PRACTICE ADVISORY
JANUARY 2026

FACTORS TO WEIGH WHEN CONSIDERING A T VISA

Trying to help a trafficking survivor decide whether to file a T visa application? Below are factors to consider and discuss with the client. The information is current only as of the date above, and in such a rapidly evolving landscape, attorneys must update their advice before giving it.

Remember that decisions about filing belong to the client. Attorneys must only provide accurate, relevant legal background on the consequences of a filing decision. As such, this resource describes factors as generally "falling in favor of" or "against" filing, to help place them on the appropriate side of a list naming the "pros" or "cons" of filing. Still, the survivor should decide for themselves if the pros outweigh the cons.

If you have questions about this list and are an ASISTA member or receive funding from the Office on Violence Against Women (OVW) or Howard G. Buffett Foundation (HGBF), you may schedule a one-on-one technical assistance consultation with an ASISTA attorney to discuss your client's personal risk factors.

KEY PRINCIPLES REFERENCED IN THESE FACTORS ARE:

- 8 CFR § 214.204(b)(3)'s general prohibition on USCIS referring a T applicant for ICE enforcement upon receiving or denying the T application. While the regulatory language is strongly protective and has only very limited exceptions, it is relatively new and its interpretation is currently unclear.

- The current major risk factors for ICE-initiated enforcement. These may evolve. At publication, they include (1) being subject to an unexecuted final order of removal, (2) being susceptible to expedited removal, (3) any criminal history, but especially recent or serious charges or convictions, (4) history of misrepresentation or fraud, and (5) attending non-family court, particularly immigration court or criminal court.

- The current other risk factors for ICE-initiated enforcement. These also may evolve. Presently they include (1) not being registered, (2) working without an EAD, especially in an industry that is commonly raided, (3) residing in a CBP jurisdiction (within 100 miles of a border or the sea), (4) residing in a jurisdiction where local law enforcement are in a cooperative agreement with ICE under INA § 287(g), especially if it is a task force model, and (5) having a family member who is at high risk for enforcement, making the survivor themselves likely to suffer "collateral" arrest.

CONSIDER & DISCUSS

ASISTA recommends practitioners memorialize these discussions in their own notes, at a minimum, including any specific policies or trends that played significant roles in the strategy decision. Many practitioners also ask clients to sign and date an acknowledgment of the discussion. Of course, multiple discussions may be necessary, including discussions after filing, and these, too, should be noted.

FACTORS RELATED TO IMMIGRATION POSTURE OR HISTORY

History of removals or ICE interactions

1. *Unexecuted removal order falls in favor of filing*
   a. ICE is currently focusing enforcement on post-order cases, whether an application is pending or not. Submitting a T application is not likely to spur enforcement because USCIS will generally not refer a T applicant to ICE.[1] By contrast, a pending, prima-facie-approvable T may support a stay under INA § 237(d), even pre-BFD.[2] If a T-BFD is issued, it automatically stays the execution of any order, even if deferred action is not granted.[3] T approval would render the person no longer removable and would make termination mandatory upon reopening.[4]

2. *Re-entry after a prior removal falls in favor of filing*
   a. Filing a T application could mitigate the risk of reinstatement under INA § 241(a)(5).[5]

3. *Inadmissibility based on a prior removal falls in favor of filing if the waiver application is strong.*
   a. Not all prior removal orders result in inadmissibility. A removal order may not trigger inadmissibility if it was never executed or if certain conditions have been met since its execution.[6] However, if the applicant's removal history does create inadmissibility, this factor supports pursuing a T visa with a corresponding waiver request. A successful T visa and waiver could lead to lawful status, whereas other immigration benefits may be unavailable due to bars such as the permanent bar. Filing a T visa petition may also reduce the likelihood that DHS will reinstate a previously executed removal order.

