San Francisco
1458 Howard Street
San Francisco, CA 94103

Washington, D.C.
600 14th Street, NW
Suite 502
Washington, D.C. 20005

San Antonio
10127 Morocco Street
Suite 149
San Antonio, TX 78216

Austin
6633 East Hwy 290
Suite 102
Austin, TX 78723

ilrc@ilrc.org
www.ilrc.org

November 15, 2023

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for T Nonimmigrant Status, USCIS–2006–0059; OMB Control Number 1615-0099

Dear Chief Deshommes,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security's (DHS) Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for T Nonimmigrant Status, published on October 16, 2023.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC is also a leader in interpreting family-based immigration law as well as VAWA, U, and T immigration relief for survivors, producing trusted legal resources including webinars, trainings, and manuals such as Families & Immigration: A Practical Guide; The VAWA Manual: Immigration Relief for Abused Immigrants; The U Visa: Obtaining Status for Immigrant Victims of Crime; and T Visas: A Critical Option for Survivors of Human Trafficking. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant and low-income communities – including survivors of intimate partner violence, sexual violence, human trafficking, or other forms of trauma. We welcome the opportunity to provide comments on Form I-914 Application for T Nonimmigrant Status and related forms and instructions.

//

//

I. Implement Uniformly Inclusive Gender Fields on All Forms and Instructions

First, the ILRC asks that USCIS amend Form I-914 to be more inclusive and representative of persons who do not identify in gender binaries. The ILRC commends the 2021 inclusion of a third "Other" box on Forms I-914 Supplement A and Supplement B. We recommend that Form I-914 be amended to include the same three options, *see* Part 2, Field 8, and that the form instructions be amended to reflect this change.

In March 2023, USCIS updated its Policy Manual to clarify that the agency now accepts self-identified gender markers for individuals requesting immigration benefits.[1] The Policy Manual further clarified that individuals requesting benefits need not submit proof of their gender identity when requesting to change their gender marker, and that their chosen gender marker need not match the gender on their supporting documentation.[2] At that time, USCIS stated that it was "working on options to include an additional gender marker ('X') for another or unspecified gender identity," and would update its forms and the Policy Manual accordingly.[3] The reissuance of Form I-914 and related forms is an opportunity to implement this policy and demonstrate the agency's commitment to inclusivity and representation in its materials and processes. Indeed, USCIS has shown a willingness to make this change in various proposed forms that have been published for comment by adding a third gender option, and the agency should follow suit for Form I-914. LGBTQIA+ individuals, including transgender and gender nonconforming people, are especially vulnerable to economic marginalization, workplace exploitation, and sexual and other forms of violence, including human trafficking.[4] Allowing for inclusive gender designation is particularly important when working with survivors of human trafficking and will make the application process—and the protections and benefits available to T visa holders—more accessible to the most vulnerable human trafficking survivors. Further, amending Form I-914 will align that form with its Supplemental Forms, minimizing the risk of confusion and error for applicants, advocates, and adjudicators.

II. Limit Required Disclosure of Certain Vacated Criminal Records and Juvenile Adjudications

The ILRC further recommends striking language requiring the disclosure of certain criminal records that have been vacated due to legal or constitutional invalidity. In 2021, several of our expert partners, including CAST and Freedom Network USA, commented that the agency should modify the disclosure requirements to account for vacaturs of criminal adjudications that carry no legal weight, including for immigration purposes. Unlike expungement, vacatur is the recognition from the criminal justice system that a legal mistake was made that invalidates the underlying conviction. The criminal vacatur process retroactively eliminates a criminal record that should not have been created in the first place and alleviates the consequences of the conviction. The vast majority of states now have special post-conviction vacatur bills for trafficking survivors and more states are in the process of developing

---

[1] USCIS, *USCIS Updates Policy Guidance on Self-Selecting a Gender Marker on Forms and Documents* (Mar. 31, 2023), https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-guidance-on-self-selecting-a-gender-marker-on-forms-and-documents. *See also* 1 USCIS-PM E.5(B)(2).
[2] *Id.*
[3] *Id.*
[4] *See, e.g.*, U.S. Dep't of State, *United States Advisory Council on Human Trafficking Annual Report 2020* (July 28, 2020), https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2020/; Polaris Project, *Sex Trafficking and LGBTQ Youth* (2019), https://polarisproject.org/wp-content/uploads/2019/09/LGBTQ-Sex-Trafficking.pdf.

vacatur laws.[5] For example, California Penal Code § 236.14, which went into effect on January 1, 2017, establishes a vacatur petition process for a person who has been arrested or convicted of a nonviolent crime while he or she was a victim of human trafficking, recognizing that these victims lack the necessary mental state to commit such crimes because of their victimization. Unlike traditional expungement or sealing bills that pardon past criminal behavior, these vacatur bills completely eradicate a survivor's criminal history as if the arrest and conviction had not occurred and restore their status as a law-abiding citizen.

