

IMMIGRATION AND CULTURAL ISSUES IN DOMESTIC VIOLENCE PROTECTION ORDERS

Special Topic Seminar: Domestic Violence
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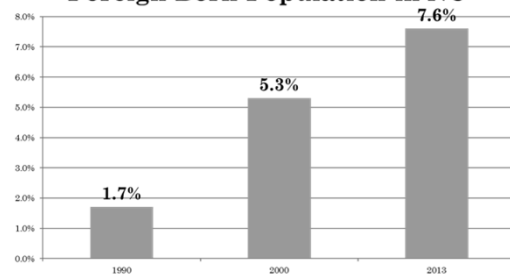
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OBJECTIVES

- Obtain an overview of the immigrant population in NC
- Identify strategies to address cultural issues which may arise in the courtroom
- Recognize real and perceived barriers faced by immigrants in accessing services and the courts
- Identify immigration related abuse
- Identify ways in which DVPO can affect victim's immigration application
- Identify ways in which DVPO can affect defendant's immigration application

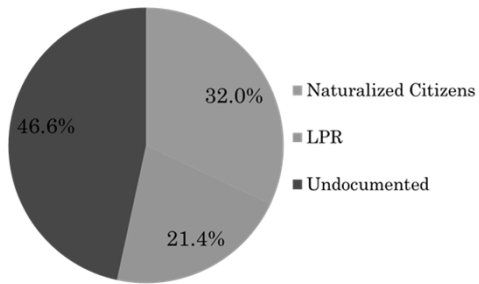
SNAPSHOT OF IMMIGRANT POPULATION OF NC

IMMIGRANT POPULATION IN NC* Foreign Born Population in NC



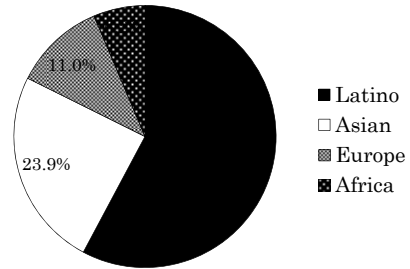
*<http://www.migrationinformation.org/datahub/state.cfm?ID=NC>

Composition of Foreign Born population



2103 US Census
http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2012.pdf

COMPOSITION OF IMMIGRANTS IN NC*

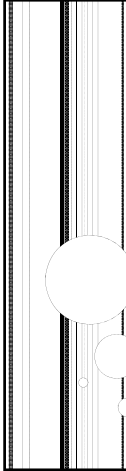


*<http://www.migrationinformation.org/datahub/state.cfm?ID=NC>

COMPOSITION OF IMMIGRANTS FAMILIES IN NC

- 17.4% of children in NC under age 18 have 1 or more immigrant parents
- 86.1% of children with immigrant parents in NC are U.S. citizens

CULTURAL CONSIDERATIONS IN DVPOS



WHAT IS CULTURE AND WHY IS IT IMPORTANT?

WHAT IS CULTURE?

- Shared experiences or other commonalities of groups of *individuals* that have developed based upon changing social and political contexts
- It can include changing and contradictory elements.

SUCH AS:

- Race
- Ethnicity
- Gender
- Age
- Nationality
- Sexuality
- Class
- Language
- Education
- Regionality
- Rural/Urban
- Religion
- Military Experience
- Disability Status
- Immigration Status
- Other axes of identification

CULTURAL IDENTITY

How do you identify yourself culturally?

Brief exercise:
Identify at least seven elements of culture for yourself.

WHY SHOULD WE CONSIDER CULTURE?

- Culture shapes an individual's experience of domestic and sexual violence.
- Culture shapes the offender's response to intervention and acceptance of responsibility.
- Culture shapes access to the court and other services that might be crucial for the parties and children.
- The culture of the system, the professionals within the system, and the parties will impact outcome.

UNIVERSAL STRATEGIES TO ADDRESS CULTURE AND DIVERSITY Understanding the individuals at hand.

- Awareness of one's own cultural identity.
- Recognize own pre-existing beliefs about a culture.
- Help to understand and reduce impediments and biases within one's own workplace/system.
- Strive to learn more about other cultures and cultural misinformation.

