

Early Identification of Victims and VAWA Confidentiality

Webinar: February 24, 2017

Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- File victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie
- Incorporate into safety planning
 - How victim can safely carry DHS document copies

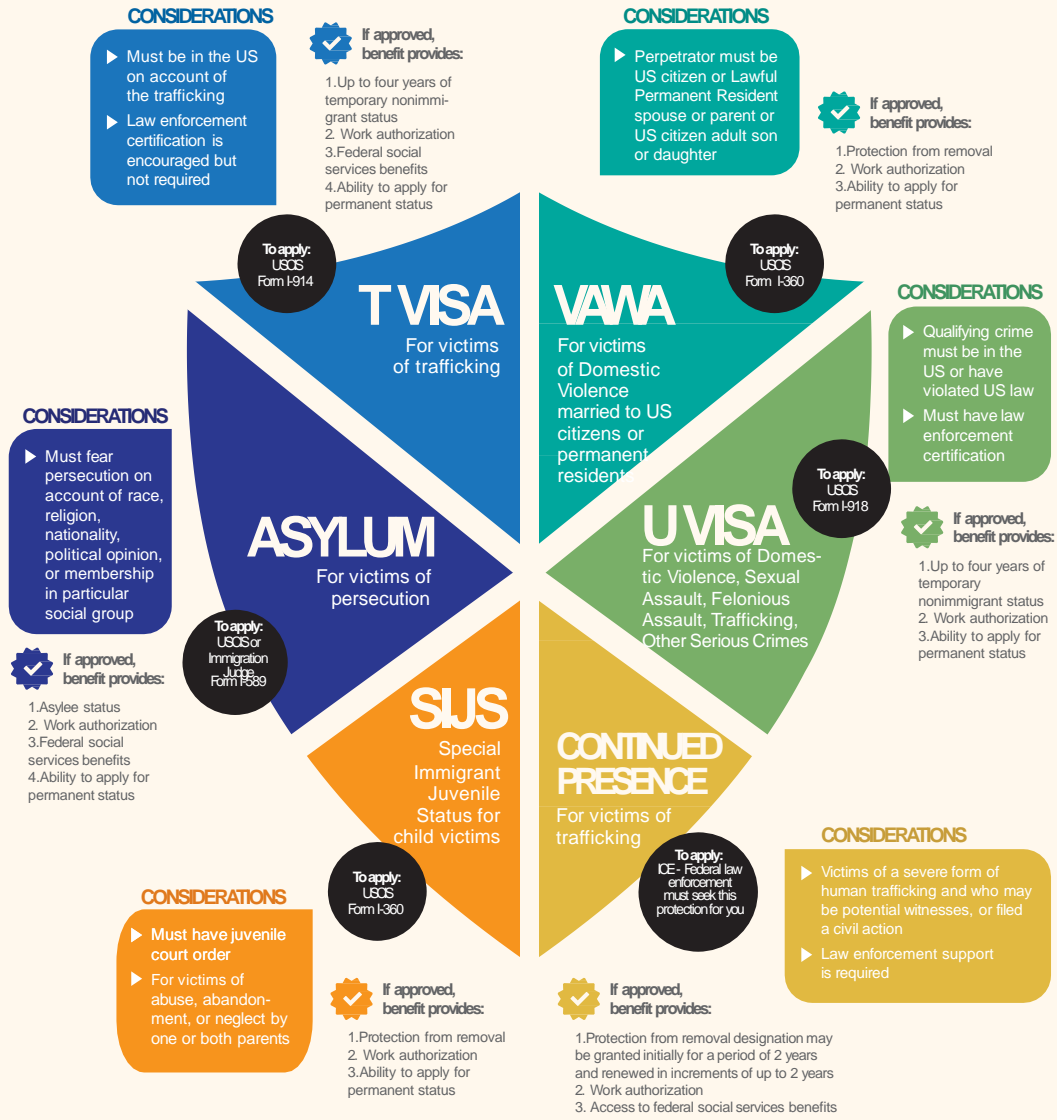


Immigration Options for Immigrant Crime Victims and Children

(Red = VAWA Confidentiality Protected Case)

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
- VAWA suspension of deportation
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Abused Spouse of Visa Holders
 - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum

PROTECTIONS FOR IMMIGRANT VICTIMS

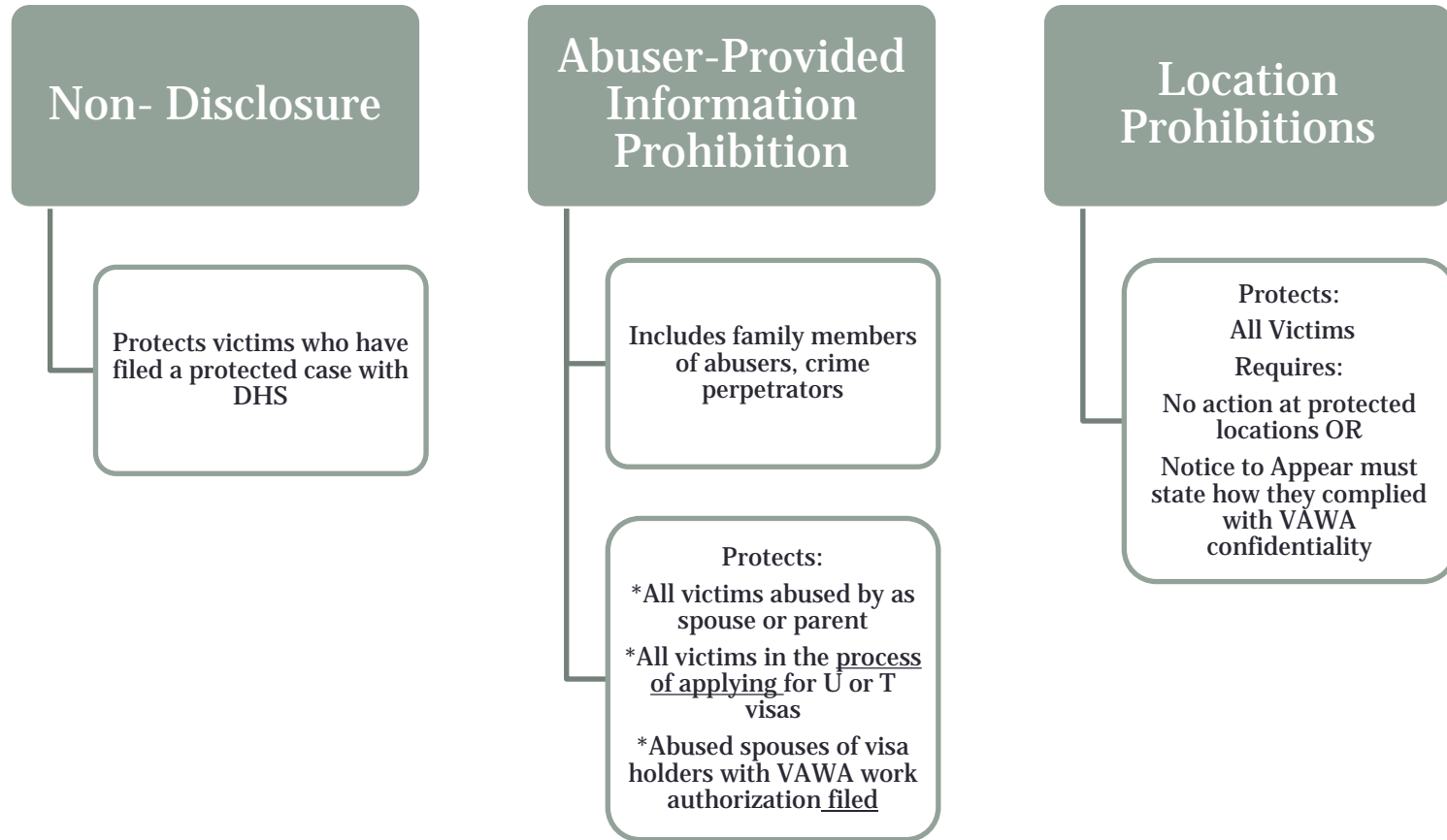




VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

VAWA Confidentiality Prongs



Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking





Relying on Information Provided by: Abuser, Perpetrator, Trafficker

- The government cannot gather and/or use information provided solely by:
 - an abuser;
 - trafficker;
 - crime perpetrator or
 - People closely associated with the perpetrator (e.g. family members) (ICE 2007)
- To take an adverse action against a victim includes
 - Arrests for civil immigration violations
 - Placing the an immigrant in removal proceedings or detention
 - Seeking or using information provided by the perpetrator in the victim's immigration case



DHS cannot rely on information *solely* provided by the perpetrator

- Information provided *solely* by prohibited sources **must** be independently corroborated by DHS
 - Adverse information about the victim from a prohibited source should be treated as “inherently suspect” (DHS Directive 11/1/2013):
 - Information can only be used if verified
 - Must complete required ICE form filed in the victim’s case documenting publicly verified information (ICE Policy 2007 and DHS Instruction 11/1/13)
 - “If the officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U” VAWA confidentiality applies (ICE 2007)



Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
 - The existence of the case
 - Actions taken in the case
 - Information contained in the case file
- Disclosure prohibited to all persons, not just the perpetrator
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed



Prohibitions on Release of Information Apply to Following Cases

- VAWA self-petition
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- VAWA work authorization abused spouses of visa holder applicants



Narrow Disclosure Exceptions

- Limited disclosure in narrow circumstances
 - Disclosure to law enforcement, national security officials, immigration case judicial review
 - Solely for a legitimate law enforcement or national security purpose; and
 - In a manner that “protects the confidentiality of such information”
 - Benefit granting or public benefits purposes
 - Congressional oversight and data collection
 - Omitting personally identifying information
 - Adult victim waived confidentiality protections




VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making a false certifications in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)

What to Do When Violations by DHS Happen

- **Advocate on the spot-provide**
 - Proof of victimization
 - Copy of the statute
 - DHS enforcement policy
 - DHS complaint system
 - DHS 384 system
- **Collect information about the violating officer**
 - Name
 - Agency
 - Badge Number
- **Work it up the chain to a supervisor**
- **File a formal complaint-**
 - Penalties of up to \$5000 per incident against the violating officer individually
 - Disciplinary actions
- **Advocate for release from detention/jail, termination of immigration proceedings, and/or granting immigration relief**
- **Call ICE Hotline 1-888-351-4024**





Technical Assistance and Materials

- PowerPoint presentations and materials for this webinar at www.niwap.org/go/vawaconfidentiality
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
 - <http://niwaplibrary.wcl.american.edu/>