

12-7-2023

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### Recommended Citation

Sarah E. Corsico, *Order of Protection or Deportation? How Civil Orders of Protection Entangle Noncitizens and their Families in the Immigration and Criminal Legal Systems, Creating the Harm That They Were Intended to Prevent.*, 89 Brook. L. Rev. 295 (2023).

Available at: <https://brooklynworks.brooklaw.edu/blr/vol89/iss1/7>

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# Order of Protection or Deportation?

## HOW CIVIL ORDERS OF PROTECTION ENTANGLE NONCITIZENS AND THEIR FAMILIES IN THE IMMIGRATION AND CRIMINAL LEGAL SYSTEMS, CREATING THE HARM THAT THEY WERE INTENDED TO PREVENT

### INTRODUCTION

A civil order of protection can be an important form of relief for individuals experiencing abuse, but it can also bring complex and potentially devastating consequences for noncitizens. Consider the following example.<sup>1</sup> An individual seeks a civil order of protection because she fears for her life. However, none of the available options fit her needs. A stay away order<sup>2</sup> is not feasible because her partner, the accused,<sup>3</sup> pays half the rent, and she cannot afford the full payment on her own. Moving to a shelter would further disrupt her children's education, but remaining in the home exposes herself and her children to violence. Furthermore, filing a petition for a protection order<sup>4</sup> risks drawing the attention of Child Protective

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<sup>1</sup> This hypothetical stems from the author's experience working with survivors of domestic violence. The illustration provided is not meant to portray a unitary or complete picture of the complex dynamics that a survivor must navigate. Every survivor has their own story and experience. Here, the author uses she/her pronouns to refer to the petitioner because almost all of the author's experiences working with survivors have been with female-identifying individuals. However, domestic violence affects individuals of all genders.

<sup>2</sup> A stay away is a court order mandating no contact between the petitioner and the accused. If the individuals live together, the alleged perpetrator can be removed from the home. See *Orders of Protection*, N.Y. STATE OFF. PREVENTION DOMESTIC VIOLENCE [hereinafter *Orders of Protection*, N.Y. STATE OFF.] <https://opdv.ny.gov/orders-protection> [<https://perma.cc/45N3-X2XP>]; *Domestic Violence (Family Offense)*, NYCOURTS.GOV, [http://ww2.nycourts.gov/COURTS/nyc/family/faqs\\_domesticviolence.shtml#op9](http://ww2.nycourts.gov/COURTS/nyc/family/faqs_domesticviolence.shtml#op9) [<https://perma.cc/HEV7-NJG9>].

<sup>3</sup> The author uses the term "accused" throughout this note to refer to individuals who have an order of protection filed against them. While the term is imperfect, as it reductively and binarily labels an individual, for the purposes of this note, it acts as a more neutral means of discussing the different parties involved in these proceedings.

<sup>4</sup> States refer to civil orders of protection differently (i.e., protection order, restraining order, order of protection). The author uses the terms interchangeably. See generally *Legal Information*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws> [<https://perma.cc/23Z7-4QQJ>] (providing state-specific information on protection orders).

Services (CPS)<sup>5</sup>—which could, at its most extreme, result in her losing her children.<sup>6</sup> Now, imagine she is a noncitizen.<sup>7</sup> On top of the safety, financial, and housing considerations she must weigh, she must also consider immigration status. Once she files a protection order, she risks exposing herself and her family to the Department of Homeland Security (DHS).<sup>8</sup> If CPS gets involved, she could face abuse/neglect charges,<sup>9</sup> which bring their own immigration consequences.<sup>10</sup> If she is applying for an immigration status dependent on her relationship with her partner,<sup>11</sup> her ability to gain or adjust status could be delayed or affected.<sup>12</sup> If she calls the police to enforce the order, she has now

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<sup>5</sup> CPS is a government entity that investigates allegations of child abuse/neglect. *Child Protective Services*, MD. DEP'T HUM. SERVS. (2022), <https://dhs.maryland.gov/child-protective-services/> [<https://perma.cc/4PDH-CWUR>].

<sup>6</sup> See, e.g., S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1100 (2022) [hereinafter Washington, *Survived & Coerced*] (describing the story of Jordan Roberts, a survivor of domestic violence who lost her children after the Administration for Children's Services conducted an "emergency removal").

<sup>7</sup> The author uses the term "noncitizen" to refer to individuals who are in the United States but do not hold US citizenship, including people who are undocumented, green card holders, temporary visa holders, and other forms of status. See *Reporting Terminology and Definitions*, DEP'T HOMELAND SEC., <https://www.dhs.gov/immigration-statistics/reporting-terminology-definitions#14> [<https://perma.cc/A7LN-97H6>]. Notably, the author uses the term noncitizen in place of "alien" throughout this note (whenever it appears in both in statutes and literature). The term "alien" is dehumanizing and othering, and has, under the Biden Administration, been discouraged. See Joel Rose, *Immigration Agencies Ordered Not to Use Term 'Illegal Alien' Under New Biden Policy*, NPR (Apr. 19, 2021, 2:51 PM), <https://www.npr.org/2021/04/19/988789487/immigration-agencies-ordered-not-to-use-term-illegal-alien-under-new-biden-policy> [<https://perma.cc/7H45-VGM3>].

<sup>8</sup> See *infra* Section II.B.2.

<sup>9</sup> Child abuse/neglect proceedings refer to cases filed by CPS against a parent accused of abuse/neglect. See CHILD WELFARE INFO. GATEWAY, HOW THE CHILD WELFARE SYSTEM WORKS 3–4 (Oct. 2020), <https://www.childwelfare.gov/pubpdfs/cpswork.pdf> [<https://perma.cc/5W9K-D4DL>].

<sup>10</sup> Tal D. Eisenzweig, *In the Shadow of Child Protective Services: Noncitizen Parents and the Child-Welfare System*, 128 YALE L.J. F. 482, 483, 485, 493–94 (2018). Notably, a CPS case can lead to the imposition of an order of protection, which, as this note will go on to describe, can bring grave consequences to a noncitizen. In New York, "family court judges routinely grant orders of protection, many of them ex parte and some addressing nonviolent situations." *Id.* at 509. Similarly, abuse/neglect proceedings can raise issues "such as drug use or suspected child neglect or abuse," which can lead to "conduct-based bars to re-admission, to status adjustment, and to many forms of relief from deportation." *Id.* at 510.

<sup>11</sup> See, e.g., *Green Card for Immediate Relatives of U.S. Citizen*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-immediate-relatives-of-us-citizen> [<https://perma.cc/T5KJ-96JS>] (explaining how the spouse of a US citizen can apply for a green card and must show an existing relationship).

<sup>12</sup> See IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION & ORDERS OF PROTECTION (2019) [hereinafter IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION] <https://www.immigrantdefenseproject.org/wp-content/uploads/Understanding-Immigration-Orders-of-Protection.pdf> [<https://perma.cc/EZ6F-DT8H>]. See also *Orders of Protection*, FUND MOD. CTS. (2017), <https://immigrants.moderncourts.org/module/orders-of-protection/> [<https://perma.cc/ULM6-YDUB>].

contacted law enforcement, a risk for any noncitizen, but especially if she has had any previous exposure to the criminal legal system through arrests or convictions.<sup>13</sup> If her partner is a noncitizen who violates the order, they could be put into removal proceedings—something that may be undesired.<sup>14</sup> Finally, her partner could file a retaliatory petition, exposing her to an identical risk of deportation.<sup>15</sup>

Now, consider another example. In *Szalai v. Holder*, a noncitizen had an order of protection imposed against him.<sup>16</sup> Amongst other things, he had to refrain from “entering or attempting to enter . . . areas within 100 yards of his ex-wife or her residence.”<sup>17</sup> Eventually, he got the order modified so that he could bring his children to and from his ex-wife’s home “so long as he remained curbside.”<sup>18</sup> One afternoon, he dropped his son off at his ex-wife’s house and “walked halfway up the driveway.”<sup>19</sup> He was then charged with and found guilty of breaking the protection order stipulations.<sup>20</sup> About one year later, DHS charged him as deportable for “violating the portion of a domestic restraining order that involved protection against credible threats of violence, repeated harassment, or bodily

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<sup>13</sup> IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12. This contact can be especially dangerous for individuals living in states where local police departments work with Immigration and Customs Enforcement (ICE), such as in New York. *See generally* Press Release, N.Y. for All Coalition, *New York Legislature Fails to Protect Immigrant Families with New York for All* (June 7, 2022), <https://www.immigrantdefenseproject.org/wp-content/uploads/NY4ALL-Statement.pdf> [<https://perma.cc/YZG2-56EK>] (discussing the ways in which the New York For All Act would protect immigrant New Yorkers by limiting contact between local police and federal immigration agencies). Consider also the story of Assia Serrano, who was resentenced and released from prison under the New York Domestic Violence Survivors Justice Act, only to be subsequently detained by ICE and immediately deported. *See generally* Assia Serrano & Nathan Yaffe, *The Domestic Violence Survivors Justice Act and Criminalized Immigrant Survivors*, 26 CUNY L. REV. F. 24 (2023).

<sup>14</sup> *See* N.Y. STATE JUD. COMM. ON WOMEN CTS., IMMIGRATION AND DOMESTIC VIOLENCE 4 (2009), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/ImmigrationandDomesticViolence.pdf> [<https://perma.cc/3E68-AGVV>]. While this report discusses contact with the criminal legal system, contact with the family regulation system creates functionally equivalent risks. *See infra* Section II.B.

<sup>15</sup> *See infra* Section II.B.2.

<sup>16</sup> *Szalai v. Holder*, 572 F.3d 975, 977 (9th Cir. 2009) (per curiam).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 978.

injury.”<sup>21</sup> The Board of Immigration Appeals (BIA) agreed,<sup>22</sup> and so did the Ninth Circuit.<sup>23</sup>

These two examples, while starkly different, conjointly show how civil protection orders harm noncitizens.<sup>24</sup> While there is no explicit data on the number of noncitizen litigants in family court proceedings or protection order cases more specifically,<sup>25</sup> as of 2020, there were 44.9 million immigrants in the United States, making up 13.7 percent of the population.<sup>26</sup> Fifteen million homes are impacted by domestic violence annually,<sup>27</sup> and in 2018 alone, 956,586 civil orders of protection were “reported by 49 states, the District of Columbia, Guam, and Puerto Rico.”<sup>28</sup> Therefore, it can be inferred that noncitizens are making contact with the family regulation system,<sup>29</sup> in particular through civil orders of protection.<sup>30</sup>

Civil protection orders are a form of relief sought in family court that allow a victim of abuse to ask the court, among other things, to order a perpetrator of violence to refrain from

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* The BIA is “the highest administrative body for interpreting and applying immigration laws.” *Board of Immigration Appeals*, U.S. DEP’T JUST., <https://www.justice.gov/eoir/board-of-immigration-appeals> [<https://perma.cc/239K-WUT7>]. It “has been given nationwide jurisdiction to hear appeals from certain decisions rendered by Immigration Judges and by district directors of the Department of Homeland Security (DHS).” *Id.*

<sup>23</sup> *Szalai*, 572 F.3d at 982.

<sup>24</sup> This note does not evaluate the effectiveness or benefits of civil protection orders, nor does it discuss how protection orders can support immigration applications. For more information on these aspects of civil protection orders, see ALBANY L. SCH., IMMIGRATION ISSUES IN FAMILY COURT 71–98 (Feb. 4, 2020), <https://www.albanylaw.edu/sites/default/files/centers/center-for-continuing-legal-education/past-programs-and-materials/program-materials/2020-02-04-Immigration-in-Family-Court-Issues.pdf> [<https://perma.cc/6J2F-GN35>].

<sup>25</sup> Notably, “civil courts and agencies do not collect demographic data on litigants, nor does any governmental agency have this charge.” Kathryn A. Sabbeth & Jessica Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1130, 1142 (2023).

<sup>26</sup> Cecilia Esterline & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLY INST. (Mar. 17, 2022), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2022> [<https://perma.cc/2JRV-MP2Q>]. This data is from 2019 due to the challenges of collecting data in 2020. *Id.* Immigrant is defined as someone “foreign born,” without US citizenship at birth. *Id.*

<sup>27</sup> Sabbeth & Steinberg, *supra* note 25, at 1151.

