



**State Justice Institute**



# **Creative Civil Protection Order Remedies That Holistically Address Victim's Safety and Cultural Needs**

**Webinar  
December 3, 2024**

# Faculty



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# Join the National Judicial Network (NJNI)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJNI (405 judges – 43 states & territories)
  - Opportunity to engage in discussions with other judges
  - Receive latest information
  - Peer-to-Peer training opportunities
  - Get your questions answered
  - Receive the information you need through
    - Monthly webinars, trainings, and technical assistance
    - Bench cards, tools and training materials
  - Judicial officers are welcome to register!



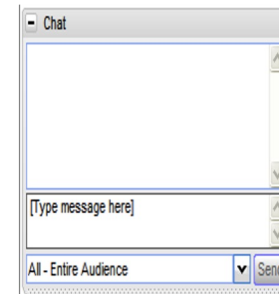
# Join a NIWAP Community of Practice

- Family Law Attorneys COP  
[www.surveymonkey.com/r/FamCOP2023](http://www.surveymonkey.com/r/FamCOP2023)
- Victim Advocates COP  
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates  
<https://www.surveymonkey.com/r/LERoundtable>

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# Poll: Who is attending this webinar?

- A. Judge
- B. Attorney
- C. Victim Advocate
- D. Court staff
- E. Law enforcement or prosecutor
- F. Other (type in chat)





# Learning Objectives

By the end of this workshop, you will be better able to:

- Issue/seek protection orders with remedies that most effectively protect immigrant victims and their children
- Know the role that no unlawful contact protection orders play for immigrant victims
- Address the victim's cultural, religious, immigration related, financial and other needs through creative protection order remedies
- Include protection order remedies that interfere with the levers of power and control being employed by the perpetrator against the victim

# What Research Tells Us About Abused Immigrants Seeking Protection Orders



# Abuse Suffered by Immigrant Survivors

- Immigrant seeking protection orders
  - 79% - physical and sexual abuse
  - 45% - stalking
  - 31% – dating violence
  - 25% – child abuse
- Survivor’s children
  - 39% - child abuse
  - 30% – battery and child abuse
  - 30% – physical and sexual abuse
  - 19% – stalking
- Ammar, Orloff, and Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, in Civil Court Responses to Intimate Partner Violence and Abuse (2020)

# NIJ Funded CPO Study Found

- With support immigrant victims will use and benefit from justice system assistance
  - 60.9% did not know about CPOs
  - With safety planning and advocate/attorney support 81% got CPOs including -
    - Particularly those experiencing high levels of abuse
  - 96% found them helpful
  - 68.3% of violations: immigration related abuse

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

# More immigrant survivors seek Civil Protection Orders from courts that...

- In times of increased immigration enforcement more immigrant victims turned to courts that
  - Provide language access
  - Sign U/T visa certifications
  - Issue Special Immigrant Juvenile Status findings
  - Outreach to immigrant communities
  - Rule against abusers who raise the victim's immigration status in CPO or custody cases

Rodrigues, Husain, Couture-Carron, Orloff, & Ammar, Promoting access to justice for immigrant and limited English proficient crime victims in an age of increased immigration enforcement: Initial report from a 2017 national survey. (2018)

# Creative Protection Order 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
  - Help victim leave abusive situation
  - Offer victim remedy-relief for past abuse
  - Help victim overcome victimization, ameliorate effects of the abuse, and build new post abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies

# Protection Orders for Victims Not Separating from Their Abusers

# Poll: Why Might Victims not Separating from their Abusers Seek Protection Orders?

(Check all that apply)



- A. Living in extended families
- B. Limited housing options
- C. Awaiting legal work authorization
- D. Curb abuse
- E. Economic challenges to successful separation for victim and their children



# Protection Orders Offer Protection for the Majority of Immigrant Victims Who Stay with Their Abusers ...

- Until the victim receives work authorization as part of their immigration case or until their immigration case is approved
- Percent who leave before receiving work authorization or approval
  - VAWA self-petitioners 33.9%
  - U visa victims 30.1%

# Poll: Have you obtained or issued protection orders for victims who ... (Check all that apply)



- A. Were not separating from their abusers
- B. Returned to live with their abusers after they were granted a CPO that included a stay away
- C. Were separated, served the CPO on the abuser, and returned to live with the abuser by the time of the CPO court hearing

# Victims Who Stay:

## No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions
  - No abuse
  - No immigration related abuse
  - No unlawful contact
  - Batterer's treatment

# Research Among Immigrant Victims Found

- Protection orders were effective in preventing or reducing recurring physical abuse
  - Including full contact protection orders issued to victims who continued to live with their abusers

Dutton, M. A., Ammar, N., Orloff, L., & Terrell, D. (2006). *Use and outcomes of protection orders by battered immigrant women* (Revised final technical report #2003-WG-BX-1004). Washington, DC: *National Institute of Justice Office of Justice Programs*, U.S. Department of Justice.

