

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
HOMELAND SECURITY INVESTIGATIONS**

**HSI Directive 21-05: Federal Victim Assistance Mandates and Responsibilities**

**Issue Date:** October 19, 2021  
**Effective Date:** October 19, 2021  
**Superseded:** ICE Directive 10071.1, "Victim Assistance Program," dated August 25, 2011, no longer applies to HSI.  
**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** This Directive provides U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) personnel with policies and procedures required to comply with federal crime victims' rights for victims identified in HSI investigations. This Directive applies to HSI personnel who come in contact with victims. Crime victims' laws mandate that investigative agency personnel provide victims with specific information regarding their rights and referrals to services, and that they make best efforts to see that victims are accorded specific court-enforceable rights; victims, therefore, have the right to sue the investigative and prosecutorial agencies that do not meet their obligations to victims under the law.
2. **Policy.** It is the policy of HSI in criminal investigations to comply with all applicable laws and ICE-wide policy governing federal victim assistance, federal crime victims' rights, and crime-specific laws pertaining to victims such as child abuse, human trafficking, and child sexual exploitation. HSI personnel will minimize, in accordance with applicable law, the physical, psychological, and financial hardships suffered by crime victims. In any HSI investigation, HSI personnel are required by law to identify crime victims, exercise just and fair treatment of victims, treat them with respect and dignity, provide them with access to information and referrals for social services, advise them of their legal rights, and conduct appropriate investigative interviews of victims. Furthermore, HSI personnel must be mindful of the privacy concerns of victims and witnesses and refrain from releasing personal or confidential information about victims and witnesses to the press or the public as protected by applicable law.
3. **Definitions.** The following definitions apply for the purposes of this Directive only:
  - 3.1. **Child:** A child, also referred to as a minor, is a person under 18 years of age.
  - 3.2. **Forensic Interview:** A forensic interview is a fact-finding interview that is designed to elicit accurate and complete information in an investigation. It is conducted by a forensic interview specialist (FIS) trained in conducting interviews of minor victims and witnesses as well as adult victims and witnesses who suffer from cognitive or developmental disability, or from severe trauma. It is most commonly conducted for investigations of

child exploitation, cybercrime, human and labor trafficking, financial crimes, gangs, war crimes, female genital mutilation, and others.

- 3.3. Forensic Interview Specialist (FIS):** A specially trained subject matter expert in the area of forensic interviewing and who conducts forensic interviews.
- 3.4. Victim Assistance Coordinator (VAC):** An HSI Special Agent (SA) who has been delegated victim assistance responsibilities as a collateral duty by the Special Agent in Charge (SAC) or designee, and who has received appropriate training.
- 3.5. Victim Assistance Specialist (VAS):** A specially trained Victim Assistance Program Specialist who possesses a high degree of specialized professional victim assistance expertise and carries out victim assistance responsibilities in a specific area of responsibility (AOR).
- 3.6. Victim – Assistance and Services:** The following definition of “victim” must be used to determine when the agency is responsible under the Victims’ Rights and Restitution Act of 1990 (VRRRA) to provide assistance, information, and referrals for services and has the authority to do so: “A person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.” Title 34, United States Code (U.S.C.), Section 20141(e)(2). Additionally, the VRRRA specifies to whom services under the VRRRA should be provided if the victim is an institutional victim or a representative victim:
- 1) Institutional Victim: If a victim is an institutional entity, services should be provided to an authorized representative of the entity. 34 U.S.C. § 20141(e)(2)(A).
  - 2) Representative Victim: If a victim is under 18 years of age, incompetent, incapacitated, or deceased, services should be provided to one of the following (in order of preference): a spouse, a legal guardian, a parent, a child, a sibling, another family member, or another person designated by the court. 34 U.S.C. § 20141(e)(2)(B).
- 3.7. Victim – Court Enforceable Rights:** The following definition of “victim” must be used to determine when the agency has the authority and is responsible to enforce the rights of crime victims under the Crime Victims’ Rights Act of 2004 (CVRA): Victim: “A person who has been directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia.” 18 U.S.C. § 3771(e).

