

UNDERSTANDING AND APPLYING THE VIOLENCE AGAINST WOMEN ACT

Leslye E. Orloff, Adjunct Professor and Director

National Immigrant Women's Advocacy Project, American University Washington College of Law

L'Antoinella Spiller-Reddick, Adjudications Officer, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services, Department of Homeland Security

Teresa Donovan, Temporary Board Member, Board of Immigration Appeals

Joan Geller, Attorney Advisor, Board of Immigration Appeals

This presentation is intended for informational purposes only. It is not intended as a comprehensive or definitive statement on all issues concerning VAWA, nor does it represent all interpretations or perspectives on VAWA. Any views expressed during this presentation are those of the presenters. Such views do not represent the positions of the Board of Immigration Appeals, the Executive Office for Immigration Review, the Department of Justice, the Attorney General, or the U.S. Government.

*VAWA Cancellation of Removal
and Suspension of Deportation*

Substantive Requirements

VAWA Cancellation of Removal

-INA § 240A(b)(2)-

- Any alien (including LPR, *see Matter of A-M-*, 25 I&N Dec. 66 (BIA 2009))
- Who has been battered or subjected to extreme cruelty, or whose **child** has been battered or subjected to extreme cruelty
- By spouse, or person the alien intended to marry but whose marriage to the alien was not legitimate due to abuser's bigamy, or parent
- Abuser is or was USC or LPR
- 3 years of continuous physical presence
 - Stop-time exception – service of NTA does not end cpp
 - Exception for absence connected to battery or extreme cruelty
- Good moral character during 3-year period
- Exception to 101(f) – if not disqualified from relief, conviction connected to abuse will not bar gmc

VAWA Cancellation of Removal (cont'd)

-INA § 240A(b)(2)-

- Not inadmissible under § 212(a)(2) or (3)
- Not deportable under § 237(a)(1)(G) (marriage fraud) or § 237(a)(2), (3), or (4)
- Not convicted of aggravated felony
- Extreme hardship to self, child, or parent
- Discretion (*see Matter of A-M-*)
- Alien bears burden of proof, but adjudicator must consider “any credible evidence relevant”
- § 240A(c) ineligibility categories do not apply

VAWA Suspension of Deportation

-Former INA § 244(a)(3)-

*(3) is deportable under any law of the United States except section 241(a)(1)(G) and paragraph (2), (3), or (4) of section 241(a); has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application; has been battered or subjected to extreme cruelty **in the United States** by a spouse or parent **who is** a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and proves that during all of such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.*

- No provision for illegitimate marriage
- Battery or extreme cruelty had to have happened in U.S., and abuser had to currently be USC or LPR

VAWA Regulations

- 8 C.F.R. § 1240.65(d) – eligibility provisions for VAWA suspension parallel the Act
- No similar regulation for VAWA cancellation of removal
- 8 C.F.R. § 1240.58 – defines extreme hardship, including special definition for VAWA claims (e.g., impact of loss of access to U.S. courts, need for access to domestic violence support resources)

Adjustment of Status for VAWA Self-Petitioners

Application Process Parallels Family-based Adjustment of Status

- Step 1: I-360 petition filed with and approved by USCIS
- Step 2: I-485 adjustment application filed with USCIS or IJ

Eligibility Criteria for I-360

- self-petitioner has been subject to battery or extreme cruelty by USC or LPR who is a qualifying family member
- good faith marriage
- residence with USC or LPR abuser
- good moral character

Eligibility Criteria for I-485

- Approved I-360
- Visa available
- Admissible
- Special adjustment of status rules
- Discretion

VAWA Waivers

- 212(a)(4)(C)(i)
- 212(a)(6)(A)(ii)
- 212(a)(9)(B)(iii)(IV)
- 212(a)(9)(C)(ii)
- 212(g)(1)(C)
- 212(h)(1)(C)
- 212(i)

Special Adjustment Rules

- Sections 245(a) and (c) of the Act

Violence Against Women Act

History and Law Enforcement Purpose

Historical Context of VAWA Immigration Legislation

“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic and immigration barriers to their safety. Abusers of immigrants- spouses or children- are liable to use threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children – if you leave me, I’ll report you to immigration authorities, and you will never see your children again.” ...

