Quick Reference Guide for Judges:
VAWA Confidentiality and Discovery Related Case Law[1]

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This quick reference tool has been developed to assist judges ruling on discovery requests in family, civil and criminal court cases. Congress provided protections for immigrant adult and child survivors of domestic violence, sexual assault, stalking, dating violence, child abuse, sex trafficking, labor trafficking, and commercial sexual exploitation of children. These protections include immigration relief, protection from deportation, confidentiality protections and access to certain benefits and services. When courts encounter children, parents, and other victims of these forms of crime and abuse, the victim will be eligible for one of the following abuse based forms of immigration relief:

- Violence Against Women Act (VAWA) self-petition;
- VAWA cancellation of removal;
- VAWA suspension of deportation;
- U visas;
- T visas;
- Continued Presence; or
- Special Immigrant Juvenile Status.

VAWA confidentiality protections were designed to allow adult and child victims of the above-listed forms of crime and abuse to safely and confidentially file their immigration cases based on crime victimization without the perpetrator's knowledge, consent, or ability to obtain any information about the case filed by the immigrant survivor of abuse or crime victimization.

The state and federal court cases listed below provide information and the court's analysis describing how courts ruled when a party seeks to obtain information contained in federal immigration case filed that covered by federal Violence Against Women Act (VAWA) confidentiality laws. The cases also describe courts' responses to attempts to discredit immigrant crime victim witnesses by raising immigration status issues in state criminal and family court cases. While the following state or federal court decisions may not be binding, the legal analysis and rulings made by the courts in the cases below may be applicable and helpful in to judicial decision-making.[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:

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[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.

a. Demaj v. Sakaj, No. 3:09 CV 255 JGM, 2012 WL 476168 (D.Conn. Feb. 14, 2012). Motion to Compel U Visa file in child custody case was denied, finding that the disclosure would undermine the purpose of the statute meant to protect the confidentiality of applications. Disclosure of documents relating to the victim's U Visa contradicts the purpose of 8 U.S.C. § 1367 which is "to protect the confidentiality of the applications by preventing disclosure of these documents to alleged criminals as disclosure would allow. . . to interfere with or undermine [victim's] immigration case." *Id.* at 5.

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 such as the VAWA self-petition and related records contained in Department of Homeland Security case files. The defendant's Sixth Amendment right to compulsory process does not permit access to such absolutely privileged information. VAWA Confidentiality protects all cases unless the application was denied on the merits. *Id.* at 9.
    i. "[W]hen an application is denied because it is moot, the petition may contain sensitive information that the policy behind VAWA still urges remain secret."
    ii. "While Mr. Hawke's Sixth Amendment right to Compulsory Process permits him access to some information held by the government, it does not permit him to receive absolutely privileged information like any records held by DHS here."
    iii. "Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer."

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 when he was denied access to the witness's 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.
    i. "Brown sought to subpoena de la Torre's complete immigration file [and]. . .The district court quashed the subpoena but ordered delivery of selected documents from
    Brown's A-File that were in the possession of the prosecution." ii. "Brown's cross-examination, even without the benefit of de la Torre's complete A-File . . . enabled the jury sufficiently to assess de la Torre's credibility in order to satisfy Brown's Sixth Amendment rights."

d. U.S. v. Locascio, 6 F.3d 924, 949 (2d Cir. 1993). Finding that the prosecution was not in possession of information acquired by federal agencies uninvolved in the state's investigation or trial.

e. Cazorla v. Koch Foods of Miss., L.L.C., 838 F.3d 540, (5th Cir. 2016). In an employment action, discovery of U visa case file was limited because the court was concerned that full discovery might intimidate individual claimants, compromise the U visa program, and law enforcement efforts more broadly. The Fifth Circuit directed the district court to craft an approach to discovery that ensures identifying information about individual victims was not revealed. Note: This type of anonymity may not be possible in a criminal prosecution or family court matter.
    i. "In addition, 8 C.F.R. § 214.14, which implements the U visa program, provides that '[a]gencies receiving information under this section. . .are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.' "
    ii. "Allowing U visa discovery from the claimants themselves in this high-profile case will undermine the spirit, if not the letter, of those Congressionally sanctioned assurances and may sow confusion over when and how U visa information may be disclosed, deterring immigrant victims of abuse–many of whom already mistrust the government–from stepping forward and thereby frustrating Congress's intent in enacting the U visa program."
    iii. "In sum, allowing discovery of U visa information may have a chilling effect extending well beyond this case, imperiling important public purposes."

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, 89 A.3d 519, 531 (Me. 2014). The Supreme Judicial Court of Maine found that the lower court did not err in denying the defendant access to the victim's entire immigration file. This Court found it sufficient that U visa certification was provided in discovery and that the defendant had the opportunity to cross-examine the victim and call credibility into question. It also noted the heightened protections given to "documents filed with immigration authorities pursuant to federal law." *Id.* at 525.
    i. "[T]he court concluded that there was insufficient justification for disclosure of the documents because the State had already produced a copy of the District Attorney's certification in support of Lissette's U visa application, and Marroquin-Aldana could therefore call Lissette's credibility into question based on her assistance with Marroquin-Aldana's prosecution."

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, 312 P.3d 123, 127-128 (Ariz. Ct. App. 2013), review denied (Feb. 11, 2014). Holding that the trial court did not err in excluding the immigration status of the victims because it found that the possible grant of a U visa was not the motivation for the disclosure of the crime and therefore, was irrelevant.
    i. "As discussed above, the trial court properly excluded evidence of Maya's U-Visa application after finding that the possibility of immigration relief did not motivate the accusations in this case."

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 because there was substantial evidence of the crime.

V. Other relevant case law
a. People v. AlvarezAlvarez, No. G047701, 2014 WL 1813302, at 5 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014). Finding that the trial court was well within its discretion to exclude reference to the U visa and that the defendant had other opportunity to question the credibility of the witness.
    i. "The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status. . .which was completely irrelevant to this case."