

Protections from DHS Enforcement Action for Vulnerable Populations: What has changed and what remains?

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Vulnerable Populations: Who are they?

Domestic
violence victims

SIJ applicants

Crime victims

Asylum
applicants

Individuals with
medical issues

Elderly

Caretakers of
young children

Trafficking
victims

Individuals with
Final Removal
Order out on
Order of
Supervision

Arguably,
nowadays,
everybody?

Immigration Executive Orders January 2017

Border Security and Immigration Enforcement Improvements (Border Enforcement Executive Order - Issued Jan. 25, 2017)

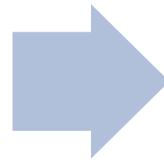
Enhancing Public Safety in the Interior of the United States (Interior Enforcement Executive Order - Issued Jan. 25, 2017)

Protecting the Nation from Foreign Terrorist Entry into the United States (Travel Ban for Refugees and those from 7 Muslim-Majority Countries Executive Order - Issued Jan. 27, 2017)

Changes in Priorities for Deportation

2014
enforcement
priorities

- Those with



2017
enforcement
priorities

- convicted

Protections for Victims

Prior
protectio
ns -
encourage
d to

exercise

Status of
protectio
ns under
new

Enforcem

ent Memo

Status of Victims Memos

- ICE says these memos remain in effect:
- 2011 memo “Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs”

- Per ICE spokesperson in Feb 2017:
- ICE “will take into consideration if an individual is the immediate victim or witness to a crime, in determining

But also...

“Just because they’re a victim in a certain case does not mean there’s not something in their background that could cause them to be a removable alien.”

“Just because they’re a witness doesn’t mean they might not pose a security threat for other reasons.”

- --David Lapan, DHS spokesman, said in

Effect on vulnerable populations:

Statistics from
Houston Police Chief
Art Acevedo released
April 2017:

The number of
Hispanics reporting
rape decreased 42.8
percent from

There was also a 13
percent decrease in
Hispanics reporting
other violent crimes.

Yet violent crime
reports from non-
Hispanics increased
by nearly 12

Limitations on DHS Enforcement Actions



Sensitive Locations Memos

ICE and CBP both have policies in place that provide that “Enforcement actions at or focused on sensitive locations ... should generally be avoided”

- Enforcement is “any action taken by ICE or CBP to apprehend, arrest, interview, or search an individual, or to surveil an individual for enforcement purposes”

Protected locations

- Schools, daycares, etc;
- Medical treatment and health care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;

Exceptions

- Ok with prior approval from supervisory official
- Ok where there are “exigent circumstances necessitating immediate action”
- CBP claims doesn’t apply at international border or functional equivalent

Remedy?

Reality

Transgender DV victim arrested by undercover CBP acting on info provided by abuser while inside courthouse seeking a PO - El Paso TX

- Prohibited location: CBP agents lied on probable cause statement about location of arrest

ICE agents arrest multiple men leaving church homeless shelter - Fairfax VA

- “The spokeswoman emphasized the arrests took place across the street from the church and not on church property.”

ICE agents follow and arrest DREAMer in car just minutes after speaking out at press conference against ICE raids - Jackson MS

- expired DACA w/ renewal pending; no criminal history

Multiple DACA recipients arrested & detained; 1 deported

- one arrested in his home, had no new criminal history, but ICE now claims is a gang member - Seattle TX
- Allegations by attorney that DHS falsified evidence of gang membership

ICYMI, from ICE



ICE @ICEgov · Mar 31

Replying to @ICEgov

Courthouses are not considered sensitive locations per ICE policy
ice.gov/ero/enforcement...

ICE ENFORCEMENT ACTIVITIES
KNOW THE FACTS



U.S. Immigration
and Customs
Enforcement

WWW.ICE.GOV

69

224

311

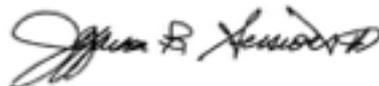
Dear California... (excerpt)

Dear Chief Justice Cantil-Sakauye:

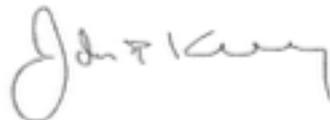
Thank you for your March 16, 2017 letter regarding concern about reports from some California trial courts that suggest law enforcement officers, engaged in the performance of their duties with U.S. Immigration and Customs Enforcement (ICE), are “stalking” individuals at courthouses to make arrests.

