

**No. 15-60562**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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MARIA CAZORLA, ET AL.,

Plaintiffs

v.

KOCH FOODS OF MISSISSIPPI, L.L.C.; JESSIE ICKOM,

Defendants

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff-Appellant Cross-Appellee

v.

KOCH FOODS OF MISSISSIPPI, L.L.C.,

Defendant-Appellee Cross-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
Nos. 3:10-cv-00135 & 3:11-cv-00391, Hon. Daniel P. Jordan III, Presiding

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**BRIEF OF *AMICI CURIAE* LATINOJUSTICE PRLDEF, NATIONAL  
IMMIGRANT WOMEN'S ADVOCACY PROJECT, INC. (NIWAP, INC.),  
LEGAL MOMENTUM, AND OTHERS IN SUPPORT OF APPELLANT  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION SEEKING  
REVERSAL OF DECISION ALLOWING DISCOVERY OF**

**CONFIDENTIAL INFORMATION DISCLOSED IN U VISA  
APPLICATIONS**

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**SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Federal Rule of Appellate Procedure 29(c), *Amici Curiae* LatinoJustice PRLDEF, National Immigrant Women’s Advocacy Project, Inc. (NIWAP, Inc.), and Legal Momentum, and the entities listed below, hereby provide that they are not-for-profit corporations, with no parent corporation and no publicly-traded stock.

The undersigned counsel of record certifies that in addition to those persons listed in the briefs already filed in this matter, the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. LatinoJustice PRLDEF; National Immigrant Women’s Advocacy Project, Inc. (NIWAP, Inc.); Legal Momentum; American Gateways (formerly the Political Asylum Project of Austin) ; Catholic Charities, Archdiocese of San Antonio; Human Rights Initiative of North Texas (“HRI”); Mosaic Family Services, Inc.; New Orleans Workers’ Center for Racial Justice (“Workers’ Center”); Texas Association Against Sexual Assault (TAASA); Americans for Immigrant Justice (“AI Justice”); API Chaya; Asian Americans Advancing Justice (“Advancing Justice - LA”); Asian/Pacific Islander Domestic Violence Resource Project (“DVRP”); Asian Task Force Against Domestic Violence (“ATASK”); ASPIRA; Battered Women’s Justice Project (“BWJP”); *Black Women’s Blueprint*



(“BWB”); *Boston Area Rape Crisis Center* (“BARCC”); California Women’s Law Center (“CWLC”); California Women’s Law Center (“CWLC”); *California Partnership to End Domestic Violence*; Casa Cornelia Law Center; Casa de Esperanza; Centre County Women’s Resource Center (“CCWRC”); Chinese Progressive Association; Prof. Donna Coker; Connecticut Sexual Assault Crisis Services (“CONNSACS”); Domestic Violence Legal Empowerment and Appeals Project (“DV LEAP”); *Prof. Margaret Drew*; ECDC/African Community Center, End Domestic Abuse Wisconsin; End Domestic Abuse Wisconsin; *Farmworker Justice*; Florida Counsel Against Sexual Violence (“FCASV”); Georgia Asylum and Immigration Network (“GAIN”); *Hispanic Association of Colleges and Universities* (“HACU”); Hispanic Federation, Inc. (HF); *Hispanic National Bar Association* (“HNBA”); *Rape Crisis Center Serving Horry and Georgetown Counties*; Hudson Valley Justice Center (“HVJC”); Illinois Coalition Against Domestic Violence (“ICDACV”); Illinois Coalition Against Sexual Assault (“ICASA”); Immigration Center for Women and Children (“ICWC”); LAF (formerly Legal Assistance Foundation of Metropolitan Chicago); League of United Latin American Citizens (“LULAC”); Los Angeles Center for Law and Justice (“LACLJ”); Maine Coalition Against Sexual Assault (“MECASA”); Prof. Karla McKanders; Michigan Coalition to End Domestic & Sexual Violence (“MCEDSV”); Michigan Immigrant Rights Center; The Migrant and Immigrant

Community Project (“MICA Project”); Minnesota Coalition Against Sexual Assault (“MNCASA”); *Missouri Coalition Against Domestic and Sexual Violence* (“MCADSV”); *National Alliance to End Sexual Violence* (“NAESV”); National Center for Victims of Crime (“National Center”); National Coalition Against Domestic Violence (“NCADV”); National Immigration Law Center (“NILC”); National Institute for Latino Policy (“NiLP”); National Latina Institute for Reproductive Health (“NLIRH”); National Organization for Women (“NOW”); National Resource Center on Domestic Violence (“NRCDV”); Nebraska Coalition to End Sexual and Domestic Violence (“The Nebraska Coalition”); *Network for Victim Recovery of DC* (“NVRDC”); New Haven Legal Assistance Association (“NHLAA”); New Jersey Alliance for Immigrant Justice (“NJAIJ”); *New Jersey Coalition to End Domestic Violence* (“NJCEDV”); New York Asian Women’s Center; *New York State Coalition Against Sexual Assault* (“NYSCASA”); *North Carolina Justice Center*; Pathways for Change, Inc. (“Pathways”); Ohio Alliance to End Sexual Violence (“OAESV”); *Oregon Coalition Against Domestic & Sexual Violence*; Pennsylvania Coalition Against Domestic Violence (“PCADV”); Pennsylvania Coalition Against Rape; Pennsylvania Immigration Resource Center (“PIRC”); Rape Victim Advocates, Rashka, Inc.; The Safe Center LI, Inc.; SF Progressive Workers Alliance (PWA); Sanctuary for Families; Sanctuary for Families; *SAVE (Safe Alternatives to Violent Environments)*; *SC Victim Assistance*

*Network* (“SCVAN”); SEPA Mujer, Inc.; SER (Service, Employment, and Redevelopment) National; Tacoma Community House; *Tri-Valley Haven*; University of Maryland Carey School of Law Gender Violence Clinic; Vermont Network Against Domestic Violence and Sexual Violence; Victim Rights Center of Connecticut; VIDA Legal Assistance, Inc. (“VIDA”); Washoe Legal Services; Wind of the Spirit; Wisconsin Coalition Against Sexual Assault (“WCASA”); Women’s Resource Center (Barbara J. Hart Justice Center) (“WRC”); YWCA Madison; YWCA Rock County; YWCA Wheeling – *Amici Curiae*;

2. Juan Cartagena, Jose Perez, Natasha Lycia Ora Bannan, LatinoJustice PRLDEF, 99 Hudson Street, 14th floor, New York, NY 10013 – Attorneys for *Amici Curiae*;

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**STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE**

Pursuant to Fed. R. App. P. 29(a), an amicus curiae may “may file a brief . . . if the brief states that all parties have consented to its filing.” All parties have consented to *Amicus Curiae* LatinoJustice PRLDEF, National Immigrant Women’s Advocacy Project, Inc. (NIWAP, Inc.), Legal Momentum, and those Amici listed below, filing a brief. No counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

**The *National Immigrant Women’s Advocacy Project* (“NIWAP, Inc.”)** is a non-profit public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws, policies and practices to improve legal rights, services and assistance to immigrant women, children and immigrant victims of domestic violence, sexual assault, stalking, human trafficking and other crimes. NIWAP Inc. Director, Leslye E. Orloff, has been closely involved with the enactment of Violence Against Women Act (“VAWA”) including the VAWA self-petition in 1994 and the T and U visas in 2000 as well as 1996, 2000, 2005 and 2013 VAWA confidentiality protections. NIWAP Inc. has documented immigrant women’s experiences illustrating the need for VAWA confidentiality protections, and trained and provided technical assistance to advocates, attorneys and justice system professionals across the country to ensure that immigrant victims are

protected by applicable confidentiality provisions. Since 2012, NIWAP Inc. has provided 148 trainings attended by 11,000 professionals working with immigrant victims and offered technical assistance to callers from all 50 states, the District of Columbia, American Samoa, the U.S. Virgin Islands, embassies and consulates on over 3,500 different matters. NIWAP, Inc. has collaborated with the Department of Homeland Security (“DHS”) and the Federal Law Enforcement Training Center (“FLTEC”) in the development of on line mandatory VAWA confidentiality training for DHS officials. Ms. Orloff was the lead trainer working with U.S. Citizenship and Immigration Services (“USCIS”) Vermont Service Center to train adjudicators on VAWA self-petitioning, U visas and on VAWA confidentiality protections and has also training Immigration and Customs Enforcement Officers and the Board of Immigration Appeals of VAWA confidentiality matters. NIWAP Inc. has worked with Congress and federal agencies to implement VAWA confidentiality protections for immigrant victims of domestic violence, sexual assault, human trafficking, and other crimes in a manner that will enhance victim, community, and law enforcement officer safety. An important goal of this work has been stopping perpetrators, family, employers and others from learning about the existence of, obtaining documents contained in, and learning the outcome of VAWA confidentiality protected cases.

*LatinoJustice PRLDEF*, formerly known as the Puerto Rican Legal Defense and Education Fund, champions an equitable society by using the power of the law together with advocacy and education. Since being founded in 1972, LatinoJustice PRLDEF has advocated for and defended the constitutional rights and the equal protection of all Latinos under the law, including litigating numerous landmark cases. Through its Latinas at Work (“LAW”) Workplace Justice Project, LatinoJustice PRLDEF has successfully challenged wage theft, discriminatory practices and unfair workplace conditions, including gender-based discrimination, sexual harassment and English-only language policies that limit the rights of Latina/o immigrants to secure equal employment opportunities in the workplace.