The ILRC acknowledges that the inadmissibility waiver available to T visa applicants is generous as to inadmissibility grounds caused by or incident to the trafficking. However, the current language requires the trafficking survivor to disclose criminal convictions that should never have been imposed in the first place, as determined by a court of competent jurisdiction. The current language undermines the intention of many states' vacatur laws, and in particular trafficking-specific vacatur laws, to eliminate convictions that were invalid due to legal or constitutional error. Requiring disclosure of these determinations serves no adjudicative purpose since they do not constitute convictions for immigration purposes.

In addition, USCIS should cease the consideration of juvenile records in applications for relief and to that end make clear on the Form I-914 and instructions that juvenile arrests, charges, and dispositions need not be disclosed, and juvenile records need not be provided. Across the United States, juvenile justice systems – civil systems that adjudicate violations of the law by children – recognize the significant developmental differences between children and adults and accordingly focus on early intervention, community-based resources, and rehabilitative efforts rather than punishment. In fact, most juvenile justice systems, including the federal system, have confidentiality provisions to protect young people from collateral consequences of juvenile court involvement that can occur when information and records from juvenile court proceedings are publicly available.[6] Requiring people to disclose their youthful violations of the law to USCIS is at odds with the law and policy undergirding juvenile justice systems.

Immigration law does not support consideration of juvenile justice records to determine inadmissibility or as a matter of discretion in immigration adjudications. In *Matter of Devison*, the Board of Immigration Appeals stated, "We have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes."[7] Nor are juvenile delinquency adjudications an appropriate consideration in the well-established rubric for discretionary determinations in immigration proceedings, set forth in *Matter of Marin*.[8] *Marin* lists several factors that could be deemed adverse for purposes of discretionary determinations: "the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this

[5] Survivor Re-Entry Project: https://freedomnetworkusa.org/advocacy/survivor-reentry-project/.
[6] See Juvenile Law Center, *Youth in the Justice System: An Overview*, https://jlc.org/youth-justice-system-overview.
[7] *Matter of Devison*, 22 I&N Dec. 1362, 1365 (BIA 2000), *citing, e.g.*, *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981).
[8] *Matter of Marin,* 16 I&N Dec. 581 (BIA 1978); *see also* 1 USCIS-PM E.8(C)(2).

country."[9] Juvenile delinquency adjudications do not fit anywhere within these factors. First, juvenile justice systems are civil in nature and accordingly state laws forbid the consideration of juvenile delinquency adjudications as "crimes" or youth adjudicated delinquent as "criminals." Second, evidence of a juvenile record simply is not evidence of "bad character." Even the Supreme Court has recognized that youthful violations of the law may not be indicative of adult character and behavior.[10]

This longstanding recognition of the distinctions between criminal and juvenile proceedings should be especially upheld in T visa adjudications. Child victims of trafficking are particularly vulnerable to criminalization and should not be required to disclose events and records that in many states are sealed, and in any case have no bearing on their eligibility for relief, their character, or their likely behavior in the future. The ILRC asks that Form I-914 and the instructions be modified to reflect this.

<u>Suggested Language:</u> (Form I-914, Part 4, Processing Information)

Answer the following questions about yourself. Responses are intended to cover any activity you have committed under your legal name or any aliases. Do not include activity that occurred when you were a minor and for which your case was handled in a juvenile court system. For purposes of this application, you must answer "Yes" to the following questions, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record. (If your answer is "Yes" to any one of these questions, explain in the space provided in **Part 9. Additional Information.** Additionally, explain if any of the acts or circumstances below are related to you having been a victim of a severe form of trafficking. Answering "Yes" does not necessarily mean that you will be denied T nonimmigrant status or are not entitled to adjust your status or register for permanent residence. If you were granted a legal vacatur for your conviction, you may answer "No" to questions 1.A.- 1.I and answer "N/A" to the questions in the chart.)

III. Implement Uniform Confidentiality and Privacy Language Throughout Forms and Instructions

The ILRC further recommends that the language regarding Confidentiality and Routine Uses should be updated and uniform throughout all forms and instructions to explicitly reference VAWA confidentiality provisions (8 USC § 1367) and USCIS Policy Manual protections against the unauthorized disclosure of protected information to third parties. Currently, the confidentiality language varies across the T visa forms and instructions, which may cause confusion and fear for applicants who remain at risk of harm from their traffickers. The VAWA confidentiality provisions were created to "ensure that abusers and criminals cannot use the immigration system against their victims."[11] It is therefore crucial that applicants understand the protections that will be in place throughout the adjudication process to encourage trafficking survivors to come forward to access the relief and benefits they are entitled to receive.

