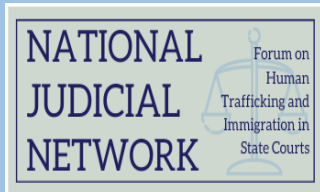


National Judicial Network Forum on Human Trafficking and Immigration in State Courts

VAWA Confidentiality Protections for Immigrant Survivors: Myths, Facts, About Courthouse Protections

February 4, 2025

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Peer-to-Peer Session Faculty

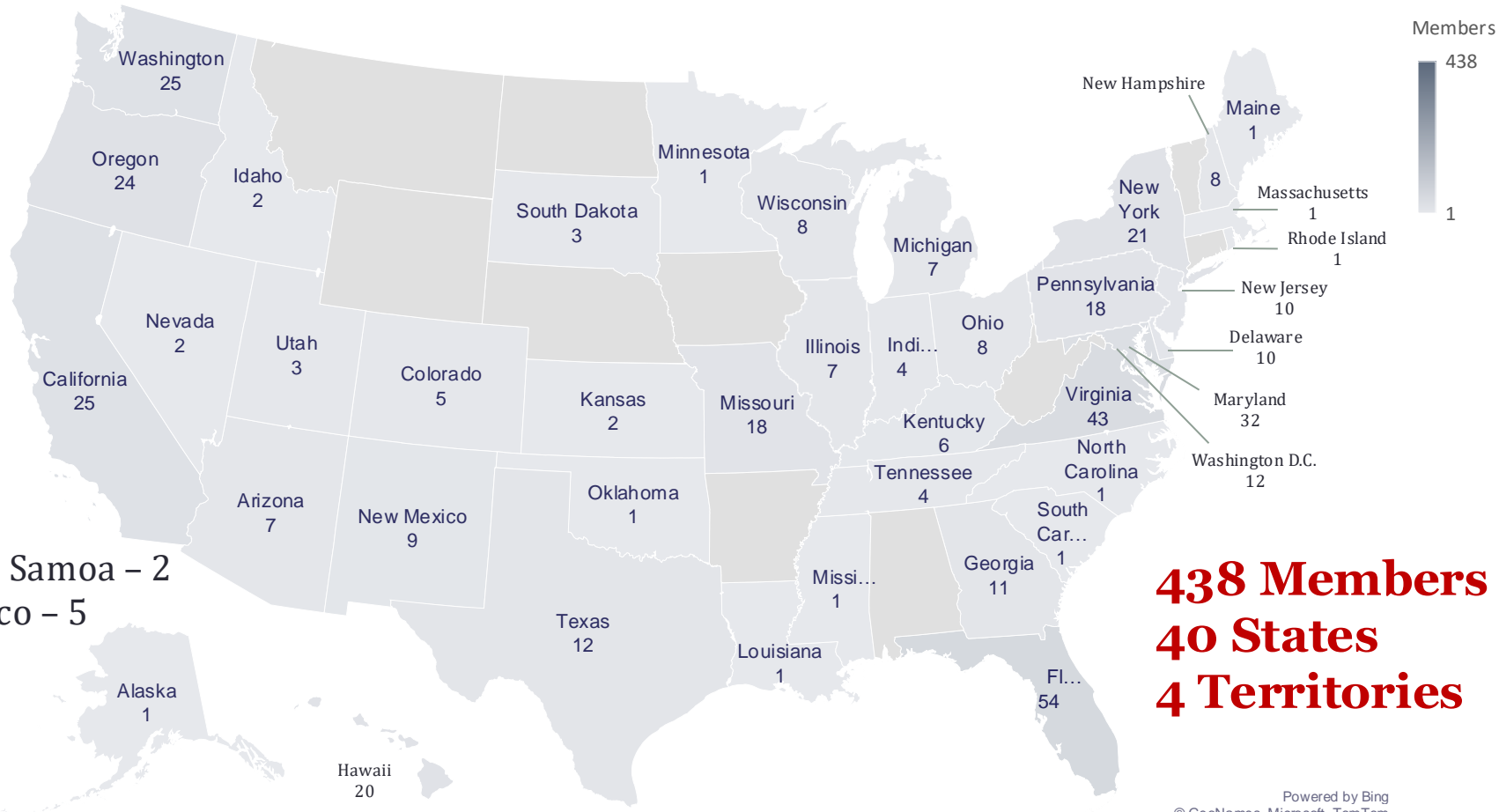


**Judge Rosemary Collins
(Ret.)**
Circuit Court Judge of the 17th
District Circuit Court of
Winnebago County



Leslye Orloff
Director
National Immigrant
Women's Advocacy Project,
American University
Washington College of Law