Senator Kennedy, VAWA 2005 Congressional Testimony

Historical Development of Battered Immigrant and Immigrant Crime Victim Protections

- Spousal sponsorship - coverture
- 1907-1922 USC woman lost citizenship if married foreign born husband
- In 1952, the INA became gender neutral, but kept sponsorship scheme
- Control of immigration process remains
 - In the hands of a batterer, abusive employer, trafficker
- VAWA, T and U-visa immigration provisions were enacted to address the problem

Violence Against Women Act of 1994 -- Purpose

- Federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- By meeting two equally important goals
 - Increasing justice system's role in offender accountability
 - Offering services, protection, counseling for victims
- Designed to help ALL victims
 - Immigration relief key component of legislation

Domestic Violence Prevalence and Severity

- U.S. in general: **22.1%** (NIJ)
- Immigrant women: **30-50%**
- Research has found that immigrant victims
 - Stay longer
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those married to citizens and lawful permanent residents – 50.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Coercive Control Over Immigration Status: VAWA Legislative History

- Among abusive spouses who could have filed legal immigration papers for victims:
 - 72.3% never file immigration papers.
 - The 27.7% who did file had a mean delay of **3.97 years.**

*Excerpts of speech of Hon. John
Conyers, Jr.*

“Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution.”

Re: VAWA 2005 (12/18/2005)

1994 – Enactment of Violence Against Women Act (VAWA)

- Federal government role in helping ALL victims
- Sever abuser power and control
- Detect, investigate and prosecute perpetrators of spouse and child abuse
- Included immigration protections connected with VAWA goals
 - Offender accountability
 - Victim assistance and protection
- Goal sever immigration related power and control

VAWA 1994 -Immigration

- Based on family based visa process
- Allows immigrants to “self-petition” to obtain lawful permanent residence
 - Without spousal sponsorship
 - If subject to “battery *or* extreme cruelty”
 - By a U.S. citizen or lawful permanent resident spouse or parent
 - VAWA self-petitioning
- Created VAWA suspension of deportation immigration relief
- VAWA any credible evidence standard

Conditional Residence & Battered Spouse Waivers

- 1990 Battered Spouse Waiver
- First legislation to help battered immigrants
- Waives the joint filing requirement and
 - two- year wait for full lawful permanent residency
- Requires proof of
 - Good faith marriage
 - “Battered or subjected to extreme cruelty”
- Did not help if abusive USC/LPR spouse never filed

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)

- Preserved access to VAWA suspension of deportation
- Created VAWA cancellation of removal
- Granted access to federal public benefits as qualified aliens to
 - VAWA self-petitioners,
 - VAWA cancellation
 - VAWA suspension applicants
 - With prima facie determinations from DHS or immigration judge
- §384 created VAWA Confidentiality and Safety Protections

When VAWA Cancellation is the Only Option

- Divorce:
 - An abused spouse who was divorced for over 2 years
 - An abused stepchild whose immigrant parent has been divorced before the stepchild could file a self petition
- Parent of an abused child:
 - The parent of an abused child, regardless of the child's U.S. citizenship, who was never married to the child's abusive U.S. citizen or permanent resident parent;
- Death:
 - The abused spouse of a USC/LPR who died more than 2 years ago
 - The abused child of a USC/LRP who died;
- Lost/Renounced citizenship or LPR status over 2 years ago
 - An abused spouse or child
- Children who, under age 21, experienced child abuse or incest
 - By a USC/LPR parent who are over 25 and cannot file self-petition
 - No proof they resided with USC/LRP abusive parent

2000 – VAWA Reauthorization

- Created two new visa categories
 - T Visa: for victims of severe forms of human trafficking
 - U Visa: for victims of certain criminal acts that result in substantial physical or emotional abuse (including domestic violence and sexual assault)
- Sent VAWA, T and U visas cases to VAWA Unit of USCIS (Vermont Service Center)
- Created inadmissibility waivers
- Created domestic violence victim waiver

Domestic Violence Victim Waiver 237(a)(7)

- For immigrant victims with domestic violence/stalking related convictions
 - dual arrests, mutual protection orders, language barriers
- Legislative History “where the spouse/child was not the primary perpetrator of violence in the relationship, the crime did not result in serious bodily injury, and there was a connection between the crime and the abuse suffered by the spouse or child”

