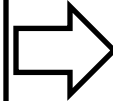


Three Prongs of VAWA Confidentiality

Knowledgeable advocates, attorneys, and judicial personnel who provide copies of DHS confidentiality policies and training materials to DHS officials violating VAWA confidentiality play a key role in ensuring successful protection.

1. Disclosure Limitations

The Department of Homeland Security (DHS), Department of State (DOS) and Department of Justice (DOJ) are prohibited from releasing any information about a protected immigrant's VAWA immigration case. *This includes whether a VAWA case exists at all.* Upon filing cases are coded "384" (VAWA confidentiality protected) by DHS to stop enforcement actions against the victim and to limit disclosure of any information about or contained in the case to anyone including state courts (family, civil or criminal). Limited Exception: To law enforcement or national security officials solely for legitimate law enforcement purposes AND *must continue to protect the confidentiality of the information.*

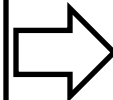


Disclosure Violations:

- 1) Family court orders an immigrant crime victim to disclose the existence of a VAWA confidentiality protected case or any of the case's contents on cross examination or through discovery in a state family court case;
- 2) A police officer or prosecutor obtains VAWA confidentiality protected information, fails to protect the confidentiality of that information, and turns it over to the perpetrator or their family member;
- 3) DHS officials disclose the existence or contents of VAWA confidentiality protected case.

2. Source Limitations

The use or gathering of information provided solely by the abuser, trafficker or crime perpetrator to initiate or undertake any part of an enforcement action, or to make any adverse determination in any immigration case against the crime victim is strictly banned. DHS may use information about a victim contained in public records and government data bases even if DHS became aware of this information from the abuser (e.g. victim's criminal conviction).



Source Violation:

- 1) An immigration enforcement official obtained information from a perpetrator about the location of a victim and used that information to find the victim at work and arrest the victim for violation of immigration laws. DHS officials are to consider information from perpetrators as inherently suspect and can search court records and government data bases to avoid relying on "tips" from perpetrators.

3. Enforcement Limitations

Immigration officials are proscribed from taking enforcement actions against victims at shelters, rape crisis centers, victim services programs, community based organizations, supervised visitation centers, family justice centers or courthouses. If enforcement actions are taken at these protected sites, DHS must certify in any removal case initiated that the enforcement action did not violate any prong of VAWA confidentiality and violations can lead to dismissal of the immigration case against the victim.



Enforcement Violation:

- 1) DHS enforcement official arrived at a protection order court room to conduct an immigration enforcement action against a victim;
- 2) DHS received a "tip" from a perpetrator, failed to check DHS data bases to see that the immigration enforcement target had a VAWA confidentiality protected case filed, located and arrested a battered immigrant at court when she arrived for a contested custody case hearing.

What can advocates and attorneys do to protect immigrant victims?

- Cultivate ties with local immigration officials to help DHS officials: identify victims, avoid reliance on perpetrator provided information and gain knowledge and expertise on DHS VAWA confidentiality responsibilities and policies.
- Inform courts when victims have VAWA immigration cases that federal VAWA confidentiality precludes disclosure of the immigration case existence and/or any of its contents through discovery or cross examination in a state family, criminal or civil court proceeding. Use a:
 - Motion *in limine* under Fed. R. Civ. P. 11 if requests are repeated and harassing.
 - Motion for protective order to prevent disclosure of VAWA information.
 - Motion to quash any subpoena or request for such records.
- Judges should grant options and preempt efforts to violate federal VAWA confidentiality laws in state court cases

Penalties for Violating VAWA Confidentiality

Any DHS, DOS or DOJ official who:
"willingly uses, or permits information to be disclosed in violation of this section...shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation."
(8 U.S.C. § 1367(c); emphasis added)

Federal Criminal Cases

- DHS may have to disclose VAWA confidentiality protected information to federal prosecutors if constitutionally required. 8 CFR § 214.14(e)(1)(ix).
- VAWA 2013 requires that any disclosure must continue to protect the confidentiality of information.

