

How the Administration is Reshaping the Immigration System to Undermine Protections for Survivors of Violence

The Administration's immigration-related executive orders, proposed regulations, and the Attorney General's actions create increased barriers for survivors to access vital immigration protections. The Administration is reshaping immigration law and policies in a way that stacks the deck against immigrant survivors of domestic violence, sexual assault, trafficking, and other forms of gender-based abuse. Survivors both in the U.S. and those who flee to the U.S. in search of protection are finding increased barriers to safety and justice. These rollbacks of hard-earned and life-saving protections will condemn thousands of survivors to deportation, sending them back to environments where they may be subjected to further violence or even lose their lives.

Administrative Changes

Interior Enforcement Executive Order: January 25, 2017

- Expands immigration enforcement priorities to encompass virtually all non-citizens, including survivors of domestic violence, sexual assault and human trafficking who have committed any act that constitutes a chargeable criminal offense, including entry in the U.S. without inspection, have misrepresentations in applications before a government agency, have abuse of a program related to public benefits, individuals "believed" to pose a threat to public safety or national security, and all individuals with final orders of removal
- Removes the authority of ICE attorneys to decide not to prosecute certain individuals, a practice that reduces the burden on courts and avoids wastes resources. This leaves the force and effect of prior prosecutorial discretion guidance relating to the prosecution of victims unclear
- Eliminates Privacy Act protections for anyone who is not a permanent resident or U.S. Citizen, giving the government the ability to disclose personal information publicly

- Revives “Secure Communities” program, relating to information sharing among local law enforcement, FBI, and ICE in order to identify immigrants in local jails who can be deported
- Encourages increased entanglement between immigration and federal and state law enforcement [287(g) agreements]
- Calls for taking away some funding from “sanctuary jurisdictions”
- Calls for increased fines & penalties for those “unlawfully present” and those who facilitate their presence

Impact on survivors: The broad enforcement priorities presented in this executive order may result in survivors being detained or removed before they have an opportunity to apply for immigration benefits for which they may be eligible. This includes survivors who may have a criminal record or immigration violations connected to the violence they have endured. Further, threats to sanctuary jurisdictions and encouraging enmeshment between immigration enforcement and state and local police agencies will create a chilling effect on survivors reaching out for help and protection from abuse.

Border Security Executive Order: January 25, 2017

- Calls for detention while cases pending, including for survivors of violence
- Expedites determinations of claims of eligibility, which could lead to adjudicators giving claims only a cursory look
- Promptly removing those whose claims are rejected
- Potential expansion of expedited removal
- Severely limits use of parole, including family members of victims with pending or approved immigration applications
- Limits access to protections for unaccompanied minors who have been abused and neglected
- Increases focus on promoting greater entanglement between Border Patrol and state and local law enforcement [287(g) agreements]
- Expands U.S./Mexico border wall and adds more Border Patrol agents (5K)

Impact on survivors: The provisions of this executive order have a significant impact on survivors fleeing domestic and sexual violence in their home countries. Furthermore, expanding the use of detention retraumatizes survivors and impacts their ability to find effective legal and social services necessary to adequately prepare and present their case.

“Public Charge” Guidance

The Department of Homeland Security (DHS) released on October 10, 2018 a proposed rule radically changing the interpretation of the public charge ground of inadmissibility for those seeking immigration status or seeking to enter the U.S. Although public charge does not specifically apply to those obtaining status under VAWA, asylees, refugees, trafficking victims, U visa applicants, or Special Immigrant Juveniles, there are many survivors of domestic violence and sexual assault who seek status under other visa categories who *will* be subject to the rule and harmed as a consequence. The proposed rule expands the range of programs that can count against an individual in deciding whether someone is likely to become a public charge, including many benefits that victims use to escape abuse and meet basic needs such as food, housing, and healthcare assistance. The proposed rule also takes into consideration benefits used by family members, thereby affecting not only immigrant victims but also victims who have U.S. citizenship or lawful status in households where family members are applying for a visa or green card.

Impact on survivors: This proposed rule may therefore deter victims from using critical programs for fear that doing so will negatively impact their family members’ immigration statuses. Families will be forced into the untenable position of having to choose between accessing vital benefits that will help them to escape or overcome abuse or risk being able to reunite with their loved ones.

“Zero-Tolerance” Policy

This policy calls for federal prosecutors to show “zero-tolerance” and refer all immigrants detained for “illegally entering” the U.S. for criminal prosecution. By law, children cannot be detained for extended periods, and so they are put in government custody or foster care while their parents face criminal charges and are sent to prison or detention. The result has been the separation of thousands of families. While the President issued an order limiting the separation of families, the result will be that large numbers of families will be detained together.

Impact on survivors: This experience is traumatizing for all immigrants and is especially re-traumatizing for survivors of violence. Parents flee to the U.S. in order to protect their children from abusers in their home countries. This “zero-tolerance” policy effectively punishes survivors for their decision to seek refuge for their children, and only serves to further the cycle of lifelong abuse and trauma for entire families.

