

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 10036.2: Implementation of Section 1367 Protections for Noncitizen Victims of Crime**Issue Date:** March 16, 2022**Superseded:** ICE Policy No. 10036.1, Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (Jan. 22, 2007)

1. **Purpose/Background.** This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy for the identification and disclosure of information protected by 8 U.S.C. § 1367 (“Section 1367”), treatment of information received from prohibited sources, and required certifications when certain enforcement actions are taken at specified locations. Congress enacted these protections so that human traffickers, perpetrators, and abusers cannot use the immigration system to retaliate against their victims. The requirements and procedures described in this Directive protect noncitizen crime victims who are beneficiaries of pending or approved victim-based benefits, including T nonimmigrant status (T Visa), U nonimmigrant status (U Visa), Continued Presence, and relief or benefits under the Violence Against Women Act (VAWA). By carefully considering confidentiality requirements applicable to certain victims and sources of information about victims, ICE complies with the law and ensures that its activities will not contribute to their victimization when working with or encountered by law enforcement.
2. **Policy.** ICE personnel are generally prohibited from using or disclosing information protected by Section 1367 to anyone other than an employee of DHS, Department of State (DOS), or the Department of Justice (DOJ), to include any information related to any noncitizen who has, or who ICE personnel has reason to believe may have, a pending or approved application for a T visa; U visa; Continued Presence; or VAWA-based benefit, including VAWA Cancellation of Removal.¹ Additionally, ICE personnel must verify any information provided by a prohibited source associated with the crime or abuse before acting upon it, regardless of whether an application is pending. Likewise, ICE personnel are required to complete the required certification for certain enforcement actions taken at specified locations, as defined by statute and discussed below.
 - 2.1. **Confidentiality and Non-Disclosure.** Subject to limited exceptions, ICE personnel are prohibited by law from willfully using, publishing, or permitting disclosure of protected 1367 information to anyone other than a sworn officer or employee of DHS, DOS, or DOJ for legitimate agency functions. This includes confirming the identity of a noncitizen by acknowledging the existence of information or record(s). Information that cannot be disclosed also includes any information about a noncitizen contained in a DHS

¹ See generally paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(T), (U), (51), or section 240A(b)(2) of such Act, 8 U.S.C. 1229b(b)(2).

database as well as information that has not yet been included in a database, such as the location of a beneficiary. The non-disclosure provision applies not only to the primary applicant, but also any beneficiaries listed on a pending or approved application. The non-disclosure provision applies until the application has been denied and all opportunities to appeal have been exhausted. The non-disclosure provision is retroactive, and thus, covers all records previously collected regardless of the noncitizen's current immigration status. Breaches of the confidentiality and non-disclosure provisions, or knowingly making a false certification under INA § 239 may result in disciplinary action and a civil penalty of not more than \$5,000 for each violation.²

There are certain statutory exceptions to the non-disclosure provision, as described in section 5.2 of this Directive.

Section 1367 does not distinguish between types of information (e.g., Personally Identifiable Information) or categories of records (e.g., applications) but applies to all information related to a protected noncitizen, including records or other information that do not specifically identify the noncitizen as the beneficiary of a pending or approved T visa; U visa; Continued Presence; or VAWA-based benefit, including VAWA Cancellation of Removal.

- 2.2. Prohibited Sources.** ICE personnel must not make adverse determinations of noncitizen admissibility or removability based on information furnished solely by prohibited sources associated with the crime or abuse underlying the application (or potential application) for benefits, regardless of whether the noncitizen has yet to apply for a T visa; U visa; Continued Presence; or VAWA-based benefit, including VAWA Cancellation of Removal.³ When ICE personnel receive adverse information about any victim of domestic violence, sexual assault, human trafficking, or a qualifying U visa crime—including and especially from a prohibited source—they must treat such information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to investigating the credibility of the adverse information. Furthermore, ICE personnel receiving information solely from a prohibited source must not act on that information unless there is an independent source of corroboration. In addition, ICE personnel generally will not act on tips from an anonymous source against known noncitizen crime victims absent special circumstances or aggravating factors.
- 2.3. Specified Locations.** As required by INA § 239(e)(2), ICE personnel must complete a certification of compliance in all cases where enforcement actions are taken at specified locations leading to a noncitizen being placed in removal proceedings. In such cases, the Notice to Appear (NTA) must include a certification of compliance articulating that ICE

² Each unauthorized disclosure is treated as an individual violation.

