



USING THE T VISA LAW ENFORCEMENT RESOURCE GUIDE

Advocating for Survivors of Trafficking

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In October 2021, the U.S. Department of Homeland Security (DHS) issued its *T Visa Law Enforcement Resource Guide*.² The guide, published alongside updated guidance on T visas in the USCIS Policy Manual (USCIS-PM),³ advises law enforcement agencies on providing T visa certifications, a crucial form of evidence in T visa applications.⁴ This practice advisory gives an overview of the resource guide and how practitioners can utilize it to advocate for law enforcement agencies to provide law enforcement certifications to survivors.

I. The T Visa and Law Enforcement Certification

T nonimmigrant status, or the “T visa,” is a form of immigration relief for certain survivors of human trafficking.⁵ The current statutory criteria for T visa eligibility are that the applicant:

1. Is a survivor of a severe form of trafficking in persons;
2. Is physically present in the United States or at a port of entry on account of the trafficking and has remained in the United States since the most recent act of trafficking;
3. Has complied with any reasonable request for assistance in investigating or prosecuting the trafficking, unless an exception applies; and
4. Is at risk of suffering extreme hardship upon removal from the United States.⁶

A severe form of trafficking in persons is defined in federal law as including both labor and sex trafficking. Additionally, certain acts of attempted trafficking, even if the person does not actually perform the underlying labor or sex act, may still constitute a severe form of trafficking

¹ The ILRC thanks the Berkeley Anti-Trafficking Project (BATPro) and students Danhong Cao, K.D. Harbeck, and Emma Heijmans for their research and contributions to this advisory.

² U.S. Department of Homeland Security, *T Visa Law Enforcement Resource Guide*, May 3, 2022, https://www.dhs.gov/sites/default/files/2022-05/T-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf [*hereinafter Resource Guide*].

³ See 3 USCIS Policy Manual (USCIS-PM) B.

⁴ The resource guide uses the terms “certification” or “declaration” when describing this piece of evidence. The legal term used in the regulations is “Law Enforcement Agency (LEA) endorsement.” 8 CFR § 214.11(d)(3)(i).

⁵ Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. 114 Stat. 1464, 1470 (Oct. 28, 2000), codified at 22 U.S.C. § 7101; Immigration and Nationality Act (“INA”) § 101(a)(15)(T); 8 CFR § 214.11.

⁶ INA § 101(a)(15)(T)(i).

in persons for the purposes of T visa eligibility.⁷ For additional information about the definition of trafficking and remaining T visa eligibility criteria, please consult the ILRC’s practice advisory *T Visas: What They Are and How They Can Help Your Clients*, https://www.ilrc.org/sites/default/files/resources/t_visas_advisory-20170509.pdf.

The T visa regulations allow for the optional submission of a law enforcement agency endorsement. This endorsement can be submitted to demonstrate compliance with reasonable requests for assistance from law enforcement and serve as evidence that the person is a trafficking survivor.⁸ This endorsement, also referred to as a law enforcement certification or law enforcement declaration, is made on Form I-914, Supplement B. The regulations define law enforcement agency to include federal, state, or local law enforcement agencies;⁹ prosecutors; judges; labor agencies; children’s protective services agencies; and other authorities that have “the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.”¹⁰ Under this definition, many officials and agencies may provide a law enforcement certification, and many survivors provide assistance to multiple different agencies in investigating or prosecuting trafficking.

Submitting a law enforcement certification is not required, and an applicant can show cooperation with law enforcement through other evidence. The certification is not afforded any special evidentiary weight even though it is submitted by a law enforcement agency.¹¹ Additionally, certain T visa applicants are not required to demonstrate cooperation with law enforcement, including trafficking survivors under the age of eighteen and survivors who are unable to cooperate due to physical or psychological trauma.¹² Nonetheless, a law enforcement certification can often be an important piece of evidence, including for T visa applicants who are not required to demonstrate cooperation with law enforcement requests.

II. The T Visa Law Enforcement Resource Guide

On October 20, 2021, DHS published the *T Visa Law Enforcement Resource Guide*, the first standalone guidance for certifying law enforcement agencies.¹³ The guide offers a summary of T visa eligibility requirements, contains tips and best practices for completing certifications, and contextualizes the role of law enforcement agencies in the T visa process. Because the certification focuses on the trafficking and law enforcement cooperation prongs of T visa eligibility, the resource guide focuses heavily on both of these criteria.

