

ACCESS DENIED:

BARRIERS
TO LEGAL
PROTECTION
FOR IMMIGRANT
SURVIVORS
OF HUMAN
TRAFFICKING

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About the BU Law Immigrants' Rights and Human Trafficking Program

The Immigrants' Rights and Human Trafficking Program is an innovative clinical program in which, under faculty direction and supervision, law students represent noncitizens and survivors of human trafficking in a broad range of complex legal proceedings before immigration courts; immigration agencies; and local, state, and federal courts. The program also collaborates with national advocacy agencies to advance protections for immigrants and survivors of human trafficking. This work includes the publication of research by faculty members in the immigration and anti-trafficking fields. The program also provides training and technical assistance to lawyers, law enforcement agencies, judges, advocates, and attorneys assisting immigrant survivors of crime, human trafficking, torture, and persecution.

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Glossary of Terms

HUMAN TRAFFICKING

A form of exploitation that typically involves deception, coercion, or force to make a person engage in forced labor or commercial sex.

TRAFFICKING VICTIMS PROTECTION ACT (TVPA)

A US law passed in 2000 to protect survivors, prevent trafficking, and prosecute perpetrators of trafficking.

T VISA

A form of legal protection designated for immigrant survivors of trafficking that Congress created in the TVPA. This report uses the term, "T visa," to refer only to T-1 nonimmigrant status for immigrant survivors of human trafficking, not derivative family members granted status by virtue of their relationship with the survivor.

US CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

The immigration agency that adjudicates applications for immigration status, including applications for T visas.

FORM I-914

Application for a T visa.

FORM I-914, SUPPLEMENT B (SUPPLEMENT B)

A Declaration completed by a law enforcement official in support of a T visa applicant from to document a survivor's response to a reasonable request for assistance in a trafficking investigation.

REQUEST FOR EVIDENCE (RFE)

A request for additional evidence or clarification from a T visa applicant issued by USCIS.

NOTICE TO APPEAR (NTA)

The document that initiates removal (i.e., deportation) proceedings. In 2018, USCIS issued a memorandum directing the agency to issue NTAs to applicants for certain immigration benefits, including T visas, if their applications were denied. President Biden rescinded this policy by executive order in January 2021.

NOTICE OF INTENT TO DENY (NOID)

A Notice of Action issued by USCIS finding that there is insufficient evidence to grant or deny an application and providing the applicant with additional time to respond.

NOTICE OF INTENT TO REVOKE (NOIR)

A Notice of Action issued by USCIS informing the recipient of immigration status that the agency seeks to revoke an applicant's status due to new, adverse information that has come to light.

BLANK SPACES POLICY

A requirement under the Trump Administration that immigration applicants place "N/A" or "none" in any fields of the application they would have otherwise left empty; under the policy, USCIS rejected applications from applicants who left any space on their application blank.

PHYSICAL PRESENCE REQUIREMENT

A requirement that T visa applicants show that they are physically present in the US or US territories "on account of" trafficking.

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

While T visas provide a crucial legal pathway to immigrant survivors, the program has been underutilized since its inception in 2000.

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.

From 2014 to 2019 T visa denials increased by more than 250 percent.

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.

Introduction

BACKGROUND ABOUT THE T VISA PROGRAM

In 2000, Congress passed the first comprehensive anti-trafficking legislation, the Trafficking Victims Protection Act of 2000 (TVPA), to establish new human trafficking crimes, create important protections for trafficking survivors, and enable efforts to prevent human trafficking.²⁰ A pivotal part of the TVPA was the establishment of T nonimmigrant status (T visa), a special form of immigration status for survivors of human trafficking.²¹ The T visa program had a dual purpose: to ensure that survivors could access immigration protections and to encourage them to cooperate with human trafficking investigations and prosecutions.²² The T visa provides immigrant survivors with access to work authorization, a pathway to permanent legal residence, and the ability to petition for eligible family members.²³

T visas are available to survivors who meet the federal definition of a “victim of a severe form of trafficking in persons.” The TVPA defines a “severe form of trafficking” as:

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or . . . the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.²⁴

To qualify for a T visa, an applicant must demonstrate that they:

- “[are] or [have] been a victim of a severe form of trafficking in persons”;²⁵
- “[are] physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a point of entry thereto, on account of such trafficking”;²⁶
- “[have] complied with any reasonable request for assistance in the Federal, State or local investigation or prosecution of acts of trafficking or the investigation where acts of trafficking are at least one central reason for the commission of that crime,” except if the applicant was under 18 years old when victimized or trauma prevents them from doing so;²⁷
- “would suffer extreme hardship involving unusual and severe harm upon removal”; and²⁸
- are admissible or are eligible for a waiver of inadmissibility.²⁹

To qualify for a T visa, an applicant typically must report the trafficking crime to law enforcement, unless they were under 18 years of age when the trafficking occurred or meet the trauma exception.³⁰ An applicant may submit a Supplement B, completed by a law enforcement officer, to demonstrate that they reported their trafficking victimization and cooperated with any reasonable request for assistance from law enforcement.³¹ The Supplement B, however, is not required; an applicant may submit other evidence to show that they meet the requirement, including emails with law enforcement,

their own personal statement or declaration, a police report, or other court records.³² According to regulations, USCIS should give such evidence equal weight as the Supplement B.³³

Immigrant survivors of human trafficking often face considerable challenges reporting to law enforcement and gathering evidence.³⁴ In response, federal regulations require that USCIS consider “any credible evidence” submitted by a survivor in recognition of the unique barriers faced by survivors of abuse.³⁵ Congress first adopted the “any credible evidence” standard in the Violence Against Women Act of 1994 to acknowledge that abuse survivors may face significant challenges when gathering

“When you’re in that situation where you don’t know what to do, it seems like you don’t have [a] way out.... You’re in a country where you don’t know anyone; how are you going to survive?”

-Survivor of human trafficking

necessary documents.³⁶ These principles were extended to survivors of crime in 2000. The “any credible evidence” standard now plays a key role to ensure that survivors can access the T visa program without unnecessarily high barriers.³⁷

FIGHTING DEPORTATION

Jane Doe, the plaintiff in a federal lawsuit, was only 16 when she was recruited from Peru to travel to the United States as a domestic worker.³⁸ The traffickers promised her a better life, including greater access to education. Full of hope, Doe prepared to embark on a journey to this brighter future.

The night before her travel, questions arose about what kind of life she would lead. The traffickers provided her with a passport and a tourist visa in someone else's name. They told her she would have to call the person traveling with her an "aunt." Still hopeful, Doe went along with the plan.

Unfortunately for Doe, when she arrived, she found more deception and coercion. The traffickers took her passport. They prohibited her from using the phone or speaking with friends. She could only call her father once a month. The traffickers did not register her for school, like they promised. Instead, for years, she worked without pay. Doe had been trafficked. Isolated and afraid, she had no one to whom she could turn.

In 2008, a friend helped her to escape. But, like many other trafficking survivors, Doe found herself in limbo afterwards. She suffered trauma related to the trafficking and had difficulty trusting others. She had no money, no passport, and little English proficiency. She could not make a living in the US. She was terrified at the prospect of going to the police. She also feared that the traffickers would find her and hurt her in Peru.

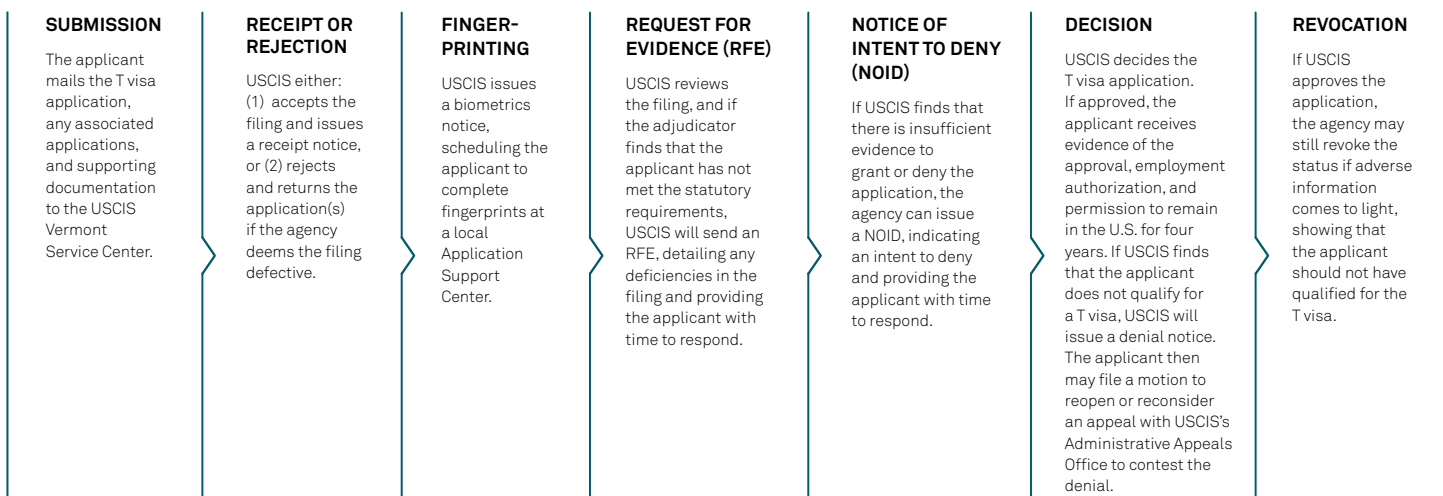
It took another ten years for Doe to get help. She eventually applied for a T visa, making the case that she was in the United States on account of trafficking and showing evidence of her victimization. But, because ten years had passed, USCIS was not convinced that Doe was in the United States "on account of" her trafficking and denied her application. Within only three months, USCIS issued a NTA to start deportation proceedings.

In August 2020, Doe, along with her lawyer, fought back. They challenged the denial in a federal lawsuit, challenging the lawfulness of the USCIS interpretation of the physical presence requirement. Shortly after the lawsuit was filed, USCIS mailed her a notice approving her T visa case. Doe was lucky to have legal representation, but the legal process took many years and the outcome was far from certain. Her case showcases the danger of having the risk of deportation tied to protection.

“Basically, the government has told her, ‘Yes, you are a victim of trafficking, but we’re going to deport you anyway.’”

-MERCER CAULEY,
attorney for Jane Doe

T Visa Application Process



APPLICATION PROCESS

To qualify for a T visa, an applicant must submit their application on Form I-914, Application for T Nonimmigrant Status, with supporting documentation to USCIS.³⁹ USCIS adjudicators generally do not interview T visa applicants.⁴⁰ As a result, USCIS relies heavily on the application and supporting materials to determine if the applicant merits approval.

All applicants must also be admissible or request and be granted a discretionary waiver of inadmissibility.⁴¹ An applicant may be inadmissible due to a variety of factors, including entry without inspection, a prior removal order, prior arrests related to the trafficking, substance abuse, and a history of thoughts about self-harm, as articulated in section 212(a) of the Immigration and Nationality Act.⁴² A waiver of inadmissibility is submitted on Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, and has an associated filing fee, which, as of November 2022, is \$930.⁴³ An applicant who cannot afford the filing fee may submit a request for a fee waiver.⁴⁴ Applicants also may apply for derivative family members by submitting Form I-914, Supplement A, either at the time of filing or after filing.⁴⁵

OBSTACLES TO PROTECTION

Many immigrant survivors of trafficking face considerable obstacles when accessing the T visa program. Scholars and advocates have observed that the US government's focus on enforcement measures—such as immigration enforcement and human trafficking prosecutions—often undermine efforts to protect survivors.⁴⁶ For instance, the T visa generally requires survivors to engage with law enforcement, but many immigrant survivors fear the police, believing they will be arrested or deported.⁴⁷ Moreover, legal scholars have highlighted that systemic racism and bias can inform how law enforcement enforce trafficking laws and shape the way that survivors access their legal

Scholars and advocates have observed that the US government's focus on enforcement measures—such as immigration enforcement and human trafficking prosecutions—often undermine efforts to protect survivors.

rights.⁴⁸ Historically marginalized groups, particularly Black, Indigenous, and people of color, often find themselves disproportionately criminalized and less likely to be believed by law enforcement.⁴⁹ As a result, marginalized groups may encounter more barriers proving their legal claims and obtaining protection. Also, scholars have drawn attention to how protection efforts have often prioritized the narratives of those perceived to be “perfect” victims who cooperates with law enforcement and await “rescue,” a lens that excludes many survivors.⁵⁰

Certain populations, like survivors in immigration detention, face additional barriers to identification and accessing their legal rights. Survivors in immigration detention often remain unidentified.⁵¹ Detention facilities are frequently located in remote locations with insufficient access to health or legal services.⁵² Moreover, as detained cases are a scheduling priority for immigration courts, their cases are generally on a fast track, giving them little time to retain counsel and prepare their immigration applications.⁵³ These challenges make it very hard to report to law enforcement and obtain the T visa if detained.