*Legal Momentum* ([www.legalmomentum.org](http://www.legalmomentum.org)) is dedicated to advancing the rights of all women and girls. Founded in 1970 as NOW Legal Defense and Education Fund, Legal Momentum has a longstanding commitment to addressing violence against women and inequality and gender bias in state and federal judicial systems. Legal Momentum was instrumental in drafting and passing the Violence Against Women Act in 1994 and its subsequent reauthorizations in 2000, 2005, and 2013. The organization has served as counsel and joined amicus curiae in numerous cases to support the rights of victims of intimate partner violence, sexual assault and other forms of gender-motivated violence. Legal Momentum, through its National Judicial Education Program (“NJEP”), and in cooperation with the

National Association of Women Judges, has developed several award-winning judicial education curricula and training DVDs about sexual assault.

***American Gateways (formerly the Political Asylum Project of Austin)*** (Austin, TX) was founded in 1987 and serves the indigent immigrant population in central Texas, through legal representation and advocacy for thousands of indigent and low income immigrants before the Department of Homeland Security and the Immigration Courts. American Gateways represents hundreds of immigrant survivors applying for relief under the Violence Against Women Act, U-Visa, and T-Visa portions of the Immigration law.

***Catholic Charities, Archdiocese of San Antonio*** (San Antonio, TX) is a non-profit organization that provides specific assistance to victims of domestic violence and victims of crime and serves clients who are underrepresented and below the poverty level.

***Human Rights Initiative of North Texas (“HRI”)*** (Dallas, TX) is a non-profit legal services agency that represents immigrant victims of violence in immigration matters, including in proceedings under VAWA, U-Visa and T-Visa. HRI has a Women and Children’s Program that provides legal representation and social service referrals to immigrant women and children who have been victims of domestic violence, violent crime, human trafficking and other forms of abuse.



*Mosaic Family Services, Inc.* (Dallas, TX) supports, educates and empowers survivors of human rights abuses from around the world and within our community, specifically including domestic violence and human trafficking survivors, by providing immigration and family law services.

*New Orleans Workers' Center for Racial Justice* (“**Workers' Center**”) (New Orleans, LA) is a non-profit membership organization that was founded in the aftermath of Hurricane Katrina, with over 1,000 members spanning across the States of Louisiana, Mississippi, and Texas—including day laborers, temporary guestworkers, and African American residents. The Workers' Center regularly supports its members and low-income workers in securing immigration protections, including U-Visa and T-Visas.

*Texas Association Against Sexual Assault* (“**TAASA**”) (Austin, TX) is a 34-year-old non-profit organization committed to ending sexual violence in Texas. Its membership includes the approximately 80 rape crisis centers throughout the state. Since its founding, TAASA has worked to bring hope, healing, and justice to all victims of sexual assault.

*Americans for Immigrant Justice* (“**AI Justice**”) (Miami, FL and Washington, DC) is a non-profit law firm dedicated to promoting and protecting the rights of all immigrants through a unique combination of direct services and public policy advocacy. AI Justice's Lucha Program provides free legal services to

immigrant victims of human trafficking, sexual assault and domestic violence and has filed thousands of applications for U-Visas, T-Visas, and VAWA self-petitions on behalf of immigrant victims.

*API Chaya* (Seattle, WA) is a non-profit organization that provides support services to Asian, South Asian, and Pacific Islander survivors and families impacted by domestic violence and sexual assault, as well as survivors of human trafficking from all communities. Many of the clients we serve are survivors of trafficking, sexual assault and domestic violence who seek U- or T- Visas.

*Asian Americans Advancing Justice (“Advancing Justice - LA”)* (Los Angeles, CA) is a non-profit, non-partisan organization and the nation’s largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders. Advancing Justice - LA has provided pro bono legal services to immigrant survivors of crimes including domestic violence and human trafficking, including assisting clients in Violence Against Women Act, U-Visa and T-Visa proceedings.

*Asian/Pacific Islander Domestic Violence Resource Project (“DVRP”)* (Washington, DC) works primarily with the immigrant women from the Asian/Pacific Islander community. DVRP has an interest in protecting the confidentiality of members of the community we serve, and ensuring their safety in seeking services.

The *Asian Task Force Against Domestic Violence* (“**ATASK**”) (Boston, MA) was incorporated in 1992 to address the gaps in services for Asian domestic violence survivors in the Greater Boston and Lowell areas, including low-income immigrants with limited English language capabilities. A United Way-affiliated agency, its mission is to prevent domestic violence in Asian families and communities and to provide hope to survivors.

*ASPIRA* (Washington, DC) is the only national organization dedicated exclusively to the education of Latino youth. Its mission is to promote the development of the Latino community through advocacy and the education and leadership development of its youth. ASPIRA has associates and affiliates in seven states (DE, IL, FL, MA, NJ, NY, PA) and Puerto Rico, as well as formal partnerships with over 30 regional and local organizations across the country.

The *Battered Women’s Justice Project* (“**BWJP**”) (Minneapolis, MN) is a national technical assistance center that provides training and resources for advocates, battered women, legal system personnel, and policymakers. Founded in 1993, the BWJP is an affiliated member of the Domestic Violence Resource Network, a group of national resource centers funded by the Department of Health and Human Services. The BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women of the U.S. Department of Justice.

***Black Women’s Blueprint (“BWB”)*** (Brooklyn, NY) is a national civil and human rights organization seeking to secure social, political, and economic equality of women and girls of African descent in the United States. BWB provides culturally specific survivor-centered counseling services to a clientele that includes a significant number of African and Afro-Caribbean immigrants, some of whom rely on the protections afforded them under VAWA.

Established in 1973, the ***Boston Area Rape Crisis Center (“BARCC”)*** (Boston, MA) was one of the first rape crisis centers in the United States to advocate for and support survivors of sexual assault. BARCC’s mission is to end sexual violence through healing and social change. Currently, 26 staff and over 140 volunteers provide free, multi-lingual and multi-cultural hotline crisis counseling, medical accompaniments to local hospitals, legal advocacy and violence prevention education to community groups, organizations and institutions in 29 cities and towns in the greater Boston area.

***California Women’s Law Center (“CWLC”)*** (El Segundo, CA) is a private, non-profit public interest law center established in 1989 and specializing in the civil rights of women and girls. CWLC focuses on advancing the civil rights of women and girls in the following priority areas: gender discrimination, violence against women, and women’s health, and places a strong emphasis on advancing both equality in the workplace as well as the rights of victims of crime – especially

crimes that disproportionately affect women, including sexual assault, sexual harassment, and family violence.

The *California Partnership to End Domestic Violence* is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups throughout the state.

*Casa Cornelia Law Center* (San Diego, CA) is a public interest law firm that provides services to indigent members of the immigrant community, asylum seekers, victims of serious crimes, including domestic violence, human trafficking, and immigrant children. Since the codification of VAWA and the promulgation of the U-Visa regulations, Casa Cornelia has been preparing VAWA petitions and U-Visas for eligible victims.

*Casa de Esperanza* (St. Paul, MN) works to mobilize communities to end domestic violence, with a focus on family advocacy and shelter services to leadership development and community engagement.

*Centre County Women's Resource Center* ("CCWRC") (State College, PA) is a private non-profit agency that has been serving the needs of victims of domestic and sexual violence for over 30 years. CCWRC's Civil Legal Representation Project ("CLRP") has provided legal advice or representation to over 775 victims of domestic violence and sexual assault including VAWA Self Petition, T-Visa, and U-Visa cases.

The *Chinese Progressive Association* (San Francisco, CA) was founded in 1972 and educates, organizes and empowers the low income and working class immigrant Chinese community in San Francisco to build collective power with other oppressed communities to demand better living and working conditions and justice for all people.

*Prof. Donna Coker* is Professor of Law, University of Miami School of Law. Her scholarship and teaching addresses domestic violence broadly and specifically the manner in which policies affect the ability of low income women to achieve assistance.

*Connecticut Sexual Assault Crisis Services (“CONNSACS”)* (East Hartford, CT) is a statewide coalition of individual sexual assault crisis programs that work to end sexual violence and to ensure high-quality, comprehensive culturally competent victim services.

*Domestic Violence Legal Empowerment and Appeals Project (“DV LEAP”)* (Washington, DC), founded in 2003, DV LEAP provides a stronger voice for justice by fighting to overturn unjust trial court outcomes, advancing legal protections for victims and their children through expert appellate advocacy, training lawyers, psychologists and judges on best practices, and spearheading domestic violence litigation.

***Prof. Margaret Drew*** is associate professor of law at the University of Massachusetts School of Law. She has represented abused men and women for over thirty years. She has been an advocate for those who have experienced intimate partner abuse through direct representation in trial and appellate courts. Prof. Drew works locally as well as nationally to promote safety for those who have been abused.

***ECDC/African Community Center*** (Denver, CO) provides victim services to refugees and asylees.

***End Domestic Abuse Wisconsin*** (Madison, WI) is a non-profit organization comprising Wisconsin's coalition of domestic violence victim service providers and the voice for survivors in the state.

***Farmworker Justice*** (Washington, DC) is a non-profit organization that seeks to empower migrant and seasonal workers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.

***Florida Council Against Sexual Violence ("FCASV")*** (Tallahassee, FL) is a statewide non-profit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs who serve these victims. FCASV provides resources to the state of Florida on sexual violence issues, including technical assistance to agencies seeking to improve their services for rape victims

and up-to-date information to the public. FCASV represents non-immigrant survivors of sexual assault in seeking VAWA self-petitions and U-Visas.

