

Executive Summary

Human trafficking is a global problem, and migrants can be particularly at risk of exploitation due to their immigration status. In the United States, the T visa is a legal protection designated for immigrant survivors of trafficking. However, it is significantly underutilized. In recent years, applicants also have faced increased obstacles from administrative officials adjudicating applications and high rates of denials. Since there was little publicly available data about the T visa process and its applicants, researchers conducted a survey of legal advocates working on the ground with T visa applicants and obtained data from US Citizenship and Immigration Services (USCIS) through a Freedom of Information Act (FOIA) lawsuit. This report releases both the survey and the FOIA data to show how a program intended to protect immigrant trafficking survivors only protected some, while exposing others to greater risk of denial and deportation.

BACKGROUND: LEGAL PROTECTION FOR IMMIGRANT SURVIVORS OF TRAFFICKING

Human trafficking is a human rights violation that impacts millions of people globally.¹ It is a form of exploitation that typically involves deception, coercion, or force to make a person engage in forced labor or commercial sex.² Distinct from human smuggling, human trafficking does not require transportation across a border.³ Trafficking impacts US citizens and noncitizens alike,⁴ but research shows that those who are marginalized, including people of color, Indigenous, LGBTQ+, and undocumented people, are uniquely at risk.⁵

In the United States, federal and state laws have evolved to provide legal remedies to survivors of human trafficking.⁶ In 2000, Congress passed the Trafficking Victims Protection Act (TVPA) to protect survivors,⁷ prevent trafficking, and prosecute perpetrators

of trafficking.⁸ Importantly, the TVPA established the T visa, a specialized form of immigration relief for immigrant survivors of trafficking.⁹ Congress designed the T visa with a dual purpose: (1) to support immigrant survivors, and (2) to encourage cooperation with human trafficking criminal investigations and prosecutions.¹⁰ The T visa allows immigrant survivors

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access to employment authorization, important federal public benefits, a pathway to lawful permanent residency, and avenues to petition for family members.¹¹ While T visas provide a crucial legal pathway to immigrant survivors, the program has been underutilized since its inception in 2000.¹²

Despite 5,000 T visas available annually, USCIS has granted T visas to fewer than 2,000 survivors each year.¹³ Denial rates have also ballooned in recent years, increasing to 42 percent in fiscal year 2020.¹⁴ These trends raise important concerns about whether immigrant survivors, especially those most vulnerable, can effectively access this important protection. Meanwhile, USCIS has released relatively little data about T visa outcomes.¹⁵ In particular, much is unknown about disparities in accessing the T visa program and the reasons for T visa denials.

“[Waiting for the T visa] was hard... I have trauma, you know; I don’t have papers, so every time I see police, I hide... [My lawyer] told me if somebody knocks on the door don’t open the door...”

-Survivor of human trafficking

OVERVIEW OF DATA & FINDINGS

This report responds to these informational gaps through two sets of unprecedented data: (1) the results of a national survey conducted in March and April 2021 of 196 legal practitioners who assisted with T visas,¹⁶ and (2) information about T visa processing derived from a 2022 FOIA lawsuit by Boston University (BU) faculty members.¹⁷ Both sets of data show that administrative barriers to the program increased in recent years. Immigration officials issued more Requests for Evidence (RFEs), denials, and Notices to Appear, the document that initiates removal (i.e., deportation) proceedings.¹⁸

The report shows how USCIS increased issuance of RFEs to immigrant survivors in T visa cases, particularly under the Trump Administration. RFEs more than doubled in T visa cases from 638 in 2018 to 1,475 in 2020. Of legal advocates surveyed in 2021, 91 percent reported that USCIS issued more RFEs after January 2016, with most RFEs received in 2019 and 2020.

