Resources For Victim Advocates and Attorneys on VAWA Confidentiality Under U.S. Immigration Laws

Current as of May 22, 2025

Resources:

- VAWA Confidentiality Brochure ……2
- Quick Reference: VAWA Confidentiality Protections: Quoting Statutes, Regulations and Department of Homeland Security Policies ……4

Additional resources are available at:

- VAWA Confidentiality Training Materials https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-materials/
- VAWA Confidentiality and Discovery Materials https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-and-discovery-materials/
- National Judicial Network Peer-to-Peer Sessions – Violence Against Women Act (VAWA) Confidentiality: Criminal and Family Case Discovery (October 1 & Nov. 12, 2024) https://niwaplibrary.wcl.american.edu/njn-vawa-criminal-case-discovery-oct-1-2024/
- How to Argue or Rule on VAWA Confidentiality Protections in Discovery Involving Immigrant Survivors https://niwaplibrary.wcl.american.edu/pubs/how-to-vawa-confidentiality-discovery/
- Letters That Promote ICE Compliance With 2025 Policies and Statutes https://niwaplibrary.wcl.american.edu/letters-that-promote-ice-compliance-with-2025-policies-and-statutes/

Three Prongs of VAWA Confidentiality Protections

1. Disclosure Limitations

The Department of Homeland Security (DHS), Department of State (DOS) and Department of Justice (DOJ) are prohibited from releasing any information about a protected immigrant's VAWA immigration case. *This includes whether a VAWA case exists at all.* Upon filing cases are coded "384" (VAWA confidentiality protected) by DHS to stop enforcement actions against the victim and to limit disclosure of any information about or contained in the case to anyone including state courts (family, civil or criminal). Limited Exception: To law enforcement or national security officials solely for legitimate law enforcement purposes AND *must continue to protect the confidentiality of the information.* (8 U.S.C. § 1367(a))

2. Source Limitations

The use or gathering of information provided solely by the abuser, trafficker or crime perpetrator to initiate or undertake any part of an enforcement action, or to make any adverse determination in any immigration case against the crime victim is strictly banned. DHS may use information about a victim contained in public records and government data bases even if DHS became aware of this information from the abuser (e.g. victim's criminal conviction). (8 U.S.C. § 1367(a))

3. Enforcement Limitations

Immigration officials are proscribed from taking enforcement actions against victims at shelters, rape crisis centers, victim services programs, community based organizations, supervised visitation centers, family justice centers or courthouses. If enforcement actions are taken at these protected sites, DHS must certify in any removal case initiated that the enforcement action did not violate any prong of VAWA confidentiality and violations can lead to dismissal of the immigration case against the victim. (8 U.S.C. §1229 (e), (8 U.S.C. § 1367(c)

Knowledgeable advocates, attorneys, and judges who provide copies of DHS confidentiality policies and training materials to DHS officials play a key role ensuring policies are followed.

Disclosure Violations:
1) Family court orders an immigrant crime victim to disclose the existence of a VAWA confidentiality protected case or any of the case's contents on cross examination or through discovery in a state family court case;
2) A police officer or prosecutor obtains VAWA confidentiality protected information, fails to protect the confidentiality of that information, and turns it over to the perpetrator or their family member;
3) DHS officials disclose the existence or contents of VAWA confidentiality protected case.

Source Violation:
1) An immigration enforcement official obtained information from a perpetrator about the location of a victim and used that information to find the victim at work and arrest 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 data bases to avoid relying on "tips" from perpetrators.

Enforcement Violation:
1) DHS enforcement official arrived at a protection order court room to conduct an immigration enforcement action against a victim;
2) DHS received a "tip" from a perpetrator, failed to check DHS data bases to see that the immigration enforcement target had a VAWA confidentiality protected case filed, located and arrested a battered immigrant at court when she arrived for a contested custody case hearing.

What can advocates and attorneys do to protect immigrant victims?

