
 **NIWAP** 

## Civil Protection Orders and Immigrant Victims

Multi-State Training  
New Orleans, Louisiana  
April 5, 2019

Judicial Training Network  
Multi-State Training 1

---

---

---

---

---

---

---

---

### Faculty

|  |  |  |
|--|--|--|
|  |  |  |
| <b>Commissioner<br/>Loretta Young</b>  | <b>Judge Mary<br/>Weir</b>   | <b>Professor<br/>Veronica<br/>Thronson</b>   |

Judicial Training Network 2

---

---

---

---

---

---

---

---

### Learning Objectives

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

- Identify the range of creative protection order remedies courts can order that are helpful particularly for immigrant victims and their children.
- Know the role that no unlawful contact protection orders play for immigrant victims
- Improve your ability to determine who is the primary aggressor any time a protection order is being sought against a victim or both parties.

Judicial Training Network  
Multi-State Training 3

---

---

---

---

---

---

---

---

### 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

Judicial Training Network  
Multi-State Training

4

---

---

---

---

---

---

---

---

---

---

### Victims Who Stay: No Unlawful Contact Protection Orders

- No state’s protection order statute requires separation of the parties
- Provisions
  - No abuse
  - No unlawful contact
  - Batterer’s treatment

Judicial Training Network  
Multi-State Training

5

---

---

---

---

---

---

---

---

---

---

### The Majority of Immigrant Victims Stay With Their Abusers ...

- Until their immigration case is approved or the victim receives work authorization
- Percent who leave before receiving work authorization or approval
  - VAWA self-petitioners 33.9%
  - U visa victims 30.1%

Judicial Training Network  
Multi-State Training

6

---

---

---

---

---

---

---

---

---

---

### Relay Race – Creative Protection Orders



Judicial Training Network  
Multi-State Training

9

---

---

---

---

---

---

---

---

### Creative Protection Order Relay Race

- Work as a team to develop a list of creative protection order remedies that would be particularly helpful to immigrant victims
- Pick a representative for your team
- Teams will go one by one proposing remedies
- Teams lose when they
  - Run out of creative remedies
  - Duplicate a remedy proposed by another team
  - Propose a traditional remedy and cannot explain to the judge why it is particularly helpful for immigrant victims

Judicial Training Network

8

---

---

---

---

---

---

---

---

## DEBRIEF

### 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

Judicial Training Network  
Multi-State Training

9

---

---

---

---

---

---

---

---

### 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  
Multi-State Training

10

---

---

---

---

---

---

---

---

### 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  
Multi-State Training

11

---

---

---

---

---

---

---

---

### Helpful Evidence

#### Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

#### Good Faith Marriage

- 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

#### Evidence of Abuse or Extreme Cruelty

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, friends

#### Evidence of Abusers Legal Status

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number

Judicial Training Network  
Multi-State Training

12

---

---

---

---

---

---

---

---

### 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  
Multi-State Training

13

---

---

---

---

---

---

---

---

### 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  
Multi-State Training

14

---

---

---

---

---

---

---

---

### 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 ½ 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  
Multi-State Training

15

---

---

---

---

---

---

---

---

**Race to the Courthouse --  
Protection Orders Issued Against  
Immigrant Victims Particularly  
Harmful**



Judicial Training Network  
Multi-State Training 16

---

---

---

---

---

---

---

---

**Question:** Issuance of a protection order is a deportable offense ?

TRUE  
 FALSE

Judicial Training Network  
Multi-State Training 19

---

---

---

---

---

---

---

---

**Which is a deportable offence**

- A. Domestic violence criminal conviction
- B. Finding in a custody case that a protection order was violated
- C. Criminal conviction for violating a civil protection order
- D. Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction
- E. All of the above

Judicial Training Network 18

---

---

---

---

---

---

---

---

### Protection Orders and Immigration Considerations

- Issuance does not cause a deportable offense
- Violation of a protection order a deportable offense
  - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
  - A finding of violation of the protective provisions of the order in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their protection

Judicial Training Network  
Multi-State Training

19

---

---

---

---

---

---

---

---

### Large Group Discussion



- When both parties seek protection orders against each other or when the court suspects the person seeking the protection order is the perpetrator
  - What steps can courts take?

Judicial Training Network  
Multi-State Training

22

---

---

---

---

---

---

---

---

### Large Group Discussion



- Steps courts can take
  - Look for facts that related to a race to the courthouse
  - Make primary aggressor determinations
  - What can the courts see about the criminal record of either party?

Judicial Training Network  
Multi-State Training

22

---

---

---

---

---

---

---

---

### Important of Primary Aggressor Determination

- Importance of determining who is the primary aggressor when the party against whom a protection order may be sought is the victim
  - This is particularly important for immigrant 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



---

---

---

---

---

---

---

---

### Immigration Status and Family Law Tool

- Padilla warnings in protection order cases are one example of the immigration consequences in family law cases
- Example: Michigan Tool on Immigration Consequences of Family Law Cases



---

---

---

---

---

---

---

---



### CPO compared to TPO

- U Visa Certification
  - Could have a case in which the victim got a TPO and did not follow up with the CPO and could still receive certification
    - E.g. at TPO provided evidence of a police report or cooperation in a criminal case
- SIJS Findings
  - Best to issue as part of the CPO, rather than TPO case

---

---

---

---

---

---

---

---



Civil Protection Order  
Bench Card

Immigration Consequences  
in Family Law

---

---

---

---

---

---

---

---

### Materials Review – Flash Drive

- Bench card – battered immigrants and protection orders
- Hofstra Journal Article -Seeking Protection Orders for Immigrant Victims
- NIJ Research – Battered Immigrants Use of Protection Orders publication and full report
- Definitions of Battering or Extreme Cruelty
- Manual chapters and more ...




---

---

---

---

---

---

---

---

## Technical Assistance and Materials

- Power Point presentations and materials for this conference at
  - <http://niwaplibrary.wcl.american.edu/jtn-nola-2019/>
- Judicial Training Manual at
  - <http://niwaplibrary.wcl.american.edu/sji-materials/>
  - **NIWAP Technical Assistance:**
    - Call (202) 274-4457
    - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)



---

---

---

---

---

---

---

---