August 13, 2020

Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529

Dear Mr. Cuccinelli:

On behalf of 146 undersigned organizations that directly or through their membership assist and advocate on behalf of asylum seekers and/or immigrant survivors of gender-based violence and human trafficking, we urge the U.S.Citizenship and Immigration Service (USCIS) to immediately rescind the agency's processing policy of rejecting applications for blank spaces on forms.

I. Background

Starting in October 2019, USCIS implemented a new processing policy of rejecting asylum applications that contain blank spaces, even when those fields are optional or not applicable to the applicant, and even when the information sought is immaterial.[1] This policy was later applied to U visa petitions in December 2019,[2] T visa applications in March 2020,[3] and it is our understanding that USCIS plans on implementing this policy to additional form types in the future. This significant shift in policy creates an enormous hardship for asylum seekers and immigrant survivors of crime, and places needless burdens on applicants and the attorneys and advocates who assist them, as well as the agencies that submit certifications for U visas.

USCIS recently asserted that "complete applications are necessary for our adjudicators to preserve the integrity of our immigration system and ensure they are able to confirm identities, as well as an applicant's immigration and criminal history, to determine the applicant's eligibility."[4] Nevertheless, for years, USCIS has accepted forms with blank spaces (or with crossed out spaces) for fields that did not

[1] USCIS. "I-589: Application for Asylum and for Withholding of Removal", available at https://www.uscis.gov/i-589 The instructions regarding blank spaces are hidden at the very bottom of the "Where to File" drop down menu, and not at all on the main page itself.
[2] USCIS. "I-918: Petition for U Nonimmigrant Status, available at https://www.uscis.gov/I-918
[3] USCIS. "I-914: Application for T Nonimmigrant Status, available at https://www.uscis.gov/i-914
[4] https://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc_story.html?hpid=hp_opinions-float-right-4-0_opinion-card-d-right%3Ahomepage%2Fstory-ans

apply to the applicant or petitioner.[5] The agency has not made any attempt to explain how blank spaces in fields inapplicable to the applicant or petitioner cause demonstrable problems for USCIS or its evaluation of the merits of the claim, and certainly no explanation of why any such problems are so significant as to warrant rejection of the entire application. Not only has USCIS not explained what problem USCIS is attempting to solve by such a drastic and significant change, which counters over a decade of prior practice, but also, whatever the original thinking, the change has resulted in new problems that waste resources across applicants and agencies, including USCIS itself, which is facing dire financial straits and threatening furloughs of more than 70 percent of its workforces.

In addition, USCIS did not provide any advance notice of *when* these processing changes would take effect. In fact, USCIS buried notice of the change, by only updating its I-589, I-918, and I-914 form web pages. USCIS provided no additional stakeholder outreach to ensure that applicants had sufficient opportunity to prepare their applications under this new policy, or to understand whether it would be immediately implemented or subject to a grace period or whether any accommodations would be made for already-submitted applications. Based on USCIS' course of action, we can only conclude that USCIS did not intend to alert or apprise the public about this new policy. Rather, its intent was arbitrary and punitive--to limit "properly filed" applications as much as possible and thereby to discourage or disqualify applicants from seeking humanitarian immigration relief.

II. Impact

USCIS asserts that it safeguards the "integrity and promise" of the U.S. immigration system by efficiently and fairly adjudicating requests for immigration benefits.[6] However, the agency undermines this assertion by changing policy without reasonable justification, advance notice, stakeholder engagement, or grace period. This new processing policy of rejecting applications because they contain blank spaces not only creates administrative inefficiencies, but also unjustly impacts applicants and their families.

The swift implementation of this new policy has resulted in unfairly rejected applications based on irrelevant and immaterial omissions. In addition, these rejection notices often contain errors and extraneous boilerplate language that make it confusing for applicants to discern what fields are at issue. Moreover, it has placed already-vulnerable victims further at risk of harm by delaying the adjudication of their applications. Even worse, it has caused some individuals to lose their eligibility altogether. This would be problematic at any time, but such bureaucratic obstacles to protection are especially unconscionable during an international pandemic, given the extreme difficulties that applicants may

