

No. 22-915

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

ZACKEY RAHIMI,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF EDUCATORS, PRACTITIONERS,
AND ORGANIZATIONS WITH EXPERTISE
IN DOMESTIC VIOLENCE PROTECTIVE
ORDERS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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Cal. Fam. Code § 6345(a)	9
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Md. Code Ann. Fam. Law § 4-505.....	6
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Tex. Fam. Code § 71.004	5
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Tex. Fam. Code § 82.042	6
Tex. Fam. Code § 82.043(c)	7
Tex. Fam. Code § 84.001(a).....	6
Tex. Fam. Code § 84.003(a).....	8
Tex. Fam. Code § 84.004(a).....	8
Tex. Fam. Code § 85.001(a).....	9
Tex. Fam. Code § 85.005	8
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OTHER AUTHORITIES	Page(s)
A. Rachel Camp, <i>From Experiencing Abuse to Seeking Protection: Examining the Shame of Intimate Partner Violence</i> , 13 U.C. Irvine L. Rev. 103 (2022).....	22
Alexia Cooper & Erica L. Smith, U.S. Department of Justice, <i>Homicide Trends in the United States, 1980-2008</i> , at 10 (2011).....	26-27
American Bar Association, Jurisdictional Adoption of Revised Model Code of Judicial Conduct, https://tinyurl.com/yhtjysdt (last visited Aug. 16, 2023).....	18
American Psychological Association, <i>Violence & Socioeconomic Status</i> (2016), https://tinyurl.com/2zh5nhts	13
Andrew C. Budzinski, <i>Reforming Service of Process: An Access-To-Justice Framework</i> , 90 U. Colo. L. Rev. 167 (2019).....	7, 11
April M. Zeoli & Daniel W. Webster, <i>Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large US Cities</i> , 16(2) Inj. Prevention 90 (2010)	27
April M. Zeoli et al., <i>Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide</i> , 187(11) Am. J. Epidemiology 2365 (2017).....	27

TABLE OF AUTHORITIES—Continued

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Arlene N. Weisz, <i>Legal Advocacy for Domestic Violence Survivors: The Power of an Informa-tive Relationship</i> , 80 <i>Fams. Soc’y</i> 138 (1999).....	14
CBS News, <i>Letterman Fights Restraining Order</i> (Dec. 21, 2005), https://tinyurl.com/y8t9u3f6	16
Dana Harrington Conner, <i>Civil Protection Order Duration: Proof, Procedural Issues, and Policy Considerations</i> , 24 <i>Temp. Pol. & Civ. Rts. L. Rev.</i> 343 (2015)	9
D.C. Access to Justice Comm’n, <i>Justice for All? An Examination of the Civil Legal Needs of the District of Columbia’s Low-Income Community</i> (2008)	11
Deborah Epstein & Lisa Goodman, <i>Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences</i> , 167 <i>U. Pa. L. Rev.</i> 399 (2019)	23, 24
Deborah Epstein et al., <i>Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long-Term Safety in the Prosecution of Domestic Violence Cases</i> , 11 <i>Am. U. J. Gender Soc. Pol’y & L.</i> 465 (2003).....	14

TABLE OF AUTHORITIES—Continued

	Page(s)
Elizabeth R. Vigdor & James A. Mercy, <i>Disarming Batterers: The Impact of Domestic Violence Firearm Laws</i> , in <i>Evaluating Gun Policy: Effects on Crime and Violence</i> (J. Ludwig & P. J. Cook eds., 2003)	27
Elizabeth R. Vigdor & James A. Mercy, <i>Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?</i> , 30 <i>Evaluation Rev.</i> 313 (2006)	27
Evan Murphy et al., <i>Motivations, Barriers, and Impact of Continuing Judicial Education: A Survey of U.S. Judges</i> , 57 <i>Ct. Rev.</i> 40 (2021).....	19
Heidi Stöckl et al., <i>The Global Prevalence of Intimate Partner Homicide: A Systematic Review</i> , 382 <i>Lancet</i> 859 (2013)	26
J.R. Johnston et al., <i>Allegations and Substantiations of Abuse in Custody-disputing Families</i> , 43 <i>Fam. Ct. Rev.</i> 283 (2005).....	22
Jacquelyn C. Campbell et al., <i>Intimate Partner Homicide: Review and Implications of Research and Policy</i> , 7 <i>Trauma Violence & Abuse</i> 246 (2007).....	26

TABLE OF AUTHORITIES—Continued

	Page(s)
Jane C. Murphy, <i>Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women</i> , 11 Am. U. J. Gender Soc. Pol’y & L. 499 (2003).....	10, 12, 13, 15
Jane K. Stoever, <i>Access to Safety and Justice: Service of Process in Domestic Violence Cases</i> , 94 Wash. L. Rev. 333 (2019).....	7, 11, 12
Jane K. Stoever, <i>Enjoining Abuse: The Case for Indefinite Domestic Violence Protective Orders</i> , 67 Vand. L. Rev. 1015 (2014).....	9, 13
Jane K. Stoever, <i>Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS</i> , 87 N.C. L. Rev. 1157 (2009).....	10
Jennie Runevitch, <i>Family Questions Court System Following Columbus Woman’s Murder Days After Being Denied Restraining Order</i> , WTHR (Dec. 29, 2022), https://tinyurl.com/2p823pp7	28
Jessica K. Steinberg, <i>Demand Side Reform in the Poor People’s Court</i> , 47 Conn. L. Rev. 741 (2015).....	11
John S. Meier, <i>Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions</i> , 11 Am. U. J. Gender Soc. Pol’y & L. 657 (2003)	24

TABLE OF AUTHORITIES—Continued

	Page(s)
Judith Herman, <i>Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror</i> (1992)	14
Judith McFarlane et al., <i>Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women</i> , 94 <i>Am. J. Pub. Health</i> 613 (2004).....	26
Julie M. Kafka et al., <i>Judging Domestic Violence from the Bench: A Narrative Analysis of Judicial Anecdotes About Domestic Violence Protective Order Cases</i> , 29 <i>Qualitative Health Res.</i> 1132 (2019).....	25
Karla Fischer & Mary Rose, <i>When “Enough Is Enough”: Battered Women’s Decision Making Around Court Orders of Protection</i> , 41 <i>Crime & Delinq.</i> 414 (1995)	14
Kathryn E. Moracco et al., <i>Female Intimate Partner Homicide: A Population-Based Study</i> , 58 <i>J. Am. Med. Women’s Ass’n</i> 20 (2003).....	26
Kim Y. Slote et al., <i>Battered Mothers Speak Out: Participatory Human Rights Documentation as a Model for Research and Activism in the United States</i> , 11 <i>Violence Against Women</i> 1367 (2005).....	24

TABLE OF AUTHORITIES—Continued

	Page(s)
Kit Kinports & Karla Fischer, <i>Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes</i> , 2 Tex. J. Women & L. 163 (1993).....	14-15
Kristin Kalsem, <i>Judicial Training on Domestic Violence: A 50-State Survey</i> (2019).....	19
Laurie S. Kohn, <i>The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim</i> , 32 N.Y.U. Rev. L. & Soc. Change 191 (2008).....	13
Lisa Goodman et al., <i>Obstacles to Victims' Cooperation With the Criminal Prosecution of Their Abusers: The Role of Social Support</i> , 14 Violence & Victims 427 (1999).....	13-14
Martha Shaffer & Nicholas Bala, <i>Wife Abuse, Child Custody and Access in Canada</i> , 3:3-4 J. Emotional Abuse 253 (2003).....	22
Mary Schouvieller, <i>Leaping Without Looking: Chapter 142's Impact on Ex Parte Protection Orders and the Movement Against Domestic Violence in Minnesota</i> , 14 Law & Ineq. 593 (1996).....	12

