



NIWAP Newsletter • VAWA Confidentiality • Jan. 2015

The National Immigrant Women's Advocacy Project (NIWAP, pronounced new-app) is pleased to announce a series of newsletters specialized by topic that we are developing in our capacity as national technical assistance providers under our Office on Violence Against Women, U.S. Department of Justice, grant.*

This newsletter, the first in our series, is devoted to the special federal VAWA confidentiality protections designed to help protect immigrant victims of domestic violence, sexual assault, human trafficking and other crimes. This newsletter will provide you with up to date information about: VAWA confidentiality law, its protections against deportation, reliance on perpetrator provider information, limitations on immigration enforcement, and protections against disclosure of even the existence of the VAWA confidentiality protected case, with very limited exceptions. Throughout this and each of our future newsletters you will find links to: statutes, government policies and regulations, legislative history, training manuals, materials, and toolkits and other relevant information to better assist you in your work with immigrant crime victims.

Please share this newsletter with others in your community and in the field who encounter immigrant survivors in their work including those who may be interested in subscribing to our newsletter. Please contact NIWAP (info@niwap.org or 202-247-4457) with any questions on VAWA Confidentiality. More information regarding VAWA confidentiality is also available in the [NIWAP web library](#).

Thank you for your service to the community. We look forward to working in partnership with your organization.

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Webinar: **VAWA Confidentiality: Understanding the Three Safeguards and Discovery Limitations that Apply in Cases of Immigrant Survivors in Family and Criminal State Courts**

Presented on Thursday, February 5th, 2015 by NIWAP in partnership with AEquitas and the California Coalition Against Sexual Assault (CALCASA).

This is a past webinar; however, it can be accessed by clicking on the link above. Presenters for this webinar included **Leslye Orloff**, Director, National Immigrant Women's Advocacy Project (NIWAP), American University Washington College of Law; **Jane Anderson**, Attorney Advisor, AEquitas: The Prosecutors' Resource on Violence Against Women; **Amy Cucinella**, Office of Civil Rights and Civil Liberties; and **Scott Santoro**, Blue Campaign, U.S. Department of Homeland Security.

Violence Against Women Act's (VAWA) Special Immigration VAWA Confidentiality Protections for Immigrant Survivors

Over the past two decades Congress has passed various laws offering access to legal immigration status, confidentiality, and protection against deportation for immigrant survivors of domestic violence, sexual assault, stalking, human trafficking and other U visa listed criminal activities.

Immigrant women and children are uniquely vulnerable to perpetrators' use of coercive control, including immigration related abuse and threats of deportation, to keep victims of domestic violence, sexual assault, stalking, human trafficking, and other crimes from leaving the abusive relationship and seeking help. Immigrant victims are often dependent on their abusive family members or employers to attain or keep legal immigration status. They may be afraid their abusers will report their lack of status to immigration authorities or that their abusers will refuse to file for status if the victims disclose the violence to law enforcement officials.

This strategy is effective because immigrant survivors may be unaware of the alternative paths to legal immigration status available to them in the United States under the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA). Congress recognized the special predicament faced by immigrant survivors and, in response, created alternative paths to legal immigration status for survivors and special protections in the form of VAWA confidentiality. VAWA confidentiality offers protection against immigration enforcement actions and officially severs the perpetrator's ability to learn about, interfere with or control any immigration case that a VAWA confidentiality protected victim files.

Types of Immigrants Eligible for VAWA Confidentiality Disclosure Limitations

VAWA confidentiality against disclosure protections apply to immigrant survivors and their family members included in their applications when the following types of immigration cases are filed:

- VAWA self-petition

- Battered spouse waiver
- U visa
- T visa
- VAWA HRIFA (Haitian Refugee Immigration Fairness Act)
- VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act)
- VAWA
- VAWA Cuban Adjustment Act
- VAWA suspension of deportation
- VAWA cancellation of removal

Who can benefit from VAWA Confidentiality Protection?

All aspects of VAWA confidentiality protect all victims of domestic violence (defined as battering or extreme cruelty) including victims of intimate partner violence, dating violence, spouse abuse, child abuse, and elder abuse perpetrated by family members whether or not the victim has ever or will ever file a VAWA immigration case.

VAWA confidentiality also offers the same protections to victims of rape, sexual assault, incest, stalking, human trafficking or substantial physical or mental abuse, whether or not they file a T or U visa or any other immigration case. This protection additionally extends to victims of [all U visa listed criminal activities](#), including the following types of crimes: felonious assault, murder, kidnapping, extortion, and obstruction of justice.

