

Protection Orders and Immigrant Victims

Florida State Team Training

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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

Large group discussion:

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

PROTECTION ORDERS



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

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

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

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)

Immigrants and Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Fla. Stat. § 741.30(1)(a) (Covers adults and children)
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Immigrants and Protection Orders

- 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

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.**”
- 8 U.S.C. § 1227(a)(2), INA § 237(a)(2)(E)(ii) (emphasis added).

Findings of Violation of Protective Provisions = Deportable Offense

- Deportable Offense = 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).

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

Mutual Protection Orders Prohibited

- Fla. Stat. Ann. §741-30(i) (2013)
 - The court is prohibited from issuing mutual orders of protection. This does not preclude the court from issuing separate injunctions for protection against domestic violence where each party has complied with the provisions of this section. Compliance with the provisions of this section cannot be waived.
- 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

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

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

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

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

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)

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?



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

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

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)

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

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

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

Thank you!