DISTRICT OF COLUMBIA COURT OF APPEALS

ANTONIO RUIZ Appellant v. WENDY R. CARRASCO Appellee	Case Nos. 98-FM-39 98-FM-40

CERTIFICATE REQUIRED BY RULE 28(a)(1) OF THE RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

The undersigned, counsel of record for *amici curiae*, certifies that the following listed parties appeared below:

For reversal: Antonio Ruiz

For affirmance: Wendy Carrasco

No *amici* appeared below. These representations are made in order that the judges of this court, *inter alia*, may evaluate possible disqualification or recusal.

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John L. Moore Jr.

Attorney of record for *amici curiae*

STATEMENT OF THE ISSUES PRESENTED

I. Whether the Superior Court abused its broad discretion in entering a civil protection order against Antonio Ruiz based on the court's finding that Mr. Ruiz had assaulted Ms. Carrasco and that he had made threats to report Ms. Carrasco to the Immigration and Naturalization Service?

II.(A) Whether the limits imposed by the civil protection order on Mr. Ruiz's ability to contact government officials concerning Ms. Carrasco infringe upon Mr. Ruiz's rights under the First Amendment of the United States Constitution where the order's "no contact" provisions were directed at preventing a recurrence of Mr. Ruiz's prior unlawful conduct, including threats concerning Ms. Carrasco's immigration status?

II.(B) Whether, assuming that Mr. Ruiz's verbal conduct does constitute "speech," the civil protection order's "no contact" provisions violate the First Amendment where the Superior Court imposed limited, content-neutral restrictions on Mr. Ruiz's ability to contact government officials concerning Ms. Carrasco and where the Superior Court included a number of safeguards in the civil protection order to limit the order's breadth?

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STATEMENT OF THE CASE

Appellee, Wendy R. Carrasco, filed a petition in the Family Division of the Superior Court on November 24, 1997, IF No. 3123-97, seeking a civil protection order against her then-husband, appellant Antonio Ruiz. On December 4, 1997, Mr. Ruiz filed a cross-petition against Ms. Carrasco, IF No. 3206-97, seeking entry of a civil protection order against her.

Judge Stephen Milliken heard testimony on both petitions on December 12, 16, 17, 18, and 19, 1997. On December 19, 1997, at the close of the hearings, Judge Milliken granted Ms. Carrasco's petition and issued a civil protection order against Mr. Ruiz. Judge Milliken denied Mr. Ruiz's cross-petition.

Mr. Ruiz filed his notice of appeal on January 14, 1998.

STATEMENT OF THE FACTS

This appeal arises from a Civil Protection Order ("CPO") granted to Appellee, Wendy Carrasco ("Ms. Carrasco") on December 19, 1997, against the Appellant, Antonio Ruiz ("Mr. Ruiz"), by the Superior Court of the District of Columbia, Family Division, after Mr. Ruiz's commission of an intrafamily offense on October 4, 1997. (R. 98-FM-40, at 30-32; Tr. 12/19/97 at 226).[*]

Ms. Carrasco and Mr. Ruiz were married on September 13, 1996. (R. 98-FM-40, at 16). Ms. Carrasco first petitioned the Superior Court for a CPO against Mr. Ruiz on November 24, 1997, pursuant to the District of Columbia Intrafamily Offenses Act, D.C. Code. § 16-1001 *et seq*. (2000). (R. 98-FM-40, at 6-8; Tr. 12/17/97, at 105). In her petition for a CPO, Ms. Carrasco alleged the following incidents: (1) Mr. Ruiz had followed her home on November 22 and October 4, 1997; and (2) on October 4, 1997, in front of two witnesses, Mr. Ruiz grabbed her by the arm, attempted to take her by force, shouted at her, and threatened to deport her. (R. 98-FM-40, at 6). On this same day, Ms. Carrasco filed a police report in Arlington, Virginia against Mr. Ruiz for assault and battery. (Tr. 12/17/97, at 104). Pending trial, Ms. Carrasco obtained two temporary protection orders against Mr. Ruiz. (R. 98-FM-40, at 11, 34-35). On December 4, 1997, Mr. Ruiz cross-petitioned for a

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[*] "R." refers to the record on appeal. Since this case involves consolidated appeals, *amici* will cite to this Court's case number in referring to the record, *e.g.*, "R. 98-FM-40, at __." "Tr." refers to the transcript of the proceedings below. Because the transcripts provided in this case are not consecutively paginated, *amici* will cite to the relevant transcript by date and page number, *e.g.*, "Tr. 12/11/97 at __."

CPO against Ms. Carrasco, alleging that Ms. Carrasco followed him, glared at him threateningly, and physically assaulted him. (R. 98-FM-39, at 1, 3, 5-7).

On December 11, 1997, the hearing for both of the CPOs began in the Superior Court. For five days, on December 12, 16, 17, 18 and 19, 1997, Judge Stephen Milliken heard testimony from Mr. Ruiz, Ms. Carrasco, and six witnesses regarding the events leading up to the filing of the CPOs by Ms. Carrasco and Mr. Ruiz. (R. 98-FM-39, at 2, 3, 10; Tr. 12/11/97, at 3-4). Mr. Ruiz was represented by counsel for part of the proceedings. (R. 98-FM-39, at 18; R. 98-FM-40, at 24, 37) (praecipe noting appearance of counsel for Mr. Ruiz).

The court also heard testimony regarding Mr. Ruiz's claim that Ms. Carrasco was fabricating the charges of spousal abuse in order to qualify to obtain lawful permanent residency in the United States without her husband's sponsorship or cooperation under the Violence Against Women Act ("VAWA").[1] Mr. Ruiz had revoked his sponsorship of Ms. Carrasco shortly after the October 4, 1997 incident by contacting the Immigration and Naturalization Service ("INS"). (Tr. 12/17/97, at 101). As a result, on October 24, 1997, the INS denied the application for permanent resident status that Mr. Ruiz had filed on Ms. Carrasco's behalf. Subsequently, Ms. Carrasco filed a self-petition for lawful permanent residency under the VAWA. (Tr. 12/17/97, at 101). The court asked each party to prepare a supplemental brief on whether Ms. Carrasco could be cross-examined on her reasons for

[1] The court apparently heard this testimony on December 16, 1997. *Amici* are unable to provide a citation to the transcript for December 16, 1997, because the Clerk's office was unable to locate this portion of the record. For the same reason, *amici* are also unable to provide citations to the transcript for the direct examination of Ms. Carrasco.