4. *Ongoing removal proceedings falls in favor of filing*
   a. Submitting a T application is not likely to do any harm and could help. A pending or approved T could add to Applicant's defense arsenal against removal.[7]

1. 8 CFR § 214.204(b)(3).
2. As of publication, Sanchez Jimenez v. Dept of Homeland Security, Case No. 2:22-cv-00967-SSS-JPRx (C.D. Cal. Nov. 14, 2022) (Order Denying Defendant's Motion to Dismiss Plaintiff's First Amended Complaint) supports, as persuasive authority, that ICE has a nondiscretionary, ministerial duty under INA § 237(d) to seek a prima facie determination from USCIS on any pending U or T visa, before deciding a discretionary stay request.
3. 8 CFR § 214.204(b)(2)(iii).
4. For more on ground for requesting termination of removal proceedings, see, ASISTA, Practice Alert: New DOJ Rule: Administrative Closure and Termination in Removal Proceedings For Immigrants Seeking Survivor-Based Relief (Aug. 2024).
5. For reasons that should also apply to T visas, nonprecedential AAO cases have found U visas approvable even where an order was reinstated. See ASISTA, "Reinstatement of Removal and Immigrant Survivors" (Jun. 2024). Risk of reinstatement is not apparently elevated by T petition submission because of the non-referral regulation at 8 CFR 214.204(b)(3), yet a T visa may be one of the only applications that can be approved if issuance or enforcement has begun. Thus, a T application is one of the only ways to reduce risk of reinstatement being executed.
6. See, INA §§ 212(a)(6)(B); 212(a)(9)(A), (a)(9)(B), & (a)(9)(C).
7. E.g., by leading to deferred action through a BFD or strengthening a fear-based claim; or, should removal be ordered, by enabling a discretionary stay under INA § 237(d), an automatic stay under 8 CFR § 214.204(b)(2)(iii), or a claim under habeas corpus as in Fatty v Nielsen, Case C17-1535-MJP (Jul. 20, 2018)

5. *Susceptibility to removal proceedings deserves discussion.*
   a. If the applicant is not currently in removal proceedings but is inadmissible or removable, evaluate the types of proceedings that DHS could initiate[8] and assess the likelihood of detention or release during those proceedings.[9] Explain to the applicant what removal proceedings would entail, your role as counsel, and the possible outcomes regarding detention or release. Depending on how the applicant responds to this information—and on the potential availability of relief from removal or the risk of mandatory detention with limited prospects for success—this factor may weigh for or against filing. Also consider and discuss any current trends in DHS's adherence to the regulation prohibiting the issuance of a Notice to Appear (NTA) based solely on a pending or denied T visa application.[10]

6. *Susceptibility to expedited removal or reinstatement falls in favor of filing.*
   a. ICE's use of expedited removal is expanding dramatically. See NIPNLG Practice Advisory (May 2025). Reinstatement orders are also being issued, although ASISTA is not currently aware of a rise in their frequency. A pending or approved T could add to Applicant's defense arsenal against these types of removal. For instance, the T application could lead to deferred action through a BFD, which should prevent physical removal. It could also strengthen some fear-based claims, which may be raised in a defensive Reasonable Fear Interview (RFI). Should removal ultimately be ordered, the pending T could enable a discretionary stay request under INA § 237(d), an automatic stay under 8 CFR § 214.204(b)(2)(iii), or a claim under habeas corpus as in Fatty v Nielsen, Case C17-1535-MJP (Jul. 20, 2018). There are non-precedent decisions from the AAO holding that, while a reinstatement order bars most INA relief, it does not bar approval of U status, and the reasoning behind these appears applicable to T status as well. See, e.g., Matter of A-L- (AAO Jan. 12, 2017); Matter of J-R-F-M- (AAO Aug. 8, 2017).

   b. OSUP/upcoming ICE check-in falls in favor of filing. If Applicant is on an order of supervision, the risk of detention or physical removal appears high at the next check-in, based on reports at time of publication. Because a pending T may provide bases for preventing removal, this factor favors filing.

7. *History of misrepresentation findings often favors filing*
   a. A history of fraud or material misrepresentation in immigration applications elevates enforcement risk with or without a pending T visa. Meanwhile, the T visa may be one of the few applications for which a waiver is available, especially for false citizenship claims. If the T and accompanying waiver applications appear strong, this factor could fall in favor of filing.

8. E.g., expedited removal under INA § 235(b)(1)(A), reinstatement under INA § 241(a)(5), or full removal proceedings under INA § 240. Note that susceptibility to expedited removal can change with the prevailing ICE interpretation. Practitioners should monitor the status of lawsuits and court orders regarding this expansion by visiting the Justice Action Center's Immigration Litigation Tracker.
9. I.e., would they be subject only to discretionary detention with the possibility of bond under INA § 236(a), or to a form of mandatory detention, such as for "arriving [noncitizens]" under INA § 235(b)(1)(B) or (b)(2)(A) (including, under *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), noncitizens who EWI'd even many years ago), for noncitizens with certain criminal histories under INA § 236(c), or for noncitizens with a final order of removal, including those otherwise facing reinstatement, under INA § 241(a)(2)? Release from mandatory types of detention is within ICE's sole discretion, absent a federal habeas corpus action.
10. 8 CFR § 214.204(b)(3)

