

APPENDIX F

DOMESTIC VIOLENCE: THE OVERLAP BETWEEN STATE LAW AND IMMIGRATION LAW¹

As public policy and legislation have focused efforts on deterring domestic violence and ameliorating its effects and as the legal system is increasingly faced with litigants of varying ethnic and racial backgrounds and life experiences, courts will likely encounter increased numbers of immigrant survivors of domestic violence. While state court judges do not have jurisdiction to make decisions about immigration status, state court decisions can have a significant if not conclusive impact on immigration issues. Issues of culture and immigration status frequently arise within the context of family law and domestic violence cases. Judges need to understand certain aspects of immigration law because in the process of conducting routine proceedings, they may unknowingly make decisions with far-reaching immigration consequences. An appreciation of how these issues affect litigants will help courts in their efforts to assure access to justice for all individuals.

This appendix is intended to provide a cursory overview of issues presented in cases where litigants are impacted by the confluence of domestic violence and immigration law. For a more in-depth guide on the overlap between civil court issues and immigration law, go to <http://www.courts.wa.gov/content/manuals/civilImmigrationBenchGuide.pdf>. For a resource guide on criminal law issues and immigration, go to: <http://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/Immigration/index>

I. HOW DOMESTIC VIOLENCE IMPACTS IMMIGRANT VICTIMS

Domestic violence is a pattern of behaviors that one intimate partner or spouse exerts over another as a means of control.² This includes psychological, social, and familial factors as well as physical acts.³ Immigrant victims, like all survivors of domestic violence, experience physical violence, emotional abuse, coercion, threats and intimidation, isolation, economic abuse, and sexual abuse. Perpetrators of domestic violence against immigrants use culture and cultural taboos, children and child custody,

¹ Updated November 2014, by Grace Huang, J.D.

² Anne Ganley, “Domestic Violence: The What, Why and Who, as Relevant to Criminal and Civil Court Domestic Violence Cases,” in *Domestic Violence Manual for Judges* Chapter 2, (Washington State Gender and Justice Commission (2015)).

³ *Id.*, Ch. 2, p 6.._____

and economics to enhance their control.⁴ In addition, abusers often use immigration status as a tool of control.⁵

Fear of Deportation

He came in and kicked me repeatedly. I was bleeding and I was starting to develop bruises. Finally, he calmed down and he left me alone. The beatings were getting worse. I began to feel that my life was in danger. When he would beat me, I never called the police because I was afraid of being deported. I thought the police were connected to Immigration. I have heard that they ask people if they have papers, and if they don't, they are turned over to Immigration. Even though my husband has a green card, he has refused to apply for papers for our children and me. After he beats me, he always promises that he will fix my papers, but he never follows through. I have lived in constant fear of his abuse and his reporting me to immigration.

Threats and fears of deportation are often the primary concern for many non-citizen or non-English speaking survivors who are seeking help fleeing domestic violence. Abusers of battered immigrants frequently threaten them with deportation if they complain about the abuse, threaten to leave, or attempt to call the police or ask others for help. For undocumented women, fear of deportation is one of the primary reasons that few seek any help unless the violence against them has reached catastrophic proportions. Even women who do have lawful status may fear deportation if they report domestic violence, due to incorrect information provided to battered women by their batterers. Victims may fear that if they report the abuse, their abusers may be deported and they will lose valuable child support or other economic assistance they need. Unfortunately, in places where it is common for those affiliated with the legal system to inquire about individuals' immigration status, victims of crime will not seek protection or redress from the justice system.

Cultural Issues

Immigrant abuse survivors often face pressure from their “cultural communities”⁶ to remain in abusive relationships for complex reasons, ranging from cultural norms about the role of women in the community, or the sacredness of the family unit, to the batterer's higher status in the particular community. Immigrant survivors of domestic violence may fear ostracism by members of their

⁴ Raj, Anita, and Jay Silverman, “Violence Against Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence,” *Violence Against Women* Vol. 8 No. 3, March 2002, 369.

⁵ Mary Ann Dutton et al., *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 *GEO. J. ON POVERTY L. & POL'Y* 245, 55 (2000).