Many law enforcement agencies, especially non-federal ones, are unfamiliar with T visas. Many agencies routinely issue certifications for U nonimmigrant status to victims of crime, but encounter T visa applicants far less frequently. As the first law enforcement-facing resource of

⁷ See 3 USCIS-PM B.2.

⁸ 8 CFR § 214.11(d)(3)(i).

⁹ Though not expressly included in the regulation, this also includes tribal and territorial law enforcement agencies.

¹⁰ 8 CFR § 214.11(a).

¹¹ 8 CFR § 214.11(d)(3)(i).

¹² 8 CFR § 214.11(b)(3).

¹³ DHS had previously issued a *U and T Visa Law Enforcement Resource Guide* that contained information on both forms of relief. https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

its kind, the resource guide gives advocates a helpful tool to which they can refer certifying officials, especially if they are facing challenges in obtaining certifications.

A. “Victim-centered approach”

The resource guide begins by reiterating the “victim-centered” approach¹⁴ to combatting trafficking that DHS has taken in recent policy guidance.¹⁵ Under this approach, identification and stabilization of trafficking survivors, which includes providing immigration relief, is considered of equal importance to the investigation and prosecution of human trafficking.¹⁶ This section provides an overview of some of the needs that trafficking survivors may have as well as challenges that they face, including that they may be distrustful of law enforcement officials. It also includes tips for law enforcement officials to build rapport with survivors and gain their trust, including connecting them to support services, explaining the role of the law enforcement agency and addressing any concerns, showing cultural competence and sensitivity, conducting interviews in a neutral location and only after the survivor’s needs are met, and being patient and allowing time for the survivor to stabilize and trust the official.¹⁷

This guidance is similar to other recent DHS policy guidance outlining this approach. They include the DHS Blue Campaign,¹⁸ Immigrations and Customs Enforcement (ICE) guidance on continued presence,¹⁹ and ICE’s victim-centered directive.²⁰ While not binding, this guidance can be helpful in advocating for favorable discretion from DHS agencies in cases and enforcement situations involving trafficking survivors.

B. Certifying agencies’ role and when to certify

The resource guide also provides contextualizing information about the role of certifying agencies in the T visa process and the importance of T visas in offering “stabilization, protection, and immigration relief” to survivors.²¹ It also emphasizes the T visa’s role in promoting cooperation between law enforcement and survivors to help combat trafficking.

¹⁴ Federal immigration law and DHS guidance use the term “victim” when it is referring to people who have been subjected to trafficking. This resource will primarily use the term “survivor.” Although the two terms can be used interchangeably it may be preferable to use one rather than the other depending on the context. The term “victim” defines a person based on the harm they suffered. In contrast, “survivor” identifies the person with their life following that harm. In many instances, advocates prefer to use the term “survivor” when describing people who have been subject to trafficking. However, in some contexts, such as referring to a legal provision, describing someone who has recently suffered harm, or discussing harm that a person did not survive, the term “victim” may be more apt. When working with directly impacted community members, the ILRC recommends asking people which term they prefer.

¹⁵ *Resource Guide* at ii.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ DHS, *Blue Campaign, Law Enforcement*, <https://www.dhs.gov/blue-campaign/law-enforcement>.

¹⁹ ICE, *Continued Presence Resource Guide*, Jul. 2021, <https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf>.

²⁰ ICE, *Using a Victim-Centered Approach with Noncitizen Crime Victims*, Aug. 10, 2021, <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>.

²¹ *Resource Guide* at iii.

According to the guide, the roles and responsibility of law enforcement are:

- Identifying trafficking survivors;
- Detecting, investigating, and/or prosecuting human trafficking; and
- Completing Form I-914B and confirming how the survivor has complied with reasonable requests for assistance or why they qualify for an exception.²²

Importantly, it specifies that it is USCIS's role, not law enforcement's, to determine whether an applicant is eligible for a T visa and highlights that a Form I-914B does not automatically confer T visa eligibility. It also clarifies that law enforcement agencies are not responsible for making determinations about a person's admissibility to the United States.²³ Although, law enforcement may provide USCIS with information about an applicant's criminal history, the guide highlights that criminal history does not automatically preclude T visa eligibility.²⁴

The resource guide also provides information as to which situations warrant an agency providing a certification. It also explains that the definition of a "severe form of trafficking" includes any of the acts enumerated in the regulations, and there is no separate analysis of the "severity" of the act.²⁵ According to the guide, "there is no requirement that an investigation or prosecution be initiated or completed" after a survivor has reported the trafficking and made themselves available for requests for assistance.²⁶ This is an important point for advocates pursuing certifications while the survivors' persecutors' criminal cases are ongoing. It also clarifies that an agency may provide a certification if the survivor is in removal proceedings, is no longer in the United States, or the trafficking has occurred outside of the agency's jurisdiction.