*Georgia Asylum and Immigration Network (“GAIN”)* (Atlanta, GA) is a non-profit organization that provides free legal representation to asylum seekers and immigrant victims of human trafficking, sexual assault, and other crimes. Through direct representation and pro bono referrals, we assist clients with their affirmative/defensive asylum applications, T-Visas, U-Visas, VAWA Self Petitions, and I-751 Battered Spouse Waivers.

*Hispanic Association of Colleges and Universities (“HACU”)*, founded in 1986, represents more than 470 colleges and universities committed to Hispanic higher education success in the U.S., Puerto Rico, Latin America, and Spain. HACU’s member institutions enroll two-thirds of the nation’s Hispanic college students.

*Hispanic Federation, Inc. (“HF”)* is a national, non-profit membership organization that works to empower and advance the Hispanic community through public policy advocacy, leadership development and community revitalization projects. Established in 1990, HF reaches thousands of Hispanics each year through its network of nearly 100 affiliated community-based organizations.

*Hispanic National Bar Association (“HNBA”)* is a non-profit, non-partisan, national professional association that represents the interests of thousands



of attorneys, judges, law professors, law students, and other legal professionals of Hispanic descent in the United States. HNBA has forty-eight affiliated bars in various states across the country. Since its creation 43 years ago, HNBA has served as the national voice for Hispanics in the legal profession and has promoted justice, equity, and opportunity for Hispanics.

The *Rape Crisis Center Serving Horry and Georgetown Counties* (Myrtle Beach, SC) is a non-profit organization providing services to survivors of rape and sexual assault while laying the foundation for healing through our advocacy programs.

*Hudson Valley Justice Center (“HVJC”)* (Yonkers, NY) is a non-profit organization dedicated to providing civil legal services to immigrants so that they may achieve economic and social justice.

*Illinois Coalition Against Domestic Violence (“ICADV”)* (Springfield, IL) promotes policies and practices that make domestic violence survivors safe, hold batterers accountable and works to strengthen legal protections for survivors of domestic violence. ICADV conducts training for more than 800 domestic violence professionals annually and creates education materials for domestic violence survivors, domestic violence programs, other professionals, and the general public.

***Illinois Coalition Against Sexual Assault (“ICASA”)*** (Springfield, IL) is a non-profit organization consisting of twenty-eight community-based sexual assault centers throughout the state of Illinois, whose purpose is to end sexual violence and to alleviate the suffering of its victims. ICASA centers counsel victims and advocates for victims who choose to report the crime to medical and criminal justice personnel. In 2014 alone, ICASA sexual assault centers provided individual and group counseling, legal and medical advocacy, crisis intervention and hotline response to nearly 20,000 victims of sexual assault and their significant others.

The ***Immigration Center for Women and Children (“ICWC”)*** is a non-profit legal organization providing affordable immigration services to underrepresented immigrants in California. ICWC strives to provide security and stability for children who are abused, abandoned or neglected and for immigrants who are victims of domestic violence, sexual assault and other violent crimes.

***Kansas Coalition Against Sexual and Domestic Violence (“KCS DV”)*** (Topeka, KS) is engaged in the prevention and elimination of sexual and domestic violence through a statewide network of programs providing support and safety for all victims of sexual violence, domestic violence, and stalking. As part of this work, KCS DV provides direct representation to immigrant victims of sexual and domestic violence.

***LAF (formerly Legal Assistance Foundation of Metropolitan Chicago)***

(Chicago, IL) has provided low-income residents in metropolitan Chicago with comprehensive free legal services to resolve non-criminal issues for over 40 years. LAF's Immigrants and Workers' Rights Practice Group represents hundreds of survivors of crimes who seek immigration relief based on domestic violence and abuse.

***League of United Latin American Citizens ("LULAC")*** is the largest and oldest Latino civil-rights membership organization in the United States. With over 132,000 members in virtually every state of the nation, LULAC advances the economic condition, educational attainment, political influence, health, and civil rights of Hispanic Americans. Since 1929, LULAC's members have sought to protect the civil rights of Latino Americans in the United States.

***Los Angeles Center for Law and Justice ("LACLJ")*** (Los Angeles, CA) is a non-profit organization which has been providing culturally competent free legal services and advocacy to low-income residents of Los Angeles and their families for over 40 years. LACLJ supports undocumented youth and survivors of interpersonal violence by representing them in their U non-immigrant status and VAWA petitions, among others, representing hundreds of individuals who have survived sexual assault, domestic violence, and/or other violent crimes in their efforts to obtain survivor-based immigration relief.

***Maine Coalition Against Sexual Assault (“MECASA”)*** (Augusta, ME) has represented and served Maine’s sexual violence service providers for over thirty years. MECASA works toward ending sexual violence by providing public policy advocacy, assistance to Maine’s sexual violence service providers, public awareness and prevention activities, and statewide training.

***Prof. Karla McKanders*** is Associate Professor of Law, University of Tennessee College of Law. She directs the Immigration Clinic at UT College of Law. Her scholarly writings address issues of access to justice, immigration federalism, and she has sought new ways of approaching legislative and executive reforms to the immigration system.

***Michigan Coalition to End Domestic & Sexual Violence (“MCEDSV”)*** (Okemos, MI) is a statewide membership organization whose members represent a network of more than 70 domestic and sexual violence programs and over 200 allied organizations and individuals. Since 1978, MCEDSV has provided leadership as the statewide voice for survivors of domestic and sexual violence. MCEDSV’s mission is to develop and promote efforts aimed at the elimination of all domestic and sexual violence in Michigan.

***Michigan Immigrant Rights Center*** (Kalamazoo, MI) is a legal resource center for Michigan’s immigrant communities. We lead a pro bono panel of more than 100 volunteer attorneys who represent survivors of domestic violence, sexual

assault, and other serious crimes in pursuing U- and T- Visas. We also provide technical support and training to a network of nonprofit immigration legal services, other civil legal aid providers, and domestic violence and sexual assault service providers throughout Michigan.

*The Migrant and Immigrant Community Project* (“MICA Project”) (St. Louis, MO) is a non-profit community organization that is committed to working with low-income immigrants to overcome barriers to justice. The MICA Project takes on a wide variety of cases, including cases brought by victims and survivors of domestic violence.

*Minnesota Coalition Against Sexual Assault* (“MNCASA”) (St. Paul, MN) is a non-profit organization that provides support for victims/survivors of sexual assault. MNCASA supports and collaborates with sexual assault programs, advocates, prosecutors, and law enforcement officers to promote a more victim-centered response to sexual violence and increase effective criminal justice, including by providing resources regarding U-Visa applications to advocates, prosecutors, and law enforcement officers.

The *Missouri Coalition Against Domestic and Sexual Violence* (“MCADSV”) is a non-profit organization that aims to unite Missourians with a shared value that rape and abuse must end. MCADSV educates the general public about domestic violence, provides technical assistance and training to members of

the community, and facilitates communication with Missouri's domestic and sexual violence service providers. MCADSV also works to improve laws, systems, and policies in order to address and prevent violence against women in Missouri.

*National Alliance to End Sexual Violence* (“NAESV”) is a voice for the 56 state and territorial sexual assault coalitions and 1,300 rape crisis centers working to end sexual violence and support survivors. The local rape crisis centers in NAESV's network see every day the widespread and devastating impacts of sexual assault upon survivors and provide the frontline response in their communities advocating for victims, spreading awareness and prevention messages, and coordinating with criminal justice and other professionals who respond to these crimes.

*National Center for Victims of Crime* (“National Center”) is a non-profit organization headquartered in Washington, DC and one of the nation's leading resource and advocacy organizations for all victims of crime. The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives.

*National Coalition Against Domestic Violence* (“NCADV”) was formed to be the voice of victims and survivors. NCADV works to change society to have zero tolerance for domestic violence.

*National Immigration Law Center* (“NILC”) is a national legal advocacy organization whose mission is to defend and advance the rights of low-income immigrants and their families. NILC has litigated key immigration-related employment law cases, drafted legal reference materials relied on by the field, trained advocates, attorneys, and government officials, and provided technical assistance on a range of legal issues affecting low-wage immigrant workers.

*National Institute for Latino Policy* (“NILP”) is a non-partisan policy research center that advocates for the rights of Latino citizens and non-citizens in the United States.

*National Latina Institute for Reproductive Health* (“NLIRH”) is the only national reproductive justice organization dedicated to advancing health, dignity, and justice for the 26 million Latinas, their families, and communities in the United States. NLIRH is committed to creating a society in which all persons can make and exercise decisions about their own health, family, and future.

The *National Network to End Domestic Violence* (“NNEDV”) is a non-profit organization incorporated in the District of Columbia in 1994. As a network of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions, NNEDV serves as the national voice of millions of victims of domestic violence. NNEDV was instrumental in promoting Congressional enactment and implementation of the Violence Against Women

Acts of 1994, 2000, 2005 and 2013, and has been providing training and technical assistance on confidentiality since 2005.

*National Organization for Women* (“NOW”) Foundation is a non-profit organization devoted to furthering women’s rights through education and litigation. NOW Foundation has worked to end all forms of violence against women and has advocated for recognition of the human rights of immigrant women and the adoption of protective measures for those attempting to escape violence.

*National Resource Center on Domestic Violence* (“NRCDV”) is a national non-profit organization founded in 1993, whose mission is to strengthen and transform efforts to end domestic violence. NRCDV provides comprehensive and individualized technical assistance, training and resource development related to domestic violence intervention and prevention, community education and organizing, and public policy and systems advocacy.

