

EXPLORING VAWA CONFIDENTIALITY AND LEGAL RIGHTS FOR IMMIGRANT VICTIMS: WHAT YOU NEED TO KNOW

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Faculty

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Poll 1: Who is attending this session?



- A. Victim advocate
- B. Attorney
- C. Culturally specific organization
- D. Law enforcement
- E. Prosecution
- F. Systems-based victim assistants
- G. Other

Learning Objectives

By the end of this session, you will be better able to:

- Improve safety planning by distinguishing myths from facts about VAWA confidentiality's removal protections
- Ensure victims qualify earlier for VAWA confidentiality's immigration protections
- Help immigrant victims access VAWA confidentiality's protected locations
- Implement best practices for anticipating and preparing for state court discovery requests that seek VAWA confidentiality protected information

VAWA Confidentiality Overview

Large Group Discussion

- What is Violence Against Women Act Confidentiality?
- What does it do?

Key Violence Against Women Act (VAWA) Statutes

- 8 U.S.C. §1367
 - VAWA confidentiality immigration
- 8 U.S.C. §1229(e) – INA 239(e)
 - VAWA confidentiality protected locations
- 35 U.S.C. §12291 – Full VAWA
 - (a) definitions
 - (b) grant conditions including
 - VAWA confidentiality protections applicable to all grantees

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)

Bipartisan VAWA Confidentiality Legislative History in VAWA 2005

- “This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses, or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA.”

VAWA Confidentiality Prongs

Non-Disclosure

Protects victims **who have filed** a protected case with DHS

Violation = \$5,000 fine and/or disciplinary action

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

Protects:

- ***All victims abused by a spouse or parent**
- *All victims in the process of applying for U or T visas
- *Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects:
All Victims

Requires:
No action at protected locations
OR
Notice to Appear must state how they complied with VAWA confidentiality

VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- VAWA Confidentiality Implementation Guidance (1997, 2005, 2007, 2008, 2013, 2019, 2021, 2025)
- ICE required to:
 - Check for “384” flag before enforcement actions
 - Certify compliance to immigration judge = violations can be basis for dismissal of removal action



Identifying Cases Eligible for VAWA Confidentiality Protections



Immigration Protections for Noncitizen Victims of Crime and Abuse



Immigration Relief Available for Immigrant Victims of —

- Domestic violence
 - Sexual assault
 - Rape
 - Incest
 - Prostitution
 - Torture
 - Felonious assault
 - Manslaughter
 - Murder
 - Female genital mutilation
 - Kidnapping
 - Abduction
 - Trafficking
 - Stalking
 - Involuntary servitude
 - Slave trade
 - Being held hostage
 - Fraud Foreign Labor Contracting
 - Peonage
 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - **Nature & elements of offense substantially similar**
 - Hate crimes, child, elder, disabled adult abuse, video voyeurism
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

Immigration Options for Immigrant Crime Victims and Children

(Red = VAWA Confidentiality Protected Case)

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
- VAWA suspension of deportation
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Abused Spouse of Visa Holders
 - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender-based asylum

Bars and Limitations on Reliance on Perpetrator Provided Information

When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- When the victim called police for help – perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017);
 - U visa 7.5%(2013)-36% (2017)

Examples of the stories
Congress was responding
to when it created and
improved VAWA
confidentiality over the
years



Bars Limiting Reliance Upon Information Provided by a Perpetrator

- The government cannot gather and/or use information provided solely by:
 - A domestic violence or child abuser
 - A sexual assault or stalking perpetrator
 - A trafficker
 - The perpetrator of any U visa listed criminal activity
 - The perpetrator's family member
 - Other persons associated with the perpetrator
- To take an adverse action against a victim
- 8 U.S.C. 1367(a)(1)

Adverse Actions Include Using Perpetrator Provided Information To...

- Deny a victims immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question or detain a victim at a prohibited location, including courthouse

Poll 2: When do victims get VAWA confidentiality protections?



