



CIVIL PROTECTION ORDERS IN BATTERED IMMIGRANT CASES

October 13, 1998

Adapted from ABA Manual Chapter by Catherine F. Klein and Leslye E. Orloff, Civil Protection Orders, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE, Goelman et al. eds., 1996, and Use of Creative Protection Orders to Better Help Battered Immigrant and Migrant Women, Leslye E. Orloff and Vonetta Brown

A recent study by the National Center for State Courts found that in the vast majority of cases, civil protection orders deter repeated physical and psychological abuse and help victims regain a sense of well-being.¹ This type of legal remedy may be among the most important tools the judicial system can offer to protect domestic violence victims from ongoing abuse,² particularly when crafted to address areas of ongoing conflict. Boiler-plate civil protection orders, however, often do not address the special needs of battered immigrants. Advocates assisting battered immigrants must explore their clients' fears and concerns, and understand the specific ways in which abusers are exerting power and control over victims. Only then will they be able to draft orders that respond to the client's needs and the cultural context of abuse.³

Civil protection orders are available to domestic violence victims by statute in all fifty states, the District of Columbia, Puerto Rico, and all U.S. Territories. Civil protection orders that are properly drafted and consistently enforced can provide effective protection for victims of domestic violence. In most jurisdictions, protection orders offer broad relief and may be used with or instead of more traditional domestic relations remedies. Protection orders can offer crucial protection against continued violence for victims who are not ready to separate from their abusers. Protection orders also provide critical evidence for battered immigrants who self-petition or file for cancellation of removal under the Violence Against Women Act. They document the violence and often strengthen extreme hardship arguments.

Two types of protection orders are available to victims of abuse. Most states authorize emergency, or temporary orders of protection, issued after an *ex parte* hearing if the victim can show that there is immediate danger of future violence. Such orders are short-lived (typically 14-30 days) and are intended to protect victims of domestic violence until a full hearing can be scheduled. Courts also issue protection orders after a full hearing, by consent, or by default. Full protection orders are of a longer duration, typically for one to three years. The National Council of Juvenile and Family Court Judges recommends that protection orders last indefinitely, and a growing number of states have implemented this recommendation.

Ayuda, Inc.
Legal Aid

1736 Columbia Road, N.W.
Washington, D.C. 20009
Telephone: 202-387-4848
FAX: 202-387-0324



A United Way Member Agency

Obtaining a protection order

- Protection order laws do not specify time limits within which a victim of domestic violence must file for a protection order. Some courts, however, may not grant an order if the most recent threat or incident of abuse occurred several months prior to the filing of a petition for a civil protection order.
- Protection orders can help battered immigrants leave their citizen or lawful permanent resident abusers and document their VAWA cases. If the last incident of abuse took place more than a few months earlier, the battered immigrant's attorney should fully document the abuse and demonstrate to the court that additional protection is needed now because the victim is taking steps to free herself from her abuser by filing for immigration relief.

Who can obtain a protection order

- State statutes and case law define the relationship required between the parties to be eligible for protection. The types of relationships protected may include:
 - ✓ Current or former spouses
 - ✓ Family members who are related by blood or marriage (i.e., parents, children, siblings, aunts, uncles, grandparents, and in-laws)
 - ✓ Current or former household members
 - ✓ Persons who have a child in common
 - ✓ Persons who are currently or were formerly in dating or intimate relationships
 - ✓ Persons in same-sex relationships
 - ✓ A few trend-setting states allow protection orders to be issued to persons who offer refuge to victims of domestic violence or to employers
- Most jurisdictions allow an abused adult to file on his or her own behalf. Most states allow an adult to file on behalf of a child or an incompetent adult. Some progressive states allow minors to petition for protection on their own behalf.
- Protection orders are available whether or not the parties plan to separate. A battered immigrant woman may prefer to remain with her abuser because he has filed an application for her with INS. In such a case, she may want a protection order which orders only that the abuser attend a batterer intervention program and refrain from assaulting, threatening, or harassing her in the future. Other battered immigrants may prefer this type of protection until INS approves their

self-petitions or grants them work authorization. After which they may seek to modify their protection orders.

Grounds for issuance of a protection order

- States condition the issuance of a protection order on an underlying act of abuse which constitutes a criminal act, including: battery, assault, kidnapping, burglary, criminal trespass, interference with child custody, rape and sexual assault, interference with personal liberty, false imprisonment, child abuse, and stalking. Some states authorize the issuance of protection orders for behavior that has not physically harmed the petitioner, including emotional abuse, threats, stalking, and destruction of property, including harm to pets.

