



The Violence Against Women Act (VAWA): Tips to Protect the Privacy of Immigrant Survivors

The immigration-related remedies for survivors of crime, and the corresponding federal immigration VAWA confidentiality laws, are designed to remove immigration status as a barrier to survivors accessing the help they need. They are also intended to encourage survivors to report to and cooperate with law enforcement and criminal prosecutions. The Victim Rights Law Center (VRLC)¹ and the National Immigrant Women’s Advocacy Project (NIWAP)² developed these tips (and a companion set of FAQs) to help attorneys understand and navigate the VAWA confidentiality protections in federal immigration law.³ The tips are intended to help you promote the safety, privacy, and healing of survivors of sexual assault, domestic violence, sex trafficking, dating violence, and stalking. We encourage you to reach out to the VRLC (TA@victimrights.org) or NIWAP (info@niwap.org) if you need assistance. We’re here to help.

Tips for Working with Immigrant Survivors

[Build Trust to Screen for Eligibility for Immigration Relief](#)

The impact of immigration-related legal remedies, including victims’ ability to access protection from deportation, secure legal work authorization, and receive federal- and state-funded public benefits, may depend upon how swiftly a victim files for immigration relief. This, in turn, requires that legal services providers promote their services and the legal remedies available, and ensure that undocumented survivors feel safe disclosing their immigration status to them. Publicize that your organization serves all survivors without regard to immigration status through outreach and community

¹ The Victim Rights Law Center (VRLC) provides technical assistance (resources, trainings, mentoring, case and programmatic consultations, and other support to lawyers and legal advocates who are (or are eligible to be) funded by the Office on Violence Against Women. Contact the VRLC at [\(503\) 274-5477](tel:5032745477) x 1 or x 2 and TA@victimrights.org.

² The National Immigrant Women’s Advocacy Project, American University Washington College of Law (NIWAP), provides technical assistance to lawyers, victim advocates, prosecutors, law enforcement, judges and professionals serving immigrant survivors on VAWA confidentiality, discovery, family court, protection orders, public benefits, immigration, and language access issues. Contact NIWAP at info@niwap.org and (202) 274-4457.

³ VAWA Confidentiality Interlineated Statutes (March 31, 2018). <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-interlined>; VAWA Confidentiality Statutes, Legislative History and Implementing Policy (Updated April 4, 2018). <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.



events, signage in your office, in resource materials, and via other means.⁴ Be sure to broadcast the message that you will protect survivor privacy and keep confidential the information survivors share, including information about their (and other family and community members') immigration status.⁵ Sharing information about the services available to undocumented survivors as part of your routine intake process and your commitment to protective privacy, and regularly screening for immigration issues, are all helpful.

Do Not Impermissibly Disclose Information Without Victim Consent When Government (or Other) Officials Ask for Information Specifically About Undocumented Victims

The VAWA confidentiality protections have no exception for requests for information from immigration enforcement officials, law enforcement, or any other government or non-government agency or individual (other than some jurisdictions' statutory requirements for mandatory reporting of abuse, or subpoenas, for example⁶). If your organization receives a request for information about an immigrant survivor, best practice is to verify the identity of the person seeking the information and inform them that you are prohibited by law from confirming or denying whether you have served an individual. You might allow the official to explain their needs and reasons for contacting your program, while continuing to withhold information you have.

If you are serving the survivor whose information is being requested, let the survivor know that you were contacted and asked for information but did not release it.⁷ (VAWA

⁴ Federally funded victim services programs, legal aid, and other legal services programs may serve survivors of domestic violence, sexual assault, dating violence, stalking, child abuse, elder abuse, human trafficking and many other criminal activities without regard to the victim's immigration status. See: *Legal Services Access Open to All Immigrant Survivors Materials (updated December 2021)*. <https://niwaplibrary.wcl.american.edu/mats-legal-services>; *Anti-Discrimination Provisions That Apply to Programs Receiving Federal Funding Serving Victims of Violence Against Women Crimes (2017)*. <https://niwaplibrary.wcl.american.edu/pubs/pb-tool-antidiscrimlaws>.

⁵ Notify survivor-clients about any exceptions.

⁶ Unless a court or statutory mandate (e.g., mandatory reporting laws addressing child abuse or abuse of an elder, person with a disability, or other vulnerable adult) requires it, OVW-funded victim service providers may not share information about an immigrant (or any other) survivor who sought, received, or was denied services without a signed, written release of information (ROI) executed with informed consent – even if it is the government requesting the information. See 8 U.S.C. §1367 and 34 U.S.C. §12291 (b)(2)(B). See also 28 C.F.R. § 90.4.

