



Immigration Enforcement Activity: Limits Applicable to Victims, Witnesses, and Sensitive Locations

November 6, 2020

Fiscal Year 2019 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Senior Official Performing the Duties of the Director

November 6, 2020

I am pleased to present the following report, “Immigration Enforcement Activity: Limits Applicable to Victims, Witnesses, and Sensitive Locations,” which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to direction in Senate Report 115-283, which accompanies the Fiscal Year 2019 Department of Homeland Security Appropriations Act (P.L. 116-6).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:



The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleishmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to me at (202) 732-3000.

Sincerely,

T TONY H
PHAM

Digitally signed by T TONY H
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Date: 2020.11.05 15:32:40
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Tony H. Pham
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement



Immigration Enforcement Activity: Limits Applicable to Victims, Witnesses, and Sensitive Locations

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I. Legislative Language

This report was compiled in response to direction in Senate Report 115-283, which accompanies the Fiscal Year (FY) 2019 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6).

Senate Report 115-283 states:

The Committee directs ICE, not later than 180 days after the date of enactment of this act, to report on steps taken to minimize the effect immigration enforcement activity has on victims of crime and witnesses of crime and to provide monthly notifications to the Committee on enforcement actions that take place in sensitive locations, including courthouses.¹

¹ ICE notes that courthouses are not considered sensitive locations under agency policy, although ICE policy also provides additional protections for victims or witnesses of a crime.

II. Background

U.S. Immigration and Customs Enforcement (ICE) law enforcement personnel put their lives on the line every day to protect our Nation and to secure its borders. The safety of the ICE workforce, those encountered during the course of their duties, and the public is paramount. Although ICE policy generally discourages enforcement action focused on sensitive locations, in the complex environment of law enforcement, such an enforcement action may be necessary in rare instances. Although ICE does not exempt any class or category of alien in violation of federal immigration laws from potential enforcement action, the agency has policies that govern the exercise of prosecutorial discretion with regard to victims and witnesses of crimes, as well as family members and friends who may be accompanying a target of a planned enforcement action to a courthouse.

A. Enforcement Actions Near Sensitive Locations

On October 24, 2011, ICE issued Policy Memorandum 10029.2, “Enforcement Actions at or Focused on Sensitive Locations” (Appendix B). This memorandum remains in effect and provides that enforcement actions at or focused on sensitive locations, such as schools, hospitals, and places of worship, may take place only when prior approval is obtained from an appropriate supervisory official; when other law enforcement actions have led officers to a sensitive location; or when exigent circumstances necessitate immediate action without supervisory approval.

Additionally, although ICE seeks to mitigate any potential enforcement impacts on sensitive locations, a sensitive location may exist in many urban settings within the general vicinity of a planned enforcement action (e.g., a place of worship located on the same block as an apartment complex where a suspect resides). However, such enforcement actions are not focused on the sensitive location itself. Because of this operational reality, ICE is able to report on the extremely limited number of enforcement actions that occur at sensitive locations but notes that it is not feasible to track every enforcement action that may occur anywhere in the vicinity of a sensitive location.

ICE also notes that courthouses are not considered sensitive locations under agency policy and that ICE’s system is not designed to track such arrests as a result. As such, on January 10, 2018, ICE issued ICE Directive 11072.1, “Civil Immigration Enforcement Actions Inside Courthouses” (Appendix C), which governs policies and procedures for civil immigration enforcement activities conducted inside federal, state, and local courthouses. Actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents because individuals inside courthouses already have undergone security screening to search for weapons and contraband.

B. Enforcement Actions Against Victims and Witnesses

In an effort to avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys continue to exercise all

appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. The exercise of prosecutorial discretion in such cases is governed by ICE Policy No. 10076.1, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” dated June 17, 2011 (Appendix D).

ICE Directive 11072.1 provides further that aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances—such as where the individual poses a threat to public safety or interferes with ICE’s planned enforcement actions. As is the case with all law enforcement, ICE officers and agents are trained to evaluate complex enforcement decisions and to consider the facts of each individual case when determining appropriate action.

Additionally, when taking enforcement actions against alien crime victims at certain specified locations, including courthouses, ICE follows: (1) DHS Directive 002-02, “Implementation of Section 1367 Information Provisions,” dated November 1, 2013 (Appendix E), and (2) DHS Instruction 002-02-001, “Implementation of Section 1367 Information Provisions,” dated November 7, 2013 (Appendix F), the latter including guidance under 8 U.S. Code (U.S.C.) § 1229(e).

DHS Instruction 002-02-001 states that, although 8 U.S.C. § 1229(e) does not prohibit arrests of aliens at sensitive locations, Congress clearly intended that arrests of aliens at such locations be handled carefully, given that those aliens ultimately may benefit from immigration aid specific to alien crime victims. The instruction also states that DHS officers and employees are encouraged strongly to exercise prosecutorial discretion favorably in cases of aliens encountered at the sensitive locations, unless other exigent circumstances exist, including terrorism or other extraordinary reasons for arresting aliens at sensitive locations.

Please see Appendix G for a list of arrests at sensitive locations in FY 2019.

III. Analysis/Discussion

A. Enforcement Actions Inside Courthouses

ICE Directive 11072.1, “Civil Immigration Enforcement Actions Inside Courthouses” (Appendix C), applies to civil immigration enforcement actions only and is consistent with pre-existing procedures for the planning, execution, documentation, and approval of such enforcement actions. Aliens subject to planned civil immigration enforcement action inside a courthouse include individuals with criminal convictions, gang members, individuals posing a threat to national security or public safety, aliens ordered removed from the United States but who have failed to depart, and aliens who have re-entered the country illegally after being removed. Other aliens encountered inside a courthouse, such as family members or witnesses to a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where they pose a threat to public safety or interfere with ICE’s enforcement actions.

