

DEPARTMENT OF JUSTICE APPROPRIATIONS
AUTHORIZATION ACT, FISCAL YEARS 2006
THROUGH 2009

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 3402



SEPTEMBER 22, 2005.—Ordered to be printed

*Section 921. Prohibition of Adverse Determinations of Admissibility
or Deportability Based on Protected Information*

In 1996, Congress 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.

This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying 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. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special

“any credible evidence” standard.

Section 921(a) and (b) provide that the Secretary of Homeland Security and the Attorney General and other Federal officials may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien.

However, information in the public record and government data bases can be relied upon, even if government officials first became aware of it through an abuser.

Section 921(c) provides that this provision shall not apply to prevent information from being disclosed, in a manner that protects victim confidentiality and safety, to the chairs and Ranking Members of the House and Senate Judiciary Committees, including the

Immigration Subcommittees, in the exercise of their oversight authority.

Section 921(d) provides that in the case of an alien applying for relief as a special immigrant juvenile who has been abused, neglected, or abandoned, the government may not contact the alleged abuser.

Section 921(e) provides that investigation and enforcement of these provisions shall be by the Office of Professional Responsibility of the Justice Department.

Section 921(f) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. DHS must certify that:

☐ (1) no enforcement action was taken leading to such proceedings against an alien at certain places including a domestic violence shelter, a rape crisis center, and a courthouse if the alien is appearing in connection with a protection order or child custody case, or that

☐ (2) such an enforcement action was taken, but that there was no violation of the aforementioned provisions. Persons who knowingly make a false certification shall be subject to penalties.

Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed. However, further proceedings can be brought if not in violation of section 384.