TABLE OF AUTHORITIES—Continued

	Page(s)
Maryland Special Joint Committee, <i>Report on Gender Bias in The Courts</i> (1989), reprinted in Maryland Special Joint Committee, <i>Report of the Special Joint Committee on Gender Bias in the Courts</i> , 20 U. Balt. L. Rev. 1 (1990)	25
Matthew Carlson et al., <i>Protective Orders and Domestic Violence: Risk Factors for Re-Abuse</i> , 14 J. Fam. Violence 205 (1999).....	26
Michelle Bemiller, <i>When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts</i> , 5 J. Child Custody 228 (2008)	24
Nancy Thoennes & Patricia G. Tjaden, <i>The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes</i> , 14 Child Abuse & Neglect 151 (1990).....	23
National Center for State Courts, <i>State Links</i> , https://tinyurl.com/z32fyw8 (last visited Aug. 16, 2023)	18
National Conference of State Legislatures, <i>Family-Friendly Courts: Opportunities for State Legislators To Improve Civil Court Processes</i> (June 20, 2023), https://tinyurl.com/4zyz2vjb	17

TABLE OF AUTHORITIES—Continued

	Page(s)
National Council of Juvenile and Family Court Judges, <i>Civil Protection Orders: Strategies for Safe and Effective Service of Process</i> (Aug. 17, 2022), https://tinyurl.com/4fv4zmp5	7, 12
NCJFCJ, <i>Judicial Education Development Initiative on Domestic Violence: From Concepts to Improved Court Responses</i> , https://tinyurl.com/yuvd7t3d (last visited Aug. 16, 2023)	19
NCJFCJ, <i>Who We Are</i> , https://www.ncjfcj.org/ (last visited Aug. 16, 2023).....	19
Nico Tocme & Nicholas Bala, <i>False Allegations of Abuse and Neglect When Parents Separate</i> , 29 <i>Child Abuse & Neglect</i> 1333 (2005)	22
Nikki Hawkins, <i>Perspectives on Civil Protective Orders in Domestic Violence Cases: The Rural and Urban Divide</i> , 266 <i>Nat'l Inst. Just. J.</i> 4, 6 (2010).....	24
NJIDV, <i>About Us</i> , https://tinyurl.com/44nh74zj (last visited Aug. 16, 2023)	19, 20
NJIDV, <i>Enhancing Judicial Skills in Domestic Violence Cases Workshop</i> , https://tinyurl.com/3skbmyrx (last visited Aug. 16, 2023)	20
Office of State Commission on Judicial Conduct, <i>Frequently Asked Questions</i> , https://tinyurl.com/mr3wwvek (last visited Aug. 16, 2023)	18

TABLE OF AUTHORITIES—Continued

	Page(s)
State Bar of Texas, <i>The Gender Bias Task Force of Texas: Final Report</i> (1994).....	24
Stuart Ross & Sophie Aitken, “ <i>If It Hadn’t Been Online I Don’t Think I Would Have Applied</i> ”: <i>Applicant Experiences of an Online Family Violence Intervention Order Process</i> , 37 <i>J. Interpersonal Violence</i> 221 (2022).....	13
Susan Sorenson, <i>Firearm Use in Intimate Partner Violence: A Brief Overview</i> , 30 <i>Evaluation Rev.</i> 229 (2006)	27
Texas Code of Judicial Conduct, https://tinyurl.com/3syjz7av (Jan. 21, 2022)	18
Texas State Law Library, <i>Protective Order Kit – as Approved by the Supreme Court of Texas</i> , https://tinyurl.com/mr3jx5p8 (last visited Aug. 16, 2023).....	5, 10
Tonya Brown, <i>SC Woman Denied Protective Order for ‘Failure to Prove’ Alleged Abuse, Court Records Show</i> , abc15 News (Jan. 26, 2022), https://tinyurl.com/5n62mcu8	28
Washington Post, <i>Judge Tosses Restraining Order Fan Obtained Against Letterman</i> (Dec. 28, 2005), https://tinyurl.com/45wd9n5n	16
<i>Woman Filed Protection Order Days Before Apparent Murder-Suicide</i> , UpNorthLive (July 12, 2022), https://tinyurl.com/yct28sx9	28

INTEREST OF *AMICI CURIAE*¹

Amici curiae, listed in the Appendix, are educators, practitioners, non-profit organizations, and a former judge with critical expertise in domestic violence generally, and the domestic violence protective order petition process specifically. *Amici*, numbering 13 individuals and two organizations in total, serve in varying roles in states across the country, including as advocates for survivors of domestic violence, directors of law school domestic violence clinics, and a former judge in state family courts. In their roles, *Amici* provide vital services to individuals and families seeking domestic violence protection, including assisting in all facets of the domestic violence protective order process.

Having dedicated their careers to advocating for, working with, and protecting survivors of domestic violence, *Amici* have a strong interest in the correct interpretation of 18 U.S.C. § 922(g)(8), a law passed by Congress to ensure that firearms are not available to some of the most dangerous individuals in our society: domestic violence abusers. *Amici* respectfully submit that the Fifth Circuit's decision misconstrued the onerous process required to obtain domestic violence protective orders that are covered by § 922(g)(8). Additionally, the Fifth Circuit ignored the vital importance of § 922(g)(8) in protecting survivors of domestic violence.

¹ In accordance with Supreme Court Rule 37, *Amici* affirm that no person or entity other than *Amici* and their counsel authored this brief in whole or in part, and that no person or entity other than *Amici* and their counsel contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The federal law at issue, 18 U.S.C. § 922(g)(8), works in conjunction with state domestic violence protective orders (“DVPOs”) to disarm dangerous individuals only where heightened due process requirements have been met and in situations where people in serious danger need protection.

A. 18 U.S.C. § 922(g)(8) disarms respondents to DVPOs after strict due process safeguards have been satisfied and a judge has found that the respondent has committed or will commit violence in a domestic setting. Due to § 922(g)(8)’s strict requirements, it applies only to a subset of civil protective orders issued by state courts.

B. Given these strict requirements, § 922(g)(8) functions appropriately to disarm dangerous individuals. Contrary to statements made in the lower court’s concurring opinion, these orders are not granted to “virtually all who apply,” and state court judges are well-equipped to perform their job of discerning between legitimate and frivolous claims—a vital presumption in our judicial system. There is no reason to assume that judges are incapable of performing their basic functions, and no support for the fear (articulated in the concurring opinion) that judges regularly grant DVPOs based on false claims.

C. Finally, § 922(g)(8)’s ability to disarm dangerous individuals is critical to protecting the lives of people who have suffered abuse, and where a judge has found they are likely to suffer more. Indeed, laws like § 922(g)(8) are demonstrably effective in protecting survivors of domestic violence. Rather than being a tool of abuse, § 922(g)(8) is a necessary instrument

used to protect individuals, families, and the community from life-threatening danger.