Additionally, the law specifies to whom the rights are afforded if the victim is an institutional victim or a representative victim:

- 1) Institutional Victim: A victim may be a corporation, company, association, firm, partnership, society, or joint stock company. 1 U.S.C. § 1 (2006).

- 2) Representative Victim: If a victim is under 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim, a representative of the victim's estate, or any other person so appointed by the court may exercise the victim's rights but, in no event, shall the defendant serve as a guardian or representative for this purpose. 18 U.S.C. § 3771(e).

**3.8. Victim-Centered Investigation:** The goal of a victim-centered investigation and prosecution is to focus the investigation and prosecution around the victim while minimizing any undue stress, harm, and trauma to the victim. Using this approach to investigations and prosecutions prioritizes victims' rights, safety, and interests first. This approach is key to successful investigations. While it requires coordinated access to an array of victim assistance resources to facilitate safety and healing, access to victim assistance is not tied to prosecutorial decisions or outcomes.

**3.9. Trauma-Informed Approach:** This approach recognizes how trauma affects victims' response to the criminal justice process and seeks to avoid victim retraumatization, increasing the safety of all and the effectiveness and efficiency of interactions with victims.

#### **4. Responsibilities.**

**4.1.** The **Executive Associate Director for HSI** is responsible for the oversight of the policy and procedures provided in this Directive.

**4.2.** The **Deputy Assistant Director, Investigative Services Division**, is responsible for overseeing the implementation of the provisions of this Directive within HSI.

**4.3.** The **Unit Chief, Victim Assistance Program/Management Oversight Unit (VAP/MOU)**, is responsible for ensuring the implementation of the provisions of this Directive, as well as the implementation of the provisions of the T Nonimmigrant Status (T Visa) Handbook (HSI HB 18-01), dated January 31, 2018, or as updated, and the U Nonimmigrant Status (U Visa) Handbook (HSI HB 18-06), dated September 21, 2018, or as updated; overseeing the VAP and the VAP budget; supporting specialized victim assistance personnel; providing VAP training and guidance; and monitoring compliance with federal crime victim assistance statutes.

**4.4.** The **HSI SACs, Deputy SACs, Assistant SACs, Resident Agents in Charge, Attachés, and Assistant Attachés** are the designated Field Responsible Officials for purposes of 34 U.S.C. § 20141(a) and are responsible for:

- 1) Selecting VASs and VACs, in conjunction with the VAP/MOU Unit Chief and/or the VAP Section Chief, to serve in their offices in order to accomplish the agency's legal responsibilities to crime victims and advising in writing of any changes in the designation of a VAS or VAC within five working days to VAP/MOU management.

- 2) Ensuring that all SAs, VASs, FISs, and VACs comply with federal crime victim statutes, the Attorney General (AG) Guidelines for Victim and Witness Assistance of 2012 (AG Guidelines), this Directive, related training requirements, and required U.S. Department of Justice (DOJ) and HSI database entries.
- 3) Supporting VAP requests of FISs, VASs, and VACs to participate in specialized trainings, seminars, or meetings related to victim assistance, as well as to fulfill agency responsibilities for domestic and international training with victim assistance components.
- 4) Supporting the day-to-day needs of VASs, FISs, and VACs in their offices, including travel and transportation in direct aid to victims and for outreach and training purposes.
- 5) Ensuring that the employee performance plan and appraisal for a VAS accurately reflects the VAS's duties and responsibilities. VAP/MOU at Headquarters (HQ) shall provide proper guidance to ensure consistency among all AORs and HSI Attaché offices.

**4.5. Forensic Interview Specialists (FISs) are responsible for:**

- 1) Conducting forensic interviews in domestic and international HSI investigations.
- 2) Working in collaboration with SAs, VASs, and VACs on case coordination, operational planning, and case consultation, where appropriate. This involves a multidisciplinary team, which, at a minimum, should include the SA, the VAS, and the FIS.
- 3) Providing VAP and forensic interview-related trainings to SAs, VASs, and VACs, as well as outreach presentations to federal, state, and local law enforcement agencies and to non-government organizations.
- 4) Participating in regular case reviews and required peer reviews as designated by the VAP/MOU Unit Chief and or the VAP Section Chief.
- 5) Testifying as expert and factual witnesses at the federal, state, and local levels.
- 6) Tracking all case referrals, consultations and coordination, trainings, and victims interviewed in the Forensic Interview Database.