[5] For example, USCIS instructed I-918 U visa petitioners to fill out the form "fully and accurately" including the use of N/A or None in earlier versions of the form, going back at least a decade. The rejection of U visa petitions based merely on blank spaces on forms did not start until December 2019.
[6] https://www.uscis.gov/about-us/mission-and-core-values

experience remediating and resubmitting applications that have been summarily rejected under the policy. Moreover, applicants are acutely disadvantaged also by USCIS' significant delays in issuing notifications, as it may take 4-6 weeks to reject an asylum application or U visa petition because of this new policy, thereby affecting filing deadlines and other eligibility requirements, like age-out provisions. Furthermore, delays caused by these rejections could impact an individual's eligibility if policies or regulations are revised in the interim (e.g. asylum applicants whose applications are rejected for blank spaces may be subject to the new fee rule and incur additional costs to filing).

A. Asylum

In the asylum context, since October 2019 hundreds of applications have been rejected by USCIS for blank spaces. At times, rejections were because fields contained "None," "Not Applicable," or "-", instead of "N/A", despite the fact that the form instructions allow you to write "none," "not applicable," or "unknown." Asylum applications have even been rejected for having the applicant's name and A# being written in pen instead of pencil on the back of passport photos. Even more egregious, applications have been rejected because the applicant's signature was not in cursive writing, or for failing to fill in their name in their native alphabet when the client's native alphabet is the same one used in English. The impact of these rejections on asylum seekers are enormous, potentially impacting their eligibility for relief, delaying their ability to get employment authorization, adding additional stress and financial burden on applicants, and creating needless delays on to already lengthy processing times.

B. T visas

On March 16, 2020--three days after the U.S. government declared a national emergency due to the COVID-19 pandemic--USCIS extended the blank space processing policy to T visa applications for victims of human trafficking. It is unclear when or if USCIS implemented this policy change with respect to T visas.

Notably, the I-914 alert is markedly different from the notices on the I-918 and I-589 pages, stating *inter alia,*

> "We will reject a Form I-914 and, if applicable, a Form I-914, Supplement A, that has, for example, *an empty field for gender, other names used, marital status, current immigration status, information about a spouse or child, or tables not completed where appropriate*."

While one could argue that none of the listed examples are so material as to require rejection, rather than a request for additional evidence, this language inappropriately ignores the reality that applicants may not identify as male or female (the only options on the form). The provisions regarding gender and

marital status in the I-914 instruction merely read, "Check the appropriate box for each."[7] Applicants should not have their applications rejected for discriminatory reasons such as not checking a box that is not "appropriate" for their gender identity.

C. U visas

The consequences of this new processing policy for U visa applicants have been dire. Applicants and their representatives report receiving rejection notices many weeks after the initial filing of U visas. As U visa petitions are adjudicated "first in, first out," a delay of weeks or even months can dramatically affect when an application is adjudicated for placement on the waitlist or when a U visa itself is issued. Given that there are only 10,000 U visas for principal applicants issued annually, these significant delays can make a crucial difference if a visa is issued in one fiscal year or the next.

In many cases, by the time a U visa applicant receives a rejection notice, the I-918B U Nonimmigrant Status Certification provided by the certifying agency involved in the investigation or prosecution has expired. One attorney reports that she filed a U visa petition for a crime victim on June 11, 2020 and it was returned as rejected on July 17, 2020 because the field for a child's middle name was left blank. The I-918B U Nonimmigrant Status Certification expired the day prior, July 16, 2020 and now the U visa petitioner must seek another certification from law enforcement. This needlessly expends limited resources of crime victims, their advocates, and law enforcement agencies, who are already operating under crisis due to the COVID-19 pandemic.

Even more appalling is that applicants may now be considered to be "aged-out" if the I-918 applications were rejected due blank spaces on forms. For example, USCIS rejected a petition of a rape survivor for for nonmaterial blank spaces on the I-918 form. Her petition was sent to USCIS *before* December 30, 2019 while her child was under 21. Her child turned 21 after the original filing and now because of the rejection, he has now "aged-out" of protection.[8]

In June 2020, USCIS extended this processing policy to I-918 Supplement B, U Nonimmigrant Status Certifications. The Form I-918 webpage now reads, "We may reject your Form I-918, Petition for U Nonimmigrant Status; Form I-918, Supplement A, Petition for a Qualifying Family Member of a U Nonimmigrant; ***and Form I-918 Supplement B, U Nonimmigrant Status Certification; if you leave a field blank, unless the field is optional."***[9] Like its prior announcements in 2019, USCIS buried this significant update on the I-918 Form page, without any formal or advance notice, nor any grace period. In addition, USCIS has failed to instruct stakeholders if this policy is currently in effect.