- Cultivate ties with local immigration officials to help DHS officials: identify victims, avoid reliance on perpetrator provided information and gain knowledge and expertise on DHS VAWA confidentiality responsibilities and policies.
- Inform courts when victims have VAWA immigration cases that federal VAWA confidentiality precludes disclosure of the immigration case existence and/or any of its contents through discovery or cross examination in a state family, criminal or civil court proceeding. Use a:
  - Motion *in limine* under Fed. R. Civ. P. 11 if requests are repeated and harassing.
  - Motion for protective order to prevent disclosure of VAWA information.
  - Motion to quash any subpoena or request for such records.
- Judges should grant options and preempt efforts to violate federal VAWA confidentiality laws in state court cases

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)

Criminal and Family Cases

- Case law and DHS policies confirm that in state criminal prosecutions only the U/T visa certification may be discoverable.
- In family law cases nothing about the victim's immigration case is discoverable.
- VAWA 2013 requires that any disclosure must continue to protect the confidentiality of information.

More information is available at:
https://niwaplibrary.wcl.american.edu/pubs/how-to-vawa-confidentiality-discovery/

Why VAWA confidentiality?

Abusers frequently attempt to exert power and control over their victims by trying to use the immigration system to track and stalk them, to trigger immigration enforcement actions against the victim and to interfere with and attempt to undermine the victims' ability to attain legal immigration status. In response, Congress created federal VAWA confidentiality laws in order to protect battered victims from having information about their VAWA, T visa, and U visa applications for relief disclosed to their abuser or anyone who could provide the information to the abuser. Violations of VAWA confidentiality may place immigrants in danger, by notifying abusers, rapists, traffickers or other crime perpetrators that victims are taking steps to free themselves from abusive homes, workplaces, or other situations. It is well established that when victims of domestic violence, trafficking and workplace sexual violence try to leave their perpetrators the likelihood that the perpetrator will retaliate using violence, threats or immigration related abuse is high. Federal VAWA confidentiality was designed to protect against disclosure of information about or contained in VAWA confidentiality protected case files, prevent DHS from relying on information provided by the perpetrator or their family member and prohibit DHS enforcement activities at protected locations.

Who is protected?

- ***All victims*** *receive protection from the prohibition against reliance on perpetrator provided information and immigration enforcement location prohibitions.* Including victims: of family violence who have not filed for VAWA, in the process of filing for T or U visa, granted continued presence, and abused spouses of work visa holders who filed for work authorization.
- The prohibitions against disclosure of VAWA confidentiality protected information applies to:
- VAWA self-petitioners: immigrant spouses, former spouses and children of U.S. citizen or lawful permanent resident abusers or immigrant parents of over 21 year old U.S. citizen children who have been battered or subjected to extreme cruelty.
- U visa: victims of U visa listed criminal activity.
- T visa and continued presence: victims of severe forms of human trafficking.
- Work authorization applications by abused spouse of work visa holders (A, E(iii), G, H).
- See Implementation of Section 1367 Information Provisions, DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 9 (May 28, 2019)

VAWA Confidentiality is Federal Law

How to file a complaint if you feel confidentiality has been violated:

- Record facts about the violation that occurred immediately. Include: Date, Location, Time, Name (Badge Number) of DHS official involved.
- Contact supervisors at the local DHS office involved.
- Document the response from DHS supervisors and staff.
- To make a formal complaint to the Office of Civil Rights, visit www.dhs.gov/file-civil-rights-complaint
- Fillable PDF forms are available online, or you can submit a letter with necessary details, as explained in the instructions.
- Submit your complaint electronically at crclcompliance@hg.dhs.gov or by 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

Additional Resources on VAWA Confidentiality

- **DHS Policies** are available at: https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/
- **NIWAP Training Materials, Briefs, Motions** are available at: https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-materials/
- **National Judicial Network training materials on VAWA confidentiality and discovery** are available at: https://niwaplibrary.wcl.american.edu/njn-vawa-criminal-case-discovery-oct-1-2024/

Violence Against Women Act (VAWA) Confidentiality Under U.S. Immigration Laws

How advocates, attorneys, judges, and justice system personnel can help protect immigrant survivors of domestic violence, sexual assault, stalking, human trafficking, child abuse and other criminal activity.