ARGUMENT

I. 18 U.S.C. § 922(g)(8) Disarms Individuals Only in a Subset of Civil Protective Order Cases Involving Domestic Violence, Where Rigorous Safeguards Are Met and Practical Barriers Are Overcome

The federal law at issue in this matter, 18 U.S.C. § 922(g)(8), applies only to a subset of civil protective orders granted under state law. Court orders that trigger § 922(g)(8) are issued only when a petitioner (in a domestic or familial relationship with the respondent) meets a series of statutory requirements that are designed to protect the respondent's constitutional right to due process and when the petitioner overcomes myriad practical barriers. As a result, § 922(g)(8) applies in only a select subset of domestic violence cases involving individuals adjudicated to pose a high risk of danger.

A. Section 922(g)(8) only applies where procedural safeguards have been satisfied and the underlying protective order meets substantive requirements specific to domestic violence cases

Section 922(g)(8) prohibits an individual from possessing a firearm while subject to a qualifying domestic violence protective order (referred to herein as "DVPO") issued by a state court. As used in this brief, "DVPO" means only non-*ex parte* orders of protection that meet four statutory requirements.

First, the respondent to the DVPO must have actual notice of a hearing on the merits by proper service of process. *See* 18 U.S.C. § 922(g)(8)(A) (the order must

be “issued after a hearing of which such person received actual notice . . .”).

Second, the order must have been issued at a hearing “at which [the respondent] had an opportunity to participate.” *See* 18 U.S.C. § 922(g)(8)(A).

Third, § 922(g)(8)(B) requires a domestic or familial relationship between the petitioner and respondent. *See* 18 U.S.C. § 922(g)(8)(B) (the order must “restrain[] such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.”). Another federal law defines “intimate partner” as “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.” 18 U.S.C. § 921(a)(32). Other relationships, such as dating or intimate relationships without cohabitation or having children in common, do not qualify.

And *fourth*, a judge must make an express finding that the respondent poses a credible threat to the petitioner or the order must expressly prohibit the respondent from using or threatening the use of physical force. *See* 18 U.S.C. § 922(g)(8)(C) (the order must “(i) include[] a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.”).

As a result, § 922(g)(8) applies in only that subset of factual scenarios where heightened procedural due

process protections are met, and the evidence demonstrates that there is reason to believe that violence has occurred and/or will occur in a domestic setting.

B. Texas’s law exemplifies the requirements of § 922(g)(8)

Texas’s DVPO law operates in concert with § 922(g)(8). In Texas, DVPOs are only available to petitioners when the parties meet the statutory definition of familial relationship. *See* Tex. Fam. Code § 71.003 (“‘Family’ includes individuals related by consanguinity or affinity, as determined [elsewhere in the code], individuals who are former spouses of each other, individuals who are the parents of the same child”); *see also* Texas State Law Library, *Protective Order Kit – as Approved by the Supreme Court of Texas*, at 2, <https://tinyurl.com/mr3jx5p8> (last visited Aug. 16, 2023) (hereinafter “Texas’s Domestic Violence Protective Order Form”) (“Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus ‘intimate partners’ as defined by 18 U.S.C. § 921(a)(32)”).

The DVPO petitioner must also have experienced family violence, as defined by statute. Tex. Fam. Code § 71.004 (defining family violence as “(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse, as that term is defined [elsewhere in the code], by a member of a family or household toward a child of the family or household.”); *see also* Texas’s Domestic Violence Protective Order Form at 32 (protective order

appropriate where Respondent has (1) “committed family violence against the Applicant or Children named below and is likely to commit family violence in the future;” (2) “[T]here is a presumption that the Respondent has committed family violence and is likely to commit family violence in the future;” or (3) “The Respondent has violated a prior Protective Order that expired or will expire within 30 days.”).

In Texas, only once these threshold requirements have been satisfied may an individual “file an application for a protective order to protect the applicant or any other member of the applicant’s family or household.” Tex. Fam. Code § 82.002(a). These requirements for issuance of a DVPO are similar in other states. *See, e.g.*, Minn. Stat. Ann. § 518B.01; N.Y. Fam. Ct. Act § 821.

C. Petitioners seeking DVPOs must meet strict procedural requirements

Upon receiving a sworn petition for a DVPO, some state courts issue a temporary protective order based on the petition alone, or based on an *ex parte* hearing at which the petitioner describes the basis for her or his petition. A temporary order granted at this stage of litigation does not trigger § 922(g)(8), as the respondent has not received notice, or had the opportunity to participate in a hearing.² *See, e.g.*, Md. Code Ann. Fam. Law § 4-505; Conn. Gen. Stat. Ann. § 46b-15(b). After granting such temporary relief as may be necessary, a court receiving a sworn petition will set a date for a merits hearing, *see* Tex. Fam. Code § 84.001(a), and issue notice of the petition and hearing date to the respondent, *see* Tex. Fam. Code § 82.042.

² *See* United States Br. 44 (“By requiring notice and a hearing, for example, Section 922(g)(8) screens out *ex parte* orders.”).

The respondent to a DVPO must also receive service of the petition. *See, e.g.*, Tex. Fam. Code § 82.043(c); Tex. R. Civ. P. 106(a). In Texas, service is considered proper where it is done by personal delivery to the respondent or the mailing of the application to the respondent with return receipt requested. *See* Tex. R. Civ. P. 106(a). However, in the vast majority of states, regular methods of service of process, such as mailing or leaving documents at the respondent’s place of residence, are insufficient, and DVPOs are enforceable only after personal service has been made on respondents.³

Fewer than one-third of states explicitly allow alternative forms of service for DVPOs if personal service has been attempted but cannot be achieved.⁴ Of the states that allow alternative service, most require the petitioner to seek judicial approval based on failed attempts to effect service (and/or evidence that the respondent is evading service) and a judicial finding that the petitioner conducted diligent efforts.⁵

The personal service requirement for DVPOs is generally more exacting than that required for service in other contexts. In federal court, for example,

³ *See* National Council of Juvenile and Family Court Judges, *Civil Protection Orders: Strategies for Safe and Effective Service of Process*, at 9 (Aug. 17, 2022), <https://tinyurl.com/4fv4zmp5>.

⁴ Jane K. Stoeber, *Access to Safety and Justice: Service of Process in Domestic Violence Cases*, 94 Wash. L. Rev. 333, 362 (2019).

⁵ *Id.* at 363. Filing a motion seeking permission to use alternative methods of service is an additional challenge, especially for *pro se* petitioners, assuming they are even aware of the option. *See* Andrew C. Budzinski, *Reforming Service of Process: An Access-To-Justice Framework*, 90 U. Colo. L. Rev. 167, 210 (2019) (“*Pro se* litigants typically lack the expertise to sufficiently document their efforts [of achieving alternate service].”).

documents can be left at an individual's dwelling "with someone of suitable age and discretion." Fed. R. Civ. P. 4(e)(2)(B). Many states likewise employ significantly less stringent service requirements in legal contexts other than DVPOs. *See, e.g.*, Cal. Corp. Code § 15908.06 (allowing notice of dissolution of limited partnership through publication); Del. Code Ann. tit. 9, § 280 (providing that publication is permissible for dissolution of corporations). Some states that require strict personal service of DVPOs permit service through more lenient methods in other contexts involving family or intimate relationships. *Compare* Cal. Fam. Code § 243 (requiring that protective orders be personally served), *with* Cal. Welf. & Inst. Code § 366.26 (authorizing service by publication in terminating parental rights).

