

# **Violence Against Women Act Confidentiality and Courthouse Enforcement**

Judicial Training Network  
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# Introductions

- Judge Lora Livingston
  - Austin, Texas
  
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# Learning Objectives

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

- Understand the limitations federal statutes, regulations and policies place on immigration enforcement at courthouses
- Identify litigants who are crime victims eligible for VAWA confidentiality protection
- Identify steps that can be taken if immigration enforcement occurs at your courthouses

# VAWA Confidentiality Legislative History

# Bipartisan VAWA Confidentiality Legislative History in VAWA 2005

- “In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings...
- These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims.”

# 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 ... rely 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.”

## 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%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)
- Traffic stops
  - VAWA self-petitioners 28.6%; U visa 26.7% (2013) – 39% (2017)

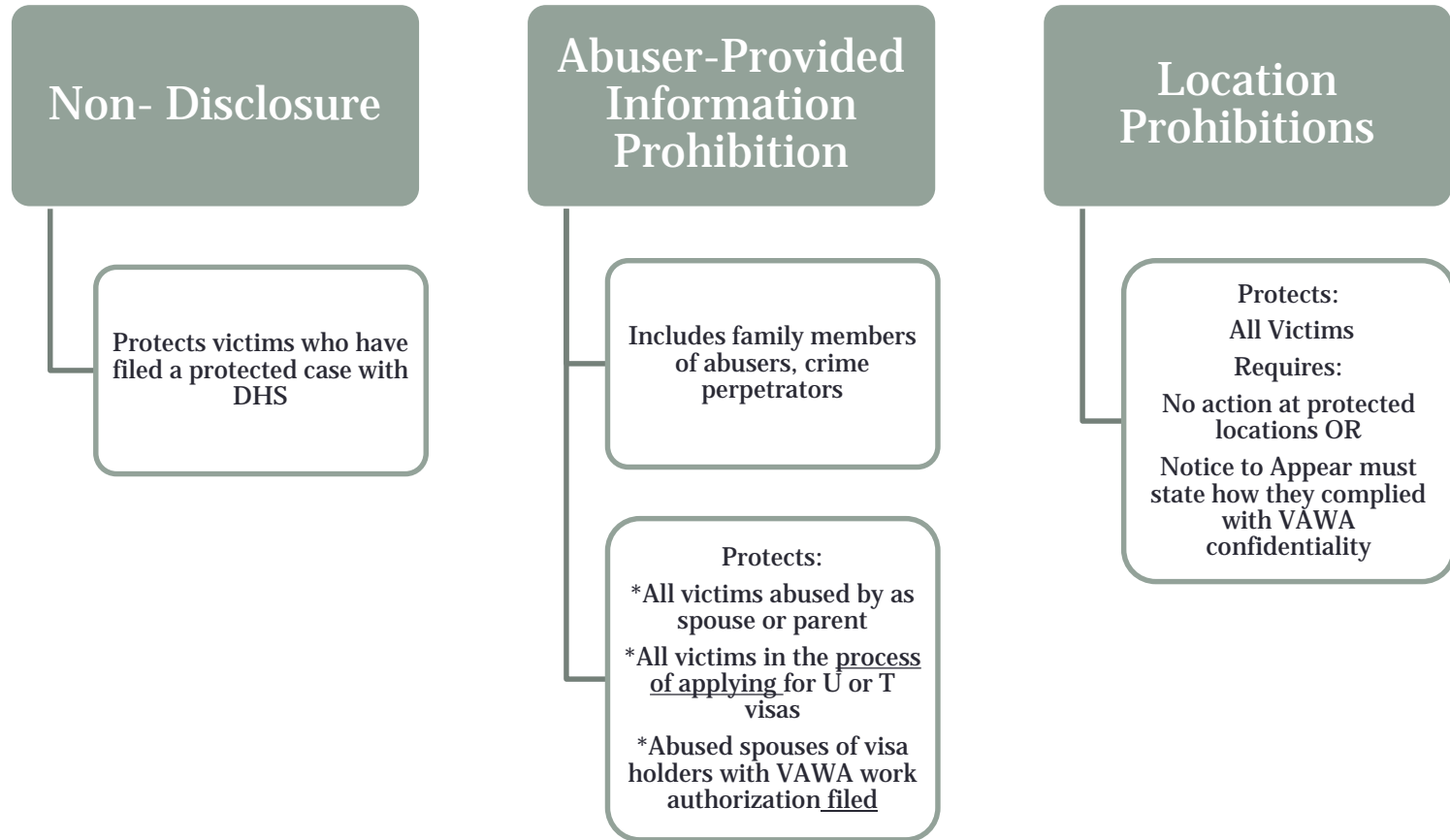
# VAWA Confidentiality in State Court Proceedings



# VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
  - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

# VAWA Confidentiality Prongs



# 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, attorneys about immigration law protections for
  - Survivors of domestic violence
  - Crime victims survivors
  - Human trafficking survivor

# DHS and Victim Protection For Whom? Statutes/Regulations/Memos/Guidance

- 384 Flag in DHS computer system
  - VAWA self-petition, cancellation, suspension
  - Battered Spouse Waiver
  - U Visas
  - T Visas
  - Abused spouses of work visa holders work authorization

# Bars and Limitations on Reliance on Perpetrator Provided Information

# 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 crime
  - 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)

# Victims Protected by Non-Reliance Prohibition

- No immigration case filing required
  - Domestic violence victims
  - Child abuse victims
  - Immigrant parents of child abuse victims
  - Victims of family violence perpetrated by another family member residing in the same household
- Victims in the process of filing
  - T Visas
  - U Visas
- Filed work authorization application
  - Abused spouses of work visa holders

# 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



# All DHS Memo 002-02-001

- Adverse information about the victim from a prohibited source should be treated as “inherently suspect”

# All DHS Memo 002-02-001

- “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.”