<sup>28</sup> SUSAN KEILITZ, JANNET OKAZAKI, BARBARA HOLMES, SHAUNA STRICKLAND, MONICA PLAYER, ROBYN MAZUR & WAI KHOO, NAT’L CTR. STATE CTS., PROTECTION ORDER REPOSITORIES, WEB PORTALS, AND BEYOND 4 (2020), <https://nscs.contentdm.oclc.org/digital/collection/tech/id/947> [<https://perma.cc/B8GS-F46Z>].

<sup>29</sup> This note uses the term “family regulation system” to refer to the family court system. Scholars use this terminology as a means of accounting for the carceral nature of the family legal system. See Washington, *Survived & Coerced*, *supra* note 6, at 1103.

<sup>30</sup> See S. Lisa Washington, *Fammigration Web*, 103 B.U. L. REV. 117, 122–25 (2023) [hereinafter Washington, *Fammigration Web*].

harming or contacting them.<sup>31</sup> While courts can impose protection orders, individuals can also file them pro se (i.e., self-representation).<sup>32</sup> There is no right to assigned counsel in civil protection order cases,<sup>33</sup> and a majority of individuals proceed unrepresented.<sup>34</sup> As a result, individuals face significant barriers in court, including difficulty accessing substantive information on civil protection order consequences.<sup>35</sup> These barriers become even more severe for noncitizens whose immigration status could be at risk as a result of an order.<sup>36</sup>

Although civil protection orders were not created to cause harm, but rather to offer survivors of abuse a legal remedy “separate from the criminal court system,”<sup>37</sup> in practice they can have the same devastating effects on noncitizens as a criminal

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<sup>31</sup> Leslye Orloff, Joyce Noche, Jennifer Rose, & Laura Martinez, *Chapter 5.2: Ensuring Access to Protection Orders for Immigrant Victims of Family Violence*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS, NATIONAL IMMIGRANT WOMEN’S ADVOCACY PROJECT 2* (Kathleen Sullivan & Leslye Orloff, eds. 2013) [hereinafter Orloff et al., *Chapter 5.2: Ensuring Access*], <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/z-FAM-Man-Ch5.2-AccessToPOsImmVictims2013.pdf> [https://perma.cc/59FL-73V7].

<sup>32</sup> See, e.g., *Orders of Protection*, N.Y. STATE OFF., *supra* note 2 (outlining how an individual can file an order of protection pro se or through the help of an advocate); *Michigan Restraining Orders*, WOMENSLAW.ORG (Oct. 19, 2022), <https://www.womenslaw.org/laws/mi/restraining-orders/domestic-relationship-personal-protection-orders/who-eligible-personal> [https://perma.cc/JE2L-RDSU]; *Texas Restraining Orders*, WOMENSLAW.ORG (2021), <https://www.womenslaw.org/laws/tx/restraining-orders/all#node-36642> [https://perma.cc/CC4W-NLNB] (explaining how an individual can file an order of protection unrepresented or through the assistance of the district attorney’s office).

<sup>33</sup> See Sabbeth & Steinberg, *supra* note 25, at 1134; *Status Map*, NAT’L COAL. CIV. RIGHT TO COUNS. (2022), <http://civilrighttocounsel.org/map> [https://perma.cc/4TPV-X43F]; Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 245, 246 n.9 (2006), [https://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39169.pdf](https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39169.pdf) [https://perma.cc/PLT4-M9A7].

<sup>34</sup> See Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 GEO. L.J. 509, 536 (2022).

<sup>35</sup> *Id.* at 539–42, 544–47; N.Y. CITY FAM. CT. COVID WORK GRP., *THE IMPACT OF COVID-19 ON THE NEW YORK CITY FAMILY COURT: RECOMMENDATIONS ON IMPROVING ACCESS TO JUSTICE FOR ALL LITIGANTS* 16, 19–21, 26 (2022), <https://www.nycourts.gov/legacypdfs/court-research/NY-Family-Court-Report-1-22-2022.pdf> [https://perma.cc/L9FS-J6RN].

<sup>36</sup> See Orloff et al., *Chapter 5.2: Ensuring Access*, *supra* note 31, at 3.

<sup>37</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, 338 (2012); see also Leslye Orloff, Cecilia Olavarria, Laura Martinez, Jennifer Rose & Joyce Noche, *Chapter 5.1: Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS, NATIONAL IMMIGRANT WOMEN’S ADVOCACY PROJECT 2* (Kathleen Sullivan & Leslye Orloff, eds. 2013) [hereinafter Orloff et al., *Chapter 5.1: Battered Immigrants*], <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/z-FAM-Man-Ch5.1-BatteredImmCivilPOs2013.pdf> [https://perma.cc/7AG4-F6AV]; MAUREEN SHEERAN & EMILIE MEYER, NAT’L COUNCIL JUV. & FAM. CT. JUDGES, *CIVIL PROTECTION ORDERS: A GUIDE FOR IMPROVING PRACTICE 2* (2010), [https://www.ncjfcj.org/wp-content/uploads/2012/02/cpo\\_guide.pdf](https://www.ncjfcj.org/wp-content/uploads/2012/02/cpo_guide.pdf) [https://perma.cc/CZX3-SMTY].



arrest or conviction.<sup>38</sup> Those effects are not limited to the possibility of deportation for the accused, but include increased exposure to DHS through data sharing and contact with the criminal legal system, as well as complications to or exclusion from future immigration relief.<sup>39</sup> Importantly, these effects extend to the person filing and the family as a whole.<sup>40</sup> A civil protection order can put the petitioner at heightened risk of CPS involvement, can delay an immigration application, and can expose them to a cross petition, which could place them at the same risk of deportation as the accused.<sup>41</sup>

Given the lack of structural legal protections and extreme consequences that can result from a civil protection order, not enough information is provided to litigants regarding the impact of a protection order on immigration status. Thus far, scholarship examining the intersection of the family and immigration legal systems has primarily focused on parental rights.<sup>42</sup> Much less attention has been given to civil protection orders, and what little information exists mostly comes from nonprofits and practitioners.<sup>43</sup> Therefore, this note adds to a larger conversation about the intersection of the immigration, family, and criminal legal systems by highlighting how civil protection orders touch all three areas and, thereby, can expose noncitizens to more harm than good.

This note argues that because of the ways the immigration, family, and criminal legal systems interact, and because there is no right to assigned counsel in civil proceedings—resulting in most individuals proceeding pro se—civil protection orders leave noncitizens particularly vulnerable to immigration and criminal punishment. This is in contradiction to its intended purpose, which is to provide a civil remedy for individuals separate from punitive state systems. Given these vulnerabilities, states should expand the right to

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<sup>38</sup> See, e.g., N.Y. STATE JUD. COMM. ON WOMEN CTS., *supra* note 14, at 4–5 (discussing how criminal convictions can harm noncitizens, including deportation and exclusion from certain immigration statuses).

<sup>39</sup> See *infra* Section II.B.1.

<sup>40</sup> See *infra* Section II.B.2.

<sup>41</sup> See Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 30–31.

<sup>42</sup> See, e.g., Eisenzweig, *supra* note 10, at 482, 484–85; Washington, *Survived & Coerced*, *supra* note 6, at 1100; cf. Washington, *Famigration Web*, *supra* note 30, at 120–22 (describing the intersection of these systems as a web that entraps noncitizens).

<sup>43</sup> See *Family Court: Raising Awareness About Immigration Consequences*, IMMIGRANT DEF. PROJECT (2022), <https://www.immigrantdefenseproject.org/family-court-raising-awareness-about-immigration-consequences/> [https://perma.cc/PZ98-2GXR]; Veronica T. Thronson & Leslye E. Orloff, *Unintended Consequences*, 36 DEL. L. 18, 18 (2018); see also ALBANY L. SCH., *supra* note 24 (discussing the immigration consequences that stem from contact with the family regulation system).

appointed counsel for both parties in these proceedings. However, this alone is insufficient, and a multilevel intervention focused on four important moments—(1) an individual’s access to information prior to contact with government systems, (2) the temporary order stage, (3) the full order stage, and (4) the post-order period—is needed.

Due to the entangled nature of these systems and the extreme consequences that can result for noncitizens, any solution to this issue needs to address every temporal stage of the civil protection order process. First, information on the intersection of these systems and the resulting consequences needs to be disseminated to communities before they have contact with state systems. An effective way to fulfill this goal is to allocate state funding to interdisciplinary working groups that can create specific resources and presentations for noncitizens. Next, courts have an essential role to play in ensuring that noncitizens are aware of the complex consequences that can result from a civil protection order. Therefore, states should establish family court procedural rules that require judges at both the temporary and full order stages of a civil protection order to inform individuals of potential immigration consequences. Finally, states should consider creating opportunities for post-order relief, parallel to criminal postconviction remedies, to help mitigate the long-term effects of civil protection orders. Ultimately, while these proposals aim to offer protections within current legal structures, they do not fix the systems that leave noncitizens especially vulnerable to harm. Until steps are taken to disentangle and dismantle these systems, noncitizens will continue to be at risk of or harmed by civil protection orders and the broader goal of this remedy will not be met.

Part I of this note discusses the structure and process of civil orders of protection. It provides background and highlights how civil protection orders functionally exist as a *pro se* remedy. Part II discusses the unique challenges noncitizens face in civil protection order proceedings. It analyzes the potential immigration consequences both parties can face and concludes by highlighting how the immigration, family, and criminal legal systems interact through orders of protection to harm entire families. Part III uses New York as a case study to show how the right to appointed counsel is important, but that it must be amended, and on its own is an insufficient solution. Part IV lays out the multilevel intervention described above to address the layered complexities noncitizens face in civil protection order



cases. Finally, it concludes by discussing the limitations of these reforms and the need to rethink current legal structures.

Briefly, it is important to acknowledge the terminology used in this note, as scholars continue to question the binary language in the legal system, its falsities, and the ways in which it acts to dehumanize individuals.<sup>44</sup> The use of the terms “accused” and “petitioner” here are intentional. While not perfect, they act as a more neutral and clear way of referencing the different parties involved in civil protection order cases. However, it is essential to recognize that the binary between “accused” and “petitioner” mirrors the binary of “victim” and “offender,” as used in the criminal legal system, something that many have highlighted as a false dichotomy.<sup>45</sup> Notably, in the context of this note, it is impossible to neatly separate both sides of a civil protection order case, and as the paper will go on to describe, the filing of a petition can often put both parties at risk. Through cross-filings and mutual orders, a petitioner can just as easily become the accused as the accused can become the petitioner.<sup>46</sup>

## I. CIVIL ORDERS OF PROTECTION

In order to understand the unique consequences civil orders of protection pose for noncitizens, it is important to first understand how they function in practice. This part provides background on civil orders of protection and highlights how financial barriers, as well as a lack of a right to assigned counsel, mean that civil protection orders are a functionally pro se remedy.

### A. *Structure and Function*

Today, all fifty states have some form of civil order of protection statute.<sup>47</sup> Anyone, regardless of immigration status, can file a civil protection order.<sup>48</sup> In general, the only

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<sup>44</sup> See generally Anna Roberts, *Criminal Terms*, 107 MINN. L. REV. 1495 (2023) (discussing the terminology of the criminal legal system and the harm it contributes to the people and communities most impacted by these structures).

<sup>45</sup> See Cynthia Godsoe, *The Victim/Offender Overlap and Criminal System Reform*, 87 BROOK. L. REV. 1319, 1319–21 (2022); see also Kathy Boudin, Judith Clark, Michelle Fine, Elizabeth Isaacs, Michelle Danielle Jones, Melissa Mahabir, Kate Mogulescu, Anisah Sabur-Mumin, Patrice Smith, Monica Szelekovics, María Elena Torre, Sharon White-Harrigan & Cheryl Wilkins, *Movement-Based Participatory Inquiry: The Multi-Voiced Story of the Survivors Justice Project*, 11 SOC. SCIS. 1, 5–6 (2022).

<sup>46</sup> See *infra* Section II.B.