*Nebraska Coalition to End Sexual and Domestic Violence* (“**The Nebraska Coalition**”) (Lincoln, NE) is a non-profit organization that provides training and technical assistance to individuals, agencies and organizations working directly with victims of domestic and sexual violence. The Nebraska Coalition also provides direct services to immigrants victimized by domestic or



sexual violence through legal representation as victims file applications for immigration relief in the form of VAWA self-petitions, U-Visas and T-Visas.

*Network for Victim Recovery of DC (“NVRDC”)* (Washington, DC) is a community-based advocacy organization that seeks to empower crime victims through a collaborative approach by providing holistic, comprehensive services in order to achieve justice and encourage self-determination. NVRDC offers all victims of crime free civil legal services as well as crime victims’ rights representation.

*New Haven Legal Assistance Association (“NHLAA”)* (New Haven, CT) is a non-profit organization devoted to providing free representation aimed at protecting the rights of members of the Greater New Haven area who are otherwise unable to obtain legal counsel. Undocumented immigrants are robustly represented among the clients served by NHLAA, and U-Visa applications and VAWA petitions are an important component of the organization’s work.

*New Jersey Alliance for Immigrant Justice (“NJAIJ”)* is a statewide coalition of faith-based, labor, CBOs, grassroots, and civil liberties organizations that work together to promote policies in New Jersey that welcome and support immigrants to become rooted economically, politically and socially within the state.

*New Jersey Coalition to End Domestic Violence* (“NJCEDV”) is a statewide coalition of 30 domestic violence programs and concerned individuals whose purpose and mission is to end domestic violence. NJCEDV seeks to provide safety and support to victims and survivors of domestic violence, to hold offenders accountable, to engage community-based systems to enhance their response to all forms of domestic and sexual violence, and to develop and implement programs that promote the prevention of domestic and sexual violence.

*New York Asian Women’s Center* (New York, NY) is a non-profit organization dedicated to the healing and thriving of survivors of domestic violence, sexual violence, and human trafficking. Many of our clients are immigrants whose lack of status has led to numerous challenges and made them particularly vulnerable to abuse and exploitation.

*New York State Coalition Against Sexual Assault* (“NYSCASA”) (Albany, NY) is coalition of community-based rape crisis programs located throughout New York State. NYSCASA’s mission is to end all forms of sexual violence and exploitation by advocating for the effective response to all people affected by sexual assault; providing technical support and assistance to rape crisis centers and others; working legislatively to improve public policy; and confronting societal denial of the impact of sexual violence through statewide outreach and education.

The *North Carolina Justice Center* (Raleigh, NC) is a non-profit research and advocacy organization dedicated to transforming North Carolina's prosperity into opportunity for all. Our mission is to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services and fair treatment it needs in order to enjoy economic security. The Justice Center represents low-income immigrants, including VAWA recipients, in immigration proceedings and civil actions.

*Pathways for Change, Inc.* ("Pathways") (Worcester, MA) is a non-profit organization established in 1973 whose mission is to address the impact of sexual assault and abuse by providing both quality, multicultural services to all persons whose lives have been impacted by sexual violence and education geared toward the prevention of violence. We serve a large population of immigrants in the Central Massachusetts region that are survivors of rape and sexual assault.

*Ohio Alliance to End Sexual Violence* ("OAESV") (Cleveland, OH) advocates for comprehensive responses and rape crisis services for survivors and empowers communities to prevent sexual violence. Through our focus on prevention, response, and public policy advocacy, OAESV envisions an elimination of sexual violence in Ohio and beyond.

*Oregon Coalition Against Domestic & Sexual Violence* (Portland, OR) is a non-profit, feminist organization, founded in 1978 whose efforts are directed

toward providing technical assistance, training and public education to local crisis centers and communities; engaging in systems advocacy; and supporting multi-disciplinary efforts to develop effective agency protocols.

***Pennsylvania Coalition Against Domestic Violence (“PCADV”)***

(Harrisburg, PA) is a private non-profit organization and the first domestic violence coalition in the nation. PCADV’s membership includes shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing projects for victims of abuse and their children. PCADV’s programs in 60 organizations across Pennsylvania have offered safety and refuge to close to 2 million victims and their children.

***Pennsylvania Coalition Against Rape*** (Enola, PA) is a non-profit organization whose mission is to advocate for the rights and needs of victims of sexual assault.

***Pennsylvania Immigration Resource Center (“PIRC”)*** (York, PA) works to provide access to justice for vulnerable immigrants in detention and in the community through education, advocacy, and legal services, including VAWA self-petitions, U-Visa and T-Visa applications.

***Rape Victim Advocates*** (Chicago, IL) is a comprehensive rape crisis center that is active in a coalition of individuals and organizations concerned with workplace sexual violence.

***Raksha, Inc.*** (Atlanta, GA) is a Georgia-based non-profit organization for the South Asian Community. Raksha works to promote a stronger and healthier South Asian community through confidential support services, education and advocacy.

***The Safe Center LI, Inc.*** is a non-profit organization based in NY that provides comprehensive services of all victims of domestic abuse, sex trafficking, child abuse, and sexual assault, including legal services and immigration services to undocumented victims.

The ***SF Progressive Workers Alliance (“PWA”)*** (San Francisco, CA) is an alliance of worker centers. PWA puts the needs and interests of low-wage and excluded workers and families across San Francisco at the center of policy decisions through joint mobilizations and strategic campaign work across race, language, neighborhood and industry.

***Sanctuary for Families*** is the largest non-profit in New York dedicated exclusively to serving domestic violence and sex trafficking victims. Sanctuary for Families provides legal, clinical, shelter, and economic empowerment services to tens of thousands of survivors, a large number of whom require immigration assistance. Sanctuary has a substantial VAWA self-petition, U-Visa, and T-Visa practice.

*SAVE (Safe Alternatives to Violent Environments)* (Fremont, CA) was founded in 1976 as a grassroots organization that provided safe shelter to women and children experiencing domestic violence. Today, SAVE provides shelter, crisis support, case management, legal services, advocacy, counseling, and prevention services so that individuals, families, and communities can be free from domestic violence and live in peace.

*SC Victim Assistance Network (“SCVAN”)* has served as a voice for all victims in the state of South Carolina for thirty years. In 2009, SCVAN launched the SC Immigrant Victim Program to work collaboratively with partners throughout the state to advocate for immigrant survivors of crime and provide direct legal representation to hundreds of immigrant survivors.

*SEPA Mujer, Inc.* (Islandia, NY) has been working to support immigrant women on Long Island since 1993, bringing together community members and advocates to push for change, speak out against injustice, provide access to opportunities and services and take a stand against domestic violence and other abuses.

*SER (Service, Employment, and Redevelopment) National* is a national network of Community Based Organizations (CBO’s) that formulates and advocates initiatives resulting in the increased development and utilization of

America's human resources, with special emphasis on the needs of Hispanics, in the areas of education, training, employment, business and economic opportunity.

*Tacoma Community House* (Tacoma, WA) serves the South Puget Sound area as a resource for immigrants, refugees, and long-time residents seeking enrichment and pathways to become contributing community members. Tacoma Community House assists immigrant victims of crime in obtaining U- and T-Visas.

*Tri-Valley Haven* (Livermore, CA) is a multi-service organization that provides comprehensive services for victims of domestic violence, sexual assault and homelessness.

*University of Maryland Carey School of Law Gender Violence Clinic* has represented individuals subjected to gender-based violence in a variety of contexts since 2013, including undocumented immigrant victims of violence seeking relief in T- and U-Visa proceedings. The views expressed in this Amicus Brief are those of the Gender Violence Clinic of the University of Maryland Francis King Carey School of Law. They do not expressly or impliedly represent the views of the University of Maryland Francis King Carey School of Law, or of the University of Maryland Francis King Carey Law School Clinical Law Program in general.

*Vermont Network Against Domestic Violence and Sexual Violence* (Montpelier, VT) is a coalition of 14 domestic and sexual violence programs throughout Vermont with a statewide office located in Montpelier. The Network's

purpose is to create a world free of oppression where actions, beliefs and systems support all people to thrive.

*Victim Rights Center of Connecticut* (Wallingford, CT) is a non-profit organization that represents victims of violent crime, focused on sexual assault, child abuse, violence against LGBTs, elder abuse and homicide. It represents undocumented victims of both adult and child sexual assault, and protecting their privacy and status is a major goal in every case.

*VIDA Legal Assistance, Inc. (“VIDA”)* (Naranja, FL) is a non-profit organization dedicated to advancing the rights of immigrant survivors of domestic violence, sexual assault, human trafficking and other violent crimes. VIDA files hundreds of U-Visas every year for women, children and men who have been subjected to abuse and exploitation at home and in the work place.

*Washoe Legal Services* (Reno, NV) is a non-profit legal services agency that is dedicated to helping qualified residents of Washoe County, NV. Washoe Legal Services provides free quality legal services and representation to qualified residents, including assistance in obtaining T-Visas, U-Visas, as well as assisting individuals who are seeking status as VAWA Self-Petitioners.

*Wind of the Spirit* (Morristown, NJ) is an interfaith organization of immigrants and non-immigrants who are moved by the tradition of hospitality to the stranger found in so many of the world’s religions. Its programs include



community organizing, advocacy, education and providing services on immigration, labor, health and safety, wage recovery and taxes. Wind of the Spirit works with and serves many Latina immigrant workers who are facing the traumatic experience of work violence and are fearful of reporting sexual abuse, and harassment at the workplace.