*Borrowed from the National Council of Juvenile and Family Court Judges' Civil Protection Orders: A Guide for Improving Practice

REAL AND APPARENT BARRIERS TO FULL PARTICIPATION

<u>Sexuality</u> <u>LGBTQ</u>	<u>Gender</u> <u>Male</u>	<u>Gender</u> <u>Female</u>	<u>Age</u> <u>Elderly</u>
Fear of being "outed"	Contrary to societal expectations	Fear of being called an abuser of the system	Shameful to discuss private matter
Reluctance to bring even more negative attention to community	Fear of Law Enforcement's and Legal System's Response	Fear of losing her children	Self-guilt because own Child is the Abuser
Perception that no domestic violence in their community	Extreme Shame	Fear of abuser's retaliation	Fear of retaliation by abuser/caregiver

REAL AND PERCEIVED BARRIERS FOR IMMIGRANTS AND HOW TO ADDRESS THEM

REAL AND APPARENT BARRIERS TO FULL PARTICIPATION FOR IMMIGRANTS

- Fear of deportation
- Fear of law enforcement
- Distrust and misinformation about US legal system
- Language barriers

REAL/PERCEIVED BARRIERS TO FULL PARTICIPATION FOR IMMIGRANTS

- Fear of abuser being removed or deported
 - Fear of loss of financial support
- Cultural and Religious Beliefs
 - Shame/Dishonor in discussing the family with strangers
 - Fear of ostracization from family
 - Divorce may violate religious beliefs and social mores

Ly Phuong (undocumented Vietnamese mom) testifies in her dvpo hearing about the **most** recent dv incident when her Vietnamese/perm resident husband grabbed her by the arm and threw her against the wall in front of their two children. This happened about 3 weeks before she filed for the order, and he threatened to call ICE if she called the police. She stares down at her shoes for the duration of her testimony even when you/judge ask her questions.

Defendant testifies that she has made it all up. They do have marital problems but that they have been talking to their parish priest, and he has been helping them. If she leaves him, he fears she will take kids to her mother's in Vietnam.

Father O'Brian, Catholic priest, testimony: He has been working with the couple for six months. The couple came to him because they want to stay together. PI has told him about D's threat to deport her, and he saw a bruise on her arm about 4 months ago. They discussed it together. Def told him he lost his temper and grabbed and shook her arm. D told him and PI he wouldn't do it again. PI is visibly crying during the priest's testimony.
 What cultural considerations do you note?

IMMIGRANT POWER AND CONTROL WHEEL



Produced and distributed by: NATIONAL CENTER on Domestic and Sexual Violence
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 www.nationalcenter.org

IMMIGRATION RELATED ABUSE

- Threats/attempts to have victim deported
- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case
- Hiding or stealing important ID documents of victim
- Calls to DHS to turn her in--have her case denied.

ADDRESSING CULTURAL CONSIDERATIONS AFFIRMATIVELY

- Examine Credibility Concerns
 - Hypo raised: For some cultures, looking another person in the eyes is a form of disrespect.
- Examine Assumptions
 - Mothers who are victims can leave & find a job & benefits. For undocumented persons, they cannot work legally and are not entitled to same benefits as citizens.
- Address Rights of Non-Citizens:
 - Parties often raise immigration status, but it may not be relevant to civil proceedings.
 - Flight risk with children: ask usual questions if actual flight risk.



LANGUAGE AND LITERACY

REAL AND APPARENT BARRIERS TO FULL PARTICIPATION

- Access to the Court and Other Resources
 - Communicating to discover options/remedies
 - Getting to court
 - Finding way to correct place in court
 - Understanding process and court proceeding itself
- Fear/Distrust of Legal System

SCENARIO:

At calendar call, Hmong male victim along with assigned and qualified interpreter respond present for the dvpo and custody hearing. The opposing counsel objects to the use of the interpreter assigned to the case arguing that the interpreter is biased because he has interpreted for the victim on many occasions and has developed a friendship with him.

What do you do?

SCENARIO

A sexual assault plaintiff in a DVPO hearing testifies about the assault. One of pl's witnesses only speaks Polish. The court has provided a certified interpreter. A DV bilingual advocate who speaks Polish and English is sitting in the courtroom. The witness testifies and the court takes a recess before her cross exam. After the court takes a recess, attorney for the PI moves court for a continuance and for a new interpreter and explains that the bilingual dv ct. advocate confirms that the court interpreter is not accurately interpreting the witness' testimony.

Do you grant continuance?

**ADDRESSING CULTURAL CONSIDERATIONS
AFFIRMATIVELY**

Utilize Accurate and Impartial Interpretation

- Every stage of proceeding: calendar call, ie. Continuances
- Evaluate the Need for an Interpreter
- Explain the Role of the Judge AND Interpreter
- Assess the Performance of the Court Interpreter
 - Are there significant differences in the length of interpretation as compared to original testimony?
 - Does the witness appear to be asking the interpreter questions?

