



IN HARM'S WAY

The Impact of President Trump's Actions on Immigrant Survivors of Gender-based Violence

Authors:
Amanda Baran, ILRC Policy Consultant
Cecelia Friedman Levin, ASISTA Policy Director

I. INTRODUCTION

“ Immigration policies put forth under President Trump have had a unique and significant impact on immigrant survivors of gender-based violence, who now face even greater barriers to access safety and justice. ”

From the moment he ascended onto the national political stage, Donald J. Trump has made racist, xenophobic, and misogynistic rhetoric the cornerstone of his brand. Once in office, one of his first acts as president was to sign executive orders severely restricting travel to the United States for citizens from mainly predominantly Muslim countries (known as the Muslim ban) and ordering massive increases in immigration enforcement nationwide. Since then, the Trump administration has marshalled the power of the executive branch, in an unprecedented way, to harass, intimidate, and threaten immigrants.

Immigration policies put forth under President Trump have had a unique and significant impact on immigrant survivors of gender-based violence, who

now face even greater barriers to access safety and justice. This report seeks to document the impact of President Trump’s administrative actions on immigrant survivors of gender-based violence and to examine how the Trump administration has empowered abusers to use institutions and systems to silence survivors.¹

II. BACKGROUND

Gender-based violence, including domestic violence, sexual assault and human trafficking is motivated by power and control. Abusers and perpetrators of violence often try to exploit immigrant survivors’ lack of legal immigration status or dependent immigration status as a way to maintain power and to keep survivors silent. Abusers often threaten survivors that if they go to the police or the courts, they will be arrested because they are undocumented, or they threaten to call immigration enforcement to have survivors arrested or deported.²

As part of its efforts to stop perpetrators of domestic violence from weaponizing the immigration system, a bipartisan majority in Congress created special paths to immigration relief for survivors in the Violence Against Women Act (VAWA). When creating these protections, Congress recognized that:

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.³

Later, Congress created, also in a bipartisan manner, two additional remedies for immigrant survivors:

- the T visa to assist immigrant victims of human trafficking, and
- the U visa to assist immigrant victims of certain eligible crimes (including domestic violence, sexual assault, and stalking) who are willing to assist in the investigation or prosecution of those crimes.

In creating these remedies, Congress reasoned that undocumented immigrant survivors could only seek the assistance of law enforcement or other agencies who investigate or prosecute crimes if they felt safe doing so.⁴ Immigration protections can often play a critical role in helping immigrant survivors and their families find independence, safety and stability.

And yet, the Trump administration has undermined access to these immigration benefits and other protections for immigrant survivors, making the threat of deportation a reality for some survivors.⁵ 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.”⁶ According to the National Domestic Violence Hotline, 4,565 victims who called the Hotline in 2018 experienced threats related to immigration status.⁷

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VAWA self-petitions

- VAWA self-petitions provide a path to legal status for:
 1. abused spouses & children of U.S. citizens & legal permanent residents, and
 2. abused parents of adult U.S. citizen sons and daughters
- VAWA self-petitions enable survivors to seek legal permanent residence without having to rely on their abuser or remain in an abusive relationship.

T visa

- T visas provide a path to legal status for victims of severe forms of human trafficking who have assisted in the investigation or prosecution of the trafficking offense.
- T visa holders may live and work legally in the United States and eventually apply for legal permanent residence and include certain family members as derivatives.

U visa

- U visas provide a path to legal status for victims of certain qualifying crimes who can demonstrate physical or emotional harm and who were, are, or will be willing to assist in the investigation or prosecution of the crime committed against them.
- U visa holders may live and work legally in the United States and eventually apply for legal permanent residence and include certain family members as derivatives.

Sweeping Department of Homeland Security (DHS) policy changes sharpen abusers' tools to keep survivors silent.⁸ As illustrated below, DHS has developed and implemented policy changes that erode paths to safety under the pretext of fraud prevention and "strengthening the integrity of the immigration system."