For all applicants, accessing legal rights also requires navigating a maze of actors, including immigration adjudicators and law enforcement personnel, and meeting burdensome requirements, which can be challenging for immigrant survivors.⁵⁴ In the T visa context, USCIS officials, for example, must review application forms and evidence to decide whether an applicant meets the requirements and whether to exercise discretion. Law enforcement also plays a key role in determining when to investigate trafficking crimes and who is eligible for Supplement B. The decision of whether to sign the Supplement B is a discretionary decision and frequently varies by officer, agency, and jurisdiction. These discretionary decisions play a pivotal role in shaping who can exercise their legal rights. In addition, seemingly mundane

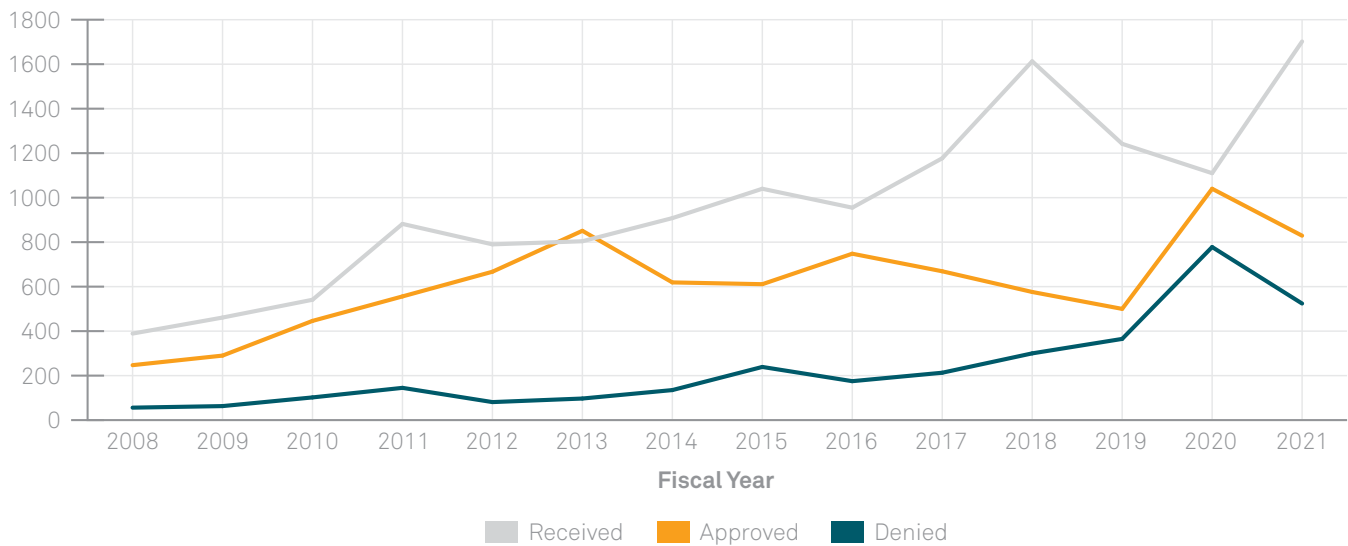
issues, such as requests for fee waivers or the application process, can directly shape who receives immigration relief.

Without legal assistance, the T visa application process can also be quite daunting. Immigrant survivors are not guaranteed legal representation. Over the past ten years, federal funding for *pro bono* legal assistance to trafficking survivors has increased, as has training for the private bar about human trafficking.⁵⁵ However, gaps remain, and legal representation often plays a pivotal role in securing a T visa.⁵⁶ According to USCIS, in fiscal year 2021, 97 percent of all approved T visa applicants in fiscal year 2021 had legal representation.⁵⁷

“The lawyer told me about this visa for human trafficking. I didn’t know what human trafficking was. And this whole time I was afraid of police, I was just living in fear.”

-Survivor of human trafficking

Figure 1.1: Number of I-914 Receipts, Approvals, and Denials (Fiscal Year 2008 to 2021)



Source: USCIS⁶⁴

UNDERUTILIZATION OF THE T VISA PROGRAM

Though the T visa is an important lifeline for immigrant survivors of trafficking, according to a 2022 Congressional Research Service report, it is underutilized.⁵⁸ Despite the availability of 5,000 T visas annually,⁵⁹ the cap has never been reached.⁶⁰ Instead, USCIS has approved fewer than 2,000 T visas for trafficking survivors.⁶¹ The same report called on policymakers to “look at factors that potentially contribute to what some observers consider to be the underutilization of the status.”⁶²

U visas for survivors of violent crime have had strikingly different utilization trends. While the U visa program has a cap of 10,000 annually, USCIS received 21,874 U visa applications in fiscal year 2021, compared to only 1,702 T visa applications received in the same year.⁶³ One reason for larger utilization may be that U visas are available to survivors of a broader range of crimes. However, it is important to examine why T visa approvals remain low and any systemic reasons for underutilization.

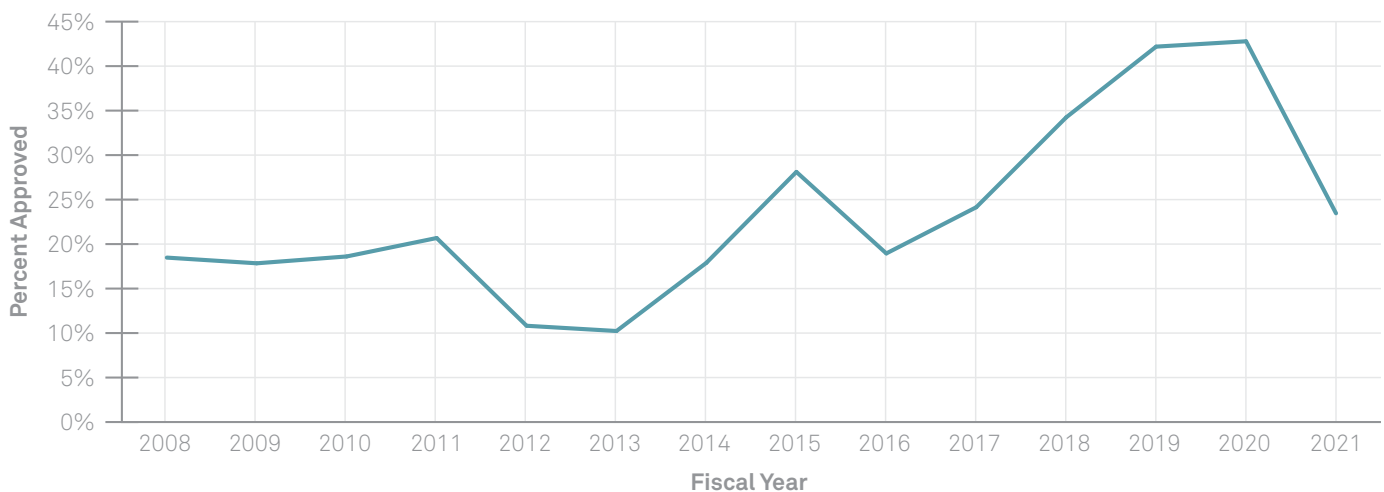
RISING T VISA DENIALS

In recent years, T visa denial rates have risen.⁶⁵ In fiscal year 2020, USCIS denied 42 percent of the T visa applications that the agency adjudicated, compared to just 28 percent in fiscal year 2015.⁶⁶ Rising denial rates have sparked alarm among national anti-trafficking

advocates. Martina Vandenberg, the founder and director of the Human Trafficking Legal Center, noted “these drops [in approvals] are reflected in data provided by the US government. So at least there’s transparency. They are transparently destroying protections for trafficking victims.”⁶⁷ Other advocates expressed that while some survivors can still access to immigration protection, marginalized survivors, such as those criminalized due to their trafficking victimization, faced heightened challenges.⁶⁸ Saerom Choi, the project manager for Asian Pacific Islander Legal Outreach, noted that for survivors with criminal records, “[t]heir chances of getting a T visa were always more difficult, and now more so (under the Trump Administration).”⁶⁹

In particular, advocates expressed concerns about USCIS’s restrictive interpretations of the T visa requirements beginning in 2017.⁷⁰ According to the US Department of State, advocates “reported increased T visa denials that they believed improperly interpreted relevant statutes and regulations, such as denials based on unlawful acts traffickers compelled victims to commit or narrower interpretations of the physical presence requirement.”⁷¹ Advocates also expressed concern about USCIS improperly denying T visa applications relating to “polyvictimization,” when a survivor suffers from multiple traumatic events, such as human trafficking and domestic violence, or human trafficking and smuggling.⁷²

Figure 1.2: Denial Rates of I-914s Adjudicated Per Fiscal Year (Fiscal Years 2008 to 2021)



Source: USCIS⁷³

SHIFTING ADJUDICATION POLICIES

In the past ten years, the adjudication policies of USCIS have shifted, influencing the T visa application process.⁷⁴ While President Donald J. Trump pledged to combat the “epidemic of human trafficking,”⁷⁵ USCIS also implemented formal and informal policies that established new obstacles for survivors applying for T visas, including the NTA Policy, Blank Spaces Policy, fee waiver changes, and rigid interpretations of the physical presence requirement.

NTA POLICY

On June 28, 2018, USCIS issued a policy memorandum (NTA Policy), authorizing the issuance of NTAs to denied immigration applicants.⁷⁶ This new practice ran counter to years of USCIS practice to take no enforcement action against those applying for victim-based immigration relief, including T visa applicants.⁷⁷ Advocates reported that this policy dramatically chilled survivors from applying for T visas. Vandenberg called the policy “a game-changer.” “It totally changes the analysis of whether or not it’s worth it for any trafficking victim to cooperate with law enforcement,” she said.⁷⁸

USCIS has yet to release any public information about the implementation of the NTA Policy, including the number of NTAs issued. However, data obtained through FOIA litigation shows that USCIS issued a total of 236 NTAs to denied T visa applicants from 2019 to 2021. No NTAs were reportedly issued after January 2021, when President Biden rescinded the NTA Policy by executive order. Moreover, USCIS issued 2,033 NTAs to applicants for other victim-based programs, including 451 NTAs to self-petitioners under the Violence Against Women Act and 1,582 NTAs to U visa applicants applying as victims of violent crime.

Many advocates have highlighted how the NTA Policy had a broader, chilling impact on T visa applications.⁷⁹ While the number of T visa applications filed steadily rose from fiscal year 2008 to 2018, applications decreased dramatically after the NTA Policy was announced in June 2018, falling from 1,613 in fiscal year 2018 to 1,242 in fiscal year 2019 and 1,110 in 2020.⁸⁰ After the NTA Policy was rescinded by executive order in January 2021, T visa applications increased to 1,702 in fiscal year 2021.⁸¹ As of fiscal year 2022, 2,163 applications have already been submitted.⁸² While potentially a positive sign, some survivors still may remain hesitant to apply for the T visa, fearful that a future administration could reinstate the NTA policy.

BLANK SPACES POLICY

The NTA Policy was not the only USCIS policy to impact T visa applicants. In March 2020, with no notice, USCIS announced a new practice (Blank Spaces Policy), requiring that U and T visa applicants place “N/A” or “None” in any fields of the application they would have otherwise left empty.⁸³ If a field was left blank, USCIS rejected the applications and required applicants to refile.⁸⁴ Due to the lack of notice, many advocates were caught off guard by the change of policy and unable to prepare in advance.⁸⁵ Advocates reported that the policy resulted in the capricious rejection of various humanitarian applications and delayed applicants from obtaining humanitarian relief for no substantive reason.⁸⁶

In *Vangala v. USCIS*,⁸⁷ plaintiffs, whose U visa applications were rejected for having blank spaces, filed a federal lawsuit challenging the policy as violating the Administrative Procedure Act.⁸⁸ On December 23, 2020, as part of the settlement agreement, USCIS agreed to stop rejecting applications with blank spaces.⁸⁹ However, USCIS has not made any data public about the impact of the policy on T visa applicants.

FEE WAIVER CHANGES

In October 2019, USCIS initiated yet another policy change that would negatively impact T visa applicants. USCIS planned to tighten policies about granting fee waivers to eligible immigrants who could not afford the immigration fees.⁹⁰ While proof of receipt of a means-tested benefit was historically sufficient to qualify for a waiver, USCIS announced that it would no longer allow such a benefit to establish eligibility for a fee waiver.⁹¹ Additionally, USCIS became more stringent regarding evidence of financial need, rejecting applications with evidence that previously was sufficient.⁹²

T visas do not have a fee, but many applicants must submit a waiver of inadmissibility, which has a filing fee of \$930.⁹³ Thus, access to the fee waiver was critical for T visa applicants, many of whom would otherwise not qualify for the T visa. Advocates reported that, after December 2019, fee waiver rejections increased, but little data was available on the scope of the impact. Shortly after implementation plaintiffs filed a federal lawsuit contesting the lawfulness of the policy, and a district court issued a national injunction preventing USCIS from implementing the program. But, the policy’s full impact is still unknown.⁹⁴ Moreover, advocates continue to report that USCIS frequently rejects fee waiver applications with insufficient justification.⁹⁵

PHYSICAL PRESENCE REQUIREMENT

In addition to formal policy shifts, advocates have observed that USCIS began in 2017 to interpret T visa requirements more restrictively, resulting in more RFEs and denials.⁹⁶ Lawyers pointed to changing interpretations of the “on account of” requirement, also known as the physical presence requirement.⁹⁷ To qualify for a T visa, applicants must show that they are physically present in the US or US territories “on account of” trafficking.⁹⁸ Until 2017, USCIS had interpreted this requirement broadly to include applicants who had not departed the US since the trafficking occurred.⁹⁹ In fact, recent regulations in 2016 simplified the process for meeting the physical presence requirement and acknowledged the barriers faced by immigrant survivors in gathering evidence.¹⁰⁰ According to such regulations, an applicant could meet the requirement by showing that their current presence related to the trafficking, such as showing that they need ongoing mental health treatment or to assist an ongoing trafficking criminal investigation.¹⁰¹

In 2017, advocates reported that USCIS narrowed its interpretation of the physical presence requirement, resulting in more denials.¹⁰² According to advocates, USCIS unlawfully interpreted the physical requirement as a *de facto* filing deadline, contrary to the statute and regulations—and inconsistent with Congressional intent in passing the TVPA.¹⁰³ As a result, many immigrant survivors who came forward years after the trafficking—due to fears of reprisal, trauma, or stigmatization—received denials.¹⁰⁴ Given that USCIS failed to release data about the reasons for denials, advocates pointed to rising cases at the USCIS Administrative Appeals Office related to the physical presence requirement as evidence of the change in interpretation.¹⁰⁵ Yet, USCIS has to acknowledge any change in interpretation of the physical presence requirement or release any publicly available data about its impact.