FACTORS RELATED TO CURRENT ENFORCEMENT TRENDS OR REMOVAL DEFENSE STRATEGY

1. *Possible exposure to ICE enforcement may fall in favor of filing*
   a. The likelier enforcement is, based on current local trends, the more this factor favors filing. Among other things, consider raid patterns, and the industry and location of Applicant's workplace, particularly if Applicant has no EAD.[11] Consider if Applicant's family or associates are likely ICE targets, in ways that may make Applicant a "collateral" arrest. Consider if Applicant will be attending a family, criminal, or immigration court proceeding in a jurisdiction with significant ICE activity at such places.[12] If so, consider whether there are express priorities as to enforcement targets there which apply to your client.[13]

   b. As noted elsewhere, if the Applicant is on an order of supervision (OSUP) or has some other upcoming ICE check-in, that is another exposure type that may favor filing. Risk of detention or removal at the check-in appears high, and a pending T may sometimes be leveraged defensively.

2. *Options for avoiding final removal order while USCIS processes T application deserve consideration*
   a. If Applicant is in removal proceedings, they may need a way to ensure their T application is processed before any individual hearing or final order of removal. EOIR regulations from 2024 set forth both discretionary and mandatory grounds for administrative closure and termination that could assist.[14] They are regarded with varying degrees of generosity by different IJ and BIA members, and it is critical to take this into account before relying on them. Monitor whether the Administration attempts to rescind or rewrite them, and, if so, when.

   b. If the administrative closure and termination regulations are unlikely to be helpful for Applicant, the removal case could be harder but consider all factors about the case and prospects for continuances to determine how much harder the case may be and counsel the client accordingly. If the IJ forces an individual hearing and orders removal before a T BFD or T decision, filing an appeal or habeas corpus petition[15] may be an option to keep Applicant present long enough for T adjudication.

11. Advocates should monitor the news for these patterns. Farms and meatpacking plants are frequent targets. A compendium of raids from the first Trump administration can be found here, but should not be assumed to comport with current targets.
12. See, e.g., Memo from Caleb Vitello, Acting DHS Dir., to Russell Hott, Acting Exec. Assoc. Dir. of ICE-ERO & Robert Hammer, Acting Exec. Assoc. Dir. of ICE-HSI, "Common Sense Enforcement Actions in or Near Protected Areas" (Jan. 31, 2025); DOJ OOD PM 25-06 "Cancellation of Operating Policies and Procedures Memorandum 23-01" (Jan. 28, 2025); Mem. from Caleb Vitello, Acting Dir. US ICE, to All ICE Employees, "Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses" 2-3 (undated) (providing that ICE "should generally avoid enforcement in or near courthouses, or areas within courthouses[,] that are wholly dedicated to non-criminal proceedings" and, specifying family court as an area to avoid unless enforcement there is "operationally necessary" and approved by specified ICE superiors). Consult with local practitioners to understand actual ICE activity.
13. E.g., "Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses," supra, at 2 (providing that ICE's actions at criminal court "[g]enerally" should happen in regards to "targeted aliens," rather than as a raid or fishing expedition, and laying out some examples of such targets, like those posing national security or public safety threats, those with unspecified "criminal convictions," gang members, those with orders of removal (not specified as final orders) who have not departed, and those who have entered the country unlawfully after a prior removal) (noting, however, that the list of targets at criminal court is "not limited" and that others identified collaterally "may be subject to civil enforcement action on a case-by-case basis considering the totality of the circumstances").
14. *See, e.g.*, ASISTA Practice Alert, New DOJ Rule: Administrative Closure and Termination in Removal Proceedings For Immigrants Seeking Survivor-Based Relief (Aug. 2024). For example, a T applicant may obtain deferred action, or may otherwise be able to prove their application is prima facie approvable, which are two separate grounds for discretionary termination; joint or affirmatively unopposed motions may be rare in this Administration, but would make closure or termination virtually mandatory. *See id.*
15. See, e.g., Fatty v Nielsen, Case C17-1535-MJP (Jul. 20, 2018).