<sup>47</sup> Orloff et al., *Chapter 5.2: Ensuring Access*, *supra* note 31, at 2.

<sup>48</sup> FAM. LEGAL CARE, THE RIGHTS OF IMMIGRANTS IN FAMILY COURT 2, <https://familylegalcare.org/wp-content/uploads/2022/07/The-Rights-of-Immigrants-in-Family-Court.pdf> [<https://perma.cc/EKX7-VZ2G>]; Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 5.

requirements are that the person filing and the accused have a familial relationship and that there has been an “underlying act of abuse.”<sup>49</sup> Family courts can impose civil orders of protection,<sup>50</sup> but individuals can also file them independently.<sup>51</sup>

Civil protection orders can provide “broad protective relief for victims of violence including no further abuse, no contact, custody, [or] economic relief.”<sup>52</sup> Furthermore, many statutes provide “catch-all provisions” that allow petitioners to ask for relief specific to their circumstances.<sup>53</sup> Courts can issue orders of protection through “consent”—where the accused does not admit to the facts—or through findings at a hearing.<sup>54</sup>

While civil order of protection statutes vary by state, most outline a two-step process.<sup>55</sup> The first step involves filing a temporary order of protection.<sup>56</sup> In most cases, this means an individual files paperwork with the family court, after which a judge will hold a hearing to determine if they are in “immediate danger.”<sup>57</sup> At this initial stage, only the petitioner is present, and the order is granted for a limited amount of time, ranging from fourteen to thirty days.<sup>58</sup> The second step is a full order hearing, where both the petitioner and the accused are present in court.<sup>59</sup> Full orders are generally granted for one to three years<sup>60</sup>—although they can last as long as five years<sup>61</sup>—and can be extended.<sup>62</sup>

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<sup>49</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 5–6. The definition of familial relationship and “underlying act of abuse” varies between states. *Id.* at 5–6, 7.

<sup>50</sup> For example, a family court judge can impose an order of protection during a child abuse/neglect proceeding. *See* Washington, *Survived & Coerced*, *supra* note 6, at 1100.

<sup>51</sup> *See, e.g., Orders of Protection*, N.Y. STATE OFF., *supra* note 2 (outlining how an individual can file a protection order unrepresented or through an advocate); *Michigan Restraining Orders*, *supra* note 32 (explaining that it is not necessary, but recommended, to file with a lawyer).

<sup>52</sup> Orloff et al., *Chapter 5.2: Ensuring Access*, *supra* note 31, at 2.

<sup>53</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 16, 17–24.

<sup>54</sup> *Id.* at 27–28.

<sup>55</sup> Ammar et al., *supra* note 37, at 338. This is a generalized description of civil protection orders and may not include all of the potential steps involved in a case.

<sup>56</sup> *Id.*

<sup>57</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 3; *Frequently Asked Questions (Obtaining an Order of Protection)*, NYCOURTS.GOV (updated Jan. 4, 2019), <https://www.nycourts.gov/faq/orderofprotection.shtml> [<https://perma.cc/2EHE-ZLQD>].

<sup>58</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 3. However, comparatively, Michigan’s protection order statute authorizes temporary orders for 182 days. *Michigan Restraining Orders*, *supra* note 32, at 4.

<sup>59</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 3.

<sup>60</sup> *Id.*

<sup>61</sup> In New York, full orders are granted for five years if there are aggravating circumstances. *Orders of Protection*, N.Y. STATE OFF., *supra* note 2.

<sup>62</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 3.

B. *The Challenges of a Functionally Pro Se Remedy*

Civil protection orders fit within the broader framework of the family regulation and civil legal system, which overwhelmingly involves unrepresented litigants.<sup>63</sup> The civil legal system's "pro se crisis"<sup>64</sup> is especially acute in the family court system.<sup>65</sup> Specifically, in civil protection order cases "both parties tend to lack counsel."<sup>66</sup>

Often, individuals proceed pro se due to financial barriers to legal representation, leaving them stuck in the middle of a system that is overwhelmed and unable to provide adequate assistance.<sup>67</sup> This reality impacts marginalized communities, including racial and ethnic minorities, "victims of domestic violence, overwhelmed single mothers, non-English speakers, and [those with psychiatric disabilities]" most severely.<sup>68</sup>

In addition to financial barriers, a lack of legal protections contributes to this phenomenon,<sup>69</sup> as there is no guaranteed federal right to counsel in civil protection order proceedings.<sup>70</sup> Over time, state law has developed to provide a right to counsel in certain family court cases;<sup>71</sup> however, this right, for the most part, has not extended to civil protection orders.<sup>72</sup> In fact, New York is the only state that provides a right to assigned counsel for both parties in civil protection order cases.<sup>73</sup> Although some states discretionarily or under special

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<sup>63</sup> Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can't Solve Inequality*, 148 J. AM. ACAD. ARTS & SCIS. 128, 128–29 (2019).

<sup>64</sup> Susannah Camic Tahk, *Distributive Precedent and the Pro Se Crisis*, 108 IOWA L. REV. 745, 747 (2023) (quoting Jessica K. Steinberg, *Demand Side Reform in Poor People's Courts*, 47 CONN. L. REV. 741, 751 (2015)).

<sup>65</sup> *Id.* at 753–54. In fact, scholars have found that "in California, for example, 'in eighty percent of family law cases,' at least one party proceeds pro se; in Maryland, seventy-six percent of litigants seeking domestic violence protective orders are pro se; and '[i]n Philadelphia, eighty-nine percent of child custody litigants' are pro se." *Id.* at 753 (quoting Steinberg, *supra* note 64, at 751) (footnotes omitted).

<sup>66</sup> Carpenter et al., *supra* note 34, at 536.

<sup>67</sup> See Shanahan & Carpenter, *supra* note 63, at 129–30 (2019); Carpenter et al., *supra* note 34, at 561 (comparing "civil courts and emergency rooms").

<sup>68</sup> Camic Tahk, *supra* note 64, at 754 (quoting Steinberg, *supra* note 64, at 758–59).

<sup>69</sup> See Sabbeth & Steinberg, *supra* note 25, at 1159–61.

<sup>70</sup> *Status Map*, *supra* note 33; Sabbeth & Steinberg, *supra* note 25, at 1134.

<sup>71</sup> Abel & Rettig, *supra* note 33, at 245–46.

<sup>72</sup> See Sabbeth & Steinberg, *supra* note 25, at 1161.

<sup>73</sup> *Status Map*, *supra* note 33; Abel & Rettig, *supra* note 33, at 246 n.9.

circumstances<sup>74</sup> provide counsel to petitioners or the accused,<sup>75</sup> the reality remains that in thirty-eight states, both parties in civil protection order cases must be able to afford counsel or proceed unrepresented.<sup>76</sup>

“Pro se status” brings “enormous disadvantage,”<sup>77</sup> including a variety of barriers at the initial stages of a case and throughout the hearing process.<sup>78</sup> Specifically, unrepresented litigants can face greater difficulties accessing substantive information about court procedures, as well as about their individual rights.<sup>79</sup> In addition, differences in education level, as well as a lack of technical legal knowledge, can cause unrepresented litigants to face challenges filing petitions and advocating for their needs in court.<sup>80</sup> This can lead to individuals’ petitions being denied, to the accused misunderstanding court orders, and to being unable to defend oneself against allegations.<sup>81</sup> These initial barriers carry over to the trial process,<sup>82</sup> where advocates note that few resources provide detailed explanations of the rules of evidence, how to cross examine, or how to make use of one’s rights in family court.<sup>83</sup>

Although efforts have been made to mitigate the challenges faced by unrepresented parties in civil protection

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<sup>74</sup> The civil right to counsel map defines “[d]iscretionary [a]ppointment [o]f [c]ounsel” as “[c]ourts [being] permitted but not required to appoint counsel for any indigent individual in this type of case,” and explains that “[a] request may be required.” *Status Map*, *supra* note 33. Similarly, it defines a “qualified” right to counsel as limiting “[t]he established right to counsel or discretionary appointment of counsel . . . in some way, including: the only authority comes from a lower/intermediate court decision or a city government, not a high court or state legislature; a case has cast doubt on prior authority; a statute is ambiguous; or the right to discretionary appointment is not for all individuals or proceedings within that type of case.” *Id.*

<sup>75</sup> *Id.* Idaho provides a discretionary right to appointed counsel for the accused in domestic violence cases, and four states plus Washington, DC provide a qualified right to counsel. *Id.* Idaho and Wyoming also provide a discretionary right to appointed counsel for petitioners in such proceedings, and nine states plus Washington, DC provide a qualified right to appointed counsel. *Id.*

<sup>76</sup> *See id.*

<sup>77</sup> Camic Tahk, *supra* note 64, at 757.

<sup>78</sup> *See generally* Carpenter et al., *supra* note 34 (explaining that while court reforms have encouraged judges to explain processes and laws to unrepresented litigants, judges frequently fail to do this—meaning litigants still face significant challenges understanding terminology, court rules, and rights).

<sup>79</sup> *See* N.Y. CITY FAM. CT. COVID WORK GRP., *supra* note 35, at 26 (“Under the best of circumstances, pro se parties in Family Court need significant help navigating the complex and intimidating maze of rules, regulations, statutes and case law governing access to the Family Court and dispositions of each proceeding.”).

<sup>80</sup> *See* Carpenter et al., *supra* note 34, at 539–48; N.Y. CITY FAM. CT. COVID WORK GRP., *supra* note 35, at 16, 19–21, 26.

<sup>81</sup> *See* Carpenter et al., *supra* note 34, at 539–56.

<sup>82</sup> *See generally id.* (providing examples of civil protection order litigants misunderstanding court instructions and getting chastised for asking questions).

<sup>83</sup> Telephone Interview with Nathalie Gonzalez, Fam. Legal Care (Aug. 30, 2022) (notes on file with author).

order cases, including through earlier access to legal advice and administrative assistance—such as support drafting papers—those efforts have unequally targeted petitioners.<sup>84</sup> As one study found, although there have been “significant investments in access to justice reform” for protection orders, “[p]etitioners [have been] the primary focus”<sup>85</sup> and in all of the jurisdictions studied, the accused were not provided legal assistance or resources.<sup>86</sup> These discrepancies were present throughout the case proceedings,<sup>87</sup> and little to no effort was made to help the accused understand their rights, even though petitioners had “received robust, systematic, pre-hearing case development assistance.”<sup>88</sup> Overall, the study emphasized that proceedings lacked clarity or any real opportunity for either side to fully participate in the trial process effectively.<sup>89</sup>

Significant obstacles exist for individuals proceeding *pro se* in civil protection order cases. On both sides, a lack of access to assigned counsel can leave individuals navigating the complex procedures of a protection order case alone, which means that neither side is guaranteed to have been informed of the consequences that can stem from an order.

## II. PROCEEDING AS A NONCITIZEN: VULNERABILITIES AND EXTREME CONSEQUENCES

Unrepresented individuals already face substantial difficulties in civil protection order proceedings, but when immigration status is added to the equation, the challenges become even more severe. Specifically, noncitizens may face language barriers,<sup>90</sup> difficulty accessing courts due to fear of exposure to Immigration and Customs Enforcement (ICE),<sup>91</sup> and extensive immigration consequences—the most severe being deportation.<sup>92</sup> This part highlights both the unique structural issues and the immigration consequences that noncitizens can face from involvement in a civil protection order case.

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<sup>84</sup> See Carpenter et al., *supra* note 34, at 548–49, 562–63.

<sup>85</sup> *Id.* at 536–37, 562–63.

<sup>86</sup> *Id.* at 537, 563.

<sup>87</sup> *Id.* at 516.

<sup>88</sup> *Id.* at 548–49, 562–63.

<sup>89</sup> *Id.* at 539–48.

<sup>90</sup> See *infra* Section II.A.

<sup>91</sup> See *infra* Section II.B.

<sup>92</sup> See *infra* Section II.B.1.