filing a self-petition under the VAWA. (R. 98-FM-39, at 23, 24-29). After reviewing the briefs, the court ruled that the self-petitioning provisions of VAWA did not require a petitioner to have a CPO or to show that there had been a criminal conviction. (Tr. 12/17/97, at 95-97). The court also noted that victims of domestic violence should be given a certain amount of confidentiality regarding their immigration status, and that police and prosecutors often decline to report immigration issues to the INS when enforcing the domestic violence laws of the District of Columbia. The decision not to report such matters to the INS is a recognition of the fact that sponsorship of an individual, and the maintenance and withdrawal of a petition for sponsorship of lawful permanent residency status, can be used abusively to exercise control over another person. The trial court held there was no reason a judge should vary from this practice of confidentiality. (Tr. 12/17/97, at 96-7).[2]

At the conclusion of the hearing, the Superior Court denied Mr. Ruiz's petition for a CPO, finding no credible evidence to support his allegations. (Tr. 12/19/97 at 218). The court then focused on whether Ms. Carrasco had been assaulted on October 4, 1997 and was entitled to a CPO based on this incident. (*Id*. at 219). The court found that there was sufficient evidence that Mr. Ruiz had assaulted and committed an intrafamily offense against

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[2] The trial court's decision was consistent with the INS confidentiality protections imposed in 1996 by Congress in all VAWA immigration cases. Section 384 of the Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208 § 384, 110 Stat. 3009-546, 3009-652-53 (1996) (codified at 8 U.S.C. § 1367), barred access to information about VAWA cases by any persons except law enforcement officials who require such access for a legitimate law enforcement purpose. This section further barred INS from relying on information submitted to it by abusers to take any adverse action against a battered immigrant. Thus, an abuser should not be able to use court proceedings to obtain information about the existence of a self-petition when INS itself would be barred from releasing such information. The Superior Court's ruling in this case furthers the purpose of these confidentiality provisions.

Ms. Carrasco by touching her offensively because he was "displeased" with her overdrawing their joint bank account. (*Id*. at 223).

In granting the CPO, the court examined the entire history of the relationship of the parties and evaluated the testimony of parties. The court found that Mr. Ruiz's attitude and testimony "really corroborated a good deal of what the petitioner, Ms. Carrasco has said about her treatment within the relationship." (Tr. 12/19/97 at 219). The court also examined Mr. Ruiz's previous contact with the INS about Ms. Carrasco's immigration status, and found that he had willingly volunteered information to the INS regarding Ms. Carrasco's immigration status after commission of the assault on October 4, 1997. (Tr. 12/19/97 at 220-21). The Superior Court also determined that Mr. Ruiz had used Ms. Carrasco's immigration status as means to abuse and injure her. (*Id*.)

At the conclusion of the hearing, the court granted Ms. Carrasco a CPO based on the assault Mr. Ruiz committed on October 4, 1997. Judge Milliken specifically found that Mr. Ruiz was guilty "of conduct which is criminal under the laws of the District of Columbia[.]" (Tr. 12/19/97, at 224). The court then determined the parameters of the CPO given the parties' previous interaction, and the fact that they would likely continue to be involved because of Ms. Carrasco's ongoing INS proceedings and any future divorce proceedings. Based on the "entire mosaic of the relationship" and the fact that Mr. Ruiz willingly volunteered information to the INS and made threats of deportation in the past, the court issued a CPO preventing Mr. Ruiz from contacting Ms. Carrasco and requiring Mr. Ruiz to obtain prior court approval before making any report concerning Ms. Carrasco to any government official absent a police emergency or a subpoena. (R. 98-FM-40, at 32; Tr. 12/19/97, at 226, 231).

Mr. Ruiz noted an appeal on January 14, 1998.

SUMMARY OF THE ARGUMENT

Amici curiae NOW Legal Defense and Education Fund, Catholic Charities Immigration Services, Refugio Del Rio Grande, Inc., The Tahirih Justice Center, Project Esperanza, Bay Area Battered Immigrants' Advocates Task Force, National Coalition Against Domestic Violence, The Wisconsin Coalition Against Domestic Violence, The Asian Pacific Islander Domestic Violence Resource Project, The National Network to End Domestic Violence, Ayuda, Inc., The Family Violence Prevention Fund, The Russian Association of Crisis Centers for Women, Women Empowered Against Violence, Inc., The National Latino Alliance for the Elimination of Domestic Violence, and The Immigrant Legal Resource Center (hereinafter referred to as "*amici*") request that this Court affirm the civil protection order ("CPO") entered by the Superior Court in this case.

This appeal concerns a CPO entered in the context of an intrafamily case involving two parties to a disintegrating marriage. The former husband, Antonio Ruiz, is a citizen of the United States; the former wife, Wendy Carrasco, is not. The Superior Court heard five days of testimony in this case. After hearing all of the evidence, the court below found that Mr. Ruiz had assaulted Ms. Carrasco and that Mr. Ruiz had threatened to report Ms. Carrasco to the Immigration and Naturalization Service. Concluding that Ms. Carrasco's immigration status had been "held over her head" and acting under authority of the District of Columbia Intrafamily Offenses Act, the court below entered a CPO which placed limited restrictions on Mr. Ruiz's ability to contact government officials concerning Ms. Carrasco.

The Superior Court's issuance of the CPO falls well within the broad discretion granted to that court under the D.C. Intrafamily Offenses Act. This Court has consistently held that that Act must be liberally construed to effectuate the statutory purpose of preventing domestic violence and abuse. The CPO was issued based upon a well-supported finding of good cause and after the court had heard evidence that Mr. Ruiz had assaulted Ms. Carrasco and had threatened her immigration status. The CPO was thus a carefully considered measure to prevent further abuse of Ms. Carrasco by Ms. Ruiz and, in particular, to prevent Mr. Ruiz from using Ms. Carrasco's immigration status as a means of perpetrating further abuse. The Superior Court's order thus comports with the broad reading of the D.C. Intrafamily Offenses Act and is not an abuse of that court's discretion.

Nor does the CPO conflict with any federal interest or policy. In enacting the Violence Against Women Act in 1994, Congress amended the Immigration and Nationality Act and determined that information provided by battering or abusive spouses, such as Mr. Ruiz, may not form the sole basis for determining an immigrant's rights to self-petition for legal resident status. Congress also provided that federal officials may not seek such information from battering or abusive spouses. The CPO which is directed solely at the problem of preventing domestic violence, does not interfere with any federal policy or interest because Congress has disclaimed any interest in obtaining information from battering or abusive spouses.