**4.6. Victim Assistance Specialists (VASs) are responsible for:**

- 1) Informing victims of their rights at the earliest opportunity after the detection of a crime at a time when it may be done without interfering with an investigation, including:

- a) Their right to receive, on request:
    - i. A place where the victim may receive emergency medical and social services;
    - ii. Any restitution or other relief to which the victim may be entitled under 34 U.S.C. § 20141(c)(1)(B) or any other law and the manner in which such relief may be obtained;
    - iii. Public and private programs that are available to provide counseling, treatment, and other support to the victim; and
    - iv. Assistance in contacting the persons who are responsible for providing the services and relief. 34 U.S.C. § 20141(b)(2) and (c).
  - b) The name, title, business address, and telephone number of the SA to whom the victim should address a request for:
    - i. Reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender;
    - ii. The status of the investigation of the crime to the extent that it is appropriate to inform the victim and to the extent that it will not interfere with the investigation; and
    - iii. The arrest of the suspected offender. 34 U.S.C. § 20141(b)(3).
  - c) Their enforceable rights as crime victims under 18 U.S.C. § 3771.
- 2) Assessing victims' needs and working in close collaboration with SAs and FISs to integrate victim assistance considerations from the beginning and throughout the duration of the criminal case and coordinating victim assistance efforts with appropriate state and local officials and victim assistance and compensation providers.
  - 3) Assisting SAs with and tracking Continued Presence, Significant Public Benefit Parole, Deferred Action, T visa declarations, and U visa certifications, as well as providing guidance and coordination on Continued Presence requests from other agencies and federal, state, and local law enforcement agencies.
  - 4) Establishing written guidance, as directed by SACs and Attachés in their respective AORs and managing victim assistance support for the local HSI field offices or the Attaché offices in their AORs, in compliance with all federal statutes, the AG Guidelines, and this Directive.

- 5) Establishing contact/liaison with the Victim/Witness Coordinators in the local U.S. Attorney's Office and other federal, state, and local victim assistance personnel and service providers, such as child and family advocacy centers.
  - 6) Providing training on the VAP and victim assistance-related issues to all appropriate HSI personnel in their AOR, as well as conducting outreach to increase understanding of the VAP, such as building awareness of human trafficking indicators, and cyber, financial, and other federal crimes.
  - 7) Providing timely reports related to VAP activities; this includes providing quarterly reports and statistics to VAP/MOU personnel at HQ when requested, as well as any additional VAP-related requests from VAP/MOU at HQ.
  - 8) Working, in collaboration with FISs, on case consultation and coordination of services related to victim and witness interviews at the commencement of the case; at a minimum, the consultation should include the SA, the VAS, and the FIS.
- 4.7. HSI Academy Officials** are responsible for providing training to all HSI employees who attend the HSI Academy on the VAP and on the implementation of the crime victims' rights laws protecting and enhancing the role of crime victims in the federal criminal justice process.
- 4.8. Special Agents (SAs)** are responsible for conducting victim-centered, trauma-informed investigations and using all appropriate prosecutorial discretion pertaining to crime victims on a case-by-case-basis<sup>1</sup> and for:
- 1) Identifying the victim or victims of a federal crime at the earliest opportunity after the detection of a crime at a time when it may be done without interfering with an investigation (34 U.S.C. § 20141(b)(1)) and informing the VAS so that the victim's information may be entered into the ICE Victim Assistance Database (VAD) and DOJ's Victim Notification System (VNS);
  - 2) Arranging for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender throughout the investigation and prosecution (34 U.S.C. § 20141(c)(2); 18 U.S.C. § 3771(a)(1));
  - 3) Providing a victim the earliest possible notice of the status of the investigation of the crime, to the extent that it is appropriate to inform the victim and to the extent that it will not interfere with the investigation (34 U.S.C. § 20141(c)(3)(A)) and the arrest of a suspected offender (34 U.S.C. § 20141(c)(3)(B); 18 U.S.C. § 3771(a)(2));