A. *Immigration Status as an Additional Barrier in Civil Court*

The structural barriers that pro se litigants face in civil protection order cases become even more pronounced when an individual is a noncitizen, particularly if the individual is non-English speaking.<sup>93</sup> Notably, throughout these proceedings, noncitizens may face “language and cultural issues” hindering an individual’s abilities to navigate the court system.<sup>94</sup> This can be a particular problem for an unrepresented noncitizen, as there is no advocate to ensure that they can access all of the appropriate court materials in a language that they understand.<sup>95</sup> Similarly, it may be difficult to secure a qualified and consistent interpreter for the parties involved.<sup>96</sup> Domestic violence can also bring an added layer of complexity to language access in the courts, when, for example, “a petitioner[s] only available method of communication with advocates, lawyers, and judges may be an English-speaking abuser.”<sup>97</sup>

Furthermore, the court structure itself can act as a barrier to noncitizens. Specifically, individuals may fear that contact with the family regulation system could expose their own immigration status or that of their family members to government enforcement systems.<sup>98</sup> And even though family court judges are not supposed to ask about immigration status, noncitizens may still fear that their immigration status or that of the accused could be exposed as a result of the court process.<sup>99</sup> The risk of court exposure is tied to a fear of deportation, not only for the survivor, but also for the accused.<sup>100</sup> Under the Trump administration, this

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<sup>93</sup> Orloff et al., *Chapter 5.2: Ensuring Access*, *supra* note 31, at 2. This section is not intended to be a comprehensive overview of the structural challenges noncitizens face in these proceedings, but rather to highlight some of the key issues relevant to understanding the dynamics at play for noncitizens in the court system.

<sup>94</sup> *Id.* at 5; Ammar et al., *supra* note 37, at 351–52.

<sup>95</sup> *See* Ammar et al., *supra* note 37, at 351–52.

<sup>96</sup> *Id.*

<sup>97</sup> Aisha Alsinai, Max Reygers, Lisa DiMascolo, Julie Kafka, Ali Rowhani-Rahbar, Avanti Adhia, Deirdre Bowen, Sandra Shanahan, Kimberly Dalve & Alice M. Ellyson, *Use of Immigration Status for Coercive Control in Domestic Violence Protection Orders*, *FRONTIERS IN SOCIOLOGY* 6 (2023).

<sup>98</sup> *See* Thronson & Orloff, *supra* note 43, at 19; Eisenzweig, *supra* note 10, at 511; DENISE KRONSTADT & AMELIA T.R. STARR, *FUND MOD. CTS., THE INTERSECTION OF IMMIGRATION STATUS AND THE NEW YORK FAMILY COURTS* 4 (2015), <http://moderncourts.org/wp-content/uploads/2014/03/Modern-Courts-Statewide-Report-The-Intersection-of-Immigration-Status-and-the-New-York-Family-Courts.pdf> [<https://perma.cc/LR7A-XPL3>].

<sup>99</sup> KRONSTADT & STARR, *supra* note 98, at 4; *FAM. LEGAL CARE*, *supra* note 48, at 3.

<sup>100</sup> KRONSTADT & STARR, *supra* note 98, at 4.



was a reality, as ICE directly targeted and arrested individuals going to and from courthouses.<sup>101</sup>

Finally, the legal system and courts in particular can be weaponized against noncitizens as a form of threat or abuse.<sup>102</sup> In the context of domestic violence, abusers can use the court system as a means of control, threatening to expose an individual's status, and leaving them even more vulnerable to harm in these proceedings.<sup>103</sup> Furthermore, threats of family separation and deportation can prevent survivors from utilizing or accessing the court system altogether. A recent study, looking at immigration status and civil protection orders in Washington state, found that "[t]he ongoing immigration process for some petitioners, and sometimes for their loved ones, made petitioners reluctant to report to police and/or to seek legal remedies."<sup>104</sup> In many instances, abusers threatened petitioners with deportation and separation from their children, preventing individuals from leaving a partner or getting assistance.<sup>105</sup>

### B. Immigration Consequences

Although civil orders of protection were intended to be a less punitive remedy for survivors of domestic violence,<sup>106</sup> for noncitizens, protection orders can act as an extension of the criminal legal system.<sup>107</sup> Similar to the devastating consequences noncitizens may face from contact with the criminal legal system—including loss of immigration status, complications or exclusion from future immigration relief, and deportation<sup>108</sup>—

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<sup>101</sup> See NYCLU, 2019-2020 LEGISLATIVE MEMORANDUM: THE PROTECT OUR COURTS ACT 1–2 (2019), [https://www.nyclu.org/sites/default/files/field\\_documents/poca\\_legislative\\_memo\\_2019.pdf](https://www.nyclu.org/sites/default/files/field_documents/poca_legislative_memo_2019.pdf) [<https://perma.cc/8GS6-DVYU>]; S. Lisa Washington, Opinion, *How the Carceral State Punishes Survivors*, REG. REV. (Apr. 14, 2022), <https://www.theregreview.org/2022/04/14/washington-carceral-state-punishes-survivors/> [<https://perma.cc/RZ3L-5WFZ>]. New York, however, successfully challenged this practice when it passed the Protect Our Courts Act, preventing ICE “agents from surveilling, arresting and terrorizing immigrant New Yorkers at courthouses.” *Immigrant Defense Project and the ICE Out of Courts Coalition Celebrate Signing of Protect Our Courts Act*, IMMIGRANT DEF. PROJECT (Dec. 15, 2020) <https://www.immigrantdefenseproject.org/immigrant-defense-project-and-the-ice-out-of-courts-coalition-celebrates-signing-of-protect-our-courts-act/> [<https://perma.cc/HX2R-44RV>].

<sup>102</sup> Orloff et al., *Chapter 5.2: Ensuring Access*, *supra* note 31, at 4.

<sup>103</sup> *Id.*

<sup>104</sup> Alsinai et al., *supra* note 97, at 4.

<sup>105</sup> *Id.*

<sup>106</sup> Ammar et al., *supra* note 37, at 338; *see also* Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 2.

<sup>107</sup> *See infra* Section II.B.

<sup>108</sup> *See* Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (noting that “deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”); N.Y. STATE JUD. COMM. ON WOMEN CTS., *supra* note 14, at 4–5.

contact with the family regulation system through a civil order of protection can result in deportation and other extensive consequences for both parties.<sup>109</sup> Although the consequences can impact an entire family, it is helpful to understand how they vary for both the accused and the petitioner.

### 1. Consequences for the Accused

Noncitizens can face severe and long-term consequences from civil protection orders. The most severe consequence is deportation, which can result from a finding of a violation of a protection order.<sup>110</sup> Under the Immigration and Nationality Act (INA) § 237(a)(2)(E)(ii):

Any [noncitizen] who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purposes of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.<sup>111</sup>

This provision of the INA is unique because it is the “only removal ground that can [be] satisfied [solely] with a civil court

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<sup>109</sup> See *Family Court: Raising Awareness About Immigration Consequences*, *supra* note 43 (“IDP is breaking new ground by raising awareness of the negative immigration consequences that can result from contact with the Family Court system. Like the criminal legal system, the halls of Family Court are disproportionately filled with families of color, many of them immigrants. For such families, court involvement can trigger an array of immigration consequences including preclusion from citizenship, the denial of immigration relief, and even deportation. Yet, few immigrants in family court are aware of what is at stake.”).

<sup>110</sup> See Immigration and Nationality Act, Pub. L. No. 414–477, § 237(a)(2)(E)(ii), 66 Stat. 163 (1952). A full analysis of the case law in this area of the law is outside the scope of this paper. However, it should be noted that the BIA has held that the categorical approach does not apply in determining removability under this subsection of the INA, but rather an immigration judge must “consider the probative and reliable evidence regarding what a State court has determined about the [noncitizen]’s violation. In so doing, an Immigration Judge should decide (1) whether a State court ‘determine[d]’ that the [noncitizen] ‘has engaged in conduct that violates the portion of a protection order that involve[d] protection against credible threats of violence, repeated harassment, or bodily injury’ and (2) whether the order was ‘issued for the purpose of preventing violent or threatening acts of domestic violence.’” KATHY BRADY & LENA GRABER, IMMIGRANT LEGAL RSCH. CTR., 2022 CASE UPDATE: THE DOMESTIC VIOLENCE DEPORTATION GROUND 17–18 (2022), [https://www.ilrc.org/sites/default/files/resources/dv\\_case\\_update\\_march\\_2022\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/dv_case_update_march_2022_final.pdf) [<https://perma.cc/VB28-7CVB>] (quoting *Matter of Obshakto*, 27 I. & N. Dec. 173, 176–77 (B.I.A. 2017)).

<sup>111</sup> INA § 237(a)(2)(E)(ii).

order.”<sup>112</sup> Furthermore, the BIA has held that this section of the INA does not require a conviction; a finding of a violation of an order of protection is sufficient on its own to make someone deportable.<sup>113</sup> Therefore, any family court “find[ing] that an individual violated a condition of an order of protection having to do with protection from domestic violence” can make someone removable.<sup>114</sup> And because no statute of limitations exists, a finding of a violation can occur at any time, leading to someone being removed years later.<sup>115</sup>

Beyond the threat of deportation, a civil protection order can put a noncitizen at risk of being found inadmissible<sup>116</sup> and denied reentry into the United States following international travel.<sup>117</sup> Customs and Border Patrol can stop and question any noncitizen at the border about a protection order,<sup>118</sup> and any statement that the individual makes about “underlying conduct” related to the order can “serve as the basis for inadmissibility.”<sup>119</sup> For example, under the INA, an admission to conduct that qualifies as a “crime involving moral turpitude” (CMT) is sufficient to render someone inadmissible—no conviction is necessary.<sup>120</sup> In general, the BIA has interpreted CMTs as offenses that include “a reprehensible act with some form of guilty knowledge,” which, depending on the state, can include crimes such as certain kinds of assault, fraud, theft, or domestic violence.<sup>121</sup> This leaves noncitizens who have orders of protection

<sup>112</sup> ALBANY L. SCH., *supra* note 24, at 36.

<sup>113</sup> Thronson & Orloff, *supra* note 43, at 20; *Obshatko*, 27 I. & N. Dec. at 175.

<sup>114</sup> *Orders of Protection*, *supra* note 12, at 9. “This is a dangerous removal ground because it may be found to include a finding of *any* violation of a DV ‘stay-away’ order, no matter how innocuous the conduct.” BRADY & GRABER, *supra* note 110, at 17.

<sup>115</sup> IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12.

<sup>116</sup> Inadmissibility is an immigration term for when someone is not lawfully permitted to enter or remain in the United States. See INA § 212.

<sup>117</sup> *Orders of Protection*, *supra* note 12, at 11; *FCA Article 8—Family Offenses: Orders of Protection*, FUND MOD. CTS. (2017) [hereinafter *FCA Article 8—Family Offenses*], <https://immigrants.moderncourts.org/module/article-8-family-offenses/issues-for-the-respondent/orders-of-protection/> [https://perma.cc/TFE9-XJN6].

<sup>118</sup> See IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12.

<sup>119</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., ADVERSE CONSEQUENCES TO FAMILY COURT DISPOSITIONS 11 (2017), <https://www.americanbar.org/content/dam/aba/administrative/crsj/webinar/advisory-memo.pdf> [https://perma.cc/ZCE9-9EAK].

<sup>120</sup> INA § 212(a)(2)(A)(i). Crime involving moral turpitude is a legal term in immigration law that is not defined by the INA. Courts and the BIA have interpreted its meaning over time through case law. *Policy Manual: Chapter 5—Conditional Bars for Acts in Statutory Period*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5#footnotelink-3> [https://perma.cc/LQY9-V5T3].

<sup>121</sup> *Policy Manual: Chapter 5—Conditional Bars for Acts in Statutory Period*, *supra* note 120.

imposed against them particularly vulnerable when traveling abroad and may limit their ability to move freely.<sup>122</sup>

Noncitizens may also face consequences simply from the existence of a civil protection order. Several immigration applications,<sup>123</sup> including Naturalization,<sup>124</sup> cancellation of removal,<sup>125</sup> certain waivers of inadmissibility,<sup>126</sup> and asylum involve a discretionary or totality of the circumstances analysis,<sup>127</sup> in addition to statutory requirements.<sup>128</sup> An order of protection—permanent or temporary, active or expired, by consent or through admission—can be highly negative in a discretionary or totality of the circumstances analysis.<sup>129</sup> This is particularly true for applicants who must show “good moral character.”<sup>130</sup> While an order of protection will not bar someone

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<sup>122</sup> See, e.g., IMMIGRANT DEF. PROJECT, WILL A FAMILY COURT CASE AFFECT MY IMMIGRATION STATUS? 1 (2021) [hereinafter IMMIGRANT DEF. PROJECT, WILL A FAMILY COURT CASE] <https://www.immigrantdefenseproject.org/wp-content/uploads/family-court-handout.pdf> [<https://perma.cc/S7BJ-GA44>] (recommending that noncitizens with orders of protections imposed against them refrain from traveling abroad).