As a result, many immigrant survivors who came forward years after the trafficking—due to fears of reprisal, trauma, or stigmatization—received denials.

In the Biden Administration, some progress has been made, as the USCIS Policy Manual was revised in October 2021, making clear that USCIS should not interpret the physical presence requirement to require an applicant to file within a particular time period after leaving the trafficking.¹⁰⁶ However, there remain reports of denials and narrow interpretations of the physical presence requirement.¹⁰⁷ These denials are troubling, as they show how some immigrant survivors are still unable to access protection.





PART 1:

Perspectives
from Legal
Advocates on
the Ground

METHODOLOGY

From March 3, 2021, to April 5, 2021, researchers administered a survey, receiving 196 responses, to legal advocates working with T visa applicants.¹⁰⁸ The researchers solicited responses with the assistance of three national anti-trafficking and immigrants' rights advocacy organizations. Advocacy organizations provided input on the survey design and helped to disseminate the survey to anti-trafficking and immigration lawyers in their networks. The survey was also sent to listservs and online groups for attorneys assisting immigrant survivors of human trafficking and/or providing *pro bono* humanitarian immigration relief. Our sample includes attorneys, paralegals, and US Department of Justice (DOJ) accredited representatives¹⁰⁹ who chose to participate in the survey.¹¹⁰

SURVEY AIMS AND OBJECTIVES

The purpose of the survey was systematically to identify legal barriers observed by legal practitioners who worked with immigrant survivors applying for T visas. The survey solicited information about legal practitioners' observations about rejections, RFEs, denials, and NTAs issued in their own cases. The survey also inquired about advocacy practices related to survivor engagement with law enforcement.

RESULTS

WHO PARTICIPATED

Seventy-seven percent of respondents worked at non-profit organizations; the rest worked at private law firms or other organizations, like law school clinical programs. Approximately half specialized in providing immigration legal assistance, and a quarter focused on anti-trafficking legal advocacy. The vast majority had filed an application for a T visa. (Please see Appendix 1, Tables 2.8-2.11 for greater description.)

REJECTIONS

Thirty-seven percent of respondents reported that since January 2016, USCIS had returned an application for a T visa or associated application, with 64 percent of those who received a rejection reporting that the application was related to a waiver of inadmissibility (I-192). While the rationale for rejections varied, 63 percent of respondents that it was due to a fee waiver rejection, while 15 percent said it was due to the Blank Spaces Policy. Twenty-one percent of the rejections were due to practitioner error, including the advocate failing to include a required document, an original signature, or a page of the application, or used an incorrect version of the application form. In terms of trends, more than half of those who received T visa rejections felt that these had increased since January 2016. Of those who had received rejections, 37 percent reported that they occurred in 2020.

Figure 2.1: Respondents Who Reported Ever Receiving a Returned Application, Including I-914s or I-192s

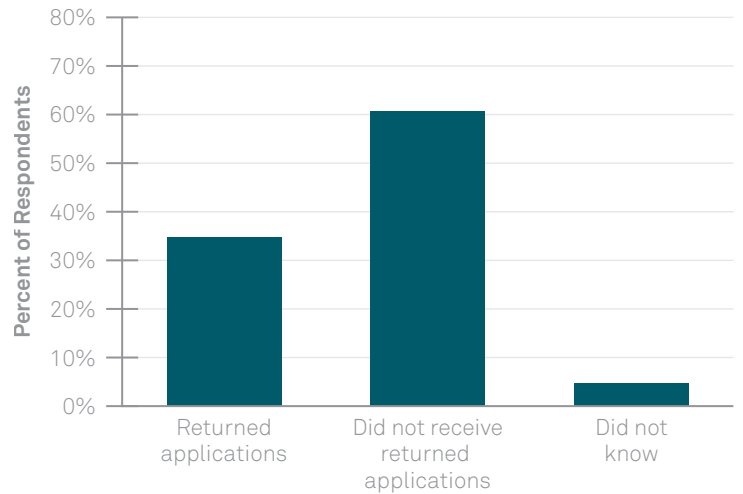


Figure 2.2: Number of Respondents Who Had Ever Received a RFE in Response to a I-914 or I-192

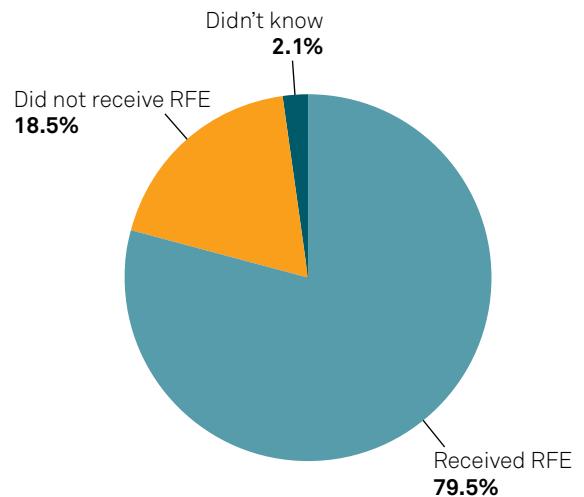
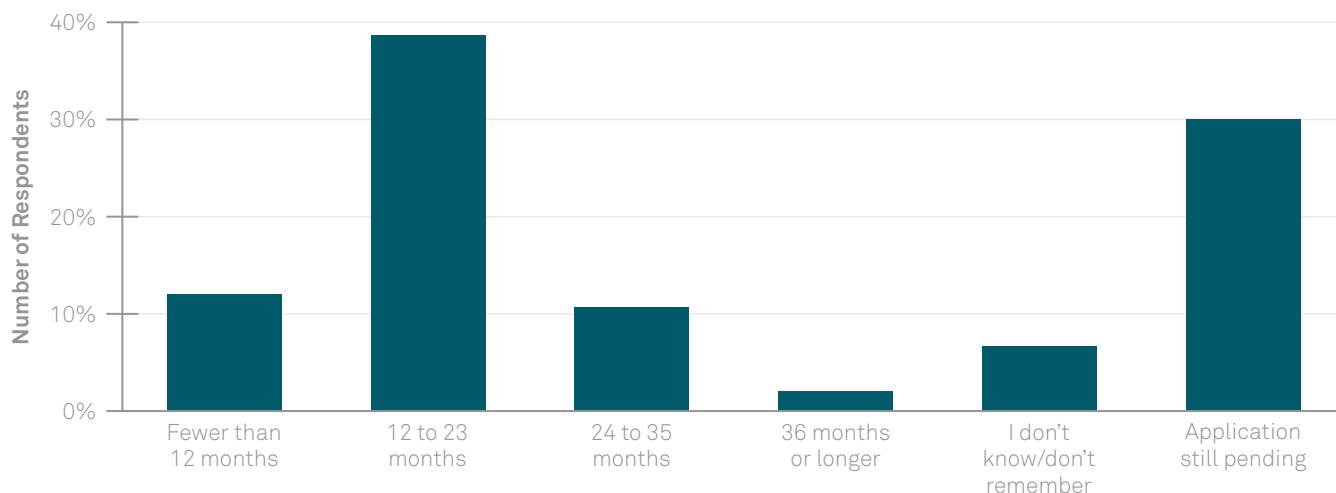


Figure 2.3: Length of Processing Times for Most Recently Filed I-914 by Respondents



REQUESTS FOR EVIDENCE (RFES)

Seventy-nine percent of respondents had received RFES in response to filing an I-914 or I-192 related to a T visa application. Over half of the RFES were issued in 2019 and 2020. Almost all respondents (91 percent) reported that RFE issuance had increased since January 2016. Of the 106 respondents who reported receiving RFES in 2020, the rationale(s) for issuance was/were:

- failure to show the applicant is a victim of a “severe form of trafficking in persons” (23 percent of responses);
- failure to show that the applicant is in the United States “on account” of the trafficking (27 percent of responses);
- failure to show that the applicant responded to a reasonable request for assistance from law enforcement (12 percent of responses);
- failure to show that the applicant would face extreme hardship involving unusual and severe harm if forced to return to their country of origin (15 percent of responses);
- failure to show that the applicant was admissible or qualified for a waiver of inadmissibility (17 percent of responses); and
- other reasons or the practitioner did not know or remember (5 percent of responses).¹¹¹

PROCESSING TIMES

Over half of advocates responding to the 2021 survey reported that their most recent I-914 had taken over 12 months to process, with over 10 percent reporting that the process took longer than two years.

DENIALS

Forty-eight percent of respondents reported that they had received a denial of an I-914 or associated I-192. Of respondents who felt confident commenting on trends, 77 percent reported that denials had increased since January 2016. Some respondents had received multiple denials, with numbers ranging from two to 15 per respondent. Thirteen respondents had received NTAs on behalf of a denied T visa applicant.

Those who received denials reported that the rationale(s) provided by USCIS for the denial was/were:

- failure to show the applicant is a victim of a “severe form of trafficking in persons” (31 percent of responses);
- failure to show that the applicant is in the United States “on account” of the trafficking (42 percent of responses);
- failure to show that the applicant responded to a reasonable request for assistance from law enforcement (4 percent of responses);
- failure to show that the applicant would face extreme hardship involving unusual and severe harm if forced to return to their country of origin (7 percent of responses);
- failure to show that the applicant was admissible or qualified for a waiver of inadmissibility (9 percent of responses); and
- other reasons or the practitioner did not know or remember (5 percent of responses).

Figure 2.4: Percentage of Respondents Who Had Received Denial of I-914 or an associated I-192

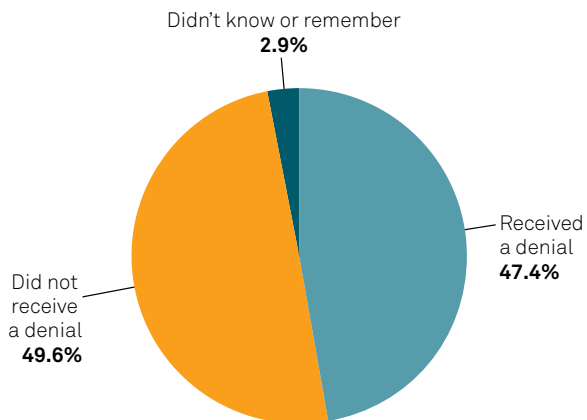


Figure 2.5: How Frequently Law Enforcement Interviewed a Survivor of Trafficking (By Percentage)

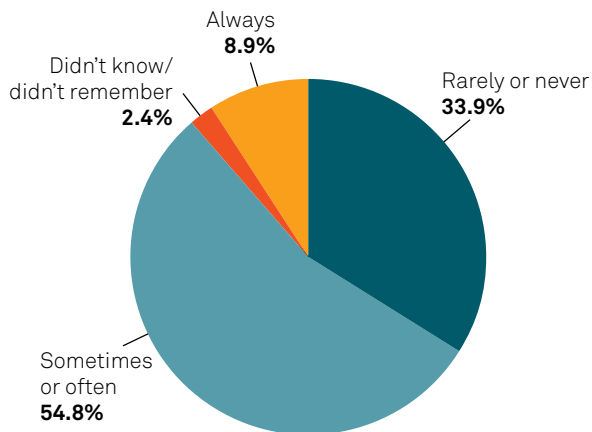


Figure 2.6: How Frequently Law Enforcement Signs I-914, Supplement B, When Requested by Respondent

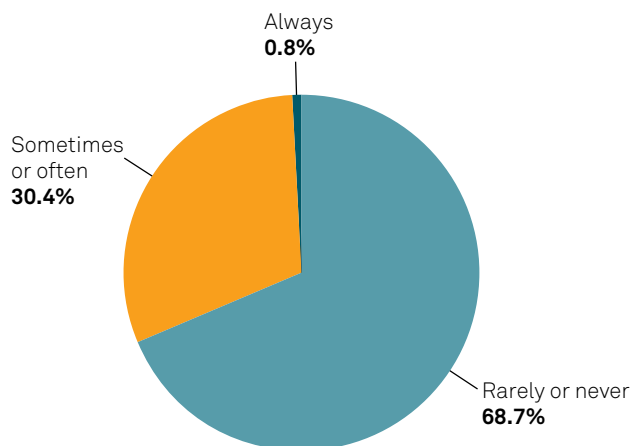
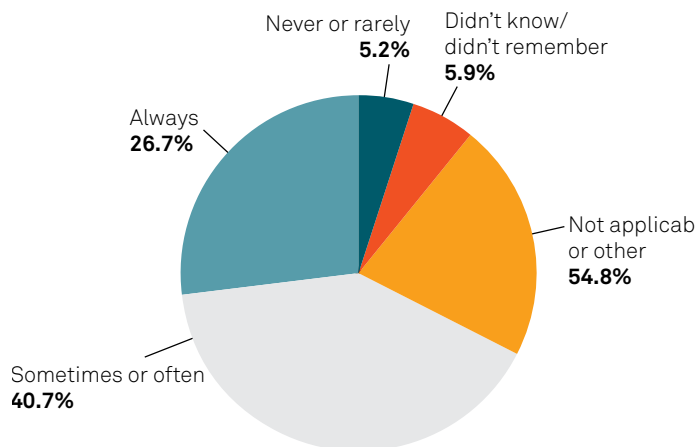


Figure 2.7: Frequency of I-914 Approval Without I-914, Supplement B



LAW ENFORCEMENT ENGAGEMENT

The survey asked respondents how they approach reporting to law enforcement on behalf of a survivor of trafficking. The respondents were divided. About a third stated that their strategy depends on the case in terms of which law enforcement agency to approach. Approximately one third reported that they generally help survivors to report to federal law enforcement. Thirteen percent of respondents report to state law enforcement, while another 17 percent report to local law enforcement. In cases in which the advocate reported to law enforcement, over half of the respondents reported that law enforcement “sometimes” or “often” interviewed the survivor.