⁶ In this context, “cultural community” refers to the way in which individuals identify as belonging to a certain community that is comprised of individuals having a common set of experiences.

community if they seek assistance from outside their community, which may include all of their friends or family members in the United States.⁷

Survivors from close-knit religious communities may feel that the remedies provided by the legal system conflict with their religious beliefs. For example, survivors may have beliefs that emphasize the sanctity of the family and prohibit or strongly discourage divorce. Religious leaders may instruct battered immigrants that they have a duty to make their marriages work. Battered immigrants who may not want to separate permanently from their batterers may need different types of family court orders to accommodate these needs. For example, a survivor can request a protection order that requires the batterer to abstain from abusive behavior, but does not require the batterer to stay away from the survivor or leave the family home.

Along with barriers created by their cultural norms, survivors may be afraid to reveal violence to individuals outside their community. Many cultural traditions are quite different than “mainstream” American customs and it may be difficult to find services that satisfy the needs of survivors from immigrant communities. Battered immigrants who choose to seek assistance from a domestic violence shelter may feel alienated and alone without access to culturally familiar surroundings. Their apprehension may cause them to leave or avoid seeking assistance in the future. Attorneys can work with domestic violence service providers and shelters to help battered immigrants receive the services they need. Some examples may include allowing battered immigrants to prepare their own food, providing translators to accompany battered immigrants to individual or group counseling sessions offered by the shelter, or advocating for language specific support groups.

To help remove these barriers, courts can learn more about the dynamics of domestic violence experienced by immigrants. In addition, courts can work to develop strategies for instituting culturally-appropriate policies and procedures. For example, courts can work on adopting culturally competent assumptions including:⁸

- ❑ All cultures are contradictory in that there are both widespread acceptance of domestic violence as part of society and traditions of resistance.
- ❑ Each victim is not only a member of her or his community, but also a unique individual with her or his own responses. The complexity of a person’s response to domestic violence is shaped by multiple factors.

⁷ Edna Erez & Carolyn Copps Harley. Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective., 2003 W. Criminology Rev. 161

⁸ Sujata Warriar, “*Cultural Considerations in Domestic Violence Cases,*” (2001).

- ❑ Each individual comes into any encounter with cultural experiences and perspectives that might differ from those present in the system.
- ❑ All institutions should develop specific policies and procedures to systematically build cultural competence by: learning to recognize and reject preexisting beliefs, biases, and prejudices about a particular culture; focusing on understanding information being provided by individual litigants within the context at hand; and foregoing labeling persons by using fixed or generalized information.

Unfamiliarity with the American Legal System

The last time I tried to call the police, when I was still in Mexico, they didn't do anything, because they consider it a family problem. My experience with the police is that they only protect the rich. When I tried to get help from them in the past, they would not help me.

Many immigrants come from countries whose legal systems work very differently than ours. Immigrant litigants in the United States often have great difficulty understanding our legal system, for example, the role of the court in resolving what is considered a “private” matter such as domestic violence.⁹

In addition, many immigrants come from countries where the courts serve as an arm of a repressive government and do not function independently. They expect that persons who will win in court are those with the most money or the strongest connections to the government.¹⁰ Many refugees who have fled their native countries have associated any contact with the legal system with persecution and terror.

Many battered immigrants distrust the U.S. legal system because of misinformation from abusers. In domestic violence cases, abusers may often manipulate these beliefs to get battered immigrant women to drop charges, or dismiss protection order petitions by convincing them that since the batterer is a citizen or has more money, or is a man and therefore his word is more inherently credible, he will win in court and the victim's life will become even more difficult.¹¹ Abusers may tell victims that they will never be believed in court or that they will be deported if they call the police or go to court. These allegations

⁹ Mary Ann Dutton, Battered Women's Strategic Response to Violence: The Role of Context, in *Future Interventions with Battered Women and their Families* 105 (J.L. Edelson & Zvi C. Eisikovits eds. 1996)

¹⁰ Leslye E. Orloff et al., Battered Immigrant Women's Willingness to Call for Help and Police Response, 13 *UCLA WOMEN'S L.J.* 44, 71 (2003)

¹¹ Leslye Orloff, Deena Jang, and Catherine F. Klein, *With No Place To Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 *Fam L. Q.* 313, 316 (1995).

are often exacerbated by court personnel believing that non-citizens are not entitled to protections under state law against abuse. To the extent possible, court personnel should explain the U.S. legal system with immigrant litigants and answer any questions they may have regarding the value of their testimony and the legal relief that is available.¹²

Language Barriers

One time, after my husband had beaten me severely and I fled the house with my children. I didn't know where to go, but I was terrified of being near him. I went to our church, who in turn called the local domestic violence program. When I got there, there was no one there who could talk to me. I had to wait for hours until they could find someone on the telephone who could talk with me. I stayed at the domestic violence shelter for a few days, but decided to go back to my husband. I didn't have anybody I could talk to, and I felt very lonely. They said that I had to participate in their support groups, but I couldn't speak English, and I didn't have anything in common with the other women there, I didn't understand them and they didn't understand me.