B. ICE-wide Training

All ICE personnel who, through the course of their work, may come into contact with alien victims of a crime or who have access to information covered by 8 U.S.C. § 1367, must complete training titled “Alien Victims of Crime: Immigration Benefits and Confidentiality Provisions.” This training includes instructions about compliance with 8 U.S.C. § 1229(e) and is available throughout DHS.

C. Officer Training

The Basic Immigration Enforcement Training Program (BIETP) is the basic training for ICE Enforcement and Removal Operations officers. BIETP is taught by personnel from ICE and Federal Law Enforcement Training Centers (FLETC). BIETP includes a block of instruction from the FLETC Behavioral Science Division and covers victim and witness response. The third Enabling Performance Objective (i.e., the learning objective) for this block of instruction is to “[i]dentify services and rights that law enforcement officers are required to provide to victims and witnesses.” BIETP also covers the Victims’ Rights and Restitution Act of 1990 (VRRRA) and the Crime Victims’ Rights Act of 2004 (CVRA). The particular lesson plan is used for several agencies and may be requested through FLETC.

D. Special Agent Training

ICE Homeland Security Investigations (HSI) Special Agents, who are concerned primarily with criminal investigations, attend a two-part basic training program at FLETC, which comprises the Criminal Investigator Training Program (CITP) and HSI Special Agent Training (HSISAT). CITP and HSISAT include several blocks of instruction related to interviewing suspects, witnesses, and victims. In particular, the fourth Enabling Performance Objective of the CITP “Interviewing for Criminal Investigators” class specifically details requirements under the VRRRA and the CVRA.

Appendices

Appendix A: Abbreviations

Abbreviation	Definition
BIETP	Basic Immigration Enforcement Training Program
CITP	Criminal Investigator Training Program
CVRA	Crime Victims' Rights Act of 2004
DHS	Department of Homeland Security
FLETC	Federal Law Enforcement Training Centers
FY	Fiscal Year
HSI	(ICE) Homeland Security Investigations
HSISAT	Homeland Security Investigations Special Agent Training
ICE	U.S. Immigration and Customs Enforcement
U.S.C.	U.S. Code
VRRA	Victims' Rights and Restitution Act of 1990

Appendix B: ICE Policy No. 10029.2, "Enforcement Actions at or Focused on Sensitive Locations"

Policy Number: 10029.2
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

OCT 24 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton 
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the "Exceptions to the General Rule" section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.¹

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

¹ Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, "Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations" 10029.1 (July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, "Enforcement Actions at Schools" (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, "Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies" HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

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- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Agency Policy

General Rule

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target's only known address is next to a church or across the street from a school).

Exceptions to the General Rule

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;

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- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.

Appendix C: ICE Directive 11072.1, “Civil Immigration Enforcement Actions Inside Courthouses”

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses

Issue Date: January 10, 2018
Effective Date: January 10, 2018
Superseded: None
Federal Enterprise Architecture Number: 306-112-002b

- 1. Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE’s enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide. And, courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.

- 2. Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE’s enforcement actions.¹

¹ ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President’s Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017).

ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Civil immigration enforcement actions inside courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits.

Planned civil immigration enforcement actions inside courthouses will be documented and approved consistent with current operational plans and field operations worksheet procedures. Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) may issue additional procedural guidance on reporting and documentation requirements; such reporting and documentation shall not impose unduly restrictive requirements that operate to hamper or frustrate enforcement efforts.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

3. **Definition** The following definitions apply for the purposes of this Directive only.
 - 3.1. **Civil immigration enforcement action.** Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.
4. **Responsibilities.**
 - 4.1. The **Executive Associate Directors** for **ERO** and **HSI** are responsible for ensuring compliance with the provisions of this Directive within his or her program office.
 - 4.2. **ERO FODs** and **HSI SACs** are responsible for:
 - 1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and
 - 2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

4.3. ICE Officers and Agents are responsible for complying with the provisions of this Directive and properly documenting and reporting civil immigration enforcement actions at courthouses, as prescribed in Section 5.1 of this Directive.²

5. Procedures/Requirements.

5.1. Reporting Requirements.

- 1) ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.³
- 2) Unless otherwise directed by leadership, there will be no additional reporting requirements in effect for this Directive.

6. Recordkeeping. ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP). ERO will maintain the FOW in accordance with the Fugitive Operations schedule DAA-0567-2015-0016. HSI will maintain EOPs in accordance with the Comprehensive Records Schedule N1-36-86-1/161.3. The EOPs will be maintained within the Investigative Case Files.

7. Authorities/References.

7.1. DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.

7.2. DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

8. Attachments. None.

9. No Private Right. This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

² See also ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses.

³ ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.



Thomas D. Homan
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Appendix D: ICE Policy No. 10076.1, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs”

Policy Number: 10076.1
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
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JUN 17 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton 
Director

SUBJECT: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs

Purpose:

This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence, and individuals involved in non-frivolous efforts related to the protection of their civil rights and liberties. In these cases, ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice. This memorandum builds on prior guidance on the handling of cases involving T and U visas and the exercise of prosecutorial discretion.¹

Discussion:

Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. In practice, the vast majority of state and local law enforcement agencies do not generally arrest victims or witnesses of crime as part of an investigation. However, ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure

¹ For a thorough explanation of prosecutorial discretion, see the following: Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from William J. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (Oct. 24, 2005); Memorandum from Doris Meissner, Commissioner, Immigration and Naturalization Service, Exercising Prosecutorial Discretion (Nov. 17, 2000).