Domestic Violence Victim Waiver 237(a)(7)

- Immigration judge and DHS can look behind state court ruling and grant waiver if
- Victim acting in self-defense
- Victim found to have violence a protection order issued to protect them;
- Relationship must be covered by state domestic violence statutes (civil or criminal)
- Applicant must not
 - Be the primary perpetrator of violence in relationship
 - Have caused “serious bodily injury”

VAWA 2005: Extended protections to wider range of family violence victims

- Child abuse and incest victims have until age 25 to file VAWA self-petitions
- Age-out protection for child self-petitioners and child derivatives
- Elder abuse victims abused by citizen son/daughter can self-petition
- Children can adjust with parents
- No petitioning for abusers as family members

VAWA 2005 and DHS Policies Aimed at Stopping Removal of Victims

- Strengthened VAWA Confidentiality required policies and training
 - ICE Policy for enforcement officials January, 2007
 - OPLA policy February 2007
- Exempts victims from overstaying voluntary departure
- Prior removal not bar to good moral character for VAWA self-petitioners
- Expanded access to motions to reopen for VAWA self-petitioners
- Filing of VAWA motion to reopen triggers stay of removal
- Encourages DHS not use reinstatement of removal against VAWA, T or U visa victims
- Training for Adjudicators at DHS and DOJ

VAWA Priority: Adjudicators Trained in Domestic Violence Dynamics

- BIA judges fully understand and are able to recognize dynamics and patterns of abuse
- Take the same care as the VAWA Unit and protection order judges in making findings regarding battering or extreme cruelty
- Be able to identify legitimate battering or extreme cruelty cases
- And separate such cases from fraudulent claims
- Without endangering victims with valid cases

Reason VAWA Works for Immigrant Victims

- Stops perpetrator retaliation through deportation
- Severs economic dependence on perpetrator through legal work authorization
- More crime victims are willing to
 - Leave perpetrators
 - Cooperate with law enforcement in crime detection, investigation and prosecution
- Victims more successful in
 - Being awarded custody and protecting children from abuse
 - Accessing victim services and support

Senate VAWA S 47

- Age out protections for U-visa applicant's children
- Strengthening IMBRA
 - Disclosure of CPO histories of sponsoring spouse
 - Compliance enforcement system
- “Stalking” added to the list of U-visa crimes
- Annual reports to Congress on case processing and work authorization times for VAWA, T and U visas
- Extending “widows fix” to minor children of VAWA self-petitioners
- Public charge exemption for VAWA self-petitioners, VAWA cancellation and suspension, T and U visas and qualified immigrants
- Battered spouse waiver when the spouse is a bigamist
- Extending PREA to all DHS and HHS facilities

Jurisdiction and Procedure in VAWA Adjudications

L'Antoinella's slides

~Break~

VAWA Adjudication Challenges

***Basis for and Definition of
“Battered OR Subjected to
Extreme Cruelty”***

DHS: No requirement of any specific quantity of harm or abusive incidents

- Adopts same definition for “battery or extreme cruelty” as the 1990 battered spouse waiver
- Like civil protection orders
- One incident sufficient
- Eligibility can be established on pattern
- Avoids seeking details about every incident
- Provides avenue to relief while reducing re-traumatizing victim
 - INS Paul Virtue, Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children
HQ 90/15-P, HQ 70/8-P

VAWA Self-Petitioning Rule:

For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

VAWA Self-Petitioning Rule Preamble:

“The acts mentioned in this definition-rape, molestation, incest if the victim is a minor and forced prostitution- will be regarded as acts of violence whenever they occur. Many other abusive actions may also be qualifying acts of violence under this rule. Acts that in and of themselves do not initially appear violent, may be a part of an overall pattern of violence...

