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Via Electronic Submission

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Re: Response to LSC Request for Comments to Proposed Changes to 45 CFR 1626

We write on behalf of the Legal Aid Foundation of Los Angeles (LAFLA), the frontline law firm for low-income people in Los Angeles. LAFLA was established in 1929 to provide free civil legal services to poor and low-income people in Los Angeles County through direct representation, broader advocacy efforts, and community education. With six neighborhood offices, three domestic violence clinics, and four Self-Help Centers, LAFLA serves communities as diverse as East Los Angeles, Santa Monica, South Los Angeles, Pico-Union, Koreatown and Long Beach.

Nearly 12,000 individuals and families are provided with legal services annually and an additional 35,000 litigants are helped through LAFLA's Self-Help Centers. Another 20,000 are assisted through referrals, workshops and community outreach activities. Many of the clients we assist are victims of domestic violence, human trafficking, torture, sexual abuse, and other violent crimes. The immigration relief we seek on behalf of our clients is often through applications under the Violence Against Women Act (VAWA), U visas, T visas, and asylum.

We are aware of organizations that just recently learned about the opportunity to comment on the proposed regulations. Due to the complexity of the issues involved and **because of the**

importance of this rule, we strongly urge LSC to extend the rulemaking comment period for additional time.

I. LSC specifically seeks comment on whether the VAWA 2005 term "trafficking" differs from the VTVPA/TVPRA/INA term "severe forms of trafficking," and, if so, how the terms are different and what evidence LSC recipients should rely on in distinguishing between these two terms for prohibited trafficking.

Due to the complexity of this issue, we urge you to authorize an extension of the comment period, to best assure an appropriate response to this issue.

Section 107(b)(1)(C) of the VTVPA defines a "victim of severe form of trafficking" as someone who is a victim of the crime of trafficking, as defined in 22 U.S.C section 7102, and is under 18 years of age; or is subject to certification by the Department of Health and Human Services as a someone who willing to assist with the investigation or prosecution of severe forms of trafficking (or cannot assist because of trauma); and has a pending good faith T visa application or whose physical presence in the United States is needed by prosecutors.[1]

Specifically, 22 U.S.C Section - 7012 defines "severe forms of trafficking in persons":

> **(9) Severe forms of trafficking in persons**
> The term "severe forms of trafficking in persons" means—
> **(A)** sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
> **(B)** the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

[1] 22 USC 7105(b)(1)(C) "Definition of victim of a severe form of trafficking in persons. For the purposes of this paragraph, the term "victim of a severe form of trafficking in persons" means only a person--

(i) who has been subjected to an act or practice described in section 103(8) [22 USCS § 7102(8)] as in effect on the date of the enactment of this Act [enacted Oct. 28, 2000]; and

(ii) (I) who has not attained 18 years of age; or

(II) who is the subject of a certification under subparagraph (E).

(D) [Deleted]

(E) Certification.

(i) In general. Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General and the Secretary of Homeland Security, that the person referred to in subparagraph (C)(ii)(II)--

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma; and

(II)

(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act [8 USCS § 1101(a)(15)(T)], as added by subsection (e), that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General and the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.

The statute also provides a definition of sex trafficking to include:

> **(10) Sex trafficking**
> The term "sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

"Trafficking" as used in the VAWA, without the qualification of severity, does not require the elements of force, fraud or coercion. Thus, the VAWA usage of "trafficking" is broader that the TVPRA, TPVRA definition. We, therefore, recommend that the broader definition be implemented for LSC purposes.

Furthermore, we recommend that LSC recognize in the regulations that the definition of trafficking (both severe form of trafficking as well as trafficking) encompasses violations of not only federal, but also state and local laws.

II. LSC specifically requests comments on the issue of where the predicate activity for "trafficking" takes place.

Due to the complexity of this issue, we urge you to authorize an extension of the comment period, to best assure an appropriate response to this issue.

