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[Redacted]

**Re: Classification for Victims of Severe Forms of Trafficking in**

**Persons**

**DHS Docket [Redacted]**  
**CIS [Redacted]**

Dear Ms. [Redacted]:

Sanctuary for Families (“Sanctuary”) respectfully submits this comment in response to the reopening of the public comment period for the Interim Final Rule entitled “Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status” (“Interim Final Rule”).<sup>1</sup> The Department of Homeland Security (“DHS”) originally published the Interim Final Rule in the *Federal Register* on December 19, 2016.<sup>2</sup> Sanctuary previously submitted two comments on the Interim Final Rule: one on January 18, 2017,<sup>3</sup> and one on February 17, 2017.<sup>4</sup> On August 13, 2021, DHS announced that the reopened comment period will be extended for an additional 30 days.<sup>5</sup> Sanctuary submits this comment to supplement its previous submissions to address two significant issues with the Interim Final Rule’s proposed language and a current policy of U.S. Citizenship and Immigration Services (“USCIS”), both of which prevent adult sons and daughters of T-1 visa holders (“Adult Children”) from securing T-6 status even if they “face[] a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.”<sup>6</sup>

<sup>1</sup> 86 Fed. Reg. 37670 (July 16, 2021).

<sup>2</sup> 81 Fed. Reg. 92266 (Dec. 19, 2016).

<sup>3</sup> Whitney Hood, Sanctuary for Families, Comment on Interim Final Rule “Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status” (Jan. 18, 2017).

<sup>4</sup> Whitney Hood, Sanctuary for Families, Comment on Interim Final Rule “Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status” (Feb. 17, 2017).

<sup>5</sup> 86 Fed. Reg. 44593 (Aug. 13, 2021).

<sup>6</sup> 8 U.S.C. § 1101(a)(15)(T)(ii)(III).

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*\*in memoriam*

Founded in 1984, Sanctuary is the largest nonprofit organization in New York State dedicated exclusively to serving victims of gender-based violence, including domestic violence, sex-trafficking, female genital mutilation, forced marriage, and campus sexual assault. In FY 20-21, Sanctuary provided direct services to 7,238 victims of gender-based violence, including 420 victims of human trafficking. Since the inception of Sanctuary's Anti-Trafficking Initiative, Sanctuary has provided direct services to 1,225 victims of human trafficking. Approximately 75% of Sanctuary's adult clients are immigrants, many of whom have adult daughters and sons. Given Sanctuary's extensive experience working directly with sex trafficking victims and their family members, Sanctuary is well positioned to provide insight into the unintended consequences of the Interim Final Rule for T-6 applicants as currently drafted and as implemented by USCIS.

Sanctuary appreciates the opportunity to further comment on the Interim Final Rule and address two barriers our clients face when applying for T-6 nonimmigrant status that USCIS can and should remedy. Specifically, this comment addresses 8 C.F.R. § 214.11(k)(1)(iii) (the "T-6 Regulation"), which sets forth the categories of family members of a T-1 nonimmigrant who are eligible for T-6 nonimmigrant status when they face a present danger of retaliation as a result of the trafficking victim's escape from their trafficker or cooperation with law enforcement. For the reasons set forth below, Sanctuary respectfully requests that DHS revise the T-6 Regulation in two ways: First, Sanctuary urges DHS to revise the T-6 Regulation to eliminate USCIS's policy of requiring that a "derivative beneficiary" of a T-1 nonimmigrant already have secured T nonimmigrant status before their adult or minor children facing present danger of retaliation become eligible for T-6 status. Second, Sanctuary urges DHS to revise the T-6 Regulation to include Adult Children who face a present danger of retaliation among those family members eligible for T-6 status even if there is no qualifying derivative spouse. These revisions will better align the T-6 Regulation with Congress's intent of eliminating barriers to victims escaping from their traffickers and cooperating with law enforcement, better serve the humanitarian objective of the T-6 Regulation, and avoid the absurd outcome that currently exists whereby victims of severe forms of human trafficking can protect virtually all of their extended family members from retaliation by their traffickers, but not their own Adult Children.