***Wisconsin Coalition Against Sexual Assault (“WCASA”)*** (Madison, WI) is a non-profit, statewide member organization composed for sexual assault programs, sexual assault survivors and individuals and agencies promoting the social change necessary to end sexual assault. WCASA has been involved in efforts to strengthen confidentiality protections for sexual assault victims since its inception.

***Women’s Resource Center (Barbara J. Hart Justice Center) (“WRC”)*** (Scranton, PA) is a private non-profit organization serving women, children and male survivors of domestic violence, sexual violence, dating violence and stalking in Lackawanna and Susquehanna Counties. WRC’s mission is to end domestic and sexual violence through advocacy, education, and social change.

***YWCA Madison*** (Madison, WI) has a mission to eliminate racism and empower women. The YWCA of Madison supports immigrant survivors of domestic abuse in our housing programs, including through the process of applying for U-Visas.

The *YWCA Rock County* (Janesville, WI) serves victims of domestic abuse through the Alternatives to Violence Program, Women’s Transitions Program and Immigrant Outreach Program, which includes legal advocacy, case management, child youth recovery services, crisis hotline, and a 33-bed domestic violence shelter. The YWCA Rock County supports immigrant survivors of domestic abuse in our housing programs and through coordination of services in the process of applying for VAWA and U- Visas.

*YWCA Wheeling* (Wheeling, WV), provides services to victims of domestic violence and human trafficking. Issues related to VAWA confidentiality, U-Visas, and T-Visas have arisen in the past and will continue to arise in the future during the course of the YWCA Wheeling’s provision of services.

### **INTRODUCTION**

This Brief is being filed by a group of 91 organizations who have expertise on the Violence Against Women Act’s (“VAWA”) immigration protections and VAWA’s confidentiality provisions and includes the lead agencies involved in development of these protections and implementation of these protections. Amici strongly support the position taken by the Appellant, U.S. Equal Employment Opportunity Commission (“EEOC”), in this case and submit this Amicus Brief in support of the EEOC’s request that discovery of any information protected by

VAWA confidentiality laws be barred including, but not limited to, information about or contained in an employee's U visa case file.

In 1994, Congress enacted the Violence Against Women Act (42 U.S.C § 13925, *et seq.*) (“VAWA”), a comprehensive legislative effort to “deter and punish violent crimes against women”. H.R. Rep. No. 103-395, at 26 (1994). From the outset, and in the significant broadening of VAWA protections since, VAWA includes sweeping provisions designed to protect immigrant women and to remove critical barriers that may otherwise cause a chilling effect for immigrant survivors seeking legal and social service protections. Leslye E. Orloff, *VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, National Immigrant Women's Advocacy Project, Inc., [www.niwap.org/uploads/Ch3\\_Confidentiality.pdf](http://www.niwap.org/uploads/Ch3_Confidentiality.pdf). Amici join in submitting this Brief to address a series of District Court orders that fundamentally misinterpret and undermine core provisions of VAWA, specifically the confidentiality provisions pertaining to U visa applications set forth in 8 U.S.C. Section 1367 and 8 C.F.R. Section 214.14.

In the record before this Court, the District Court correctly denied Appellee Koch Foods' attempts to seek the immigration status of the Individual Plaintiffs and Aggrieved Individuals and discovery directed to the Appellant EEOC seeking U visa information regarding the employees seeking relief. For reasons which are

not clear, in ruling upon Koch Foods' motion seeking to compel U visa information from the EEOC, the District Court, through a footnote, essentially opened a path for Koch Foods to seek the same confidential U visa information directly from the Individual Plaintiffs and the Aggrieved Individuals. This appeal arises from multiple rulings by the District Court compelling the Individual Plaintiffs and Aggrieved Individuals to provide information contained in victim workers' U visa applications filed with the U.S. Department of Homeland Security ("DHS") to Koch Foods that despite the fact that the information being sought by the employer is covered by VAWA's confidentiality provisions.

As will be discussed herein, the District Court orders allowing discovery of U visa information in a civil matter directly from the victims for whom the EEOC seeks relief are unsupported by any reading of the confidentiality provisions of VAWA, are in direct contravention of Congress' intent in enacting the VAWA confidentiality provisions, and set a dangerous precedent that would allow perpetrators, their employers, and others to obtain information Congress clearly intended to shield so as to protect victims and the public. Amici respectfully request that this Court reverse the District Court's orders.

### **ARGUMENT**

The VAWA and the Trafficking Victims Protection Act (22 U.S.C. § 7101, *et seq.*) ("TVPA") create several forms of immigration relief that were designed by

Congress to offer protection to vulnerable immigrant victims of domestic violence, sexual assault, human trafficking, and other violent crimes. VAWA self-petitions, VAWA cancellation of removal, battered spouse waivers, U visas, and T visas offer documented and undocumented immigrant victims targeted by perpetrators of crimes committed in victim's homes, workplaces, schools, and in communities across the United States access to legal immigration status that includes a potential path to lawful permanent residency. Each of these forms of immigration relief results in encouraging immigrant crime victims to come out of the shadows and avail themselves of crime victim protections in the U.S. justice system's civil, criminal, and family courts. Krisztina E. Szabo, David Stauffer, Benish Anver, and Leslye E. Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants February 12, 2014*, National Immigrant Women's Advocacy Project, Inc., 28-32, [www.niwap.org/reports/Early-Access-to-Work-Authorization.pdf](http://www.niwap.org/reports/Early-Access-to-Work-Authorization.pdf).

When immigrant victims, like other crime victims, seek help from the police, prosecutors, courts, and other state and federal government enforcement agencies, by reporting the criminal activities they have suffered, the risk of harm to the victims and their family members increases. The VAWA confidentiality statute, 8 U.S.C. Section 1367(d), concerned about this issue, required that "[T]he Attorney General, Secretary of State, and the Secretary of Homeland Security shall

provide guidance to officers and employees ... who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u)) from harm that could result from the inappropriate disclosure of covered information.” Perpetrators use violence, retaliation, and threats against victims and their family members to undermine criminal prosecutions and enforcement actions, to maintain family property in divorce actions, to avoid paying child support, and to win custody of children contravening state laws that discourage or bar perpetrators being awarded custody of children.

VAWA’s confidentiality protections are “strict.” *Hawke v. U.S. Dep’t of Homeland Sec.*, No. C-07-03455, 2008 WL 4460241 \*1, \*7 (N.D. Cal. Sept. 29, 2008). They are also broad: by prohibiting the “use by or disclosure to *anyone* . . . of *any information*.” 8 U.S.C. § 1367 (emphasis added). Section 1367 prevents abusers from discovering the substance, as well as the existence, of any VAWA<sup>1</sup> application or U visa for relief. As such, courts have held that an immigrant victim’s VAWA application or U visa application for relief is “absolutely privileged information” that cannot be compelled for use in either criminal or civil

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<sup>1</sup> In this brief the term “VAWA” includes all forms of VAWA self-petitions, battered spouse waivers, VAWA cancellation of removal, and VAWA suspension of deportation.

proceedings. *Hawke*, 2008 WL 4460241 at \*7 (denying accused batterer's demand that the Department of Homeland Security produce his wife's immigration records for use in criminal battery proceedings); *Demaj v. Sakaj*, No. 3:09-CV-255, 2012 WL 476168 \*1, \*5 (D. Conn. Feb. 14, 2012) (denying motion to compel U visa application because "disclosure of these documents for this purpose runs contrary to the intent of the protections afforded by 8 U.S.C. § 1367").

Section 1367 prevents abusers, perpetrators, traffickers, employers, spouses, family members, and others from discovering the substance, as well as the existence, of any VAWA, U visa, or T visa application for relief. Section 1367's robust protections improved upon prior regulations that failed to protect the confidentiality of immigrant victim information. *See* 8 C.F.R. § 216.5(e)(3)(vii) (1992) "[a]ny information provided under this part *may* be used for the purposes or enforcement of the act in any criminal proceeding," (emphasis added); *see also* 56 Fed. Reg. 22635 (May 16, 1991), allowing alleged abusers to locate immigrant victims. To protect victims from the resulting harms, and foster full participation of immigrant victims in the justice system, Congress created VAWA's confidentiality protections. VAWA's confidentiality protections permit victims of domestic and sexual violence, human trafficking, and other U visa criminal activities to safely and confidentially file their immigration case without the perpetrators' knowledge, consent, or ability to obtain any information about the case filed by the immigrant

crime victim. VAWA, U and T visas were designed to allow victims to file with no requirement that victims separate from contact with their abusers because victims have no access to legal work authorization until their case is adjudicated and victims are more able to leave abusive circumstances after their have received a favorable adjudication from DHS. These confidentiality protections are essential for the many immigrant victims who remain at risk of harm from their abusers for an eight to twenty-four month period to while awaiting an immigration adjudication that provides legal work authorization. VAWA confidentiality also provides crucial life, safety, and stalking protections for victims who have fled their abusers and victims who are at enhanced risk because they are actively participating in litigation involving perpetrators and their employers.