<sup>123</sup> An application for an immigration benefit is defined as “any application or petition to confer, certify, change, adjust, or extend any status granted under the Immigration and Nationality Act.” 8 U.S.C. § 1572(2).

<sup>124</sup> “Naturalization is the process by which U.S. citizenship is granted to a lawful permanent resident.” *Citizenship and Naturalization*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization> [<https://perma.cc/5RAN-DBZ5>].

<sup>125</sup> “Cancellation of removal is an immigration benefit whereby permanent residents and non-permanent residents may apply to an immigration judge to adjust their status from that of deportable [noncitizen] to one lawfully admitted for permanent residence.” *Cancellation of Removal*, CORNELL L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/cancellation\\_of\\_removal#:~:text=Cancellation%20of%20removal%20is%20an,provided%20certain%20conditions%20are%20met](https://www.law.cornell.edu/wex/cancellation_of_removal#:~:text=Cancellation%20of%20removal%20is%20an,provided%20certain%20conditions%20are%20met) [<https://perma.cc/Z9B8-URRU>]. See also INA § 239(b).

<sup>126</sup> Under certain circumstances, individuals who are inadmissible can apply for a waiver that would allow them to proceed with an application for immigration status even though they would otherwise be ineligible. See *Policy Manual: Volume 9—Waivers and Other Forms of Relief*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-9-part-a> [<https://perma.cc/BR2K-UW8Z>].

<sup>127</sup> “Many immigration benefits require the requestor to demonstrate that the request merits a favorable exercise of discretion . . . . For these benefits, a discretionary analysis is a separate, additional component of adjudicating the benefit request.” *Policy Manual: Chapter 8—Discretionary Analysis*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8> [<https://perma.cc/WHX3-LK9V>].

<sup>128</sup> See INA §§ 208; 316; 239(b).

<sup>129</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 11. See also EM PUHL & MARIE MARK, IMMIGRANT DEF. PROJECT, BEST PRACTICES GUIDE TO SCREENING FOR IMMIGRATION CONSEQUENCES IN NEW YORK FAMILY COURT 2 (2021), <https://www.immigrantdefenseproject.org/wp-content/uploads/Best-Practice-Guide-to-Screening-for-Immigration-Consequences-in-Family-Court-July-2021.pdf> [<https://perma.cc/DK3E-AUDM>] (explaining how “[f]indings by a family court can also be used by an immigration agency to deny any benefit based on the agency’s discretion authority”).

<sup>130</sup> Thronson & Orloff, *supra* note 43, at 19. “[G]ood moral character” is an immigration legal term that has been defined by immigration statutes and regulations. See INA § 316(e); 8 C.F.R. § 316.10(a)(2) (2023).

from showing good moral character under the statute,<sup>131</sup> it will likely be counted against them—even if all of the statutory requirements are fulfilled.<sup>132</sup> Depending on the circumstances, it could lead to the denial of an application.<sup>133</sup> Additionally, because even expired orders of protection can be counted in these analyses, individuals may need to delay applications in order to reduce the chances of any resulting complications.<sup>134</sup>

Protection orders can also put an individual at heightened risk of exposure to DHS and ICE, and therefore, removal proceedings. Forty-eight states maintain a database of protection orders,<sup>135</sup> and thirty-two of those jurisdictions have a protection order registry or database established by statute.<sup>136</sup> In some states, those databases are shared directly with the Federal Bureau of Investigation's (FBI) National Crime Information Center,<sup>137</sup> a federal database that is accessible by almost every law enforcement agency in the country, including DHS.<sup>138</sup> Through this database, immigration agencies are not only able to determine if someone has an order of protection issued against them, but can also access the order's related information.<sup>139</sup> This information can include the person's name, race, and sex; the type of order, date of issuance, date of expiration, and conditions of the order;<sup>140</sup> as well as possibly their date of birth, social security number, or driver's license

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<sup>131</sup> An individual can be permanently barred from showing good moral character if they have been convicted of murder or an aggravated felony. *See* INA § 101(f); 8 C.F.R. § 316.10(b)(1) (2023). Additionally, an individual can be conditionally barred from showing good moral character if, during the five years prior to their filing, they are found to have engaged in or been convicted of any of the additional actions listed in INA section 101(f). *See* 8 C.F.R. § 316.10(a)(2) (2023).

<sup>132</sup> *See FCA Article 8—Family Offenses*, *supra* note 117; IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12.

<sup>133</sup> *See FCA Article 8—Family Offenses*, *supra* note 117. Orders of protection are extremely negative in discretionary and other totality of the circumstances analyses, and it is particularly challenging to explain their existence or to present contrary positive equities that might outweigh the negative. Interview with Em Puhl, Immigrant Def. Project, (Sept. 1, 2022) (notes on file with author).

<sup>134</sup> *See* IMMIGRANT DEF. PROJECT, WILL A FAMILY COURT CASE, *supra* note 122, at 1 (advising noncitizens who have family court cases—“especially an order of protection”—to consider delaying the submission of any affirmative immigration applications).

<sup>135</sup> KEILITZ ET AL., *supra* note 28, at 10.

<sup>136</sup> *Id.*

<sup>137</sup> BECKI GOGGINS & ANNE GALLEGOS, NAT'L CTR. STATE CTS., STATE PROGRESS IN RECORD REPORTING FOR FIREARM-RELATED BACKGROUND CHECKS: PROTECTION ORDER SUBMISSIONS 8–10 (2016), <https://www.ojp.gov/pdffiles1/bjs/grants/249864.pdf> [<https://perma.cc/D6Q4-A4CU>]; IND. CONTINUING LEGAL EDUC. F., PROTECTIVE ORDER EXPUNGEMENT 1 (2021), [https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1047&context=iclef\\_2021](https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1047&context=iclef_2021) [<https://perma.cc/YG7G-DE2R>].

<sup>138</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 4.

<sup>139</sup> IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12.

<sup>140</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 4–5.

number.<sup>141</sup> Notably, this information is accessible for up to five years after a protection order has expired,<sup>142</sup> leaving someone vulnerable to immigration exposure long after the imposition of an order of protection.

Finally, an order of protection can significantly increase an individual's likelihood of contact with the criminal legal system, which can lead to severe immigration consequences.<sup>143</sup> Particularly, this can occur through the enforcement of a protection order, as they are often enforced by the police.<sup>144</sup> If an individual contacts the police to report a violation, the police are "authorize[d] . . . to intervene without having to show evidence of occurring violence."<sup>145</sup> An arrest in this situation can be charged as contempt, which could qualify as a deportable offense.<sup>146</sup> Furthermore, an arrest can lead to fingerprinting, which can expose individuals to ICE,<sup>147</sup> as some state criminal systems automatically share information with federal immigration authorities.<sup>148</sup> Apart from contacting the police, individuals can also file violations with the family court,<sup>149</sup> which can lead to criminal prosecution.<sup>150</sup> A resulting conviction could then place someone into removal proceedings.<sup>151</sup>

Ultimately, an imposed protection order brings significant risk to a noncitizen, directly and indirectly. The risks are long-lasting, often extending well beyond the order's designated period.<sup>152</sup> This reality significantly complicates the effectiveness and value of this form of relief, as something that is intended to mitigate harm can instead lead to an individual's indefinite vulnerability to immigration complications or deportation.

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<sup>141</sup> GOGGINS & GALLEGOS, *supra* note 137, at 5.

<sup>142</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 5.

<sup>143</sup> *See supra* Section II.B.

<sup>144</sup> Ammar et al., *supra* note 37, at 338–39.

<sup>145</sup> *Id.* at 338.

<sup>146</sup> *See* Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 32–33; *see also* Matter of Obshakto, 27 I. & N. Dec. 173, 173–74 (B.I.A. 2017).

<sup>147</sup> NYCLU & IMMIGRANT DEF. PROJECT, NEW YORK PRACTICE ADVISORY: WHEN DOES FINGERPRINTING PUT YOUR CLIENT AT RISK WITH ICE? 1 (2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/DCJS-advisory-7-27-17-6-PM-updated1.pdf> [<https://perma.cc/8MLL-P8TL>].

<sup>148</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 5–6.

<sup>149</sup> *Restraining Orders*, WOMENSLAW, <https://www.womenslaw.org/laws/ny/restraining-orders/orders-protection/steps-obtaining-order-protection> [<https://perma.cc/LJ98-UFVX>].

<sup>150</sup> *See* ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 11 (explaining that in New York, an admission made during a family offense case, such as a protection order proceeding, can be used to support a criminal prosecution).

<sup>151</sup> *Id.*

<sup>152</sup> A person who has an order of protection imposed against them is essentially left exposed to the possibility of arrest (and potential deportation) for up to five years after the order of protection has expired. Interview with Em Puhl, *supra* note 133.



## 2. Consequences for Petitioners

Civil protection orders can also place noncitizen petitioners at significant risk of immigration consequences. These consequences may inform a petitioner's decision as to whether or not to proceed with an order.

Importantly, filing an order of protection can result in CPS involvement, which can expose a petitioner to child abuse/neglect charges.<sup>153</sup> This is a serious risk for any individual, as their children can be taken away as a result.<sup>154</sup> However, for a noncitizen, this is an even greater risk, since child abuse/neglect charges can bring significant immigration consequences.<sup>155</sup> As such, a noncitizen can, through a process intended to help them access safety, inadvertently expose themselves to harm, jeopardizing their status in the United States.

The existence of a protection order can also negatively impact or delay a future immigration application.<sup>156</sup> If the petitioner is seeking an immigration status that is dependent on "[a] spousal relationship to a party against whom an [order of protection] is issued, USCIS [United States Citizenship and Immigration Services] will not schedule an interview for the application."<sup>157</sup> Similarly, an order of protection can impact a noncitizen child's ability to "derive immigration status from their parents."<sup>158</sup> Therefore, a protection order can directly impact one's ability to stabilize their own status or that of their child.

Furthermore, noncitizen petitioners can be exposed to mutual orders<sup>159</sup> or police contact through the filing of a civil protection order—placing them at the same risks as the accused.<sup>160</sup> Although a protected party cannot be prosecuted for a finding of a violation of their own protection order,<sup>161</sup> they can be exposed to retaliatory actions by an alleged abuser who could try to have them arrested<sup>162</sup> or who could file a crisscross

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<sup>153</sup> Eisenzweig, *supra* note 10, at 493–94.

<sup>154</sup> See *supra* note 6 and accompanying text.

<sup>155</sup> Eisenzweig, *supra* note 10, at 513.

<sup>156</sup> IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12.

<sup>157</sup> *Id.*

<sup>158</sup> *Orders of Protection*, *supra* note 12.

<sup>159</sup> A mutual order is "a protection order issued against both parties, although only one party has filed a petition and effected service on the opposing party." Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 29. Generally, when a mutual order is imposed, both sides must abide by the court stipulations. *Id.* at 29–30.

<sup>160</sup> *Id.* at 30–31; Thronson & Orloff, *supra* note 43, at 19.

<sup>161</sup> ANDREA CARCAMO CAVAZOS, LIMAYLI HUGUET & LESLYE E. ORLOFF, NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT, IMMIGRANTS AND PROTECTION ORDERS BENCH CARD 2 (2019), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Bench-Card-Immigrants-and-Protection-Orders.pdf> [<https://perma.cc/K549-H7P2>].

