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18 U.S.C. § 3771A

Counsel's Guide to the Trafficking Survivors Relief Act

A Manual for Clearing Federal Criminal Records for Survivors of Human Trafficking

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Disclaimer

This Guide is current as of October 2026. The Trafficking Survivors Relief Act is a relatively new law, and court procedures and decisions continue to evolve. Practitioners should ensure that all legal authorities relied on in this Guide are current at the time of use.

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Counsel's Guide to the Trafficking Survivors Relief Act

A Manual for Clearing Federal Criminal Records for Survivors of Human Trafficking

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I. Introduction

The Trafficking Survivors Relief Act ("**TSRA**") became law on January 23, 2026. The TSRA provides an avenue for survivors of human trafficking to clear their record of certain federal convictions and arrests that are related to a survivor having been a victim of trafficking.[1] This is the first time that federal law has authorized the vacatur or expungement of a federal conviction.[2] The TSRA further provides that trafficking victims are able to assert duress as a defense to criminal charges and as a mitigating factor when seeking a reduction of a sentence that was previously imposed. Though the majority of states provide some mechanism for trafficking survivors to clear some or all of their criminal records resulting from their trafficking victimization, this marks the first time survivors have the ability to clear records on a federal level. The TSRA is retroactive, applying to convictions or arrests that occurred before the act was enacted, and can serve as a powerful form of relief for survivors to reduce barriers to employment, housing, immigration status, and access to services.

This Counsel's Guide is designed to assist attorneys in effectively advocating for their clients who are survivors of human trafficking in seeking vacatur and expungement associated with their clients' federal criminal record or in advocating for a reduction in sentence. It provides the necessary legal background, as well as guidance on the procedures for seeking the relief that the TSRA provides.[3]

[1] Throughout this guide, the terms "victim" and "survivor" are used interchangeably, though each carries a distinct meaning. The term "victim" is typically defined by the harm suffered, while "survivor" emphasizes recovery, resilience, and the life beyond that harm; for that reason, advocates often prefer to refer to their clients as "survivors." While this guide aims to help community members survive and thrive despite the harms they have suffered, it uses the term "victim" where it appears in federal statutory language or when referring to individuals who may still be experiencing ongoing harm.

[2] *Federal Expungement for Survivors of Human Trafficking*, COLLATERAL CONSEQUENCES RES. CTR. (May 13, 2026), https://ccresourcecenter.org/federal-expungement-for-survivors-of-human-trafficking.

[3] Note that this guide covers federal convictions only. Practitioners whose clients have mixed state and federal records should consult applicable state-specific resources for state convictions.

II. Overview of Trafficking and Criminalization of Victims

The TSRA represents a landmark federal effort to address one of the most underrecognized consequences of human trafficking: the criminalization of survivors. This Section provides foundational context for the nature of human trafficking and why survivors so frequently accumulate criminal records as a result of their exploitation.

A. What is Human Trafficking?

Human trafficking is a form of abuse in which individuals are exploited through force, fraud, or coercion for commercial sex or labor. Federal law recognizes two primary forms of trafficking:

- **Sex Trafficking**: the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, where in a severe form of trafficking, the commercial sex act is induced by force, fraud, or coercion, or the person induced to perform such an act has not attained 18 years of age; and
- **Labor Trafficking**: 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.[4]

Human trafficking remains pervasive throughout the United States, occurring in urban, suburban, rural, and tribal communities alike. In 2024, the National Human Trafficking Hotline received reports of 11,999 potential human trafficking cases involving 21,865 potential survivors nationwide.[5] However, the official statistics represent only a fraction of actual trafficking activity—the coercive dynamics of trafficking make survivors significantly less likely to provide information on their traffickers, resulting in substantial undercounting.[6]

B. Criminalization of Victims of Trafficking

A defining and devastating feature of human trafficking is that survivors often acquire criminal records as a result of their exploitation. Traffickers employ a wide range of tactics to control their victims, including physical violence, threats against family members, psychological manipulation, romantic coercion, debt

[4] Trafficking Victims Protection Act § 103, 22 U.S.C. § 7102.
[5] *Human Trafficking 101*, U.S. DEP'T OF TRANSP. (2025), https://www.transportation.gov/stop-human-trafficking/human-trafficking-101 (citing 2024 National Human Trafficking Hotline data reported by Polaris).
[6] *Gaps in Reporting Human Trafficking Incidents Result in Significant Undercounting*, NAT'L INST. OF JUST. (Aug. 4, 2020), https://nij.ojp.gov/topics/articles/gaps-reporting-human-trafficking-incidents-result-significant-undercounting.

bondage, document confiscation, and isolation from support networks. A particularly common form of control is **forced criminality**, in which traffickers compel victims to engage in unlawful conduct as part of their exploitation. As a result, labor trafficking victims may be forced to transport, sell, or manufacture illegal substances, while sex trafficking victims are routinely arrested for prostitution, or possession of weapons or drugs. Survivors may also face charges for related crimes such as financial crimes, the use of false identification documents, or trespassing. Consequently, many trafficking survivors have criminal records that are a direct result of the trafficker's coercion and control, or as a byproduct of the trafficking experience.

Congress expressly recognized the evolving nature of trafficking tactics, finding that the TSRA is "a first step to address the changing tactics of human traffickers, who are using forced criminality as a form of force, fraud, and coercion in their human trafficking enterprises."[7] This acknowledgment reflects a broader understanding that traffickers weaponize the criminal legal system itself—using the threat of arrest and prosecution to bind victims to their exploiters and silence them from seeking help.

Common mechanisms through which trafficking victims are forced into criminal conduct include:[8]

- **Survival offenses:** Victims may commit theft, fraud, or drug offenses to survive, particularly when traffickers withhold food, housing, or money.
- **Prostitution-related offenses:** Victims of sex trafficking are routinely arrested for prostitution and related offenses arising from the very exploitation from which they suffered.
- **Drug-related offenses:** Traffickers frequently use drugs to control victims through addiction and then direct victims to distribute or transport controlled substances on the trafficker's behalf. Victims are also arrested for using or possessing the drugs the trafficker used as a form of control.
- **Financial crimes:** Victims may be coerced into opening bank accounts, facilitating money laundering, engaging in wire fraud, or participating in other financial schemes that benefit the trafficker.
- **Recruiting and managing other victims:** Traffickers may force victims to recruit or supervise newer victims, exposing them to charges of promoting trafficking, conspiracy, or related offenses.
- **Violent offenses under compulsion:** In some cases, victims are forced under threat of serious harm to commit acts of violence against other persons, including other victims within the trafficking operation.

Criminal records create cascading, often lifelong, barriers for trafficking survivors. A conviction or even an arrest record can result in:[9]

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[7] Pub. L. No. 119–73, § 5(1), 139 Stat. 2003, 2008 (2026).
[8] K.B. White, *Impact of Arrest and Conviction Histories on Trafficking Survivors*, FREEDOM NETWORK USA (2021), https://freedomnetworkusa.org/2021/11/10/impact-of-arrest-and-conviction-histories-on-trafficking-survivors; THE USE OF FORCED CRIMINALITY: VICTIMS HIDDEN BEHIND THE CRIME, U.S. DEP'T OF STATE (June 2014), https://2009-2017.state.gov/documents/organization/233938.pdf.
[9] *Criminal Record Relief for Trafficking Survivors*, POLARIS 11 (Apr. 2023), https://polarisproject.org/wp-content/uploads/2023/04/Criminal-Record-Relief-for-Trafficking-Survivors-by-Polaris.pdf.

- Ineligibility for **housing** assistance, including public housing and Section 8 vouchers;
- Barriers to private housing, as landlords often require background checks to qualify for leasing;
- Barriers to **employment**, particularly in healthcare, childcare, education, social work, legal work, and other licensed professions, but also in any job that requires a background check prior to employment;
- Barriers to education opportunities at colleges, universities, or vocational schools, and ineligibility for federal **student loans** and educational assistance;
- Exclusion from federally funded **public benefits programs**;
- Barriers for parents to obtain and maintain the custody of their children;
- **Immigration** consequences, including removal from the United States, for non-citizen survivors; and
- **Continued exposure to traffickers**, who exploit survivors' fear of prosecution to maintain control long after the trafficking relationship has nominally ended.

Prior to the TSRA, federal law offered no mechanism for trafficking survivors to seek vacatur of federal convictions or expungement of federal arrest records arising from their exploitation. Many states had enacted "vacatur" or "affirmative defense" laws covering state offenses, but federal offenses—which often carry more serious consequences—remained entirely outside the reach of such relief.

III. Understanding the Trafficking Survivors Relief Act (18 U.S.C. § 3771A)

This Section provides a general overview of the TSRA and the various sections of the statute. Because the TSRA was enacted only recently, federal courts have not yet had an opportunity to interpret many of its key terms or resolve important questions regarding its scope. The interpretations set forth in this Section reflect a current assessment of the statutory text, analogous authority, and relevant interpretive principles. Counsel should therefore treat the analysis in this Guide as a framework based on the current state of the law rather than a definitive statement of how the statute ultimately will be construed.

A. Who is Eligible for Relief?

The TSRA creates remedies for individuals whose **federal offense** resulted from trafficking victimization. A person is potentially eligible for relief under the TSRA if two threshold conditions are met: (1) the person is a "**victim of trafficking**"; and (2) the underlying **federal offense** bears the required **connection** to that victimization (discussed in Sections III.B and C below).

i. "Victim of Trafficking"

The TSRA defines "victim of trafficking" by reference to Section 103 of the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 ("**TVPA**").[10] Under the TVPA, a "victim of trafficking" refers to a person subjected to one of the following acts:

- **Sex trafficking**, defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act" or when "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
- **Labor trafficking**, defined as "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."[11]

[10] 18 U.S.C. § 3771A(a)(7).

[11] Trafficking Victims Protection Act § 103, 22 U.S.C. §§ 7102(11)–(12), (17). Note that the Trafficking Survivors Relief Act also makes technical amendments to paragraphs (16) and (17) of TVPA Section 103 to update cross-references within that statute. *See* Pub. L. No. 119–73, § 7, 139 Stat. 2003, 2009 (2026).

The TVPA identifies three means by which a person may become a trafficking victim: **force, fraud, or coercion**. Of these, coercion is defined most comprehensively. Coercion—which can be a result of force[12]—is explicitly defined in the TVPA as:

(1) threats of serious harm to or physical restraint against any person;
(2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
(3) the abuse or threatened abuse of the legal process.[13]

The TVPA adopts a broader understanding of coercion that goes beyond physical or legal coercion to include nonviolent forms of coercion, such as psychological abuse or economic control.[14] Congress intended coercion to encompass subtle forms of subjugating people's wills which cause victims to believe that serious harm will result to themselves or others if they leave the trafficker.[15] In practice, traffickers may manipulate victims through emotional abuse, isolation, economic dependence, or substance addiction—for example, by supplying drugs or alcohol to create dependency and then withholding them until the victim performs services.[16] The "Power & Control Wheel" adapted by the Polaris Project from the Duluth Model is a useful tool to identify the broad and various ways in which abuse can occur in trafficking situations, including: coercion and threats; intimidation; emotional abuse; isolation; denying, blaming, and minimizing; sexual abuse; physical abuse; abuse of privilege; and economic abuse.[17]

In addition, the TVPA defines the term "abuse or threatened abuse of the legal process" as the use or threatened use of administrative, civil, or criminal law, in any manner or for any purpose for which the law was not designed, to exert pressure on someone to cause that person to act or refrain from acting.[18]

Unlike coercion, fraud is not explicitly defined in the TVPA. Courts have generally understood fraud in the trafficking context to involve "material misrepresentations" used to compel the victim to provide labor or commercial sex.[19] A false statement can constitute "material misrepresentation" if it tends to influence or is capable of influencing the intended victim.[20] For example, in *United States v. Bell*, 761 F.3d 908 (8th Cir. 2014), the court found that a trafficker defrauded victims by misrepresenting his marital status and having a pattern of convincing vulnerable victims that he loved them and would take care of them financially and emotionally to the exclusion of others.[21]

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[12] *State v. Braun*, 20 Wash. App. 2d 756, 790 (2022).
[13] 22 U.S.C. § 7102(3).
[14] *United States v. Dann*, 652 F.3d 1160, 1169 (9th Cir. 2011).
[15] *Braun*, 20 Wash. App. 2d at 789–90 (citing United States v. Marcus, 487 F. Supp. 2d 289, 301 (E.D.N.Y. 2007); *United States v. Mussry*, 726 F.2d 1448, 1452 (9th Cir. 1984)).
[16] *See United States v. Mack*, 808 F.3d 1074, 1082 (6th Cir. 2015); *United States v. Betts*, 911 F.3d 523, 530 (8th Cir. 2018).
[17] *Human Trafficking Power and Control Wheel*, POLARIS (2010), https://www.niwrc.org/sites/default/files/images/resource/HT-Power-Control-Wheel.pdf.
[18] 22 U.S.C. § 7102(1).
[19] *Braun*, 20 Wash. App. 2d at 790–91 (quoting *United States v. Maynes*, 880 F.3d 110, 113 (4th Cir. 2018)).
[20] *Id.*; *United States v. Gaudin*, 515 U.S. 506, 509 (1995).
[21] *United States v. Bell*, 761 F.3d 908 (8th Cir. 2014).

Neither prior identification by law enforcement, certification under the TVPA, nor receipt or pursuit of a T visa is a prerequisite to relief for "victim of trafficking" under the TSRA. The movant need only establish they are a victim of trafficking by a preponderance of the evidence. The Act directs the court to consider an affidavit or sworn testimony of an anti-human-trafficking service provider or clinician, and such affidavit or testimony, standing alone, is sufficient to vacate a conviction or expunge an arrest where the court finds it credible and no other evidence is readily available.[22]

ii. Types of Victims Eligible for Relief

Depending on the posture of the case, eligible TSRA movants include:

- **Victims of trafficking convicted of a Level A offense**, who may move to vacate the conviction.[23]
- **Victims of trafficking arrested for a Level A offense**, who may move to expunge all records of the arrest.[24]
- **Victims of trafficking arrested for a Level B offense**, who may move to expunge arrest records, but only if certain charge-disposition conditions are satisfied—acquittal, the Government declining or dismissing the charges, or reduction to a Level A offense followed by a favorable disposition on that lesser charge.[25]
- **Victims of trafficking who are "covered prisoners"**—a person convicted of a Level A or Level B offense, sentenced to a term of imprisonment, and currently or formerly imprisoned under that sentence—who may seek a reduction in sentence.[26]
- **Victims of trafficking pending prosecution** for a Level A or Level B offense, who may raise the affirmative duress defense.[27]

Two features broaden access to the TSRA. First, the movant need not show that any other person (such as the trafficker) was arrested or convicted.[28] Second, the TSRA applies **retroactively and prospectively**—to any conviction or arrest occurring before, on, or after January 23, 2026.[29]

Because the Act is structured around the categories of people it covers, the limits on its reach must be read out of its definitional and threshold provisions. Reading § 3771A and § 28 together, the following records are not eligible for relief—or are eligible only in a limited way:

- **Offense was not connected to the trafficking victimization.** Every remedy requires a causal link between the offense and trafficking victimization—"direct result" for vacatur and sentence reduction, and "directly related to" for expungement.[30] An offense that does not have a sufficient

[22] § 3771A(b)(5)(A), (B).
[23] § 3771A(b)(1)(A). See infra Section III.B for the definition of a Level A offense.
[24] § 3771A(b)(1)(B). See infra Section III.B for the definition of a Level A offense.
[25] § 3771A(b)(1)(C).
[26] § 3771A(a)(2), (e).
[27] 18 U.S.C. § 28(b).
[28] § 3771A(b)(6).
[29] § 3771A(i).
[30] § 3771A(b)(1).

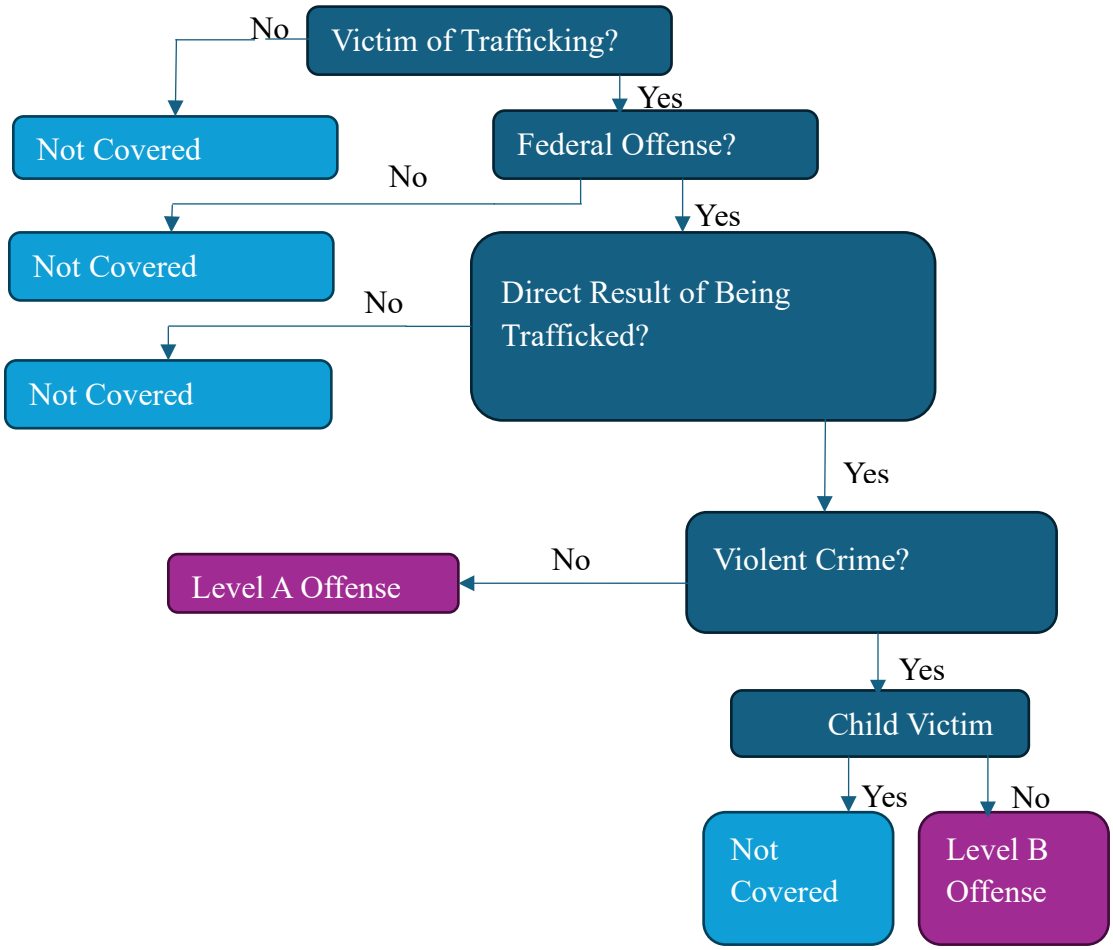
connection to the victimization, even if the person is or was a trafficking victim, is not eligible for relief under the TSRA. Trafficking-victim status alone is not enough.

- **State offenses.** The TSRA defines "[f]ederal offense" as one punishable under federal law, and both the Level A and Level B categories are built on that definition.[31] State convictions and state arrests fall entirely outside the TSRA.[32]
- **Violent offense with a child victim.** The definition of Level B offense expressly **excludes** a federal violent crime of which a child (under 18) was a victim.[33] Because such an offense is neither a Level A nor a Level B offense, a trafficking survivor who committed a violent federal crime against a child victim has no relief under the TSRA, regardless of the strength of the trafficking nexus.

[31] § 3771A(a)(4)–(6).
[32] Because many states have enacted statutes that allow for record clearing for trafficking survivors, practitioners should help the survivor determine whether they may have state level offenses that are eligible to be vacated or expunged.
[33] § 3771A(a)(1), (6)(B).