The integrity of our immigration system is diminished when it is weaponized by abusers. A 2019 nationwide survey of advocates found that 75% of advocates who work with survivors state that immigrant survivors fear calling the police and report that survivors fear going to court for matters related to the abuser. Similarly, a recent study found that law enforcement officials believe that "many crimes have become more difficult to investigate: 69% said domestic violence was harder to investigate, 64% said this applied to human trafficking, and 59% said this was true about sexual assault."¹⁰ Sixty-four percent of law enforcement officials also expressed concern for community safety when immigrant crime survivors are afraid to seek assistance.¹¹

III. TRUMP'S IMMIGRATION POLICIES HARM SURVIVORS



The Trump administration has proposed and tried to implement the most restrictionist policies possible to create barriers for immigrant communities, including immigrant survivors of violence. Very often, these policy and procedural changes do not grab national headlines, and involve precise and calculated modifications that impact access to immigration benefits for thousands. By pulling the right bureaucratic levers, the Trump administration has been able to coordinate these policies across agencies and throughout the federal government.

PRINCIPAL FEDERAL AGENCIES INVOLVED IN IMMIGRATION MATTERS

The Department of Homeland Security, or DHS, is the federal agency created in the aftermath of 9/11 as a response to those attacks. Under DHS, immigration has become more entwined with national security. DHS houses several component agencies that are responsible for many federal immigration functions.

- **Immigration and Customs Enforcement**, or ICE, is a component agency of DHS in charge of immigration enforcement in the country's interior. It oversees the sprawling immigration detention system and its officers are involved in deportations and immigration raids.
- **U.S. Customs and Border Protection**, or CBP, is a component agency of DHS in charge of immigration enforcement along our borders and at ports of entry. Its officers are stationed at the border and at airports, are involved in deportations, and oversee detention facilities at or near the border.
- **U.S. Citizenship and Immigration Services**, or USCIS, is a component agency of DHS created to "exclusively (focus) on the administration of immigration benefits."¹² Under the Trump administration it has taken on more enforcement functions, blurring the line between immigration adjudications and immigration enforcement.

The Department of Justice, or DOJ, is a federal agency responsible for enforcing the country's federal laws. The Attorney General is the head of the agency and directs immigration laws that come out of the agency.

- **The Executive Office for Immigration Review**, or EOIR, is a component agency of DOJ. It is in charge of the administration and interpretation of federal immigration laws and houses the country's immigration judges. Under the Trump administration, the Attorney General has had an out-sized influence on immigration case law and has slowly taken away independence from immigration judges to rule on their cases.

The Department of State, or State Department, is a federal agency responsible for carrying out U.S. foreign policy and international relations. Among its many functions, the State Department directs immigration services at U.S. embassies and consulates abroad.

A. AGGRESSIVE ENFORCEMENT LANDSCAPE

Five days into his presidency, President Trump issued two executive orders that dramatically changed the immigration enforcement landscape.¹³ One of the most sweeping changes made was the administration's directive to prioritize virtually any undocumented immigrant for deportation. This change gives individual

immigration officers wide latitude to arrest and detain anyone they suspect of being in the country without documents, including immigrant survivors.

“ In June 2017, Tom Homan, then-acting director of ICE, spoke plainly to immigrant communities, saying, “You should be uncomfortable. You should look over your shoulder. You need to be worried. No population is off the table.”¹⁴ ”

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At the same time, the administration ramped up indiscriminate raids at workplaces and homes, targeting not just specific people, but also making “collateral” arrests. In 2017, as ICE prepared for “Operation Mega,” a nationwide raid targeting 8,400 people, one ICE officer wished his colleagues,

“Happy Hunting.”¹⁵ While the raid was never implemented, the press coverage it received paralyzed immigrant communities. In 2019, ICE raided a number of poultry-processing plants in Mississippi, arresting 680 workers, in a high-profile action. The resulting press coverage was yet another warning to immigrant communities that they are unsafe. These policies and actions, coupled with Trump's continued racist, misogynistic rhetoric, contribute to immigrant survivors' justified fear that reporting abuse could lead to immigration consequences for themselves or their family.

