

VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information^{1a}

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Violence Against Women Act (VAWA) confidentiality provisions are federal immigration law protections that were enacted² to prevent perpetrators from learning about, interfering with, and obtaining information from certain immigration cases where the victim is seeking a protected form of immigration relief due to their victimization.^{3 4} These VAWA confidentiality provisions were designed to protect against the release of the following information in VAWA confidentiality protected cases:

- The existence⁵ of the case or application;
- Any action taken on the victim’s application;⁶ and
- Information contained within the case file related to the application for immigration protection.⁷

Disclosure of this information is prohibited to anyone including the abuser, the abuser’s family member,⁸ and any third party, including defense attorneys.⁹ The Department of Homeland Security has assigned VAWA confidentiality cases a special electronic “code of admission” that identifies a case as having VAWA confidentiality protection. This code signals DHS officials that the sharing of information about VAWA confidentiality protected applicants and case files both within and outside of DHS is extremely limited to the exceptions specified by statute.¹⁰ Immigration cases that receive VAWA Confidentiality Protection are:¹¹

- VAWA immigrant victims who have been battered or subjected to extreme cruelty¹² by a spouse, former spouse, parent, step-parent or child. The abuser must be a U.S. citizen, lawful permanent resident, or qualifies or qualified for CAA, HRIFA or NACARA. VAWA confidentiality protections apply from the point at which DHS receives information that the immigrant is a victim of spouse, child or elder abuse is either in the process of filing a T or U visa case, or has filed a work authorization application based on abuse by a visa holder spouse. Types of immigration cases protected:
 - VAWA self-petitions (I-360)¹³

^a If you need technical assistance on a cases involving an immigrant crime victim please contact NIWAP at (202) 274-4457 or info@niwap.org. Prosecutors should also call AEquitas for technical support for prosecutors working on cases involving immigrant victims (202) 558-0040 or info@aequitasresource.org. For more information relevant to this document see: Jane Anderson, Leslye E. Orloff, and Benish Anver, *What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims* (2017), available at: <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-1-17-final-with-logos>; Jane Anderson & Benish Anver, *Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law* (2017), available at: <http://niwaplibrary.wcl.american.edu/pubs/case-law-quick-reference-tool-7-24-17-final-w-logo>; Jane Anderson, Leslye E. Orloff, and Benish Anver, *Certifying Early: When Should You Sign a U or T Visa Certification for a Victim?* (2017), available at: <http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-1-17-final-w-logo>. This project was supported by Grant No. 2014-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

- Battered spouse or child waivers (I-751)¹⁴
 - VAWA CAA - Abused Cuban Adjustment Act applicants¹⁵
 - VAWA HRIFA - Abused Haitian Refugee Immigration Fairness Act applicants
 - VAWA NACARA - Abused Nicaraguan Adjustment and Central American Relief Act applicants
 - VAWA Suspension of Deportation applicants
 - VAWA Cancellation of Removal applicants
- T visa applications (I-914) for applicants who are victims of a severe form of trafficking in persons under INA 101(a)(15)(T).¹⁶ VAWA confidentiality protections apply from the point at which DHS receives information that the victim is in the process of filing a T visa.
 - U visa applications (I-918) for victims of qualifying criminal activity under INA 101(a)(15)(U).¹⁷ VAWA confidentiality protections apply from the point at which DHS receives information that the victim is in the process of filing a U visa.
 - Abused spouses subjected to battering or extreme cruelty by visa holder spouses (A, E(3), G and H).¹⁸ VAWA confidentiality protections apply when the victim files their work authorization application as an abused immigrant spouse of a specified visa holder.

In a criminal case where the victim is seeking immigration relief based on their victimization, a defense attorney may seek to discover the existence of, or the information contained in, a VAWA confidentiality protected immigration application.¹⁹ Where a victim has applied for a U or T Visa, the prosecutor is likely aware of the application because either their office, or involved law enforcement, signed certifying documents on the victim's behalf.²⁰ If this is the case, the prosecutor has a duty²¹ to disclose the fact of the certification to defense counsel, usually by providing the certification in discovery.