The respondent must also have sufficient time to prepare to rebut the allegations. *See, e.g.*, Tex. Fam. Code § 84.003(a); *see also* Tex. Fam. Code § 84.004(a) ("If a respondent receives service of notice of an application for a protective order within 48 hours before the time set for the hearing, on request by the respondent, the court shall reschedule the hearing for a date not later than 14 days after the date set for the hearing.")⁶

After a hearing on the merits, at which both parties have the opportunity to be represented by counsel, the judge will weigh the evidence and make findings. In Texas, for example, if the judge finds that (1) family violence has occurred, and (2) family violence is likely

⁶ A hearing is not required where the respondent consents to the order, *see* Tex. Fam. Code § 85.005, which is what respondent Zackey Rahimi did in the instant case, *see* J.A. 3.

to occur in the future, *see* Tex. Fam. Code § 85.001(a),⁷ the judge may issue a final protective order.

State statutes typically limit DVPOs to an initial, limited period of time. *Compare* Ark. Code Ann. § 9-15-205(b) (requiring courts to enter DVPOs for a fixed period that may be as short as ninety days), *with* Cal. Fam. Code § 6345(a) (stating DVPOs “may have a duration of not more than five years”).⁸ Petitioners seeking orders in effect for a longer period of time must petition the court for an extension of the order, and judges have the discretion to grant or deny that request. If the order expires before a petitioner makes that request but the petitioner still seeks protection, she or he would be required to begin the filing process and effectuate service upon the respondent once again.⁹ Additionally, limited-duration DVPOs may be modified or vacated for “good cause,” or if the need for the order ceases. *See, e.g.*, Cal. Fam. Code § 6345. The requirements of § 922(g)(8) are only applicable during the duration of the DVPO, which is limited to the time that a court finds is necessary to address abuse and protect the community.

⁷ The Texas legislature recently updated this statute to remove the “likely to occur in the future” element, but that amendment does not take effect until September 1, 2023. *See* 2023 Tex. Sess. Law Serv. Ch. 688 (H.B. 1432).

⁸ *See* Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protective Orders*, 67 Vand. L. Rev. 1015, 1046 (2014); Dana Harrington Conner, *Civil Protection Order Duration: Proof, Procedural Issues, and Policy Considerations*, 24 Temp. Pol. & Civ. Rts. L. Rev. 343, 349 (2015).

⁹ Stoever, *Enjoining Abuse*, at 1050–52.

D. Petitioners seeking DVPOs must overcome myriad practical burdens

In addition to these rigid procedural requirements embedded in state DVPO statutes, there are numerous practical barriers that, on the one hand, serve as robust safeguards for respondents and, on the other, can have a chilling effect even on the petitioners most in need of these protections. Personal service and attendance at hearings are two such requirements that impose numerous logistical, economic, and psychological burdens on petitioners.¹⁰

¹⁰ Further, *pro se* petitioners constitute the majority of those seeking DVPOs. See Jane K. Stoeber, *Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS*, 87 N.C. L. Rev. 1157, 1203 & n.187 (2009). In addition to dealing with these logistical, economic, and psychological burdens, a *pro se* petitioner must still advocate on her or his own behalf and navigate complex and confusing legal procedures. For example, in Texas, after filing a petition for a DVPO, the petitioner must file two copies of their petition directly with the court. Tex. Fam. Code § 82.002(a). If the petitioner wants their address and date of birth to remain confidential, they must submit a notarized affidavit. See Texas's Domestic Violence Protective Order Form, at 31–32. A petitioner alternatively may submit a non-notarized declaration as part of their application instead of an affidavit, but their address and date of birth will be public information. *Id.* at 2. A court will not consider any petition that fails to comply with these requirements. These challenges pose too high a bar for many, and lacking legal representation has been shown to substantially decrease the likelihood of receiving a final protective order. See, e.g., Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 Am. U. J. Gender Soc. Pol'y & L. 499, 511 (2003) (finding that applicants represented by attorneys obtained protective orders more than twice as often as those without attorneys).

1. Practical burdens of the notice/personal service requirement

The personal service requirement carries with it practical hurdles that petitioners must overcome to obtain relief. The petitioner may have difficulty perfecting service because the respondent lacks a stable address or evades service. The petitioner may therefore need to attempt personal service multiple times, which can be time-consuming and expensive, and may dissuade petitioners from pursuing their case even when their safety is genuinely in jeopardy.¹¹

While some petitioners can afford a private investigator or process server who can search for respondents and attempt service multiple times, most petitioners are *pro se* and lack financial means to do so.¹² These petitioners often rely on law enforcement agencies to conduct personal service under the Violence Against Women Act (“VAWA”). *See* 34 U.S.C. §§ 10450, 10461. VAWA does not, however, require law enforcement personnel to attempt service a set number of times or

¹¹ *See* Stoever, *Access to Safety and Justice*, at 366–67 & nn.191–96 (detailing cases where petitioners spent thousands of dollars to locate and serve respondents); Budzinski, *Reforming Service of Process*, at 212 (“Logistical challenges, agency costs, stringent rules governing requests for alternative service, and inadequate access to effective methods of alternative service all work together to magnify the negative impact of service of process rules on *pro se* plaintiffs, particularly in low-income communities.”).

¹² *See, e.g.*, D.C. Access to Justice Commission, *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia’s Low-Income Community* 61 (2008); Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 Conn. L. Rev. 741, 746 (2015) (finding increasing rates of *pro se* litigants in domestic violence cases); *see also* Budzinski, *Reforming Service of Process*, at 198–207 (detailing logistical and cost challenges *pro se* petitioners face when serving abuser).

make reasonable efforts. Given resource and staffing constraints, the large volume of petitions and orders to be served, and a potentially short window to effect service, “overworked law enforcement personnel may have little incentive to doggedly locate and personally serve a batterer.”¹³ One study from Seattle found that “police were unable to accomplish service in more than 40% of protection order cases due to their inability to locate the subject.”¹⁴ Another found that service failed in 50% of cases.¹⁵

The personal service requirement thus proves insurmountable for many petitioners. Over one-third of DVPO cases are continued or dismissed for lack of personal service.¹⁶ Alternatively, difficulty or failure to achieve personal service may delay the scheduling of a hearing on a final protective order or prevent the terms of an order from being enforceable.¹⁷

2. Practical burdens of the hearing requirement

The hearing requirement protects a respondent’s right to due process, but also presents its own set of significant challenges for victims of domestic violence who are in need of the protections provided by a

¹³ Mary Schouvieller, *Leaping Without Looking: Chapter 142’s Impact on Ex Parte Protection Orders and the Movement Against Domestic Violence in Minnesota*, 14 *Law & Ineq.* 593, 630 (1996).

¹⁴ Stoever, *Access to Safety and Justice*, at 337.

¹⁵ Murphy, *Engaging with the State*, at 509 (finding that the law enforcement agency responsible for serving an *ex parte* order failed in 50% of the cases surveyed).