Another time, my husband accused me of cheating on him. He began yelling at and beating me. Someone called the police, who came to the house and knocked on the front door. The officers came to talk to me, but I did not understand what they were saying. My husband told them something in English, and they left. He had proven to me that he could do whatever he wanted to do, and that the police would not believe me.

When battered immigrants do approach the legal system for help, the courts and law enforcement agencies, and even shelters, often have not implemented policies which ensure that domestic violence victims who do not speak English can communicate their complaints effectively and can learn about their rights as domestic violence victims. An inability to communicate may prevent a battered immigrant from seeking necessary legal, shelter, or emergency services. For example, the immigrant may be unable to communicate with law-enforcement officers responding to an emergency call. The batterer may attempt to communicate on behalf of the victim, and distort and twist the facts or completely minimize or deny the abuse. Furthermore, the abuser may lie and tell the police that the victim initiated the fight and she may be arrested as a result. Many courts, domestic violence shelters, crisis hotlines, and social service agencies have limited access to interpreters, further isolating the battered immigrant from the services she needs. Immigrants may also be unaware of the availability of interpreters and translated forms, and thus are not able to access available services.

¹² *Id.*

Though domestic violence protection order forms and instructions are translated in various states, including Washington State,¹³ this is only a small part of the legal process faced by domestic violence survivors. The lack of ability to read or understand English impacts every part of the immigrant woman's encounter with the legal system: forms must be translated; hearings are meaningless unless an interpreter is present; and the woman may not understand court orders or when a violation has occurred unless adequate, competent, interpretation and translated explanation is provided. Provision of qualified interpretation and translation is critical to ensuring equal access to safety and justice in the courts.¹⁴

As our society becomes more aware about the problem of domestic violence, more and more non-citizen battered women and children are turning to the legal system for assistance. Although domestic violence traverses all racial, ethnic, religious, and economic lines, battered immigrant women face greater obstacles to escaping violence and getting help from the legal system. Awareness of how immigration law affects battered women can help courts intervene more effectively in all domestic violence cases.

II. DOMESTIC RELATIONS LAW AND IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE

An understanding of the immigration consequences of state court decisions may assist the court in understanding many factors influencing litigants' choices and decision-making. For example, one primary impact of a court ordering dissolution of marriage is that spouses and/or children may lose their immigration status as a result of the order. In child custody cases, the litigants may be concerned that their immigration status (or lack thereof) will have a significant bearing on how residential time is awarded.

A. Child Custody

Abusers may threaten to obtain legal custody of the children, telling immigrant victims that they will lose their children due to their lack of immigration status. In parenting plan cases involving battered immigrants, an abuser may attempt to introduce evidence about the victim's immigration status.¹⁵ This maneuver is

¹³ RCW 26.50.035 provides, "The administrator for the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy . . ."

¹⁴ Practices that deny limited English Proficient individuals meaningful access to the courts may violate federal civil rights protections. *See*, http://www.lep.gov/final_courts_ltr_081610.pdf. For interpreter resources, see http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=interpreterCommission.

¹⁵ *See, e.g., Kim v. Kim*, 208 Cal. App. 3d 364 (1989)

intended to control the battered immigrant victim by frightening her and reinforcing the abuser's threats that he will have her deported if she does not comply with his demands. Immigration status is irrelevant in and of itself to the custody determination. If the abuser claims that this information is necessary because of the threat of flight with the children, the abuser should be required to prove that the threat of flight is real, as any litigant would have to do in any other parenting plan matter.

Abusers may also claim that because the immigrant is from a foreign culture, it is not in the best interests of children to be raised in an environment that differs from the "norm." For example, an immigrant litigant's living arrangements may appear unusual to a judge from a different ethnic or cultural background. A client may live with extended family members, or share a bedroom with another family. This may be a typical arrangement within the immigrant community, but may raise concerns for the court. The court should seek information regarding cultural differences and about whether the unfamiliar cultural practices harm the children or affect them negatively.

Parenting Plans

Findings of abuse, restrictions in residential placement or visitation due to abuse, and restraint provisions in custody orders may also affect a litigant's ability to prove the requirement of "extreme hardship" in certain types of deportation cases. For example, judicial findings that the abuser has threatened to harm the children might help establish that removing the battered parent or children from the legal protections provided by U.S. courts would cause "extreme hardship." In addition, family court findings with respect to a child's best interest being primary residential placement with the non-abusive parent might be used to demonstrate extreme hardship to either the parent or the child due to their long term separation.