**Borrowed in part from N.C. AOC's "Working with Interpreters" Bench Card for Judges

**THE ABC'S OF
IMMIGRATION**

DEPARTMENT OF HOMELAND SECURITY AGENCIES

- **CIS:** Citizenship and Immigration Services
 - Processes affirmative immigration applications
- **CBP:** Customs and Border Patrol
 - Guards borders and inspects incoming goods
- **ICE:** Immigration and Customs Enforcement
 - Enforces immigration laws by starting removal cases

OTHER RELEVANT AGENCIES

- **EOIR** - Executive Office of Immigration Review
 - Immigration court system falls under Department of Justice
- **INS** - Immigration and Naturalization Service
 - Used to encompass all DHS agencies but has not been existence since 2003

TYPES OF IMMIGRATION STATUS

- **United States Citizen (USC)**
Born in the 50 states, Guam, Puerto Rico, USVI; naturalized citizen; descent from USC parent(s)
- **Lawful Permanent Resident (LPR)**
Has permission to live and work in US permanently; has "green card"
- **Conditional Permanent Resident**
Is lawful permanent resident for 2 years based on marriage to USC that is less than 2 years old at time of adjustment. "Green card" expires after 2 years

TYPES OF IMMIGRATION STATUS (CONTINUED)

- **Individuals with permission to remain in the U.S.**
Asylees, refugees, Deferred Action, TPS; Can get employment authorization
- **Temporary/Nonimmigrant Visas**
Limited duration and travel restrictions, e.g. tourist/visitor, student, U visa
- **Undocumented**
Residing in U.S., overstayed visa, or entered without inspection



DHS PROTECTIONS FOR VICTIMS

DHS PROTECTIONS OFFERED TO VICTIMS

- o **Victim-based affirmative immigration applications**
- o **Grounds of removal for those with legal status who commit crimes of domestic violence**
- o Effect of DVPOs on DHS Protection for Victims
DHS may use DVPOs to assess whether applicant is a victim deserving of certain protections and to assist in prevention of waste of resources on perpetrators.

DHS PROTECTIONS OFFERED TO VICTIMS (CONTINUED)

- o **Prohibition against release of information**
- o **Prohibition against use of information provided solely by abuser in victim-based applications**
- o **Violation of either prohibition is grounds for disciplinary action and fine of up to \$5000**

Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)

DHS PROTECTIONS OFFERED TO VICTIMS (CONTINUED)

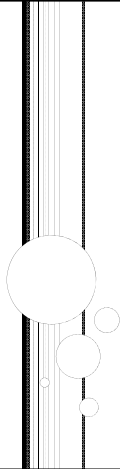
- o ICE Enforcement Locations – ICE discourages officers from conducting enforcement actions at a courthouse if:
 - protection order case
 - child custody case
 - other civil or criminal case relating to domestic violence, sexual assault, human trafficking or stalking

<http://www.ice.gov/doclib/foia/prosecutorial-discretion/vawa2005.pdf>



HOW DO DVPOS AFFECT PARTIES' IMMIGRATION CASES?

Effect on victim's immigration case
Effect on abuser's immigration case



HOW DOES A DVPO AFFECT A VICTIM'S IMMIGRATION CASE?

Petition to Remove Conditions on Residence
Self-Petition
U Visa

SCENARIO

- Priya is from India and married to U.S. citizen. Since her husband brought her to the U.S. on a fiance visa two years ago, her husband has not allowed her to contact her family in India, leave the house without him, or obtain legal status which would allow her to work and obtain a driver's license. When Priya complains, her husband threatens to send her back to her family in India to bring shame on her family in the community. Her husband pulls her hair at times when he is not pleased with her and has her on a rigorous daily schedule which includes waking him up every day at 5:30 am with a gentle foot massage and sexual act, preparing breakfast, calling him three times a day, and preparing his dinner. Recently, when Priya told her husband that she wants to learn how to drive, he slapped her and threatened to have her deported.
- Priya is now seeking a DVPO in your courtroom.

WHAT IS A PETITION TO REMOVE CONDITIONS?