Jurisdiction

- Jurisdiction for protection orders generally exists in the state where the underlying acts of abuse (or threats) have taken place or where the victim is present.
- The federal Violence Against Women Act of 1994 requires that each state, tribe, or territory give full faith and credit to a sister state's protection order (including an *ex parte* order) as long as due process requirements were met in the issuing state.⁴ A battered woman should not have to take any specific action to have her protection order recognized in a different state. However, many jurisdictions may require that these types of orders be registered in the county courthouse where the petitioner resides. A fee may be charged for this service as well. If your client plans to move away from the jurisdiction where she obtained her protection order, contact the courthouse or the state domestic violence coalition to verify what the registration procedure is and if there are any fees involved.

Relief Available

- Include all forms of relief necessary to protect the victim. Gaps in the relief provided or a lack of specificity in the drafting of the order can lead to future violence and make enforcement of the order difficult if not impossible.
- Because batterers are often abusive to the petitioner's children, it is important to include the children specifically by name in all appropriate provisions.
- Advocates should first interview clients to identify their needs, fears, and barriers to leaving their abusers. Advocates can utilize the following remedies to address specific client needs. Even if clients do not initially request these provisions, they may find them to be useful. The checklist includes relief generally available in jurisdictions, as determined by statute, catch-all provisions, or case law. Advocates should discuss fully with each client the following options:

- ✓ ***The respondent shall not molest, assault, harass, or in any manner threaten or physically abuse the petitioner and/or his/her child(ren).***

Protection orders should always include a no further abuse clause. Without this clause, enforcement through contempt or criminal prosecution will be very difficult. Clearly word the clause so that the abuser knows specifically which types of actions are forbidden.

- ✓ ***The respondent shall stay 150 yards away from the petitioner's home, person, workplace, school, children, place of worship, and day care provider.***

Clearly define where the respondent is forbidden to go. Include in the stay away provision all locations frequented by the petitioner, including places such as the community center in the petitioner's cultural community, the petitioner's hairdresser, and the homes of relatives. If the petitioner is in hiding, the order should prohibit the respondent from going to the petitioner's residence without revealing its location and prohibit the respondent from attempting to locate the petitioner either directly or through third parties. The order may also provide a minimum distance the respondent must keep from the petitioner and other listed locations and persons.

It may be particularly important to order a respondent to refrain from contacting the petitioner at work. A battered immigrant may have permission from INS to work, but only at an authorized workplace; if she loses the job because of her batterer's harassment, she may violate the terms of her legal immigration visa.

- ✓ ***The respondent may not contact petitioner and/or his/her children in any manner: either personally, in writing, by telephone, or through third parties.***

Batterers frequently adopt less violent, but harassing, behaviors following the issuance of a protection order. Their intent is to continue to assert power and control over the victim in a manner less likely to draw the attention of legal or law enforcement authorities. This provision will help forestall such behavior.

- ✓ ***The respondent shall vacate the residence at (location) by (date and time). The (local) police department shall stand by and shall give respondent 15 minutes to collect his/her personal belongings. Personal belongings include clothes, toiletries, and one set of sheets and pillowcases. No other property may be removed from the premises without petitioner's permission. The police shall take all***

keys and garage openers from respondent, check to see that they are the right ones, and then turn keys over to petitioner.

Vacate orders require the respondent to leave the home shared with or owned by the petitioner and must specify how the vacate order is to be carried out. Include additional provisions prohibiting the respondent from re-entering the home, and ordering respondent to surrender all keys, refrain from damaging the premises or property, and refrain from shutting off utilities or discontinuing mail service.

- ✓ ***The respondent shall relinquish possession and/or use of the following personal property (list specifically itemizing property in question) as of (date and time).***

The court can order the respondent to relinquish certain items of personal property, including the family vehicle, or restrain respondent from taking, selling, or destroying certain personal property. This provision can be particularly useful for battered immigrants who need to retrieve documents for their immigration cases. (See below). If the protection order has a vacate provision, it may be appropriate to order the respondent to relinquish use of all the property except for personal belongings and any enumerated items. If both parties have vacated the home, the order should clearly state which items the respondent may remove from the family home.