⁷ For more information see, *OVW, Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provisions (34 U.S.C. Section 12291(b)(2)) (October 2017)*. <https://www.justice.gov/ovw/page/file/1006896/download>.

confidentiality laws also inform how your program should respond if you are presented with a subpoena, a search warrant, or an arrest warrant.⁸⁾

Promote Language Access While Protecting Survivor Privacy

Language access to your services, and to services offered by other agencies, is an essential component of your work. The following tips address survivor privacy when using translators and interpreters to communicate with and about survivors in languages other than English.⁹

- Let the survivor know the name of the interpreter or translator you propose to use before you hire them. This avoids conflicts of interest and privacy breaches. In smaller or insular communities, the survivor may prefer to have interpretation or translation provided by someone outside of the geographic area or outside of the immigrant survivor's more immediate community. This can often be arranged by using a variety of telephone interpreters and internet translation services. Even such arrangements are not a guarantee of privacy, however, because interpretation and translation services hire nationally (and sometimes immigrant communities are closely connected across the U.S.), so be sure to ask the name of the interpreter or translator.
- Whether in person or remote, ask the survivor for permission to use a specific interpreter or translator.
- Have interpreters and translators sign a confidentiality agreement. Review the confidentiality form with each interpreter and/or translator before introducing them to the client, providing documents, or otherwise contracting with them to perform work for you.

⁸ Agencies serving immigrant survivors should seek assistance of counsel if presented with a subpoena, a search warrant or an arrest warrant seeking an individual or information about any victim of domestic violence, sexual assault, stalking, dating violence, or other crime who your agency is serving, including immigrant survivors. For technical assistance with privacy-related issues, contact the Victim Rights Law Center's Technical Assistance (TA) team at: TA@victimrights.org. OVW grantees who receive a request from law enforcement or immigration enforcement officials regarding an immigrant survivor can access free immigration-related legal TA from NIWAP by emailing them at: Info@niwap.org. See also, *Confidentiality and Immigrant Victims: Responsibilities Of Shelters, Rape Crisis Centers and Victim Services Providers (2012)*. <https://niwaplibrary.wcl.american.edu/pubs/vawa-tkit-shelterconfidentialityissues> (Includes steps to take if presented with a subpoena, search, or arrest warrant).

⁹ Interpreters provide oral interpretation services while translators translate written documents. The skills required of a qualified interpreter are different than the skills required of a qualified translator.

- Redact names and other identifying information on documents to be translated when this is permissible. (You may not be allowed to do this in all contexts depending on the document to be translated.)
- Use a qualified professional interpreter or translator. Note that the skills required for interpretation of spoken language and those required for translation of written documents differ. Some qualified interpreters may not be qualified translators and vice versa. Also, some may be skilled at translating from one language to another but not the reverse.
- Do not use bilingual program advocates or other staff to interpret or translate for law enforcement, the prosecutor, or in court if they are also providing direct services to the survivor without first discussing with the survivor the privacy implications. Using staff as interpreters or translators could risk waiver of privilege, the advocate being called as a witness, and other problems.¹⁰
- Translate your VAWA-compliant release of information¹¹ and other vital documents as required under Title VI.¹²

Immigration Case Tips

“In the Process of Filing” Letter

VAWA confidentiality is most effective in protecting victims when the Department of Homeland Security (DHS) officials are notified that the immigrant against whom they are conducting an enforcement action is a victim eligible for certain protections. Best practice is that, as soon as a survivor decides they will file an application for immigration relief under VAWA, T visa, U visa, continued presence, or abused spouse of A, E(3), G or H work visa holder programs (“victim based immigration case”), survivors’ attorneys should give their client a letter stating that the victim is *in the process of filing* for the listed type of victim-based immigration case, assuming it is safe to do this. This letter formally gives DHS notice that the immigrant is a victim and cuts off DHS’ ability to rely information the perpetrator provided to harm the victim.¹³ Be sure to discuss the

¹⁰ Email the Victim Rights Law Center at: TA@victimrights.org to request a copy of VRLC’s Tip Sheet on the Use of Interpreters and Translators.

¹¹ See 34 U.S.C. § 12291(b)(2) and 28 C.F.R. § 90.4.

¹² *Translation Requirements for Vital Documents, Intake and Notice of LEP Assistance for DOJ and HHS Grantees Serving Immigrant Crime Victims.* <https://niwaplibrary.wcl.american.edu/pubs/translation-vital-docs>.