³ There are a number of ways ICE employees might receive “tips” from an abuser or an abuser’s family, such as: a former spouse or family member calling ICE to report the victim as “illegal” or providing information to USCIS to rebut the basis for the victim’s application, or a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented.

personnel complied with the Section 1367 non-disclosure and prohibited source provisions.

- 2.4. **Required Training.** All ICE personnel who, through the course of their work, may come into contact with immigration information or records for noncitizens maintained in ICE systems, including ICE personnel who may disclose information on noncitizens, must complete the relevant prerequisite training courses. Relevant ICE personnel must complete the training when onboarding and as required thereafter.
- 2.5. **Reporting Violations and Other Actions.** ICE personnel must report any suspected or confirmed unauthorized disclosure of protected Section 1367 information, use of uncorroborated information from a prohibited source, and/or failure to properly certify compliance for action at a specified location. Additionally, ICE personnel must report exceptions to disclosure, enforcement actions at specified locations, and enforcement actions taken after corroborating information from a prohibited source, as required by this Directive.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
 - 3.1. **Headquarters Responsible Officials (HROs).** Executive Associate Directors (EADs) of Enforcement and Removal Operations, Homeland Security Investigations, and Management and Administration (M&A); the Associate Director of the Office of Professional Responsibility (OPR); the Principal Legal Advisor⁴; and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.
 - 3.2. **Field Responsible Official (FRO).** The highest-ranking official in any ICE field location. This includes Special Agents in Charge, Field Office Directors, Chief Counsel, ICE Attachés, and any other officials who have been designated, in writing, by the Director.
 - 3.3. **Disclosure.** Transmission, communication, allowing access to, sharing, or transferring of any information to any Federal, State, local, tribal, or territorial government; private-sector entity; or any foreign government, foreign person, or international organization; or any other individual.
 - 3.4. **ICE Personnel.** All ICE employees and contractors, designated immigration officers, special agents, and warrant service officers required to comply with the mandates set out in Section 1367 and this Directive.
 - 3.5. **Prohibited Source.** Individuals associated with the crime or abuse of a noncitizen who may provide adverse information regarding the admissibility or deportability of a

⁴ This Directive applies to the Office of the Principal Legal Advisor (OPLA) to the extent it is not inconsistent with directives, policies, or formal guidance issued by the General Counsel of the Department of Homeland Security (DHS). DHS Delegation No. 0400.2, Delegation to the General Counsel (Sept. 14, 2004).

noncitizen.⁵ Prohibited sources include: 1) a spouse or parent who engages in the proscribed mistreatment of noncitizen or subjected the noncitizen to extreme cruelty; 2) a member of the spouse's or parent's family residing in the same household as the noncitizen who has engaged in the proscribed mistreatment of the noncitizen or subjected the noncitizen to extreme cruelty when the spouse or parent consented to or acquiesced in such mistreatment or extreme cruelty; 3) a spouse or parent who engages in the aforementioned mistreatment of the noncitizen's child or subjected the noncitizen's child to extreme cruelty (unless the noncitizen actively participated in the mistreatment or extreme cruelty); 4) a member of the spouse's or parent's family residing in the same household as the noncitizen who has engaged in the aforementioned mistreatment of the noncitizen's child or subjected the noncitizen's child to extreme cruelty when the spouse or parent consented to or acquiesced in such mistreatment or extreme cruelty and the noncitizen did not actively participate in such mistreatment or extreme cruelty; 5) in the case of a noncitizen who is applying for a U visa, the perpetrator of the substantial physical or mental abuse and the criminal activity; and 6) in the case of a noncitizen who is applying for a T visa, has been granted Continued Presence, or is applying for immigration relief as a VAWA self-petitioner, the trafficker or perpetrator.

3.6. Protected Section 1367 Information. Any information relating to a noncitizen who has a pending or approved application for nonimmigrant or immigrant status as: 1) a victim of a severe form of human trafficking who generally is cooperating with law enforcement authorities (T visa, U visa, and Continued Presence); 2) a noncitizen who has suffered substantial physical or mental abuse as the result of qualifying criminal activity and who generally is cooperating in the investigation or prosecution of that activity (U visa); or 3) VAWA-protected noncitizens.

