



# FAQs for Victims' Lawyers:

## The Central Role of Federal Immigration Laws and the Confidentiality Provisions of the Violence Against Women Act (VAWA) in Protecting the Safety and 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)<sup>1</sup> and the National Immigrant Women's Advocacy Project (NIWAP)<sup>2</sup> developed these FAQs (and a companion tip sheet) to help attorneys understand and navigate the VAWA confidentiality protections in federal immigration law when representing survivors of sexual assault, domestic violence, sex trafficking, dating violence, and stalking who are seeking protection from deportation and other immigration relief.<sup>3</sup> (Securing protection from deportation is a primary safety concern for immigrant survivors which, if unaddressed, impedes their access to critical services, support, and public benefit safety-net services.) We encourage you to reach out to the VRLC or NIWAP if you need assistance. We're here to help.

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<sup>1</sup> The Victim Rights Law Center (VRLC) is funded to provide 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:503-274-5477) x 1 or x 2 and [TA@victimrights.org](mailto:TA@victimrights.org).

<sup>2</sup> 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](mailto:info@niwap.org) and (202) 274-4457.

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

# VAWA Confidentiality: An Overview

## 1. What are the key immigration-related VAWA confidentiality protections in federal law?<sup>4</sup>

VAWA federal immigration confidentiality laws offer three types of protections specifically designed to protect immigrant survivors. The laws prohibit the government from: (1) relying on information provided by the perpetrator; (2) enforcing immigration law at certain locations; and (3) disclosing information about a case that is protected by VAWA confidentiality. Note that these laws are in addition to the privacy and confidentiality provisions set forth in 34 U.S.C. § 12291.

## 2. What prohibits government reliance on perpetrator provided information?

The Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Department of State (DOS) are prohibited from using information provided by a perpetrator or the perpetrator's family member or agent<sup>5</sup> to take any action or make any adverse immigration determination against an immigrant victim of crime.<sup>6</sup> A survivor of domestic violence, sexual assault, stalking, sex trafficking, or other gender-based violence is not required to have filed an application for immigration relief to receive these protections. This prohibition applies to all marriages and to parent-child and stepparent-stepchild relationships where an immigrant was subjected to battering or extreme cruelty. The same prohibitions apply when an immigrant survivor of sexual assault, stalking, human

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<sup>4</sup> The term "VAWA confidentiality" as used in these FAQs refers to the special protections contained in U.S. immigration laws designed to enhance safety, privacy, confidentiality, and access to immigration relief and protections against deportation for immigrant survivors. These protections are set forth in IIRAIRA § 384; 8 U.S.C. § 1367; INA § 239(e); 8 U.S.C. § 1229(e).

<sup>5</sup> 151 CONG. REC. E2606-7 (Dec. 18, 2005). (speech of Hon. John Conyers Jr.).

<sup>6</sup> IIRAIRA § 384 (a)(1); 8 U.S.C. § 1367(a)(1). ("Adverse actions prohibited" includes but is not limited to: using the information against the victim in the victim's immigration case, issuing a detainer, detaining, issuing or serving a Notice to Appear in immigration court, stopping, questioning or attesting the victim, opposing motions in the victim's immigration case, deporting a victim, or deciding to reinstate removal against a victim.)

trafficking, domestic violence, child abuse, or other U visa listed criminal activity<sup>7</sup> is in the process of filing a U visa or T visa application, a VAWA self-petition, or a VAWA cancellation of removal application.

### **3. What Protections Exist to Prohibit Immigration Enforcement at Certain Locations?**

There are specific locations where, by statute, immigration enforcement actions are prohibited. Some of these prohibitions protect all immigrants at the specified locations while other location protections are specific to victims who have filed for certain kinds of immigration relief.

#### **3A. At what locations are all immigrants protected?**

DHS is prohibited from arresting or detaining immigrants at the following locations, absent supervisor or headquarters approval:

- Schools;
- Places where children gather;
- Medical treatment facilities;
- Social services agencies;
- Places of worship;
- Religious or civil ceremonies;
- Locations where emergency relief is being provided;
- Parades or rallies; and
- Under most circumstances, courthouses<sup>8</sup>

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<sup>7</sup> U visa criminal activities include: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, solicitation to commit any of the above-mentioned criminal activity, or any similar activity in violation of federal, state, or local criminal law and solicitation, attempts or conspiracy to commit any such criminal activity. Child abuse and elder abuse may be considered domestic violence or may involve sexual assault or other offenses that fall within the list of U visa criminal activities.

