

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 16

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PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER  
Indictment No.: 74275-2022

JUN DU,

Defendant

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Hon. Donald Leo, A.J.S.C.

The defendant is charged with Sexual Abuse in the First Degree and related charges. Sanctuary for Families' (Sanctuary) moves to Quash the defendant's Subpoena, served on June 18, 2024, ordering production of the Application for T Nonimmigration Status, USCIS Form I-914 of the complaining witness for *in camera* review. For the reasons set forth below, Sanctuary's motion Quash the Judicial Subpoena is **granted**.

Pursuant to CPLR § 3101(a)(4), a party may obtain discovery from a nonparty where the matter sought is material and necessary to the prosecution or defense of an action (*see Matter of Kapon v Koch*, 23 NY3d 32, 36; *Hudson City Sav. Bank v 59 Sands Point, LLC*, 153 AD3d 611, 612). A party seeking discovery from a nonparty must apprise the nonparty of the circumstances or reasons requiring disclosure (*see CPLR § 3101[a][4]*; *Matter of Kapon v Koch*, 23 NY3d at 39; *DiBuono v Abbey, LLC*, 163 AD3d 524, 525; *Hudson City Sav. Bank v 59 Sands Point, LLC*, 153 AD3d at 612).

Sanctuary moves to quash the defendant's subpoena on the grounds that the subpoenaed information is confidential and protected from disclosure under the Violence Against Women Act (VAWA), 8 U.S.C. 1367(a)(2). The law protects the confidentiality of crime victims to seek help, report crimes and cooperate with law enforcement in their investigations of violence. Sanctuary argues that one of the primary purposes of the VAWA confidentiality provision is to

prohibit disclosure of confidential application material to the accused batterer. Sanctuary argues that VAWA prohibits the disclosure of any information related to any VAWA protected immigration information including applications for relief.

The defendant argues that there is meaningful impeachment material directly related to the circumstances of this case and that the defendant's Sixth Amendment constitutional right of confrontation outweighs the need to protect the complainant's interests. The defendant argues that the defendant has made a compelling particularized showing that the information in the T-VISA application would contain valuable impeachment material.

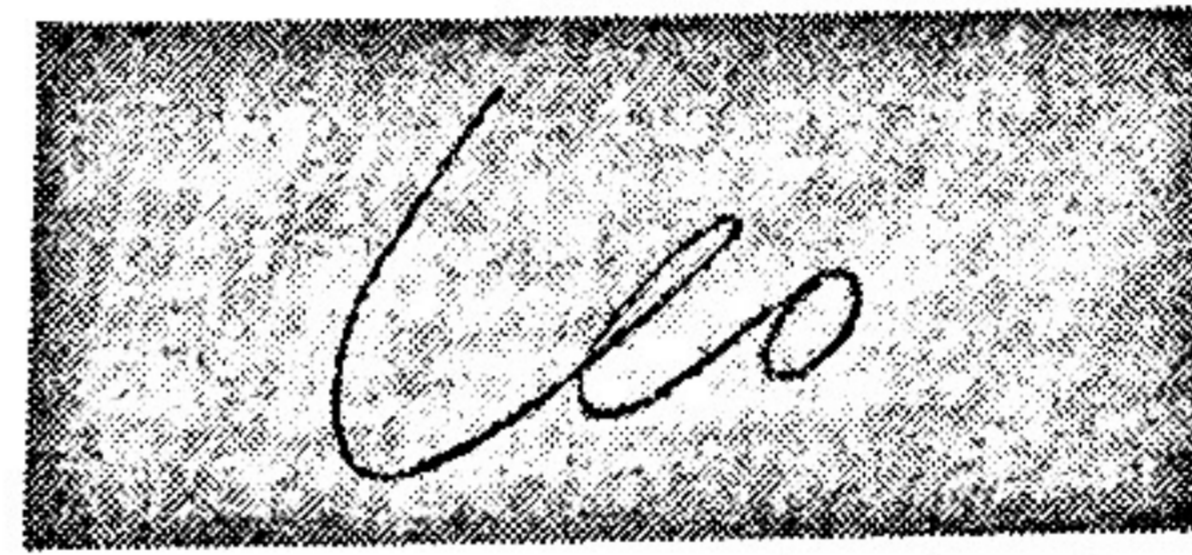
The court agrees with Sanctuary that the federal protections of the VAWA protects the disclosure of the complainant's T-VISA application, and that the defendant has failed to make the requisite showing that the application is so relevant or material that it outweighs the federal protections of confidentiality. Although the court initially signed the Subpoena finding potential impeachment materials in such records, upon further review of the cases submitted by Sanctuary, the court agrees that the materials being sought are protected materials. "Congress' clear intent is to keep these visa applications confidential in order to encourage undocumented women to come forward and report abuse." *People v Bartlett*, 40 Misc.3d 1202(A) (Kings County Sup. Ct., 2013). Accordingly, Sanctuary's motion to quash the defendant's subpoena is **granted**. See *People v. Bartlett*, 40 Misc. 3d 1202(A) (Kings County Sup. Ct., 2013); *Commonwealth v. Riojas*, 2016 WL 5940424 (Superior Court of PA, 2016); *People v. Martinez*, 40 Misc.3d 1204(A) (Kings County Sup. Ct., 2013).

Sanctuary moves for a protective order preventing further discovery of VAWA protected materials in this case. The court finds that the issuance of a protective order is not ripe as there

are no materials, which would be the subject of a protective order, currently in the possession of the prosecution or the defendant. The request for a protective order is **denied**.

The foregoing constitutes the decision and order of the court.

Dated: September 27, 2024  
Brooklyn, NY

A rectangular stamp containing a handwritten signature in cursive script, which appears to read "Leo".

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Donald Leo, A.J.S.C.