ABUSED, BLAMED, AND REFUSED:
PROTECTION DENIED TO WOMEN AND CHILDREN TRAFFICKED OVER THE U.S. SOUTHERN BORDER

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Cover Photo: A woman and her child following their release from Customs and Border Protection in McAllen, Texas. Photo by Spencer Platt/Getty Images.
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**SUMMARY**

The current U.S. administration asserts that its border policies are designed to protect women and children from traffickers. However, its actions tell a very different story. Over the course of the last two years, the administration has failed to protect trafficking victims, as reflected in a dramatic increase in denials of visas for them, resulting from a new and highly restrictive interpretation of requirements under the Trafficking Victims Protection Act. A review of all published appeals of applications for visas for victims of trafficking since 2017 shows that the administration’s decision-making has been particularly dismissive of claims by women and children who have been trafficked over the southwestern border, and has effectively blamed them for their own victimization. Recently implemented policies also scare survivors from coming forward to report abuse and even push them into the hands of traffickers.

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), which created T visas for victims of severe labor or sex trafficking. Beyond proving that they have been forcibly transported for commercial sex or involuntary servitude, T visa applicants also must comply with reasonable requests to assist law enforcement in investigating and prosecuting their traffickers. In addition, they must prove they are physically present in the United States on account of trafficking, and that they would face “extreme hardship involving unusual and severe harm” if removed from the United States. T visas allow victims of trafficking who are in the United States without authorization to legalize their status and petition for the legal entry of certain family members. They also provide access to work permits and federally funded health and other benefits. Congress capped the number of T visas at 5,000 per year, but never more than one-third of that total have been provided in any given year.

From 2005 to 2016, each time Congress reauthorized the TVPA and the Department of Homeland Security (DHS) revised its implementing regulations, the pool of applicants eligible for T visas was widened. New groups of applicants included farm laborers recruited abroad and subsequently underpaid and housed in unacceptable conditions, and young women lured to the United States by relatives or marriage partners who abused them and subjected them to domestic servitude. New and expanded provisions also provided access to T visas for children kidnapped and enslaved by narco-traffickers working along the U.S. southern border. Among other liberalizing elements, the 2016 DHS regulations loosened the evidentiary standard to meet eligibility requirements for T nonimmigrant status.

Just after the liberalized regulations went into effect in January 2017, however, the T visa denial rate began to rise. Whereas the denial rate for victims of trafficking for the period October–De-

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1. The law defined severe trafficking in this way: "(A) the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act that 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 (B) 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."


cember 2016 was 19 percent, that figure had grown to 46 percent by the first quarter of fiscal year 2019 (See figure 1).4

Available data indicate that, in addition to an increase in overall denials, applicants from Mexico, El Salvador, Guatemala, and Honduras have been disproportionately impacted. In 2017, the T visa denial rate for applicants from these countries was 39 percent, whereas for applicants from elsewhere, it was 17 percent. In 2016, comparable figures were 29 percent and 14 percent, respectively.5 Thus, although denial rates increased for both groups between 2016 and 2017, the rate of increase of visa denials for applicants from Mexico, El Salvador, Guatemala, and Honduras was far higher than the rate of increase of visa denials for applicants from elsewhere.6

Rejection of trafficking visa applications since 2017 is based on new, overly narrow, and harsh interpretations of the standards required to meet the definition of a victim of severe forms of trafficking.

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5. Data about T visa grants and denials disaggregated by nationality are not available for 2018 or 2019.

For example, U.S. Citizenship and Immigration Services (USCIS), the branch of DHS that handles applications for T visas, has become very dismissive of claims of forced labor in stash houses. USCIS also dismisses most cases in which applicants have paid smugglers, regardless of how applicants were later victimized. Some decisions reveal a reluctance to consider victims of domestic violence as victims of trafficking, even when there are clear elements of compulsion, including involuntary servitude that would indicate trafficking. Recent decisions also demonstrate a reluctance to recognize the need for victims to remain in the United States due to the trauma they experienced, as the law's regulations permit. In determining whether an applicant has been trafficked, recent USCIS decisions have also relied on incomplete and cursory Customs and Border Protection (CBP) interviews rather than assessments by medical professionals, the Department of Health and Human Services, or even the State Department. Many of these actions are in conflict with accepted best practices for protecting victims of trafficking, including those of the United Nations Office on Drugs and Crime (UNODC), which has endorsed a definition of trafficking that “capture[s] all forms of exploitation...encountered in practice.”

In addition, Immigration and Customs Enforcement (ICE) has not opened up enough investigations in response to requests by T visa applicants, leading adjudicators to dismiss applicant accounts without having factually based alternatives. Instead of investigating the traffickers who T visa applicants have brought to their attention, DHS investigators, overly concerned with fraudulent applications, focus their attention on multiple interviews with T visa applicants and sometimes their service providers and family members.

Moreover, since 2017, the Trump administration has instituted several policies that further increase denials of T visa applications and discourage victims from reporting their trafficking and accessing the public benefits they (and their children) need. These policies include the deputizing of local police for immigration enforcement and ICE arrest of undocumented victims at courthouses and shelters. Moreover, increased USCIS issuance of requests to applicants for additional evidence in T visa cases has prolonged the time it takes to adjudicate them. Thus, some people with T visa applications or pending appeals have been deported, especially because the Attorney General put in place policies to limit immigration judges from granting continuances in removal proceedings. USCIS is also making it more difficult for survivors to obtain fees waivers related to expensive waiver of inadmissibility applications they must file with most trafficking visa applications; this violates Congress's intent to make relief available to all survivors regardless of income. Finally, USCIS has begun issuing “Notices to Appear” to those applicants to whom it has denied T visas, thus targeting them for removal.

In addition, Refugees International is deeply concerned that the administration’s metering and “Remain in Mexico” policies at the border have pushed Central American asylum seekers into the hands of traffickers in Northern Mexico. President Trump’s recent threats to shut the border completely and eliminate asylum altogether have led more Central American families to leave home before harsher policies are put in place and cross the border between ports of entry, further increasing business for smugglers.

The Trump administration’s rhetoric and the activities of some DHS personnel conflate Central American families with the criminals and smugglers who exploit them, belying professed “grave” concern for vulnerable women and children. Decisions by the USCIS Administrative Appeals Office (AAO), which handles appeals in T visa cases, reveal a disregard for the well-being of women victims of rape in circumstances related to trafficking. At the end of 2018 and the beginning of 2019, the AAO issued decisions denying T visas to women who were raped and threatened with forced prostitution by their smugglers while crossing the border and on the American side. These decisions were made at a time when President Trump repeatedly spoke about the need to build a border wall to save women from being bound, taped, and trafficked over the border.

Reports also emerged of sexual assault of migrants by CBP and ICE personnel.