¹³ *Instruction 002-02-001, Implementation of Section 1367 Information Provisions 10 (11.7.13).*

<https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001>.



privacy implications of providing such a letter on your agency letterhead as it may indirectly disclose what type of abuse the survivor experienced. For example, if you are an agency that exclusively serves survivors of sexual assault or human trafficking, a letter on your agency letterhead may reveal this information. A conversation regarding survivor safety should factor into the conversation about what letters the survivor takes home and carries with them.

Consider Approaches That Lead to Swift Filing of a Survivor’s Immigration Case

Protection against deportation is greatly enhanced once an immigrant survivor files an immigration case protected by VAWA confidentiality. Therefore, consider filing a skeletal application that contains sufficient information to receive a prima facie or bona fide determination even though it will not include all of the information and documentation that will ultimately be submitted in support of the application. You do not need – and should not wait for – a request for further evidence (RFE) to provide additional information on the survivor’s behalf. You should amend the survivors’ filing to include all additional information that will be submitted to support the survivor’s application as soon as possible after the skeletal application has been filed. This ensures that the adjudicator has the complete record before them when they adjudicate the application reducing the need for requests for further evidence and speeding up approval of the victim’s case.

Use of Safe Address¹⁴

All VAWA confidentiality-protected case types (e.g., VAWA self-petitions, VAWA cancellation of removal, U visas, T visas, continued presence, employment authorization for abused visa holder spouses) provide survivors the opportunity to list a safe/alternate address that DHS can use to communicate with the survivor applicant. The forms also ask for the contact information for the person or organization that helped the survivor complete the application. Completing this information is very important because it enables the listed person or agency to help the victim inquire about the victim’s case in a manner that complies with VAWA confidentiality laws. An attorney (or Accredited Representative) should also file the entry of appearance to represent the survivor in the immigration case. When a survivor files a VAWA confidentiality-protected immigration case without listing an agency that helped them, and without entry of an appearance by

¹⁴ See 8 U.S.C. § 1367(b)(7).

an attorney, only the victim will be able to communicate with DHS and only by mailing a letter through the U.S. mail.

Memorize the “A” Number

Once any immigration case has been filed, the immigrant’s case file will be assigned an identification number. This number begins with the letter “A.” Victims should be strongly encouraged to memorize this number and, if ever stopped by an immigration enforcement official or local police, should tell them the following:

- They are a crime victim.
- They are the primary caretaker of a child or an incapacitated adult¹⁵
- They have filed a VAWA confidentiality-protected immigration case with DHS.
- Provide the officer their “A” number.
- Ask the DHS official to check the Central Index System for a “384” Flag.

DHS officials have been directed to check the “Central Index System” for the victim’s name and/or “A” number when they encounter a potential victim. All individuals who have filed VAWA confidentiality-protected cases will appear in the system. DHS has been instructed not to pursue enforcement actions against crime victims and witnesses.¹⁶

Motions to Terminate Removal Proceedings

If, related to a tip from an abuser or crime perpetrator, or other VAWA confidentiality violation, DHS has initiated an enforcement action against an immigrant survivor that results in the victim being involved in an immigration court case, you should file a

¹⁵ See *U.S. Immigration and Customs Enforcement, 11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults (Jul. 14, 2022)* (Requiring immigration enforcement officials to ask whether the noncitizen is a caregiver of a child or incapacitated adult as part of every enforcement related encounter.) available at <https://niwaplibrary.wcl.american.edu/pubs/parental-guardian-interests-directive>; See also, *Parental-Guardian Interests Directive: How to Get a Detained or Removed Person to Court for Family Court Cases Involving Children or Incapacitated Adults (June 12, 2021)* <https://niwaplibrary.wcl.american.edu/pubs/how-to-get-a-detained-parent-to-court>.