Communities program or another ICE enforcement program, may come to the attention of ICE. Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.

To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor.

In deciding whether or not to exercise discretion, ICE officers, agents, and attorneys should consider all serious adverse factors. Those factors include national security concerns or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety. Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors, exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate. Discretion may also take different forms and extend to decisions to place or withdraw a detainer, to issue a Notice to Appear, to detain or release an alien, to grant a stay or deferral of removal, to seek termination of proceedings, or to join a motion to administratively close a case.

In addition to exercising prosecutorial discretion on a case-by-case basis in these scenarios, ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA),² its subsequent reauthorization,³ and the Violence Against Women Act (VAWA).⁴ These provide several protections for the victims of crime and include specific provisions for victims of domestic violence, victims of certain other crimes,⁵ and victims of human trafficking.

Victims of domestic violence who are the child, parent, or current/former spouse of a U.S. citizen or permanent resident may be able to self-petition for permanent residency.⁶ A U nonimmigrant visa provides legal status for the victims of substantial mental or physical abuse as

² Pub. L. No. 106-386, §§101-113, 114 Stat. 1464, 1466 (codified as amended in scattered sections of the U.S.C.).

³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁴ Pub. L. No. 106-386, §§1001-1603, 114 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁵ For a list of the qualifying crimes, see INA §101(a)(15)(U)(iii).

⁶ See INA §101(a)(51).

a result of domestic violence, sexual assault, trafficking, and other certain crimes.⁷ A T nonimmigrant visa provides legal status to victims of severe forms of trafficking who assist law enforcement in the investigation and/or prosecution of human trafficking cases.⁸ ICE has important existing guidance regarding the exercise of discretion in these cases that remains in effect. Please review it and apply as appropriate.⁹

Please also be advised that a flag now exists in the Central Index System (CIS) to identify those victims of domestic violence, trafficking, or other crimes who already have filed for, or have been granted, victim-based immigration relief. These cases are reflected with a Class of Admission Code "384." When officers or agents see this flag, they are encouraged to contact the local ICE Office of Chief Counsel, especially in light of the confidentiality provisions set forth at 8 U.S.C. § 1367.

No Private Right of Action

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

⁷ See INA §101(a)(15)(U).

⁸ See INA §101(a)(15)(T).

⁹ See Memorandum from John P. Torres, Director, Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, Interim Guidance Relating to Officers Procedure Following Enactment of VAWA 2005 (Jan. 22, 2007).

Appendix E: DHS Directive 002-02, “Implementation of Section 1367 Information Provisions,” November 1, 2013

Department of Homeland Security
DHS Directives System
Directive Number: 002-02
Revision Number: 00
Issue Date: 11/1/2013

IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS

I. Purpose

This directive establishes a single Department of Homeland Security (DHS) policy regarding the implementation of Title 8, United States Code (U.S.C.), Section 1367, Violence Against Women Act (VAWA) confidentiality provisions and provides guidance as instructed by 8 U.S.C. 1367(d), as amended by the Violence Against Women Reauthorization Act of 2013, Public Law 113-4, section 810.

II. Scope

This directive applies throughout DHS, particularly those employees who work with applicants for victim-based immigration relief or who have access to protected information, such as United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

III. Authorities

- A. Public Law 101-649, “Immigration and Nationality Act” (INA) Section 101(a)(51), as codified in 8 U.S.C. Section 1101(a)(51)
- B. Public Law 103-322, “Violence Against Women Act (VAWA) of 1994”
- C. Public Law 106-386, “Victims of Trafficking and Violence Protection Act of 2000.” (VTVPA)
- D. Public Law 109-162, “Violence Against Women and Department of Justice Reauthorization Act of 2005,” Section 817, “VAWA Confidentiality Nondisclosure.”(VAWA 2005)
- E. Public Law 113-4, “Violence Against Women Reauthorization Act of 2013,” Section 810, “Disclosure of Information for National Security Purposes.” (VAWA 2013)
- F. Section 239(e) of the Immigration and Nationality Act (INA) (8 U.S.C. 1229(e)), “Certification of compliance with restrictions on disclosure”

- G. Section 240A(b)(2) of the Immigration and Nationality Act (INA) (8 U.S.C. 1229(b)), "Special Rule for Battered Spouse or Child"
- H. Title 8, U.S.C., Section 1367, "Penalties for disclosure of information" (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA))
- I. Title 42, U.S.C., Section 13925(a), "Definitions and grant provisions" (as re-designated and amended by Section 3 of VAWA 2013), Public Law 113-4
- J. Delegation 19004, Delegation of Authority to Implement Section 1367 Information
- K. Instruction 002-02-001, Implementation of Section 1367 Information Provisions
- L. DHS Privacy Incident Handling Guidance (Jan. 26, 2012)

IV. Responsibilities

All responsible parties listed below are to help ensure compliance with applicable policies and procedures set forth in this Directive.

