

October 17, 2013

Mr. Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington D.C. 20007
Sent Via Electronic Submission

RE: Commentary on Proposed Rule ID: LSC-2013-0032-0001 [Restrictions on
Legal Assistance to Aliens]

Dear Mr. Freedman,

I am writing to offer my comments on the LSC's proposed rule that implements statutory changes on aliens eligible for legal assistance through LSC funds. I appreciate the opportunity to comment on such an issue and look forward to reading the codified regulation. Providing local programs the ability to aid undocumented individuals is a great concern of mine. However, with that concern are the realities of being able to provide adequate legal aid. While I am glad these regulations will ease restrictions on legal assistance available to aliens, I feel that LSC's proposed rule oversteps its philanthropic goal.

Background of proposed rule:

This proposed rule updates regulations governing the agency entitled Legal Service Corporation (LSC). LSC is a private non-profit corporation established by Congress, which seeks to ensure legal assistance to Americans who are unable to afford such access. LSC's budget for the 2013 financial year is estimated around \$350,129,760.

The proposed rule entails three proposed changes to their regulations. This comment will focus on the proposed update to the agency regulation's definition of "Aliens Eligible for Assistance Under Anti-Abuse Laws" (45 CFR § 1626.4). This proposed rule will update § 1626.4 and place the regulation on track with the statutory changes that took place as part of the Department of Justice reauthorization bill. The statutory amendments, discussed above, tracked changes that were implemented in regards to trafficking acts such as the Violence Against Women Act (VAWA). Because of these statutory amendments, LSC is now permitted to provide assistance to previously ineligible aliens. The proposed rule updates LSC's own regulations and hopes to codify their guidelines in connection with their designated authority. While parts of these provisions are necessary to place LSC's regulations in line with Congress's appropriations, LSC is attempting to use this good cause opportunity to implement provisions that fall outside said goal.

Positive effects:

Paragraph (a)'s new provision outlining how LSC funds should be appropriated is a valuable addition. This amendment states recipients who qualify under § 1626.4 are now eligible

for assistance with any LSC funding as opposed to the once, superseded, funding limitation which required recipients use non-LSC funds. This change helps not only the recipients themselves receive better services and funding, but it helps the agencies that provide the services.

Currently there are about 127 legal aid offices across the country that receive funding from LSC. While this number seems large, some states lack available programs for Americans that need these services. Connecticut, for example, only has one office listed on LSC's official website. While "State Wide Legal Services" currently aids residents of Connecticut, this new provision defining what funds are now available for certain services will help add clarity and assurance to new potential programs. New legal offices may now want to apply to be recipients of LSC funding in order to aid deprived individuals across the state.

I have a strong personal connection to the potential growth of civil services offered in the legal field due to LSC's new regulations. Working in the Civil Justice Clinic at Quinnipiac University's School of Law, I have seen many cases taken by the clinic that would fall under §1626.4. The clinic has taken (and been referred) cases for undocumented aliens. One of these reasons we get an influx of undocumented cases is because these individuals are not informed of proper channels of redress. Allowing recipients to use LSC funding for aliens that qualify under anti-abuse statutes will hopefully provide more options for individuals in need.

Negative effects:

My criticism on these proposed changes occurs when LSC oversteps their rulemaking ability. While the LSC's proposed rule tries to state their ambitions as one attempting to codify existing trafficking statutes, they are – in essence – creating a new broader regulation, one not explicitly stated by the statute. LSC is attempting to eliminate an existing regulatory requirement by conducting their own interpretation of the VAMA amendment in regards to geographic precedents. There are two separate changes LSC attempts to enact.

The first change is in regards to where the alleged act must take place in order to qualify for services. This change would update their old regulation, which gave assistance to an alien who has "been battered or subject to extreme cruelty *in* the United States," to a regulation that allows assistance to an alien "who has been battered or subjected to extreme cruelty or a victim of sexual assault." This change, in essence, removes the territorial restriction once placed on LSC funding and, thus, eliminates the requirement that such conduct take place in the United States. This change is a large deviation in services available to individuals applying for assistance under §1626.4.

The second issue that should be criticized is LSC's attempt to create a rule that establishes available assistance to aliens who may or may not be present in the United States. LSC's old regulation described eligibility in a subsequent section titled "Alien Status and Eligibility" (45 CFR §1626.5). This regulation explicitly stated "a recipient may provide legal assistance to an alien who *is* present in the United States." The proposed rule LSC puts forth for

public comment, fails to state that such a requirement currently is a prerequisite for assistance. Instead, LSC tries to support their position by tying the removal of geographical presence in with the new applicability of assistance to aliens receiving U visas. Such an interpretation is only applicable under the section of the current statute that discusses U visas in connection with the United States Citizenship and Immigration Services. This interpretation has no bearing on territorial requirements for individuals receiving assistance from the VAWA amendments, and LSC concedes this point in the proposed rule, stating “VAWA does not address whether aliens must be physically present in the U.S.” In fact, the U visa provision in §1626.4 allows aliens to remain *in* the United States for a limited time period who are victims of a variety of abuse crimes, who then may assist law enforcement related to such crimes, or who are family members of victims. Trying to tie geographical qualifications for legal assistance, to qualifications for U visas, seems somewhat counterintuitive and a large departure from the tracking changes for the rest of the regulation.