<sup>162</sup> N.Y. STATE JUD. COMM. ON WOMEN CTS., *supra* note 14, at 4.

petition.<sup>163</sup> The legal system is frequently used as a coercive form of abuse, particularly where one party in a relationship lacks status.<sup>164</sup> Additionally, noncitizens can face special difficulties enforcing orders of protection through the police due to language and cultural barriers,<sup>165</sup> potentially leading to their own arrest rather than the accused's.<sup>166</sup> Therefore, by utilizing a structure designed to reduce harm, a noncitizen survivor can find themselves at even greater risk of harm.

Finally, similar to the accused, petitioners can face a heightened risk of exposure to immigration agencies through protection order data sharing.<sup>167</sup> The information shared from state registries with the FBI and subsequently, immigration authorities, includes not only information about the accused, but also the name of the party who made the request, other protected parties, and any shared children.<sup>168</sup> Therefore, just by filing a petition, the petitioner has now potentially been exposed to the family, criminal, and immigration legal systems. Action impacting protected individuals because of this information is less common; however, the petitioner remains vulnerable to exposure to DHS.<sup>169</sup>

Contact with the family regulation system through a civil order of protection can leave an entire family vulnerable to immigration consequences, not just the person against whom the order is imposed. Ultimately, while the accused party will face the most severe consequences, the petitioner faces their own consequences, including an identical threat of deportation if a mutual order or crisscross petition is filed. Children, too, as a result of a protection order, can lose the ability to adjust their own immigration status.<sup>170</sup> Therefore, for noncitizens, because of the ways these systems overlap, the value of this civil remedy is severely limited and, in many ways, fails to accomplish the broader goals it was designed to fulfill.

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<sup>163</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 29–31. A crisscross petition occurs when the accused, after having a protection order filed against them, files their own protection order complaint with the court against the petitioner. *Id.* at 30.

<sup>164</sup> See KRONSTADT & STARR, *supra* note 98, at 18–19.

<sup>165</sup> Thronson & Orloff, *supra* note 43, at 19. It has been found that “[w]hen immigrant . . . [survivors] call police for help, police . . . fail to use qualified interpreters . . . thus increasing the likelihood that the victim will be arrested either with or instead of the perpetrator.” *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> See *supra* Section II.B.1.

<sup>168</sup> IMMIGRANT DEF. PROJECT, UNDERSTANDING IMMIGRATION, *supra* note 12.

<sup>169</sup> Interview with Em Puhl, *supra* note 133.

<sup>170</sup> *Orders of Protection*, *supra* note 12, at 12.

### III. NEW YORK: WHY THE RIGHT TO ASSIGNED COUNSEL ALONE DOES NOT SOLVE THE PROBLEM

As the only state in the country that provides a right to assigned counsel for both parties in a civil protection order proceeding, New York provides unique insights into the ways in which guaranteed counsel may or may not mitigate the challenges faced by noncitizens.<sup>171</sup> Although the New York model offers one necessary structural protection, it ultimately falls short of a sufficient solution because of issues with access to counsel; the temporal limitations of that counsel; a lack of federally protected rights; and the complex interactions between the immigration, criminal, and family legal systems.

First, despite a statutory right to assigned counsel for both parties in civil protection order cases, gaps remain in accessing this right. Since 1975, New York's Family Court Act has provided a "constitutional right to counsel" to some individuals in family court proceedings.<sup>172</sup> Such individuals include "the petitioner and the respondent"<sup>173</sup> in civil protection order proceedings.<sup>174</sup> However, "[o]nly the Judge can decide if you qualify for an attorney[,] [and] [t]he Judge may not appoint an attorney unless you ask for one."<sup>175</sup> As such, this right is not automatic. Additionally, according to practitioners, the income restrictions on appointed counsel leave a large group of people unrepresented, as they do not qualify as indigent, but also cannot afford a private attorney.<sup>176</sup>

As a result, even with this right, many individuals proceed pro se in New York Family Court. Of the ten different types of proceedings in New York family courts, family offenses (which include orders of protection) have consistently ranked as the third highest case load type.<sup>177</sup> Specifically, between March 2020 and October 2021, New York family courts "issued 63,603 orders of protection" and extended or modified 93,941

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<sup>171</sup> See *supra* Section I.B.

<sup>172</sup> N.Y. FAM. CT. ACT § 261 (McKinney 2023); N.Y. INDIGENT LEGAL SERVS., STANDARDS FOR DETERMINING FINANCIAL ELIGIBILITY FOR ASSIGNED COUNSEL 2–3, 33 (2021), <https://www.ils.ny.gov/files/Eligibility%20Standards%20Final%20021621.pdf> [<https://perma.cc/VC2G-8MSR>].

<sup>173</sup> N.Y. FAM. CT. ACT § 262(ii) (McKinney 2023).

<sup>174</sup> *Id.* § 842.

<sup>175</sup> *Domestic Violence (Family Offense)*, NYCOURTS.GOV, [http://ww2.nycourts.gov/COURTS/nyc/family/faqs\\_domesticviolence.shtml#op9](http://ww2.nycourts.gov/COURTS/nyc/family/faqs_domesticviolence.shtml#op9) [<https://perma.cc/HEV7-NJG9>].

<sup>176</sup> Telephone Interview with Mary Armistead, Legal Project (Aug. 25, 2022) (notes on file with author).

<sup>177</sup> *Family Court Caseload Activity*, NYCOURTS.GOV, <https://ww2.nycourts.gov/family-court-data-35076> [<https://perma.cc/UJJ5-5G2Z>].

orders.<sup>178</sup> And according to a recent report, 80 percent of litigants in family court are unrepresented.<sup>179</sup> Therefore, a significant population of people must be proceeding pro se in civil protection order cases.

Second, the delayed timing of appointed counsel severely hinders the effectiveness of this right for noncitizens. In New York, where an individual can ask for a temporary protection order prior to a full order, a petitioner cannot ask for appointed counsel until their first appearance before a judge after already having filed a petition.<sup>180</sup> This means that there is no guarantee that a petitioner has had the opportunity to speak with an attorney regarding potential immigration consequences—for themselves or the accused—prior to filing.<sup>181</sup> Similarly, accused individuals are not able to ask for appointed counsel until their first court appearance before a judge, which occurs after a temporary protection order has already been filed and imposed.<sup>182</sup> The delayed timing of assigned counsel is particularly noteworthy because a temporary protection order can bring about almost all of the same consequences to an accused individual as a full order.<sup>183</sup> Furthermore, at this point in the proceedings, only a petitioner has had the opportunity to tell their story—the accused individual does not have the opportunity to fight the allegations until their appearance in court for a full order.<sup>184</sup>

Third, unlike criminal defense counsel, who is constitutionally obligated to ensure that noncitizens are fully informed of the immigration consequences of a guilty plea in

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<sup>178</sup> N.Y. CITY FAM. CT. COVID WORK GRP., *supra* note 35, at 3 n.5.

<sup>179</sup> *Id.* at 4.

<sup>180</sup> Telephone Interview with Shani Adess, New York Legal Assistance Group (Oct. 11, 2022) (notes on file with author). Additionally, this same delay in representation tends to exist for noncourt appointed attorneys, where individuals seek representation only after a temporary order has been granted. Telephone Interview with Mary Armistead, *supra* note 176.

<sup>181</sup> Throughout the pandemic, when courts were closed and no onsite assistance was available, organizations like the New York Legal Assistance Group helped petitioners by providing consultations prior to the initiation of court proceedings. Telephone Interview with Shani Adess, *supra* note 180. This early intervention allowed individuals to consult with lawyers prior to filing a petition, enabling them to make more informed decisions for themselves. *Id.* This example, while stemming from unique circumstances, highlights how earlier access to attorneys, before any documents have been filed in court, can be hugely important for litigants and could be even more important for noncitizen litigants. *Id.*

<sup>182</sup> Telephone Interview with Shani Adess, *supra* note 180.

<sup>183</sup> See ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 11.

<sup>184</sup> Carpenter et al., *supra* note 34, at 537.

criminal proceedings,<sup>185</sup> family defense counsel is not,<sup>186</sup> therefore limiting the structural protection that counsel can provide in these proceedings. In *Padilla v. Kentucky*, the Supreme Court recognized the direct link between contact with the criminal legal system and deportation.<sup>187</sup> As a result, the court held that “constitutionally competent counsel” under the Sixth Amendment included fully informing an individual of the immigration consequences of certain convictions.<sup>188</sup> Even though parallel consequences can result for noncitizen litigants in civil protection order proceedings, this obligation has not been extended.<sup>189</sup> Therefore, the lack of federal constitutional obligations means that there is no guarantee that an individual is being fully informed of all of the consequences that may stem from their family court case.<sup>190</sup>

Finally, having assigned counsel does not guarantee that an individual is receiving complete advice on the immigration consequences of a civil protection order. As the Immigrant Defense Project explains, “[i]mmigration law is complex and it can be overwhelming for counsel to navigate a client’s potential immigration consequences while managing the complexities and urgent issues of a family court case.”<sup>191</sup> Despite ongoing efforts to increase knowledge of the interaction of these systems,<sup>192</sup> clerks, judges, and advocates are frequently unaware of the immigration consequences that can stem from family court dispositions.<sup>193</sup> Furthermore, for panel attorneys,<sup>194</sup> who may not work in an office with immigration experts, it is necessary to seek out this specialized information.<sup>195</sup> The fact that trained

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<sup>185</sup> N.Y. CITY BAR, *PADILLA V. KENTUCKY: THE NEW YORK CITY CRIMINAL COURT SYSTEM, ONE YEAR LATER 1* (2011), <https://www2.nycbar.org/pdf/report/uploads/PadillaCrimCtsCJOReportFINAL6.15.11.pdf> [<https://perma.cc/U44H-7JXB>].

<sup>186</sup> Thronson & Orloff, *supra* note 43, at 20.

<sup>187</sup> *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010).

<sup>188</sup> *Id.* at 360.

<sup>189</sup> ALBANY L. SCH., *supra* note 24, at 9, 12, 18, 21.

<sup>190</sup> There may be ethical obligations that require counsel to inform individuals of such consequences. *See id.* at 12.

<sup>191</sup> PUHL & MARK, *supra* note 129, at 1.

<sup>192</sup> Several public defenders in New York work collaboratively on family, criminal, and immigration cases. *See* Eisenzweig, *supra* note 10, at 503 (discussing the Bronx Defenders holistic approach to representation); *see also Our Mission*, BROOKLYN DEF. SERVS., <https://bds.org/about> [<https://perma.cc/F2UN-TVUJ>].

<sup>193</sup> *See* KRONSTADT & STARR, *supra* note 98, at 3.

<sup>194</sup> An 18-B panel attorney is a private attorney paid by the state who is trained to represent indigent clients in criminal proceedings. *Assigned Counsel Plan (18B)*, NYCOURTS.GOV, <https://www.nycourts.gov/courts/ad1/committees&programs/18b/index.shtml> [<https://perma.cc/4QKR-QWZM>].

<sup>195</sup> In New York, this support comes from Regional Immigration Assistance Centers, but it is not automatic, and it requires that individual attorneys are aware of the potential immigration and criminal consequences. *See RIAC General Information*,

advocates and judges do not always fully understand the potential consequences of how these systems interact highlights how dangerous it can be for a noncitizen to navigate this process on their own. It also shows how simply having assigned counsel does not solve this issue.

Overall, New York's model not only provides important insight into the benefits of assigned counsel, but it also highlights the significant challenges that remain for noncitizens. States should expand access to assigned counsel in these proceedings, but to make this right more effective, they must ensure that petitioners are able to access counsel prior to filing and that the accused receives counsel as soon as an order is imposed against them. Ultimately, however, New York's model shows how assigned counsel, even if amended, is insufficient on its own to address the issues resulting from the interactions of these larger systems.

#### IV. COMPREHENSIVE MULTILEVEL INTERVENTION FOR BOTH PARTIES

Given the overwhelming number of individuals who proceed unrepresented in civil protection order cases and the significant issues that persist even with a right to assigned counsel, protections at all levels of a civil protection order case need to be implemented to address the complex issues noncitizens face in these proceedings. This part identifies four important moments: (1) an individual's access to information prior to contact with state systems, (2) the temporary order stage, (3) the full order stage, and (4) the post-order period. It discusses how allocation of state funding, the creation of a procedural family court rule, and post-order remedies could begin to mitigate some of these unique harms.