¹⁶ See Stoever, *Access to Safety and Justice*, at 337.

¹⁷ See *Civil Protection Orders: Strategies for Safe and Effective Service of Process* at 9.

DVPO.¹⁸ Domestic violence proceedings can be more dangerous for litigants than any other type of court proceeding, and DVPO petitioners sometimes face acute physical danger when attending hearings.¹⁹ Attendance at court hearings also means having to take time off of work, arrange transportation to a courthouse, and/or find childcare.²⁰ These burdens are particularly challenging for many individuals seeking DVPOs because those experiencing domestic violence, particularly women, are more likely to have unstable employment than the general population.²¹

Petitioners may also find attending the hearing (and facing their abuser) to be psychologically daunting. A large percentage of domestic violence victims suffer from depression, post-traumatic stress disorder (“PTSD”), and/or anxiety, among other conditions.²²

¹⁸ See Murphy, *Engaging with the State*, at 509 (noting that 30% of petitioners surveyed did not attend the hearing for a final protective order); Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. Rev. L. & Soc. Change 191, 205 (2008) (discussing high dismissal rates for protective order cases based on petitioners’ failure to appear in court).

¹⁹ Stoever, *Enjoining Abuse*, at 1026–28.

²⁰ See Stuart Ross & Sophie Aitken, “*If It Hadn’t Been Online I Don’t Think I Would Have Applied*”: Applicant Experiences of an Online Family Violence Intervention Order Process, 37 J. Interpersonal Violence 221, 230 (2022) (describing childcare and economic barriers to court attendance).

²¹ See, e.g., American Psychological Association, *Violence & Socioeconomic Status*, at 2 (2016), <https://tinyurl.com/2zh5nhts> (“Women who are physically assaulted are significantly more likely to have unstable employment than women who do not experience intimate partner violence.”).

²² See, e.g., Lisa Goodman et al., *Obstacles to Victims’ Cooperation With the Criminal Prosecution of Their Abusers: The*

Thus, petitioners often feel intense fear and dread ahead of a DVPO hearing due to the knowledge that they will have to confront their abuser in court and testify in the abuser's presence about the harm that was inflicted upon them.²³ Even if the petitioner can overcome these hurdles and attend the hearing, providing hearing testimony about the abuse can be retraumatizing.²⁴ Petitioners may also experience shame or humiliation from sharing these personal experiences in a public setting in front of a judge and strangers whom they have never met and who will be evaluating and potentially attacking the validity of their trauma.²⁵ Many victims are unable to move

Role of Social Support, 14 *Violence & Victims* 427, 435 (1999) (finding that nearly 80% of domestic violence victims involved in prosecutions of their abusers suffered from clinically diagnosable depression).

²³ See Arlene N. Weisz, *Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship*, 80 *Fams. Soc'y* 138, 143 (1999) (quoting comments made by multiple women about the fears and corresponding physical symptoms they experienced before protective order hearings); see also Karla Fischer & Mary Rose, *When "Enough Is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 *Crime & Delinq.* 414, 419 (1995) (explaining that petitioners may fear respondents' threats of retaliation for revealing abuse).

²⁴ Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 *Am. U. J. Gender Soc. Pol'y & L.* 465, 474–75 (2003) (noting that “when confronted with reminders of the abuse, battered women with PTSD often experience flashbacks that make them feel as though they are actually reliving the trauma”); Judith Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* 72 (1992) (“If one set out by design to devise a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law.”).

²⁵ See Kit Kinports & Karla Fischer, *Orders of Protection in*

forward with their petitions due to the specter of a hearing and its attendant hardships.

In sum, the barriers faced by petitioners seeking DVPOs underscore that these orders are not easily obtainable,²⁶ and should instill additional confidence in the legitimacy and merits of DVPOs that are ultimately issued.

E. Section 922(g)(8) does not apply to many civil disputes

As is discussed above, § 922(g)(8) applies only to the set of scenarios where (1) a petitioner has overcome significant procedural and practical obstacles to pursue protection, (2) a respondent has been given ample notice and time to respond to the allegations made against him or her, (3) a court has found that a familial relationship exists, and (4) a court has found a credible threat to the safety of the petitioner or has restrained the respondent's use or threatened use of physical force against the petitioner. This means that there are numerous civil disputes and civil protective orders that never trigger § 922(g)(8).

In his concurring opinion, Judge Ho attempts to illustrate how § 922(g)(8) might be susceptible to abuse by discussing a civil protective order that never would have triggered § 922(g)(8). Judge Ho cites a

Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes, 2 Tex. J. Women & L. 163, 213 (1993) (reporting that, in a national survey of domestic violence legal organizations, over 75% of them responded that “the public nature of the procedures for obtaining orders of protection and the embarrassment of going to court prevent some women in their county from seeking protective relief”).

²⁶ See Murphy, *Engaging with the State*, at 508 (study finding that fewer than half of applicants received a final protective order).

2005 incident in which a judge issued a restraining order against television personality David Letterman “on the ground that his presence on television harassed the plaintiff.” *United States v. Rahimi*, 61 F.4th 443, 466 (5th Cir. 2023) (Ho, J., concurring). However, a protective order such as the order against Letterman would *never* trigger § 922(g)(8). Letterman had no intimate partner relationship with the woman seeking the order, there was no family violence alleged between them, Letterman was never served with the order, and he did not have the opportunity to appear at a hearing.²⁷ Thus, Letterman never did and never would have faced any restraint on his right to possess a firearm in that case.

While Judge Ho cites Letterman in an attempt to argue that § 922(g)(8) applies too broadly, this example ultimately demonstrates the opposite. The safeguards embedded in § 922(g)(8) (and the statutes that form the predicate for § 922(g)(8)) would not have allowed the order against Letterman to deprive him of his Second Amendment rights.

II. In Light of These Substantive Safeguards and Practical Burdens, DVPOs Appropriately Disarm Dangerous Individuals of Firearms

The concurring opinion also asserts that “judges are too often ill-equipped to prevent abuse” and that “restraining orders . . . are granted to virtually all

²⁷ See generally CBS News, *Letterman Fights Restraining Order* (Dec. 21, 2005), <https://tinyurl.com/y8t9u3f6>. The same judge who granted the order ultimately reversed and vacated the order. Washington Post, *Judge Tosses Restraining Order Fan Obtained Against Letterman* (Dec. 28, 2005), <https://tinyurl.com/45wd9n5n>.

who apply,” *Rahimi*, 61 F.4th at 465–66 (Ho, J., concurring) (alteration in original). But Judge Ho cites only speculation for this sweeping statement, which ignores the guardrails just discussed: DVPOs generally require the submission of a sworn statement or declaration, notice via personal service, and a hearing at which a judge evaluates the evidence and makes a finding that the respondent has committed domestic violence and poses a danger to the petitioner. *See* United States Br. 44–45 (discussing same, and noting the “strict requirements that a protective order must satisfy to trigger Section 922(g)(8)”).

These requirements provide heightened procedural and substantive safeguards for respondents, as discussed *supra* section I.A-C. They are also consistent with the fundamental judicial obligations of state court judges. Making credibility assessments and decisions based on the facts in cases involving domestic violence are matters of everyday practice for state judges. This Court should have confidence that judges will undertake their responsibilities seriously, just as the law presumes they do in all other contexts, by deciding whether to grant the requested relief based on the facts presented to them and in accordance with applicable law.

