

**Protection Orders and
Immigrant Victims**

Louisiana State Team Training
New Orleans, Louisiana
September 21, 2018

Judicial Training Network 1

Faculty

- Judge Rosemary Collins
 - Rockford, Illinois
- Leslye E. Orloff
 - NIWAP, American University, Washington College of Law
- Veronica T. Thronson
 - Michigan State University College of Law, East Lansing, Michigan

Judicial Training Network 2

Learning Objectives

By the end of this session you will be better able to:

- Understand legally accurate information about the intersection of state civil protection order and federal immigration laws
- Issue protection orders and make rulings and findings about protection order violations involving immigrant victims and perpetrators
- Use state protection catch all provisions to issue protection orders that more effectively protect immigrant victims and their children

Judicial Training Network 3

What countries do immigrants come from that are you seeing in court proceedings in Louisiana?




Judicial Training Network 4

Louisiana Demographics (2016)*

- ❖ Total foreign born population - 189,921
- ❖ 4.1% of the state's 4.7 million people are foreign born
 - 42% naturalized citizens
 - ≈23.3% lawful permanent residents or temporary status
 - ≈34.7% undocumented
- ❖ 63.9% rise in immigrant population from 2000 to 2016
- ❖ 7.5% of children in the state under age 18 have 1 or more immigrant parents
 - 84.5% of children with immigrant parents in the state are U.S. native.

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/LA> (Feb. 2018)




Judicial Training Network 5

Louisiana- Countries/Regions of Origin and Limited English Proficiency (2016)*

<ul style="list-style-type: none"> ▶ Latin America - 54.5% <ul style="list-style-type: none"> ▶ Mexico (17.3%) ▶ South America (5.0%) ▶ El Salvador (3.0%) ▶ Cuba (2.3%) ▶ Asia - 28.6% <ul style="list-style-type: none"> ▶ Vietnam (9.7%) ▶ Philippines (3.0%) ▶ China (5.3%) ▶ India (3.3%) ▶ Middle East - 2.6% ▶ Europe - 8.5% <ul style="list-style-type: none"> ▶ Germany (2.1%) ▶ United Kingdom (2.0%) ▶ Africa - 4.2% 	<p>Limited English Proficiency (Speak English less than very well)</p> <ul style="list-style-type: none"> ▶ Naturalized citizens 32.9% ▶ Non-citizens 57.9% <p>Languages Spoken at Home</p> <ul style="list-style-type: none"> ❖ Spanish (167,160) ❖ French (87,771) ❖ Vietnamese (24,093) ❖ Mandarin or Cantonese (10,758) ❖ Arabic (10,653) ❖ Haitian (5,441) ❖ German (5,419) ❖ Tagalog (5,109)
---	--

*Source: <http://www.migrationinformation.org/databank/state.cfm?ID=LA> (Feb. 2018)



Judicial Training Network 6

Large group discussion:

- What immigration related issues are you seeing raised by parties or that you have questions about in protection order proceedings?

Judicial Training Network 7

PROTECTION ORDERS



Judicial Training Network 8

Immigration Law Definition of Domestic Violence

- “Battery or Extreme Cruelty”
- Includes
 - All forms of abuse covered in state civil protection order statute
 - All forms of abuse that constitute domestic violence under state criminal laws
 - Plus – Forms of abuse that are extreme cruelty
 - No physical harm or crime required

Judicial Training Network 9

Immigration Law's Domestic Violence Definition "Battering or Extreme Cruelty"

- Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, stalking, threats, attempts *and/or*
 - Emotional abuse
 - Economic abuse
 - Using children
 - Deportation threats and immigration-related abuse
 - Intimidation
 - Social isolation
 - Degradation
 - Possessiveness
 - Harming pets
 - Coercive control

Judicial Training Network

10

Immigration Law Definition of Battering or Extreme Cruelty

- "Being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence" 8 C.F.R. §204.2(c)(1)
- Based on what state family courts have consider to be extreme cruelty in divorce, alimony, support and custody cases

Judicial Training Network

11

NIJ Funded CPO Study Found

With support immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from advocate/attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

Judicial Training Network

12

Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction or *finding of violation* of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Judicial Training Network

13

Findings of Certain Protection Order Violations = Deportable Offenses

- Even if no criminal prosecution or conviction
- Deportable Offense = An immigrant “enjoined under a protection order issued by a court and whom **the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.**”
- For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or [child](#) custody orders or provisions)
- 8 U.S.C. § 1227(a)(2), INA § 237(a)(2)(E)(ii) (emphasis added).

Judicial Training Network

14

In Louisiana under what circumstances could a judge issue protection orders against both parties?