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[7] I-914 Instructions, available at https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf

[8] https://www.washingtonpost.com/opinions/the-trump-administrations-kafkaesque-new-way-to-thwart-visa-applications/2020/02/13/190a3862-4ea3-11ea-bf44-f5043eb3918a_story.html.

[9] *See* note 2 *supra*, emphasis added.

III. Conclusion

Our organizations have been deeply impacted by the COVID-19 pandemic and have faced numerous challenges in our work serving and advocating on behalf of immigrant survivors and asylum seekers, both at the individual staff and organization-wide levels. Penalizing applicants and petitioners because of non-material blank fields on forms creates unnecessary barriers for individuals seeking humanitarian protections, needlessly burdens our organizations, and drains agency resources during this unprecedented time of staggering challenges.

We call on USCIS to immediately:

- Rescind USCIS' processing policy for rejecting asylum applications, U visa petitions, or T visa applications because of blank fields on the form, including Form I-918 B: U Nonimmigrant Status certifications for U visas and Form I-914 B: Declaration of Law Enforcement Officer for Victim of Trafficking in Persons and halt extension of this processing policy to other form types.

- Provide remedies to those survivors who have already been impacted by this rejection policy, including but not limited to treating their applications as properly filed when initially submitted and issuing new receipt notices for impacted applications with their original filing date so as to restore eligibility and priority that would otherwise have been lost; accepting as current I-918 Supplement B: U Nonimmigrant Status Certifications which were valid at the time of the original filing; and preserving the age of applicants at the time of the original filing.

- Provide public engagement sessions for all impacted stakeholders, including but not limited to advocates, government agencies, judges, law enforcement, and all other certifying agencies as USCIS changes any relevant processes in order to ensure due process.

Thank you for your attention to this critical matter. Please contact Cecelia Friedman Levin, Policy Director at ASISTA (cecelia@asistahelp.org) if you have any questions or need additional information.

Signed:

National Organizations

Alianza Nacional de Campesinas
American Immigration Lawyers Association
American Friends Service Committee (AFSC)
Asian Pacific Institute on Gender-Based Violence
ASISTA
Association of Pro Bono Counsel
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Catholic Legal Immigration Network, Inc.
Center for Gender & Refugee Studies
Coalition to Abolish Slavery & Trafficking (CAST)
Freedom Network USA

Human Rights First
Human Trafficking Legal Center
Immigrant Justice Corps
Immigrant Legal Center
Immigrant Legal Resource Center
International Refugee Assistance Project
Kids in Need of Defense (KIND)
Latin American Legal Defense and Education Fund
Lutheran Community Services NW
National Immigrant Justice Center
National Resource Center on Domestic Violence
RAICES
Tahirih Justice Center

State and Local Organizations

Arizona
Florence Immigrant & Refugee Rights Project

California
Catholic Charities Diocese of San Diego
Catholic Charities of Santa Clara County
Central American Resource Center - (CARECEN)
Centro Legal de la Raza
Coalition for Humane Immigrant Rights (CHIRLA)
Colin Immigration Law
CRLA Foundation
Immigration and Nationality Section of the Los Angeles County Bar Association
Immigration Center for Women and Children (ICWC)
Immigrant Defenders Law Center
Jenesse Center, Inc.
Law Office of Carolina C. Gomez
Law Office of Erika Rodriguez
Law Office of Richard Hobbs
Law Office of Tanya Brannan
Legal Aid Society of San Mateo County
Legal Services for Children
LGBT Asylum Project
Los Angeles Center for Law and Justice
Oasis Legal Services
Public Counsel
Rose Immigration Law Corp
Southwestern Law School Immigration Clinic
Warren Law Firm

Colorado
Latina SafeHouse
Rocky Mountain Immigrant Advocacy Network (RMIAN)
Violence Free Colorado

Connecticut
Connecticut Institute for Refugees and Immigrants
Connecticut Legal Services
Greater Hartford Legal Aid
Law Office of Alicia Kinsman