Some jurisdictions, including the State of California and many of its largest counties and cities, have enacted statutes and ordinances designed to specifically prohibit or hinder ICE from enforcing immigration law by prohibiting communication with ICE, and denying requests by ICE officers and agents to enter prisons and jails to make arrests. Such policies threaten public safety, rather than enhance it. As a result, ICE officers and agents are required to locate and arrest these aliens in public places, rather than in secure jail facilities where the risk of injury to the public, the alien, and the officer is significantly increased because the alien can more readily access a weapon, resist arrest, or flee. Because courthouse visitors are typically screened upon entry to search for weapons and other contraband, the safety risks for the arresting officers and persons being arrested are substantially decreased.

Sincerely,



Jefferson B. Sessions III
Attorney General



John F. Kelly
Secretary of Homeland Security



Steve King ✓

@SteveKingIA

 Follow



First non-valedictorian DREAMer deported.
Border Patrol, this one's for you.
usat.ly/2pyZriQ



RETWEETS

862

LIKES

1,876



5:42 PM - 18 Apr 2017

VAWA

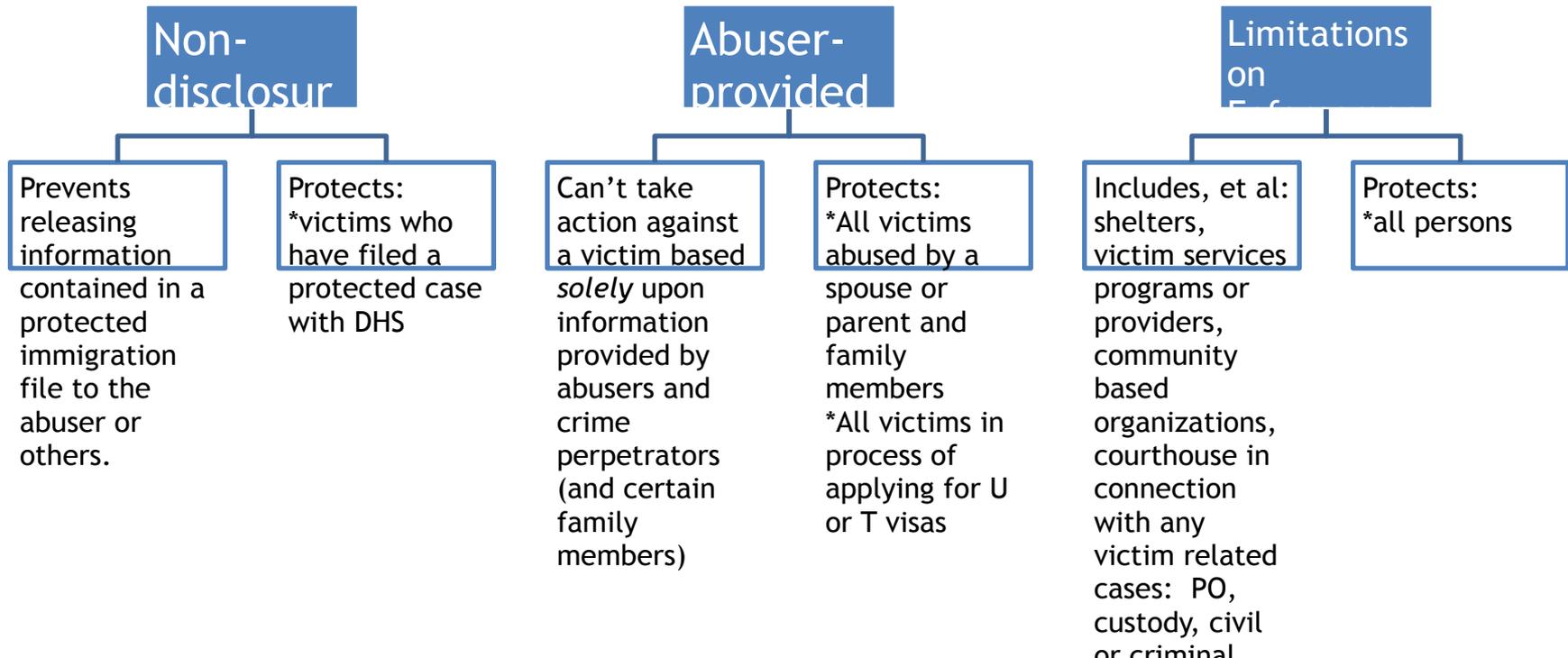
Confidentiality Protections for

Immigrant
Victims of
Domestic
Violence, Sexual
Assault Human

AKA “VAWA
Confidentiality”