Contrary to Mr. Ruiz's contentions, the CPO's limited restrictions on his ability to contact government officials concerning Ms. Carrasco do not infringe on any rights protected by the First Amendment. First, Mr. Ruiz's threats to report Ms. Carrasco to the Immigration

and Naturalization Service constitute non-speech elements of communication and are thus, in essence, simply conduct that warrants no First Amendment protection. Thus, as a matter of District of Columbia law, the Superior Court is permitted to restrict such threats without violating the First Amendment.

In addition, the trial court's conclusion that Mr. Ruiz used Ms. Carrasco's immigration status as a means of abuse is supported by both congressional findings and scholarly research in the field of domestic abuse among immigrant women. In enacting the VAWA in 1994 and in amending that statute in 2000, Congress found that abusive spouses will often use their victims' immigration status as a weapon of domestic abuse. Congress has thus sought to prevent such abuse by allowing aliens who have been subjected to abuse to self-petition for legal resident status. Furthermore, scholarly research among battered immigrant women has found that many are reluctant to seek protection from domestic abuse for fear that their immigration status will be used against them.

Second, even if Mr. Ruiz's threats were entitled to some First Amendment protection, the CPO's no contact provisions were content neutral and were narrowly tailored so as to burden no more speech than necessary to achieve the significant governmental interest in preventing domestic abuse. The CPO's no contact provisions were entered not as an effort to restrain speech protected by the First Amendment, but rather as a remedy for Mr. Ruiz's prior unlawful conduct. The CPO is thus free of any constitutional infirmity and should be affirmed.

ARGUMENT

Appellant claims that the CPO violated his rights to freedom of speech under the First Amendment of the United States Constitution. (App. Br. at 2, 5.) As explained below, this Court should affirm the ruling of the Superior Court and uphold the enforcement of the CPO, because the Superior Court's actions were neither an abuse of the Superior Court's authority under the Intrafamily Offenses Act, D.C. Code §§ 16-1001–1006 (1995, Supp. September, 2000) nor an infringement on Mr. Ruiz's rights to constitutionally protected freedom of speech.

I. THE INTRAFAMILY OFFENSES ACT GRANTS THE SUPERIOR COURT BROAD AUTHORITY TO ISSUE A CPO PROHIBITING RUIZ FROM CONTACTING GOVERNMENT OFFICIALS.

At the outset, Mr. Ruiz contends that the trial court abused its discretion in granting Ms. Carrasco a CPO because it "misconstrued evidence" and was aware that some of the testimony presented at trial was "made up and exaggerated." (App. Br. at 1). In particular, Mr. Ruiz alleges that the court "was not just" when it granted Ms. Carrasco the CPO because it was "clearly demonstrated" that the alleged accusations against Mr. Ruiz were manufactured by Ms. Carrasco to obtain immigration benefits. (*Id.*) Based on these allegations, Mr. Ruiz requests that the ruling be reevaluated and corrected.[3] (*Id.* at 6).

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[3] This Court should note that Mr. Ruiz questions only the authority of the Superior Court to order the no contact provisions of the CPO that directed Mr. Ruiz not to make any report concerning Ms. Carrasco to any government official absent court order, a police emergency, or a subpoena. He neither questions the general authority of the Superior Court to issue orders under the Intrafamily Offenses Act nor attacks the constitutionality of the statute. *See McKnight v. Scott*, 665 A.2d 973, 976 (D.C. 1995) ("the intrafamily offense statute does not implicate First Amendment concerns").

Contrary to Mr. Ruiz's contentions, the CPO easily survives his challenges. The CPO was based upon a well-supported finding of good cause, and its provisions are consistent with the broad interpretation that this Court has given to the Intrafamily Offenses Act.

A. The Superior Court Issued the CPO Based Upon a Well-Supported Finding of Good Cause.

Under the D.C. Intrafamily Offenses Act, the Superior Court may grant a CPO if there is good cause to believe that the respondent committed an intrafamily offense. D.C. Code § 16-1005(c). This Court has held that the determination of good cause under the statute is committed to the sound discretion of the trial court and can be reversed only upon a showing of abuse of that discretion. *Maldonado v. Maldonado*, 631 A.2d 40, 42 (D.C. 1993) (citing *Cruz-Foster v. Foster*, 597 A.2d 927, 931-32 (D.C. 1991)). This Court's role in reviewing a trial court's exercise of discretion is supervisory in nature and deferential in attitude because a trial court is in the best position to "get the feel of the case" and observe the witnesses firsthand. *E.g., Johnson v. United States*, 398 A.2d 354, 362 (D.C. 1979).

In determining whether a trial court has abused its discretion, this Court must examine the record and the trial court's ruling and determine whether it was rational and fair in light of all of the evidence presented. *Johnson,* 398 A.2d at 363. Generally, this Court has found that a trial court abuses its discretion when its ruling exceeds the bounds of reason in light of all of the evidence, or bases its ruling on an incorrect legal standard. *Id*.; *In re J.D.C.*, 594 A.2d 70, 75 (1991). In the context of a CPO hearing, a trial court abuses its discretion when it fails to consider the entire history of the relationship of the parties when issuing its ruling. *Cruz-Foster*, 597 A.2d at 931-32; *see Maldonado,* 631 A.2d at 42-44

(court examined the all of the circumstances of trial findings before affirming the trial court's extension of CPO).

In this case, the Superior Court examined all of the evidence presented to it, (Tr. 12/19/97, at 225; *see id*. at 217-26), and found that Ms. Carrasco had shown by a preponderance of the evidence that Mr. Ruiz had committed a criminal assault. (*Id*. at 226) The Superior Court also found that part of the abuse that Ms. Carrasco suffered included Mr. Ruiz's threats to her immigration status. (*Id*. at 220-21.) The court then determined that the no contact provisions of the CPO were necessary to resolve the intrafamily offense. (*Id*. at 226.) The factual record of the case amply supports the findings and the order of the Superior Court. Thus, the trial court did not abuse its discretion in finding that good cause existed to issue the CPO.

B. The Intrafamily Offenses Act is Liberally Construed.

After finding good cause to issue the CPO, the Superior Court crafted a remedy to the intrafamily offense before it under the authority of the "catch-all" provision of D.C. Code § 16-1005, which provides that: "If, after hearing, the Family Division finds that there is good cause to believe the respondent has committed or is threatening an intrafamily offense, it may issue a protection order . . . directing the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter." D.C. Code § 16-1005(c)(10). This Court should affirm the "no contact with government officials" provision of the CPO because it is a reasonable and limited remedy for Mr. Ruiz's attempts to use Ms. Carrasco's immigration status to further his pattern of abuse, and it is consistent with the broad reading this Court has accorded to the statute.

