

VAWA Confidentiality Protections, Courthouse Enforcement, and Protected Areas Policies at a Glance¹

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This chart summarizes for courts the protections from immigration enforcement actions and arrests offered immigrant victims of domestic violence, child abuse, elder abuse, sexual assault, sex trafficking, labor trafficking, commercial sexual exploitation of children and other crimes under U.S. immigration law protections.² Also provided is an overview of the protections against immigration enforcement at other specified locations under Department of Homeland Security Policies providing information useful for courts drafting custody and visitation orders and court orders helping parents, children and families access services.

VAWA Confidentiality	ICE Courthouse Policy ³	Protected Areas Policy
<p>Who is protected?⁴</p> <ul style="list-style-type: none"> • All victims of spouse and child abuse • Immigrant parents of child abuse victims (Child may be citizen or immigrant) • Immigrant victims in the process of filing or who have filed⁵ <ul style="list-style-type: none"> ○ VAWA self-petitions ○ VAWA cancellation & suspension of deportation ○ U Visas ○ T Visas ○ Battered spouse waivers ○ Work authorization abused visa holder spouses <p>What locations are protected for immigrant victims?⁶</p> <ul style="list-style-type: none"> • Domestic violence shelters • Rape crisis centers • Supervised visitation centers • Family justice centers • Victim services or victim services providers • A courthouse⁷ 	<p>Are courthouses sensitive locations or protected areas?</p> <ul style="list-style-type: none"> • No, except for VAWA confidentiality protected victims.⁸ <p>Who will not be targeted for courthouse enforcement?⁹</p> <ul style="list-style-type: none"> • VAWA confidentiality protected victims¹⁰ • Persons participating in family, civil, criminal or other court proceedings, serving as witnesses, paying a fine, using court services, or accompanying parties¹¹ <p>Under what circumstance could Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) conduct a civil immigration enforcement action at a courthouse?</p> <ul style="list-style-type: none"> • <u>Courthouse enforcement limited to individuals identified as enforcement priorities only.</u>¹² <i>Must involve:</i>¹³ (1) a national security threat (2) imminent risk of death, violence, or physical harm to any person, or (3) hot pursuit of an individual who is a threat to public safety, or (4) imminent risk of destruction of evidence material to a criminal case¹⁴ • If no hot pursuit, civil enforcement actions taken against public safety threats only allowed when no safe alternative location AND action is approved by the Field Office Director or the Special Agent in Charge, Chief Patrol Agent or Port Director.¹⁵ 	<p>What are the protected areas where immigration enforcement should not occur?</p> <p>In addition to the statutory location protections, all Department of Homeland Security officials must treat the following places as protected areas, including, but not limited to:¹⁶</p> <ul style="list-style-type: none"> • Schools¹⁷ • Places where children gather¹⁸ • Medical treatment facilities¹⁹ • Social services establishment²⁰ • Places of worship²¹ • Religious or civil ceremonies²² • Places where emergency relief is being provided²³ • Place where there is an ongoing parade or rally²⁴

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¹ For additional information on these policies *see generally*, Leslye E. Orloff, Meaghan Fitzpatrick & Monica Bates, DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Location Policies and Memoranda Information for State Court Judges, p.6 (Mar. 31, 2018) (Hereinafter “DHS Enforcement Priorities Bench Card”), <http://niwaplibrary.wcl.american.edu/pubs/dhsenforcementpriorities-benchcard/>.

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 nondisclosure of the existence of or any information contained in the survivor’s VAWA related immigration case. 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. VAWA confidentiality protections also prohibit immigration enforcement officials from seeking or relying upon perpetrator provided information in any immigration enforcement action and in adjudicating applications filed by the survivor. Common forms of immigration relief for immigrant survivors that are equally available for both adults and child victims 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.

³ U.S. Immigration and Customs Enf’t, Civil Immigration Enf’t Actions Inside Courthouses, Directive No. 11072.1, at p.3 (Jan. 10, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-courthouse-directive-2018/>; *see also* U.S. Immigration and Customs Enforcement, Civil Immigration Enf’t Actions in or near Courthouses, (April 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement> (Hereinafter “ICE Enforcement Actions Memo”).

⁴ *See* 8 U.S.C. § 1367(a)(1).

⁵ DEP’T OF HOMELAND SEC., INSTRUCTION NO.: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFO. PROVISIONS 10 (Nov. 7, 2013) <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>; *See also* Leslye E. Orloff & Alina Husain, *VAWA Confidentiality Statutes, Legislative History and Implementing Policy*, (Apr. 4, 2018) (Hereinafter “VAWA Confidentiality Statutes”), at p.9-10, <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>.

⁶ Immigration and Nationality Act (“INA”) § 239(e); codified at 8 U.S.C. §1229(e) “Initiation of Removal Proceedings: Certification of compliance with restrictions on disclosure.”