8 USC 1367, 8
USC 1229(e)

VAWA Confidentiality: 3 Prongs



Non-Disclosure Provision,
8 U.S.C. § 1367(a)(2)

Prohibits disclosure to *anyone* of information related to a protected case, including:

- The existence of the case

When is this protection triggered?

- Upon the filing of a protected case type
- Code of Admission (COA) of 384 in

Non-Disclosure VAWA Confidentiality protected case types include:

U Visa

T Visa and
Continued
Presence

VAWA self-
petitions

VAWA HRIFA

Domestic
violence-based
I-751 waivers

VAWA
Cancellation of
Removal and
Suspension of
Deportation

VAWA NACARA

VAWA Cuban
Adjustment Act

Abused spouses
of A, E (iii), G,
and H visa
holders

criminal
and

conversations

Ways the Non-Disclosure provision may be useful to Immigration attorneys

civil
contexts to
limit
discovery of
protect

with
client
about
risks of
filing a
protected
applica

Invoke
confidentiality
in
immigration
process

Prohibited Source Limitation Provision,
8 USC § 1367(a)(1)

DHS, DOJ and DOS are prohibited from taking adverse action against a victim based *solely* on information provided by abusers or crime perpetrators

DHS may take action *only* if corroborates the information via independent source, and follows DHS procedure (DHS 2013), which requires:

Prohibited Source Limitations (cont.)

Who is protected by this provision?

- All victims of battery or extreme cruelty committed by a spouse, parent, or their family members
 - REGARDLESS of whether the victim has filed, or qualifies

What sources are prohibited?

- Abusive spouse or parent, and their family members (possibly extends to those closely associated with the abuser, ICE 2007)
- U visa Crime perpetrator

What types of adverse actions are prohibited?

- Determination of inadmissibility or deportability (8 U.S.C. § 1367)
- Enforcement actions - arrest for civil immigration violations,

Limitations on Enforcement Location Provision, INA § 239(e); 8 U.S.C. § 1229(e)

Enforcement actions are not to be taken at the following locations unless DHS official complies with VAWA Confidentiality provisions:

Domestic violence shelter, rape crisis center, supervised visitation center, family justice center, victim services program or provider, community-based

At a **courthouse** if in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual

DHS must comply with certain requirements if take enforcement action at a Protected Location:

Notice to Appear shall include statement by DHS certifying that the VAWA confidentiality provisions *have been* complied with, including prohibition against reliance on abuser-provided information. INA § 220(c)

DHS policy (2013) requires that the I-213 detail:

- the protected location where enforcement action taken;
- whether information about individual came from a prohibited source;

Criminal Complaint Affidavit from Feb. 2017, ICE arrest of victim of DV in El Paso courthouse following protective order hearing

On February 7, 2017, Homeland Security Investigations (HSI) Border Enforcement Security Taskforce (BEST) Agents received information that an individual who had been previously deported was in the United States. This information was confirmed through the Enforce Alien Removal Module. The information received stated that the individual later identified as Ervin GONZALEZ (DOB: 03/18/1983, COB: Mexico) was residing at the Center Against Sexual and Family Violence, 580 Giles Road, El Paso, Texas. The information stated that GONZALEZ had been arrested previously for Possession of Stolen Mail and Illegal Re-Entry into the United States and sentenced to 12 months and 1 day.

It was also mentioned that GONZALEZ had filed a Protective Order against his boyfriend Mario Alberto De Avila who is currently incarcerated for Forgery of a Financial Instrument. GONZALEZ has a hearing scheduled for Thursday, February 9, 2017 at 9:00 a.m. at the El Paso County Courthouse, 500 E. San Antonio, El Paso, Texas.

