

VAWA Confidentiality Protections for Immigrant Survivors: Myths, Facts and Best Practices

Joint Session of the Victim Advocate and
Family Law Communities of Practice

February 11, 2025

This event is supported by Grant No. 15JOVW-23-GK-05119-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Faculty



Tricia Ravenhorst
General Counsel
South Carolina Coalition
Against Domestic
Violence and Sexual
Assault



Leslye Orloff
Director
NIWAP, American
University Washington
College of Law



Learning Objectives

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

- Identify immigrant crime victims who qualify for VAWA confidentiality's immigration protections
- Distinguish myths from facts about VAWA confidentiality's removal 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

Poll: Who has joined us for today's Community of Practice?

- A. Victim Advocate
- B. Victim Witness Staff (Law enforcement or Prosecutor's Office)
- C. Attorney
- D. Accredited Representative
- E. Other

Answer on the left



▼ Feedback

A

B

C

D

No Answer

Other write in chat box →

Chat

Public Private

Type here to send a message

VAWA Confidentiality Overview

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*

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 ... 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.”

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 Enforcement Guidance (1997, 2005, 2007, 2008, 2013, 2021)
- ICE required to:
 - Check for “384” flag before enforcement actions
 - Certify compliance to immigration judge = violations can be basis for dismissal



Identifying Cases Eligible for VAWA Confidentiality Protections



Immigration Protections for Noncitizen Victims of Crime and Abuse

NIWAP

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ In removal proceedings, may need to file Form I-589 with the immigration judge

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification

T VISA
For victims of human trafficking
To apply: USCIS Form I-914

VAWA
For victims of domestic violence and abuse
To apply: USCIS Form I-360

SIJ
Special Immigrant Juvenile classification for child victims under 21 years of age
To apply: USCIS Form I-360

U VISA
For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes
To apply: USCIS Form I-918

ASYLUM
For victims of persecution
To apply: USCIS Form I-589

If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

If approved, benefit provides:

- Ability to apply for permanent residency

If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

BLUE CAMPAIGN
One Voice. One Mission. End Human Trafficking.

Center for Countering Human Trafficking

DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)
All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: www.uscis.gov/forms/all-forms

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



How could VAWA
confidentiality impact
what cases an immigration
lawyer files for a victim
client?



How do courts and communities benefit when victims are in the process of obtaining victim-based forms of immigration relief?



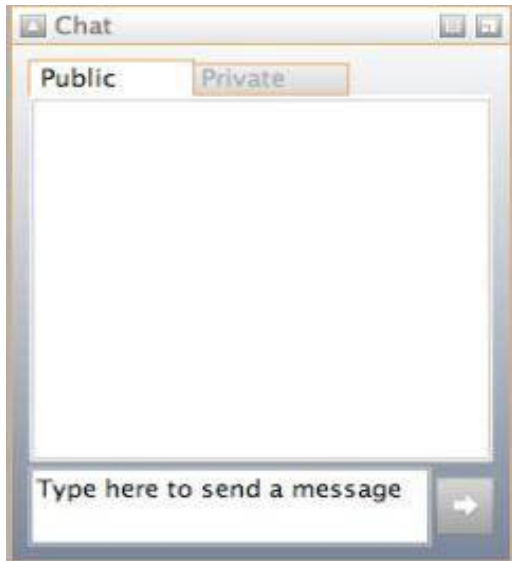


Research shows that U visa applicants report future crimes at higher rates

- Increases justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 22% help other victims report abuse and seek help/justice
- Significantly reduces abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

Bars and Limitations on Reliance on Perpetrator Provided Information

Why do you think
Congress barred DHS from
relying on perpetrator
provided information?



Write in chat box

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)



Can you share some 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)

Poll 2: When do victims get VAWA confidentiality protections? Check all that apply



- 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
 - 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 seeking or in the process of filing
 - T Visas
 - U Visas

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



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.”

Violations of perpetrator provided information bar

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



- Have led to DHS investigations that resulted in demotions and other job sanctions



What have been the results
for victims when DHS
investigations find VAWA
confidentiality violations?



What to Do When Violations by DHS Happen

- Advocate on the spot-provide
 - Proof of victimization
 - Copy of the statute
 - DHS VAWA confidentiality policy
 - DHS 384 system
- Collect information about the violating officer
 - Name
 - Agency
 - Badge Number
- Work it up the chain of command to a supervisor
- File a formal VAWA confidentiality violation complaint
- Advocate for release from detention, termination of immigration proceedings, and/or granting immigration relief



VAWA Confidentiality Protected Locations

VAWA's Locational Prohibitions

- INA § 239(e) (effective Feb. 5, 2006)
- Prohibits immigration enforcement against victims at sensitive locations

Poll 3: At which sensitive locations are victims protected against immigration enforcement?

Check all that apply



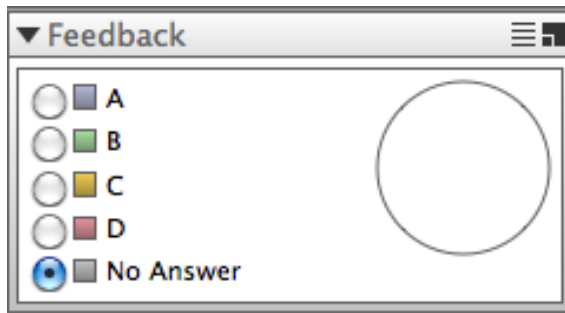
- A. Shelters
- B. Rape crisis centers
- C. Supervised visitation centers
- D. Family justice centers
- E. Victim services program/provider
- F. Community based organization

Poll 4: True or False?

- Courthouses are sensitive locations?