¹⁶ See generally, *DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges (December 27, 2021)*. <https://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard>; *DHS Guidelines for the Enforcement of Civil Immigration Law (September 30, 2021)*. <https://niwaplibrary.wcl.american.edu/pubs/civil-immigration-enforcement-guidelines-9-2021>; John Morton, *DHS Memo Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs (June 17 2011)*. <https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>.

motion to terminate the removal proceedings due to the VAWA confidentiality violations.¹⁷

Requests for Prosecutorial Discretion

Attorneys should consider asking DHS officials to exercise prosecutorial discretion not to initiate or continue enforcement of immigration laws against a survivor who has suffered VAWA confidentiality violations. Actions that could help remedy VAWA confidentiality violations include Immigration and Customs Enforcement trial attorneys joining in a motion to dismiss or administratively close the survivor's immigration case,¹⁸ or expediting U.S. Citizenship and Immigration Service's adjudication of a survivor's immigration case.¹⁹

Tips For Working with Immigrant Survivors in State Court Cases

Consult with Your Client and, if Appropriate, Request to Appear Remotely

Although immigration enforcement at courthouses was curtailed in 2021,²⁰ you may still wish to consider requesting that the survivor be allowed to participate in court proceedings remotely. Appearing remotely can promote survivors' physical and emotional safety and eliminate the possibility that the perpetrator could follow the survivor leaving the courthouse. It also avoids the difficulties and trauma for survivors of encountering perpetrators in-person on the way to, from, or at, the courthouse. If the survivor is appearing remotely, be sure to discuss privacy protections that apply to remote appearances such as using an inserted or blurred background to hide the survivor's location, obscuring the phone number for the call origination, removing identifying or personal objects, etc.

¹⁷ VAWA Confidentiality: History, Purpose, DHS Implementation, and Violations of VAWA Confidentiality Protections 16-17; 24-29 (2014). <https://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose>.

¹⁸ Staff can take a wide range of possible actions Immigration and Customs Enforcement on a survivor's behalf. See, ICE Directive 11005.3 – Using a Victim-Centered Approach with Noncitizen Crime Victims (August 10, 2021). <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>.

¹⁹ USCIS Policy Manual Chapter 5 – Requests to Expedite Applications or Petitions (October 1, 2021). <https://niwaplibrary.wcl.american.edu/pubs/uscis-expedite-criteria>.

²⁰ Civil Immigration Enforcement Actions in or near Courthouses (April 27, 2021). <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement>.

Motions in Limine

When representing immigrant survivors in divorce, custody, protection order, employment, or other state court proceedings, consider filing a motion *in limine* seeking a court order limiting the perpetrator's ability to raise the immigration status of the victim in the proceedings.²¹

How to Respond to Discovery Requests and in Depositions²²

Perpetrators may attempt to obtain information about a victim's VAWA confidentiality-protected case through state court discovery in a family, civil, or criminal case. Case law nationally, DHS policies, and the federal VAWA confidentiality laws all confirm that the information about the existence of, actions taken in relation to, and evidence contained in federal VAWA confidentiality-protected case files is not discoverable in state civil, family, and criminal court cases. The only document that may be discoverable is a U visa certification or a T visa declaration signed by a government official involved in the case before the court.²³ In criminal, family, and civil court cases, if immigrant survivors are asked about the existence of or decisions made in a VAWA confidentiality-protected immigration case, counsel for the survivor should not admit or deny the existence of such case, whether or not one has been filed, and should object citing VAWA confidentiality. 8 U.S.C. § 1367.

VAWA Confidentiality and Privacy

Educate systems-based organizations, community partners, and immigrant serving organizations about VAWA confidentiality protections (8 U.S.C. § 1367; 34 U.S.C. § 12291(b)(2)); and 28 C.F.R. § 90.4. Discuss ways to maintain boundaries and protect survivors' privacy when agencies work together to help immigrant survivors.

²¹ See, *Sample Plaintiffs' Motion in Limine in VAWA Confidentiality: history, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections* 27-64 (2014). <https://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose>.

²² *VAWA Confidentiality Protections for Immigrant Crime Victims (Update March 8, 2021)*. <https://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools>; *VAWA Confidentiality and Discovery Cases (December 6, 2021)*. <https://niwaplibrary.wcl.american.edu/vawa-confidentiality-cases>.

²³ *Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (November 8, 2017)*. <https://niwaplibrary.wcl.american.edu/prosecutors-tools>. NIWAP collaborates with AEquitas to provide technical assistance to prosecutors on criminal case discovery questions and criminal case strategy in cases involving immigrant survivors. NIWAP provides technical assistance on VAWA confidentiality to lawyers representing survivors in state court cases. To obtain either of these forms of technical assistance contact NIWAP.

Benefits of Segregating Program Components

If your agency is a multi-service organization, segregating program components can help minimize opportunities for staff inadvertently sharing private information. Depending on your type of organization and the applicable ethical rules, segregating information by program can also help to minimize opportunities for conflicts of interest. Structure program databases so that there is a firewall between different program components. Be sure you implement VAWA confidentiality obligations (8 U.S.C. § 1367; 34 U.S.C. § 12291(b)(2); and 28 C.F.R. § 90.4) through policies that guarantee survivors' confidentiality and privacy are protected when your program is a multi-service organization serving both survivors of gender-based violence and other clients.