Government officials are barred from releasing any information about a VAWA confidentiality protected case to the perpetrator or any other person. 8 U.S.C. § 1367(a)(2). Adjudicators of VAWA, and T and U visa cases are also prohibited from relying solely on perpetrator information, which is considered “inherently suspect”. Department of Homeland Security, DHS Directives System, *Implementation Of Section 1367 Information Provisions*, Directive No. 002-02, Revision No. 00 (November 1, 2013) [www.niwap.org/uploads/implementation-of-section-1367.pdf](http://www.niwap.org/uploads/implementation-of-section-1367.pdf), (“Adverse determinations of admissibility or deportability against an alien are not made using information furnished solely by prohibited



sources associated with the battery or extreme cruelty, sexual assault, human trafficking or substantial physical or mental abuse, regardless of whether the alien has applied for VAWA benefits, or a T or U visa. . . . If a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees should treat the information as inherently suspect and exercise all appropriate prosecutorial discretion with respect to pursuing the adverse information. Further, DHS employees receiving information solely from a prohibited source do not take action on that information unless there is an independent source of corroboration.”); *see also* Department of Homeland Security, DHS Instructions System, Instruction No. 002-02-001, Revision No. 00, (November 7, 2013) (defining “prohibited sources”); 8 U.S.C. § 1367(a)(1).

Accordingly, this Court should not entertain attempts by the perpetrator, his employer, or any other person to seek an alternative means of obtaining confidential information that the government is forbidden from providing and that was intended to remain out of their hands. Allowing discovery in a civil case of VAWA confidentiality protected information would render VAWA confidentiality protections meaningless and will hand perpetrators and/or their employers a powerful tool that Congress clearly intended to bar.

**I. THE LEGISLATIVE HISTORY OF THE U VISA PROGRAM CLEARLY HIGHLIGHTS CONGRESS' INTENT TO EXPAND THE CONFIDENTIALITY PROVIDED TO U VISA APPLICANTS AND THE CONTENTS THEREIN.**

By creating the VAWA self-petition and the U visa crime victim immigration relief in VAWA in 1994 and in reauthorizing VAWA in 2000, Congress hoped to free immigrant domestic abuse victims who were trapped in abusive marriages and offer temporary immigration relief for immigrant crime victims who muster the courage to come forth and work with law enforcement, prosecutors, and other government officials investigating and prosecuting the criminal activities suffered. Before the passage of VAWA, Immigration and Naturalization Service (“INS”) regulations contained an exception through which INS and state and local authorities could disclose information about the victim to the accuser. With the passage of VAWA, Congress closed that loophole by limiting the release of VAWA confidential information to law enforcement officials “to be used *solely for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information.*” 8 U.S.C. § 1367(b)(2) (emphasis added). In a subsequent INS memorandum, the agency admitted that its “disclosure of information to the alleged abuser or any other family member was inappropriate even prior to the new law.” 74 Interpreter Release 795 (May 12, 1997).

In passing VAWA's confidentiality protections for immigrant crime victims, Congress drew upon a long history of confidentiality protections for victims of domestic violence, sexual assault, and other crimes. Under the 1984 Family Violence Prevention and Services Act ("FVPSA"), (Pub. L. No. 98-457, § 101 et seq., 98 Stat. 1749, et seq. (1984), as amended), and VAWA 1994, as amended, any shelter, rape crisis center, domestic violence program, or other victim service program that receives either VAWA or FVPSA funding is barred from disclosing to anyone any information about a victim receiving services, including any locational information. FVPSA, Pub. L. No. 98-457, § 303(a)(2)(E), 98 Stat. 1757 (1984) (codified as amended at 42 U.S.C. § 10402(a)(2)(E)), mandating that the Federal government may make grants to States only if the States "provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this chapter and provide assurances that the address or location of any shelter-facility assisted under this chapter will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public"); *see also* ACF Grant Opportunities, Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions, <http://www.acf.hhs.gov/grants/open/HHS-2007-ACF-ACYF-SDVC->

0122.html#part\_3\_1. Congress found that “[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.” H.R. Rep. No. 103-395, at 25 (1993). The legislative history of the creation of the VAWA confidentiality protections states that “we all know confidentiality is a matter of life and death whether or not they are citizens or whether they are immigrants... If you could imagine if you had an abuser being tried in court for abuse, he could get the victim deported so she could not testify if we didn’t do this.” Full Committee Mark Up: Hearing on H.R. 2202 Before the House Judiciary Committee, 104th Cong. (1995) (statement of Representative Patricia Schroeder). Discussing the importance of VAWA confidentiality in family violence cases, Senator Wellstone stated, “It would be unconscionable for our immigration laws to facilitate an abuser’s control over his victim.” Hearing on H.R. 2202 Before the House Judiciary Committee, 104th Cong. (1995) (Statement of Sen. Wellstone).

Congress reauthorized VAWA in 2000 “to improve on efforts made in VAWA 1994 to prevent immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant spouse from reporting abuse or leaving the abusive relationship.” 146 Cong. Rec. S10195 (2000) (“Title V, the Battered Immigrant Women Protection Act of 2000- Section-By-Section Summary”). As part of these improvements, Congress expanded the

right of self-petition to include immigrant victims that previously did not qualify under VAWA's 1994 provisions. Pub. L. No. 106-386, §§ 1501-1513, 114 Stat. 1464-1533. VAWA confidentiality was also extended to these newly-qualified U visa victims. *Id.*

Congress in 2000 created the U visa program to provide temporary immigration benefits to victims who had suffered abuse as a result of certain crimes, and assist law enforcement or other federal investigative authorities in the detection, investigation, prosecution, conviction, or sentencing of those crimes. *Id.*, §§ 1513, 114 Stat. 1533-37; 8 C.F.R. §§ 214.14(a)(2) and (5). At the same time, Congress amended VAWA's confidentiality provisions to cover this new form of immigration relief. *Id.* The recent 2010 *DHS Broadcast Message on New 384 Class of Admission Code* memo on VAWA's confidentiality provisions announced the creation of a red flag "384" notification system designed to alert immigration officials of VAWA confidentiality protected cases. *DHS Broadcast Message on New 384 Class of Admission Code*, [www.niwap.org/uploads/message-to-DHS-384-COA.pdf](http://www.niwap.org/uploads/message-to-DHS-384-COA.pdf). That system guarantees that VAWA confidentiality protections attach upon the filing of a VAWA confidentiality protected immigration case and continue indefinitely. *Id.*

In reauthorizing VAWA in 2005, Congress introduced additional protections to VAWA confidentiality. Among these increased protections, Congress expanded

VAWA confidentiality under Section 1367 to include newly-created forms of immigration relief (Pub. L. No. 109-162, § 817, 119 Stat. 2960, 3060); further expanded the definition of VAWA self-petitioners thus extending VAWA confidentiality (*Id.*, §§ 811, 817, 119 Stat. at 3057, 3060); added penalties to Section 1367 for violating VAWA confidentiality provisions (*Id.*, § 817, 119 Stat. at 3060); and required DHS to develop policies, protocols, and training to implement VAWA confidentiality (*Id.*, § 817, 119 Stat. at 3060). As in the past, Congress added these increased victim protections “*to ensure that abusers and criminals cannot use the immigration system against their victims.*” See H.R. Rep. No. 109-233, at 120 (emphasis added) (2005); *see also* 151 Cong. Rec. E2605, E2607 (daily ed. Dec. 18, 2005).

**II. THE CONFIDENTIALITY PROVISIONS OF THE U VISA PROGRAM PROHIBIT DISCLOSURE OF AN APPLICANT’S INFORMATION TO ANY THIRD PARTY, AND PARTICULARLY THE AGGRESSOR, DURING DISCOVERY.**

The confidentiality provisions of U visa applications prohibit federal authorities from using or disclosing any information related to a VAWA application to *any third party*. While serving as a shield to prohibit governmental disclosure, VAWA confidentiality also provides a sword of protection for immigrant victims. By laying out the limited circumstances under which VAWA confidentiality can be waived, Congress made clear that VAWA confidentiality is

*a privilege that belongs to the victim.* For example, with prior written consent of the victim, DHS can “communicate with nonprofit, nongovernmental victims’ service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section.” 8 U.S.C. § 1367(b)(7).

Congress also allowed limited circumstances in which immigrant victims could voluntarily waive their rights to VAWA confidentiality. 8 U.S.C. § 1367(b)(4). Absent voluntary disclosure by a victim, information protected by VAWA is statutorily required to remain confidential, regardless of whether the information resides with the government or the victim. To hold otherwise would defeat the paramount purpose of VAWA confidentiality--“to prohibit disclosure of confidential application materials to the accused batterer.” *Hawke*, 2008 WL 4460241, at \*7. Accordingly, courts should not compel victims to reveal confidential information they otherwise would not voluntarily reveal to anyone, much less to their aggressors, or to those who employed the aggressor and countenanced the aggressor’s behavior.

Additionally, VAWA confidentiality contained an exclusive list of exceptions to the information sharing bar. Each exception was expressly limited. The exceptions included the law enforcement exception discussed on page 43, the

waiver with written consent discussed on page 48, and an exception applicable to judicial review in 8 U.S.C. Section 1367(b)(3) that does not apply to or in any manner reach court ordered discovery. The judicial review exception is exclusively linked to judicial review of DHS and immigration judge decisions on the VAWA confidentiality protected victim's immigration case in an immigration proceeding and not to a civil or criminal case. And even that exception requires disclosure "in a manner that protects the confidentiality of such information." 8 U.S.C.

§ 1367(b)(3). Thus, to compel disclosure of a victims' VAWA confidentiality protected information to her accused perpetrator or to someone who could release that information to the perpetrator could never meet the statutory exception.

Additionally, each of the other exceptions limit disclosure to entities that could not be construed to include a perpetrator or an employer. They are – to the census § 1367(b)(1); to public benefits agencies solely for benefits determinations § 1367(b)(5); to the Chair and Ranking member of the House and Senate Judiciary committees for oversight purposes § 1367(b)(6); and for national security purposes § 1367(b)(8).