Respondents were also asked to comment on the issuance of Supplement B forms, which can be helpful but not required evidence.¹¹² In cases in which advocates requested the Supplement B, over half of respondents reported that it was “rarely” or “never” issued. Only 10 percent of respondents reported that a Supplement B was “often” issued. When asked whether the T visa applicants’ application was approved without a Supplement B, however, 27 percent of respondents said it was “always” approved, whereas 41 percent said that it was “often” or “sometimes” approved. This data is consistent with public USCIS data on approved cases, which indicate that 84 percent of approved cases had no Supplement B.¹¹³



PART 2:

Data
Obtained
from
FOIA
Litigation

SUMMARY

In August 2020 and January 2022, Boston University faculty Julie Dahlstrom and Heba Gowayed submitted FOIA requests seeking USCIS data on the T visa program, including the number of RFEs, rejections, denials, and NTA issued, disaggregated by demographic characteristics. When no responsive records were received, they filed a federal complaint for injunctive relief in *Dahlstrom v. DHS* in April 2022. They were represented on a *pro bono* basis by Thomas L. Hamlin, François O. Ecclesiaste, and Christopher L. Hamlin.

Eventually, DHS produced three sets of data. This report outlines the main findings of this data, which the researchers have also made available in their raw form. This section provides data about T visa applications filed by survivors and does not address derivative family members. All data provided by USCIS in response to the FOIA litigation is by calendar year, not by fiscal year. Please click [here](#) to access the legal pleadings and raw data.

T VISA ADJUDICATION TRENDS

REJECTIONS

From 2014 to 2020, USCIS data shows that rejections of T visa applications declined. USCIS returned 20 T visa applications in 2014, 12 in 2015, and nine in 2016. Rejections rose to 19 in 2017 and then fell to zero, where they have remained from 2019 to 2021. This data does not reflect rejections of applications commonly associated with the T visa, including applications for waivers of inadmissibility (I-192), which has not yet been publicly released.

RFES

RFEs associated with T visa applications climbed from 2016 to 2020, rising from 540 to 1,475 respectively—a more than 200 percent increase. RFE issuance declined significantly in 2021 to 753, but this timeframe also coincided with the worsening pandemic and an overall slowdown of adjudication at USCIS.¹¹⁴ For example, the number of T visa cases adjudicated decreased from 1,818 in fiscal year 2020 to 1,353 in fiscal year 2021.¹¹⁵

Figure 3.1: Number of I-914 Rejections (2014 to 2021)



Figure 3.2: Number of I-914 RFEs Issued (2014 to 2021)

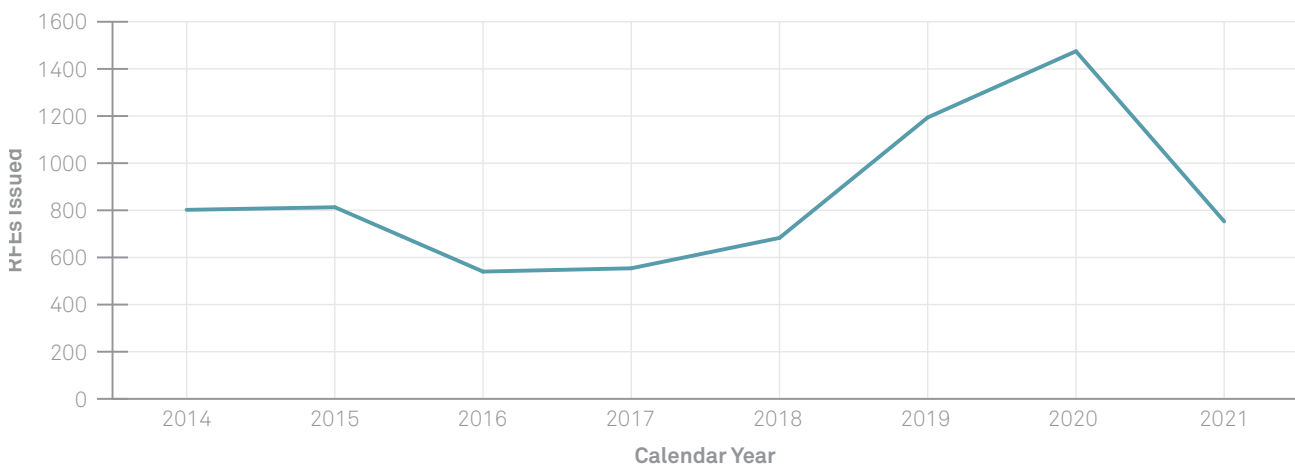


Figure 3.3: Processing Times for I-914s (2014 to 2021)

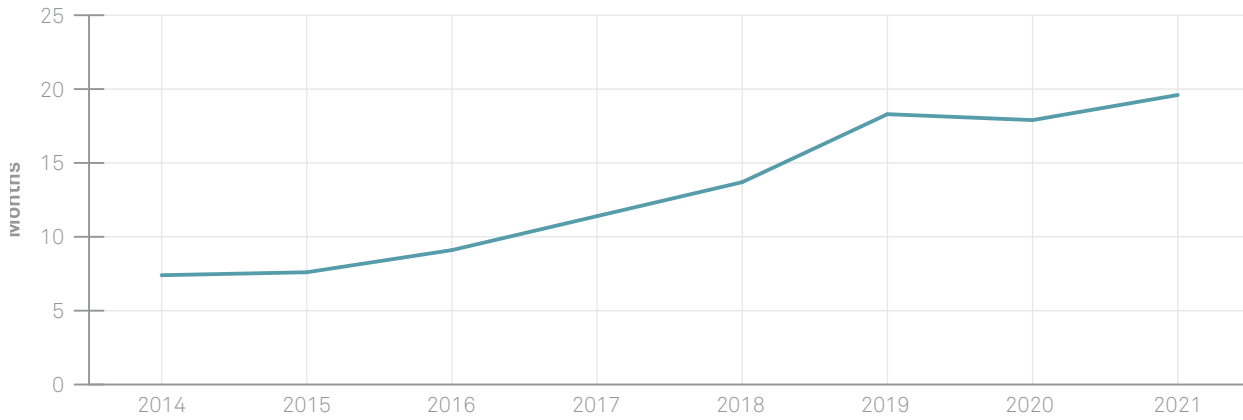


Figure 3.4: Number of I-914 Denials (2014 to 2021)



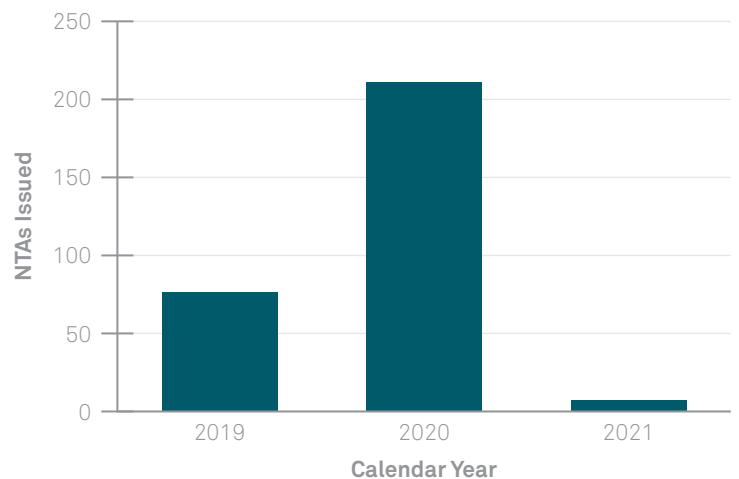
PROCESSING TIMES

From 2014 to 2021, average processing times increased from 7.4 months to 19.6 months. In 2014, processing of a T visa application took on average 7.4 months, and this time period steadily increased to 13.7 in 2018. In 2019, T visa processing times shot up to 18.3 months, and they have remained over 15 months since then. As of October 2022, USCIS reports that it adjudicates 80 percent of T visa cases in 19 months.¹¹⁶

DENIALS

Denials of T visa applications increased steadily from 2016 to 2021. In 2014, USCIS denied 175 applicants. By 2021, the number of denials had grown to 382, an increase of 218 percent. The denial rate also increased, rising from 17 percent in fiscal year 2014 to 42 percent in fiscal years 2019 and 2020.¹¹⁷ As part of the FOIA litigation, USCIS also released a breakdown of demographic data related to denied T visa applications, which is available at Appendix 2.

Figure 3.5: Number of NTAs Issued by USCIS to Denied T Visa Applicants



NTAS ISSUED TO DENIED T VISA APPLICANTS ¹¹⁸

According to court filings in *Dahlstrom v. DHS*, on November 19, 2018, USCIS began to implement the 2018 NTA Policy in a “phased approach” for T visa applicants.¹¹⁹ As a result of the policy, USCIS issued a total of 236 NTAs to denied T visa applicants from 2019 to 2021. In particular, USCIS issued 61 NTAs in 2019, 169 NTAs in 2020, and six NTAs in 2021. No NTAs were reportedly issued after January 2021, when President Biden rescinded the NTA Policy by executive order.¹²⁰

As part of the FOIA litigation, USCIS also released important new information about the impact of the NTA Policy on other applicants for victim-based immigration benefits. USCIS issued 2,033 NTAs to applicants for other victim-based programs, including 451 NTAs to self-petitioners under the Violence Against Women Act (VAWA) and 1,582 NTAs to U visa applicants under the same policy.¹²¹ These numbers were likely larger than the T visa program due to higher application rates and the fact that U visas are available for survivors of a wider variety of crimes.

NOTICES OF INTENT TO DENY (NOIDs)

USCIS released data about NOIDs to T visa applicants from 2014 to 2021. NOIDs are typically issued when USCIS reviews the application and determines that there is insufficient information to approve the application and insufficient information to deny it.¹²² From 2014 to 2021, approximately 252 NOIDs were issued. From 2014 to 2021, USCIS issued the most NOIDs to applicants born in Guatemala, Honduras, India, South Korea, the Philippines, and Mexico. According to USCIS, fifty percent of those who received NOIDs were female, and 96 percent were adults over the age of 18.

Figure 3.6: Number of NOIDs for I-914s (2014 to 2021)



NOTICES OF INTENT TO REVOKE (NOIRs)

USCIS also issued data about NOIRs sent to T visa recipients from 2014 to 2021. A NOIR is issued to a T visa recipient when USCIS seeks to revoke an approved T visa due to new, adverse information that has come to light. From 2014 to 2021, USCIS issued 57 NOIRs to T nonimmigrants. The six countries of birth from which applicants received the most NOIRs from 2014 to 2021 were El Salvador, Haiti, India, Mexico, the Philippines, and South Korea. Thirty-three percent of all NOIRs issued from 2014 to 2021 were issued to applicants born in South Korea. Fifty-six percent of the NOIRs were issued to applicants who selected female as their gender on the application form, and 97 were issued to adults over the age of 18.

Figure 3.7: NOIRs for I-914s (2014 to 2021)



RECOMMENDATIONS AND CONCLUSION

Trafficking survivors describe the T visa as life-changing protection—an end to their legal uncertainty and a pathway to eventual citizenship. As this report shows, while the T visa is a crucial support, the existence of the program alone is not on its own sufficient to ensure protection. Especially for marginalized survivors, it is essential to eliminate barriers to access, including administrative burdens. When government officials politicize the T visa program, sweeping up survivors, new obstacles can emerge, making it harder for survivors to step forward. Thus, continued action is needed to ensure that survivors can effectively apply for and receive protection.

The data included here corroborates concerns raised by advocates about the T visa program. It demonstrates the difficulty faced by survivors who seek legal protection. The survey found evidence of elongated waiting times; rising evidentiary requests, denials, rejections; and a real and present fear of deportation. While this data reflects findings during a particular moment under the Trump Administration, many of these problems—like the role of law enforcement in responding to trafficking conduct, long wait times, and narrow interpretations of existing law and regulations—persist.

Especially for marginalized survivors, it is essential to eliminate barriers to access, including administrative burdens.

The findings of this report also bring into full focus the real harm that comes from policies that expose T visa applicants to greater risk of deportation. Survivors, many fearful of reprisals from traffickers, take a courageous step in seeking help and filing an application for protection. Yet, if they are met with denial or the threat of deportation, fewer will come forward, and the T visa program will remain underutilized.

This report also highlights the role of law enforcement in the T visa process. While the T visa was originally developed to encourage survivors to engage with law enforcement, survey data indicates that the evidence designed to document cooperation—Form I-914, Supplement B—is rarely issued. As a result, further training is essential. USCIS should do greater outreach and training for certifying agencies to understand why they should consider signing. Also, some states, such as Massachusetts, have passed legislation to require law enforcement to establish a clear, transparent policy about issuance of the Supplement B.¹²³ Such policies are important to reduce barriers for immigrant survivors who are stepping forward, and as of 2020, already 17 states have passed similar legislation.¹²⁴ So long as this protection is tied to reporting to law enforcement, immigrant survivors may be reticent to step forward.

The underutilization of T visas can be mitigated by meaningful, trauma-informed responses that take seriously the text and spirit of the law and existing “any credible evidence” standard. This standard, intended to reduce the evidentiary burden on already traumatized and

resource-challenged survivors, recognizes the considerable obstacles immigrant survivors of trafficking face in gathering evidence and making their legal claim. An adherence to this standard clears the pathway to this protection by limiting unnecessary paperwork and reducing potential retraumatization. By contrast, interpretations of T visa requirements that unlawfully narrow the scope of protection, such as the physical presence requirement, limit access to the T visa program and risk denying the most vulnerable protection.

So long as this protection is tied to reporting to law enforcement, immigrant survivors may be reticent to step forward.