# DHS must independently corroborate information provided *solely* by prohibited sources

- Adverse information corroboration examples:
  - Outstanding removal orders
    - Corroboration sources:
      - DHS databases
      - DHS or immigration court case files
  - Criminal convictions
    - Corroboration sources:
      - NCIC
      - Other criminal history databases
      - Information from local law enforcement
      - Court records of criminal convictions or pleas

# The perpetrator provided information bar

- Is enforced in a variety of ways
  - Complaints filed with the office of civil rights at the Department of Homeland Security
  - The prohibited sensitive locations bar

# Prohibiting immigration enforcement at sensitive locations was designed to ...

- Ensure that abusers and criminals cannot use the immigration system against their victims stopping victims from:
  - Accessing civil and criminal justice system help
    - Protection courthouses, family justice centers, and supervised visitation centers
  - Obtaining help from shelters, rape crisis centers, victim services, community based organizations

# Locational Prohibitions

- Enforcement actions at VAWA Confidentiality protected sensitive 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)

# VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
  - 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



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.....

- A. Seeking a protection order
- B. For a child custody case
- C. For an eviction case when the perpetrator stopped paying rent
- D. As a State’s witness in a criminal case
- E. All of the above



# Are Courthouses Sensitive Locations?

- Courthouses are not considered sensitive locations
- Exception: VAWA confidentiality statutes and DHS policies treat courthouses as sensitive locations with regard to victims

# Sensitive Location Certificate of Compliance VAWA 2005

- INA § 239(e)
- If any part of the enforcement action leading to the victim being brought before an immigration judge included
  - Relying upon abuser-provided information
  - Enforcement action taken at prohibited location
- DHS is required to file a certification in the immigration case that VAWA confidentiality protections were not violated

# VAWA Confidentiality Violations Effect on Immigration Court Proceedings

- Can result in dismissal of the immigration proceeding against the non-citizen (VAWA 2005 legislative history)



# VAWA Confidentiality Violations

- Each violation
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- Violations also include making a false certifications in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)



# When Does VAWA Confidentiality Protection End?

- Protections applies from the time of filing permanently unless
  - Case denied on the merits and
  - All appeal options have been completed

# Why is VAWA Confidentiality Important for State Courts?

# Why is VAWA Confidentiality Important for State Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- Prohibited immigration enforcement locations include courthouses

# U.S. Government Materials Excellent for Courthouse Distribution

- DHS “Know Your Rights” Information
  - Infographic
  - VAWA/T and U Brochure
  - SIJS Brochure
- U.S. Dep’t Of State –Rights And Protections For Foreign-citizen Fiancé(e)s And Spouses Of U.S. Citizens and Spouses Of Lawful Permanent Residents



# VAWA Confidentiality Protected Victims

- Receive protections in addition to those offered by VAWA confidentiality
- From each of the following policies
  - Courthouse enforcement
  - Sensitive locations

# January 2018 ICE Courthouse Enforcement Policy: Targeted Immigrant Limitation

- Civil immigration enforcement at courthouses will only occur when
  - ICE officers have information that leads them to believe that a targeted immigrant will be present at a courthouse
- To be targeted an immigrant must
  - Have criminal conviction(s)
  - Be gang members
  - Be a threat to national security or public safety
  - Have been ordered removed and failed to depart, or
  - Have re-entered the country illegally after being removed

# Civil Immigration Enforcement Action Defined

- Action by immigration enforcement action regarding an individual to:
  - Apprehend
  - Arrest
  - Interview
  - Stop
  - Search

# January 2018 Policy: Persons Who are Not Targets

- Will not subject to immigration enforcement persons who are not targets including
  - Witnesses
  - People accompanying others to to court
  - Victims

# January 2018 Policy:

## Avoid Non-Criminal Proceedings

- Avoid enforcement in courthouses or areas within a courthouse that is dedicated to non-criminal proceedings
  - Applies to courts and cases
  - Family cases
  - Civil cases
- Requires Field Office Director/Special Agent in Charge Approval
  - Will involve screening for VAWA confidentiality protected victim's cases

# Policy Directives: Immigration Enforcement at Courthouses

- Civil enforcement actions at courthouses will be planned
- Minimize impact on court proceedings
- Take place in non-public areas
- Be conducted in collaboration with court staff and security
- Use non-public entrances and exits
- Substantial efforts will be made to not alarm the public

# Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
  - Schools
  - Medical treatment and health care facilities
  - Places of worship
  - Religious or civil ceremonies: e.g. weddings, funerals
  - During a public demonstration: e.g., march, rally, parade

# Sensitive Location Exceptions

- Exigent circumstances
- Other law enforcement action led the officer to a sensitive location
- Prior approval by a designated supervisor



What policies or procedures might courts implement with regard to VAWA confidentiality and courthouse enforcement?

How is might information about sensitive locations be helpful to courts?

# Resources and Webinar Materials

- [www.niwap.org/go/JTN1](http://www.niwap.org/go/JTN1)
- PowerPoint
- Recording of Webinar
- VAWA confidentiality
  - Legislative and Regulatory History
  - DHS regulations and policies
  - Newsletter
  - Benchcard for Family Court Judges
  - Brochure
- Web library materials
  - [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

# Technical Assistance and Materials

- PowerPoint presentations and materials for this webinar at [www.niwap.org/go/JTN1](http://www.niwap.org/go/JTN1)
- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Web Library:  
[www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

# Questions



# Evaluations