Disclosing confidential information provided by a crime victim in an immigration status application that receives VAWA confidentiality protection undermines the purpose of confidentiality and could result in disastrous consequences for the victim. As set forth herein, the vast majority of immigrant



victims receiving VAWA confidentiality protection are immigrant victims of: domestic violence, child abuse, elder abuse, sexual assault, and human trafficking, and are filing VAWA confidentiality protected cases: VAWA self-petitions, battered spouse waivers, U visas, and T visas. Courts considering requests to access information contained in a victim's VAWA self-petition and U visa case files have recognized the need to protect victims by denying discovery requests for disclosure of VAWA confidentiality protected information in civil or family court proceedings. For example, in both *Hawke v. United States Department of Homeland Security*, and *Demaj v. Sakaj*, the courts found VAWA confidentiality outweighed any interests asserted by the perpetrators seeking disclosure of confidentiality protected information.

In *Hawke*, the court held that the federal government could not release information protected by VAWA confidentiality provisions to civil or criminal attorneys who sought such information. *Hawke*, 2008 WL 4460241, at \*1. In *Demaj*, the court found the VAWA confidentiality protections to be absolute. “[W]hile it would appear that claims of abuse made in Respondent’s U-Visa application are relevant to Respondent’s credibility as a witness and may be used to impeach Respondent’s testimony at trial, disclosure of these documents for this purpose runs contrary to the intent of the protections afforded by 8 U.S.C. § 1367”. *Demaj*, 2012 WL 476168, at \*18.

No rationale exists to permit perpetrators accused of committing the crimes described in VAWA self-petitions, and U and T visa applications, or their employers, to use civil court discovery to obtain *directly from the victim* the same VAWA confidentiality protected information that the government itself is prohibited from revealing or requiring disclosure of that protected information to the perpetrator or the perpetrator's employer, family member of someone associated with or who could deliver the information to the perpetrator. To do so would create a chilling effect for victims seeking judicial remedies for abuse or violence and defies the legislative history and purpose of the confidentiality provision.

### **III. IMPORTANCE OF VAWA CONFIDENTIALITY FOR CRIME VICTIM PROTECTION.**

The VAWA confidentiality provisions serve three essential goals. The first is to protect the victims themselves. The second is to assist law enforcement by freeing victims to provide the evidence necessary to seek out and prosecute perpetrators, employers, and others connected to violence against victims. The third is for public safety generally.

#### **A. Protection of Victims.**

Congress enacted VAWA and created the U visa to protect victims of violence, especially women and children. Full Committee Mark Up: Hearing on

H.R. 2202 Before the House Judiciary Committee, 104th Cong. (1995) (statement of Statement of Sen. Wellstone, “It would be unconscionable for our immigration laws to perpetuate violence against women and children.”). The overwhelming majority of U visa applications, over seventy-five percent, are victims of domestic violence, rape, sexual assault, and/or human trafficking. Leslye E. Orloff and Paige E. Feldman, *National Survey on Types Of Criminal Activities Experienced By U-Visa Recipients*, IMMIGRANT WOMEN PROGRAM, LEGAL MOMENTUM (November 29, 2011), [www.niwap.org/uploads/National-Survey-Types-Criminal-Activities-2011.pdf](http://www.niwap.org/uploads/National-Survey-Types-Criminal-Activities-2011.pdf). The majority of VAWA confidentiality protected cases involve perpetrators who have intimate, close, and/or ongoing access to the crime victim as a family member, employer, or human trafficker. Many of the crimes covered by U visa protections (*e.g.* sexual assault, stalking, human trafficking, child sexual exploitation, and felonious assault) involve criminal perpetrators whose activities are serial in nature affecting public safety and often involve multiple victims in the community. Crime victims, who file police reports, cooperate in government investigations and testify in criminal, civil and family court proceedings do so at increased risk to themselves, their children, and their family members. This is particularly so for those who continue living or working in locations where the abuse occurred and who have fled and gone into hiding.

VAWA's and TVPA's immigration protections for crime victims help both documented and undocumented immigrant crime victims. Immigrant women and girls who enter the United States legally with a range of temporary visas are still vulnerable to sexual assault, human trafficking, and domestic violence. Such individuals may be in the United States on a work visa tied to a particular employment, a student visa, or a diplomatic visa. If the victim leaves or loses their employment or does not continue with school or work as a result of the crime victimization, the victim can become undocumented. Other immigrants with tourist, work, or religious visas may become crime victims eligible to move from temporary legal immigration status to a U visa that provides a potential path to lawful permanent residency in the United States. Additionally, immigrant victims who attained legal immigration status through a family member are often threatened that if they report abuse, the abuser will have their legal immigration status taken away. Thus, immigrant victims with a form of temporary lawful immigration status may legitimately fear immigration consequences should their perpetrators obtain information about or access information contained in their VAWA confidentiality protected immigration case. Using discovery in civil cases as a means by which perpetrators and employers can directly force victims to reveal information that they were assured would remain confidential will only enhance their apprehension. A study showed that battered immigrant Latinas who

had a stable immigration status were almost twice as likely to call the police compared with those who either had a temporary legal immigration status or were undocumented. Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, and Giselle Aguilar-Hass, *Calls To Police And Police Response: A Case Study Of Latina Immigrant Women In The USA*, 7 INT'L J. POLICE SCIENCE & MGMT, 236-37 (2005). In fact, immigration status is one of the two most heavily weighed factors a battered woman considers in whether to report domestic violence to the police.

Perpetrators have actively tried to have removal actions initiated by the DHS against victims who have filed U visa and VAWA applications in the course of litigation in order to deter them from proceeding with the charges and to withdraw the allegations. This is despite DHS's clear policy that deportation of VAWA and U visa applicants is not a priority category for removal. Thirty percent of U visa applicants have become the subject of DHS enforcement actions after filing their application and while it was still pending, with over a quarter initiated by reports by perpetrator or the perpetrator's family. Szabo, *supra*, at 28-32.

Even immigrant women who become naturalized U.S. citizens or lawful permanent residents have residual fears of adverse immigration actions being taken against them. This serves as a barrier to accessing services for domestic violence victims and is due largely to perpetrators' ongoing threats. Almost one-third of immigrant Latina victims of domestic violence have a deep-seeded fear of

immigration problems and deportation that do not end with the attainment of legal immigration status, such as through a U visa. Mary Ann Dutton, Leslye E. Orloff, and Giselle Aguilar, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEORGETOWN J. POVERTY LAW & POLICY 292 – 95 (2000).

In sexual assault cases, ensuring the confidentiality of the victim's extremely sensitive and personal information in the victim's confidential immigration case is paramount. Disclosure of highly intimate information can have consequences for the victim's esteem, reputation, and safety and could provoke additional violence, blackmail, intimidation, or harassment by the aggressor.<sup>2</sup> Sexual assault cases can often involve allegations that warrant protection of intimate information about the victim including anonymity of the plaintiff given privacy concerns related to the intimate nature of the accusations. *Doe v. El Paso Cnty. Hosp. Dist.*, 2015 WL 1507840, at \*4 (W.D. Tex. Apr. 1, 2015); *see also, e.g., Plaintiff v. Francis B*, 631 F.3d 1310, 1315-19 (11th Cir. 2011); *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir.1997) (“[F]ictitious names are allowed when necessary to protect the privacy of ... rape victims, and other particularly vulnerable parties or witnesses.”); *Doe v. Cabrera*, Civ. A. No. CV 14–

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<sup>2</sup> While the District Court permitted the use of a protective order to redact information related to the immigration status and history of Appellants, recognizing its irrelevance to the claims at hand, the information related to the very intimate nature of the crimes alleged, including those of a sexual nature, were permitted to be discoverable.

1005(RBW), 2014 WL 4656610, at \*4 (D.D.C. Sept. 10, 2014); *EEOC v. Spoa, LLC*, No. CIV. CCB–13–1615, 2013 WL 5634337, at \*3 (D.Md. Oct.15, 2013); *Roe v. St. Louis Univ.*, No. 4:08CV1474 JCH, 2009 WL 910738, at \*3–5 (E.D.Mo. Apr.2, 2009); *Doe No. 2 v. Kolko*, 242 F.R.D. 193, 196 (E.D.N.Y.2006).

Courts have often considered the consequences of revealing highly personal and private information in the course of judicial proceedings. *Doe v. El Paso Cnty. Hosp. Dist.*, 2015 WL 1507840, \*4 (W.D. Tex. Apr. 1, 2015) (where the issues involved are matters of a sensitive and highly personal nature ... the normal practice of disclosing the parties' identities yields to a policy of protecting privacy in a very private matter,” quoting *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 712 - 13 (5th Cir. 1979)). The risk of revealing sexual assault victimization can be even more severe for victims who become ostracized from their cultural or religious communities or whose spouses initiate divorce proceedings when they learn about the victim’s sexual assault.

“Victim safety may be jeopardized if sensitive information is published or otherwise made available to the offender and the public.” Viktoria Kristiansson, *Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions Part I. An Overview of the Importance of Confidentiality and Privilege Laws*, 1, (May 2013), [http://www.aequitasresource.org/Issue\\_9\\_Walking\\_A\\_Tightrope\\_Balancing\\_Victi](http://www.aequitasresource.org/Issue_9_Walking_A_Tightrope_Balancing_Victi)

m\_Privacy\_and\_Offender\_Accountability\_in\_Domestic\_Violence\_and  
\_Sexual\_Assault\_Prosecutions\_Part\_I\_May\_2013.pdf.