3.7. Specified Locations.⁶ Locations specified in INA § 239(e)(2), where if an enforcement action leading to a removal proceeding was taken against a noncitizen at any of the locations specified below, the Notice to Appear shall include a statement that the provisions of Section 1367 have been complied with. The locations specified include: 1) domestic violence shelters; 2) rape crisis centers; 3) supervised visitation centers; 4) family justice centers; 5) victim services or victim services providers; 6) community-based organizations; and 7) courthouses (or in connection with the appearance of the noncitizen at a courthouse) *if* the noncitizen 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 noncitizen has been battered or subject to extreme cruelty or if the noncitizen is the beneficiary of a pending or approved T or U visa.

⁵ For a current list of prohibited sources, see DHS Instruction No. 002-02-001, Rev. No. 00.1, Implementation of Section 1367 Information Provisions (Nov. 7, 2013; revised May 28, 2019).

⁶ Specified locations, as defined by this Directive and INA § 239(e)(2), are separate and distinct from locations identified by ICE and DHS guidance governing enforcement actions at sensitive locations. *Compare* INA § 239(e), with ICE Directive No. 11072.1, Civil Immigration Enforcement Actions Inside Courthouses (Apr. 27, 2021), and Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., *Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021).

4. Responsibilities.

4.1. HROs are responsible for:

- 1) Ensuring overall compliance with this Directive within their respective Directorate or Program Office;
- 2) Developing and issuing implementation guidance specific to their Directorate or Program Office;
- 3) Within 30 days of issuance of this Directive identifying the relevant ICE personnel within their Directorate or Program Office who, based on responsibilities and duties, may access and use protected Section 1367 information maintained in ICE systems to ensure those designated ICE personnel take the required training upon onboarding and as required thereafter, and reporting this information to ICE learning management;
- 4) Reporting compliance with annual training requirements within their Directorate or Program Office;
- 5) Identifying the process for documenting authorized disclosures of protected Section 1367 information within their respective Directorate or Program Office that occur pursuant to the exceptions enumerated under section 5.2 of this Directive; and
- 6) Tracking and reporting to the ICE Office of Diversity and Civil Rights (ODCR) and the Office of Regulatory Affairs and Policy (ORAP), on a quarterly basis, the following:
 - a) Enforcement actions that an FRO authorizes against noncitizen victims based on information corroborated from a prohibited source;
 - b) Enforcement actions that an FRO authorizes against noncitizens at specified locations;
 - c) Authorized disclosures based on the exceptions enumerated under Section 5.2; and
 - d) Any other information as required by this Directive.

4.2. FROs are responsible for:

- 1) Implementing this Directive within their area(s) of responsibility;

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- 2) Adhering to all associated implementing guidance within their area(s) of responsibility;
- 3) Within 30 days of issuance of this Directive identifying the relevant ICE personnel within their field location who, based on responsibilities and duties, may access and use protected Section 1367 information maintained in ICE systems to ensure those designated ICE personnel take the required training upon onboarding and annually thereafter, and reporting this information to ICE learning management;
- 4) Reviewing and approving enforcement actions that may lead to a removal proceeding before they are taken against noncitizens with Section 1367 protections at specified locations,⁷ including ensuring that such enforcement actions at specified locations are appropriately documented in the appropriate ICE system that allows for the tracking and reporting of such actions in accordance with this Directive;
- 5) Reporting compliance with annual training requirements;
- 6) Reporting suspected or confirmed violations of Section 1367 or INA § 239(e) in accordance with this Directive;
- 7) Reviewing and approving statutory and non-statutory exceptions to non-disclosure within their area(s) of responsibility, pursuant to DHS guidance and this Directive;
- 8) Ensuring that all authorized disclosures of Section 1367 records and all enforcement actions taken following corroborated prohibited source information are documented in an appropriate ICE system that allows for the tracking and reporting of such disclosures in accordance with this Directive and any implementation guidance covering their area(s) of responsibility; and
- 9) Tracking and reporting to their respective HRO:
 - a) Enforcement actions that the FRO authorizes against noncitizen victims based on information corroborated from a prohibited source;
 - b) Enforcement actions leading to a removal proceeding that the FRO authorizes against noncitizens at specified locations;
 - c) Authorized disclosures based on the exceptions enumerated under Section 5.2; and
 - d) Any other information as required by this Directive.

