

September 6, 2019

Submitted via email to dhsdeskofficer@omb.eop.gov

USCIS Desk Officer
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: OMB Control Number 1615-NEW; USCIS Agency Information Collection Activities; New Collection: USCIS Tip Form, Docket ID USCIS-2019-0001

Dear Sir or Madam:

Thank you for the opportunity to submit this comment on the U.S. Department of Homeland Security (DHS), United States Citizenship and Immigration Services' (USCIS) proposal to implement the new Form G-1530: USCIS Tip Form (hereinafter USCIS Tip Form). UnidosUS is submitting this comment in response to the second notice and request for public comment published in the Federal Register on August 8, 2019.¹

Since 1968, UnidosUS—formerly known as the National Council of La Raza—has been committed to building a stronger America by creating opportunities for Latinos.² In this rich 50-year history, UnidosUS has remained a trusted, nonpartisan voice for Latinos, serving the community through research, policy analysis, and state and national advocacy. We also work closely with a network of nearly 300 community-based organizations in 37 states, the District of Columbia, and Puerto Rico to serve our community in a variety of areas including housing, workforce development, health care, immigration, and education. Many of our community partners provide direct services to Latino and immigrant communities in the United States, serving over 9 million people annually.

UnidosUS has serious concerns that this measure will result in greater incidences of racial profiling and discrimination against Latinos and immigrants. Moreover, this proposal appears to be part of a concerning practice and pattern over the past two years of USCIS's growing intervention in immigration enforcement matters largely reserved for sister components. For the reasons discussed below, we urge USCIS to withdraw its consideration of the proposed form.

¹ Department of Homeland Security. U.S. Citizenship and Immigration Services, "Agency Information Collection Activities; New Collection: USCIS Tip Form" OMB Control Number 1615-NEW, 84 FR 39010, (August 8, 2019) available at <https://www.federalregister.gov/documents/2019/08/08/2019-17022/agency-information-collection-activities-new-collection-uscis-tip-form#addresses> (hereinafter "August 8th Announcement")

² The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

1. *We are concerned that the Agency is ignoring widespread public concern about the USCIS Tip Form proposal.*

We take note that the public response in February 2019³ was overwhelmingly in strong opposition to the USCIS Tip Form proposal; many commenters called for its withdrawal. After a review of the latest Federal Register notice purporting to respond to those concerns, we find it hard to avoid the conclusion that the Agency outright ignored this widespread opposition. USCIS provided no significant response to the hundreds of comments submitted during the initial comment period; indeed, we understand that except for some language added on the applicability of the Paperwork Reduction Act, the updated USCIS Tip Form posted to the Federal Register on August 8, 2019 is identical in form and substance to the one originally published on February 15, 2019.⁴

UnidosUS strongly believes that the Agency should fully and fairly consider public comments on the USCIS Tip Form, and at a minimum, articulate a basis for its disagreement with public commenters for public examination. For example, USCIS should articulate a response to the concerns UnidosUS shares with many of our sister civil rights organizations: we contend that the USCIS Tip Form has the markings of a dangerous tool of harassment and intimidation for those members of the public keen on interfering with the rights of communities of color, including their ability to lawfully access immigration benefits. Furthermore, USCIS should address commenters questions about the need to expend staff time and resources – largely derived from paying customers – towards the development and implementation of a new enforcement tool like the USCIS Tip Form, when other mechanisms already exist and are more appropriately situated at USCIS sister components.

2. *The USCIS Tip Form is unnecessary and encourages the presumption of fraud in the immigration benefits process.*

While the USCIS Tip Form may seem like a discreet tool to some, in practice it could serve as a vehicle to foment and enable nefarious harms against entire communities. UnidosUS believes that the USCIS Tip Form will create another avenue through which those harboring preconceived or uninformed notions about Latinos and immigrants can submit unsubstantiated and frivolous reports of perceived fraud. This is not hyperbole; according to the Department of Justice, hate crimes continue to rise in the United States, particularly crimes motivated by racial, ethnic, or religious animus.⁵ The FBI reports that hate crimes against Hispanics and Latino communities have risen nationally, despite underreporting of such incidents due to increased fear of reporting racially motivated crimes and incidents to law enforcement.⁶ Our community is still grieving and grappling with the aftermath of the horrific tragedy in El Paso, Texas that

³ Department of Homeland Security. U.S. Citizenship and Immigration Services, “Agency Information Collection Activities; New Collection: USCIS Tip Form” USCIS Docket No. USCIS-2019-0001, 84 FR 4518, (February 15, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0001-0001> (hereinafter “February 15 Announcement”)

⁴ Compare <https://www.regulations.gov/document?D=USCIS-2019-0001-0283> with <https://www.regulations.gov/document?D=USCIS-2019-0001-0003>.

⁵ Federal Bureau of Investigations Uniform Crime Reporting Program 2017 Hate Crimes Statistics, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.