- A. The **Chief Privacy Officer** is the senior official within the Department with primary responsibility for privacy compliance and policy.
- B. The **Officer for Civil Rights and Civil Liberties (CRCL)** directs and oversees the implementation of the integration of civil rights and civil liberties across the Department and has the delegated authority to issue this Directive and Instruction.
- C. The **General Counsel** is responsible for ensuring legal compliance and has final authority and responsibility for legal policy determinations within the Department and its Components.
- D. The **Component Heads** with any Section 1367 information that might be shared will implement and execute all applicable policies and procedures set forth in this directive, and will develop any necessary implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other Instruction, or national or departmental policy.
- E. The **Council on Combating Violence Against Women** works to ensure that policies and practices for combating violence against women and

children are consistent Department-wide. By identifying opportunities to build consensus on challenging issues across Components, sharing best practices, and coordinating efforts Department-wide, the Council supports the Department's missions of effectively administering the laws preventing violence against women and children. The Council collects information on a quarterly basis and conduct after-action reviews on cases where exceptions have been applied to disclose information and where enforcement actions have been taken at sensitive locations. The Council is also responsible for assisting in developing all implementing policies that are created by Components.

- F. The ***Federal Law Enforcement Training Center (FLETC)*** ensures the computer-based training module, *VAWA: Confidentiality and Immigration Relief*, is available to all Components for promulgation through their Learning Management Systems and provides assistance to keep the training updated and current, as necessary.

V. Policy and Training Requirements

Policy: The policy is comprised of three confidentiality requirements:

- A. All DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee of DHS, Department of State (DOS), or Department of Justice (DOJ) 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. There are certain exceptions to the general nondisclosure requirement, such as information to be used solely for a legitimate national security purpose in a manner that protects the confidentiality of such information. (Please note that different procedures apply for the disclosure of information to national security officials and can be found at Instruction 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes).
- B. 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. For a more information on what qualifies as a VAWA benefit, refer to Instruction 002-02-001, Implementation of Section 1367 Provisions. 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 should treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information. Further, DHS employees receiving information solely from a prohibited source do not take action on that information unless there is an independent source of corroboration.

- C. DHS employees complete a certification of compliance in cases where enforcement actions leading to a removal proceeding are taken at sensitive locations, as required by INA 239(e) (8 U.S.C. 1229(e)). The certification includes the Notice to Appear, which affirms compliance with the Section 1367 Information and prohibited source provisions.

Component requirements: Components with access to Section 1367 Information that might be shared with those outside of the DHS develop any necessary implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other instruction, or national or departmental policy. Components coordinate with the Council in the development of implementing policy. Moreover, any Component with access to Section 1367 information creates ways to identify those individuals protected by Section 1367 confidentiality, such as through a Central Index System (CIS) database check, and develops safeguards to protect this information in the relevant systems.

Training requirement: All DHS employees who, through the course of their work may come into contact with victim applicants or have access to information covered by 8 U.S.C. 1367 complete the VAWA: Confidentiality and Immigration Relief training, which is currently on Component's Learning Management Systems (LMS). The VAWA Training was developed by FLETC in collaboration with subject-matter experts from several DHS Components, including USCIS, ICE and CBP. No later than 180 days after the enactment of this policy, and on an annual basis thereafter, the Component Heads, or his or her delegates, of CIS OMB, CRCL, USCIS, ICE and CBP report to the Review Committee the rate of compliance for this training.

VI. Questions

Address any questions or concerns regarding this Directive to CRCL.



Chris Cumiskey
Acting Under Secretary for Management

11/1/13

Date

Appendix F: DHS Instruction 002-02-001, “Implementation of Section 1367 Information Provisions,” November 7, 2013

Department of Homeland Security
DHS Instructions System
Instruction Number: 002-02-001
Revision Number: 00

Issue date:

IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS

I. Purpose

This Instruction implements the Department of Homeland Security (DHS) Directive 002-02, Implementation of Section 1367 Information Provisions. In Section 810 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54 (2013). Congress amended Title 8, United States Code (U.S.C.), Section 1367, to require that the Attorney General, the Secretary of State and the Secretary of Homeland Security provide guidance consistent with the amendments it made to subsections (a) and (b) of 8 U.S.C. § 1367. See 8 U.S.C. § 1367(d). This Instruction provides guidance as instructed by 8 U.S.C. 1367(d), as amended by Section 810 of the Violence Against Women Reauthorization Act of 2013, and DHS Directive 002-02.

II. Scope

This instruction applies throughout DHS, particularly those employees who work with applicants for victim-based immigration relief or who have access to protected information, such as United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

III. References

- A. Public Law 103-322, “Violence Against Women Act (VAWA) of 1994”
- B. Public Law 106-386, “Victims of Trafficking and Violence Protection Act of 2000.” (VTVPA)
- C. Public Law 109-162, “Violence Against Women and Department of Justice Reauthorization Act of 2005,” Section 817, “VAWA Confidentiality Nondisclosure.” (VAWA 2005)
- D. Public Law 113-4, “Violence Against Women Reauthorization Act of 2013,” Section 810, “Disclosure of Information for National Security Purposes.” (VAWA 2013)
- E. Title 8, U.S.C., Section 1367, “Penalties for disclosure of information” (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA))

- F. Title 42, U.S.C., Section 13925(a), "Definitions and grant provisions" (as re-designated and amended by Section 3 of VAWA 2013)
- G. Section 101(a)(51) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(a)(51))
- H. Section 239(e) of the Immigration and Nationality Act (8 U.S.C. 1229(e)), "Certification of compliance with restrictions on disclosure"
- I. Section 240A(b)(2) of the Immigration and Nationality Act (INA) (8 U.S.C. 1229(b)), "Special Rule for Battered Spouse or Child."
- J. DHS Privacy Incident Handling Guidance (Jan. 26, 2012)
- K. Delegation 19004, Delegation of Authority to Implement Section 1367 Information, Date
- L. Directive 002-02, Implementation of Section 1367 Information Provisions, Date

