



April 7, 2017

The National Task Force to End Sexual and Domestic Violence Calls on the Secretary of Department of Homeland Security to Protect Access to Safety and Justice for Immigrant Survivors of Gender-Based Violence

The National Taskforce to End Sexual and Domestic Violence (NTF), comprised of national leadership organizations advocating on behalf of sexual and domestic violence survivors and representing thousands of allied organizations and advocates, condemns recent statements from the Department of Homeland Security (DHS) that seriously undermine important protections for immigrant victims of gender-based violence and that curtail their ability to seek safety through the courts. We call on DHS to recognize that immigrant survivors deserve access to safety and justice, and we request that DHS meet with representatives of our member organizations to discuss ways to ensure that ICE policies and procedures do not deter survivors of domestic and sexual violence from accessing critical protections.

We are very concerned that the recent letter issued by DHS Secretary Kelly and Attorney General Sessions to the Chief Justice of California, dated March 29, 2017,^[i] a recent statement by a DHS spokesman to the *Washington Post*^[ii] regarding ICE's courthouse enforcement policies, and confirmation on April 5 by Secretary Kelly during Senate testimony that DHS will apprehend immigrant victims of crime at courthouses, fail to take into consideration the detrimental impact of these policies on immigrant victims and witnesses. They also fail to take into consideration special remedies and confidentiality protections for immigrant victims of domestic violence, sexual assault, stalking and trafficking created by Congress under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA), which were both reauthorized in a bipartisan fashion by Congress in 2013. Given the breadth of the current ICE enforcement priorities, there will be victims detained and removed who are eligible for immigration relief. DHS should not allow survivors to be detained or removed before they are able to obtain immigration protections afforded them by Congress.

Furthermore, we are deeply concerned that enforcement activities conducted at places where victims and witnesses seek assistance will undermine public safety for all by discouraging others from seeking protection and participating in criminal processes to hold perpetrators accountable. In the past several weeks, police chiefs and prosecutors have already noted steep reductions in the reporting of domestic violence and sexual assault crimes to law enforcement.^[iii]

When ICE enforcement increased significantly after 2007, including through the expansion of the Secure Communities and 287(g) programs, it had a detrimental impact on numerous victims and witnesses and ICE eventually took steps to address this situation. ICE issued a policy memorandum, dated June 17, 2011, entitled "Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs" (Victim Witness Memo).^[iv] This memorandum reminds ICE officials of existing protections under VAWA and under the TVPA and states that "Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime." Furthermore, the Victim Witness Memo states:

“To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime...”^[v]

ICE’s recent positions on protections and processes for immigrant survivors have been inconsistent and confusing and makes our communities and survivors less safe. In recent media articles highlighting growing fears among immigrant victims to seek protection, ICE indicated that the prior guidance about prosecutorial discretion for victims remains in effect.^[vi] However, subsequent statements from a different DHS spokesperson, David Lapan, on April 4, 2017, as well as the testimony of the DHS Secretary in a Senate hearing before the Homeland Security Committee on April 5, 2017, suggest otherwise.

The confusion regarding the status of existing ICE processes and procedures not only impacts the ability of our organizations to provide accurate information to survivors who are seeking assistance, but also affects survivors directly. If victims feel the court is an unsafe place for them to seek protection out of fear of deportation, they will choose not to report sexual assault or choose to stay with abusive partners, where they and their children endure increased violence.

On March 8, 2017, over 560 national, state, and local organizations signed a letter sent to Secretary Kelly and Acting ICE Director Homan expressing concerns about the detrimental impact of recent DHS policy changes on immigrant victims.^[vii]

The NTF calls on Secretary Kelly and Acting Director Homan to:

- **Meet with representatives of our member organizations** to discuss the intent of VAWA to help immigrant victims access safety and justice and to discuss the impact of ICE’s practices on survivors of violence; and
- **Provide clear guidance**, both to the public and to ICE officials nationwide, **that the 2011 ICE Victim Witness Memo remains operational** and should be implemented by ICE officials when interacting with victims and witnesses.

We also call on the Administration and Congressional leaders to stand up for immigrant victims of domestic and sexual violence and oppose ICE’s role in undermining VAWA and TVPA protections and reducing the ability of immigrant victims to seek safety.

For more information, please contact Grace Huang, Asian Pacific Institute on Gender-Based Violence, at ghuang@api-gbv.org; Rosie Hidalgo, Casa De Esperanza: National Latin@ Network, at rhidalgo@casadeesperanza.org; or Archi Pyati, Tahirih Justice Center at ArchiP@tahirih.org.

^[i] Letter from Secretary Kelly and Attorney General Sessions to Chief Justice Tani G. Cantil-Sakauye, March 29, 2017, found at <https://assets.documentcloud.org/documents/3533530/Attorney-General-and-Homeland-Security-Secretary.pdf>

^[ii] DHS spokesman David Lapan failed to acknowledge any special considerations when ICE agents arrest a victim or witness and said that that the factors that could lead ICE agents to arrest a victim or witness “could be any number of things – again, the categories that we’ve talked about that make them subject to arrest or potential removal still apply to somebody who might him or herself be a victim.” See Devlin Barrett, “DHS: Immigration agents may arrest crime victims, witnesses at courthouses” Washington Post. April 4, 2017. Available at: https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html

^[iii] Heidi Glenn, “Fear Of Deportation Spurs 4 Women To Drop Domestic Abuse Cases In Denver” NPR. March 21, 2017. Available at: <http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>. See also James Queally, “Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says” Los Angeles Times March 21, 2017. Available at: <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>. See also Brooke A. Lewis, “HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crime Compared to Last Year.” Houston Chronicle. April 6, 2017. Available at:

<http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>

^[iv] Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” 10076.1 (June 17, 2011). Available at: <https://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>

^[v] *Id* at 2.

^[vi] Tyler Kingkade, “Domestic Abuse Victims Aren’t Coming Forward Because They’re Scared Of Being Deported” BuzzFeed. March 16, 2017. Available at: https://www.buzzfeed.com/tylerkingkade/under-trump-domestic-abuse-victims-are-more-afraid-of-being?utm_term=.yuR99PpQ0M#.kjPnnMzP7y (“reporting that an ICE official “...said that the 2011 directive that advises immigration officers to use discretion when dealing with abuse victims remains in effect. ‘Particular attention is paid to victims of domestic violence, human trafficking or other serious crimes,’ Jennifer D. Elzea, acting press secretary for ICE, told BuzzFeed News in a statement.”) See also Nora Caplan-Brickler. “I Wish I Never Called the Police” Slate. March 19, 2017. Available at: http://www.slate.com/articles/news_and_politics/cover_story/2017/03/u_visas_gave_a_safe_path_to_citizenship_to_victims_of_abuse_under_trump.html (reporting that “ICE spokeswoman Danielle Bennett told me that the 2011 policy remains in effect and that ICE ‘will take into consideration if an individual is the immediate victim or witness to a crime, in determining whether to take enforcement action.’”

^[vii] See March 8, 2017 Sign on Letter to DHS Secretary John Kelly and Acting ICE Director Thomas Homan Available at: http://www.asistahelp.org/documents/news/Sign_on_Letter_to_DHS_and_ICEProtec_AD96AD5C060E1.pdf