- A. Victim has filed a VAWA, T, or U visa case
- B. Victims shows a protection order to an immigration official
- C. Victim shows letter from advocate stating that victim is seeking VAWA, T or U immigration relief
- D. When abuse occurs in a spouse or parent child relationship

Victims Protected by Non-Reliance Prohibition

- No immigration case filing required
 - Spouse abuse victims
 - Child abuse victims (includes step-children)
 - Immigrant parents of child abuse victims
 - Without regard to the child's immigration status
 - Victims of family violence perpetrated by another family member residing in the same household
- Victims seeking or in the process of filing
 - T Visas
 - U Visas
 - VAWA immigration relief

All DHS Memo 002-02-001.1 Rev.00.1 (May 29, 2019)

- States that the VAWA Confidentiality prohibited source and non-disclosure protections apply to victims who *are seeking, are in the process of preparing an application, have filed for, and have been approved* for a victim-based form of immigration relief covered by 8 U.S.C. 1367

DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

Cases With VAWA Confidentiality Red Flags

- VAWA self-petitions
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa
- T visa
- Continued presence
- VAWA work authorization as abused spouses of visa holders (A, E(iii), G & H)

All DHS Memo 002-02-001.1 (May 29, 2019)

- “Whenever a DHS officer or employee receives *adverse information* from a spouse, family member of a spouse, or unknown private individual, the employee will check the Central Index System (CIS) for the COA ‘384’ flag. Employees will be sensitive to the fact that the alien at issue may be a victim and that a victim-abuser dynamic may be at play.”

All DHS Memo 002-02-001.1

- Adverse information about the victim from a prohibited source should be treated as “inherently suspect”
- “Violations of Section 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. Violations compromise the trust victims have in the efficacy of services that exist to help them and, importantly, may unwittingly aid perpetrators retaliate against, harm or manipulate victims and their family members, and elude or undermine criminal prosecutions.”

Notification of That Victim Has VAWA Confidentiality Protections

- Does this mean that immigrant victims are protected from removal?
- How do immigration enforcement officials know that someone is a victim?
- Are there helpful tools that cite current laws and policies?

New Tools Demonstration

- Letters that advocates and attorneys can provide to victims
- Letters for law enforcement and prosecutors and their agency staff to provide to victims
- Letters that advocates and attorneys at protected locations can provide should they encounter ICE



What to Do When Violations by DHS Happen

- Advocate on the spot-provide
 - Proof of victimization
 - Proof that the victim has been in the U.S.
 - Longer than two years
 - Copy of the statute
 - DHS VAWA confidentiality policy 2019
 - DHS victim and courthouse policies 2025
- Collect information about the violating officer
 - Name
 - Agency
 - Badge Number
- Ask if they obtained supervisory approval
- Call for technical assistance



VAWA Confidentiality Protected Locations

Enforcement at Sensitive Locations

ICE and CBP Jan. 20, 2025

- Revoked the 10/27/2021 Guidelines stating:
- “As part of that work, officers frequently apply enforcement discretion to balance a variety of interests, including the degree to which any law enforcement action occurs at a sensitive location. Going forward law enforcement officers should continue to use that discretion along with a healthy dose of common sense. It is not necessary ... to create bright lines regarding where our immigration laws are permitted to be enforced.”

Poll 3: At which protected locations are victims protected against immigration enforcement?
Check all that apply



- A. Shelters
- B. Rape crisis centers
- C. Supervised visitation centers
- D. Family justice centers
- E. Victim services program/provider
- F. Community based organization

VAWA Community Based Locations Definition

“(5) Community-based organization. The term “community-based organization” means a nonprofit, nongovernmental, or tribal organization that serves a specific geographic community that—

- (A) focuses primarily on domestic violence, dating violence, sexual assault, or stalking;
- (B) has established a specialized culturally specific program that addresses domestic violence, dating violence, sexual assault, or stalking;
- (C) has a primary focus on underserved populations (and includes representatives of these populations) and domestic violence, dating violence, sexual assault, or stalking; or
- (D) obtains expertise, or shows demonstrated capacity to work effectively, on domestic violence, dating violence, sexual assault, and stalking through collaboration.”

Are Courthouses Protected Locations?

8 U.S.C. Sec.1229(e)(2)(B) – INA 239(e)

- Generally prohibits immigration enforcement at Courthouses **against victims**:
 - “(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is 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 subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [8 USCS § 1101(a)(15)].”

Poll 3: VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....

