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Via Electronic Mail

**RE: FURTHER NOTICE OF PROPOSED RULEMAKING AS TO 45 CFR 1626 ALIENS ELIGIBLE FOR ASSISTANCE UNDER ANTI-ABUSE LAWS**

Dear Ms. Davis:

Legal Services NYC (LSNYC) submits these additional comments in response to the Legal Services Corporation's (LSC) Further Notice of Proposed Rule-Making (FNPRM) issued on February 5, 2014.

LSNYC fights poverty and seeks justice for low-income New Yorkers. For more than 40 years, we have challenged helped clients meet basic needs for housing, access to high-quality education, health care, family stability, and income and economic security. LSNYC is the largest civil legal services provider in the country, with deep roots in all of the communities we serve. Our neighborhood-based offices and outreach sites across all five boroughs help more than 60,000 New Yorkers annually.

These comments address modification to 45 CFR §1626.4(c), which covers the ability of LSC-funded organizations to provide legal services to immigrant victims of trafficking and other crimes. The comments are specifically in response to LSC's request for further clarification of the term "**in the United States**" as outlined in the Violence Against Women's Act (VAWA) and the Trafficking Victim's Protection Act (TVPA), and their respective reauthorizations. We believe that the phrase should be interpreted, and the eligibility of victims of trafficking under VAWA and victims of severe forms of trafficking under the Trafficking Victims Protection Reauthorization Act (TVPRA) should be satisfied, if either the victim's trafficking occurred "in the United States" or the victim is at some point physically present "in the United States."

Human trafficking is a global criminal activity and is recognized as such by the international community. *See Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674, 683 (S.D. Tex. 2009) ("[H]uman trafficking is by nature and 'international crime' . . ."). The criminal act of trafficking may begin in one nation, be ongoing in another and yet conclude in a third, fourth or fifth country. *Id.* Acknowledging this fact, the TVPRA proscription against trafficking, which allows for civil or criminal prosecution, applies to trafficking that occurred outside the United States. Thus, an individual who is trafficked outside of the United States can seek redress in United States courts. Furthermore, as the FNPRM notes, such an individual may also be eligible for T nonimmigrant status, which does not require that the trafficking crime have occurred in the United States. 79 Fed. Reg. 6859, 6862.

In particular, we strongly urge that LSC not require that victims of trafficking be physically present in the United States to be eligible for legal assistance. The term "in the United States" should be

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interpreted to require that victims of trafficking have a link or nexus to the United States to be eligible for LSC funded services. Such an interpretation will allow immigrant victims of trafficking who are *either* physically present in the U.S. *or* have experienced trafficking within the United States to be eligible for legal services from LSC-funded agencies.

This broader interpretation is also consistent with the worldwide nature of trafficking and the U.S.'s anti-abuse statutes which are meant to deter human rights abuses, such as trafficking, protect victims of such crimes and strengthen the ability of law enforcement agencies to investigate and prosecute trafficking crimes.

Both VAWA and the TVPRA have broad remedial purposes and were enacted to provide legal relief to survivors of trafficking and other abuses. *See, e.g., Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1217 (9th Cir. 2011) (noting Congress's "remedial purpose in enacting VAWA"); *Matter of Armendarez-Mendez*, 24 I&N Dec. 646 (BIA 2008) (interpreting VAWA provision broadly given the statute's "overtly remedial purpose"); 22 U.S.C. § 7102 (18) (the TVPRA seeks to ensure expansive services to all victims of trafficking because "adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance."). Statutes with such a remedial purpose "must be liberally construed". *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *see also Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 268 (1977) (reading civil rights statute expansively in light of its remedial purpose). Further, both statutes explicitly established LSC eligibility for survivors and allowed for expanding, and not limiting, LSC eligibility for survivors of violence. LSC's proposed rule that now requires that survivors be physically present in the United States to be eligible for legal representation is incompatible with the intent and goal of the VAWA and the TVPRA.

Under LSC's current interpretation, victims of trafficking who leave the United States would not be eligible for legal services unless they also qualify for a U-visa or initiated representation while still in the United States. However, not all trafficking victims may qualify for a U-visa: victims whose trafficking occurred within the United States may return to their home country because they never intended to remain permanently in the United States, or the trafficker may have forcibly removed the victim from the United States, or arranged for the victim's deportation from the U.S. Such victims may still seek redress through the U.S. courts, or even return to the United States via public interest parole authorized by law enforcement and then pursue a T-visa. Such a victim would be eligible for legal assistance under our proposed interpretation.

Furthermore, a victim may not know of their legal rights or have the opportunity to contact a legal services provider until after leaving the country. This is especially true if the victim is forcibly removed from the United States by the trafficker. Victims may at first also be frightened to report their victimization and may only consider pursuing legal action once they're in their home country. This often happens after the victim learns about a lawsuit or the availability of legal services from another victim who remained in the United States.

LSC should not require that victims of severe forms of trafficking be "in the country on account of the trafficking" in order to establish eligibility. Proposed § 1626.4(c)(2)(ii) would require that aliens eligible under the TVPRA be "present in the United States on account of such trafficking" to be eligible for LSC-funded services. A review of the underlying statute, 22 U.S.C. § 7105(b)(1)(B), demonstrates that the "on account of" requirement is overly broad and is not compelled by the statute. In fact, the statute's reference is only to "victims of severe forms of trafficking in persons in the United States," without any accompanying requirement that the trafficking be the proximate cause of the victim's

presence in the United States. By eliminating this requirement, the confusing discrepancy between “victims of trafficking” and “victims of severe trafficking” no longer exists in the proposed regulations.

Under 22 U.S.C. § 7105(b)(1), the definition of a “victim of a severe form of trafficking in persons” for the purposes of eligibility means only a person who is a victim of a severe form of trafficking as defined at 22 U.S.C. § 7102(8) and who is under 18 or is the subject of a certification. An individual subject to certification under 22 U.S.C. § 7105(b)(1)(E) includes one who has made a bona fide application for T-nonimmigrant status (“T-visa”) or for whom the government is ensuring continued presence. The authority to permit continued presence is found at 28 CFR § 1100.35. Of these three categories—youths under 18, a T-visa applicant, or an individual granted continued presence—only the T-visa requires that the individual be “present in the United States . . . on account of such trafficking.” 8 U.S.C. § 101(a)(15)(T)(i)(II). Thus the proposed rule improperly extends the “on account of” language to individuals under 18 and those granted continued presence, when the TVPRA, the VAWA and regulations contain no such requirement. An interpretation that 22 U.S.C. § 7105(b)(1) requires that services can be provided only to an individual who is present on account of such trafficking is incorrect and overly broad. In addition, defining “in the United States” differently under the TVPRA and the VAWA only leads to unnecessary confusion and complications for the intake staff of LSC funded organizations when assessing eligibility requirements.

We strongly support LSC’s statement in the preamble to the FNPRM recognizing that once a program commences legal services, a victim of trafficking’s subsequent departure does not necessarily render the client ineligible for services. 79 Fed. Reg. 6859, 6863 (discussing Program Letter 2000-2). Such a situation may arise, for example, where a trafficking victim, who has obtained a T-visa, returns temporarily to their home country on advance parole to help their minor children obtain the proper documentation and complete the necessary procedures at the American consulate that will allow them to reunite with their parent in the United States. Victims of trafficking should be eligible for continuing representation throughout such a temporary absence.

Thank you for allowing us to provide these comments and respectfully request that LSC ensure that the LSC regulations better conform to the LSC eligibility provisions of the VAWA and TVPA.

*/s/ M. Audrey Carr*

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