Defense counsel often seeks to obtain further information than the certification in order to bolster their argument that the victim is fabricating statements about abuse in order to be eligible for immigration relief or to access additional statements about the charged offense hoping that there will be some inconsistency between the evidence and the contents of the immigration file. Prosecutors should be prepared to respond to discovery requests for information beyond the certification. In most cases, these requests are fishing expeditions. It is important to remember that the abuser may be using the justice system and the discovery process to obtain protected information to continue the cycle of abuse.

The Department of Homeland Security (DHS) U Visa interim rule states that "DHS may have an obligation to provide portions of petitions for U nonimmigrant status to federal prosecutors for disclosure to defendants in pending criminal proceedings. This obligation stems from constitutional requirements that pertain to the government's duty to disclose information, including exculpatory evidence or impeachment material, to defendants."²² The same obligation applies to prosecutors and law enforcement agencies that are in possession of the signed U visa certification form.²³ However, the fact that a U visa certification in the possession of a prosecutor or law enforcement official may be discoverable does not give the defense the ability to obtain other information that may be contained in the the victim's immigration case file at the U.S. Department of Homeland Security (DHS). DHS policies state:

"Please note, defense counsel in state cases may sometimes attempt to make the entire A-file discoverable; however, the entire file is not discoverable in its entirety under this exception."²⁴

DHS regulations and the VAWA confidentiality statute require that if any information from a VAWA Confidentiality case is disclosed to a law enforcement official, prosecutor or judge the information must continue to be handled according to the statute “in a manner that protects the confidentiality of such information.”²⁵ DHS regulations require that:

“Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367”²⁶

Discovery Obligations in Criminal Court

- Relevant and material?
 - Does it tend to prove or disprove any fact significant to the issue at hand?
 - The U Visa certification may contain information that is significant to the issue at hand.
 - While it is possible that the U Visa application may contain additional information that is relevant to the case, the confidentiality protections afforded the actual application will likely override any fishing expedition into the application barring the defense having specific and articulable reasons to believe the contents, if not provided to defense, would violate the defendant’s due process rights.

- *Brady* or *Giglio*?
 - Is it evidence that exonerates the defendant or calls into question the victim’s motives?
 - The fact that the victim is seeking immigration relief is likely discoverable under *Brady* and/or *Giglio*.

- Is it in the State’s possession?
 - Is it in the care, custody, or control of the prosecutor?
 - Evidence will be considered in the “care, custody, and control” of the prosecutor if it is in the possession of involved law enforcement.
 - If anyone in the prosecutor’s office or law enforcement agency involved with the case has the certification or application, then it needs to be turned over.
 - Typically, best practice by advocates and immigration attorneys is to only provide the a proposed certification with a brief cover letter to the certifying agency and not to provide the application or supporting documentation.
 - Law enforcement and prosecution agencies signing U and T visa certifications can sign certifications based on the agency’s own case files since all the information needed for certification is available in these case files. This includes information about the crime(s) that occurred, who the victim(s) are, and information about how the victim has been helpful to law enforcement and/or prosecution in the detection, investigation, prosecution, conviction or sentencing of the criminal activity.²⁷
 - However, documents, files, and information is not deemed in the “care, custody, and control” of the prosecutor if it is held by a Federal Agency *uninvolved in the state investigation or trial*.
 - Files in the possession of the U.S. Department of Homeland Security are in the possession of a federal agency that is not involved in the investigation, prosecution, or trial of the criminal case.

- The prosecution may also not have the certification in its “care, custody or control” when local law enforcement or prosecutors are not the certifiers in the victim’s U Visa application. There is a range of other certifiers that could sign including but not limited to protection order judges or child/adult protective services, the Equal Employment Opportunity Commission and state or federal labor enforcement agencies.²⁸
- However, if the prosecutor knows about the existence of such an application or certification, then information about the existence is likely something that needs to be turned over to defense counsel (even if the actual certification and/or application is not.)