## **I. Background on Protection for Family Members of Human Trafficking Victims**

In 2000, Congress passed the landmark Trafficking Victims Protections Act ("TVPA").<sup>7</sup> With near-unanimous bipartisan support, the TVPA provided law enforcement with tools to investigate and prosecute incidents of human trafficking, and, among other things, services and immigration relief to victims of severe forms of human trafficking and certain of their close family members. Congress found that "[t]raffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm."<sup>8</sup> Congress further called for regulations that would, *inter alia*, "tak[e] measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates."<sup>9</sup> It also amended the Immigration and Nationality Act ("INA") to make eligible for the new "T" nonimmigrant category not only victims of human trafficking

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<sup>7</sup> Victims of Trafficking and Violence Protection Act of 2000, 114 Stat. 1464 (2000).

<sup>8</sup> *Id.* at 1466-67.

<sup>9</sup> *Id.* at 1477.

themselves, but also their spouses and children, as well as parents of victims under twenty-one if “necessary to avoid extreme hardship.”<sup>10</sup>

Consistent with the TVPA’s goal of protecting victims of human trafficking and their families, Congress repeatedly has expanded the categories of family members eligible for T nonimmigrant derivative status. In 2003, it added unmarried minor siblings of human trafficking victims under twenty-one. It also added “age out protection” for the principal applicant’s children so that such children qualify if they were under twenty-one on the day their parents apply, regardless of their ages at the time their applications are adjudicated.<sup>11</sup>

In 2008, Congress amended the law to allow any principal, regardless of age, to apply for T nonimmigrant status for parents or unmarried siblings under eighteen if such family member faced “a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.”<sup>12</sup>

Finally, the Violence Against Women Act Reauthorization of 2013 (“VAWA 2013”) further expanded immigration relief for family members of human trafficking victims. Specifically, Congress amended the INA to allow trafficking victims to apply for adult and minor children of the victim’s “derivative beneficiary” family members when such children face a danger of retaliation.<sup>13</sup> As amended, the section of the INA authorizing T-1 nonimmigrants’ family members to secure T nonimmigrant status provides:

**(ii)** if accompanying, or following to join, the alien described in clause (i) [the principal T applicant]—

**(I)** in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

**(II)** in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

**(III)** any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as [sic]<sup>14</sup> of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.

8 U.S.C. § 1101(a)(15)(T)(ii).

Congress included family members of human trafficking victims in its immigration relief because it recognized that human traffickers often retaliate against their victims who escape or cooperate with law enforcement by harming (either directly or through their associates) the victims’ family members in their

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<sup>10</sup> *Id.* at 1478.

<sup>11</sup> Trafficking Victims Protection Reauthorization Act of 2003, 117 Stat. 2875, 2878 (2003).

<sup>12</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 122 Stat. 5044, 5053 (2008).

<sup>13</sup> 127 Stat. 54, 57 (2013).

<sup>14</sup> This ambiguous language was enacted by Congress when it added this provision.

home countries. Indeed, as we have heard repeatedly from our clients, threatening to kill family members is a common tactic used by traffickers to coerce their victims to stay in their trafficking situations, engage in commercial sex acts against their will, and not contact the police for help. Because traffickers often court and sometimes even marry their victims before luring them into coming to the United States with false promises, the traffickers know where their victims' families live. The traffickers' threats of retaliation against family members therefore are legitimate and an effective means of cementing victims into their horrific circumstances.

Congress expanded immigration relief to trafficking victims' family members who face a danger of retaliation for both humanitarian reasons and to encourage greater cooperation with law enforcement. The legislative history repeatedly shows a desire to protect the victims' family members from retaliation. For example, at a hearing on international trafficking, Representative Ileana Ros-Lehtinen explained that trafficked migrants "fear that if they were to go to the authorities they would be deported and that retribution would be handed down to their family members."<sup>15</sup> At a hearing on reauthorizing the TVPA, Acting Deputy, Assistant Secretary for Immigration and Border Security at the Department of Homeland Security Kelly Ryan explained that, in an exemplary case, "the provision of the T-visas to the dependents of the victims was absolutely critical in the successful prosecution which led to very long sentences. So [she] believe[s] from a DHS perspective that the provision of a T-visa to the victim and their dependents is absolutely critical to the law enforcement piece as well as victim assistance."<sup>16</sup> The committee report of the predecessor to the law that prompted the Interim Final Rule also explained that protecting immediate family members is critical: "Traffickers seek to control their victims by threatening *not just immediate family members*, but also grandchildren, step-children, nieces, and nephews."<sup>17</sup> This report states the obvious: aliens are certainly concerned for their "immediate family members" in addition to more distant relatives.