⁷ A Field Office Director or Special Agent in Charge may delegate this approval authority to the Deputy Field Office Director or Deputy Special Agent in Charge, but no lower. Such delegations of authority must be made in writing and provided to the HRO.

4.3. ORAP is responsible for:

- 1) Coordinating with the Council on Combating Gender-Based Violence, as required, on updates or revisions to ICE's Section 1367 implementing policy; and
- 2) Consulting with Directorates and Program Offices on the development of the implementing guidance required by Section 5.1 of this Directive.

4.4. ICE Personnel are responsible for:

- 1) Protecting the confidentiality of protected Section 1367 information for noncitizen crime victims;
- 2) Treating information received from a prohibited source as inherently suspect, including finding an independent source for the information before acting on it, and in the absence of serious adverse factors, considering exercising favorable discretion to not pursue an action based on corroborated prohibited source information;
- 3) Adhering to Section 1367 and INA § 239(e) requirements regarding certain enforcement actions taken at specified locations, including but not limited to seeking FRO review and approval prior to taking enforcement actions that may lead to removal proceedings against noncitizens with Section 1367 protections at specified locations;
- 4) Reporting the following suspected or confirmed Section 1367 or INA § 239(e) violations in accordance with this Directive to their chain of command;
 - a) The use of uncorroborated information from a prohibited source;
 - b) The unauthorized disclosure of protected information; and
 - c) The failure to properly certify compliance for an enforcement action leading to a removal proceeding against a noncitizen taken at a specified location; and
- 5) Timely completing all Section 1367 training requirements.

4.5. The Office of Information Governance and Privacy (IGP) is responsible for:

- 1) Providing guidance to ensure compliance with federal privacy laws and policies pertaining to Section 1367;
- 2) Consulting with Directorates and Program Offices on the development of the implementing guidance required by Section 5.1 of this Directive;

- 3) Reviewing and monitoring the execution of implementing guidance by Directorates and Program Offices required by Section 5.1 of this Directive for consistency and compliance with applicable law and policy, and reporting annually on Directorate and Program Office execution to the Office of the Director through ORAP;
- 4) Reporting suspected and confirmed Section 1367 violations to the DHS Office of Civil Rights and Civil Liberties (CRCL) and the DHS Privacy Office (PRIV);
- 5) Tracking and reporting suspected and confirmed Section 1367 violations in accordance with this Directive, including remedial measures or mitigations put in place in response to suspected or confirmed Section 1367 violations;
- 6) Handling the investigation, notification, and mitigation for Section 1367 non-disclosure violations; and
- 7) In coordination with the Office of the Principal Legal Advisor (OPLA), identifying the process for responding to third-party or other requests for information, such as Freedom of Information Act (FOIA) requests or ad hoc requests received from other federal agencies, to ensure compliance with disclosure prohibitions pursuant to Section 1367 and this Directive, as well as all applicable FOIA and information-sharing policies.

4.6. The Office of the Chief Information Officer (OCIO) is responsible for:

- 1) Evaluating current and new information system(s) used by ICE personnel to perform their job responsibilities and ensuring all information systems are adequate to enable ICE personnel to uphold the statutory requirements of Section 1367, including warnings to readily identify noncitizens protected by Section 1367 provisions;
- 2) Ensuring that no record of a noncitizen with a pending or approved application subject to Section 1367 will appear in public systems; and
- 3) Implementing and incorporating the necessary security and privacy controls during the IT development to ensure that ICE IT systems maintain the capability to identify and filter Section 1367 records before the deployment of an IT system.

4.7. The Office of Professional Responsibility (OPR) is responsible for:

- 1) Assessing and/or investigating any suspected violations of DHS or ICE policy relating to Section 1367, including but not limited to unauthorized disclosures or failure to corroborate information from a prohibited source; and
- 2) Evaluating whether any Section 1367 or INA § 239(e) violation was willful and potentially subject to the penalty clause under Section 1367(c).