Assisting victims of trafficking who suffered the predicate offence of trafficking outside the United States should qualify for LSC services. PL-104-134, section 502(a)(2)(C), as amended by VAWA 2005, offers two options for assisting victims of trafficking. It allows legal assistance to victims of "trafficking in the United States" or to a person who qualifies for immigration relief under section 101(a)(15)(U) of the INA, the U visa statute. As the proposed regulation acknowledges, there is no requirement that a victim who qualifies for U visa suffer the predicate **offense of trafficking** inside the United States. Whether an advocate decides to file for a U non-immigrant visa or a T non-immigrant visa should not have a bearing on where the qualifying crime took place. As trafficking is a qualified crime in the U visa statute, and there is no requirement that the predicate qualifying crime occur in the USA, LSC should allow for assistance to victims of trafficking who suffered the predicate offense of trafficking whether it occurred inside or outside of the United States.

III. LSC specifically requests comment on the issue regarding trafficking victim's presence in the United States.

We applaud LSC's view that aliens should be eligible for assistance under the anti-abuse statutes regardless of whether they are present in the United States. We agree that this interpretation comports with the U visa statute, under which victims of trafficking and other VAWA crimes

may seek immigration relief. As victims of trafficking are qualified for U visa relief, and no requirement exist that they be present in the USA, it should not make a difference whether the advocate decides to file a U or a T non-immigrant visa for the trafficking victim. The victim's presence in the USA, therefore, should not be a requirement for LSC advocates to be able to assist trafficking victims.

IV. LSC seeks comment on how an alien, eligible by means of VAWA, U visa or T visa, may prove eligibility.

Due to the inherent difficulty of identifying a trafficking victim, the initial intake stage of a case should allow for a broad range of evidence, including victim's self identification as well as the advocate's assessment of trafficking eligibility pursuant to the victim's oral statement or narration. It is well known that trafficking victims are the most hidden and vulnerable group of immigrants. A trafficking victim does not escape the trafficking situation equipped with documents proving his/her trafficking. A statement, therefore, should be sufficient. Once the victim is receiving legal assistance, the advocate will assist the victim in gathering evidence and in contacting and cooperating with law enforcement.

V. Recommendation of addition to regulations regarding no requirement to inquire as to citizenship or immigration status in certain cases.

We recommend that paragraphs (e) and (f) of § 1626.4 be modified to more clearly state that in certain cases, including when the victim is a human trafficking or domestic violence victim, LSC funded programs may represent victims without regard to their citizenship or immigration status. Specifically, LSC Office Legal Affairs Advisory Opinion # AO-2009-1008 states LSC does not require proof of citizenship or eligible alien status to demonstrate than a client is not covered by the alienage prohibition. Once an applicant demonstrates that he or she has a specific legal problem—for example domestic abuse by a spouse—then there is no remaining applicable alienage prohibition and thus no need for a citizenship or alienage inquiry.[2]

The LSC statutes and regulations prohibit LSC grantees from providing services to certain classes of aliens. In order to ensure compliance with these restrictions, LSC generally requires grantees to inquire about applicants' citizenship or alienage status. When grantees provide services to individuals with legal needs that would qualify for the exceptions to statutory alienage restrictions under the Victims of Trafficking Acts or the Violence Against Women Act of 2005 (expanding the Kennedy Amendment), the alienage restriction no longer applies. As such, there is no remaining statutory or regulatory requirement that grantees inquire into citizenship or alienage in those situations. We recommend that this be explicitly outlined and clarified to LSC programs.

[2] See LSC Office of Legal Affairs Advisory Opinion #AO – 2009-1008.

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

We agree with LSC's proposed 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.

Many persons have been granted withholding of deportation and cannot obtain withholding of removal. Today, there are still persons 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 recommend that LSC include "withholding of removal under the Convention Against Torture (CAT)" and "deferral of removal under 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.[3] These forms of relief are extremely similar to withholding of removal under the INA, and they all require the individual 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, (a) (10).

VII. 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.

[3] See Act Oct. 21, 1998, P.L. 105-277, Div. G, Subdiv. B., Title XXII, Ch. 3, Subch B, § 2242, 112 Stat. 2681-822.

VIII. Conclusion

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.

If you have any questions, please contact Daliah Setareh (dsetareh@lafla.org), Michael Ortiz (mortiz@lafla.org) or Joann Lee (jlee@lafla.org). Thank you very much.

Sincerely,

LEGAL AID FOUNDATION OF LOS ANGELES

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