



The Legal Rights and Needs of Victims of Human Trafficking in the United States

The U.S. legal system is highly complex and fractured. Victims may face concurrent cases in the federal criminal court, local criminal court, immigration court, and local civil court—all related to the trafficking scheme, all at the same time (or stretched out over the course of several years)—and the victim may have a different attorney for each case. Victims may be frustrated by the slow pace of the legal system. It is important to keep the victim informed of the status of any and all legal proceedings, and it is equally important for other providers working with the victim to understand the complexities of the legal process.



What Are the Legal Needs of Trafficking Survivors?

Civil Legal Needs

Trafficking victims have a wide range of civil legal needs, depending on their personal circumstances and the trafficking situation they have endured. Some will need only limited legal services for a short period of time, while others will have multiple legal issues that may last for many years.

Civil legal issues commonly presented by trafficking victims include family law, employment law, public benefits access, rights enforcement, and immigration or repatriation:

- **Family law.** Victims might want a protection or restraining order that directs the trafficker to stay away from the victim and return the victim's possessions. These orders may be included in any criminal proceeding, but victims may need to seek a civil order while the case is pending or when there is no criminal case. Victims, particularly those who are related to their traffickers, may need assistance with separation, divorce, child custody and support, guardianship, or

adoption. Even the strongest families can be irreparably damaged by the trafficking experience and may need legal resolution.

- **Employment law.** Trafficking victims may have been subject to violations under the Fair Labor Standards Act, which requires the payment of a minimum wage and overtime to covered, nonexempt workers. Trafficking victims may also have claims under state or local minimum wage laws or contract law. Victims may have been subjected to harassment or discrimination in their workplace and need assistance in filing a complaint with the Equal Employment Opportunity Commission.
- **Public benefits access.** Trafficking victims may be eligible for a wide range of federally and locally funded public benefits; however, they may need assistance in accessing those benefits. In some cases, a criminal record or the victim's immigration status may affect an individual's ability to access services. Public benefits offices may not be familiar with human trafficking and may not apply the appropriate criteria for assessing eligibility.
- **Rights enforcement.** Victims of crime have rights. Although prosecutors are responsible for ensuring that victims are afforded their rights within the criminal justice system,

DECEMBER 2015

enforcement by civil attorneys or advocates is sometimes necessary. The following victims' rights are included under federal law (state law may afford additional rights and protections):

- To be made aware of available services.
- To be notified of certain significant actions and proceedings within the criminal justice system pertaining to their cases.
- To be notified of crime victim compensation.
- To receive access to emergency funds.
- To be accompanied to all criminal proceedings by a family member, victim advocate, or any other person providing support or assistance.
- To provide, prior to the sentencing of a defendant, an impact statement detailing the physical, psychological, and economic impact of the crime upon themselves and their families.
- To receive restitution and compensation for unpaid wages.
- To receive notice of a defendant's release.
- **Immigration or repatriation.** Many victims who are foreign nationals prefer to remain in the United States. Several immigration options were specifically created for trafficking victims, including Continued Presence and the T visa, and some options also apply to trafficking victims, such as the U visa and Special Immigrant Juvenile Status. An immigration attorney can assess the victim's options and assist her or him in filing the appropriate application. Other victims who are foreign nationals prefer to return to their home countries, and providers can assist with their safe repatriation.

Criminal Defense

Some trafficking victims are forced to commit crimes as part of the trafficking scheme. They may be facing current criminal charges or may have a criminal record from past arrests or convictions.

Victims facing current criminal charges will need representation in those proceedings and may be assigned a public defender if they cannot afford a private attorney. The defense attorney may need additional training or technical assistance to understand the context of the victimization to best advocate for the victim. The defense attorney may also need information about the immigration consequences of criminal convictions if the victim is a foreign national.

Sealing or Expunging a Criminal Record

A criminal record can create difficult downstream consequences whether the person was arrested, convicted, or both. Victims with criminal records may face difficulty in obtaining public benefits, education, housing, or employment for the rest of their lives if the records remain. Increasingly, states are adopting safe harbor and vacatur provisions, which allow for expunging or vacating criminal records related to the trafficking scheme. Other post-conviction relief may be available, which may greatly improve the ability of trafficking victims to attain long-term financial stability and self-confidence.

Where Do I Find Providers That Can Meet These Needs?

Legal services partners might include domestic violence agencies that provide legal representation, general legal aid agencies, law school clinical programs, specialized legal service organizations, such as those that focus on specific legal issues (immigration, employment, or family law) or specific populations (juvenile, lesbian, gay, bisexual, transgender, queer [LGBTQ] populations, or people with disabilities), and public defenders or other criminal defense providers.

For more information, please visit www.ovc.gov/trafficking and www.ovcttac.gov/taskforceguide.