B. DEEPER ENTANGLEMENT OF ICE WITH LOCAL LAW ENFORCEMENT

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Against the backdrop of this new enforcement landscape, the administration has been increasing its efforts to direct local law enforcement to work hand-in-hand with ICE. To this end, it has resurrected two failed enforcement programs, Secure Communities and the 287(g) program, which enlist local and state

law enforcement to help ICE in immigration enforcement. Secure Communities is a technological system that allows ICE to access information about people in local jails and identify immigrants who may be deportable under immigration law.¹⁷ The 287(g) program allows ICE to enter into written agreements with state and local law enforcement agencies to deputize state and local officers to act as federal immigration agents.¹⁸ As of November 2019, there were 90 jurisdictions across 20 states that had 287(g) agreements.¹⁹

When local law enforcement becomes entangled with ICE in these programs, immigrant survivors fear seeking services, including accessing police, shelter, and courts. Such entanglement lends credence to abusers' threats that coming forward and using the criminal legal and immigration systems will get survivors deported, especially given several state-level efforts to support ICE's growing reliance on local and state law enforcement.²⁰



75% of advocates report that immigrant survivors have concerns about going to a court for a matter related to their abuser

Source: May 2019 Advocates Survey: Immigrant Survivors Fear Reporting Violence.

Despite the administration's push to increase the entanglement of state and local law enforcement with federal immigration enforcement, advocates on the ground have successfully resisted by passing local laws and policies that divest local agencies and resources from the immigration enforcement system.²¹ Popularly known as "sanctuary policies," these laws take many different forms, but generally cut ties between states, counties, or cities and ICE.²² The administration has attacked these "sanctuary cities" repeatedly, threatening local officials with withholding critical federal funding and using the executive branch to lash out politically at states, cities, and localities that prioritize the needs of their communities. This public display has added to the climate of fear that plagues communities and keeps immigrant survivors from leaving abusive situations.

Resources:

- APIGBV/ASISTA/Casa de Esperanza/NAESV/NDVH/NNEDV/Tahirih, [May 2019 Findings: Immigrant Survivors Fear Reporting Violence](#)
- ILRC, [Growing the Resistance: How Sanctuary Laws and Policies Have Flourished During the Trump Administration](#)
- ILRC, [National Map of 287\(g\) Agreements](#)
- ILRC, [National Map of Local Entanglement with ICE](#)
- APIGBV, [The Effects of Increased Entanglement on Immigrant Survivors](#)

C. NEW U-VISA GUIDANCE AT ICE

In August 2019, ICE reversed long-standing agency policy that encouraged its officers to stop deporting U visa applicants by requesting and receiving U.S. Citizenship and Immigration Services (USCIS) confirmation that the person submitted all necessary documents for their U visa.²³ This generally included certification from a law enforcement agency that the U visa applicant was, is, or will be helpful in the investigation or prosecution of the crime committed against them.

In its place, ICE officers are no longer required to seek this USCIS confirmation and gives greater discretion to individual ICE officers to decide whether or not to deport a U visa applicant.²⁴ This policy change places immigrant survivors at greater risk. To give individual ICE officers such broad discretion undermines the bipartisan Congressional intent in creating special protections for immigrant survivors. In addition to this new ICE policy, USCIS's long processing delays, which currently stretch to over four years, put even more survivors at risk for deportation before their cases are decided.

Resources:

- ASISTA, [Changes in ICE Guidance on Will Impede Access to Protections for Immigrant Survivors](#)
- BuzzFeed News, [An Asylum-Seeking Mom Who Applied For A Special Visa For Victims Of Violence Is About To Be Deported Anyway](#)
- The Hill, [ICE rule change on U visas sparks outrage](#)

D. COURTHOUSE ARRESTS

“ A report by the Immigrant Defense Project found that in 2017, courthouse arrests by ICE increased a staggering 1200% in New York alone.²⁶ ”

In 2018, ICE issued a directive formalizing its practice of making arrests in criminal and civil courthouses.²⁵ While due process mandates that people be able to avail themselves of the legal system without fear of deportation, ICE arrests at courthouses have surged. A report by the Immigrant Defense Project found that in 2017, courthouse arrests by ICE increased a staggering 1200% in New York alone.²⁶ The impact on immigrant survivors has been felt just as deeply. A

report published by the National Immigrant Women's Advocacy Project and the American Civil Liberties Union in 2018 found that the fear of deportation, magnified by immigration arrests in courthouses since the change in administration, has affected immigrant survivors' willingness to come forward and pursue cases against

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perpetrators.²⁷ Entire communities are put at risk when survivors fear filing protection orders or participating in child custody proceedings.