A. This Court should presume that state judges are capable of appropriately doing their jobs

State court judges play a critical (and familiar) role in dispensing civil justice within their communities.²⁸

²⁸ *See* National Conference of State Legislatures, *Family-Friendly Courts: Opportunities for State Legislators To Improve Civil Court Processes* (June 20, 2023), <https://tinyurl.com/4zyz2vjb> (explaining that state courts handle 98% of civil matters).

Moreover, several means of ensuring accountability exist for oversight of their decisions and to protect public trust in the judiciary.

For example, judges are expected to follow codes of judicial conduct.²⁹ These codes establish basic ethics standards and duties for judges when handling proceedings. For example, the Texas Code of Judicial Conduct instructs judges that they should “accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law,” that they should “not be swayed by partisan interests, public clamor, or fear of criticism,” and that they “should be faithful to the law and shall maintain professional competence in it.”³⁰ And in Texas, as in all other states, a judicial oversight commission can investigate and discipline judges for not adhering to the state’s code of judicial conduct or other rules governing the state’s court system.³¹

States’ court systems also ensure the high quality of judicial decision-making by mandating judicial educational training before and during judges’ time on the

²⁹ See American Bar Association, *Jurisdictional Adoption of Revised Model Code of Judicial Conduct*, <https://tinyurl.com/yhtjysdt> (last visited Aug. 16, 2023) (listing 37 jurisdictions that have approved a revised model code of judicial conduct).

³⁰ *Texas Code of Judicial Conduct*, at 2 (Jan. 21, 2022) <https://tinyurl.com/3syjz7av>.

³¹ See, e.g., Office of State Commission on Judicial Conduct, *Frequently Asked Questions*, <https://tinyurl.com/mr3wwvek> (last visited Aug. 16, 2023) (stating that the Texas State Commission on Judicial Conduct can investigate allegations of judicial misconduct and impose a variety of disciplinary measures); see also National Center for State Courts, *State Links*, <https://tinyurl.com/z32fyrw8> (last visited Aug. 16, 2023) (listing state bodies responsible for overseeing judicial conduct).

bench.³² Given the prevalence of cases involving domestic violence, there has been an increasing trend towards ensuring that state court judges are capable and equipped to address these cases. As of 2019, thirty-one states and the District of Columbia had legal provisions or court rules concerning judicial training on domestic violence, with fifteen states and the District of Columbia requiring it for certain judges.³³

Institutions like the National Council of Juvenile and Family Court Judges (“NCJFCJ”), a comprehensive training and technical assistance provider to judges on domestic violence, exist to support these efforts.³⁴ NCJFCJ partners with the U.S. Department of Justice, Office on Violence Against Women, and nonprofit organizations to run the National Judicial Institute on Domestic Violence (“NJIDV”), which has provided technical assistance and interactive, skills-based domestic violence workshops for over 9,000 judges and judicial officers in all fifty states.³⁵

³² See, e.g., Evan Murphy et al., *Motivations, Barriers, and Impact of Continuing Judicial Education: A Survey of U.S. Judges*, 57 Ct. Rev. 40, 41 (2021) (stating that state court judges in 45 states must obtain continuing education).

³³ Kristin Kalsem, *Judicial Training on Domestic Violence: A 50-State Survey* (2019). On May 29, 2023, Texas Governor Greg Abbott signed SB 855, which will require judicial training around family violence. See *Judicial Training Requirements Regarding Family Violence*, 2023 Tex. Sess. Law Serv. Ch. 275 (S.B. 855) (Vernon’s 2023).

³⁴ See NCJFCJ, *Who We Are*, <https://www.ncjfcj.org/> (last visited Aug. 16, 2023).

³⁵ See NCJFCJ, *Judicial Education Development Initiative on Domestic Violence: From Concepts to Improved Court Responses*, <https://tinyurl.com/yuvd7t3d> (last visited Aug. 16, 2023); NJIDV, *About Us*, <https://tinyurl.com/44nh74zj> (last visited Aug. 16, 2023).

The NJIDV has a wide roster of judicial education workshops, including “Enhancing Judicial Skills in Domestic Violence Cases (EJS),” and “Continuing Judicial Skills in Domestic Violence Cases (CJS).”³⁶ These judicial education workshops do not advance a particular side or position, but instead focus on providing judges with the skills necessary to oversee domestic violence cases competently. For example, the EJS workshop trains judges on how to “apply an understanding of domestic violence to judicial fact-finding,” “apply the law in their jurisdictions to the facts,” and uphold “[f]airness . . . in domestic violence cases.”³⁷

These workshops represent just a sample of the available resources provided to already capable judges to assist them in appropriately adjudicating their cases.³⁸

B. Our justice system requires the presumption that judges can discern between legitimate and frivolous claims

Putting aside judges’ ethical duties and training, this Court should have faith in judges’ ability to identify unfounded claims of domestic violence, particularly in the absence of any evidence that they are unable to do so. *See* United States Br. 44 (stating that “a judicial decree, such as a protective order, is entitled to a ‘presumption of regularity.’” (quoting *Parke v. Raley*,

³⁶ NJIDV, *About Us*, <https://tinyurl.com/44nh74zj> (last visited Aug. 16, 2023).

³⁷ NJIDV, *Enhancing Judicial Skills in Domestic Violence Cases Workshop*, <https://tinyurl.com/3skbmyrx> (last visited Aug. 16, 2023).

³⁸ These resources were further increased with the passage and inclusion of the Keeping Children Safe From Family Violence Act (“Kayden’s Law”) in the 2022 reauthorization of the Violence Against Women Act, which incentivizes states to expand judicial training on family violence. Tit. XV, Pub. L. 117-103, 136 Stat. 951 (2022).

506 U.S. 20, 30 (1992))). Every state entrusts judges with handling a wide range of disputes arising in all facets of everyday life, and resolving these disputes regularly requires judges to make credibility determinations and findings regarding contested facts. Presiding over a hearing involving a DVPO is structurally no different from other cases: judges listen to and question both parties, preside over evidentiary hearings, evaluate the credibility of testifying parties and witnesses, weigh competing claims and evidence, make factual findings, determine whether the burden of proof is met, and order tailored relief. Any assumption that judges are “ill-equipped” to identify frivolous claims in this context would necessarily imply that they are ill-equipped to do so in any other type of case they adjudicate.³⁹

C. If anything, judges are biased *against* DVPO petitions filed by abused women

Judge Ho’s concurrence asserts that, despite judges’ best efforts, DVPOs are frequently granted on the basis of falsified allegations. *See Rahimi*, 61 F.4th at 465 (Ho, J., concurring) (“[A] plaintiff willing to exaggerate past incidents or even commit perjury can have access to a responsive support group, a sympathetic court, and a litany of immediate relief.”). This proposition is wrong, and not supported by the facts.

