
JUDGE, JURY, AND COMMANDING OFFICER: A PROPOSAL FOR JUDICIALLY ISSUED DOMESTIC VIOLENCE MPOS

ALISHA NGUYEN*

TABLE OF CONTENTS

I. BACKGROUND ON THE MILITARY JUSTICE SYSTEM AND DOMESTIC VIOLENCE IN THE MILITARY	395
A. THE MILITARY JUSTICE SYSTEM AS SEPARATE AND DISTINCT	105
B. DOMESTIC VIOLENCE IN THE MILITARY	106
II. MILITARY AND CIVIL DOMESTIC VIOLENCE PROTECTIVE ORDERS	108
A. WHAT ARE MPOS?	109
B. LIMITATIONS OF MPOS	110
1. MPOs Cannot Be Enforced by Civilian Law Enforcement or Courts	110
2. MPOs Are Issued and Controlled Exclusively by the Allegedly Abusive Service Member’s Commanding Officer	111
3. MPOs Are Linked to a Specific Command	114
C. WHAT ARE CPOS?	114

*. Scribes Award Recipient & Senior Submissions Editor, *Southern California Law Review*, Volume 94; J.D. Candidate 2021, University of Southern California Gould School of Law; B.A. Economics 2017, University of California, San Diego. I would like to thank Drs. Dwight Stirling and CarolAnn Peterson for their invaluable insights on the substance of my paper, and Professor Sam Erman for his guidance throughout the note-writing process. I am also grateful to the entire Southern California Law Review team for their excellent editing work. Above all, thank you to my family and friends for their unconditional love and encouragement in all of my pursuits. None of this could have been possible without your unwavering support.

D. BARRIERS TO ACCESS FOR MILITARY VICTIMS SEEKING	
CPOS	115
1. Slower and More Difficult to Obtain than MPOs.....	116
2. Fear and Isolation as Deterrents to Filing	116
3. Risk of Retaliation and Unwanted Exposure	117
4. Difficulty of Serving Process.....	118
III. ARGUMENT FOR USING CIVILIAN EX PARTE TROS AS A	
MODEL FOR REFORMING THE MPO SYSTEM.....	118
A. WHAT ARE DOMESTIC VIOLENCE TROS?	119
B. ANALYZING DUE PROCESS FOR PROTECTIVE ORDERS UNDER	
<i>BLAZEL V. BRADLEY</i>	119
C. APPLYING THE <i>BLAZEL</i> FRAMEWORK TO MPOS	121
IV. A PROPOSAL TO CREATE JUDICIAL MPOS	122
A. A SUGGESTED MODEL FOR JMPOS.....	122
B. SPECIFIC RECOMMENDATIONS	124
1. Empower Military Judges and Magistrates to Issue	
JMPOS	124
2. Establish a Central Database to Record and Track All	
Military Issued Protective Orders	127
3. Legislatively Mandate All Military Installations to Establish	
Domestic Violence MOUs with Their Civilian Counterparts	
and Improve Public Access to MOU-Related	
Information.....	128
CONCLUSION.....	130

INTRODUCTION

In 2012, former Air Force Major Thomas Maffei shot his ex-wife Kate Ranta and her father multiple times point blank in her Parkland, Florida apartment—right in front of their four-year-old son, who screamed, “Don’t do it Daddy, don’t shoot Mommy.”¹ Although Ranta had reported Maffei’s physical abuse to his commanding officer almost two years prior, the military protected him because “charging him would cause him to lose his pension.”² It was not until after the shooting that he was convicted in civil court and sentenced to sixty years in prison.³

Fortunately, Ranta and her father both survived.⁴ Seven years later, on

1. *Shattered Families, Shattered Service: Taking Military Domestic Violence Out of the Shadows: Hearing on Domestic Violence Before the Subcomm. on Mil. Person. Before the H. Comm. on Armed Services*, 116th Cong. (2019) (statement of Kate Ranta, domestic abuse survivor).

2. *Id.*

3. *Id.* Thomas was convicted of premeditated attempted first-degree murder. *Id.*

4. *Id.*

September 1, 2019, she appeared before the House Armed Services Committee (“HASC”) as one of three military domestic abuse survivors who testified at the Committee’s first hearing on domestic violence in over fifteen years.⁵ Each of their stories was connected by a common thread: when the military system failed to protect them, the survivors found justice through the civilian system.⁶ Ranta explained that “[a]ll of this was avoidable.”⁷ After enduring years of abusive behavior, she holds Maffei’s command “fully responsible” because they knew he was dangerous but “chose to not do a thing about it.”⁸

Ranta’s testimony illustrates a broader, unresolved problem that domestic violence victims face when protection offered by the military does not extend into the civilian realm. Congresswoman Jackie Speier, who led the HASC hearing, described domestic violence in the military as a “forgotten crisis” that continues to resurface as survivors “tell and retell their stories” to deaf ears.⁹

Time and time again, military spouses fall through the cracks in a system that essentially allows commanding officers to play judge, jury, and executioner in domestic violence cases.¹⁰ This Note focuses on one particular aspect of the gap between military and civilian jurisdictions: the unenforceability of military protective orders by civilian law enforcement and courts. For example, on November 5, 2017, a gunman with a record of domestic violence offenses massacred twenty-six and wounded twenty-two churchgoers in Sutherland Springs, Texas.¹¹ Despite being subject to a military protective order and no-contact order, he was able to pass multiple background checks and illegally purchase firearms on six different occasions.¹² The orders were never submitted to any national criminal databases because they “were issued by his military commander and not a

5. Press Release, Jackie Speier, Congresswoman, Congresswoman Speier Holds First House Armed Services Committee Hearing on Domestic Violence in Over 15 Years (Sept. 19, 2019), <https://speier.house.gov/2019/9/congresswoman-speier-holds-first-house-armed-services-committee-hearing-on-domestic-violence-in-over-15-years> [<https://perma.cc/LP9A-KK5V>].

6. Claudia Grisales, *Hearing on Military Domestic Violence*, NPR (Sept. 18, 2019, 3:49 PM), <https://www.npr.org/2019/09/18/762046599/hearing-on-military-domestic-abuse> [<https://perma.cc/7H8T-R8DW>].

7. *Shattered Families, Shattered Service*, *supra* note 1.

8. *Id.*

9. Grisales, *supra* note 6.

10. *Id.*

11. U.S. DEP’T OF DEF., DODIG-2019-030, REPORT OF INVESTIGATION INTO THE UNITED STATES AIR FORCE’S FAILURE TO SUBMIT DEVIN KELLEY’S CRIMINAL HISTORY INFORMATION TO THE FEDERAL BUREAU OF INVESTIGATION 5 (2018).

12. *Id.* at 30.

court.”¹³

Although the law now requires all military-issued protective orders to be reported to civilian law enforcement,¹⁴ these orders still are not given full faith and credit beyond military jurisdiction. This Note attempts to bridge this jurisdictional gap by proposing a new system through which military domestic abuse victims could obtain military-issued protective orders that *are* enforceable by civilian law enforcement and courts. Part I sets the stage with a brief overview of the military justice system and its approach to domestic abuse. Part II describes the two types of protective orders generally available to military domestic violence victims—military protective orders (“MPOs”) and civil protective orders (“CPOs”)—and summarizes their respective advantages, shortcomings, and barriers to access. In particular, this Part homes in on one of the main shortcomings of MPOs—their unenforceability by civilian authorities—and explains that are issued exclusively by the allegedly abusive service member’s commanding officer rather than by a neutral military judge.

Part III seeks to address this shortcoming by looking to domestic violence temporary restraining orders (“TROs”) as a model for reform. Applying an analytical framework from *Blazel v. Bradley*,¹⁵ this Part concludes that in order to create civilian-enforceable MPOs, Congress should develop an alternative process that closely mirrors the TRO process and satisfies the minimum procedural protections set forth in *Blazel*.

Part IV proposes a new system that gives military judges and magistrates the power to issue a new kind of MPO, which this Note refers to as judicial MPOs (“JMPOs”). In theory, a JMPO system would produce protective orders that are both military-issued and civilian-enforceable by shifting decision-making power from commanding officers to the military judiciary. Part IV then concludes with three specific recommendations for improving protection for military domestic violence victims, as well as a summary of Congress’s past and present support for these ideas.

A few notes on focus and terminology may be helpful at the outset. First, this Note discusses only situations in which an abusive service member commits acts of domestic abuse against a civilian spouse. Of course, civilians also commit domestic violence against service members; but because MPOs can be issued only against service members, such offenses raise issues that

13. *Id.* at 61, 105.

14. 10 U.S.C. § 1567a.

15. *Blazel v. Bradley*, 698 F. Supp. 756 (W.D. Wis. 1988).

are beyond the scope of this Note.¹⁶ Second, although the terms “victim” and “survivor” are both used to describe individuals who are experiencing or have experienced domestic abuse, this Note primarily uses the term “victim” due to its focus on military spouses dealing with ongoing domestic violence.¹⁷ Finally, this Note generally refers to victims and survivors of domestic abuse with female pronouns and perpetrators with male pronouns. This choice reflects available empirical data; while male survivors and female perpetrators certainly exist, historical and recent statistics show that the vast majority of active-duty offenders are male.¹⁸

I. BACKGROUND ON THE MILITARY JUSTICE SYSTEM AND DOMESTIC VIOLENCE IN THE MILITARY

A. THE MILITARY JUSTICE SYSTEM AS SEPARATE AND DISTINCT

The military and civilian justice systems have always been treated as separate and distinct.¹⁹ The military system is defined by the Uniform Code of Military Justice (“UCMJ”), which enumerates criminal offenses under federal military law.²⁰ The Supreme Court’s rationale for this distinction has changed over time.²¹ In *Parker v. Levy* (1974), the Court declared that it “has

16. ELLEN C. SCHELL, BATTERED WOMEN’S JUSTICE PROJECT, REPRESENTING VICTIMS OF INTIMATE PARTNER VIOLENCE CONNECTED WITH THE MILITARY: A HANDBOOK FOR CIVIL ATTORNEYS, 33 (2014).