American anti-trafficking policy has always been limited in its ability to protect migrants. Since 2017, however, the Trump administration has been rolling back protections that advocates, Congress, and previous DHS adjudicators and personnel had worked to implement in the previous decade. The Trump administration should quickly reverse course if it is serious about protecting the victims of trafficking. The Department of Justice (DOJ) and DHS each have essential roles to play, as do state and local officials along the U.S. southern border. For its part, Congress must vigorously assert its oversight function.

RECOMMENDATIONS: POSITIVE APPROACHES AND A BETTER WAY FORWARD

To the Department of Homeland Security, including USCIS and ICE

- Interpret T visa regulations such that applicants found to be victims of trafficking and experiencing ongoing trauma and the need for a variety of services are permitted to remain in the United States; abide by existing regulations directing DHS to broaden its definition of involuntary servitude when assessing T visa applications.

- In assessing T visa applications, place more evidentiary weight on certifications of victimization by the State Department, which is charged with assessing and responding to trafficking all over the world; and the Department of Health and Human Services—the sole federal agency authorized to certify that foreign victims of human trafficking are eligible for specified benefits.

- In assessing T visa applications, abide by the best practices and guidance that UNODC provides for assessing consent, the purpose of exploitation, and evidentiary requirements in trafficking cases.

- Revoke policies and reverse practices regarding notices to appear and not issuing fee waivers that discourage and make it more difficult to apply for T visas.

- Allocate more resources to USCIS to reduce adjudication times in T visa cases.

- Reinstate trainings on the relationship between trafficking and domestic violence. The USCIS Office of Policy and Strategy should put out guidance on this issue for adjudicators.

- Do not arrest undocumented immigrants at courthouses or the offices of service providers; this practice limits the ability of immigrant survivors to secure justice and access needed services.¹⁵

- Ensure that Border Patrol agents receive training on how to advise victims of trafficking about how to apply for T visas.

- Require Homeland Security investigators detailed to the border to investigate smuggling and trafficking to inform all identified victims that they can apply for T visas and can access housing, transportation, education, and health care services.

- Direct the DHS Office of Civil Rights and Civil Liberties to prepare and publish a report on filed complaints received regarding the handling of T-visas.

- Direct the DHS Office of the Inspector General to report on USCIS handling of T visa applications.

To the Department of Justice, including the Attorney General

- Make clear that immigration judges should grant continuances so trafficking survivors can have their T visas fully adjudicated.

• Invite external researchers to give presentations on trafficking to better direct interagency discussions on the relationship between smuggling and trafficking, the motives of traffickers, and their exploitation of migrants.

• Direct that the Human Trafficking Protection Unit of the DOJ investigate and report on the impact of DHS border enforcement practices on the well-being of trafficking victims and their ability to obtain relief.

To Members of Congress

• Require DHS and DOJ to report on how U.S.-Mexico anti-human trafficking initiatives consider the needs of trafficking victims.

• Conduct investigatory hearings into how CBP and ICE handle victims of smuggling and trafficking found in the course of enforcement actions.

• Request copies of written policies or standard operations/protocols that DHS and ICE personnel follow in their anti-smuggling and anti-trafficking investigations at the border, including policies regarding handling victims and their family members residing in the United States and abroad; to the extent possible, request that such policies be made public.

• Require that USCIS publicly disclose the number of T visa applications and appeals in T visa cases that prompted Requests for Evidence.

• Request that USCIS provide to Congress any internal policy guidance regarding the making of decisions in T visa cases involving hired smugglers, applicants who crossed the southwestern border, unaccompanied minors, or applicants from Central America; to the extent possible, request that such policies be made public.

• Request a Government Accountability Office report about the performance of USCIS, including the AAO, in handling T visas in light of the analysis in this report regarding recent changes in adjudications.

To State and Local Governments

• Enact laws mandating that law enforcement agencies certify T visa applications promptly and expanding who can certify them to help victims provide evidence of assistance in the investigation and prosecution of trafficking.

• Work with nongovernmental organizations that support and provide services to victims of trafficking. These local, victim-centered approaches should continue to be supported by grants from large foundations and DOJ.16

BACKGROUND:

The Trafficking Victims Protection Act of 2000

In 2000, Congress recognized that fears of deportation often deterred victims of trafficking—those forcibly transported to the United States to perform involuntary labor or commercial sex—from reporting these crimes to law enforcement officials. To address this situation, Congress overwhelmingly passed the Trafficking Victims Protection Act (TVPA), which established T visas for which trafficking victims can apply. In short, T visas provide successful applicants (and “derivative” immediate family members, including spouses, children, parents, and young siblings) the ability to live and work legally in the United States for four years; after three years, they are able to apply for permanent residence. In addition, T visa holders are eligible for federal refugee benefits and can petition for T visas for family members living abroad.

As initially enacted, the law required applicants for T visas to prove that they met four criteria. First, as mentioned, they must be victims of a severe form of trafficking, defined as forced transportation for involuntary labor or commercial sex. Second, applicants must have complied with requests for assistance from law enforcement in investigating and prosecuting their traffickers. Third, they need to prove they are physically present in the United States on account of trafficking. Finally, successful applicants must show that they will “suffer extreme hardship involving unusual and severe harm” if made to return to their home countries.

To apply for a T visa, trafficking victims submit an application, along with an account of their trafficking and available documentary evidence (including an endorsement from law enforcement or letters from victim service providers) to the Vermont Service Center, a regional office of the United States Citizenship and Immigration Service (USCIS), where officers adjudicate all T visa applications. The adjudicators undergo specialized training on “the eligibility requirements and various forms of evidence that might be submitted to address those requirements as well as how to assess that evidence,” as well as “in recognizing the dynamics of victimization and understanding how those influence the evidence provided to support the applicant/petitioner’s claims.”

By law, T visa applications are evaluated based on any credible evidence provided. Trafficking victims who are in the United States without authorization or have committed crimes related to their trafficking can apply for waivers of these inadmissibilities under U.S. law. The rationale for these waivers is stated in the TVPA: “victims of severe forms of trafficking should not be... penalized solely for unlawful acts committed as a direct result of being trafficked.” In cases in which trafficked migrants are forced to be drug mules or sex workers, USCIS may grant them waivers of inadmissibility because their drug and sex crimes were incident to their trafficking. However, USCIS can deny a waiver of inadmissibility as a matter of discretion and—because a ground of inadmissibility is not waived—deny the T visa. Finally, there is a substantial application fee for this waiver, so trafficking victims without means to pay must also apply for a fee waiver. The decision to grant a fee waiver is also discretionary.

