

An Advocate's Guide to Immigrant Survivors' Rights & Protections (2013)

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Basic Rights & Protections if a Survivor is Subject to an Enforcement Action

Survivors have the right:

- To remain silent, even if officials ask them to speak
- To an attorney
- To request to see a search warrant before letting law enforcement officials into their home
- To see a judge & have a hearing
- To speak to their home country's consulate
- To be treated humanely
- To tell immigration enforcement officials that they are a crime victim or a witness to a crime.
Immigration officials have the discretion to not enforce immigration laws against an individual who is a crime victim or witness.
- To find out why they are being arrested

*Enforcement officials are advised against conducting enforcement actions near sensitive community locations (i.e. schools, places of worship, funerals or other religious ceremonies) except when the investigation involves terrorism or public safety.

Basic Rights & Protections if a Survivor is Detained

Survivors have the right:

- To telephone a lawyer
- To the facility's immigration law resources
- To a list of affordable legal services
- To access physical & mental health care
- To ask for humanitarian release from immigration detention if they are the primary caretaker of children, are pregnant or are nursing
- To opt out of sharing their personal information through the Online Detainee Locator System if they are a victim of domestic violence, sexual assault, human trafficking or other serious crime. The survivor should inform enforcement officials that they are a victim of a crime & are afraid that the perpetrator will be able to find them through ODLs. They should provide them with an opportunity to call someone who is a safe contact.

VAWA Confidentiality Protections

- The government cannot disclose any information about the existence or contents of an immigration case filed by an immigrant crime victim, including a VAWA self-petition, U-visa, or T-visa. This protection ends only if the application for relief is denied on substantive grounds & all appeals have been exhausted.
- Enforcement officials cannot use information provided solely by an abuser, trafficker, U-visa crime perpetrator, or a member of their family to seek, arrest, detain, or deport a survivor. Victims receive this protection whether or not they have filed for immigration relief related to their victimization.
- Enforcement actions are not to be taken at shelters, rape crisis centers, victim services programs, community based organizations, courthouses, supervised visitation centers, & family justice centers.
- If there is an enforcement action at one of these places, any immigration case brought as a result of such action can be dismissed by the immigration judge & the immigration enforcement agent must certify under oath to the immigration judge that VAWA confidentiality was not violated.

Survivors should inform immigration & law enforcement officials & their attorney if they are a crime victim or if they have filed for a VAWA self-petition, U-visa, or T-visa

- Domestic violence, child abuse, elder abuse, sexual assault, abusive sexual contact, human trafficking, restrictions on ability to come & go from their home or workplace, blackmail, extortion of money or labor, assault, battery & threats or coercion to convince a survivor not to help law enforcement & prosecutors are crimes in the United States. If a survivor has been mistreated, abused or harmed by anyone, consult with a crime victim advocate or an attorney as this mistreatment may make them eligible for immigration protection.
- To locate an advocate or an attorney with expertise helping immigrant crime victims, go to: <http://iwp.legalmomentum.org/reference/service-providers-directory>.
- Immigration officials are encouraged to use prosecutorial discretion not to detain, deport or enforce immigration laws against a survivor if they are a victim of domestic violence, sexual assault, trafficking, or other serious crime.
- If the survivor has filed a U-visa, T-visa, or VAWA self-petition their case will be flagged in the Department of Homeland & Security (DHS) Central Index System that will notify immigration enforcement that the survivor has VAWA confidentiality protection & that they should not stop, detain or remove them.
- If a deportation case is pending against a survivor or they are detained & have filed a VAWA self-petition, a U-visa or a T-visa application, the decision on their pending immigration case will be expedited.
- If there are no investigations or serious adverse factors (e.g. criminal history, terrorism) in the survivor's case & they are eligible for immigration relief, the immigration case against them should be dismissed.

Guidelines in an Enforcement Action

Survivors should stay calm & should not run. - Request & write down the officer's name, badge, license plates & agency identification.

Survivors are required to provide proof of their immigration status if they are not a U.S. Citizen

- All non-U.S. citizens must carry evidence of their immigration status.

- An immigration enforcement agent may ask the survivor for proof of status. If they have this, they should provide it to the law enforcement agent.
- If the survivor is in the process of applying for immigration relief as an immigrant victim of domestic violence, sexual assault, trafficking or other crime they should tell the officer about this & give them their immigration case number (it begins with the letter A). They should memorize this number.

Survivors have the right to speak to an attorney, & should call one during or after any enforcement action.

- If the survivor does not have lawful permanent residence (a green card), they should memorize or carry their attorney's phone number. They should also memorize or carry their victim advocate's number so they can help them reach an attorney.
- If the survivor does not already have an attorney, they should ask immigration authorities to give them a list of low-cost & free legal services in their area.

Survivors do not have to speak to immigration or law enforcement before speaking to an attorney.

- If the survivor is questioned, they have the right to remain silent & to decline to answer any questions even after being arrested.
- If the survivor says "I choose to remain silent, & will not answer any questions without a lawyer," the officers are legally required to stop asking them questions until the survivor has a lawyer with them.
- If the survivor does talk, they should tell the truth.

If there is a search, survivors should pay attention & take notes.

- Request & write down the officer's name, badge, license plates & agency identification.
- Get a receipt for any property taken.

Immigration officials should ask survivors' questions that could lead to the use of prosecutorial discretion not to seek immigration enforcement against them &/or to give them humanitarian release from detention.

- The survivor should tell immigration officials: if they have children they are caring for; if they or their spouse is pregnant, if they or their spouse is nursing, or if they are caring for disabled or severely ill relatives. In such cases immigration officials have policies that can keep the survivor from being placed in immigration detention & separated from their children & that can lead to a faster decision in their immigration case.
- If the survivor is denied humanitarian release they can seek relief before an Immigration Judge, who has the ability to release them from detention.
- The survivor should tell immigration officials: if they are a crime victim or witness of a crime, if they are a minor or are elderly, if they have a U.S. citizen or permanent residence spouse, child, or parent, if they have lived in the United States since they were a young child, if they are enrolled in or have graduated from a high school or college in the United States, & if they, their spouse, parent or child has served in the U.S. military, reserves, or national guard. In such cases, they should tell this to immigration officials & ask for prosecutorial discretion. Informing enforcement officials of these facts helps them to decide that they should not pursue an enforcement action against the survivor.

Survivors have the right to a phone call after they are arrested.

- The survivor has the right to make a local phone call.
- Survivors should work with their advocate to plan whom they will call if they are detained for immigration reasons
- The police are not allowed to listen to a call with their lawyer.
- If the survivor is a foreign national, they are entitled to call their consulate or to have the deportation officer inform the consulate of their arrest.

Resources for Survivors & Family Members

Attorneys / Pro Bono Links

- <http://www.nationalimmigrationproject.org/ReferralPage/ReferralPage.html> (state-by-state listings for immigration, criminal defense, & other attorneys who handle immigration issues).
- <http://www.usdoj.gov/eoir/probono/states.htm> (state-by-state list of attorneys providing free legal services to detained individuals)
- <http://iwp.legalmomentum.org/reference/service-providers-directory> (state-by-state list of victim advocacy programs, immigrant organizations & pro bono/low bono legal assistance for immigrant crime victims)

To find out where a friend or family member is detained:

- call 202.732.3100, or visit <http://www.ice.gov/about/dro/contact.htm>
- If you are a crime victim & are concerned that your abuser will use the detainee locator system to find you, you may opt out of being listed in the system & have the right to alternatively contact friends or family so they will know where you are

Lists of immigration detention centers available at

- www.ice.gov/pi/dro/facilities.htm & <http://detentionwatchnetwork.org/dwnmap> (includes interactive map)

Hotlines for Victims of Crime

- National Organization for Victim Assistance 1.800.879.6682
- National Domestic Violence Hotline 1.800.799.7233
- <http://www.ojp.usdoj.gov/ovc/help/numb.htm>
- National Sexual Assault Hotline - 1.800.656.4673

Resources & Technical Assistance for Immigrant Crime Victim Advocates & Attorneys

- National Immigrant Women's Advocacy Project – 202.274.4457; niwap@wcl.american.edu;
- ASISTA - 515.244.2469, www.asistahelp.org
- National Immigration Project of the National Lawyer's Guild - 617.227.5495, www.nationalimmigrationproject.org
- Resource libraries on immigrant victim's legal rights available at: <http://niwaplibrary.wcl.american.edu> & www.asistahelp.org