

REPORTING TRAFFICKING TO LAW ENFORCEMENT FOR T-VISA PURPOSES
Revised October 2019

Under [8 CFR §214.11\(b\)\(3\)](#) and (d)(3), applicants for T visas are not required to have [a certification](#) for T-visas purposes. As of January 18, 2017, the T visa certification is now considered “[any credible evidence](#)” and there is no longer a distinction between primary and secondary evidence for law enforcement endorsements. Law enforcement endorsements continue to be evidence of victimization and cooperation with law enforcement but still, are **not** required. See 8 CFR § 214.11(d)(3).

Advocates should review the latest regulation updates and review the preamble for Department of Homeland Security’s release of the newest regulations. The preamble can be accessed at [this link](#).

IMPORTANCE OF ACTING AS A VICTIM RIGHTS ATTORNEY IN T-VISA CASES

With the rise of trafficking prosecutions and the increasing need for trafficking survivors to have wraparound legal assistance, attorneys working with trafficking survivors need to be prepared to take on the role of a [Victims’ Rights Attorney \(VRA\)](#). Victims of crime have many rights on the [federal](#) and [state level](#) that need to be affirmatively asserted, either by the victim themselves or their legal representative.

Although the trafficking survivor themselves can affirmatively assert their victim rights, often trafficking survivors are unable to effectively articulate their rights or have outstanding issues of criminal liability (e.g. open bench warrants, active criminal cases against them) that prevent them from accessing and asserting their victim rights on their own.

If the survivor cannot assert their own rights, it is important to note that only an attorney who is licensed and authorized to practice law within the state may assert the survivor’s victim rights on the survivor’s behalf. Board of Immigration Appeals Accredited Representatives (BIA Reps) and attorneys not barred within the state cannot practice outside of federal law such as immigration law, including asserting state victim rights on behalf of their clients. Organizations working with victims of crime should consider this constraint when deciding who in the organization will represent trafficking survivors.

THINGS TO CONSIDER BEFORE REPORTING

While the T-visa requires reporting your case to law enforcement, there are some things your client will need to consider before contacting any law enforcement agency (LEA). You should go over these benefits and consequences of reporting to LEA to ensure that your client is empowered to make an informed decision on whether they would like to report to law enforcement.

Benefits

- Protect others from harm
- May be necessary for immigration relief
- Path to seeking justice for the crime committed against them
- Potential for order of restitution
- May receive immunity or lower charges
- Other benefits client can think of

Consequences

- Length of the criminal justice process
- Potential for increased threats to survivors and especially survivors family in home country
- Trial is generally open to the public
- Once start the process US government is in control of the case NOT the victim
- Other challenges client can think of

WHERE TO REPORT

This is a case-by-case determination. Whenever reporting a crime, you and your client have options. You can report in the jurisdiction where the crime occurred or in the jurisdiction where the victim is located. We often recommend considering reporting where the client is located in case they need to be interviewed, that way the attorney can act as the victims' rights attorney and enforce the victims' rights.

Contact your local partners (legal service providers, social service providers, etc.) to find out who would be the most appropriate law enforcement agency (LEA) to report the case. These partners will be able to help you identify trained and trauma-informed LEA in your region.

If you are not aware of local providers who are providing services to trafficking survivors, review the Freedom Network members for the nearest trafficking-survivor service provider in your area. This is a good place to start your research of advocates who have assisted trafficking survivors in working with LEA. Review [the list here](#).

RELEASE OF INFORMATION BEFORE REPORTING

Before reporting the case, an attorney must have the consent of their client to provide any information and should take the steps to get a Release of Information before making contact with law enforcement.

INITIAL REPORTING TO LAW ENFORCEMENT

Reporting by email is the best way to track good-faith cooperation with law enforcement for T visa purposes. Initial emails reporting to law enforcement should be short and simple. A completed Factual Intake Form begins the process of reporting and arranging an interview

([Download the Factual Intake Form here](#)¹). The Factual Intake form is a short one-page document with only the essential information needed to report the crime to law enforcement. While the intake has boxes to complete with our client's phone number and address, we do not distribute client contact information to law enforcement and instead use our organization information to encourage LEA to contact the client's attorney to schedule any investigatory interviews.

Written/e-mail communications to law enforcement officials should include minimal facts about your client's trafficking experience to ensure the protection of privileged content and consistency of statements for potential criminal and/or civil cases.

Attorneys should advise their clients that once the crime is reported to law enforcement, an agent or prosecutor should contact the Victims' Rights attorney to discuss additional details about the case; however, even with the Victims' Rights attorney contact information, LEA may contact your client directly. In this case, attorneys should make sure they have advised their clients of their right to have an attorney present when they talk to a law enforcement officer and encourage the client do direct all communications to the Victims' Rights attorney.

The email samples below show good faith efforts in your client's attempt to cooperate with LEA. These emails should be attached to your attorney declaration in the T visa application if no law enforcement certification is obtained. A sample of the attorney declaration is included below.