Applicants can appeal denials in T visa cases to the Administrative Appeals Office (AAO) within USCIS and then to the federal courts. The AAO assigns specific officers to adjudicate appeals of T visa cases. Each officer

conducts a *de novo* review of all evidence submitted and evaluates whether this evidence demonstrates that the applicant's claim is "probably true." Though the AAO can release decisions designed to set policy (precedent decisions), it has not released any such decisions in the case of T visas. Despite the fact that each AAO non-precedent T visa decision is binding only on the parties involved in the individual case, USCIS has, in fact, referred to nonprecedent T visa decisions in making determinations on other T visa cases. A review all AAO non-precedent decisions in T visa cases reveals common trends and standards in adjudication. The AAO is not independent of USCIS; thus, trends and standards in its decisions are informed by overall policy priorities, preferred legal interpretations, and the predilections of the USCIS, Department of Homeland Security (DHS), and the current administration.


The TVPA was reauthorized with full bipartisan support in 2003. However, only a few hundred T visas were granted each year in the early 2000s because they were relatively unknown, because of delays in adjudication, and because it was difficult to qualify for relief under the law. In 2004, 136 T visas were approved and 292 denied; in 2005, 112 were approved and 213 denied.

In the decade and a half after the passage of the TVPA, protections for trafficking victims were expanded in reauthorizations, implementing regulations, and policy memoranda. Following reauthorizations in 2008 and 2013, the number of T visa applications rose, though grants remained at only several hundred per year—far below the cap Congress had established.

*The expansion of protections had several elements, described below.*

Law Enforcement Assistance (LEA): The requirement that victims be willing to assist law enforcement was modified in both 2003 and 2008. The 2003 reauthorization of the TVPA exempted trafficking victims under 18 years of age from the LEA requirement.

2005 TVPA reauthorization relaxed the LEA requirement for those unable to cooperate “due to psychological or physical trauma.” Indeed, in the decade that followed (2006–2016), attention to victims’ trauma influenced both DHS and Department of Justice (DOJ) anti-trafficking efforts. However, the “trauma exception” did not cover those reluctant to assist law enforcement because they were afraid associates of the traffickers might target their families for retaliation.

Unaccompanied Minors: The TVPA 2008 reauthorization created a process for screening all arriving children and established special protections for unaccompanied minors. The 2008 law also established that all unaccompanied children arriving from noncontiguous countries (such as those in Central America) should be transferred to the care of the Office of Refugee Resettlement (ORR), an agency under the Department of Health and Human Services, for screenings as to their protective needs. ORR was given the authority to determine the eligibility of foreign minor victims of trafficking for benefits and services available to refugees. Before a T visa is granted, ORR can give minors letters attesting to this eligibility.

This new screening system was not without its flaws. The law mandated that children from Mexico be screened by U.S. Customs and Border Protection (CBP) officials to determine whether the children were victims of trafficking or eligible for asylum before transferring them to ORR custody or—if ineligible—returning them across the border. However, a study by the UN Refugee Agency (UNHCR) found that CBP consistently failed to correctly identify child trafficking victims and asylum-eligible children from Mexico and instead returned them to dangerous situations.

Nevertheless, when large numbers of unaccompanied minors from Central America migrated to the United States beginning in 2012, advocates were able to successfully secure T visas for children abused by smugglers and coerced into narco-trafficking. The Department of Health and Human Services defined forced drug smuggling as a specific form of child labor trafficking. Furthermore, USCIS trainings with respect to both children and adults emphasized that “an individual’s willingness to be smuggled into another country does not minimize the victimization he or she may experience at the hands of a trafficker” and that consent to be smuggled was “rendered meaningless by coercive or abusive actions of the traffickers.”

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Domestic violence and trafficking: As with the original TVPA, its 2013 reauthorization came about as part of the Violence Against Women Act. In the years that followed, USCIS trainings focused on when abuse in the context of a domestic relationship could constitute trafficking. Indeed, the intersectionality of trafficking and domestic violence was recognized by advocacy groups, judges, USCIS, and U.S. government-sponsored anti-trafficking initiatives. A USCIS Fact Sheet noted that trafficking can “occur alongside domestic violence.” A 2016 DOJ-supported webinar outlined how to identify when domestic violence cases intersected with trafficking by looking for signs of coercion and forced labor. It used an example of a woman who was lured to the United States by a man who promised her marriage and opportunities. After she arrived, she found he was already married; he kept her isolated and working as an unpaid maid in his home while subjecting her to physical abuse and surveillance.

The “physical presence requirement”: After publishing implementing regulations for the TVPA in 2002, DHS did not revise them for fourteen years. In the interim, victims’ advocates pushed for a change in the “physical presence requirement”—the basic requirement that the applicant prove he or she is in the U.S. on account of trafficking. Before 2016, regulations had required applicants for T visas to prove they did not have a clear opportunity to depart the United States after escaping their traffickers and before law enforcement became involved. DHS had already tempered the physical presence requirement by “looking at the opportunity to depart in light of the individual’s circumstances such as trauma, injury, and lack of resources.” However, in 2016, DHS agreed to remove the “opportunity to depart” requirement from its regulations altogether.

According to the new regulations, a T visa applicant can meet the physical presence requirement by submitting evidence of activities undertaken to deal with the consequences of having been trafficked and the resulting need to remain in the United States. For example, an applicant might show that her or his continuing presence in the United States is directly related to trafficking by submitting evidence of the use of needed services to cope with the traumatic impact of trafficking, which would be unavailable if the victim were to leave the United States.

Moreover, in its amended 2016 T visa regulations, DHS removed the requirement that a T visa applicant show fulfillment of the purpose of trafficking to establish that she or he was a victim of trafficking. In other words, victims escaping from a trafficker before performing forced labor, sex, or services for which they were recruited would still qualify for a T visa if they could prove that traffickers...
intended to exploit them in this way. DHS made this change in recognition of the fact that:

Victims already often find it difficult to report trafficking and work with law enforcement; excluding an entire class of potential victims from T visa eligibility could thwart the purpose of the visa and hinder prosecutions. A narrow interpretation would also seem to punish a victim who was rescued by an LEA or escaped on their own before any labor, services or commercial sex acts were performed. That result is illogical and inconsistent with Congressional intent.\(^{33}\)

**Definition of involuntary servitude:** According to the TVPA, an individual applying for a T visa must demonstrate that he or she is a victim of a severe form of trafficking, including being obtained for labor through the use of force or coercion for the purpose of subjecting to involuntary servitude. By 2013, the AAO issued a nonprecedent decision that a boy who had been forced to work by smugglers in Guatemala before being transported to the United States had been subjected to involuntary servitude. The AAO disagreed with the determination of the director of the Vermont Service Center that the boy’s “labor was a means to pay for his smuggling debt.” Instead, the AAO found the record showed that the boy was held for 12 days and forced to labor without pay through the threat of being beaten. “In this case the record is insufficient to conclude that the applicant willingly provided labor to repay a debt...the preponderance of the relevant evidence demonstrates that the petitioner was harbored at the final holding house for his labor through the use of coercion and for the purpose of subjecting him to involuntary servitude.”\(^{34}\)

