NATIONAL IMMIGRATION LAW CENTER

ASISTA

Via Electronic Submission

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Re: Aug. 21, 1013 Notice of Proposed Rulemaking as to 45 CFR 1626

The National Immigration Law Center (NILC) and ASISTA Immigration Assistance (ASISTA) are pleased to submit these comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM).

NILC is a national nonprofit legal advocacy organization whose sole mission is to promote and defend the rights and opportunities of low-income immigrants and their families. Until 1996, when LSC funding for national support centers ended, NILC was funded as a national support center for immigration law issues. For over 30 years, NILC has worked to promote and ensure access to legal services for low-income immigrants and their family members. Over the years, we have responded to thousands of requests for technical assistance on immigration-related issues from LSC-funded programs across the country. NILC also drafted the chart providing examples of acceptable documents evidencing noncitizen eligibility for representation by LSC programs that was promulgated as the Appendix to Part 1626 of the current regulations.

ASISTA Immigration Assistance ("ASISTA") is a national nonprofit organization that worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault and other crimes, incorporated in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field with Department of Homeland Security personnel charged with implementing these laws, most notably Citizenship and Immigration Services (CIS), Immigration and Customs Enforcement (ICE), and DHS' Office on Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law

enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, non-profit, pro bono and private attorneys working with immigrant crime survivors.

We commend LSC for acting to update Part 1626 to reflect more recent changes in the law. Unfortunately, we only recently learned of the rulemaking proposal, and have discovered that the same is true for many other interested organizations across the country. Because of the importance of rule, we strongly urge LSC to extend the rulemaking comment period for additional time.

In the comments below we will address some specific aspects of the proposed rule in the order that they appear in the rule.

§ 1626.4 – Aliens eligible for assistance under anti-abuse laws.

We agree with LSC's conclusion that programs may represent victims of battery and extreme cruelty under VAWA and victims of criminal activity sufficient for U visa eligibility regardless of whether the abuse or criminal activity took place in or outside of the United States. However, we do not agree with the distinction made by the proposed rule that would require victims of sexual assault or severe forms of sexual trafficking to have suffered this abuse in the United States in order to establish eligibility. We understand the qualifying phrase "in the United States" in 22 U.S.C. § 7105(b)(1)(B), which applies only to trafficking victims, not victims of sexual assault, to refer to the location of the victim, rather than the location of the abuse. This interpretation is supported by the heading of § 7105(b), "Victims in the United States." The VAWA amendment to section 502 of the appropriations legislation simply adopts the same language, and "in the United States" should be interpreted to qualify the location of the victim rather than the misconduct.

LSC also specifically requested that comments address the difference between "trafficking" as used in VAWA and "severe forms of trafficking" as used in the VTVPA, TVPRA and INA. There is a specific definition of the acts that constitute a "severe form of trafficking in persons" in 22 U.S.C. § 7102(8). "Trafficking" as used in VAWA includes state and local trafficking laws, which often do not adopt the federal "severity" qualification and, indeed, define other aspects of trafficking activity as crimes that are not included in the federal definition. It would be helpful if LSC would note in the regulations that the definition encompasses violations of state and local laws, as well as federal law. In addition, we believe that an extension of the comment period, as we are requesting, would best assure a sufficient response to LSC's request for comments addressing what evidence LSC recipients

should rely on in establishing eligibility in this area from organizations directly involved in assisting trafficking victims.

On a separate issue, we recommend that paragraphs (e) and (f) of § 1626.4 be modified to more clearly state that in cases where programs may represent individuals without regard to their citizenship or immigration status, as in assisting victims of human trafficking or domestic violence, programs are not required to inquire into the citizenship or immigration status of the clients they assist. See LSC Office of Legal Affairs Advisory Opinion #AO – 2009-1008.

Section 1626.5 – Aliens eligible for assistance based on immigration status.

We agree with the addition of persons granted withholding of removal to the categories of eligible noncitizens listed in Section 1626.5. However, persons granted withholding of deportation under former section 243(h) of the INA should not be removed from the regulation. There are today many people in the country who have withholding of deportation – they cannot obtain withholding of removal. Moreover, there are still today people who are currently in deportation proceedings rather than removal proceedings. This is because of the prospective and gradual manner in which removal proceedings were implemented under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Under IIRIRA, persons whose deportation proceedings were initiated prior to April 1, 1996, were not put into removal proceedings, but rather continued in deportation proceedings. Their cases may be appealed to the courts of appeals and subsequently remanded, they may be reopened to apply for other relief, but they continue to be deportation rather than removal proceedings.

In addition, we believe that LSC should include withholding of removal and deferral of removal under the Convention Against Torture (CAT) in this category of eligibility. As with withholding of removal under the INA, this relief was created after the last revision of Part 1626. It implements the United States' adoption of an international treaty prohibiting the involuntary return of persons in danger of subjection to torture. See Act Oct. 21, 1998, P.L. 105-277, Div. G, Subdiv. B., Title XXII, Ch. 3, Subch B, § 2242, 112 Stat. 2681-822. These forms of relief are extremely similar to withholding of removal under the INA, and they all require the individual to establish that his or life or freedom would be endangered by removal – either because of the threat of persecution, in the case of Section 241(b)(3), or because of the threat of torture, in the case of CAT. Moreover, individuals granted withholding may not have documentation indicating whether the grant was based on the INA or CAT. Indeed, the employment authorization documents issued by USCIS for individuals granted withholding of deportation, withholding of removal under the INA, and

withholding of removal under the CAT, all use the same code, A10. See 8 C.F.R. Sec. 274a.12(a)(10) (providing for employment authorization for noncitizens "granted withholding of deportation or removal" without distinguishing between withholding under the INA and withholding under the CAT).

Accordingly, we recommend that paragraph (e) of this section be revised to read as follows:

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)), withholding of removal or deferral of removal under the Convention Against Torture, or withholding of deportation pursuant to former section 243(h) of the INA (8 U.S.C. 1259, as in effect on Sept. 29, 1996).

Replacement of the appendix to Part 1626 with program letters

We support the proposal to replace the appendix to Part 1626, listing documents establishing immigrant eligibility for representation, with program letters. We agree that immigration forms and documents frequently change, and LSC will be better able to provide this information to programs in a timely manner by means of program letters, rather than the formal rulemaking process.

In conclusion, we appreciate the work that LSC has put into updating Part 1626, and we support these changes, with the modifications suggested herein. Again, we strongly urge that LSC extend the comment period in order to receive comments from a greater number of interested organizations.

Sincerely,

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