B. What Offenses are Subject to Relief?

The TSRA applies only to federal convictions and federal arrests. The flowchart below summarizes the threshold questions counsel should consider when determining whether a particular federal offense is eligible for relief under the TSRA and, if so, whether it falls within the statute's Level A or Level B categories.



i. Level A Offense

A **Level A offense** is a federal offense that is **not a violent crime (see Section III.B.iii below for definition of "violent crime"**).[34] Level A offenses are eligible for the broadest relief under the TSRA: a movant may seek both **vacatur of a conviction** and **expungement of an arrest,** as well as sentence reduction.[35]

[34] § 3771A(a)(5).
[35] § 3771A(b)(1)(A), (B).

ii. Level B Offense

A **Level B offense** is a federal offense that **is a violent crime**, with one important carve-out: the term does **not** include a federal violent crime of which a **child** (an individual under 18) was a victim (discussed in **Section III.B.iv** below).[36]

Level B offenses receive narrower relief. The Act does **not** authorize vacatur of a Level B conviction; the only remedies are **expungement of an arrest** and **sentence reduction.** Expungement is available only where one of the following charge dispositions applies:

1. the movant was **acquitted** of the Level B offense;
2. the Government **did not pursue** or moved to **dismiss** charges for the Level B offense; **or**
3. the charges were reduced to a Level A offense *and* either (a) the movant was then acquitted of that Level A offense, (b) the Government did not pursue or moved to dismiss that Level A offense, or (c) any subsequent Level A conviction was vacated.[37]

iii. What Constitutes a "Violent Crime"?

Whether an offense is classified as Level A or B depends on whether it is a "violent crime." The TSRA defines **"violent crime"** by adopting the meaning given to **"crime of violence" in 18 U.S.C. § 16(a)**.[38]

Under 18 U.S.C. § 16, the term "crime of violence" is defined as:

> (a) an offense that has **as an element** of the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.[39]

Section 16(a) is often called the "elements clause" or "force clause."[40] To determine whether a conviction satisfies the elements clause, courts must apply a "**categorical approach**."[41] The "categorical approach" limits the court's inquiry to the statutory elements of the offense of conviction, ignoring the particular facts of the defendant's conduct.[42] For example, the Supreme Court in *United States v. Taylor* held that a crime of violence was not committed under the categorical approach even when a victim was shot and

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[36] § 3771A(a)(6).
[37] § 3771A(b)(1)(C).
[38] 18 U.S.C. § 3771A(a)(8).
[39] 18 U.S.C. § 16 (emphasis added).
[40] The TSRA references § 16(a) alone and does not incorporate § 16(b), the "residual clause." That distinction is significant because the residual clause in § 16(b) was held "unconstitutionally vague" by the U.S. Supreme Court (which also invalidated a similarly worded clause in 18 U.S.C. § 924(c)(3)(B)). *Sessions v. Dimaya*, 584 U.S. 148, 174–75 (2018); *United States v. Davis*, 588 U.S. 445, 470 (2019). By tying the definition to the surviving elements clause, the TSRA avoids reliance on the invalidated residual provision.
[41] *United States v. Smith,* 104 F.4th 314, 319 (D.C. Cir. 2024) (citing *United States v. Taylor*, 596 U.S. 845, 850 (2022)).
[42] *Id.*

killed because the underlying crime—attempted Hobbs Act robbery—does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another.[43]

Whether a given offense "has as an element" that includes the use of physical force is frequently litigated, and offenses that may seem violent in the abstract are not always crimes of violence under § 16(a). Counsel should analyze the elements of the specific statute of conviction rather than the offense label, because that analysis determines whether the broader Level A relief (including vacatur) or the narrower Level B relief is available.

For example, courts have held that sex trafficking and federal drug charges are not crimes of violence under 18 U.S.C. § 16(a) because they fail to satisfy the categorical approach, which requires that the use, attempted use, or threatened use of physical force be an element of the offense.[44] Some survivors may have a criminal record involving the Mann Act, which is the knowing transportation—or persuasion, inducement, enticement, or coercion—in interstate or foreign commerce, together with the intent that the individual engage in prostitution or criminal sexual activity. Unlike sex trafficking and federal drug offenses, no published decision appears to address whether a Mann Act offense is a crime of violence under § 16(a). However, counsel could argue that none of the elements of a Mann Act offense involve the use, attempted use, or threatened use of physical force, so it is not categorically a crime of violence under § 16(a). That a particular defendant used force to accomplish the transportation should not change the analysis, which looks only to the statutory elements.

The degree of intent behind a committed crime can also be relevant to determine whether it may be considered a "crime of violence." Section 16(a) requires the use, attempted use, or threatened use of force "**against** the person or property of another." The U.S. Supreme Court in *Leocal v. Ashcroft* held that the phrase "against" bears on the degree of intent required—it generally requires more than negligent conduct.[45] The Supreme Court further held in *Borden v. United States* that even reckless conduct does not meet the degree of intent required because the phrase "against another" requires force to be directed or targeted at another—a requirement that reckless conduct does not satisfy.[46] Accordingly, federal courts of appeals have generally found crimes of violence under Section 16(a) to exclude "offenses committed through the reckless or grossly negligent use of force."[47]

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[43] *United States v. Taylor*, 596 U.S. 845, 859 (2022).
[44] *United States v. Jackson*, 7 F.4th 261, 263 (5th Cir. 2021); *See also United States v. Fuertes*, 805 F.3d 485, 498 (4th Cir. 2015); *United States v. Cruz*, 805 F.2d 1464, 1469 n.5 (11th Cir. 1986); *See also United States v. Meyer*, 803 F.2d 246, 248-49 (6th Cir. 1986) ("selling drugs" is not crime of violence because the sale itself need not involve a substantial risk of physical force); *United States v. Baker*, 10 F.3d 1374, 1393-94 (9th Cir. 1993) *overruled on other grounds* by United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000) ("conspiracy to manufacture, distribute and possess drugs" does not fall within§ 16(a) crime of violence)..
[45] *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004).
[46] *Borden v. United States*, 593 U.S. 420, 429 (2021).
[47] *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1132 (9th Cir. 2006).

More specifically, a crime of violence under § 16(a) requires "an *intentional* use of force,"[48] and the Supreme Court noted in *Delligatti v. United States* that an offense causing bodily injury or death is still a crime of violence even if committed by omission or through nonviolent means like deceit, as long as the defendant acted intentionally or knowingly.[49] Certain offenses have traditionally been treated as crimes of violence because they ordinarily require the intentional use, attempted use, or threatened use of force against another person. Examples include:[50]

- Murder[51]
- Voluntary Manslaughter
- Kidnapping
- Aggravated Assault
- Assault involving a deadly or dangerous weapon or resulting in bodily injury[52]
- Robbery

The Sentencing Guidelines likewise identify a broader set of offenses that qualify as "crimes of violence" in the sentencing context, including the crimes listed below.[53] Because the TSRA incorporates only § 16(a)'s force clause, however, practitioners should not assume that every offense classified as a crime of violence under the Sentencing Guidelines necessarily qualifies as a crime of violence for purposes of § 16(a). Rather, counsel may argue that courts must examine the elements of the offense to determine whether it requires the use, attempted use, or threatened use of physical force against the person or property of another.

- Forcible Sex Offense[54]
- Arson
- Extortion
- Use or Unlawful Possession of a Firearm[55] or Explosive Material[56]

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[48] *Quijada-Aguilar v. Lynch*, 799 F.3d 1303, 1306 (9th Cir. 2015).
[49] *Delligatti v. United States*, 604 U.S. 423, 429-37 (2025).
[50] U.S.S.G. § 4B1.2.
[51] Second-degree murder is also a "crime of violence" under Section 16(a) because it requires a mens rea of more than ordinary recklessness. *United States v. Torres*, 668 F.Supp.3d 1226, 1230 (D.N.M. 2023).
[52] *United States v. Mobley*, 344 F. Supp. 3d 1089, 1097 (N.D. Cal. 2018).
[53] U.S.S.G. § 4B1.2.
[54] Federal courts of appeals have found that "forcible sex offenses" qualify as crimes of violence even if the offense does not involve "physical force." *See United States v. Remoi*, 404 F.3d 789, 793–94 (3d Cir. 2005); *United States v. Romero-Hernandez*, 505 F.3d 1082, 1087 (10th Cir. 2007); *United States v. Chacon*, 533 F.3d 250, 256 (4th Cir. 2008). While there was a circuit split as to whether "forcible sex offenses" under "crimes of violence" include sex offenses that do not involve physical force, in 2008, the Sentencing Commission resolved this split through amendments to the commentary on "crime of violence." *United States v. Contreras*, 739 F.3d 592, 597 (11th Cir. 2014). The Sentencing Guideline added commentary to "crimes of violence" that " 'forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced." U.S.S.G. §§ 4B1.2, 2L1.2. Accordingly, a "forcible sex offense" under "crimes of violence" does not require physical force.
[55] As described in 26 U.S.C. § 5845(a).
[56] As defined in 18 U.S.C. § 841(c).

- Burglary of a Dwelling[57]

By contrast, offenses whose elements can be satisfied through negligent or reckless conduct generally fall outside § 16(a). Examples include:[58]

- Burglary of Non-Dwelling Structures
- Driving Under the Influence ("DUI"): A DUI offense—even one causing serious bodily injury or death—is not a crime of violence under § 16(a).[59] DUI offenses typically have a requisite *mens rea* of recklessness or negligence, which do not meet the *mens rea* standard of crimes of violence.[60]
- Reckless Manslaughter

iv. Child Victim Carve-Out

No TSRA remedy is available for the survivor if the victim of the underlying federal violent offense (Level B) was a minor. The carve-out is therefore an initial question to resolve in any case involving a federal violent crime, and it raises three issues addressed below: whether courts will apply the carve-out categorically or based on the facts of the particular case, who qualifies as a "victim," and how the carve-out operates when the trafficker or a co-defendant is charged with an offense against a child.

A threshold interpretive question is whether a court will apply the child-victim carve-out categorically or in a circumstance-specific manner. If a court extends the categorical logic of "crime of violence" to the child-victim clause, the operative question is not whether a child was in fact harmed, but whether the offense of conviction categorically requires a child victim as an element. If instead the court reads "of which a child was a victim" as a factual condition attached to the offense, it will conduct a circumstance-specific inquiry into what actually happened.

The U.S. Supreme Court has interpreted comparable statutory language tying relief to a victim-specific fact as circumstance-specific rather than categorical.[61] In *Nijhawan v. Holder*, the Court held that the phrase "an offense that . . . involves fraud or deceit in which the loss to the victim or victims exceeds $10,000" calls for a circumstance-specific inquiry because the $10,000 loss threshold is a factual circumstance of the offense rather than an element of a generic crime.[62] Therefore, counsel should review records bearing on victim identity and age and be ready to argue that a child was in fact not a victim of the crime at issue.

Other courts have reached similar conclusions when statutory language turns on offense-specific facts. For example, in *United States v. White*, the Tenth Circuit held that Congress intended courts applying the Sex Offender Registration and Notification Act to determine the victim's age using a circumstance-

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[57] *United States v. Sherman*, 928 F.2d 324, 326 (9th Cir. 1991).
[58] *Fernandez-Ruiz*, 466 F.3d at 1132.
[59] *Leocal*, 543 U.S. at 9.
[60] *Borden v. United States*, 593 U.S. 420, 438 (2021).
[61] *See Nijhawan v. Holder*, 557 U.S. 29, 30 (2009).
[62] *Nijhawan*, 557 U.S. at 40.

specific approach, even though the underlying offense itself is analyzed categorically. [63] By contrast, in *Bastias v. United States Attorney General*, the Eleventh Circuit applied the categorical approach to the Immigration and Nationality Act's reference to a "crime of child abuse, child neglect, or child abandonment" because the statute focuses on the types of underlying offenses.[64]

Although no controlling authority has yet addressed the TSRA's child-victim carve-out, there is a strong argument that a court will apply a circumstance-specific approach because the phrase "of which a child was a victim" describes a factual characteristic of the offense rather than a generic offense category. Accordingly, counsel should be prepared to develop the factual record regarding the identity and age of each victim named in the record by obtaining and reviewing charging instruments, plea agreements, presentence investigation reports, victim-impact statements, and trial transcripts. Because this issue remains unsettled, counsel should also closely monitor developments in the case law addressing the proper interpretation of the child-victim carve-out.

State law offers a further point of reference. Several state trafficking vacatur statutes have carve-outs for certain offenses, including offenses against child victims. For instance, under Colorado's trafficking vacatur statute, relief does not apply to convictions of trafficking survivors for crimes such as sexual assault on a child, child abuse, sexual exploitation of children, and soliciting for commercial sexual activity with a child.[65] Similarly, Alabama and Washington do not allow relief of trafficking survivors' offenses involving child victims.[66] In the District of Columbia and New Jersey, some violent or serious offenses are ineligible for vacatur, including offenses against a child victim such as sex trafficking of a child and luring or enticing a child.[67] While these child-victim carve-outs in state statutes have not yet been construed under either the categorical or circumstance-specific approach, counsel should monitor emerging case law for guidance on the appropriate interpretation.

Separately, the Act does **not** define "victim," and that definitional gap allows counsel to argue for a narrow construction of the carve-out.[68] The TSRA sits in Chapter 237 of Title 18 (the same chapter as § 3771, the Crime Victims' Rights Act) and expressly cross-references § 3771 by providing that "[a]ny proceeding under this subsection shall be subject to section 3771."[69] Accordingly, a natural reading of "victim" in the context of the child victim carve-out is the § 3771(e) standard: "a person **directly** and **proximately** harmed as a result of the commission of a Federal offense." Typically, direct harm excludes attenuated or derivative effects, and proximate harm requires a reasonably foreseeable causal link. Where a minor appears only in an arrest report or charging instrument and no finding of fact at plea, trial, or sentencing establishes that the minor was directly and proximately harmed by the offense of conviction, counsel could argue that the

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[63] *United States v. White*, 782 F.3d 1118, 1134–35 (10th Cir. 2015).
[64] *Bastias v. United States Attorney General*, 158 F.4th 1188, 1219–20 (11th Cir. 2025).
[65] C.R.S.A. § 18-1-410.7.
[66] *See* Ala. Code 1975 § 15-27-2; RCWA 9.96.080.
[67] *See* D.C. Official Code § 22-1844; N.J.S.A. 2C: 44-1.1.
[68] Because the child-victim carve-out has not yet been judicially construed, counsel should monitor authority in the relevant circuit and district and the GAO report due three years after enactment, which will likely surface the first wave of judicial interpretations.
[69] § 3771A(e)(2).

minor is not a "victim" for carve-out purposes. For example, a child who was present at, witnessed, or was indirectly affected by an offense is likely not a "victim" under this standard because the harm that the child suffers would be tangential rather than being closely related to conduct inherent to the offense. [70]

Moreover, because the carve-out attaches to the offense of conviction, the question should be whether a child was a victim of the survivor's own offense—not whether a child was harmed by the trafficker or by a co-defendant. Vacatur eligibility generally turns on the trafficking survivor's own conduct and charges, not on the charges brought against the trafficker or any co-defendants. Some states, such as Virginia, explicitly provide in their trafficking vacatur statutes that the court may vacate an offense "regardless of whether any person other than the petitioner has been arrested for, charged with, or convicted or adjudicated delinquent of an offense related to the petitioner being a victim of human trafficking."[71]

Where the statement of facts, the plea colloquy, the verdict form, and the judgment do not attribute child-victim conduct to the survivor, counsel should argue that the recitation elsewhere in the indictment of a co-defendant's conduct against a minor does not trigger the carve-out. Counsel should also read the presentence investigation report with care, as it may sweep in a co-conspirator's reasonably foreseeable acts, including acts against a child; such a finding is not an adjudication that a child was a victim of the offense of conviction, and counsel should be prepared to say so expressly.

Separate trials add a further layer. Where the survivor and the trafficker were tried separately (e.g., where the trafficker was prosecuted in another district or in state court), findings made in the trafficker's case were not made in a proceeding to which the survivor was a party and therefore generally cannot bind the survivor. As a practical matter, however, a court may still review the related record for context. Portions of that record may also be sealed or otherwise unavailable to the survivor. Counsel should obtain the related docket where possible, identify precisely which findings were made as to whom, and be prepared to object if the government or the court treats a finding from the trafficker's separate proceeding as though it resolved the victim-identity question in the survivor's case.

C. When Is an Offense a "Direct Result" of Trafficking Victimization?

The connection between the offense and the trafficking victimization is the heart of every TSRA remedy. Although the Act uses slightly different language depending on the form of relief sought, each remedy ultimately requires the movant to establish a sufficient nexus between the trafficking and the offense.

- **Vacatur of a conviction** requires that participation in the Level A offense was a **direct result** of the movant having been a victim of trafficking.[72]

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[70] S*ee Rendon Galvis v. Murillo-Bejerano*, 564 F.3d 170, 175–76 (2d Cir. 2009); *In re Fisher*, 640 F.3d 645, 647–48 (5th Cir. 2011); *In re McNulty*, 597 F.3d 344, 352 (6th Cir. 2010).
[71] Va. Code Ann. § 19.2-327.18.
[72] § 3771A(b)(1)(A), (b)(4)(A)(ii).

- **Expungement of an arrest** requires that the conduct (or alleged conduct) leading to the arrest was **directly related to** the movant having been a victim of trafficking.[73]
- **Sentence reduction** requires that the covered prisoner committed the offense as a **direct result** of having been a victim of trafficking.[74]

In each instance, the movant bears the burden of proving the required causal connection by a **preponderance of the evidence** standard.[75]

i. Federal Causation Standards

The TSRA leaves unresolved the precise degree of causation required for relief. Neither "direct result" nor "directly related to" is defined in the statute. As a result, the precise degree of causation required remains unsettled. Rather than treating causation as a rigid doctrinal test, counsel should recognize that it is likely to be a fact-intensive, context-specific inquiry.

But the phrases "direct result" and "directly related to" fall within a familiar spectrum of federal causation standards, and Supreme Court precedent provides useful guideposts for locating where those phrases likely fall on that spectrum.

But-for causation. In *Burrage v. United States*, the Supreme Court held that the phrase "results from" in statutory language carries its ordinary meaning of but-for causation—that is, the outcome would not have occurred absent the defendant's conduct.[76] The Court also reaffirmed the default rule that statutory causation language carries but-for meaning absent a textual signal otherwise.[77] The TSRA's "direct result" formulation appears to incorporate at least this baseline requirement while also requiring a direct, closer nexus between trafficking victimization and offense conduct. At the same time, the TSRA does not require sole, exclusive, or proximate causation.

Proximate causation. Proximate causation could also provide a useful benchmark for the interpretation of "direct" because it requires a closer causal nexus than but-for causation. In *Paroline v. United States*, the Court emphasized that proximate cause requires more than but-for causation, explaining that proximate cause requires a sufficiently close connection between the conduct and the resulting harm.[78] There must be "some direct relation between the injury asserted and the injurious conduct alleged," and liability is generally foreclosed where the causal chain is unduly attenuated or dependent on fortuitous events.[79] As the TSRA does not use the words "proximate cause," counsel may argue that Congress's

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[73] § 3771A(b)(1)(B)–(C), (b)(4)(B)–(C).
[74] § 3771A(e)(1)(D).
[75] § 3771A(b)(4), (e)(1)(D).
[76] *Burrage v. United States*, 571 U.S. 204, 210–11 (2014) (citing *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346–47 (2013)).
[77] *Id.* at 212.
[78] *Paroline v. United States*, 572 U.S. 434, 444 (2014).
[79] *Id.*

choice of the more remedial term "direct result" deliberately avoided the proximate-cause limitations *Paroline* described.