To the best of our knowledge, at no time did any congressperson suggest that Adult Children should be given less protection than other family members facing a present danger of retaliation.

## **II. DHS's and USCIS's Implementation of Congress's Expanded Protections for Family Members Facing Danger of Retaliation Leads to Absurd Results**

### **A. The T-6 Regulation as Drafted Protects Virtually All Family Members Other Than the Victim's Adult Children Even When Facing Danger of Retaliation**

The classification regulation adopted by DHS in the current Interim Final Rule provides as follows:

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<sup>15</sup> *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery: Hearing Before the H. Comm. on Foreign Affs.*, 110th Cong. 1st Sess. at 48 (2007) (statement of Rep. Ileana Ros-Lehtinen, Member, H. Comm. on Foreign Affs.), available at <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1025&context=humtraffdata>.

<sup>16</sup> *The Trafficking Victims Protection Reauthorization Act: Renewing The Commitment To Victims Of Human Trafficking: Hearing Before the Senate Jud. Comm.*, 112th Cong. 1st Sess., at 13 (2011) (statement of Kelly Ryan, Acting Deputy, Asst. Sec'y, Dep't of Homeland Sec.), available at <https://www.congress.gov/112/chr/CHRG-112shrg20268/CHRG-112shrg20268.pdf>.

<sup>17</sup> *Trafficking Victims Protection Reauthorization Act of 2011*, 112 S. Rep. 96, 112th Cong., 1st Sess., (2011), available at <https://www.govinfo.gov/content/pkg/CRPT-112s rpt96/html/CRPT-112s rpt96.htm> (emphasis added).

(1) **Eligibility.** Subject to section 214(o) of the [Act](#), an alien who has applied for or has been granted T-1 nonimmigrant status (principal alien) may apply for the admission of an [eligible family member](#), who is otherwise admissible to the [United States](#), in [derivative T nonimmigrant](#) status if accompanying or following to join the principal alien.

(i) **Principal alien 21 years of age or older.** For a principal alien who is 21 years of age or over, [eligible family member](#) means a T-2 (spouse) or T-3 (child).

(ii) **Principal alien under 21 years of age.** For a principal alien who is under 21 years of age, [eligible family member](#) means a T-2 (spouse), T-3 (child), T-4 (parent), or T-5 (unmarried sibling under the age of 18)

(iii) **Family member facing danger of retaliation.** Regardless of the age of the principal alien, if the [eligible family member](#) faces a present danger of retaliation as a result of the principal alien's escape from the severe [form](#) of trafficking or cooperation with law enforcement, in consultation with the law enforcement officer investigating a severe [form](#) of trafficking, [eligible family member](#) means a T-4 (parent), T-5 (unmarried sibling under the age of 18), or T-6 (adult or minor [child](#) of a derivative of the principal alien).

8 C.F.R. § 214.11(k). Section 101(b)(1) of the INA limits the definition of “child” to unmarried persons under the age of twenty-one. Thus, on its face the regulation provides protection to an extensive list of family members who face a present danger of retaliation from traffickers because their relative either escaped or cooperated with law enforcement – spouses, parents, children under twenty-one, siblings, step-siblings, grandchildren of any age, nieces and nephews of any age, and spouses' children of any age even if not the victim's children. However, not included in this list are the immediate daughters and sons of trafficking victims who happen to be twenty-one or older. The effect is that, for example, a woman who has obtained T-1 status may apply for T-6 status for her forty-year-old nephew but not her twenty-one-year-old daughter, even though both are in danger of retaliation. The regulation as written is therefore patently unreasonable. It enables T-1 applicants to protect their extended family members while leaving their closest family members ineligible for the same protection.