- ✓ ***As of (date and time) the respondent shall turn over to the (local) police department any and all weapons that the respondent owns or possesses and all licenses the respondent has authorizing the possession of or purchase of weapons.***

The court should prohibit the respondent from possessing any weapon or firearm⁵ and revoke the respondent's weapon's license or prohibit the respondent from purchasing or receiving a weapon during the duration of the protection order. The court may also order the local police to search for and confiscate weapons when they assist with a vacate order or are called for assistance. Courts should require the respondent to submit a receipt proving that the weapons were relinquished as ordered.

Some jurisdictions may waive this requirement if the respondent is a police officer or in the armed forces.

- ✓ ***The respondent shall participate in and successfully complete the following (intervention program).***

Courts may order respondents to attend intervention programs. These may include batterer's intervention programs, or substance abuse or mental health counseling programs, where appropriate. Only batterer

intervention programs which have been certified as having specific expertise working with domestic violence perpetrators should be used. Joint or family counseling is inappropriate where there has been domestic violence. Substance abuse treatment alone is insufficient to address battering behavior. If the respondent is not fluent in English, he should be ordered to attend a certified program conducted in the language he speaks; if no such program is available, he should be ordered to arrange for an interpreter to accompany him to all sessions.

✓ ***Temporary custody of the minor child(ren) is awarded to petitioner until further order of this court or the expiration date of this order.***

Include a custody order as part of a protection order when children are involved. At least one study has shown that approximately 50% of batterers also physically abuse their children, indicating that the risk of physical danger to the children is high.⁶ Even when children have not been abused themselves, studies show that children living in violent homes are adversely affected.⁷ After battered immigrants separate from their abusers, relationships with the children may become the conduits through which abusers maintain control over their former partners. Without legal custody, a battered immigrant may be required to negotiate child-related concerns with the abuser, or be viewed as an uncooperative, unfriendly parent.

✓ ***The respondent has rights of visitation with the minor child(ren) under the following conditions (specific requirements).***

Craft a visitation arrangement that ensures the safety of the petitioner and the children. The National Council of Juvenile and Family Court Judges recommends against unsupervised visitation until the abusive parent has successfully completed a domestic violence treatment program and, if warranted, a substance abuse treatment program. Supervised visitation can be arranged through either an approved third party or a local supervised visitation center. If the petitioner believes that visitation need not be supervised, the order should clearly provide when, where, and how visitation should take place. Particularly if there is a stay away or no contact provision, the order should specify a drop off and pick up arrangement that will not result in contact between the parties, such as the home of a relative. If this is not possible, exchange of the children should take place in a public place such as a museum, McDonald's, or local police precinct. If there is no reasonable way that the petitioner and/or the children can be safe during visitation, request that visitation rights be suspended until further order of the court. Be prepared to show the judge why visitation is not feasible and argue that continued conflict between the parents is not in the child(ren)'s best interest. Protection orders should also address visitation concerns. Respondents retain visitation rights in

60% of protection order cases, and only 11% of cases require supervised visitation.⁸ Visitation provides an opportunity for continued abuse and control, unless there are clear provisions to minimize this risk. Protection orders which are tailored to the individual needs of battered women provide the greatest opportunity for effective intervention.

- ✓ ***The respondent shall pay child support for (minor child) and/or petitioner in the amount of (dollar amount), bi-weekly.***

Victims who have a minor child with the respondent may be entitled to child support or family maintenance. Use your state's child support guidelines to determine the amount of the award and make certain that child support orders are paid through wage withholding so the respondent cannot use child support payments as a coercive tool. Other monetary payments could include payment of specific bills, health insurance, rent or mortgage payments, or spousal support.

Financial relief may be particularly important for battered immigrants who are undocumented, do not have work authorization, or are only able to obtain limited public assistance. Without the ability to support themselves or their children, battered immigrants may be forced to return to their abusers.

- ✓ ***The respondent shall pay for the repair of the door to petitioner's apartment and all costs associated with the changing of petitioner's lock and all medical expenses the petitioner incurred as a result of respondent's violence.***

Courts can order the batterer to provide monetary relief to the victim. Victims may be entitled to reimbursement for economic losses, including: medical costs, repair of damaged property, attorney's fees, and court costs. Respondent also can be ordered to continue paying health insurance for the victim and child(ren).

