

## Protection Orders and Battered Immigrants: The Impact of Attorneys and Advocates

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### Purpose of Protection Orders

Civil protection orders are essential to the safety of battered immigrants and their children, particularly when they are crafted to address the battered immigrant applicant's unique needs.<sup>2</sup> Civil protection orders, which were created to protect and empower victims and deter abusers from ongoing violence and harassment are available to victims in every U.S. State and territory, including the District of Columbia and Puerto Rico.<sup>3</sup>

### Battered Immigrants' Need For, Willingness to Seek, and Effectiveness of Protection Orders

The perpetrator's coercive control over an immigrant victim's immigration status leads to higher rates of domestic abuse in relationships where the perpetrator is a citizen or has legal

immigration status and the victim is foreign born and is either undocumented or has a form of legal immigration status that is derived from and dependent on the perpetrator.<sup>4</sup> Immigration related abuse, and power and control dynamics result in immigrant women staying longer in abusive relationships, having fewer economic and other resources to help them leave and sustaining more severe physical and emotional consequences of abuse.<sup>5</sup>

Despite this, research has found that when battered immigrants find their way to advocates and attorneys with knowledge, expertise and training on immigrant crime victims' legal rights, battered immigrants, including undocumented immigrants, will turn to courts for help.<sup>6</sup> A complicated relationship exists between battered immigrant women and the U.S. justice system, often creating the misconception that battered immigrants will not seek and use protection orders or call the police for help.<sup>7</sup> Most battered immigrants have no

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<sup>2</sup> See generally Orloff, et al., *Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* (2013), available at: [http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/5.1\\_BB\\_Family\\_ProtectionOrders\\_Battered\\_Immigrants\\_Civil\\_Protection-MANUAL-BB.pdf](http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/5.1_BB_Family_ProtectionOrders_Battered_Immigrants_Civil_Protection-MANUAL-BB.pdf)

<sup>3</sup> *Id.* at 337-359; see also Leslye Orloff, Cecelia Olavarria, Laura Martinez, Jennifer Rose, & Joyce Noche, *Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* (2013), available at: [http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/5.1\\_BB\\_Family\\_ProtectionOrders\\_Battered\\_Immigrants\\_Civil\\_Protection-MANUAL-BB.pdf](http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/5.1_BB_Family_ProtectionOrders_Battered_Immigrants_Civil_Protection-MANUAL-BB.pdf)

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<sup>4</sup> GISELLE AGUILAR HASS, NAWAL AMMAR, AND LESLYE ORLOFF, *BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES 4* (April 24, 2006) (Hereinafter "Hass 2006"), available at:

[http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy\\_of\\_BB\\_RSRCH\\_ImmVictims\\_Battered\\_Imm.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy_of_BB_RSRCH_ImmVictims_Battered_Imm.pdf/view); see also GISELLE AGUILAR HASS, MARY ANN DUTTON AND LESLYE E. ORLOFF, *Lifetime Prevalence of Violence Against Latina Immigrant: Legal and Policy Implications* (2000) in *DOMESTIC VIOLENCE: GLOBAL RESPONSES*, available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/RSCH\\_Lifetime\\_Prevelence\\_DV\\_Latinas.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/RSCH_Lifetime_Prevelence_DV_Latinas.pdf/view); see also Anita Raj & Jay G. Silverman, *Immigrant South Asian Women at Greater Risk for Injury From Intimate Partner Violence*, 93 AM. J. PUB. HEALTH 435 (March 2003), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/cultural-competency/dynamics-of-violence-against-immigrant-women/RSRCH\\_IMM\\_SouthAsian\\_Women\\_Risk\\_DV.pdf](http://niwaplibrary.wcl.american.edu/reference/additional-materials/cultural-competency/dynamics-of-violence-against-immigrant-women/RSRCH_IMM_SouthAsian_Women_Risk_DV.pdf)

<sup>5</sup> Hass 2006 at 2-3.

<sup>6</sup> MARY ANN DUTTON, NAWAL AMMAR, LESLYE ORLOFF, & DARCY TERRELL, *USE AND OUTCOMES OF PROTECTION ORDERS BY BATTERED IMMIGRANT WOMEN: REPORT TO THE NATIONAL INSTITUTES OF JUSTICE* (Nov. 10, 2006) (Hereinafter "Dutton NIJ 2006"), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/RSRCH\\_DV\\_Use\\_Outcomes%20Protection\\_Orders.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-9-12-2012-san-diego-ca/research/RSRCH_DV_Use_Outcomes%20Protection_Orders.pdf/view)

<sup>7</sup> See generally Nawal Ammar, Leslye Orloff, Mary Ann Dutton, & Giselle Hass, *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 INT'L J. OF POLICE SCI. AND MGMT. 230 (Mar. 5, 2005), available at: <http://niwaplibrary.wcl.american.edu/reference/additional->

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knowledge of their legal rights until they seek help for domestic violence from advocates or attorneys. Research has found that 89% of battered immigrant women did not know about protection orders until they reached an advocate, attorney, or other service provider.<sup>8</sup>

Despite this fact, 81%<sup>9</sup> of battered immigrants (including significant numbers of undocumented victims) who sought help from trained advocates and attorneys chose to seek civil protection orders against their abusers.<sup>10</sup> Further, the research found strong evidence of effective lethality assessment and safety planning, with immigrant victims more likely to obtain protection orders when the levels of violence they had experienced were higher.<sup>11</sup> Immigrant battered women who receive protection orders report: feeling safer (70%)<sup>12</sup>; changes in their abuser's attitudes (57%)<sup>13</sup>; and significant reductions in physical violence.<sup>14</sup>

### What Barriers Do Battered Immigrants Face Regarding Protection Orders?

Battered immigrant women often face the following barriers when seeking protection orders:

- Lack of knowledge about legal options and rights<sup>15</sup>
- Limited English Proficiency (LEP)<sup>16</sup>
- Mistrust of the justice system based on victims' experiences in their home countries<sup>17</sup>

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[materials/research-reports-and-data/research-US-VAIW/Ammar-Orloff-Police-Response-2005.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Ammar-Orloff-Police-Response-2005.pdf/view)

<sup>8</sup> Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton, & Giselle Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, 37(3) CRIM. JUST. REV. 337 (2013), (Hereinafter "Ammar 2013"), available at:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/family-law-for-immigrants/protective-orders/research-reports-and-data/AmmaretalCPO.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> Dutton NIJ 2006 at 51.