Finally, this report emphasizes the need for increased transparency in both policies and data around the T visa process. Recent policy changes occurred with little or no notice, leaving survivors and advocates unable to effectively respond. What’s more, without access to data, advocates were poorly equipped to understand the full scope of these policies or to respond to ensure that marginalized survivors retained access to the program. Only after FOIA litigation was filed did USCIS release data on NTAs or RFEs, years after the policies in question were put into place. It should not take years to understand how the T visa program functions. Instead, USCIS should regularly release data about outcomes at every step of the process, including rejections, RFEs, denials, NOIDs, and NOIRs, including demographic data.

Access to justice requires access to knowledge. Data transparency is crucial to the effectiveness of the T visa program and to generate trust among survivors and advocates. Accurate data about obstacles faced by survivors is essential to develop effective solutions. The lives of immigrant survivors, and their right to dignity and justice, are at stake.

APPENDIX 1: DATA TABLES

Table 1.1: Number of I-914 Receipts, Approvals, and Denials (Fiscal Year 2008 to 2021)

Fiscal Year	Receipts	Approvals	Denials
Total	13,614	8,649	3,273
2008	389	247	56
2009	461	290	63
2010	541	446	102
2011	882	556	145
2012	790	667	81
2013	804	851	97
2014	908	619	135
2015	1,040	611	239
2016	955	748	175
2017	1,177	669	213
2018	1,613	576	300
2019	1,242	500	365
2020	1,110	1,040	778
2021	1,702	829	524

Source: USCIS¹²⁵

Table 1.2: Denial Rates of I-914s Adjudicated Per Fiscal Year (Fiscal Years 2008 to 2021)

Fiscal Year	Percentage of I-914s Denied of Those Adjudicated Annually
Average Percentage	23.46%
2008	18.48%
2009	17.84%
2010	18.61%
2011	20.68%
2012	10.82%
2013	10.23%
2014	17.90%
2015	28.11%
2016	18.95%
2017	24.14%
2018	34.24%
2019	42.19%
2020	42.79%
2021	38.72%

Source: Calculation based on USCIS data. Denial rate represents the number of T visa applications denied annually divided by total adjudicated annually.¹²⁶

Table 2.1: Respondents Who Reported Ever Receiving a Returned Application, Including I-914s or I-192s

	Number of Respondents	% of Respondents
Total	150	100%
Yes (received a returned application)	52	34.67%
No (did not receive a returned application)	91	60.67%
Did not know	7	4.67%

Source: Data from survey administered by Heba Gowayed and Julie Dahlstrom to attorneys, paralegals, and DOJ-accredited representatives from March 3, 2021, to April 5, 2021 (survey on file with authors) [hereinafter "Survey Data"].

Table 2.2: Number of Respondents Who Had Ever Received an RFE in Response to a I-914 or I-192

	Number of Respondents	% of Respondents
Total	146	100%
Yes (received an RFE)	116	79.45%
No (did not receive an RFE)	27	18.49%
Did not know/Did not remember	3	2.05%

Source: Survey Data

Table 2.3: Length of Processing Times for Most Recently Filed I-914 by Respondents

	Number of Respondents	% of Respondents
Total	150	100%
Fewer than 12 months	18	12.00%
12 to 23 months	58	38.67%
24 to 35 months	16	10.67%
36 months or longer	3	2.00%
Did not know/Did not remember	10	6.67%
The application is still pending	45	30.00%

Source: Survey Data

Table 2.4: Percentage of Respondents Who Had Received Denial of I-914 or I-192

	Number of Respondents	% of Respondents
Total	137	100%
Yes (received a denial notice)	65	47.45%
No (did not receive a denial notice)	68	49.64%
Did not know/Did not remember	4	2.92%

Source: Survey Data

Table 2.5: How Frequently Law Enforcement Interviewed a Survivor of Trafficking (By Percentage)

	Number of Respondents	% of Respondents
Total	124	100%
Never	8	6.45%
Rarely	34	27.42%
Sometimes	44	35.48%
Often	24	19.36%
Always	11	8.87%
Did not know/Did not remember	3	2.42%

Source: Survey Data

Table 2.6: How Frequently Law Enforcement Signs I-914, Supplement B, When Requested by Respondent

	Number of Respondents	% of Respondents
Total	115	100%
Never	28	24.35%
Rarely	51	44.35%
Sometimes	24	20.87%
Often	11	9.57%
Always	1	0.87%

Source: Survey Data

Table 2.7: Frequency of I-914 Approval Without I-914, Supplement B

	Number of Respondents	% of Respondents
Total	135	100%
Never	4	2.96%
Did not know/Did not remember	8	5.93%
N/A	18	13.33%
Rarely	3	2.22%
Sometimes	21	15.56%
Often	34	25.19%
Always	36	26.67%
Other	11	8.15%

Source: Survey Data

Table 2.8: Demographic Data on Survey Respondents: Public or Private Sector

	Number of Respondents	% of Respondents
Total	196	100%
Private Firm	42	21.43%
Non-profit Organization	151	77.04%
Other	3	1.53%

Source: Survey Data

Table 2.9: Demographic Data on Survey Respondents: Specialization of Respondents' Organization

	Number of Responses (Respondents Can Choose Multiple Specialties)
	193
Immigration legal assistance	152
Trafficking-related legal assistance	82
Employment-related legal assistance	28
Other	39
No specialty	13

Source: Survey Data

Table 2.10: Demographic Data on Survey Respondents: Length in Current Position

	Number of Respondents	% of Respondents
Total	196	100%
0-5 years	117	59.69%
6-10 years	47	23.98%
11-20 years	24	12.24%
More than 20 years	8	4.08%

Source: Survey Data

Table 2.11: Demographic Data on Survey Respondents: Approximate Number of T Visa Applications Filed

	Number of Respondents	% of Respondents
Total	193	100%
0	36	18.65%
Fewer than 10	90	46.63%
Between 11 and 30	43	22.28%
More than 30	24	12.44%
Did not know/Did not remember	0	0%

Source: Survey Data

Table 3.1: Number of I-914 Rejections (2014 to 2021)

Calendar Year	Rejections
Total	62
2014	20
2015	12
2016	9
2017	19
2018	2
2019	0
2020	0
2021	0

Source: USCIS Data from FOIA Litigation, *Dahlstrom v. DHS*

Note: This data includes only rejections of Form I-914, not any associated applications like waivers of inadmissibility (Form I-192) or derivative applications (Form I-914A).

Table 3.2: Number of I-914 RFEs Issued (2014 to 2021)

Calendar Year	Rejections
Total	6,814
2014	802
2015	813
2016	540
2017	554
2018	683
2019	1,194
2020	1,475
2021	753

Source: USCIS data obtained from FOIA litigation, *Dahlstrom v. DHS*.
Note: Totals represent data for calendar year and relate only to RFEs related to Form I-914.

Table 3.3: Processing Times for I-914s (2014 to 2021)

Calendar Year	Processing Times (Months)
Average	13.1
2014	7.4
2015	7.6
2016	9.1
2017	11.4
2018	13.7
2019	18.3
2020	17.9
2021	19.6

Source: USCIS data obtained from FOIA litigation, *Dahlstrom v. DHS*.
Note: Totals represent data for calendar year and relate only to processing times for Form I-914.

Table 3.4: Number of I-914 Denials (2014 to 2021)

Calendar Year	Denials
Total	2,326
2014	175
2015	181
2016	139
2017	248
2018	262
2019	453
2020	486
2021	382

Source: USCIS data obtained from FOIA litigation, Dahlstrom v. DHS.
 Note: Totals represent data for calendar year and relate only to denials of Form I-914.

Table 3.5: Number of NTAs Issued by USCIS Vermont Service Center to Denied T Visa Applicants

Month	Notices to Appear
Total	236
2018	0
2019	61
2020	169
2021	6

Source: USCIS data obtained from FOIA litigation, Dahlstrom v. DHS.
 Note: Totals represent data for calendar year and relate only to NTAs issued upon the denial of Form I-914.

Table 3.6 Number of NOIDs for I-914s (2014 to 2021)

Calendar Year	Notices of Intent to Deny
Total	252
2014	47
2015	22
2016	27
2017	17
2018	42
2019	37
2020	42
2021	18

Source: USCIS data obtained from FOIA litigation, Dahlstrom v. DHS.
 Note: Totals represent data for calendar year and relate only to NOIDs issued related to the processing of Form I-914.

Table 3.7: NOIRs for I-914s (2014 to 2021)

Calendar Year	Notices of Intent to Revoke
Total	57
2014	5
2015	3
2016	12
2017	10
2018	5
2019	11
2020	5
2021	6

Source: USCIS data obtained from FOIA Litigation, *Dahlstrom v. DHS*.

Note: Totals represent data for calendar year and relate only to NOIDs issued related to the processing of Form I-914.

Table 4.1: Top Six Countries of Birth for Denied I-914 Applicants (2014 to 2021)

Country of Birth	Number of Denied I-914 Applicants
Total	1689
Mexico	573
Philippines	412
Honduras	235
Guatemala	190
El Salvador	158
South Korea	121

Source: USCIS data obtained from FOIA litigation, *Dahlstrom v. DHS*.

Note: Totals represent data for calendar year and relate only to denials of Form I-914.

Table 4.2: Percentage of Denied T Visa Applicants from Top Countries of Birth (2014 to 2021)

Country of Birth	Percent of Denied I-914 Applicants
Total	100%
South Korea	5%
El Salvador	7%
Guatemala	8%
Honduras	10%
Philippines	18%
Mexico	25%
All Other Countries	27%

Source: USCIS data obtained from FOIA litigation, *Dahlstrom v. DHS*.

Note: Totals represent data for calendar year and relate only to denials of Form I-914.

Table 4.3: Regional Breakdown of Country of Birth for Denied I-914 Applicants (2014 to 2021)

Region of Birth	Percent of Denied I-914 Applicants
Total	100%
Africa	2.4%
Asia	35.9%
Central America	50.9%
Eastern Europe	0.7%
European Union	1%
Middle East	0.1%
Northern America	0.3%
Oceania	0.0%
South America	5.5%
The Caribbean	2.2%
Unknown	1.0%

Source: USCIS Data obtained from FOIA litigation, *Dahlstrom v. DHS*.
 Note: Totals represent data for calendar year and relate only to denials of Form I-914.

Table 4.4: Ages of Denied I-914 Applicants (2014 to 2021)

Age	Percent of Denied I-914 Applicants
Total	100%
Under 18	7.2%
18-24	12.4%
25-29	10.5%
30-39	32.2%
40-49	26.8%
50 and Older	10.7%

Source: USCIS data obtained from FOIA litigation, *Dahlstrom v. DHS*.
 Note: Totals represent data for calendar year and relate only to denials of Form I-914.

Table 4.5: Gender of Denied I-914 Applicants (2014 to 2021)

	Number of Respondents	% of Respondents
Total	115	100%
Female	1192	51.24%
Male	1126	48.40%
Unknown	8	0.003%

Source: USCIS data obtained from FOIA litigation, *Dahlstrom v. DHS*.
 Note: Totals represent data for calendar year and relate only to denials of Form I-914.

APPENDIX 2: CHARACTERISTICS OF DENIED T VISA APPLICANTS

The information below is an analysis of data obtained from USCIS in FOIA litigation that provides a more complete picture of denied T visa applicants, including their countries of birth, gender, and age.¹²⁷

DENIALS BY COUNTRY OF BIRTH

From 2014 to 2021, the six countries of birth with the highest number of denied T visa applicants were South Korea, El Salvador, Guatemala, Honduras, the Philippines, and Mexico, accounting for 73 percent of all denied applicants. Notably, 51 percent of all denied applicants were born in Central America, including 7 percent from El Salvador, 8 percent from Guatemala, 10 percent from Honduras, and 25 percent from Mexico.¹²⁸

In comparison, USCIS reported in January 2022 that applicants born in the Philippines filed the majority of approved cases between Fiscal Year 2008 and 2021 (22.2 percent).¹²⁹ The six countries of birth with the most approved applicants were the Philippines, Mexico, India, Honduras, Guatemala, and Thailand, accounting for 71 percent of all T nonimmigrants from Fiscal Year 2008 to 2021.¹³⁰

Figure 4.1: Top Six Countries of Birth for Denied I-914 Applicants (2014 to 2021)

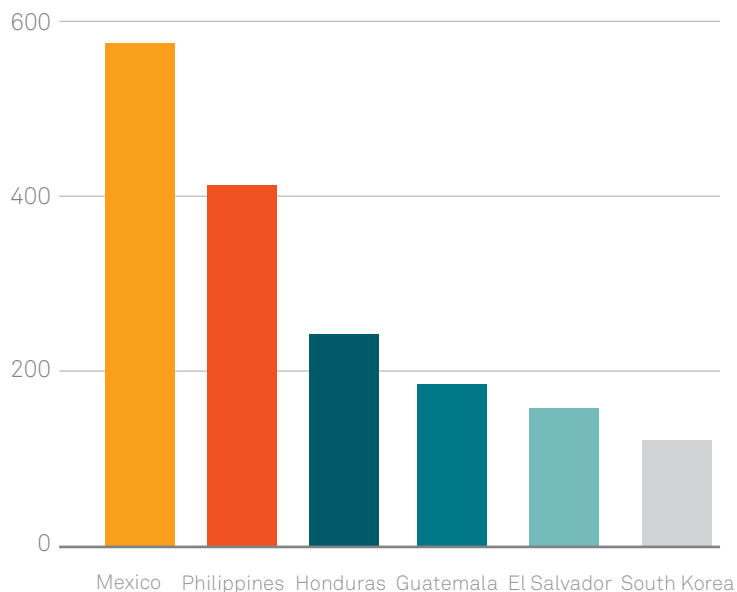


Figure 4.2: Top Six Countries of Birth for Denied I-914 Applicants (2014 to 2021)