Resources:

- ILRC, [ICE Courthouse Arrests in California: Explainer and Legal Strategies Tool for Legal Services Providers and Defenders](#)
- ACLU, [Freezing out Justice](#)
- ICE Out of Our Courts Coalition. [Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State](#)
- Ceres Policy Research. [The Chilling Effect of ICE Courthouse Arrests: How Immigration and Customs Enforcement \(ICE\) Raids Deter Immigrants from Attending Child Welfare, Domestic Violence, Adult Criminal, and Youth Court Hearings](#)
- UW Center for Human Rights, [Justice Compromised: Immigration Arrests at Washington State Courthouses](#)

E. EXPANSION OF EXPEDITED REMOVAL

Expedited removal is a process that allows low-level immigration officers to deport noncitizens quickly and without due process.²⁸ By regulation, it only applies to people found within 100 miles of the border who have not been physically present in the country for 14 continuous days.²⁹ On July 22, 2019, the Trump administration announced that it would expand expedited removal to apply throughout the country against people who had been here up to two years.³⁰ In September 2019, this policy was temporarily blocked by the courts, and currently the government is forbidden from implementing it.³¹

If implemented, this policy will force people to prove to individual ICE officers, rather than immigration judges, that they should not be deported.³² It will increase the already rampant fear in immigrant communities of contacting law enforcement and places an untenable burden on survivors to produce documentation challenging DHS accusations they should be subject to fast track deportation.³³ Immigrant survivors, in particular, may be

fleeing abuse and may not have access to evidence to demonstrate their continuous presence. This expansion would create additional and unnecessary barriers for survivors that compound the myriad challenges that they already face when accessing protections.³⁵

Resources:

- ILRC, [Toolkit to Assist People Facing Expanded Expedited Removal](#)

F. USCIS IS BECOMING AN ENFORCEMENT AGENCY

“ Under the Trump administration, USCIS’s mission has become increasingly focused on immigration enforcement, rather than considering applications for immigration benefits. ”

As mentioned above, USCIS was created by Congress to adjudicate immigration benefits. Under the Trump administration, USCIS’s mission has become increasingly focused on immigration enforcement, rather than considering applications for immigration benefits. For example, take the June 2018 policy expanding USCIS’s authority to issue notices to appear (NTAs), the document the government uses to begin a deportation case in immigration court against a person.³⁶

The new guidance broadened the categories of people USCIS will send to immigration court if their application for immigration relief is denied, even for technical errors, including applicants for VAWA, U visa, and T visa protections. Previously, it had been a long standing practice that USCIS did not typically send VAWA self-petitioners, U visa petitioners, and T visa applicants to immigration court if their applications were denied because the government did not want to “chill” victims’ willingness to come forward to access these protections.

Immediately following the issuance of the new guidance, in July 2018, USCIS issued another policy giving adjudicators the freedom to deny immigration applications outright without allowing applicants the opportunity to cure any deficiencies.³⁷ Previously, if USCIS officials needed more information to make a decision they would issue a document (called a Request for Evidence or “RFE”) which gave applicants the ability to correct errors or send in more information. This new policy gives USCIS officials the ability to deny applications without asking for more information. Coupled with the new NTA policy, the chances for a simple error or omission on an application resulting in possible deportation has significantly increased.

Building on these draconian policies, on December 30, 2019, USCIS posted on its website that it may reject U visa petitions or T visa applications if there is a blank field on the form.³⁸ This unannounced and drastic shift in policy and practice has created significant hardship for survivors and puts enormous strain on advocates and U visa certifying agencies. USCIS has unjustly rejected applications based on overbroad interpretations of this new

policy, putting victims further at risk by delaying their adjudications, and subjecting relatives who qualify for relief to possible age-out and loss of eligibility.³⁹

As noted previously, when Congress passed VAWA, it recognized that abusers use the immigration system as a tool to further their harm and abuse. By instituting these new policies, the government is making itself complicit in this abuse. The policy memoranda will have a chilling effect on immigrant survivors' willingness to come forward, file for benefits for which they are statutorily eligible, and report abuse and other crimes to law enforcement.

