

Filing a complaint about VAWA Confidentiality violations with the US Department of Homeland Security (DHS)

DHS requires that you first file a complaint to the supervisor of the local DHS office involved in the violation. A complaint includes:

- Names of persons involved, dates, locations, and other details of the violation; and the gravity (including potential lethality) faced by the survivor. Danger to the survivor can increase if the aggressor learns that the survivor has filed for immigration relief, especially if the aggressor has been using deportation threats or otherwise abusing their power over the survivor's immigration status.
- Documentation that the survivor qualifies for VAWA Confidentiality protections, which can include receipt and approval forms from US Citizenship and Immigration Services (USCIS, the branch of DHS that processes immigration cases) and an immigration judge, or proof of qualifying victimization.

In the complaint, the immigration attorney may also urge the supervisor to act quickly to remedy any harm to the survivor or their family that occurred as a result of the violation; these remedies can include cancellation of a notice to appear, release of the survivor from DHS detention, exercise of prosecutorial discretion, or dismissal of the enforcement action.

If the complaint is unanswered or the local DHS office is unreceptive, the next step is to file a second complaint with the DHS Office of Civil Rights and Civil Liberties (CRCL). The CRCL will assign an investigator to investigate the complaint, review documentary evidence, and interview witnesses. The complaint to CRCL includes:

- The survivor's name, date of birth, and immigration case number (if applicable); how to safely contact the survivor; and the immigration attorney's contact information.
- A brief overview of the history of the case – the facts that make the survivor eligible for VAWA-specific immigration relief or protections under the VAWA Confidentiality provision; a description of the violation; and the status of any pending family, immigration, or criminal law cases (the advocate may need to assist the survivor to coordinate communications between attorneys).
- Detailed description of the violation, including the name(s) and office of the DHS official(s) involved; the date, time, and location of the violation; what occurred; and the names and contact information of witnesses.
- Documentation supporting or verifying the following:
 - Survivor's immigration status, such as copies of DHS filings, approval notices and other documentation from DHS
 - Victimization (e.g., medical records, photos, civil orders of protection, witness affidavits) that proves eligibility for VAWA-specific remedies, U-, or T-visa
 - VAWA Confidentiality violation, such as DHS documents served as part of the violation, summaries of witness statements
 - Efforts to address the violation through the local DHS office

In the event the survivor is subject to a DHS enforcement action, the immigration attorney may advocate with DHS to exercise prosecutorial discretion and dismiss or not pursue any enforcement action against the immigrant survivor. If the survivor still must appear in immigration court, the immigration attorney should seek to establish that DHS has the burden to prove that no part of its action violated the survivor's rights under VAWA Confidentiality. If violations exist, the immigration attorney should move to terminate the proceedings.

Works referenced

Orloff, L.E. (2013). VAWA confidentiality: History, purpose, DHS implementations and violations of VAWA confidentiality protections. In L. Orloff (Ed.), [*Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault*](#). National Immigrant Women's Advocacy Project, Washington College of Law at American University, and Legal Momentum.