More information is available at:

<http://niwaplibrary.wcl.american.edu/topic/vawa-confidentiality/>

Why VAWA confidentiality?

Abusers frequently attempt to exert power and control over their victims by trying to use the immigration system to track and stalk them, to trigger immigration enforcement actions against the victim and to interfere with and attempt to undermine the victims' ability to attain legal immigration status. In response, Congress created federal VAWA confidentiality laws in order to protect battered victims from having information about their VAWA, T visa, and U visa applications for relief disclosed to their abuser or anyone who could provide the information to the abuser. Violations of VAWA confidentiality may place immigrants in danger, by notifying abusers, rapists, traffickers or other crime perpetrators that victims are taking steps to free themselves from abusive homes, workplaces, or other situations. It is well established that when victims of domestic violence, trafficking and workplace sexual violence try to leave their perpetrators the likelihood that the perpetrator will retaliate using violence, threats or immigration related abuse is high. Federal VAWA confidentiality was designed to protect against disclosure of information about or contained in VAWA confidentiality protected case files, prevent DHS from relying on information provided by the perpetrator or their family member and prohibit DHS enforcement activities at protected locations.

Who is protected?

- **All victims** receive protection from the prohibition against reliance on perpetrator provided information and immigration enforcement location prohibitions. Including victims: of family violence who have not filed for VAWA, in the process of filing for T or U visa, granted continued presence, and abused spouses of work visa holders who filed for work authorization.
- The prohibitions against disclosure of VAWA confidentiality protected information applies to:
- VAWA self-petitioners: immigrant spouses, former spouses and children of U.S. citizen or lawful permanent resident abusers or immigrant parents of over 21 year old U.S. citizen children who have been battered or subjected to extreme cruelty.
- U visa: victims of U visa listed criminal activity.
- T visa and continued presence: victims of severe forms of human trafficking.
- Work authorization applications by abused spouse of work visa holders (A, E(iii), G, H).

VAWA Confidentiality is Federal Law

How to file a complaint if you feel confidentiality has been violated:

- Record facts about the violation that occurred immediately. Include: Date, Location, Time, Name (Badge Number) of DHS official involved.
- Contact supervisors at the local DHS office involved.
- Document the response from DHS supervisors and staff.
- If a victim is detained call NIWAP for technical assistance and call ICE public advocate at 1-888-351-4024.
- To make a formal complaint to the Office of Civil Rights, visit www.dhs.gov/file-civil-rights-complaint
- Fillable PDF forms are available online, or you can submit a letter with necessary details, as explained in the instructions.
- Submit your complaint electronically at crclcompliance@hg.dhs.gov or by U.S.P.S at:
U.S. Department of Homeland Security
Office of Civil Rights and Civil Liberties
Compliance Branch
245 Murray Lane, SW
Building 410, Mail Stop #0190
Washington, D.C. 20528

Additional Resources on VAWA Confidentiality

- **DHS Policies** are available at:
<http://niwaplibrary.wcl.american.edu/vawa-confidentiality/government-memoranda-and-factsheets>
- **NIWAP Training Materials** are available at:
<http://niwaplibrary.wcl.american.edu/vawa-confidentiality>
- **Sample motions and Briefs** are available at:
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/vawa-confidentiality/sample-motion>

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Confidentiality under the Violence Against Women Act (VAWA)

How advocates, attorneys and judicial system personnel can help protect immigrant survivors of domestic violence, sexual assault, stalking, human trafficking and other criminal activity

NIWAP

AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW



State Justice Institute

VAWA Confidentiality was specially designed to counter efforts by perpetrators of criminal activities against immigration victims from:

- Triggering enforcement actions against the victim
- Undermining or interfering in a victim's immigration case
- Obtaining information from government officials that can be used to stalk or harm the victim



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