NIWAP

AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW

SJI
State Justice Institute

VAWA Confidentiality was specially designed to counter efforts by perpetrators of criminal activities against immigration victims from:

- Triggering enforcement actions against the victim
- Undermining or interfering in a victim's immigration case
- Obtaining information from government officials that can be used to stalk or harm the victim

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Quick Reference: VAWA Immigration Confidentiality Protections: Quoting Statutes, Regulations and Department of Homeland Security Policies[1][2]

By: Zachary B. Perez, Alina Husain, Nupur Chandna, and Leslye E. Orloff

March 29, 2019 (Updated May 21, 2025)

Purpose of VAWA Confidentiality:

VAWA Confidentiality was created to protect "…victims of domestic violence against disclosure of information to their abusers and the information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief."[3]

The protections guaranteed to immigrant adult victims and child victims of domestic violence, sexual assault, child abuse, sex trafficking, human trafficking, labor trafficking, and commercial sexual exploitation of children includes immigration relief, protection from deportation, confidentiality protections and access to certain benefits and services. Immigration relief for adult and child victim of crime include: (1) VAWA self-petition; (2) VAWA cancellation of removal; (3) VAWA suspension of deportation; (4) T visas; (5) U visas; (6) Continued Presence; (7) Special Immigrant Juvenile Status. VAWA confidentiality protections were designed to allow adult and child victims of the above-mentioned crimes to safely and confidentially file their immigration cases based on crime victimization without the perpetrator's knowledge, consent, or ability to obtain any information about the case filed by the immigrant crime victim.

The legislative history of the federal VAWA confidentiality protections stated that the VAWA confidentiality "Act contains same of the most important protections for immigrant victims. This section enhances VAWA's confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution. In 1996, Congress

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[2] For detailed information on the VAWA confidentiality statute, regulations, regulatory and legislative history and DHS policies *see,* Alina Husain and Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy,* 24 (June 7, 2022), *https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history*. .

[3] STAFF OF S. COMM. ON THE JUDICIARY, 109TH CONG.. REP. ON DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS THROUGH 2009, H.R. NO. 109-233, 122 (2005) http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/

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created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief.

"These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims."[4]

"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."[5]

Continued Adherence to VAWA Confidentiality Laws Required By January 2025 Policies

The Immigration and Customs Enforcement policy 11005.4 issued January 30, 2025 titled "Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits"[6] confirmed that immigration victims continue to receive protections under 8 U.S.C. 1367 (VAWA Confidentiality) and Department of Homeland Security (DHS) Instruction No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions (May 28, 2019). It states

"Notably:"

"1) ICE officers and agents may not rely on information obtained solely from a "prohibited source" when making an adverse determination of admissibility or deportability. Such information must be independently corroborated with information from a non-prohibited source and documented within the relevant system of record. Prohibited sources for purposes of this guidance are:

a. A spouse or parent who battered the alien or subjected the alien to extreme cruelty;

b. A member of the spouse's or parent's family residing in the same household as the abusive spouse or parent;

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[4] STAFF OF S. COMM. ON THE JUDICIARY, 109TH CONG.. REP. ON DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS THROUGH 2009, H.R. NO. 109-233, 122 (2005) http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/

[5] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 15 (May 28, 2019)) https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001.