Because the law is still developing, counsel should focus on presenting a compelling factual narrative demonstrating that the offense flowed naturally from the trafficking experience. When developing the evidentiary record, counsel should focus on the following considerations:

1. **The trafficking relationship:** recruitment, transportation, harboring, or maintenance of the survivor by the trafficker.
2. **The mechanisms of control and coercion:** documentation of how the trafficker controlled the survivor—physical violence, psychological coercion, debt bondage, document confiscation, drug induction, isolation, threats to family or immigration consequences.
3. **The temporal connection:** when the offense occurred relative to the trafficking—during active control, in the immediate aftermath, or during a period of continuing vulnerability resulting from the trafficking.
4. **The functional connection:** how the offense served the trafficking operation or arose from the trafficking situation—proceeds flowed to the trafficker, the offense was committed at the trafficking site, it was a means of meeting trafficker-imposed quotas, it was committed to escape the trafficker, or it occurred under trafficker-induced substance dependency.
5. **The absence of independent motivation:** affirmative evidence, to the extent available, that the survivor would not have committed the offense but for the trafficking.

ii. State Analogs

State trafficking vacatur statutes may also provide persuasive guidance (see Appendix D for a table of state and District of Columbia statutes). Most states have enacted trafficking vacatur statutes, and the states that use the "direct result" language in vacatur statutes are: New Hampshire, Montana, Georgia, District of Columbia, Kentucky, Maryland, North Dakota, Rhode Island, South Carolina, West Virginia, Pennsylvania, and Arizona.[80] The following select state statutes may provide insight into how federal courts may interpret "direct result."

New York offers among the broadest statutory nexus language; its statute asks only whether "the defendant's participation in the offense was *a result* of having been a victim" of trafficking without the word "direct" and, since a 2021 amendment, applies to *any* criminal conviction rather than only prostitution offenses.[81] New York also supplies a rebuttable presumption of the nexus from official documentation of victim status, and its courts apply a low threshold to obtain relief.[82] Counsel should

[80] RSA 633:7, VIII; MCA § 46-18-608; O.C.G.A. § 17-10-21 (Survivors First Act); D.C. Code § 22-1844; KRS § 529.160; Md. Code, Crim. Proc. § 8-302; N.D.C.C. § 12.1-41-14; G.L. 1956 § 11-67.1-17; S.C. Code § 16-3-2020(F); W. Va. Code § 61-14-9; 18 Pa.C.S. § 3019; A.R.S. § 13-909.
[81] N.Y. Crim. Proc. Law § 440.10(1)(i) (nexus satisfied where "the defendant's participation in the offense was a result of having been a victim" of trafficking; expanded in 2021 to reach any criminal conviction, not only prostitution offenses).
[82] *Id.*

argue that the TSRA's "direct result" language, construed in light of its remedial purpose, should be read at least as generously as New York's "a result of" standard.

Maryland uses the same "direct result" phrasing as the TSRA and supplies the most useful *interpretive* model, because its statute directs courts to weigh a set of factors when deciding the nexus: the length of time between the offense and the trafficking, the dynamics of the relationship between the survivor and the trafficker, and any other relevant evidence.[83] Two of those factors are especially valuable. The "length of time" factor confirms that a temporal gap between the trafficking and the offense does not defeat the nexus; it is one consideration to be weighed, not a bar. This would directly support the expungement or vacatur of offenses which may have been committed after the victim was actively trafficked. The "relationship dynamics" factor confirms that psychological and coercive-control mechanisms, not just physical compulsion, establish the connection. Counsel should urge a federal court to organize its "direct result" analysis around these same considerations.

Georgia's Survivors First Act likewise uses the "direct result" standard, applies to *any* offense of conviction, applies a preponderance standard, and creates a rebuttable presumption of victim status from official documentation, illustrating that "direct result" and broad offense coverage coexist comfortably.[84]

By contrast, **California** provides a useful contrasting example on the nexus *standard*: it requires clear and convincing evidence and a showing that the trafficking negated the requisite intent.[85] The TSRA adopts neither limitation, so California's demanding nexus test shows how much more favorable the TSRA's preponderance, no-intent-requirement formulation is.

Although there is relatively little federal case law interpreting that phrase in the trafficking context, courts may also look to analogous criminal-law decisions. For example, **Pennsylvania** has interpreted "direct result" in the criminal restitution context to require a direct causal connection consistent with but-for causation, [86] whereas **New Hampshire** has treated "direct result" in the criminal law context as substantially equivalent to proximate or legal cause.[87]

D. Types of Relief

The Act provides three court-ordered remedies under § 3771A—vacatur, expungement, and sentence reduction—and a fourth, distinct protection in the form of an affirmative duress defense under § 28. To

[83] Md. Code Ann., Crim. Proc. § 8-302(b) (vacatur where "the person's participation in the offense was a direct result of being a victim of human trafficking"), § 8-302(d)(2) (directing the court to consider the length of time between the offense and the trafficking, the dynamics of the relationship between the movant and the trafficker, and any other relevant evidence).
[84] Ga. Code Ann. § 17-10-21 (The Survivors First Act) (vacatur where the offense was committed "as a direct result of" being a trafficking victim; applies to any offense; preponderance standard; rebuttable presumption of victim status from official documentation).
[85] Cal. Penal Code § 236.14(a).
[86] *Commonwealth v. Yahya Asaad Muhammed,* 219 A.3d 1207, 1213–14 (Pa. Super. Ct. 2019).
[87] *State v. Hutchinson*, 161 N.H. 765, 767–68 (2011).

recap, the matrix below summarizes which remedies are available for which categories of offense; the subsections that follow describe each remedy in detail.

Offense Category	Vacatur	Expungement	Sentence Reduction	Duress (§ 28)
Level A offense Non-violent federal offense	✓ Yes	✓ Yes	✓ Yes If "covered prisoner"	✓ Yes
Level B offense Federal violent crime (no child victim)	✗ No Vacatur unavailable for violent crimes	⚠ Conditional Only if acquitted, dismissed, not pursued, or reduced to Level A	✓ Yes If "covered prisoner"	✓ Yes

i. Vacatur

Vacatur is available only for a **Level A** conviction.[88] If the court grants the motion, it must **immediately** (§ 3771A(c)(1)):

- vacate the conviction for cause;
- set aside the verdict and enter a judgment of acquittal; and
- enter an expungement order directing that all references to the arrest, the institution of criminal proceedings, and the results of those proceedings be expunged from all official records.

A vacated conviction is not regarded as a conviction under federal law, and the movant is restored to the status occupied before the arrest or the institution of proceedings.[89] Vacatur does **not** require a court to amend or remove any fine or restitution order.[90]

Sections IV.B and IV.C address the supporting documents, filing mechanics, hearings, and the terms of a grant of vacatur. Section IV.E addresses denial, re-filing, and appeal.

[88] § 3771A(b)(1)(A).
[89] § 3771A(c)(3).
[90] § 3771A(c)(2).

ii. Expungement

Expungement of arrest records is available for arrests for **Level A** offenses (§ 3771A(b)(1)(B)) and for **Level B** offenses where the charge-disposition conditions are met (§ 3771A(b)(1)(C)). If the court grants the motion, it must **immediately** enter an expungement order directing that all references to the arrest, the institution of any criminal proceedings, and the results of those proceedings be expunged from all official records.[91]

An expunged arrest is not regarded as an arrest under federal law, and the movant is restored to the status occupied before the arrest or related proceedings.[92] (Expungement of the arrest also follows automatically as part of a grant of vacatur.)[93]

Sections IV.B and IV.C below address the supporting documents for an expungement motion, where and how to file, hearings, and the scope of an expungement order. Section IV.E addresses denial, re-filing, and appeal.

iii. Sentence Reduction

For a **covered prisoner**, the court that imposed the sentence may **reduce the term of imprisonment** for a Level A or Level B offense.[94] A reduction may be made on the prisoner's motion or on the court's own motion, after notice to the Government, and the court must consider (1) the sentencing factors in 18 U.S.C. § 3553(a), (2) the nature and seriousness of any danger to any person, and (3) the community and any crime victims.[95] The court may grant the reduction if it finds, by a preponderance of the evidence, that the prisoner committed the offense as a direct result of having been a victim of trafficking.[96]

Sentence-reduction proceedings are subject to the crime victims' rights provisions of 18 U.S.C. § 3771.[97] In addition, the Government must conduct a **particularized inquiry** into the facts and circumstances of the original sentencing to assess whether a reduction would be consistent with the section.[98]

Section IV.D below addresses how to develop trafficking victimization as a mitigating factor and how to prepare, file, and litigate a motion for sentence reduction, including client background and mitigation research. Section IV.E addresses denial, re-filing, and appeal, and Section V.B.i addresses sealing of the motion.

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[91] § 3771A(d)(1).
[92] § 3771A(d)(2).
[93] § 3771A(c)(1)(C).
[94] § 3771A(e)(1).
[95] § 3771A(e)(1)(A)–(C).
[96] § 3771A(e)(1)(D).
[97] § 3771A(e)(2).
[98] § 3771A(e)(3).

iv. Human Trafficking Duress Defense

Separate from the post-conviction remedies, the Act creates an affirmative **duress defense** at 18 U.S.C. § 28, available at trial in a prosecution for a **"covered federal offense"**—that is, a Level A or Level B offense as defined in § 3771A.[99] Defendants may establish duress by demonstrating that they were a victim of trafficking at the time the offense was committed.[100]

Such demonstration is purely *status-based*: the movant needs to prove by a preponderance of the evidence that, at the time of the conduct, they fell within the § 7102 definition of a victim of trafficking. The statute attaches no additional predicate—no proof of a specific threat, no showing that escape was foreclosed, and, notably, no express requirement that the offense be causally linked to the trafficking. This is a significant departure from the traditional federal common law duress defense, which generally requires the defendant to show an immediate threat of death or serious bodily injury, a well-grounded fear that the threat would be carried out, and no reasonable opportunity to escape or otherwise avoid the harm—a fact-intensive inquiry tied to the circumstances of the specific offense.[101]

Because § 28 creates an affirmative defense rather than a sentencing consideration, a successful assertion results in an acquittal: if the factfinder credits the defense, the defendant cannot be convicted of the covered federal offense, and double jeopardy bars the government from re-charging the same offense. The defense, however, applies on a count-by-count basis; a factfinder may accept the § 28 duress defense on certain counts while rejecting it as to others. The § 28 duress defense includes several protections:

- **Sealing.** In any proceeding in which the duress defense is raised, any record or part of the proceeding related to the defense shall, on motion, be placed under seal until a conviction is entered for the offense.[102]
- **Preservation of post-conviction relief.** A failure to assert the defense—or an unsuccessful assertion of it—does **not** preclude the individual from later raising trafficking-victim status and duress as a **mitigating factor** at sentencing or in any post-conviction proceeding.[103]
- **No disqualification from federal aid.** A failure to assert, or a failed assertion of, the defense may **not** be used to disqualify the individual from participating in any federally funded program that aids victims of trafficking.[104]

Section IV.F below addresses how to raise the defense at each stage of a pending prosecution—in plea negotiations, by pre-trial motion, and as an affirmative defense at trial—together with the burden-of-proof question, which remains unsettled, and the consequences of a successful or unsuccessful assertion.

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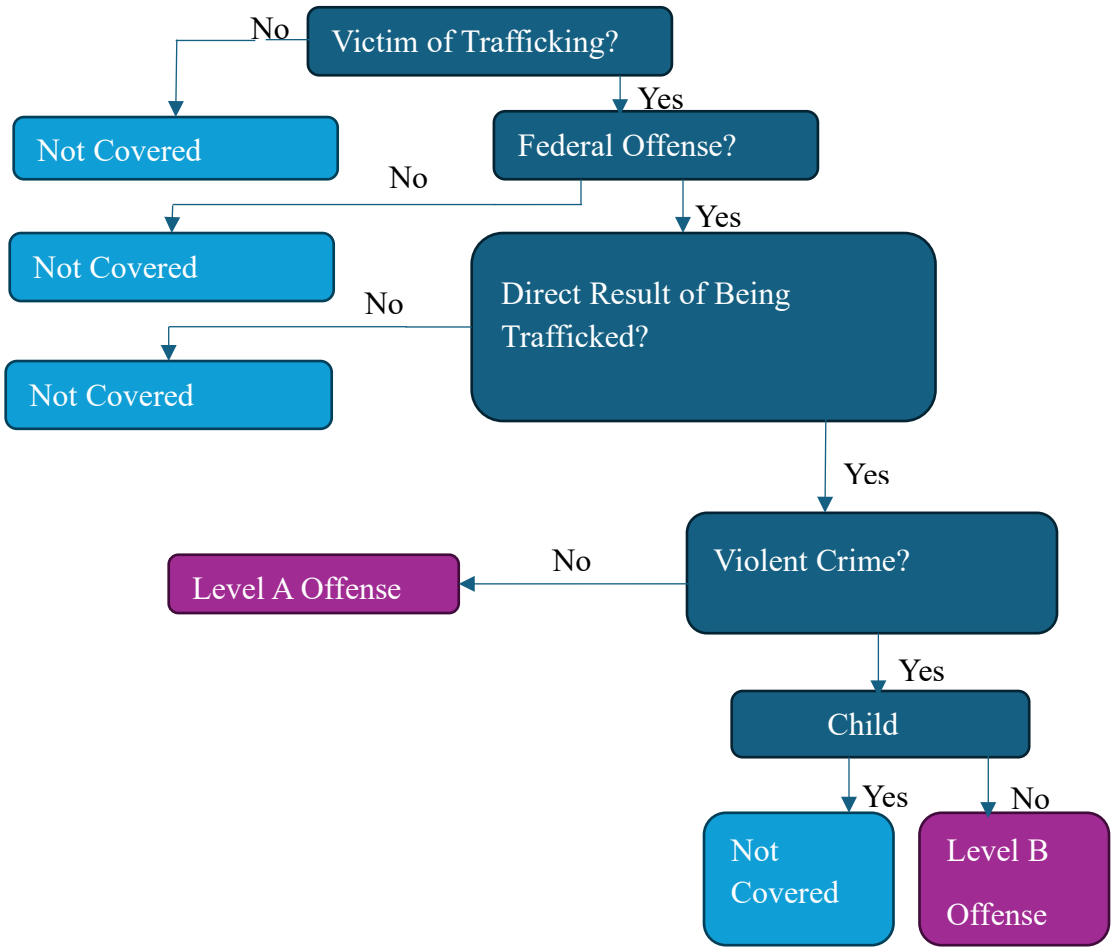
[99] § 28(a)(1).
[100] § 28(b).
[101] *See United States v. Bailey*, 444 U.S. 394 (1980); *Dixon v. United States*, 548 U.S. 1 (2006).
[102] § 28(c).
[103] § 28(d).
[104] § 28(e).

IV. Practical Guide

This section provides practical guidance and tips to counsel on how the TSRA can be used to advocate for a client at each successive stage of the criminal process, from before a charge is filed through post-conviction proceedings. Because the relief available depends on the procedural posture of the case, counsel should first assess eligibility and then pursue the stage-appropriate form of relief described below.

A. Determining Whether Your Client is Eligible

Counsel must conduct a threshold eligibility assessment to determine whether any of the relief set forth in the TSRA is available to their client. This step applies regardless of the client's current procedural posture and should be completed at the outset of representation. The specific steps are described in detail above in Section III, according to this flow chart below.



Even if a client is found to be eligible to seek relief under the TSRA, relief is not guaranteed. While many states have enacted automatic record-clearing or sealing laws under which a record is cleared once the statutory criteria are met, Section 3771A(b)(4) of the TSRA provides that a court "may" grant a motion to vacate or expunge if it makes the required findings; it does not provide that the court "shall" do so.

i. Confirm the Conviction or Arrest Is Federal

The TSRA applies only to federal convictions and federal arrests. State convictions and arrests (even those arising from the same trafficking situation) are governed by state criminal codes and applicable state-specific relief statutes. Counsel whose clients have both federal and state records should pursue relief under the TSRA for the federal record and should consult state-specific resources for state convictions.[105] Counsel should carefully consider the order in which to file for relief if there are charges in multiple jurisdictions. Relief granted in one jurisdiction can be used as supporting evidence when filing for relief in other jurisdictions.

ii. Confirm the Client Qualifies as a "Victim of Trafficking"

The TSRA incorporates the definition of "victim of trafficking" from Section 103 of the TVPA, 22 U.S.C. § 7102, encompassing victims of sex trafficking and severe forms of labor trafficking as defined under federal law. *See* Section III.A. Per § 3771A(b)(5) of the TSRA, the court will consider any affidavit from an anti-trafficking service provider or clinician, or more broadly, any supporting evidence that is of sufficient credibility and probative value, including sworn testimony from a law enforcement officer.

No certification is needed. Prior law-enforcement identification, TVPA certification, or an approved T visa is not required.[106] This is especially important for U.S. citizen and lawful-permanent-resident clients, for whom there is no certification to obtain in the first place. The Justice for Victims of Trafficking Act of 2015 amended the TVPA to clarify that U.S. citizens and LPRs who are trafficking victims need not obtain certification from HHS to access specialized services or federal benefits;[107] consistent with that amendment, HHS's Office on Trafficking in Persons does not issue Certification Letters (which are otherwise provided to adult survivors) or Eligibility Letters (which are otherwise provided to minor survivors) to U.S. citizens.[108] However, in certain states, such as New York, state agencies may make such a determination.[109]

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[105] See Appendix C for a list of state vacatur resources by state and Appendix D for a table of state and District of Columbia statutes.
[106] 18 U.S.C. § 3771A; *see* Section III.A.i.
[107] Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22; HHS Office on Trafficking in Persons, *Victim Determinations for U.S. Citizens and Lawful Permanent Residents who have Experienced Human Trafficking Information Memorandum* (Jan. 16, 2025), https://acf.gov/sites/default/files/documents/otip/IM-on-Trafficking-Determinations-for-USC-and-LPR.pdf (U.S. citizens and LPRs are not required to obtain HHS certification to access services or federal benefits).
[108] HHS Office on Trafficking in Persons, *Victim Determinations for U.S. Citizens and Lawful Permanent Residents who have Experienced Human Trafficking Information Memorandum* (Jan. 16, 2025), https://acf.gov/sites/default/files/documents/otip/IM-on-Trafficking-Determinations-for-USC-and-LPR.pdf ("OTIP does not issue Certification or Eligibility Letters to U.S. citizens or lawful permanent residents who have experienced human trafficking").
[109] *See* Section 483-CC of New York State Social Services Law.

Regardless of certification, any judicial proceeding and law enforcement record that may help to establish the client as a victim of trafficking should be collected, such as:

- State and federal court damages award to the client (e.g., resulting from civil causes of action for victims of human trafficking)
- Orders and records of vacatur and/or expungement of the client from other states or jurisdictions pursuant to similar post-conviction statutes
- Traffickers' own criminal court records
- Victim's own police reports, charging documents, or case transcripts that identify them as a victim of trafficking

For clients who are foreign nationals, additional evidence for certification may be available, such as:

- Certification or Eligibility Letter from Department of Health and Human Services and similar state-level agencies that certify a survivor as a victim of human trafficking
- A receipt notice of a T visa application, or approved T visa
- Continued Presence approval documentation
- U visa accompanying certification from a law enforcement agency showing cooperation in investigation of the trafficking-related crime (I-918 Supplement B)

iii. Categorize the Offense(s) as Level A, Level B, or Ineligible

The TSRA creates two categories of federal offenses: **Level A** (non-violent crimes) and **Level B** ("violent crimes" where the victim was not a minor), which is explained in detail in Section III.B above.

Classify each count separately, and start from Level A. Run the analysis count-by-count; a client with several convictions may obtain vacatur on the non-violent counts even if one or more counts are Level B. A non-violent offense involving a child is still Level A. Focus the argument on showing the offense is not a crime of violence under § 16(a); if it is not, the child victim exclusion cannot apply.[110]

Argue remedial construction on any genuine ambiguity. The TSRA is remedial legislation aimed at relieving survivors from forced criminality; classification ambiguities should be resolved to maximize eligibility. State trafficking-relief statutes reinforce the point by defining eligibility broadly.[111]

If an offense really is Level B, pivot rather than stop. Level B offenses remain eligible for sentence reduction and for arrest expungement in the limited circumstances of § 3771A(b). Where a Level B charge

[110] 18 U.S.C. § 3771A(a)(6)(B).
[111] *See, e.g.*, open-category state statutes reaching "any non-violent offense" (e.g., Nev. Rev. Stat. § 179.247; Colo. Rev. Stat. § 18-1-410.7; Ky. Rev. Stat. § 529.160; Mont. Code Ann. § 46-18-608); A.B.A., The Survivor Reentry Project, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*, at 10–11 (eligibility defined as "All Offenses," a "Specific Category," or by availability of a coercion defense).

was acquitted, dismissed, not pursued, or reduced to Level A, the client may be eligible for expungement of the arrest.[112]

Research the controlling circuit and preserve the issue. Many offenses already have a definitive "crime of violence" determination in each circuit. Cite favorable precedent; where the circuit is unsettled or contrary, brief the categorical argument fully and preserve it for appeal.[113]

No time bar. The TSRA applies to convictions and arrests occurring before, on, or after enactment, so even decades-old convictions are eligible; classification, not timing, is the gatekeeper.[114]

iv. Confirm the "Direct Result" Nexus

Vacatur and expungement require that the offense was committed "as a direct result" of the client's trafficking victimization, established by a preponderance of the evidence. The statute does not expressly state a standard of proof for sentence reduction motions, and until courts address this question, counsel should be prepared to argue that the preponderance standard applies by analogy. Counsel should be prepared to advocate for a broad interpretation of the nexus requirement, including that "as a direct result" encompasses not only offenses arising from direct physical compulsion, but also from psychological coercion, debt bondage, and trauma-based dependency. For a full discussion of the nexus standard and how to build the evidentiary record, including guidance drawn from analogous state statutes, see Section III.C.

