

Orders of protection for the immigrant survivor

The purpose of the civil order of protection is to prevent criminal acts of abuse. If orders of protection were not available to immigrants, aggressors would be given license to abuse immigrants and not be held accountable for criminal activity. Consequently, any person, including all immigrants, can obtain an order of protection. Denial of an order on the basis of immigration status violates Equal Protection and Due Process of federal law governing public health and welfare.¹ Therefore, no justice system official, including police, prosecutors, court staff, or judges, should ask survivors about their immigration status or if they have a Social Security number when they call for help or seek an order of protection.² This does not, however, mean they *cannot*. For example, the Supreme Court has established local police may inquire into a crime victim's immigration status without first establishing reasonable suspicion. There is no exception for survivors. Police are not, however, *required* to inquire into or report the immigration status of crime victims.³

Civil orders of protection can have a preventive effect and so may be especially useful to an immigrant survivor, if both the survivor and the aggressor understand:

- The *issuance* of an order of protection has no immigration consequences for either party, but the *violation* of an order by a non-citizen aggressor is a deportable offense.
- Orders of protection do not require criminal justice system intervention; the method of enforcement is under the control of the survivor.

Civil orders of protection can further enhance survivor safety in the following ways:

- Orders of protection can establish clear custody arrangements and economic support from the aggressor.
- Orders of protection can support a survivor's efforts to attain immigration relief, because they provide legal documentation of the abuse.

Orders of protection do not in any way guarantee an end to the abuse. They do not guarantee a reduction in lethality or any other outcome, and it is important for advocates to spend the time necessary to help immigrant survivors understand the scope of the orders.

However, civil orders of protection can be finely crafted to address and counter abuses of power and control specific to a survivor's experience, including coercion and manipulation tied to immigration status. In many instances, advocates can support survivors to craft the details of their order of protection such that survivors' own definitions and desires for safety are honored and respected.

¹ USC 42, Sec. 1981(a)

² Orloff, L., Olavarria, C., Martinez, L., Rose, J. & Noche, J. (2013). Battered immigrants and civil protection orders. In K. Sullivan & L. Orloff (Eds.), [*Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*](#). National Immigrant Women's Advocacy Project, Washington College of Law at American University, and Legal Momentum.

³ Ibid.

In order for an immigrant survivor to be empowered to make their best and most informed choices, questions as to whether or not to file for an order of protection, and/or whether or not to enforce it, should be examined carefully and from different angles.⁴ For example, deportation of the aggressor might increase safety and security for some survivors. For others, deportation of the aggressor might create or increase dangers related to economic survival, the survivor's own immigration status, or their own and/or their family's safety in the US and abroad. It may also jeopardize survivors' relationships with their families and communities.

Immigrant survivors are subject to the same restrictions regarding availability of orders of protection; namely, domestic violence orders are available nationwide, but sexual violence orders are available in only a few states. Survivors of sexual abuse by a partner/spouse are eligible for domestic violence civil orders of protection. Survivors who are unrelated to their aggressors and live in states without sexual assault orders of protection have limited options, including the following:

- general civil restraining/anti-harassment orders,
- stalking orders,
- orders that protect vulnerable populations, e.g., elderly persons or people with disabilities,
- institutional orders, e.g., military or college/university stay-away orders,
- housing stay-away or vacate orders,
- civil injunctive relief for "arms length" relationships,
- criminal bond orders or conditions of release (a criminal court option) have, in some cases, been crafted to offer protections similar to those available in a civil order of protection.

Sexual violence orders of protection

Sexual violence orders of protection differ by state. They often differ with regard to definitions of sexual violence/assault, harassment, etc.; remedies available, including that of a "catch-all" provision that permits the court some freedom to craft remedies specific to an individual survivor's needs; and order of protection filing processes. See the [Protection Orders Available to Sexual Assault Victims Chart](#)⁵ for a review of what is available in your state; and make sure to know the current standards, as the laws and processes do change. Discuss with the survivor if an order, and which type of order, may be appropriate. Depending on the type of relationship the survivor has with the aggressor and the remedies they seek, the survivor may qualify for one, some, all, or none of the orders.⁶

⁴ See, for example, [Survivors of violence and fear of deportation: A story from an advocate](#) [blog post]. National Latin@ Network for Healthy Families and Communities (14 October 2015).

⁵ Victim Rights Law Center (July 2012).

⁶ Orloff, L., Martinez, L., Fata, S., Hartman, R. & Eastman, A. (2013). Protection orders for immigrant victims of sexual assault. In L. Orloff (Ed.), [Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault](#). National Immigrant Women's Advocacy Project, Washington College of Law at American University, and Legal Momentum.