Strategies to Address Discovery Issues

- Coordinate with allied professionals, including the victim’s immigration attorney, victim advocate, and/or family law attorney:
 - Ensure that advocates and victim attorneys understand the prosecutor’s discovery obligation and potential risk to the victim’s privacy should material be turned over by police or prosecutors involved in the case.
 - Educate advocates, and attorneys working with immigrant victim U visa applicants, that any information they provide police or prosecutors in their advocacy is information that the prosecutor will have to turn over to the defense as part of the prosecutor’s criminal discovery obligations. Often times this means that victim advocates and attorneys will limit the information provided in the certification request letter.
- Educate the Judge²⁹
 - Why did Congress create the U Visa, the T Visa and VAWA self-petitioning?³⁰
 - In order to promote the detection, reporting, investigation and prosecution of criminal activities by encouraging vulnerable population to come forward who live under threat of deportation from perpetrators³¹
 - What is the idea behind VAWA confidentiality?
 - Congress created strict confidentiality provisions and established limited circumstances under which disclosure can be made to:
 - Deter immigration related abuse, threats, witness tampering and intimidation;
 - Prevent the retaliation and escalation of abuse that occurs when perpetrators learn of the steps the victim is taking to seek protection; and
 - Stop perpetrators from using information contained in the victim’s immigration case to stalk and locate the victim or interfere with the victim’s access to VAWA, T and U immigration protections.
 - Make the Judge aware of case law and memos and offer to brief the VAWA confidentiality issue³²
- Where the prosecution knows that a certification was signed, concede the existence of the certification and where the prosecution is in custody of the certification, provide a copy to defense.
 - How?
 - Discovery pleading
 - *Brady* notice

- Consider your ethical obligation to disclose any witnesses that were involved in the certification; e.g. systems based advocates who do not have a confidential relationship with the victim and who have information that is relevant and material to your case or to any *Brady* information.

- Move to quash any motions to compel or defense subpoenas for the content of any VAWA confidentiality protected immigration case (e.g. U visa, T visa, VAWA self-petition) beyond the certification itself.
 - VAWA confidentiality protected immigration cases are not discoverable and are protected by statutory confidentiality provisions.
 - Quash the subpoena for any discovery from the victim’s immigration attorney, victim’s family law attorney, the victim advocate, social service provider, etc.
 - If the U visa application is in the prosecutor’s “care, custody, or control” because it was provided to the prosecutor in the context of a U visa certification request, but contains information which is arguably confidential and not subject to disclosure, offer to have the application reviewed *in camera* prior to disclosure.
 - *In camera* reviews can be used in any number of situations where judicial review of the material in question is sought prior to disclosure of information.
 - If the judge conducts an *in camera* review, the prosecutor should ask the judge to determine what if any part of the documents reviewed would need to be released to the defendant and what should be redacted to comply with VAWA confidentiality’s statutory requirement that disclosure of VAWA confidentiality protected information be “in a manner that protects the confidentiality of such information.”³³
 - Should the court ultimately order the release of any confidential information, seek protective orders to prevent further dissemination.
- Prepare victim for direct and cross-examination about immigration status and any applications for immigration relief based upon their victimization.³⁴
 - Work with systems and community based advocates to ensure that the victim has a safety plan in place and is supported throughout the investigation and prosecution.
- Use expert and/or fact witnesses to provide the fact-finder with the proper context for any application for immigration relief.³⁵
 - Where judges and juries are unfamiliar with the form immigration relief sought by the victim in your case, you can seek to introduce expert testimony to explain various forms of immigration relief, how immigration status impacts victims of crime, and other topics that may be beyond the understanding of the average fact-finder.

¹ For more in-depth information about VAWA confidentiality provisions, including information on exceptions to the prohibition on disclosure, see Leslye E. Orloff, *VAWA Confidentiality: History, Purpose, DHS Implementation, and Violations of VAWA Confidentiality Protections*, in *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (2013), available at <http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose>; See Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (March 11, 2017) available at <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>

² Kavell Joseph and Leslye E. Orloff, *VAWA Confidentiality Statutes History- Interlined* (July 22, 2016) available at <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-interlined>