In its 2016 regulations, DHS changed its interpretation of involuntary servitude in response to concerns of commentators that DHS’s prior definition was too narrow. That definition cited *United States v. Kozminski*, 487 U.S. 931, 952 (1988). In Kozminski, the Supreme Court considered the historical context of the term “involuntary servitude” as used in particular criminal statutes and held that involuntary servitude excluded compulsion by psychological coercion. Commentators contended that Congress intended the definition of involuntary servitude as used in the TVPA to go beyond the Kozminski construction and recommended striking the citation from the definition. DHS agreed and noted that “the TVPA definition of ‘forced labor’ was meant to ‘expand the definition of involuntary servitude contained in Kozminski.’”\(^{35}\)

**Smuggling/trafficking:** Since passage of the TVPA, administrative decision makers have struggled with the distinction drawn between smuggling and trafficking in U.S. policy. Like the Palermo Protocols to the UN Convention Against Transnational Organized Crime, U.S. law essentially defines smuggling as consensual and trafficking as nonconsensual.\(^{36}\) In other words, smugglers illegally transport willing people, whereas traffickers use force, fraud, or coercion to transport people for

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the purpose of induced commercial sex or subjection to involuntary servitude, peonage, debt bondage, or slavery. In reality, the line between smuggling and trafficking is not so distinct. Many migrants initially consent to pay smugglers who later coerce, extort, and subject them to fraud or otherwise exploit them and limit their movement. A 2007 Customs and Border Protection [CBP] memo noted that “once a person has been held in servitude, their status as a trafficking victim supersedes all other smuggling or immigration questions.”

According to DHS regulations, successful applicants for T visas must prove that their trafficking involved both a particular means—including force, fraud, or coercion—and a particular purpose, end, or intended end—to include sex trafficking, involuntary servitude, peonage, debt bondage, or slavery. In other words, to become traffickers, smugglers must force the migrant to engage in nonconsensual labor or commercial sex.

In the mid-2000s, the few T visa cases reviewed by the AAO involving migrants transported across the southern border were dismissed as smuggling rather than trafficking, despite the fact that many cases involved young people who had been subjected to “ill-treatment” and were “being held hostage” by smugglers. In one case involving a Honduran, the AAO denied that illegal immigration status could be used as a tool of coercion by a trafficker and claimed the applicant was not a victim of labor trafficking, but rather an illegal immigrant attempting to avoid detection.

By 2015, however, the AAO had stopped dismissing as smuggling all cases in which the applicant had initially hired a coyote. In one such case, the AAO determined that a Mexican woman who was raped repeatedly by a smuggler in Arizona was the victim of sex trafficking. The AAO wrote the following:

The applicant asserts that the sexual assaults she suffered were for commercial purposes because she was given basic necessities, such as food and shelter, and the promise of continued survival in exchange for sex acts induced by force and coercion. Individuals who are voluntarily smuggled into the United States may become victims of a severe form of trafficking in persons after their arrival if, for example, the smuggler uses threats of serious harm or physical restraint to force the individual into a commercial sex act or indentured servitude.

The AAO acknowledged this in a February 1, 2008 decision: “It is noted that a willing participant in a smuggling scheme can later become a victim of trafficking in persons, particularly when the participant is placed into a position of servitude in the United States to which she did not agree or anticipate.” See “United States Citizenship and Immigration Services, “AAO Non-Precedent Decisions,” accessed May 14, 2019, https://www.uscis.gov/sites/default/files/err/D12%20-%20Application%20for%20Nonimmigrant%20Status/Decisions_Issued_in_2008/Feb012008%202D12101.pdf.


servitude. The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

Examining the record, the AAO found the following:

The applicant reported that she voluntarily entered into an agreement with a smuggler that stipulated she would pay a defined amount of money in order to be smuggled into the United States...[A]fter she was smuggled into Arizona, however, she was detained and forced to engage in sex acts with the individual who smuggled her in exchange for her survival in the Arizona desert. She recounted in probative detail that the smuggler induced sex acts by physically assaulting her and threatening to kill her... The record demonstrates that the applicant was harbored in the Arizona desert for the purpose of a commercial sex act induced by force and coercion. Accordingly, the applicant was subjected to sex trafficking and is the victim of a severe form of trafficking in persons.41

In another 2015 case, the AAO overturned the Vermont District Director's decision that a 14-year-old Guatemalan boy “was smuggled, not trafficked.” The AAO disagreed, writing that the boy credibly explained how he was approached by a man who offered to advance money to a coyote to bring him to the United States, where he would live well and work picking fruit in Oregon. When the boy reached Mexico, the coyote took his passport and threatened to leave him with a notorious rancher. “The preponderance of the evidence demonstrates that the applicant was recruited for his labor through fraudulent promise of wealth and prosperity in the United States and for the purpose of the applicant's subjection to involuntary servitude. Accordingly, the evidence demonstrates that the applicant was the victim of a severe form of trafficking in persons,” the AAO concluded.42

ROLLING BACK PROTECTIONS IN THE TRUMP ERA

Since 2017, much of the progress made in the previous decade toward a victims-centered approach to trafficking has been reversed. Adjudicators are ignoring the spirit of the new 2016 regulation that helps victims fulfill the physical presence requirement (see text box on the case of S-A-R-M-). Survivors of trafficking have also been denied relief on many other grounds, particularly through the claim that, having consented to be smuggled, they cannot complain if they are later abused. Moreover, USCIS currently requires that applicants prove the precise motives of their alleged traffickers and dismisses applicants’ articulated interpretation of such motives without USCIS pointing to any evidence-based alternative interpretations.

AN EMBLEMATIC CASE FOR THE TRUMP ERA

In February 2017, S-A-R-M-, a teenager from El Salvador, applied to USCIS, a division of DHS, for a visa as a victim of trafficking. S-A-R-M- had left El Salvador a few months earlier to avoid recruitment by a gang, whose members had threatened him on his way to school and outside of his church. He traveled by bus through Guatemala until he reached northern Mexico, where he was taken captive by armed men and kept starving and sleepless in a boarded-up house for several days. He was then beaten and threatened with a gun to his head until he agreed to carry a backpack across the river. Once on the U.S. side, his captors took the backpack and abandoned S-A-R-M-. Border Patrol agents found, questioned, and detained him, and then released him to the Office of Refugee Resettlement, which in turn released him to his sister; she brought him to an attorney who helped him apply for a T visa soon after President Trump took office.