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- 4) Ensuring that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes (34 U.S.C. § 20141(c)(6));
- 5) Engaging HSI VAP personnel who also have duties to victims under the law. SAs shall request that an HSI VAS accompany them on the scene when victims are likely to be encountered to provide mandated services, referrals, and information to crime victims under 34 U.S.C. § 20141. Additionally, SAs shall request that an HSI FIS accompany them to the scene if a same day forensic interview is needed;
- 6) Working in collaboration with FISs, VASs, and VACs on case coordination and operational planning, where appropriate. This would involve a multidisciplinary team, which, at a minimum, should include the SA, the VASs, and the FISs.
- 7) Contacting an HSI FIS to conduct forensic interviews prior to using any non-HSI forensic interview personnel; and
- 8) To the extent that it is reasonably practicable, identifying victims and gathering information on the extent of victims' losses, the nexus between those losses and the defendant's criminal conduct, and whether any assets exist that might be recovered, frozen, forfeited, or otherwise used to pay restitution. 18 U.S.C. § 3771(a)(6).

**4.9.** The **Victim Assistance Coordinators (VACs)** are SAs responsible for performing collateral victim assistance duties under the VAC title in any HSI office where there is no VAS assigned until there are sufficient resources to have a VAS in every HSI office. VACs are also responsible for assisting the VAS in larger operations.

## **5. Requirements/Procedures.**

**5.1. Guidance.** HSI will issue any additional guidance as necessary in accordance with this Directive and all applicable law pertaining to crime victims.<sup>2</sup> For example, there are specific requirements pertaining to required notifications and actions, services, and benefits for victims of human trafficking and child sexual exploitation.

**5.2. Confidentiality.** HSI will protect victim information in accordance with all applicable statutes, regulations, policies, and procedures and to use, where appropriate, recognized security mechanisms such as password, encryption, or other reasonable safeguards to prevent unauthorized access related to personally identifiable information (PII), such as protecting the privacy of child victims and witnesses and protecting from public disclosure any information pertaining to trafficking victims and their families. To ensure that appropriate confidentiality is afforded to crime victims, HSI personnel will use the victim's initials rather than the victim's true name in reports of investigation, whenever possible. No victims' photos or other PII will be used in public affairs or HSI training

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<sup>2</sup> Per the Senate Explanatory Statement to H.R. 1158, "ICE is directed to provide its officers with guidance and training for engaging with victims of crime and witnesses of crime."

materials. HSI intends that PII is to be disclosed only to authorized individuals with a need to know and only for uses that are consistent with the purposes of this Directive.

- 5.3. Reliance on VAP Personnel.** HSI maintains, as part of its workforce, highly specialized and effective personnel as VASs and FISs. It is not appropriate to rely on personnel from outside agencies for HSI investigations, especially as the agency is legally required to provide each identified victim with assistance. Outside agencies' resources may be utilized if VAP personnel are unable to assist.
- 5.4. Incorporate a Trauma-Informed Approach.** HSI personnel encountering any crime victim should strive to incorporate a trauma-informed approach, recognizing a trauma survivor's vulnerabilities and experiences, particularly the prevalence of the physical, social, emotional, and spiritual impact of the trauma. The harm can be physical, emotional, or financial. In the absence of physical or monetary harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence, or, if not present, received information about a violent act attempted against him or her. In all other cases, emotional harm should not be presumed in the absence of physical or economic harm, but rather the existence of cognizable emotional harm should be determined on a factual, case-by-case basis (AG Guidelines).
- 5.5. Legal Counsel.** The Office of the Principal Legal Advisor (OPLA)'s HSI Embedded Attorneys answer legal questions related to victim assistance that arise in the course of criminal investigations. OPLA field locations' T visa, U visa, and Violence Against Women (VAWA) points of contact are available to assist HSI if any victim in an HSI investigation is in immigration court proceedings. OPLA's Human Rights Violator Law Division provides legal advice and training on federal victim assistance, crime victims' rights laws, human trafficking, T visas, U visas, VAWA, human rights violations and war crimes, continued presence, and female genital mutilation/cutting and other forms of gender-based violence, whether as part of a criminal investigation, extradition, removal proceeding, or a custody determination.
- 6. Training.**