- An application that allows abused conditional residents to remove the conditions on their residence without the participation of their abusive U.S. citizen or LPR spouse

REQUIREMENTS FOR PETITION TO REMOVE CONDITIONS (“BATTERED SPOUSE WAIVER”)

- Conditional LPR status
- Good faith marriage
- Subjected to physical battering or extreme cruelty

INA Section 216(c)(4)(C)

IMPLICATIONS OF DVPO ON PETITION TO REMOVE CONDITIONS ON RESIDENCE

- DVPO is not essential for a petition to remove conditions but can be helpful
- DVPO findings can be used to support the “physical battering/extreme cruelty” element
- DVPO order can be used to compel defendant to turn over documents to support “good faith marriage”

BENEFITS FOR APPLICANTS TO REMOVE CONDITIONS

- Conditional resident status is immediately extended for one year upon filing application to remove conditions
- Allows applicant to become lawful permanent resident without conditions

WHAT IS A SELF-PETITION?

- An application that allows the abused foreign national spouse of a U.S. citizen or lawful permanent resident to obtain legal status without the involvement or cooperation of the abusive spouse
- Offers a path to legal permanent residence

VAWA SELF-PETITION REQUIREMENTS

- Spouse, Child, or Parent of U.S. Citizen or LPR
 - spouse can be divorced if within last 2 yrs
- Married in good faith
- Resided with abuser (past or present)
- Subjected to physical battering or extreme cruelty
- Good moral character

INA Section 204(a)(1)(A) and (B)

IMPLICATIONS OF DVPO ON SELF-PETITION

- DVPO is not essential for a self-petition but it can be helpful
- DVPO findings can be used to support the “physical battering/extreme cruelty” element
- DVPO order can be used to compel abuser to turn over documents to support “good faith marriage” and “joint residence” elements

BENEFITS OF THE SELF-PETITION

- Obtain Deferred Action status
- Obtain employment authorization
- Children can also obtain Deferred Action status and employment authorization
- Can provide pathway to lawful permanent residence

WHAT IS A U VISA?

- Temporary visa that allows victims of certain crimes to remain in the U.S. and work here. Offers path to LPR status.
- Dual Purposes of U Visa:
 - Law Enforcement: Encourage victims to come forward and report crimes and work with law enforcement
 - Humanitarian: Protect and assist vulnerable victims of domestic violence and other crimes

REQUIREMENTS FOR U VISA

- Victim of qualifying crime
- Suffered substantial abuse as result of qualifying crime
- Has been/is being/is likely to be helpful in the investigation or prosecution of the crime
- Certification from law enforcement or judge regarding qualifying crime and helpfulness

INA Section 101(a)(15)(U)

IMPLICATIONS OF DVPO ON U VISA

- DVPO is not essential for U visa but is helpful
- DVPO can be used to support the “suffered substantial abuse” element of the U visa
- In states other than NC, judges presiding over DVPO cases sign U visa certifications

BENEFITS OF A U VISA

- Deferred Action status/Lawful U visa status for 4 years
- Employment Authorization
- May apply for lawful permanent resident status after 3 years
- Can get benefits for derivatives (children, spouse, siblings, and parents, depending on victim’s age)

SCENARIO

- Priya is from India and married to U.S. citizen. Since her husband brought her to the U.S. on a fiance visa two years ago, her husband has not allowed her to freely contact her family in India, leave the house without him, or obtain legal status which would allow her to work and obtain a driver’s license. When Priya complains, her husband threatens to send her back to her family in India to bring shame on her family in the community. Her husband pulls her hair at times when he is not pleased with her and has her on a rigorous daily schedule which includes waking him up every day at 5:30 am with a gentle foot massage and sexual act, preparing breakfast, calling him three times a day, and preparing his dinner. Recently, when Priya told her husband that she wants to learn how to drive, he slapped her and threatened to have her deported.
- Priya is seeking a DVPO.

SCENARIO

- A. Defendant's attorney states that plaintiff has fabricated this story just to obtain immigration status because she is undocumented. How do you evaluate this information?

- B. Plaintiff's attorney requests a sidebar and discloses that in settlement negotiations, Defendant's attorney indicated that Defendant had been generous in not contacting ICE regarding Plaintiff's status and insinuated that Plaintiff could still do it. Plaintiff's attorney feels like this is a threat to report Plaintiff. What do you do?

- C. Plaintiff's attorney has requested that defendant provide plaintiff with copy of his proof of citizenship and a copy of all of the documents Defendant filed to bring Plaintiff to the US as his fiance. Defendant's attorney objects that this is plaintiff's private information and that he should not be forced to release it to Plaintiff. How do you rule?