3. *Strength of Applicant's other immigration prospects deserves discussion.*
   a. Review and discuss all available benefits and removal defenses, such as U visa, VAWA self-petition, VAWA-based and regular cancellation of removal, fear-based claims, SIJS, or family immigration, etc. Time the filing of your applications strategically accounting for adjudicatory setting, processing times, and probability of approval. Remember to also take into account the reputation of any assigned IJ or immigration court for this factor.

FACTORS RELATED TO CRIMINAL HISTORY

1. *Some, but not all criminal histories fall against filing*
   a. Applicants with arrests, charges, or convictions (especially recent) are more likely than average to face enforcement and detention, with or without a pending T visa. Meanwhile, strong T and waiver application facts may overcome crime-based hurdles, and the T visa may be one of few applications for which such waiver is available. This combination could fall in favor of filing.

   b. Remember the more serious or recent the history, the more likely discretion is to be exercised negatively for the BFD or inadmissibility waiver. If the T visa is denied, USCIS could refer to ICE if the history is "egregious" or national-security related. See 8 CFR §214.204(b)(3).[16]

FACTORS RELATED TO STRENGTH OF APPLICATION OR APPLICATION PROCESSING POLICIES

1. *Strong facts for T and inadmissibility waiver fall in favor of filing*
   a. The stronger the T visa elements and discretionary equities[17], the more this factor favors submission, because it may lead to full relief (T visa grant) and/or interim benefits (Continued Presence, BFD, stay of removal, deferred action, EAD).

   b. Stronger applications are more likely to support a favorable exercise of discretion—whether by an Immigration Judge in granting a continuance, administrative closure, termination, stay of removal, or custody redetermination, or by ICE in granting a stay of removal or release request.

2. *Still needing to report to LEA may fall against filing in some but not many cases*
   a. If Applicant has already reported the trafficking to a law enforcement agency (LEA), they have cleared one potential enforcement risk but need to consider other factors to determine whether to apply for a T visa.

16. As of publication, scattered T applicants have reported NTAs despite not having such serious histories. Many have also had T BFDs denied for national security grounds that they believe do not actually apply. These national security-related BFD denials, if annotated in the files and left to stand, could conceivably increase the likelihood of an NTA if the T application is ultimately denied, but ASISTA has not yet seen enough examples of this posture to know if that is happening.

17. Under INA § 101(a)(15)(T), there is no element of discretion in a T visa application itself, only the inadmissibility waiver is discretionary. Admissible applicants need no waiver, so no discretion. When assessing equities, consider factors throughout this list, as well as factors in the USCIS Policy Manual.

b. If Applicant has not yet reported, consult colleagues local to the crime jurisdiction and research the probability that reporting or requesting a declaration there could lead to referral to ICE, e.g., because of a task force-level cooperation agreement under INA § 287(g).[18] As always, also discuss the practicalities of reporting and Applicant's goals for justice.

c. If Applicant is not required to report due to age or trauma, discuss whether Applicant wants to report anyway.[19] Enforcement risk may be reduced by not reporting, especially in jurisdictions with task force §287(g) agreements. However, if reporting is likely to lead to investigation into the trafficker(s), then Continued Presence or significant public benefit parole may be possible, enabling an EAD, strengthening the T-visa case, and reducing enforcement risk.

3. *When is the case likely to receive either a BFD, based on recent experience, or a final decision, based on USCIS average processing times?*
   a. If during the Trump administration, factor in favor of filing, especially if BFD-based deferred action is likely to be granted or Applicant especially needs work authorization.[20]

   b. If later, this factor is neutral.

4. *Imminent age-out may fall in favor of filing*
   a. If the applicant or a family member may cross a critical age threshold for T eligibility, this factor may favor filing now. How strongly it influences the filing decision or timeline is up to Applicant after considering other factors on this list.

   b. Look out for potential conflicts of interest if you currently represent multiple family members or are considering doing so.

5. *Urgent need for civil or financial documents and supports may fall in favor of filing*
   a. If Applicant has an urgent need for an EAD, public benefits, or driver's license—or an urgent need to relieve other stresses of living undocumented—filing the T application may unlock certain such benefits for adults under TVAP, as well as under other state provisions in some places. Note that the availability of these programs has dwindled or will dwindle under the One Big Beautiful Bill Act (OBBBA), also known as HR-1.