USCIS responded to the T visa application with a “Request for More Evidence” (RFE), a practice that became common by mid-2017 and which significantly prolongs adjudication. The RFE in this case was also typical of cases considered by mid-2017, in that it claimed S-A-R-M-’s story (as told in an affidavit submitted with the T visa application) did not match the summarized notes of his initial questioning by the Border Patrol (as taken down on CBP’s form I-213). CBP’s form stated that S-A-R-M- said his mother “made the arrangements for his entry to the United States,” whereas S-A-R-M- specifically claimed in his T visa application that he had left El Salvador without telling his family. In his reply to the RFE, S-A-R-M- stated that CBP’s form was inaccurate. S-A-R-M- said CBP never asked him if he used a smuggler or whether he had been trafficked, and that he only mentioned his mother in response to a question about who took care of and supported him in El Salvador.

Despite this clarification, USCIS denied S-A-R-M-’s trafficking visa on the grounds of inconsistency. S-A-R-M- appealed to the AAO. On March 13, 2019, the AAO determined that there was no record of the complete questions and answers during the CBP interview or whether the interview was conducted in Spanish or with an interpreter. The AAO instead found that the available record established that S-A-R-M- was indeed a victim of trafficking. Nonetheless, in what has become a common reason for denial in T visa cases since 2017, the AAO denied S-A-R-M- a trafficking visa on the grounds that he “was physically present in the United States because he was fleeing gangs in El Salvador and not on account of his trafficking”—in short, because he was a victim twice over.

In language that can only be described as Kafkaesque, the AAO also denied that S-A-R-M- met the “physical presence requirement” by claiming that his continued presence in the United States is directly related to his trafficking because he is still suffering from traumatic nightmares and that in the United States he can go to school and church, and get services he needs that are unavailable in El Salvador. Though the AAO accepted that he “suffered emotional and physical harm” as a result of the trafficking that brought him to the United States, S-A-R-M-’s statements indicating that he did not wish to return to El Salvador “because of his fear of gangs there” actually damaged his case. The AAO somehow determined that the applicant’s fear of return, rather than his need for continued trauma-related services, was the real reason for his unwillingness to return—and thus, his presence in the United States was not due to trafficking. AAO officials came to this conclusion even though the applicant had to mention his fear of return to help demonstrate he would face extreme hardship if he were returned to El Salvador (the final requirement for the T visa application).
These approaches taken by USCIS make it very difficult for applicants to obtain T visas because, in many cases, family members have paid for smuggling that subsequently turned into trafficking; young age, fear, confusion, and trauma can influence consistency of a victim’s account; and victims sometimes find it difficult to discern traffickers’ motives.

The T visa approval numbers reflect these trends. Whereas the T visa denial rate for October through December 2016 was 19 percent, that for January through September 2017 grew to 26 percent. The rate rose to 35 percent in fiscal year 2018 (October 1, 2017 to September 30, 2018) and another 11 percent between October and December of 2018. In that first quarter of fiscal year 2019, the denial rate was 46 percent.  

Available data indicate that in addition to an overall increase in denials, applicants from Mexico, El Salvador, Guatemala, and Honduras have been disproportionately impacted (see figure 2). In 2017, the T visa denial rate for applicants from these countries was 39 percent, whereas that of applicants from elsewhere was 17 percent. In 2016, comparable figures were 29 percent and 14 percent, respectively. Thus, although

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**FIGURE 2: T VISA DENIAL RATES FOR TRAFFICKING VICTIMS FROM THE NORTHERN TRIANGLE AND MEXICO VS. TRAFFICKING VICTIMS FROM ALL OTHER COUNTRIES**

![T Visa Denial Rates Graph](https://via.placeholder.com/150)


denial rates increased for both groups between 2016 and 2017, the rate of increase of visa denials for applicants from Mexico, El Salvador, Guatemala, and Honduras was far higher than the rate of increase of visa denials for applicants from elsewhere. As this report shows, the same vulnerable population fleeing gangs and gender violence in the Northern Triangle of Central America (Guatemala, Honduras, and El Salvador) that has been denied asylum and other forms of protection under the Trump administration also is being denied T visas as victims of trafficking.\footnote{Human Rights First. “Central Americans Were Increasingly Winning Asylum Before President Trump Took Office,” accessed May 14, 2019, https://www.humanrightsfirst.org/resource/central-americans-were-increasingly-winning-asylum-president-trump-took-office. The denial rate for Special Immigrant Juvenile visas went up from 4 percent to 7.5 percent in fiscal year 2017 and then jumped to 26 percent in fiscal year 2018. The U visa denial rate (for victims of crime) went up from 15 percent in fiscal year 2016 to 19 percent in fiscal year 2018. U.S. Citizenship and Immigration Services, “Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year, Quarter and Case Status Fiscal Year 2019,” accessed May 14, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I360_sij_performancecasedata_fy2019_qtr1.pdf; U.S. Citizenship and Immigration Services, “Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status 2009-2019,” accessed May 14, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1918u_visastatistics_fy2019_qtr1.pdf.}

Analysis of more than 100 T-visa appeals decisions from February 2017 through April 2019 helps explain the rise in the denial rate, especially for applicants trafficked across the southwestern border. Rejection of trafficking visa applications in these cases is based on new, overly narrow, and harsh interpretations of the standards required to meet the definition of a victim of a severe form of trafficking.

Raising the bar on physical presence: First, our review of cases reveals that it has become practically impossible for migrants who cross the southwestern border—and who the AAO concedes have been victims of severe trafficking—to meet the physical presence requirement. To be sure, in the wake of the 2016 regulations, the AAO no longer requires applicants to prove they have not had an opportunity to depart from the United States. However, the case of S-A-R-M- and other cases we have reviewed reveal that trafficking victims who have reasons to remain in the United States related to their being trafficked are being denied relief.\footnote{U.S. Citizenship and Immigration Services, “Matter of N-E-S-, ID# 60462 (AAO Jan. 9, 2018),” accessed May 14, 2019, https://www.uscis.gov/sites/default/files/err/D12-2-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2018/JAN092018_01D12101.pdf.}

In S-A-R-M-’s case, the AAO also ruled that, though as a minor he was exempt from the LEA requirement to prove he was a victim of trafficking, he needed law enforcement to investigate his case to fulfill the physical presence requirement—an overly harsh interpretation of the regulations.