17. See generally Barry Goldstein, *Appreciating Survivors of Abuse While Supporting its Victims*, DOMESTICSHELTERS.ORG (May 13, 2019), <https://www.domesticshelters.org/articles/domestic-violence-op-ed-column/appreciating-survivors-of-abuse-while-supporting-its-victims> [https://perma.cc/FW82-Q2KG] (discussing preferences for using “survivor” or “victim” to describe individuals who experience domestic violence). Here, the term “victim” also emphasizes the inadequacy of the current system and the need to better protect military spouses from future abuse. *Id.*

18. E.g., U.S. DEP’T OF DEF., REPORT ON CHILD ABUSE AND NEGLECT AND DOMESTIC ABUSE IN THE MILITARY FOR FISCAL YEAR 2019, at 52 (2020). According to the Family Advocacy Program (“FAP”) report for the fiscal year 2019, 89% of service-member abusers who met the FAP criteria for spouse abuse were male and only 11% were female. *Id.* Moreover, even in instances involving a female offender and male victim, only about 19% of the offenders were military service members, while about 80% were civilian family members and fewer than 1% were categorized as “other.” See *id.* at 53 (indicating that out of 2,044 female offenders, 393 were service members, 1,646 were civilian family members, and 5 were “other”). Whether these statistics accurately and completely reflect the military domestic violence climate is beyond the scope of this Note. See the FAP report for a further breakdown of military domestic violence statistics.

19. Anthony J. Ghiotto, *Back to the Future with the Uniform Code of Military Justice: The Need to Recalibrate the Relationship Between the Military Justice System, Due Process, and Good Order and Discipline*, 90 N.D. L. REV. 485, 485 (2014).

20. *The Uniform Code of Military Justice (UCMJ)*, MILITARY.COM, <https://www.military.com/join-armed-forces/the-uniform-code-of-military-justice-ucmj.html> [https://perma.cc/JYY9-K2ZD].

21. See Kent S. Bernard, *Structures of American Military Justice*, 125 U. PA. L. REV. 307, 307 (1976).

long recognized that the military is, by necessity, a specialized society separate from civilian society,” which must be governed by a law of obedience and discipline rather than by due process.²² To avoid interfering with its operations and objectives, courts traditionally deferred almost completely to the military to deal with its service members’ transgressions.²³

Today, the law has evolved to focus on the military justice “trinity,” which strives to balance justice and due process; good order and discipline; and efficiency in the interest of national security.²⁴ But unlike the civilian legal system, which revolves primarily around judges and courts, the military system is driven by commanding officers (“COs”) who typically prioritize good order and discipline.²⁵ COs have authority to punish any misconduct within their command and deal with their service members as they see fit.²⁶ They can choose to resolve issues by court-martial or informal nonjudicial punishment and are involved in every part of the adjudicative or administrative resolution process.²⁷

B. DOMESTIC VIOLENCE IN THE MILITARY

Department of Defense Instruction (“DoDI”) 6400.06 defines “Domestic Violence” as an “offense under the United States Code, the Uniform Code of Military Justice, or State law involving the use, attempted use, or threatened use of force or violence against a person, or a violation of a lawful order issued for the protection of a person” who is a “current or former spouse”; a “person with whom the abuser shares a child in common”; or a “current or former intimate partner with whom the abuser shares or has shared a common domicile.”²⁸ To fall under the umbrella of *military* domestic violence, at least one party in the relationship must be an active-duty service member or the civilian spouse of an active-duty service member.²⁹

Until 2018, domestic violence was not an enumerated crime under the

22. *Parker v. Levy*, 417 U.S. 733, 743–44 (1974) (noting that the law of the military is “that of obedience” (quoting *In re Grimley*, 137 U.S. 147, 153 (1890))).

23. See Bernard, *supra* note 21, at 310.

24. JOINT SERV. COMM. ON MIL. JUSTICE, MANUAL FOR COURTS-MARTIAL UNITED STATES I-1 (2019) (“The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby strengthen the national security of the United States.”); Ghiotto, *supra* note 19, at 504–05.

25. Ghiotto, *supra* note 19, at 485.

26. *Id.* at 505.

27. *Id.*

28. DEP’T OF DEF., DoDI 6400.06, DOMESTIC ABUSE INVOLVING DoD MILITARY AND CERTAIN AFFILIATED PERSONNEL 36 (2017).

29. U.S. DEP’T OF DEF., *supra* note 18, at 38.

UCMJ.³⁰ Instead, acts of domestic abuse were prosecuted as more generalized crimes, such as general assault, cruelty and maltreatment, rape and sexual assault, or “conduct unbecoming an officer and a gentleman.”³¹ But by conflating domestic violence with other violent crimes, the UCMJ failed to account for certain characteristics that make domestic violence uniquely dangerous, such as its high recidivism rate and tendency to escalate slowly over an extended period of time.³²

In August 2018, domestic violence was finally recognized as a distinct offense when Article 128b was added as a punitive article to the UCMJ.³³ Now, service members who abuse their spouse, intimate partner, children, or other immediate family members may face military criminal charges for domestic violence.³⁴

Up-to-date statistics on the prevalence of domestic abuse can be difficult to find. Because the military tends to deal with such issues informally and expediently, it often does not keep accurate public records of domestic violence incidents.³⁵ Moreover, comparisons between military and

30. BRYCE H. P. MENDEZ, KRISTY N. KAMARCK, LAWRENCE KAPP & BARBARA SALAZAR TORREON, CONG. RESEARCH SERV., R45343, FY2019 NATIONAL DEFENSE AUTHORIZATION ACT: SELECTED MILITARY PERSONNEL ISSUES 11 (2018).

31. *Id.* Domestic violence could be prosecuted as assault under Article 28, cruelty and maltreatment under Article 93, rape and sexual assault under Article 20, or “conduct unbecoming an officer and a gentleman” under Article 133. *Id.*; Faith R. Coutier, *Til Death Do Us Part: A Recommendation to Make Domestic Violence an Enumerated Article in the UCMJ*, 224 MIL. L. REV. 715, 731 (2016).

32. Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552, 567 (2007). An extensive social science literature describes domestic violence as a pattern of harm, which consists of repeated acts by the same offender against the same victim. *Id.* at 566–67. Moreover, the abuser intends not only to commit an act of violence, but also to exercise power over and restrict the autonomy of his victim. *Id.* at 567. One expert estimated that 63% of men who assault their wives repeat the behavior, and a National Violence Against Women survey similarly found that over 65% of women who reported suffering physical assault by an intimate partner also reported being victimized multiple times by that person. *Id.* Furthermore, “nearly seventy percent of women who had been assaulted by an intimate partner reported that their victimization lasted more than one year. For more than a quarter of the women, the victimization occurred over more than five years, and the average duration of the violence was four and a half years.” *Id.* at 568. Although these data do not differentiate between civilian and military populations, they are still illustrative of the enduring and recurring nature of domestic violence generally.

33. 10 U.S.C. § 928b; MENDEZ ET. AL., *supra* note 30, at 11.

34. 10 U.S.C. § 928b. Potential consequences for violating Article 128b include forfeiture of pay, confinement, restraining order, reduction of rank, and dishonorable discharge. *Domestic Violence Is Now a Distinct Offense in the UCMJ*, SAN DIEGO MIL. DEF. ATT’YS (July 3, 2019), <https://armycourt martialdefense.info/2019/07/domestic-violence-is-now-a-distinct-offense-in-the-ucmj> [<https://perma.cc/2K7X-FH7H>].

35. See Erika I. Ritchie, *The US Military Doesn’t Follow Its Own Rules when Investigating Domestic Violence on Bases*, TASK & PURPOSE (May 2, 2019), <https://taskandpurpose.com>

civilian populations are particularly difficult because there is no federal mechanism to track civilian domestic abuse rates.³⁶

In 2017, Congress attempted to peel back the curtain by ordering the Secretary of Defense to produce annual reports on both child and domestic abuse incident data through April 2021.³⁷ According to the latest report, 7,921 incidents of military spouse and intimate partner abuse that met the DoDI criteria for domestic violence were reported to the FAP in fiscal year 2019.³⁸ However, this figure likely underestimates the actual prevalence of domestic abuse since it does not account for unreported incidents or reported incidents that do not meet the DoDI's specified criteria.

Fortunately, the military has gradually become more open to acknowledging the domestic violence problem within its ranks. In 2000, the Department of Defense ("DoD") created the Defense Task Force on Domestic Violence ("DTFDV") to conduct a comprehensive review of the military's domestic violence programs and policies and make recommendations to "improve the responses of the Armed Forces to domestic violence"³⁹

Over a three-year period, the DTFDV released three reports containing almost two hundred recommendations for improving the military's efforts to address and prevent the domestic violence epidemic.⁴⁰ These reports emphasized a need to bridge the gap between the military and civilian justice systems by ensuring "a cooperative relationship between military and civilian organizations."⁴¹ The DoD agreed with and has made progress on implementing many of the DTFDV's recommendations, signaling an important shift away from the military's traditional approach of addressing domestic abuse internally and toward greater collaboration with the civilian

/news/military-domestic-violence-investigations-review [https://perma.cc/J2GH-YMAN]. According to an analysis of more than two hundred cases of domestic violence across eight military installations, "commanders and law enforcement personnel are not following their own rules when investigating and handling these cases and their victims." *Id.* Common deviations from the DoD's policy for dealing with domestic violence include how crime scenes are processed, how interviews are conducted, and whether incidents are reported to the FAP at all. *Id.*

36. U.S. DEP'T OF DEF., *supra* note 18, at 43.

37. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 574(a), 130 Stat. 2000, 2141 (2016).

38. U.S. DEP'T OF DEF., *supra* note 11, at 39.

39. National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, 113 Stat. 512 (1999), *amended by* Pub. L. No. 115-232, 132 Stat. 1636 (2018).

40. Jennifer Heintz, *Safe at Home Base? A Look at the Military's New Approach to Dealing with Domestic Violence on Military Installations*, 48 ST. LOUIS U. L.J. 227, 286 (2003); *see* U.S. DEP'T OF DEF., DEFENSE TASK FORCE ON DOMESTIC VIOLENCE: THIRD YEAR REPORT 2003 (2003).

41. U.S. DEP'T OF DEF., *supra* note 40, at ix.

system.⁴²

II. MILITARY AND CIVIL DOMESTIC VIOLENCE PROTECTIVE ORDERS

Protective orders are important tools for keeping domestic violence victims safe.⁴³ Two types of protective orders are available to military spouses: (1) MPOs, which are issued by COs; and (2) CPOs, which are issued by civil courts.⁴⁴ The distinction between these orders and their respective advantages and limitations are described in detail below.

A. WHAT ARE MPOS?

The first type of protective order available to military spouses is an MPO.⁴⁵ MPOs fall within the military justice system and are issued only as direct orders by the allegedly abusive service member's CO.⁴⁶ When a service member is accused of committing an act of domestic violence, the incident is reported to his CO, who is then responsible for deciding how to hold him accountable.⁴⁷

One available response is to issue an MPO.⁴⁸ An MPO can include any kind of provision as long as it does not contradict an active CPO against the service member.⁴⁹ While the most common provision prohibits contact between the service member and the victim, other provisions can also address military-specific issues, such as removing the alleged abuser from military housing.⁵⁰ The order remains in effect until it is terminated or replaced by the CO who issued it.⁵¹ Because MPOs are direct military orders,

42. *See id.* at 145–69 (providing overview of the DoD's responses to the DTFDV's recommendations, as well as a status report showing whether any action had been taken); Heintz, *supra* note 40, at 286.

43. SCHELL, *supra* note 16, at 31.

44. BATTERED WOMEN'S JUSTICE PROJECT, IMPORTANT DIFFERENCES BETWEEN CIVILIAN AND MILITARY PROTECTION ORDERS 1 (5th ed. 2013), http://www.ncdsv.org/images/NCPOFFC_Important-Differences-Between-Civilian-And-Military-POs_4-11-2013.pdf [<https://perma.cc/64VG-RPPJ>].

45. *Id.*

46. *Id.*

47. KRISTY N. KAMARCK, LISA N. SACCO & ALAN OTTO, CONG. RESEARCH SERV., R46097, MILITARY FAMILIES AND INTIMATE PARTNER VIOLENCE: BACKGROUND AND ISSUES FOR CONGRESS 17 (2019), <https://fas.org/sgp/crs/natsec/R46097.pdf> [<https://perma.cc/TJ8U-QD9P>].

48. *Id.*

49. DEP'T OF DEF., *supra* note 28 at 8; SCHELL, *supra* note 16, at 32.

50. SCHELL, *supra* note 16, at 64.

51. 10 U.S.C. § 1567 (“A military protective order issued by a military commander shall remain in effect until such time as the military commander terminates the order or issues a replacement order.”). However, some military services recommend issuing short-term MPOs that last no more than ten days

violations are punished as failures to obey an order or regulation under the UCMJ rather than as criminal conduct.⁵²

MPOs have some advantages that make them an effective supplement to—or sometimes even more effective than—CPOs. For example, they do not require extensive legal procedures and are thus often quicker and easier to obtain.⁵³ While CPOs require a formal filing process, MPOs simply require a verbal or written order from a CO.⁵⁴ No formal filing, investigation, notice, hearing, or finding of guilt is required.⁵⁵ Once issued, MPOs can also be revised and extended fairly easily by the issuing CO.⁵⁶ This wide degree of discretion allows MPOs to be more flexible and comprehensive than a CPO would be, since COs have considerable freedom to tailor their orders to each specific domestic abuse situation.⁵⁷

B. LIMITATIONS OF MPOS

Although MPOs are a valuable source of protection for military domestic violence victims, they also have significant limitations that make them inadequate as the only protective order available within the military system. This Section discusses the three limitations most relevant to this Note.

1. MPOs Cannot Be Enforced by Civilian Law Enforcement or Courts

The first major limitation is that MPOs cannot be enforced by civilian law enforcement or courts. Although an active MPO follows the service member at all times,⁵⁸ it is directly enforceable only by military authorities.⁵⁹

after the initial incident. JUDITH E. BEALS & PATRICIA ERWIN, BATTERED WOMEN'S JUSTICE PROJECT, UNDERSTANDING THE MILITARY RESPONSE TO DOMESTIC VIOLENCE 23 (2007).

52. 10 U.S.C. § 892(1)–(3) (“Any person subject to this chapter who . . . violates or fails to obey any lawful general order or regulation . . . having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order . . . shall be punished as a court-martial may direct.”); Martha Chace, *How the Military Processes Reports of Domestic Violence: A Brief Look at the Ways a Uniformed-Abuser Is Prosecuted and What Can Change to Ensure Prosecution*, 7 HOUS. L. REV.: OFF REC. 1, 11 (2016).

53. SCHELL, *supra* note 16, at 33.

54. *Id.*

55. *Id.*

56. JANE M. SADUSKY, BATTERED WOMEN'S JUSTICE PROJECT, COLLABORATING FOR SAFETY: COORDINATING THE MILITARY AND CIVILIAN RESPONSE TO DOMESTIC VIOLENCE—ELEMENTS & TOOLS 43 (2010).

57. SCHELL, *supra* note 16, at 33.

58. BEALS & ERWIN, *supra* note 51, at 23, 36.

59. DEP'T OF DEF., *supra* note 28, at 8; Kathlene J. Somerville, *The Military Report Card Concerning Domestic Violence and Sexual Assault, Including Compliance with the Lautenberg Amendment*, 43 FAM. L.Q. 301, 308 (2009).

But since most civilians are unfamiliar with the military system, if an MPO violation occurs off base, civilian witnesses are most likely to call local civilian police, whose ability to respond to the incident is limited.⁶⁰ For example, if a bystander calls 911 to report that a service member has violated an MPO at an off-base school, the local police officer who responds to the call has no authority to enforce the military-issued order and thus cannot arrest the offending service member unless a separate crime has also been committed.⁶¹ At most, the officer would merely refer the matter to military police or to the service member's CO, or advise the victim to file for a CPO in civil court.⁶²

This limited response is particularly ineffective when working relationships between military and civilian authorities are uncooperative or poorly established.⁶³ Because most military installations are located where military and civilian jurisdictions overlap, and since roles and responsibilities are divided differently from one shared-jurisdiction community to the next, it is often unclear who has jurisdiction to deal with a given incident.⁶⁴ This confusion can make state police reluctant to intervene for fear of overstepping federal jurisdictional boundaries.⁶⁵

Finally, the fact that MPOs can be directly enforced only by military authorities may cause protected parties to feel safer on base where military police are readily on hand.⁶⁶ As discussed later in Part II.D.2, this fear of leaving the military base can prevent victims from going to civil court to seek a CPO or getting support from civilian family and friends.⁶⁷

60. See IMPORTANT DIFFERENCES BETWEEN CIVILIAN AND MILITARY PROTECTION ORDERS, *supra* note 44, at 2; LAURA J. HICKMAN, LOIS M. DAVIS & PAUL S. STEINBERG, RAND CORP., APPROACHES TO MAKING MILITARY-CIVILIAN DOMESTIC VIOLENCE COLLABORATIONS WORK: LESSONS LEARNED FROM TWO CASE STUDIES 11 (2003) https://www.rand.org/pubs/issue_papers/IP254z1-1.html [<https://perma.cc/4CM9-TN68>].

61. See IMPORTANT DIFFERENCES BETWEEN CIVILIAN AND MILITARY PROTECTION ORDERS, *supra* note 44, at 1.

62. *Id.* at 1–2. Nearly 80% of military children in the United States attend civilian public schools. *Fact Sheet on the Military Child*, SCH. SUPERINTENDENTS ASS'N, <https://www.aasa.org/content.aspx?id=8998> [<https://perma.cc/RXB3-8FAD>]; *All About DODEA Educational Partnership*, DEP'T DEF. EDUC. ACTIVITY, <https://www.dodea.edu/Partnership/about.cfm> [<https://perma.cc/8PG2-6SXU>].

63. See HICKMAN ET AL., *supra* note 60, at 11.

64. Heintz, *supra* note 40, at 295 (describing confusion about jurisdictional boundaries); see also HICKMAN ET AL., *supra* note 60, at 12 (describing differing arrangements for sharing jurisdiction on two military installations in San Diego, California, and Anchorage, Alaska).

65. Heintz, *supra* note 40, at 295.

66. See BATTERED WOMEN'S JUSTICE PROJECT, *supra* note 44, at 1–2. Although MPOs are binding both on and off base, the first responder to an off-base MPO violation is often civilian law enforcement, who does not have authority to enforce the MPO.

67. *Id.*; see *infra* Section II.D.2.