HELPFUL DVPO PROVISIONS FOR IMMIGRANT VICTIMS

HELPFUL DVPO PROVISIONS FOR IMMIGRANT VICTIMS

- Make detailed findings of fact that describe the physical and/or emotional abuse to which the plaintiff was subjected

- Order defendant not to contact DHS, Embassy, or any government agency absent permission from the court.

- Order defendant to turn over victim and children's identification documents
 - Passport
 - Birth certificate
 - Social security card
 - Health insurance card

HELPFUL DVPO PROVISIONS FOR SELF-PETITIONING IMMIGRANT VICTIMS

- Order defendant to provide plaintiff with copy of his:
 - LPR card
 - naturalization certificate
 - birth certificate (if born in U.S.)

- Order defendant not to withdraw any immigration papers filed for plaintiff

- Order defendant to provide plaintiff with all immigration forms filed by defendant on plaintiff's behalf and documents received from USCIS for victim

**HELPFUL DVPO PROVISIONS FOR
SELF-PETITIONING IMMIGRANT VICTIMS**

- Order defendant to relinquish
 - marriage certificate · wedding photos
 - joint tax returns · joint leases
 - family photos · joint bills
 - joint account statements
 - letters addressed to couple at joint residence
- Order defendant not to remove children from jurisdiction

**IMPACT OF DVPO ON
DEFENDANT'S
IMMIGRATION CASE**

Affirmative applications
Removal cases

**IMPACT OF DVPO ON
DEFENDANT'S
AFFIRMATIVE IMMIGRATION
CASE**

**IMPACT OF DVPOs
ON AFFIRMATIVE APPLICATIONS**

- USCIS does not ask any specific questions about DVPOs on any immigration application
- Applicants for immigration relief have no obligation to reveal the existence of DVPO
- USCIS does not check to see if civil lawsuits have been initiated against applicants for immigration relief
- Mere entry of civil DVPO will have NO impact on a defendant's affirmative application.
 - As long as there is no subsequent criminal charge of violation of DVPO.

IMPACT OF DVPOS ON AFFIRMATIVE APPLICATIONS

VIOLATION OF DVPO

- **Criminal charge** of violation of DVPO MAY impact defendant's affirmative application

- Conviction of DVPO Violation
 - May affects application for relief when applicant has prior criminal conviction
 - DHS could consider findings in DVPO in applications which require showing of good moral character

- Dismissal of DVPO Violation
 - Considered a conviction by DHS if defendant made admission under oath of all elements of crime and some form of penalty/punishment/restraint is imposed
 - DHS could consider findings in DVPO in applications which require showing of good moral character

IMPACT OF DVPO ON
DEFENDANT'S
REMOVAL CASE

IMPACT OF DVPOS ON REMOVAL

- Mere entry of DVPO will not be the basis of removal from the U.S.

- Convictions of violation of certain provisions of DVPO could be basis of defendant's removal from the U.S.

IMPACT OF CONVICTION OF VIOLATION OF
DVPO ON REMOVAL CASE

- A conviction for Violation of a DVPO can be the basis for removal from the U.S. of defendant with legal status if:
 - Respondent is enjoined under a court ordered protection order AND
 - Court determines that the respondent violated the part of the order protecting against:
 - Bodily injury against the protected person
 - Credible threats of violence, OR
 - Repeated harassment

INA Section 237(a)(2)(E)(ii)

SCENARIO

- Maria is seeking a DVPO against Jose, her ex-boyfriend and father of two of her children, with whom she broke up two months ago. Since their breakup, Jose has been threatening to take the children, report her to ICE, and have her deported. He has called her employer and told her employer that she is working with a fake ssn, which resulted in her being fired. Although he never went to church with Maria while they were together, since their breakup, he has gone to her church several times, pulled her aside, and threatened to kill her if she ever starts dating anybody else. He has also called her multiple times in the middle of the night from a unknown number. Maria states that she is terrified of Jose, does not feel safe, and cannot sleep at night. She has contacted the police, and Jose has also been charged with communicating threats.

SCENARIO

- A. Jose's attorney argues that Maria is seeking a DVPO simply to obtain immigration status. How do you respond to this claim?
- B. Jose's attorney states that Jose is applying for lawful permanent residence, and a DVPO could jeopardize his application. How do you evaluate this information? Is it relevant?
- C. Now let's say that Jose is a lawful permanent resident and a DVPO puts him at risk of being removed from the country, which would make him unable to support his children. How do you evaluate this information? Is it relevant?
- D. Assuming that you found Maria credible and are inclined to issue an order on her behalf, what provisions would you include in the DVPO for Maria's benefit?

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