- ✓ ***The (local) Police Department shall assist the petitioner in enforcing this order and shall pay special attention to calls for assistance from petitioner and/or (petitioner's address).***

Counsel may ask the court to instruct law enforcement to transport the petitioner to a shelter, accompany the petitioner home, serve process, and assist with vacate orders or orders dealing with the relinquishment of personal property or weapons.

Catch-all Provisions

Most protection order statutes include a “catch all” provision which can be used creatively to obtain specific relief for battered immigrants.⁹ Such provisions can be used to ensure that protection orders address potential areas of ongoing conflict, and remove barriers that prevent victims from leaving their abusers. They also provide an avenue to address concerns specifically related to the petitioner’s culture.

Catch-all provisions have been broadly interpreted, and generally allow courts to order additional relief as necessary to prevent further abuse. In *Powell v. Powell*,¹⁰ for example, the District of Columbia Court of Appeals held that courts had the authority to grant monetary relief in civil protection order proceedings, although this remedy was not specifically provided by statute.¹¹ Similarly, In *Maldonado v. Maldonado*,¹² the Court confirmed that the catch-all provision covered a wide range of relief, including provisions to assist the battered immigrant petitioner:

the husband shall relinquish possession and/or use of the wife’s pocketbook, wallet, working permit, ID card, bank card, Social Security card, passport, and any other item of the children’s personal belongings, table, four chairs and dishes . . . the husband shall not withdraw the application for permanent residence that he had filed on behalf of the wife¹³.

Specific Provisions Which May Be Used to Assist Battered Immigrants

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

If a battered immigrant’s husband has filed papers for her with INS, the petitioner may need access to supporting documentation to pursue her immigration case. The petitioner should consult an immigration attorney to find out which documents should be requested.

- ✓ ***The respondent shall not withdraw the application for permanent residency which has been filed on petitioner’s behalf.***

Abusers who have filed applications for permanent residency on behalf of their abused spouses frequently threaten to withdraw such applications if the victims seek help to end the violence or leave the relationship. This type of provision in a civil protection order may provide enough leverage in some cases to prevent abusers from withdrawing such applications. The amount of evidence which a United States citizen or lawful permanent resident spouse must provide to attain lawful permanent residency for a spouse is substantially lower than the burden a battered

immigrant must meet under the VAWA. Thus, for many battered immigrants, requiring the abuser to cooperate by completing the petition he has already filed is an option that should be pursued, if possible.

- ✓ ***The respondent shall not contact INS, the (insert particular) Consulate, or the (insert particular) Embassy about petitioner's immigration petition.***

If an abuser has threatened to "have the victim deported," this type of provision may prevent an abuser from interfering with the petitioner's immigration case, since the threat of contempt or a misdemeanor charge will be present.

- ✓ ***The respondent shall take any and all action necessary to ensure that the petitioner's application for permanent residency is approved.***

This type of general provision can also be used to prohibit abusers from becoming involved with a battered spouse's immigration status.

- ✓ ***The respondent shall relinquish possession and/or use of the following items: 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).***

Battered immigrants may qualify for a range of immigration relief. Battered spouses married to U.S. citizens or lawful permanent residents may qualify to obtain lawful permanent residency without the cooperation of their abusive spouse under the Violence Against Women's Act immigration provisions. Protection orders can be used creatively to obtain evidence needed to prove immigration cases. The above-mentioned items can be useful in proving elements of a VAWA self-petition case, or may be needed to prove alternative immigration cases.

- ✓ ***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.***

Similarly, these items may be needed to prove elements of an immigration case, such as the respondent's immigration status.

- ✓ ***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.

Such documentation may be needed to prove that the battered spouse entered into a good faith marriage, one element of a VAWA immigration case.

- ✓ ***The respondent shall relinquish possession and/or use of the following items: children's early school records, documents that help prove that the petitioner and respondent resided together, such as rent receipts and income tax returns.***

This documentation may be needed to prove that the parties resided together and to establish the validity of the parties' marriage.

- ✓ ***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.***

Batterers often threaten to abduct children as a control tactic, and carry out such threats. When batterers remove children to other countries, it may be particularly difficult to trace or retrieve the children. A copy of this court order must be forwarded to the United States Department of State, Office of Passport Services, to prevent the issuance of passports or duplicate passports for the children if the respondent attempts to obtain them.

- ✓ ***The respondent shall sign a statement that will also be signed by the petitioner and the judge informing the (particular) embassy or consulate that it should not issue visitor's visas or any other visa to the child of the parties absent an order of the court.***

The petitioner and court can also sign this statement. A copy of the court order is then filed by the petitioner with any potentially relevant consulates and/or embassies to prevent issuance of a visa.