Resources:

- ILRC, [Practice Update: Issuance of Notices to Appear \(NTAs\) in Denied Humanitarian -based Immigration Cases](#)
- ASISTA, [Annotated Notes and Practice Pointers: USCIS Teleconference on Notice to Appear \(NTA\) Updated Policy Guidance](#)
- AILA, [Policy Brief: Expanded NTA Guidance Will Have Devastating Effects on Survivors of Domestic Abuse, Trafficking, and Other Serious Crimes](#)
- ASISTA, [Letter to USCIS Regarding Blank Spaces Processing Policy](#)

G. OUT-OF-CONTROL PROCESSING DELAYS AND BACKLOGS

Under the Trump administration, processing times for survivor-based forms of immigration protections have dramatically increased, undermining the effectiveness and purpose of these critical benefits. As of May 2020, petitioners for protection under VAWA must wait between 18.5 and 24 months for their cases to be adjudicated.⁴⁰

For U visas, the delay is even more significant, topping 55.56 months (over 4 years)⁴¹ to have an application even initially reviewed. Such delays, coupled with other barriers mentioned above can be devastating to victims, and may subject them to homelessness or returning to violent homes.⁴² Similarly, survivors facing these backlogs risk potential deportation before their applications are adjudicated, which defeats the purpose of these bipartisan protections established by Congress.⁴³

Resources:

- ASISTA/APIGBV, [Testimony on USCIS Processing Delays \(July 2019\)](#)
- Immigration and Domestic Violence Coalition, [Coalition testimony on Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services](#)

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H. USCIS'S PUBLIC CHARGE REGULATION

In August 2019, USCIS issued a regulation that changed the test to determine if someone applying for a green card or a visa to enter the United States is likely to depend on public benefits in the future.⁴⁴ If a person is found likely to be dependent on certain public benefits in the future, they will be determined to be a “public charge,” and their green card or visa application can be denied.

“**(T)he public charge grounds of inadmissibility create an enormous chilling effect on survivors who are fearful of reaching out for services, even if the public charge grounds do not apply to them.**”

While the public charge test does not apply to immigrant survivors who are VAWA self-petitioners, U petitioners, or T visa applicants,⁴⁵ immigrant survivors could be affected by the new public charge rule if they are immigrating through family or employment sponsorship, are certain non-immigrants like foreign students or temporary workers (or their spouses or dependents), are diversity visa applicants, or are permanent residents who have left the United States for over 180 days.⁴⁶ Furthermore, the public charge grounds of inadmissibility create an enormous chilling effect on survivors who are fearful of reaching out for

services, even if the public charge grounds do not apply to them.⁴⁷

In addition to any potential immigration consequences, many immigrants, including survivors, will fear accessing life-saving public benefits for which they may be eligible because of the confusing guidelines outlined in the new public charge rule.

Resources:

- ILRC, [Public Charge: What the Community Needs To Know](#)
- ILRC, [Public Charge Exemptions and Considerations](#)
- ILRC, [Full Suite of Public Charge Materials](#)
- APIGBV, [Revised Advisory: How Will 'Public Charge' Proposed Policy Changes Impact Immigrant Survivors of Domestic Violence and Sexual Assault?](#)



I. USCIS FEE RULE AND CHANGES TO THE FEE WAIVER

Applicants are required to pay a filing fee for the majority of immigration benefits. For some applications, when a person can demonstrate an inability to pay, the fee can be waived. In November 2019, USCIS published a proposed rule dramatically increasing the cost of applying for many immigration benefits and eliminating waivers of the filing fees for those who are unable to afford them.⁴⁸ While VAWA self-petitions, U visa petitions, and T visa applications generally have no cost, they often must submit other, accompanying immigration forms that have fees. Under the law, VAWA self-petitioners, U visa petitioners, and T visa applicants are eligible to waive these filing fees.⁴⁹ Under this proposed rule, the fees for these accompanying applications will increase substantially. For example, many survivors must submit an additional waiver with their U petition or T application to overcome certain issues (if, for example, they lack a passport or if they originally entered the United States without authorization). The cost for this waiver will increase from \$930 to \$1415, an increase of 52%.⁵⁰ In addition, the proposed rule creates strict eligibility requirements for fee waivers, eliminating two of the existing three criteria by which people will be able to obtain a fee waiver. This change penalizes survivors who may not be able to show eligibility under the stricter rules.⁵¹

Specifically, the proposed rule states the only criteria it will consider for a fee waiver is that applicants must show income at or below 125% of the federal poverty guidelines (FPG) lowering it from the current standard of either 150% FPG, or receipt of a means-tested benefit or financial hardship, and requires documentation of income that survivors are unlikely to have.⁵² The result of making the fee waivers for associated filings so difficult to obtain will be that many survivors will not be able to qualify for the primary benefit of VAWA, U status, or T status, in direct opposition to Congressional intent in making these visas available.⁵³

The proposed rule also calls for USCIS to transfer over \$100 million to ICE for enforcement purposes - an indication that the Trump administration is transforming USCIS - which is an immigration services and benefits agency - to support ICE's efforts to arrest, detain and deport immigrants.