REPORTING FOR T-VISA PURPOSES

One of the benefits of a T-visa over a U-visa is that [a Form I-914B Law Enforcement Certification](#) is not required for the T-visa, but good faith efforts to obtain the law enforcement certification must be made. Therefore, in addition to reporting the trafficking crime, you must also make a good-faith effort to obtain the law enforcement certification, even if the LEA does not respond to any previous attempts to report the crime.

SAMPLE FIRST E-MAIL TO LAW ENFORCEMENT

From: *Client's attorney*
Sent: *Wednesday, February 24, 2008*
To: *[insert agent email here]*
Subject: *New Referral for CLIENT NAME (D.O.B.: 01/01/2000)*

Attachments: *[Attach completed factual intake form]*

¹ Please note that not all the information on this form may be appropriate for law enforcement. Be mindful of sharing your client's contact information or information that may incriminate your client.

Please find attached the intake and referral form for CLIENT NAME (D.O.B.: 01/01/2000). CAST has identified CLIENT NAME as a victim of sex/labor trafficking. CLIENT NAME would like to report her case to law enforcement. Please contact me to arrange an interview with this individual.

FOLLOWING UP WITH LEA

CAST attorneys normally follow up with law enforcement approximately 2-3 weeks after the initial reporting to show continuous good faith efforts in cooperation with LEA.

SAMPLE FOLLOW-UP EMAIL IF NO RESPONSE FROM LEA

From: Client's attorney
Sent: Tuesday, March 12, 2008
To: [insert agent email here]
Subject: RE: New Referral for CLIENT NAME (D.O.B.: 01/01/2000)

Attachments: [Attach completed factual intake form]

Just following up with you to see if and when you would like to interview the referral I sent you on February 24, 2008.

FOLLOW-UP EMAIL IF NO RESPONSE TO YOUR INTERVIEW REQUESTS:

After the initial reporting and the follow-up email, if you have still not received a response from law enforcement, you should still make one last attempt to follow up with the law enforcement agency with which whom you initially reported. In this follow-up email, in addition to affirming your client's willingness to cooperate, you should also request that law enforcement complete the Form I-914B.

CAST attorneys usually partially complete the I-914B certification for their law enforcement partners for their convenience.

SAMPLE FOLLOW-UP EMAIL REQUESTING CERTIFICATION

From: Client's attorney
Sent: Monday, April 12, 2008
To: [insert agent email here]
Subject: Request for LEA for XXX trafficking victim reported February 2008
Attachment: [attach Form I-914B] [Attach completed factual intake form]

I am contacting you again concerning CLIENT NAME, a domestic servitude/sex trafficking victim, I reported to you in February 2008. Please contact me at your earliest convenience to schedule an interview. I am also writing to request that you fill out the I-914 Supplement B form for the client's T-Visa application. The form is attached. Thanks in advance for your assistance with this matter. Please return this form to me at your earliest convenience

ATTORNEY DECLARATION

If you are unable to obtain a Law Enforcement Agency certification for your client, a declaration executed by the client's attorney must be submitted detailing what efforts were taken to report the crime and what efforts were made to obtain a law enforcement certification.

The Attorney's Declaration will be its own exhibit and should include print-outs of all email correspondence with the law enforcement official who you reported the case to as attachments to the declaration. Additionally, you should include proof that an actual request was made to obtain the I-914B Form.

The attorney declaration should also include the following information:

1. Introductory paragraph should state your name, title, organization/firm, and the state or territory you are licensed to practice law.
2. Brief background of your organization/firm.
3. If you have experience working with trafficking survivors, please give a brief summary.
4. The last section should state when you reported your client's trafficking situation and to which agencies. This section will vary depending on whether your client was granted an interview.
 - a. This section should emphasize the following:
 - The client reported the trafficking crime to law enforcement;
 - Whether your client was interviewed, declined the opportunity to interview, or you received no response to your requests;
 - The client remains ready and willing to cooperate in the investigation and prosecution of their trafficker.
 - That an I-914 Supplement B will be submitted if and when it is received.

Attorney declarations should **NOT** include facts related to the trafficking. Trafficking facts should be limited to the client's declaration. To view a sample attorney declaration, [click here](#).

ADDITIONAL TIPS

TIP #1: DO NOT WAIT TO FILE THE T-VISA BECAUSE YOU HAVE NOT RECEIVED THE LAW ENFORCEMENT CERTIFICATION

CAST has not seen the inclusion of the certification to increase the chances of approval or to speed up the approval process. Additionally, the new regulations state that no special evidentiary

weight will be given to the LEA certification. See 8 CFR 214.11(d)(3). The biggest success factors in T-visas are the quality of the declaration and the quality of the cover letter. Do **NOT** wait to file a T-visa based on the law enforcement certification. Attorneys should file as soon as possible to best stabilize the client so that clients may be able to access federal benefits and receive work authorization.