- ✓ ***The respondent shall pay any and all fees associated with the petitioner's and/or children's immigration cases.***

This provision could assist battered spouses to pay the financial fees or penalties required to pursue particular immigration actions.

- ✓ ***The respondent shall sign a prepared FOIA (Freedom of Information Act) form with the results of this form to be sent the petitioner or the petitioner's attorney.¹⁴***

FOIA requests are used to obtain copies of a client's immigration case file. This is useful if the respondent has been withholding information from the petitioner about the status of the immigration petition that he may have filed on her behalf. She cannot access this information without his permission and signature on the FOIA.

Finally, include in all Civil Protection Orders the following written warning that states the potential immigration consequences of violating the order and committing domestic abuse:

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as codified at 8 U.S.C. Sec. 1227(a)(2)(E)) makes a violation of this Order a deportable offense. If you are not a U.S. citizen, which includes being a lawful permanent resident or other lawfully present noncitizen, violation of this Order may result in your being deported.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 also makes a conviction for a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment a deportable offense. If you are not a U.S. citizen, *which includes being a lawful permanent resident or other lawfully present noncitizen*, and you violate this order or are convicted for one of the above listed offenses, you may be deported.¹⁵

Trial Issues

- **Preparation:** Prepare your client thoroughly for the legal proceeding, including a review of the court procedures, potential questions that will be asked, and proper courtroom behavior. Ask immigrant clients about their expectations of the legal system before describing how the United States legal system functions. Be sure that a professional interpreter is available if needed. The court may not always provide interpreters or may charge fees for their services. Furthermore, interpreters from within the family or a tight-knit cultural community may not translate appropriately due to shame, embarrassment, or loyalty to the respondent. Qualified interpreters may be identified through non-profit organizations in the petitioner's cultural community or through your agency.

It is important to note that the psychological impact of physical, psychological and sexual abuse can interfere with a battered immigrant's ability to present well in custody and visitation matters before the court. The victim may appear angry and hostile, socially withdrawn and passive, highly anxious and cognitively disorganized, terrorized, or numb and detached. Each of these presentations may be "normal" reactions to trauma. A battered immigrant's demeanor and oral testimony in court may be strongly affected if the victim is encountering the batterer for the first time again. In contrast, a victim with strong support from family friends may appear assertive, strong, and competent. Advocates, as well as courts, should be aware that many factors impact a battered immigrant's psychological response to violence¹⁶.

- **Service of Process:** Most states specifically provide that notice of the protection order hearing and any *ex parte* order be served personally on the respondent. Many require the police to serve the respondent. Some states allow for service by mail or publication if personal service cannot be effected.
- **Standard of Proof in *Ex Parte* Proceedings:** The standard is generally good cause, but may vary by state. Good cause may be shown by evidence that the respondent abused the victim and that the victim reasonably fears abuse in the future.
- **Standard of Proof in Full Protection Order Proceedings:** The standard is generally a preponderance of the evidence, but may vary by state. The burden usually can be met by showing that the petitioner has been the victim of recent abuse by the respondent. Courts have acknowledged that past abuse is a factor to consider in determining whether the standard of proof has been met. The standard can be satisfied based on petitioner's testimony alone. However, using witnesses, photographs, medical reports, and police reports whenever possible to corroborate the victim's testimony will help victims obtain comprehensive remedies addressing their particular needs. Such evidence will also assist the petitioner in proving her case if the respondent contests the case or seeks custody.
- **Negotiating a consent order:** Attempt to negotiate a consent order with the respondent or the respondent's counsel (if represented). If the respondent is unwilling to consent to provisions which protect the petitioner's or children's physical safety and economic security, be prepared to litigate the case. For battered immigrant clients, it is not advisable to consent to a protection order which states that it is being issued without a finding of abuse or an admission by the respondent; such statements can undermine the petitioner's immigration case. Advise your client to sign the consent order or to litigate the case based on the strength of your case, the court's willingness to grant the specific provisions you are seeking, your client's desire to testify and/or hold the batterer accountable, and the need for a judicial finding of domestic violence in future cases, such as custody. Prioritize your client's safety, including her ability to obtain immigration relief without her abuser's cooperation. Note that this process is a negotiation; domestic violence cases should never be mediated.
- **Inform the court about:**
 - ✓ the history of violence
 - ✓ injuries to the petitioner
 - ✓ the impact of the violence on the petitioner and/or the children, including threats to abduct the children