First, allegations of domestic violence are more likely to be corroborated than not. A study in 2005 reviewed

³⁹ Judges have multiple tools at their disposal to sanction litigants who file baseless claims. *See, e.g.*, Tex. R. Civ. P. 13 (“If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.”).

the records of 120 divorced families and found that 63% of allegations of abuse by one adult of another (including domestic violence and substance misuse) were substantiated.⁴⁰ The remaining “unsubstantiated” cases are not necessarily false; due to the nature of abuse happening in private and the shame and blame often surrounding those who experience abuse,⁴¹ it can be difficult for independent researchers to distinguish between findings of falsity or insufficient evidence. The implication of this distinction cannot be overstated. There is a large difference between the inability to demonstrate in court that an offense has happened and a judicial finding that a claim is false.

In a study that examined contested custody cases involving allegations of sexual abuse, researchers were able to conduct interviews with the experts

⁴⁰ J.R. Johnston et al., *Allegations and Substantiations of Abuse in Custody-disputing Families*, 43 Fam. Ct. Rev. 283, 290 (2005). This study replicated the results of a Canadian study done two years earlier, which found that 74% of 42 cases of spousal abuse against men were substantiated. Martha Shaffer & Nicholas Bala, *Wife Abuse, Child Custody and Access in Canada*, 3:3-4 J. Emotional Abuse 253, 260 (2003). In that study, where courts either found claims unfounded or exaggerated they were unlikely to provide a reason for their conclusion, and so it was similarly challenging to determine why the judge did not find the claims to be substantiated. *Id.* at 259–60. A nationwide Canadian study in 2004 further found that while 42% of investigations of child maltreatment could be substantiated and 23% were suspected, only 4% of the remaining 35% of unsubstantiated investigations were judged by experts to have been intentionally false reports. Nico Tocme & Nicholas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 Child Abuse & Neglect 1333, 1337 (2005).

⁴¹ A. Rachel Camp, *From Experiencing Abuse to Seeking Protection: Examining the Shame of Intimate Partner Violence*, 13 U.C. Irvine L. Rev. 103 (2022).

involved in those cases and determined that false allegations were not more prevalent in custody disputes compared to child abuse claims in the general population.⁴² The researchers found “no evidence to support the belief that these cases typically involved mothers falsely accusing fathers to gain or maintain custody of the children.”⁴³ This finding suggests that abuse can be difficult to substantiate, especially in contested settings, not that parents are likely to misrepresent abuse. *See* Kayden’s Law § 1502(9), 136 Stat. at 952 (“Scientifically unsound theories that treat abuse allegations of mothers as likely false attempts to undermine fathers are frequently applied in family court to minimize or deny reports of abuse of parents and children. Many experts who testify against abuse allegations lack expertise in the relevant type of alleged abuse, relying instead on unsound and unproven theories.”).

Second, the available evidence suggests that any error by judges in considering evidence of intimate partner violence favors the perpetrators of such violence, rather than the victims. Survivors of domestic violence are often discredited and disbelieved.⁴⁴ Research

⁴² Nancy Thoennes & Patricia G. Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 *Child Abuse & Neglect* 151, 161 (1990).

⁴³ *Id.* Factors that were commonly associated with unsubstantiated allegations included the children’s age, single reports of abuse, and allegations of fondling or exposure; the study noted that children having the capability to testify, allegations of patterns of behavior, and reports of penetration or oral-genital abuse increased the likelihood that accusations of abuse would be substantiated. *Id.* at 158.

⁴⁴ Deborah Epstein & Lisa Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 *U. Pa. L. Rev.* 399, 436 (2019). More

focusing on particular jurisdictions or courts confirms that judges often fail to consider evidence of intimate partner violence in adjudicating custody disputes.⁴⁵ In one survey of the legal and victim services community in rural and urban Kentucky, researchers got the message loud and clear: When they asked participants to name the three biggest barriers that petitioners face in obtaining a DVPO, 40% of participants “mentioned ‘judicial bias.’”⁴⁶

Concerns of judicial bias center around an “epistemic asymmetry” in which judges struggle to comprehend the decisions of survivors.⁴⁷ Many people who have not personally suffered domestic violence assume how they would respond (*i.e.*, that they would leave the relationship), and judges struggle to understand why DVPO petitioners might maintain relations with their abuser.⁴⁸ In a 2019 qualitative study that interviewed

generally, women “experience hostile, demeaning, or condescending treatment by attorneys and judges” and are often “held to higher standards than their male counterparts.” *See, e.g.*, State Bar of Texas, *The Gender Bias Task Force of Texas: Final Report*, at 1 (1994).

⁴⁵ *See, e.g.*, Kim Y. Slote et al., *Battered Mothers Speak Out: Participatory Human Rights Documentation as a Model for Research and Activism in the United States*, 11 *Violence Against Women* 1367, 1368–69 (2005); *see also* Michelle Bemiller, *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts*, 5 *J. Child Custody* 228 (2008); John S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 *Am. U. J. Gender Soc. Pol’y & L.* 657, 662 (2003).

⁴⁶ Nikki Hawkins, *Perspectives on Civil Protective Orders in Domestic Violence Cases: The Rural and Urban Divide*, 266 *Nat’l Inst. Just. J.* 4, 6 (2010).

⁴⁷ Epstein & Goodman, *Discounting Women*, at 412, 416.

⁴⁸ *Id.* at 414.

judges adjudicating DVPOs, judges often discussed what they perceived as “flawed behavior on the part of the female plaintiff, suggesting shared blame for the violence.”⁴⁹ In a separate study, one petitioner shared a judge’s response to her civil protective order application: “He said . . . ‘since I would not let that happen to me, I can’t believe that it happened to you.’”⁵⁰

In sum, there is no reliable evidence that survivors of domestic violence systemically lie or commit perjury. Instead, the majority of domestic violence cases are substantiated, and where bias exists, it exists against the petitioner.

III. Section 922(g)(8) Is Vitally Important to Protect People in Serious Danger

The concurrence below envisions a world in which DVPOs are merely a tactical tool in divorce or separation proceedings. *See Rahimi*, 61 F.4th at 465 (Ho, J., concurring) (“Many divorce lawyers routinely recommend pursuit of civil protection orders for clients in divorce proceedings,” “civil protective orders [are] a tempting target for abuse,” “civil protective orders can help a party in a divorce proceeding to secure [favorable] rulings,” “[p]rotective orders can also be a powerful strategic tool in custody disputes.”).⁵¹ But this

⁴⁹ Julie M. Kafka et al., *Judging Domestic Violence from the Bench: A Narrative Analysis of Judicial Anecdotes About Domestic Violence Protective Order Cases*, 29 *Qualitative Health Res.* 1132, 1140 (2019).

⁵⁰ Maryland Special Joint Committee, *Report on Gender Bias in The Courts* (1989), reprinted in Maryland Special Joint Committee, *Report of the Special Joint Committee on Gender Bias in the Courts*, 20 *U. Balt. L. Rev.* 1, 11–12 (1990).

⁵¹ Given the barriers to obtaining DVPOs, *supra* section I, the concurrence further exaggerates the “common practice” of

reasoning ignores the barriers to obtaining DVPOs (discussed above), and it is contrary to research establishing that DVPOs are the most effective legal remedy for intervening in and preventing additional violence.⁵²

The most consistent risk factor for the murder of victims is prior intimate partner violence,⁵³ and these homicides are typically committed after a long history of domestic violence.⁵⁴ Guns are used in fatal domestic violence more than any other type of weapon.⁵⁵ And in

“mutual” protective orders, and the purported incentive for abusers to disarm their victims using the combination of “mutual” protective orders and § 922(g)(8). *See Rahimi*, 61 F.4th at 466–67 (Ho, J., concurring). But as the United States explains in its brief, mutual protective orders are restricted in the “overwhelming majority” of states. United States Br. 45.