Resources:

- ILRC, [Fee Waivers and Their Impact on DV Survivors](#)
- ASISTA, [Fee Waiver Advocacy and Practice Resources](#)

J. UNSUBSTANTIATED “FRAUD TIPS” TO USCIS

In June 2018, unbeknownst to the public, USCIS established a “Tip Unit,” co-located with ICE, in order to process “thousands of immigration benefit fraud tips that USCIS receives annually from the public and other government entities.”⁵⁴ According to written Congressional testimony, as of May 2019, the Tip Unit processed over 45,000

tips from the public and sent over 26,000 “leads” to ICE for criminal investigation.⁵⁵ USCIS gave no reason as to why yet another unit dedicated to “fraud” had to be established and gave no information as to what credence or weight this new unit was giving to tips.

In February 2019, USCIS issued a proposed form which sought to collect information from the public regarding purported fraud. The form proposed no criteria for submitting tips, does not define “fraud”, encourages anonymous reporting and racial profiling, and does not give applicants the opportunity to learn about derogatory information lodged against them or refute any allegations. This form was officially published on March 3, 2020.⁵⁶

“Advocates are concerned that this form and new “Tip Unit” will encourage abuse by people seeking to harm immigrant communities, especially those of Muslim, Arab, Iranian, Middle Eastern, and South Asian descent and survivors of gender-based violence.”

Advocates are concerned that this form and this new “Tip Unit” will encourage abuse by people seeking to harm immigrant communities, especially those of Muslim, Arab, Iranian, Middle Eastern, and South Asian descent and survivors of gender-based violence. When Congress created the special immigration protections in VAWA for survivors of domestic violence, sexual assault, human trafficking and other forms of violence, it also established important confidentiality protections. These protections guard a survivor’s information from the abuser and prohibit negative action on a survivor’s case based on information solely provided by an abuser or a member of an abuser’s household or family member. Co-locating this unit with ICE and publishing this form undermines the purpose of these confidentiality protections and unlawfully gives perpetrators another tool for abuse, further endangering survivors.

Resources:

- AAI/ASISTA/ILRC, [USCIS Tip Form Fact Sheet](#)



K. BARRIERS TO RELIEF TO SURVIVORS IN IMMIGRATION COURT

In addition to the erosion of protections for asylum seekers fleeing gender-based violence in their home country, the Attorney General, and the Board of Immigration Appeals (BIA) under his direction, have severely limited paths to protection for survivors of violence seeking protection under VAWA or the Trafficking Victims Protection Act (TVPA). For example, in May 2018, then-Attorney General Jeff Sessions issued a decision that took away the ability of immigration judges to temporarily close cases.⁵⁷ This process, called administrative closure, was a way that immigration judges could temporarily take a case off the court schedule, usually to allow for an immigrant who may be eligible for some type of immigration benefit, to have their application processed by USCIS. For example, an immigration judge may choose to administratively close a case to wait for visa approval or for an asylum application to be decided.

This policy change took a heavy toll on survivors as many in immigration proceedings have VAWA, U, or T cases pending with USCIS. Not allowing immigration judges to pause removal proceedings to adjudicate their VAWA-related petitions is a gross due process violation that puts survivors in danger of being deported before a decision on their application is issued. In August 2019, a federal court in the Fourth Circuit overturned Sessions' decision and ended the practice in that legal jurisdiction (Maryland, Virginia, West Virginia, North Carolina, and South Carolina). In other jurisdictions, however, the practice remains.

On January 22, 2020, the BIA issued *Matter of Mayen* which impacts how immigration judges should consider granting continuances in immigration court for U visa petitioners. As a result of this decision, it is likely that fewer U visa petitioners will be granted continuances in immigration court while their applications are pending. This decision, coupled with the unprecedented backlog of U visa applications, not only increases the risk of deportation while U visas are pending but expressly undermines the bipartisan Congressional intent behind these protections.