# How Do No Unlawful Contact Protection Orders Work

- Shift the balance of power in the relationship
- Give victims an opportunity to begin to envision a path toward separation
- Potent enforcement tool when
  - When abuse/violence occurs in violation of the protection order
- Discuss U.S. v Dixon Supreme Court Case

What has been your experience  
with issuing No Unlawful Contact  
Protection Orders?



What are a judge's options when victims who return want to drop protection orders?





# Creative Protection Order Remedies

What important issues need to be addressed for protection orders to be effective?



# Key issues to address in protection order remedies

- Safety
- Custody and caring for children
- Housing
- Financial support
- Victims cultural, religious, and community support needs
  - Fully addressing these impacts compliance

# Take the time initially when seeking/issuing a protection order to address victim's needs

- Cultural
- Religious
- Family traditions
- Immigration
- Education
- Social and community support system
- Sporting

# Poll: Are you familiar with the concept of Cultural Competence in the context of judicial decision making?



- A. Yes
- B. No
- C. Not sure

# Cultural Competency

## Judicial Discretion in Family Court

- A civil protection order judge has broad **discretion** to grant additional protections based on *all the evidence* introduced at the hearing, whether premised on the nature and facts of the predicate act, a "future risk to [a victim's] safety or well-being," or any other consideration under the facts of each case.
- C.R. v. M.T. 257 N.J. 126, 164 (2024)

# Appellate Standard of Review

## Example: New Jersey

- Our review of an FRO [civil protection orders] is generally limited. *C.C. v. J.A.H.*, 463 N.J. Super. 419, 428 (App. Div. 2020).
  - "We accord substantial deference to Family Part judges, who routinely hear domestic violence cases and are 'specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples.'" *Ibid.* (quoting *J.D. v. M.D.F.*, 207 N.J. 458, 482 (2011)); *see also S.K. v. J.H.*, 426 N.J. Super. 230, 238 (App. Div. 2012).
  - Consequently, findings by a court "are binding on appeal when supported by adequate, substantial, credible evidence."



# Appellate Standard of Review

- In appellate review of a trial court's order entered following trial in a domestic violence matter,
  - the appellate court grants substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings.
- The appellate court defers to the credibility determinations made by the trial court because
  - the trial judge hears the case, sees and observes the witnesses, and hears them testify, affording it a better perspective than a reviewing court in evaluating the veracity of a witness.
- The appellate court also recognizes because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding.

How might a judge's personal views impact the exercise of judicial discretion in family court cases?



# Cultural Competency is . . .

- Cultural competence is a set of skills and knowledge that can help you learn, reason, solve problems, and interact comfortably when you're working with people from different cultures.
- Becoming culturally competent is a lifelong learning process that results in developing knowledge, skills, behaviors and attitudes that allow us to work effectively with others from different cultural backgrounds.
- Cultural competence can be improved through training, education, and experience.

# 4 Major Components

- **Awareness** - of one's own cultural worldview
- **Attitude** - toward cultural differences
- **Knowledge** - about one's own culture
- **Skill** - increased through a culturally competent trainings, workshops, or seminars

# Caution:

## Do Not Make Assumptions

- Cultural assumptions are the predominant conceptions about individuals and society that are almost taken for granted in a particular context.
- These are largely unquestioned presuppositions about what is proper, what is desirable, what is the nature of human beings, what is a problem, and what is possible in society.

# Know Your Community

- Understand the demographics of the jurisdiction where you serve
- If there are immigrant communities, become familiar with their customs, mores, and traditions.
  - Is there a religious institution or cultural center where one can learn?
- It may be helpful to meet leaders of that community to become informed about their culture in order to better understand their behavior, customs, and motivations.

**Poll: How do cultural assumptions and stereotypes impede a survivor-witness from receiving justice?  
(check all that apply)**

**A. We may miss important testimony or information** because their narrative or situation does not fit into the story we tell ourselves.

**B. We can misread a situation** because we assume that the person is not seeing things the way we are, especially if we come from the same culture.

**C. We can offend** – people who are in marginalized groups recognize or feel when stereotypes are at play – and may then be slower to trust the court system, staff person, a judge or an attorney who stereotyped them or failed to consider important cultural mores, customs or traditions.

**D. All of the above**



Can you share examples of CPO remedies that address religious and/or cultural needs?



# Remedies that Address Cultural and Religious Needs of Victim and Children

- Cultural
  - Turn over photos, mementos, items of sentimental value from victim's home country
  - Restrain from cultural events victim attends
  - Prohibit interference with victim's ability to communicate with persons who speak their language
  - Document destruction as evidence of abuse
- Religious
  - Prohibit hex on victim
  - Allow ceremony to banish bad spirits in house
  - Set times when abuser cannot attend religious services
  - Religious holiday visitation

Why is it best practice for judges to address custody and visitation in protection orders?



# Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
  - Either not filing or withdrawing immigration papers
  - Threats to turn victim in for deportation
  - Part of history of violence
- Not relevant to:
  - Core primary caretaker determination
  - Evaluation of parenting skills
  - Best interests of the child determination
  - Requirements regarding custody awards to non-abusive parent



# CPO Custody and Visitation Orders Need to Address

- Vacation time
- Birthdays
- Graduations
- Family events
  - 1<sup>st</sup> Communion
  - Religious holidays
  - Other examples

# 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

What kinds of economic relief can judges issue in protection orders to maintain the status quo?



# Economic Relief

- Child support
- Spousal support
- Enforce Affidavit of Support
- Rent/Mortgage
- Pay for relocation
- Payment of Medical bills
- Household maintenance
  - Utilities, home insurance
- Maintain spouse & children on health insurance
- Pay for Repairs/replacement
  - Car, tires, windows, locks, cell phones, passports, identification cards, important documents
- Payment of
  - Credit card debt
  - Children's sports, travel, music lessons, religious school expenses
- Shall not dissipate assets



# Tax Related Remedies

- Turn over income tax statements
- Respondent ordered to pay victim  $\frac{1}{2}$  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

# Poll: Why are economic CPO remedies particularly important for immigrant survivors? (check all that apply)



- A. May have to wait 1-5 years to get work authorization
- B. Cannot purchase health insurance on the exchanges
- C. Have limited access to public benefits

How have you crafted protection order remedies where parties work at the same employer or share a family business?



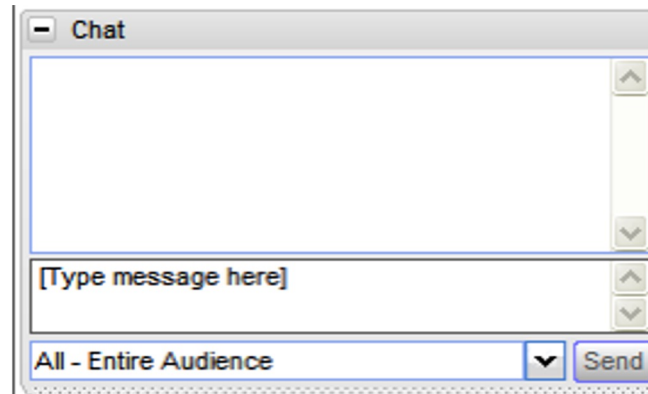
# Protection Order Remedies That Help Immigrant Victims

# Stopping 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)
- Abuser ordered to sign FOIA form to obtain information from the abuser's or victim's immigration case file

# 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?



# Documents Victims and Children Need for Identification and to Prove or Attain Legal Immigration Status

- Passports
- Birth Certificates
- Work authorization documents
- Green cards
- Immigration case papers
- Social Security Cards
- Abuser ordered to pay for replacement of these documents they are not turned over

# Documents Victims and Children Need Including To Prove or Attain Legal Immigration Status

- Passports
- Birth Certificates
- Work authorization documents
- Green cards
- Immigration case papers
- Border Crossing Cards
- Social Security Card
- Real ID
- State issued ID
- Driver's license
- ATM card
- Pay stubs
- Health insurance cards



# 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
- Income tax returns
- Children's 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, passport, social security number
- Copy of family based I-130 petition

# Remedies That Enhance Perpetrator Accountability

# Best Practices for Enhancing Compliance

- Issue detailed comprehensive orders that include special conditions
- Set compliance calls
  - That include reports from batterer's intervention programs
- Set follow up hearings that may include lifting a stay away over time

What are some examples of how culturally based relief can be used to improve offender accountability?



# Drafting Protection Orders Best Practices

# Beneficial Findings to Include When Issuing Protection Orders for Immigrant Victims

- In contested cases findings of:
  - Physical and sexual abuse, stalking, extreme cruelty, & human trafficking against
  - The immigrant survivor, their child, and/or their step-child
- In all cases showing existence of:
  - Parent/child relationship
  - Spousal relationship
  - Stepparent/stepchild relationship
- Include creative remedies

# Questions and Answers

# Resources

- Bench cards and manual chapters on immigrant survivors and protection orders
  - Includes examples of creative CPO remedies
- New state-by-state tool on trafficking victim access to civil protection orders (Dec. 2024)
  - Highlights importance of identifying human trafficking cooccurring with domestic violence and sexual assault
- All State Demographics (Oct. 2023)
- Tool: How to Analyze U.S. Census Data to Identify Local LEP Populations



# Technical Assistance and Materials

- NIWAP Technical Assistance:
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
  - Web Library:  
[www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)
- Materials for this Workshop:
  - [https://niwaplibrary.wcl.american.edu/njn-culturally-creative CPOs 2024](https://niwaplibrary.wcl.american.edu/njn-culturally-creative-CPOs-2024)
- Contact NIWAP to provide training for your jurisdiction