IV. Definitions

- A. **U Nonimmigrant Status:** U nonimmigrant status for victims of criminal activity designated in INA §101(a)(15)(U) (qualifying crimes) who have suffered substantial mental or physical abuse as a result of being a victim of criminal activity, possess relevant information concerning the crime, and have been helpful, are being helpful, or are likely to be helpful to law enforcement or government officials in the investigation or prosecution of the criminal activity. U status allows victims to remain in the United States for up to four years (or longer if a limited exception applies), receive work authorization, and, if certain conditions are met, apply for adjustment of status to that of a lawful permanent resident (LPR).
- B. **T Nonimmigrant Status:** T nonimmigrant status for victims of a severe form of trafficking in persons, as defined in section 103 of the TVPA of 2000, who are physically present in the United States on account of trafficking and who have complied with any reasonable requests for assistance in a law enforcement investigation or prosecution (with limited exceptions). See INA 101(a)(15)(T). T status allows victims of human trafficking to remain in the United States for up to four years (or longer if a limited exception applies), receive work authorization, and, if certain conditions are met, apply for adjustment of status to that of an LPR.
- C. **VAWA Self-Petitioner(er):** Under VAWA, as amended, certain persons who have been battered or subjected to extreme cruelty by a qualifying relative may self-petition, allowing them to remain in the United States,

apply for LPR status as an approved VAWA self-petitioner, and eventually apply for naturalization. VAWA self-petitioners include: the spouse, child or parent of an abusive U.S. citizen; the spouse or child of an abusive LPR; the conditional resident spouse or child of an abusive U.S. citizen or LPR; the spouse or child of an alien eligible for relief under the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act, or the Nicaraguan Adjustment and Central American Relief Act; and the spouse or child eligible for suspension of deportation or cancellation of removal due to abuse by a U.S. citizen or LPR. See INA 101(a)(51) (defining “VAWA self-petitioner”).

- D. **VAWA Cancellation:** Victims of domestic violence who are in removal proceedings may be eligible to apply for relief with the immigration court in the form of VAWA cancellation of removal. See INA 240A(b)(2) (prescribing eligibility requirements).
- E. **Sensitive Location:** Locations specified in INA § 239(e)(2), where if an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified below, the Notice to Appear (NTA) includes a statement that the provisions of 8 U.S.C. 1367 have been complied with. The locations specified include: domestic violence shelter, rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

Sensitive locations can also include a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [8 U.S.C. § 1101(a)(15)].

- F. **Section 1367 Information:**
 - 1. Any information relating to aliens who are seeking or have been approved for immigrant status as battered spouses, children and parents under provisions of the Violence Against Women Act (VAWA), as victims of a severe form of human trafficking who generally are cooperating with law enforcement authorities, or as aliens who have suffered substantial physical or mental abuse and are cooperating with law enforcement authorities. This definition includes records or other information that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections.
 - 2. Section 1367 covers information relating to beneficiaries of applications for a number of immigration benefits, not just the Form

I-360 VAWA self-petition. For the purpose of this guidance if an alien is the beneficiary of a pending or approved application for one or more of the victim-based benefits described below, the requirements of 8 U.S.C. 1367 will be followed:

- a. VAWA self-petitioner, which incorporates the following applications or petitions:
 - i. I-360 Self-petition - self-petitioners under INA sec. 204
 - ii. I-751 Hardship waiver - battered spouse or child hardship waiver
 - iii. VAWA CAA - abused Cuban Adjustment Act applicants
 - iv. VAWA HRIFA - abused Haitian Refugee Immigration Fairness Act applicants
 - v. VAWA NACARA - abused Nicaraguan Adjustment and Central American Relief Act applicants
 - vi. VAWA Suspension of Deportation
- b. VAWA Cancellation of Removal applicants under INA 240A(b)(2).
- c. I-914 T Nonimmigrant Status - victim of a severe form of trafficking in persons under INA 101(a)(15)(T).
- d. I-918 U Nonimmigrant Status - victim of qualifying criminal activity under INA 101(a)(15)(U).

V. Responsibilities

All responsible parties listed below are to help ensure compliance with applicable policies and procedures set forth in this instruction.

- A. The ***Chief Privacy Officer*** is the senior official within the Department with primary responsibility for privacy compliance and policy.
- B. The ***Officer for Civil Rights and Civil Liberties*** directs and oversees the implementation of the integration of civil rights and civil liberties across the Department, serving as the foundational DHS organization through which all Department-wide civil rights and civil liberties activities are overseen, defined, and measured. The Officer for Civil Rights and Civil Liberties has the delegated authority from the Secretary to provide this single DHS

policy on the implementation of Title 8, U.S.C., Section 1367 (VAWA/T/U confidentiality provisions).