[6] This policy rescinded the following two ICE memos: ICE Policy Statement 10076.1: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (July 17, 2011) and ICE Directive 11005.3: Using a Victim Centered Approach with Noncitizen Crime Victims (December 2, 2021)

c. A spouse or parent who battered the alien's child or subjected the alien's child to extreme cruelty (unless the alien actively participated in the battery or extreme cruelty);
d. A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty);
e. In the case of an alien who is applying for a U visa, the perpetrator of the substantial physical or mental abuse and the criminal activity; and
f. In the case of an alien who is applying for a T visa, Continued Presence, or immigration relief as a VAWA self-petitioner, the trafficker or perpetrator.

2) With respect to information relating to a beneficiary of a pending or approved application for victim-based immigration benefits, ICE personnel are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee of DHS, the Department of State, or the Department of Justice for legitimate agency purposes. Penalties for violating this general prohibition include disciplinary action and civil monetary penalties. ICE personnel should consult with OPLA in advance of disclosing information protected under 8 U.S.C. § 1367 to other parties."

Federal Statutory Prohibition Against Reliance Upon Perpetrator Provided Information

Congress created VAWA confidentiality protections to "ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or 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."[7]

"Section 1367(a)…prevents ICE employees from making an adverse determination of admissibility or deportability of an alien using information furnished solely by certain people associated with the battery or extreme cruelty, such as the abuser or a member of the abuser's family living in the same household as the victim."[8]

"The following are prohibited sources for purposes of this guidance[9]:

[7] STAFF OF S. COMM. ON THE JUDICIARY, 109TH CONG.. REP. ON DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS THROUGH 2009, H.R. NO. 109-233, 122 (2005) http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/.
[8] STAFF OF S. COMM. ON THE JUDICIARY, 109TH CONG.. REP. ON DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS THROUGH 2009, H.R. NO. 109-233, 122 (2005) http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/.
[9] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, *Rev. 00.1,* 9 (*May 28, 2019*). *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits,

- A spouse or parent who battered the alien or subjected the alien to extreme cruelty,
- A member of the spouse's or parent's family residing in the same household as the abusive spouse or parent,
- A spouse or parent who battered the alien's child or subjected the alien's child to extreme cruelty (unless the alien actively participated in the battery or extreme cruelty),
- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty,
- In the case of an alien who is applying for a U visa, the perpetrator of the substantial physical or mental abuse and the criminal activity, and
- In the case of an alien who is applying for a T visa, Continued Presence, or immigration relief as a VAWA self-petitioner, the trafficker or perpetrator."[10]

"Adverse determinations of admissibility or deportability against an alien are not made using information furnished solely by prohibited sources associated with the battery or extreme cruelty, sexual assault, human trafficking or substantial physical or mental abuse, regardless of whether the alien has applied for VAWA benefits, or a T or U visa."[11]

"… [A]n adverse determination of admissibility or deportability would include placing an alien in removal proceedings or making civil arrests relating to an alien's violation of the immigration laws."[12]

"If a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information."[13]

Implementation (January 2025) https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/

[10] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 9 (May 28, 2019) https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001. *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, Implementation (January 2025), https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/.

[11] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 2 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*; *see also*, *Implementation of Section 1367 Information Provisions,* at 9 ("Section 1367 also prohibits DHS officers and employees from making an adverse determination of admissibility or deportability against an alien using information furnished solely by a prohibited source associated with the battery or extreme cruelty, sexual assault, human trafficking or substantial physical or mental abuse, regardless of whether the alien has applied for VAWA benefits, or a T or U nonimmigrant status.") *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits*, Implementation (January 2025), https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/*

[12] DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, 122 (2005) http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/

[13] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1,2-3, 10 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

"An assertion of fraud by the prohibited source, such as an accusation that the marriage is fraudulent, ordinarily will not serve as the sole basis for adverse action. Abusers often claim their marriage is fraudulent in order to exact revenge or exert further control over the victim."[14]

"DHS also confirmed that the prohibited source requirements of VAWA confidentiality extend based on the text of the 8 U.S.C. 1367(a)(1) to—