When working with immigrant survivors to assess whether or not to file for a sexual violence order of protection, consider also the evidentiary requirements of each form of immigration relief available to the survivor. As stated above, an order of protection serves as legal documentation of evidence of violence, which is vital for a survivor's immigration case. There are, however, risks associated with the *denial* of an order of protection or with the petition process, for example:

- Some courts may not grant an order if the most recent threat or incident occurred several months before filing for the order; others may not grant an order without a finding of domestic violence *and* that there is likelihood the violence will continue.
- During the hearing for an order of protection, the survivor's version of events becomes public record. This provides the defense attorney a tool for impeachment of the survivor if there is a criminal trial, because the attorney can now compare the survivor's testimony at the hearing for the order to the survivor's testimony at the criminal trial. Any discrepancy will be presented as evidence that the survivor is lying.⁷

Any of these situations may have negative implications for a VAWA self-petition. For example, an immigrant survivor who is divorced must prove the divorce was connected to abuse during the marriage, which may be much more difficult to do if the survivor was denied an order of protection. A VAWA self-petition also has strict "good moral character" requirements; if the survivor has been impeached, this can complicate efforts to prove they meet this requirement.

Domestic violence orders of protection

State statutes for domestic violence civil orders of protection differ on which relationships are eligible for orders of protection, whether or not abuse and harassment that does not cause direct physical violence will warrant an order, when the abuse happened, and which remedies are available. Search for your state's statute in the WomensLaw.org [Restraining Orders](#) database; and make sure to know the current standards, as the laws and processes do change.

Orders of protection have little effect in ending abuse in 20-30% of domestic violence cases and may, in fact, trigger an increase or worsening of the abuse. These relationships have high levels of lethality and are extremely dangerous for survivors and their families. In these situations, advocates can play key roles in helping survivors develop and implement combined strategies that may include obtaining civil orders of protection; criminal prosecution of the aggressor; and immigration relief.

As stated above, an order of protection serves as legal documentation of evidence of violence, which is vital for a survivor's immigration case. "Of consent" and "mutual" domestic violence orders of protection, however, pose specific risks to the evidentiary requirements for immigration relief:

⁷ Ibid.

- Some courts encourage the use of “of consent” orders. While survivors should attempt to negotiate consent orders with aggressors, it is essential that survivors do not accept consent orders that state they are being issued without any findings of abuse or admission by the aggressor (which the courts should not be issuing). Such orders can undermine the immigrant survivor’s immigration case and access to public benefits.⁸
- Mutual orders are issued when the aggressor alleges during a hearing for a civil order of protection that they have also been abused; this process (i.e., failure by the aggressor to file a petition, present evidence of abuse, and obtain a court ruling that the survivor committed domestic violence) violates a survivor’s due process rights. Later, if a court finds that the survivor has violated a mutual order, the finding can make the survivor deportable. Immigrant survivors should be counseled never to consent to a mutual order and, if a judge tries to impose one, the survivor should object, state the order violates due process rights, and request a full hearing.⁹

Crafting the order of protection

To be most effective, the order of protection should specify all forms of relief a survivor needs to address the abuse. Immigration-related needs of survivors can include:

1. protection from specific forms of abuse related to their immigration status (e.g., employer threatening to report the survivor to immigration authorities if the survivor reports sexual abuse, a US citizen aggressor refusing to acknowledge spousal relationship to the survivor on immigration papers),
2. the ability to obtain immigration relief or a work permit necessary for survivor safety and security, independent of the aggressor, and
3. access to the survivor’s documents if they are being withheld by the aggressor.

The following provide guidance on crafting civil orders of protection for immigrant survivors:

- Chapter 15, “Protection orders for immigrant victims of sexual assault” of the manual [Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault](#).¹⁰
- Chapter 5, “Battered immigrants and civil protection orders” of the manual [Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants](#).¹¹

Filing for an order of protection

In addition to the trauma of sexual/domestic violence and fears of the aggressor shared by many survivors, immigrant survivors face distinct barriers to filing for orders of protection:

⁸ Ibid.

⁹ Orloff, L., Olavarria, C., Martinez, L., Rose, J. & Noche, J. (2013). Battered immigrants and civil protection orders. In [Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants](#).

¹⁰ See “Creative application of traditional provisions of civil protection order remedies” (pages 395-412). Pages 404-412 review use of catch-all provisions, when available, in sexual violence civil orders of protection.

¹¹ See “Obtaining effective remedies – creative protection order remedies” (pages 298-313).