4.8. ODCR is responsible for:

- 1) Reporting prohibited source and/or specified location violations to CRCL within 24 hours of receipt; and
- 2) Reporting disclosures of Section 1367-protected information pursuant to an exception, enforcement actions based on corroborated source information, and enforcement actions taken at specified locations to CRCL on a quarterly basis or upon request.

4.9. The Office of Public Affairs is responsible for reviewing all information to be publicly released to ensure that it does not contain Section 1367-protected information.

5. Procedures/Requirements.

5.1. Implementing Guidance. Within 12 months of issuance of this Directive, HROs, in appropriate consultation with OPLA, ORAP, and IGP, shall develop and issue implementing guidance consistent with this Directive and specific to how Section 1367 protections impact their Directorate or Program Office and personnel based on procedural workflows and internal operations. HROs will determine the form or framework (e.g., memorandum, standard operating procedure) suitable for the issuance of Section 1367 implementation guidance for their Directorate or Program Office. Implementation guidance must satisfy the following objectives to ensure operational effectiveness and compliance with legal, regulatory and policy requirements:

- 1) Identify and implement all processes and procedures specific to the Directorate or Program Office's mission and functions to comply with all sections of this Directive (e.g., reporting) as well as all statutory requirements;
- 2) Identify the relevant ICE personnel within their Directorate or Program Office who, based on their responsibilities and duties, may access Section 1367 information maintained in ICE systems;
- 3) Identify the information system(s) as well as the system mechanisms and warning identifiers (e.g., banner) used to notify the user that they are encountering Section 1367-protected records;
- 4) Identify reporting procedures in accordance with Sections 5.5 and 5.6 of this Directive; and
- 5) Identify in their implementing guidance all specific positions that are required to take the PALMS training, *Noncitizen Victims of Crime: Immigration Benefits and Confidentiality Provisions* (previously *Alien Victims of Crime: Immigration Benefits and Confidentiality Provisions*), or any successor training, and provide this list to the ICE Office of Leadership and Career Development (OLCD).

5.2. Exceptions to Non-Disclosure. There may be instances in which disclosure of protected Section 1367 information is mandated by court order or constitutional requirements,⁸ or when disclosure is appropriate under one of the eight exceptions under 8 U.S.C. § 1367(b). ICE personnel are required to request FRO approval and coordinate with OPLA, as appropriate, prior to any disclosure, in order to determine if any of the following exceptions apply, or if disclosure is otherwise mandated by court order or constitutional requirements:

- 1) Disclosure in the same manner and circumstances as census information, which allows for the sharing of statistical compilations;
- 2) Disclosure to law enforcement officials to be used solely for a legitimate law enforcement purpose, provided that disclosure is made solely and in furtherance of the Department's or the recipient's legitimate law enforcement purpose;⁹
- 3) Disclosure in connection with judicial review of a determination in a manner that protects the confidentiality of such information;
- 4) Disclosure pursuant to a written waiver where adults who may be applicants or beneficiaries in the case have waived the disclosure restrictions by signing a waiver explicitly waiving Section 1367 protections;
- 5) Disclosure to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for welfare and public benefits under 8 U.S.C. § 1641(c);
- 6) Disclosure of closed cases, (e.g., application for relief has been denied and all opportunities for appeal have been exhausted) to the chairmen and ranking members of the House and/or Senate Committees on the Judiciary in their oversight capacities;
- 7) Disclosure to nonprofit, nongovernmental victim services providers with the prior written consent of the victim, for the sole purpose of assisting victims in obtaining victim services; and
- 8) Disclosure to elements of the U.S. Intelligence Community, other Federal departments or agencies possessing a counterterrorism function, or foreign governments to be used solely for a national security purpose, provided that disclosure is made in furtherance of the recipient's authorized National Intelligence or

⁸ Examples of constitutional obligations necessitating disclosure include, but are not limited to, providing 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). In such cases, OPLA must be consulted before disclosure to DOJ or any state or local prosecutor is made.