Flores Settlement Agreement

As was anticipated following the President’s order limiting the separation of families, on September 7, 2018, the U.S. Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) released a proposed rule that would allow the government to detain families

together. The proposal would terminate the *Flores* Settlement Agreement – which requires the government to minimize the frequency and duration of incarceration of children – so that children can be held with their parents, many of whom are survivors of gender-based violence, in family detention centers indefinitely. The proposed rule would also give the government the ability to re-determine a child’s status as an unaccompanied minor (UAC) on an ongoing basis, and strip significant protections if a child loses UAC designation by turning eighteen or because a parent or legal guardian has been located to care for the child.

Impact on survivors: A common tool of abusers is to keep victims in a chronic state of fear, submission, and helplessness. Terminating the *Flores* Settlement Agreement would re-impose these conditions on survivors and their children, triggering re-traumatization. Expanding the ability of the government to re-determine a child’s status as a UAC will be especially harmful for survivors of child abuse who benefit from protections such as access to child-appropriate medical and mental health services and appointment of a child advocate, posing serious barriers to healing and due process.

Guidance for Referral of Cases & Issuance of NTAs

On July 6, 2018, USCIS released policy guidance that vastly expands the circumstances in which USCIS will issue a Notice to Appear (NTA) in removal proceedings, or refer cases to ICE for enforcement. An NTA is a document that instructs an individual to appear before an immigration judge, which is the first step in starting deportation proceedings. The updated NTA memo echoes the expanded enforcement priorities found in the 2017 interior enforcement and border security executive orders; most notably, cases presenting a criminal history, fraud or misrepresentation or abuse of public benefits are high among the enforcement priorities, though the memo also states that USCIS may issue an NTA if a case has been denied and the individual is not legally present in the United States. USCIS has stated that this policy includes applicants for victim-related protections, releasing [updated guidance](#) that beginning on November 19, 2018, survivors of domestic violence, sexual assault, and other gender-based abuses may be issued an NTA if their VAWA self-petition or their U or T visa application is denied. It had been a longstanding practice that USCIS did not issue NTAs in connection with survivor-based cases, due in part to counteract the chilling effect that doing so would have on victims coming forward to access these protections.

Impact on survivors: This new policy will re-impose this chilling effect, keeping survivors in abusive relationships and situations as they may forego applying for immigration relief out of fear that their case will be denied and they will be forced to leave the United States.

Fee Waiver Form Revisions (Proposed)

On September 28, 2018, USCIS published in the Federal Register proposed revisions to the I-912 fee waiver form, reducing the evidence they will accept for individuals to demonstrate that they are unable to pay the fee for an application, including VAWA self-petitions, U and T visa applications. USCIS is proposing that they will no longer permit a fee waiver for an individual who can prove that they receive a means-tested benefit, and will only rely on a person's household income, the poverty-guidance threshold, and financial hardship criteria. Practitioners across the country are already reporting a significant increase in the rates of fee waiver denials for applications for survivor-based protections.

Impact on survivors: Flexibility of the forms of information acceptable to qualify for fee waivers is essential, as survivors fleeing abuse often do not have access to documentation to prove their economic need. Restricting the evidence considered for granting fee waivers will serve as an immense economic barrier that will prevent many survivors from accessing protections that provide safety and justice.

End of Temporary Protected Status

In the last year, the Administration has decided to end Temporary Protected Status (TPS) for individuals from six countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, and South Sudan. A country receives a TPS designation if the U.S. determines that the country's conditions are too dangerous, often due to violence or environmental disasters, for nationals from the country who are present in the U.S. to return safely. Despite continued reports that the six countries that have now lost TPS status are still unstable and experience high levels of violence, including gender-based violence, the Administration has determined that conditions have improved enough for nationals to return.

Impact on survivors: This decision will impact those survivors who currently have TPS status and will impact over 300,000 individuals once protected by TPS from the U.S., forcing them to return to highly volatile situations where they will likely face extortion, sexual violence, human trafficking, kidnapping, exploitation by gangs, and possibly murder. The rule has been temporarily blocked by a federal judge, and the Supreme Court has upheld the order.

HUD Mixed Status Housing Rule

On May 10, 2019, the Administration released a proposed Department of Housing and Urban Development (HUD) regulation that would change longstanding policy relating to immigration status verification requirements, disallowing those ineligible for federal housing assistance (i.e., members of “mixed-status” households) from residing in HUD’s public and specified assisted housing programs, which include HUD programs covered by Section 214 of the Housing and Community Development Act, such as Public Housing, Section 8 Housing Vouchers, Section 8 Project-Based Housing, Section 236 and Rent Supplement Housing, Section 235 Homeownership Housing, Housing Development Grants for low income units, and the Section 23 Leased Housing Assistance Program, or other housing programs where Section 8 Project-Based assistance might be mixed with other funding sources.

Impact on survivors: This significant change of HUD policy, which currently allows ineligible immigrants to live in a home with their family members who are eligible for federal housing subsidies, with the rents for the family pro-rated, will have a detrimental impact on immigrant victims who are ineligible for housing subsidies, such as victims who hold U-visa status.