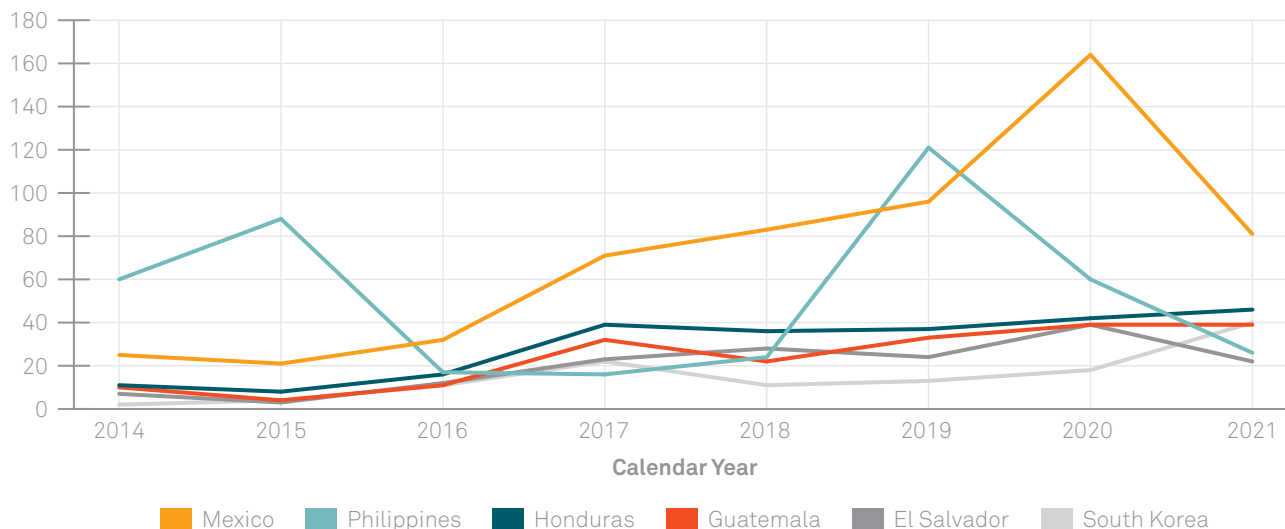
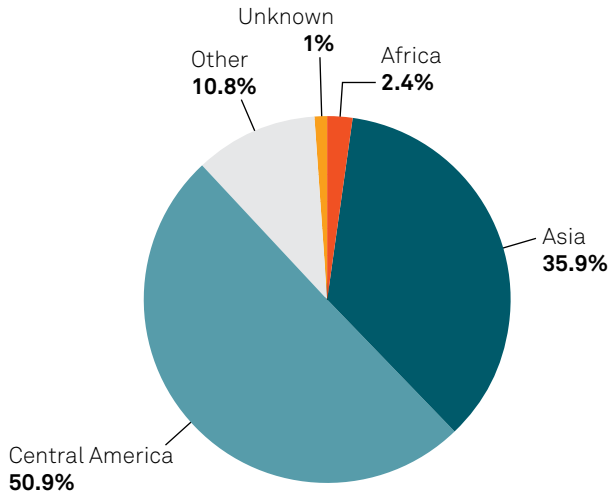


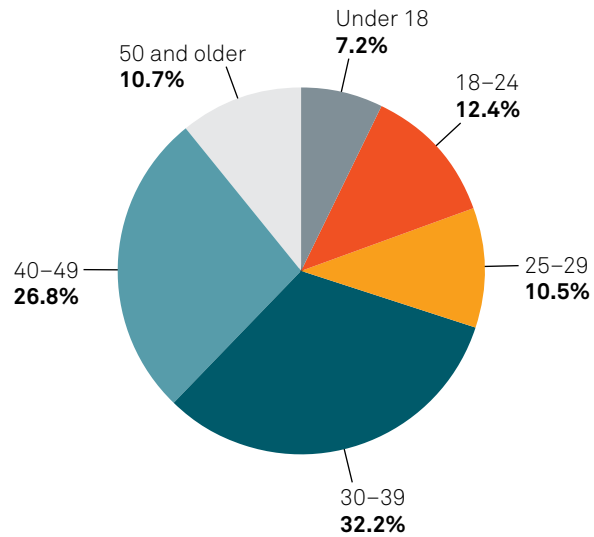
Figure 4.3: Regional Breakdown of Country of Birth for Denied I-914 Applicants (2014 to 2021)



DENIALS BY AGE

From 2014 to 2021, the majority (59 percent) of denied T non-immigrant applicants were 30 to 49 years old at the time of their applications. This data was similar to approved cases, where 30- to 40-year-olds comprised the majority (58 percent) of all approved cases.¹³¹ Over 92 percent of all denied applicants were adults over the age of 18.

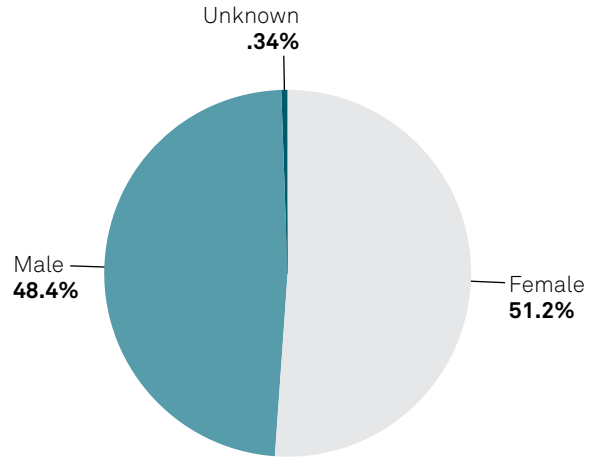
Figure 4.4: Ages of Denied I-914 Applicants (2014 to 2021)



DENIALS BY GENDER

From 2014 to 2021, 51 percent of denied T visa applicants marked female as their gender on the T visa application. As a comparison between fiscal year 2008 and fiscal year 2021, 58 percent of approved applicants marked female on the T visa application.¹³²

Figure 4.5: Gender of Denied I-914 Applicants (2014 to 2021)



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- ¹ Data on human trafficking is inherently difficult to gather, given the underground nature of the conduct. However, some agencies have attempted to estimate the nature of trafficking in the United States and globally. See, e.g., INT'L LABOUR OFFICE, GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE (2021), https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_854795.pdf [<https://perma.cc/4RWZ-67V8>] (finding that 49.6 million people are in “modern slavery on any given day, either forced to work against their will or in a marriage that they were forced into”); THE WHITE HOUSE, THE NATIONAL ACTION PLAN TO COMBAT HUMAN TRAFFICKING 8 (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf> [<https://perma.cc/E5Q9-NDVG>] [hereinafter NATIONAL PLAN] (referencing data from the International Organization for Migration’s victim assistance database and surveys that finds 24.9 million survivors, “16 million...in the private economy, another 4.8 million...in forced sexual exploitation, and 4.1...in forced labour imposed by state authorities.”).
- ² Human trafficking is defined under international law in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319. The United States defined sex trafficking and forced labor crimes in the Trafficking Victims Protection Act. Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. No. 106–386, § 102(b)(2), 115 Stat. 1464 (2000) (codified at 18 U.S.C. §§ 1581–95 (2018)).
- ³ See, e.g., DEP’T OF HOMELAND SECURITY, MYTHS AND MISCONCEPTIONS, <https://www.dhs.gov/blue-campaign/myths-and-misconceptions> [<https://perma.cc/FB3B-JCNC>] (last accessed: Oct. 30, 2022) (“‘Trafficking’ is based on exploitation and does not require movement across borders.”).
- ⁴ See NATIONAL PLAN, *supra* note 1, at 10.
- ⁵ See, e.g., Cheryl Nelson-Butler, *The Racial Roots of Human Trafficking*, 62 UCLA L. REV. 1464, 1466–67 (2015) (observing the “strong nexus...between sex trafficking and race” and examining the “root factors that push minority and poor youth into America’s commercial sex trade”); Corinne Schwarz & Hannah E. Britton, *Queering the Support for Trafficked Persons: LGBTQ Communities and Human Trafficking in the Heartland*, 3 SOCIAL INCLUSION 63, 66 (2015), https://www.cogitatiopress.com/socialinclusion/article/viewFile/172/pdf_16 [<https://perma.cc/2G2Z-HYAJ>] (“Though they seem initially very different, homeless youth, undocumented migrants, and trans individuals are all targeted by traffickers who pray [sic] on their housing insecurity, economic insecurity, or personal vulnerability.”). Systemic racism, colonization, and practices of indigenous disposition have fueled human trafficking, significantly impacting historically marginalized groups. See, e.g., OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, FACT SHEET: THE CONNECTIONS BETWEEN SYSTEMIC RACISM AND HUMAN TRAFFICKING (July 1, 2021), <https://www.state.gov/acknowledging-historical-and-ongoing-harm-the-connections-between-systemic-racism-and-human-trafficking/> [<https://perma.cc/NA3H-N833>] (acknowledging that “the United States and other governments face human trafficking challenges and trends today that reflect the living legacy of the systemic racism and colonization globalized during the transatlantic slave trade through chattel slavery and regional practices of indigenous dispossession”).
- ⁶ After the TVPA, Congress passed reauthorizations and related measures to combat trafficking. See AM. BAR ASS’N, HUMAN TRAFFICKING LEGISLATION: FEDERAL LEGISLATION, https://www.americanbar.org/groups/human_rights/human-trafficking/trafficking-legislation/ [<https://perma.cc/R6B3-H28L>] (last accessed Oct. 8, 2022). Also, 50 states have now enacted human trafficking legislation and established state human trafficking crimes. See NAT’L CONF. OF STATE LEGISLATURES, HUMAN TRAFFICKING STATE LAWS, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> [<https://perma.cc/LY3X-Y8NG>] (last accessed Oct. 8, 2022).
- ⁷ This report primarily uses the term “survivor” to refer to immigrant victims of human trafficking. Scholars and advocates have acknowledged the limitations of the term, “victim,” arguing that it defines an individual one-dimensionally in reference to their victimization. For this reason, “survivor” is largely used in place of “victim” in this report. However, the authors use the term, “victim,” when referencing a legal definition, quotations from other sources, and program names.
- ⁸ TVPA, *supra* note 2.
- ⁹ *Id.* at § 107(e).
- ¹⁰ See Hussein Sadruddin, Natalia Walter & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 405 (2005) (“To encourage cooperation with prosecutors and to protect victims, Congress granted benefits to victims if they provided ‘reasonable’ assistance to law enforcement in the prosecution of traffickers.”); TVPA, *supra* note 2, § 102(b); H.R. 3244, 106th Cong., 146 CONG. REC. H8855, H8856 (2000) (enacted).
- ¹¹ *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status> [<https://perma.cc/U7N7-HPB5>] (last visited Sep. 20, 2022) [hereinafter *Victims of Human Trafficking*].
- ¹² Abigail F. Kolker & Kristin Finklea, *Immigration Relief for Victims of Human Trafficking*, CONG. RSCH. SERV. 2 (Oct. 28, 2020), <https://sgp.fas.org/crs/homesec/R46584.pdf> [<https://perma.cc/WH9D-RFQ9>].
- ¹³ See, e.g., U.S. CITIZENSHIP & IMMIGR. SERVS., NUMBER OF FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS BY FISCAL YEAR, QUARTER, AND CASE STATUS FISCAL YEARS 2008-2022 (2022), https://www.uscis.gov/sites/default/files/document/data/I914t_visastatistics_fy2022_qtr3.pdf [<https://perma.cc/6RU9-TAHZ>] [hereinafter USCIS I-914 STATISTICS].
- ¹⁴ *Id.* (providing denials and approvals per fiscal year sufficient to calculate denial rate of cases adjudicated each fiscal year). Denial rates in this report are the percentage of denied cases of those adjudicated per fiscal year.

