# Sample: VAWA Confidentiality Notices: For Law Enforcement and Prosecutors to Provide Victims

## Current as of April 21, 2025

## Sample letters for law enforcement and prosecutor agency staff to use with victims who are working with them and who are receiving certifications


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Prosecutors can obtain contact information for the Immigration and Customs Enforcement Field Office responsible for their jurisdiction at: https://www.ice.gov/contact/field-offices

**MONTH DATE**, 2025

Dear **REQUESTOR NAME**,

This letter is to notify you that the **NAME OF LAW ENFORCMENT, PROSECUTION OR OTHER GOVERNMENT AGENCY** has approved your **U Visa OR T Visa** certification request for **PETITIONER NAME**.

By signing this certification, the **AGENCY** is confirming that we have reviewed relevant agency records indicating that a qualifying criminal activity was detected or investigated, that the victim had information concerning criminal activity, and that the victim was helpful or is being helpful to this agency in the detection, investigation, or prosecution of a qualifying crime.

This certification is valid for six months after being signed. USCIS will not accept an expired certification form so if the petition is not submitted within six months of the date of this certification you may contact our program to request a re-certification.

We recommend that the victim carry a copy of this letter with them and should they encounter any immigration enforcement officials, show them a copy of this letter.

To Department of Homeland Security Officials:

*Notification That Immigrant Is Seeking Victim-Based Immigration Benefits*: Please note that [victim's name] has been identified as a victim of [qualifying crime] that our office is [investigating/prosecuting]; has been or is being helpful in the detection, investigation, prosecution, or sentencing in that case; and is seeking and in the process of filing or has filed an application for a U VISA / T VISA. We have signed a CERTIFICATION / DECLARATION in support of their application. My understanding is that the U VISA/ T VISA is a form of victim-based immigration relief that is legally entitled to protection under, the Violence Against Women Act, the Trafficking Victims Protection Act and 8 U.S.C. §1367.[1]

- *Statute and ICE Policies See*, 8 U.S.C. §1367;
- ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits (January 30, 2025); and
- Department of Homeland Security (DHS) Instruction No. 002-02-001, Rev 00.1 Implementation of Section 1367 Information Provisions (May 28, 2019).[2]

Our agency asks that as described in ICE Victim Policy 11005.4 you immediately contact this Agency's staff member listed below to coordinate, deconflict, and ensure that criminal investigations, prosecutions, court actions, and/or other state agency enforcement actions will not be compromised by actions that DHS might consider taking in this case.[3]

Our agency also has an interest in promoting compliance with the statutory 8 U.S.C. §1367 requirement that immigration enforcement officials not rely solely on information obtained from a 'prohibited source.'[4] Under ICE policies, prohibited sources include the perpetrator of the crimes and/or battering or extreme cruelty committed against this victim and also include the perpetrator's family members, or an unknown private individual acting on the perpetrator's behalf.[5] This is meant to ensure that our agency and its partners are able to hold offenders accountable and offenders are not

able to have their victim removed in order to escape accountability. [6]

We also request that prior to moving forward with any immigration enforcement action against this petitioner and/or any of their family members included in their application, that you provide documentation to our agency staff that you have consulted with the Office of the Principal Legal Advisor (OPLA) and with your supervisory Field Office Director or Special Agent in Charge.[7]

Confidentiality

Pursuant to 8 U.S.C. §1367(a)(2) and **INSERT RELEVANT LOCAL LAW**, the **AGENCY** shall not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by applicable federal law or court order, or unless the certifying agency receives informed, written, and reasonably time-limited consent from all adult victims involved in the case. 8 U.S.C. §1367(b)(4) and 34 U.S.C. §12291(b)(2). **INSERT RELEVANT LOCAL LAW -WAIVERS FOR ADULT AND MINOR VICTIMS (If Applicable)**

This subsection does not modify prosecutor or law enforcement obligations to disclose information and evidence to defendants under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), or *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555; 131 L. Ed. 2d 490 (1995), or any related State case law, statutes, or court rules.

Relevant Resources
Attachment ICE Victim Policy 11005.4, VAWA Confidentiality Statutes and DHS Implementation Policy
**ADD STATE RESOUCES**

Sincerely,

*Agency staff name*
*Agency staff title*
*Agency staff phone number*
*Agency staff Email*

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[1] Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions, Sections III A. – E., IV F.1. and VI.A.2.d.(May 28, 2019).
[2] Full text of the statute, its legislative history and both the 2025 and 2019 policies are contained in Attachment ICE Victim Policy 11005.4, VAWA Confidentiality Statutes and DHS Implementation Policy. https://niwaplibrary.wcl.american.edu/pubs/ice-2025-victim-policy-11005-4-vawa-confidentiality-statutes-and-dhs-implementing-policy/
[3] ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits 2 (January 30, 2025)
[4] 8 U.S.C. §1367(a)(1).
[5] Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions, Section VI. A. 1. c. (May 28, 2019)
[6] Report, Committee on the Judiciary House of Representatives, To Accompany HR 3402, Department of Justice Appropriations Authorization Act, Fiscal Years 2006-2009, 122-123 (September 22, 2006).
[7] ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits 2 (January 30, 2025)

**MONTH DATE**, 2025

Dear Officer,

Please be advised that [INSERT VICTIM'S NAME] is a victim of battering or extreme cruelty, human trafficking or other U visa criminal activit(ies) that were reported to the [INSERT **NAME OF LAW ENFORCMENT, PROSECUTION OR OTHER GOVERNMENT AGENCY]**, case number [INSERT CASE NUMBER].

[INSERT VICTIM'S NAME] has been identified as a victim of [qualifying crime] that our office is [investigating/prosecuting] and [victim's name] has been or is being helpful in the detection, investigation, prosecution, or sentencing in that case. The [INSERT **NAME OF LAW ENFORCMENT, PROSECUTION OR OTHER GOVERNMENT AGENCY]**'s victim assistance staff are helping the victim identify and access resources needed to address the victimization they suffered, stabilize them, and help them heal.

This letter contains important information pertaining to the protections that the victim is entitled to under U.S. immigration laws including the victim's entitlements under 8 U.S.C. 1367.

*Notification That Immigrant Is Seeking Victim-Based Immigration Benefits*:

Please note that our agency is working with [INSERT VICTIM'S NAME] who is legally entitled to protection under, the Violence Against Women Act, the Trafficking Victims Protection Act and 8 U.S.C. §1367[1] as victim who is seeking, is in the process of filing, or has filed an application for, or has been approved VAWA, U visa, T visa or another form of 8 U.S.C. §1367 covered immigration relief. The victim's family members [INSERT NAMES OF FAMILY MEMBERS] who will be or are included in their immigration application are also entitled to 8 U.S.C. §1367 protections.

- *See*, 8 U.S.C. §1367; ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits (January 30, 2025); and Department of Homeland Security (DHS) Instruction No. 002-02-001, Rev 00.1 Implementation of Section 1367 Information Provisions (May 28, 2019).[2]

ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits (January 30, 2025) requires:

> "*Adherence to Laws*
> In implementing this guidance, ICE personnel remain bound to adhere to all applicable statutory and policy requirements including the provisions of 8 U.S.C. § 1367 and Department of Homeland Security (DHS) Instruction No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions (May 28, 2019)."[3]

Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions (May 28, 2019) state that the prohibited source and non-disclosure protections apply to victims who *are seeking, are in the process of preparing an application, have filed for, and have been approved* for a victim-based form of immigration relief covered by 8 U.S.C. 1367.[4]

Our agency asks that as described in ICE Victim Policy 11005.4 you immediately contact this

Agency's staff member listed below to coordinate, deconflict, and ensure that criminal investigations, prosecutions, court actions, and/or other state agency enforcement actions will not be compromised by actions that DHS might consider taking in this case.[5]

This communication is necessary to promote compliance with the statutory 8 U.S.C. §1367(a)(1) which prohibits the Department of Homeland Security, the Department of Justice, and the Department of State from making a determination of admissibility or deportability based solely on information from a "prohibited source". A prohibited source includes: [6] a spouse, parent, or member of the spouse's or parent's household who battered or subjected to extreme cruelty the immigrant of the immigrant's child/stepchild and perpetrators of domestic violence, child abuse, sexual assault, stalking, human trafficking, aggravated felonies, kidnapping, or other U visa or T visa listed criminal activities. Prohibited sources include the perpetrator, the perpetrator's family members, and an unknown private individual acting on the perpetrator's behalf.[7]

DHS communication with this agency pertaining to ongoing or potential enforcement action against [INSERT NAMES OF THE VICTIM AND FAMILY MEMBERS INCLUDED IN THEIR IMMIGRATION APPLICATION] assures DHS is in compliance with its 8 U.S.C. §1367 statutory mandates and also prevents perpetrators from undermining the ability of state and local law enforcement prosecutors, courts, and other government agencies to investigate and prosecute crimes.[8]

We also request that prior to moving forward with any immigration enforcement action against this petitioner and/or any of their family members included in their application, that you provide documentation to our agency staff that you have consulted with the Office of the Principal Legal Advisor (OPLA) and with your supervisory Field Office Director or Special Agent in Charge.[9]

Confidentiality

Pursuant to 8 U.S.C. §1367(a)(2) and **INSERT RELEVANT LOCAL LAW**, the **AGENCY** shall not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of battering or extreme cruelty, trafficking, or criminal activity including any requesting a certification unless required to do so by applicable federal law or court order, or unless this agency receives informed, written, and reasonably time-limited consent from all adult victims involved in the case. 8 U.S.C. §1367(b)(4) and 34 U.S.C. §12291(b)(2). **INSERT RELEVANT LOCAL LAW -WAIVERS FOR ADULT AND MINOR VICTIMS**

These confidentiality laws do not modify prosecutor or law enforcement obligations to disclose information and evidence to defendants under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), or *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555; 131 L. Ed. 2d 490 (1995), or any related State case law, statutes, or court rules.

Sincerely,

*Agency staff name*
*Agency staff title*
*Agency staff phone number*
*Agency staff Email*

[1] Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions, Sections III A. – E., IV F.1. and VI.A.2.d.(May 28, 2019).
[2] See Attachments for the full text of the statute, its legislative history and both the 2025 and 2019 policies.
[3] ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits 3 (January 30, 2025)
[4] Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions, Sections IV F.1. and VI.A.2.d.(May 28, 2019)
[5] ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits 2 (January 30, 2025)
[6] Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions, Section VI. A. 2. b. (May 28, 2019)
[7] Instruction No. No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions, Section VI. A. 1. c. (May 28, 2019)
[8] Report, Committee on the Judiciary House of Representatives, To Accompany HR 3402, Department of Justice Appropriations Authorization Act, Fiscal Years 2006-2009, 122-123 (September 22, 2006).
[9] ICE Victim Policy 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits 2 (January 30, 2025)

**MONTH DATE**, 2025

Dear Officer,

Please be advised that [INSERT VICTIM'S NAME] is a victim of battering or extreme cruelty, human trafficking or other U visa criminal activit(ies) whom the [INSERT NAME OF PROSECUTORS' OFFICE] has identified as a [VICTIM/WITNESS] in a criminal case. The protections that [INSERT VICTIM'S NAME] is statutory entitled to receive under 8 U.S.C. §1367 include the limitations on courthouse immigration enforcement against victims of 8 U.S.C. §1229(e); INA §239(e).

[ADD AN EDITED VERSION OF THE FOLLOWING SENTENCE ONLY IF THE VICTIM HAS REQUESTED THE PROSECUTOR'S OFFICE OR LAW ENFORCEMENT AGENCY TO SIGN A CERTIFICATION FOR U- OR T-VISA. OTHERWISE SEEKING INFORMATION ABOUT A VICTIM'S IMMIGRATION STATUS IS NOT A RECOMMENDED BEST PRACTICE]:

[INSERT VICTIM'S NAME] is a victim who IS SEEKING/IS IN THE PROCESS OF FILING/HAS FILED for VAWA, T visa, or U visa immigration relief under the Violence Against Women Act (VAWA) and/or the Trafficking Victims Protection Act.]

Victims of Battering Extreme Cruelty, Human Trafficking and Other U Visa Listed Crimes
(Attachments in Appendix delivered with this letter)

Civil immigration enforcement against victim of domestic violence, sexual assault, stalking, battering, extreme cruelty, human trafficking, or any other U and T visa covered crimes when the victim is in a courthouse in connection with any protection order, custody, or any other civil or criminal case related to their victimization is prohibited by the following ICE Policies and federal statutes:

- 8 U.S.C. 1229(e) and 8 U.S.C. 1367(c) (Attachment B)
- ICE Policy Number 11005.4 Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits (January 31, 2025) (Attachment C)
- Department of Homeland Security (DHS) Instruction No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions (May 28, 2019) (Attachment D).

When an immigration enforcement action is taken against a victim at or near a courthouse, the enforcement official is required to prove that the enforcement action complies with 8 U.S.C. 1367's prohibitions against this action relying solely on information or tips provided by the perpetrator, the perpetrators family member or another person acting on the perpetrator's behalf.

Immigration officials are required to check the DHS Central Index System (CIS) for the "COA 384" flag that identifies cases filed under Violence Against Women Act and Trafficking Victim Protection Act provision and policies require that DHS employees will be "sensitive to the fact that the alien at issue may be a victim and the victim-abuse dynamic may be at play." Immigration officials who violate the terms of 8 U.S.C. 1367 or 8 U.S.C. 1229(e) may be subject to disciplinary action and/or civil penalties.

Before proceeding with an enforcement action against a victim of crime or abuse at this courthouse, please confirm to this prosecutor's office and the court in writing that the DHS CIS system was checked, that supervisor approval was obtained, and describe any other steps taken to ensure compliance with the requirements of 8 U.S.C. Sections 1367 and 1229(e).

Sincerely,

[Insert name]
[Insert title]
[Insert agency]
[Insert contact info]

**Attachment A**

FOR OFFICIAL USE ONLY

Policy Number: 11072.3

*Office of the Director*

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: Caleb Vitello
Acting Director

SUBJECT: Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses

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Purpose

This memorandum provides interim guidance governing U.S. Immigration and Customs Enforcement (ICE) civil immigration enforcement actions in or near courthouses. In accordance with Memorandum from the Acting Secretary of Homeland Security Benjamine Huffman, *Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025),[1] the April 27, 2021, *Civil Immigration Enforcement Actions in or near Courthouses* memorandum from Acting ICE Director Tae Johnson and Acting U.S. Customs and Border Protection Commissioner Troy Miller is now rescinded for ICE and is superseded by this interim guidance.

This guidance is effective immediately and remains in effect until superseded.

Background

Federal, state, and local law enforcement agencies routinely engage in enforcement activities in or near courthouses because many individuals appear in courthouses for unrelated criminal or civil violations. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, when ICE engages in civil immigration enforcement actions in or near courthouses it can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. Finally, enforcement activities in or near courthouses are often required when jurisdictions refuse to cooperate with ICE, including when such jurisdictions refuse to honor immigration detainers and transfer aliens directly to ICE custody.

[1] The Acting Secretary's Memorandum also supersedes and rescinds Alejandro Mayorkas's October 27, 2021 memorandum entitled, Guidelines for Enforcement Actions in or Near Protected Areas.

Implementation

For purposes of this guidance, a civil immigration enforcement action is any action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations. This policy does not apply to criminal immigration enforcement actions inside courthouses.

*Aliens Subject to Enforcement Actions*

Generally, ICE's civil immigration enforcement actions in or near courthouses include actions against targeted aliens, including but not limited to:

- National security or public safety threats;
- Specific aliens with criminal convictions;
- Gang members;
- Aliens who have been ordered removed from the United States but have failed to depart; and/or
- Aliens who have re-entered the country illegally after being removed.

Other aliens encountered during a civil immigration enforcement action in or near a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, may be subject to civil immigration enforcement action on a case-by-case basis considering the totality of the circumstances.[2]

*Procedures*

ICE officers or agents may conduct civil immigration enforcement actions in or near courthouses when they have credible information that leads them to believe the targeted alien(s) is or will be present at a specific location, and where such action is not precluded by laws imposed by the jurisdiction in which the enforcement action will take place. ICE officers or agents must coordinate with the relevant local Office of the Principal Legal Advisor (OPLA) office before conducting enforcement actions in or near courthouses to determine whether jurisdiction-specific legal limitations apply.

Additionally, civil immigration enforcement actions in or near courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits. When practicable, ICE officers and agents will conduct civil immigration enforcement actions against targeted aliens discreetly to minimize their impact on court proceedings.

[2] ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security and ICE policy.

*Non-Criminal or Specialized Courts*

ICE officers and agents should generally avoid enforcement actions in or near courthouses, or areas within courthouses that are wholly dedicated to non-criminal proceedings (e.g., family court, small claims court). When an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required prior to conducting the enforcement action.

*Responsibilities*

Each FOD or SAC, in consultation with OPLA, must ensure that all employees under their supervision comply with this policy by providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions in or near courthouses within their area of responsibility. This includes ensuring all civil immigration enforcement actions in or near courthouses are properly documented[3] and recorded in the applicable ICE system of record, which can be searched and validated.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public or disrupting court operations. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

No Private Right

This memorandum provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

[3] ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.

Attachment B

# *8 USCS § 1367*

Current through Public Law 118-274, approved January 6, 2025.

***United States Code Service > TITLE 8. ALIENS AND NATIONALITY (Chs. 1 — 15) > CHAPTER 12. IMMIGRATION AND NATIONALITY (§§ 1101 — 1537) > IMMIGRATION (§§ 1151 — 1382) > MISCELLANEOUS (§§ 1351 — 1382)***

## § 1367. Penalties for disclosure of information

**(a) In general.** Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

**(1)** make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by—

**(A)** a spouse or parent who has 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 alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

**(C)** a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien 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 applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [*8 USCS § 1101(a)(15)(U)*], the perpetrator of the substantial physical or mental abuse and the criminal activity, [or]

**(F)** in the case of an alien applying for status under section 101(a)(15)(T) of the Immigration and Nationality Act (*8 U.S.C. 1101(a)(15)(T)*), under section 107(b)(1)(E)(i)(II)(bb) of the Trafficking Victims Protection Act of 2000 (*22 U.S.C. 7105*), under section 244(a)(3) of the Immigration and Nationality Act (*8 U.S.C. 1254a(a)(3)*), as in effect prior to March 31, 1999, or as a VAWA self-petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act (*8 U.S.C. 1101(a)(51)*)[)], the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 237(a)(2) of the Immigration and Nationality Act [*8 USCS § 1227(a)(2)*]; or

**(2)** permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [*8 USCS § 1101(a)*] or section 240A(b)(2) of such Act [*8 USCS § 1229b(b)(2)*].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

**(b) Exceptions.**

**(1)** The Secretary of Homeland Security or the Attorney General may provide, in the Secretary's or the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under *section 8 of title 13, United States Code*.

**(2)** The Secretary of Homeland Security or the Attorney General may provide in the discretion of the Secretary or the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information.

**(3)** Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

**(4)** Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

**(5)** The Secretary of Homeland Security and the Attorney General are authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [*8 USCS § 1641(c)*].

**(6)** Subsection (a) may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

**(7)** Government entities adjudicating applications for relief under subsection (a)(2), and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [*8 USCS § 1101(i)(1)*], may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

**(8)** Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

**(c) Penalties for violations.** Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [*8 USCS § 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.

**(d) Guidance.** The Attorney General, the Secretary of State, and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice, Department of State, or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (*8 U.S.C. 1101(a)(15)(u)*) from harm that could result from the inappropriate disclosure of covered information.

## History

# *8 USCS § 1229*

Current through Public Law 118-274, approved January 6, 2025.

***United States Code Service > TITLE 8. ALIENS AND NATIONALITY (Chs. 1 — 15) > CHAPTER 12. IMMIGRATION AND NATIONALITY (§§ 1101 — 1537) > IMMIGRATION (§§ 1151 — 1382) > INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL (§§ 1221 — 1232)***

## § 1229. Initiation of removal proceedings

**(a) Notice to appear.**

**(1)** In general. In removal proceedings under section 240 [*8 USCS § 1229a*], written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

**(A)** The nature of the proceedings against the alien.

**(B)** The legal authority under which the proceedings are conducted.

**(C)** The acts or conduct alleged to be in violation of law.

**(D)** The charges against the alien and the statutory provisions alleged to have been violated.

**(E)** The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

**(F)**

**(i)** The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240 [*8 USCS § 1229a*].

**(ii)** The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

**(iii)** The consequences under section 240(b)(5) [*8 USCS § 1229a(b)(5)*] of failure to provide address and telephone information pursuant to this subparagraph.

**(G)**

**(i)** The time and place at which the proceedings will be held.

**(ii)** The consequences under section 240(b)(5) [*8 USCS § 1229a(b)(5)*] of the failure, except under exceptional circumstances, to appear at such proceedings.

**(2)** Notice of change in time or place of proceedings.

**(A)** In general. In removal proceedings under section 240 [*8 USCS § 1229a*], in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying—

**(i)** the new time or place of the proceedings, and

**(ii)** the consequences under section 240(b)(5) [*8 USCS § 1229a(b)(5)*] of failing, except under exceptional circumstances, to attend such proceedings.

**(B)** Exception. In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

**(3)** Central address files. The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

**(b) Securing of counsel.**

**(1)** In general. In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240 [*8 USCS § 1229a*], the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

**(2)** Current lists of counsel. The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 240 [*8 USCS § 1229a*]. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

**(3)** Rule of construction. Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 240 [*8 USCS § 1229a*] if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

**(c) Service by mail.** Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

**(d) Prompt initiation of removal.**

**(1)** In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

**(2)** Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

**(e) Certification of compliance with restrictions on disclosure.**

**(1)** In general. In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (*8 U.S.C. 1367*) have been complied with.

**(2)** Locations. The locations specified in this paragraph are as follows:

**(A)** At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

**(B)** At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien 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 the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [*8 USCS § 1101(a)(15)*].

## History

**HISTORY:**

**Attachment C**

Policy Number: 11005.4

*Office of the Director*

**U.S. Department of Homeland Security**
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: Caleb Vitello
Acting Director

SUBJECT: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits

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## Purpose

This memorandum provides interim guidance governing U.S. Immigration and Customs Enforcement (ICE) civil immigration enforcement actions involving aliens who are known beneficiaries of victim-based immigration benefits or are known to have pending applications or petitions for such benefits. ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (Dec. 2, 2021) and ICE Policy Statement 10076.1: *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011) are now rescinded and superseded by this interim guidance.[1]

This interim guidance is effective immediately and remains in effect until superseded.[2]

## Background

The Violence Against Women Act (VAWA)[3] and its reauthorizations and the Trafficking

[1] Current beneficiaries of victim-based immigration benefits may be subject to civil immigration enforcement, subject to applicable legal limitations, at the discretion of Field Office Directors (FODs) and Special Agents in Charge (SACs) in consultation with the Office of the Principal Legal Advisor (OPLA), where the totality of circumstances warrant enforcement and/or the termination of the victim-based immigration benefit.

[2] Nothing in this interim guidance should be construed to impact or cease the mission or work of the Congressionally appropriated DHS Center for Human Trafficking and its Victim Assistance Program.

[3] Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

Victims Protection Act[4] and its reauthorizations, among other laws, permit qualifying aliens to apply or petition for certain victim-based immigration benefits. ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (Dec. 2, 2021) and ICE Policy Statement 10076.1: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (Jun. 17, 2011) generally required ICE officers and agents, absent exceptional or exigent circumstances, to refrain from taking civil immigration enforcement actions against known beneficiaries of victim-based immigration benefits, or primary and derivative applicants or petitioners for such benefits. Further, when encountering an alien not known to be an approved beneficiary of victim-based immigration benefits or to have applied or petitioned for such benefits, ICE officers and agents were required to look for indicia or evidence suggesting an alien was a victim of crime (e.g., being the beneficiary of an order of protection) and consider such information as a positive discretionary factor in determining whether to take civil immigration enforcement action, including but not limited to release from detention. Finally, ICE officers and agents were required to coordinate with U.S. Citizenship and Immigration Services (USCIS) to seek expedited adjudication of victim-based immigration applications and petitions, when necessary and appropriate.

Policy

On January 20, 2025, President Donald J. Trump issued an Executive Order (EO) entitled "Protecting the American People Against Invasion," which states it is the policy of the United States to achieve the "total and efficient enforcement of [immigration] laws" against all inadmissible and removable aliens. Accordingly:

1) ICE officers and agents should coordinate and deconflict internally, and with local, state, and other federal law enforcement, as appropriate, when determining whether to take civil immigration enforcement actions to ensure criminal investigative and other enforcement actions will not be compromised;

2) When encountering an alien who is the beneficiary of a victim-based immigration benefit, ICE officers and agents should consult with the Office of the Principal Legal Advisor (OPLA) through their Field Office Directors or Special Agents in Charge prior to conducting a civil enforcement action against such known beneficiaries, or against primary and derivative applicants or petitioners for such benefits, to ensure any such action is consistent with applicable legal limitations;

3) When encountering an alien during a civil immigration enforcement action who is not known to be an approved beneficiary of victim-based immigration benefits or to have applied or petitioned for such benefits, ICE officers and agents are not required to affirmatively seek to identify indicia or evidence suggesting an alien is a victim of a crime or consider such

[4] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

evidence as a positive discretionary factor in determining whether to take civil immigration enforcement action; and

4) ICE will no longer routinely request expedited adjudications from USCIS. ICE officers and agents may continue to do so subject to a case-by-case determination that it is in ICE's best interests.

Implementation

*Adherence to Laws*

In implementing this guidance, ICE personnel remain bound to adhere to all applicable statutory and policy requirements including the provisions of 8 U.S.C. § 1367 and Department of Homeland Security (DHS) Instruction No. 002-02-001, Rev. 00.1: Implementation of Section 1367 Information Provisions (May 28, 2019). 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;
    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.

No Private Right

This memorandum provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

**Attachment D**

**Department of Homeland Security**
**DHS Directives System**
**Instruction Number: 002-02-001**
**Revision Number: 00.1**
**Issue Date: 11/07/2013**
*Incorporating Change 1, 05/28/2019*
*Approved by Cameron Quinn, Officer for Civil Rights and Civil Liberties*

# IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS

## I. Purpose

This Instruction implements the Department of Homeland Security (DHS) Directive 002-02, Implementation of Section 1367 Information Provisions. In Section 810 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54 (2013). Congress amended Title 8, United States Code (U.S.C.), Section 1367, to require that the Attorney General, the Secretary of State and the Secretary of Homeland Security provide guidance consistent with the amendments it made to subsections (a) and (b) of 8 U.S.C. § 1367. See 8 U.S.C. § 1367(d). This Instruction provides guidance as instructed by 8 U.S.C. 1367(d), as amended by Section 810 of the Violence Against Women Reauthorization Act of 2013, and DHS Directive 002-02.

## II. Scope

This instruction applies throughout DHS, particularly those employees who work with applicants for victim-based immigration relief or who have access to protected information, such as United States Citizenship and Immigration Service (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

## III. References

A. Public Law 103-322, “Violence Against Women Act (VAWA) of 1994”

B. Public Law 106-386,”Victims of Trafficking and Violence Protection Act of 2000.” (VTVPA)

C. Public Law 109-162, “Violence Against Women and Department of Justice Reauthorization Act of 2005,” Section 817, “VAWA Confidentiality Nondisclosure.”(VAWA 2005)

D. Public Law 113-4, “Violence Against Women Reauthorization Act of 2013,” Section 810, “Disclosure of Information for National Security Purposes.” (VAWA 2013)

E. Title 8, U.S.C., Section 1367, “Penalties for disclosure of information” (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA))

F. Title 42, U.S.C., Section 13925(a)(4), “Definitions and grant provisions” (as redesignated and amended by Section 3 of VAWA 2013)

G. Section 101(a)(51) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(a)(51))

H. Section 239(e) of the Immigration and Nationality Act (8 U.S.C. 1229(e)), “Certification of compliance with restrictions on disclosure”

I. Section 240A(b)(2) of the Immigration and Nationality Act (INA) (8 U.S.C. 1229(b)), “Cancellation of removal; adjustment of status”

J. DHS Privacy Incident Handling Guidance (Jan. 26, 2012)

K. Delegation 19004, Delegation of Authority to Implement Section 1367 Information

L. Directive 002-02, Implementation of Section 1367 Information Provisions

# IV. Definitions

A. ***U Nonimmigrant Status***: U nonimmigrant status for victims of criminal activity designated in INA §101(a)(15)(U) (qualifying crimes) who have suffered substantial mental or physical abuse as a result of being a victim of criminal activity, possess information concerning the crime, and have been helpful, are being helpful, or are likely to be helpful to law enforcement and government officials in the investigation or prosecution of the criminal activity. U status allows victims to remain in the United States for up to four years (or longer if a limited exception applies), receive work authorization, and, if certain conditions are met, apply for adjustment of status to that of a lawful permanent resident (LPR).

B. ***T Nonimmigrant Visa***: T nonimmigrant status for victims of a severe form of trafficking in persons, as defined in section 103 of the TVPA of 2000, who are physically present in the United States on account of trafficking and who have complied with any reasonable requests for assistance in a law enforcement investigation or prosecution (with limited exceptions). See INA 101(a)(15)(T). T status allows victims of human trafficking to remain in the United States for up to four years (or longer if a limited exception applies), receive work authorization, and, if certain conditions are met, apply for adjustment of status to that of an LPR.

C. ***VAWA Self-Petition(er)***: Under VAWA, as amended, certain persons who have been battered or subjected to extreme cruelty by a qualifying relative may self-petition, allowing them to remain in the United States, apply for LPR status as an approved VAWA self-petitioner, and eventually apply for naturalization. VAWA self-petitioners include: the spouse, child or parent of an abusive U.S. citizen; the spouse or child of an abusive LPR; the conditional resident spouse or child of an abusive U.S. citizen or LPR; the spouse or child of an alien eligible for relief under the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act, or the Nicaraguan Adjustment and Central American Relief Act; and the spouse or child eligible for suspension of deportation or cancellation of removal due to abuse by a U.S. citizen or LPR. See INA 101(a)(51) (defining "VAWA self-petitioner").

D. ***VAWA Cancellation***: Victims of domestic violence who are in removal proceedings may be eligible to apply for relief with the immigration court in the form of VAWA cancellation of removal. See INA 240A(b)(2) (prescribing eligibility requirements).

E. ***Sensitive Location***: Locations specified in INA § 239(e)(2), where if an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified below, the Notice to Appear (NTA) shall include a statement that the provisions of 8 U.S.C. 1367 have been complied with. The locations specified include: domestic violence shelter, rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

Sensitive locations can also include a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien 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 the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [8 U.S.C. § 1101(a)(15)].

F. ***Section 1367 Information***:

1. Any information relating to aliens who are seeking or have been approved for immigrant status as battered spouses, children and parents under provisions of the Violence Against Women Act (VAWA), as victims of a severe form of human trafficking who generally are cooperating with law enforcement authorities, or as aliens who have suffered substantial physical or mental abuse and are cooperating with law enforcement authorities. This definition includes records or other information that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections.

2. Section 1367 covers information relating to beneficiaries of applications for a number of immigration benefits, not just the Form I-360 VAWA self-petition. For the purpose of this guidance if an alien is the beneficiary of a pending or approved application for one or more of the victim-based benefits described below, the requirements of 8 U.S.C. 1367 will be followed:

a. VAWA self-petitioner, which incorporates the following applications or petitions:

(1) I-360 Self-petition - self-petitioners under INA sec. 204

(2) I-751 Hardship waiver - battered spouse hardship waiver

(3) VAWA CAA - abused Cuban Adjustment Act applicants

(4) VAWA HRIFA - abused Haitian Refugee Immigration Fairness Act applicants

(5) VAWA NACARA - abused Nicaraguan Adjustment and Central American Relief Act applicants

(6) VAWA Suspension of Deportation

b. VAWA Cancellation of Removal applicants under INA 240A(b)(2)

c. I-914 T Nonimmigrant Status - victim of a severe form of trafficking in persons under INA 101(a)(15)(T)

d. I-918 U Nonimmigrant Status - victim of certain serious criminal activity under INA 101(a)(15)(U).

# V. Responsibilities

All responsible parties listed below are to help ensure compliance with applicable policies and procedures set forth in this instruction.

A. The ***Chief Privacy Officer*** is the senior official within the Department with primary responsibility for privacy compliance and policy.

B. The ***Officer for Civil Rights and Civil Liberties*** directs and oversees the implementation of the integration of civil rights and civil liberties across the Department, serving as the foundational DHS organization through which all Department-wide civil rights and civil liberties activities are overseen, defined, and measured. The Officer for Civil Rights and Civil Liberties has the delegated authority from the Secretary to provide this single DHS policy on the implementation of Title 8, U.S.C., Section 1367 (VAWA/T/U confidentiality provisions).

C. The ***General Counsel*** is responsible for ensuring legal compliance and has final authority and responsibility for legal policy determinations within the Department and its Components.

D. The ***Component Heads*** with any Section 1367 information that might be shared implement and execute all applicable policies and procedures set forth in this instruction, and develop any necessary implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other instruction, or national or departmental policy.

E. The ***Council on Combating Violence Against Women*** works to ensure that policies and practices for combating violence against women and children are consistent Department-wide. By identifying opportunities to build consensus on challenging issues across Components, sharing best practices, and coordinating efforts Department-wide, the Council supports the Department's missions of effectively administering the laws preventing violence against women and children. The Council collects information on a quarterly basis and conducts after-action reviews on cases where exceptions have been applied to disclose information and where enforcement actions have been taken at sensitive locations. The Council is also responsible for assisting in developing all implementing policy that are created by Components.

F. The ***Federal Law Enforcement Training Center (FLETC)*** serves as an interagency law enforcement training organization for 91 federal agencies and partner organizations. It provides training to state, local, rural, tribal, territorial, and international law enforcement agencies. FLETC ensures the computer-based training module, *Alien Victims of Crimes: Immigration Benefits and Confidentiality Protections,* ~~*VAWA: Confidentiality and Immigration Relief*~~, is available to all Components through their Learning Management Systems and provides assistance to keep the training updated and current, as necessary.

# VI. Policy and Requirements

A. ***Policy***:

1. **Disclosure of Protected Information Generally Prohibited**.

a. This guidance serves as a reminder that all DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone other than: a sworn officer or employee of DHS, the Department of State (DOS); or the Department of Justice (DOJ) of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits. 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.

b. The nondisclosure requirement does not apply to disclosures of protected information within DHS or to DOJ or DOS for legitimate agency purposes.

c. 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, and the limitation ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

d. Exceptions: There are specified exceptions to the general nondisclosure requirement allowing for disclosure of protected information in limited circumstances.

Statutory Exceptions. The statute prescribes eight (8) exceptions to the general nondisclosure requirement:

(1) For the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. section 8. This exception allows for the furnishing of tabulations and other statistical material that do not disclose the information reported by, or on behalf of, any particular respondent, and the making of special statistical compilations and surveys,

for Federal, State, or local government agencies or "other public and private persons and agencies" – provided that no information furnished is "used to the detriment of any respondent or other person to whom such information relates."

(2) For the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose. However, the authority to exercise this exception is subject to the Secretary's discretion.

(3) In connection with judicial review of a Federal agency or court determination in a manner that protects the confidentiality of such information. 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.

(4) If all the battered individuals in the case are adults and they have all waived the nondisclosure restrictions.

(5) For the disclosure of information to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for public benefits under 8 U.S.C. section 1641(c).

(6) For the disclosure to the Chairmen and Ranking Members of the Senate and House of Representatives Committees on the Judiciary, for the exercise of congressional oversight authority, "information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals)."

(7) For purposes of communicating, with the "prior written consent of the alien involved," with nonprofit, nongovernmental victims' services providers "for the sole purpose of assisting victims in obtaining victim services." The victim services providers receiving such referrals are bound by the nondisclosure requirements of Section 1367. Recall that Section 101(i) of the INA (8 U.S.C. section 1101(i)) mandates that DHS provide T nonimmigrants with a referral to an NGO "that would advise the alien regarding the alien's options while in the United States and the resources available to the alien."

(8) The disclosure of information to national security officials to be used solely for a legitimate national security purpose in a manner that protects the confidentiality of such information. (Please note that different procedures apply for the disclosure of information to national security officials and can be found at Instruction 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes.

For instances where an official is uncertain whether an exception applies or where questions exist about a particular exception, local counsel's office should be consulted.

e. Nonstatutory Exceptions. In addition to the enumerated statutory exceptions, there may be instances in which disclosure of protected information is mandated by court order or constitutional requirements. For example, disclosure may be required in a federal, state, or local criminal proceeding for purposes of complying with constitutional obligations to provide exculpatory and impeachment material that is relevant either to guilt or punishment of a criminal defendant in a federal criminal proceeding ("Brady" material) or that bears upon the credibility of a prosecution witness ("Giglio" material). If DOJ or a state or local prosecutor requests protected information that is not subject to disclosure under one of the statutory exceptions and that will be disclosed to a court or another agency (other than DOS), please consult DHS counsel. DHS counsel are consulted if a Member of Congress not described in the congressional oversight exception in Section 1367(b)(6) is requesting protected information pursuant to his or her congressional oversight authority.

f. Notification of Unauthorized Disclosures: In the event that any Component (1) discloses Section 1367 information in a manner inconsistent with the provisions above or (2) is informed by the recipient of Section 1367 information that the recipient has disclosed that information in an unauthorized manner, the Component Head for that Component (1) notifies the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties as soon as is practicable, but in no event later than twenty-four hours after discovery of the unauthorized disclosure, and (2) satisfies the requirements of the DHS Privacy Incident Handling Guidance.

2. **Use of Information from Prohibited Sources**:

a. 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.

b. Prohibited Sources. The following are prohibited sources for purposes of this guidance:

(1) A spouse or parent who battered the alien or subjected the alien to extreme cruelty,

(2) A member of the spouse's or parent's family residing in the same household as the abusive spouse or parent,

(3) 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),

(4) 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),

(5) 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

(6) 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.

c. This prohibited source restriction does not apply to an alien who has been convicted of a crime listed in INA section 237(a)(2). Such crimes include: crime involving moral turpitude, aggravated felony, human trafficking, failure to register as a sex offender under 18 U.S.C. section 2250, certain controlled substance violations, certain firearms offenses, and certain domestic violence, child abuse, stalking, protection order violation offenses. Consultation with counsel to determine if this exception applies is recommended before making a determination whether this exception applies.

d. 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 prohibition 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.

e. Receipt of Information from a Prohibited Source

(1) There are a number of ways DHS employees might receive "tips" from an abuser or an abuser's family, such as: calling ICE to report the victim as illegal, a "landlord" (who may actually be a human trafficker) calling ICE to report that his "tenants" are undocumented, or providing information to USCIS rebutting the basis for the victim's application. When 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 treats the information as inherently suspect. In deciding whether to pursue an investigation or enforcement action, DHS employees should consider all serious adverse factors. These factors include: national security concerns; evidence the alien has a serious criminal history; is involved in a serious crime; poses a threat to public safety (in fact, if the alien has been convicted of a crime listed in INA 237(a)(2); the prohibited source protections do not apply at all). Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors, exercising favorable

discretion, such as not pursuing allegations of fraud from a prohibited source, is appropriate.

(2) 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.

f. Corroborating Information Furnished Solely By Prohibited Source: If a DHS employee receives information solely from a prohibited source that he or she wishes to corroborate and take action on, the DHS employee finds an independent source for the information and adheres to the following procedures:

(1) DHS employees document in the A-file specifically what information they received, from whom they received the information, and what adverse factors about the alien exist to justify pursuing action in the case;

(2) The above information is presented to the DHS employee's immediate supervisor for review and approval;

(3) If the supervisor determines it is appropriate to pursue action in the case and authorizes such action, the responsible Component shares details about the action with the section 1367 information and Victim Safety Provisions Review Committee (the "Review Committee") on a quarterly basis, but always after such action is taken;

(4) The Review Committee is a subcommittee of the DHS Council for Combating Violence Against Women and Girls and consists of subject matter representatives from DHS Policy, CRCL, CIS OMB, ICE, CBP, USCIS and OGC. The Review Committee reviews the information to help ensure compliance with this policy.

3. **Sensitive Location Certification of Compliance Requirement**:

a. In general, in cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in subparagraph b below, the Notice to Appear includes a statement that the provisions of 8 U.S.C. section 1367 have been complied with.

b. Locations requiring certification in accordance with INA section 239(e) are:

(1) A domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services provider, or a community-based organization.

(2) A courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, human trafficking, or stalking in which the alien has been battered or subject to extreme cruelty, or if the alien may be eligible for T or U nonimmigrant status.

c. DHS officers and employees comply with the section 239(e) certification requirement even if the alien has not applied for or does not intend to apply for a victim-based application or petition.

d. Section 239(e) requires the relevant DHS agency to certify that the agency has independently verified the inadmissibility or deportability of an alien who was encountered at these sensitive locations.

Accordingly, before issuing an Notice to Appear (NTA) (with the requisite section 239(e) certification of compliance with 8 U.S.C. section 1367) to an alien against whom an enforcement action leading to a removal proceeding was taken at a sensitive location, DHS employees record on the Form I-213: (1) the sensitive location at which the enforcement action was taken; (2) whether information related to the alien's admissibility or deportability was supplied by a prohibited source; (3) whether and to what extent such information was independently verified; and (4) an acknowledgement of compliance with the nondisclosure requirements.

e. The certification of compliance is completed by an officer or agent authorized to issue NTAs after reviewing the information contained in the I-213 and confirming that all section 1367 provisions and policy were followed.

(1) If a DHS employee suspects that the provisions and relevant policy were not followed, the employee immediately brings the issue to the attention of his or her immediate supervisor rather than issuing the NTA.

(2) If the provisions and policies appear to have been followed, the DHS officer or agent should type or print the following on the NTA, "I certify that, to the best of my knowledge and belief, I have complied with the provisions of 8 U.S.C. § 1367."