Immigration Court Changes

The previous and current Attorney General (AG) have used their authority to re-open and review decisions made in four cases by the Board of Immigration Appeals (BIA). As head of the U.S. Department of Justice, the AG has the power to overturn the BIA decisions to implement new policies, and is poised to make sweeping changes to the immigration court system that will undermine longstanding and vital protections for immigrant survivors of violence.

Matter of Castro-Tum

Former Attorney General Sessions determined that an immigration judge (IJ) does not have the authority to use a practice known as administrative closure to put cases in removal proceedings on hold indefinitely. IJs have used this legal tool to effectively halt removals of survivors applying for relief through immigration protections like VAWA self-petitions, U visas, and T visas, allowing them to remain in the U.S. while their applications are being processed and approved, which often takes several years.

Impact on survivors: Ending this practice could re-open hundreds of thousands of cases and will prevent IJs from administratively closing cases in the future, putting at risk of deportation

survivors of domestic and sexual violence, trafficking, and other abuses who are in the process of applying for immigration relief, or are simply awaiting issuance of visas.

Matter of L-A-B-R-

Regulations establish immigration judges' authority to grant continuances in cases in removal proceedings for "good cause" shown. In 2018, former Attorney General Sessions certified this case to himself to raise the question of what circumstances constitute good cause for an IJ to grant a continuance for a collateral matter, such as a case outside of the immigration court system, to be adjudicated. Since petitions for VAWA, U visas, T visas, and other immigration protections are processed through the United States Citizenship and Immigration Services (USCIS), IJs have often found that there is good cause to continue cases and delay removal hearings to avoid deporting survivors before they have had a chance to obtain decisions on these collateral claims.

Impact on survivors: While there is specific case law regarding continuances for survivors applying for U visa status, some immigration judges improperly deny continuances for survivors who are eligible for protection in the U.S., and thus risk being deported to abusive situations simply because their applications took too long to process.¹

Matter of E-F-H-L-

Former Attorney General Sessions decided that IJs can deny asylum based solely off the information on a written application, overwriting a BIA ruling that asylum-seekers are entitled to a hearing to present other forms of evidence and oral testimony to support their claim.

Impact on survivors: This new precedent is detrimental to survivors of gender-based violence, especially those who are of limited English proficiency or cannot afford to retain an attorney. The immigration legal system is incredibly complex and difficult to navigate, and survivors who simply do not know what information to include in a written application may be deported, even if they are eligible for asylum and could have proven their right to remain in the U.S. should they have been afforded the opportunity to do so through a full evidentiary hearing.

Matter of A-B-

Former Attorney General Sessions overturned a prior Board of Immigration Appeals decision that upheld that survivors fleeing domestic abuse whose home governments cannot or will not

¹ If you are seeing cases in which judges are improperly denying continuances to survivors, please contact Cecelia Friedman Levin at ASISTA Immigration, cecelia@asistahelp.org.

protect victims are eligible for asylum. This decision was made despite extensive evidence that women and girls are particularly vulnerable in countries where there are high rates of domestic violence and sexual violence, and the government does little to protect victims or hold abusers accountable.

Impact on survivors: By declaring domestic violence insufficient grounds for asylum, the AG's decision threatens the lives of victims, sending them back to abusive and potentially fatal situations. In a separate lawsuit, *Grace v. Whitaker*, a federal judge blocked the application of portions of the AG's *Matter of A-B-* decision relating to credible fear proceedings, ruling that asylum officers cannot deny a survivor during the credible fear interview simply because they are seeking asylum based on a domestic violence claim. This court decision, however, does not extend to the context of full deportation proceedings.

Matter of L-E-A-

On December 3, 2018, the acting U.S. Attorney General certified a precedential decision by the BIA to himself for review. The decision in *Matter of LEA* reaffirmed the concept that family may constitute a particular social group for the purposes of asylum. The Acting AG certified to himself the question of “[w]hether, and under what circumstances, a non-citizen may establish persecution on account of membership in a ‘particular social group’ under 8 U.S.C. § 1101(a)(42)(A) based on the individual’s membership in a family unit,”

Impact on survivors: This decision may have significant implications for domestic violence victims, who are often targeted with violence because they are part of a particular family.

Immigration Judge Quotas

The Department of Justice has imposed case quotas on immigration judges, requiring IJs to 1) clear at least 700 cases a year, 2) have fewer than 15% of their decisions overturned on appeal, and 3) finish cases within just days after holding a hearing. IJs may feel pressured to rush through their caseload to meet the new standards, likely compromising fairness and due process rights. This is extremely dangerous for survivors of abuse, as IJs may no longer provide survivors with adequate time to plead their case.

Impact on survivors: This focus on quantity over quality could see a vast increase in the speed and number of deportations of survivors who have a legitimate claim to protection in the U.S.

Board of Immigration Appeals Changes Rule (Proposed)

The Department of Justice has proposed rule changes that would dramatically change the Board of Immigration Appeals. These proposed revisions would allow for the BIA to quickly make decisions on cases put forth by survivors of violence with no guarantee that the appellate judge adequately considered their claims for protection. The changes would also allow for rapid changes to be made to immigration law, including laws affecting survivors of violence, even if they lack the support of the majority of BIA judges.

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