³ The list of immigration cases protected by VAWA confidentiality includes: VAWA self-petitions, VAWA cancellation of removal cases, VAWA suspension of deportation cases, battered spouse waivers, abused immigrant spouse work authorization applications under INA Section 106; VAWA Cuban Adjustment Act cases (VAWA CAA); VAWA Nicaraguan and Central American Relief Act (VAWA NACARA); and VAWA Haitian Refugee Immigration Fairness Act (VAWA HRIFA) See Dep’t of Homeland Sec., “Implementation of Section 1367 Information Provisions” Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013) at p. 4, available at

<http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

Applications for work authorization filed by abused spouses of A, E(3), G and H visa holdres also receive VAWA confidentiality protection. *See*, U.S. Citizenship and Immigration Services, Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants Revisions to the Adjudicator’s Field Manual (AFM); Revision of Chapter 30.13 (AFM Update AD16-01) PM-602-0130 (March 8, 2016)

<http://niwaplibrary.wcl.american.edu/pubs/h-visa-765/>

⁴ B-Partisan (Sensenbrenner-Conyers) Judiciary Committee Report, 151 Cong. Rec, E2605 (2005); H. COMM. ON THE JUDICIARY, 109TH CONG., DEP’T OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006-2009, H.R. REP. NO. 109-233 at 122 *available at* <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-ighist-dojexcerptshr-3402-09-22-2005/>; Alina Husain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy (March 11, 2017), *available at*

<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>.

⁵ Dep’t of Homeland Sec., “Memorandum for all Office of Principle Legal Advisor (OPLA) Chief Counsel: VAWA 2005 Amendments to the Immigration Laws and 8 U.S.C. 1367” at p. 25 (February 1, 2007); (in enacting this nondisclosure provision, Congress southgt to prevent, with limited exceptions, disclosure of any information relating to beneficiaries of applications for VAWA benefits (battered spouses or children) or T or U nonimmigrant status, including the fact that they have applied for benefits.”), *available at*

<http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>

⁶ Dep’t of Homeland Sec., “Implementation of Section 1367 Information Provisions” Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013) at 3 (“Any information relating to aliens who are seeking or have been approved for immigrant status as battered spouses, children and parents under provisions of the Violence Against Women Act (VAWA), as victims of a severe form of human trafficking who generally are cooperating with law enforcement authorities, or as aliens who have suffered substantial physical or mental abuse and are cooperating with law enforcement authorities. This definition includes records or other information that do not specifically identify the individual as an applicant or beneficiary of the T Visa, U Visa, or VAWA protections.”); Paul Virtue, Immigration and Naturalization Service, Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRAIRA Section 384 (May 5, 1997) at 2 (Bars responses to inquiries that are otherwise common under immigration law including “verification of status and other routine information.”), *available at*

<http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>

⁷ Dep’t of Homeland Sec., “Implementation of Section 1367 Information Provisions”, Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013) at p. 7-8 (Discussing that even when information disclosure is court ordered in a local, state or federal criminal case, DHS will not release without consulting DHS counsel and any release will be limited and will not include the case file and what is contained in it in its entirety.), *available at*

<http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>

⁸ Paul Virtue, Immigration and Naturalization Service, Non-Disclosure and Other Prohibitions Related to Battered Aliens: IIRAIRA Section 384 (May 5, 1997) at 3 *available at* <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-virtuememoguidancesec384-05-06-1997/>

⁹ 8 U.S.C. 1367(a)(2); Dep’t of Homeland Sec., “Memorandum for all Office of Principle Legal Advisor (OPLA) Chief Counsel: VAWA 2005 Amendments to the Immigration Laws and 8 U.S.C. 1367” at p. 16 (February 1, 2007); John P. Torres and Marcy Forman, Interim Guidance on Officer Procedure Following the Enactment of VAWA 2005 (January 22, 2007) (“Section 1367 also generally prohibits ICE employees from disclosing any information about a VAWA, T or U beneficiary to anyone, especially those who might use the information to the alien’s detriment, i.e. an abuser who may wish to have the victim removed from the United States.”), *available at*

<http://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia/>; Dep’t of Homeland Sec.,

“Implementation of Section 1367 Information Provisions”, Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013) at p. 5-6 (Prohibits disclosure to anyone who is not a sworn officer of DHS, DOJ or Dept of State). *available at* <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>

¹⁰ *See* Alina Husain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy 3, 4, 10, 15-17 (March 11, 2017) *available at*