⁷ The courthouse restriction applies when an immigrant victim listed in 8 U.S.C. § 1367(a)(1) appears at a courthouse (or in connection with an appearance at a courthouse) for a protection order or custody case, or other civil or criminal case relating to domestic violence, sexual assault, human trafficking, or stalking. INA § 239(e); 8 U.S.C. §1229(e).

⁸ INA Section 239(e); *see also* ICE ENFORCEMENT ACTIONS MEMO at p. 2.

⁹ VAWA Confidentiality Statutes, at p.15.

¹⁰ DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, p.4 (Nov. 7, 2013), <http://niwaplibrary.wcl.american.edu/pubs/implementation-ofsection-1367-all-dhs-instruction-002-02-001/>; *See also* VAWA Confidentiality Statutes, at p.21.

¹¹ Individuals such as family members or friends accompanying a targeted immigrant to court appearances or serving as a witness will not be subject to civil immigration enforcement unless there are special circumstances such as a threat to public safety. *See* Dep. of Homeland Security, FAQs: Protected Areas and Courthouse Arrests, at p.5 (Oct. 28, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests>; *See also* consistent prior policies: U.S. Immigration and Customs Enf’t, Civil Immigration Enf’t Actions Inside Courthouses, Directive No. 11072.1, at p.1 (Jan. 10, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-courthouse-directive-2018/>; *see also* U.S. Immigration and Customs Enf’t, FAQ on Sensitive Locations and Courthouse Arrests, at p.3 (Jan. 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq>.

¹² Dep. of Homeland Security, FAQs: Protected Areas and Courthouse Arrests, at p.5 (Oct. 28, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests>.

¹³ ICE ENFORCEMENT ACTIONS MEMO at p.2.

¹⁴ ICE ENFORCEMENT ACTIONS MEMO at p.2.

¹⁵ ICE ENFORCEMENT ACTIONS MEMO at p.2.

¹⁶ U.S. Immigration and Customs Enforcement, Guidelines for Enforcement Actions in or Near Protected Areas (Oct. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/dhs-enforcement-in-or-near-protected-areas> (Hereinafter Protected Areas Policy) (updates and replaces U.S. Immigration and Customs Enf't, FAQ on Sensitive Locations and Courthouse Arrests, at p.3 (Jan. 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq>; see also U.S. Customs and Border Prot., Sensitive Locations FAQs, at p.2 (Aug. 22, 2016), <https://niwaplibrary.wcl.american.edu/pubs/cbp-sensitive-location-faq> ; see also U.S. Immigration and Customs Enf't, FAQ on Sensitive Locations and Courthouse Arrests, at p.3 (Jan. 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq>).

¹⁷ PROTECTED AREAS POLICY at p.2 <https://niwaplibrary.wcl.american.edu/pubs/dhs-enforcement-in-or-near-protected-areas> (Defines school as a school, such as a pre-school, primary or secondary school, vocational or trade school, or college or university).

¹⁸ PROTECTED AREAS POLICY at p.3 (noting the protection covers playgrounds, recreational centers, foster care facilities, before- or after-school car, and school bus stops).

¹⁹ PROTECTED AREAS POLICY at p.2 (Defines medical facility as A medical or mental healthcare facility, such as a hospital, doctor's office, health clinic, vaccination or testing site, urgent care center, site that serves pregnant individuals, or community health center).

²⁰ PROTECTED AREAS POLICY at p.3 (Social services establishments include but are not limited to a crisis center, domestic violence shelter, victims services center, child advocacy center, supervised visitation center, family justice center, community-based organization, facility that serves disabled persons, homeless shelter, drug or alcohol counseling and treatment facility, or food bank or pantry or other establishment distributing food or other essentials of life to people in need.).

²¹ PROTECTED AREAS POLICY at p.2 (A place of worship or religious study, whether in a structure dedicated to activities of faith (such as a church or religious school) or a temporary facility or location where such activities are taking place.).

²² PROTECTED AREAS POLICY at p.3 (A place where a funeral, graveside ceremony, rosary, wedding, or other religious or civil ceremonies or observances occur); see also prior policy John Morton, Enf't Actions At or Focused on Sensitive Locations, Policy No. 10029.2, at p.2 (Oct. 24, 2011), <http://niwaplibrary.wcl.american.edu/pubs/ice-2011-sensitive-locations-policy>.

²³ PROTECTED AREAS POLICY at p.3 (A place where disaster or emergency response and relief is being provided, such as along evacuation routes, where shelter or emergency supplies, food, or water are being distributed, or registration for disaster-related assistance or family reunification is underway.).

²⁴ PROTECTED AREAS POLICY at p.3 (place where there is an ongoing parade, demonstration, or rally).