##### A. *Preemptive Protections*

One way to ensure that noncitizens are fully appraised of the potential immigration consequences of a civil protection order is to provide information to individuals well before they have any contact with the family regulation system.<sup>196</sup> Early access to information allows individuals to make more informed

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N.Y. STATE OFF. INDIGENT LEGAL SERVS., <https://www.ils.ny.gov/node/204/riac-general-information> [<https://perma.cc/C349-C2SK>].

<sup>196</sup> See, e.g., KRONSTADT & STARR, *supra* note 98, at 25, 28 n.136 (discussing ways to get information to undocumented communities without "triggering any outcome-determinative process").



decisions about filing orders and similarly allows someone to understand what having an order imposed against them means. States should create community legal services grants that fund working groups—of immigration, criminal, and family law attorneys, as well as community organizers—that are focused on creating resources that address the intersection of these systems and the potential consequences both parties can face in civil protection order cases. Existing efforts, such as those in New York, can provide guidance on what this working group could look like and how it could be most effective.

In New York, efforts to assist pro se litigants in family court proceedings have included establishing infrastructure at the family courts,<sup>197</sup> creating specialized immigration centers,<sup>198</sup> and distributing nonprofit materials.<sup>199</sup> A key part of this infrastructure is court Help Centers that have historically assisted unrepresented litigants with filings and legal information.<sup>200</sup> However, the information provided by the courts is limited.<sup>201</sup> Additionally, when the courts were closed due to the COVID-19 pandemic, this resource was inaccessible,<sup>202</sup> and groups found that the court website was unclear, hard to access, and not sufficiently translated.<sup>203</sup>

In addition to the Help Centers, New York has Regional Immigration Assistance Centers (RIAC) that act as hubs of specialized knowledge on immigration issues that stem from family and criminal court contact.<sup>204</sup> The goal of the RIACs is to fill a gap where there is a lack of “aware[ness] of the importance of immigration-related issues in family court proceedings.”<sup>205</sup> The RIACs act as a resource for defense attorneys and

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<sup>197</sup> N.Y. CITY FAM. CT. COVID WORK GRP., *supra* note 35, at 5.

<sup>198</sup> KRONSTADT & STARR, *supra* note 98, at 27–28.

<sup>199</sup> See, e.g., *Legal Resource Guides*, FAM. LEGAL CARE, <https://familylegalcare.org/guide/> [<https://perma.cc/RX7K-L6EP>] (providing resources on the New York family regulation system); KRONSTADT & STARR, *supra* note 98, at 26; IMMIGRANT DEF. PROJECT, WILL A FAMILY COURT CASE, *supra* note 122, at 1.

<sup>200</sup> N.Y. CITY FAM. CT. COVID WORK GRP., *supra* note 35, at 5, 26–27, 34.

<sup>201</sup> Telephone Interview with Shani Adess, *supra* note 180.

<sup>202</sup> N.Y. CITY FAM. CT. COVID WORK GRP., *supra* note 35, at 5, 26–27, 34.

<sup>203</sup> *Id.* at 5, 17–19.

<sup>204</sup> ALBANY L. SCH., *supra* note 24, at 8; *RIAC General Information*, *supra* note 195.

<sup>205</sup> KRONSTADT & STARR, *supra* note 98, at 3. “The primary purpose of the statewide network of ILS regional resource centers is to provide legal support and training to assigned attorneys providing mandated representation to indigent immigrant clients pursuant to NYS County Law Article 18-B in family and criminal court proceedings. The goal is to enhance compliance by assigned counsel with the mandate established by the United States Supreme Court in *Padilla v. Kentucky* to advise noncitizen clients about the immigration consequence(s) of a conviction, as well as about the potential immigration consequences arising within a family court proceeding.” *Id.* at 28 n.136.

unrepresented litigants.<sup>206</sup> These centers are important, but individuals must know that they exist.

Finally, nonprofit organizations like Family Legal Care and the Immigrant Defense Project create resources on the immigration consequences of family and criminal court contact.<sup>207</sup> These materials are targeted toward advocates and unrepresented individuals.<sup>208</sup> While helpful, these resources remain limited, and advocates note that it can be difficult to get them to the communities they are intended to assist.<sup>209</sup>

These three structures provide important guidance on how best to disseminate information on these complex issues to unrepresented noncitizens. At the same time, they also highlight how receiving this information is often contingent on some kind of initial contact with state systems. Therefore, greater attention needs to be focused on getting information to communities preemptively.<sup>210</sup> Last year, the organization Family Legal Care hosted an outdoor informational session on family court for noncitizens in Sunset Park, a neighborhood where many of its clients live.<sup>211</sup> Community members had the opportunity to hear from representatives, to ask questions, and to express their own concerns.<sup>212</sup> The best way to understand what information is needed and how to get that information to people is to center community voices.<sup>213</sup> The creation of state-funded community

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<sup>206</sup> *RIAC General Information*, *supra* note 195. Similar services are provided by the Immigrant Defense Project. *See Legal Advice & Training*, IMMIGRANT DEF. PROJECT (2022), <https://www.immigrantdefenseproject.org/legal-training-advice/> [<https://perma.cc/UMM8-PFAA>].

<sup>207</sup> *See, e.g., Legal Resource Guides*, *supra* note 199 (providing specialized resources on family court proceedings); KRONSTADT & STARR, *supra* note 98, at 26; PUHL & MARK, *supra* note 128, at 1.

<sup>208</sup> *See, e.g., FAM. LEGAL CARE*, *supra* note 48, at 3 (answering legal questions related to immigration status and family court); KRONSTADT & STARR, *supra* note 98, at 26; IMMIGRANT DEF. PROJECT, *WILL A FAMILY COURT CASE* *supra* note 122, at 1; PUHL & MARK, *supra* note 129, at 1.

<sup>209</sup> Telephone Interview with Nathalie Gonzalez, *supra* note 83; Interview with Em Puhl, *supra* note 133; KRONSTADT & STARR, *supra* note 98, at 3.

<sup>210</sup> *See* KRONSTADT & STARR, *supra* note 98, at 24–28 (highlighting the need to reach undocumented communities).

<sup>211</sup> Telephone Interview with Nathalie Gonzalez, *supra* note 83.

<sup>212</sup> *Id.* Similarly, the Immigrant Defense Project “work[s] in close partnership with impacted communities to best serve their needs,” designing trainings and Know Your Rights materials specific to community priorities. *Community Defense from Ice Raids and Deportation*, IMMIGRANT DEF. PROJECT (2022), <https://www.immigrantdefenseproject.org/what-we-do/advocacy/community-defense/> [<https://perma.cc/MKC4-BYUD>].

<sup>213</sup> *See, e.g., SURVIVED & PUNISHED*, <https://www.survivedandpunishedny.org/> [<https://perma.cc/W3MD-8FS9>] (describing a coalition of “community organizers, survivor advocates, legal experts, and policy advocates including currently and formerly incarcerated survivors” fighting the criminalization of survivors of domestic violence); *Our Mission*, ENVISION FREEDOM FUND, <https://envisionfreedom.org/about-us/> [<https://perma.cc/GY5Z-U54K>] (emphasizing the importance of “work[ing] alongside

legal services grants that establish interdisciplinary working groups that can expand on existing organizations' current approaches is one way to do this.

*B. Temporary Order Stage Protections*

The next important moment for a noncitizen in civil protection order proceedings is the temporary order stage. At this stage, even if the petitioner and the accused have access to assigned counsel, both parties will have interacted with the court before accessing that counsel.<sup>214</sup> Therefore, this makes it a critical point at which legal protections must be implemented. One way this could be done is through the creation of a family court procedural rule that (1) requires judges at the start of a temporary order hearing to inform petitioners that immigration consequences (including the denial or delay of an immigration application, complications to travel, and if violated, deportation) can result from a protection order, and (2) requires that service of process of a temporary order of protection include an explanation of the potential immigration consequences that can result from an order.<sup>215</sup>

A procedural rule that includes a mandated court advisal that outlines potential immigration consequences to petitioners becomes even more important in this context because of the overwhelming number of individuals who proceed unrepresented. This means that the judge may be the only guaranteed legal authority that a petitioner is interacting with at this stage of the process. Scholars have argued that an effective way to address some of the disadvantages pro se litigants face in civil courts is not only to center judges, but also to establish clear procedural guidelines on how to assist unrepresented litigants.<sup>216</sup> Advocates who have considered family court advisals also highlight that any advisal must be done universally "at all initial appearances."<sup>217</sup> A procedural rule

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impacted communities to dismantle the oppressive and interconnected criminal legal and immigration systems"). These organizations are examples of coalitions that center systems-impacted voices in their work to fight mass incarceration and advocate for survivors of domestic violence.

<sup>214</sup> See *supra* Part III.

<sup>215</sup> This proposal is inspired by suggestions made by advocates and working groups. See, e.g., ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 2 n.6; Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 35–6; see also KRONSTADT & STARR, *supra* note 98, at 29–35 (discussing the need for court rules and legislation that directly address the intersection of the family and immigration systems).

<sup>216</sup> See Carpenter et al., *supra* note 34, at 524–29, 539.

<sup>217</sup> ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 2 n.7. One proposed advisal reads as follows: "I am not asking you whether or not you are a

that addresses the vulnerability of noncitizens in these proceedings would provide protection while ensuring that an advisal is not discretionary.<sup>218</sup>

Any procedural rule at this stage must balance the sensitive nature of a temporary filing with the need to inform individuals. Noncitizens already face many barriers to filing protection orders, and a judicial notification at this stage could cause more harm than good.<sup>219</sup> Importantly, there is a possibility that this kind of intervention could be misunderstood and lead to individuals being fearful to move forward with an order.<sup>220</sup> However, a court advisal could be the only opportunity for a petitioner to get information about potential immigration consequences.<sup>221</sup> Transparency allows individuals to make informed decisions, ensuring that they are not blindsided by the future consequences that they or their family could face.<sup>222</sup> As long as these structures exist—that place noncitizens at the intersection of harm—it is essential that individuals be informed of potential consequences as immediately and comprehensively as possible. One way to ensure that this warning is as sensitive as possible is for states to appoint a committee of advocates, survivors, noncitizens, and judges to help draft the rule’s language.<sup>223</sup> Centering and valuing systems-impacted voices is essential to any effective change in these structures.<sup>224</sup>

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United States citizen, but if you are not, then you may wish to consider consulting with a lawyer to discuss whether this case presents any immigration-related or other type of consequence that you should be aware of before proceeding in this case. Do you understand this?” *Id.*

<sup>218</sup> See, e.g., Carpenter et al., *supra* note 34, at 521–24 (discussing how judges have often failed to heed recommendations for assisting pro se litigants when guidance is not mandated); *IDP & Partners Cheer the Passage of Court Notification Bill*, IMMIGRANT DEF. PROJECT (June 1, 2022), <https://www.immigrantdefenseproject.org/idp-partners-cheer-the-passage-of-court-notification-bill/> [https://perma.cc/2K6Z-GRQG] (discussing the need for uniform language in criminal court notifications because of current “notifications vary[ing] in their clarity and effectiveness”).

<sup>219</sup> Telephone Interview with Mary Armistead, *supra* note 176; Telephone Interview with Shani Adess, *supra* note 180.

<sup>220</sup> Telephone Interview with Mary Armistead, *supra* note 176.

<sup>221</sup> See *supra* Section I.B; Part III.

<sup>222</sup> Interview with Em Puhl, *supra* note 133; Telephone Interview with Nathalie Gonzalez, *supra* note 83.

<sup>223</sup> See Washington, *Survived & Coerced*, *supra* note 6, at 1161–62 (“If family safety truly matters to us, we must interrogate how those disproportionately impacted by the carceral state define safety and support. Including community perspectives as part of participatory research is one possible intervention in the subjugation of marginalized knowledge. The demand for a centering of survivor knowledge is not new. In fact, feminist voices within the anti-violence movement have criticized the carceral response to domestic violence for decades. Yet, their language has been utilized to further bolster the criminal legal response to domestic violence.”).