**B. Impact on Law Enforcement and the Justice System**

The justice system holds perpetrators of criminal activities that include domestic violence, sexual assault, human trafficking, extortion, and felonious assault accountable for their actions. A perpetrator can be prosecuted for many years after a crime is committed. State family law courts issue civil protection orders to domestic and sexual violence victims, grant custody to the non-abusive parent, limit visitation of parents who commit child abuse, and order a disproportionate share of marital property to victims of domestic violence. Civil courts award damages to victims of criminal activity in actions brought by the EEOC, crime victims, and victims of human trafficking. As long as the perpetrator remains exposed to the potential of criminal prosecution, civil liability, or family law remedies for the criminal activities revealed in a victim's application for U visa status, the victim is at risk, and perpetrators can use ongoing violence, threats, stalking, immigration related abuse, and intimidation to silence victims. It is for this reason that VAWA confidentiality protections continue indefinitely and DHS immigration officials are encouraged to use prosecutorial discretion not to initiate enforcement actions against victims of domestic violence, sexual assault, human trafficking, and victims of criminal activity including immigrants involved as



victims and witnesses in criminal cases and in civil rights enforcement actions. John Morton, *U.S. Customs and Immigration Enforcement, Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs*, (June 17, 2011), <http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

The potential for recidivism of violence against the victim remains great, particularly once the aggressor receives details of the victims' allegations or the fact that the victim has filed for immigration relief. When perpetrators learn that their victims have filed for immigration relief, they and their family members actively retaliate by calling immigration authorities to have the victim's deported. Szabo, *supra*, at 26. Often perpetrators attempt to have the victim arrested by local law enforcement officials, further silencing the victim.<sup>3</sup> *Id.* Seventy-eight percent of victims fear for their own safety and the safety of their children. *Id.*

The confidentiality provisions undeniably strengthen the ability of law enforcement, prosecutors, and government investigative agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against immigrants. At the same time, they offer protection to victims of such offenses consistent with the humanitarian interests of

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<sup>3</sup> In domestic violence cases this occurs in 15.4% of the VAWA self-petitioning and 7.5% of U visa cases.

the United States. Pub. L. No. 106-386, §§ 1513, 114 Stat. 1533-37. Protecting the confidentiality of women and children who are the victims of a crime also encourages their full participation in the detection, investigation, prosecution, conviction, and sentencing of those crimes. This is the public safety policy at the heart of the Congressional intent in creating VAWA confidentiality protections. Ensuring that victims can confidentially file for and receive immigration protection removes deportation as a tool of coercion and frees victims to come forward and government officials to better serve immigrant crime victims and their communities by investigating and prosecuting crimes committed against all members of the community, including immigrants. It also gives government officials a means to regularize the status of cooperating individuals during investigations or prosecutions.

The confidentiality provision serves an important role in furthering access to justice by strengthening collaboration and participation by vulnerable immigrant crime victims in the justice system. As with all laws and policies requiring confidentiality, the provision encourages open, honest, and safe communication between victims of criminal activity, police, prosecutors, the EEOC and other government agencies whose work involves the detection, investigation, prosecution, and enforcement of laws against persons who perpetrate violence. The law fosters the pursuit of justice and encourages victims' use of the justice system

to seek accountability. Confidentiality is the foundation upon which victims rebuild their trust, self-esteem, and autonomy after they have been greatly harmed and had their lives destroyed by acts of violence. Confidentiality laws encourage victims to disclose their victimization in the context of therapeutic and other professional relationships, as well as seek redress through the civil and criminal justice systems.

By encouraging victims to come forward providing information about criminal activity, they assist government enforcement agencies like the EEOC and law enforcement officials in identifying potential witnesses to assist in cases brought against perpetrators, discouraging employers from hiring and retaining perpetrators, thus ultimately enhancing overall offender accountability. On the contrary, if an aggressor is provided with the confidential information a victim has provided in her U visa application, the perpetrator can use statements to both intimidate the victim to change or withdraw allegations or use threats and coercion to manipulate and the scare the victim so that testimony presented in the civil, family, or criminal case brought against the abuser will be less credible.

It is important that as the Court considers its ruling in this case that the Court be cognizant of the victim protection and offender accountability intent of Congress in creating VAWA, T and U visa crime victim protections, and VAWA confidentiality. Amici strongly support a ruling that finds that under Federal Rule

26, VAWA confidentiality protections operate as an outright privilege to discovery in civil cases or alternatively that VAWA's confidentiality mandate warrants that the good cause exception be invoked to bar discovery. The VAWA confidentiality protection's statutory requirements that have continually been strengthened by Congress, combined with clear legislative history and federal implementing agency (INS and DHS) policies, make it clear that what is at stake here is the prevention of future acts of violence, criminal, and immigration related threats, witness tampering obstruction of justice and harm to specific individuals and society as a whole. The harm is not limited to and is much greater than concern that discovery of VAWA confidentiality protected information will lead to the "annoyance, embarrassment, oppression or undue burden or expense" that Federal Rule of Civil Procedure 26 seeks to prevent. Fed. R. Civ. P. 26(c)(1).

**C. Public Health And Well-Being.**

The impact of crime victimization on the health and wellbeing of victims is substantial. *See generally*, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, *Vision 21 Transforming Victim Services Final Report*, (May 2013), [http://ovc.ncjrs.gov/vision21/pdfs/Vision21\\_Report.pdf](http://ovc.ncjrs.gov/vision21/pdfs/Vision21_Report.pdf). Providing victim services, legal protection, safety planning, physical and mental health services to crime victims is essential to their ability to rebuild their lives and the lives of their families and children following victimization and "plays an integral

role in promoting safe and healthy communities.” *Id.* at vii. The INS and DHS both understood the role that VAWA, T and U visa immigration relief play in promoting public health and well-being. Specifically, both agencies recognized that victims suffered legitimate public health and safety concerns and that victim safety and public health concerns merited issuance of interim final regulations that took effect immediately. In 2002, INS specifically found that:

In passing the TVPA, Congress intended to create a broad range of tools to be used by the Federal government to combat the serious and immediate problem of trafficking in persons. The provisions of the TVPA address the effect of severe forms of trafficking in persons on victims, including many who may not have legal status and are reluctant to cooperate. In trafficking in persons cases, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. The TVPA strengthens the ability of government officials to investigate and prosecute trafficking in persons crimes by providing for temporary immigration benefits to victims of severe forms of trafficking in persons. . . . Without the prompt promulgation of this rule, victims of severe forms of trafficking in persons might continue to be victimized for fear of coming forward, thus hindering the ability of law enforcement to investigate and prosecute cases and preventing victims from obtaining critical assistance and benefits.

Similarly, in 2007 when DHS issued the U visa regulations DHS stated that:

USCIS has determined that delaying this rule to allow public comment would be impracticable and contrary to the public interest ...USCIS finds a compelling public need for rapid implementation of this rule...delay could result in serious harm...Congress created the new U classification to curtail

criminal activity, protect victims of crimes committed against them in the United States, and encourage victims to fully participate in the investigation of the crimes and the prosecution of the perpetrators... Many immigrant crime victims fear coming forward to assist law enforcement until this rule is effective. Thus, continued delay of this rule further exposes victims of these crimes to danger, and leaves their legal status in an indeterminate state. Moreover, the delay prevents law enforcement agencies from receiving the benefits of the BIWPA and continues to expose the U.S. to security risks and other effects of human trafficking. Therefore, delay in the implementation of these regulations would be contrary to the public interest.

#### **IV. CONCLUSION.**

Amici are concerned that should the Court not bar discovery of U visa information, courts will engage in an inappropriate case by case analysis balancing test, weighing the perpetrator's or employer's stated need for confidential, immigration-status related discovery against the likelihood of harm from discovery to the victim. As illustrated by the District and Magistrate Courts' failures in this case to fully understand VAWA confidentiality and immigration law U visa protections, the likelihood of other courts misunderstanding immigration law protections for crime victims is high. As such, specialized training is needed by courts, police, and prosecutors in domestic violence and sexual assault cases in order to fairly adjudicate these matters. It is imperative that for the justice system to function properly, law enforcement, prosecutors, and judges obtain proper training to adjudicate cases involving victims of sexual assault and domestic

violence. Lack of proper training can lead to the revictimization of victims and can undermine critical policy considerations like public safety, retribution, and security. National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>. Judicial education and training is essential in order to fairly, justly and effectively undertake adjudications, including, when appropriate, balancing tests. *See* National Council of Juvenile and Family Court Judges, 2015 NCJFCJ Topical-One Pagers, <https://cld.bz/xmnR21r#1>. This is particularly true for judges outside of the family court system who may not fully grasp the dynamics and physical and psychological consequences of domestic violence and sexual assault. The harm and negative implications that would follow a decision by this Court to allow a perpetrator to force an immigrant victim to produce her U visa application and supporting documents, would impact not only those immigrant victims in the instant action, but *all* immigrant victims of domestic violence, sexual assault, human trafficking, child abuse, felonious assault, stalking, extortion, and other crimes in *all* VAWA confidentiality protected cases, and in all kinds of contexts, employment, family, and in the community as a whole.

Respectfully submitted,

*/s/ Christopher Odell*

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume requirements of Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,570 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(b)(iii) and Fifth Cir. R. 32.2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Fifth Cir. R. 32.1 and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font in the body and 12-point Times New Roman font in the footnotes.

*/s/ Christopher Odell*

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**CERTIFICATE OF SERVICE**

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