2. MPOs Are Issued and Controlled Exclusively by the Allegedly Abusive Service Member's Commanding Officer

The second major limitation of MPOs is that they are issued solely at the discretion of the allegedly abusive service member's CO.⁶⁸ Because the military system "puts the interests and functioning of the unit as a whole above the interests of individuals," COs essentially serve as judge, jury, and executioner when adjudicating service-member misconduct.⁶⁹ To this end, MPOs are primarily designed to achieve military objectives and can be issued by COs whenever they find it necessary to uphold good order and discipline.⁷⁰

While this system may be convenient in the sense that no extensive procedure is required, giving the alleged abuser's supervisor unbridled discretion over MPOs raises serious concerns. The military plays an all-encompassing role as "employer, landlord, provisioner, and lawgiver rolled into one."⁷¹ As a result, instead of treating domestic violence as a criminal matter, it tends to take a more discipline-focused, quasi-employer approach.⁷² As such, to maintain good order and deal with allegations as quickly as possible, COs are incentivized to use MPOs as an easy "band-aid" for disputes, even if they may not be the best long-term solution.⁷³

Due to inadequate domestic violence response training, many COs may not realize the level of danger involved.⁷⁴ Moreover, even the most vigilant COs must grapple with conflicting interests and human biases when their own service members are accused of abuse.⁷⁵ Some will even "turn[] a blind

68. SCHELL, *supra* note 16, at 33.

69. *Id.* at 32.

70. *Id.*

71. *Parker v. Levy*, 417 U.S. 733, 751 (1974); Bernard, *supra* note 21, at 312–13; LAURA J. HICKMAN & LOIS M. DAVIS, RAND CORP., DOMESTIC VIOLENCE IN THE MILITARY IMPLEMENTING COLLABORATIVE MOUS 2 (2004), https://www.rand.org/content/dam/rand/pubs/research_briefs/RB6016/RB6016.pdf [<https://perma.cc/2JC5-B3GP>].

72. HICKMAN & DAVIS, *supra* note 71, at 2.

73. SCHELL, *supra* note 16, at 33–34.

74. Adele Uphaus-Conner, *Quantico Case Raises Questions About How Marine Corps Handles Domestic Abuse*, FREE LANCE-STAR (Mar. 10, 2019) <https://www.military.com/daily-news/2019/03/10/quantico-case-raises-questions-about-how-marine-corps-handles-domestic-abuse.html> [<https://perma.cc/QA9R-8JKY>].

75. COs also have powerful influence over a unit's culture. A study by the *American Journal of Industrial Medicine* shows that women are six times more likely to experience sexual assault in a unit whose commander "accommodates hostile sexism." Uphaus-Conner, *supra* note 74. This could have both positive and negative influences, depending on the particular CO's values and personality.

eye,”⁷⁶ “[sweep incidents] under the rug,”⁷⁷ and “actively protect” abusive service members by overlooking complaints of physical and emotional violence.⁷⁸ In some cases, they will simply order the abuser to spend a “cool down period” in the barracks.⁷⁹ While this may be enough to prevent subsequent abuse in the short term, it fails to prevent long-term abuse by overlooking the cyclical nature and high recidivism rates commonly associated with domestic violence, which often involves long yet temporary periods of “peace” between one abusive act and the next.⁸⁰

Often, COs will not even consider a victim’s request for an MPO. Unlike civil law, which allows plaintiffs to demand a formal decision from the court, military law allows COs to deal with offenses informally, often without coming to a formal resolution at all.⁸¹ In fact, in order to maintain good order and discipline within the command, the Rules for Courts Martial actually *require* misconduct charges to be resolved at the lowest level possible.⁸² Thus, a CO can simply choose to avoid dealing with the MPO process entirely. This is problematic because the “lowest level” for resolving an incident does not always provide adequate relief and protection for at-risk victims.⁸³

In addition, giving COs exclusive control over MPOs also increases the likelihood that a dangerous abuser will have access to firearms. MPOs do not automatically trigger firearm restrictions under the Gun Control Act—even when a comparable CPO would—because the Act prohibits firearm possession only by persons subject to a “civilian court-issued restraining

76. Jessica Taylor, *Lawmakers Hear Emotional Stories from “Forgotten Crisis” of Military Domestic Violence*, NPR (Sept. 18, 2019, 7:09 PM), <https://www.npr.org/2019/09/18/762100271/law-makers-hear-emotional-stories-from-forgotten-crisis-of-military-domestic-viol> [https://perma.cc/M3TA-W62M].

77. Amanda Kippert, *Servicemembers Are Getting Away with Abuse*, DOMESTICSHELTERS.ORG (Mar. 21, 2018), <https://www.domesticshelters.org/articles/in-the-news/servicemembers-are-getting-away-with-abuse> [https://perma.cc/6BC5-59ML].

78. Taylor, *supra* note 76.

79. See Kippert, *supra* note 77 (stating that command sometimes choose to send service members to the barracks for a “cool down period” even after being arrested by military police).

80. Debra Pogrud Stark & Jessica Choplin, *Seeing the Wrecking Ball in Motion: Ex Parte Protection Orders and the Realities of Domestic Violence*, 32 WIS. J.L. GENDER & SOC’Y 13, 23 (2017); Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1026 (2014) (“While at least one-third of abusers reabuse in a short timeframe, more do so when examining longer periods of time, with longitudinal studies showing gaps of several years between abusive incidents.”). For further information on the cyclical nature of domestic violence, see also Burke, *supra* note 32.

81. 10 U.S.C. § 815(b).

82. Somerville, *supra* note 59, at 308.

83. Major Marshall L. Wilde, *Incomplete Justice: Unintended Consequences of Military Nonjudicial Punishment*, 60 A.F.L. REV. 115, 118 (2007).

order.”⁸⁴ Instead, the CO who issued the order gets to choose whether or not to include a firearm restriction.⁸⁵ But COs have strong incentives *not* to prevent a service member from carrying a gun because such restrictions could substantially interfere with the service member’s training and deployment.⁸⁶ Thus, many abusive service members have access to firearms even while subject to an MPO, which increases the victim’s risk of serious harm or death.⁸⁷

3. MPOs Are Linked to a Specific Command

The third major limitation is that because MPOs are direct orders linked to a specific command, they are active only while the service member remains under that same command.⁸⁸ If the service member transfers to a new command, the order is no longer valid.⁸⁹ In the event of a transfer, the CO of the original unit must notify the CO of the receiving unit that the MPO exists.⁹⁰ Then, the victim must also ask the receiving CO to issue a new MPO, subject to the former CO’s recommendation as to whether the order is “still necessary to protect the victim(s).”⁹¹ However, the new CO may decline to replace the MPO, even in spite of a recommendation to do so.⁹² As a result, victims may be left unprotected and vulnerable to abuse both during and possibly after the transfer.

84. M. G. DANA, DIR. OF MARINE CORPS STAFF, MARINE CORPS BULLETIN 5810, at 2-1, 6-3 (2018), <https://www.marines.mil/Portals/1/Publications/MCBUL%205810.pdf?ver=2018-08-30-132131-503> [https://perma.cc/9UK4-2HX8] (“Military Protective Orders (MPO) do not qualify as restraining orders for the purpose of this prohibition under [the Gun Control Act] . . .”).

85. Wilde, *supra* note 83, at 124–25.

86. *Id.* at 125.

87. *E.g.*, Jacquelyn C. Campbell, Daniel Webster, Jane Koziol-McLain, Carolyn Block, Doris Campbell, Mary Ann Curry, Faye Gary, Nancy Glass, Judith McFarlane, Carolyn Sachs, Phyllis Sharps, Yvonne Ulrich, Susan A. Wilt, Jennifer Manganello, Xiao Xu, Janet Schollenberger, Victoria Frye & Kathryn Laughon, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1090, 1092 (2003), <https://www.thetrace.org/wp-content/uploads/2016/08/FemicideDr.Campbell.pdf> [https://perma.cc/KS5Y-DPRV] (finding that domestic violence victims are five times more likely to be killed if their abuser has access to a firearm).

88. BEALS & ERWIN, *supra* note 51, at 44; *Domestic Violence in the Military*, WOMENSLAW.ORG (Oct. 9, 2019), <https://www.womenslaw.org/laws/federal/domestic-violence-military/military-protective-orders/basic-info-about-military-1> [https://perma.cc/4XGM-4YDV].

89. Somerville, *supra* note 59, at 308.

90. 10 U.S.C. § 1567a(b).

91. DEP’T OF DEF., *supra* note 28, at 9 (“[A commander] [s]hould contact the gaining command and recommend that the gaining command issue a new MPO when the Service member is transferred to a new command and an MPO is still necessary to protect the victim(s).”).

92. *See id.*

C. WHAT ARE CPOS?

The second type of protective order available to military domestic violence victims is a CPO.⁹³ CPOs are issued by state courts against both service-member and civilian abusers.⁹⁴ Because they fall wholly within the civilian system, they are subject to full constitutional due process protections.⁹⁵ This means that the respondent must be given prior notice and a hearing before the order can be granted.⁹⁶ The typical process for obtaining a CPO entails filing a petition with the court, serving process on the alleged abuser, and attending a hearing to convince the judge that relief is needed.⁹⁷ Violation of a CPO is considered a criminal offense.⁹⁸

In the past thirty years, CPOs have received full recognition under both civilian and military jurisdictions. The Violence Against Women Act of 1994 required states, tribes, and territories to give full faith and credit to protective orders issued by other jurisdictions,⁹⁹ but a loophole prevented CPOs from having any effect on military installations.¹⁰⁰ On December 2, 2002, Congress closed this loophole by passing the Armed Forces Domestic Security Act,¹⁰¹ which gave CPOs “the same force and effect on a military installation as such order has within the jurisdiction of the [civil] court that issued such order.”¹⁰² It extended a form of full faith and credit to CPOs,¹⁰³ such that a service member who violates a CPO may be disciplined by either military or civilian authorities regardless of whether the violation occurred on or off base.¹⁰⁴

D. BARRIERS TO ACCESS FOR MILITARY VICTIMS SEEKING CPOS

Those who oppose legislation to expand the current MPO system have argued that such expansion is unnecessary because domestic violence victims can already obtain protection through other means, such as by getting

93. BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 44.

94. *Id.*

95. *Id.*

96. *Id.*

97. 1 FAMILY LAW AND PRACTICE § 6.02 (2020). This process may vary slightly by state. *See id.*

98. Heintz, *supra* note 40, at 280.

99. 18 U.S.C. § 2265 (1994); BEALS & ERWIN, *supra* note 51, at 36.