- ✓ respondent's access to weapons
 - ✓ threats made against petitioner and/or family members
 - ✓ drug and/or alcohol abuse by the respondent
 - ✓ respondent's history of mental illness
 - ✓ threats of suicide by the respondent
 - ✓ respondent's criminal record
- **Right to a Jury:** Respondent has no right to a jury in issuance or modification proceedings.
 - **Right to Counsel:** Respondent has no right to appointed counsel in the issuance or modification of a protection order, even when custody is at issue.
 - **Double Jeopardy:** Criminal prosecution for a specific act should never preclude the victim from filing for a protection order based on that same incident. If the prosecution dismisses the criminal case, a criminal stay away order will cease even though the victim needs continued protection.

Mutual Protection Orders

- A mutual protection order is one that is entered against both parties, requiring both parties to abide by the restraints and other forms of relief in the order. Batters often file false petitions for civil protection orders (in addition to false criminal charges) after victims take legal action against them. Some batterers do not file petitions, but allege during civil protection order hearings that they have been abused. Under these circumstances, courts sometimes issue mutual protection orders in the mistaken belief that such orders will prevent future violence against either party. However, when mutual protection orders are entered against innocent victims, both batterers and victims learn that the system can be manipulated, and that courts are unwilling to determine who has been abused and order appropriate legal protection.
- Each party may obtain an order against the other that will be afforded full faith and credit only if the following safeguards are met: 1) a petition articulating grounds for issuance of each order was filed; 2) the person against whom the order was entered was served with notice of the petition; 3) the person against whom the order was entered had an opportunity for a hearing before a court; and 4) the court made specific findings that each party was entitled to such an order.¹⁷
- Be wary of mutual orders entered against the petitioner without the respondent filing a petition, presenting evidence of abuse, and obtaining a court ruling that

your client committed an offense of domestic violence. Orders of this kind violate the petitioner's due process rights and should be opposed.¹⁸

Modification

If your client wishes to change any provisions of her protection order, she may file a motion to modify the order. Inform her that this is her right and support her decision. If she wants to eliminate the stay away order so that she can reunite with the respondent, it is important to affirm her choice and remind her that she can reinstate the old provisions of her protection order if she needs to. Work out a safety plan with her to help her flee if the respondent behaves violently in the future.

Contempt

If the respondent violates the Civil Protection Order, encourage your client to call the police and file a report. She may also file a motion for contempt. Penalties for being in contempt vary from state to state and may include six months to a year in jail or a fine. Depending on the length of incarceration and whether contempt is considered a misdemeanor or felony in your jurisdiction, this charge could constitute grounds for deportation. It is therefore very important that the risks of the respondent's deportation while making this decision. In many cases, the income of the respondent is the only financial support that the battered immigrant receives, particularly if she is undocumented. It may also be more difficult to obtain immigration documents for a VAWA case from the respondent if he is physically removed from the country.

Criminal Cases

Many jurisdictions have instituted mandatory arrest laws to protect battered women and bring abusers to justice. If a battered woman calls the police and probable cause exists (i.e. broken furniture, injuries, etc.), the police are required to arrest the batterer and hold him in jail overnight. Arraignment hearings are usually scheduled for the next day. If the State prosecutor decides that there is enough evidence to charge the batterer with a crime, a trial will be held. Because domestic violence is considered a crime against the state, your client may become a witness for the prosecution. Most prosecutor's offices have adopted a "no-drop" policy towards domestic violence offenses. Unlike a civil case, your client will have little control over the criminal case that is pursued. Victim-witness advocates from the prosecutor's office are usually available to explain the legal process to witnesses and help them prepare statements. Encourage your client to seek the support of an advocate and make sure that interpreters are available to assist her. If she has not already, encourage her to obtain a civil protection order. Sentences for domestic violence charges vary depending on the jurisdiction where the incident took place, whether a weapon was involved, and how severe the violence was. A criminal conviction could result in deportation. As a result, it is important that you explain these possibilities to your client and take appropriate steps to ensure her physical and economic safety.

Common Questions and Answers:

- 1) Why do you need a civil protection order? Isn't it already illegal to abuse your intimate partner, spouse, or family member?