⁹ See DHS Instruction No. 215-01-002, Disclosure of Section 1367 Information to Law Enforcement Officials for Legitimate Law Enforcement Purposes (Jun. 18, 2016).

counterterrorism function and the information provided is used only for the authorized purpose for which it was provided.¹⁰

5.3. Corroborating Information. ICE personnel who receive information from the public about noncitizens must verify whether the information pertains to a Section 1367-protected noncitizen and determine if the information came from a prohibited source. Where information pertains to a Section 1367-protected noncitizen, the information must be corroborated from a source independent of the prohibited one.

- 1) Evaluating Tips and Leads. All tips and leads about noncitizens must be evaluated to determine if the information pertains to a noncitizen with Section 1367 protections, including:
 - a) Affirmatively checking available databases to determine whether the noncitizen has a pending or approved application subject to Section 1367 protections;¹¹ and
 - b) Not acting on anonymous tips against known noncitizen crime victims absent special circumstances or aggravating factors.
- 2) Information from Prohibited Sources. If ICE personnel receive actionable information that is suspected or determined to be solely from a prohibited source, or if ICE personnel cannot definitively state that the information did not come from a prohibited source, before taking any enforcement action ICE personnel must corroborate the information from an independent source and:
 - a) Document in the Alien file, or appropriate electronic system of records, what information was received, from whom the information was received, whether and how the information was corroborated, and what adverse factors about the noncitizen exist to justify pursuing action in the case;
 - b) Check for any relevant criminal background of the reporting individual for indications that the reporting individual is a prohibited source;
 - c) Include this information when seeking FRO review and approval for enforcement actions or OPLA consultation regarding non-disclosure matters;
 - d) If the FRO determines it is appropriate to pursue an action in the case and authorizes such action, the FRO shares details about the action with their HRO after such action is taken; and

¹⁰ See DHS Instruction No. 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes (Nov. 7, 2013).

¹¹ The lack of a pending or approved petition or application does not necessarily mean that the prohibited source provisions do not apply. ICE personnel must stay vigilant for indicia that a noncitizen may be a crime victim.

- e) Take appropriate measures to ascertain any relationship between the reporting individual and the reported noncitizen and how the reported information was obtained.
- 3) Exception. The prohibited source restriction does not apply to a noncitizen who has been convicted of a crime listed in INA § 237(a)(2). ICE personnel should consult with OPLA to determine if this exception applies. Moreover, even where this exception applies, ICE personnel should endeavor to corroborate the information from an independent source prior to utilizing it where practicable.

5.4. Required Certifications for Certain Enforcement Actions at Specified Locations.

Where an enforcement action leading to a removal proceeding was taken against a noncitizen at a specified location, ICE personnel must certify that they independently verified the inadmissibility or removability of a noncitizen subject to Section 1367 protections. Accordingly, before issuing an NTA to a noncitizen as a result of an enforcement action taken at a specified location, ICE personnel must record the following information on the Form I-213, *Record of Deportable/Inadmissible Alien*:

- 1) The specified location where the enforcement action occurred;
- 2) Whether any information related to the noncitizen's admissibility or removability was provided by a prohibited source;
- 3) If information was provided by a prohibited source, whether and to what extent such information was independently verified; and
- 4) An acknowledgement of compliance with the Section 1367 requirements.¹²

Noncitizens encountered at specified locations may be beneficiaries of pending or approved applications for benefits; however, regardless of whether the noncitizen applied for or does not intend to apply for a victim-based application or petition, certain requirements apply. While INA § 239(e) does not prohibit arrests of noncitizens at specified locations, ICE personnel encountering noncitizens at such locations and considering an enforcement action that may lead to a removal proceeding must verify, to the fullest extent reasonably practicable, whether a particular noncitizen is a victim who falls within the protection of the Section 1367 provisions. In deciding whether to effectuate an arrest of a noncitizen subject to Section 1367 protections at a sensitive location, ICE personnel should adhere to all relevant DHS and ICE enforcement priorities and policies.¹³

¹² Such an acknowledgement should consist of the statement, if factually accurate: "I certify that, to the best of my knowledge and belief, I have complied with the provisions of 8 U.S.C. § 1367." If Section 1367 requirements were not followed, ICE personnel must immediately bring the issue to the attention of their supervisor.

¹³ See, e.g., ICE Directive No. 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses* (Apr. 27, 2021), and Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., *Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021).