- Lack of familiarity with the US legal system may generate fear that reporting abuse may result in their own and/or the aggressor's deportation. Reporting abuse might be associated with making themselves known to the authorities and/or revealing having had anything to do with violence, or seeming to disturb the peace.
- Fear of law enforcement and court involvement.
- Survivors of sexual violence may not acknowledge marital rape or sexual violence if they believe religious scriptures that instruct that sex is a marital obligation.
- Inability to read an order of protection due to limited reading skills and/or limited English proficiency.
- Fear that those who prevail in court are those with more influence, more money, and/or stronger ties to the government which may include an aggressor's personal characteristics such as shared language, gender, or nationality with court officials.

Survivors who do not expect justice from legal systems may find it difficult to engage with or trust it. It is important for advocates to explain the cultures and behavioral norms in US local and federal court systems and law enforcement systems. Knowledge and comfort with those norms is learned—not inherent or obvious. Advocates can work with immigrant survivors to increase survivors' likelihood of feeling informed and empowered through systems processes, instead of isolated, helpless, confused, and under the control of others.

Support for immigrant survivors preparing testimony for an order of protection or other court proceedings may include:

- Reassuring immigrant survivors:
 - The abuse experienced is illegal and because of that, they are eligible for protection under US law.
 - Talking to you (or an attorney), reporting the abuse, and/or getting help do not constitute actions for which the survivor will be punished or deported.
- Explaining that survivor testimony is valid evidence.
- Helping survivors plan for the experience of talking about their abuse in public and in the presence of strangers.
- Accompanying survivors to court before their own hearing so that they can see the physical setting and observe how the system operates.
- Assisting the survivor in gathering and presenting corroborating evidence and information:
 - The aggressor's immigration-specific tactics of control and abuse, including any threats or actions taken to call immigration law enforcement (Immigration and Customs Enforcement, or ICE) to report the survivor, or other attempts to have them deported.
 - Threats against the survivor and/or family members, both in the U.S. and abroad.
 - A list of documents and items of which the survivor needs to take possession, including documents that will help in the survivor's immigration case.
- Reviewing court procedures, potential questions that will be asked, and conventional courtroom behavior, including how to work with a court interpreter.

Enforcing the order of protection¹²

It is important that immigrant survivors with concerns about triggering removal of their aggressors understand their options regarding enforcement of a protection order. When or if an aggressor violates the terms of a protection order, a survivor may:

1. Call the police, which triggers a criminal case brought by and controlled by state prosecutors; this can result in the deportation of a foreign-born aggressor.

OR

2. File a civil contempt action. Civil contempt proceedings are often effective in cases of violations such as the aggressor's failure to vacate the family home, turn over specified items to the survivor, make payments on time, provide copies of the aggressor's own immigration status documents, or return children after visitation. Generally, at the conclusion of a civil contempt proceeding, the aggressor is given a period of time to comply and should they fail to do so, they will be jailed. Civil contempt proceedings do not make the aggressor deportable unless the violation of the order is a violation of provisions that address violence, threats, harassment, or stalking.

OR

3. File a criminal contempt action. Generally, criminal contempt is charged for acts of abuse, harassment, threats, or stalking; violation of stay-away/no contact provisions; and failure to return the children after visitation or kidnapping/sequestering the children. If the survivor brings a criminal contempt case to court and the court finds the aggressor in criminal contempt, this conviction is a deportable offense. Because the charge brought by the survivor is for violating the order, not for the criminal act that violated the order, the local prosecutor may initiate a second criminal prosecution for the act itself which, if it results in conviction, could also result in deportation of the aggressor.

Continue safety planning

Encourage immigrant survivors to document violations of orders of protection, whether or not they currently plan to enforce their order.

- Documentation can include keeping a journal, telling someone they trust, taking photographs, and keeping letters, e-mails, and phone or text messages from the aggressor. Encourage survivors to also take note of the effects of the violation(s) of the order on themselves and their child(ren).

¹² Orloff, L., Olavarria, C., Martinez, L., Rose, J. & Noche, J. (2013). Battered immigrants and civil protection orders. In [*Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*](#).

- If you know that local/state police departments have procedures for taking reports of criminal activity after the fact and handling cases in which no arrest is made at the time, encourage survivors to call the police to report violations even when they are not asking the police to make an arrest or take other action.

Explain that this may increase their safety in the future, should they decide to enforce their order of protection or seek immigration relief.

Work with each survivor to understand the purpose and specific provisions of the order of protection – immigrant survivors who do not have this information may be at risk of violating some orders if, for example, they have been raised with strong practices of community or restorative justice, and a family member, community member, or religious leader seeks to mediate.

Encourage survivors to carry a copy of their order of protection if it is safe for them to do so, as this can help ensure their rights, safety, and security in the event they are detained by immigration law enforcement.