

Community of Practice for Family Law Attorneys Representing Immigrant Survivors

Civil Protection Orders for Noncitizen Survivors: What do Judges, Attorneys and Advocates Need to Know

February 24, 2022

Thank you to OVW

This project was supported by Grant No. 15JOVW-21-GK-02208-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

NIWAP Community of Practice Team



Rocio Molina
Deputy Director
National Immigrant
Women's Advocacy Project,
American University
Washington College of Law



Veronica T. Thronson
Clinical Professor of Law
Director, Immigration
Law Clinic
Michigan State University
College of Law



Leslye Orloff
Director
National Immigrant Women's
Advocacy Project,
American University
Washington College of Law

The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.



Upcoming Community of Practice Meetings in 2022

- March 31, 2022 at 1 to 2:00 PM EST
- April 28, 2022 at 1 to 2:00 PM EST
- May 24, 2022 at 1 to 2:00 PM EST



PROTECTION ORDERS



Immigrants and Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- The definition of domestic violence under U.S. immigration laws is broader than all state protection order and criminal laws

NIWAP

7

7

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

NIWAP

National Immigrant Women's Advocacy Project
American University Washington College of Law

8

8

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)

NIWAP

9

9

Most immigrant survivors in your jurisdiction obtain protection orders with the help of:

- A. You, their family law attorney
- B. An advocate
- C. Family Justice Center
- D. Pro-se



NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

10

10

Aside from domestic violence, which survivors do you most frequently assist with protection orders?

- A. Sexual assault
- B. Stalking
- C. Child abuse
- D. Trafficking
- E. Other

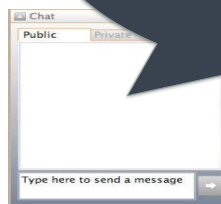
NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

11

11

Please share best practices, challenges, and what you would like to learn more about in working with these non-DV survivors?



NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

12

12

What have you noticed that attorneys and victim advocates are doing very well when assisting immigrant survivors with CPOs?

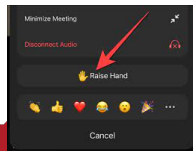
What do you think they need more support with?



Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- 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
- Best practices Padilla advisals

Raise Your Zoom Hand:
If you have seen cases in your CPO courts of protection orders issued against both parties.



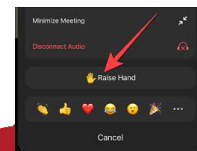
Effect of Protection Order Issued Against Immigrant Victims

- 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

Findings that Victim Violated a Protection Order Could Cut Off Access to Immigration Relief

- Having an order of protection issued against a noncitizen could prevent them from establishing good moral character that is a requirement for immigration relief - Examples:
 - VAWA self-petition
 - VAWA cancellation of removal
 - Naturalization
 - Exercise of discretion for inadmissibility waivers in VAWA, U and T visa cases

Raise Your Zoom Hand:
If you have felt pressured by the court to agree to a "No Findings" order of protection?



Effects of “No Findings” Protection Orders

- Not enforceable when court forms are amended
- Can allow the abuser to keep his firearms
- Increase danger to a survivor and her children
- Undermine state laws regarding domestic violence and custody

NIWAP

19

19

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

NIWAP

20

20

Does your court make determinations about custody and visitation of children as part of the order of protection? What have been some challenges you have encountered?



NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

21

21

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

NIWAP

Judicial Training Network
Multi-State Training

22

22

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

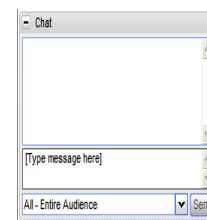
NIWAP

Judicial Training Network
Multi-State Training

23

23

What are some examples of creative protection order remedies you have obtained for your clients?



NIWAP

24

24

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

What are some effective arguments have you made to the court to obtain economic provisions in CPOs ?



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

In a training with a judicial expert on protection orders, what questions do you think would be the most important to have a judicial perspective on for attorneys and advocates?

Additional Questions