In a case involving a Honduran forced to carry drugs over the border and then held hostage on the U.S. side, the AAO decided that his ongoing posttraumatic stress disorder was not significant enough to prove that his continued presence in the United States was on account of trafficking.\footnote{U.S. Citizenship and Immigration Services, “Matter of E-E-H-P-, ID# 918385 (AAO Mar. 1, 2018),” accessed May 14, 2019, https://www.uscis.gov/sites/default/files/err/D12-2-%20Application%20for%20U%20Nonimmigrant%20Status/Decisions_Issued_in_2018/MAR012018_01D12101.pdf.}
In another decision, the AAO conceded that a Mexican woman was trafficked by her former spouse (who abused her, controlled her movements, threatened to have her deported and harm her children, and took half of her salary) and that she assisted law enforcement in the prosecution of her trafficker (by reporting to the police that he had raped her, leading to his subsequent arrest and deportation to Mexico). Despite asserting her fear that her trafficker would find her if she were returned to Mexico and her receipt in the U.S. of vital trafficking victim services for herself and special education services for her American-born autistic son, the AAO denied she met the physical presence requirement. Indeed, the AAO asserted that the fact that she was receiving services for her own trauma “indicate[s] that her life has improved” and “does not establish that her continuing physical presence in the United States is directly related to her past trafficking.”

Insensitivity to trauma: AAO decisions from 2018 reveal that Homeland Security investigators and agents of the DHS Fraud Detection and National Security unit operated with heightened scrutiny and suspicion regarding applicants’ accounts of trafficking and counseling for its traumatic effects. Applicants point to language barriers during interviews and investigators’ misconduct, including one case in which they cast unfair doubt on the extent of a victims’ mental health treatment by a therapist and the therapist’s expertise. As in the case of S-A-R-M-, AAO decisions frequently assert that the T visa applications do not match CBP’s records, whereas applicants assert that CBP interview records are inaccurate, unreliable, and made under duress. The AAO decisions also reveal that DHS has ignored other agencies’ input in making their determinations. In denying T visas to two sisters from Honduras on September 27, 2018, USCIS disregarded the letters from the Department of Health and Human Services that they were victims of trafficking. USCIS also denied a T visa to a Mexican boy forced to work by cartels; he was summarily returned to Mexico by CBP officers despite telling them of his fear of return and both the State Department and Mexican

consulate claiming he was trafficked.54

The AAO also has denied relief on the basis of slight inconsistencies in accounts provided by victims in response to USCIS’s requests for additional evidence, or by therapists to support the victims’ applications.55 In denying relief to a Guatemalan boy taken hostage by a cartel, the AAO pointed to inconsistencies in his account despite the boy’s assertion that “he struggles to recall and communicate about his past experiences, has tried to forget past traumas, and continues to have nightmares.”56

Domestic violence: USCIS has denied T visas to those whose domestic partners have subjected the applicants to deception and largely controlled their travel over the U.S.-Mexican border, as well as subjecting them to severe abuse and an “ongoing cycle of violence.”57 In one case that Refugees International reviewed, USCIS denied a T visa to an applicant on the grounds that she was a victim of domestic violence rather than trafficking; the woman appealed the decision but was deported while her appeal was pending, so the AAO declared the intersectionality issue she raised to be moot.58

Involuntary servitude: In cases in which the AAO concedes that Central American T-visa applicants have been subjected to coercion by cartels when imprisoned and forced to carry drugs over the border, the AAO still denies that the applicants were “harbored for the purpose of subjecting them to involuntary servitude.” This denial is based on arguments that seem to relate to the magnitude, duration, or precise motives for abuse—for example, arguments claiming that requiring a migrant to carry a backpack over the river once does not rise to the level of involuntary servitude, or that such work required of a migrant does not sufficiently demonstrate the intention of captors.59 In addition, the AAO has denied that being forced to work for captors while held for ransom in a safe house constitutes involuntary servitude.60 In these cases, the AAO has found that the purpose of the captivity was monetary gain rather than involuntary servitude. “The applicant must establish the trafficker’s intent,”

the AAO argues, adding that forced work in safe houses is more akin to "communal chores" than servitude.61

NEW STANDARDS THAT LIMIT PROTECTION: ONCE SMUGGLED, NEVER TRAFFICKED

The more humane approach taken by the AAO in 2015 toward the smuggling and trafficking distinction has been rolled back over the past two years.

In several cases involving Central American youths, the AAO recognized that they “experienced abuse” at the hands of smugglers but insisted it “did not constitute human trafficking.”62 In these cases and other T visa denials since 2017, migrants or their relatives arranged for smugglers to take migrants to the United States, but they were handed off to other smugglers in Mexico or Texas, kidnapped by armed men, or held by cartel members who forced them to engage in activities against their will until ransomed. The denial of T visas in these cases hinges on the AAO’s assertion that the motive of the transporters was financial gain, their efforts were exclusively to bring the migrants to the United States, and all of their behavior was geared to avoiding detection by law enforcement—though this is speculative, as it is not based on investigation or prosecution.63 This assessment of motive is the key to T visa denials because the AAO claims applicants have not shown they have been trafficked “for the purpose of subjection” to involuntary servitude or slavery as required by law.

The AAO consistently denies T visas to applicants who assert that “a trafficker may have multiple motives, such that trafficking and extortion are not mutually exclusive” or that smugglers can be motivated both to smuggle individuals to the United States for profit and subject those same individuals to involuntary servitude for the period of time during the smuggling.64 T visa applicants have asserted that those who kidnapped them were motivated by an interest in using them as drug mules or sex slaves and for forced domestic labor. In doing so, they point to research by scholars about criminal activities along the border. However, the AAO has dismissed these assertions and research as unconvincing and lacking “evidentiary weight.”65 In one case in which the applicant claimed that rape

by a smuggler in a coercive environment was attempted as a form of payment, the AAO declared that the attempted rape took place for “for personal reasons.”

That DHS has frequently found both drugs and migrants during the course of Texas stash house busts belies the notion that traffickers and smugglers do not have mixed motives.

The AAO also denies that trafficking occurs when relatives of Central American migrants pay smugglers in full in advance but migrants are later held hostage in Mexico and forced to work until relatives pay additional funds.

The AAO has denied that migrants have been trafficked in cases in which Central American migrants traveling on buses hired by smugglers have been taken hostage by armed men affiliated with cartels in Northern Mexico—something that happens relatively frequently in Tamaulipas, Coahuila, and Veracruz and has been described by

In short, despite explicitly acknowledging in its decisions since 2017 that “smuggling situations can turn into trafficking situations,” USCIS under the Trump administration has decided to consider T visa applications that describe such situations as exclusively smuggling cases. Focusing on the perceived intentions of the transporters, AAO decisions downplay the issue of victims’ consent as a factor in determining whether the abuse constitutes trafficking. The logic seems to be that migrants who agree to be smuggled have no right to complain about trafficking if arrangements take abusive and unexpected turns, such as being forced to cook and clean at a safe house or carry a backpack over the border.