<sup>8</sup> VAWA Confidentiality Protections, Courthouse Enforcement, and Sensitive Locations Policies at a Glance (December 27, 2021). <https://niwaplibrary.wcl.american.edu/pubs/victims-and-protected-locations-policies-at-a-glance>. See also <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Enforcement->

### **3B. At what additional locations are immigrant survivors protected?**

In addition to the locations referenced in 3A above, some immigrant victims are eligible for protection at additional locations. Specifically, survivors who have filed for a U-visa, T-visa, VAWA self-petition (for adjustment of status), or VAWA cancellation are protected as are immigrant victims who (a) are married to or are the child/step-child of an abuser and/or (b) have a letter from a professional such as their lawyer, clergy, advocate, or other victim service provider asserting that this individual is in the process of filing for crime victim-based immigration relief, are also protected at the following additional locations:

- Domestic violence shelters;
- Rape crisis centers;
- Supervised visitation centers;
- Family justice centers; and
- Victim services, victim services providers, or other community-based organizations that serve survivors.

Sensitive locations may also include a courthouse (or in connection with that appearance of the alien at a courthouse) if the survivor 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 they have been battered or subject to extreme cruelty or experienced the harms that render them eligible for a T- or a U-visa.<sup>9</sup> (See 8 U.S. Code § 1229 (e.)

If DHS undertakes any part of an enforcement action against a VAWA confidentiality protected immigrant victim at a protected location, VAWA confidentiality statutes require DHS to disclose this fact to the survivor in its Notice to Appear and to the immigration court. It must also certify that such action did not violate VAWA confidentiality provisions. (See 8 U.S.C. § 1229 (e)(1).)

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[Actions-in-or-Near-Protected-Areas-.pdf](#) at 4; [Civil Immigration Enforcement Actions in or near Courthouses \(american.edu\)](#) at 2.

<sup>9</sup> See [https://niwaplibrary.wcl.american.edu/wp-content/uploads/implementation-of-section-1367-information-provisions-instruction-002-02-001\\_0\\_0.pdf](https://niwaplibrary.wcl.american.edu/wp-content/uploads/implementation-of-section-1367-information-provisions-instruction-002-02-001_0_0.pdf).

#### **4. What protections exist against disclosure of information in a case protected by VAWA confidentiality?**

VAWA confidentiality prevents DHS, DOJ, and DOS from releasing to the abuser or others any information contained in a protected immigration file.<sup>10</sup> VAWA confidentiality laws prohibit the release of information:

- About the existence of a VAWA confidentiality protected immigration filing;
- Regarding actions taken in the VAWA confidentiality protected immigration case or any other immigration case a VAWA confidentiality protected victim files; and
- Contained in the VAWA confidentiality protected immigration case file, including identity, victimization, locational information, and other information the case file.

#### **5. In what kinds of immigration cases do VAWA's Confidentiality disclosure protections apply?**

To receive VAWA confidentiality disclosure protections a victim must have filed one of the following types of VAWA confidentiality protected cases:

- VAWA self-petition
- Battered Spouse Waiver
- VAWA cancellation of removal
- VAWA suspension of deportation
- T visa
- U visa
- VAWA Cuban adjustment applicants
- VAWA Haitian Refugee Immigration Fairness Act
- VAWA Nicaraguan Adjustment and Central American Relief Act Protections

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<sup>10</sup> IIRAIRA § 384-(a)(2); 8 U.S.C. § 1367(a)(2).

- Work Authorization Applications Filed by Abused Spouses of A, E (3), G and H Visa Holders under INA Section 106
- Continued Presence

**Note:** Victims filing immigration cases protected by VAWA confidentiality will have their cases red flagged for protection shortly after filing.<sup>11</sup> Formal protection from deportation is offered later as the survivor’s case moves through the immigration process. Depending on the type of case, the protection can be achieved through deferred action, a visa, or receipt of lawful permanent residency. The protections against immigration enforcement can take between three months and five years to get, depending on the case type.

## **6. May information about the victim’s case be shared with government agencies and entities?**

Generally, no. With limited exceptions (see FAQ # 8 below), the disclosure protections set forth in VAWA immigration confidentiality 8 U.S.C. § 1367(a)(2) prohibit disclosure to immigration enforcement officials within DHS, to state and local law enforcement, courts, prosecutors, the perpetrator, and any other persons.<sup>12</sup> The purpose of these prohibitions is to prevent disclosure of any information about any VAWA confidentiality protected immigration case to government officials, including immigration enforcement officials (as well as to the perpetrator, their family members, or agents) to prevent any information contained in the case from being used to harm the victim.