- Family violence victims who were battered or subjected to extreme cruelty by their:
  - Spouse[15]
  - Parent[16]
  - Family member living in the same household[17]

  - **Note:** For these domestic violence cases the prohibited source bars apply whether or not the victim has filed, or is in the process of filing a VAWA confidentiality protected immigration case.[18]
- Victims in the process of applying for status
  - As a victim of criminal activity[19] under the U visa
  - As a victim of human trafficking under the T visa

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[14] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001,Rev. 00.1,11 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[15] *Implementation of Section 1367 Information Provisions, ,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 2 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*. (Includes former spouses INA Section 240(a)(1)(A)(iii)(II)(aa)(CC) and INA Section 240(a)(2)(B)(ii)(II)(aa)(CC)).

[16] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 2 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*. (The immigration law definitions apply in VAWA confidentiality cases. The definition in the Immigration and Nationality Act Section 101(b)(1) and (2) cover abuse by step-parents of step-children even when state family laws would not recognize a parent child relationship based on the facts of the case).

[17] *Implementation of Section 1367 Information Provisions*, DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 2 (May 28, 2019) https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001. (Includes abuse of parents by over 21 year old citizen sons or daughters. INA Section 240(a)(1)(A)(vi)). *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, Implementation (January 2025), https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/

[18] *Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRARA § 384*, Memo by Paul Virtue, U.S. IMMIGR. & NATURALIZATION SERV., 2 (May 5, 1997), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-insconfvawamemo-05-05-1997/ ("While the first category of potential abusers enumerated above -- spouse or parent – parallels the category which can give rise to a claim of immigration status under the VAWA provisions, the other three categories reflect an expansion of protection to battered aliens who are not eligible for status under VAWA. Such expansion to include those who have suffered abuser at the hands of another family member in the same household is similar to IIRAIRA section 384 which makes individuals abused by other member of the spouse or parent's family 'qualified aliens" for purposes of public benefits").

[19] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 2 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*. (U Visa criminal activities include: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, fraud in foreign labor contracting, hostage taking, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, and attempt conspiracy or solicitation to commit any of these crimes and any similar activity where the elements of the crime are substantially similar).

"Applying for status" has been interpreted to cover victims who have not yet filed applications for immigration relief. Generally, once a DHS official learns that the immigrant is a victim in the process of preparing an application the victim receives VAWA confidentiality protection. This could include informing local immigration officials that the victim has or is seeking a protection order and will be filing a VAWA, T, U or VAWA work authorization for abused spouses of visa holder's application. The All DHS Memo states that--

> **"**The lack of a pending or approved VAWA self-petition does not necessarily mean that the prohibited source provisions do not apply and that the alien is not a victim of battery or extreme cruelty. Similarly, although the prohibited source provisions with respect to T or U nonimmigrant status applies only to applicants for such relief, the victim might be in the process of preparing an application. Accordingly, 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."[20]

"An assertion of fraud by the prohibited source, such as an accusation that the marriage is fraudulent, ordinarily will not serve as the sole basis for adverse action. Abusers often claim their marriage is fraudulent in order to exact revenge or exert further control over the victim."[21]

VAWA Confidentiality's Protections Against Disclosure

"Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), commonly referred to as "384 provisions," protects the confidentiality of victims of domestic violence, trafficking, and other crimes who have filed for or have been granted immigration relief.