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RFEs are requests for additional evidence or clarification by USCIS, and they can slow down the processing of the application. They also place additional burdens on survivors to collect evidence or retell their story. Many advocates reported that RFEs were often duplicative and cumbersome, thus adding barriers to the T visa for no substantive reason. RFEs can also increase the workload on *pro bono* attorneys and reduce their capacity to assist indigent survivors.

Processing times for T visa applications also rose in the last ten years. The average processing time for T visa applications increased from 13.7 months in 2018 to 19.6 months in 2021. In 2021, over half of advocates reported that their most recent T visa application had taken over 12 months to process, with over ten percent reporting that adjudication took longer than two years. While the T visa application is processing, survivors are frequently undocumented with limited access to services. Many fear reprisals from their perpetrators and face tremendous financial challenges because they frequently cannot access work authorization while the application is pending. Thus, long processing times can stand in the way of a survivor's path to financial stability.

From 2014 to 2019 T visa denials increased by more than 250 percent. In 2014, USCIS denied 175 T visa applications, compared to 453 in 2019. The denial rate steadily rose from just 18 percent of cases adjudicated in fiscal year 2016 to 42 percent in fiscal years 2019 and 2020. While it decreased modestly in fiscal year 2021, the rate remained high at 38 percent. USCIS has not made public the basis for denials, but 43 percent of legal advocates surveyed who received a denial said that it was due to a failure to show that the applicant was in the United States "on account of" of trafficking—the physical presence requirement. This data is consistent with the observations of advocates who claimed that USCIS in the last five years has interpreted the physical presence requirement narrowly to deny more survivors of trafficking the T visa.

Denials left T visa applicants often with no legal protection and vulnerable to deportation. Under the Trump Administration, denied applicants were particularly at risk of deportation, as USCIS also began to issue them NTAs to initiate removal proceedings pursuant to a 2018 memorandum (NTA Policy). According to data obtained through FOIA litigation, USCIS issued a total of 236 NTAs to denied T visa applicants from 2019 to 2021 under the NTA Policy. USCIS separately issued 2,033 NTAs to applicants for immigration relief designed for immigrant survivors of domestic violence and violent crime. No NTAs were reportedly issued after January 2021, when President Biden rescinded the NTA Policy by executive order.

Overall, this report finds that while the T visa program protects some survivors, it also exposed many to a greater risk of deportation, and there remain continued barriers to access, particularly for marginalized groups.

The survey data also provides other insights into law enforcement responses to human trafficking. Law enforcement engagement is a key component of the T visa process because adult survivors over age eighteen must respond to reasonable requests for assistance in any human trafficking investigation or prosecution, unless trauma prevents them from doing so. Survivors, however, are often fearful of engaging with law enforcement, afraid that they will be subject to reprisals by perpetrators or may be subject to arrest or deportation.

According to survey data, most legal advocates surveyed reported that law enforcement "sometimes" or "often" interviewed the survivor when they report the crime to law enforcement. However, few issued the Supplement B, which can be important evidence in a T visa application. Forty-four percent of advocates surveyed in 2021 reporting that the Supplement B was "rarely" issued when requested. However, 67 percent of advocates surveyed reported that their T visa applications were "always," "sometimes," or "often" approved without the Supplement B. This response was consistent with data released by USCIS, confirming that a clear majority of approved T visa applications do not contain a Supplement B.¹⁹

Overall, this report finds that while the T visa program protects some survivors, it also exposed many to a greater risk of deportation, and there remain continued barriers to access, particularly for marginalized groups. These outcomes illuminate the ongoing need for transparency, training, and safeguards at USCIS to ensure that officials consistently and lawfully administer the T visa program. Survivors of human trafficking face unique challenges when stepping forward, and marginalized groups, including detained immigrants, LGBTQ+ survivors, and survivors of color, may encounter additional barriers. Therefore, it is essential for USCIS to reduce any barriers in accessing the T visa program, especially bureaucratic burdens connected to the application process. While some harmful policies implemented under the Trump Administration have been reversed, further action is needed to ensure more equitable and consistent access to the T visa program.