



NEW FEDERAL POST-CONVICTION RELIEF FOR SURVIVORS OF HUMAN TRAFFICKING AND POTENTIAL BENEFITS FOR NONCITIZEN DEFENDANTS

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I. Overview

The Trafficking Survivors Relief Act (TSRA)² was passed on January 23, 2026, and provides new federal post-conviction relief options for those convicted of certain federal offenses that were committed as a direct result of having been a victim of human trafficking. The TSRA is codified at 18 USC § 3771A. It gives survivors of human trafficking the ability to vacate and expunge federal convictions, and also provides for sentence reductions and an affirmative defense. Since this law is new, we don't yet have examples of successful motions, and these vacatur have not yet been tested in terms of immigration effectiveness. That being said, this practice alert provides considerations for noncitizen defendants seeking post-conviction relief of federal convictions under this new law.³

II. Vacatur for Offenses that are not Crimes of Violence

18 USC § 3771A allows for different types of post-conviction relief (PCR) depending on the offense. There is no deadline for when a vacatur motion is to be filed and it is not subject to the existing rules for federal PCR at 28 USC § 2255.⁴ The law allows a person convicted of any “level A offense” to move the court that imposed the sentence to vacate the judgement of the conviction if the offense was committed as a direct result of the person having been a victim of trafficking.⁵

A. What is a “level A offense”?

A “level A offense” is defined as a federal offense that is not a “crime of violence” (COV) under 18 USC § 16(a).⁶ A COV under this section is “an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.”⁷ Thus, if your client is convicted of a federal crime that is not a COV, they can move the court for vacatur under the TSRA.

B. What is the legal definition of human trafficking?

The law refers to the federal definition of human trafficking in the Trafficking Victims Protection Act of 2000 (22 USC § 7102), termed severe forms of trafficking in persons. According to this federal definition of trafficking, severe forms of trafficking in persons include “A) Sex trafficking,

² Pub. L. 119-73, Jan. 23, 2026, 139 Stat.2003.

³ For a general resource, see Freedom Network USA, *FAQs about Federal Criminal Record Relief for Human Trafficking Survivors* (March 2026), <https://freedomnetworkusa.org/app/uploads/2026/03/FNUSA-TSRA-FAQs-for-Survivors-March-2026-1.pdf>.

⁴ It is possible some courts will hold that the rules of § 2255 will apply, because the statute does not explicitly say otherwise. However, it is unlikely this is what Congress intended, and practitioners should be prepared to argue that the rules § 2255 do not apply.

⁵ 18 USC § 3771A(b)(1)(A).

⁶ 18 USC §§ 3771A(a)(5),(8).

⁷ 18 USC § 16(a). Note that 18 USC § 16(b) was found to be unconstitutionally vague by the Supreme Court in *Sessions v. Dimaya*, 584 U.S. 148 (2018), and the TSRA only refers to § 16(a)'s definition of “crime of violence.”

where a commercial sex act is induced through force, fraud, or coercion, or when the person induced to perform such an act is under 18 years of age; or B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, accomplished through force, fraud, or coercion with the intention of subjecting the person to involuntary servitude, peonage, debt bondage, or slavery.”⁸ Practitioners should be aware that many who have been forced or coerced to work and otherwise meet the federal definition of trafficking will not self-identify as survivors of trafficking. For that reason, it is critical that attorneys become familiar with the definition to ensure they correctly identify human trafficking.⁹ It’s important to note that people can be trafficked by intimate partners, family members, and/or others, as well as by employers or others more commonly understood to be traffickers.

C. What is the “direct result” standard?

The “direct result” standard is not defined, but practitioners can look to similar vacatur at the state level for some guidance. For example, under Maryland’s vacatur statute, courts should consider: “[t]he length of time between the offense and the trafficking of the movant; the dynamics of the relationship between the movant and the person committing trafficking against the movant; and any other relevant evidence.”¹⁰

One way to think about the nexus between trafficking and the client’s conviction is through a “but for” analysis: but for the client’s trafficking victimization, they would not have committed the offense.¹¹ As the Coalition to Abolish Slavery and Trafficking explains “‘Direct result’ should be broadly interpreted as human trafficking is not solely defined by the threat or presence of physical force; rather, human trafficking includes psychological means of coercion including threats, manipulation, and lies to control a victim. Practitioners should not restrict the interpretation of ‘direct result’ to only offenses committed while a survivor was actively in their trafficking situation. Instead, practitioners should seek to include offenses that occurred in the aftermath of the survivor’s victimization, including but not limited to offenses resulting from meeting survival needs after escape from a trafficking situation.”¹² Practitioners should argue for as broad as possible of an interpretation of the “direct result” standard.