Check all that apply

- A. Seeking a protection order
- B. For a child custody case
- C. As a witness in a criminal case
- D. In an eviction case when the perpetrator stopped paying rent in violation of a family court order



VAWA Confidentiality 8 U.S.C. 1367

All DHS Directive 002-02-001.1 (2019)

- Protections apply “*even if the alien has not applied for or does not intend to apply* for a victim-based application or petition”
- “If a *DHS employee suspects* that the provisions and relevant policy were not followed, the employee immediately *brings the issue to the attention of his or her immediate supervisor* rather than issuing the NTA.”
- “[I]t is clear that Congress intended that arrests of aliens at such locations to be handled properly given that they may ultimately benefit from VAWA’s provisions”

When Immigration Enforcement Occurs at a Courthouse Against A Victim --

- 8 U.S.C. §1229(e) -Requires ICE certification re: non-reliance on perpetrator provided information
- 8 U.S.C. §1367(c) imposes disciplinary action and fines for violation
- DHS VAWA Confidentiality Implementation - Instruction 002-02-001, Implementation of Section 1367 Information Provisions (May 28, 2019) <https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>
 - ICE is required to check the Central Index System for the “COA 384” flag identifying victim-based cases filed under the Violence Against Women Act and the Trafficking Victim’s Protection Act
 - Requires supervisory approval
 - Officers are to be “sensitive to the fact that the alien at issue may be a victim and the victim-abuse dynamic may be at play.”

Locational Prohibitions

- Enforcement actions at VAWA Confidentiality protected locations actions are not to be taken:
 - “[A]bsent clear evidence that the alien is not entitled to victim-based benefits”
 - Actions taken must “be handled properly given that they may ultimately benefit from VAWA’s provisions”
 - Officers are to follow a specific process aimed at protecting victims that includes obtaining advance permission from a supervisor or ICE general counsel for enforcement actions at statutorily protected sensitive locations
- John P. Torres and Marcy Forman, Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005 (January 22, 2007)

Protected Location Certificate of Compliance

- If any part of the enforcement action leading to the victim being brought before an immigration judge included
 - Relying upon abuser-provided information, OR
 - Enforcement action taken at prohibited location
- DHS is required to disclose the facts to the immigration judge, and
- File a certification in the immigration case that VAWA confidentiality protections were not violated
- The immigration judge can dismiss the proceedings for violations

ICE's 2025 Courthouse Enforcement Policies and VAWA's Statutory Requirements

ICE Policy 11072.3 Court House Enforcement (January 2025) – Family and Non-Criminal Court Limitations

- “ICE officers and agents should generally avoid enforcement actions in or near courthouses, or areas within courthouses, that are wholly dedicated to non-criminal proceedings (e.g. family court, small claims court). When an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required prior to conducting the enforcement action.”

https://niwaplibrary.wcl.american.edu/pubs/2025-01_ice_courthouse_enforcement_guidance/



Enforcement at courthouses must be against targeted immigrants:

ICE Policy 11072.3 - January 21, 2025

- Civil immigration courthouse enforcement will be planned against a targeted immigrant who
 - Is a threat to national security or public safety
 - Has criminal conviction(s)
 - Is a gang member
 - Has been ordered removed and failed to depart, or
 - Has re-entered the country illegally after being removed

Enforcement Against Other Persons

At Court Jan. 21, 2025 Policy

- “Other aliens encountered during a civil immigration enforcement action in or near a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, may be subject to civil immigration enforcement action on a case-by-case basis considering the totality of the circumstances.”

Civil Enforcement at Courthouses - Limitations

ICE Policy 11072.3 - January 21, 2025

- ICE Policy requires that civil immigration enforcement actions
 - Should be conducted in collaboration with court staff
 - Will take place in non-public areas of the courthouse
 - Will be conducted against targeted immigrants discretely to minimize impact on court proceedings
 - Should generally avoid being conducted in or near courthouses and courtrooms wholly dedicated to noncriminal proceedings
 - Make every effort to not disrupt court cases and court operations
 - Make substantial efforts to avoid alarming the public.