In interpreting the Intrafamily Offenses Act, this Court has consistently held that the Act must be given an expansive reading so that the trial court may provide for resolution of the matter before it. *Powell v. Powell*, 547 A.2d 973, 974 (D.C. 1988) (holding that "the plain intent of the legislature was an expansive reading of the Act, which we think must be accorded the catchall provision as well."); *see also Cruz-Foster*, 597 A.2d at 929 (holding that the statute "was designed to protect victims of violence from acts and threats of violence."). The purpose of a CPO is to offer a "deterrent and provide[] a measure of peace of mind for those for whose benefit it was issued." *Maldonado*, 631 A.2d at 43. To accomplish this, a CPO may order relief not specified in the statute, including requiring that the respondent not contact the victim either by telephone or by mail, *id.*, or that the respondent pay the petitioner monetary relief. *Powell*, 547 A.2d at 974-75.

Mr. Ruiz's repeated threats to Ms. Carrasco's immigration status were part of the pattern of abuse that Ms. Carrasco suffered. (Tr. 12/19/97, at 226). The Superior Court's no contact order was drafted in a limited manner and designed to prohibit specific actions and immigration-related threats made by Mr. Ruiz. The CPO was a deterrent to future abuse and provided relief from past abuse. At the same time, the CPO allowed Mr. Ruiz to call upon the authorities in a police emergency and to respond to subpoenas. (R. 98-FM-40, at 32). It further allowed him to seek permission of the court if he wanted to contact any government official regarding Ms. Carrasco. (*Id.*) Further, the CPO did not impose a general restriction on Mr. Ruiz's ability to contact government officials. Instead, it prohibited Mr. Ruiz only from contacting or making any report to government officials *concerning Ms. Carrasco*. A liberal interpretation of the statute requires this Court to uphold the CPO's limited restraint on Mr. Ruiz's ability to contact government officials, including the INS.

C. The CPO's No Contact Provisions Do Not Conflict With Federal Law Regulating Immigration.

In reviewing the remedy crafted by the Superior Court, it is important to note that the CPO's no contact provisions create no conflict with federal immigration law. First, Congress has made clear that information provided by a battering or abusive spouse, such as Mr. Ruiz, is not to be sought by INS officials and, when provided, cannot be relied upon in making determinations concerning an alien's admissibility or deportability. Second, Mr. Ruiz was under no further duty to report information concerning Ms. Carrasco to the INS, and the CPO therefore does not impede information gathering by that agency. Thus, contrary to Mr. Ruiz's assertions, the CPO in no way interferes with any federal policy or interest.

As part of Congress' effort to protect battered immigrant women, the VAWA supplemented certain sections of the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.* (2000). These provisions create several potential options that would allow Ms. Carrasco to remain in the United States. To offer access to legal immigration status and to free battered immigrant spouses from dependence upon their abusive citizen or lawful permanent resident spouses, the VAWA in 1994 allowed battered immigrant spouses like Ms. Carrasco to self-petition for immigration status under 8 U.S.C. § 1154(a)(1)(A)(iii) or 8 U.S.C.

§ 1154(a)(1)(B)(ii).[4]

In making any determination with respect to applications made pursuant to Sections 1154(a)(1)(A)(iii), 1154(a)(1)(B)(ii), and 1186a(c), the INS is authorized to consider any credible evidence relevant to the application. 8 U.S.C. §§ 1154(a)(1)(J), 1186a(c). "The determination of what evidence is credible and the weight to be given to that evidence shall be within the sole discretion of the [INS]." *Id.* Significant for the purposes of this case is that Congress has forbidden the INS from making an adverse determination of an alien's applications based solely on information supplied by a spouse who battered the alien or subjected the alien to extreme cruelty. 8 U.S.C. § 1367(a)(1)(A). Furthermore, the Immigration and Nationality Act contains no affirmative obligation that an abusive spouse must provide evidence for any determination to be made under 8 U.S.C. §§ 1154(a)(1)(iii) and 1186a(c). Congress has thus made a judgment, now codified in federal law, that information furnished by battering or abusive spouses may be provided for malicious and improper motives and therefore may not serve as the sole basis for an INS action regarding

[4] Had Mr. Ruiz not withdrawn the family-based visa petition that he had filed with INS for his wife, Ms. Carrasco, and had Ms. Carrasco gained conditional residency status based on that petition, the INS could remove the conditional basis for her permanent resident status if that agency were to find that she entered into the marriage in good faith and that during the marriage she was subject to extreme cruelty. 8 U.S.C. § 1186a(c)(4)(C). This provision of the Immigration and Nationality Act helps battered immigrants whose abusive citizen or lawful permanent resident spouses file and follow through with the family-based visa application. In many cases when an abused immigrant is married to a citizen or lawful permanent resident spouse, that spouse either never files immigration papers on her behalf or files papers and later withdraws the application, as did Mr. Ruiz. *See* Part II.A.2., *infra*.

an alien's immigration status. *See* 8 U.S.C. § 1367(a)(1)(A).[5] The federal government has thus disclaimed any interest in obtaining the information that Mr. Ruiz contends that he must provide to the INS.

Mr. Ruiz incorrectly complains that he is obligated to inform the INS of any change in his marital status to Ms. Carrasco. (App. Br. at 2, 5). When Mr. Ruiz revoked the petition for permanent residency he filed for Ms. Carrasco, any obligation to report changes in his marital status to Ms. Carrasco ended. The Superior Court found that Mr. Ruiz had met all of his then-current obligations to inform the INS of his present location and marital status. (Tr. 12/19/97, at 232). Mr. Ruiz was thus under no further obligation to provide information the INS. Even if he were to come under some further obligation either to contact the INS or to provide evidence to that agency, the CPO specifically provided that Mr. Ruiz could comply with any subpoenas for information regarding Ms. Carrasco. Further, the order allowed Mr. Ruiz at any time to request the permission of the court to make a report to a government agency regarding Ms. Carrasco. (R. 98-FM-40, at 32). These safeguards ensured that the CPO did not impede the ability of the INS to collect information as required by law, while at the same time protecting Ms. Carrasco from Mr. Ruiz. The CPO does *not*