VAWA Self-Petitioning Rule Preamble:

“ It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule therefore does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase ‘was battered or was subject to extreme cruelty.’ ”

“Battering or Extreme Cruelty” Includes:

- Crimes and criminal threats that would support issuance of a protection order or would be considered domestic violence crimes by state courts constitute “battery”
 - National Council of Juvenile and Family Court Judges Model Domestic Violence Code (1994)
 - ABA Commission on Domestic Violence State by State Protection Order Chart
- NIWAP research-training materials

Extreme Cruelty Includes: Abusive acts or treatment that are part of a pattern of “*coercive control*”

- Control Process defined by NIJ research and state courts:
- Setting the Stage
 - Create expectancy for negative consequences
 - Create or exploit victim's vulnerabilities
 - Wear down victim's resistance
 - Facilitate attachment
- Coercive Demand
- Credible Threat
- Surveillance
 - Victim knows/believes that surveillance is occurring
- Delivery of threatened consequences
- Coercive control enhances victim vulnerability to coercion and constitutes extreme cruelty

Cases in Which Immigration Judge and/or BIA Found No Battering or Extreme Cruelty

- Extreme cruelty examples:
 - While drunk drove in the car with the children
 - Threatened to take the children away and victim would never see them
 - Left wife at home after serious surgery without any access to transportation, food or medication
 - Taking victim's money and her mother's money
 - Emotional and physical abuse led to psychiatric hospitalization related to depression and potential for suicide.

Cases in Which Immigration Judge and/or BIA Found No Battering or Extreme Cruelty

- Physical violence examples:
 - Breaking a chair and twisting and threatening to break victim's arm
 - Hitting victim's head against the wall causing blurred vision and headache requiring treatment
 - Struck children (3-7 years old) with tree branch 2-3 times a week causing red welts
 - Physically shook and pushed the victim during arguments, grabbed victim and pushed her down on the bed
 - Grabbed victim and tried to break her arm
 - Drugged and raped victim prior to marriage, abused her during pregnancy, stalked her and stabbed her
 - Forced sexual relations

Adjudication Challenges

Circuit Split on Reviewability
of “extreme cruelty”

Split in the Circuits

- On the issue of whether
 - “extreme cruelty”, like “battery,” is a question of law and application of the correct legal standard and is, therefore, reviewable on appeal by the Circuit Courts; or
 - “extreme cruelty” is to be treated like “extreme hardship” and considered a discretionary factor in the IJ’s opinion that is only reviewable by the BIA and not a Circuit Court.

Confusion Between Extreme *Hardship* and *Extreme Cruelty*

- The 9th and 2nd Circuits have ruled that both battering and *extreme cruelty* are questions of law and are reviewable by the Circuits.
- The 3rd, 5th, 6th, 7th, and 10th Circuits have ruled that *extreme cruelty* is a discretionary determination that can only be decided by the immigration judge and the BIA, and BIA rulings are not reviewable.

Adjudication Challenges

**Good Moral Character
considerations**

Adjudication Challenges

**Any Credible Evidence
Standard**

Striking A Balance: Goal of Credible Evidence

- Allow victims to garner what evidence they can to prove their VAWA case
 - Reduce danger to victims
 - Why victims may not have access particular evidence
- Prohibit the requirement of any specific form of evidence
 - Central role of victim's affidavit
- Give victims ample opportunity to add to the evidence submitted
- Give adjudicators discretion to decide:
 - If the evidence submitted taken viewed in its totality is credible
 - What weight to give evidence
 - If evidence submitted establishes eligibility

Adjudication Challenges

Extreme Hardship
(VAWA cancellation of removal)

Extreme Hardship – VAWA Factors

- Nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- Impact of the loss of access to the U.S. courts /justice system
- Victim's need for social, medical, mental health, or other supportive services;
- Home country laws, social practices, or customs that penalize or ostracize victim
- Abuser's ability to travel to the foreign country
- Ability, willingness, or lack thereof of foreign government authorities to spouse and/or child abuse victims;
- Likelihood of physical or psychologically harm the applicant or the applicant's children

Extreme Hardship- Traditional Factors In Battered Immigrant Cases

- The victim's experience of battering or extreme cruelty influences traditional extreme hardship factors
- Importance of totality of the circumstances
- The battery or extreme cruelty exacerbates the harm to the victim/children of removal
- Interfere with healing, health care, safety
- VAWA extreme hardship handout

Adjudication Challenges

Good Faith Marriage
(Adjustment of Status)

Proving Good Faith Marriage: Role of Abuse

- Can affect duration of marriage
- Important to understand domestic violence dynamics
- More understanding with specialized training