TIP #2: THINK CAREFULLY BEFORE USING LAW ENFORCEMENT COOPERATION EXCEPTIONS

While there are exceptions to the law enforcement cooperation requirement for minors and those who have suffered physical/psychological trauma, attorneys should consider the best interests of their client beyond the initial T-visa phase.

The 2 considerations that attorneys should make are:

1. **If there are family members who wouldn't be eligible because of age-out but can be eligible based on the present danger of retaliation.** The [memo on T-6 and relatives](#) who are eligible under the “present danger of retaliation” standard notes that in order for these derivatives to be eligible, the applicant has to show cooperation with LEA. Though USCIS has been fairly lenient, the applicant still has to show their good faith efforts of cooperation with LEA. By raising one of these exceptions at the onset of the initial T-visa, it makes the argument for the “present danger of retaliation” more difficult for these derivative family members.
2. **Whether your client wants to adjust early.** If your client does not report to LEA, then they have no opportunity to adjust early. Remember, your client **can** adjust early even if they're never interviewed with LEA as long as they have reported the crime and have the letter from the [Department of Justice](#). This is an important reason why CAST attorneys generally advise all clients to report even if the client might have to raise an exception later in the criminal investigation.

At the end of the day, attorneys should do as the client wishes. If the client cannot move forward based on the need to cooperate with law enforcement, attorneys should use the exceptions so that their client can obtain T status while advising the client of the potential loss of benefits.

TIP # 3: PREPARE YOURSELF AND THE CLIENT IN THE CHANCE YOU ARE CONTACTED BY LAW ENFORCEMENT FOR AN INVESTIGATORY INTERVIEW

Victims of crime have a right to be represented by their own attorney in an [investigatory interview](#). Attorneys should be prepared to attend the interview and to be able to assist their clients in [asserting their victims' rights](#). Attorneys can use the [Interview Guide](#) to prepare the client for the interview. The interview guide covers topics such as explaining the criminal process, the benefits of reporting and cooperating with law enforcement, as well as what to expect during the interview.

Following the interview, the attorney should be sure that they have the law enforcement officer's contact information so that you can follow up with law enforcement regarding next steps, request for [Continued Presence](#), and requests for the law enforcement certification.

POST INTERVIEW FOLLOW UP

Attorneys should take the following steps after an investigatory interview:

- **Debrief with the client:** Make sure the client is feeling okay and understands what the next steps are in the criminal process. Reiterate that the investigation may not happen quickly or that LEA may request more information.
- **Provide additional information at the client's request:** Make sure the client has their questions answered. Follow up with the client to see if there is additional information that they would like to provide law enforcement.
- **Re-advise client on confidentiality:** Remind clients they have the right to have their Victims' Rights Attorney (VRA) present during all communication with LEA. Also remind them that if they are contacted separately by a law enforcement officer, they can request that the officer contacts their VRA and they do not have to share confidential personal information. Lastly, remind clients to refrain from speaking to others about details of the criminal case for their own safety and to avoid having people around them subpoenaed.
- **Discuss Safety Issues:** It is important to have case manager do safety planning with the client, but it's also good to reinforce the safety plan with your client. Have conversations periodically with your client to be aware of all current safety concerns and have the legal approach be reflective of client's safety concerns (e.g., obtaining restraining order; obtaining Safe-at-Home addresses, etc.)

TIP #4: WHEN REPORTING OLDER CRIMES, BE PREPARED TO ANSWER TO THE PHYSICAL PRESENCE AND EXTREME HARDSHIP ARGUMENTS

Generally, your agency's protocols for reporting trafficking crimes should be standard for old and recent trafficking crimes. Make sure to discuss with your client about their reasoning and expectation for reporting. If you client is seeking justice and wants prosecution, make sure that you report to the LEA with the highest chances of criminal prosecution.

Although the procedure on reporting older cases are similar, other potential hurdles for the T-Visa exist. After being identified as a victim of trafficking, the applicant will still have to show they are "present on account of trafficking" under 8 CFR § 214.11(g). The "present on account of trafficking" element speaks to why the victim is still present in the US today on account of trafficking. This can include whether they are here in the US to continue to receive vital social/legal services that they cannot receive in the home country, or present to assist in criminal investigation/prosecution.

The second place where you may have difficulties is in the extreme hardship argument. According to 8 CFR § 214.11(i), the extreme hardship cannot be based on current or future economic harm or disruption to social or economic opportunities alone. Attorneys will want to paint the picture for the adjudicator about how their client will face unusual and severe harm if they are removed and forced to return to their home country. Address at least three factors listed in the regulations at 8 CFR § 214.11(i)(2). This can be difficult to do when the arguments about safety in the home country and threats by the trafficker are more than 10 years old. For older cases, be mindful of which factors you are using to show extreme hardship.

ADDITIONAL QUESTIONS

If you have further questions, please contact CAST's Technical Assistance Hotline at technicalassistance@castla.org.

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