⁸ 22 USC § 7102(11).

⁹ For more information on identifying trafficking, see CAST, *Understanding the Legal Definition of Human Trafficking* (March 2025), <https://castla.app.box.com/v/HumanTraffickingAnalysis> and *Ends-Means-Process Model*, https://casttta.nationbuilder.com/emp_model. See also this free training on the human trafficking definition for attorneys:

https://castla.quickbase.com/nav/app/bk8sdh7ti/table/bmbtwqw58/action/nwr?_fid_29=128&dfid=18.

Practitioners are also encouraged to reach out to an expert in anti-trafficking whenever possible.

¹⁰ Md. Crim. Proc. § 8-302(d)(2)).

¹¹ Free to Thrive, *California Criminal Vacatur Practice Guide* (2024),

<https://www.ils.edu/media/loyolalawschool/academics/clinicexperientiallearning/sji/publicationsandreports/Free%20to%20Thrive%20California%20Vacatur%20Practice%20Guide.pdf>.

¹² CAST, *Brief Guide on Vacatur Relief Under CA Penal Code § 236.14* (Feb. 2024), <https://castla.app.box.com/v/CAVacaturGuide23614>.

D. What are the requirements for vacatur?

The statute provides that a court may grant a motion to vacate if the court finds by a preponderance of the evidence that the movant was convicted of a level A offense (non-COV) and that the participation in the offense by the movant was a direct result of the movant having been a victim of trafficking.¹³ The motion must be in writing, describe supporting evidence, state the offense, and include copies of documents showing that the movant is entitled to relief.¹⁴ The government may file an opposition to the vacatur motion within 30 days, in which case a hearing will be held by the court within 15 days of the opposition motion. If the government does not file an opposition, then the court may hold a hearing within 45 days of the vacatur motion.¹⁵ In determining whether the movant is a victim of trafficking, the court shall consider an affidavit or sworn testimony of an anti-human trafficking service provider or clinician and may consider any additional supporting evidence of sufficient probative value. The court may also consider countervailing evidence from a law enforcement officer detailing the role of the movant in coercing other victims of trafficking into committing criminal offenses, should such evidence exist.¹⁶

E. Considerations for noncitizens: vacatur may be effective for immigration purposes

A conviction that is vacated due to legal error will not be considered a conviction for immigration purposes under *Matter of Pickering*.¹⁷ In contrast, a conviction that is vacated “solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings” will remain a conviction for immigration purposes.¹⁸

As discussed above, if your client’s conviction is not a COV, they can move for vacatur under the TSRA. If the court grants the motion, it will vacate the conviction for cause, set aside the verdict and enter a judgment of acquittal. The court will also enter an expungement order that directs that the arrest, the institution of criminal proceedings, and the results of proceedings be expunged from all official records.¹⁹ If a conviction is vacated under 18 USC § 3771A(c)(1), then “the conviction shall not be regarded as a conviction under Federal law and the movant for whom the conviction was vacated shall be considered to have the status occupied by the movant before the arrest or the institution of the criminal proceeding related to such conviction.”²⁰

Immigration advocates should argue that a TSRA-based vacatur is effective under *Matter of Pickering* and erases the conviction for immigration purposes because the statute includes the

¹³ 18 USC § 3771A(b)(4).

¹⁴ 18 USC § 3771A(b)(2).

¹⁵ 18 USC § 3771A(b)(3).

¹⁶ See 18 USC § 3771A(b)(5).

¹⁷ *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003).

¹⁸ *Id.* at 621.

¹⁹ 18 USC § 3771A(c)(1).