5.5. Reporting Violations. All ICE personnel must report violations as follows:

- 1) Non-Disclosure Violation. Non-disclosure violations are reported as, and in the same manner as, privacy incidents. ICE personnel must report any suspected or confirmed unauthorized disclosure of protected Section 1367 information within 24 hours of discovery to the ICE Security Operations Center (SOC) or the IT Help Desk. IGP must notify the Office of the Director, and will also notify the DHS Chief Privacy Officer and CRCL as soon as practicable, but in no event later than 24 hours after discovery of an unauthorized disclosure.
- 2) Prohibited Source and/or Specified Location Violation. ICE personnel must report any suspected or confirmed violation of the use of information from a prohibited source and/or failure to properly certify compliance for an enforcement action at a specified location leading to a removal proceeding within 24 hours to their supervisor. Supervisors must report this information to their FRO, who must report it to their HRO. HROs are required to report such violations as soon as practicable to the Office of the Director and ODCR; ODCR will report all prohibited source and specified location violations to CRCL within 24 hours after receiving notification of the violation from the relevant HRO.

5.6. Additional Reporting Requirements. The following additional reporting requirements apply:

- 1) Disclosures under the Exceptions: FROs approve disclosures and coordinate appropriately with OPLA, prior to any disclosure, in order to determine if any of the exceptions under Section 5.2 apply. The FRO is required to report to their HRO any authorized disclosures, who must report any authorized disclosures to ODCR. ODCR must report such authorized disclosures to the CRCL on a quarterly basis or upon request.
- 2) Enforcement Actions Based on Corroborated Source Information: FROs approve actions based on corroborated source information. If the FRO authorizes such action, the FRO will report the action to their HRO, who will report the action to ODCR. ODCR must report any such actions to CRCL on a quarterly basis or upon request.
- 3) Certain Enforcement Actions Taken at Specified Locations: FROs approve, in advance, an enforcement action leading to a removal proceeding against noncitizens with Section 1367 protections at specified locations. If the FRO authorizes such action, the FRO must report the action to their HRO, who will report it to ODCR. ODCR must report any such actions to CRCL on a quarterly basis or upon request.

6. Recordkeeping. All documents created or received by ICE personnel must be maintained in accordance with a National Archives and Records Administration (NARA) General Records Schedule or an applicable DHS or ICE records schedule. If a schedule does not

exist that covers the records, they are considered unscheduled. Unscheduled records cannot be destroyed or deleted until a schedule has been developed and approved by NARA.

7. Authorities/References.

- 7.1. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002) (codified, as amended, in Title 6, United States Code).
- 7.2. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).
- 7.3. Violence Against Women Act (VAWA) of 1994, Pub. L. No. 103-322, §§ 40001-40703, 108 Stat. 1796 (1994).
- 7.4. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006).
- 7.5. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).
- 7.6. 8 U.S.C. § 1229(e), Certification of Compliance with Restrictions on Disclosure.
- 7.7. 8 U.S.C. § 1367 (2013), Penalties for Disclosure of Information.
- 7.8. DHS Directive No. 002-02, Rev. No 00.1, Implementation of Section 1367 Information Provisions (Nov. 1, 2013; revised Apr. 29, 2019).
- 7.9. DHS Instruction No. 002-02-001, Rev. No. 00.1, Implementation of Section 1367 Information Provisions (Nov. 7, 2013; revised May 28, 2019).
- 7.10. DHS Directive No. 215-01, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes (Nov. 6, 2013).
- 7.11. DHS Instruction No. 215-01-001, Disclosure of Section 1367 Information to National Security Officials for National Security Purposes (Nov. 7, 2013).
- 7.12. DHS Instruction No. 215-01-002, Disclosure of Section 1367 Information to Law Enforcement Officials for Legitimate Law Enforcement Purposes (Jun. 8, 2016).
- 7.13. DHS Instruction Guide 047-01-008, Privacy Incident Handling Guidance (Dec. 4, 2017).
- 7.14. Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., *Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021).

- 7.15. ICE Directive No. 11072.1, Civil Immigration Enforcement Actions Inside Courthouses (Apr. 27, 2021).
- 7.16. ICE Directive No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (Jun. 17, 2011).
8. **Attachments.** None.
9. **No Private Right.** This Directive 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.



Lee D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement