

# RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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*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.*

As we cruised through January, we are still sorting through some of the new Executive Orders and Presidential Proclamations that have been announced. We will provide you with a Newsletter soon with all the changes you need to know to take you through this New Year!

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### Family Court and Immigration : Part 2

#### UPCOMING EVENTS:

Stay tuned! COVID is still with us so we will continue to provide online trainings in 2021 via Webex!



### **FAMILY COURT AND IMMIGRATION: PART 2**

In this series, we are focusing on the intersection of Immigration Law and Family Court practice. Part 2 begins with a discussion of the importance of applying Padilla principles in Family Court.

#### **Does Padilla matter in Family Court proceedings?**

While *Padilla v. Kentucky*, 559 U.S. 356 (2010), involved a criminal case, its principles equally apply in the Family Court setting. Immigration considerations are intricately intertwined in the family court system and include consequences as drastic as deportation. Many of the negative consequences associated with criminal convictions apply to Family Court proceedings (e.g., Violation of an Order of Protection). Family Court proceedings can also affect eligibility for a green card or citizenship. As we will see, although there are no “convictions” in Family Court, **findings** can have negative and, sometimes disastrous, immigration consequences for your client. For all these reasons, it is imperative to contact the RIAC when you are representing a noncitizen client in Family Court. Just as with criminal matters, there are three areas of concern:

1) Deportability, 2) Inadmissibility and 3) Applications for immigration benefits (i.e., green card, citizenship and relief from removal).

#### **When do the laws of “deportability” apply?**

Any noncitizen who is present in the U.S. after having been lawfully admitted is subject to the laws of deportability. This includes immigrants (e.g., those who have a green card) and lawfully admitted nonimmigrants (e.g., temporary workers, students, visitors/tourists, exchange visitors, etc.), whether or not their authorized stay in the U.S. has expired.



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**Chief Defenders & Assigned  
Counsel Administrators:**

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

Although a “conviction” is required to **remove** a noncitizen, under the laws of deportability, there is one exception. Any noncitizen “who 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.” INA §237(a)(2)(E)(ii). In other words, any noncitizen who violates an Order of Protection.

This applies to a temporary or permanent order, and includes both no-contact/stay away orders and orders directing the respondent to “refrain from” harassment, threats, assault, intimidation or other conduct that threatens the safety of the protected person. The statute does not require a conviction for such conduct and can be based merely on a court **finding** of a violation.

If such a finding has been made, **the underlying conduct does not matter**. For example, in an Article 8 proceeding, if your client shows up in the driveway of the home where he or she has been ordered to stay away from, violating the “no contact” part of the order, the fact that he or she was there to pay the rent and nothing more is irrelevant if the court finds that the client disobeyed the order simply by being there in the first place. No harm need have come to the petitioner. *Matter of Strydom*, 25 I&N Dec. 507 (BIA 2011), relying on *Alanis-Alvarado v. Holder*, 558 F.3d 833 (9th Cir. 2009).

As Orders of Protection are frequently issued in Family Court, especially on a temporary basis, it is critical to protect the record from a finding that your client violated an Order of Protection.

**Other Considerations**

It is also critical to avoid any **admissions** that will form the basis for prosecution of a criminal case against your client, especially if they are in IDV court. These include admissions to the commission of a crime, such as assault or menacing.

Orders of Protection are immediately entered into the NYS Order of Protection registry and shared with other federal agencies, including ICE. If your client is “otherwise removable” for other reasons (e.g., overstay a visa, prior conviction for a deportable offense, etc.), your client will come to the attention of ICE, meaning he or she could be arrested and placed in removal proceedings.

Another strategy in these cases involves negotiating for an expanded Order of Protection, including conditions such as attending a program, or paying for/ attending a program. A violation of this type does not involve threats or actual conduct against the complainant and, therefore, is not a ground of deportation under 327(a)(2)(E)(ii).

Always make sure your client understands every term and condition of the Order, as well as what constitutes a violation, in his or her native language. **ALWAYS** use an interpreter. Contact the RIAC at the earliest possible moment in the representation so that we can give you possible options for an immigration-safe disposition.