71. In one case, the AAO writes, “While we recognize that the Applicant did not agree to carry the backpack and did so under coercive and abusive conditions, he has not provided sufficient evidence to show that the armed men subjected or intended to subject him to involuntary servitude rather than requiring him to transport the backpack [for reasons of convenience or necessity] as part of the smuggling scheme.” U.S. Citizenship and Immigration Services, “Matter of O-O-R-P-, ID# 1527940 (AAO Oct. 31, 2018),” accessed May 14, 2019, https://www.uscis.gov/sites/default/files/err/D12%20-%20Application%20for%20T%20Nonimmigrant%20Status/Decisions_Issued_in_2018/OCT312018_01D12101.pdf.
In another decision, the AAP writes: “While the [T visa] applicant may not have intended that she would be required to remain an indefinite period at a safe house during the course of her smuggling and perform some labor during that period as part of
Dismissing trafficking claims in this way is contrary to the best practices suggested by UNODC over the past three years. Rather than make victims prove the intent of their exploiters, a 2018 UNODC issue paper argues that actual exploitation is the most compelling evidence of the intent to exploit. The issue paper also points out the following:

_A disregard for the principle of the irrelevance of consent [of the victim] serves to close the door to investigations...in cases where there is some indication that the alleged victim consented to some aspect of her or his exploitation or her or his getting in this situation._

Finally, UNODC recognizes that “trafficking in persons is a complex crime, with...organized crime groups pursuing profit through new and evolving forms of exploitation” so that states should ensure that their definition of trafficking “can capture all forms of exploitation...encountered in practice.”72 Another recent UNODC report on trafficking cases points out that the duration of abuse—how many times a migrant was forced to carry a backpack or how long a migrant was made to work in a stash house—is irrelevant. The report cites an American court decision, _U.S. v. Pipkins_, 378 F.3d 1281 (2004), that involuntary servitude can be for “any term,” including short term.73

Since 2018, rather than be guided by American legal precedents that expanded protections for victims, the AAO cites precedents, such as United States v. Kozinski, that provide narrower definitions of involuntary servitude than intended in the TVPA and minimize protections for victims. The AAO also dismisses as inapplicable, and not binding on USCIS, federal and state court anti-trafficking decisions cited by applicants. In one case, a Guatemalan woman who was raped by her smugglers claimed she had been subjected to sex trafficking because she had been forced to have sex as payment for her continued passage. The woman claimed that a commercial sex act occurred because there was an exchange of something of value—her freedom and continued passage to the United States—in exchange for the forced sexual acts. To support her claim, the woman cited _U.S. v. Petrovic_, 701 F.3d 849, 858 (8th Cir. 2012), for the notion that “value” is a subjective term that can include both tangibles, such as money, and intangibles, including freedom or safety. The AAO responded dismissively, claiming that the record did not establish that any exchange had occurred.74 This decision stands in sharp contrast to the AAO’s 2015 decision,

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discussed earlier, involving a Mexican woman who was subject to similar sexual abuse by a smuggler; when she made the same argument in her appeal, the AAO found she was a victim of trafficking.

In another case that cites Kozminski, the AAO refused to accord evidentiary weight to the applicant’s submission of a “police report from Kentucky regarding arrest for trafficking under state law involving acts of short duration” or a letter from a Texas prosecutor asserting that extortion and trafficking are not mutually exclusive. In another case citing Kozminski, the AAO dismissed the relevance of two U.S. District Court cases in which smuggling evolved into trafficking when the victims, who initially had engaged with smugglers voluntarily, were compelled to provide labor without pay.

The AAO rejects T visa applications even when the alleged traffickers are different than the people the migrants hired as smugglers. In its rejection of the T visa application of a Honduran who migrated because of gang violence, the AAO wrote “Although the hired smugglers eventually stopped guiding him and other guides took over at multiple points along the journey, the evidence does not establish that the smuggling situation became a trafficking situation.” In this case, despite the T visa applicant’s contrary description of his handling, and without any law enforcement investigation into who actually handled the applicant on his route to the United States, the AAO insisted that the applicant’s various handlers were part of a connected smuggling “network.”

This is precisely the way the Commissioner of the Border Patrol and now Acting DHS Secretary Kevin McAleenan described Central American migration to the Senate Judiciary Committee on March 6: “for the vast majority of arrivals, they are entering the smuggling cycle with a transnational criminal organization from their home countries.” This framing ignores DOJ’s numerous indictments of U.S.-based individuals and criminal organizations for trafficking of immigrants. Evidence from DHS’s own investigations reveal that smugglers and traffickers frequently do not work together in a network, but rather kidnap migrants from each other. As one former border official recently said, “We never get a strategic sense…

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of who is doing the smuggling and how it really works. They are pretty decentralized.”

A CHILLING EFFECT: CRIMINALIZING VICTIMS, DRIVING THEM INTO THE SHADOWS AND FURTHER DANGER

Border Patrol and ICE Enforcement Policies Criminalize Immigrants

As already noted, the premise of many T visa rejections is that applicants were subject to smuggling (not trafficking) to which they and their relatives agreed. As a leaked DHS/DOJ internal planning memo revealed, the administration has been trying to find ways to criminally prosecute “those who smuggle their kids into the United States” since the summer of 2017 and has in fact targeted several such family members for criminal prosecution. At the same time, ICE agents targeted immigrant human trafficking and domestic violence survivors for arrest at courthouses. In fact, USCIS T visa denials in smuggling-turned-trafficking cases track closely to these DHS operations. The first AAO decisions denying T visas to unaccompanied minors because parents paid smugglers were published in June and July of 2017, at the height of a DHS effort to target these parents. (These summer 2017 AAO decisions were then later cited by the Vermont Service Center to deny a T visa to a Honduran woman who initially traveled with a smuggler but then was kidnapped by the Zetas, who forced her to carry a backpack over the border and tried to force her into prostitution in Texas.)

These practices are in conflict with guidelines of the UN Office of the High Commissioner of Human Rights, which state that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination.” A 2017 survey of more than 700 advocates working with survivors of intimate partner violence, sexual abuse, and human trafficking revealed that 43 percent of advocates had clients who dropped a civil or criminal case due to fear of immigration enforcement.85

Moreover, the shift in ICE attention to arresting immigrant victims and their family members has meant that complex smuggling schemes have gone uninvestigated.86 It has also meant that ICE has not responded to the requests of victims to look into their cases after their escape. In fact, by ignoring these requests, ICE has made it more difficult for victims to fulfill T-visa requirements. In a late 2018 decision, the AAO ruled that, to fulfill the physical presence requirement, proof that an applicant reached out to ICE is not enough if ICE does not follow up and become involved in an investigation.87

CBP and Homeland Security Investigations have raided numerous stash houses in New Mexico and Texas, where they have found Central American migrants, including children and others who left their home countries to escape government and gang violence, in horrible conditions.88 However, the AAO has ruled that being held captive, physically abused, and forced to work in a stash house does not entitle a migrant to a T visa.89

In denying a T visa in one late 2018 case, the AAO wrote as follows:

The Applicant credibly explained that her captors kept her in a trailer with other migrants for approximately one month, closely monitoring her movements and, through their sexual assault of other women in the trailer, making her fear that she too would be sexually assaulted if she did not comply with their demands. The Applicant was not provided with sufficient food, water, or sanitary supplies, did not have a way to contact her family, was unfamiliar with the area in which the trailer was located, and was afraid of being forced to return to El Salvador...