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- ¹⁵ See Glenn Kessler, *New Details Revealed on Visas Given to Victims of Human Trafficking*, WASH. POST (Feb. 16, 2020), <https://www.washingtonpost.com/politics/2022/02/16/new-details-revealed-visas-given-victims-human-trafficking/> [<https://perma.cc/52MN-L8D7>] (noting lack of data on the T visa program and providing only data on approved cases broken down by country of birth, age, and gender).
- ¹⁶ Julie Dahlstrom & Heba Gowayed, *Survey of Practitioners Assisting T Visa Applicants* (May 2021) (unpublished survey) (on file with author) [hereinafter T Visa Survey].
- ¹⁷ *Dahlstrom v. U.S. Dep't of Homeland Sec.*, No. 1:2022cv01165 (D.D.C. filed Apr. 27, 2022). Quotes from survivors of trafficking throughout this report are from qualitative interviews conducted by the researchers. The results of this research are forthcoming in “Securing a T-Visa: A Story of Law, Bureaucratic Discretion, and Inequality,” authored by Heba Gowayed and Julie Dahlstrom.
- ¹⁸ An NTA is the charging document issued to begin removal proceedings. The NTA must be filed with the immigration court for removal proceedings to commence.
- ¹⁹ U.S. CITIZENSHIP & IMMIGR. SERVS., CHARACTERISTICS OF T NONIMMIGRANT STATUS (T VISA) APPLICANTS 3 (2022), https://www.uscis.gov/sites/default/files/document/factsheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf [<https://perma.cc/6SWT-3AGQ>] [hereinafter CHARACTERISTICS].
- ²⁰ TVPA, *supra* note 2.
- ²¹ INA § 101(a)(15)(T)(i), 8 U.S.C. § 1101(a)(15)(T)(i). T nonimmigrant status has been colloquially referred to as a “T visa,” even though it is not a visa and is not issued to a survivor outside the United States. This report refers to T nonimmigrant status as a “T visa.” The report uses the term T visa to refer to immigrant survivors of trafficking often applying for T-1 nonimmigrant status. The report does not relate to derivative family members, who may qualify for T nonimmigrant status by virtue of their relationship with the survivor of trafficking.
- ²² See Sadruddin et al., *supra* note 10, at 405.
- ²³ *Victims of Human Trafficking*, *supra* note 11.
- ²⁴ 22 U.S.C. § 7102(11). The term “severe” does not refer to the nature of the trafficking or require a particular severity; rather, it is a legal term of art referring to those who were recruited, obtained, provided, or transported through force, fraud, or coercion for the purposes of sex or labor trafficking.
- ²⁵ INA § 101(a)(15)(T)(i)(I), 8 U.S.C. § 1101(a)(15)(T)(i)(I).
- ²⁶ INA § 101(a)(15)(T)(i)(II), 8 U.S.C. § 1101(a)(15)(T)(i)(II).
- ²⁷ INA § 101(a)(15)(T)(i)(III), 8 U.S.C. § 1101(a)(15)(T)(i)(III). In 2005, Congress established the trauma exception for those survivors unable to cooperate “due to psychological or physical trauma.” INA § 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb). Applicants need not report to law enforcement if they were under eighteen when the trafficking occurred or are unable to do so due to physical or psychological trauma. See INA § 101(a)(15)(T)(i), 8 U.S.C. § 1101(a)(15)(T)(i).
- ²⁸ INA § 101(a)(15)(T)(i)(IV), 8 U.S.C. § 1101(a)(15)(T)(i)(IV).
- ²⁹ INA §§ 212(d)(3), (13); 8 U.S.C. §§ 1182(d)(3), (13). According to the USCIS Policy Manual, adjudicators should first determine whether the applicant merits a waiver under section 212(d)(13) of the INA, showing how the grounds of inadmissibility are connected to the human trafficking and how the national interest is served by approval. See 9 U.S. CITIZENSHIP & IMMIGR. SERVS., USCIS POLICY MANUAL, pt. O, chs. 3.A, 3.C, 4.A (2022) <https://www.uscis.gov/policy-manual/volume-9-part-o> [<https://perma.cc/B6SD-VGZV>]. In the alternative, USCIS should consider if they merit a waiver under section 212(d)(3) of the INA, demonstrating how it is in the national interest to remain in the United States. *Id.*
- ³⁰ See *supra* note 27 for more about the standard for cooperation with law enforcement.
- ³¹ U.S. CITIZENSHIP & IMMIGR. SERVS., SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS, <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf> [<https://perma.cc/6CUC-3FNK>] (last visited Sep. 30, 2022).
- ³² *Victims of Human Trafficking*, *supra* note 11.
- ³³ 8 C.F.R. § 214.11(d)(3) (2020).
- ³⁴ 8 C.F.R. § 214.11(d)(5) (2020); *Evidentiary Requirements for T Visas*, COALITION AGAINST SLAVERY AND TRAFFICKING https://castta.nationbuilder.com/evidentiary_requirements [<https://perma.cc/7KVZ-339J>] (last accessed Oct. 8, 2022). A T visa applicant must show that they demonstrate eligibility by a preponderance of the evidence. 3 U.S. CITIZENSHIP & IMMIGR. SERVS., USCIS POLICY MANUAL, pt. B, ch. 3 n.4 (2022), <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3> [<https://perma.cc/XL7C-YUXG>] (citing *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997)).
- ³⁵ Leslye E. Orloff, Kathryn C. Isom & Edmundo Saballos, *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act’s Immigration Protections and Its “Any Credible Evidence” Rules—A Call for Consistency*, 11 GEO. J. GENDER & L. 619, 621 (2010).
- ³⁶ *Id.* at 627.
- ³⁷ *Id.* at 629.
- ³⁸ These facts are drawn from the Complaint, and the survivor is referred to only as “Jane Doe” because her attorney requested that she proceed under a pseudonym. See *generally* Complaint for Declaratory and Injunctive Relief, *Doe v. Wolf*, No. 3:20-cv-00481 (W.D. N.C. Aug. 31, 2020).
- ³⁹ See U.S. CITIZENSHIP & IMMIGR. SERVS., I-914, INSTRUCTIONS FOR APPLICATION FOR T NONIMMIGRANT STATUS, <https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf> [<https://perma.cc/5GNK-YQVL>] [hereinafter I-914 INSTRUCTIONS].

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- ⁴⁰ While an interview is not required, USCIS has discretion to interview the applicant, though it rarely does so. See 8 C.F.R. § 214.11(d)(6) (2020) (“USCIS may require an applicant for T nonimmigrant status to participate in a personal interview.”).
- ⁴¹ See 9 U.S. CITIZENSHIP & IMMIGR. SERVS., USCIS POLICY MANUAL, pt. O, ch. 2 (2022) <https://www.uscis.gov/policy-manual/volume-9-part-o-chapter-2>; see also INA §§ 212(d)(3), (13), 8 U.S.C. §§ 1182(d)(3), (13).
- ⁴² See INA § 212(a), 8 U.S.C. § 1182(a).
- ⁴³ U.S. CITIZENSHIP & IMMIGR. SERVS., I-192, APPLICATION FOR ADVANCE PERMISSION TO ENTER AS A NONIMMIGRANT, <https://www.uscis.gov/i-192> [<https://perma.cc/7CF7-54KZ>] (last accessed Oct. 8, 2022) [hereinafter FORM I-192].
- ⁴⁴ U.S. CITIZENSHIP & IMMIGR. SERVS., I-912, REQUEST FOR FEE WAIVER, <https://www.uscis.gov/i-912> [<https://perma.cc/EQD5-CP3E>] (last accessed Oct. 8, 2022) [hereinafter FORM I-912].
- ⁴⁵ INA § 101(a)(15)(T)(ii), 8 U.S.C. § 1101(a)(15)(T)(ii); see also I-914 INSTRUCTIONS, *supra* note 39, at 9-11. T visa applicants may file for derivative family members to receive T nonimmigrant status. See *id.* Generally, an applicant under 21 years of age at the date of filing may apply for their spouse, minor children under 21 years of age, siblings under 18 years of age, and parents. *Id.* An applicant over 21 years of age at time of filing may only apply for their spouse or minor children under 21 years old. *Id.* In addition, applicants may include unmarried siblings under 18 years of age, and/or the adult minor child of another derivative because of a present danger of retaliation based on your escape from the severe form of trafficking in persons or cooperation with law enforcement. *Id.* The data in this report relates only to applicants for T-1 nonimmigrant status, not derivative family members. *Id.*
- ⁴⁶ See Sadrudin et al., *supra* note 10, at 405; Jennifer Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 158 U. PENN. L. REV. 1609, 1615 (2010).
- ⁴⁷ See, e.g., Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 158, 164 (2007) (“Trafficked domestic workers may fear reporting exploitative conditions because of their precarious immigration status, particularly if they lack documentation.”).
- ⁴⁸ See, e.g., Nelson-Butler, *supra* note 5, at 1466-67; Rachel Rein, *Trafficking Victims of Color: Failed by the U.S. Legal System?*, HUM. TRAFFICKING SEARCH (Feb. 20, 2022), <https://humantraffickingsearch.org/trafficking-victims-of-color-are-they-being-thrown-away-by-the-u-s-legal-system/> [<https://perma.cc/8RFQ-T34Q>].
- ⁴⁹ See sources cited *supra* note 48.
- ⁵⁰ See Srikantiah, *supra* note 47, at 161.
- ⁵¹ See, e.g., Alison Parker & Megan Rhoad, *US: Victims of Trafficking Held in ICE Detention: Letter to the US Dep’t of State on 2010 Trafficking in Persons Report*, HUM. RTS. WATCH (Apr. 19, 2010), <https://www.hrw.org/news/2010/04/19/us-victims-trafficking-held-ice-detention> [<https://perma.cc/Q6CV-G9JA>] (documenting reports of human trafficking survivors in US detention centers).
- ⁵² Nora Ellman, *Immigration Detention is Dangerous for Women’s Health and Rights*, AM. PROGRESS (Oct. 21, 2019), <https://www.americanprogress.org/article/immigration-detention-dangerous-womens-health-rights/> [<https://perma.cc/BJR5-QJ2P>]; Karen Barberich & Nina Siulc, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, VERA INST. OF JUST. (Nov. 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf> [<https://perma.cc/8DUQ-AEKE>] (observing that “representation rates for people in detention have hovered around 30 percent”); Patrick G. Lee, *Immigrants in Detention Centers Are Often Hundreds of Miles From Legal Help*, PRO PUBLICA (May 16, 2017, 4 pm EDT), <https://www.propublica.org/article/immigrants-in-detention-centers-are-often-hundreds-of-miles-from-legal-help> [<https://perma.cc/UU34-VWNP>] (describing how according to a 2015 study, only 6% of immigrant detainees in one center had legal representation).
- ⁵³ See, e.g., Memorandum from James R. McHenry III, Dir., Exec. Office for Immigr. Rev., Case Priorities and Immigration Court Performance Measures 2 (Jan. 17, 2018), <https://justice.gov/eoir/page/file/1026721/> [<https://perma.cc/GUJ7-VC8T>] (“All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.”). This memorandum also created “performance measures,” which included a directive that non-status detained removal cases are heard within 60 days of the NTA’s filing. *Id.* at 2 n.1. Moreover, being in immigration detention creates its own challenges in collecting evidence or engaging with experts, like mental health clinicians, to corroborate legal claims.
- ⁵⁴ See Lauren B. Edelman & Mark C. Suchman, *The Legal Environments of Organizations*, 23 ANN. REV. OF SOC’Y 479 (1997).
- ⁵⁵ See, e.g., OFFICE FOR VICTIMS OF CRIME, CRIME VICTIMS JUSTICE CORPS – LEGAL FELLOWS PROGRAM PURPOSE AREA 1 – INCREASING CAPACITY AND ACCESS TO CIVIL LEGAL HELP FOR CRIME VICTIMS THROUGH LEGAL FELLOWS PROGRAM, <https://ovc.ojp.gov/funding/awards/2017-mu-mu-k131> [<https://perma.cc/7JJS-FNB5>] (announcing funding of \$8,817,916 to fund lawyer fellows through Equal Justice Works to expand *pro bono* capacity to represent human trafficking survivors and increase training and technical assistance).
- ⁵⁶ See Sarah Byrne, *Meeting the Legal Needs of Human-Trafficking Survivors*, 52 WAKE FOREST L. REV. 379, 380 (Spring 2017) (“Unlike victims of most other crimes, trafficking survivors have their own legal needs due to their experience of being trafficked; yet they do not always meet the eligibility requirements for receiving a court-appointed attorney or Legal Aid services.”).
- ⁵⁷ CHARACTERISTICS, *supra* note 19, at 3.
- ⁵⁸ Kolker & Finklea, *supra* note 12, at 12.
- ⁵⁹ *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-of-human-trafficking-t-nonimmigrant-status> [<https://perma.cc/SRA9-WYSP>] (last visited Oct. 2, 2022). Certain derivative family members can qualify for a T visa by virtue of their relationship with the principal applicant. *Id.* Derivative beneficiaries granted T visas are not counted in the numerical cap. *Id.*