"Section 1367(a)…prohibits ICE employees from disclosing any information about a VAWA, T, or U beneficiary to anyone, especially those who might use the information to the alien's detriment, i.e. an abuser who may wish to have the victim removed from the United States."[22]

"All DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone …of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits, including a battered spouse or child hardship

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[20] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 10 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[21] *Implementation of Section 1367 Information Provisions, Project* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 11 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[22] STAFF OF S. COMM. ON THE JUDICIARY, 109TH CONG.. REP. ON DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS THROUGH 2009, H.R. NO. 109-233, 122 (2005) http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005/.

waiver, VAWA self-petition, VAWA cancellation of removal or suspension of deportation case, or T or U nonimmigrant status, including the fact that they have applied for such benefits."[23]

"It is important to emphasize that the prohibition extends to any information relating to the battered spouse or child, which could include verification of status or any other routine information."[24]

VAWA confidentiality protections apply "…from the time the application for relief is submitted until such time as "the application for relief is denied and all opportunities for appeal of the denial have been exhausted. 8 U.S.C. § 1367(a)(2). There are limited exceptions to this broad confidentiality provision set forth in 8 U.S.C. § 1367(6)."[25]

Disclosure of VAWA confidentiality protected information is permitted in limited circumstances. Those circumstances include disclosure for legitimate law enforcement purposes, statistical purposes, and benefit granting or public benefit purposes. See 8 U.S.C § 1367(b) (listing exceptions to general nondisclosure rule). [26] Each such disclosure requires that release be accomplished in a manner that continues to protect the confidentiality of the information.[24] As a result DHS notes in its policy guidance that defense counsel in state cases may sometimes attempt to make the entire A-file discoverable; however, the entire file is not discoverable in its entirety under this exception"[27]

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[23] Implementation of Section 1367 Information Provisions, Project DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 10 (May 28, 2019) https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001. *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, Implementation (January 2025), https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/

[24] *Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRARA § 384*, Memo by Paul Virtue, U.S. IMMIGR. & NATURALIZATION SERV., 2 (May 5, 1997), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-insconfvawamemo-05-05-1997/.

[25] *Memorandum for All OPLA Chief Counsel: VAWA 2005 Amendments to the Immigration Laws,* DEP'T OF HOMELAND SECURITY, 4 (Feb. 1, 2007), http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007foia/; 8 U.S.C. § 1367 (VAWA confidentiality protections continue indefinitely unless the case is denied on its merits and all opportunities for appeal of the denial have been exhausted); *see also Hawke v. U.S. Dep't of Homeland Security*, 2008 U.S. Dist. LEXIS 87693, at *1 (N.D. Cal. Sept. 29, 2008); No. C-07-03456 RMW, 2008 WL 4460241 at *1 (N.D. Cal. Sept. 29, 2008) (Hawke was a case in which a VAWA self-petitioner spouse ultimately obtained lawful permanent resident status through a petition filed by her spouse and the self-petition was not needed in the end because the citizen spouse followed through with the spousal petition he had filed. So the victims self-petition was administratively dismissed. Since the dismissal was not on the merits VAWA confidentiality protections continue to apply indefinitely to that VAWA confidentiality protected casefile).

[26] *See* John p. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, 25 (January 22, 2007), http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawaconfidentiality-2007-foia/; *see also* 8 U.S.C. § 1367. [24] 8 U.S.C. § 1367 (b)(2), (3).

[27] *See Implementation of Section 1367 Information Provisions, Project* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1,7 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001.*(In U visa cases where police or prosecutors have signed U visa certifications the U visa certification document may be released because the certification was completed by police or prosecutors and is part of the prosecution's case. Information contained in the federal immigration file of a U visa victim beyond the certification is not discoverable. In civil cases with multiple victims courts may in response to discovery requests only order release of redacted certifications that protect the identity of the individual U visa applicants); *see also* EEOC v. Koch Foods of Miss., Civ. No. 11-00391 (S.D. Miss. 2011) (In VAWA self-petition cases where no certifications are required no part of the victim's immigration case file is discoverable). For additional case law on discovery and VAWA confidentiality; *see* Rafaela Rodrigues, Limayli Huguet, Sarah Register, and Leslye E. Orloff, *Quick Reference Guide for Judges: VAWA Confidentiality, Discovery, and Admissibility Related Case Law* (October 7, 2024) https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-discovery-cases-judicial/; *see also* National Judicial Network Peer-to-Peer Sessions – *Violence Against Women Act (VAWA) Confidentiality:*

