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# FAQs

## Immigration Enforcement and Victim Services Programs

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In light of heightened fear within immigrant communities, the following FAQs are intended to address confidentiality and due process protections afforded to victim advocacy organizations and victims themselves. A recent report, [2017 Advocate and Legal Service Survey Regarding Immigrant Survivors](#), in collaboration with several national organizations, revealed an increase in immigration-related questions from survivors to their victim advocates and attorneys and uncertainty about pursuing assistance from the legal system. Federal law and Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) policies provide programs with several avenues for protecting the confidentiality of survivors. Advocates can reference these confidentiality protections when describing the confidentiality protections that their programs will adhere to if confronted with immigration enforcement.

These Frequently Asked Questions (FAQs) address common questions about responding to immigration enforcement activities at victim services programs. It is not intended to address situations where immigration officers or other law enforcement officers are engaging with an immigrant victim to provide assistance or to support victims in seeking an immigration benefit, such as assistance in placing a victim in a housing program, or working with a victim to provide a certification for a crime victim U Visa. This document proposes ideal practices for programs, however, **it is not legal advice**. Immigration and criminal laws vary from region to region, and federal immigration enforcement policies are constantly changing. Programs should analyze their program-specific risks, their community's particular needs, and the laws in their jurisdiction—including legal duties associated with an agency's funding sources—as they design or update program policies. Consulting a local immigration attorney with criminal law experience is highly advisable.

FAQs addressed in this document are:

1. Do immigration agents regularly try to detain individuals at victim services programs?
2. What should we do if immigration agents come to our building or facility?
  - Protections included in the Violence Against Women Act (VAWA)
  - Protections included in the Family Violence Prevention Services Act (FVPSA)
  - Protections included in the Victims of Crime Act (VOCA)
3. What types of policies and protocols should victim service programs have?
4. What should we do if ICE detains a program participant with dependent children?
5. Could our program be charged with violating the law if we do not grant immigration authorities access to the building?
6. What if a program participant is detained in or near our facility?

## 1. Do immigration agents regularly try to detain individuals at domestic violence or sexual assault victim services programs?

The risk that either Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) agents would come to a domestic violence or sexual assault victim services provider to detain an individual for immigration proceedings is relatively low. If it happens, it is most likely because an individual provided the address of the program as their home or mailing address to ICE or U.S. Citizenship and Immigration Services (USCIS). Nevertheless, it is important for victim advocacy programs to have clear policies and protocols to follow so that staff, volunteers, and board are prepared in the event ICE, CBP, or other federal or local law enforcement officers<sup>1</sup> arrive at the program to investigate or detain an individual, and so that current and future program participants from immigrant communities understand the availability of services to victims as well as your program's obligations to maintain their confidentiality.

## 2. What should we do if immigration agents come to our building or facility?

Under federal laws protecting victims of domestic violence, sexual assault, and other crimes, and related [state laws](#), victim services programs have certain obligations to maintain the confidentiality of victims seeking their services.

### Protections Included in the Violence Against Women Act (VAWA)

- 42 U.S.C. 13925 (b)(2), amended by VAWA 2013 (Section 3) prohibits the disclosure of victims' personal or personally identifying information. Personally identifying information is information that would identify an individual or that is "likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected." 42 U.S.C. 13925 (a)(20).
- VAWA prohibits the Department of Homeland Security (DHS) from using information solely from a spouse or parent who has battered the individual or subjected an individual to extreme cruelty, including any live-in family members of the alleged abuser, as the basis for arresting and charging an undocumented immigrant with removability, unless the individual has been convicted of certain serious crimes. See 8 U.S.C. § 1367 (a)(1).
- VAWA requires certification by ICE or other immigration officials that confidentiality provisions have been complied with when immigration enforcement actions leading to a removal proceeding are taken at specified locations, such as domestic violence shelters, rape crisis centers, or courthouses (if the individual 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). See 8 U.S.C. § 1229(e). These VAWA protections are in addition to protections under ICE/CBP policy as follows:
- Two memoranda published in 2011 set forth policy relevant to the victims of abuse. Although they do not specifically reference VAWA confidentiality protections, they provide added protection for victims:

<sup>1</sup> In some communities, law enforcement officers may have agreements under the Immigration Code (known as §287(g) agreements) where ICE has delegated immigration enforcement authority to local officials.

1. Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs requires that ICE officers, agents, and attorneys “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,” with special consideration for cases of domestic violence. Though various ICE officials have stated that this policy remains in effect, as of the date of publication of this FAQ, there have not been written documents issued by ICE that describe whether other policies that relate to immigration enforcement priorities override this guidance.
2. Enforcement Actions at, or Focused on, Sensitive Locations established policy that prohibits federal immigration enforcement activity, including arrests, at “sensitive locations” and encouraged “particular care” for children and victims of abuse. Such “sensitive locations” include schools, hospitals, places of worship, public demonstrations, and locations that “could reasonably be viewed as being at or near a sensitive location,” with organizations serving victims of crime or abuse given as an example. These policies do not completely bar immigration agents from entering these locations, only that enforcement actions at these locations are discouraged and that ICE agents have to go through a supervisory review process within ICE before they are undertaken, unless certain narrow exigent circumstances apply. DHS has confirmed that this policy remains in effect, though, like the 2011 Victim/Witness memo, it is unclear whether other policies that relate to immigration enforcement override this guidance.

### Protections Included in the Family Violence Prevention Services Act (FVPSA)

FVPSA established confidentiality and privacy protections under [42 U.S.C. 10406\(c\)\(5\)](#). Grantees and sub-grantees are prohibited from disclosing any personal or personally identifying information collected in connection with services requested, and are prohibited from revealing such information without the written, informed, reasonably time-limited consent of the individual.

### Protections Included in the Victims of Crime Act (VOCA)

VOCA requires that programs ensure the confidentiality of served individuals in order to maintain funding without penalty. Specifically, VOCA requires compliance with the regulations set out in [28 CFR Part 22](#). Information identifiable to a private person [cannot be shared or used as evidence without the written consent of the individual in question](#).

### 3. What types of policies and protocols should victim service programs have?

Because of victim service programs’ obligations to maintain confidentiality of program participants, and because many program locations would be protected under VAWA, or would be considered “sensitive locations” under ICE/CBP policy, staff and volunteers should be trained to make this clear to immigration agents and/or refer officers to their supervisor if they do show appear at a program location for enforcement action. Victim services would be well served to establish protocols for encounters with immigration and other law enforcement agents who are seeking to search, investigate, arrest, or detain an individual. See sample practice tips [in chapter 3 of BWJP’s Confidentiality: An Advocate’s Guide](#). Model policies and protocols as they relate to immigration enforcement should include:

1. Protocols requiring staff to immediately consult with a supervisor/program director before responding to immigration officers and informing immigration officers that they are not authorized to answer questions without first consulting with a supervisor.
2. Policies not to allow immigration and other law enforcement officers<sup>2</sup> access to non-public areas of their building and facilities without a judicial search warrant (signed by a judge or magistrate within the past fourteen days) granting them that access to search for specific, listed items. It should be noted that immigration officers may sometimes provide “administrative” arrest warrants (i.e., a form I-200, or form I-205, signed by an immigration officer) but these do NOT grant them permission to enter areas that are not open to the public, such as a domestic violence shelter or therapeutic offices, even if the person named in the administrative warrant is inside the building.
3. Policies prohibiting the release of information about program participants to immigration officers unless they can provide the program with a signed judicial warrant (or subpoena) specifically requiring the [release](#) of that information or unless the client has provided written, informed consent to such release, for example, in order to help them with an immigration or other legal matter.
4. Staff training (particularly for those at reception areas or who have initial contact with the public) on how to respond if immigration or law enforcement agents come to their location and establish a protocol for such situations. Such training should include protocols which:
  - a. Provide that staff inform immigration agents that they do not have permission to enter non-public areas of the building and facility unless they have a judicial warrant (as opposed to an administrative arrest warrant issued by ICE or CBP). If the agents claim to have a warrant, staff should contact a supervisor who can review the documents and follow up with legal counsel if necessary.
  - b. Provide that staff be trained that only valid judicial warrants are acceptable for entry and that they should not accept agents’ claims of having a warrant as sufficient to grant access. Reception staff should be trained to consult with a supervisor and supervisory staff should be trained to review the scope of any warrant and also that it is being executed within its permitted time frame.
  - c. Provide that if the immigration agents do not have a valid judicial warrant to search the building, staff should inform the agents that they are not authorized to consent to grant access to the facility.
5. Protocols on how staff should advise any program participants who are nearby about their rights to remain silent and not answer any questions posed by immigration agents.  
**Caveat:** Staff should be careful not to direct clients to not speak to the agents, lest it be interpreted as interference. If possible, protocols should include how program participants can be moved to a private location in the facility until the situation has been resolved.
6. Reminders to staff that they should not lie to immigration officers. For instance, if immigration agents are asking about an individual who is actually in the building, staff should not say the person is not there but should simply decline to answer questions about that individual and consult with a supervisor.

<sup>2</sup> These FAQs are intended to address situations where law enforcement is at a program location for the purposes of immigration enforcement or investigation or arrest of an individual connected to criminal activity, and not for voluntary meetings or community engagement purposes.

7. Protocols including staff documentation of the name/contact information of the agents and the supervisor of the agents (ask for their cards) and, if possible, recording the interactions with immigration agents (but they should announce they are making a recording). After any interaction, staff protocols should include preparing a thorough report of the interaction.
8. Policies reminding staff that they should not take any action to hide or conceal any person, or aid in their escape from the premises. (See, Advisory on criminal harboring).

#### 4. What should we do if ICE detains a program participant with dependent children?

As part of safety planning with immigrant survivors, victim service programs should share information about developing “family preparedness plans” that include instructions about who can care for children in the event a parent is detained, as well as document emergency contact and children’s medical information as needed for those temporarily caring for the children. For more resources, see [Appleseed Network’s deportation manual](#) and [Immigrant Legal Resource Center’s guide to family preparedness plans](#).

#### 5. Could our program be charged with violating the law if we do not grant immigration authorities access to our building?

Victim services programs are not breaking federal law by refusing to turn over information absent a subpoena or judicial warrant. However, victim services programs and their staff should be aware that if they take affirmative steps to conceal the whereabouts of an individual being sought by immigration authorities or they aid in the person’s escape from those authorities they could be accused of violating federal laws against “harboring” undocumented individuals. Asserting the right not to answer questions about persons who may or may not be present in a building or refusing to collect information regarding the immigration status of individuals served would not implicate federal prohibitions against the harboring of undocumented individuals. (See Advisory on Criminal Harboring by Asian Pacific Institute on Gender-Based Violence).

#### 6. What if a program participant is detained in or near our facility?

You have a right to observe the arrest from a reasonable distance, so as not to interfere, and to record the incident (but due to various recording consent laws, those engaged in recording should announce that they are doing so). To the extent that it is possible to do so without interfering with the immigration officers carrying out the detention, remind the program participants that they have the right to remain silent and ask them if they would like you to help them contact a family member or an attorney.

#### Conclusion.

Reviewing program policies and protocol, and fully training staff and volunteers to address how to respond to possible, albeit highly unlikely, immigration enforcement activities at a victim services program is critical. Because victims from immigration communities may fear seeking assistance and services, it is incumbent on victim services programs to understand the confidentiality protections afforded their agencies and the victims they serve.