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[5] Congress further expanded protections for battered immigrant women in the Violence Against Women Act of 2000, Pub. L. No. 106-386, signed into law on October 28, 2000 ("VAWA 2000"). Section 1513 of VAWA 2000 creates new options for battered immigrants who are not the spouses or children of citizens or lawful permanent residents to attain legal immigration status, seek protection orders, and cooperate in their abuser's prosecutions. In creating the new crime victims visa (U-visa) Congress also expanded the confidentiality provisions in 8 U.S.C. § 1367(a)(1)(A) to cover both VAWA cases and battered immigrants and other immigrant crime victims who qualified to receive the new U-visas.

prevent the INS from gathering and weighing the credibility of the evidence it needs to make a final ruling on any self-petition that Ms. Carrasco may file.[6]

In sum, the CPO is directed exclusively at concerns not addressed by the Immigration and Nationality Act. It is not intended to assist the INS in determining what evidence is credible in any self-petition, VAWA, or other immigration case that Ms. Carrasco may file with the INS. The CPO provides an effective resolution to a domestic abuse matter, offering protection to Ms. Carrasco by restricting Mr. Ruiz from continuing to make, or from carrying out, the threats to harm her by having her deported or interfering with her ability to attain legal immigration status. Therefore, this Court should affirm the order of Superior Court and uphold all of the terms of the CPO because it provided an effective solution to Mr. Ruiz's and Ms. Carrasco's intrafamily matter without interfering with any federal policy or interest.

[6] It is important to note that statutes governing the self-petitioning process required that the self-petitioner be married on the date the self-petition was filed. Divorce after the filing date has no effect on the self-petition. *See* 8 U.S.C. § 1154(a).

II. THE CPO DOES NOT VIOLATE MR. RUIZ'S RIGHTS UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

The CPO does not violate Mr. Ruiz's rights under the First Amendment to the United States Constitution for two reasons: (i) the CPO does not restrict constitutionally protected speech; and (ii) even if Mr. Ruiz's contact with the government were constitutionally protected, the CPO is narrowly tailored to burden no more speech than is necessary to further the significant governmental interest in preventing domestic abuse. Therefore, the CPO should be affirmed.

A. Mr. Ruiz's Threatened Reports to the INS Constitute Conduct and Are Not Speech Protected by the First Amendment.

Not all verbal expressions are entitled to the protection of the First Amendment. "Before analyzing whether the state has impermissibly encroached upon a person's fundamental right of free speech it must be determined whether that expression is the type to which the First Amendment extends protection." *Svedberg v. Stamness,* 525 N.W.2d 678, 683 (N.D. 1994) (reviewing First Amendment challenge to restraining order prohibiting threats and harassment). The Supreme Court has recognized that there are a number of categories of speech that fall outside of First Amendment protection. *See R.A.V. v. City of St. Paul,* 505 U.S. 377, 382-86 (1992). One category of speech that the First Amendment does not protect are words that threaten injury to another person. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942); *see State v. T.B.D.*, 656 So. 2d 479, 480 (Fla. 1995), *cert. denied*, 516 U.S. 1145 (1996). Generally, the government is prohibited from restricting speech, *R.A.V.*, 505 U.S. at 382, however, the "right to freedom of speech is not absolute at all times and under all circumstances." *Chaplinsky*, 315 U.S. at 571-72. Certain words have "no essential

part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Id*. at 572. In holding that certain forms of speech, such as "fighting words," are not protected by the First Amendment, the Supreme Court has noted that the Constitution does not shield "the lewd and obscene, the profane, the libelous and the insulting words or 'fighting' words – *those which by their very utterance inflict injury* or tend to incite an immediate breach of the peace." *Id*. at 572 (emphasis added).

Threats of violence or injury, a subset of fighting words, are excluded from the ambit of the First Amendment because they cross over a line that separates speech that is intended to promote ideas from speech that is in effect conduct. *Cox v. Louisiana*, 379 U.S. 536, 555-56 (1965). "In other words, . . . the unprotected features of the words are, despite their verbal character, essentially a 'non-speech' element of communication." *R.A.V.*, 505 U.S. at 386 . The state may restrict such non-speech elements without violating the First Amendment. "'[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language, either spoken, written, or printed.'" *Cox*, 379 U.S. at 555-56 (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 409, 502 (1949)); *see also T.B.D.*, 656 So. 2d at 480-81 (holding that "threats of violence can be regulated because the government has a valid interest 'in protecting individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that threats will occur.'") (quoting *R.A.V. v City of St. Paul*, 505 U.S. 377, 388 (1992)); *Illinois v. Williams*, 551 N.E.2d 631, 634 (Ill. 1990) (acts that state may forbid do not acquire First Amendment protection "merely by virtue of

the fact that some or all of their elements are verbal in nature"); *Gilbert v. State*, 765 P.2d 1208, 1210 (Okl. Ct. Crim. App. 1988) ("We first reject any notion that the First Amendment . . . ever covered threatening or abusive communication to persons who have demonstrated a need for protection from an immediate and present danger of domestic abuse.").[7]

In short, "[p]rohibiting harassment is not prohibiting speech, because harassment is not protected speech." *Thorne v. Bailey*, 846 F.2d 241, 243 (4th Cir. 1988) (internal quotation omitted). Therefore, enjoining future verbal threats to injure or harass the victim of an intrafamily offense, including threats to harm the victim by having her deported, is consistent with the Supreme Court's ruling in *Chaplinsky* and implicates no speech protected by the First Amendment.[8]

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[7] *Amici* recognize that the issue in some of the cited cases was the constitutionality of a state statute that prohibited certain types of verbal expression, rather than the constitutionality of a judicial order that restricted such expression. Cases involving statutes that prohibit domestic violence, spousal abuse, harassment, or stalking are nevertheless relevant because those statutes may also restrict certain forms of expression. When challenged on First Amendment overbreadth grounds, these statutes have withstood constitutional scrutiny. *See People v. Blackwood*, 476 N.E.2d 742, 745-46 (Ill. Ct. App. 1985) (rejecting overbreadth challenge to Illinois Domestic Violence Act); *Gilbert*, 765 P.2d at 1210 (rejecting First Amendment overbreadth challenge to Oklahoma Protection from Domestic Abuse Act); *Schramek v. Boren*, 429 N.W.2d 501, 506-07 (Wis. Ct. App. 1988); *see generally* Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 905-09 (1993).