It is against the law to commit crimes against intimate partners, spouses, or family members, just as it is illegal to commit crimes against strangers. However, civil protection orders can remind some abusers that their actions are illegal, and deter others from future violence because of the threat of going to jail if the order is violated. Some petitioners may choose to file for civil protection orders rather than pursuing criminal charges, while others may pursue both civil and criminal relief simultaneously.

- 2) Are civil protection orders effective?

Civil protection orders can be effective in shifting the balance of power between an abuser and a victim. Studies have shown that in most cases (70%), the issuance of a civil protection order decreased the physical violence in the relationship, and made petitioners feel more secure.¹⁹ Civil protection orders may be more effective when used with other forms of relief. In some cases, they may not deter an abuser.

- 3) Won't going to court to obtain a civil protection order just provoke the abuser?

Domestic violence rarely, if ever, ceases in the absence of intervention. In many cases, seeking a civil protection order will deter future violence. Some abusers may use the issuance of civil protection orders as an excuse to assault or harass their partners, however, it is likely that these abusers would have continued to abuse their partners in any case. All victims of abuse should be aware that the danger of violence may escalate upon separation, and take appropriate precautions.

- 4) Can a client who is not a United States citizen or a lawful permanent resident obtain a protection order?

Yes. Protection order statutes are designed to deter the commission of criminal acts against intimate partners or spouses, or family members. All persons are entitled to this protection, regardless of immigration status. Any other approach would allow abusers to continue to use violence against their partners, so long as their partners were immigrants. There have been a few reported incidents in which courts or police officers have inquired about the immigration status of victims requesting assistance. Attorneys and advocates should contact local shelters, coalitions, or immigrant rights groups to determine whether this issue has surfaced in their area.

- 5) What resources are available for family law attorneys who are helping battered immigrants obtain protection orders and custody of the children?

Battered immigrants are eligible for protection orders and may be awarded custody of their children. They should seek legal representation because abusers may attempt to raise the victim's immigration status to shift the court's attention from the relevant issues of whether violence occurred and what is in the child's best interest. For technical assistance on civil protection order and other family law cases involving battered immigrants, contact NIWAP at (202) 274-4457 or info@niwap.org.

Endnotes:

-
1. Keilitz, Hannaford & Efke, 1997.
 2. Peter Finn & Sarah Colson, NATIONAL INST. OF JUSTICE CIVIL PROTECTION ORDERS; LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (1990).
 3. Leslye E. Orloff, *Effective Advocacy for Domestic Violence Victims Role of the Nurse-Midwife*, 41 J. NURSE MID-WIFERY 473, 484 n.6 (1996).
 4. The Violence Against Women Act of 1994, 18 U.S.C. § 2265 (1994).
 5. The federal Violence against Women Act prohibits persons who have protection orders issued against them from possessing firearms. 18 U.S.C. § 922(d)(8)-(g)(8) (1994).
 6. Straus, 1990.
 7. *See, e.g.*, HOWARD A. DAVIDSON (REPORTER), AMERICAN BAR ASSOCIATION CENTER ON CHILDREN & THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN, A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (1994).
[HTTPS://NIWAPLIBRARY.WCL.AMERICAN.EDU/PUBS/IMPACT-DV-CHILDREN](https://niwaplibrary.wcl.american.edu/pubs/IMPACT-DV-CHILDREN)
 8. Keilitz at . . .
 9. *But see* IND. CODE ANN. § 34-4-5.1-2 (West 1997); KAN. STAT. ANN. § 60-3107 (1996); NEB. REV. STAT. § 49-924 (1996).
 10. 547 A.2d 973 (D.C. 1988).
 11. *Id.* at 975.
 12. 631 A.2d 40 (D.C. Ct. App. 1993).
 13. 631 A.2d 40, 41 (D.C. Ct. App. 1993).
 14. Suggested OFP Relief for Battered Immigrants. Centro Legal. 3/16/98.
 15. Suggested OFP Relief for Battered Immigrants. Centro Legal. 3/16/98.
 16. Dr. Mary Dutton and Giselle Haas - Expert Testimony Concerning Battering (September, 2000) from ABA Manual <https://niwaplibrary.wcl.american.edu/pubs/testimony-battering-experienced-imm-victims>.
 17. 18 U.S.C. § 2265(c)(1)(2) (1994).
 18. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21(4) HOFSTRA L. REV. 801, 1074-78 (1993).

19. PETER FINN & SARAH COLSON, NATIONAL INSTITUTE OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (1990).