

# COVID-19, UPDATES & T VISA NUTS & BOLTS

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## Agenda

- COVID-19 agency updates and practice strategies
- CASE LAW & PRACTICE UPDATES
- TRAFFICKING ELEMENTS
- T VISA BENEFITS AND ELIGIBILITY
- PRACTICE POINTERS
- QUESTIONS

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## Learning Objectives

### TODAY'S OBJECTIVES:

- Know where to find the latest updates on the impact of COVID-19 on immigration practice
- Strategize for continued, trauma-informed lawyering in light of social distancing and quarantine policies
- Recognize the fundamental eligibility and filing elements for T visa relief



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# COVID-19 Updates



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## COVID-19 Updates

Tahirih staff, by default, will be working remotely until at least March 27, 2020. Calls will be forwarded and messages checked regularly, but response time may be impacted.

**WHAT WE KNOW TODAY:**

- National emergency, many states and localities are issuing emergency declarations.
- Bay Area counties are under shelter-in-place order.
- CDC recommends no gatherings of groups of more than 10 people for the next 6 weeks and limiting discretionary travel.
- Crisis hotlines and most crisis related services, such as shelters, continue to operate.
- Survivors, like advocates, are figuring it day to day.

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## COVID-19 Updates

**Immigration Court Status**

- All non-detained hearings, including MCH and individuals postponed through April 10.
- Some courts closed with alternate filing locations, including Houston S. Glessner and Atlanta W. Peachtree
- Keep your filing deadlines unless you have clear U or agency notification otherwise.

**Asylum Office Status**

- All asylum offices are closed until at least April 1.

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## COVID-19 Updates

### USCIS Field Offices

- All Field Offices and ASC offices are closed until April 1
- Contact USCIS Contact Center for emergency requests for assistance.
- This does not affect filing deadlines for affirmative applications, such as VAWA, T, U visa, asylum, and SIS filings.

### ICE/ERO Check Ins

- Check with local ERO offices.
  - Washington (Fairfax, Richmond, Norfolk, VA): Check ins for March and April will be postponed and rescheduled.
  - Baltimore has posted a notice that all check ins to be rescheduled on or after May 1.

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## COVID-19 Updates

### What if I have court?

- Hotline may not be updated. You'll get a new notice.
- No broad guidance on call up dates. Plan to meet original pre-hearing filing deadlines.
- You and your client must decide whether to seek continuance of hearings after April 10.
- See resources, including template motion, on Tahirih's pro bono e-library



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## COVID-19 Strategies

### What if I have an asylum interview?

- If you have an asylum interview scheduled after offices reopen but you or your client is sick, consider a reschedule request:
  - [Houston.Asylum@uscis.dhs.gov](mailto:Houston.Asylum@uscis.dhs.gov)
  - [ZARRescheduleRequest@uscis.dhs.gov](mailto:ZARRescheduleRequest@uscis.dhs.gov)
  - [sfasylumreschedulerequests@uscis.dhs.gov](mailto:sfasylumreschedulerequests@uscis.dhs.gov) \*\*



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# Trauma-Informed Strategies

- General Tips**
- Be transparent about what you do – and don't – know
  - Validate concerns
  - Assure client of your commitment to their case
  - Have or make a plan for necessary meetings

- Things to Remember to Say**
- I believe you.
  - I am not judging you.
  - It is not your fault.

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# Trauma-Informed Strategies

- Adjusting for Virtual Meetings with Clients:**
- Use videoconferencing platforms when possible.
  - Shorten meetings.
  - Encourage your client to eat before the meeting and have water available.
  - Have meetings in a private setting and use headset, even though you're alone.
  - Be transparent and collaborative with your client about the goals for the meeting.
  - Make a plan for what to do if you get disconnected.
  - Use grounding techniques based on what's on screen.
  - Be OK with silence and offering space for breaks and emotional responses.

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# Trauma-Informed Strategies

- Adjusting for Other Considerations:**
- If you will be meeting with a client in person out of need, prepare multiple copies of all relevant documents for signature.
  - Use FedEx or other shipments with pre-paid return envelopes to have documents signed if not possible in person.
  - In some circumstances, wet ink signatures might not be needed. Consult with your mentor attorney.
  - Consider sending a taxi or Uber/Lyft for clients who would otherwise need to take public transportation.
  - Be flexible and stay in contact with your clients.