ENDNOTES

- ⁶⁰ Kolker & Finklea, *supra* note 12, at 2. In contrast, the U visa for victims of qualifying crimes, established in 2000 in the TVPA, has a cap of 10,000, which was first reached in 2011, with more than 20,000 received annually since 2012. *Id.*
- ⁶¹ Madeline Sloan, *T Visas Protect Victims of Human Trafficking and Strengthen Community Relationships*, POLICE EXEC. RSCH. F. 2 (2017), <https://www.policeforum.org/assets/TVisas.pdf> [<https://perma.cc/23HQ-SXU5>].
- ⁶² Kolker & Finklea, *supra* note 12, at 2.
- ⁶³ U.S. CITIZENSHIP & IMMIGR. SERVS., FORM I-918 PETITION FOR U NONIMMIGRANT STATUS BY FISCAL YEAR, QUARTER, AND CASE STATUS, FISCAL YEARS: 2009-2022 (2022)13, https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2022_qtr1.pdf [<https://perma.cc/X44V-5B29>] (last accessed Oct. 9, 2022); see also USCIS I-914 STATISTICS, *supra* note 13, at 1.
- ⁶⁴ USCIS I-914 STATISTICS, *supra* note 13, at 1.
- ⁶⁵ See Corie O'Rourke, Cory Sagduyu & Katherine Soltis, *Present Yet Unprotected: USCIS's Misinterpretation of the T Visa's Physical Presence Requirement and Failure to Protect Trafficking Survivors*, 3 AILA L.J. 53, 54 (2021).
- ⁶⁶ USCIS I-914 STATISTICS, *supra* note 13, at 1.
- ⁶⁷ Michael Gordon, *Lured to U.S. at 16, She Sought Visa for Trafficking Victims. Now She May Be Deported*, CHARLOTTE OBSERVER (Sept. 12, 2020), https://greensboro.com/news/state/lured-to-u-s-at-16-she-sought-visa-for-trafficking-victims-now-she-may/article_da47ff06-f456-11ea9c7-f3babaebdd19.html [<https://perma.cc/5E39-Y75B>].
- ⁶⁸ Melissa Gira Grant, *It Is Now Even Harder for Trafficking Survivors to Get Visas*, THE APPEAL (Aug. 22, 2018), <https://theappeal.org/it-is-now-even-harder-for-trafficking-survivors-to-get-visas/> [<https://perma.cc/X5J8-P3L5>].
- ⁶⁹ *Id.*
- ⁷⁰ See U.S. DEP'T OF STATE, 2020 TRAFFICKING IN PERSONS REPORT: UNITED STATES 518 (2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf> [<https://perma.cc/QA28-B6GR>] [hereinafter 2020 TIP REPORT].
- ⁷¹ *Id.*
- ⁷² *Id.*
- ⁷³ USCIS I-914 STATISTICS, *supra* note 13, at 1.
- ⁷⁴ 2020 TIP REPORT, *supra* note 70, at 518 (“Advocates noted a continuing rise in the number of requests for additional evidence by adjudicators, which tends to increase processing times, and reported increased T visa denials that they believed improperly interpreted relevant statutes and regulations, such as denials based on unlawful acts traffickers compelled victims to commit or narrower interpretations of the physical presence requirement.”).
- ⁷⁵ *Trump Vows to Fight 'Epidemic' of Human Trafficking*, AP NEWS (Feb. 23, 2017), <https://apnews.com/article/health-epidemics-human-trafficking-united-states-government-9517fb5ec44e4e93a275cc0722abd6a1> [<https://perma.cc/95TL-R8A4>].
- ⁷⁶ U.S. CITIZENSHIP & IMMIGR. SERVS., PM-602-0050.1, Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (June 28, 2018), <https://www.uscis.gov/sites/default/files/document/memos/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf> [<https://perma.cc/59VY-WKED>] [hereinafter USCIS Policy Memorandum].
- ⁷⁷ The Editors, *How Trump Is 'Destroying Protections' for Victims of Human Trafficking*, WORLD POL. REV. (July 2, 2019), https://www.worldpoliticsreview.com/wpcontent/uploads/2019/07/WPR_How_Trump_Is_Destroying_Protections_for_Victims_of_Human_Trafficking.pdf [<https://perma.cc/S5LS-J4HA>] [hereinafter *Destroying Protections*].
- ⁷⁸ *Id.*
- ⁷⁹ See, e.g., *Destroying Protections*, *supra* note 77.
- ⁸⁰ USCIS I-914 STATISTICS, *supra* note 13, at 1.
- ⁸¹ *Id.*
- ⁸² *Id.*
- ⁸³ 2020 TIP REPORT, *supra* note 70, at 518 (“In March 2020, DHS announced it would enforce current regulations and form instructions and would reject forms where required fields are left blank or incomplete (and allow applicants to resubmit applications.”).
- ⁸⁴ See AILA POL'Y BRIEF, USCIS'S “NO BLANK SPACE” POLICY LEADS TO CAPRICIOUS REJECTIONS OF BENEFITS REQUESTS (Oct. 22, 2020), <https://www.aila.org/advo-media/aila-policy-briefs/uscis-no-blank-space> [<https://perma.cc/36MK-RNNQ>] [hereinafter AILA POL'Y BRIEF]; AM. IMMIGR. L. ASS'N, ASISTA & URBAN JUST. CTR., DOMESTIC VIOLENCE PROJECT, PRACTICE ADVISORY: INSIGHT INTO USCIS'S APPLICATION OF THE “NO BLANKS” POLICY TO U-VISA PETITIONS (Nov. 20, 2020), <https://asistahelp.org/wp-content/uploads/2020/11/No-Blanks-Practice-Advisory-11.20.20.pdf> [<https://perma.cc/D4VL-YFNS>].
- ⁸⁵ AILA POL'Y BRIEF, *supra* note 84, at 1-2.
- ⁸⁶ *Id.* According to the American Immigration Lawyers Association, the rejections were “particularly egregious as the majority of rejected applications left spaces blank for information that was not relevant to an individual's eligibility, such as leaving blank the space asking for an individual's name in a native alphabet when the native alphabet was the same as English.” *Id.* at 2.
- ⁸⁷ No. 20-cv-08143-HSG (N.D. Ca. July 19, 2021).
- ⁸⁸ *Id.* at 1-2.
- ⁸⁹ *Id.* at 4; *Advocates Reach Settlement with USCIS Over Blank Space Policy*, AM. IMMIGR. LAW. ASS'N (Aug. 19, 2021), <https://www.aila.org/infonet/settlement-agreement-blank-space-case>. [<https://perma.cc/wxz4-uw72>].
- ⁹⁰ See Geneva Santis, *Federal Court Halts Trump Administration Changes to Fee Waiver for Citizenship*, CNN (Dec. 13, 2019, 3:04 PM EST), <https://www.cnn.com/2019/12/10/politics/federal-court-halts-changes-fee-waiver-for-naturalization> [<https://perma.cc/2UZH-G8WC>].
- ⁹¹ *Id.*

ENDNOTES

- ⁹² See IMMIGRANT LEGAL RESOURCE CENTER, FEE WAIVERS AND THEIR IMPACT ON SURVIVORS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND OTHER CRIMES 2, https://www.ilrc.org/sites/default/files/resources/fee_waiver_report.pdf [<https://perma.cc/KDX2-NCH5>] (last accessed Oct. 30, 2022) (“This stricter, and often arbitrary, scrutiny of supporting evidence [in fee waiver applications] resulted in many applicants either borrowing the money to pay the fees or foregoing submitting their applications altogether.”).
- ⁹³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 201(d)(3), 122 Stat. 5044, 5054 (2008) (codified at 8 U.S.C. § 1255(l)(7)) [hereinafter TVPRA]; see also FORM I-192, *supra* note 43.
- ⁹⁴ Santis, *supra* note 90.
- ⁹⁵ See, e.g., ASISTA, NOTES FROM FEE WAIVER LISTENING SESSION WITH USCIS (April 6, 2021), <https://asistahelp.org/wp-content/uploads/2021/04/Notes-from-Fee-Waiver-Listening-Session-with-USCIS-4.6.2021-.pdf> [<https://perma.cc/VW68-DA53>] (describing ongoing concerns raised by advocates on fee waiver adjudication in humanitarian cases).
- ⁹⁶ 2020 TIP REPORT, *supra* note 70, at 518. [include note about 2017 re AAO decisions]
- ⁹⁷ O’Rourke et al., *supra* note 65, at 54.
- ⁹⁸ INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T).
- ⁹⁹ O’Rourke et al., *supra* note 65, at 58.
- ¹⁰⁰ Classification for Victims of Severe Forms of Trafficking in Persons: Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92,266 (Dec. 19, 2016), <https://www.federalregister.gov/documents/2016/12/19/2016-29900/classification-for-victims-of-severe-forms-of-trafficking-in-persons-eligibility-for-t-nonimmigrant> [<https://perma.cc/3KVX-397M>] (Victims already often find it difficult to report trafficking and work with law enforcement; excluding an entire class of potential victims from T [visa] eligibility could thwart the purpose of the visa and hinder prosecutions. A narrow interpretation would also seem to punish a victim who was rescued by an LEA or escaped on their own before any labor, services or commercial sex acts were performed. That result is illogical and inconsistent with Congressional intent.”); see also Yael Schacher, ABUSED, BLAMED, AND REFUSED: PROTECTION DENIED TO WOMEN AND CHILDREN TRAFFICKED OVER THE U.S. SOUTHERN BORDER 13 (2019), <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5c9bf5c55c747a0001e19274/1560016326718/Trafficking+Report++May+2019+-+final.pdf> [<https://perma.cc/7KEH-288R>].
- ¹⁰¹ Schacher, *supra* note 100, at 13.
- ¹⁰² *Id.* at 60 (“Notably, of the 50 AAO nonprecedential decisions about T visa applications in calendar year 2020, physical presence was mentioned in 26 decisions and was the basis of the appeal in 20 of the cases.”).
- ¹⁰³ *Id.* at 67 (“USCIS’s increasingly narrow interpretation of the physical presence requirement thwarts Congressional intent and exerts a chilling effect on both T visa applications and trafficking prosecutions.”).
- ¹⁰⁴ O’Rourke et al., *supra* note 65, at 60.
- ¹⁰⁵ *Id.*
- ¹⁰⁶ 3 U.S. CITIZENSHIP & IMMIGR. SERVS., USCIS POLICY MANUAL, pt. B (2022) <https://www.uscis.gov/policy-manual/volume-3-part-b> [<https://perma.cc/9U3H-67G2>] [hereinafter USCIS POLICY MANUAL 3 pt. B]; see also COALITION AGAINST SLAVERY AND TRAFFICKING & ASISTA, ADVISORY ON NEW T VISA SECTIONS OF THE USCIS POLICY MANUAL (Nov. 2021), <https://castla.app.box.com/v/T-Visa-Policy-Manual-Advisory> [<https://perma.cc/MHC5-5JVJ>]. Importantly, the manual clarified that the applicant can meet the physical presence requirement “regardless of the timeline” between the individual’s liberation from law enforcement and filing of the T visa filing. USCIS POLICY MANUAL 3 pt. B, *supra*, at ch. 2.C.1. Additionally, the manual makes clear that the applicant need not file the application within a particular time period after leaving the trafficking. *Id.*
- ¹⁰⁷ For example, in January 2022, a plaintiff, a survivor of labor trafficking, filed a federal lawsuit against USCIS, alleging that she was denied a T visa due to an unlawfully restrictive interpretation of the physical presence requirement. Complaint, Doe v. Mayorkas, No. 2:22-cv-00014 (N.D. Ga. Jan. 26, 2022). According to federal pleadings, USCIS ignored critical evidence that her presence was connected to the trafficking, including that she faced subsequent threats or had received “critical services necessary to her recovery.” *Id.*
- ¹⁰⁸ T Visa Survey, *supra* note 16.
- ¹⁰⁹ A DOJ-accredited representative is a non-attorney who has satisfied the requirements of DOJ that they have sufficient expertise and experience to provide competent immigration legal services. See 8 C.F.R. § 1292.12 (2019).
- ¹¹⁰ The sampling procedure, which samples from advocacy organizations, as well as the self-selection design of this research presents notable limitations. Advocates who responded are reasonably more likely to be versed in T visa advocacy and vocal about the obstacles around this policy. We were limited by the lack of a sampling frame of total legal advocates working on T visas and therefore cannot know whether the sample over-selects on *pro bono* advocates, or any other subgroup of advocate. Despite these limitations, as a result of our large N and the presumed small number of lawyers nationally who work on T visas, we have reasonable expectation that the data reflects the experiences of legal professionals in this process.
- ¹¹¹ For the purpose of this report, survey data is not rounded, and therefore, the responses may not add up to 100 percent.
- ¹¹² *Victims of Human Trafficking*, *supra* note 11.
- ¹¹³ CHARACTERISTICS, *supra* note 19, at 6.
- ¹¹⁴ See U.S. CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, ANNUAL REPORT 2022 (June 30, 2022), https://www.dhs.gov/sites/default/files/2022-07/2022%20CIS%20ombudsman%20Report_verified_medium_0.pdf [<https://perma.cc/2Q6M-ZHQ4>] (describing case processing delays related to the COVID-19 pandemic).
- ¹¹⁵ USCIS I-914 STATISTICS, *supra* note 13, at 1.
- ¹¹⁶ *Check Case Processing Times*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://egov.uscis.gov/processing-times/> [<https://perma.cc/5XHN-KWXQ>] (last visited Oct. 26, 2022) (selecting “I-914 | Application for T Nonimmigrant Status” for “Form,” “Provides temporary immigration benefits to noncitizen victims of trafficking and their eligible family members” for “Form Category,” and “Vermont Service Center” for “Field Office or Service Center”).

ENDNOTES

¹¹⁷ USCIS I-914 STATISTICS, *supra* note 13, at 1.

¹¹⁸ In *Dahlstrom v. DHS*, USCIS produced data separately about monthly and weekly total NTAs issued to denied T visa applicants, and this data differed by 5 NTAs, with USCIS stating in monthly data that it issued a total of 236 NTAs and in weekly data 241 NTAs. The litigation is ongoing, as the plaintiffs are seeking for USCIS to reconcile any inconsistencies between the monthly and weekly data.

¹¹⁹ Defendant's Motion for Summary Judgment at *14, n. 2, *16, n.9, *21, *Dahlstrom v. DHS*, No. 1:2022cv01165 (D.D.C. filed Apr. 27, 2022).

¹²⁰ Exec. Order No. 13993, 86 Fed. Reg. 7,051 (Jan. 25, 2021).

¹²¹ Immigration relief under VAWA is available to survivors of domestic violence who are married to a US citizen or lawful permanent resident and meet other criteria. INA § 204(a)(1)(A), 8 U.S.C. § 1154(a)(1)(A). A U visa is available to immigrant survivors of violent crime who assist government officials in the investigation or prosecution of the crime and meet other criteria. INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U).

¹²² 8 C.F.R. § 103.2(b)(8) (2011).

¹²³ MASS. GEN. LAWS ch. 258F; see also Alison Kahmi & Sarah Lakhani, *A Guide to State Laws on U and T Visa Certifications*, IMMIGRANT LEGAL RES. CTR. (Apr. 2020), https://www.ilrc.org/sites/default/files/resources/u_visas_and_t_visas_pa-04.2020.pdf [<https://perma.cc/QLK3-V8BY>].

¹²⁴ Kahmi & Lakhani, *supra* note 123.

¹²⁵ USCIS I-914 STATISTICS, *supra* note 13, at 1.

¹²⁶ *Id.*

¹²⁷ The T visa application includes a question on gender and provides only two categories for applicants to select: "male" and "female." Thus, the USCIS data reflects the selections of applicants, which may not reflect their gender identity or expression.

¹²⁸ The classification system used to group countries into regions comes from the grouping used in the United Nations Sustainable Development Goals Report. U.N. STAT. DIV. *SDG Indicators: Regional Groupings Used in Report and Statistical Annex*, <https://unstats.un.org/sdgs/indicators/regional-groups/> (last visited Sept. 29, 2022). [<https://perma.cc/7LGE-KVYD>] The remaining Central American denials include 0.4% from Belize, 0.5% from Nicaragua, and 0.04% from Panama.

¹²⁹ CHARACTERISTICS, *supra* note 19, at 2.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*