On February 9, 2017, HSI BEST Agents were conducting surveillance at 500 E. San Antonio, El Paso, Texas in attempts of seeing GONZALEZ. At approximately 9:30 a.m., HSI BEST Agents observed GONZALEZ exiting the El Paso County Courthouse and proceeded to walk along the side walk on San Antonio Avenue. BEST Agents approached GONZALEZ identified themselves as United States Border Patrol Agents and questioned him as to his citizenship and immigration status. GONZALEZ admitted to being a Mexican National with no immigration documents allowing him to enter, be or remain in the United States legally. GONZALEZ was taken into the custody and transported to the HIS Office located at 11541 Montana, Avenue, El Paso, Texas.

Remedies for VAWA Confidentiality Violations

Penalties for DHS violations of any of the 3 prongs, 8 U.S.C. § 1367(c):

- Disciplinary action and/or Fine up to \$5,000 for each violation

Advocate on the spot with DHS official

- Evidence of victimization
- VAWA confidentiality statutes, 8 USC §§ 1367 and 1229(e)

Remedies for VAWA Confidentiality Violations

File complaint with DHS urging immediate action to mitigate harm from violation, e.g. release, cancellation of NTA, dismissal of proceedings,

Removal proceedings

- Seek dismissal of proceedings:
 - Congressional intent that removal proceedings in violation of VAWA

VAWA Confidentiality Sources and Resources

Statutes

- IIRAIRA § 384; 8 U.S.C. § 1367
- INA § 239(e); 8 U.S.C. § 1229(e)

DHS policy

- DHS Broadcast Message on New 384 Class of Admission Code (Dec. 21, 2010)
- Department of Homeland Security, Instruction 002-92-001 “Implementation of Section 1367 Information Provisions,” (Nov. 7, 2013)

Legislative History

- Bi-Partisan (Sensenbrenner-Conyers) Judiciary Committee Report, 151 Cong. Rec. E2605 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APROPRIATION AUTHORIZATION ACT, FISCAL YEARS 2006 - 2009, H.R.

Non-governmental

- National Immigrant Women’s Advocacy Project (NIWAP), www.niwap.org, VAWA Confidentiality resources, including sources of legal authority, training materials, and technical assistance

Strategies for Representing Vulnerable Populations before EOIR



Tips: Representation before EOIR

Do not plea if you have not seen the NTA

Do not plea if you have a copy of NTA but are not ready to proceed

- Request continuance for attorney preparation time
- Always identify if representing a client pro bono

If there are issues with the NTA

- Challenge the NTA
- Seek termination of proceedings

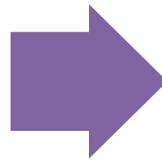
Identify relief in court on the record

- If in the course of proceedings applications are pending with the USCIS, or approved/ask to admin. close or terminate proceedings in court.

Termination v. Administrative Closure

Administrative Closure

- Available to the IJ



Termination of Proceedings

- Is final

BIA Case Law: Administrative Closure

Matter of Avetisyan, 25 I&N Dec. 288
(BIA 2012).



IJ and the Board has discretion to admin. close proceedings, using these factors:

- the reason administrative closure is sought

BIA Case Law: Administrative Closure

Matter of W-Y-U, 27 I&N Dec. 17 (BIA 2017)

(1) The primary consideration for an Immigration Judge in evaluating whether to administratively close or re-calendar proceedings is whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits. *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), clarified.

(2) In considering administrative closure, an Immigration Judge cannot review whether an alien falls within the enforcement priorities of the Department of Homeland Security, which has exclusive jurisdiction over matters of prosecutorial discretion.

Application for Stay with ICE

When in removal proceedings under an Order of Release

- Must show Court Hearing Notice
- Must show any USCIS/Court filings

When under a final removal order, and under an Order of Supervision

- Each OS report day may be the last day in the country

Application for Stay with ICE (cont'd)

A Separate Application must be filed for each person/family member (ICE Form I-246)

Must pay correct Filing Fee (\$155)

Must have a valid passport/travel document

- If no passport, provide proof of applications filed/efforts to procure a passport/travel document

Evidence of intent to comply with order

- Plane ticket

Family ties/exceptional circumstances of hardship/medical history and letters from doctors

Approval of Stay is discretionary by Field Director

- 30 day review