State Representation in The National Judicial Network as of February 4, 2025



438 Members
40 States
4 Territories

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Upcoming Peer-to-Peer Sessions & Webinars

March 4, 2025

April 1, 2025

May 6, 2025

June 3, 2025

Summer 2025 TBD

October 7, 2025

November 4, 2025

December 2, 2025

Learning Objectives

By the end of this session, you will be better able to:

- Identify immigrant crime victims who qualify for VAWA confidentiality's immigration protections
- Distinguish myths from facts about VAWA confidentiality's removal protections
- Help immigrant victims access VAWA confidentiality's protected locations
- Implement best practices for ruling on, or anticipating and preparing for state court discovery requests that seek VAWA confidentiality protected information

Poll 1: Who Has Joined Us on This Peer-to-Peer Session?

- A. Criminal court judge
- B. General jurisdiction judge
- C. Family court judge
- D. Juvenile court judge
- E. Other

Answer on the left

Feedback

A

B

C

D

No Answer

Other write in chat box

Chat

Public Private

Type here to send a message

VAWA Confidentiality Overview

Historical Context of VAWA Immigration Legislation

“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic and immigration barriers to their safety. Abusers of immigrants- spouses or children are liable to use threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children – if you leave me, I’ll report you to immigration authorities, and you will never see your children again.” ...

*Senator Kennedy. VAWA 2005 Congressional
Testimony*

Excerpts of speech of Hon. John Conyers, Jr.

“Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution.”

Re: VAWA 2005 (12/18/2005)

VAWA Confidentiality Prongs

Non-Disclosure

Protects victims **who have filed** a protected case with DHS

Violation = \$5,000 fine and/or disciplinary action

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

Protects:

- ***All victims abused by a spouse or parent**
- *All victims in the process of seeking U or T visas
- *Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects:
All Victims

Requires:

No action at protected locations
OR

Notice to Appear must state how they complied with VAWA confidentiality

VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- VAWA Confidentiality Enforcement Guidance (1997, 2005, 2007, 2008, 2013, 2019, 2021)
- ICE required to:
 - Check for “384” flag before enforcement actions
 - Certify compliance to immigration judge = violations can be basis for dismissal



Identifying Cases Eligible for VAWA Confidentiality Protections



Immigration Protections for Noncitizen Victims of Crime and Abuse

NIWAP

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ In removal proceedings, may need to file Form I-589 with the immigration judge

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification

U VISA CONSIDERATIONS

- ▶ Ability to apply for permanent residency

If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

If approved, benefit provides:

- Ability to apply for permanent residency

If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)
 All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: www.uscis.gov/forms/all-forms

Immigration Relief Available for Immigrant Victims of —

- Domestic violence
 - Sexual assault
 - Rape
 - Incest
 - Prostitution
 - Torture
 - Felonious assault
 - Manslaughter
 - Murder
 - Female genital mutilation
 - Kidnapping
 - Abduction
 - Trafficking
 - Stalking
 - Involuntary servitude
 - Slave trade
 - Being held hostage
 - Fraud Foreign Labor Contracting
 - Peonage
 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - **Nature & elements of offense substantially similar**
 - Hate crimes, child, elder, disabled adult abuse, video voyeurism
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

Why is VAWA
confidentiality important
for state courts?



Why is VAWA Confidentiality Important for State Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- Prohibited immigration enforcement locations include courthouses

How do courts and communities benefit when victims are in the process of obtaining victim-based forms of immigration relief?