Resources:

- ACLU and AIC, [Practice Advisory on Matter of Castro-Tum](#)
- ASISTA, [Practice Advisory: The Impact of Matter of Mayen, 27 I&N 755 \(BIA 2020\)](#)



L. REORGANIZATION OF DOJ'S EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

In August 2019, the Executive Office for Immigration Review (EOIR) issued an interim final rule - one that took effect immediately without an open public comment period - reorganizing itself and diluting the impact of the office responsible for legal access programs.⁶¹ One of the casualties of this reorganization was the Recognition and Accreditation Program which trains and deputizes qualified non-lawyers to provide legal representation before USCIS and in immigration court. This program, which has been in effect for 60 years, has helped thousands of immigrants and has been especially successful in assisting those with VAWA-related claims.⁶² Diminishing this program will leave more immigrant survivors without legal representation and threaten their and their families' safety.

In addition, the rule gives the Director of EOIR broad authority to decide cases on appeal to the BIA, the administrative appeals court for immigration cases. This change has put enormous power into the hands of a political appointee to rewrite law without any regard for due process. This could potentially have an enormous impact on all immigrants, including survivors.

Resources:

- CLINIC, [EOIR Reorganizes under New Interim Rule](#)
- CLINIC, [Advocate for the Integrity of the DOJ Recognition & Accreditation Program and Fair Due Process in Immigration Court](#)

IV. 2020 FORECAST



The Administration will continue to weaponize the bureaucracy to harm immigrant communities even more, believing that it is a winning political strategy for the upcoming 2020 election. In addition to publishing a tremendous number of regulations and policies, Trump will likely double down on his political attacks against sanctuary cities and manipulate the regulatory process to create additional barriers for immigrants to access relief. This has already started. ICE is now "flooding the streets" and expanding its surveillance in sanctuary jurisdictions with the purpose of "arrest(ing) as many undocumented immigrants as possible."⁶³ A recent Second Circuit decision has permitted the Trump administration to proceed with its plan to cut off funding to "sanctuary cities", threatening law enforcement grants to jurisdictions that do not comply with immigration detainers and other ICE policies.⁶⁴

The topics below are just some of the issues that are on the Trump administration's radar that will impact immigrant survivors of crime, in particular.

A. U VISA RULE

The administration announced last year that it is planning on publishing a rule amending the current U-visa regulations. Given the current policy trajectory for immigration regulations, we expect USCIS to erect additional barriers to accessing U-visas. Like many of the policies discussed above, (e.g. rejecting U visa applications for blank spaces), we anticipate that USCIS will attempt to restrict or limit the U visa program under the pretext of fraud prevention. In 2012, the Congressional Research Service (CRS) found empirical evidence for widespread fraud assertions lacking.⁶⁵ In addition, the current system already has numerous gatekeepers, checkpoints, and roadblocks that immigrant survivors must pass in order to access VAWA protections.⁶⁶ Immigrant survivors of violence are deeply harmed by the false narrative correlating their cases with immigration fraud. As one advocate stated, "As long as stories of survivors continued to be mistrusted, we're putting people in more danger. We're allowing violence to continue in our communities."⁶⁷

B. PUBLIC CHARGE DEPORTABILITY

DOJ has long-promised to publish a companion public charge regulation to the one issued by USCIS. Reports indicate that the regulation would open the door to deporting those who have used certain government benefits and unlike the DHS rule, would not exempt from deportation refugees or asylum seekers.⁶⁸ This rule, if implemented, would put survivors at risk of deportation and serve as an even greater reason to dissuade them from accessing benefits for which they or their children could be eligible.

C. CHANGES TO AFFIDAVIT OF SUPPORT

USCIS is making changes to the affidavit of support, a form people living in the United States fill out when sponsoring family members to join them in the country. Already, the agency has made changes to the form, asking new questions about bank account information. The administration is planning on issuing a new rule making dramatic changes to the affidavit of support, which is expected to come out in spring 2020.⁶⁹ While these changes may not initially impact immigrant survivors and their family members, they could later affect their ability to petition for relatives to join them in the United States in the future.

D. REFERRAL OF DECISIONS TO THE ATTORNEY GENERAL

The Attorney General has the power to refer cases pending or decided by the BIA, to themselves to decide as they see fit. Past administrations have used this power sparingly, but the George W. Bush administration used it extensively (then-Attorney General Michael Mukasey utilized this authority in 15 cases), and Trump's Attorney General is on pace to meet or exceed the Bush Administration's use. DOJ has pledged to issue a rule that expands even more the power of the Attorney General to rewrite cases. This blatant disregard for the rule of law and due process norms will impact all immigrants, including survivors.