[8] Nor is the CPO a "prior restraint" on speech. Once a court determines that a course of conduct is unlawful, even conduct that is composed of speech, injunctive relief narrowly crafted to prohibit repetition of the prohibited conduct is not an unconstitutional prior restraint of speech. *Madsen v. Women's Health Center, Inc*, 512 U.S. 753, 763 n.2 (1994); *Pittsburgh Press Co. v. Human Rel. Comm'n*, 413 U.S. 376, 390 (1973); *Kramer v. Thompson*, 947 F.2d 666, 675 (3d Cir. 1991); *Aguilar v. Avis Rent a Car System, Inc.*, 980 P.2d 846, 858 (Cal. 1999); *see generally* 4 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 20.16, at 323 (3d ed. 1999) [hereinafter "ROTUNDA & NOWAK"]. The CPO was issued after five days of hearings after which the Superior Court determined that Mr. Ruiz had committed a criminal assault on Ms. Carrasco. The CPO was thus a *response* to Mr. Ruiz's prior unlawful conduct and was narrowly crafted to protect the vital government interest in preventing domestic abuse. Therefore, far from being a *prior* restraint on speech, the CPO was a *subsequent* remedy for conduct that had been found to violate District of Columbia law. Accordingly, this Court should affirm the Superior Court's order.

1. District of Columbia Law Permits the Prohibition or Restriction of Verbal Conduct Intended to Injure or Harass Another Person.

This Court has at least once upheld a CPO that restrained an abusive spouse from contacting either the INS or his victim because his words were abusive and inflicted injury. *Maldonado*, 631 A.2d at 41, 43 (holding that an abused spouse was entitled to be free from threats of further abuse). Although *Maldonado* did not review a CPO in the context of First Amendment jurisprudence, this Court did reason that threats to commit physical abuse, while not as harmful as actual physical abuse itself, nevertheless constituted abusive conduct. *Maldonado*, 631 A.2d at 43. Thus, the *Maldonado* court clearly assumed that threats to harm another person constitute *conduct* that the courts may prohibit, rather than speech protected by the First Amendment. *Accord Gilbert,*765 P.2d at 1211 (Park, J., concurring) ("'words which by their very nature inflict injury' are not constitutionally protected"). This reasoning is consistent with *R.A.V., Chaplinsky* and with the holdings of other courts that have examined domestic abuse protection orders and have found that harassing and threatening words are not constitutionally protected free speech. *State v. Hauge,* 547 N.W.2d 173, 176 (S.D. 1996) (domestic protection order forbidding ex-husband from contacting ex-wife in any manner and from verbally abusing or threatening ex-wife not unconstitutionally overbroad because harassment is not free speech protected by First Amendment); *Svedberg*, 525 N.W.2d at 684 (restraining order prohibiting taunts and threats upheld because such conduct is not protected by First Amendment).

An examination of the verbal expression at issue in this case – threats to have Ms. Carrasco deported or to report her to the INS – demonstrates that it, like the threats considered in *Maldonado,* are "essentially a non-speech element of communication." *R.A.V.,*

505 U.S. at 388. This Court must evaluate the nature of the expression against the background of the facts found below. *See Svedberg*, 525 N.W.2d at 683 (determining nature of "fighting words" requires a contextual inquiry). The Superior Court found that Mr. Ruiz had (a) assaulted Ms. Carrasco, (b) "volunteer[ed] and readily provid[ed] information" to the INS, and (c) held Ms. Carrasco's immigration status "over her head." (Tr. 12/19/97, at 221, 224). Thus, Mr. Ruiz's threats to have Ms. Carrasco deported and his efforts to provide damaging information to the INS were part of the abuse that Ms. Carrasco suffered. After making these findings of prior unlawful conduct, the Superior Court issued the CPO, which, to prevent further abuse by Mr. Ruiz, places limited restrictions on his ability to communicate with government officials concerning Ms. Carrasco. *See Madsen v. Women's Health Center, Inc*, 512 U.S. 753, 763 n.2 (1994) (injunction issued not because of content of speech but as a remedy for prior unlawful conduct). The CPO therefore restricts Mr. Ruiz's verbal expression because of its threatening and injurious character, not because of its content. *Cf. T.B.D.*, 656 So. 2d at 481 ("it is the . . . threatening mode of expression, not the idea expressed, that is intolerable").

Although statutes that punish certain forms of speech after their utterance and court orders that may limit some speech are subject to different standards of review, *see* 4 ROTUNDA & NOWAK § 20.16, the case law dealing with such statutes in the First Amendment context supports the view that the state may treat certain forms of speech as conduct that inflicts harm on others and may therefore limit such speech. This "conduct versus speech" distinction has long been recognized in District of Columbia law. The concept that verbal threats constitute conduct that may be proscribed or restricted by the state finds expression in the District of Columbia's statutory law. The District's code makes it a

criminal offense punishable by up to twenty years' imprisonment "to threaten[] to injure the person of another . . . ." D.C. Code § 22-2307; *see also* D.C. Code § 22-507 ("threats to do bodily harm" subject to fine of $500 or imprisonment for six months). These statutes reflect the legislative recognition that threats "can have significant adverse effects upon the victim." *Maldonado,* 631 A.2d at 43.

District of Columbia law has thus long distinguished between true speech and words intended to injure or harass another person. True speech is protected by the First Amendment; threats are not. Consistent with this distinction, this Court has rejected First Amendment challenges to convictions under the District's threat statutes. *Beard v. United States,* 535 A.2d 1373, 1378 (D.C. 1988) (words threatening the life of the victim are not constitutionally protected speech).

Of course, words need not threaten *physical* harm to another person before the state may proscribe their utterance. Threats of injury also include threats that would cause emotional distress; they are not restricted to threats of physical abuse alone. *United States v. Smith,* 685 A.2d 380, 388 (D.C. 1996), *cert. denied,* 522 U.S. 856 (1997) (holding that the District of Columbia's anti-stalking statute restricting harassing activity did not violate the protections of the First Amendment because the statute restricts actions that, when viewed in their totality, are conduct). Examination of conduct prohibited under the District of Columbia's anti-stalking statute, D.C. Code § 22-504, further demonstrates that the First Amendment is not offended by the proscription and punishment of verbal conduct that threatens emotional distress. In *Smith,* this Court ruled that the District of Columbia's anti-stalking statute may punish the willful and repeated engagement in a course of conduct that is intended to cause emotional distress without violating the United States Constitution. *Id*. at

384. To be convicted of stalking, the trial court must find that the defendant engaged "in a course of conduct either in person, by telephone, or in writing, which would cause a reasonable person to be seriously alarmed, annoyed, frightened or tormented." *Id*. at 386-87.