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# Latest Updates in Immigration Law & Policy



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## MPP (Remain in Mexico)

### SUPREME COURT RULING

- The 9<sup>th</sup> Circuit on 2/28 issued a permanent injunction on MPP.
- Almost immediately, the 9<sup>th</sup> Circuit stayed its decision.
- The administration requested an emergency stay from the Supreme Court
- Supreme Court granted stay on March 11
- MPP will remain in effect pending litigation on the merits. Hearings have **not** been suspended in light of COVID-19.



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## Recent BIA Decisions

### Matter of W-E-R-B-, 27 I&N Dec. 795 (BIA 2020)

- Related to serious non-political crimes bar

### Matter of Jimenez-Cedillo, 27 IN Dec. 782 (BIA 2020)

- Md. Crim. Code 3-324(b) violation (sexual solicitation of a minor) is categorically a crime involving moral turpitude.

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## Other Asylum Litigation News

### 9<sup>th</sup> Circuit on Third Country Transit Asylum Ban

- Declined to stay injunction on implementation of transit asylum ban on those who were subjected to metering before July 16, 2019.

### 9<sup>th</sup> Circuit on Asylum Ban Between Ports of Entry

- Affirmed the lower court's preliminary injunction of the asylum ban on individuals who enter between ports of entry).

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## Recent Circuit Decisions

### Ali v. Barr, \_\_\_ F.3d \_\_\_, 2020 U.S. App. Lexis 5484 (5th Cir. Feb. 24, 2020)

- Initial grant of asylum had terminated, because an individual "loses his asylee status when he voluntarily and successfully adjusts to LPR status"

### Barrientos v. CoreCivic, Inc., \_\_\_ F.3d \_\_\_, 2020 U.S. App. LEXIS 6158 (11<sup>th</sup> Cir. Feb. 28, 2020)

- The TVPA applies to private for-profit contractors operating federal immigration detention facilities in suit alleging forced labor.

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## Administrative Updates

### Proposed Rule to Raise EOIR fees

- BIA Appeal \$110 → \$975
- \$50 Asylum application fee
- Increases to motion to re-open and other EOIR filing fees

### Immigration Practice Manual

- Limits pre-hearing briefs to 25 pages
  - File a motion to increase page limit
  - Incorporate by reference
  - Attach statements of law
  - Don't restate facts in affidavit
  - Consult with mentor attorney

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# T Visa Nuts & Bolts



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## *T Visa Nuts & Bolts*

**TODAY'S OBJECTIVES:**

- Understand the basic analysis of severe forms of human trafficking and T visa benefits
- Evaluate and establish the elements of T visa eligibility
- Be equipped with key practice tips for successful T visa applications



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## *Severe Forms of Human Trafficking*



Defined at 22 U.S.C. § 7102(11) and includes specific definitions for sex and labor trafficking.

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## Trafficking Elements

### Process

- Recruiting
- Harboring
- Transporting
- Providing
- Obtaining
- Soliciting
- Patronizing

### Means

- Force
- Fraud
- Coercion
  - 8 CFR § 214.11

### End

- Commercial Sex Act
- Involuntary Servitude
- Debt Bondage
- Peonage
- Slavery



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## Minor Sex Trafficking Elements

### Process

- Inducing

### End

- Commercial Sex Act



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## Immigration Relief: T-Visa



- Legal status and work authorization for four years
- Eligible for same public benefits as a refugee
- Can petition for derivatives (I-914 Supplement A)
  - For applicants under 21: spouse, children, parents and unmarried siblings < 18 years
  - For applicants 21 or older: spouse, children, or any parent or unmarried sibling who faces danger of retaliation from trafficker
- Can apply to adjust status to Lawful Permanent Resident ("green card") after three years or upon conclusion of investigation and prosecution of criminal case



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## T Visa Eligibility

ELEMENT	EXCEPTION
Is or has been a victim of a severe form of trafficking	None
Is physically present in the United States on account of trafficking	None
Complied with any reasonable request for assistance in the investigation or prosecution (if over 18)*	Inability to cooperate due to physical/psychological trauma
Would suffer extreme hardship involving unusual and severe harm if removed from the United States	None