⁵² *See, e.g.*, Matthew Carlson et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. Fam. Violence 205 (1999) (concluding that abuse survivors experience a “significant decline in the probability of abuse” following the entry of a civil protection order); Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 Am. J. Pub. Health 613, 613–18 (2004) (finding significant reductions in physical assaults, stalking, threats to do bodily harm, and worksite harassment among women who sought and qualified for protection orders).

⁵³ Jacquelyn C. Campbell et al., *Intimate Partner Homicide: Review and Implications of Research and Policy*, 7 Trauma Violence & Abuse 246, 246 (2007).

⁵⁴ Kathryn E. Moracco et al., *Female Intimate Partner Homicide: A Population-Based Study*, 58 J. Am. Med. Women’s Ass’n 20, 20 (2003); Heidi Stöckl et al., *The Global Prevalence of Intimate Partner Homicide: A Systematic Review*, 382 Lancet 859, 859 (2013) (noting that femicide often “represents the culmination of a long history of abuse”).

⁵⁵ Alexia Cooper & Erica L. Smith, U.S. Department of Justice,

homes with “chronic” or “severe” domestic violence, firearm ownership is 20% higher than in the general population.⁵⁶ It is hardly surprising, then, that “intimate partners with guns present the greatest fatal risk to women.”⁵⁷ At least four studies have found that the rate of intimate partner homicides committed with firearms decreased when states passed domestic violence protective order firearm restriction laws like § 922(g)(8).⁵⁸ As a result, firearm possession bans for individuals subject to DVPOs, including § 922(g)(8), result in significantly lower rates of intimate partner homicides.⁵⁹

The takeaway from the data is clear: § 922(g)(8) is a necessary instrument to protect individuals, families, and communities from the life-threatening dangers of domestic violence. Those who have committed

Homicide Trends in the United States, 1980-2008, at 10 (2011).

⁵⁶ Susan Sorenson, *Firearm Use in Intimate Partner Violence: A Brief Overview*, 30 *Evaluation Rev.* 229, 232 (2006).

⁵⁷ *Id.*

⁵⁸ See Elizabeth R. Vigdor & James A. Mercy, *Disarming Batterers: The Impact of Domestic Violence Firearm Laws*, in *Evaluating Gun Policy: Effects on Crime and Violence* 157–214 (J. Ludwig & P. J. Cook eds., 2003); Elizabeth R. Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 *Evaluation Rev.* 313 (2006); April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large US Cities*, 16(2) *Inj. Prevention* 90 (2010); April M. Zeoli et al., *Analysis of the Strength of Legal Firearm Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187(11) *Am. J. Epidemiology* 2365 (2017).

⁵⁹ Vigdor & Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, at 332.

domestic violence and have access to guns pose a unique danger,⁶⁰ and Congress acted appropriately to reduce this danger when it enacted § 922(g)(8).

⁶⁰ See, e.g., Jennie Runevitch, *Family Questions Court System Following Columbus Woman's Murder Days After Being Denied Restraining Order*, WTHR (Dec. 29, 2022), <https://tinyurl.com/2p823pp7> (reporting shooting death of a woman by her estranged husband ten days after a judge denied a protective order and quoting her sister as saying her death “was definitely preventable”); *Woman Filed Protection Order Days Before Apparent Murder-Suicide*, UpNorthLive (July 12, 2022), <https://tinyurl.com/yct28sx9> (reporting shooting deaths of a woman and her family after her petition for a protective order was denied two weeks prior); Tonya Brown, *SC Woman Denied Protective Order for ‘Failure to Prove’ Alleged Abuse, Court Records Show*, abc15 News (Jan. 26, 2022), <https://tinyurl.com/5n62mcu8> (reporting the shooting death of a woman by her husband after she was denied an order of protection against him).

CONCLUSION

This Court has the opportunity to uphold a vital tool in the continued effort to protect survivors of domestic violence from further and potentially fatal attack. Section 922(g)(8) is both constitutional and critically important to protecting these survivors from further violence.

Respectfully submitted,

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August 21, 2023

APPENDIX

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APPENDIX

List of *Amici Curiae*¹

1. **Bonnie Carlson**, Assistant Professor of Law and Founder and Director of the Domestic Violence Clinic at Mercer University School of Law (*in her individual capacity; information provided for identification purposes only*).

2. **Atlanta Legal Aid Society, Inc.**, a non-profit law firm that offers free legal services to low-income individuals across metro Atlanta.

3. **Andrew Budzinski**, Associate Professor of Law and Co-Director of the General Practice Clinic at the University of the District of Columbia David A. Clarke School of Law (*in his individual capacity; information provided for identification purposes only*).

4. **Sacha M. Coupet**, Professor of Law at the Loyola University Chicago School of Law (*in her individual capacity; information provided for identification purposes only*).

5. **Crisis Line & Safe House of Central Georgia, Inc.**, a non-profit agency serving family violence, sexual assault, and stalking victims and their children in Central Georgia.

6. **Hon. Sherrill A. Ellsworth, Ret.**, Past Presiding Judge for the Superior Court of California, Riverside, and judicial consultant to government and non-profit organizations (*in her individual capacity; information provided for identification purposes only*).

¹ The views expressed herein do not necessarily reflect the views of the institutions with which *Amici* are or have been affiliated.

7. **Deborah Epstein**, Co-Director of the Georgetown University Law Center's Domestic Violence Clinic (*in her individual capacity; information provided for identification purposes only*).

8. **Tianna Gibbs**, Associate Professor of Law and Co-Director of the General Practice Clinic at the University of the District of Columbia David A. Clarke School of Law (*in her individual capacity; information provided for identification purposes only*).

9. **Julie Goldscheid**, Professor of Law at the City University of New York School of Law (*in her individual capacity; information provided for identification purposes only*).

10. **Zelda B. Harris**, Dean of the Western New England University School of Law and Professor of Law (*in her individual capacity; information provided for identification purposes only*).

11. **Catherine Priebe**, Jane W. Wilson Family Justice Clinic Fellow at the University of Georgia School of Law (*in her individual capacity; information provided for identification purposes only*).

12. **Christine Scartz**, Clinical Associate Professor and Director of the Jane W. Wilson Family Justice Clinic at the University of Georgia School of Law (*in her individual capacity; information provided for identification purposes only*).

13. **Charisa Smith**, Associate Professor of Law and Co-Director of the Family Law Practice Clinic at the City University of New York School of Law (*in her individual capacity; information provided for identification purposes only*).

14. **Jane Stoeber**, Clinical Professor of Law and Director of the Domestic Violence Clinic at the University of California Irvine School of Law, and Director of the UCI Initiative to End Family Violence (*in her individual capacity; information provided for identification purposes only*).

15. **Julia F. Weber, Esq., MSW**, Consultant for the Giffords Law Center to Prevent Gun Violence, and Adjunct Professor at the Golden Gate University School of Law (*in her individual capacity; information provided for identification purposes only*).