Argue expressly for a broad construction. Trafficking coercion is psychological as much as physical; a nexus test limited to direct physical compulsion would defeat the Act's remedial purpose. Press this in every motion and anchor it in the statute's forced-criminality findings.[115]

Use the "but for" frame. Show that but for the trafficking victimization, the client would not have committed the offense. This is the most generous articulation of the causal test and the one to put to the court.[116]

Argue against a temporal cutoff. Counsel should argue that the nexus is not limited to offenses committed while the client was under active control. Address the time between trafficking and offense, the relationship dynamics, and any other relevant evidence, and preempt any facts that seem inconsistent with the nexus by explaining them in context.[117] The statute's past-tense "having been a victim," and

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[112] 18 U.S.C. § 3771A(b) (Level B arrest-expungement conditions); see Sections III.A and III.B.
[113] *See* Section IV.B.vi and IV.A.iii (monitoring developing TSRA precedent); classification precedent is circuit-specific.
[114] 18 U.S.C. § 3771A(i) (the section applies to any conviction or arrest occurring before, on, or after the date of enactment).
[115] Pub. L. No. 119-73, § 5 (findings); 22 U.S.C. § 7102(3) (non-physical coercion).
[116] Free to Thrive, *California Criminal Vacatur Practice Guide 29 (2024)*, https://www.lls.edu/media/loyolalawschool/academics/clinicsexperientiallearning/sji/publicationsandreports/Free%20to%20Thrive%20California%20Vacatur%20Practice%20Guide.pdf.
[117] Md. Code Ann., Crim. Proc. § 8-302(d)(2).

Maryland's "length of time" factor, both support relief for survival and aftermath offenses committed after escape.[118]

On an arrest-only motion, invoke the looser "directly related to" standard. For arrest expungement the statute requires only that the conduct was "directly related to" the victimization — broader than the "direct result" test for convictions. Hold the government to that more generous language.[119]

Emphasize the favorable burden. Unlike certain states, the standard is preponderance, not clear-and-convincing evidence or proof that the client "lacked the requisite intent." Resist any attempt to import a heightened or intent-based nexus test.[120]

Draw the causal line explicitly for non-obvious offenses. For convictions that are not facially trafficking-related (e.g., fraud, theft, or drug-related convictions), spell out the chain from the means of control to the offense; support it with a service-provider or clinician affidavit or expert testimony on trafficking dynamics.[121]

Cite the broadest state analogs. Maryland's multi-factor "direct result" test and Georgia's Survivors First Act serve as persuasive authority that "direct result" should be read broadly.[122]

Keep the nexus analytically separate from status and classification. Brief each element on its own; a strong victim-status record plus a recognized coercion pattern will usually carry the nexus, but the court must make a discrete nexus finding, so address it expressly rather than by implication.[123]

v. Determine Stage of Criminal Proceeding and Identify the Appropriate Pathway for Relief

Once the eligibility assessment is complete, identify which path applies and, if multiple pathways are available, determine the optimal sequencing. The following considerations should guide that analysis:

- **Pre-Trial**: The pre-trial stage includes the period of time after an individual has been arrested, but before they have been sentenced following a finding of guilt by plea or after trial. It can include charges where the prosecutor files a complaint stating who is accused of the crime, what crime, and when. During the pre-trial stage, both the defendant and the prosecutor will gather and share information about the matter, and try to reach an agreement or plan for the defendant. There may be hearings or motions filed with the court. During this stage, the TSRA may provide several benefits:

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[118] 18 U.S.C. § 3771A(b) ("having been a victim"); Md. Code Ann., Crim. Proc. § 8-302(d)(2)(i); Coalition to Abolish Slavery & Trafficking (CAST), *Brief Guide on Vacatur Relief Under CA Penal Code §236.14*, at 5 (Feb. 2024).
[119] 18 U.S.C. § 3771A(b) ("directly related to"); see Section III.C.
[120] 18 U.S.C. § 3771A(b) ("preponderance of the evidence"); *compare* Cal. Penal Code § 236.14(a).
[121] *See* Free to Thrive, supra note 116, at 29; Section IV.A.iv.
[122] N.Y. Crim. Proc. Law § 440.10(1)(i); *People v. L.F.*, 2026 N.Y. Slip Op. 03186; Md. Code Ann., Crim. Proc. § 8-302(d)(2); Ga. Code Ann. § 17-10-21.
[123] 18 U.S.C. § 3771A(b) (court must find the nexus element); *see* Section IV.A.iv (addressing each required element expressly).

- A client who has been arrested, but never charged, convicted, or sentenced may seek expungement of the arrest (**Sections IV.B and C**).
- A client who has been charged but not yet convicted may assert the human trafficking defense, including by moving to dismiss, or negotiating a favorable disposition or lesser charge.

- **Trial:** If the prosecutor and the defendant are unable to reach an agreement, and the case has not otherwise been dismissed, then the matter will go to trial. Under the TSRA, the client may assert the affirmative defense of duress to the jury, asking for a finding of not guilty. This is available to the client at the close of the government's case, at the close of all the evidence, and after a post-guilty verdict. (**Section IV.F**).
- **Post-Conviction:** If the client is found guilty by a jury or pleads guilty, the judge will sentence the client and determine what the punishment will be. After sentencing, the client will have to serve the sentence, and/or may have options to appeal or challenge the decision or sentence. During post-conviction, the client may have various avenues of relief:
  - A client who has pleaded guilty but has not yet been sentenced may seek to withdraw a guilty plea upon showing a "fair and just reason" under Fed. R. Crim. P. 11(d)(2)(B). One of the factors a District Court considers in determining whether a guilty plea should be withdrawn is whether a client asserts a claim of innocence. The now-available TSRA duress defense is a strong ground for plea withdrawal, especially where it was not available at the time of the plea. If the court permits withdrawal, the client may then raise the duress defense at trial.[124]
  - A client who has been convicted and sentenced, and is still serving a sentence, may seek both sentence reduction and vacatur, which may be pursued concurrently or in sequence. (**Section IV.D**).
  - A client who has already completed their sentence may seek to vacate their conviction and expunge their arrest record. (**Sections IV.B and C**).
- A client who takes a favorable plea deal at the pre-trial or trial stage should be advised that even a favorable disposition may result in a federal conviction that is eligible for subsequent relief under Sections IV.B through IV.D. The TSRA is explicit that a prior failure to assert the duress defense does not preclude post-conviction relief.[125]

B. Prepare Your Filing Documents for Vacatur and Expungement Motions

i. Motion

A motion for expungement, vacatur, and/or sentence reduction must:

[124] Given the TSRA's recent enactment, counsel should especially consider this option where the plea was entered around the enactment timeframe without counsel's awareness of an available TSRA defense.
[125] 18 U.S.C. § 28(d).

- Be in writing and conform to any local rules for motion filings in the relevant jurisdiction and court;
- Set forth the legal standard (preponderance of the evidence);
- State the underlying offense(s) and the arrest(s) for which expungement is sought and show that the defendant was arrested for Level A and/or Level B offenses;
    - For Level B offenses, the motion also needs to state the client was: (1) acquitted of the Level B offense; (2) the Government did not pursue, or moved to dismiss, the criminal charges; or (3) the charges for the Level B offense were reduced to a Level A offense and the client was acquitted of the Level A offense, the Government did not pursue or moved to dismiss the Level A criminal charges, or any subsequent conviction of the Level A offense was vacated.
- Establish that the client is a victim of trafficking;
- Establish that the conduct leading to the arrest was directly related to the client having been a victim of trafficking;
- Present the § 3553(a) mitigation argument (for sentence reduction);
- Describe any supporting evidence;
- Include copies of documents showing the client is entitled to relief; and
- Be filed under seal.[126]

Because federal judges may be encountering this statute for the first time, the motion should not assume familiarity with the TSRA. Counsel should include a concise statutory overview, the relevant definitions, and the standard of proof in the motion itself. Sample motions and petitions are listed in Appendix A.

ii. Clinician/Provider Affidavit

The TSRA provides for a specific and important evidentiary mechanism for the client to establish they are a victim of trafficking: an affidavit or sworn testimony from an anti-human trafficking service provider or clinician "shall be sufficient evidence" to support the motion if (i) the court finds it credible and (ii) no other evidence is readily available.[127] In other words, the submission of this affidavit or sworn testimony and a subsequent finding by the court that it is credible can be enough for the court to vacate a conviction or expunge an arrest.

- **"Service provider" and "clinician" are not strictly defined.** Read the term broadly; qualifying affiants may include providers of housing, counseling, legal, medical, and mental-health services. Multiple affidavits from different providers may be submitted and are often stronger than one.[128]

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[126] § 3771A(h)(1). Note, the motion does not need to attach a filing fee. The TSRA explicitly provides that no fees may be charged for filing a motion under § 3771A(g).
[127] § 3771A(b)(5)(B).
[128] A.B.A. / SRP Guide, *supra* note 111, at 22 (construing "service provider" and "clinician" broadly and noting that multiple affidavits may be submitted).

- **Establish the affiant's foundation.** The affidavit should set out the affiant's qualifications, the nature and duration of the relationship with the client, the basis for the affiant's assessment, and the specific trafficking indicators the affiant observed or elicited, so the court can make the required credibility finding. Where the matter proceeds to a hearing or trial, the same provider or clinician can testify live, which is typically more persuasive than a written declaration and is expressly contemplated by the statute. Sample provider and clinician affidavits are listed in Appendix A.

iii. Survivor Declaration

Alongside (or, where no provider is available, in place of) the service-provider affidavit, the client's own first-person declaration may lend credibility when accompanied by specific, detailed narrative accounts even without corroboration.

A survivor declaration: a written statement (submitted under penalty of perjury) by the client describing in their own words (1) their personal background and any specific vulnerabilities that made their trafficking victimization more likely; (2) the trafficking situation, the means of control the trafficker used, and how the arrest arose directly from that situation; and (3) their post-trafficking life, which can include information about their healing, aspirations, accomplishments, and harms they have faced as a result of the criminal record. Sample declarations and affidavits are listed in Appendix A, and a client declaration outline is listed in Appendix B.1.

Two federal immigration authorities, though not controlling on a § 3771A finding, are directly on point and give counsel persuasive federal support for how a survivor's evidence should be weighed:

- **The "any credible evidence" standard.** In the T visa context, federal adjudicators evaluate victim status under an "any credible evidence" standard and are instructed to consider all evidence describing the impact of trafficking, recognizing that victims may be unable to provide documentation that would otherwise be available.[129] This mirrors the TSRA's own premise in § 3771A(b)(5) that a credible sworn account suffices where other evidence is not readily available.
- **Trauma-informed credibility.** Federal guidance directs that, in assessing the credibility and sufficiency of a survivor's personal statement, officers must consider the impact of trauma and victimization, and be mindful of the cognitive, emotional, sensory, and physical ways trauma presents — including that a survivor's recollection may shift over time.[130] Counsel should cite this framework to pre-empt any argument that gaps, non-linear chronology, or evolving detail in the

[129] USCIS Policy Manual, Vol. 3, Pt. B, Ch. 3 (Documentation and Evidence) ("any credible evidence" standard; adjudicators consider all evidence of the ongoing impact of trafficking using a victim-centered approach).
[130] *Id.* (in evaluating the credibility and sufficiency of the personal statement and other evidence, officers must consider the impact of trauma and victimization, including the cognitive, emotional, sensory, and physical ways trauma may present); Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34864 (Apr. 30, 2024) (codified at 8 C.F.R. pt. 214) (clarifying the "any credible evidence" standard and instructing that, because of the nature of victimization, victims may be unable to provide otherwise-available documentation and that trauma may affect recollection, which may shift over time).

client's account undercut credibility. The practice point follows directly: address memory gaps and apparent inconsistencies openly in the declaration and explain them as ordinary features of traumatic memory, rather than concealing them.

For many survivors of trafficking, documentary evidence may be difficult to obtain given the hidden nature of trafficking, and survivors may have had their documents confiscated or been denied access to services which produce records at the time of trafficking. In addition, the complex trauma survivors may experience greatly affects the ability to recall specific timelines, locations, or details that may allow a survivor to present a credible and coherent narrative in support of their motion for expungement. This provision allows a survivor to obtain evidence about their trafficking after the experience and where contemporaneous evidence may not exist.

Before Sitting Down with the Client

Preparation protects the client and strengthens the record.

- **Gather the records first.** Obtain the client's arrest and conviction records, dockets, and dispositions (*See* **Section IV.B.vi**) before the substantive interview, so counsel can orient the conversation and confirm dates without asking the client to supply basic facts they may find painful or hard to recall.[131]
- **Know what the declaration must establish.** Review the statutory elements so the interview is targeted: victim status; the direct-result nexus for each offense; and, for arrest expungement, the disposition of each case. Prepare to capture post-trafficking history as well.
- **Reuse existing narratives.** If the client has already told this story in another proceeding, such as a T visa declaration, a U visa statement, a family-law filing, civil claims against the trafficker, victim impact statement, or state-level vacatur or expungement motion, start from that narrative. Reusing it reduces re-traumatization and, importantly, keeps the client's account consistent across the public record; coordinate with any immigration or family counsel so the facts align.[132]
- **Plan the logistics.** Arrange a comfortable, private setting with enough time and no hard stop; plan for breaks; arrange a qualified interpreter if needed; and think through who, if anyone, the client wants present. Read a trauma-informed interviewing resource before beginning (see the resource list below).[133]

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[131] See Section IV.B.vi (obtaining records); CSE Institute, *A Legal Guide for Vacatur Motions in Pennsylvania* (Jan. 2024), at 43 (prepare for the interview in advance, conduct it using trauma-informed care, and draft the affidavit for credibility; go at the client's speed).

[132] Coalition to Abolish Slavery & Trafficking (CAST), *Brief Guide on Vacatur Relief Under CA Penal Code §236.14*, at 9 (Feb. 2024) (reuse previously drafted narratives to promote consistency across the public record and to minimize re-traumatization; coordinate with counsel handling other matters).

[133] CSE Institute, *A Legal Guide for Vacatur Motions in Pennsylvania* (Jan. 2024), at 43 (prepare for the interview in advance, conduct it using trauma-informed care, and draft the affidavit for credibility; go at the client's speed).

Tips for interviewing the client

Approach the interview as a series of relationship-building meetings, not a single interrogation. Most survivors will not tell the story in one sitting or in chronological order.[134] A sample client questionnaire and interviewing guidance are listed in Appendix B.1.

- **Open with an orienting explanation.** Tell the client, in plain terms, who counsel is, what counsel is trying to help with, that some questions may feel uncomfortable and that discomfort is not the goal, that they may decline any topic, that they control the pace, and that they can take a break or stop at any time. Then invite them to begin wherever feels comfortable.[135]
- **Mirror the client's own language.** Many survivors do not identify themselves as "victims" and may refer to a trafficker as a boyfriend, manager, or employer. Use the client's words — "during the time you were with [name]" — rather than imposing legal labels, and avoid any snap judgment about whether someone "looks like" a trafficking victim.[136]
- **Start broad, then focus.** Begin with a broad invitation to describe their life in their own words; note the language and the gaps; then return with gentle, specific follow-ups. Use concrete orienting anchors such as the birth of a child, a move, a major public event, and especially the arrests, which are usually the most fixed, verifiable dates to assemble a non-linear account into a timeline.[137]
- **Treat gaps and inconsistencies as ordinary.** Trauma fragments memory, and accounts commonly shift as the client processes them over time. If the client says something that seems inconsistent, note it non-accusatorily and frame the question as helping sort out the sequence, not catching a lie; do not infer anything about credibility from demeanor.[138]
- **For non-citizen clients, immigration counsel** should be consulted early in the process, and most certainly during the preparation of the declaration. A declaration may have adverse immigration consequences if it conflicts with the client's immigration record or contains statements that could support grounds for inadmissibility or deportation.

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[134] *See* A.B.A. / SRP Guide, supra note 111, at 27 (attorneys handling trafficking vacatur cases report that it usually takes several interviews before even the broad parameters of the story are settled, and survivors may not tell the story in a linear way).

[135] Amara Legal Center, *Vacatur of Convictions for Survivors of Trafficking: District of Columbia Toolkit* (2001), Attachment A (provided by Freedom Network USA as DC Vacatur Toolkit) (sample interview introduction; the client may decline any topic, take breaks, and end the meeting at any time, and ultimately controls the conversation).

[136] *Id.* at Attachment A n.18 (mirror the client's language; many clients do not self-identify as victims and may refer to a trafficker as an ex-boyfriend); A.B.A. / SRP Guide, *supra note 111*, at 3 (avoid snap judgments about who is or is not a trafficking victim).

[137] DC Vacatur Toolkit, *supra* note 134, Attachment A (use biographical facts and orienting dates — including the arrests, as the most concrete, verifiable anchors — to construct a chronology; point out any conflicting information in a non-accusatory way).

[138] A.B.A. / SRP Guide, *supra* note 111, at 26–27 (survivors may not store memories in a linear manner, traumatic memories are scattered, and it usually takes several interviews); see also National Institute of Justice, *A Practical Guide to Interviewing Potential Human Trafficking Victims* (Nov. 20, 2024), https://nij.ojp.gov/topics/articles/practical-guide-interviewing-potential-human-trafficking-victims#note8 (interviewers should refrain from credibility judgments based on demeanor; accounts commonly change as victims process their experience over time).

What the Declaration Should Include

The client declaration, at minimum, should include three main sections: 1) personal background prior to trafficking; 2) beginning of and experience during trafficking; and 3) escape from and post-trafficking experience. The section of the declaration covering the active trafficking will be the core facts for supporting the motion, while the other two supply context and support the equities.[139] Counsel should ensure that the declaration and any supporting affidavits are as complete as possible, and especially in situations where the government opposes the relief sought. The court may treat the declaration as the client's full testimony and only allow cross-examination and redirect of the client during the hearing. The court may also decline to hear other witnesses. The following checklist provides guidance on the types of information to cover in the declaration, though not all will be required in every context.

- **Personal background and vulnerability (pre-trafficking).** The client's age, origin, family situation, and education; and the specific vulnerabilities a trafficker exploited, such as youth, poverty, homelessness or housing instability, prior abuse, immigration status, disability, isolation from family, or substance use. This context makes the coercion comprehensible and supports any interest-of-justice showing.
- **Recruitment and entry.** How the client came to be under the trafficker's control; any promises, deception, or false pretenses used to draw them in (fraud); and the nature of the relationship as the client understood it at the outset.
- **The means of control (this establishes victim status).** The concrete force, fraud, or coercion used, such as physical violence and specific incidents of it; threats against the client or the client's family; debt, quotas, and control of money; confiscation of identity documents or wages; surveillance, isolation, and restricted movement; supplying or withholding drugs; and psychological manipulation, including threats of arrest or deportation. Specific, sensory detail about particular incidents is far more credible than general statements, so capture it where the client can comfortably provide it. For a minor trafficked for sex, record the client's date of birth and age at the time — age alone establishes status, without any need to prove force, fraud, or coercion.[140]
- **The offense(s) and the nexus (this establishes "direct result").** For each arrest or conviction, what happened, the client's role, and — critically — how the offense connected to the trafficking: whether the trafficker directly ordered or coerced it, whether it met a survival need created by the trafficking, whether it flowed from a trafficking-induced condition such as addiction, or whether it occurred in the aftermath. Tie each offense to a specific control mechanism rather than a general

[139] A.B.A. / SRP Guide, *supra* note 111, at 20–21 (separating the timeline into pre-trafficking, trafficking, and post-trafficking; in most states the only strictly required evidence pertains to the trafficking period itself); Coalition to Abolish Slavery & Trafficking (CAST), *Brief Guide on Vacatur Relief Under CA Penal Code §236.14*, at 8-9 (Feb. 2024) (three focus areas: background, trafficking victimization, and life post-trafficking).