<sup>11</sup> *Id.*

<sup>12</sup> Ammar 2013 at 347.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 348 (Violence reduction was measured for the first six months following the issuance of the protection order).

<sup>15</sup> *Id.* at 349.

<sup>16</sup> *Id.*

- Overcoming the psychological and/or physical and sexual trauma the victim has experienced to be able to fully participate in the protection order case.<sup>18</sup>

To overcome these barriers attorneys and advocates should:

- Conduct a lethality assessment and develop a safety plan with the client.
- Inform the client that domestic violence is a crime in the United States; explain justice system remedies and how U.S. court cases work (e.g. that testimony is valid evidence).
- Educate clients about their legal rights:
  - Under VAWA and U visa immigration laws;
  - To obtain protection orders; and
  - To maintain custody of their children.
- Use trauma informed interviewing tools and story writing techniques to gain a more complete overview of the client's violence history and to help the victim heal from trauma.

### What is the Impact of a Protection Order on a Battered Immigrant's Immigration Case?

Attorneys and advocates should advise their clients about the role of protection orders in their immigration cases. Immigration related threats are a common form of psychological abuse experienced by immigrant women.<sup>19</sup> This includes<sup>20</sup>:

- Threats to or actually reporting them to immigration officials (51%)

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<sup>17</sup> Leslye E. Orloff, Mary Ann Dutton, Giselle Aguiar Hass, & Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L. J. 43 (2003), available at: [http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/RSRCH\\_ImmVictims\\_Battered\\_ImmWomen\\_Police.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/RSRCH_ImmVictims_Battered_ImmWomen_Police.pdf/view)

<sup>18</sup> For tools and training on working with immigrant victims to help them overcome trauma, please visit:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/march-19-2014-trauma-informed2>

<sup>19</sup> Ammar 2013 at 344-45.

<sup>20</sup> *Id.*

- Threats to or actually withdrawing immigration papers (39%)
- Abuse related to their immigration status (34%)

Explain to battered immigrant clients that, by filing a VAWA self-petition or U visa case, the victim can cut off the ability of the perpetrator to trigger DHS immigration enforcement actions against her.<sup>21</sup> Additionally, inform the victim about DHS prosecutorial discretion policies designed to prevent detention, deportation, and DHS enforcement activities against immigrant victims.<sup>22</sup>

### The Intersection of Immigration and Protection Order Laws

When working with battered immigrants on protection order cases, there are a few key points about the intersection between immigration law and protection orders that are important to remember:

- Issuance of a protection order will not cause a non-citizen perpetrator's detention or deportation. Issuance of a protection order is not a deportable offense under immigration law.
- Findings by a court that a perpetrator has violated the protective anti-abuse provisions of a protection order or conviction for violating a protection

<sup>21</sup> U.S. DEPARTMENT OF HOMELAND SECURITY, DHS BROADCAST MESSAGE ON NEW 384 CLASS OF ADMISSION CODE (Dec. 21, 2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message-to-DHS-384-COA-Final-12.21.10.pdf/view>; see also National Immigrant Women's Advocacy Project (NIWAP), *Safety Planning Flow Chart for Immigrant Survivors and DHS Policies Protecting Immigrant Victims*, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-6-2012-safety-planning-webinar/dhs-policies-safety-planning-flow-chart.pdf/view>

<sup>22</sup> Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, to All Field Office Directors, All Special Agents in Charge, & All Chief Counsel, *Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs* (June 17, 2011), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view>

order constitutes a deportable offense under immigration laws.<sup>23</sup>

One danger that a battered immigrant may face in seeking a protection order is the possibility of a protection order being issued against both the perpetrator and the victim. This can happen if the court issues a mutual protection order, a practice that violates the full faith and credit protections of the Violence Against Women Act.<sup>24</sup> It can also occur when the victim and the perpetrator have both filed protection order actions against each other. These are often called "crisscross" protection orders.<sup>25</sup>

Attorneys and advocates working with battered immigrant victims should determine whether the victim has perpetrated any incidence of physical violence against the perpetrator, including those when the victim was acting in self-defense. If the victim has not committed acts of violence against the perpetrator or was acting in self-defense, never advise a client to agree to the issuance of a protection order against them.

Under immigration law, the violation of a protection order is a deportable offense. If a protection order is issued against a battered immigrant, either by consent or after a hearing, the victim's risk of deportation is enhanced. If the perpetrator can successfully convince a court that the battered immigrant violated the protection order, the victim will be found to have committed a domestic violence offense which could make them deportable.

<sup>23</sup> Orloff, et al., *Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* at 33 (2013), available at: [http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/5.1\\_BB\\_Family\\_ProtectionOrders\\_Battered\\_Immigrants\\_Civil\\_Protection-MANUAL-BB.pdf](http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/5.1_BB_Family_ProtectionOrders_Battered_Immigrants_Civil_Protection-MANUAL-BB.pdf)

<sup>24</sup> For a more in-depth explanation of these safeguards and other issues related to mutual protection orders, see *id.* at 30.

For more information about criss-cross protection orders, see *id.* at 30-31.