

## Creative Methods in Protecting Battered Immigrants

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Battered immigrants often require additional protection to address specific needs sensitive to the particular dynamics of power and coercive control in the abusive relationship where the abuser is the only pathway to lawful immigration status.<sup>2</sup> Thus, while all states offer traditional remedies in a protection order, certain creative protection order remedies, as provided by state statutes and the court’s equitable jurisdiction, may be better suited to achieve certain immigrant victims’ goals.<sup>3</sup> All creative protection order remedies must have a nexus to the abuse. Relief must assist victim of abuse in their (1) escape from the abusive situation, or (2) ameliorate the current effects of the abuse, or (3) protect against future abuse.<sup>4</sup>

Furthermore, the existence of catch-all provisions in some states can be used to creatively obtain specific culturally appropriate relief and allow courts to exercise discretion to order additional relief as necessary to prevent abuse.<sup>5</sup>

Creative Provisions To Assist Victims When Striving for Particular Goals	
In Order to Deter	Consider Filing
Parental Kidnapping	<ul style="list-style-type: none"> <li>▪ Order abuser not to remove children from court’s jurisdiction</li> <li>▪ Order abuser to turn over passports of the children-in-common</li> <li>▪ Order signed by both parties and judge for Embassy to refrain from issuing passports or visas for the children-in-common, absent a court order<sup>6</sup></li> <li>▪ Order of supervised visitation<sup>7</sup> between abuser and children</li> <li>▪ Amendments to abuser’s order of release on bond</li> </ul>
Immigration-Related Abuse <i>Note: if the abuser holds the principle immigration status, abuser represents the</i>	<ul style="list-style-type: none"> <li>▪ Order respondent not to contact DHS, Embassy, Consulate, or any government agency about victim, absent permission from court, police employee, or a subpoena<sup>8</sup></li> <li>▪ Order respondent to cooperate with and not withdraw or revoke any case file with immigration authorities for petitioner or the children<sup>9</sup></li> <li>▪ Order respondent not to withdraw any immigration papers filed for battered</li> </ul>

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<sup>2</sup> Andrea Carcamo Cavazos & Leslye Orloff, Nat’l Immigrant Women’s Advocacy Project, Immigrants and Protection Orders Bench Card 1-3 (Aug. 27, 2013).

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.*; 45 C.F.R. § 1626.2(f)-(g) (2012).

<sup>5</sup> *Powell v. Powell*, 547 A.2d973 (D.C. 1993) (the District of Columbia Court of Appeals determined that the courts had the authority under the statute’s catch-all provision to grant monetary relief in civil protection order proceedings, though the remedy was not specifically provided by statute); and *Maldonado v. Maldonado*, 631 A.2d 40 (D.C. 1993) (the court confirmed the wide range of relief provided by a catch-all provision and included provisions to assist the battered immigrant petitioner, including prohibiting the husband from withdrawing the application for permanent residence that he had filed on behalf of his wife).

<sup>6</sup> Leslye Orloff et. al, Nat’l Immigrant Women’s Advocacy Project, *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* 23 (Kathleen Sullivan & Leslye Orloff, eds., Jul. 2013), available at <http://niwaplibrary.wcl.american.edu/reference/manuals/domestic-violence-family-violence>. Please note that similar provisions exist for victims of sexual assault. For more information and resources regarding immigrant victims of sexual assault please see Leslye Orloff et. al. Nat’l Immigrant Women’s Advocacy Project, *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (Leslye Orloff, ed., Jul. 2013) <http://niwaplibrary.wcl.american.edu/reference/manuals/sexual-assault>.

<sup>7</sup> *Id.* at 14.

<sup>8</sup> *Id.* at 18-19.

<sup>9</sup> *Id.* at 17.