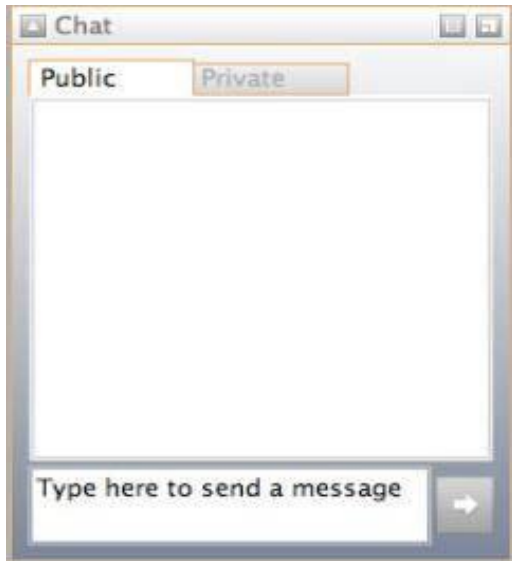


Research shows that U visa applicants report future crimes at higher rates

- Increases justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 22% help other victims report abuse and seek help/justice
- Significantly reduces abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

Bars and Limitations on Reliance on Perpetrator Provided Information

Why do you think
Congress barred DHS from
relying on perpetrator
provided information?



Write in chat box

When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- When domestic violence victims called police for help, perpetrators got the victim arrested
 - VAWA self-petitioners 15.4% (2013)-17% (2017);
 - U visa 7.5%(2013)-36% (2017)

Can you share some examples of the stories Congress was responding to when it created and improved VAWA confidentiality over the years?



Bars Limiting Reliance Upon Information Provided by a Perpetrator

- The government cannot gather and/or use information provided solely by:
 - A domestic violence or child abuser
 - A sexual assault or stalking perpetrator
 - A trafficker
 - The perpetrator of any U visa listed criminal activity
 - The perpetrator's family member
 - Other persons associated with the perpetrator
- To take an adverse action against a victim
- 8 U.S.C. 1367(a)(1)

Poll 2: When do victims get VAWA confidentiality protections? Check all that apply



- A. Victim has filed a VAWA, T, or U visa case
- B. Victims shows a protection order to an immigration official
- C. Victim shows letter from advocate stating that victim is seeking VAWA, T or U immigration relief
- D. When abuse occurs in a spouse or parent child relationship

Victims Protected by Non-Reliance Prohibition

- No immigration case filing required
 - Domestic violence victims
 - Child abuse victims
 - Immigrant parents of child abuse victims
 - Victims of family violence perpetrated by another family member residing in the same household
- Victims seeking or in the process of filing
 - T Visas
 - U Visas

Adverse Actions Include Using Perpetrator Provided Information To...

- Deny a victims immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question or detain a victim at a prohibited location, including courthouse

DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

Cases With VAWA Confidentiality Red Flags

- VAWA self-petitions
 - 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
- T visa
- Continued presence
- VAWA work authorization as abused spouses of visa holders (A, E(iii), G & H)

All DHS Memo 002-02-001.1 (May 29, 2019)

- “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.”
- 1/31/25 Memo revoked victim centered policies and ICE bound to adhere to 8 USC 1367 VAWA and this 2019 policy

All DHS Memo 002-02-001.1

- Adverse information about the victim from a prohibited source should be treated as “inherently suspect”
- “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.”

Violations of perpetrator provided information bar

- Can result in dismissal of the immigration proceeding against the non-citizen
 - (VAWA 2005 legislative history)



- Have led to DHS investigations that resulted in demotions and other job sanctions

What have been the results
for victims when DHS
investigations find VAWA
confidentiality violations?



VAWA Confidentiality Sensitive Locations

VAWA's Locational Prohibitions

- INA § 239(e) (effective Feb. 5, 2006)
- Prohibits immigration enforcement against victims at sensitive locations

Poll 3: At which sensitive locations are victims protected against immigration enforcement?

Check all that apply

- A. Shelters
- B. Rape crisis centers
- C. Supervised visitation centers
- D. Family justice centers
- E. Victim services program/provider
- F. Community based organization

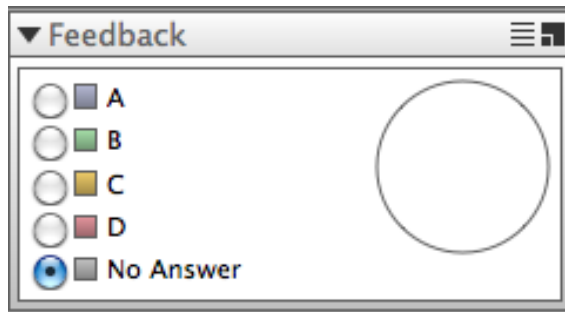


Poll 4: True or False?