⁶ Brendan Campbell, Angel Mendoza and Tessa Diestel, Rising hate drives Latinos and immigrants into silence, News21 (August 22, 2018), available at <https://www.philly.com/philly/living/rising-hate-drives-latinos-and-immigrants-into-silence-20180822.html>.

expressly targeted Hispanics.⁷ Meanwhile, our nation is confronting the reality that the venom of prejudice and bigotry in our public discourse can be a poison strong enough to kill.⁸

Thus, when the August 8, 2019 Federal Register notice asks us to “evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility,”⁹ we maintain that beyond lacking practical utility, a tool like the USCIS Tip Form may actually be dangerous. Tools like these can serve to deepen and even nurture biases and hateful notions about certain communities. We are concerned that the implementation of a USCIS Tip Form would result in reported individuals facing increased scrutiny, surveillance, and potential loss of benefits without due process enabling them to refute allegations of fraud. Furthermore, the Agency has failed to articulate the acute countervailing public safety interest that would override these potential harms.

3. *A USCIS Tip form would be a misuse of resources as case backlogs remain high.*

Any resources spent vetting unsubstantiated tips from anonymous members of the public will take away from the adjudication of benefits, which is the principal job of USCIS. The Agency has radically slowed application processing in the past two years, with recent reports showing that the average USCIS case processing time increased 46 percent between FY2016 and FY2018.¹⁰ This past fiscal year, USCIS’ backlog exceeded 5.69 million cases.¹¹ Complicating the adjudications process with anonymous and unfounded allegations of fraud in a system that already suffers from backlogs and lack of transparency will harm applicants and their families.

UnidosUS is gravely concerned by the increasing backlogs of pending applications. The lengthy wait times significantly impact the lives of many families and are fundamentally unfair to customers. Naturalization applicants, for example, commit to a process that in many instances involves taking courses in English and Civics, studying and preparing for the citizenship exam, and saving for months to obtain legal assistance and pay the USCIS application fee. These individuals are eager to take the oath of naturalization. USCIS intervention in immigration enforcement – a matter best left to its sister DHS components – needlessly diverts resources from the adjudication of applications.

4. *The USCIS Tip Form violates due process and diminishes the integrity of the immigration system.*

The proposed USCIS Tip Form requests that individuals provide their name and contact information but does not require this information to make a report. USCIS has not indicated how the agency will test the veracity of reports, nor has it stated whether anonymous reports will be given equal consideration to non-

⁷ See Arab American Institute, *Hate Crimes Continue to Surge in America* (November 13, 2018), available at http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america (summarizing FBI 2017 statistics). See also Theresa Waldrop and Paul Murphy, *Hate Crime Charges Are Possible For El Paso Shooting Suspect* (August 4, 2019), available at <https://www.cnn.com/2019/08/03/us/el-paso-shooting-possible-hate-crime/index.html>

⁸ <https://www.washingtonpost.com/opinions/2019/08/04/there-are-no-lone-wolves/>

⁹ See note 1, *supra*.

¹⁰ Jason Boyd and Greg Chen, *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration*, American Immigration Lawyers Association (January 30, 2019), available at <https://www.aila.org/advocacy/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>. See also Leon Rodriguez, “The Trump administration is making legal immigration harder, too” *Washington Post* (July 29, 2019), available at <https://www.washingtonpost.com/outlook/2019/07/29/trump-administration-is-making-legal-immigration-harder-too/>

¹¹ *Id.*

anonymous submissions. Thus, USCIS has not shown it has any formal mechanism for screening, vetting, or following up on allegations submitted through the Tip Form. Perhaps more importantly, USCIS has not shown that individuals against whom these accusations are made will be notified of a report, be able to review derogatory information lodged against them, or to refute allegations. The failure to collect this basic information from the person completing the form provides an easy and obvious path for those who wish to target individuals based upon racial or personal animus to submit anonymous, baseless claims with no accountability.

USCIS fails to set criteria for reporting fraud and does not require that allegations be made in connection with a pending application for benefits. The form also provides no definition of “fraud,” which has a complex definition under the Immigration Act and in case law. Additionally, it is unclear how the information collected through the USCIS Tip Form will be used in adjudications. Furthermore, the vague “Other: Immigration Benefit Fraud/Abuse” category listed in the drop-down menu invites those motivated by racial or personal animus to *carte blanche* make allegations against *anyone* who has ever applied for or received an immigration benefit *at any time*.¹² This category is grossly overbroad, creates an avenue for bigotry and harassment, and seriously burdens individuals and communities of color.

For these reasons, the USCIS Tip Form will substantially reduce, not enhance, “the quality, utility and clarity of the information it seeks to collect.”¹³

Conclusion

UnidosUS strongly opposes USCIS’s proposal to implement a USCIS Tip Form, and firmly urges the agency to abandon plans to implement it. We have sincere concerns that, if promulgated, the rule would produce undue harm to Latino and immigrant communities by increasing the likelihood of racial profiling and discrimination. Should you have any questions regarding these comments, please contact Carlos Guevara, Senior Policy Advisor, at cguevara@unidosus.org.

Sincerely,

Clarissa Martinez De Castro
Deputy Vice President
UnidosUS

¹² See “USCIS Tip Form Suspected Fraud or Abuse Section”, available at <https://www.regulations.gov/contentStreamer?documentId=USCIS-2019-0001-0008&contentType=pdf> See also, Ted Hesson, “USCIS form would allow the public to report immigration fraud” Politico Pro (August 7, 2019), available at <https://subscriber.politicopro.com/employment-immigration/article/2019/08/uscis-form-would-allow-the-public-to-report-immigration-fraud-1639052>

¹³ See note 1 *supra*.