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# FAQs

## Immigration Enforcement and Victim Services Programs

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January 2025

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In light of heightened fear being expressed by advocates within immigrant communities, the following FAQs are intended to address confidentiality and due process protections afforded to victim advocacy organizations and victims themselves. A 2019 report, *Immigrant Survivors Fear Reporting Violence*, conducted in collaboration with several national survivor focused organizations, revealed a high need for responses to immigration-related questions from survivors to their victim advocates and attorneys, and uncertainty about pursuing assistance from the legal system. Federal law and certain Department of Homeland Security (DHS) 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. They are 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 shelter or housing 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?

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## 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 the 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) 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 (see next bullet-point).

<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.

## 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](#). Section 22.28 states that 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 the confidentiality of program participants, and because many program locations would be protected under VAWA or state confidentiality laws, staff and volunteers should be trained to make this clear to immigration agents and/or refer officers to their supervisor if they do show up at a program location for enforcement action. Victim services organizations would be well served to establish protocols for [emergency situations](#), such as encounters with immigration and other law enforcement agents (including state/local law enforcement, or Child Protective Services) who are seeking to search, interview, 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. Training for staff about informing program participants about their rights if they are approached by immigration officials, including the right to remain silent. Sample resources can be found from the [American Civil Liberties Union](#) or the [Immigrant Legal Resource Center](#).
2. Protocols directing 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.
3. Policies limiting 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 access to search for specific, listed items. It should be noted that immigration officers may sometimes provide "administrative"

<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.

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.

4. 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. (See [template for limited release of information \(ROI\) by the Battered Women's Justice Project](#) and [NNEDV's FAQ's on Survivor Confidentiality Releases](#))
5. 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 establishing protocols 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. In instances where agents or officers have a valid judicial search or arrest warrant, staff should request the opportunity to discuss the matter with the program participant and allow them to surrender themselves, rather than have the program searched.
6. 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, in case it might 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.
7. Reminders to staff that they should not lie to immigration officers. For instance, if immigration agents are asking about an individual who is in the building, staff should not say the person is not there but should simply decline to answer questions about that individual, and they should consult with a supervisor.
8. 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.

9. Policies reminding staff that they should not take any action to hide or conceal any person, or advise them to flee, resist arrest, or aid in their escape from the premises. (See Chapter 3 of [BWJP's Confidentiality: An Advocate's Guide](#).)

#### 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 to not 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. Victim Services organizations should obtain independent legal advice about risks they face in their jurisdictions related to harboring, transporting, or "aiding or abetting" unauthorized immigration. (See the [Immigrant Legal Resource Center's State Map on Immigration Enforcement](#))

#### 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 protocols 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 immigrant 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.

**Acknowledgements:** The Asian Pacific Institute on Gender-Based Violence thanks and acknowledges the contributions of the Battered Women's Justice Project, Mariam Durrani and Kelly McCabe of the National Network to End Domestic Violence, and the Northwest Immigrant Rights Project in the development of this document.



Funding for this document was made available through the US Department of Health and Human Services, Grants #90EV0526 (Asian Pacific Institute on Gender-Based Violence) and #90EV0440 (Battered Women's Justice Project). The viewpoints contained in this document are solely the responsibility of the author(s) and do not represent the official views or policies of the department and do not in any way constitute an endorsement by the Department of Health and Human Services.