(3) Knowingly making a false certification of compliance may subject the officer or employee to civil penalties and/or disciplinary action under 8 U.S.C. § 1367(c). For more information, see Section VII, Penalties, below.

f. Aliens encountered at sensitive locations may be beneficiaries of pending or approved applications for benefits. DHS officers encountering individuals at such locations and considering an enforcement action verify, to the fullest extent reasonably practicable, whether a particular alien is a victim who falls within the protection of the section 1367 provisions.

(1) While INA 239(e) does not prohibit arrests of aliens at sensitive locations, it is clear that Congress intended that arrests of aliens at such locations to be handled properly given that they may ultimately benefit from VAWA's provisions.

(2) DHS officers and employees are strongly encouraged to exercise prosecutorial discretion favorably in cases of aliens encountered at the sensitive locations, unless other exigent circumstances exist, including terrorism or other extraordinary reasons for arresting aliens at a sensitive location.

g. If a DHS employee is unsure whether a particular personal encounter or apprehension requires a certification of compliance under INA section 239(e), the employee consults with his supervisory chain and, if authorized in accordance with the office's or Component's protocols, the relevant counsel's office and/or the Office for Civil Rights and Civil Liberties (CRCL).

B. ***Component requirements***: With regard to the above Section 1 (Disclosure of Protected Information Generally Prohibited), Section 2 (Use of Information from Prohibited Sources), and Section 3 (Sensitive Location Certification of Compliance Requirement), Components will meet the following requirements, when applicable.

1. Requirement to Create Implementing Policy: Any Component with access to Section 1367 information that might be shared with those outside of the Department develops any necessary implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other instruction, or national or departmental policy. Components coordinate with the Council in the development of implementing policy.

2. Requirement to Identify Those Protected: Components establish, to the fullest extent reasonably practicable, means of identifying individuals protected by Section 1367 confidentiality and will take steps to develop safeguards to protect this information in the relevant systems. One such way to help identify most, though not all, of those protected is through a Central Index System (CIS) database check.

a. CIS database check: For any cases where it is suspected that an alien is an applicant for a benefit protected by section 1367, a DHS employee consults the Central Index System (CIS) database to verify whether an alien has a pending or approved application or petition covered by section 1367.

b. CIS contains a class of admission (COA) code “384” (signifying section 384 of IIRIRA) that was created to alert DHS personnel that the individual is protected by section 1367. Information about the location, status, or other identifying information of any individual with the code “384” may not be released outside of DHS, DOJ, or DOS unless one or more of the exceptions applies or the individual has been denied relief and has exhausted all opportunities for appeal.

(1) When an individual files a VAWA self-petition (Form I-360), T nonimmigrant application (Form I-914, Form I-914 Supplement A), or U nonimmigrant petition (Form I-918, Form I-918 Supplement A) with USCIS, the COA in CIS will be updated to “384.”

(2) Aliens granted these victim-based immigration benefits remain protected by Section 1367 and the COA will likely be changed from "384". Any following COA in CIS is an indication that the individual was granted a form of relief that is covered by Section 1367 and the confidentiality provisions apply: T-1, T-2, T-3, T-4, T-5, U-1, U-2, U-3, U-4, U-5, B11, B12, B16, B17, B20, B21, B22, B23, B24, B25, B26, B27, B28, B29, B31, B32, B33, B36, B37, B38, BX1, BX2, BX3, BX6, BX7, BX8, IB0, IB1, IB2, IB3, IB4, IB5, IB6, IB7, IB8, ST0, ST6, ST7, ST8, ST9, SU0, SU6, SU7, SU8, SU9, Z14.

C. ***Training requirement***: All DHS employees who, through the course of their work, may come into contact with victims or have access to information covered by 8 U.S.C. section 1367 are required to complete the computer-based training module, *Alien Victims of Crimes: Immigration Benefits and Confidentiality Protections,* ~~*VAWA: Confidentiality and Immigration Relief*~~, which is currently on the Component's Learning Management Systems (LMS). The VAWA Training was developed by the Federal Law Enforcement Training Center (FLETC) in collaboration with subject-matter experts from several DHS components, including USCIS, ICE and CBP. No later than 180 days after the enactment of this policy, and on an annual basis thereafter, Component Heads, or his or her delegates, of CIS OMB, CRCL, USCIS, ICE and CBP report to the Review Committee the rate of compliance for this training. FLETC ensures the training module is available to all Components through their LMS and provides assistance to keep the training updated and current, as necessary.

D. ***Penalties***: The law provides for civil penalties and/or disciplinary action for certain violations of 8 U.S.C. section 1367 and INA section 239(e): "Anyone who willfully uses, publishes, or permits information to be disclosed in violation of [8 U.S.C. section 1367] or who knowingly makes a false certification under section 239(e) of the [INA] 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. section 1367(c).

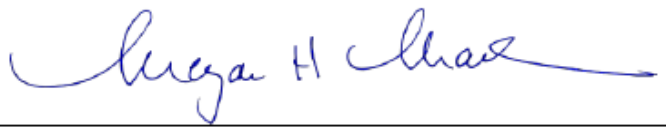
Violations of Section 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. Violations compromise the trust victims have in the efficacy of services that exist to help them and, importantly, may unwittingly aid perpetrators retaliate against, harm or manipulate victims and their family members, and elude or undermine criminal prosecutions.

# VII. Questions and Reporting

A. To report any suspected violations of 8 U.S.C. section 1367 or INA section 239(e) or this policy instruction, please contact the Office for Civil Rights and Civil Liberties:

1. ***E-mail:*** CRCLCompliance@hq.dhs.gov
2. ***Telephone:*** 202-401-1474
3. ***Fax:*** 202-401-4708
4. ***U.S. Postal Mail***:
   U.S. Department of Homeland Security
   Office for Civil Rights and Civil Liberties
   Compliance Branch
   245 Murray Lane, SW
   Building 410, Mail Stop #0190
   Washington, D.C. 20528

B. Address any questions or concerns regarding this Instruction to CRCL.



Megan Mack
Officer for Civil Rights and Civil Liberties

11/7/13
Date