[140] 22 U.S.C. § 7102 (force, fraud, or coercion; coercion includes non-physical means); *see* Section III.A.i; A.B.A. / SRP Guide, *supra* note 111, at 24.

claim of victimization, and address any facially unrelated offense (a fraud, theft, or drug charge) expressly. Record any alias the client gave at booking and any misrepresentation of age.[141]

- **Escape or exit and its aftermath.** How the client escaped victimization, and the immediate aftermath — often a period of instability, which is normal and need not be minimized.
- **Post-trafficking life and the harm from the record.** The client's life since — recovery, employment, education, family, community involvement, services engaged — and the concrete barriers the criminal record now creates: lost or foreclosed jobs, housing denials, licensing bars, immigration consequences, custody effects, and stigma. It is entirely acceptable for the declaration to say the client is still struggling or still rebuilding; no statute requires a particular rehabilitation outcome, and honesty here reads as credible.[142]
- **Corroborating evidence.** When drafting, flag the documents and witnesses that can be attached or referenced — official documentation of victim status, a service-provider or clinician affidavit, medical or mental-health records, communications with the trafficker, photographs of injuries or branding, the trafficker's own criminal records, and third-party letters — and cross-reference them to the declaration's factual assertions.[143]

The declaration does not need to read like a legal brief; narrative, first-person accounts are appropriate and often more compelling. The declaration should also be written from the voice of the client. Utilizing the terms or descriptions as stated by the client will lend to the declaration's credibility. It is important to note that counsel must use a trauma-informed, survivor-centered approach throughout this process, but particularly when assisting clients with their declaration. Clients may have fragmented or inconsistent recollections of their trafficking experience, particularly where trauma, substance use, or ongoing coercion were factors. Inconsistencies in a client's account do not necessarily undermine the motion; courts in analogous state proceedings have recognized that trauma affects memory and that the overall weight of evidence, not internal consistency, governs the analysis.

iv. Arrest, Conviction, and Prison Records

Counsel must obtain a complete picture of the client's federal arrest, court, conviction and/or prison record before filing, with particular attention to:

- The judgment and commitment order, which reflects the offense of conviction, the sentence imposed, and any conditions of supervision;

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[141] *See* Section IV.A.iv (direct-result nexus; four categories of qualifying offenses); DC Vacatur Toolkit, *supra* note 134, Attachment B (sample motion tying each arrest — including the alias used and the disposition — to the trafficking and to the direct-result standard); Free to Thrive, *supra* note 116, at 48.

[142] Survivor Reentry Project, Guide for Attorneys FAQ (a declaration may acknowledge ongoing instability; no statute requires a specific rehabilitation outcome; the declaration should describe life after trafficking and the barriers the record creates); DC Vacatur Toolkit, *supra* note 134, Attachment A (post-trafficking accomplishments, aspirations, and obstacles caused by the record).

[143] *See* the corroboration tier list in Section IV.B.v; DC Vacatur Toolkit, *supra* note 134, Attachment A (corroborating-evidence question set).

- The plea agreement (if the conviction resulted from a guilty plea), including any waiver provisions that could affect post-conviction relief;
- The original indictment or information, to confirm the precise charges of which the client was convicted;
- Any prior post-conviction motions or appeals, which may affect the court's assessment of the current motion; and
- The presentence investigation report, which contains factual background relevant to the trafficking narrative.

v. Corroborating Evidence

Under § 3771A(b)(5) a credible survivor declaration together with a service-provider or clinician affidavit can carry the motion on its own, and courts credit detailed first-person accounts even without documents. Nevertheless, corroboration may prove necessary in practice, particularly where the survivor has not previously been identified as a trafficking victim, the offense is not obviously related to the trafficking, or the court or prosecutor appears unconvinced that relief is warranted. When gathering corroborating evidence, keep three questions in view for each item: **which element does it support** — victim status (Sections III.A and B), the direct-result nexus (Section III.C), or the equities/interest of justice; **how it will be authenticated** (see the note at the end); and **is obtaining it safe and necessary**. The categories below move roughly from the strongest status corroboration to contextual support.[144]

Official government documentation of victim status

These corroborating documents have been found to trigger a rebuttable presumption that a client is a victim of trafficking under various state laws. Under the TSRA, they may serve as powerful evidence to enhance credibility. However, for a client who is not a U.S. citizen, counsel should consult the client's immigration attorney about potential immigration consequences before obtaining or submitting any of these documents. Where the client does not have immigration counsel, counsel should assist in retaining immigration counsel experienced with the interplay between immigration and criminal laws.

- **T visa and U visa notices (Forms I-914 / I-918), approvals, receipts, or the Employment Authorization Document (work permit).** *Use:* confirm a federal determination bearing on victim status. File only these discrete items, not the underlying petition or its supporting documentation, to avoid compromising the confidentiality of the immigration filing. *Where:* the client's own copies first; immigration counsel; or through a FOIA request for the client's files through USCIS (Section IV.B.vi).
- **Continued Presence documentation.** *Use:* DHS grants Continued Presence to identified victims of human trafficking; the grant strongly corroborates status. *Where:* the client, immigration counsel, or DHS/the requesting law-enforcement agency.

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[144] 18 U.S.C. § 3771A(b)(5); see Sections III.A and III.D.

- **Law-enforcement certifications — Form I-914, Supplement B (T) and Form I-918, Supplement B (U).** *Use:* a signed LE declaration that the client was a victim who assisted (assistance is not required for TSRA relief, but the certification corroborates status). *Where:* the client's files or immigration counsel. Note that Supplement B is not required to obtain a T visa, so T visa survivors may not have one; the U visa Supplement B is required, but because the U visa covers a broad range of crimes, it may not itself corroborate the trafficking victimization.[145]
- **HHS Certification or Eligibility Letters (ORR/OTIP).** *Use:* federal confirmation of victim status for some foreign-national survivors. *Where:* the client or the Office on Trafficking in Persons. Note that U.S. citizens and LPRs are not issued these letters, and many foreign-national survivors never obtain one either, so the absence of a Certification or Eligibility Letter is not probative for any client (Section IV.A.ii).[146]

Records of the trafficker and the trafficking enterprise

The trafficker's conviction or arrest is expressly **not** required, but records of the enterprise may assist in corroborating that trafficking occurred even where the client is not named.[147]

- **Criminal charging documents, indictments, plea agreements, and judgments against the trafficker or co-defendants.** *Use:* establish the existence and mechanics of the operation. *Where:* PACER / the PACER Case Locator for federal cases (**Section IV.B.vi**); state court dockets; the prosecuting office.
- **Civil trafficking judgments and filings (18 U.S.C. § 1595 suits or similar state statutes).** *Use:* civil complaints and findings often detail the scheme. *Where:* PACER; state civil dockets.
- **Restitution and forfeiture orders.** *Use:* corroborate financial control and the enterprise. *Where:* the criminal docket.
- **Declarations from co-survivors of the same operation.** *Use:* firsthand corroboration of the trafficker's methods. *Where:* through service providers or co-counsel, with careful attention to each survivor's safety and consent.

Service-provider and program records

- **Anti-trafficking service-provider or clinician affidavit.** *Use:* § 3771A(b)(5) of the TSRA allows for an affidavit or sworn testimony of an anti-human trafficking service provider or clinician that can be sufficient on its own if credible (see the affidavit guidance in Section IV.B.ii). *Where:* any provider—housing, counseling, legal, medical, or mental-health.[148]

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[145] 8 C.F.R. § 214.200–16 (T nonimmigrant status; Form I-914 and Supplement B); 8 C.F.R. § 214.14 (U nonimmigrant status; Form I-918 and Supplement B). Cooperation with law enforcement is not a prerequisite for TSRA relief (Section III.A.i).
[146] *See* HHS Office on Trafficking in Persons, *supra* note 107; *see* Section IV.A.ii (U.S. citizens and LPRs are not issued certification, so its absence is not probative for those clients).
[147] *See* Section III.A.ii (the TSRA specifically provides that a conviction or arrest of the client's trafficker or others is not required); 18 U.S.C. § 1595 (civil remedy); Section IV.B.vi (obtaining records through PACER).
[148] 18 U.S.C. § 3771A(b)(5); see Section IV.B.ii (Clinician/Provider Affidavit).

- **Case-management and intake-assessment records from victim-service organizations.** *Use:* contemporaneous documentation of the client's identification and needs as a survivor. *Where:* the organization, with the client's written authorization. *Caution:* submitting the records themselves may waive privilege as to the full file and expose the client to broader disclosure than the motion requires. The safer course is to request an affidavit from the service provider attesting to the relevant facts, rather than the underlying case-management, intake, or program records.
- **Shelter, transitional-housing, and drop-in-program records.** *Use:* corroborate the client's circumstances and dates. *Where:* the program, with authorization.

Prison Record

- **Evidence of the client's conduct** since sentencing, including participation in Federal Bureau of Prisons (BOP) programming, completion of educational or vocational training, lack of disciplinary record while in prison, and relationships with family or community that support reentry.
- **Letters of support from prison officials** detailing the client's good behavior while in prison may also be powerful evidence to support a sentence reduction.

Medical, mental-health, and substance-treatment records

- **Emergency-department, hospital, and primary-care records.** *Use:* corroborate injuries consistent with violence or control. *Where:* the provider, via a HIPAA authorization signed by the client.[149]
- **Dental and reproductive/OB-GYN records.** *Use:* dental injuries and reproductive-health records (STI treatment, pregnancy) that corroborate abuse or exploitation. *Where:* the provider, with authorization.
- **Mental-health and psychological records; PTSD or trauma diagnoses.** *Use:* corroborate trauma, explain memory gaps and inconsistencies, and support a trauma-driven nexus. *Where:* the treating clinician, with authorization.
- **Substance-use treatment records.** *Use:* corroborate a trafficker-induced or -exploited addiction, which is often the link for drug-related offenses or a form of coercion. *Where:* the treatment program — but note these records carry heightened federal confidentiality and require a specific written consent that satisfies 42 C.F.R. Part 2, distinct from an ordinary HIPAA authorization.[150]
- **A commissioned forensic or clinical evaluation.** *Use:* where treating records are thin, a retained clinician can evaluate the client and opine on trafficking dynamics, trauma bonding, the effect of trauma on memory, and how the offense connected to the victimization — often the most effective way to bridge a non-obvious nexus. *Where:* retain a qualified evaluator early.[151]

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[149] 45 C.F.R. § 164.508 (HIPAA authorization for release of protected health information).
[150] 42 C.F.R. Part 2 (confidentiality of substance use disorder patient records; disclosure requires a specific written consent that meets the Part 2 requirements).
[151] *See* Section IV.A.iv (using expert testimony on trafficking dynamics to establish an indirect nexus); Section IV.B.iii (trauma-informed credibility).

Communications and digital evidence

- **Texts, emails, voicemails, and direct messages** among the client, the trafficker, other victims, customers/buyers and others. *Use:* corroborate threats, quotas, control of money and movement, and the relationship. *Where:* the client's own devices and accounts first; platform data-download tools; and, where a device is lost, the carrier or provider — send a preservation letter promptly, as records expire.[152]
- **Social-media profiles and posts** (the trafficker's or the client's). *Use:* corroborate the relationship and the operation. *Where:* platform archives and account downloads; the Internet Archive for deleted pages; authenticated screenshots.
- **Call-detail and location records.** *Use:* corroborate movement across venues or jurisdictions. *Where:* the carrier (often requiring legal process — see the obtaining-records note).

Financial and travel records

- **Bank statements, money-transfer records** (wire services and payment apps), **hotel folios, and rideshare or bus/airline records.** *Use:* corroborate that the trafficker controlled money, imposed quotas or debt, and/or moved the client among locations or to a specific location. *Where:* the client's accounts and the service providers, with authorization; hotels and carriers by records request.[153]
- **Debt ledgers or "accounting" kept by the trafficker; pay stubs or their conspicuous absence.** *Use:* corroborate debt bondage and unpaid labor. *Where:* seized evidence in the trafficker's case (via the docket) or the client.

Photographs and physical or identifying evidence

- **Photographs of injuries, scars, and burns.** *Use:* corroborate specific incidents of violence described in the declaration. *Where:* the client; medical records; prior case files.
- **Photographs of branding tattoos, and records of their removal or cover-up.** *Use:* branding is a recognized indicator of trafficker control; removal records corroborate both the branding and the client's exit. *Where:* the client; tattoo-removal programs that serve survivors.[154]

The immigration file (A-file)

- **The A-file**, including Form I-213 (Record of Deportable/Inadmissible Alien), credible-fear or asylum records, and prior T/U visa application forms (Forms I-914 / I-918), notices of receipt, or approvals. *Use*: the survivor's immigration records may contain corroborating evidence that they were a survivor of trafficking, i.e., a granted T visa which is provided to victims of trafficking.

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[152] Authenticate communications under Fed. R. Evid. 901; send litigation-hold/preservation letters to carriers and platforms promptly, as retention periods are short.
[153] Obtain the client's own financial and travel records with written authorization; hotels and carriers respond to records requests, though some require legal process.
[154] *See e.g.*, UNC Sch. of Gov't, Tattooing of Human Trafficking Victims (Oct. 2022), https://cplg.sog.unc.edu/wp-content/uploads/sites/16800/2022/10/SOG-Resource-on-Tattoos-of-HT-Victims_1.pdf.

Where: Immigration records may be requested from USCIS FOIA; coordinate with immigration counsel.[155]

Prior legal proceedings and related records

- **Prior vacatur, sealing, or expungement orders** from other jurisdictions for related offenses. *Use:* a court has already credited the same trafficking. *Where:* the issuing courts.
- **Family-court and protective-order records.** *Use:* corroborate coercive control and the intimate-partner-violence/trafficking overlap. *Where:* the family or civil court.
- **Child-welfare, dependency, and runaway records**. *Use:* corroborate youth and vulnerability, recruitment, exploitation, and identification as a trafficking victim; grooming or recruitment from care; trafficking by family members, foster family, or staff at shelters. The Child Abuse Prevention and Treatment Act (CAPTA) requires participating States to maintain procedures for identifying and assessing reports involving children known or suspected to be sex-trafficking victims.[156] Specifically, the title IV-E foster-care plan separately requires the agency to identify and document children in its care who are, or are at risk of being, sex trafficking victims, and to report identified victims to law enforcement within 24 hours.[157] *Where:* the child-welfare agency, with authorization and attention to confidentiality.
- **Victim-compensation claims and awards.** *Use:* a state board's award reflects a victimization finding. *Where:* the state victim-compensation program.

Third-party lay witnesses

- **Declarations or letters from family, friends, employers, teachers, and clergy.** *Use:* corroborate vulnerability to trafficking, the trafficking period and — equally valuable — the client's post-trafficking rehabilitation and the record's ongoing harm. *Where:* obtain short, first-person declarations under 28 U.S.C. § 1746 from people with firsthand knowledge.[158]
- **Outreach workers and first responders.** *Use:* corroborate identification and condition at a point in time. *Where:* the relevant organization or agency.

Country-conditions, news, and expert evidence

- **Country-conditions materials, including the State Department Trafficking in Persons Report,** and press reports or news coverage of the trafficker or network, which are often easier to obtain than other records. *Use:* supply context and corroborate the existence and methods of the operation. *Where:* the State Department; news archives.[159]

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[155] USCIS FOIA (Section IV.B.vi); the A-file commonly includes Form I-213 and prior applications; coordinate with immigration counsel (Section V.C); *see also* https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act

[156] 42 U.S.C. § 5106a(b)(2)(B)(xxiv)–(xxv).

[157] 42 U.S.C. § 671(a)(9)(C), (34)–(35).

[158] 28 U.S.C. § 1746 (unsworn declarations under penalty of perjury); third-party declarations may address both the trafficking period and post-trafficking rehabilitation.

[159] U.S. Dep't of State, Trafficking in Persons Report (country-conditions context).

- **An independent expert declaration on trafficking dynamics.** *Use:* educate the court on coercive control, why survivors do not simply leave, and how trauma affects memory and behavior — distinct from the client's treating clinician. *Where:* retain a qualified expert.[160]

vi. How to obtain records

Most of this evidence is reachable without contested discovery. Start with the client's own copies. For third-party records the client is entitled to, use a signed authorization (a HIPAA authorization for medical and mental-health records; a Part 2-compliant consent for substance-use records). Be aware that a post-conviction expungement motion may not carry the subpoena or discovery tools of active litigation; where a needed record is held by an uncooperative third party, consider asking the court for assistance or issuing process only if the posture permits, and otherwise proceed on the declaration and provider affidavit.[161]

How to use records — authentication, sealing, and footprint

A federal court applies the Federal Rules of Evidence, so plan authentication in advance: obtain certified copies where possible, and use a custodian's certification to self-authenticate business records under Rule 902(11) rather than relying on live testimony; lay and expert declarations authenticate their own attached exhibits.[162] Because much of this material is deeply sensitive, disclose only what the elements require, move to file sensitive exhibits under seal, and weigh the safety and re-traumatization costs of obtaining any given record against its marginal value — a strong declaration plus one provider affidavit may be sufficient in some cases, though courts may expect additional corroboration, particularly where the government opposes the motion.[163] The client should be counseled throughout the process with full understanding and control over what records will be submitted to support their motion.

Obtain Complete Arrest Records and Background Checks

Clients often may not have an accurate or complete recollection of their arrest history or the outcome of those arrests, particularly where trafficking involved multiple jurisdictions or where the client was processed under a false identity. Interactions with law enforcement and criminal proceedings can be overwhelming, confusing, and brief. Before filing, counsel must obtain a complete picture of the client's criminal record. This requires requesting the client's full federal criminal history (e.g., "rap sheet") through the FBI Identity History Summary, available at www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/identity-history-summary-checks.[164] The request can be made by the individual (or by counsel with written authorization) and involves submission of fingerprint identification and payment of

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[160] A retained expert on trafficking dynamics is distinct from the client's treating clinician and from the § 3771A(b)(5) service-provider affiant.
[161] *See* Section IV.B.vi (how to obtain records); 45 C.F.R. § 164.508; 42 C.F.R. Part 2. The scope of subpoena and discovery authority in a § 3771A post-conviction proceeding is unsettled; where a record is held by an uncooperative third party, consider requesting the court's assistance and otherwise proceed on the declaration and provider affidavit.
[162] Fed. R. Evid. 901 (authentication generally); Fed. R. Evid. 902(11) (certified domestic records of a regularly conducted activity are self-authenticating with a custodian's written certification).
[163] *See* Section V.B.i (sealing; the unsettled question under 18 U.S.C. § 28(c)).
[164] *See Appendix B.2 for a sample* "rap sheet," with annotated tips on how to decipher the information included.

a fee. It is not recommended to use commercial background check services as they may be unreliable and provide incomplete information.