Because both of these changes will affect the Legal Service Corporation in many similar ways, I will discuss my reprehensions on these provisions together. The greatest change that will take effect is the sheer increase in case work those recipients of LSC funds will have to manage. By removing the requirement of not only where the violation must take place, but where the complainant of the violation is located as well, these removals broaden the reach of §1626.4 exponentially.

During my research for this letter, I spoke with James Alexander, a civil rights attorney who works for New Haven Legal Assistance. While New Haven Legal Assistance does not receive LSC funding, they do receive many referral cases from State Wide. When asked about the current case load at the office, he forlornly responded that most legal aid programs are in a funding crisis. Case intakes are not diminishing and funding is not rising. This crisis is most easily understood through a breakdown of LSC’s budget. Currently LSC’s 2013 budget is estimated around \$350,000,000. Moreover, their submitted FY 2014 budget is \$430,000,000. While that is a grand proposal, the likelihood that it will be approved is slim. LSC has many factors working against a new budget. The first hurdle is the GOP. LSC appropriations have been a hot button issue for spending cuts over the past couple years. Recently, Republican Senator Charles Grassley commented on LSC spending decisions by shouting to the hill tops that “there’s not enough funds going to the poor.” Moreover, there have been multiple GAO and Inspector General Reports that have uncovered poor spending decisions on the part of LSC. These factors, when combined, lead to a treacherous path for an expanded budget.

While the increase in course load will be arduous, these changes will similarly burden the processing of a complainant’s cases. Legal offices across the country need to be constantly weary of frivolous complaints. Unfortunately, frivolous complaints are even more rampant for undocumented individuals. This is due to our lack of immigration reform. While reform is currently at a stalemate in the Congress, one way aliens may seek asylum is through a filing of a U visa or a similar VAWA claim. While these protections are righteous for those injured,

unfortunately, some individuals take wrongful advantage of these protections. One of our fellows in our civil justice clinic has done extensive research on this exploitation of the system. She states that some individuals walk a fine line on frivolous criminal claims in order to stay in the country as their claims are processed. In fact, U visa applications have fulfilled available quotas into 2016.

The provisions LSC puts forward (removing geographical requirements) will only allow more of these frivolous claims to come forward. An individual under these new provisions could state a claim that arose in a completely different country. The task of investigating such a claim is arduous, to say the least. To complicate things further, the individual seeking redress may also be beyond the confines of the United States. Legal offices attempting to aid these individuals need enough information to properly run cases through proper channels and filters. These new LSC provisions would allow individuals to put forward complaints without enough valid facts to aid attorneys to properly help these individuals. Instead, attorneys and legal aids may need to devote more time to these complaints that may not ever pan out due to insurmountable barriers of communication.

Moving forward:

While I am an avid supporter of representing individuals such as undocumented individuals who have trouble establishing aid for legal problems, I feel that these proposed changes fall too far outside the means of which LSC was established. Not only do they allow the ability for more frivolous claims to come forward, but legal aid programs do not have the wherewithal to properly process these new complaints.

The establishment of LSC was based on the notion that it would promote equal access to justice by providing grants for high-quality civil legal assistance to low-income Americans. If you ask any civil justice lawyer in America if there are enough resources to aid just American citizens in need, their answer would be a resounding no. Even through my own short time spent in the civil justice field, I understand that unequal access to legal aid bars plenty of Americans to the legal aid they deserve. I fully support legal aid to aliens; however, it should not be a free-for-all. Limitations should be placed on the funds that go to these claims.

Of course a simple fix would be to re-introduce the predicate for activity and individuals who want to state a claim for LSC funding under §1626. Requiring that the activity as well as the individual be present *in* the United States would curtail many of the potential effects I have mentioned above. We must also be aware that claims that fall outside these borders are not automatically discarded. There are plenty of pro-bono firms that could take on these claims as well as legal services within their own country.

Another potential provision that could replace the current geographical requirement would be to limit claims arising outside the U.S. to bordering cities. By limiting funds to claims either in the U.S. or bordering cities, LSC would reduce the pressures placed on the legal

programs while at the same time still achieving their humanitarian goal. Most of the claims that fall under § 1626 are initiated due to the horrendous acts that occur in unlawfully crossing into this country. Coyotes that take advantage of these individuals reside close to the border of America. Individuals who become victims of these crimes committed en route would still be able to find redress in America. While more research will need to be conducted in order to find out how far this geographical line should be drawn for bordering countries, this limitation would ease hardships much more than a complete removal of territorial restrictions.

Thank you for your time in reading this comment and I look forward to whatever progressive decision LSC makes for the future.

Sincerely,

Jonathan Gregg Fisher