



NNEDV
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TO END DOMESTIC
VIOLENCE

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Lauren Alder Reid, Assistant Director
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**RE: RIN 1125-AA96; EOIR Docket No. 19-0022; A.G. Order No. 4800-2020,
Proposed Rules on Appellate Procedures and Decisional Finality in Immigration
Proceedings; Administrative Closure
Submitted via: www.regulations.gov**

The National Network to End Domestic Violence (NNEDV) submits this comment in response to the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) proposed rule, entitled “Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure,” which was initially published in the Federal Register on August 26, 2020 (hereinafter “proposed rule”). We are gravely concerned about how this proposed rule will prevent survivors from accessing the humanitarian relief that Congress specifically created for them, thereby putting them at risk of continued harm. For the reasons outlined below, we urge EOIR to withdraw the proposed rule entirely.

NNEDV is a leading voice for domestic violence victims and their advocates. As a membership and advocacy organization of the 56 state and territory domestic violence coalitions, and their 2,000 locally-based member domestic violence programs, NNEDV works closely with its members to understand the ongoing and emerging needs of domestic violence victims and advocacy programs. NNEDV makes sure those needs are heard and understood by policymakers at the national level. We worked closely with our allies to secure the passage of the Violence Against Women Act (VAWA) in 1994 and each subsequent reauthorization. We oppose barriers and roadblocks that rob survivors of immigration remedies enshrined in VAWA.

In addition to working on policy issues, NNEDV conducts an annual census among domestic violence advocates to highlight the most important needs of survivors – and immigration protection ranks high on the list. On September 12, 2019, for the fourteenth consecutive year, NNEDV conducted this one-day, unduplicated census to tally domestic violence services requested and received across the country. Of the 1,887 domestic violence programs and shelters identified nationwide, 1,669 programs participated on DV Counts Day from all fifty states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. We published the results in the Domestic Violence Counts Report¹ (hereinafter “DV Counts Report”), including data on

¹ National Network to End Domestic Violence (2020). *14th Annual Domestic Violence Counts Report*. Washington, D.C., available at: <https://nnedv.org/content/domestic-violence-counts-14th-annual-census-report/>

the number of individuals accessing services, the types of services requested, and the number of unmet requests. In sum, in just one day, 77,226 adults and children received essential, life-changing domestic violence services. Emergency shelters and housing programs provided refuge for 42,964 adult and child victims, and an additional 34,262 adults and children received support and advocacy through non-residential services, such as counseling, childcare, courtroom advocacy, and other services. Yet on the same day, 11,336 requests for services were unmet due to a lack of resources.

The DV Counts Report details the struggles that survivors face when they cannot access help and support - a lack of housing, shelter, legal assistance, transportation, childcare, and more. Notably, seventy-eight percent of participating domestic violence programs indicate that they provide support or advocacy around immigration, demonstrating the great need for immigration support. Survivors not only face real danger from abusers who threaten, stalk and sabotage them, but they face many barriers to getting help. Each and every one of these barriers is exacerbated for immigrant survivors. However, the one saving grace for immigrant survivors has been the possibility of being eligible for federal immigration remedies through VAWA, U visas, and related laws.

In addition to our DV Counts Report, NNEDV responds to immigrant survivors' needs via our WomensLaw project. On our WomensLaw Spanish and English Email Hotlines, in the past 12 months, we provided 381 pieces of immigration information; 56 of those were related to U visas and 121 were related to VAWA. It is clear from their Email Hotline queries that immigrant survivors are in danger, living in fear and confusion, and looking for help and support. The below quotes, which have been translated from Spanish to English, came from survivors or their family members during the summer of 2020 via the WomensLaw Email Hotline:

“I would like to know what to do after my husband hit me, I have a recording where he was hitting me, spitting in my face and saying a lot of bad things, he bit me and I called the police the next day and they arrested him, but he paid a fine and his out and I don't know what to do. Now I need to know what I can do after this, I don't have a lawyer. I'm scared because I have my green card but it expires next year and I don't know what I need to do next.”

“I'm an immigrant and am the victim of abuse and threats by my partner. Yesterday was the second time I called the police for help. I had to get out of the house because I was scared. I need a restraining order for my daughter and myself. I am scared and I don't know what to do.”

“The father of my 2 small children is verbally and physically abusing me. It's not the first time, he has been arrested twice. He says that if I leave with my kids he will make a report for abduction and get me deported. Is that true?”

“My sister's husband beat her and she defended herself and the police took both of them. He is on parole and is very aggressive. She doesn't have her immigration papers and that's why she was scared.”