VAWA's immigration protections and confidentiality are gender neutral laws. These laws apply equally to cases involving same sex and heterosexual relationships, as well as female and male immigrant survivors of domestic violence, sexual assault, stalking, human trafficking and other U visa criminal activities. This is a relatively new change following the Supreme Court's decision in *U.S. v. Windsor*, 570 U.S. ____ (2013).

VAWA Confidentiality Protections for Eligible Immigrants

The protections guaranteed by VAWA and TVPA are collectively referred to as "VAWA confidentiality." VAWA confidentiality has three components:

1. Prohibited Source limitations
2. Enforcement Location limitations
3. Disclosure limitations

All victims receive protection from the prohibition against reliance on perpetrator provided information and enforcement at protected locations, regardless of whether or not they have already filed for a form of VAWA confidentiality protected immigration relief and without regard to whether they ever file.

Prohibited Source Limitations

The use or gathering of information provided by an abuser, trafficker or crime perpetrator (or a member of their family) to initiate or undertake any part of an immigration enforcement action or to make any adverse determination in any immigration case against the crime victim **is strictly prohibited**. DHS may use information about a victim if it is contained in public records and government databases, even if DHS initially became aware of this information from the abuser (for example, a victim's criminal conviction.)

Enforcement Location Limitations

Immigration officials are proscribed from performing enforcement actions at protected locations, including: shelters, rape crisis centers, community based organizations, supervised visitation centers, family justice centers or courthouses, if victims are at the courthouse in connection with the crime. If enforcement action is taken at one of these protected sites, the officer must certify in any removal case initiated as a result that the action did not violate any prong of VAWA confidentiality. **A certification of compliance is then required**. Violations can lead to the dismissal of immigration cases against the victim.

Disclosure Limitations

The Department of Homeland Security (DHS), Department of State (DOS) and Department of Justice (DOJ) are proscribed from releasing any information about a protected victim's VAWA immigration case, including whether such a VAWA case exists at all. Upon filing, these cases are tagged in the Central Index System with a special code "384" by DHS to stop enforcement actions against the victim, any family members included in the victim's application and to limit disclosure of any of the contents of a case or its existence.

Examples of Violations

Prohibited source violation

An immigration enforcement official obtained information from a perpetrator about the location of a victim, used that information to find the victim at work, and then arrested the victim for violation of immigration laws. DHS officials are to consider information from perpetrators as inherently suspect and can search court records and government databases in order to avoid having to rely on "tips" from perpetrators.

Enforcement location violation

Immigration officer received a "tip" from a perpetrator and the officer located and arrested the battered immigrant at court when she arrived for a contested custody case hearing.

A police officer or prosecutor obtained VAWA confidentiality protected information for a legitimate law enforcement purpose and then failed to protect the confidentiality of the information received from DHS, resulting in the release of that

information including but not limited to the perpetrator, the perpetrator's family member or any other persons.

Exceptions to VAWA Confidentiality

Exceptions to VAWA confidentiality protections are, by statute, very limited:

- Disclosure to law enforcement or national security officials solely for legitimate law enforcement or national security purposes and the receiving official must continue to protect the confidentiality of the information;
- Statistical data collection with no individually identifying information;
- As may be required for the purpose of granting access to public benefits;
- Judicial review of the survivor's immigration case in a manner that continues to protect VAWA confidentiality.

Disclosure of VAWA confidentiality protected information is not authorized in state court cases through discovery or cross examination in family, civil or criminal state court proceedings. For further information on this issue please see:

- [Family Court Bench Card](#) on violence against women
- VAWA confidentiality [Federal District court rulings](#)

Penalties for Violating VAWA Confidentiality

Any DHS, DOS or DOJ 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.*"

(8 U.S.C. 1367(c); *emphasis added*).

DHS has a [dedicated complaint procedure for VAWA confidentiality violations](#).

Reporting Violations to DHS

When any VAWA confidentiality provisions are violated, DHS wants to know about such violations. Reports of VAWA confidentiality violations can be made by filing a VAWA a VAWA confidentiality complaint.

Write down every detail of the incident that you or your client can recall. Memory tends to fade with time and it is important to have an accurate account of the potential violations. Pertinent details include but are not limited to time, date, badge number and name of the officer (if possible), and other witnesses.

DHS protocols require advocates and attorneys file complaints through the chain of command, starting with the local DHS office. Complaints can include a formal complaint letter that outlines the potential violation, any possible remedies (for example, cancellation of a notice to appear or release from detention) and

encouragement for a swift assessment of penalties against the violator. Relevant documentation can also be attached. Our manual [outlines the process of reporting VAWA confidentiality violations](#).

Document the response or lack of response from the local DHS office. If the local office is unresponsive or the response is not timely, submit complaints to DHS's [Office of Civil Rights and Civil Liberties](#)

CRCL has made available a [fillable PDF form](#) with the pertinent information online, or you can submit letter with as many details as possible explained in the [instructions](#).