District of Columbia statutory law thus provides additional support for allowing the District of Columbia's courts to place reasonable restrictions on verbal expression that is calculated to threaten or injure another person. The limited restrictions the CPO placed on Mr. Ruiz's verbal expression were necessary to prevent further abuse and to protect Ms. Carrasco. The CPO is consistent with this Court's precedents, with this jurisdiction's statutory law, and with the Constitution, and it should be affirmed.

2. The Superior Court's Order Is Supported By Congressional Findings and By Studies On Battered Immigrant Women.

The Superior Court found that part of the injuries that Ms. Carrasco suffered included Mr. Ruiz's threats to Ms. Carrasco immigration status. (Tr. 12/19/97, at 220-21.) This finding is consistent with several studies that have examined domestic abuse in the Latina community and among immigrant women. *See* Mary Ann Dutton, Leslye E. Orloff & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latina: Legal and Policy Implications*, 7 GEO. J. POVERTY L. & POL'Y 245 (Summer 2000) [hereinafter *"Help Seeking Behaviors"*]; Giselle Aguilar Hass, Mary Ann Dutton & Leslye E. Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93 (2000) [hereinafter *"Lifetime Prevalence"*]. Part of the abuse includes threats by lawful permanent resident or citizen husbands to cease to sponsor the victim's application for lawful permanent residency and to have the victim deported if the victim leaves the relationship.

Lifetime Prevalence, at 105; *see also* Leslye E. Orloff, *et al.*, *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women,* 29 FAM. L.Q. 313, 324-25 (1995) [hereinafter "*No Place to Turn*"]. The victims are afraid to seek help because they believe that it will lead to deportation, and this provides abusers with a means to acquire greater power over their victims. *Lifetime Prevalence,* at 105. The threat of deportation is the predominant means by which psychologically abusive spouses control their alien victims. *Id*. at 105-06.

In fact, in a survey among Latina immigrants in the Washington, D.C. area, researchers found that a large proportion (47.8%) of the immigrant Latinas who reported being physically or sexually abused were married to U.S. citizens or lawful permanent residents who could file immigration papers for them. Of those abusive citizen or lawful permanent resident spouses who could file immigration papers for their spouses, 72.3% never filed such papers. Among the 27.7% who did file papers for their abused immigrant spouses, the mean delay was almost 4 years. *Help Seeking Behaviors,* 7 GEO. J. POVERTY L. & POL'Y at 259, 292. Fear of being reported to the INS and fear of deportation are the two most significant factors that keep battered Latinas from leaving their abusive spouses. *Id*. at 293. The threat to an abused alien's immigration status is thus a real and powerful one. *Id.*; *No Place to Turn,* 29 FAM. L.Q. at 325 & n.52.

Congress recognized the validity of this fear and the impact it had on victims of family violence when it passed the VAWA in 1994 and the Battered Immigrant Women Protection Act of 2000. The Committee on the Judiciary of the House of Representatives found in a report that is part of the legislative history of the VAWA 1994 that

> [d]omestic battery problems can become terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizen's legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen or lawful permanent resident spouse. Under the Immigration and Nationality Act, a U.S. citizen or lawful permanent resident can, but is not required to, file a relative visa petition requesting that his or her spouse be granted legal status based on a valid marriage. Also, the citizen or lawful permanent resident can revoke such a petition at any time prior to the issuance of permanent or conditional residency to the spouse. Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation.

H.R. REP. NO. 103-395, at 26 (1993).

When Congress amended the VAWA in 2000 to offer enhanced protection to battered women, the legislators reiterated their ongoing efforts to enhance protection for battered immigrant women like Ms. Carrasco.

> Several points regarding the provisions of Title V, The Battered Immigrant Women's Protection Act of 2000, bear special mention. Title V continues the work of the Violence Against Women Act of 1994 ('VAWA') in removing obstacles inadvertently interposed by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident to blackmail the abused spouse through threats related the abused spouse's immigration status.

146 CONG. REC. S10192 (daily ed. Oct. 11, 2000) (statement of Sen. Hatch appending joint managers' statement).

These congressional findings and the research on domestic violence experienced by battered immigrant women confirm that it was reasonable for Ms. Carrasco to be frightened by Mr. Ruiz's threats to her immigration status and for the court to take action to prevent any recurrence of such abuse. The Superior Court's conclusion is thus supported not only by the record, but also by congressional findings and scholarly research.

Advocates for battered women propose that abused spouses who have been threatened with deportation ask the courts for protection orders that prevent the abuser from contacting the INS and interfering with the victims' attempts to self-petition. DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT 154-55 (Bette Garlow, Leslye Orloff, Heather Maher & Janice Kaguyutan eds., ABA Commission on Domestic Violence, NOW Legal Defense and Education Fund and Ayuda 2000). The no contact provisions of the CPO do just that. The CPO protects Ms. Carrasco from future abuse and prohibits Mr. Ruiz from carrying out his previous threats. By affirming the Superior Court's holding, this Court will allow Ms. Carrasco to self-petition for lawful permanent resident status and achieve stable legal immigration status under §§ 1154 and 1186a of the Immigration and Nationality Act without being subject to further harassment.

The CPO does not, as Mr. Ruiz claims, hinder him from "protect[ing] himself from further damages caused by Ms. Carrasco." (App. Br. at 2.) The words that Mr. Ruiz wishes to offer to the INS are a part of the threats and intimidation he has used to abuse Ms. Carrasco, and therefore are not constitutionally protected. The CPO merely protects Ms. Carrasco from further abuse by Mr. Ruiz. Accordingly, the Superior Court's order should be affirmed.

B. Even If the CPO's No Contact Provision Incidentally Burdened Protected Speech, the CPO Was Narrowly Crafted to Serve a Significant State Interest.

Even assuming that Mr. Ruiz's stated desire to contact the INS is constitutionally protected speech, the CPO's no contact provisions do not violate the First Amendment. The

Supreme Court's test for evaluating an injunction that regulates speech requires a court first to examine whether the injunction is content neutral, and if it is, a court must then determine if the injunction burdens "no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Center, Inc*, 512 U.S. 753, 762-67 (1994). If the injunction is not content neutral, then it will be subject to strict scrutiny. *Id*. at 762-64. Here, the CPO is both content neutral and narrowly crafted to burden no more speech than is absolutely necessary to protect Ms. Carrasco from further abuse.