- C. The **General Counsel** is responsible for ensuring legal compliance and has final authority and responsibility for legal policy determinations within the Department and its Components.
- D. The **Component Heads** with any Section 1367 information that might be shared implement and execute all applicable policies and procedures set forth in this instruction, and develop any necessary implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other instruction, or national or departmental policy.
- E. The **Council on Combating Violence Against Women** works to ensure that policies and practices for combating violence against women and children are consistent Department-wide. By identifying opportunities to build consensus on challenging issues across Components, sharing best practices, and coordinating efforts Department-wide, the Council supports the Department's missions of effectively administering the laws preventing violence against women and children. The Council collects information on a quarterly basis and conducts after-action reviews on cases where exceptions have been applied to disclose information and where enforcement actions have been taken at sensitive locations. The Council is also responsible for assisting in developing all implementing policies that are created by Components.
- F. The **Federal Law Enforcement Training Centers (FLETC)** serves as an interagency law enforcement training organization for federal agencies and partner organizations. It provides training to state, local, rural, tribal, territorial, and international law enforcement agencies. FLETC ensures the computer-based training module, *VAWA: Confidentiality and Immigration Relief*, is available to all Components for promulgation through their Learning Management Systems and provides assistance to keep the training updated and current, as necessary.

VI. Policy and Requirements

- A. **Policy:**
 - 1. **Disclosure of Protected Information Generally Prohibited.**
 - a. This guidance serves as a reminder that all DHS officers and employees are generally prohibited from permitting use by or disclosure to anyone other than a sworn officer or employee

of DHS, the Department of State (DOS); or the Department of Justice (DOJ) of any information relating to a beneficiary of a pending or approved application for victim-based immigration benefits. 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.

- b. The nondisclosure requirement does not apply to disclosures of protected information within DHS or to DOJ or DOS for legitimate agency purposes.
- c. 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, and the limitation ends when the application for relief is denied *and* all opportunities for appeal of the denial have been exhausted.
- d. Exceptions: There are specified exceptions to the general nondisclosure requirement allowing for disclosure of protected information in limited circumstances.

Statutory Exceptions. The statute prescribes eight (8) exceptions to the general nondisclosure requirement:

- i. For the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. section 8. This exception allows for the furnishing of tabulations and other statistical material that do not disclose the information reported by, or on behalf of, any particular respondent, and the making of special statistical compilations and surveys, for Federal, State, or local government agencies or “other public and private persons and agencies” – provided that no information furnished is “used to the detriment of any respondent or other person to whom such information relates.”

- ii. For the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose. However, the authority to exercise this exception is subject to the Secretary's discretion.
- iii. In connection with judicial review of a Federal agency or court determination in a manner that protects the confidentiality of such information. 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.
- iv. If all the battered individuals in the case are adults and they have all waived the nondisclosure restrictions.
- v. For the disclosure of information to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for public benefits under 8 U.S.C. section 1641(c).
- vi. For the disclosure to the Chairmen and Ranking Members of the Senate and House of Representatives Committees on the Judiciary, for the exercise of congressional oversight authority, "information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals)."
- vii. For purposes of communicating, with the "prior written consent of the alien involved," with nonprofit, nongovernmental victims' services providers "for the sole purpose of assisting victims in obtaining victim services." The victim services providers receiving such referrals are bound by the nondisclosure requirements of Section 1367. Recall that Section 101(i) of the INA (8 U.S.C. section 1101(i)) mandates that DHS provide T nonimmigrants with a referral to an NGO "that would advise the alien regarding

the alien's options while in the United States and the resources available to the alien.”

- viii. The disclosure of information to national security officials to be used solely for a legitimate national security purpose in a manner that protects the confidentiality of such information. (Please note that different procedures apply for the disclosure of information to national security officials and can be found at Instruction 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes.

For instances where an official is uncertain whether an exception applies or where questions exist about a particular exception, local counsel's office should be consulted.

- e. Nonstatutory Exceptions. In addition to the enumerated statutory exceptions, there may be instances in which disclosure of protected information is mandated by court order or constitutional requirements. For example, disclosure may be required in a federal, state, or local criminal proceeding for purposes of complying with constitutional obligations to provide exculpatory and impeachment material that is relevant either to guilt or punishment of a criminal defendant in a federal criminal proceeding (“Brady” material) or that bears upon the credibility of a prosecution witness (“Giglio” material). If DOJ or a state or local prosecutor requests protected information that is not subject to disclosure under one of the statutory exceptions and that will be disclosed to a court or another agency (other than DOS), please consult DHS counsel. DHS counsel are consulted if a Member of Congress not described in the congressional oversight exception in Section 1367(b)(6) is requesting protected information pursuant to his or her congressional oversight authority.
- f. Notification of Unauthorized Disclosures: In the event that any Component (1) discloses Section 1367 information in a manner inconsistent with the provisions above or (2) is informed by the recipient of Section 1367 information that the recipient has disclosed that information in an unauthorized manner, the Component Head for that Component (1) notifies the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties as soon as is practicable, but in no event later than twenty-four hours after discovery of the unauthorized disclosure, and (2) satisfies

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the requirements of the DHS Privacy Incident Handling Guidance.

2. Use of Information from Prohibited Sources:

- a. 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.
- b. Prohibited Sources. The following are prohibited sources for purposes of this guidance:
 - i. A spouse or parent who battered the alien or subjected the alien to extreme cruelty,
 - ii. A member of the spouse's or parent's family residing in the same household as the abusive spouse or parent,
 - iii. 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),
 - iv. 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,
 - v. 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
 - vi. 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.
- c. This prohibited source restriction does not apply to an alien who has been convicted of a crime listed in INA section 237(a)(2). Such crimes include: crime involving moral

turpitude, aggravated felony, human trafficking, failure to register as a sex offender under 18 U.S.C. section 2250, certain controlled substance violations, certain firearms offenses, and certain domestic violence, child abuse, stalking, protection order violation offenses. Consultation with counsel to determine if this exception applies is recommended before making a determination whether this exception applies.