Immigrant survivors face incredible danger and extreme barriers to safety, compounded by their immigration status. These dangers and barriers are exacerbated by the global pandemic, which is disproportionately impacting survivors and immigrants. In addition, while they are technically eligible for relief, the proposed rule, other erosions to access, the unconscionable United States Customs and Immigration Services (USCIS) backlog, and a lack of legal resources means that VAWA and related remedies are out of reach for far too many survivors.

VAWA, has always included protections for immigrant survivors of domestic violence because Congress recognizes that victims of violence should never be forced to choose between living with abuse and facing deportation. Self-petitioning was created in VAWA 1994; the U and T visas in VAWA 2000. The longstanding inclusion reflects bipartisan recognition that domestic violence is a serious crime and a public safety issue that cannot be fully addressed if all victims are not safe and all perpetrators are not held accountable.

Since 1994, Congress has repeatedly reaffirmed the commitment to immigrant survivors through bipartisan legislation to expand and improve those protections (e.g., in 2000, Congress extended protections to reach victims of human trafficking).

VAWA recognizes the special vulnerabilities of immigrant survivors and children to abuse and exploitation, including:

- Practical factors (language barriers; lack of support network; lack of awareness of rights/resources);
- Cultural factors (domestic violence denied/excused; fear of disgrace; fear of police; based on experiences in their countries of origin);
- Economic factors (dependence on abuser due to the lack of work authorization);
- Legal factors (fear of deportation; abuser withholds or threatens to withdraw filings to give victim legal immigration status; very limited access to legal representation).

To address these vulnerabilities, VAWA and related bills (including the Trafficking Victims Protection Act) have established various forms of “relief from deportation.” Taken together, these protections are intended to encourage immigrant survivors without legal status, or who depend on their abusers or the perpetrators of the crimes against them for legal status, to escape violence, report crimes, and cooperate with the police without fearing they will face automatic deportation. Over the last 26 years, through successive VAWA and TVPA reauthorizations, these humanitarian provisions have been reinforced and refined to ensure they meet the dual objectives of protecting victims and promoting public safety. Throughout all these years, too, they have enjoyed broad, strong bipartisan support.

We are deeply concerned that the proposed rule undermines the Violence Against Women Act (VAWA) by allowing victims to be deported even though they are eligible for survivor-related protections. Under these proposals, the immigration court and the Board of Immigration Appeals (BIA) cannot administratively close removal cases while survivors’ VAWA cases are pending, and they cannot send removal cases back to examine whether a survivor qualifies for survivor-related immigration protections.

Procedural barriers for individuals with matters in immigration court or before the Board of Immigration Appeals (BIA) impact due process and their right to just and fair proceedings. For survivors of gender-based violence, these issues are of particular importance. Immigrants who have experienced violence, including horrific domestic violence, sexual assault, and other forms of gender-based abuse, often must navigate a complex and confusing immigration court system to plead their case. As such, survivors who have a strong case for protection may nevertheless have their case denied, especially if they are unrepresented. It is exceedingly difficult for respondents without counsel to navigate the enormous complexity of the U.S. immigration system. As survivors whose cases have been denied are often deported back to extremely dangerous, even life-threatening, situations, it is crucial that immigration court proceedings provide all immigrants with every opportunity to have their fair day in court.

We oppose these procedural changes, which will send survivors back into danger and rob them of their chance to seek status here in the U.S. and escape abuse:

- Limits to administrative closure, which will prohibit judges from temporarily halting deportation proceedings for any reasons even though survivors rely on this remedy while United State Citizenship and Immigration Services (USCIS) reviews their petitions for relief. Administrative closure allows survivors to access Congressionally-created relief, which is out of reach for years due to the historic USCIS backlog.
- Time limits on filing and responding to briefs, which prejudice gender-based asylum claims in particular as these cases involve 1) highly technical legal arguments requiring sufficient time to adequately develop; and 2) sensitive facts that survivors of severe trauma need time to process before recounting.
- Limits on reconsideration, reopening, and the length of time the BIA has to review appeals and the prohibition of the submission of new evidence by respondents, including survivors. These provisions will all contribute to increased *refoulement*, especially of those fleeing gender-based violence as explained above. In addition, abusers and traffickers manipulate survivors by confiscating important documents that they could otherwise submit as evidence in their cases. Trying to get back their documents from perpetrators directly puts survivors at risk and so survivors may file for a protection order to force the abuser to return their documents -- but this takes time.

NNEDV vehemently opposes the proposed rule due to the extremely harmful impact it would have on survivors of gender-based violence. We call on DOJ to promptly withdraw the proposed rule in its entirety. Thank you for considering these comments in response and **opposition** to this proposed rule. Please contact me, Monica McLaughlin, at mmclaughlin@nnev.org to provide any additional information you might need.

Sincerely,

Monica McLaughlin



Director of Public Policy
National Network to End Domestic Violence