<http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>

¹¹ *See* Dep’t of Homeland Sec., “Implementation of Section 1367 Information Provisions” DHS Instructions System, Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013) at p. 4, *available at*

<http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/> and INA Section 106; Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants

Revisions to the Adjudicator’s Field Manual (AFM); Revision of Chapter 30.13 (AFM Update AD16-01) PM-602-0130 at 3 (March 8, 2016) *available at* <http://niwaplibrary.wcl.american.edu/pubs/h-visa-765/>

¹² Leslye E. Orloff, Brittnay Roberts, and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases* (October 13, 2013) *available at* <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/>

¹³ Abuser must be a citizen spouse, parent, step-parent, or over 21 year old child or a lawful permanent resident spouse, parent, or step-parent. INA §204 (2011)

¹⁴ Abuser must be a citizen or lawful permanent resident spouse, parent or step-parent.

¹⁵ Abuser must be a Cuban Adjustment Act eligible spouse or parent.

¹⁶ T visas provide protection for immigrant victims of severe forms of human trafficking as defined by 22 U.S.C. § 7102(9) and (10): Sex Trafficking, which is defined as: the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, or in which the person induced by any means to perform such act has not attained 18 years of age; or Labor Trafficking, which is defined as: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

¹⁷ U visas provide protection to immigrant victims of qualifying criminal activities covered by the U visa statute INA Section 101 (a)(15)(U)(iii) are: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, fraud in foreign labor contracting, being held hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, and related criminal activities or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. “DEP’T OF HOMELAND SEC, U and T Visa Law Enforcement Resource Guide, 7 (2015), *available at* <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015>

¹⁸ INA §106 (2006); Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants Revisions to the Adjudicator’s Field Manual (AFM); Revision of Chapter 30.13 (AFM Update AD16-01) PM-602-0130 at 3 (March 8, 2016) (“USCIS has also elected to extend the confidentiality provisions of Title 8, United States Code, section 1367 to applicants for employment authorization under INA section 106.”) *available at* <http://niwaplibrary.wcl.american.edu/pubs/h-visa-765/>

¹⁹ The following immigration applications are protected by VAWA confidentiality provisions: VAWA Self-Petition, Battered Spouse Waiver, U Visa, T visa, VAWA Cuban Adjustment, VAWA HRIFA, VAWA NACARA, VAWA Suspension of Deportation, and VAWA Cancellation of Removal. For more information on each of these forms of immigration relief, *see* Dep’t of Homeland Sec., DHS Infographic: Protections for Immigrant Victims (January 12, 2017) English *available at* <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/>; Spanish *at* <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections-spanish-translation/> (This is an interactive infographic which links of DHS websites with further information and application forms for each form of immigration relief discussed); National Immigrant Women’s Advocacy Project (NIWAP), Center for Public Policy Studies, and Legal Momentum, *Glossary of Key Immigration Terms Relevant to State Court Judges* (Sept. 11, 2013), *available at* <http://niwaplibrary.wcl.american.edu/pubs/judg-tkit-immtermsglossary>

²⁰ When the victim is a VAWA self-petitioner, a VAWA cancellation of removal applicant, a VAWA suspension of deportation applicant, or an abused spouse of a work visa holder, the police or prosecutor will not have played any role in the victim’s application and may not have knowledge of the application because there is no certification requirement. If defense counsel tries to learn about or obtain copies of any of these types of VAWA case files through criminal court discovery, prosecutors in opposing this discovery can make the same arguments as they would in cases involving U and T visas.

²¹ The certification falls within a prosecutor’s discovery obligation because it could be evidence a motive to lie on the part of the victim who is undocumented and seeking immigration relief based on the fact that s/he is a victim of the charged crime. For strategies countering this allegation at trial, *see* Pretrial and Trial Strategies.