²⁰ 18 USC § 3771A(c)(3).

language quoted above stating that the conviction will not be a conviction under federal law. Moreover, it includes the language that the court will vacate the conviction “for cause.” Therefore, the vacatur is based on legal error and not on rehabilitative relief.

To provide additional security to the noncitizen client, practitioners could include a constitutional error in the judge’s order when possible. For example, include the language “the conviction is vacated based on constitutional and statutory grounds.” However, practitioners should be aware of a tradeoff here: if the constitutional language is included, then it is more likely the vacatur motion will be subject to the rules of § 2255. If the constitutional language is not included, the vacatur motion is less likely to be subject to the rules of § 2255. That being said, the language in the statute that the vacated conviction “shall not be regarded as a conviction under Federal law” is independently strong. Thus, an order with the language “the conviction is vacated based on statutory grounds” should also satisfy *Pickering*. Note that noncitizen clients should be also advised to keep a copy of all records of any post-conviction relief obtained and original court records should they be in a position of proving eligibility for immigration relief for which they need to provide proof of vacatur and/or proof of no conviction. Otherwise, clients will not be able to access these records.

A different basis for federal post-conviction relief, under the Federal First Offense Act (FFOA) is available at 18 U.S.C. 3607 and may provide some guideposts for the immigration effectiveness of the TSRA. Ninth Circuit cases *Lujan-Armendariz* and *Nunez-Reyes* acknowledge the immigration effectiveness of Federal First Offender Act (FFOA) expungements for certain federal drug offenses.²¹ These expungements are an exception to the general rule that expungements that provide rehabilitative relief are ineffective for immigration purposes. 18 U.S.C. 3607(b) provides, “A disposition under subsection (a), or a conviction that is the subject of an expungement order under subsection (c), shall not be considered a conviction for the purpose of a disqualification or a disability imposed by law upon conviction of a crime, or for any other purpose.”

While the TSRA doesn’t include this exact language, the TSRA language that a vacated conviction will not be considered a conviction under federal law is similarly strong, as is the language that the person shall be considered to have the status before the arrest even occurred. 18 U.S.C. 3607(c), which also includes language regarding the restoration of the status of the movant prior to the arrest, is discussed in more detail below at Part III. Immigration advocates should explore arguments analogizing provisions in the TSRA to the FFOA. However, these arguments will be stronger in the Ninth Circuit, and there is no precedent to date on this issue.

²¹ *Nunez-Reyes* declined to extend the same treatment to similar expungements of state offenses, but did not disturb the court’s recognition that the FFOA’s first-expungement rule applies to noncitizens with certain federal drug offenses. See *Lujan-Armendariz*, 222 F.3d 728 (9th Cir. 2000); *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (en banc). Other circuits don’t have case law holding that expungements under the FFOA will be effective for immigration purposes and have expressed uncertainty over this issue. See, e.g., *Vasquez-Velezmore v. U.S. INS*, 281 F.3d 693 (8th Cir. 2002); *Elkins v. Comfort*, 392 F.3d 1159 (10th Cir. 2004); *Ramos v. Gonzalez*, 414 F.3d 800 (7th Cir. 2005).

III. Expungement of Arrests for Crimes of Violence that did not Result in a Conviction

The TSRA also provides for expunging *arrests* for both “level A” and “level B” offenses. “Level B” offenses are defined as those that are COVs, but not including COVs where a child was the victim (those convicted of COVs where a child was the victim do not qualify for any relief under 18 USC § 3771A).

Arrests for non-COVs will be expunged along with the vacatur. Arrests for COVs not involving a child victim will be expunged in certain circumstances where the arrest did not result in a conviction or the offense was reduced to a non-COV and then vacated.²²

A. Considerations for noncitizens: expungements of arrests are likely not effective for immigration purposes

While the TSRA allows for expungements of arrests of level A offenses (non-COVs) and level B offenses (COVs not involving a minor victim) that did not result in a conviction, they may not significantly benefit noncitizens. Noncitizens will likely still need to answer “yes” on any immigration applications that ask whether the noncitizen has ever been arrested. Again, clients should be advised to keep a copy of all expunged records should they be in a position of proving eligibility for relief and they need to provide proof of vacatur and/or proof of no conviction.

Practically speaking, it is likely in the best interest of the client to disclose even expunged arrests when applying for immigration relief.²³ However, immigration advocates may want to explore arguments that expungement of arrests under the TSRA should be deemed effective for immigration purposes. For example, the court in *Paredes-Urresterazu* discussed a similar provision in the FFOA that provides expungement of an arrest at 18 U.S.C. § 3607(c) and opined that individuals with such an expungement would have an argument that this expunged arrest should not even be included in an analysis for discretionary immigration relief under INA § 212(c).²⁴ That section provides “for the expunging of ‘all references to *[the] arrest for the*

²² 18 USC § 3771A(1)(C). These arrests will be expunged if the conduct or alleged conduct of the movant resulting in the arrest was directly related to the movant having been a victim of trafficking. The statute also requires that for these offenses, the movant was acquitted of the offense, prosecutors didn’t file charges or moved to dismiss the charges, or the charges were reduced from a COV to a non-COV and the movant was acquitted of the non-COV offense, the government did not pursue prosecution, the government moved to dismiss the criminal charges, or the conviction of a non-COV offense was vacated.

²³ Failure to disclose arrests carries a risk of immigration officials denying relief and even charging a noncitizen with removability on the basis that the omission constituted fraud or a material misrepresentation under Immigration and Nationality Act (INA) § 212(a)(6)(C)(i), 8 USC § 1182 (a)(6)(C)(i). A finding of fraud or material misrepresentation can even lead to a finding that a lawful permanent resident (LPR) is subject to the grounds of deportation because their application for LPR status, which failed to disclose prior criminal arrests, was unlawfully granted. INA § 237(a)(1)(A), 8 USC § 1227(a)(1)(A).

²⁴ *Paredes-Urresterazu v. INS*, 36 F.3d 801, 812 (9th Cir. 1994) (emphasis added). The court opined that not even a negative discretionary finding would be justified based on 18 U.S.C. § 3607(c) and its substantially identical predecessor statute 21 U.S.C. § 844(b)(2) (1988). Note that 18 U.S.C. § 3607(c) limits relief to those who committed an offense while under the age of twenty-one.

offense’ . . . and permits the person to deny that the arrest that led to the criminal proceedings ever took place.”

18 U.S.C. § 3607(c) contains similar language to 18 USC § 3771A(1)(C), in that it serves to restore a person to their pre-arrest status. Based on these similarities, immigration advocates could explore possible arguments that the arrest itself does not exist, even for immigration purposes.²⁵ Practically speaking, however, these arrests may still appear on a client’s rap sheet and the risks of being penalized for not disclosing arrests likely outweigh the benefits.

IV. Reduction of Sentence

18 USC § 3771A(e)(1) allows for a reduction of sentence upon motion by a covered prisoner or upon the court’s own motion. This also requires that the court find by a preponderance of the evidence that the covered prisoner was a victim of trafficking.²⁶

A. Considerations for noncitizens: reduction of sentence may be effective for immigration purposes

There are some instances of when a sentence reduction might be beneficial to a noncitizen. For example, for some convictions to trigger an “aggravated felony” finding under immigration law, they must have resulted in a sentence of a year or more.²⁷ However, a sentence reduction also must comply with *Matter of Pickering* in order to be valid for immigration purposes.²⁸ Therefore, unless counsel is able to convince the court to include a statutory and/or constitutional error in the resentencing order, the resentencing will not be valid for immigration purposes.

V. Defense at Trial

Practitioners should be aware that a defense at trial is also provided for at 18 USC § 28. Thus, if a client has a pending criminal case, they may establish duress by demonstrating that they were the victim of trafficking at the time at which they committed the offense.

²⁵ However, 18 U.S.C. § 3607(c) also includes additional language that 18 USC § 3771A(1)(C) does not have, including that the person cannot be guilty of perjury for failure to acknowledge the expunged arrest. Advocates should be aware of these differences in presenting arguments that the expungement provisions relating to arrests in the TSRA and FFOA are comparable.

²⁶ 18 USC § 3771A(e)(1)(D).