- **Three submission routes for FBI records.** (1) *Electronically, directly to the FBI* through the eDO (electronic Departmental Order) portal: the client registers online, pays the $18 fee, and then submits fingerprints — either electronically at a participating U.S. Post Office or by mailing a completed FD-1164 or FD-258 fingerprint card; results typically issue within about three to five business days after the FBI receives the prints, with electronic pickup available. (2) *By mail*, submitting the applicant form, fingerprint card, and fee. (3) *Through an FBI-approved Channeler* — a private company that transmits the request electronically and is usually the fastest and easiest option (often one to three business days), for an additional fee on top of the $18. Channelers typically capture fingerprints electronically, which avoids the illegible-print issues that sometimes arise with ink cards; many police departments will also take fingerprints, though this may be traumatizing for survivors and should be considered carefully.[165]
- **Noncitizen clients.** Some Channelers process Departmental Order requests only for U.S. citizens and lawful permanent residents; a noncitizen without LPR status may need to submit the request directly to the FBI. Confirm the route before the client pays.[166]
- **Reading the summary.** The Department of Justice publishes a job aid on how to read an Identity History Summary.[167] Use it to interpret arrest cycles, charges, and disposition codes, and flag any entry whose disposition is missing or ambiguous for follow-up with the court or agency. Appendix B.2 collects additional job aids, the procedure for challenging or correcting an FBI record, and fingerprint submission instructions.

Additional avenues for obtaining records include the following:

- Reviewing court dockets through PACER (Public Access to Court Electronic Records, www.pacer.gov) for the district(s) where the arrest occurred. PACER provides access to federal district court case filings and dockets. Any cases can be found directly by searching the case number, or by running the client's name through the federal district court's CM/ECF system for any district where arrests may have occurred.
    - **Practical and cost points**: registration is free; access runs $0.10 per page with a $3.00 cap per document, and fees are waived entirely for any quarter in which usage is $30 or less, so a typical records search for one client is often free or nominal; court opinions are always

[165] *Id.*; U.S. Dep't of Justice Order 556-73 (authorizing an individual's Departmental Order request). Fee is $18 to the FBI; fingerprints are submitted on Form FD-1164 or FD-258, electronically via a participating U.S. Post Office or by mail; results by the electronic route typically issue within roughly three to five business days of the FBI's receipt of the prints. FBI-approved Channelers transmit requests electronically and are generally faster (often one to three business days) for an additional service fee; the FBI publishes the current list of approved Channelers.

[166] *See* FBI-approved Channeler instructions (some Channelers process Departmental Order requests only for U.S. citizens and lawful permanent residents; noncitizens without LPR status may need to submit directly to the FBI). Confirm the applicable route before the client pays a fee.

[167] U.S. Dep't of Justice, Job Aid — How to Read an Identity History Summary, available at https://www.justice.gov/tribal/page/file/1354861/dl.

free; and courts may grant fee exemptions to indigent parties, pro bono counsel, and nonprofits, which is worth requesting for high-volume or multi-district searches.[168]

- Requesting any charging documents, arrest records, and case disposition records from the relevant U.S. Attorney's Office and/or the arresting agency.
- Consider searching for similar documents and records in relevant state jurisdictions.
- If the client previously had an attorney representing them in an underlying matter, seek a copy of the case file from their previous attorney. You'll need the client to sign a release of information authorizing the previous attorney to release the files to counsel, and counsel can send the release to the attorney and request a copy of the case file.

A thorough independent records search is crucial before advising the client on eligibility and moving forward on the matter. However, there may be times when obtaining case files or other records is difficult, and counsel should make an independent judgment about whether they still have sufficient evidence to move forward with the filing for relief. You should consider, if records are exceedingly difficult to obtain, whether information in the case file will materially change the submission.

Resource guides

For sample exhibits and model requests, see Appendix A. Additional practice resources appear in Appendix B; national and state-by-state vacatur resources appear in Appendix C; and a table of state and District of Columbia relief statutes appears in Appendix D.

Counsel should be creative and should broadly consider what can be submitted as supporting evidence. Even if a document may not come from an official agency, it may still be probative for the client's submission.

C. Specific Notes for Expungement and Vacatur

i. Filing

Where to File

Vacatur motions must be filed with the U.S. District Court that imposed the sentence for the offense being vacated (both the district and division of conviction). Expungement motions for an arrest that did not result in an eligible conviction must be filed in the Division of the U.S. District Court where the arrest occurred. These may be different districts, including where the case was transferred after arrest. The federal judicial district directory is available at www.uscourts.gov/court-locator. Some clients may have trafficking-related arrests or convictions in multiple jurisdictions and will need to file separate motions in each — vacatur in the district of each eligible conviction, and expungement in the district where each eligible arrest occurred.

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[168] PACER, *Pricing: How Fees Work*, https://pacer.uscourts.gov/pacer-pricing-how-fees-work ($0.10 per page; $3.00 per-document cap; by Judicial Conference policy, fees waived when quarterly usage is $30 or less; court opinions free; courts may exempt indigent parties, pro bono attorneys, and nonprofits).

Counsel who are not admitted to the bar of the relevant federal district must seek admission pro hac vice. The requirements for pro hac vice admission vary by district but generally require: (1) a motion for admission, supported by a certificate of good standing from the state bar(s) where counsel is admitted; (2) sponsorship by a local counsel who is admitted to that district's bar; and (3) payment of a pro hac vice fee, which varies in amount by district. Counsel should review the local rules of the specific district before filing. All federal district court local rules are available on the relevant court's website; a directory of federal court websites is available at www.uscourts.gov.

When to File

The TSRA provides that motions may be filed "at any time" and applies to "any conviction or arrest occurring before, on, or after the date of enactment."[169] There is no statute of limitations or deadline for filing. Counsel should not assume that delay is harmful; however, filing promptly after completing the evidentiary record is advisable because the client's collateral consequences are ongoing and because memories and records are more accessible closer in time to the trafficking situation.

ii. Hearings

The TSRA creates two hearing scenarios:

- If the government files a motion in opposition within 30 days of the motion being filed, the court *must* schedule a hearing within 15 days of that opposition.[170]
- If no opposition is filed, the court has discretion to hold a hearing no later than 45 days after the motion is filed.[171] The court may also grant the motion without a hearing in this scenario.

Counsel should prepare the client for the possibility of a hearing even if the government does not oppose the motion. This will be more likely in cases where there is little or no corroborating evidence. Courts and prosecutors may also weigh equities that the statute does not list as eligibility factors: in several cases pursued to date, judges and prosecutors have argued that the victimization was already considered when charges or sentences were reduced, or have resisted relief where the survivor's own conduct caused harm to other victims, including where the survivor was charged as a co-conspirator. Although § 3771A(b)(5) provides that a credible declaration can be sufficient on its own, counsel should not assume this will hold in practice, with particular caution where there are no police reports identifying the client as a victim, the trafficker was never investigated, or the client was prosecuted as a co-conspirator. Courts encountering the TSRA for the first time also may wish to ask questions about the factual record, particularly for the most serious offenses, such as sex trafficking of a minor. Having clear and open communication with your client about the possibility of a hearing is critical. Clients should be aware of the reason for the hearing, and understand the parts of the story they may be required to present. It is advisable to go over the

[169] § 3771A(i).
[170] § 3771A(b)(3)(A).
[171] § 3771A(b)(3)(B).

questions you will ask the client during the hearing, and help them anticipate any questions on cross-examination. Conducting a practice or moot hearing may be helpful for the client to prepare.

Counsel should also be prepared for the court to limit the scope of the hearing. Because the TSRA does not prescribe a particular evidentiary format, courts may exercise significant discretion over the presentation of testimony and evidence.

Seek remote (video or telephone) appearance if the survivor prefers to avoid appearing in person. Argue that state analogs allow remote testimony: California allows appearance by phone or video for a compelling reason, Colorado requires courts to permit remote appearances, and New Jersey directs telephone or video appearance absent a compelling reason to deny.[172] This is also a special consideration for non-citizen clients as there have been incidents throughout the United States arising from federal immigration enforcement at courthouses.

Request a closed courtroom for any evidentiary portion. Where local rules allow, ask the court to close the courtroom during testimony about the trafficking, given the intensely sensitive subject matter. Ground the request in the court's authority to manage proceedings and, by analogy, in the crime-victim principles that a victim be reasonably protected and treated with respect for their dignity and privacy. Because the statute already contemplates that these motions generally proceed under seal, counsel should consider arguing that a courtroom closure is a natural extension of that existing determination rather than a separate showing.[173]

iii. Grant of Expungement and Vacatur

If the court grants the motion for expungement of an arrest, the arrest is treated as though it never occurred under federal law.[174] The court is required to immediately enter an expungement order directing that all references to the arrest, the institution of any criminal proceedings, and the results of those proceedings be expunged from all official records.[175] Thereafter, the arrest shall not be regarded as an arrest under federal law, and the client shall be considered to have the status they occupied before the arrest occurred.[176] The client may therefore lawfully represent that no such arrest occurred.

If the court grants the vacatur motion, the conviction is treated as though it never occurred under federal law. The court must:

- Set aside the verdict of guilty;

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[172] Cal. Penal Code § 236.14(n) (appearance by telephone or video for a compelling reason); Colo. Rev. Stat. § 24-72-707 and Colorado Judicial Branch guidance (remote appearances required as of July 1, 2025); N.J. Stat. § 2C:44-1.1(b)(2) (telephone or video appearance unless a compelling reason to deny).
[173] *See* the court's inherent authority to manage proceedings and applicable local rules; *cf.* 18 U.S.C. § 3771(a)(1), (a)(8) (crime-victim rights to be reasonably protected from the accused and to be treated with fairness and with respect for the victim's dignity and privacy) as persuasive support for protective measures.
[174] § 3771A(d)(1).
[175] § 3771A(d)(1).
[176] § 3771A(d)(2).

- Enter a judgment of acquittal; and
- Enter an expungement order requiring all references to the arrest and criminal proceedings to be expunged from federal records.

However, counsel should advise clients of several important caveats:

- The **expungement order applies to federal records only**. State or local arrest records arising from the same incident are not affected and must be addressed separately under applicable state law.
- **Expunged records may still appear on some background checks**, particularly those run by private data aggregators that pull from older databases. Counsel should advise clients that they may need to take additional steps to correct background check results after the expungement order is entered.
- For non-citizen clients, **counsel should consult with immigration counsel before and after the expungement to assess the immigration effect**. The TSRA states that a vacated or expunged record "shall not be regarded as a conviction [or arrest] under federal law," but immigration law defines these terms differently from criminal law, and the effect of TSRA expungement on removal proceedings, admissibility, or immigration applications is not yet settled.

Federal Records

Name the right custodians and ensure the order is actually implemented. When drafting the proposed order, expressly name each federal record-holder, including the FBI's Criminal Justice Information Services (CJIS) Division, which maintains the national criminal-history systems. The statute authorizes the court to direct "any relevant law enforcement agency" to expunge, and consistent with the Act's restorative purpose that clause should be read to include the FBI.[177]

Two implementation steps make the order stick: request that each named custodian provide a **written compliance certificate** confirming the record was expunged, and direct the order to require **notification of any entity to which the record was previously disseminated**. Then verify — re-pull the client's FBI Identity History Summary roughly a year after entry to confirm the federal record was actually cleared (Section IV.B.vi).[178]

State and Local Discrepancies

Separate state or local records for the same incident. These are unaffected by the federal order and must be cleared, if possible, under the applicable state relief statute.

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[177] § 3771A(f).

[178] The FBI CJIS Division maintains the Interstate Identification Index (III) and the National Crime Information Center (NCIC) and issues the Identity History Summary (Section IV.B.vi); DC Vacatur Toolkit, *supra note 134*, at 17 (run a background check after roughly a year to verify expungement; attach the order to applications if there is doubt about agency compliance).

Watchlists and Records in Related Cases

Clients frequently ask about three further categories of records. First, NCIC criminal history files are maintained by the FBI's CJIS Division, so naming CJIS as a custodian (as discussed above) should reach them. Absent a court order, CJIS corrects or updates an identification record only "upon the receipt of an official communication directly from the agency which contributed the original information" — most likely the submitting arresting or prosecuting agency, not the individual.[179] A § 3771A order supplies the alternative, court-ordered basis: the statute directs the court to enter an order requiring that all references to the arrest and proceedings be expunged from "all official records," which should reach the NCIC System records CJIS maintains when the order specifically names CJIS as a custodian. [180] Second, placement on a DHS "no-fly" or watchlist (maintained through TSA Secure Flight and the FBI's Terrorist Screening Center) rests on a separate watchlisting determination, not simply the existence of an arrest or conviction record; a TSRA expungement order does not by itself compel removal, and a client who believes they are on such a list should instead pursue relief through the DHS Travel Redress Inquiry Program (DHS TRIP). [181] Third, charging or court documents from a related case (e.g., a co-defendant's or trafficker's prosecution in which the client is named as a co-conspirator) are not the client's own arrest or conviction records and fall outside the scope of a § 3771A order; counsel would need to seek redaction of the client's name through a separate motion filed in that other case. [182]

Federal arrest data that was shared into state systems. When the FBI expunges, the correction should propagate to the states, but state repositories maintain their records independently and may not conform automatically.

Commercial Background-Check Services

The most common reason an expunged record keeps appearing is not the court or the FBI but the private background-check industry. Consumer reporting agencies (CRAs) and data brokers scrape and cache court and agency records, and many do not update their databases when a record is later cleared, so the stale record persists in commercial reports used by employers and landlords.

- **Accuracy and dispute rights.** A CRA must follow reasonable procedures to assure maximum possible accuracy, and the client may dispute an inaccurate or obsolete entry, triggering a mandatory reinvestigation and correction or deletion of information that cannot be verified. Reporting an expunged or vacated record as a current arrest or conviction is inaccurate and disputable.[183]

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[179] 28 C.F.R. § 16.34.
[180] 18 U.S.C. § 3771A(c).
[181] TSA, DHS Traveler Redress Inquiry Program ("The No Fly List is a small subset of the U.S. government Terrorist Screening Database... maintained by the FBI's Terrorist Screening Center... TSA implements the No Fly List through its Secure Flight program."), https://www.tsa.gov/travel/security-screening/travel-redress-program.
[182] 18 U.S.C. § 3771A(b)(1)(A)-(B), (c) (framing eligibility for relief and the resulting expungement order in terms of "the movant" and the movant's own arrest or conviction).
[183] Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.: § 1681e(b) (reasonable procedures to assure maximum possible accuracy). Reporting an expunged or vacated record as current is inaccurate and disputable.

- **Obsolescence limits.** The FCRA bars reporting arrest records that predate the report by more than seven years (subject to a salary-threshold exception), which independently supports removal of older entries.[184]
- **Remedies.** Willful or negligent noncompliance exposes a CRA to statutory liability, which gives leverage in a dispute.[185]
- Use the **Foundation for Continuing Justice's Expungement Clearinghouse**, a free service that, on receipt of a certified court order and attorney verification, notifies a large network of private background-check companies (reportedly 500-plus sources) that the record should be removed; expect roughly 60 to 120 days. Confirm the service's current availability before relying on it.[186]
- Have the client **run their own background check** about a year after the order to confirm the record is gone, and keep copies of the order to attach to employment or housing applications as a precaution.[187]

D. Victimization as a Mitigating Factor and Motion for Sentence Reduction

Where a client has been convicted of a Level A or Level B offense and is approaching sentencing or has already been sentenced, the TSRA provides two related avenues for relief: (1) asserting trafficking victimization as a mitigating factor at the time of sentencing,[188] and (2) moving for a reduction in a previously imposed sentence.[189]

While the statute also explicitly authorizes the court to act on its own initiative without waiting for a motion by the client, in practice, it rarely occurs. Thus, the motion will likely be the primary vehicle for obtaining this form of relief.[190]

If the court grants the sentence reduction motion, it reduces the term of imprisonment. The court may reduce the sentence to the time served, which would result in immediate release if the client is still incarcerated. Counsel should consult with the BOP in advance about the mechanics of release if this outcome is anticipated.

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[184] Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.: §§ 1681c(a)(2), (b) (arrest records predating the report by more than seven years generally may not be reported, subject to the salary-threshold exception).
[185] Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.: §§ 1681n, 1681o (civil liability for willful or negligent noncompliance).
[186] Foundation for Continuing Justice, Expungement Clearinghouse / Criminal Database Update project, https://www.continuingjustice.org/our-projects/criminal-database-update/ (free service; requires a certified copy of the court order and attorney verification; notifies 500-plus private-sector background-check sources; typically 60–120 days). Confirmed active as of 2026; verify current availability before relying on it.
[187] DC Vacatur Toolkit, *supra* note 134, Attachment A (running the client's own background check to verify, and attaching the order to applications as a precaution).
[188] § 28(d).
[189] § 3771A(e)(1).
[190] § 3771A(e)(1)(A)(ii).

Note that a sentence reduction under the TSRA does not vacate the underlying conviction; the client's criminal record continues to reflect the conviction. After the sentence is served, counsel should pursue vacatur and expungement as outlined under Sections IV.B and C to address the conviction record itself.

i. Client Background and Mitigation Research

A successful sentence reduction motion requires counsel to present a comprehensive mitigation picture that situates the client's trafficking experience within the broader sentencing framework. This requires two parallel workstreams: documenting the trafficking victimization and researching the applicable legal factors.

Legal Factors Enumerated in 18 U.S.C. § 3553(a)

Federal sentencing is governed by 18 U.S.C. § 3553(a), which requires courts to consider, among other things: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; (4) the need to afford adequate deterrence; (5) the need to protect the public; and (6) the need to avoid unwarranted sentencing disparities.

Counsel should organize the mitigation presentation around the factors most relevant to trafficking survivors:

- **Nature and circumstances of the offense (§ 3553(a)(1))**: Emphasize that the offense was a direct result of trafficking victimization and that the client's participation was coerced or induced by the trafficker. The TSRA's duress framework provides the analytical vocabulary for this argument even at the sentencing stage.
- **The defendant's history and characteristics (§ 3553(a)(1))**: Present the client's full background, including the history and dynamics of the trafficking relationship, any prior trauma or vulnerability that made the client susceptible to trafficking, the client's post-trafficking trajectory (including participation in services, recovery, or rehabilitation), including any positive community ties or involvement.
- **Avoiding unwarranted sentencing disparities (§ 3553(a)(6))**: Research comparable cases in which courts have reduced sentences for trafficking survivors and argue that imposing or maintaining a heavy sentence for conduct coerced by a trafficker creates an unwarranted disparity relative to those cases. This argument will likely become stronger as TSRA sentencing decisions accumulate.

Communicate with the Prosecutor

As with other TSRA motions, counsel should consider contacting the USAO before filing a sentence reduction motion. Unlike the vacatur and expungement provisions, the **TSRA does not specify a fixed opposition window for sentence reduction motions**; counsel should consult the local rules of the relevant district and the assigned judge's standing orders for applicable motion practice procedures.

Counsel should also consider whether the assigned AUSA is the same prosecutor who handled the original case. If so, there may be a pre-existing relationship or institutional knowledge that either assists or complicates the outreach. In either case, the framing should focus on the TSRA's purposes and the client's specific circumstances rather than relitigating the original conviction.

Additionally, counsel should be aware that the TSRA imposes a specific obligation on the government in connection with sentence reduction motions. Before opposing or responding to the motion, the government must conduct a "particularized inquiry of the facts and circumstances of the original sentencing of the covered prisoner in order to assess whether a reduction in sentence would be consistent with this section."[191] Counsel should reference this requirement explicitly in pre-filing outreach to the USAO, both to ensure the government fulfills its statutory obligation and to prompt a genuine engagement with the client's specific circumstances rather than a reflexive opposition.

ii. Filing a Motion for Sentence Reduction

Where to File

The motion should be filed in the district court that imposed the original sentence; filing before the sentencing court is consistent with standard federal practice for sentence modification proceedings. Counsel should confirm the current judge assignment with the clerk's office, as the original sentencing judge may have retired, been elevated, or taken senior status.

When to File

There is no express filing deadline under the TSRA. Counsel representing a client who is approaching sentencing should consider raising the trafficking mitigation at sentencing first, and filing a separate sentence reduction motion later if the court does not grant sufficient relief at sentencing. For clients who are already serving sentences, the motion may be filed at any time, though earlier filing maximizes the period of potential sentence reduction.

iii. Hearings for Motions for Sentence Reduction

The TSRA does not specify a fixed opposition window or hearing timeline for sentence reduction motions. Counsel should consult the local rules of the relevant district and the assigned judge's standing orders for applicable motion practice procedures, and should follow the preparation and advocacy guidance for hearings described in Section **IV.C** as a general matter.

E. Denial, Re-filing, and Appeal

This section applies equally to vacatur and expungement motions.

[191] § 3771A(e)(3).