A. True

B. False



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

Enforcement at courthouses must be against targeted immigrants

DHS Policies (ICE & CBP) 2021 ICE Policy January 21, 2025

- A civil immigration enforcement action may be taken in or near a courthouse only in limited instances, including the following:
 - Involves national security,
 - There is an imminent risk of death, violence, or physical harm to any person,
 - Hot pursuit of an individual who poses a threat to public safety, or
 - Imminent risk of destruction of evidence material to a criminal case.
- 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

DHS Policies (ICE & CBP) 2021

- Must be approved in advance by a Field Office Director, Special Agent in Charge, Chief Patrol Agent, or Port Director
- Take place in non-public area
- Be conducted in collaboration with courthouse security personnel
- Utilize the courthouse's non-public entrances and exits
- Be conducted at the conclusion of the judicial proceeding that brought the individual to the courthouse

ICE Policy January 21, 2025

- Take place in non-public areas
- Be conducted in collaboration with court staff and security
- Use non-public entrances/exits
- When practicable conduct enforcement actions discretely to minimize impact on court proceedings
- Avoid courthouses/areas within courts dedicated to non-criminal cases (e.g. family, civil, small claims) – supervisor approval required
- Make substantial efforts to avoid unnecessarily alarming the public or disrupting court operations

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”



Locational Prohibitions

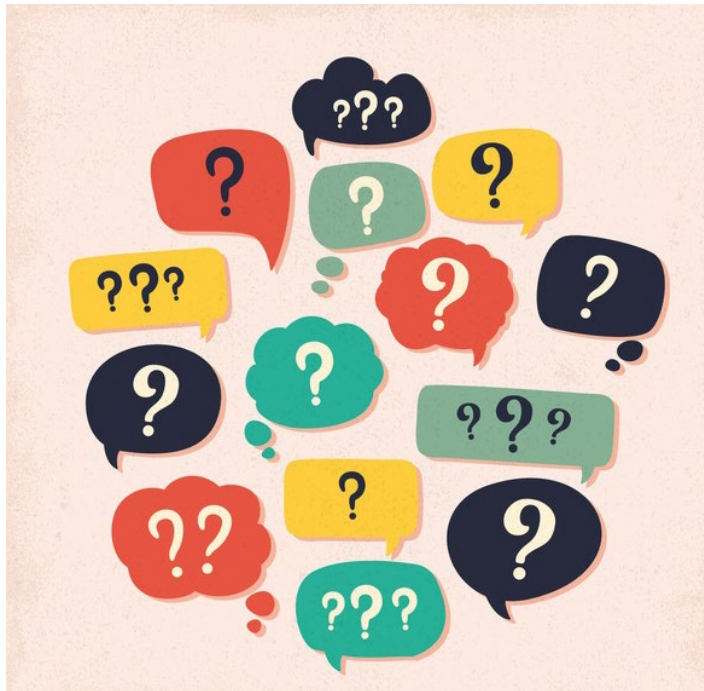
- Enforcement actions at VAWA Confidentiality protected sensitive locations actions are not to be taken:
 - “[A]bsent clear evidence that the alien is not entitled to victim-based benefits”
 - Actions taken must “be handled properly given that they may ultimately benefit from VAWA’s provisions”
 - Officers 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)



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

Poll 5: 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

Steps Courts Are Taking

- Restrict activities that interfere with courtroom operations
- Enforcement restricted to non-public areas of the courthouse*
- Courts ask ICE to coordinate with court security staff and use of non-public entrances & exits*
- Some courts do not allow ICE into courtrooms
- No enforcement in civil and family proceedings absent written authorization from ICE Field Office Director or Special Agent in Charge*
- No interruptions during court proceedings or until case is completed
- No enforcement against victims, witnesses, family members, people accompanying others to court*
- Call courthouse security if ICE fails to comply with court orders



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.”



Sensitive Locations Policies Historically (1993, 2008, 2011, 2013, 2016, 2018, & 2021)

- Enforcement actions by ICE and CBP were not to occur at sensitive locations (all years):
 - Schools
 - Places of worship
 - Religious or civil ceremonies: e.g. weddings, funerals
- 2021 added
 - Medical treatment, health care facilities, social services agencies, disaster relief, parades, demonstrations,
- Very limited exceptions:
 - Exigent circumstances
 - Prior approval by a designated supervisor
 - Other law enforcement action led ICE/CBP there

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

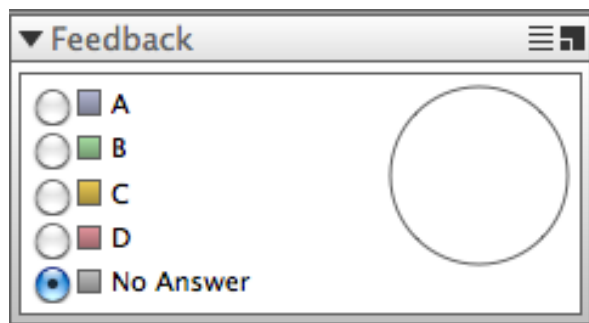
- To law enforcement and national security
 - Solely for purposes related to their work
- Judicial review
- Public benefits granting agencies
- Chair and ranking member of House and Senate Judiciary committees without personally identifying information
- All adults in case waive confidentiality
- With 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**

Poll 6: True or False?

- VAWA confidentiality's judicial exception applies to State Court judges hearing criminal, family and/or civil court matters.

A. True

B. False





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

EEOC v Koch (5th Circuit)

- In civil discovery court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable
 - That is not possible in a family or criminal court 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

- **NIWAP Technical Assistance**
 - Call (202) 274-4457 E-mail info@niwap.org
- **Web Library:**
www.niwaplibrary.wcl.american.edu



Evaluations