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## T Visa Eligibility

### “PRESENT ON ACCOUNT OF”

Applicant is present in the US, or at a port of entry, on account of the trafficking

Initial entry does not have to be related to the trafficking\*

Continuing presence in the US since trafficking occurred is directly related to the original trafficking (including any exit/reentry)

- USC children\*
- Access to trafficking related services
- Continued cooperation with law enforcement

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## Preparing the T Visa Petition

- Cover letter outlining eligibility; brief if novel/complex issue
- Forms: G-28, I-914, I-914A, I-914B or explanation, I-192, I-912
- ID: Copy of ID page of Passport
- Declaration
- Evidence in support of each element, including country conditions evidence and letters from therapists or advocates
- Proof of relationship for derivatives
- Positive discretionary factors

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## Practice Pointers on RFEs

### Troubling Language

- RFEs often include troubling language such as incorrect statements of law, victim-blaming language, and overbroad/boilerplate language
- Consider including an argument about discretion, why the person shouldn't be issued an NTA and flagging any other forms of relief that the person is eligible/has applied for, and citing to the preamble to the T visa regulations.

### "Past Trafficking" RFEs

- Cite physical presence language of 8 CFR 214.11(g)(1)(iv) and
  - Explain that the survivor is still accessing crucial victims' services; advocate that trauma is the reason the survivor is still in US
  - Fear of retaliation
  - No resources to leave US
  - Need to cooperate with law enforcement agency

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## Practice Pointers

### Smuggling v. Trafficking RFEs

- Conflation of smuggling and trafficking; applicant "consented" to trafficking.
- Structure the affidavit and argument to begin at the point of when the smuggling (consensual agreement) turned into the trafficking
- "Attempted" trafficking also qualifies for a T-visa; argue that the person would have ended up in the trafficking situation but for the escape/help from law enforcement

### Criminal Record RFEs

- Consider potential self-incrimination on the part of the individual survivor
- Potential denial by USCIS based on discretion for failing to provide record
- Ties to trafficking victimization
- Whether criminal activity alleged would render client inadmissible

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## Practice Pointers

### Mental Health Record RFEs

- Weigh value of evidence in support of eligibility with inadmissibility risks related to "harm to self or others"
- Before filing, evaluate what you include in the initial application
- Be responsive to RFE and determine what you will provide
  - Inconsistent statements?
  - Raising unnecessary grounds of admissibility?
  - Making unnecessarily burdensome policy arguments?
  - Relying on the standard (any credible evidence)
  - Ensure mental health professional understands the purpose of the psychological evaluation

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## Trauma-Informed Lawyering



- Go back to basics of [trauma-informed lawyering](#)
- Patience, understanding, nonjudgment
- Remember the impact of trauma on memory, recall, and trust
- Attend to barriers like economic instability where possible (e.g. provide transportation via taxi or rideshare)
- Offer space for choice and decision-making for survivors to reclaim agency and power

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## Questions?

### After the webinar, contact

- Your Tahirih mentor attorney
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Questions | [tahirih.org](#)



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## How You Can Help

Our work is amplified by the power of many. As Pro Bono Network members, there are many ways to contribute your time, resources, and expertise.

### CO-COUNSEL

Directly represent, with Tahirih mentorship, an immigrant survivor in their asylum, VAWA, T, U visa, or Special Immigrant Juvenile Status immigration matters.

### IMPACT LITIGATION

Work with Tahirih on federal litigation, amicus briefs, and other impact litigation opportunities.

### ADVOCATE

Respond to our advocacy alerts to submit comments or engage in other advocacy on behalf of immigrant survivors.

### RESEARCH

Help Tahirih with research and analyze legal questions or research country conditions evidence to help immigrant survivors seeking asylum and other forms of relief.

### DONATE

Tahirih's Client Fund is a pool of money that we may use to provide immediate and critical support to survivors of gender-based violence who are currently in crisis.

### SPREAD THE WORD

Encourage a colleague to join Tahirih's Pro Bono Network.

How You Can Help | [tahirih.org](#)



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# Contact Us



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