Family Court findings may also affect a battered immigrant's ability to meet the "good moral character" requirement for an immigration case. If there has been a finding that a non-citizen "failed to protect" the child from abuse, the individual may face difficulty in establishing that she or he has good moral character for the purposes of the immigration matter.

B. Dissolution of Marriage

Because many applications for immigration status are based on a legal family relationship, one primary impact of a court declaring a marriage invalid, or ordering dissolution of a marriage is that spouses and/or children may jeopardize their immigration status as a result of the order. Various issues may arise for abused immigrants in matters involving dissolution of marriage. An immigrant's

legal immigration status may be completely dependent on the fact that she or he is married to a spouse with a certain legal status. Other concerns may be related to beliefs about the propriety of dissolving a marriage. Divorce may be contrary to their religious or social beliefs, or they may be concerned that they will be shunned by their community if they initiate dissolution proceedings. Some may seek to obtain a legal separation instead of dissolution of marriage.

1. Validity and Viability of the Marriage

In order for a non-citizen to obtain lawful permanent residence through marriage to his or her spouse, immigration law requires that the marriage was not entered into for the purposes of evading immigration law,¹⁶ and the marriage must be valid under the law of the state or country, and then under the Immigration and Nationality Act. In certain instances involving abused spouses, if the marriage was not valid because a prior or concurrent marriage of the abusive U.S. citizen or Permanent Resident sponsor was not terminated, but the non-citizen applicant believed the marriage was valid, an application for status as an *intended spouse* may still be filed.¹⁷

In addition, because there is a long waiting period between the time a family visa petition is accepted and the time a visa becomes available, if the marriage terminates before a visa is available and the immigrant spouse can get her or his permanent resident status, she or he is no longer eligible for the immigration status she or he applied for.

There is one major exception for those who are eligible to apply to self-petition under the Violence Against Women Act (“VAWA”). If the marriage is terminated for any reason after a VAWA self-petition is filed, the termination will not affect the application.¹⁸ In cases where the marriage has been terminated prior to the filing of the VAWA self-petition, if the application is filed within two years of the termination and there is a showing of a “connection” between the dissolution of marriage and domestic violence, the individual may still be eligible for immigration benefits under VAWA.¹⁹

¹⁶ INA §204(c); 8 U.S.C. §1154(c)

¹⁷ INA §204(a)(1)(A)(iii)(II)(aa)(BB); INA §204(a)(1)(B)(ii)(II)(aa)(BB)

¹⁸ INA §204(a)(1)(A)(vi) and INA §204(a)(1)(b)(v)(I)

¹⁹ INA §204(a)(1)(A)(iii)(II)(aa)(CC); INA §204(a)(1)(B)(ii)(II)(aa)(CC)

2. Financial Issues

Many abused immigrants may face economic barriers due to a lack of employment authorization from the Bureau of Citizenship and Immigration Services (CIS), low-paying jobs, or an inability to obtain certain public benefits due to their immigration status.²⁰ Battered immigrants may lack job experience or employment skills due to isolation by the abuser. For examples, abusers often prohibit battered immigrants from learning English or from working outside the home in order to maintain control.

Economic issues can be addressed by family court orders distributing marital assets, as well as orders to pay maintenance and child support. In dividing property and awarding maintenance, it is appropriate for courts to consider domestic violence by considering the length of time the abused immigrant may require financial support for herself and/or her children; the length of time it will take for the abused immigrant to be able to work, the abused party's lost employment opportunities due to the abuser's controlling behavior, and/or other factors such as the need for counseling or other interventions resulting from the abuse.²¹

C. Civil Protection Orders

Protection orders can offer broad relief and can offer crucial protection against continued violence.²² In addition, orders including findings of abuse provide critical evidence for battered immigrants who self-petition or file for cancellation of removal under the Violence Against Women Act.

Washington's protection order statute includes a "catch-all" provision that can be used creatively to obtain specific relief for battered immigrants. [RCW 26.50.060\(f\)](#). In addition, in family law matters, courts can "make provision for any necessary continuing restraining orders." [RCW 26.09.050\(1\)](#).

Some provisions that may provide particularly relevant relief might include:

- The respondent shall give petitioner access to, or copies of, any documents supporting petitioner's immigration application.