Adjudication Challenges

Outdated regulations

VAWA Implementation by DHS

- Inconsistencies between VAWA statutes and regulations
- INS and DHS long delays in issuing regulations
- Regulations still in the CFR that have been overruled by subsequent VAWA statutes
 - Matter of A.M.
- Many statutory protections implemented by policies not regulations
- Some protections never implemented

Examples VAWA Regulations overruled by statute

- Deletion of U.S. residency requirement for VAWA self-petitioners allowing filing from abroad
 - VAWA 2000 § 1503(b) overruled : 8 CFR § 204.2(c)(1)(i)(C) and (D) and 8 CFR § 204.2(c)(1)(v)
- Good Moral Character for VAWA cancellation/suspension parallel to special VAWA inadmissibility waivers
 - VAWA 2005 § 822(c) overruled 8 CFR § 204.2(c)(1)(vii)
- A self-petitioner's remarriage does not preclude approval of a VAWA self-petition
 - VAWA 2000 § 1507(b) overruling 8 CFR § 204.2(c)(1)(ii)
- Deleted extreme hardship requirement for VAWA self-petitioners
 - VAWA 2000 §§ 1503(b) and (c) overruling : 8 CFR §§ 204.2(c)(1)(i)(G) and (viii)
- Self-petitioning regulations requiring proof of residence of a battered spouse or child with the abuser:
 - VAWA 2000 § 1503 overruled 8 CFR § 204.2(c) (1) (v); § 204.2(c)(2)(iii); 8 CFR. § 204.2(e)(1)(v); § 204.2(e)(2)(iii).
- Retrieving priority dates for child self-petitioners
 - VAWA 2000 § 1502(d) overruled 8 CFR § 204.2(a)(4)

Examples: VAWA protections with no implementing policies or regulations

- VAWA self-petitioning for elder abuse victims
 - VAWA 2005 § 816
- Employment Authorization for Abused Spouses of Certain Non-Immigrant (A, E(iii), G, or H) Professionals.
 - VAWA 2005 §828
- Removes two-year custody and residency requirement for abused adopted children
 - VAWA 2005 § 805(d)
- VAWA, T and U visa victims not subject to reinstatement of removal
 - VAWA 2005 § 813(b)
- Abused children can include their own children in their VAWA self-petitions
 - VAWA 2000 § 1503(b)(2)

Adjudication Challenges

Prosecutorial Discretion

DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement and help crime victims/witnesses
 - Call police and pursue justice
 - Pursue legitimate civil rights complaints
- Exceptions:
 - Serious criminal history or serious crimes
 - Poses a threat to public safety
 - Human rights violator; or has
 - Engaged in significant immigration fraud
 - National security
 - Terrorism

DHS Memos

- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.2010)
 - Prosecutorial discretion for crime victims (6.17.2011)
- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.2011)
 - Protections for immigrants who came to US as children (6.15.2012)

“A battered immigrant woman was arrested at the steps of a courthouse and detained by immigration enforcement officers. She was on her way to a custody hearing, and the officers had acted upon a tip from her abuser who wanted her deported. She was in fact an approved VAWA self-petitioner and should have been neither detained nor deported . . . (ICE) must stop relying on information provided by the abuser to track down, arrest and deport an immigrant victim or to deny an immigration case she has filed because of the information provided by her abuser. This would protect battered victims from unjust immigration enforcement actions and allow them to protect their children and themselves from further abuse.”

~ Excerpts of speech of Hon. Janice D. Schakowsky
RE: VAWA 2005 Immigration (12/19/2005)

*L'Antoinella add anything here
re. prosecutorial discretion?
Or replace Lesyle's 3 slides with hers?*

Comparison of VAWA Cancellation and Self-petition

Leslye's 2 slides or new ones from Teresa?

