



Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law¹

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This quick reference tool should be used to assist prosecutors during trials when defense counsel is attempting to either discover VAWA confidentiality protected information about an immigrant crime victim's application for immigration relief or is attempting to impugn the credibility of the victim or an immigrant witness by raising their immigration status. While the following state or federal court decisions may not be binding, the arguments may be applicable and helpful in developing counter arguments.²

- I. Federal court decisions addressing discoverability of the U visa certification, the U visa case file, the VAWA self-petition case file, and/or other application materials that are protected by VAWA confidentiality:
 - a. Demaj v. Sakaj, No. 3:09 CV 255 JGM, 2012 WL 476168, at *5 (D.Conn. Feb. 14, 2012) - Denying Motion to Compel U visa file in child custody case, finding that the disclosure would undermine the purpose of the statute in protecting the confidentiality of applications.
 - b. Hawke v. U.S. Dep't of Homeland Sec., No. C-07-03456 RMW, 2008 WL 4460241, at *7 (N.D. Cal. Sept. 29, 2008) - Finding that the defendant does not have the right to receive absolutely privileged information (VAWA self-petition and related Department of Homeland Security records).
 - c. U.S. v. Brown, 347 F.3d 1095, 1099 (9th Cir. 2003) - Finding that the defendant's right to confront witnesses was not violated where the defense was denied access to the witness' immigration file and was not allowed to call an expert witness regarding the unusual immigration circumstances of the witness. The Court found that the cross-examination of the witness sufficiently addressed bias/motive.
 - d. U.S. v. Locascio, 6 F.3d 924, 949 (2nd Cir. 1993) - Finding that the prosecution was not in possession of information acquired by federal agencies uninvolved in the state's investigation or trial.

¹ 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, Leslye E. Orloff, and Benish Anver, *VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information* (2017), available at: <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-va-wa-confidentiality-tool-final-7-24-17>; 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>.

² Please note: The case law cited in this document is current as of July 2017. When you are working on a case involving the issues discussed in this document it is important to check for additional cases that may have been decided since the publication of this document. 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.

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- e. Cazorla v. Koch Foods of Miss., L.L.C., 838 F.3d 540, (5th Cir. 2016) - Limiting discovery of U visa case file contents in an employment action where the court was concerned that allowing full discovery might intimidate individuals and compromise the U visa program and law enforcement effort more broadly and directing the lower court to craft any discovery orders to ensure that identifying information was not revealed. Note: This type of anonymity may not be possible in a criminal prosecution.
- II. State court decisions addressing discoverability of the U visa certification and/or other application materials that are protected by VAWA confidentiality
- a. State v. Marroquin-Aldana, 2014 ME 47, ¶ 39, 89 A.3d 519, 531 (Me. 2014) - Finding that the court did not err in denying the defendant access to the victim’s entire immigration file where the U visa certification was provided in discovery and the defendant had the opportunity to cross-examine the victim regarding the certification.
- III. State court decisions addressing defense counsel’s use of lack of immigration status and/or pursuing immigration relief during cross-examination:
- a. Guardado v. State, No. 2397, 2015 WL 5968756 (Md. App. Oct. 14, 2015) - Holding that the trial judge properly limited the scope of the cross-examination of the victim about her immigration status where the “defense offered no evidence that [the victim] lacked stable immigration status, that she could be eligible for some sort of favorable immigration treatment as a crime victim, or, if it exists, that she was aware of the program at the time she identified [the defendant] as her assailant.”
- IV. State court decisions regarding the admissibility of the victim’s U visa application:
- a. State v. Buccheri-Bianca, 233 Ariz. 324, 328, 31 P.3d 123, 127 (Ariz. Ct. App. 2013), review denied (Feb. 11, 2014) - Upholding the courts pretrial determination that the U visa application was not a motivation for the disclosure of the crime and therefore was irrelevant.
 - b. Briggs v. Hedgpeth, No. C 11-3237 PJH, 2013 WCL 245190, at *15 (N.D. Cal. Jan. 22, 2013) aff’d, 585 F.App’x 454 (9th Cir. 2014) - Finding that it was erroneous to preclude the defense from asking about U visa benefits that were offered to the victim, but also found that it was harmless error where there was substantial evidence of the crime.