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

By: Zachary B. Perez, Alina Husain, and Leslye E. Orloff
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Purpose of VAWA Confidentiality:

VAWA Confidentiality was created to protect "…victims of domestic violence against disclosure of information to their abusers and the information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief."[2]

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

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

[1] For detailed information on the VAWA confidentiality statute, regulations, regulatory and legislative history and DHS policies *see*, Alina Husain and Leslye Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy*, 24 (Apr. 4, 20018), *https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history*. .

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

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4300 Nebraska Avenue, N.W., N100B, Washington, D.C. 20016
(o) 202.274.4457 · niwap@wcl.american.edu · wcl.american.edu/niwap ·http://library.niwap.org/

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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."[3]

"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."[4]

Federal Statutory Prohibition Against Reliance Upon Perpetrator Provided Information

Congress created VAWA confidentiality protections to "ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or rely on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA."[5]

"Section 1367(a)…prevents ICE employees from making an adverse determination of admissibility or deportability of an alien using information furnished solely by certain people associated with the battery or extreme cruelty, such as the abuser or a member of the abuser's family living in the same household as the victim."[6]

"The following are prohibited sources for purposes of this guidance[7]:

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

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

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

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

[7] *Implementation of Section 1367 Information Provisions,* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, *Rev. 00.1,* 9 (*May 28, 2019).* *See also,* U.S. Immigration and Customs Enforcement Memo, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, Implementation (January 2025)

- A spouse or parent who battered the alien or subjected the alien to extreme cruelty,
- A member of the spouse's or parent's family residing in the same household as the abusive spouse or parent,
- A spouse or parent who battered the alien's child or subjected the alien's child to extreme cruelty (unless the alien actively participated in the battery or extreme cruelty),
- A member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty,
- In the case of an alien who is applying for a U visa, the perpetrator of the substantial physical or mental abuse and the criminal activity, and
- In the case of an alien who is applying for a T visa, Continued Presence, or immigration relief as a VAWA self-petitioner, the trafficker or perpetrator."[8]

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

VAWA benefits, or a T or U visa."[9]

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

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

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

"… [A]n adverse determination of admissibility or deportability would include placing an alien in removal proceedings or making civil arrests relating to an alien's violation of the immigration laws."[10]

"If a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information."[11]
"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."[12]

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

- Family violence victims who were battered or subjected to extreme cruelty by their:
  - Spouse[13]
  - Parent[14]
  - Family member living in the same household[15]

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

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

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

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

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

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

- **Note:** For these domestic violence cases the prohibited source bars apply whether or not the victim has filed, or is in the process of filing a VAWA confidentiality protected immigration case.[16]

- Victims in the process of applying for status
  - As a victim of criminal activity[17] under the U visa
  - As a victim of human trafficking under the T visa

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

> **"**The lack of a pending or approved VAWA self-petition does not necessarily mean that the prohibited source provisions do not apply and that the alien is not a victim of battery or extreme cruelty. Similarly, although the prohibited source provisions with respect to T or U nonimmigrant status applies only to applicants for such relief, the victim might be in the process of preparing an application. Accordingly, whenever a DHS officer or employee receives adverse information from a spouse, family member of a spouse, or unknown private individual, the employee will check the Central Index System (CIS) for the COA "384" flag. Employees will be sensitive to the fact that the alien at issue may be a victim and that a victim-abuser dynamic may be at play."[18]

"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

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

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

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

claim their marriage is fraudulent in order to exact revenge or exert further control over the victim."[19]

VAWA Confidentiality's Protections Against Disclosure

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

"Section 1367(a)…prohibits ICE employees from disclosing any information about a VAWA, T, or U beneficiary to anyone, especially those who might use the information to the alien's detriment, i.e. an abuser who may wish to have the victim removed from the United States."[20]

"All DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone …of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits, including a battered spouse or child hardship 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."[21]

"It is important to emphasize that the prohibition extends to any information relating to the battered spouse or child, which could include verification of status or any other routine information."[22]

VAWA confidentiality protections apply "…from the time the application for relief is submitted until such time as "the application for relief is denied and all opportunities for appeal

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

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

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

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

of the denial have been exhausted. 8 U.S.C. § 1367(a)(2). There are limited exceptions to this broad confidentiality provision set forth in 8 U.S.C. § 1367(6)."[23]

Disclosure of VAWA confidentiality protected information is permitted in limited circumstances. Those circumstances include disclosure for legitimate law enforcement purposes, statistical purposes, and benefit granting or public benefit purposes. See 8 U.S.C § 1367(b) (listing exceptions to general nondisclosure rule). [24] Each such disclosure requires that release be accomplished in a manner that continues to protect the confidentiality of the information.[24] As a result DHS notes in its policy guidance that defense counsel in state cases may sometimes attempt to make the entire A-file discoverable; however, the entire file is not discoverable in its entirety under this exception"[25]

Similarly, release of information in the context of judicial review is limited by statute to contexts where release can be accomplished "in a manner that protects the confidentiality of such information."[26] This judicial review exception to VAWA confidentiality applies to judicial review of a victim's VAWA confidentiality protected immigration case.[27]