District of Columbia
Ayuda
Capital Area Immigrants' Rights (CAIR) Coalition

Florida
Aguirre Law, PA
Americans for Immigrant Justice
Catholic Legal Services, Archdiocese of Miami
Florida Legal Services, Inc.
Janice V Nisbett, PLLC
Orlando Center for Justice
UNO Immigration Ministry

Georgia
Law Office of Dagmar W Rick

Illinois
Ascend Justice
Illinois Coalition Against Domestic Violence
Legal Aid Society of MFS
Mano a Mano Family Resource Center
North Suburban Legal Aid Clinic
University YMCA - New American Welcome Center

Indiana
Indiana Coalition Against Domestic Violence, Inc.

Iowa
Iowa Coalition Against Domestic Violence

Maine
Immigrant Legal Advocacy Project

Maryland
Human Trafficking Prevention Project
University of Maryland SAFE Center (Support, Advocacy, Freedom and Empowerment) for Human Trafficking Survivors

Massachusetts
Ascentria Care Alliance Immigration Legal Assistance Program
De Novo
DOVE Inc. (Domestic Violence Ended)
Harbor Communities Overcoming Violence (HarborCOV)
Political Asylum Immigration Representation (PAIR) Project

Michigan
Michigan Immigrant Rights Center (MIRC)

Minnesota
De Leon, Nestor & Torres, LLC
Immigrant Law Center of Minnesota
Roberts Immigration Law Office, Ltd.

Mississippi
Elmore and Peterson Law Firm

Missouri
Willmoth Immigration Law, LLC

Nebraska
Nebraska Coalition to End Sexual and Domestic Violence

Nevada
GWP Immigration Law

New Jersey
AG Law Firm
Ana Raquel Reis - Attorney at Law LLC
Andres Mejer Law
Casa de Esperanza
Centro Comunitario (CEUS)
Kiam and Abraham LLC
Kiran Anik Law, LLC
Law Office of Carolina T. Curbelo, LLC
Law Office of Cynthia M. Russo
Law Office of Daniel W. Diaz

Law Office of Mustafa Cetin
Law Office of Sally L. Steinberg, Esq.
Law Office of Susan G. Roy, LLC
Law Offices of MJ Kim LLC
Law Office of Sally L. Steinberg, Esq.
Leschak & Associates, LLC
Volunteer Lawyers for Justice

New Mexico
New Mexico Immigrant Law Center

New York
Asylum Seeker Advocacy Project (ASAP)
Catholic Migration Services (CMS)
Erie County Bar Association Volunteer Lawyers Project, Inc.
Her Justice
Jing Feng Law Group PLLC
Justice For Our Neighbors-New York
Law Office of Peter E. Torres
Safe Horizon
Sosa Law
The Legal Aid Society (New York)
The Legal Project
Urban Justice Center Domestic Violence Project
Womankind

North Carolina
Catholic Charities of Raleigh
Mi Casa Community Services

Ohio
Advocating Opportunity

Oregon
Meadowlark Immigration PC

Pennsylvania
CWS - Lancaster
HIAS Pennsylvania
Justice at Work

South Carolina
Law Office of Amanda Keaveny
Law Office of Stephanie Nodine, LLC

Tennessee
Tennessee Justice for Our Neighbors

Texas
American Gateways
Human Rights Initiative of North Texas
Law Office of Angelique Montano PLLC
Mosaic Family Services
Rays Of Freedom Non-Profit Organization

Vermont
Vermont Network Against Domestic and Sexual Violence

Washington
Beckner Immigration Law PLLC
Law Office of Shara Svendsen, PLLC
Law Offices of Stella E. Dokey, PC
Northwest Immigrant Rights Project
Open Sky Law
Tisocco Immigration PLLC

Wisconsin
Community Immigration Law Center
End Domestic Abuse Wisconsin
Maria I. Lopez Immigration Law LLC

cc: Joseph Edlow, Deputy Director of Policy, U.S. Citizenship and Immigration Service
Robert Law, Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Service
Michael T. Dougherty, Ombudsman, Office of Citizenship and Immigration Services Ombudsman
Stacy Shore, Acting Dep. Ombudsman, Office of Citizenship and Immigration Services Ombudsman
Elissa McGovern, Chief of Policy, Office of Citizenship and Immigration Services Ombudsman