<sup>224</sup> See *id.*; see also Boudin et al., *supra* note 45, at 1–3 (discussing the inception of the Survivors Justice Project as a collaboration between “lawyers, advocates, organizers, researchers, and social workers[,] most of [whom] have survived prison

Additionally, it is equally important that the creation of any procedural rule at the temporary order stage also focuses on the process for the accused. Since the accused is not involved in the court process at this stage, but can still face the consequences of a temporary order,<sup>225</sup> a procedural rule focused on service of process could be an effective way to address this issue. This rule should require that service of process documents for a civil protection order include a memorandum outlining the potential immigration consequences of an order of protection. In addition, it should have referrals to organizations that can provide assistance to the different parties in these proceedings. These documents should be translated into several languages, perhaps the three most spoken languages in the relevant state or neighborhood. Similarly, to ensure the sensitivity and comprehensiveness of this document, states could appoint an interdisciplinary committee to draft the resource.<sup>226</sup>

### C. *Full Order Stage Protections*

The next important moment in a civil protection order proceeding is the full order stage. At this stage, both parties are present, and following a trial, a permanent order—sometimes of up to five years<sup>227</sup>—can be issued.<sup>228</sup> This makes it yet another critical point in these proceedings at which legal protections must be implemented. In addition to a two-part procedural rule at the temporary stage, states should create a third part that would require judges, at the start of the full order hearing, to inform the parties that the issuance of a full order of protection can cause immigration consequences, including potential complications with travel, denial or delay of immigration applications, and, at its most severe, deportation

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and/or domestic violence,” aimed at documenting, researching, and reporting on New York’s Domestic Violence Survivors Justice Act while supporting individuals filing applications under the law, those who have been released, and those who are still incarcerated); SUSAN HOWLEY, COUNCIL ON CRIM. JUST., REFLECTIONS ON LONG PRISON SENTENCES: A CONVERSATION WITH CRIME SURVIVORS, FORMERLY INCARCERATED PEOPLE, AND FAMILY MEMBERS 5 (2023), [https://assets.foleon.com/eu-west-2/uploads-7e3kk3/41697/reflections\\_on\\_long\\_prison\\_sentences\\_-\\_howley.4d54a984fb61.pdf](https://assets.foleon.com/eu-west-2/uploads-7e3kk3/41697/reflections_on_long_prison_sentences_-_howley.4d54a984fb61.pdf) [https://perma.cc/FH7W-6TQP] (discussing how “it is important” that work “explor[ing] the impact of long sentences on public safety and public health . . . be informed by the voices and experiences of those directly impacted”).

<sup>225</sup> See *supra* Section II.B.1.

<sup>226</sup> The importance of involving diverse voices in this process applies here as well.

<sup>227</sup> In New York state, full orders are granted for five years if there are aggravating circumstances. *Orders of Protection*, N.Y. STATE OFF., *supra* note 2.

<sup>228</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 3.

if violated. Individuals should seek immigration counsel as needed prior to proceeding.<sup>229</sup>

A procedural rule that requires judges to give this information at this stage ensures that both sides are aware of the serious consequences that can stem from a civil protection order. Again, because such high numbers of individuals proceed unrepresented in these cases, it becomes even more important for a judge to be the central conveyor of this information.<sup>230</sup> A variety of stakeholders have advocated that courts should provide advisals on the immigration consequences that stem from family court orders and specifically, orders of protection.<sup>231</sup> Some include simple advisals that recommend talking to a lawyer,<sup>232</sup> while others suggest that judges provide greater detail, including that orders of protection can act as evidence in certain immigration applications and that violating an order is a deportable offense.<sup>233</sup> Finally, others suggest that judges give *Padilla*-like advisals, explaining that violating a protection order can lead to deportation.<sup>234</sup> The rule proposed here takes these previous suggestions into account, but rather than have it stand on its own, makes it a part of a multilevel rule that addresses all stages of a civil protection order.

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<sup>229</sup> This proposal is based on previous suggestions provided by advocates and working groups. See *supra* note 215. It also considers language from a New York criminal court notification bill: “[T]he court must advise the defendant on the record, that if the defendant is not a citizen of the United States, the defendant’s plea of guilty and the court’s acceptance thereof may result in the defendant’s deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States.” S. A9877A, 2022 Leg., Legis. Sess. 2021-2022 (N.Y. 2022). For further information on the bill see *IDP & Partners Cheer the Passage of Court Notification Bill*, *supra* note 218.

<sup>230</sup> See Carpenter et al., *supra* note 34, at 512–13, 536; Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 35.

<sup>231</sup> See, e.g., ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 2 n.6; Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 35; CAVAZOS ET AL., *supra* note 161, at 2; Thronson & Orloff, *supra* note 43, at 20.

<sup>232</sup> See ADVISORY COUNCIL ON IMMIGR. ISSUES FAM. CT., *supra* note 119, at 2 n.7.

<sup>233</sup> Orloff et al., *Chapter 5.1: Battered Immigrants*, *supra* note 37, at 35. An example of one such advisal is as follows: “This court’s role in these proceedings is to issue orders of protection in cases in which the court believes that a domestic violence offense under the statutes of this state occurred. The court will issue such orders without regard to the immigration status of either the petitioner or the respondent. Further, the issuance of a protection order will not have negative immigration consequences for either party. However, violation of a protection order issued by this court will be a deportable offense for any respondent who is a noncitizen.” *Id.* Other proposed language includes: “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 non-citizen*, violation of this Order may result in your being deported.” *Id.*

<sup>234</sup> CAVAZOS ET AL., *supra* note 161, at 2; Thronson & Orloff, *supra* note 43, at 20.



#### D. *Post-Order Remedies*

The final important moment of a civil protection order is the post-order period, as noncitizens are not only at heightened risk of deportation, but also can be denied reentry into the United States or be excluded from future immigration relief.<sup>235</sup> This significantly parallels the circumstances of an individual who has been convicted of a crime.<sup>236</sup> However, the same type of postconviction relief that exists in the criminal legal system<sup>237</sup> does not exist in the family regulation system.<sup>238</sup> Given this reality, states should look to expand and create avenues to mitigate the potential harm that noncitizens who have civil protection orders imposed against them can face.<sup>239</sup>

One way that states could do this would be to allow civil protection orders to be expunged.<sup>240</sup> Expungement, which would “erase” the order,<sup>241</sup> could help mitigate the long-term consequences of an order of protection—including the impact it can have years after its expiration.<sup>242</sup> Since expungements are not yet fully recognized by immigration law, this relief would be limited to eliminating the continued risk of a finding of a violation of a protection order rather than as a means of deportation defense for a violation of an order.<sup>243</sup>

<sup>235</sup> See *supra* Section II.B.1.

<sup>236</sup> See *supra* Section II.B.

<sup>237</sup> See generally *Post Conviction Remedies*, AM. BAR ASS'N, [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_postconviction\\_blk/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_postconviction_blk/) [https://perma.cc/R3VU-8MU3] (providing suggested procedures for postconviction relief claims).

<sup>238</sup> See, e.g., Joann Sahl, *Can We Forgive Those Who Batter? Proposing an End to the Collateral Consequences of Civil Domestic Violence Cases*, 100 MARQ. L. REV. 527, 530 (2016) (proposing a civil protection order sealing remedy to mitigate the long-term consequences of such orders).

<sup>239</sup> But see Elizabeth Seedorf, Note and Comment, *Kick Them While They're Down: Ohio's Automatic Expungement Amendment for Protection Orders and Its Devastating Effects on Survivors of Domestic Violence*, 51 UNIV. TOL. L. REV. 357, 359 (2020) (discussing Ohio's automatic expungement of civil protection orders and the harm it can cause to survivors).

<sup>240</sup> Some states expunge civil protection orders under specific circumstances. See, e.g., *Expunging Civil Protective Orders and Civil Stalking Injunctions*, UTAH STATE CTS., <https://www.utcourts.gov/en/self-help/categories/protect-order/expunge.html> [https://perma.cc/4274-Q5MJ]; IND. CONTINUING LEGAL EDUC. F., *supra* note 137, at 5.

<sup>241</sup> An expungement “is the process by which a record of criminal conviction is destroyed or sealed from state or federal [court]. An expungement order directs the court to treat the criminal conviction as if it had never occurred, essentially removing it from a[n] [individual]’s criminal record as well as, ideally, the public record.” *What is “Expungement?”*, AM. BAR ASS'N (Nov. 20, 2018), [https://www.americanbar.org/groups/public\\_education/publications/teaching-legal-docs/what-is-expungement/](https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-expungement/) [https://perma.cc/VRV6-YMAK].

<sup>242</sup> See *supra* Section II.B.

<sup>243</sup> See generally IMMIGRANT DEF. PROJECT, PRACTICE ADVISORY: NEW YORK MARIHUANA DECRIMINALIZATION, VACATUR, AND EXPUNGEMENT LEGISLATION (2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/Practice-Advisory-2019->

Additionally, states could consider allowing protection orders to be pardoned.<sup>244</sup> Full gubernatorial pardons are respected by immigration law and would allow an individual to benefit from similar relief as an expungement.<sup>245</sup> However, again, under immigration law, only certain immigration offenses are waivable through pardons, and the violation of a protection order is not.<sup>246</sup> Therefore, this remedy would focus on removing the protection order, and thereby reducing the long-term risk of deportation stemming from the violation of an order, rather than acting as a direct prevention to deportation.<sup>247</sup>

## CONCLUSION

While a civil order of protection can act as an important safety measure for individuals, it can come at a great cost to the person accused, the person filing, and their whole family. For noncitizens, because of the ways that the criminal, immigration, and family legal systems are entangled, this remedy can act as more of a threat to safety than a form of protection. As long as the realities of civil protection orders remain—exposing noncitizens to immigration authorities, leaving individuals vulnerable to deportation for years, threatening the ability to gain or adjust status, and increasing exposure to law enforcement—this form of relief will remain limited. It is essential that structural protections are implemented at every stage of a civil protection order—preemptively, at the temporary stage, at the full order stage, and during the post-order period—to ensure that noncitizens are informed of these consequences.

However, until these larger systems are untangled and dismantled, it will be impossible to fulfill the broader goals of civil protection orders. In many respects, civil protection orders can be understood as the result of a larger fight to end gender-based violence that was intended to protect, but which “has

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MJ-Decrim.pdf [https://perma.cc/9V5U-HSPB] (discussing the treatment of expungements in immigration law and potential changes in interpretation).

<sup>244</sup> Pardons are used in the criminal-immigration context to help prevent deportation for specific crimes. See IMMIGRANT DEF. PROJECT, PARDON: THE IMMIGRANT CLEMENCY PROJECT TOOLKIT 4–5 (2018), <https://immigrantpardonproject.com/wp-content/uploads/2018/10/IDP-Pardon-Toolkit.pdf> [https://perma.cc/UES4-C8TG].

<sup>245</sup> *Id.* at 8–9.

<sup>246</sup> *Id.*

<sup>247</sup> A thorough exploration of a potential “post-order” remedy for individuals with civil protection orders is outside of the scope of this note. However, this section intends to provide a very brief introduction to the idea and aims to initiate a larger conversation.

actually created harm for others.”<sup>248</sup> As scholar Beth Richie has explained, for all the good that the movement to end gender violence has done, it has also failed to take an intersectional approach, leading to the marginalization of certain communities and a push toward incarceration rather than abolition.<sup>249</sup> Protection orders and incarceration—and by extension, deportation—only act to “remove[] an abusive person from access to someone they were harming . . . [they] [do] not do anything to make fundamental changes necessary to end gender violence.”<sup>250</sup> Importantly, these punitive responses fail to address the underlying issues and only act to create more harm rather than provide sustainable relief. Therefore, as scholars and activists urge, in order to make real and effective change, it is necessary to “reimagine” the structures that define our legal systems and to consider how we can actually provide safety to everyone.<sup>251</sup>

Sarah E. Corsico<sup>†</sup>

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<sup>248</sup> Beth E. Richie, *Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice* (Transcript), 5 U. MIAMI RACE & SOC. JUST. L. REV. 257, 261 (2015).

<sup>249</sup> *Id.* at 259–60, 266–70.

<sup>250</sup> *Id.* at 270.

<sup>251</sup> *Id.* at 273; Washington, *Fammigration Web*, *supra* note 30, at 178–79.

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