## **7. Are there additional privacy protections for survivors who have already filed for victim-specific immigration relief?**

Yes. Survivors who have already filed for one of the VAWA confidentiality protected

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<sup>11</sup> The case types that receive VAWA confidentiality protection are VAWA self-petitions (defined by 8 U.S.C. § 1101(a)(51)); battered spouse waivers, VAWA cancellation of removal, VAWA suspension of deportation, U visas, T visas, continued presence for human trafficking victims, and work authorizations sought by abused spouses of A, E(iii), G and H visa holders. VAWA confidentiality protections extend to the immigrant filing the case and any family members they include in their immigration application and lasts forever unless the survivor’s immigration case is denied on its merits. VAWA confidentiality protections also extend to all immigration cases involving the survivor.

<sup>12</sup> IIRAIRA § 384 (b); 8 U.S.C. § 1367(b).

case types listed in FAQ #5 above are afforded additional privacy protections. In addition to being protected from arrest or detainment at the locations set forth in FAQ #3 above, and by the prohibition on DHS reliance on information provided by the perpetrator discussed in FAQ # 2 above, survivors who have already filed for victim-specific immigration relief have the benefit that immigration enforcement officials are affirmatively notified, by DHS, that victims with VAWA confidentiality protected cases filed, pending, or approved, should not be subject to immigration enforcement. In addition, these survivors receive the benefit of the VAWA confidentiality protections on all documents they file *except* that in a criminal case, the U visa or T visa certification document may be discoverable.<sup>13</sup>

## **8. Are there any exceptions to VAWA confidentiality’s non-disclosure protections and if so what are they?**

Yes, there are a few exceptions to the prohibitions on disclosure in the VAWA confidentiality’s immigration protections. The limited exceptions to VAWA’s confidentiality protections apply: (A) to certain disclosures to law enforcement officials; (B) to judges in immigration appeals; (C) for determining eligibility for public benefits; (D) to provide referrals, with the survivors’ permission; (E) if all of protected persons are adult survivors and all agree in writing to waive their protections; and (F) to DHS, DOJ, and certain other congressional committee members, so long as the information is anonymized.

**8A. Disclosure to Law Enforcement Officials:** Disclosure to law enforcement officials is authorized solely for legitimate law enforcement purposes and to national security officials solely for national security purposes. In both circumstances, the law enforcement or national security agency is required to continue to protect the confidentiality of the information.<sup>14</sup>

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<sup>13</sup> This information is not discoverable, however, in a domestic relations case between the victim and the person who harmed them. For a summary of cases discussing discovery requests and VAWA confidentiality see [VAWA-Confidentiality-Discovery-Cases-Judicial-Quick-Reference-Guide-6.12.21.pdf \(american.edu\)](#). See also *Cazorla v Koch Foods of Mississippi*, 838 F.3d 540 (5th Cir. 2016) (while discovery of plaintiff-petitioners’ U-visa application status was not prohibited outright, the information provided could not reveal to the employer the identities of the individual employees or their families).

<sup>14</sup> 8 U.S.C. § 1367(b)(2) and (8).

**8B. Disclosure to Judges:** A judicial exception applies only to appeals of the victim’s immigration case. It does not extend to state or federal judges hearing other civil, family, or criminal court matters.<sup>15</sup>

**8C. Disclosure for Public Benefits:** Disclosures are authorized to federal, state, and local public benefits agencies, and to private agencies providing public benefits. Any information disclosed must be used solely for determining the protected individual’s eligibility for public benefits.<sup>16</sup>

**8D. Disclosure for Referrals:** DHS and DOJ personnel may, with the survivor’s permission, provide referrals to programs with expertise serving immigrant victims.<sup>17</sup>

**8E. Written Waiver of Confidentiality:** When all immigrant survivors in the case are adults and all agree in writing to waive their rights to protections from some or all of the protections set forth in 8 U.S.C. § 1367,<sup>18</sup> then disclosure is permitted.

**8F. Disclosure of Anonymous Information:** Anonymized information may be disclosed by DHS or DOJ with the same privacy protections that apply to information collected during the census<sup>19</sup> or to the chairpersons and ranking members of the House or Senate Judicial Committees for oversight purposes.<sup>20</sup>

## 9. What are the penalties in 8 U.S.C. § 1367 for violating VAWA Confidentiality?

Any DHS, DOJ, or DOS official who “willingly uses, or permits information to be disclosed in violation of this section . . . shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.”<sup>21</sup>

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<sup>15</sup>8 U.S.C. § 1367(b)(3). *Hawke v. Department of Homeland Security* (N.D. Cal. 2008).

<sup>16</sup> 8 U.S.C. §1367(b)(5).

<sup>17</sup> 8 U.S.C. § 1367(b)(7).

<sup>18</sup> 8 U.S.C. § 1367(b)(4).

<sup>19</sup> 8 U.S.C. § 1367(b)(1).

<sup>20</sup> 8 U.S.C. § 1367(b)(6).

<sup>21</sup> 8 U.S.C. § 1367(c).