18. Unless you or a colleague knows a federal agent at HSI or DOL in the vicinity to whom you could report, it is often safer to report locally than federally, assuming the locality has no task force § 287(g) agreement (task force level being the level of greatest cooperation between local agents and ICE). Choosing a non-police entity to report to can also reduce risk. Any reporting is less risky for survivors who have very recent or very obvious claims of trafficking, with clear force, fraud, or coercion components, which present a strong case for Continued Presence or would be attractive to prosecute. It is riskier for survivors with criminal histories or warrants and/or unconventional DV- or forced-criminality-based trafficking claims that require significant legal argument to establish.
19. Reasons for wanting to report include wanting to see the perpetrator brought to justice and wanting to be eligible for early adjustment of status. For more, see CAST, "Reporting Trafficking to Law Enforcement for T Visa Purposes" at 13 (Jan. 2024) (This advisory was current at the time of publication. For the most up-to-date information, please visit https://casttta.nationbuilder.com/.).
20. It is worth considering that the BFD or deferred action/EAD could be denied. Unfortunately, there are currently many reports of BFD denials for complete applications with no apparent national security implications, which ASISTA and partners are tracking for potential further action. However, USCIS's published NTA policy does not address that scenario, because it addresses only denials of full applications, not interim benefits. As of the date of publication, it appears ICE is not always aware when USCIS has issued a BFD and/or deferred action for a T applicant, so it may not know of denials, either.

b. EAD speed/availability varies with BFD processing times and likelihood of BFD approval; this affects the degree to which this factor favors filing.

c. T application and biometrics completion may satisfy the registration requirement, though official policy is currently ambiguous.

d. Applicant should weigh how urgent it is for them to file the application and access these benefits and/or gain lawful status.

4.

This Practice Advisory and accompanying worksheet provide general guidance on factors relevant to assessing risks in filing a T nonimmigrant visa application. They are not a substitute for individualized, case-specific legal analysis or technical assistance. Practitioners should evaluate each case based on its unique facts and seek additional guidance as needed.

T VISA RISK ASSESSMENT WORKSHEET

Instructions for Practitioners

Use this worksheet to assess the potential risks and benefits of filing a T nonimmigrant visa application for your client. Review each factor listed below and refer to the accompanying Practice Advisory for detailed guidance on how to evaluate each one.

01 REVIEW EACH FACTOR CAREFULLY

02 CONSIDER HOW IT APPLIES TO YOUR CLIENT'S INDIVIDUAL CIRCUMSTANCES

03 MARK THE APPROPRIATE COLUMN

- ✅ Weighs in Favor: The factor supports filing for T nonimmigrant status (e.g., strong eligibility facts, favorable equities).
- ⚠️ Weighs Against: The factor presents a significant risk or negative consideration (e.g., prior removal order, criminal history that may trigger inadmissibility or enforcement).
- — N/A or Neutral: The factor does not apply to your client or is not clearly positive or negative.

04 ADD EXPLANATORY NOTES

05 USE THE NOTES COLUMN TO SUMMARIZE RELEVANT DETAILS SUCH AS DATES, DISPOSITIONS, OR SPECIFIC FACTS. THIS HELPS DOCUMENT YOUR RISK ANALYSIS AND CAN GUIDE STRATEGY DISCUSSIONS WITH THE CLIENT

06 WEIGH THE OVERALL PICTURE

07 ONCE ALL FACTORS ARE EVALUATED, CONSIDER HOW THE POSITIVES AND NEGATIVES BALANCE OUT. A SINGLE HIGH-RISK FACTOR (SUCH AS REINSTATEMENT OF REMOVAL) MAY OUTWEIGH MULTIPLE FAVORABLE ONES.

Example: If your client has a 2017 domestic violence conviction, mark "Weighs Against" under Criminal History and note: "2017 misdemeanor DV conviction – 12 months probation, completed; no subsequent offenses."

T VISA RISK ASSESSMENT WORKSHEET

Factors	Weighs in Favor	Weighs Against	N/A/Neutral	Notes
Unexecuted Removal Order				
In absentia removal order- inadmissible for 10 years				
Reentry After Removal (Reinstatement Risk)				
Pending removal proceedings				
Upcoming OSUP/ICE check-in				
Susceptible to Expedited Removal				
Risk of exposure to ICE enforcement				
Criminal History				

T VISA RISK ASSESSMENT WORKSHEET

Factors	Weighs in Favor	Weighs Against	N/A/Neutral	Notes
Client need for EAD, public benefits, drivers' license				
Strong T visa facts				
Strong inadmissibility waiver factors				
Imminent age-out				
Trafficking has not yet been reported to LEA				
Client does not want to report to/cooperate with LEA				

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