100. Peter C. MacDonald & Deborah D. Tucker, *The War on Violence: Improving the Response to Domestic Violence in the Military*, 54 JUV. & FAM. CT. J. 121, 124 (2003).

101. *Id.* at 123–24; Armed Forces Domestic Security Act, 10 U.S.C. § 1561 (2006).

102. 10 U.S.C. § 1561a (2006).

103. MacDonald & Tucker, *supra* note 100.

104. BEALS & ERWIN, *supra* note 51, at 22–23.

a CPO in civil court.¹⁰⁵ Generally, experts recommend that military spouses get a CPO even if they already have an MPO.¹⁰⁶ But in reality, military domestic violence victims face barriers to accessing CPOs beyond those that their civilian counterparts already face.¹⁰⁷ This Section summarizes four of the barriers particularly relevant to military domestic abuse victims.

1. Slower and More Difficult to Obtain than MPOs

The first barrier to access is that CPOs are generally slower and more difficult to obtain than MPOs.¹⁰⁸ Since CPOs are subject to full due process protections, they can involve fairly extensive legal procedures in some states.¹⁰⁹ Moreover, whenever the military is involved, civil courts can be reluctant to intervene and provide relief that would otherwise be available to domestic abuse victims.¹¹⁰ Because military bases are subject to some level of federal jurisdiction, some state court judges may decline to get involved with military domestic violence issues for fear of overstepping jurisdictional boundaries.¹¹¹ Furthermore, a victim may be physically unable to get to a courthouse if her money and transportation are tied to her service-member spouse.¹¹² As a result, victims with limited resources may decide that settling for quick, short-term relief within the military system is a better option than trying to navigate the more extensive CPO process.¹¹³

2. Fear and Isolation as Deterrents to Filing

A second barrier to access is fear and isolation, which can deter victims from filing for a CPO. Domestic abusers use both physical and emotional abuse as part of an “ongoing strategy of intimidation, isolation, and control that extends to all areas of a women’s life.”¹¹⁴ While fear and isolation are

105. See *infra* text accompanying notes 168–72 for one of the Administration’s reasons for opposing legislation that would have expanded the MPO system.

106. BEALS & ERWIN, *supra* note 51, at 23.

107. Military and civilian domestic abuse victims also face many common obstacles, such as retaliation for reporting. SCHELL, *supra* note 16, at 19–20.

108. *Id.* at 33 (explaining that an MPO may be easier and quicker to issue than a CPO).

109. In contrast, MPOs are issued immediately at the CO’s complete discretion and can thus be much faster and easier to obtain. See *id.*

110. Heintz, *supra* note 40, at 297.

111. *Id.* at 295.

112. Burke, *supra* note 32, at 570–71 (listing “material necessities” as an area of a victim’s life that abusers control through physical and emotional violence).

113. See SCHELL, *supra* note 16, at 33.

114. G. Anthonie Riis, *President’s Order Aimed to Better Document, Prosecute Domestic Violence*, FORT KNOX NEWS (Oct. 30, 2018), https://www.army.mil/article/213173/presidents_order_aimed_to_better_document_prosecute_domestic_violence [<https://perma.cc/8GFS-EZF8>] (listing ways through which abusers can assert and maintain control over victims); Burke, *supra* note 32, at 570–71.

common among all domestic violence victims, they are further exacerbated by military culture and lifestyle.¹¹⁵ Victims who reside on base are physically, psychologically, and socially separated from their civilian support systems.¹¹⁶ In addition, many service members are required to relocate frequently to new places where their spouses have no friends, family, or familiarity with available resources.¹¹⁷ Without a strong support system, opportunities to escape abusive circumstances become even more limited.¹¹⁸

Furthermore, if a victim already has an MPO against her abuser, she may feel safer staying on base where military police can respond to incidents more quickly.¹¹⁹ Because domestic violence has deeply psychological effects, even a *presumed* lack of protection could deter a victim from venturing off base to file for a CPO in civil court.¹²⁰

3. Risk of Retaliation and Unwanted Exposure

A third barrier to access is that the CPO process can often increase the risk of retaliation and result in unwanted exposure. While MPOs can quickly and quietly be issued by a CO, the CPO process is more extensive and involves public court proceedings and serving process on the alleged abuser, which alerts him of the victim's efforts to protect herself from further abuse.¹²¹ The acts of going to the courthouse and filing for a protective order can trigger separation assault, which occurs when a victim's attempt to leave or seek protection provokes heightened abusive behavior.¹²²

115. BEALS & ERWIN, *supra* note 51, at 4.

116. *E.g.*, *id.* at 4, 13 (describing victims' frequent geographic isolation from their familiar support systems); Psych Central Staff, *Understanding the Effects of Domestic Violence*, PSYCHCENTRAL.COM (May 17, 2016), <https://psychcentral.com/lib/understanding-the-effects-of-domestic-violence> [<https://perma.cc/5KNL-LEMV>] ("Victims of domestic violence may be isolated from friends, family and neighbors and lose their network of social support."); KAMARCK ET AL., *supra* note 47 (listing social isolation and separation from "natural support networks" as factors unique to military domestic violence).

117. BEALS & ERWIN, *supra* note 51, at 4–5.

118. *Id.* at 4, 11; Deborah B. Grays, *Domestic Violence Awareness a Matter of 3 Rs*, U.S. ARMY (Oct. 21, 2010), https://www.army.mil/article/46933/domestic_violence_awareness_a_matter_of_3_rs [<https://perma.cc/4G6C-A8C3>].

119. *See* BATTERED WOMEN'S JUSTICE PROJECT, *supra* note 44, at 1–2. Although MPOs are binding both on and off base, the first responder to an off-base MPO violation is typically civilian law enforcement, who does not have authority to enforce the MPO. *See* Section II.B.1.

120. *See* BATTERED WOMEN'S JUSTICE PROJECT, *supra* note 44, at 1–2.

121. CAL. RULES OF COURT 2.550(c)–(d) (West 2017) (stating that "[u]nless confidentiality is required by law, court records are presumed to be open" and may only be sealed if specific requirements are met); *see also In re Marriage of Nicholas*, 113 Cal. Rptr. 3d 629, 635–36 (Ct. App. 2010) (discussing the public right to access civil court records under the First Amendment and the very limited circumstances under which family law court records may be sealed).

122. Stark & Choplin, *supra* note 80, at 34.

Furthermore, the courthouse itself can also be dangerous because it provides a time and place where abusers can confront or even assault their victims.¹²³ A scheduled court hearing, which is required in order to get a CPO, lets the abuser know exactly when and where he can find his target.¹²⁴ Even if an MPO is in place, the fact that it cannot be enforced by civilian law enforcement or courthouse security—who is often unaware of the order—may make the courthouse a tempting place for the abuser to confront the victim, placing her at greater risk.¹²⁵ In one highly publicized incident, a woman was killed by her abusive boyfriend in a courthouse hallway.¹²⁶ After hiding out at a secret location for several days, she had shown up to the courthouse to request a protective order, only to be murdered by her abuser who knew she would be there for the trial.¹²⁷ In another incident, a woman was shot to death in the middle of a divorce proceeding by her abusive husband of barely two weeks.¹²⁸ After hearing stories like these, military victims may prefer to avoid unwanted exposure by simply staying away from court altogether.

4. Difficulty of Serving Process

A fourth barrier to access is the difficulty of serving court documents. Many service members live on military installations, ships, or aircraft carriers with restricted public access.¹²⁹ The protected party and her advocates may not have access to the installation or other place of assignment, especially if the service member uses it as a “refuge” to avoid being served.¹³⁰ In these cases, serving process requires coordination with the base’s Staff Judge Advocate or Command Judge Advocate.¹³¹ Furthermore, court documents cannot be served within a command without the CO’s consent, which may be impossible to obtain from an uncooperative CO.¹³² This is especially difficult for victims who do not have access to

123. Stoeber, *supra* note 80, at 1026–30.

124. *Id.* at 1027.

125. *See id.* at 1027–29 (discussing issues with courthouse security that endanger domestic violence litigants).

126. Don Terry, *Killing of Woman Waiting for Justice Sounds Alert on Domestic Violence*, N.Y. TIMES (Mar. 17, 1992), <https://www.nytimes.com/1992/03/17/us/killing-of-woman-waiting-for-justice-sounds-alert-on-domestic-violence.html> [<https://perma.cc/4KA7-DDDR>].

127. *Id.*

128. Timothy Egan, *Mail-Order Marriage, Immigrant Dreams and Death*, N.Y. TIMES (May 26, 1996), <https://www.nytimes.com/1996/05/26/world/mail-order-marriage-immigrant-dreams-and-death.html> [<https://perma.cc/2WAR-6Y8Z>].

129. Somerville, *supra* note 59, at 309.

130. *Id.*

131. *Id.*

132. *See* 32 C.F.R. § 720.20(a) (2019).

ample legal resources.¹³³

III. ARGUMENT FOR USING CIVILIAN EX PARTE TROS AS A MODEL FOR REFORMING THE MPO SYSTEM

The shortcomings of MPOs and CPOs call for systemic reform. This Section homes in on one particular shortcoming of MPOs: their unenforceability by civilian law enforcement and courts.¹³⁴ Specifically, it argues that legislators should look to domestic violence TROs as a model to develop an alternative process through which military spouses can obtain a new type of military-issued protective order that could be enforced by civilian authorities.

A. WHAT ARE DOMESTIC VIOLENCE TROS?

A TRO is a civil *ex parte* protective order available to domestic violence victims.¹³⁵ Like CPOs, domestic violence TROs order an alleged abuser not to hurt or threaten the petitioner, and in most states they can also include no-contact provisions.¹³⁶ Applying for a TRO is usually the first step in getting a CPO, since TROs are effective immediately and provide protection on an emergency basis until the party seeking protection can obtain a more permanent order.¹³⁷ The process typically involves filing a petition with the court, which is then reviewed by a judge who decides whether to grant the request.¹³⁸ No prior notice or hearing is required.¹³⁹ However, TROs are effective for only a short period of time, expiring any time from the end of the business day on which they are issued to the date of the final protection order hearing.¹⁴⁰

133. Somerville, *supra* note 59, at 309.

134. BEALS & ERWIN, *supra* note 51, at 43.

135. FED. R. CIV. P. 65(b)(1); 14 LOUIS R. FRUMER, OSCAR L. WARREN & JOSEPH J. O'CONNELL, BENDER'S FORMS FOR CIVIL PRACTICE CPLR § 6313(a) (2021).

136. *Domestic Violence Restraining Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/general/restraining-orders> [<https://perma.cc/5DM3-TAP4>].

137. WIDER OPPORTUNITIES FOR WOMEN, PROTECTION ORDERS AND SURVIVORS (2012). In California, the reviewing judge must issue or deny the order "on the same day that the application is submitted to the court, unless the application is filed too late in the day to permit effective review." CAL. FAM. CODE § 6326 (West 2013).

138. 1 FAMILY LAW AND PRACTICE § 6.02(4)(b). Some states have additional requirements for obtaining *ex parte* orders. *Id.*

139. *Id.* ("Because so many victims seek emergency help from the courts, every state now allows issuance of an *ex parte* protection order, in which a short-term order is issued without prior notice to the alleged abuser.").

140. See BATTERED WOMEN'S JUSTICE PROJECT, STATE PROTECTION ORDER DURATIONS MATRIX 3-4 (2015) (stating that TROs in Arizona are effective only "[u]ntil close of business on day after

B. ANALYZING DUE PROCESS FOR PROTECTIVE ORDERS UNDER *BLAZEL V. BRADLEY*

While TROs resemble MPOs to the extent they forgo the traditional due process requirements of prior notice and a hearing, unlike MPOs, TROs are fully enforceable by civilian law enforcement and courts. Thus, by closely analyzing TROs, lawmakers can pinpoint how to modify MPOs to allow for interjurisdictional enforcement.

The problem is that because no state statute governing ex parte protective orders has successfully been challenged to date,¹⁴¹ very little case law extensively analyzes due process for TROs.¹⁴² The most thorough and instructive analysis comes from *Blazel v. Bradley*,¹⁴³ a Western District of Wisconsin case that was later adopted by a federal court of appeals.¹⁴⁴

Blazel addressed the constitutionality of a state law that permitted ex parte TROs to be issued in domestic abuse actions without notice to the respondent.¹⁴⁵ Under general due process protections, deprivation of liberty or property without prior notice and a hearing is permissible only under “extraordinary circumstances” and when “appropriate safeguards” are in place.¹⁴⁶ Courts usually evaluate the adequacy of such protections by weighing three factors set forth in *Mathews v. Eldridge*: (1) the private interest that will be affected; (2) the risk of erroneous deprivation; and (3) the probable value of any procedural safeguards.¹⁴⁷

However, in *Blazel*, the court found that the *Mathews* test did not “provide substantial guidance as to what specific procedural protections are required” to protect the respondent’s interests with regard to TROs.¹⁴⁸

emergency order of protection was issued unless otherwise continued by court,” while those in Alabama are “[e]ffective until final protection Order”).

141. David H. Taylor, Maria V. Stoilkov & Daniel J. Greco, *Ex Parte Domestic Violence Orders of Protection: How Easing Access to Judicial Process Has Eased the Possibility for Abuse of the Process*, 18 KAN. J.L. & PUB. POL’Y 83, 93–94 (2008).

142. *Nollet v. Justices of the Trial Court*, 83 F. Supp. 2d 204, 212 (D. Mass. 2000); 1 FAMILY LAW AND PRACTICE § 6.02(4)(b).

143. *Blazel v. Bradley*, 698 F. Supp. 756 (W.D. Wis. 1988).

144. *Nollet*, 83 F. Supp. 2d at 212–13 (adopting the court’s reasoning in *Blazel* because although *Blazel* is not binding authority, its analysis and reasoning is particularly persuasive and “a correct interpretation of the Supreme Court cases on the requirements of the due process clause”); see Taylor et al., *supra* note 141, at 94 (noting that the United States District Court for the Western District of Wisconsin is “[t]he only federal court that has addressed the constitutionality of a typical state statute providing for the issuance of ex parte temporary restraining orders in domestic abuse actions”).

145. *Blazel*, 698 F. Supp. at 757.

146. *Id.* at 763.

147. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

148. *Blazel*, 698 F. Supp. at 763.

Instead, the court turned to a line of pre-*Mathews* cases to develop a framework for evaluating statutes that govern domestic abuse restraining orders.¹⁴⁹ It concluded that when no pre-deprivation hearing is provided, due process is satisfied by four minimum procedural safeguards: (1) participation by a judicial officer; (2) a prompt post-deprivation hearing; (3) verified petitions or affidavits containing detailed allegations based on personal knowledge; and (4) a risk of immediate and irreparable harm.¹⁵⁰

Ultimately, the court found that Wisconsin's TRO statute satisfied due process because it provided all four procedural safeguards.¹⁵¹ First, the TROs were to be issued only by a judge or family court commissioner.¹⁵² Second, the statute required a post-deprivation hearing to be held within seven days after issuance of the TRO.¹⁵³ Third, the statute required the petitioner to provide a verified petition containing specific allegations against the respondent based on the petitioner's personal knowledge.¹⁵⁴ And fourth, the statute required a showing of immediate and irreparable harm.¹⁵⁵

C. APPLYING THE *BLAZEL* FRAMEWORK TO MPOS

TROs are an instructive civilian counterpart to MPOs.¹⁵⁶ Both are short-term emergency protective orders available to domestic violence victims. And, more specifically, they both deviate from traditional due process requirements by prioritizing victim safety and forgoing prior notice and a hearing.¹⁵⁷ Yet, TROs are enforceable by civilian law enforcement and courts despite their relaxed procedural protections, whereas MPOs cannot be enforced by civilian authorities. This suggests that the absence of prior notice and a hearing is not the only determinative factor preventing MPOs from enjoying interjurisdictional enforcement.

149. *Id.* Although all of these cases reviewed state statutes that allowed repossession of property and garnishment without prior notice and a hearing, they are most analogous to this issue because like domestic violence protective orders, "repossession and garnishment involve conflicting interests of petitioner and respondent." *Id.* (noting that debtors have a protected ownership interest in wages and property, creditors have strong competing interests in collecting money and partial ownership of the same property, and providing prior notice of repossession or garnishment involves substantial risks because a debtor could sell or hide the property upon notice).

150. *Id.* at 763–64.

151. *Id.* at 764–68.

152. *Id.* at 764.

153. *Id.*

154. *Id.*

155. *Id.* at 764–68.

156. See BEALS & ERWIN, *supra* note 51, at 43 ("A military protective order (MPO) is similar to a temporary restraining order issued by a civilian court.").

157. FED. R. CIV. P. 65(b)(1); SCHELL, *supra* note 16, at 33.

An application of the *Blazel* framework illuminates exactly where MPOs fall short of satisfying due process and how to make them enforceable by civilian authorities.¹⁵⁸ Perhaps unsurprisingly, the current MPO system satisfies none of *Blazel*'s four minimum procedural safeguards.¹⁵⁹ First, MPOs are not issued by a judicial officer, but rather by the allegedly abusive service member's CO. Second, although the CO issuing the order can choose to give the service member an opportunity to defend himself, no post-deprivation hearing is required. Third, the CO has complete discretion to issue an order without any support or verification from petitions, affidavits, personal knowledge, or specific allegations. And fourth, no particular factual or legal findings—including of immediate or irreparable harm—are required.

Without any traditional due process protections in place, it is no surprise that MPOs cannot be enforced by civilian law enforcement or courts. To bridge this gap in interjurisdictional enforcement, Congress should develop a new MPO system that holds up under the *Blazel* framework, passes constitutional muster, and, in effect, can be given full faith and credit across jurisdictions.

IV. A PROPOSAL TO CREATE JUDICIAL MPOS

In an effort to protect military domestic violence victims, the military justice system should offer two coexisting processes for obtaining military-issued protective orders: one for traditional MPOs issued by COs and another for JMPOs, a new kind of protective order issued by military judges and magistrates.

Currently, the only protective order that fully protects military victims under civilian jurisdiction is a CPO, which can be obtained only by venturing off base where the victim is more vulnerable to confrontation by her abuser. A JMPO system would bridge this gap in protection by allowing military spouses to obtain civilian-enforceable protective orders without leaving base.

JMPOs would alleviate due process concerns and other barriers to enforceability. It is important to emphasize that this Note does not seek to replace the current MPO process, but rather to create a JMPO process that coexists and works in conjunction with existing MPOs. This dual-track system would allow COs to continue issuing traditional MPOs for the purpose of achieving good order and discipline while also giving victims a

158. See *Blazel*, 698 F. Supp. at 764.

159. See *id.*

way to seek protection outside the chain of command. The goal is to shift decision-making power from the service member's CO to a neutral judge or magistrate, providing an alternative option that balances the need to expand protection for domestic violence victims with the need to protect the due process rights of alleged abusers.

A. A SUGGESTED MODEL FOR JMPOS

Under the proposed dual-track system, a military spouse seeking protection could first request a traditional MPO from the service member's CO. Many domestic violence victims may prefer to try this option first since the informality and expediency of the traditional MPO process could provide more immediate relief.¹⁶⁰ The CO then has full discretion to decide whether to grant the request. If the CO decides to issue an MPO but also believes that additional protection is needed, he or she can request a JMPO from a military judge or magistrate on behalf of the victim, using the newly issued MPO as evidentiary support. Of course, the victim is free to decline any additional protective orders if she feels that the MPO alone is sufficient. Alternatively, if the CO rejects the MPO request, or if the victim does not want to get the CO involved at all, the victim can forgo the entire MPO process and go straight to the military judiciary to request a JMPO.

To ensure that JMPOs are fully enforceable and that due process is satisfied, the JMPO process should closely mirror the TRO process and satisfy *Blazel's* four minimum procedural safeguards.¹⁶¹ Specifically, the person seeking protection would file a JMPO petition, which is reviewed by a military judge or magistrate who then decides whether to grant the order. The order must be supported by verified petitions and affidavits derived from the petitioner's personal knowledge, as well as a finding of immediate and irreparable harm under applicable state standards.¹⁶² The service member should also be given an opportunity to defend himself at a timely post-deprivation hearing.

Many military spouses may prefer to get a JMPO before filing for a CPO since JMPOs could be acquired without going off base. Then, if she

160. See *infra* text accompanying notes 108–13 (explaining that an MPO can be faster and easier to obtain than a CPO).

161. See *Blazel*, 698 F. Supp. at 764.

162. Interpretations of the federal immediate and irreparable harm standard varies by state. *Domestic Violence/Domestic Abuse Definitions and Relationships*, NAT'L CONF. ST. LEGISLATURES (June 13, 2019), <http://www.ncsl.org/research/human-services/domestic-violence-domestic-abuse-definitions-and-relationships.aspx> [<https://perma.cc/WQ3X-MYYQ>] (providing comprehensive list of domestic violence and abuse laws by state). For a discussion of how these interpretations have evolved over time, see generally Stark & Choplin, *supra* note 80, at 15–24.

also decides to get a CPO, she will be fully protected by a military-issued protective order that is enforceable by both military and civilian law enforcement when she goes to civil court.

Finally, to minimize the risk of erroneous deprivation, JMPOs would be effective for only a limited period of time—perhaps no more than thirty days. This would give the protected party an opportunity to file for a more permanent CPO without feeling vulnerable to off-base confrontations. Any extensions should be granted by the military judge or magistrate only upon further review.

B. SPECIFIC RECOMMENDATIONS

The following are specific recommendations for an effective JMPO system and for generally improving protection for military domestic violence victims.

1. Empower Military Judges and Magistrates to Issue JMPOs

Congress should pass legislation giving military judges and magistrates the power to issue protective orders. Unlike direct orders from a CO, which clearly create conflicts of interest and do not satisfy due process, JMPOs issued by a military judge who is unaffiliated with the service member's command would not present the same risks. By shifting decision-making power from the chain of command to an independent and legally trained judicial authority, the JMPO system would satisfy *Blazel's* first required procedural safeguard and be seen as more legally legitimate by other jurisdictions.¹⁶³ This process would better protect both the victim and the allegedly abusive service member by guaranteeing both sides an opportunity to be heard before a judicial authority. Moreover, since JMPOs would not be linked to a specific command, they would remain effective even if the service member transfers to a new command.

Congress has already taken significant steps to advance the development of judge-issued military protective orders. In 2018, section 544 of the Senate version of the National Defense Authorization Act for Fiscal Year 2019 (“NDAA FY19”) introduced a bill that would have amended the UCMJ to allow military judges and magistrates to issue “protective

163. Press Release, Debbie Dingell, Congresswoman, Dingell Urges Congressional Leaders to Expand Restraining Orders in Military (July 16, 2018), <https://debbiedingell.house.gov/news/document/single.aspx?DocumentID=1290> [<https://perma.cc/48R2-NT5S>]; Ghiotto, *supra* note 19, at 509–10.

order[s] . . . on an emergency basis.”¹⁶⁴ Section 544 further specified that, like CPOs, these judge- and magistrate-issued MPOs would require prior notice and an opportunity to be heard, even though protective orders “issued on an ex parte basis” would not.¹⁶⁵

Unfortunately, section 544 was not adopted for two main reasons.¹⁶⁶ First, the Administration believed that the amendment would “strain the military judiciary’s limited resources.”¹⁶⁷ But according to Defense Secretary Dr. Mark T. Esper, “[the military’s] people are [its] greatest resource.”¹⁶⁸ In 2019, the DoD renewed its commitment to supporting military families by adding a new major line of effort—“taking care of military personnel and their families”—to its National Defense Strategy.¹⁶⁹ To achieve this goal, the DoD requested nearly \$8.2 billion dedicated to military family support programs for the fiscal year 2021.¹⁷⁰ In a similar vein, the HASC has also shown revitalized concern about the military’s domestic violence problem after its 2019 hearing on domestic violence, during which “[m]embers from both sides of the aisle expressed outrage and frustration over the Department’s current practice and policies for domestic violence prevention, intervention, and response.”¹⁷¹

These recent events suggest that increased protection for domestic abuse victims should be seen not as a “strain” on military resources, but rather as a priority aligned with military objectives and warranting significant investment. Domestic violence affects thousands of military

164. John S. McCain National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong. § 544 (as passed by Senate, June 18, 2018) (amending the UCMJ). Section 544 of the Senate version of the Act proposed to amend the UCMJ by inserting section 809a Article 9a, which would have authorized a military judge or military magistrate to issue an emergency or nonemergency MPO. *Id.*

165. *Id.*

166. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, S. 2987, FOLLOW-ON TO STATEMENT OF ADMINISTRATION POLICY 8 (2018), <https://nooneleft.org/wp-content/uploads/2019/10/WH-statement-on-FY19-NDAA-06-26-2018.pdf> [<https://perma.cc/KNZ2-WDH4>] (explaining reasons for objecting to provision that would have allowed military judges to issue and enforce domestic violence protective orders).

167. *Id.*

168. *DOD Amplifies Focus on People in Executing National Defense Strategy*, U.S. DEP’T OF DEF. (Aug. 5, 2020), <https://www.defense.gov/Explore/News/Article/Article/2300553/dod-amplifies-focus-on-people-in-executing-national-defense-strategy> [<https://perma.cc/7Q9L-EGBG>].

169. *Id.*; OFFICE OF THE UNDER SEC’Y OF DEF. (COMPTROLLER)/CHIEF FIN. OFFICER, DEFENSE BUDGET OVERVIEW: UNITED STATES DEPARTMENT OF DEFENSE FISCAL YEAR 2021 BUDGET REQUEST 2-1 (2020), https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf [<https://perma.cc/7GM9-PZ8T>].

170. OFFICE OF THE UNDER SEC’Y OF DEF. (COMPTROLLER)/CHIEF FIN. OFFICER, *supra* note 169, at 1-4, 2-6.

171. Press Release, Speier, *supra* note 5, at 2; see *supra* text accompanying notes 5–10 (discussing the House Armed Services Committee’s first hearing on domestic violence in over fifteen years).

families each year.¹⁷² If the Administration is truly concerned about straining judicial resources, it should allocate more funding to the military judiciary and dedicate a portion of those funds to developing a JMPO system. This would greatly assist domestic violence victims while also achieving DoD objectives.

Second, the Administration argued that section 544 would “greatly expand the authority of military judges into an area that has been reserved to civil courts.”¹⁷³ It claimed that section 544 was unnecessary because domestic violence victims already “have access to State civil courts, which have robust and long-standing procedures to issue and enforce protective orders” and “military commanders can [already] issue protective orders in appropriate circumstances.”¹⁷⁴ But although *civil* protective orders are clearly “reserved to civil courts,”¹⁷⁵ section 544 specified that any protective order described by that section was to be “treated as a *military* protective order,”¹⁷⁶ which explicitly falls under military jurisdiction.¹⁷⁷ Furthermore, these other purported sources of protection are inadequate alternatives, as shown by the barriers to access discussed in Part II.D.¹⁷⁸ Nevertheless, the Senate’s efforts to pass section 544 did not succeed.

On September 10, 2019, in response to the Sutherland Springs massacre, the House of Representatives joined the effort to create military judge- and magistrate-issued protective orders by introducing the Safe Homefront Act.¹⁷⁹ Like section 544, the Safe Homefront Act seeks to “establish[] a process by which a military judge or magistrate may issue [an MPO] against an individual suspected of having committed . . . an offense [of domestic violence].”¹⁸⁰ The bill was referred to the Subcommittee on Crime, Terrorism, and Homeland Security on September 25, 2019, and is pending as of the time of this Note.¹⁸¹

172. See U.S. DEP’T OF DEF., *supra* note 18, at 39 (providing statistics on domestic abuse incidents in fiscal year 2019).

173. OFFICE OF MGMT. & BUDGET, *supra* note 166, at 8.

174. *Id.*

175. *Id.*

176. John S. McCain National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong. § 544(f)(3) (emphasis added).

177. BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 44. Section 1567a of the UMCJ grants COs authority to issue MPOs. 10 U.S.C. § 1567a.

178. See *supra* Section II.D.

179. Safe Homefront Act, H.R. 4264, 116th Cong. § 2(b)(1)(B) (as introduced in House, Sept. 10, 2019); see *supra* text accompanying notes 11–13 (discussing the Sutherland Springs massacre).

180. H.R. 4264 § 2(b)(1)(B).

181. *All Actions H.R.4264 — 116th Congress (2019-2020)*, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/house-bill/4264/all-actions?r=2&overview=closed&s=1#tabs> [https://perma.cc/6HGB-EGHC].