²⁰ See, e.g., Washington Administrative Code Sec. 388-424-001, et. al, 8 U.S.C. §§1601 et. al.

²¹ See, In re Marriage of Foran, 67 Wn. App 242, 258 (1992)

²² Victoria Holt, et.al, "Civil Protection Orders and Risk of Subsequent Police-Reported Violence, *Journal of the American Medical Association*, Vol. 288, No. 5, 589 (August 7, 2002).

- The respondent shall not withdraw the application for permanent residency or any other visa application which has been filed with the CIS on the petitioner's behalf.
- The respondent shall not contact Immigration and Customs Enforcement (ICE), the (insert particular) Consulate, or the (insert particular) Embassy about the petitioner's immigration petition.
- The respondent shall take any and all action necessary to ensure that the petitioner's application for permanent residency is approved.
- The respondent shall turn over the following items or copies of the following items to the petitioner: petitioner's pocketbook, wallet, working permit, ID card, bank card, social security card, passport, certificate of naturalization or citizenship (if applicable), alien registration receipt card, or passport stamp to prove permanent residency (if applicable).
- The respondent shall relinquish possession and/or use of the following items: respondent's passport, certificate of naturalization or citizenship, alien registration receipt card or passport stamp to prove permanent residency, working permit, ID card, bank card, baptismal certificate, Social Security card.
- The respondent shall relinquish possession and/or use of the following items: the parties' marriage certificate, family photos, papers, documentation, or other objects relating to the marriage, copies of the respondent's divorce certificates for any previous marriages and/or information about where such divorce decrees may be obtained.
- The respondent shall relinquish possession and/or use of the following items: children's early school records, rent receipts, and income tax returns.
- The respondent shall not remove the children from the court's jurisdiction and/or the United States absent a court order and shall relinquish the children's passports to the petitioner or the court.
- The respondent shall sign a statement informing the (particular) embassy or consulate that it should not issue a visitor, or any other type of visa, to the child absent an order of the court.
- The respondent shall pay all fees associated with the petitioner's and/or children's immigration cases.
- The respondent shall sign a prepared CIS FOIA (Freedom of Information Act) form. This signed form shall be turned over to the petitioner or the petitioner's attorney.

By ordering these types of remedies, courts can prevent an abuser from continuing to use the immigration process as a means to control and manipulate the victim. To withstand constitutional scrutiny, a court must have made a specific determination that a particular course of conduct is unlawful, and provide injunctive relief that is narrowly crafted to prohibit repetition of the prohibited

conduct. E.g, *Bering v. Share*, 106 Wn. 2d 212, 243 (1986), *cert dismissed* , 479 U.S. 1050(1987); *In re Marriage of Suggs*, 152 Wn. 2d 74 (2004); *In re Marriage of Meredith*, 148 Wn. App 887 (2009); *Madsen v. Women’s Health Center, Inc.* 512 U.S. 753, 763 n. 2 (1994).

D. State Court Findings as Evidence of Domestic Violence for Immigration Matters

The Violence Against Women Acts allows abused spouses, and children of lawful permanent residents²³ or abused spouses, parents, and children of United States citizens²⁴ to file petitions for lawful permanent residence without having to rely on their abusive spouse or parent to apply for them. Spouses also may file petitions based on abuse suffered by their children. In order to successfully self-petition under VAWA, an applicant must demonstrate²⁵:

1. Battering or extreme cruelty inflicted by a U.S. citizen or lawful permanent resident on a spouse or child (or parent by a U.S. Citizen child);
2. Good faith marriage and residence with the United States citizen or lawful permanent resident spouse (or residence if a child or parent); and
3. Good moral character.

The state court system can help facilitate a battered immigrant’s self-petitioning process by providing evidence to meet the statutory requirements under VAWA, as well as help protect her from further abuse. For example, protection or restraining orders that order abusers to vacate a joint residence may provide the opportunity for a battered immigrant to gather the documents necessary to support a self-petition. In such a case, it may be crucial for such an order to go into immediate effect, preventing an abuser from being given the opportunity to hide, destroy, or remove importance evidence needed for her self-petition.

State court findings of abuse may also be particularly helpful for a battered immigrant in providing evidence that he or she was subjected to battering or extreme cruelty. Evidence of battering or extreme cruelty may include “any credible evidence.”²⁶ Specifically, “[e]vidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel.”²⁷ Other relevant evidence may include: an order of

²³ INA §§ 204(a)(1)(B)(ii) and (iii).

