IMMIGRATION CONSEQUENCES OF A PROTECTION ORDER

Unintended Consequences

There are several situations in protection order hearings that judges should flag as possible sources of unintended consequences. These reflect ongoing problems with the system failing to identify primary perpetrators and with an immigration law that makes noncitizens removable for violating certain portions of protection orders.

Removal for Protection Order Violations

In 1996, Congress added a special ground of deportation for those who are convicted of domestic violence crimes or are found by a court to have violated certain provisions of protection orders. News of this new law spread quickly in immigrant communities, resulting in additional reticence by abused noncitizens to access the system. Judges can help alleviate these concerns by crafting protection orders that reflect the victim’s goals: Does she want him removed if he violates its terms, or will his removal harm her or her children? The provisions to avoid, if the victim does not want her abuser removed, are those involving “threats of violence, repeated harassment, or bodily injury.”

Consent and Mutual Orders

Any order that implicates a noncitizen victim’s future behavior makes that person vulnerable to further manipulation by the abuser and, ultimately, removal for violation of the order’s provisions. Judges should expect abusers to use mutual orders issued against noncitizen victims by alleging they have violated the provisions that render them removable. Abusers have learned that racing to the court to file protection orders against noncitizen victims is an effective way of undermining both their access to the court and to immigration status. Judges should closely scrutinize cases brought against noncitizens to ensure that the charge is not a part of a larger pattern of abuse. If a judge suspects a noncitizen appearing before him or her is not the primary perpetrator, the judge should suggest that she obtain an attorney to represent her or ask questions to discover the facts him or herself.

While consent orders may not be as readily manipulated by abusers against noncitizens, they are notably unhelpful to a noncitizen seeking immigration status based on domestic violence. This is doubly true for mutual orders. Unless these orders provide detail about who committed the domestic violence and its nature, they will only cloud a noncitizen’s application for immigration status. While such orders may enhance efficiency in the court system, they fail to alter the power differential between a citizen abuser and his noncitizen victim and are a disservice to noncitizen victims of domestic violence.

1 INA § 237(a)(2)(E)(ii), 8 U.S.C. § 1227(a)(2)(E)(ii) (“Any alien 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.”) (emphasis supplied).