On December 20, 2019, Congress endorsed this idea for a third time by passing section 550E(a)(2) of the National Defense Authorization Act for Fiscal Year 2020 (“NDAA FY2020”).¹⁸² Section 550E(a)(2) ordered the Secretary of Defense to conduct a study on the “feasibility of establishing a process by which a military judge or magistrate may issue a protective order against an individual suspected of having committed [an offense of domestic violence].”¹⁸³ It also required the Secretary to submit a report on the study’s results within 180 days of enactment.¹⁸⁴

A year later, in Section 549C(b)(9) of the National Defense Authorization Act for Fiscal Year 2021 (“NDAA FY2021”), Congress ordered the Secretary of Defense to contract with a private entity to determine the “potential effects of requiring military protective orders to be issued by a military judge, including whether such a requirement would increase the enforcement of military protective orders by civilian law enforcement agencies outside the boundaries of military installations.”¹⁸⁵

For the reasons discussed at length in this Note, civilian law enforcement would indeed be more likely to enforce military protective orders issued by military judges rather than by COs. These notable efforts by Congress show that support for JMPOs has already picked up significant steam since 2018 and that creating a JMPO system is an attainable goal. Accordingly, lawmakers should continue taking prompt and concrete steps to ensure that a JMPO process comes to fruition in accordance with the Secretary of Defense’s reports.

2. Establish a Central Database to Record and Track All Military Issued Protective Orders

In addition to creating JMPOs, Congress should establish a centralized database to record and track all military-issued protective orders—namely, MPOs and JMPOs—upon their issuance. Support for this idea has also increased in recent years. In 2001, the DTFDV advised the DoD to “[e]stablish a system to record and track all MPOs,” similar to the National Crime Information Center or central registry.¹⁸⁶ At the time, the DoD did not fully concur with this recommendation but requested to work with the

182. National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 550E(a)(2), 113 Stat. 1198 (2019).

183. *Id.*

184. *Id.* § 550E(b). This author was unable to locate or determine the status of the Secretary’s report.

185. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 549C(b)(9) (2021).

186. DEF. TASK FORCE ON DOMESTIC VIOLENCE, DEFENSE TASK FORCE ON DOMESTIC VIOLENCE INITIAL REPORT 26–27 (2001).

DTFDV to study it further.¹⁸⁷

In 2019, the Safe Homefront Act sought to codify an existing DoD policy requiring the Secretary of Defense to study the feasibility of establishing a database to record, track, and report domestic violence MPOs.¹⁸⁸ On December 20, 2019, Congress incorporated this provision into section 550E(a)(1) of the NDAA FY2020.¹⁸⁹ As of the date of this Note, an MPO database has not yet been established, and any progress on the study is unknown.

A centralized MPO database would help improve interjurisdictional reporting and communication. Although COs are required to notify local civilian law enforcement whenever they issue an MPO,¹⁹⁰ they often fail to follow protocol when responding to and reporting domestic violence incidents.¹⁹¹ In 2019, a study found that military commanders and law enforcement personnel failed to comply with DoD policies in 209 of the 219 cases analyzed.¹⁹² One common type of noncompliance was failure to submit criminal history data to the appropriate national security databases and organizations.¹⁹³

Although the study did not specifically provide data on the consistency of MPO reporting, it found that COs often “instructed law enforcement personnel to implement practices that were not consistent with DoD requirements which resulted in noncompliance.”¹⁹⁴ This implies that at least some COs either chose not to follow or were not properly trained to follow DoD protocol for dealing with domestic violence incidents. A centralized MPO database—as well as comprehensive training on how to properly handle domestic abuse incidents—would help reduce these kinds of errors. At minimum, Congress should use the Secretary of Defense’s feasibility study as a starting point for establishing an MPO database. Moreover, any legislation creating such a database should delineate clear enforcement

187. U.S. DEP’T OF DEF., *supra* note 40, app. A at 149.

188. Safe Homefront Act, H.R. 4264, 116th Cong. § 2(b)(1)(A) (2019).

189. National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 550E(a)(1)–(b), 113 Stat. 1198, 1383–84 (2019).

190. 10 U.S.C. § 1567a.

191. See Erika I. Ritchie, *The US Military Doesn’t Follow Its Own Rules when Investigating Domestic Violence on Bases*, TASK & PURPOSE (May 2, 2019), <https://taskandpurpose.com/news/military-domestic-violence-investigations-review> [<https://perma.cc/E8JQ-2SMP>] (discussing an April 19, 2019, study of military law enforcement practices and adherence to Department of Defense policies).

192. *Id.* The cases studied occurred across eight military bases over a two-year period. *Id.*

193. INSPECTOR GEN., U.S. DEP’T OF DEF., DODIG-2019-075, EVALUATION OF MILITARY SERVICES’ LAW ENFORCEMENT RESPONSES TO DOMESTIC VIOLENCE INCIDENTS 20 (2020).

194. *Id.* at i–ii.

mechanisms and consequences for failure to follow protocol.

3. Legislatively Mandate All Military Installations to Establish Domestic Violence MOUs with Their Civilian Counterparts and Improve Public Access to MOU-Related Information

Finally, Congress should require all military installations to establish written domestic violence memoranda of understanding (“MOUs”) with local civilian authorities. An MOU is a formal agreement that clearly defines the respective roles and responsibilities of an installation and civilian law enforcement for dealing with jurisdictional issues and sharing information.¹⁹⁵ Although many military bases already cooperate informally with their civilian counterparts, jurisdictional overlaps, high turnover rates among leadership, and lack of uniformity in state and local approaches make these relationships difficult to maintain.¹⁹⁶

To ensure continuous and effective collaboration, all installations should formalize their arrangements in written MOUs. A study on two military-civilian communities in Anchorage, Alaska and San Diego, California found that MOUs can strengthen collaborative relationships.¹⁹⁷ They enhance bidirectional communication by memorializing jurisdictional boundaries and protocol for what to do when a service member violates an MPO or is arrested under civilian jurisdiction.¹⁹⁸ They can also help facilitate the CPO process by making it easier for civilian officers to serve court documents on base.¹⁹⁹

The DoD has already instructed commanders to form MOUs for “improving information sharing on domestic abuse investigations, arrests, and prosecutions involving military personnel.”²⁰⁰ But an internal directive is not enough. In its first-year review, the DTFDV found that the Air Force and Marine Corps only *encouraged* the establishment of MOUs, while the Navy did not address the issue at all.²⁰¹ Only the Army explicitly requires military law enforcement officials to seek out formal MOUs with their

195. See BEALS & ERWIN, *supra* note 51, at 53–54. For examples and templates of various MOUs addressing domestic violence issues, see generally *id.* at 161–70.

196. HICKMAN ET AL., *supra* note 60, at 3.

197. *Id.*

198. SCHELL, *supra* note 16, at 33; BEALS & ERWIN, *supra* note 51, at 39.

199. BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 44, at 2.

200. DEP’T OF DEF., *supra* note 28, at 13.

201. LAURA J. HICKMAN & LOIS M. DAVIS, RAND CORP., FORMALIZING COLLABORATION: ESTABLISHING DOMESTIC VIOLENCE MEMORANDUMS OF UNDERSTANDING BETWEEN MILITARY INSTALLATIONS AND CIVILIAN COMMUNITIES 1 (2004), https://www.rand.org/content/dam/rand/pubs/issue_papers/2005/IP254-1.pdf [<https://perma.cc/Y5LW-HMFQ>].

civilian counterparts.²⁰²

To give this directive some teeth, Congress should pass formal legislation that requires *all* installations under *all* branches of the military to establish domestic violence MOUs. In so doing, commanders should ensure that the MOUs are based on mutual expectations and clearly delineate each party's roles, responsibilities, and actions for dealing with domestic abuse incidents. The legislation should outline specific minimum issues that must be addressed in every MOU, including procedures for promptly transmitting MPO data from military to civilian law enforcement, reevaluating the MOU at least every three years, and generally improving military-civilian relationships going forward.

Furthermore, information about domestic violence MOUs should be made available to the public. Currently, tracking each installation's progress and verifying compliance with MOU requirements is nearly impossible due to a lack of comprehensive, readily available, and installation-specific information. This lack of transparency allows the military to simply ignore the DoD directive and, by extension, the will of the public.

To increase accountability, Congress should build a verification method into its MOU legislation that requires the DoD to prepare and release an annual report on the status of each installation's progress in complying with the mandate. Moreover, to help assess how effective these MOUs really are, the report should also provide the number of MPOs and JMPOs cross-filed with civilian law enforcement in a way that protects the identities of the protected parties. Additionally, these MOUs should be posted on each installation, city, and county website. And finally, the DoD should electronically publish a comprehensive annual list to show which of its bases has complied with this mandate and provide status updates for in-progress MOUs.

CONCLUSION

Domestic violence is a "forgotten crisis" that affects thousands of military families each year. While all domestic abuse victims face tremendous obstacles to obtaining protection, testimony from the 2019 HASC hearing illustrates some of the many ways in which military culture and lifestyle can exacerbate these obstacles.

Currently, MPOs are devoid of due process protections and thus are not given full faith and credit beyond the military system. Given the limitations

202. 32 C.F.R. § 635.20(a) (2021).

of MPOs and the barriers to obtaining CPOs as an alternative means of protection, systemic reform is necessary to provide greater protection for military domestic violence victims.

This Note attempted to address this issue by proposing a JMPO system that produces military-issued protective orders that are enforceable by civilian authorities. From the limited case law guiding due process analyses for similar orders, this Note concluded that MPOs can pass constitutional muster if they satisfy the minimum procedural protections set out in *Blazel*. By using TROs as a model for reform and shifting decision-making power from the chain of command to the military judiciary, lawmakers can create JMPOs that are both military-issued and civilian enforceable.

Recent efforts to enact similar reform provide hope and a foundation for real change. Of course, none of these changes will be truly effective without proper training, investment, and collaboration between military and civilian authorities. Although JMPOs would not fully solve the pervasive issue of domestic abuse, this Note provides a step toward bridging the gap in protection for victims of military domestic violence.