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

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

[25] *See Implementation of Section 1367 Information Provisions, Project* DEP'T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, Rev. 00.1,7 (May 28, 2019) *https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001*.(In U visa cases where police or prosecutors have signed U visa certifications the U visa certification document may be released because the certification was completed by police or prosecutors and is part of the prosecution's case. Information contained in the federal immigration file of a U visa victim beyond the certification is not discoverable. In civil cases with multiple victims courts may in response to discovery requests only order release of redacted certifications that protect the identity of the individual U visa applicants); *see also* EEOC v. Koch Foods of Miss., Civ. No. 11-00391 (S.D. Miss. 2011) (In VAWA self-petition cases where no certifications are required no part of the victim's immigration case file is discoverable). For additional case law on discovery and VAWA confidentiality; *see* Limayli Huguet, Benish Anver, Jane Anderson & Leslye E. Orloff, *Quick Reference Guide for Judges: U Visa and VAWA Confidentiality Related Case Law,* (March 26, 2019), *https://niwaplibrary.wcl.american.edu/pubs/judges-vawa-confidentiality-cases-and-discovery*.

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

[27] *Hawke v. U.S. Dep't of Homeland Security*, 2008 U.S. Dist. LEXIS 87693, at *1 (N.D. Cal. Sept. 29, 2008); Demaj v. Sakaj, 2012 U.S. Dist. LEXIS 18159 at *1 (D. Conn. Feb. 14, 2012); No. 3:09CV255(JGM), 2012 WL 476168 at *1 (D. Conn. Feb. 14, 2012); *see also*, Carly Erickson & Leslye E. Orloff, *Court Rulings Confirm Federal*

"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"[28]

"The lack of a pending or approved VAWA self-petition does not necessarily mean that the prohibited source provisions do not apply and that the alien is not a victim of battery or extreme cruelty. Similarly, the victim might be in the process of preparing an application." [29]

"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..."[30] "If ICE employees know that an alien has sought such victim-based benefits, they are generally prohibited from disclosing any information to a third party." [31]

"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."[32]

"In enacting this nondisclosure provision, Congress sought to prevent…disclosure of any information relating to beneficiaries of applications for VAWA benefits (battered spouses or children) or for T or U nonimmigrant status, including the fact that they have applied for benefits."[33]

VAWA Confidentiality Protections Bar Discovery of VAWA Confidentiality Protected Information in State Family Court Proceedings, (June 17, 2014), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-tool-hawkedemajfactsheet/.

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

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

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

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

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

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

"Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367"[34]

Department of Homeland Security Required Procedures

"VAWA confidentiality protections…were created by Congress so that the battered alien can seek status independent of the abuser. Thus, disclosure of information to an alleged abuser or any other family member was inappropriate event prior to the new law. With enactment of section 384, however, such inappropriate conduct is not also grounds for disciplinary action or fine, or both."[35]

"Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section [VAWA confidentiality 8 U.S.C.1367] or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation."[36]

"The Immigration and Customs Enforcement field guidance implementing VAWA 2005 states that "if an officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U [visa] status, the requirements of 8 U.S.C. § 1367 [VAWA confidentiality] must be followed."[37]

Complaints Regarding VAWA Confidentiality Violations

When an employee of the Department of Homeland Security violates VAWA confidentiality protections or is involved in an enforcement action that takes place in violation of DHS, Immigration or Customs Enforcement (ICE), Customs and Border Protection (CBP) or United States Citizenship and Immigration Services (USCIS) policies, any individual may file a complaint with the DHS Office of Civil Rights and Civil Liberties (DHS CRCL).[38]

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[34] 8 C.F.R. 214.14(e)(2).

[35] Paul Virtue, Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRARA Section 384, U.S. Immigration and Naturalization Service, 2 (May 5, 1997), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-insconfvawamemo-05-05-1997/.

[36] 8 U.S.C. § 1376(c).

[37] John p. Torres and Marcy Forman, *Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005*, 24 (January 22, 2007), http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality2007-foia/ .

[38] *Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security,* DEP'T OF HOMELAND SECURITY (2008), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-dhscomplaintinstrts2008/.

Complaints alleging a violation of the VAWA confidentiality provisions by a DHS employee should be submitted in writing via letter, fax or e-mail DHS CRCL.[39]

"CRCL recommends that complaints include at least the following information….Appropriate contact information: name, date of birth, A-number (if available), and contact information for the alien; and name and contact information for the organization filing the complaint (if any). A written description of the circumstances of the alleged violation, including: date, time and location; name(s) and contact information of any witness(es); and name and contact information (if available) of the DHS employee(s) alleged to have committed the violation. Relevant documentation, including: copies of any paperwork served at or during the occurrence of the alleged violation, such as NTAs and warrants; and copies of any pending VAWA, T-visa or U-visa applications filed with DHS. A summary of other steps, if any, that have been taken to resolve this complaint."[40]

[39] For address, email and fax number see: *Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security*, DEP'T OF HOMELAND SECURITY (2008), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-dhscomplaintinstrts-2008/.

[40] *Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security*, DEP'T OF HOMELAND SECURITY (2008), http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-dhscomplaintinstrts2008/.