VAWA Cancellation & VAWA Self-Petition

VAWA Cancellation of Removal

- Battered or subject to extreme cruelty
- By person **who is or was** USC/LPR
 - Spouse
 - Parent
- Or by intended spouse of USC/LPR bigamist
- **Children not included receive parole after parent granted cancellation**
- **Continuously present 3 years**
 - NTA not toll 3 years
- Good moral character – 3 years
- **Not removable for marriage fraud**
- **Removal cause extreme hardship to immigrant victims, victim's child, or victim's parent**

VAWA Self-Petition

- Battered or subject to extreme cruelty
- By a USC/LPR
 - spouse,
 - **Former spouse or lost status due to abuse**
 - If filed within 2 years
 - parent,
 - **adult son/daughter (over 21)**
- Or by intended spouse of USC/LPR bigamist
- **Children included in self-petition**
- **With Whom self-petitioner resided**
- Good Moral Character – 3 years
- **Good Faith Marriage**

VAWA motions

VAWA Motions to Reopen

-INA § 240(c)(7)-

- Not subject to numerical limit, but can file only one VAWA motion to reopen
- No time limit in deportation proceedings
- MTR for VAWA cancellation or self-petition must be filed within 1 year of removal order
 - 1-year deadline can be waived upon showing of extraordinary circumstances or extreme hardship to applicant's child
- Copy of application must be included
- Alien must be present in U.S. at time of filing
- Failing to depart under VD order does not bar MTR if the battery or extreme cruelty was at least one central reason for not departing

Domestic Violence Waiver

-INA § 237(a)(7)-

- Can waive most 237(a)(2)(E) removability if:
- Alien is battered or subjected to extreme cruelty
- Alien was not primary perpetrator of violence in relationship

- Alien was acting in self-defense, or
- violated CPO intended to protect alien, or
- there was connection between crime and having been battered or subjected to extreme cruelty, and crime did not result in serious bodily injury

- Can look behind and beyond criminal court record

Closing Comments

**** Thank you ****

VAWA Confidentiality

For L'Antoinella to use

VAWA Confidentiality

- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
 - Victims with VAWA confidentiality protected cases filed
 - VAWA cancellation, suspension, self-petitioning, Ts and Us
- **Abuser-Provided Information:** Prohibited reliance of abuser-provided information whether or not a victim had filed a specific VAWA-related case
- 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, VAWA cancellation, VAWA suspension, 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
- Essential because many victims continue living with abuser until VAWA immigration case has been approved

Non-Disclosure: Protecting Immigration Files: **Exceptions**

- Legitimate law enforcement purposes
- Judicial Review of immigration case (Hawke)
- Agency to whom victim has applied for public benefits only for benefits granting purposes
- Congressional oversight
- Statistical 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
 - DHS 384 Broadcast

Enforcement actions at sensitive sites must follow specific procedures and issue compliance certificates

- Domestic violence shelter,
 - A rape crisis center,
 - Supervised visitation center,
 - Family justice center,
 - A victim services, or
 - Victim services provider, or
 - Community-based organization.
- At a courthouse (or in connections with the appearance of the alien at a courthouse) if the alien appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subjected to extreme cruelty.

“Prohibited Source” Provisions

- VAWA 2005
 - Prevents ICE employees from making an *adverse determination* of admissibility or deportability by using information furnished “solely” by certain people: abuser, member of the abuser’s family living in the same household of the victim, a trafficker, or criminal offender
 - An adverse determination includes placing alien in removal proceedings or making civil arrest relating to alien’s violation of immigration laws e.g., serving an NTA
 - VAWA 2005 requires the completion of a certificate of compliance in all cases where an enforcement action is taken against an alien at any of the specified locations – and NTA must include specific statements that 8 USC §1367 has been complied with
 - penalties for violations of mandatory certifications

Violations of VAWA Confidentiality

- Violations include
 - Seeking or using information from a prohibited source
 - Disclosing or permitting disclosure of information in or about any VAWA, T or U visa case
 - Making a false certifications
- Violations can
 - Result in termination of an NTA
 - Result in dismissal if the immigration case by the immigration judge
 - Subject individual agent/officer to
 - civil penalties \$5,000 fine for each violation and
 - disciplinary action

ICE Policy Directives Regarding Enforcement and VAWAs, Ts and Us

- Director Marcy Forman, Office of Investigations and Director John Torres, Office of Detention and Removal Operations, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007)
 - All enforcement actions (including mailing an NTA) at a sensitive location should be cleared through the local ICE Office of Chief Counsel
- Memorandum from William J. Howard, Principal Legal Advisor, *VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367* (Feb. 1, 2007)