If the court denies a motion, it must state its reasons in writing.[192] The court may deny the motion either on the papers without the hearing, or during or after a hearing if one is held. If the court rules from the bench, counsel should request that the court state its reasons for denial on the record if the denial occurs during the hearing. The denial may or may not be with prejudice depending on the stated grounds.

A denial is final, with two exceptions: (i) where the denial rests on a curable deficiency, and (ii) where "new and compelling evidence or information" is later discovered. If denial is based on curable deficiencies in the evidentiary record (e.g., insufficient documentation of victim status), counsel should seek leave to refile with additional evidence, and the court should provide sufficient time to cure the deficiency. If denial is not based on a curable deficiency, the denial is final unless new and compelling evidence or information becomes available. Counsel should therefore request that the court identify any curable deficiencies at the time of denial.[193]

By contrast, a court's legal conclusion that the offense falls outside the statute is generally not curable by more evidence. An example is a ruling that a conviction is a Level B offense, which cannot be vacated under this section. Such rulings are candidates for appeal rather than re-filing. Appeals from district court decisions under the TSRA would proceed to the applicable U.S. Court of Appeals under the ordinary federal appellate rules.[194] As the first cases under the TSRA are decided, published opinions will begin to shape the interpretive landscape; counsel should monitor developing precedent and reevaluate strategy accordingly.

F. Raising the Duress Defense

When a client has been charged with a federal offense but has not yet been convicted, the TSRA provides an affirmative defense of duress, codified at 18 U.S.C. § 28, for both Level A and Level B offenses. This defense is distinct from the post-conviction relief available under § 3771A and operates within the ordinary criminal prosecution framework.[195]

Notably, a failure to assert or a failed assertion of the duress defense at the pre-conviction stage does not preclude the client from asserting victimization as a mitigating factor at sentencing or in any post-conviction proceeding.[196] That being said, while practitioners and their clients should not treat the pre-conviction stage as a "one shot" chance, asserting the defense effectively at the earliest opportunity maximizes the client's chances of avoiding a conviction that will require subsequent relief.

Where the duress defense is raised, practitioners should move contemporaneously to seal any records or parts of the proceeding related to the defense. Sealing is not automatic and requires a court order.[197]

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[192] § 3771A(b)(7).
[193] § 3771A(b)(7).
[194] § 3771A(b)(8).
[195] *See* Section III.D.iv.
[196] 18 U.S.C. § 28(d).
[197] 18 U.S.C. § 28(c).

i. Negotiating a More Favorable Plea Offer or Disposition

During the pre-trial stage, the duress defense provides significant leverage in plea negotiations. In presenting evidence regarding a legally valid claim of duress based on human trafficking, an AUSA may agree to not charge a client at all (if charges have not been entered), reduce the charges to a lesser offense that does not carry the same collateral consequences, recommend a lesser punishment, or dismiss the charges altogether.

Note that the defense is allowed to assert a mitigating narrative of trafficking or a duress defense at the pre-trial stage and maintain a not guilty plea, even if it may be inconsistent. Arguments pled in the pre-trial stage are not admissible against the client.

Timing Considerations

The mitigating narrative of trafficking and any evidence in support of a duress defense should be introduced to the USAO early in the prosecution. The earlier the government understands the client's situation, the more time there is for informal resolution before trial preparation locks both sides into their positions. If possible, counsel should consider making the initial presentation to the USAO at or shortly after arraignment, and before any scheduling order sets a plea deadline.

Documenting the Duress Evidence for Plea Purposes

Counsel should prepare a comprehensive trafficking narrative package to share with the USAO in connection with plea discussions. This package can include (1) the service provider affidavit or clinical documentation, (2) a written legal memorandum explaining how the TSRA duress standard applies to the client's situation, and (3) any other corroborating evidence. At this stage, counsel should have spoken with their client to begin preparing their statement, but be mindful that any statements by the client should not be shared directly with the USAO as they can be used against the client. The memorandum need not be a formal legal brief; a clear, organized presentation of the facts and the applicable standard is also appropriate. The goal is to make it as easy as possible for the AUSA, who may be unfamiliar with the TSRA, to understand why prosecution is not in the interest of justice.

Effect of Establishing Duress on the Government's Bargaining Position

A credible duress defense should change the government's trial calculus. If the evidence of trafficking and the resulting nexus to the offense is strong, the government faces the risk that a jury will return an acquittal on duress grounds. Therefore, counsel should frame this risk explicitly in plea discussions, noting that the TSRA's status-based standard makes proof of the defense more accessible than the common law standard, and that, as a practical matter, a sympathetic trafficking survivor is an unfavorable witness profile for the government to oppose before a jury.

Effect of a Plea on Future TSRA Eligibility

Even a favorable plea that reduces charges or avoids incarceration may still result in a federal conviction that could carry significant collateral consequences, including immigration consequences, loss of professional licenses, bars to federal benefits and many other detrimental impacts on the client's quality of life. Before accepting any plea, counsel should advise clients that: (1) the resulting conviction will

remain on their federal record unless subsequently vacated; (2) the TSRA provides a pathway for that vacatur; and (3) the TSRA expressly provides that a prior failure to assert the duress defense does not preclude post-conviction vacatur, meaning that accepting a plea does not forfeit the client's ability to seek vacatur later (see Section IV.F). Counsel should document this advice in writing.

ii. Pre-Trial Motion to Dismiss Based on Duress

A motion to dismiss is a pre-trial dispositive motion that asks the judge to dismiss a charge or the case in its entirety on certain legal grounds. A court will evaluate a motion to dismiss by accepting the factual allegations in the indictment as true, and decide whether the indictment legally states an offense. *United States v. Sampson*, 371 U.S. 75, 78-79 (1962). Given that the court cannot consider evidence outside of the indictment at the motion to dismiss stage, there are very limited situations which would allow for the successful filing of a motion to dismiss based on the affirmative defense of duress. However, counsel should still review the indictment carefully and consider whether there are any facts alleged in the indictment which may support an argument that the client was a victim of trafficking. In such case, counsel should consider filing a pre-trial motion to dismiss the charges on the grounds that the defendant's status as a trafficking victim at the time of the offense establishes duress as a matter of law. While courts typically allow affirmative defenses to go to the jury, a well-supported motion to dismiss creates an early opportunity to present the trafficking narrative to the court and may result in dismissal or, at a minimum, early engagement by the USAO on a negotiated resolution.

When to File

There is currently no TSRA-specific rule governing the timing or notice requirements for the duress defense. Counsel should consult the Federal Rules of Criminal Procedure and the local rules of the relevant district.

Under Fed. R. Crim. P. 12(b)(3), certain pretrial motions, including motions to dismiss, must be raised before trial if the basis for them is then reasonably available. Courts typically set a pretrial motion deadline at or after arraignment. A motion to dismiss based on duress, to the extent it raises legal rather than factual questions, should be filed before trial within the schedule set by the court. While the Federal Rules of Criminal Procedure do not expressly require advance notice of the duress defense like they do some others (e.g., the insanity defense under Fed. R. Crim. P. 12.2), early disclosure is advisable as a matter of practice because it may prompt the government to reconsider prosecution and enables counsel to engage the USAO in settlement discussions from a position of strength.

Preparing the Motion and Supporting Documents

The motion to dismiss must only make arguments about the legal insufficiency of the indictment, and it cannot include any additional evidence or facts outside of the four corners of the indictment.

Counsel should anticipate that the government may argue that the TSRA's duress standard does not eliminate the common law requirements of immediacy and no reasonable escape, and should brief that legal question proactively and directly. The motion should include: (1) a statutory interpretation argument that the TSRA displaces the common law standard for covered offenses; (2) the factual record taken from

the complaint that establishes the client's victim status; and (3) if applicable in the alternative, an argument that the facts also satisfy the common law standard given the psychological nature of trafficking coercion.

Because all TSRA-related proceedings involving the duress defense may be sealed (§ 28(c)), the motion to seal should be filed simultaneously with or before the motion to dismiss.

As with motions for expungement and vacatur, a motion to dismiss should be filed under seal, and counsel should confirm the district's procedure for sealed filings before submission.

Hearings

A motion to dismiss is likely to require a hearing, particularly if the government opposes it. Counsel should prepare the client for the possibility of live testimony and should consider requesting that the client testify by electronic means or that the courtroom be closed to the public given the sensitive nature of the trafficking evidence, particularly where the court has already granted a motion to seal the proceedings, which supports closure on the same grounds. Courts have discretion to accommodate such requests under their inherent authority to manage proceedings.

If the court grants the motion to dismiss, the charges are dismissed and the client avoids conviction. Thereafter, counsel should immediately pursue expungement of any arrest records as outlined under Section IV.B.

Denial, Re-filing, and Appeal

Denial of a pretrial motion to dismiss is typically not immediately appealable as a final order; the denial is reviewed on appeal from any conviction. Counsel should preserve the issue by objecting clearly on the record, ensuring the motion and the court's ruling are fully documented, and renewing the arguments in post-trial motions and any appeal.

iii. Asserting Duress as an Affirmative Defense at Trial

If the case proceeds to trial, the duress defense under 18 U.S.C. § 28 may be presented to the jury as an affirmative defense. This is often the highest-stakes context for the defense, but may also be the forum where a fully developed trafficking narrative can have the greatest impact.

Notably, presenting an affirmative defense means that the client is admitting to the underlying conduct, but is asserting that there is a justification that excuses the guilt. In presenting the client's case at trial, the defense should choose to either show that the client did not engage in the underlying conduct and is therefore not guilty, or present evidence of duress that admits the conduct but excuses the guilt. It is not advised to present both theories at trial as they are inconsistent and the client will lose credibility with the jury.

Notice Requirements for Asserting the Defense

Unlike the insanity defense (which requires notice under Fed. R. Crim. P. 12.2), the Federal Rules of Criminal Procedure do not expressly require advance notice of the duress defense. However, some districts' local rules or individual judges' standing orders may require disclosure of affirmative defenses

before trial. Counsel should review both the applicable local rules and the assigned judge's standing orders well in advance of trial.

As a matter of practice, counsel should consider giving the court notice of the defense as early as possible, to allow the court to address the defense in its preliminary jury instructions and trial management orders.

Preparing Supporting Documents and Evidence for Trial

The evidentiary presentation at trial requires the same foundational elements described above—victim status, direct-result nexus—but adapted for live presentation to a jury. Key considerations include:

- **Confront government witnesses:** Prepare to cross-examine the government witnesses, particularly law enforcement, on facts that go to establish a duress defense. During the investigation law enforcement may become aware of things such as acts of violence against the client, injuries suffered by the client, evidence that minimizes the client's role in the offense, and, in some cases, an initial law-enforcement determination that the client was a trafficking victim even though the client was later charged.
- **Expert witnesses:** Consider retaining a trafficking expert to provide context testimony explaining the dynamics of trafficking, how traffickers exercise control through psychological means rather than just physical force, and why trafficking victims often do not immediately escape or self-identify to law enforcement, and how survivors may be coerced into engaging in illegal acts to avoid further harm to themselves or to other victims. Several academic researchers and anti-trafficking advocates are available as expert witnesses in federal criminal cases.
- **Service provider testimony:** In addition to or in lieu of an affidavit, an anti-trafficking service provider or clinician can testify live at trial. Live testimony is typically more compelling than a written declaration, and the TSRA specifically anticipates this form of evidence.
- **Survivor testimony**: The client's own testimony, if they are willing and able to testify, is likely to be the most powerful tool of the defense. Counsel should prepare the client for direct and cross-examination using a trauma-informed approach, allowing the client to tell their story in their own words while also addressing the specific elements of the TSRA standard.
- **Documentary evidence:** Corroborating documents, like communications with the trafficker, financial records, medical or mental health records, photographs, or immigration records, should be gathered and authenticated in advance of trial.[198]

Jury Instruction Considerations

There is no standard federal jury instruction for the TSRA duress defense, as the statute is new and the pattern instruction committees have not yet addressed it.[199] Therefore, counsel will need to propose a custom jury instruction. The instruction should:

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[198] *See* Section IV.B.v.

[199] As the TSRA becomes more widely litigated, pattern instruction committees may issue standard instructions for the duress defense. Practitioners should confirm the current status of pattern instructions in the applicable circuit before drafting a

- State the TSRA standard: the defendant establishes duress by demonstrating that they were a victim of trafficking at the time of the offense;
- Define "victim of trafficking" by reference to the TVPA definition (22 U.S.C. § 7102);
- Address the burden of proof, which is not yet settled under the TSRA; courts may place the burden on the defendant to establish duress, or may require the government to disprove duress once raised. Counsel should brief this question and propose an instruction consistent with the most favorable available precedent in the applicable circuit; and
- Instruct the jury on how to evaluate coercive control, including psychological and non-physical forms of coercion.

Examples of model jury instructions may be found in Appendix E; published model instructions from other jurisdictions are listed in Appendix A.

Effect of a Successful Duress Defense

If the court grants the motion to dismiss, the charges are dismissed and the client avoids conviction. The client should be advised that a pretrial dismissal does not bar re-charging, as double jeopardy does not attach until the jury is sworn in. An acquittal based on the duress defense results in no conviction, and double jeopardy bars the government from re-charging the same offense.

Counsel should immediately move to expunge any arrest records as outlined in **Section IV.C** above and should advise the client on the collateral consequences of any remaining arrest record even absent a conviction.

Effect of an Unsuccessful Duress Defense and Appellate Options

If the jury rejects the duress defense and the client is convicted, counsel should:

- **Move for judgment of acquittal** under Fed. R. Crim. P. 29(c) on the grounds that the evidence was insufficient to support conviction in light of the duress evidence;
- File a **motion for new trial** under Fed. R. Crim. P. 33 if there is a basis (e.g., if the court's jury instruction on duress was erroneous or if the government's cross-examination of the client or trafficking expert was improper);
- **Raise the duress defense on direct appeal**. The appellate standard of review for denial of a motion to dismiss or for judgment of acquittal is generally de novo on legal questions and sufficiency of the evidence review on factual ones; or
- **Preserve the client's post-conviction options.** As noted above, the TSRA expressly provides that a failed duress assertion does not preclude the client from asserting victimization as a mitigating factor at sentencing or in post-conviction relief proceedings. Counsel should pivot immediately

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proposed instruction. Federal circuit pattern jury instructions are available through each circuit's official website; a directory is maintained by the Federal Judicial Center at www.fjc.gov.

from the unsuccessful trial defense to sentence reduction and vacatur pathways, as outlined in Section IV.D and Sections IV.B and IV.C, respectively.

V. Other Considerations

A. Contact with the U.S. Attorney's Office

Because TSRA motions are filed in federal court, the relevant government actor is a United States Attorney's Office (USAO) rather than a local district attorney — specifically, the USAO for the district of conviction for a vacatur motion, or the USAO for the district where the arrest occurred for an expungement motion.

Counsel is not required to contact the USAO before filing, but doing so proactively may be helpful depending on the situation. Importantly, the USAO will have investigative and other case records that may be helpful in asserting and establishing that the client was a victim of trafficking.[200] Having consent of the prosecutor, or lack of prosecutorial objection, can be powerful support to have the motion granted. Also, the TSRA is new legislation and many Assistant United States Attorneys (AUSAs) will not be familiar with it. Reaching out before filing gives counsel the opportunity to:

- Introduce the statute and provide the USAO with a copy of the text and relevant accompanying literature as it becomes available, including the Freedom Network USA Summary and Analysis (April 2026), which is a clear and accessible overview.
- Present the client's eligibility and supporting documentation informally, which may result in the government declining to oppose the motion, avoiding a contested hearing that could be more difficult and retraumatizing for the client. Presenting a strong case to the prosecutor in the first instance improves the chances of consent to the motion, so it is advisable to gather as much evidence as possible before approaching the USAO.
- Gauge the USAO's posture and identify any factual or legal issues the government is likely to raise, allowing counsel to address those concerns proactively in the motion itself.

A best practice approach is for counsel to open discussions with the USAO with interest in collaboration and providing a survivor with justice. Prosecutors may care about victim advocacy and may be open to learning about the client and their experience of being a victim of a crime. It is also not advised to approach conversations with the prosecutor by attacking or placing blame on them. Attempt to work with them to identify ways that would help them the most in advocating for the client in their division.

If the USAO states that it will not oppose the motion for expungement, counsel can state on its filings that it is an unopposed motion. If the USAO is unresponsive or indicates it will oppose the motion without engaging on the merits, counsel can still proceed to filing the motion.

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[200] During litigation of TSRA related claims, counsel should be sure to request these records under *Brady v. Maryland*, 373 U.S. 83 (1963).

Counsel unfamiliar with the USAO structure should note that the USAO is organized by federal judicial district, with 94 districts in the United States. For a vacatur motion, the appropriate office is the USAO for the district of conviction; for an expungement motion, it is the USAO for the district where the arrest occurred. A directory is available at www.justice.gov/usao/find-your-united-states-attorney.

B. Confidentiality

Confidentiality is a central concern in all TSRA proceedings. Trafficking survivors often face serious risks, including danger from traffickers, immigration consequences, and re-traumatization if their participation in TSRA proceedings becomes publicly known. The TSRA addresses confidentiality in two distinct provisions, each operating differently depending on the type of proceeding.

i. Sealing of § 3771A Motions (Vacatur, Expungement, and Sentence Reduction)

The TSRA provides that any motion filed under § 3771A, and any documents, pleadings, or orders relating to the motion, shall be filed under seal.[201] This is a mandatory "shall" provision. Sealing is not discretionary for the court or the parties, and it applies to the full range of § 3771A motions, including vacatur, expungement of arrests, and sentence reduction.

The statute further provides that an officer or employee may not make available for public inspection any report, paper, picture, photograph, court file, or other document in their custody or possession that identifies the movant.[202] This prohibition on public identification extends beyond the formal court record to any government-held document that could identify the client, which is a meaningful protection given that federal arrest and conviction records are held across multiple agencies.

Unlike the sealing provision applicable to the duress defense under § 28(c) (discussed below), which requires a separate motion to seal, as drafted, the § 3771A(h)(1) provision is self-executing—because the statute states that motions and related documents 'shall be filed under seal' without requiring any separate motion, sealing attaches automatically by operation of law at the time of filing. Counsel therefore need not file a separate motion to seal for § 3771A proceedings. That said, the legal obligation and the practical mechanics of sealed filings are distinct questions: even where sealing is mandatory and self-executing, counsel must follow the relevant district's local rules on how to submit sealed documents to ensure they are actually docketed as sealed. Failure to follow local procedure could result in inadvertent public filing even where the statute requires sealing. Counsel should confirm the sealed filing procedure with the clerk's office before submission and should include a cover notation on the filing identifying it as filed under seal pursuant to § 3771A(h)(1).

[201] § 3771A(h)(1).
[202] § 3771A(h)(2).

Impact of an Unsuccessful Motion on the Seal

The statute does not address whether the seal survives a denial of a § 3771A motion. Unlike the § 28(c) duress defense provision (described below), § 3771A(h)(1) contains no express unsealing trigger, suggesting that the seal attaches permanently to the motion and related documents regardless of outcome. This reading is consistent with the statute's broader confidentiality purpose and with the absence of any congressional intent to expose a survivor's trafficking history as a consequence of an unsuccessful motion. Nevertheless, because no court has yet addressed this question, counsel should take affirmative steps to preserve the seal upon denial: specifically, counsel should request that the court's denial order itself confirm that the seal on the motion and related documents remains in place, and should object promptly to any court or clerk action that would result in the unsealing of those materials. This is another area where early litigation will shape the practical operation of the statute, and counsel should monitor developing precedent accordingly.

ii. Sealing of Duress Defense Proceedings

The sealing provision applicable to the duress defense under § 28 operates differently from the § 3771A(h) provision in two important respects.

First, unlike the § 3771A(h) provision, which is automatic and mandatory, the § 28(c) provision requires an affirmative motion by the defendant. Where the duress defense is raised, any record or part of the proceeding related to the defense shall, on motion, be placed under seal.[203] Sealing of duress defense proceedings is not self-executing. As discussed in Section IV.F, counsel must file a motion to seal at the time the defense is first raised and in advance of any hearing or filing in which the defense is discussed.