Judicial Training Network

15

Issuance of Protection Orders

- Mutual Protection Orders Prohibited
 - Louisiana - La. Ch. Code Ann. art. 1570(I) (2014)
 - A court shall not grant a mutual order for protection to opposing parties. However, nothing contained in this Paragraph shall be construed to prohibit the court from granting a protective order to a party in a subsequently filed Petition for Domestic Abuse Assistance provided that the provisions contained in R.S. 46:2136(B) have been met.
- With notice and an opportunity to be heard each party could seek a protection order against the other



Effect of Protection Order Issued Against Immigrant Victims

- Increases perpetrators power and coercive control
 - Victim is one step away from deportation
 - A violation of a protection order is a deportable offense
 - Findings enough – conviction not required
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful obtaining findings that the victim violated the order
- This can pose serious safety concerns for immigrant victims



Effect of Protection Order Issued Against Immigrant Victims

- Having an order of protection issued against a non-citizen could prevent them from establishing good moral character that is a requirement for immigration relief - Examples:
 - VAWA self-petition
 - VAWA cancellation of removal
 - Naturalization
- This is one of the reasons why issuance of an order of protection against an immigrant victim can be harmful



How Immigrant Victims End Up As Respondents In Protection Order Proceedings

Police arrive at domestic violence incident, perpetrator speaks English

- o Perpetrator speaks to and/or interprets for the police
- Outcome A
 - o Police see victim's injuries but take no action and advise the parties about protection order
 - o Perpetrator files for a protection order against the victim
 - o Victim is served and then also seeks a protection order
- Outcome B
 - o Perpetrator convinces the police to arrest the non-English speaking victim



How might the fact that convictions and findings of protection order violations are deportable offenses impact state court practices in protection order proceedings?

- With regard to
 - Perpetrators
 - Victims




Best Practices

- Issue Padilla advisals in protection order cases
- In cases in which parties seek protection orders against each other
 - When one party is pro se and the other is represented consider appointing counsel for the unrepresented party




When Perpetrators Are Willing to Consent Only to “No Findings” Protection Orders



Judicial Training Network 22

Effects of “No Findings” Protection Orders

- Can allow the abuser to keep his firearms
- Increase danger to a survivor and her children
- Undermine state laws regarding domestic violence and custody



Judicial Training Network 23

Beneficial Findings to Include When Issuing Protection Orders

- In contested cases
 - Findings of physical, sexual and emotional abuse of immigrant, her child or step-child
- In all cases showing an:
 - Existence of parent/child or spousal relationship by checking this box on standard court orders
- Include creative remedies



Judicial Training Network

Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or coercive control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies



Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance



Group Activity:
What Creative Protection Order Remedies Might Help an Immigrant Victim?



**Victims Who Stay:
Full Contact Protection Orders**

- No state’s protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
 - No abuse
 - Counseling

Judicial Training Network 28

**Using Catch-all Provisions to Stop
Immigration Related Abuse**

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare, etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

Judicial Training Network 29

**Remedies That Help a Victim’s
Immigration Application**

- Turn over documents/evidence in abuser’s control needed for the victim’s immigration case.
- What might some of those documents be?



Judicial Training Network 30

Helpful Evidence

<p>Evidence of Legal Marriage</p> <ul style="list-style-type: none"> • Marriage certificate • Wedding/family pictures • Health insurance <p>Good Faith Marriage</p> <ul style="list-style-type: none"> • Children birth certificates • Love letters, cards, text, emails • Copies of joint leases/utility bills • School records • Letters and other mail addressed to the victim and to the abuser at the same address 	<p>Evidence of Abuse or Extreme Cruelty</p> <ul style="list-style-type: none"> • Police, medical, court documents about the relationship • Protection order • Affidavits of neighbors, relatives, friends <p>Evidence of Abusers Legal Status</p> <ul style="list-style-type: none"> • Abuser's green card or passport • Copy of I-130 petition • Social security number
---	--

Judicial Training Network 31

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order
- Supervised visitation
- Bond

Judicial Training Network 32

Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Enforce Affidavit of Support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)

Judicial Training Network 33

Important Economic Provisions

- Maintain and/or pay for health care for victim and children
- Provide one time emergency monetary relief
 - Money to repair locks or broken windows
 - Obtain an unlisted telephone number
 - Relocation assistance
- Pay house insurance, mortgage, rent, utility and/or debt payments
- Taxes
 - Turn over income tax statements
 - Respondent ordered to pay victim 1/2 of refund
 - Victim named trustee for receipt of tax return funds
 - Respondent ordered to sign over check
 - Victim awarded exclusive right to claim children as tax exemptions



Judicial Training Network

34

Small Group Activity - Case

- Using the Eduardo and Clara case scenario -Handout
- While Clara was in the hospital she received help from a victim advocate who told her about civil protection orders.
- Clara has come to your court seeking a protection order against Eduardo
- What creative protection order remedies would be useful
 - For Clara
 - For Miguel



Judicial Training Network

35

Resources for Courts

- Protection Orders and Immigrant Victim's Bench Card
- Manual chapters on immigrant victims and protection orders for victims of domestic violence, child abuse and sexual assault
 - Include lists of potentially useful creative remedies



Judicial Training Network

36