- d. 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 prohibition 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.
- e. Receipt of Information from a Prohibited Source
 - i. There are a number of ways DHS employees might receive "tips" from an abuser or an abuser's family, such as: calling ICE to report the victim as illegal, a "landlord" (who may actually be a human trafficker) calling ICE to report that his "tenants" are undocumented, or providing information to USCIS rebutting the basis for the victim's application. When 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. In deciding whether to pursue an investigation or enforcement action, DHS employees should consider all serious adverse factors. These factors include: national security concerns; evidence the alien has a serious criminal history; is involved in a serious crime; poses a threat to public safety (in fact, if the alien has been convicted of a crime listed in INA 237(a)(2); the prohibited source protections do not apply at all). Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors,

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exercising favorable discretion, such as not pursuing allegations of fraud from a prohibited source, is appropriate.

- ii. 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.
- f. Corroborating Information Furnished Solely By Prohibited Source: If a DHS employee receives information solely from a prohibited source that he or she wishes to corroborate and take action on, the DHS employee finds an independent source for the information and adheres to the following procedures:
- i. DHS employee documents in the A-file specifically what information was received, from whom the information was received, and what adverse factors about the alien exist to justify pursuing action in the case;
 - ii. The above information is presented to the DHS employee's immediate supervisor for review and approval;
 - iii. If the supervisor determines it is appropriate to pursue action in the case and authorizes such action, the responsible Component shares details about the action with the section 1367 information and Victim Safety Provisions Review Committee (the "Review Committee") on a quarterly basis, but always after such action is taken;
 - iv. The Review Committee is a subcommittee of the DHS Council for Combating Violence Against Women and Girls and consists of subject matter representatives from DHS Policy, CRCL, CIS OMB, ICE, CBP, USCIS and OGC. The Review Committee reviews the information to help ensure compliance with this policy.

3. Sensitive Location Certification of Compliance Requirement:

- a. In general, in cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in subparagraph b below, the Notice

to Appear includes a statement that the provisions of 8 U.S.C. section 1367 have been complied with.

- b. Locations requiring certification in accordance with INA section 239(e) are:
 - i. A domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services provider, or a community-based organization.
 - ii. A courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, human trafficking, or stalking in which the alien has been battered or subject to extreme cruelty, or if the alien may be eligible for T or U nonimmigrant status.
- c. DHS officers and employees comply with the section 239(e) certification requirement even if the alien has not applied for or does not intend to apply for a victim-based application or petition.
- d. Section 239(e) requires the relevant DHS agency to certify that the agency has independently verified the inadmissibility or deportability of an alien who was encountered at these sensitive locations.

Accordingly, before issuing an Notice to Appear (NTA) (with the requisite section 239(e) certification of compliance with 8 U.S.C. section 1367) to an alien against whom an enforcement action leading to a removal proceeding was taken at a sensitive location, DHS employees record on the Form I-213: (1) the sensitive location at which the enforcement action was taken; (2) whether information related to the alien's admissibility or deportability was supplied by a prohibited source; (3) whether and to what extent such information was independently verified; and (4) an acknowledgement of compliance with the nondisclosure requirements.

- e. The certification of compliance is completed by an officer or agent authorized to issue NTAs after reviewing the information contained in the I-213 and confirming that all section 1367 provisions and policy were followed.

- i. If a DHS employee suspects that the provisions and relevant policy were not followed, such employee immediately brings the issue to the attention of his or her immediate supervisor rather than issuing the NTA.
 - ii. If the provisions and policies appear to have been followed, the DHS officer or agent should type or print the following on the NTA, "I certify that, to the best of my knowledge and belief, I have complied with the provisions of 8 U.S.C. § 1367."
 - iii. Knowingly making a false certification of compliance may subject the officer or employee to civil penalties and/or disciplinary action under 8 U.S.C. § 1367(c). For more information, see Section VII, Penalties, below.
- f. Aliens encountered at sensitive locations may be beneficiaries of pending or approved applications for benefits. DHS officers encountering individuals at such locations and considering an enforcement action verify, to the fullest extent reasonably practicable, whether a particular alien is a victim who falls within the protection of the section 1367 provisions.
- a. While INA 239(e) does not prohibit arrests of aliens at sensitive locations, it 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.
 - b. DHS officers and employees are strongly encouraged to exercise prosecutorial discretion favorably in cases of aliens encountered at the sensitive locations, unless other exigent circumstances exist, including terrorism or other extraordinary reasons for arresting aliens at a sensitive location.
- g. If a DHS employee is unsure whether a particular personal encounter or apprehension requires a certification of compliance under INA section 239(e), the employee consults with his supervisory chain and, if authorized in accordance with the office's or Component's protocols, the relevant counsel's office and/or the Office for Civil Rights and Civil Liberties (CRCL).

B. **Component requirements:** With regard to the above Section 1 (Disclosure of Protected Information Generally Prohibited), Section 2 (Use of Information from Prohibited Sources), and Section 3 (Sensitive Location

Certification of Compliance Requirement), Components will meet the following requirements, when applicable.