Similarly, release of information in the context of judicial review is limited by statute to contexts where release can be accomplished "in a manner that protects the confidentiality of such information."[28] This judicial review exception to VAWA confidentiality applies to judicial review of a victim's VAWA confidentiality protected immigration case.[29]

"Please note, defense counsel in state cases may sometimes attempt to make the entire A-file discoverable; however, the entire file is not discoverable in its entirety under this exception"[30]

"The lack of a pending or approved VAWA self-petition does not necessarily mean that the prohibited source provisions do not apply and that the alien is not a victim of battery or extreme cruelty. Similarly, the victim might be in the process of preparing an application." [31]

"The nondisclosure provision 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..."[32] "If ICE employees know that an alien has sought such victim-based benefits, they are generally prohibited from disclosing any information to a third party." [33]

"This includes a battered spouse or child hardship waiver, VAWA self-petition, VAWA cancellation of removal or suspension of deportation case, or T or U nonimmigrant status, including the fact that they have applied for such benefits. Information that cannot be disclosed includes information about an individual contained in a DHS database as well as information that has not yet been included in a database, such as the location of a beneficiary."[34]

Criminal and Family Case Discovery (October 1 & Nov. 12, 2024) https://niwaplibrary.wcl.american.edu/njn-vawa-criminal-case-discovery-oct-1-2024/.

[28] *See* 8 U.S.C. 136(b)(3); *see also Implementation of Section 1367 Information Provisions, Project* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 6 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[29] *Hawke v. U.S. Dep't of Homeland Security*, 2008 U.S. Dist. LEXIS 87693, at *1 (N.D. Cal. Sept. 29, 2008); Demaj v. Sakaj, 2012 U.S. Dist. LEXIS 18159 at *1 (D. Conn. Feb. 14, 2012); No. 3:09CV255(JGM), 2012 WL 476168 at *1 (D. Conn. Feb. 14, 2012); *see also*, Carly Erickson & Leslye E. Orloff, *Court Rulings Confirm Federal VAWA Confidentiality Protections Bar Discovery of VAWA Confidentiality Protected Information in State Family Court Proceedings*, (June 17, 2014), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-tool-hawkedemajfactsheet/.

[30] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 7 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[31] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 10 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[32] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 6 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.

[33] John P. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, 25 (Jan. 22, 2007), http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality2007-foia/; 8 U.S.C. § 1367

[34] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1, 5-6 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*. *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits*, Implementation (January 2025), https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/*

"In enacting this nondisclosure provision, Congress sought to prevent…disclosure of any information relating to beneficiaries of applications for VAWA benefits (battered spouses or children) or for T or U nonimmigrant status, including the fact that they have applied for benefits."[35]

"Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367"[36]

Department of Homeland Security Required Procedures

"VAWA confidentiality protections…were created by Congress so that the battered alien can seek status independent of the abuser. Thus, disclosure of information to an alleged abuser or any other family member was inappropriate event prior to the new law. With enactment of section 384, however, such inappropriate conduct is not also grounds for disciplinary action or fine, or both."[37]

"Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section [VAWA confidentiality 8 U.S.C.1367] or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation."[38]

"The Immigration and Customs Enforcement field guidance implementing VAWA 2005 states that "if an officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U [visa] status, the requirements of 8 U.S.C. § 1367 [VAWA confidentiality] must be followed."[39]

[35] John P. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, 25 (January 22, 2007), http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality2007-foia/; 8 U.S.C. § 1367.
[36] 8 C.F.R. 214.14(e)(2).
[37] Paul Virtue, Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRARA Section 384, U.S. Immigration and Naturalization Service, 2 (May 5, 1997), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-insconfvawamemo-05-05-1997/.
[38] 8 U.S.C. § 1376(c).
[39] John p. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, 24 (January 22, 2007), http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality2007-foia/ .