---

[9] 16 I&N Dec. 581, 584 (BIA 1978)

[10] See *Roper v. Simmons* 543 U.S. 551, 570 (2005) (stating "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.")

[11] "Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402" H.R. Rep. No. 109-233, at 120 (2005), https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf.

In addition, in April 2023, USCIS updated its Policy Manual to provide guidance on mailing address procedures for persons eligible for victim-based immigration relief, including T visa applicants.[12] This guidance provides:

- 8 USC § 1367(a)(2) prevents DHS from disclosing any personal information related to a person who is protected under VAWA, subject to certain limited exceptions;
- USCIS officers must review each form to ensure that all communications are sent to the preferred, safe mailing address of a VAWA-protected applicant;
- USCIS may not make adverse case determinations in any application, including non-victim-based applications, based on information from the applicant's abuser, family of the applicant's abuser, or other perpetrator of crime or trafficking against the applicant; and
- USCIS officers must follow specific mailing address procedures for protected persons who are represented, unrepresented, and who have multiple pending forms.

Although USCIS originally announced that the policy would take effect in July 2023, that that date has now been pushed to March 29, 2024. Notwithstanding this delay, USCIS should now update all confidentiality disclosures and certifications throughout the I-914 forms and instructions to reference this policy update, as it is scheduled to take effect shortly after the new forms will likely issue and therefore will impact all new applicants for T nonimmigrant status and their families. Clear, consistent guidance and reference to public resources will help trafficking survivors understand the protections available to them and further encourage these individuals to apply for benefits without fear of harm by their traffickers.

Suggested language:

- Confidentiality (Instructions, page 13)

Information concerning principal applicants for T nonimmigrant status and the family members they apply for is protected under the Violence Against Women Act, 8 U.S.C. Section 1367, and implementing regulations, 8 CFR § 214.14(e). The disclosure of information relating to an individual with a pending or approved application for T nonimmigrant status is prohibited except in certain limited circumstances. These circumstances may include, but are not limited to, disclosure of information to law enforcement agencies with the authority to detect, investigate, or prosecute severe forms of trafficking in persons; non-governmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims; and for purposes of national security. More information on USCIS policy implementing these protections is available in the USCIS Policy Manual, Volume 1, Part A, Chapter 7.

- Routine Uses (Instructions, page 14)

The information you provide in the application is confidential and protected from disclosure under the Violence Against Women Act, 8 USC §1367. Your information will be used to determine eligibility,

---

[12] USCIS, *USCIS Updates Policy Guidance on Safe Mailing Address and Case Handling Procedures for Certain Protected Persons* (Apr. 11, 2023), https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-guidance-on-safe-mailing-address-and-case-handling-procedures-for-certain; USCIS-PM Vol. 1, Part A, Ch. 7.E. https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-7.

to investigate fraudulent claims, to assist in the investigation and prosecution of trafficking and related crimes. The information will be used by and disclosed to DHS personnel and contractors or other agents in accordance with approved routine uses described in the associated published system of records notices . . . . DHS may also share this information with other federal, state, local, and foreign government agencies and authorized organization, as appropriate, for law enforcement purposes or in the interest of national security. More information on USCIS policy protecting against the unauthorized disclosure of confidential information is available in the USCIS Policy Manual, Volume 1, Part A, Chapter 7.

- Applicant's Declaration and Certification (Form I-914, Part 6; Supplement A, Part 6)

I further authorize USCIS to release information to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 USC 1641(c). Any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 USC § 1367 and 8 CFR § 214.14(e).

IV. Conclusion

The ILRC thanks USCIS for the opportunity to comment on the T Nonimmigrant forms and instructions and for the recent policy updates that inform these suggestions. We appreciate the agency's consideration of the ILRC's suggestions regarding further improvements to this set, as well as the comments of other expert organizations and colleagues who submitted comments in 2021 that remain unimplemented. Please feel free to contact us if we can provide further comments or assist in any other way.

Sincerely

/s/Kate Mahoney
Kate Mahoney
Senior Staff Attorney
Immigrant Legal Resource Center

/s/ Jennefer Canales-Pelaez
Jennefer Canales-Pelaez
Texas Policy Attorney and Strategist
Immigrant Legal Resource Center