<p><i>Respondent and victim represents the Petitioner</i></p> <p>Immigration-Related Abuse</p>	<p>immigrant and abuser shall take any and all action to ensure victim's application for lawful permanent residence is approved<sup>10</sup></p> <ul style="list-style-type: none"> <li>▪ Order respondent to sign a sworn document in court with information of where abuser was born so immigrant victim can obtain abuser's birth certificate (which may be required for immigration application)<sup>11</sup></li> <li>▪ Order respondent to acknowledge any previous marriages and to turn over divorce decree<sup>12</sup></li> <li>▪ Order respondent to sign a prepared FOIA Request Form with the results of this form to be sent to the victim or the victim's attorney<sup>13</sup></li> <li>▪ Order respondent to pay immigration application-related fees for battered spouse and children<sup>14</sup></li> <li>▪ Order respondent to immediately relinquish possession and/or use of and to transfer any of the following: <ul style="list-style-type: none"> <li>○ Personal Property: personal effects and any papers related to immigration case for victim or children<sup>15</sup></li> <li>○ Documents Victim Needs to Care for Children and to Prove or Attain Immigration Status:<sup>16</sup> including any evidence to establish good faith marriage and shared residence, and the following: <ul style="list-style-type: none"> <li>▪ Copies of all immigration documents and papers sent to government if abuser filed immigration papers on victim's behalf (at any point, even if the application was revoked by abuser)<sup>17</sup></li> <li>▪ Identification examples: passports, driver's licenses, birth certificates healthcare and social security cards</li> <li>▪ Establishing good faith marriage and shared residence: love letters, wedding photos, family photos, police reports and court documents proving relationship, joint leases and bills, letters addressed to couple at joint residence,</li> <li>▪ Child-related examples: birth certificates, medical records, health insurance cards</li> <li>▪ Abuser-related documents examples: copy of abuser's passport, copy of birth certificate, copy of naturalization certificate, copy of lawful permanent residence card, copy of tax returns, copy of abuser's A-number<sup>18</sup></li> </ul> </li> </ul> </li> <li>▪ Order respondent to pay for any missing, hidden or destroyed documents needed for immigration application (i.e. passports, identification cards, birth certificates)<sup>19</sup></li> </ul>
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<sup>10</sup> Leslye Orloff et. al, Nat'l Immigrant Women's Advocacy Project, *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* 19 (Kathleen Sullivan & Leslye Orloff, 2013, eds.).

<sup>11</sup> *Id.* at 22.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 19.

<sup>15</sup> *Id.* at 17-21.

<sup>16</sup> *Id.* at 17.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 22.

<sup>19</sup> *Id.* at 21.

<b>Traditional Provisions and Orders Tailored to Assist Battered Immigrants</b>			
<b>Remedy</b>	<b>Designed to Protect</b>	<b>Best For</b>	<b>Keep in Mind</b>
No Further Abuse Orders <sup>20</sup>	Parties not separated	Victims filing for VAWA and U Visas without abuser's knowledge	
Stay Away Protections <sup>21</sup>	Victims who wish to remain in their communities	Victims with limited English proficiency who may want to stay within their immigrant communities; Immigrants tied to a specific employer	
No Contact Orders <sup>22</sup>	Victims continually harassed by abusers	Abuse and coercive control that cross state and country borders (i.e. family members in home country)	
Vacate Orders <sup>23</sup>	Victims who live with abusers	Victims waiting for work authorization	Immigration backlog (i.e. it could be 1 ½ years until legal work authorization is granted to victim and 5 years to access public benefits)
Abuser Weapon Relinquishment <sup>24</sup>	All victims	Victims who know that abuser has weapons such as firearms	
Abuser Treatment Program <sup>25</sup>	All victims and all children-in-common	All victims	
Property Exchange Orders <sup>26</sup>	All victims	Victims who may find heirlooms and photographs help the healing process	
Custody and Visitation Orders <sup>27</sup>	Children of the parties	Victims who fear that abuser will kidnap or harm children	
Child Support <sup>28</sup>	Children of the parties	Victims waiting for work authorization	
Special Attention from Police for Calls from Victim <sup>29</sup>	All victims	All victims	
Additional Orders for Reparations <sup>30</sup>	All victims	Covering medical and miscellaneous abuse-related expenses (i.e. changing locks, repairing broken doors)	
Catch-All Provisions <sup>31</sup>	All victims	Obtaining culturally appropriate relief	

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 9

<sup>22</sup> *Id.* at 9-10.

<sup>23</sup> *Id.* at 10-11.

<sup>24</sup> *Id.* at 11.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 10-11.

<sup>27</sup> *Id.* 12-14.

<sup>28</sup> *Id.* at 15.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 16.