All employees who come into contact with victim applicants or have access to information regarding victim applicants are required to complete the annual mandatory training modules, *Alien Victims of Crime: Immigration Benefits and Confidentiality Provisions Victims*, and the annually mandated *Stop Trafficking for Victim Witness Coordinators* and *Human Trafficking Awareness Training for DHS Personnel*, available on the

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All FISs, VASs, VACs, and other HSI employees who, through the course of their work, come into contact with victims, must attend VAP-sponsored trainings or meetings as scheduled and funded. All VACs must attend, at a minimum, a 10-to-12-hour initial training session and yearly in-service training. All SAs must attend, at a minimum, a four-hour initial training session conducted by VASs and yearly refresher training related to victim assistance.



## **7. Recordkeeping.**

VNS is a web-based automated email or mail notification system that provides victims of federal crimes with legally required standardized notifications regarding the offender's court proceedings and custody status. Victims have a court-enforceable right to specific information about the offender and the proceedings. 18 U.S.C. § 3771. To fulfill this mandate, VASs are therefore required to enter every HSI-identified victim into the DOJ VNS as soon as possible.

For internal purposes, VASs and VACs are required to document and track all victims identified by HSI and the specific assistance provided to them in the VAD. The VAD is used to track compliance with crime victims' rights under the law and contains no PII. All those who are identified as victims and who receive victim assistance from HSI must be recorded in the VAD within five business days, including information on any victim assistance provided or referrals made. Additionally, FISs are required to document and track all case referrals, consultations and coordination, trainings, and victims interviewed in the Forensic Interview Database within five business days.

## **8. Authorities and References.**

- 8.1.** Crime Victims' Rights Act of 2004 (CVRA), 18 U.S.C. § 3771 (2006 & Supp. III 2009) (including court enforceable rights for those who are directly and proximately harmed by a charged offense).
- 8.2.** Victims' Rights and Restitution Act of 1990 (VRRRA), 34 U.S.C. § 20141 (2006) (containing mandatory services to those directly harmed by a crime).
- 8.3.** Justice for All Act of 2004, 18 U.S.C. § 3771(a) (2006) (granting crime victims eight specified rights).
- 8.4.** Child Victims' and Child Witnesses' Rights, 18 U.S.C. § 3509 (2006 & Supp. III 2009).
- 8.5.** Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960, and its reauthorizations (creating VAWA relief for battered immigrant victims).
- 8.6.** Victims of Child Abuse Act of 1990, Pub. L. No. 101-647 (1990) (including federal victims' services, protections, and rights).
- 8.7.** Victims of Crime Act of 1984, Pub. L. No. 98-473, 98 Stat. 2170 (1984).
- 8.8.** Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248 (1982).
- 8.9.** Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 and its reauthorizations, 22 U.S.C. § 7105(c) (including specific

responsibilities to trafficking victims in addition to Continued Presence, T visa, and U visa).

- 8.10. Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System, 18 U.S.C. § 1512 (1984).
- 8.11. 8 U.S.C. § 1367, Penalties for disclosure of information (originally enacted as Section 384 of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA)).
- 8.12. DOJ, Attorney General's Guidelines for Victim and Witness Assistance (2012).
- 8.13. Department of Homeland Security (DHS) Directive Number 002-02, Rev. 00.1, Implementation of Section 1367 Information Provisions, dated April 29, 2019.
- 8.14. DHS Instruction Number 002-02-001, Rev. 00.1, Implementation of Section 1367 Information Provisions, dated May 28, 2019.
- 8.15. DHS Instruction Number 215-01-002, Rev. 00, Disclosure of Section 1367 Information to Law Enforcement Officials for Legitimate Law Enforcement Purposes, dated June 18, 2016.
- 8.16. ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims, dated August 10, 2021, or as updated.
- 8.17. ICE Policy Number: 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, dated June 17, 2011, or as updated.
- 9. **Attachments.** None.
- 10. **No Private Right.** This Directive provides only internal HSI 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 Directive on the otherwise lawful enforcement or litigative prerogatives of HSI.



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