- Courthouses are sensitive locations?

A. True

B. False



Are Courthouses Sensitive Locations?

- Courthouses are not considered sensitive locations
- Exception: VAWA confidentiality statutes and DHS policies treat courthouses as sensitive locations with regard to victims of
 - Domestic violence, sexual assault, human trafficking, stalking, battering or extreme cruelty

Enforcement at courthouses must be against targeted immigrants

DHS Policies (ICE & CBP) 2021 ICE Policy January 21, 2025

- A civil immigration enforcement action may be taken in or near a courthouse only in limited instances, including the following:
 - Involves national security,
 - There is an imminent risk of death, violence, or physical harm to any person,
 - Hot pursuit of an individual who poses a threat to public safety, or
 - Imminent risk of destruction of evidence material to a criminal case.
- Civil immigration courthouse enforcement will be planned against a targeted immigrant who
 - Is a threat to national security or public safety
 - Has criminal conviction(s)
 - Is a gang member
 - Has been ordered removed and failed to depart, or
 - Has re-entered the country illegally after being removed

Enforcement Against Other Persons At Court Jan. 21, 2025 Policy

- “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.”

Civil Enforcement at Courthouses - Limitations

DHS Policies (ICE & CBP) 2021

- Must be approved in advance by a Field Office Director, Special Agent in Charge, Chief Patrol Agent, or Port Director
- Take place in non-public area
- Be conducted in collaboration with courthouse security personnel
- Utilize the courthouse's non-public entrances and exits
- Be conducted at the conclusion of the judicial proceeding that brought the individual to the courthouse

ICE Policy January 21, 2025

- Take place in non-public areas
- Be conducted in collaboration with court staff and security
- Use non-public entrances/exits
- When practicable conduct enforcement actions discretely to minimize impact on court proceedings
- Avoid courthouses/areas within courts dedicated to non-criminal cases (e.g. family, civil, small claims) – supervisor approval required
- Make substantial efforts to avoid unnecessarily alarming the public or disrupting court operations

VAWA Confidentiality 8 U.S.C. 1367

All DHS Directive 002-02-001.1 (2019)

- Protections apply “even if the alien has not applied for or does not intend to apply for a victim-based application or petition”
- “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.”
- “[I]t 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”

Locational Prohibitions

- Enforcement actions at VAWA Confidentiality protected sensitive locations actions are not to be taken:
 - “[A]bsent clear evidence that the alien is not entitled to victim-based benefits”
 - Actions taken must “be handled properly given that they may ultimately benefit from VAWA’s provisions”
 - Officers are to follow a specific process aimed at protecting victims that includes obtaining advance permission from a supervisor or ICE general counsel for enforcement actions at statutorily protected sensitive locations
- John P. Torres and Marcy Forman, Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005 (January 22, 2007)

Protected Location Certificate of Compliance

- If any part of the enforcement action leading to the victim being brought before an immigration judge included
 - Relying upon abuser-provided information, OR
 - Enforcement action taken at prohibited location
- DHS is required to disclose the facts to the immigration judge, and
- File a certification in the immigration case that VAWA confidentiality protections were not violated
- The immigration judge can dismiss the proceedings

Poll 5: VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....



Check all that apply

- A. Seeking a protection order
- B. For a child custody case
- C. As a witness in a criminal case
- D. In an eviction case when the perpetrator stopped paying rent in violation of a family court order

What policies or procedures might courts implement with regard to VAWA confidentiality and courthouse enforcement?



Steps Courts Are Taking

- Restrict activities that interfere with courtroom operations
- Enforcement restricted to non-public areas of the courthouse*
- Courts ask ICE to coordinate with court security staff and use of non-public entrances & exits*
- Some courts do not allow ICE into courtrooms
- No enforcement in civil and family proceedings absent written authorization from ICE Field Office Director or Special Agent in Charge*
- No interruptions during court proceedings or until case is completed
- No enforcement against victims, witnesses, family members, people accompanying others to court*
- Call courthouse security if ICE fails to comply with court orders

Enforcement at Sensitive Locations

ICE and CBP Jan. 20, 2025

- Revoked the 10/27/2021 Guidelines stating:
- “Our brave men and women in uniform put their lives on the line every day to advance the rule of law and keep our people safe. As part of that work, officers frequently apply enforcement discretion to balance a variety of interests, including the degree to which any law enforcement action occurs at a sensitive location. Going forward law enforcement officers should continue to use that discretion along with a healthy dose of common sense. It is not necessary ... to create bright lines regarding where our immigration laws are permitted to be enforced.”