1. The CPO's No Contact Provision Was Content Neutral.

In determining whether the government has adopted a content neutral regulation of speech, the primary inquiry is whether the purpose of the regulation has nothing to do with the message the speech conveys. *Madsen,* 512 U.S. at 763 (citations omitted). It does not matter that the Superior Court inquired into Mr. Ruiz's previous contacts with the INS or was concerned about his desire to have further contacts with the INS. *See Hill v. Colorado,* 120 S. Ct. 2480, 2492 (2000) (noting that it is not improper for court to look at content of statement to determine whether a rule of law applies to a course of conduct). The CPO restricted Mr. Ruiz's contact with government officials and with Ms. Carrasco to further the purpose of D.C. Code § 16-1005, which is to protect victims of violence from acts and threats of violence. *Cruz-Foster*, 597 A.2d at 929. Part of Mr. Ruiz's abusive conduct included threats to Ms. Carrasco's immigration status, and the trial court found this abuse and other abuse within the relationship to violate the law. Consequently, part of the relief for such abuse was a no contact order to prevent Mr. Ruiz from continuing to make such threats and from carrying out his threats by contacting the INS. *See Madsen*, 512 U.S. at 763-64

(finding that an injunction was content neutral because it was remedying prior unlawful conduct). Thus, the CPO is directed at Mr. Ruiz's *conduct*, not at the message he intended to convey.

The restriction on Mr. Ruiz's speech is incidental to the remedy crafted by the Superior Court. The court was not restricting Mr. Ruiz's message; it was restricting his ability to continue to make or carry out his threats. For this reason, the CPO's no contact provision was content neutral. *Cf. McFarlin v. District of Columbia*, 681 A.2d 440, 449 (D.C. 1996) (statute restricting solicitation at entrances of Metro stations held content neutral because purpose was safety and not suppression of speech).

2. The CPO Burdened No More Speech Than Necessary to Serve a Significant Governmental Interest.

In a case analogous to this one, the Supreme Court of South Dakota upheld a protective order that restricted speech. In *State v. Hauge*, 547 N.W.2d 173 (S.D. 1996), the South Dakota Supreme Court reviewed a domestic abuse protection order which directed the respondent to "not verbally contact [petitioner] in any manner, which includes phone contact, … and not verbally abuse or threaten [petitioner]." *Hauge*, 547 N.W.2d at 174. The relief under the protection order at issue in *Hauge* was made pursuant to a catch-all provision similar to the one found in D.C. Code Section 16-1005(c)(10). *See id*. at 176. The respondent in *Hauge* was later charged with violating the protection order when he sent the petitioner a letter, which the Supreme Court of South Dakota found to contain no overt threats. *Id*. at 174. At his contempt hearing, the respondent argued that that "the protection order placed overbroad restrictions on his right of free speech, embodied in the First Amendment of the United States Constitution." *Id*. at 175-76. After reviewing the

guarantees of free speech provided by the First Amendment, the Supreme Court of South Dakota ruled that the respondent's conduct did not fall "within the ambit of the rights of free speech protected by the First Amendment." *Id*. at 176 (citations omitted). The Supreme Court of South Dakota reached this holding because it determined that the domestic abuse protection order served a compelling government interest and provided no more burden to speech than necessary to serve that interest. *Id*.

Domestic abuse protection is unquestionably a vital government interest. *Id*.; *see Maldonado*, 631 A.2d at 42-43; *Cruz-Foster*, 597 A.2d at 929; *Powell*, 547 A.2d at 974-75. Verbal domestic abuse consists not only of threats to commit physical abuse. It also consists of threats that would cause a reasonable person to be frightened or tormented. *Smith*, 685 A.2d at 384, 387-88. Based on Mr. Ruiz's history of threatening to have Ms. Carrasco deported, the CPO's no contact provision was narrowly crafted so that Mr. Ruiz could only contact the INS if the Superior Court was assured that the purpose of such contact was not to abuse Ms. Carrasco.

The Superior Court incorporated several safeguards in the CPO to limit the breadth of its order. First, the court excepted from its order instances where Mr. Ruiz might need to contact the police for personal protection from Ms. Carrasco. Second, the court specifically stated that Mr. Ruiz could comply with any subpoenas for information regarding Ms. Carrasco. Third, the court excepted filings necessary in Mr. Ruiz's divorce proceedings against Ms. Carrasco. Fourth, as a final safeguard to protect Mr. Ruiz from any unforeseen harm, the CPO contemplates that Mr. Ruiz could at any time request the permission of the court to make a report to a government agency regarding Ms. Carrasco. These provisions are more than adequate to avoid any possible unconstitutional infringements on Mr. Ruiz's

rights. *Cf. McKnight*, 665 A.2d at 976 n.6 (CPO not unconstitutionally overbroad because although it prohibited direct contact with petitioner, respondent could contact her through counsel); *Schramek*, 429 N.W.2d at 506-07 (same).

The CPO was narrowly tailored to ensure that Ms. Carrasco would not be further abused by Mr. Ruiz's attempts to threaten her immigration status while at the same time balancing Mr. Ruiz's interest that he not be subject to any fines or penalties that might be incurred as a result of a failure to respond to an inquiry or contact from the INS. It is important to recall that VAWA confidentiality rules prohibit INS employees from contacting Mr. Ruiz regarding a self-petition case that Ms. Carrasco may have filed. *See* 8 U.S.C. § 1367(a)(2); *see also* Part I.C., *supra* (discussing 8 U.S.C. § 1367). Despite the fact that the Superior Court allowed Mr. Ruiz to respond to subpoenas for information or to seek court permission to respond to INS inquiries, once Ms. Carrasco's self-petition has been filed with that agency the VAWA's confidentiality provision forbids the INS from initiating any contact with Mr. Ruiz. *See* 8 U.S.C. § 1367(a)(2), (c). The CPO burdened no more speech than necessary to further the significant government interest in settling an intrafamily matter. Accordingly, the CPO did not violate Mr. Ruiz's First Amendment rights and the Superior Court's order should be affirmed.

CONCLUSION

The Superior Court possessed broad discretion to fashion a CPO that would resolve the domestic dispute between the parties to this case. Appellant has failed to show any abuse of that discretion. Moreover, Mr. Ruiz's threats to Ms. Carrasco's immigration status do not constitute speech protected by the First Amendment, and the CPO's no contact provisions do

not offend the Constitution. Finally, even if Mr. Ruiz's threats were entitled to some constitutional protection, the CPO burdens no more speech than is necessary to achieve the important governmental interest in preventing domestic abuse. The Superior Court's order should thus be affirmed.

Respectfully submitted,

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