²² Department of Homeland Security, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53027 (Sept. 17, 2007) (citing U.S. Cons. amend. V & VI; *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Giglio v. U.S.*, 405 U.S. 150, 154 (1972)), *available at* <http://niwaplibrary.wcl.american.edu/pubs/u-visa-regulation>

²³ When issuing U visa certifications best practices is for prosecutors and law enforcement officials to base the certification on information that will be in the their agency case files including police reports, documentation collected during investigative interviews, and other information in the government’s possession. It is not recommended that police or prosecutors ask for or accept if offered by the victim copies of documents they are planning to file as part of the U visa application. These materials are not need by police or prosecutors for

certification and if they are received they would become part of the police and prosecutors case files and be subject to disclosure through discovery in the criminal case.

²⁴ Dep't of Homeland Sec., "Implementation of Section 1367 Information Provisions" DHS Instructions System, Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013) at p. 7, available at <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>

²⁵ 8 U.S.C. 1367(b)(2)(discussing limitations on disclosures to law enforcement); (b)(3)(discussing limitations on disclosures to judges); (b)(5)(discussing limitations for public benefits verification and granting purposes); (b)(6)(discussing limitations on disclosure for Congressional oversight); (b)(7)(discussing limitations on communications with non-profit non-governmental victim services providers their obligation under the law to continue to protect information released); (b)(8)(discussing limitations on disclosure to national security officials)

²⁶ 8 C.F.R. 214.14(e)(2)

²⁷ See Department of Homeland Security, U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies 6 (November 30, 2015) <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

²⁸ For more information on the potential range of certifiers that can sign a U visa certification, see Benish Anver and Leslye E. Orloff, *U Visa Certifications: Range of Potential Certifiers at the Local, State, and Federal Government Levels* (2014), available at <http://niwaplibrary.wcl.american.edu/pubs/u-visa-range-of-potential-certifiers>

²⁹ Useful information is contained in U Visa Certification Toolkit for Federal, State, and Local Judges, and Magistrates available at <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/> and U Visa Toolkit for Law Enforcement Agencies and Prosecutors available at <http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>

³⁰ See, Katrina Castillo, Alexandra Spratt, Catherine Longville, and Leslye E. Orloff, *Legislative History of VAWA (94, 00, 05), T and U Visas, Battered Spouse Waiver, and VAWA Confidentiality* (June 17, 2015), available at http://niwaplibrary.wcl.american.edu/pubs/vawa_leg-history_final-6-17-15-sji/; and Alina Husain and Leslye E. Orloff, *VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy* (March 11, 2017), available at <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>

³¹ DHS U and T Visa Law Enforcement Resource Guide Updated 11.30.15 available at <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

³² For current case law on VAWA confidentiality, see Jane Anderson & Benish Anver, *Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law* (2016), available at: <http://niwaplibrary.wcl.american.edu/pubs/imm-chart-uvisaref> See also Dep't of Homeland Sec., "Implementation of Section 1367 Information Provisions" DHS Instructions System, Instruction NO. 002-02-001, Revision No. 00, (November 7, 2013), available at <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001>; Memorandum from William J. Howard, Principal Legal Advisor, U.S. Immigration and Customs Enforcement, to All OPLA Chief Counsel, *VAWA 2005 Amendments to the Immigration and Nationality Act and 8 U.S.C. § 1367* (Feb. 1, 2007), available at <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-8usc1367-2005>; Memorandum from John P. Torres, Director, Office of Detention and Removal Operations, and Marcy M. Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement, to Field Office Directors and Special Agents in Charge, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), available at <http://niwaplibrary.wcl.american.edu/pubs/interim-guidance-vawa-memo>.

³³ 8 U.S.C. 1367(b)(2); See, Veronica T. Thronson, Carole Angel, Soraya Fata, Rocio Molina, Benish Anver, Kalli Wells and Leslye E. Orloff, *Utilizing VAWA Confidentiality Protections in Family Court Proceedings* (February 17, 2017), available at <http://niwaplibrary.wcl.american.edu/pubs/utilizing-vawa-confidentiality-protections-family-court/>, and <http://www.civicrosearchinstitute.com/online/article.php?pid=6&iid=1270>

³⁴ For more information on how to prepare the victim for cross-examination, direct examination, and rebuttal, see Jane Anderson & Benish Anver, *Pretrial/Trial Strategies to Limit Evidence of or Attempts by Defense Counsel to Raise Victim's Immigration Status* (2016)

³⁵ *Id.*