

The Legal Rights of Immigrant Victims of Family Violence: What You Need to Know Today to Help Victims and Their Children

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VAWA Confidentiality

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- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
 - Victims with VAWA confidentiality protected cases filed
- **Abuser Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
 - All victims
- **Location Prohibitions:** Enforcement locational prohibitions
 - All persons

Non-Disclosure: Protecting Immigration Files

- Prohibits from disclosing of any information relating to someone who has filed one of the eligible self-petitions, a T or a U visa.
- Applies to Departments of:
 - Justice
 - Homeland Security
 - State
- Disclosure rules extend to
 - Everyone
 - Not only crime perpetrator
- Disclosure rules generally bar access by government officials

Non-Disclosure: Protecting Immigration Files

Exceptions

- Legitimate law enforcement purposes
- Judicial Review of immigration case only (Hawke)
- Agency to whom victim has applied for public benefits only for benefits granting purposes
- Limitation ends when application for relief is denied based on substantive grounds and all opportunities for appeals have been exhausted
- If no denial confidentiality continues

What does this mean for immigrant victims?

Non-Disclosure: Protecting Immigration Files

Preventative Strategies?

Protecting Immigration Files Preventative Strategies?

Legal strategies:

- Attorneys/Advocates should clearly mark all immigration filings with the § 384 warning
- Advise victim and whomever victims interact with to know that such protections exist
- Object to discovery of information contained in or about the immigration case in family court proceedings

Relying on Abuser Provided Information

- The government cannot gather and/or use information provided solely by an perpetrator or his or her family members to make adverse determination regarding admissibility/deportability
- The victim does not have to have filed or even qualify to file a VAWA, T or U visa immigration application
- Need only prove that the individual is a protected immigrant

Location Prohibitions

Immigration judge to dismiss case if any part of an enforcement action occurs at:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking

Where else is DHS not supposed to conduct enforcement activities?

Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities

Location Prohibitions

- This enforcement location bar applies in all cases and does not require victimization
- But if there is an enforcement action at one of these locations:
 - the Immigration Court Notice to Appear must include a certification by a DHS official
 - confirming that none of the VAWA confidentiality prohibitions were violated
 - DHS Policy
 - VAWA Confidentiality Enforcement

Relying on Information, Locational Prohibitions

Preventative Strategies?

Relying on Information, Locational Prohibitions Preventative Strategies

- Provide victims with proof of victimization
- Work with DHS and local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Train personnel who work at prohibited locations
- File skeletal immigration applications
- Advise victim and everyone working with the victim about these protections...they may need to advocate on the spot
- Distribute copies of DHS policies
 - 384 Computer system
 - Pending applications

Preventative Strategies, Cont.

- File skeletal immigration applications
- Provide victims with proof of filed VAWA, T or U case
- Object to discovery of information contained in or about the immigration case in family court proceedings

- Advocate on the spot- provide
 - proof of victimization,
 - Copy of the statute
 - DHS enforcement policy
 - DHS complaint system
 - DHS 384 system
- Collect information about the violating officer
 - Name
 - Agency
 - Badge Number
- Work it up the chain to a supervisor
- File a formal complaint-
 - penalties of up to \$5000 per incident against the violating officer individually
 - Also disciplinary actions
- Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief

Sec. 287(g) Added By IIRAIRA With VAWA Confidentiality

- Allows state/local law enforcement to “perform functions of immigration officer”
- Officers are required to “Have knowledge of, and adhere to” federal immigration laws
 - Including the positive laws that help crime victims
- Subject to sanctions for VAWA confidentiality violation in the same manner as DHS employees

DHS Humanitarian Release

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done
 - In English/Spanish
 - Oral and writing
- Release as
 - Order of recognizance
 - Order of supervision
 - Alternatives to Detention

New Release From Detention Homeland Security Policy

(August 20, 2010)

- Applies to Homeland Security Detention
 - Initiation and prosecution of removal of immigrants
 - Homeland Security detention
- Release for immigrants with a filed, pending or approved applications for immigration benefits
 - U visa,
 - T-Visa
 - VAWA,
 - Family Petition
 - Other

August 2010 DHS Policy

- Dismissal without prejudice of removal case if DHS believes the applicant is likely to receive an immigration benefit
- Unless applicant
 - Has criminal convictions or misconduct
 - Is a threat to public safety or national security
 - Evidence of fraud
- Importance of Predominant Aggressor Determination

DHS 2-4-11 Coordination Memo on VAWA, T and U cases when victim in proceedings

- Immigration and Customs Enforcement (ICE) required to notify the VAWA Unit when a victim in removal proceedings has a pending case for –
 - VAWA self-petition
 - T-visa
 - U-visa
- ICE to send A-file to VAWA Unit
- Victim in removal + detention = 30 days to adjudicate
- Victim in removal no detention = 45 days to adjudicate

VAWA Unit Criteria to Expedite Cases

- Severe financial loss to company or individual
- Extreme emergent situation
- Humanitarian situation
- Department of Defense or National Interest Situation
- USCIS error
- Compelling interest of USCIS