1. Requirement to Create Implementing Policy: Any Component with access to Section 1367 information that might be shared with those outside of the Department develops any necessary implementing instructions or other policy guidance to the extent permitted by and consistent with their authorities and any restrictions imposed by statute, executive order, presidential or other instruction, or national or departmental policy. Components coordinate with the Council in the development of implementing policy.
2. Requirement to Identify Those Protected: Components establish, to the fullest extent reasonably practicable, means of identifying individuals protected by Section 1367 confidentiality and will take steps to develop safeguards to protect this information in the relevant systems. One such way to help identify most, though not all, of those protected is through a Central Index System (CIS) database check.
 - a. CIS database check: For any cases where it is suspected that an alien is an applicant for a benefit protected by section 1367, a DHS employee consults the Central Index System (CIS) database to verify whether an alien has a pending or approved application or petition covered by section 1367.
 - b. CIS contains a class of admission (COA) code "384" (signifying section 384 of IIRIRA) that was created to alert DHS personnel that the individual is protected by section 1367. Information about the location, status, or other identifying information of any individual with the code "384" may not be released outside of DHS, DOJ, or DOS unless one or more of the exceptions applies or the individual has been denied relief and has exhausted all opportunities for appeal.
 - i. When an individual files a VAWA self-petition (Form I-360), T nonimmigrant application (Form I-914, Form I-914 Supplement A), or U nonimmigrant petition (Form I-918, Form I-918 Supplement A) with USCIS, the COA in CIS will be updated to "384."
 - ii. Aliens granted these victim-based immigration benefits remain protected by Section 1367 and the COA will likely be changed from "384". Any following COA in CIS is an indication that the individual was granted a form of relief that is covered by Section 1367 and the confidentiality provisions apply: T-1, T-2, T-3, T-4, T-5, T-6, U-1, U-2, U-3, U-4, U-5, B11,

B12, B16, B17, B20, B21, B22, B23, B24, B25, B26, B27, B28, B29, B31, B32, B33, B36, B37, B38, BX1, BX2, BX3, BX6, BX7, BX8, IB0, IB1, IB2, IB3, IB4, IB5, IB6, IB7, IB8, ST0, ST6, ST7, ST8, ST9, SU0, SU6, SU7, SU8, SU9, Z14.

- C. **Training requirement:** All DHS employees who, through the course of their work, may come into contact with victim applicants or have access to information covered by 8 U.S.C. section 1367 are required to complete the computer-based training module, *VAWA: Confidentiality and Immigration Relief*, which is currently on the Component's Learning Management Systems (LMS). The VAWA Training was developed by the Federal Law Enforcement Training Centers (FLETC) in collaboration with subject-matter experts from several DHS components, including USCIS, ICE and CBP. No later than 180 days after the enactment of this policy, and on an annual basis thereafter, Component Heads, or his or her delegates, of CIS OMB, CRCL, USCIS, ICE and CBP report to the Review Committee the rate of compliance for this training. FLETC ensures the training module is available to all Components through their LMS and provides assistance to keep the training updated and current, as necessary.
- D. **Penalties:** The law provides for civil penalties and/or disciplinary action for certain violations of 8 U.S.C. section 1367 and INA section 239(e): "Anyone who willfully uses, publishes, or permits information to be disclosed in violation of [8 U.S.C. section 1367] or who knowingly makes a false certification under section 239(e) of the [INA] is 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. section 1367(c).

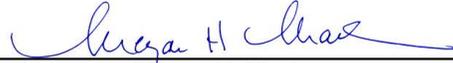
Violations of Section 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. Violations compromise the trust victims have in the efficacy of services that exist to help them and, importantly, may unwittingly aid perpetrators retaliate against, harm or manipulate victims and their family members, and elude or undermine criminal prosecutions.

VII. Questions and Reporting

- A. To report any suspected violations of 8 U.S.C. section 1367 or INA section 239(e) or this policy instruction, please contact the Office for Civil Rights and Civil Liberties:
1. ***E-mail:*** CRCLCompliance@hq.dhs.gov
 2. ***Telephone:*** 202-401-1474
 3. ***Fax:*** 202-401-4708
 4. ***U.S. Postal Mail:***

U.S. Department of Homeland Security
Office for Civil Rights and Civil Liberties
Compliance Branch
245 Murray Lane, SW
Building 410, Mail Stop #0190
Washington, D.C. 20528

B. Address any questions or concerns regarding this Instruction to CRCL.



Megan H. Mack
Officer for Civil Rights and Civil Liberties

11/7/13

Date

Appendix G: Arrests at Sensitive Locations in Fiscal Year (FY) 2019

1. U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations Arrests at Sensitive Locations in FY 2019

Type	Date	Sensitive Location	City	State	Description of Alien	Description of Action
Exigent	10/1/2018	School	Raleigh	NC	Convicted criminal and re-entry of previously removed alien (convictions for possession with intent to sell or distribute cocaine)	University police arrested the alien; officers were led to a sensitive location.
Exigent	4/24/2019	School	Pleasanton	TX	ICE fugitive	The local police department contacted ICE; officers subsequently were led to a sensitive location.

Note: ICE notes that courthouses are not considered sensitive locations under agency policy. As such, the above table does not include courthouse arrests.

2. ICE Homeland Security Investigations' Arrests at Sensitive Locations in FY 2019

Type	Date	Sensitive Location	City	State	Description of Alien	Description of Action
Planned	January 2019	School	Edwardsville	IL	The suspect was an employee of the school.	Criminal search warrant
Planned	May 2019	Care Facility	Sibley	IA	The suspect resided at the care facility.	Criminal search warrant
Planned	February 2019	School	Woodbury	MN	The suspect was a student at the school.	Criminal search warrant
Planned	October 2018	Religious Facility	New Orleans	LA	The suspect was an employee at the religious facility.	Criminal search warrant

Note: ICE notes that courthouses are not considered sensitive locations under agency policy. As such, the above table does not include courthouse arrests.