## **B. USCIS's Policy Memo Provides Victims Who Are Married to their Traffickers with Less Protection Than Other Victims**

Following the enactment of VAWA 2013, USCIS published a policy memo interpreting Congress's new T-nonimmigrant category for family members facing danger of retaliation (the T-6 Policy Memo).<sup>18</sup> In it, USCIS adopted a contrived and exceedingly narrow interpretation of the phrase “derivative beneficiary” in the T-6 category of “adult or minor children of a derivative beneficiary.” Specifically, USCIS concluded that to be eligible for this category, the adult or minor children of a derivative beneficiary must be adult or minor children of persons *who already have been granted T derivative status*: “[T]he ‘derivative beneficiary’ must have derived T-2, T-3, T-4 or T-5 nonimmigrant status through the principal in order for the derivative beneficiary's child (adult or minor) to be eligible for the new T-6 category.”<sup>19</sup>

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<sup>18</sup> USCIS, Policy Memo. PM-602-0107, *available at* [https://www.uscis.gov/sites/default/files/document/memos/Interim\\_PM-602-0107.pdf](https://www.uscis.gov/sites/default/files/document/memos/Interim_PM-602-0107.pdf) (“T-6 Policy Memo.”).

<sup>19</sup> *Id.* at 4.

One result of this interpretation is that trafficking victims who are married to their traffickers – which unfortunately is common – cannot use the T-6 category to protect their Adult Children who are in danger of retaliation. To give a concrete example, Sanctuary assisted a sex-trafficking victim who we will call “Julina” in obtaining T-1 status. Julina was trafficked by her husband, with whom she had four children. The children resided in her home country. The trafficker husband targeted Julina’s children when Julina escaped, beating and threatening to kill them. Julina applied for T-3 derivative status for her three youngest children and T-6 derivative status for her oldest child, a daughter who was over twenty-one. USCIS granted the applications for the three younger children but denied the application for the adult daughter. Even though Julina presented compelling evidence that her trafficker was viciously assaulting her daughter, USCIS denied the application because this daughter was over twenty-one years old at the time of Julina’s application. The denial decision noted that because Julina had not filed for her husband (her trafficker) this daughter did not qualify as an adult child of a derivative family member. Of course, for her own safety and that of her children, Julina did not want her husband to be allowed to come to the United States. Moreover, Julina is prohibited from applying for her husband to receive T derivative status because he is a trafficker.<sup>20</sup>

There are numerous other circumstances where trafficking victims have adult sons and daughters in danger of retaliation but the victims are not married to eligible spouses, or do not wish to obtain status for their spouses so they cannot secure T-6 status for all of their children. For example, an Adult Child’s father may be deceased, unknown, or may have abandoned the family. Or, the spouse may be an abuser of the victims and/or their children. Sanctuary’s clients have faced these circumstances, which preclude the protection of family members facing danger of retaliation that Congress intended.

We respectfully submit that the T-6 Policy Memo’s requirement that derivative beneficiaries obtain T status before their adult or minor children facing danger of retaliation are eligible for T-6 status is unfounded. None of USCIS’s reasons for its interpretation withstands scrutiny. First, USCIS concluded that the term “derivative beneficiary” “plainly means someone who has *derived* status as a family member (under INA section 101(a)(15)(T)(ii)) and who has *benefited* from the qualifying relationship with the principal.”<sup>21</sup> USCIS provides no authority for this interpretation. Moreover, it is inconsistent with USCIS’s own use of the term “beneficiary” elsewhere in the same memo to mean someone who *stands to benefit*:

- “[I]n the family immigration context, U.S. citizens can petition directly for immediate relative beneficiaries.”
- “[P]reference classification petitions may include derivative beneficiary family members granted a preference classification who can accompany or follow to join the principal.
- “A derivative beneficiary is eligible for the benefit based solely on having a qualifying relationship to the principal beneficiary . . . .”<sup>22</sup>

In each of these three instances USCIS uses the term “beneficiary” to mean someone who is eligible but has not yet received status, *i.e.* someone who could benefit in the future. It provides no explanation for its

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<sup>20</sup> 8 C.F.R. § 214.11(b)(5).

<sup>21</sup> T-6 Policy Memo at 4 (emphasis in original).

<sup>22</sup> *Id.*

conflicting uses of the term “beneficiary.” Additionally, USCIS’s interpretation of “derivative beneficiary” as limited to someone who already has benefited from their relationship to the principal applicant is contrary to the common definition of “beneficiary,” as a person or entity that stands to benefit:

Beneficiary. A broad definition for any person or entity (like a charity) who is to receive assets or profits from an estate, a trust, an insurance policy or any instrument in which there is distribution.<sup>23</sup>

We submit that there is no reasoned basis for USCIS’s interpretation, which, as explained above, is contrary to Congress’s intent of protecting immediate as well as more distant family members of T-1 applicants.

USCIS also attempted to justify its contrary-to-common-understanding interpretation of “derivative beneficiary” by pointing to the introductory phrase “if accompanying or following to join the principal.”<sup>24</sup> It reasoned that this phrase limits INA Section 101(a)(15)(T)(ii) to derivatives who accompany or follow the principal. That is true. Only T-6 applicants who accompany or will follow to join the principal applicant are eligible for status. But that does not mean that the phrase “if accompanying or following to join the principal” *also* modifies the phrase “derivative beneficiary.” It doesn’t. USCIS’s interpretation impermissibly re-writes the statute to insert words Congress did not use. Instead of:

(ii) if accompanying, or following to join, the alien described in clause (i) [the principal T applicant]—

••••

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.

USCIS’s interpretation is as follows:

(ii) if accompanying, or following to join, the alien described in clause (i) [the principal T applicant]—

••••

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien if accompanying, or following to join, the alien described in clause (i), as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.

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<sup>23</sup> Law.com legal definition, available at <https://dictionary.law.com/Default.aspx?typed=beneficiary&type=1> (last accessed Sept. 13, 2021); *see also* Beneficiary, Black’s Law Dictionary (11th ed. 2019) (“Someone who is designated to receive the advantages from an action or change; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument.”); *cf. Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 107 (1989) (“A beneficiary is ‘a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.’” (quoting 29 U.S.C. § 1000(8))).

<sup>24</sup> T-6 Policy Memo at 4.

USCIS has no authority to add this limiting phrase.

Finally, USCIS points to the legislative history of a prior unpassed bill with identical language, which states that the expanded category “‘modestly augments the list of eligible relatives who may file as a derivative beneficiary of a ‘T’ Visa holder.’”<sup>25</sup> USCIS seized on the word “modestly” to justify an irrational interpretation that misinterprets the phrase “derivate beneficiary” and fails to implement Congress’s objective of protecting immediate family members of any age who face danger of retaliation. Indeed, the very sentence that USCIS invokes uses the term “derivative beneficiary” to mean someone *eligible* to apply for T status, not someone who has received such status. Thus, the very history that USCIS relies upon shows that Congress intended “derivative beneficiary” to mean a relative “who may file” for T derivative status. Interpreting the T-6 category as Sanctuary proposes remains a modest expansion while simultaneously giving effect to Congress’s goal of protecting immediate family members in danger of imminent retaliation, and rendering sensical the T-Visa statutory regime.

### **III. DHS Should Modify the T-6 Regulation to Give Human Trafficking Victims’ Adult Children the Same Protection from Retaliation Afforded to More Distant Family Members, and to Protect Children of Derivative Beneficiaries Who Have Not Secured T Derivative Status**

Sanctuary urges DHS to modify 8 C.F.R. § 214.11(k)(iii) to change “or T-6 (adult or minor [child](#) of a derivative of the principal alien)” to read “or T-6 ([adult son or daughter of the principal alien, or adult son or daughter](#) or ~~minor~~-child of a derivative [beneficiary](#) of the principal alien).” Doing so would further Congress’s dual objectives of (a) providing humanitarian relief to those in danger of harm or even death at the hands of human traffickers, and (b) encouraging human trafficking victims to escape their traffickers and cooperate with law enforcement in investigating and prosecuting these heinous criminals. A mother who knows her adult son or daughter may be murdered if she reports her trafficking situation and cooperates with law enforcement is highly unlikely to do so even if she also knows that her parents, children under twenty-one, siblings, step-siblings, grandchildren, and nieces and nephews will be safe. Including in the T-6 category Adult Children who face danger of retaliation will save innocent lives and help law enforcement identify and prosecute more human traffickers.