RECOMMENDATIONS

In light of this aggressive policy landscape, we recommend the following:

Advocacy

- **Adopt an Intersectional Analysis:** Advocates in the mainstream women's movement should ensure that the needs and lived experiences of immigrant survivors are lifted up. It is important that whenever advocates talk about mainstream anti-violence campaigns (e.g. MeToo, TimesUp) or make policy demands that the voices of immigrant survivors are considered.
- **Stand in Solidarity with Other Communities:** Trump's racist, misogynistic rhetoric is designed to strike fear in the hearts of all immigrant communities. It is imperative that advocates for immigrant survivors stand and work in solidarity with all immigrant communities, including the Muslim, South Asian, Arab, and Black communities who are bearing the brunt of this administration's xenophobic policies.
- **Advocacy with Elected Officials:** Advocates should continue to educate their members of Congress along with state and local elected officials about the impacts the administration's immigration policies are having on immigrant survivors. It is crucial for elected officials to understand the links that such policies have to survivors.

Congressional Actions

- **Immigrant Witness and Victim Protection Act:** Congress should pass the Immigrant Witness Victim Protection Act, which eliminates the 10,000 annual cap on U visas and gives work authorization to survivors with pending U visas and T visas.⁷⁰ The Act would give more survivors the freedom to come forward and leave abusive situations with less fear that the immigration system will be used as another tool of abuse against them.
- **Oversight:** Congress should engage in greater oversight over the agencies in charge of immigration. This includes holding more hearings across a variety of committees, including the House Judiciary, Oversight, and Homeland Security Committees, and demanding that the agencies produce information and

accountability for policies that affect survivors.

- Accountability in Appropriations: Congress should hold USCIS accountable when it attempts to transfer money out of the agency to support more immigration enforcement, as it did in the fee rule. USCIS fee money should be used for adjudications, not more enforcement.

Administrative Advocacy

- Fight Back Against Trump's Administrative Agenda: The administration's ambitious, aggressive 2020 administrative agenda will require vigorous opposition from advocates. Such opposition includes submitting comments to regulations published in the federal register that impact immigrant communities and encouraging and helping others to do so, especially members of Congress and state/local elected officials.

Federal Litigation

- Much of the Administration's efforts to weaponize administrative policy to diminish access to legal immigration status has been subject to federal litigation. Often, changes in policy have not followed legal administrative procedures, contain arbitrary and capricious provisions, and cause immense burdens to applicants. For example, there are two federal court actions challenging changes to USCIS's fee waiver policy discussed above. These challenges have an immense impact on low-income immigrant survivors of violence seeking to access immigration protections. Support for federal litigation efforts to continue to challenge these, and other, administrative policies will be essential in the months to come.

V. CONCLUSION

The Trump administration's unrelenting assault on immigrant communities, including immigrant survivors, has been unprecedented in its scope. The immigrant rights community has used all its might - through organizing, litigation, and policy advocacy - to challenge these dangerous proposals. The next year will require even more strength and resilience to combat the barrage of policy proposals in the pipeline, and we must continue to use all our tools to fight for justice and safety for all our communities.



1. This document is intended to educate attorneys and advocates who work with immigrant survivors. While the authors acknowledge the damage the Trump administration has instituted against asylum seekers, this report will focus on harm the administration is undertaking in the United States and will not address the numerous policy changes the administration has made and is making to undermine the asylum program.
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4. *Id.* See also section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464. Congress found that “providing battered immigrant women and children . . . with protection against deportation . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers.” Pub. L. No. 106-386, § 1502(a)(2), 114 Stat. 1464 (2000) (emphasis added).
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IMMIGRANT LEGAL RESOURCE CENTER

ILRC Main Office

1458 Howard Street
San Francisco, CA 94103
Main: (415) 255-9499
Fax: (415) 255-9792

DC Office

1015 15th Street NW, Suite 600
Washington, DC 20005

San Antonio Office

500 6th Street, Suite 204
San Antonio, TX 78215

Austin Office

6633 East Hwy 290, Suite 102
Austin, TX 78723



ASISTA

P.O. Box 12

Suffield, CT 06078
Main: (860) 758-0733