²⁷ Aggravated felony convictions carry harsh immigration consequences, including deportation of even lawfully-present immigrants, ineligibility for many forms of immigration relief, and permanent ineligibility for U.S. citizenship. The term “aggravated felony” is defined by the immigration statute and includes dozens of offenses, some of which require at least a one-year sentence in order to fall under the definition. INA § 101(a)(43), 8 USC § 1101(a)(43). For example, convictions for burglary and theft, crimes of violence, and fraud require at least a one-year sentence in order to constitute an “aggravated felony,” whereas convictions for murder, rape, and drug offenses do not.

²⁸ *Matter of Thomas & Thompson*, 27 I&N Dec. 674 (A.G. 2019).

VI. Other Considerations for Noncitizens

A. Admission to conduct

Note that even if a conviction is vacated, it could still cause immigration harm. There are provisions in the INA that only require an “admission” to the elements of a criminal offense in order to be inadmissible. For example, admitting to a crime involving moral turpitude (CIMT) or a controlled substance offense, can result in a finding of inadmissibility under the INA.²⁹ However, the Board of Immigration Appeals (BIA) has declined to find inadmissibility based on a guilty plea if the conviction is followed by effective post-conviction relief, pardon, or where no resolution amounting to a conviction is entered pursuant to the plea.³⁰ Thus, a client should not be found to be inadmissible under the CIMT or controlled substance grounds because they admitted to conduct that led to a conviction that was vacated.

B. Beware of the “reason to believe” drug trafficker ground

If your client has admitted to the transport or sale of drugs, the Department of Homeland Security may charge them as inadmissible even without a conviction, or with a vacated conviction. The INA provides that a person is inadmissible if “the consular officer or the Attorney General knows or has reason to believe” that the person “is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 USC 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so.”³¹ The scope of this inadmissibility ground is broad. This ground does not require a conviction or admission, and is not waivable, except in the context of T and U nonimmigrant status.³² Since coerced drug trafficking may form the very basis for eligibility for T or U nonimmigrant status, it naturally follows that the drug trafficking conduct may be waivable. For cases involving violent or dangerous criminal activities not incident to the trafficking, the application will only be granted in “extraordinary

²⁹ INA § 212(a)(2), 8 USC § 1182(a)(2).

³⁰ *Matter of E.V.*, 5 I&N Dec. 194 (BIA 1953); *Matter of G*, 1 I&N Dec. 96 (BIA 1942) (dismissal pursuant to Texas statute); *Matter of Winter*, 12 I&N Dec. 638 (BIA 1967, 1968) (case placed “on file” under Massachusetts statute); *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980) (state counterpart of federal first provisions, no conviction).

³¹ INA § 212(a)(2)(C), 8 USC 1182(a)(2)(C).

³² The waiver available for U nonimmigrant status applicants is located at INA § 212(d)(14), and the waiver available for T nonimmigrant status applicants is located at INA § 212(d)(13). The U nonimmigrant status waiver allows the reason to believe ground to be waived “if the Secretary of Homeland Security considers it to be in the public or national interest to do so.” T nonimmigrant status provides a waiver by the Attorney General in their discretion if the inadmissibility ground to be waived was caused by or incident to the noncitizen having been a victim of trafficking.

circumstances.”³³ Note that applicants for T nonimmigrant status can also seek a waiver under INA § 212(d)(3), and it is best practice to argue for the (d)(3) waiver in the alternative.³⁴

VII. Conclusion

The TSRA should provide a valuable form of post-conviction relief to noncitizens who are survivors of trafficking. Advise your client to keep a copy of all records and consult with an immigration attorney with expertise in the intersection of criminal and immigration law on the specifics of your case. If your client has any state convictions, you should also look into vacatur for those since many states also have similar laws that provide for vacatur of convictions for human trafficking survivors.³⁵



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³³ 8 CFR § 212.16(b)(3).

³⁴ For more on waivers in T Visa cases, see CAST, *Waivers of Inadmissibility in T Visa Cases*, https://castta.nationbuilder.com/inadmissibilities_waivers_in_t_visas.

³⁵ For information on vacaturs available in different states, see National Conference of State Legislatures, *Judicial Protections, Remedies, and Restitution for Human Trafficking*, <https://www.ncsl.org/civil-and-criminal-justice/judicial-protections-remedies-and-restitution-for-human-trafficking>.