

# RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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Ahhh, Spring!

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ANATOMY OF AN  
ADVISAL:  
Orders of Protection



*The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.*

*\*RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

## ***ANATOMY OF A RIAC ADVISAL: Part 9*** ***Orders of Protection*** ***INA §237(a)(2)(E)(ii)***

Last month we covered New York's stalking laws and their impact on immigration concerns for non-citizens. INA §237(a)(2)(E)(i). As with most charges in Criminal Court and offenses in Family Court, Orders of Protection are being granted daily. The potentially devastating immigration consequences of violating an Order of Protection are the topic of this month's newsletter.

Orders of Protection (OOPs) are issued in many cases as a matter of course, and usually on very little grounds. Courts often issue an Order of Protection without a request from the complainant. Obeying the (temporary or permanent) OOP to the letter is a matter of grave importance to your client as the consequence for violating that order is, in no uncertain terms, removal from the United States.

INA §237(a)(2)(E)(ii) states that “[a]ny alien who at any time after entry 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 who the protection order was issued is deportable.” (Emphasis added.)

### **What constitutes a violation?**

In *Matter of Strydom*, 25 I&N Dec. 507 (BIA 2011), the Board of Immigration Appeals held that a “no contact” order was one that “involves protection against credible threats of violence, repeated harassment, or bodily injury” within the meaning of section 237(a)(2)(E)(ii) of the Act, and that any contact in violation of such a

## UPCOMING EVENTS

**Oneida County Assigned  
Counsel School for Criminal  
Defenders**  
March 3, 2018  
**Issues in "Crimmigration"**  
MVCC, Utica NY

**Onondaga County ACP CLE:**  
March 23, 2018  
CNY Philanthropy Center  
Syracuse, NY

**Tompkins/Cortland County CLE:**  
**Immigration Issues in Criminal  
and Family Court**  
May 30, 2018  
12:00 – 2:30 pm  
Ithaca Public Library

### **Chief Defenders & Assigned Counsel Administrators:**

Contact the RIAC2 to schedule a training, lunch hour or other session in your office/county. We will provide CLE credit!

### **CONTACT US!**

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**RIAC trainings:** All of the CLEs put on by the RIAC are FREE and we have been able to offer CLE credits.

provision renders the defendant deportable, regardless of whether the conduct itself alleged violent, threatening or harassing behavior. Thus is it not the client's specific conduct that is relevant, only that the client violated that part of the order that is protecting the beneficiary of that order from acts that constitute threats, harassment, etc. For example, suppose there is a full OOP against your client and your client wants to call the house to speak to the children. A phone call to the house, regardless of the specific nature of the conversation, violates the OOP that protects against credible threats of violence, repeated harassment or bodily injury. In other words, it is the violation of the provision of the order itself (no contact), not what your client specifically did (no matter how harmless that appears) that makes your client deportable.

### **Does the client have to be charged with or convicted of a crime, such as Criminal Contempt?**

No. Obviously it is critical to avoid any conviction for Criminal Contempt, but a court need only *make a finding or determination* that your client has violated the OOP and your client can be deported. What matters "is simply what the state court 'determined' about [the alien's] violation of the protection order." *Matter of Obshatko*, 27 I&N Dec. 173 (BIA 2017) citing *Garcia-Hernandez v. Boente*, 847 F.3d 869, 872 (7th Cir. 2017).

### **How can a court *merely find* that your client has violated an OOP?**

In Family Court, imagine a family offense petition where the petitioner alleges that your client called to say that the rent has been paid, in violation of a no contact OOP. As a result of the Family Court proceeding, your client is granted an ACD but the Family Court Judge makes a factual finding concerning the violation of the order of protection and orders your client to attend Domestic Violence training as part of the disposition. That finding on the record can support a charge of removability in Immigration Court against your client.

In Criminal Court, imagine a complaint is filed by a person with a no contact OOP against your client. Your client then goes to the house to give the former significant other money to pay the rent and leaves, resulting in a charge of Criminal Contempt 2d. Because there was no threat or allegation of physical contact or threats, the ADA offers a plea to Criminal Trespass 2d (an "immigration-safe" plea) with a proposed sentence of probation. If your client admits to a Probation officer facts that establish your client violated the OOP, and the court uses or refers to that report on the record while making a determination about the proposed disposition, despite the "immigration-safe" plea, your client could be deported.

Whenever there is an OOP issued, whether temporary or permanent, you must review every line of the OOP with your client, in your client's native language, in order to ensure your client clearly understands what conduct can trigger a violation of the OOP.