²⁴ INA §§ 204(a)(1)(A)(iii), (iv), and (vii).

²⁵ INA §§ 204(a)(1)(A)(iii), (iv), (vii), and (B)(ii) and (iii)

²⁶ INA § 204(a)(1)(H).

²⁷ 8 CFR §§ 204.2(c)(2)(iv) and (e)(2)(iv).

protection against the abuser or other legal steps to end the abuse, evidence of seeking refuge in a battered women's shelter or similar place, a photograph showing visible injuries, or other documentation.

The state court can facilitate a self-petitioner's gathering of evidence to support an application by providing documentation of a record of domestic violence. Restraining and protection orders without a finding of abuse are not as useful to self-petitioners as orders with such findings, except to corroborate other evidence. Courts should permit battered immigrants to provide testimony and evidence on the record about the history of violence, injuries to the petitioner, the impact of violence on the petitioner and/or her children, use of control over the petitioner's immigration status as a means to exert power and control, threats made by the abuser, and the respondent's criminal record. In addition, it may be preferable to obtain a judicial finding that domestic violence has occurred in protection order matters or family law cases rather encouraging the parties to settle such matters without hearing.

E. Certification for Visas for Certain Victims of Crime

The Victims of Trafficking and Violence Protection Act created two categories of visas for immigrant crime victims, one for certain violent crimes (U-Visas), and one for victims of severe forms of trafficking (T-visas). Both types of visas are designed to provide immigration status for individuals who are assisting or willing to assist authorities investigating specifically delineated crimes. Of particular relevance to domestic violence cases are U-visas (crime victim visas).

In order to obtain a U-visa, applicants are required to obtain a certification from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating criminal activity designated in the statute that states that the U-visa applicant is being, has been, or is likely to be helpful to the investigation or prosecution of designated criminal activity.²⁸ The statute does not require that an investigation in which the immigrant victim cooperated result in a prosecution, nor does it require that a prosecution result in a conviction.

State court judges are included in the list of individuals who can provide certifications for individuals who have provided statements that serve as the basis for a criminal investigation (e.g., the basis for a warrant) or for individuals who have served as witnesses in a criminal prosecution. In addition, state court judges may consider directing a prosecutor's office or law enforcement agency to provide certification for witnesses in certain cases.

²⁸ INA §101(a)(15)(U)(i)(III) & INA §214(o)(1), added by VTVPA §1513(b) & (c)

III. IMMIGRATION CONSEQUENCES FOR DOMESTIC VIOLENCE CRIMINAL MATTERS

Often the most important issues facing non-citizen defendants charged with crimes is whether a conviction and sentence for any given offense will trigger certain provisions under the Immigration and Nationality Act that will result in his or her removal (deportation) from the United States. All non-citizens, including survivors of domestic violence, may risk removal, or be rendered ineligible to adjust status to permanent resident or to obtain citizenship if they are convicted of a criminal offense. Often non-citizen defendants do not realize just how important this issue is until it is too late.

As noted in the Immigration Resource Guide, found at <http://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/Immigration/index>, under current provisions of immigration law, the consequences for obtaining criminal convictions can be severe. For example, non-citizens who plead guilty to a seemingly low-level misdemeanor offense (e.g. theft in the third degree, simple assault) can face severe consequences.

Once convicted, non-citizens may face such consequences as automatic deportation, permanent bars to returning to the United States and possible indefinite detention by the Immigration and Customs Enforcement (ICE)—regardless of how long they have lived in the United States and what family ties they may have, or whether they are here legally. Moreover, the vast majority of non-citizen defendants (more than 85%) will be unrepresented (pro se) in their immigration proceedings before the Immigration Court.

Furthermore, even if a non-citizen is not immediately facing deportation proceedings, immigration applications generally ask if the beneficiary has ever been arrested. Even where the charges are dropped, the beneficiary will usually have to disclose the details of the arrest and disposition. This may affect his or her eligibility for discretionary immigration relief in the future.

In light of the severe consequences facing non-citizen defendants with criminal convictions and their families, it is important that courts take the time to ensure that defendants truly are aware that, if they are not U.S. citizens, their guilty pleas, especially in domestic violence cases, may ultimately result in deportation. It is important that a non-citizen defendant have the opportunity to meaningfully address the immigration consequences BEFORE deciding on which course of action to pursue in her or his criminal proceedings.

IV. CONCLUSION

The effectiveness of court interventions can be improved with an understanding of the cultural and immigration legal barriers that face non-citizen litigants in both the civil and criminal court.