Second, and critically, the statute provides that the seal remains in place only "until such time as a conviction is entered for the offense."[204] This language raises a significant open question that counsel should be aware of and prepared to address: what happens if a survivor asserts the duress defense and is ultimately convicted? The plain language of § 28(c) suggests that the seal on records related to the defense could lift upon entry of the conviction. The practical implications could be serious: sealed survivor declarations, service provider affidavits, and other sensitive materials assembled in support of the duress defense could potentially become part of the public record at the moment the survivor is most vulnerable. This result would seem contrary to the statute's broader confidentiality purpose, but the question has not yet been addressed by any court under the TSRA.

Until courts provide guidance on this issue, counsel facing a post-conviction unsealing question should consider the following:

- File a motion to maintain the seal post-conviction, arguing that the privacy and safety interests of the trafficking survivor, and the effect that unsealing would have on future survivors' willingness to assert the defense, outweigh any public interest in access to the sealed records.

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[203] § 28(c).
[204] § 28(c).

- Seek the court's guidance on this question at the time of filing the initial motion to seal, so that the court is aware of the issue and can address it prospectively rather than reactively.
- Consult the district's local rules and any applicable standing orders regarding the maintenance of seals post-conviction, as some districts may have general procedures that provide a pathway for preserving seals after a criminal judgment is entered.
- Monitor developing precedent in this area, as early TSRA litigation will shape how courts interpret and apply this provision. Counsel who encounter this issue in a case should consider whether it presents an opportunity to establish favorable precedent, and may wish to consult with trafficking law specialists or advocacy organizations such as Freedom Network USA about coordinated litigation strategy.

By contrast, where the duress defense succeeds and the defendant is acquitted, the § 28(c) provision operates in the survivor's favor: because no conviction is entered, the condition that would trigger unsealing never occurs, and *absent another action,* the seal on the related records should *presumably* remain in place. Counsel should nonetheless request that the court's acquittal order expressly confirm that the seal on all records related to the duress defense remains in place, both to create a clear record and to forestall any future attempt by a third party to access those materials.

C. Immigration Considerations

It is best practice for counsel to engage the help of a qualified immigration attorney with expertise in assisting survivors of trafficking when representing non-citizens to fully understand any potential immigration consequences resulting from representation under the TSRA. A coordinated approach is critical to ensure that any potential impacts from record clearing on any immigration proceedings (and vice versa) are fully understood and discussed with the client. All filings and disclosures made under the TSRA (including the petition for relief and any statements from the survivor), and immigration petitions, should be reviewed by both attorneys familiar with the non-citizen client's situation so that all efforts are made to avoid any potential consequences to either path of relief. The proposed motion for relief should be drafted to provide as much immigration protection as possible for the survivor. The Immigrant Legal Resource Center has published a practice alert on the TSRA addressing these questions for noncitizen defendants; counsel should consult it along with immigration counsel.[205]

If the client is a non-citizen, it will be important for a qualified immigration attorney to conduct an intake and assess whether the client may be eligible for certain immigration benefits. Below are some potential forms of immigration relief that may be relevant for survivors of trafficking:

- A **T visa**, or T nonimmigrant status, is a temporary immigration benefit created by Congress in October 2000 as a part of the Victims of Trafficking and Violence Protection Act. It can provide

[205] Maddie Boyd, Immigrant Legal Resource Center, *New Federal Post-Conviction Relief for Survivors of Human Trafficking and Potential Benefits for Noncitizen Defendants* (Practice Alert, June 2026), https://www.ilrc.org/sites/default/files/2026-06/New-Federal-PCR-for-Survivors-Human-Trafficking.pdf.

certain victims of severe forms of trafficking who comply with reasonable requests from law enforcement to investigate the trafficking to remain in the United States for an initial period of up to 4 years. T visa holders may be eligible to adjust status and become lawful permanent residents. T visas provide survivors with protection while law enforcement officials are more able to investigate and prosecute human trafficking. Unlike a U visa, a certification from a law enforcement agency that the victim was helpful in the investigation or prosecution of the crime is optional for a T visa. To obtain a T visa, a survivor needs to show the following:

- Is or was a victim of a severe form of trafficking;
- Is physically present in the U.S. because of the trafficking;
- Is cooperating or has cooperated with reasonable requests from law enforcement in the investigation of the trafficking;
- Is likely to suffer extreme hardship if deported; and
- Is admissible to the United States, or has obtained a waiver of certain grounds of inadmissibility.

A notice from USCIS approving a T visa can constitute official documentation certifying that the client satisfies the requirement of being a victim of trafficking.

- A **U visa**, or a U nonimmigrant status, is an immigration benefit for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement in the investigation and/or prosecution of the criminal activity. U visas were also created under the Victims of Trafficking and Violence Protection Act, and were intended to protect victims of crime while helping law enforcement authorities serve those victims and investigate the criminal activity. Unlike a T visa, a U visa requires a certification from a law enforcement agency that the victim was helpful in the investigation or prosecution of the crime. A survivor is eligible for a U visa upon showing the following:
  - Was a victim of a qualifying criminal activity;
  - Has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
  - Has information about the criminal activity and was, is, or is likely to be helpful to law enforcement in the prosecution or investigation of the crime;
  - The crime occurred in the United States or violated U.S. law; and
  - Is admissible to the United States, or has obtained a waiver of certain grounds of inadmissibility.

  A notice from an approved U visa or a signed I-918 Supplement B certification from law enforcement can be strong evidence that the client is a victim of trafficking, but only where the underlying crime is related to trafficking.

- **Asylum** is an immigration benefit for individuals who arrive at the U.S. border or are already in the U.S. and they are unable or unwilling to return to their home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the

future on account of race, religion, nationality, membership in a particular social group, or political opinion. A grant of asylum provides an individual with protection from being returned to their home country, is authorized to work in the United States, and can apply for legal permanent residency after a year of asylee status. Not all survivors of trafficking will qualify to apply for asylum simply because of their trafficking victimization. However, asylum may be relevant where the client experienced being trafficked or fears being trafficked in their home country as a form of persecution or exploitation on account of their race, religion, nationality, membership in a particular social group, or political opinion. Even if there is no evidence of trafficking or fear of being trafficked in the client's home country, there may be particular vulnerabilities that led to their trafficking victimization in the U.S. (sexuality, gender-identity, ethnic minority, etc.) that could form the basis of fear of persecution in their home country to support an asylum claim.

- The Violence Against Women Act, or **VAWA**, allows for individuals who have been abused by a spouse, abused by their parents, or abused by their son or daughter, where the abuser is a U.S. citizen or permanent resident, to apply for immigration relief separate from the abusive family member. A survivor of trafficking may be eligible to apply for a VAWA self-petition if they were married to their trafficker, their trafficker was a parent, or their trafficker was their adult son or daughter, and their trafficker is a U.S. citizen or legal permanent resident. An individual with an approved VAWA may receive protection from deportation, may be allowed to work lawfully, may be eligible for a green card, and may be able to include some family members as part of the VAWA petition. VAWA applies to individuals regardless of gender. To be eligible for VAWA, the client must show they:
    - Were the spouse or child of a U.S. citizen or legal permanent resident, or the parent of a U.S. citizen adult son or daughter
    - Were abused by the U.S. citizen or legal permanent resident family member and experienced battery or extreme cruelty
    - Reside or resided with the abuser at some time
    - Are currently living in the United States
    - If applying as a spouse, show a good faith legal marriage[206]
    - Are a person of good moral character

Arrests, convictions, and admissions of criminal acts can all pose a barrier to a survivor's eligibility for immigration benefits. Many immigration benefits, including the ones listed above, have criminal bars, meaning that having a conviction or arrest can prevent a survivor from being eligible for the benefit. For example, when applying for asylum, the applicant must state whether they have "ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States."[207] In applying for adjustment of status, or application for a green card, the applicant will need to respond

[206] A survivor is still eligible to apply for VAWA if they are divorced from their abuser as long as they apply for VAWA within two years of the divorce.
[207] https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf

regarding any prior criminal acts or violations, regardless of whether the records are sealed, cleared, or if they were otherwise told they no longer have a record.[208] Thus, even if the TSRA provides that vacaturs result in the conviction not being regarded as a conviction under Federal law, it may still be advisable to disclose the prior conviction and provide an explanation in a supplement to the USCIS form. There are significant risks to not disclosing convictions and arrests, even if they are otherwise cleared, such that it could outweigh any benefits of nondisclosure.

Whether a vacatur or expungement will be effective for various immigration benefits greatly depends on the many iterations of inadmissibility or criminal bars associated with the immigration benefits, and will require a close review by experienced immigration and criminal law experts to understand how one may affect the other.[209] It also depends on the language in the relevant expungement or vacatur statute and the language used in the order.[210] However, below are various aspects to consider when working with a non-citizen client through these various issues:

- Obtain all of the client's criminal records to analyze the procedural posture of the criminal background and the facts of the underlying offense. USCIS will be able to obtain the individual's criminal history through submitting fingerprints to the FBI, so counsel should have at least the information obtained by USCIS. It is also important to not rely on the client's recollection of their criminal proceedings. The criminal court system is confusing, significant time may have passed since the criminal proceedings, and the client may feel shame or trauma about the events and understate what actually occurred. Counsel will need to obtain all relevant facts directly to properly determine immigration consequences to the client.
- Carefully determine whether any inadmissibility ground or criminal bar actually applies to the client. For example, asylum applicants may be disqualified from receiving humanitarian protection if they have been "convicted by a final judgment of a particularly serious crime."[211] It will be critical to understand whether the client was actually convicted, whether their conviction constituted a "final judgment" such that all appeals were exhausted, and whether any prior conviction constitutes a "particularly serious crime."[212] Also, if the client is still in pre-trial stages, it may be beneficial to work with the prosecutor to negotiate for a reduction to a charge which may not have a negative immigration consequence.
- Carefully consider whether any waiver or exemption may apply to the client based on their situation. For example, within the VAWA context, having been convicted of a crime of moral turpitude or of prostitution is waivable under INA § 212(h). The waiver is discretionary and granted based on a balance of the equities, so it will be important for counsel to introduce evidence regarding the client's trafficking victimization and any other positive discretionary factors.

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[208] https://www.uscis.gov/sites/default/files/document/forms/i-485.pdf
[209] https://www.ilrc.org/sites/default/files/2026-06/New-Federal-PCR-for-Survivors-Human-Trafficking.pdf
[210] https://freedomnetworkusa.org/app/uploads/2026/06/New-Federal-PCR-for-Survivors-Human-Trafficking.pdf
[211] INA §§ 208(b)(2)(A)(ii), 241(b)(3)(B)(ii); 8 CFR § 208.13(c).
[212] https://www.ilrc.org/sites/default/files/2023-12/Particularly%20Serious%20Crimes%20Advisory_Dec%202023.pdf

- Maintain all copies of any criminal records, court records, or other documentation showing any vacatur, expungement, or reduction of sentence. These documents may become critical during the immigration process to prove the fact of expungement or vacatur.

D. Funding

Representation of trafficking survivors under the TSRA, particularly for post-conviction relief, can be resource-intensive, requiring significant attorney time for records gathering, motion drafting, hearing preparation, and coordination with service providers and clinicians. For legal services organizations and counsel working with underserved survivor populations, identifying sustainable funding for this work is a practical imperative. Public defenders and community defender organizations are likely to be the primary attorneys raising the TSRA duress defense in pending prosecutions, and some offices may also be willing to pursue vacatur and expungement for current or former clients or for other survivors. Defender offices should confirm whether their funding and staffing resources extend to post-conviction work of this kind.

Two federal grant programs are the primary funding vehicles for legal representation of trafficking survivors: programs administered by the Office for Victims of Crime (OVC) within the Department of Justice's Office of Justice Programs (OJP), and programs administered by the Office on Violence Against Women (OVW), also within the DOJ. In addition, legal aid agencies funded by the Legal Services Corporation (LSC) may be able to draw on those funds for TSRA representation, as discussed below. The TSRA includes an express provision ensuring that grant recipients may use these funds for post-conviction relief representation, removing a significant barrier that previously limited how legal aid grantees could deploy their federal funding.

Counsel should be aware that the federal funding landscape for victim services programs, including trafficking survivor services, is subject to change, including through litigation, executive action, and annual appropriations. Before relying on any specific grant program described below, counsel should verify the current status and availability of that program at the relevant agency's website or by contacting the program directly. As the TSRA creates new categories of legal need, additional dedicated funding addressing TSRA implementation specifically may emerge as the statute is litigated and demand for representation increases.

i. The TSRA's Express Authorization for Use of Grant Funds for Post-Conviction Relief

Prior to the TSRA, some federal grant programs contained restrictions, both express and implied, that limited the use of grant funds to certain categories of legal representation, which in practice sometimes excluded post-conviction relief work. The TSRA addresses this directly—the Office of Justice Programs or the Office on Violence Against Women, in awarding a grant that may be used for legal representation, may not prohibit a recipient from using the grant for legal representation for post-conviction relief.[213]

[213] § 4 of Pub. L. 119-73.

This is a significant protection for legal services organizations. It means that organizations receiving OJP or OVW grants that include legal representation as an allowable use may use those funds to represent trafficking survivors seeking vacatur, expungement, or sentence reduction under the TSRA, and grant administrators may not impose conditions that prohibit this use. Counsel at funded organizations may take the following steps to ensure compliance and to document their reliance on this provision:

- Review the organization's current award conditions to confirm that legal representation is an allowable activity under the grant. If it is, the TSRA's anti-restriction provision applies and post-conviction relief work is permissible.
- Consider notifying the program officer of the organization's intent to use grant funds for TSRA post-conviction relief representation if it was not included in the relevant application for funding, and request written confirmation that the award conditions are consistent with the TSRA's anti-restriction provision. Determine if this expansion in legal services will require a formal grant modification. A change in the scope or objective of the project requires prior written approval even where no budget revision is needed, so if the proposed work changes the approved activities, counsel would need to obtain the awarding agency's prior written approval before implementing the change; notifying the program officer is not a substitute for approval.[214] This creates a record in the event of a compliance review.
- Consider tracking time and expenses for TSRA work separately to facilitate reporting and to demonstrate to funders the demand for this type of representation, which will support future grant applications in this area.

The TSRA contains a related protection that operates on the beneficiary side rather than the grantee side. Under § 28(e), a failure to assert (or a failed assertion of) the duress defense may not be used to disqualify a client from participating in any federally funded program that aids victims of trafficking.[215] Read together with the anti-restriction provision in § 4 of Pub. L. 119-73, these two provisions create a coherent framework: grant recipients may use federal funds to represent survivors in post-conviction proceedings, and the outcome of those proceedings, including an unsuccessful duress defense, may not be turned against the survivor to deny them access to the federally funded services those grants support.

ii. Office for Victims of Crime (OVC) Grant Programs

The TVPA authorizes the DOJ to make grants to develop, expand, or strengthen programs for victims of human trafficking. OVC (one of six departments within OJP) administers several grant programs directly relevant to counsel seeking funding for TSRA representation.

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[214] 2 C.F.R. § 200.308(b) (recipients must report deviations from the approved budget, project or program scope, or objectives, and request prior approvals), (f)(1) (prior written approval required for a change in the scope or the objective of the project or program, even where no budget revision requires approval); see also 2 C.F.R. § 200.407 (prior-approval provisions).
[215] § 28(e)

Services for Victims of Human Trafficking

This is OVC's primary grant program for direct services to trafficking survivors and has historically included legal services as an allowable cost. The program supports grantees that are developing capacity to serve victims, enhancing victim access to comprehensive services, or providing specialized services for human trafficking victims. Current and upcoming funding opportunities under this program are posted online.[216]

Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program

VOCA provides formula-based funding to states and territories for distribution to local victim services organizations. VOCA-funded programs may use grant funds for legal services to crime victims, including trafficking survivors, subject to state-level program requirements. Counsel whose organizations receive VOCA subgrants should confirm with their state administering agency that post-conviction relief work is an allowable use under their specific award.

iii. Office on Violence Against Women (OVW) Grant Programs

OVW administers grant programs under the Violence Against Women Act (VAWA) that support programs for victims of domestic violence, sexual assault, dating violence, and stalking. Two programs are particularly relevant for counsel seeking to fund TSRA representation.

Legal Assistance for Victims (LAV) Grant Program

The LAV Program is intended to increase the availability of legal assistance to victims of domestic violence, dating violence, sexual assault, and stalking, and is one of the primary OVW vehicles for funding direct legal representation. Eligible applicants include nonprofit organizations and law schools. Organizations that receive LAV grants should be aware that the TSRA's anti-restriction provision expressly permits use of these funds for post-conviction relief representation. However, the OVW grants are generally restricted to survivors of the "VAWA crimes" (domestic violence, dating violence, sexual assault, and stalking), and VAWA funds are not available for trafficking survivors: the LAV Program is authorized only for victims of domestic violence, dating violence, sexual assault, or stalking in legal matters relating to or arising out of that abuse, and the statute separately confines criminal legal assistance to criminal matters relating to or arising out of those crimes. [217] Therefore, the funds would be limited to representing trafficking survivors who are also survivors of one of the VAWA crimes. Current LAV funding opportunities are posted online.[218]

Expanding Legal Services Initiative (ELSI)

ELSI is an OVW program that provides funding specifically to organizations that have a history of providing direct services to victims of domestic violence, dating violence, sexual assault, or stalking but

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[216] ovc.ojp.gov/program/human-trafficking/grants-funding.
[217] 34 U.S.C. § 20121(a) (purpose; criminal legal assistance under the section is limited to criminal matters relating to or arising out of domestic violence, sexual assault, dating violence, and stalking), (c) (authorized uses of LAV grants).
[218] www.justice.gov/ovw/grant-programs.

do not currently offer in-house legal representation. ELSI funding includes a planning phase during which recipients establish a legal services capacity, followed by continuation funding for direct legal services. For anti-trafficking organizations that do not currently have in-house attorneys, ELSI may provide a pathway to building the legal capacity necessary to take on TSRA cases, also subject to the restriction that funds must be used for survivors of the VAWA crimes.

OVW also funds training and technical assistance providers that support LAV Program grantees in assisting trafficking survivors with legal needs. Counsel at OVW-funded organizations should inquire with their OVW program officer about available training and technical assistance resources for TSRA representation, as this support is available at no additional cost to the organization.

iv. Legal Services Corporation (LSC) Funding

Many legal aid organizations that serve trafficking survivors are funded in whole or in part by the Legal Services Corporation (LSC). The TSRA does not specifically address LSC funding: the anti-restriction provision reaches grants awarded by OJP and OVW and does not by its terms extend to LSC grantees.[219] Nonetheless, LSC funding remains an important potential resource for this work, and LSC funding may be available to support certain TSRA representations, provided that the representation is otherwise consistent with applicable LSC statutory, regulatory, and appropriations restrictions.

LSC recipients remain subject to their own statutory and regulatory restrictions, which the TSRA does not displace. Section 1007(b)(2) of the LSC Act[220] and its implementing regulation at 45 C.F.R. Part 1613 bar the use of LSC funds to provide legal assistance with respect to a criminal proceeding. An advisory opinion concluded that Part 1613 does not reach a proceeding that neither challenges the merits of the underlying conviction nor forms part of the adversary judicial process to determine guilt or innocence, and on that basis permitted the use of LSC funds to represent clients seeking reduction of a conviction after completing probation or a sentence.[221]

The application of this restriction to TSRA work likely turns on the relief sought. By analogy, a court or LSC could conclude that a § 3771A motion seeking expungement of an arrest record or reduction of a sentence falls outside Part 1613 for similar reasons, although LSC does not appear to have specifically addressed those forms of relief. A motion to vacate a judgment of conviction presents a more difficult question, as vacatur directly affects the validity of the conviction itself and therefore may be viewed differently under Part 1613.

Accordingly, counsel at LSC-funded organizations should analyze the specific form of relief sought and confirm with their organization's compliance staff, and if necessary with LSC directly, that the representation is consistent with LSC requirements and the terms of the organization's grant before undertaking representation.

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[219] § 4 of Pub. L. 119-73.
[220] 42 U.S.C. § 2996f(b)(2).
[221] Advisory Opinion 2016-006 (2016).