[But] the record indicates that the Applicant’s captors actions in holding her in the trailer following her entry into the United States related directly to the need to avoid detection by immigration authorities while waiting to complete the smuggling operation.90

CBP and ICE press releases from the last year describing arrests of migrants who claimed they had been trafficked or raids on stash houses where migrants were held against their will do not suggest that any of the migrants were advised of their ability to apply for T visas. They indicate instead that migrants were arrested and “processed for immigration violations” or “per CBP guidelines.”

In the Rio Grande Valley, fear of arrest by Border Patrol or deputized local law enforcement personnel has driven further underground many undocumented victims of forced farm, ranch, and domestic labor. Calls to the National Trafficking Hotline from Texas fell from 792 in 2017 to 455 in 2018. Nationwide, there were only half as many calls to the hotline in 2018 compared to 2016.

USCIS Policies Block Relief for Immigrant Victims

In addition to rejecting increasing numbers of T visa cases in the past year and a half, USCIS has also instituted policies that have made applying for them more difficult and hazardous for survivors of trafficking. USCIS processing times have lengthened for many humanitarian visas, including T visas, visas under the Violence Against Women Act (for those abused by partners who are U.S. citizens or legal residents), and special immigrant juvenile visas (for foreign minors who have been abused by a parent). One reason for this development—and it happened in S-A-R-M-’s case—is what advocates call “double adjudication”—the issuance of requests for more evidence (when frequently what is being requested has already been submitted).

Moreover, if a migrant is in detention or removal proceedings, immigration judges—under pressure from the Attorney General to complete cases or re-calendar those closed administratively—will not allow for closures or continuances to give migrants a chance to apply for a T visa or wait for adjudication on a pending application. In a departure from past policy, in November 2018, USCIS announced that it would issue “notices to appear” (NTAs) for removal proceedings for those denied T visas. This had an immediate chilling effect—scaring survivors from coming forward—and, in the past few weeks, applicants denied T-visas have received NTAs summoning them to immigration court for removal proceedings. On April 10, 2019, the AAO dismissed as moot an appeal by a Salvadoran woman who had

already been deported.96

Based on interviews with attorneys involved in these cases, Refugees International believes that many T visa applicants have found it much more difficult to get steep application fees waived for necessary ancillary applications (such as waivers of inadmissibility), with USCIS requiring a great deal of proof that victims lack financial resources.97 As one attorney told RI,

Previously, I could cite financial issues related to life-changing events like homelessness without providing supporting documentation. Now, if I cannot provide documents showing that someone is sleeping outside while on a list for a shelter (a shelter will write a letter, but there is nothing for someone who is not receiving that service) or provide evidence of unemployment (proving a negative), the fee waiver is denied.

Who is granted a fee waiver also seems quite arbitrary; outcomes for applicants with similar or identical documentation vary. Advocates also worry that trafficking victims who seek out medical and mental health services may later be denied waivers required to adjust to permanent residency under the new “likely to become a public charge” policy, which denies residency to those who have used public services.

Advocates claim these policies have had a chilling effect, resulting in a reduction in applications, and keeping victims in the shadows and without the services they need. The same policies also are reducing applications for U visas for immigrant victims of crime, including trafficking and domestic violence.98 Advocates also have seen an increased focus by DHS on investigating alleged fraud by T visa applicants. According to the Senior Policy Counsel at Assist, an organization that helps immigrant survivors of trafficking, “There’s a false argument that T visas are being given out like candy, when in fact they are increasingly being denied.” Another advocate added that waivers of inadmissibility applications are increasingly being denied on discretionary grounds in line with the enforcement priorities of the administration. According to the senior director of the Detained Children’s Program at the Capitol Area Immigration Rights coalition, this tactic especially affects young people like S-A-R-M- and others who have been caught up in trafficking along the border. The inadmissibility waiver denial rate for the first quarter of fiscal year 2018 was more than double that of the first quarter of fiscal year 2016.99

DHS Policies Push Vulnerable Migrants Into Further Danger

In addition, Refugees International is deeply concerned that the administration’s metering

and “Remain in Mexico” policies at the border have pushed asylum seekers into the hands of traffickers in Northern Mexico. For example, two Hondurans were killed in Tijuana in December, and those turned away or sent back to Mexico have been robbed, kidnapped, and sexually assaulted. Chaotic administration attempts to crack down on immigration—including recent threats by the President to shut the border completely and eliminate asylum altogether—have led more Central American families to leave home before harsher policies are put in place and to cross the border between ports of entry, thus increasing business for smugglers.\\n
Reports by several organizations have shown that zero tolerance, deterrence, and pushback policies at the border have endangered the most vulnerable—unaccompanied minors, pregnant women, the illiterate, the sick, the disabled, and sexual and ethnic minorities. Moreover, researchers have found that the administration’s policy of detaining all single adult asylum seekers has led to additional trauma—and even abuse and forced labor in custody—for those who have already suffered such abuse at the hands of smugglers and traffickers on their way to the United States.\\n
**CONCLUSION**

In April 2019, just as the Homeland Security Advisory Council expressed grave concern over the trauma migrant children experience when they are held hostage and extorted by criminal smuggling organizations and human traffickers, the AAO denied T visas to Central American children who experienced precisely this form of exploitation and abuse. Specif-

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ically, the AAO denied relief to a Honduran child it conceded “faced challenging circumstances by three [unconnected] groups of smugglers, who forced him to perform chores, threatened him, and held him while extorting his parents for money.” This boy was receiving trafficking survivor services through the Office of Refugee Resettlement when he was rejected for a T visa. On the same day, the AAO also denied a visa to a Guatemalan child who had been held by members of the Gulf cartel, a major Mexican criminal organization.

From both victims’ rights and anti-trafficking perspectives, the best way to address trafficking at the border is to protect victims by providing them refuge in the United States as envisioned in the TVPA, including receipt of the services they need while assisting law enforcement to address the scourge of trafficking.

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ABOUT
REFUGEES INTERNATIONAL

Refugees International advocates for lifesaving assistance and protection for displaced people and promotes solutions to displacement crises around the world. We are an independent organization and do not accept any government or UN funding.