Complaints can be submitted electronically at crclcompliance@hq.dhs.gov or visa U.S.P.S. at:

U.S. Department of Homeland Security,
Office of Civil Rights and Civil Liberties, Compliance Branch
245 Murray Lane, SW
Building 410, Mail Stop #0190
Washington D.C. 20528

If an attorney or advocate has questions about [the complaint process](#), CRCL can be reached at 202-401-1474 or 866-644-8360.

If a victim is detained call an ICE public advocate at 1-888-351-4024 and call NIWAP for technical assistance at 202-447-4457.

How to Prepare to address VAWA Confidentiality in State Courts

Perpetrators and their attorneys in family law and criminal court cases who are unable to obtain VAWA confidentiality protected information from DHS, may attempt to obtain information about the existence of or information contained in immigration cases protected by federal VAWA confidentiality laws in state court proceedings.

Advocates and attorneys working with immigrant survivors should provide local judges and court staff with [information and training tools](#) for courts on VAWA confidentiality.

Attorneys representing immigrant crime victims with pending or approved VAWA confidentiality protected immigration cases should be prepared and anticipate attempts to obtain VAWA confidentiality protected information in state court cases. Options include:

- [Act before the perpetrator seeks the information](#) by filing a motion in limine to obtain a court ruling that information about the existence of or information contained in the VAWA confidentiality protected immigration case file cannot be asked about or obtained through the state court proceeding

- [Respond by objecting to discovery requests and cross examination](#) by filing a motion for a protective order supported by brief for the court on VAWA confidentiality

Useful materials on VAWA confidentiality issues that arise in state courts

- [Quick Reference Guide for Judges: VAWA Confidentiality and Discovery Related Case Law](#)
- [VAWA Confidentiality Statutes, Legislative History and Implementing Policy](#)
- [Utilizing VAWA Confidentiality Protections in Family and Criminal Court Cases](#)
- [ICE Courthouse enforcement policy and VAWA confidentiality protections for victims](#)

The following materials provide samples that can be adapted to assist in responding to VAWA confidentiality issues that are in state court cases:

- VAWA confidentiality sample [brief in criminal court cases](#)
- VAWA confidentiality sample brief [opposing discovery in family court](#)
- VAWA confidentiality sample [motion in limine](#)
- VAWA confidentiality sample [protective order](#)

DHS Memos Implementing VAWA Confidentiality Protections:

- [2007 ICE VAWA Confidentiality Memo](#)
- [2007 ICE Office of Principle Legal Advisor VAWA Confidentiality Memo](#)
- [DHS Broadcast Message on New 384 Class of Admission Code](#)
- [DHS-wide VAWA Confidentiality Implementation Instruction](#)
- [All DHS Directive on Implementation of Section 1367 Information Provisions](#)
- [VAWA Confidentiality Complaint Instructions \(DHS\) \(2008\)](#)
- [ICE Victim Witness Memo](#)
- [Adjudicating Stay Requests Filed by U Visa Applicants](#)
- [ICE Memo on Crime Victim Policies](#)
- [CBP limitations on language assistance memo](#)

Additional Materials on VAWA Confidentiality:

- [Quick Reference: VAWA Confidentiality Protections: Quoting Statutes, Regulations and DHS Policies](#)
- [Interlineated VAWA Confidentiality Statute](#)
- [VAWA Confidentiality, History, Purpose, and Violations](#)
- [VAWA Confidentiality Overview, Anticipating Violations and Preparing Complaints](#)
- [Service Provider VAWA Confidentiality: Best Practices & Responses when Prohibited Location Violations Occur](#)
- [Legislative History of VAWA Confidentiality](#)

Visit NIWAP.org for access to our directory of service providers, extensive web library, and information on obtaining technical assistance. NIWAP is here to help!

About NIWAP:

NIWAP addresses the needs of immigrant women, immigrant children and immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking and other crimes by advocating for reforms in law, policy and practice.

NIWAP is a national provider of training, legal and social science research, policy development, and technical assistance to advocates, attorneys, pro bono law firms, law schools, universities, law enforcement, prosecutors, social service and healthcare providers, justice system personnel, and other professionals who work with immigrant women, children and crime victims. Our work supports those in the field and in government who work to improve laws, regulations, policies, and practices to enhance legal options and opportunities for immigrant women and children.

NIWAP provides training and technical assistance on a broad range of issues of importance to immigrant women and children, including VAWA immigration and confidentiality, family law, protection orders, public benefits, language access, cultural competency, and access to services, including shelter, transitional housing, health care, and education.

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