Sensitive Locations Policies Historically (1993, 2008, 2011, 2013, 2016, 2018, & 2021)

- Enforcement actions by ICE and CBP were not to occur at sensitive locations (all years):
 - Schools
 - Places of worship
 - Religious or civil ceremonies: e.g. weddings, funerals
- 2021 added
 - Medical treatment, health care facilities, social services agencies, disaster relief, parades, demonstrations,
- Very limited exceptions:
 - Exigent circumstances
 - Prior approval by a designated supervisor
 - Other law enforcement action led ICE/CBP there

VAWA's Confidentiality's Non-Disclosure Protections

8 U.S.C. Section 1367 and DHS Policies and Regulations on VAWA Confidentiality

- Protects all information in immigration files about a VAWA confidentiality protected victim
- Prohibits disclosure of any information to anyone not just the perpetrator about
 - The existence of a the victim's VAWA confidentiality protected immigration cases
 - Decisions made in the cases
 - All Information contained in the victim's #A file
 - Protects the person and all their immigration cases

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
- Trafficking victims granted continued presence
- VAWA work authorization abused spouses of visa holder applicants

When Non-Disclosure Protections Begin & End

All DHS Instruction 002-02-001.1 (2019)

- Any information related to noncitizens who are “seeking or who have been approved for immigration status” under the U visa, T visa, or other VAWA immigration programs may not be disclosed.
- This includes protection of the victim’s “information that has not yet been included in a [DHS] database.”
- “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”
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed
 - Victim naturalizes

Non-Disclosure Exceptions

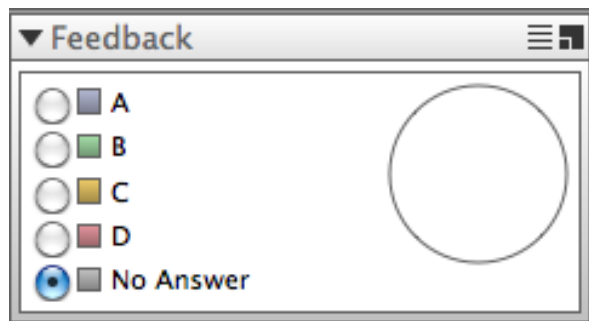
- To law enforcement and national security
 - Solely for purposes related to their work
- Judicial review
- Public benefits granting agencies
- Chair and ranking member of House and Senate Judiciary committees without personally identifying information
- All adults in case waive confidentiality
- With victim's permission connecting victim with victim services
- Anonymous information -census rules apply
- **All only in a manner that continues to protect the confidentiality of the information**

Poll 6: True or False?

- VAWA confidentiality's judicial exception applies to State Court judges hearing criminal, family and/or civil court matters.

A. True

B. False



How does VAWA
Confidentiality impact
discovery in state courts?



What is discoverable in a state court?

- Criminal case
 - U visa and T visa case
 - The request for certification letter
 - The U or T visa certification itself
 - VAWA self-petition, VAWA cancellation, VAWA suspension cases
 - Nothing
- Family Case
 - Nothing

Questions?

NJN State Court Discovery Resources

- NJN Peer-to-Peer Session recordings
 - [VAWA Confidentiality: Criminal and Family Case Discovery \(October 1 & Nov. 12, 2024\)](#)
- [VAWA Confidentiality and Discovery Materials January 7, 2025](#)
 - Case law nationally
 - All statutes, regulations, policies
 - Tips on best practices
- [Bench Card on Violence Against Women Act \(VAWA\) Confidentiality \(December 3, 2021\)](#)

NIWAP Technical Assistance, Materials, and Training

- Power Point and materials for this session
 - <https://niwaplibrary.wcl.american.edu/VAWAConfidentiality2025>
- Judicial training manuals, toolkits, bench card and materials at <https://niwaplibrary.wcl.american.edu/sji-njn-materials>
- **NIWAP Technical Assistance**
 - Call (202) 274-4457 E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu