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DISCLOSURE OF SECTION 1367 INFORMATION TO LAW ENFORCEMENT OFFICIALS FOR LEGITIMATE LAW ENFORCEMENT PURPOSES

I. Purpose

This Instruction implements the Department of Homeland Security (DHS) Directive 002-02 with respect to the disclosure to Law Enforcement Officials for Legitimate Law Enforcement Purposes any information relating to applicants for or beneficiaries of T nonimmigrant status applications (“T visa”), U nonimmigrant status petitions (“U visa”), or applications for immigration relief under the Violence Against Women Act (VAWA) (“Section 1367 Information”). Title 8, United States Code (U.S.C.), Section 1367(a)(2), (b)(2).

II. Scope

This Instruction applies throughout DHS. It does not affect the disclosure of Section 1367 Information in accordance with other exceptions enumerated in Title 8, U.S.C., Section 1367(b).

III. References

- A. Section 102(b)(1) of the Homeland Security Act of 2002; Title 6, U.S.C., Section 112(b)(1)
- B. Sections 101(a)(15)(T), (15)(U), (51), 240A(b)(2) of the Immigration and Nationality Act (INA); Title 8, U.S.C., Sections 1101(a)(15)(T), (15)(U), (51), 1229b(b)(2)
- C. Section 103(a) of the INA; Title 8, U.S.C., Section 1103(a)
- D. Title 8, U.S.C., Section 1367, “Penalties for disclosure of information”
- E. 8 C.F.R. § 2.1

- F. DHS Privacy Incident Handling Guidance (Jan. 26, 2012)
- G. DHS Directive 002-02, "Implementation of Section 1367 Information Provisions"
- H. DHS Instruction 002-02-001, "Implementation of Section 1367 Information Provisions"

IV. Definitions

- A. **Information**: Any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.
- B. **Law Enforcement Official**: An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, a foreign government or international organization, or an Indian tribe, who is empowered by law to:

(1) Investigate or conduct an official inquiry into a potential violation of criminal, civil or administrative law or

(2) Prosecute; or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

The term includes individuals who provide technical, administrative, or other authorized support to law enforcement officers, but does not include emergency, fire, or public officials who are not acting in a law enforcement capacity.

- C. **Legitimate Law Enforcement Purpose**: Preventing, detecting, investigating, or prosecuting, an offense or civil or administrative violation or a potential offense or civil or administrative violation, or assisting a law enforcement agency or Law Enforcement Official in such prevention, detection, investigation, or prosecution, provided that these purposes fall within that law enforcement agency or Law Enforcement Official's lawful enforcement authority. This does not include personal or collateral purposes not related to the official functions of the Law Enforcement Official.
- D. **Section 1367 Information**: Any information relating to aliens who are seeking or have been approved for nonimmigrant or immigrant status as

(1) battered spouses, children, or parents under provisions of the Violence Against Women Act (VAWA); (2) victims of a severe form of human trafficking who generally are cooperating with law enforcement authorities (T nonimmigrant status); or (3) victims who have suffered substantial physical or mental abuse as the result of qualifying criminal activity and have been, are being, or are likely to be helpful in the investigation or prosecution of that activity (U nonimmigrant status). This includes information pertaining to qualifying family members who receive derivative T, U, or VAWA status. Because 8 U.S.C. § 1367 applies to any information about a protected individual, this definition includes records or other information that do not specifically identify the individual as an applicant for or beneficiary of T nonimmigrant status, U nonimmigrant status, or relief under VAWA. Section 1367 Information covers information relating to applicants for and beneficiaries of the immigration benefits described below:

(1) Immigration relief under the Violence Against Women Act (VAWA), including VAWA self-petitioners as defined in section 101(a)(51) of the INA. The following is a non-exhaustive list of forms that may be used by VAWA self-petitioners:

- a. Form I-360, *Petition for Amerasian, Widow, or Special Immigrant*, where the petition is filed as the self-petitioning spouse, parent, or child of a U.S. citizen or lawful permanent resident.
- b. Form I-751, *Petition to Remove the Conditions of Residence*, where a waiver of the joint petition requirement is requested because of battery or extreme cruelty by certain family members.

(2) VAWA cancellation of removal under section 240A(b)(2) of the INA.

(3) T nonimmigrant status (“T visa”), as defined in section 101(a)(15)(T) of the INA.

- a. Form I-914, *Application for T Nonimmigrant Status*, and relevant supplements.

(4) U nonimmigrant status (“U visa”), as defined in section INA 101(a)(15)(U) of the INA.

- a. Form I-918, *Petition for U Nonimmigrant Status*, and relevant supplements.

- b. Form I-929, *Petition for Qualifying Family Member of a U-1 Nonimmigrant*.

V. Responsibilities

- A. The **Officer for Civil Rights and Civil Liberties** directs and oversees the implementation of the integration of civil rights and civil liberties across the Department. The Office for Civil Rights and Civil Liberties serves as the foundational DHS organization through which all Department-wide civil rights and civil liberties activities are overseen, defined, and measured, including the maintenance and disclosure of Section 1367 Information. The Officer for Civil Rights and Civil Liberties manages the execution of this Instruction.
- B. The **Under Secretary for Intelligence and Analysis** serves as the Chief Intelligence Officer for the Department, exercising leadership and authority over intelligence policy and programs throughout the Department and, acting in conjunction with, and without preempting the authorities of the DHS Chief Information Officer and the DHS Chief Security Officer, exercising leadership over information sharing and safeguarding policy and programs throughout the Department in partnership with the Heads of other Components, including with respect to the disclosure of Section 1367 Information.
- C. The **General Counsel** is the final legal authority within the Department, who participates in and decides any legal matter within the Department and provides legal advice to all Components of the Department on any legal matter that arises within the Department.
- D. The **Director of U.S. Citizenship and Immigration Services** oversees lawful immigration to the United States by establishing national immigration services policies and priorities, including with respect to the maintenance and disclosure of Section 1367 Information.
- E. The **Chief Privacy Officer** is the senior official within the Department with primary responsibility for privacy compliance and policy, including assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personally identifiable information.
- F. The **Component Heads** implement and execute all applicable policies and procedures set forth in this instruction and any implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute,

executive order, presidential or other directive, or national or departmental policy.

- G. The **Council on Combating Violence Against Women (CCVAW)** works to ensure that policies and practices for combating violence against women and children are consistent Department-wide. By identifying opportunities to build consensus on challenging issues across Components, sharing best practices, and coordinating efforts Department-wide, the Council supports the Department's missions of effectively administering the laws preventing violence against women and children.

VI. Content and Procedures

A. **Content.**

(1) Consistent with applicable law, regulation, presidential and other directives, and national and departmental policies, Component Heads (or their designees, provided that any such designee is adequately trained on applicable protections and policies), in coordination with the Director of U.S. Citizenship and Immigration Services (USCIS) or his designees, are permitted to disclose Section 1367 Information to Law Enforcement Officials, provided that disclosure is made in furtherance of the Department's or the recipient's Legitimate Law Enforcement Purpose in a manner that protects the confidentiality of such information and the recipient agrees not to further disseminate the information or use it for a purpose other than the purpose for which it was provided absent express authorization.

- a. This provision is not intended to limit the further use or sharing of Section 1367 Information by the Department, where such use or further sharing is required by law or otherwise consistent with national and departmental policies.
- b. If exigent circumstances (e.g., a credible and imminent threat to the homeland) require the immediate disclosure of Section 1367 Information to Law Enforcement Officials for a Legitimate Law Enforcement Purpose, disclosure is permissible without advance coordination with the Director of USCIS so long as USCIS is notified of the disclosure and the circumstances surrounding the disclosure within 24 hours of the disclosure. Any such disclosure must otherwise be consistent with this

Instruction, including the use of standard warning caveats.

- c. In accordance with Section 1367(a)(2), Components may disclose Section 1367 Information within DHS and to any sworn officer or employee of the Department of Justice or the Department of State, or any agency or bureau thereof, for any legitimate Department, agency or bureau purpose, including a Legitimate Law Enforcement Purpose. This guidance is not intended to govern such lawful disclosures.

(2) Except for sharing described in Section VI.A.1.c, disclosure by a Component Head or their designee(s) to any of the entities described in Section VI.A.1. of this Instruction is permissible only in accordance with Component-specific procedures for disclosing Section 1367 Information jointly developed by the Component, U.S. Citizenship and Immigration Services, and the Office for Civil Rights and Civil Liberties, including any exemptions and alternate procedures developed for particular component activities.

(3) This Instruction is not intended to contradict or abrogate other protections covering information relating to applicants for or beneficiaries of T nonimmigrant status, U nonimmigrant status, or immigration relief under VAWA under law, regulation, presidential or other directive, international agreement, or national or departmental policy, including but not limited to Title 5, U.S.C., Section 552a, "Privacy Act of 1974," Office of Management and Budget (OMB) Memorandum M-06-19, "Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments," July 12, 2006, and DHS Instruction No. 047-01, "Privacy Policy and Compliance," July 7, 2011.

- B. **Procedures:** When disclosing Section 1367 Information under the law enforcement exemption, Component Heads or their designees comply with the following procedures:

(1) Identification of Section 1367 Information

- a. Prior to disclosing any information outside the Department under the law enforcement exception, Component Heads or their designees are responsible for determining whether any information intended to be disclosed is Section 1367

Information.

- i. Disclosures of information to Law Enforcement Officials for Legitimate Law Enforcement Purposes are permissible only to the extent permitted by and consistent with processes and procedures for identifying and disclosing Section 1367 Information jointly developed by the Component, U.S. Citizenship and Immigration Services, and the Office for Civil Rights and Civil Liberties.
- ii. Section VI.B.1.a.i of this Instruction does not apply to any Component until the processes and procedures described in that section are executed or 180 days after the execution of this Instruction, whichever occurs first.

(2) Disclosure of Section 1367 Information:

- a. Component Heads and their designees have the discretion to disclose Section 1367 Information under the law enforcement exception only when the intended recipient of such information acknowledges and agrees not to further disseminate the information or use it for a purpose other than the purpose for which it was provided absent express authorizations, and to delete it once it is no longer needed for that purpose.
- b. Component Heads and their designees have the discretion to disclose Section 1367 Information only when the intended recipient of the information agrees to delete any Section 1367 Information that is subsequently determined by the recipient to be unrelated to the initial purpose for sharing as soon as possible, but no later than 24 hours after such a determination has been made.
- c. Prior to disclosing Section 1367 Information outside of DHS, Component Heads or their designees must affix (or verbalize during briefings) the appropriate caveat against onward disclosure set forth in Appendix A in a manner that clearly identifies the specific information that must be protected.

- d. Bulk sharing of information is accomplished pursuant to an Information Sharing and Access Agreement (ISAA) coordinated with the Office of the General Counsel, the Privacy Office, and the Office for Civil Rights and Civil Liberties. The terms of any ISAA establish the conditions and procedures for identifying, sharing, and retaining Section 1367 Information that may be shared pursuant to the ISAA.
- e. The procedures referenced in Section VI.B.1.a.i of this Instruction are not intended to supersede any provision addressing the sharing of Section 1367 Information in existing ISAA's, provided that any such provision comports with 8 U.S.C. § 1367.

(3) Third-Party Dissemination: Component Heads and their designees disclose Section 1367 Information only when the intended recipient of such information acknowledges and agrees that such information is only further disclosed to a third-party recipient in accordance with 8 U.S.C. § 1367 and where the conditions described below are satisfied.

- a. Section 1367 Information may be disclosed by the recipient of such information to a third party with the written permission (whether in paper or electronic format) of the Secretary, or the Component Head or designee who originally disclosed the information acting in coordination with the Director of USCIS and other Component Heads or their designees, as appropriate, provided that Component Heads or their designees only permit recipients of Section 1367 Information to share such information under circumstances where the Component Heads or their designees could directly share that information with the intended third-party recipient.
- c. Each Component Head or designee that discloses Section 1367 Information pursuant to this Instruction alerts the recipient that current departmental policy does not permit the further disclosure of Section 1367 Information to a person, group, or entity except as permitted by 8 U.S.C. § 1367, this Instruction, and any other applicable departmental guidance, without the

explicit authorization of the Secretary or the Component Head or his or her designee who originally disclosed the information, acting in coordination with the Director of USCIS and any other Component Head, as appropriate. The Component Head or designee alerts the recipient they must include the standard warning against further disclosure set forth in Appendix A in conjunction with the recipient's approved disclosure to the third party.

(4) Protecting against Unauthorized Disclosures: Component Heads or their designees disclose Section 1367 Information only when the intended recipient of such information acknowledges and agrees that the requirements set forth below are satisfied.

- a. Recipients of Section 1367 Information ensure that any such information in their possession is: (i) accessed only by authorized personnel that need to know the information; (ii) safeguarded and marked, as appropriate, consistent with the Department's policy on sensitive but unclassified information; and (iii) safeguarded according to any other applicable requirements concerning the handling of such information. These safeguards include procedures to document proper accounting for access to and disclosure of the information.
- b. Recipients of Section 1367 Information who make unauthorized disclosures are not considered for future information sharing until they have conducted an internal audit to determine how the unauthorized disclosure occurred and submitted to the Director of USCIS any remedial measures that have been taken to prevent additional unauthorized disclosures in the future. The Director of USCIS then decides if information sharing should resume based upon the results of the requestor's internal audit and the remedial measures undertaken by the recipient.

(5) Notification of Unauthorized Disclosures: In the event that any Component (1) discloses Section 1367 Information in a manner inconsistent with the provisions above, or (2) is informed by the recipient of Section 1367 Information that the recipient has disclosed that information in an unauthorized manner, the Component (1) notifies the Chief Privacy Officer and the Officer for

Civil Rights and Civil Liberties as soon as is practicable, but in no event later than 24 hours after discovery of the unauthorized disclosure, and (2) satisfies the requirements of the DHS Privacy Incident Handling Guidance.

VII. Questions

Address any questions or concerns regarding this Instruction to the Office for Civil Rights and Civil Liberties.

Appendix A: Standard Warning Against Further Disclosure to Outside Entities



Megan H. Mack
Officer for Civil Rights and Civil Liberties

6/8/16

Date

Appendix A: Standard Warning Against Further Disclosure to Outside Entities

Any Law Enforcement Official who receives Section 1367 Information for a Legitimate Law Enforcement Purpose receives the following warning against further disclosure of the information:

This information [has been determined to be/ may be] protected under 8 U.S.C. § 1367. You may not disclose this information to third parties or use it for purposes other than the purpose for which it was provided without the permission of U.S. Citizenship and Immigration Services and the originating agency, as applicable, and in accordance with 8 U.S.C. § 1367 and DHS policy. You may request permission by contacting the DHS Single-Point-of-Service Desk (dhs-sps-rfi@hq.dhs.gov, dhs-sps-rfi@dhs.sgov.gov, or dhs-sps-rfi@dhs.ic.gov) before onward sharing of the information. Section 1367 Information that is subsequently determined by the recipient to be unrelated to the initial individual of interest, investigation, or threat, must be deleted as soon as possible, but no later than 24 hours after such a determination has been made.