DHS has the authority to make this change. When it enacted the T-6 Regulation it did so interpreting what Congress wrote: “any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) . . . .” 8 U.S.C. § 1101(a)(15)(T)(ii). USCIS acknowledged in the T-6 Policy Memo that the stray “as” in this sentence renders Congress’s language unclear, which gives USCIS authority to interpret the provision in accordance with congressional intent.<sup>26</sup> As explained above, that intent was to protect all immediate family members facing danger of retaliation. Additionally, statutes must be interpreted in a way that avoids absurd results.<sup>27</sup> Including Adult Children facing danger of retaliation in the T-6 category is the only way the protection enacted by Congress makes sense.

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<sup>25</sup> T-6 Policy Memo at 5 (citing Trafficking Victims Protection Act of 2011, S. Rep. 112-96 (Nov. 17, 2011)).

<sup>26</sup> T-6 Policy Memo. at 3 n.6; *see also, e.g., United Steelworkers v. Weber*, 443 U.S. 193, 201-02 (1979) (recognizing that statutes must be construed consistent with Congress’s intent); *Neang Chea Taing v. Napolitano*, 567 F.3d 19, 29 (1st Cir. 2009) (“Where a regulation conflicts with congressional intent as expressed in a statutory scheme, courts must give effect to congressional intent.”).

<sup>27</sup> *See, e.g., United States v. Wilson*, 503 U.S. 329, 334 (1992) (quoting *United States v. Turkette*, 452 U.S. 576, 580 (1981) (“absurd results are to be avoided”)); *United States v. American Trucking Ass’ns*, 310 U.S. 534, 543 (1940) (“When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act.”).



For the same reasons DHS should modify 8 C.F.R. § 214.11(k)(iii) to change “of a derivative of the principal alien” to “of a derivative beneficiary of the principal alien regardless of whether the derivative beneficiary has secured T derivative status.” It is absurd that a trafficking victim who was tricked or forced into marrying her trafficker cannot utilize 8 C.F.R. § 214.11(k)(iii) to protect her Adult Children while a victim who is married to someone other than her trafficker can. As written, the regulation discriminates against unmarried trafficking victims and those forced or tricked into marrying their traffickers.<sup>28</sup> Moreover, there are other reasons why the derivative beneficiary may not be available or eligible for T nonimmigrant status. The trafficking victim’s spouse, parent, or sibling could be deceased, or they might be inadmissible for any of a myriad of reasons. Such circumstances do not bear on whether an Adult Child, sibling, niece or nephew is in danger of retaliation and therefore in need of humanitarian help, or whether victims will stay in trafficking situation and refuse to cooperate with law enforcement due to such danger to their relatives. Given that the T-6 Policy Memo is just a policy, and provided that DHS sets forth a reasoned explanation for the change, DHS may change its policy in the manner Sanctuary proposes.<sup>29</sup> We urge it to do so.

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We look forward to a continuing dialogue with DHS and USCIS on these issues and related matters.  
Respectfully submitted,

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<sup>28</sup> Because this policy unfairly favors married women over unmarried women with no rational basis, it likely is unconstitutional under the Equal Protection Clause. *See, e.g., People v. Liberta*, 474 N.E.2d 567, 573 (N.Y. 1984) (quoting *Eisenstadt v Baird*, 405 U.S. 438, 447 (1972) (“Where a statute draws a distinction based upon marital status, the classification must be reasonable and must be based upon ‘some ground of difference that rationally explains the different treatment.’”).

<sup>29</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125, 579 U.S. 211 (2016) (“Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.”).