C. Guidance and best practices for completing Form I-914B

The resource guide includes tips and best practices for agencies completing the Form I-914B. The Form I-914B must be signed by the "supervising official" responsible for detecting, investigating, or prosecuting trafficking; a "law enforcement officer with direct knowledge of the case;" or a federal, state, local, tribal, or territorial judge.²⁷ All fields of the Form I-914B must be completed. Although T visa certifications do not expire, the guide points out that in some instances a survivor may need a second certification from an agency. A second certification may be needed in response to a Request for Evidence from USCIS, or to demonstrate continued compliance with law enforcement requests for assistance.²⁸

The "Best Practices" section of the guide instructs certifying officials to:

- Be as specific and detailed as possible when completing Form I-914B;
- Verify all information on Form I-914B prior to signing. The guide also suggests that the agency itself should fully complete the declaration;

²² *Id.* at 2.

²³ *Id.* at 5.

²⁴ *Id.* at 10.

²⁵ *Id.* at 3.

²⁶ *Id.* at 6, 9.

²⁷ *Id.* at 6, 7.

²⁸ *Id.* at 10.

- Attach additional relevant documents, such as statements and photos, and indicate on Form I-914B that the documents are attached to prevent them from being separated from the certification;
- Establish and periodically update local procedures and policies in order to “promote consistency and transparency and to improve the quality” of certifications;
- Provide an original ink signature on Form I-914B (though not specified in the guide, practitioners should request that Form I-914B be signed in blue ink to highlight that it contains the original signature); and
- Return Form I-914B to the survivor or their representative rather than submitting it to USCIS directly.²⁹

D. Filing for Continued Presence and parole

In addition to T visa certifications, the guide also provides information about two other forms of immigration relief for trafficking survivors: continued presence and parole.

Continued Presence (CP) is a form of temporary immigration status, authorized by the DHS Center for Countering Human Trafficking. CP allows a survivor to remain in the United States during an ongoing investigation or prosecution. CP is granted for a two-year period, but can be renewed in two-year increments afterward. CP can also be helpful for trafficking survivors who have applied for a T visa and are awaiting adjudication. Only federal law enforcement agencies can sponsor a survivor for CP. State, local, tribal, and territorial agencies are advised to work with the DHS Homeland Security Investigations office in their area in order to facilitate a CP request.³⁰

The resource guide states that a CP application should be initiated as soon as a trafficking survivor is identified.³¹ It emphasizes that it is available to all trafficking survivors, even if there are no charges brought in connection with the trafficking or the survivor does not cooperate with the investigation.³²

Like continued presence, parole is a form of temporary immigration relief that DHS may grant. DHS has wide discretion to grant parole, temporarily permitting someone to enter or remain in the United States for a limited time, including to serve as a witness or source for law enforcement.³³ However, the resource guide does not offer any instructions or guidance for law enforcement agencies to request parole on behalf of trafficking survivors.

E. Declining to provide a certification or revoking an existing certification

The resource guide encourages law enforcement agencies to complete T visa certifications, but states that doing so is discretionary under federal law.³⁴ However, practitioners should be

²⁹ *Id.* at 8.

³⁰ *Id.*

³¹ *Id.* at 11.

³² *Id.*

³³ See INA § 212(d)(5).

³⁴ *Resource Guide* at 7.

mindful of state laws that impose obligations on agencies that go further than these federal requirements. For example, in California, law enforcement agencies must provide T visa certifications to survivors of trafficking who have complied with reasonable law enforcement requests.³⁵

Practitioners should be mindful that the guide also provides information for law enforcement agencies who wish to terminate or revoke a previously issued certification. If a certifying official wishes to withdraw a certification or discovers new information about the survivor, the resource guide provides an email address they can use to contact USCIS. A disavowed or revoked certification will no longer be considered as evidence.³⁶

III. Conclusion

The *T Visa Law Enforcement Resource Guide* is a helpful resource practitioners can use when advocating with potential law enforcement certifiers. It includes persuasive arguments that demonstrate the utility of providing certifications and how doing so can further an agency's mission. Additionally, it contains helpful information on completing certifications for agencies that may not be familiar with the Form I-914B or the T visa application process.



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About the Immigrant Legal Resource Center

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³⁵ Cal. Pen. Code § 679.11(f).

³⁶ 8 CFR § 214.11(d)(3)(ii).