Tips for Filing a Complaint Regarding Violations of VAWA Confidentiality

Enforcement of immigration law against crime victims at courthouses has been statutorily precluded since 2005.²⁴ In addition, current DHS policies also bar most immigration enforcement actions against any noncitizen at courthouses. If you are concerned about a perpetrator's active efforts to report a victim for immigration enforcement, you may want to create a file with hardcopies of the VAWA confidentiality statute and important DHS regulations and policies²⁵ and have it on hand in the event any DHS officials attempt courthouse enforcement against a survivor client. Sometimes

²⁴ INA § 239(e); 8 U.S.C. § 1229(e).

²⁵ Documents to include in the folder are:

- *VAWA Confidentiality Interlineated Statutes (March 31, 2018)*.
<https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-interlined>
- *DHS Broadcast Message on New 384 Class of Admission Code (December 1, 2010)*.
<https://niwaplibrary.wcl.american.edu/pubs/dhs-broadcast-class-admission-code>;
- *Alejandro Mayorkas, Guidelines for Enforcement of Civil Immigration Law (September 30, 2022)*
<https://niwaplibrary.wcl.american.edu/pubs/civil-immigration-enforcement-guidelines-9-2021>;
- *John Morton, DHS Memo Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs (June 17 2011)*.
<https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>
- *Civil Immigration Enforcement Actions in or near Courthouses (April 27, 2021)*.
<https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement>
- *VAWA Confidentiality Statutes, Legislative History and Implementing Policy (2022)*.
<https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>

you might want to show the documents to the judge²⁶ and ask them to intervene if DHS is seeking to take enforcement action at the court.

Document and Report VAWA Confidentiality Violations²⁷

If an immigrant survivor's VAWA confidentiality rights are violated by federal immigration enforcement officials, the steps to take are:

- Immediately record the facts that occurred (incident, name, date, location, officers' badge numbers) and the impact on the client.
- Include how the attorney learned about the violation.
- Contact the local U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) office involved²⁸ (establishing relationships in advance with ICE or CBP officials – particularly supervisors and victim assistance staff – provides greater access to redress violations).
- Speak with the officer involved and let them know about the VAWA confidentiality violation. Document their response. If needed, speak with their supervisor and document the supervisor's response as well.
- If the harm caused by the VAWA confidentiality violation is not resolved, you might file a VAWA confidentiality violation complaint with the DHS Office of Civil Rights and Civil Liberties.²⁹

²⁶ Also give the judge *Family Court Bench Card on Violence Against Women Act (VAWA) Confidentiality* (December 3, 2021) <https://niwaplibrary.wcl.american.edu/pubs/family-court-bench-card-vawa-confidentiality>; *Courthouse Immigration Enforcement Steps Courts Are Taking* (December 29, 2021) <https://niwaplibrary.wcl.american.edu/pubs/courthouse-immigration-enforcement-steps-courts-are-taking>.

²⁷ For a step-by-step description of best practices for addressing VAWA confidentiality violations attorneys should see, *VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections* 26-29 (2014). <https://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose>. For technical assistance with VAWA confidentiality violations contact NIWAP at info@niwap.org or (202) 274-4457 as soon as possible after the violation occurred or you learn of the violation.

²⁸ To identify the local ICE field office responsible for your jurisdiction, see <https://www.ice.gov/contact/field-offices?office=16>. To find the contact information for Customs and Border Protection Field Offices first search the ports of entry in your state: <https://www.cbp.gov/contact/ports#>. Click on your state and you will see a list of field offices. Click on the relevant field office for contact information.

²⁹ *USCIS Policy Manual Chapter 7 – Privacy and Confidentiality* (March 23, 2022).

<https://niwaplibrary.wcl.american.edu/pubs/uscis-policy-man-ch-7-privacy-and-confidentiality> (Includes the current location at which complaints are to be filed); *VAWA Confidentiality Complaint Process at DHS Civil Rights and Civil Liberties (CRCL)* (2018) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-process-crcl-2018> (Complaint form and process to be used); *VAWA Confidentiality Complaint Process at DHS Civil Rights and Civil Liberties (CRCL)* (2018) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-process-crcl-2018>. NIWAP provides technical assistance to help resolve and remedy VAWA confidentiality violations, including assistance in filing complaints. Email info@niwap.org.