Resources

- Resources on Civil Immigration Enforcement At Courthouses (March 31, 2025)
<https://niwaplibrary.wcl.american.edu/pubs/courthouse-enforcement-resources/>
- Sample Letters From Courts for ICE Officers At Courthouses (March 2025)
<https://niwaplibrary.wcl.american.edu/pubs/sample-letters-from-courts-for-ice-officers-at-courthouses/>
- ICE Courthouse Enforcement Guidance 11072.3 Jan.2025, VAWA Confidentiality Statutes, and DHS Implementation Policies
<https://niwaplibrary.wcl.american.edu/pubs/attachments-a-d-ice-courthouse-handout/>
- ICE Field Offices: <https://www.ice.gov/contact/field-offices>

VAWA's Confidentiality's Non-Disclosure Protections

8 U.S.C. Section 1367 and DHS Policies and Regulations on VAWA Confidentiality

- Protects all information in immigration files about a VAWA confidentiality protected victim
- Prohibits disclosure of any information to anyone not just the perpetrator about
 - The existence of the victim's VAWA confidentiality protected immigration cases
 - Decisions made in the cases
 - All Information contained in the victim's #A file
 - Protects the person and all their immigration cases

Disclosure prohibited to

- All persons
- Not just the perpetrator
- All federal and state government officials
 - Including immigration enforcement officials
 - Only limited statutorily authorized exceptions

Prohibitions on Release of Information Apply to Following Cases

- VAWA self-petition
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- Trafficking victims granted continued presence
- VAWA work authorization abused spouses of visa holder applicants

When Non-Disclosure Protections Begin & End

All DHS Instruction 002-02-001.1 (2019)

- Any information related to noncitizens who are “seeking or who have been approved for immigration status” under the U visa, T visa, or other VAWA immigration programs may not be disclosed.
- This includes protection of the victim’s “information that has not yet been included in a [DHS] database.”
- “provides protection as soon as a DHS employee has reason to believe that the alien may be the beneficiary of a pending or approved victim-based application or petition”
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed
 - Victim naturalizes

Non-Disclosure Exceptions

- To law enforcement and national security
 - Solely for purposes related to their work
- Judicial review of the victim's immigration case
- Public benefits granting agencies
- Chair and ranking member of House and Senate Judiciary committees without personally identifying information
- All adults in case waive confidentiality
- With victim's permission connecting victim with victim services
- Anonymous information -census rules apply
- All only in a manner that continues to protect the confidentiality of the information

Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

(Judicial review exception)

- VAWA Confidentiality Protects cases:
 - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
 - Does not apply to civil, family, or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer”

Demaj v Sakaj (D. Conn, 2012) – U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
 - The victim discloses in state court that DHS has approved her protected immigration case

**Ramirez v. Marsh, and
New Mexico Immigrant Law Center v. Leos
(May 7, 2024) New Mexico Supreme Court**

- Criminal court judge cannot order disclosure of U or T visa applications or related materials from
 - The victim
 - The victim's parents
 - The victim's counsel
- New Mexico Supreme Court invalidated subpoenas issues by state criminal court judges requiring disclosure
- *Ramirez v. Marsh*, S-1-SC-39966, and *New Mexico Immigrant Law Center v. Leos*, S-1-SC-40114.

People v. Jun Du – Criminal Case

“Sanctuary For Families”

[NY Sup Ct Kings County 2024](Sept. 27, 2024)

- Based on VAWA confidentiality laws, the Judge reversed their previous decision granting an *in camera review* and denied the request for *in camera review* of the T-visa application (Form I-914).
- VAWA Confidentiality protects the disclosure of the T-visa application (Form I-914).
- Party seeking disclosure must show that the application is so relevant or material that it outweighs VAWA confidentiality.
- The Court decided the materials (T-visa application) are protected and confidential. No exceptions are permitted.

What is discoverable in a state court?

- Criminal case
 - U visa and T visa case
 - The request for certification letter
 - The U or T visa certification itself
 - VAWA self-petition, VAWA cancellation, VAWA suspension cases
 - Nothing
- Family Case
 - Nothing

Discovery Resources

- NJN Peer-to-Peer Session recordings
 - [VAWA Confidentiality: Criminal and Family Case Discovery \(October 1 & Nov. 12, 2024\)](#)
- [VAWA Confidentiality and Discovery Materials January 7, 2025](#)
 - Case law nationally
 - All statutes, regulations, policies
 - Tips on best practices
- [Bench Card on Violence Against Women Act \(VAWA\) Confidentiality \(December 3, 2021\)](#)

Questions?

NIWAP Technical Assistance, Materials, and Training

- **Materials for this training**
 - <https://niwaplibrary.wcl.american.edu/2025-maryland-victims-conference/>
- **NIWAP Technical Assistance**
 - Call (202) 274-4457 E-mail info@niwap.org
- **Web Library:**
www.niwaplibrary.wcl.american.edu

Evaluation

