

No. 19-_____

19-6118

IN THE

ORIGINAL

Supreme Court of the United States

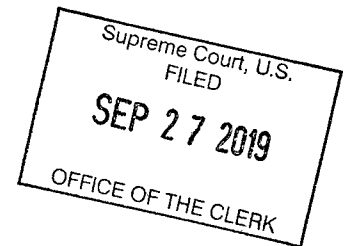
Aaron Brent

Petitioner,

v.

Ashley Workman

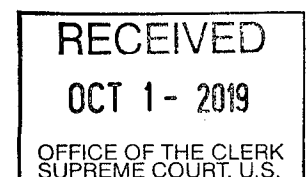
Respondent.



**On Writ of Certiorari to
the Michigan Court of
Appeals**

PETITION FOR WRIT OF CERTIORARI

Aaron Brent
Petitioner *pro per*
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QUESTIONS PRESENTED

1. Michigan law (MCL 600.2950(4)) requires the Court to issue a personal protection order whenever there is reason to believe the person to be enjoined **may** commit an act to be enjoined. Further the Statute limits consideration only to that evidence that supports the issuance of the PPO. Does this statute unconstitutionally deprive the accused of meaningful due process?
2. In the instant case the entry of the PPO took from Mr. Brent his ability to reside in his own home, and obtain any of his personal papers and possessions that were in the home. Is this an unlawful taking without compensation in violation of the Fifth Amendment?
3. Although the PPO expires by its own terms, once issued the accused is forever listed as a domestic violence offender in the same manner as if he was convicted in a criminal proceeding. Michigan provides no mechanism to remove an expired PPO from the Law Enforcement Information Network database. Does the collateral consequences of the PPO overcome any claims of mootness?
4. If this case has become moot, is the proper remedy to vacate all of the lower court orders and remand to the original Circuit Court with instructions to dismiss?

PARTIES TO THE PROCEEDINGS

Petitioner and Respondent/Appellant below

Aaron Brent

Respondent and Petitioner/Appellee below

Ashley Workman

Other interested parties not parties below

State of Michigan

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OPINIONS BELOW

The order and opinion of the Michigan Court of Appeals dated November 13, 2018 is unpublished and reproduced below at App1 to App 13. The Michigan Supreme Court order dated July 2, 2019 denying leave to appeal is unpublished and reproduced at App 15. The previous Michigan Supreme Court opinion and order remanding the case dated September 12, 2018 is unpublished and reproduced below at App 16. The previous Michigan Court of Appeals order dated April 20, 2017 is unpublished and reproduced at App 17 to App 18.

JURISDICTION

This Court has jurisdiction over the instant petition for writ of certiorari pursuant to 28 U.S.C. 1257(a). The Michigan Court of Appeals entered judgement in this case on November 13, 2018. The Michigan Supreme Court denied leave to Appeal on July 2, 2019. These orders are include in the appendix. Petitioner has challenged the constitutionality of Michigan's MCL 600.2590 as being repugnant to the due process clause contained in the Fifth and Fourteenth Amendments to the Constitution

CONSTITUTIONAL AND STATUTORY PROVISIONS

- **U.S. Const. amend. II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

- **U.S. Const. amend V.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor

shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- **U.S. Const. amend XIV § 1.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- **28 U.S.C. 1257(a).**

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

- **18 U.S. C. § 922 (g)(8)**

(g) It shall be unlawful for any person—

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains 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; and

(C)

(i) includes 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; or

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

- **MCL 600.2950**

(1) Except as otherwise provided in subsections (26) and (27), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following:

- (a) Entering onto premises.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Threatening to kill or physically injure a named individual.
- (d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- (e) Purchasing or possessing a firearm.
- (f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- (h) If the petitioner is a minor who has been the victim of sexual assault, as that term is defined in section 2950a, by the respondent and if the petitioner is enrolled in a public or nonpublic school that operates any of grades K to 12, attending school in the same building as the petitioner.
- (i) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
- (j) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.
- (k) Any of the following with the intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner has an ownership interest:
 - (i) Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal. A restraining order that enjoins conduct under this subparagraph does not prohibit the lawful killing or other use of the animal as described in section 50(11) of the Michigan penal code, 1931 PA 328, MCL 750.50.
 - (ii) Removing the animal from the petitioner's possession.
 - (iii) Retaining or obtaining possession of the animal.

(1) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

(2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer licensed or certified by the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation before issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

(3) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court with a mailing address.

(4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

(5) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1)(a) if all of the following apply:

(a) The individual to be restrained or enjoined is not the spouse of the moving party.

(b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.

(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

(6) A court shall not refuse to issue a personal protection order solely because of the absence of any of the following:

(a) A police report.

(b) A medical report.

(c) A report or finding of an administrative agency.

(d) Physical signs of abuse or violence.

(7) If the court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.

(8) A court shall not issue a mutual personal protection order. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court under subsection (1).

(9) A personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge. Upon service, a personal protection order may also be enforced by another state, an Indian tribe, or a territory of the United States.

(10) The issuing court shall designate a law enforcement agency that is responsible for entering a personal protection order into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(11) A personal protection order must include all of the following, to the extent practicable in a single form:

(a) A statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:

(i) If the respondent is 17 years of age or older, immediate arrest and the civil and criminal contempt powers of the court and, if he or she is found guilty of criminal contempt, imprisonment for not more than 93 days and a fine of not more than \$500.00.

(ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody and the dispositional alternatives listed in section 18 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

(b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge and that, upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(c) A statement listing the type or types of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in this state by any law enforcement agency.

(f) The name of the law enforcement agency designated by the court to enter the personal protection order into the law enforcement information network.

(g) For ex parte orders, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the order and that motion forms and filing instructions are available from the clerk of the court.

(12) A court shall issue an ex parte personal protection order without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.

(13) A personal protection order issued under subsection (12) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. A motion to modify or rescind the personal protection order must be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after the 14 days have elapsed.

(14) Except as otherwise provided in this subsection, the court shall schedule a hearing on a motion to modify or rescind the ex parte personal protection order within 14 days after the motion is filed. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the motion is filed.

(15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined:

(a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide the petitioner with 2 or more true copies of the personal protection order.

(c) If the respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order.

(d) If the personal protection order prohibits the respondent from purchasing or possessing a firearm, notify the county clerk of the respondent's county of residence about the existence and contents of the personal protection order.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

(16) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court under subsection (10) to be immediately entered into the law enforcement information network.

(17) The law enforcement agency that receives a true copy of a personal protection order under subsection (15) or (16) shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(18) A personal protection order issued under this section must be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner allowed by the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of the individual must also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last

known address or addresses of the parent, guardian, or custodian. A proof of service or proof of oral notice must be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement under subsections (21) and (22).

(19) The clerk of the court that issued the personal protection order shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) if either of the following occurs:

(a) The clerk of the court receives proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(21) Subject to subsection (22), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(22) If the individual restrained or enjoined has not been served, a law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the law enforcement information network that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined must be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. The failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(23) An individual who is 17 years of age or older and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, must be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual who is less than 17 years of age and who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided

under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct.

(24) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(25) A personal protection order issued under this section is also enforceable under section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b, and chapter 17.

(26) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if any of the following apply:

- (a) The respondent is the unemancipated minor child of the petitioner.
- (b) The petitioner is the unemancipated minor child of the respondent.
- (c) The respondent is a minor child less than 10 years of age.

(27) If the respondent is less than 18 years of age, issuance of a personal protection order under this section is subject to chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(28) A personal protection order that is issued before March 1, 1999 is not invalid on the ground that it does not comply with 1 or more of the requirements added by 1998 PA 477.

(29) For purposes of subsection (1)(k), a petitioner has an ownership interest in an animal if 1 or more of the following are applicable:

- (a) The petitioner has a right of property in the animal
- (b) The petitioner keeps or harbors the animal.
- (c) The animal is in the petitioner's care.
- (d) The petitioner permits the animal to remain on or about premises occupied by the petitioner.

(30) As used in this section:

(a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(c) "Neglect" means that term as defined in section 50 of the Michigan penal code, 1931 PA 328, MCL 750.50.

(d) "Personal protection order" means an injunctive order issued by the family division of circuit court restraining or enjoining activity and individuals listed in subsection (1).

• **MCL 750.81**

(1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) Except as provided in subsection (3), (4), or (5), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or

she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(3) An individual who assaults or assaults and batters an individual who is pregnant and who knows the individual is pregnant is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(4) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has previously been convicted of assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has 2 or more previous convictions for assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(6) This section does not apply to an individual using necessary reasonable physical force in compliance with section 1312 of the revised school code, 1976 PA 451, MCL 380.1312.

(7) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

STATEMENT OF CASE

On October 15, 2015 Aaron Brent terminated his dating relationship with Ashley Workman.(App 41 and App 48) The following day Ms. Workman had Mr. Brent arrested making claims of domestic violence. (App 68). Ms. Workman then took possession of Mr. Brent's apartment. Mr. Brent was released on bond on October 17, 2015 on the condition that he did not make any contact with Ms. Workman. (App 55 and App 57) Without any further contact

between the parties, Ms. Workman applied for and received an ex-parte personal protection order enjoining Mr. Brent and stripping him of many of his fundamental rights and liberties, including his ability to reside in his residence and/or obtain his personal belongings that were in his apartment (App 60-63). On October 29, 2015 the criminal charges against Mr. Brent were dismissed (App 58). On October 29, 2015 Mr. Brent moved to terminate the PPO in part on the bases that Michigan law was unconstitutional (App 59).

On November 18, 2015 the Circuit Court upheld the PPO (App 35). The Court's ruling was based solely upon the allegations contained in the petition (App 52). The Court did not make any findings of fact regarding those allegations, nor did it state what standard of proof it was applying. Mr. Brent filed his appeal with the Michigan Court of Appeals on November 19, 2015. On April 20, 2017 the Michigan Court of Appeals denied the appeal as moot (App 17-18). Mr. Brent filed a timely motion for reconsideration on May 5, 2017 (App 19-33) which was also denied on May 30, 2017 (App 34). Mr. Brent filed a timely application for leave to appeal with the Michigan Supreme Court on July 7, 2017. On September 12, 2018 the Michigan Supreme Court remanded the case to the Court of appeals for consideration of the recent decision of *TM v MZ*, 501 Mich 312, 320; 916 NW2d 473 (2018) (App 16). On remand without any further briefing or augment, the Michigan Court of Appeals upheld the Circuit Court on November 13, 2018 (App 1-13). Reconsideration was denied on December 21, 2018 (App 14). Mr. Brent filed another application for leave to appeal with the Michigan Supreme Court on January 25, 2019 which was denied on July 2, 2019 (App 15). This petition follows.

Ms. Workman did not appear and/or participate in the appeals process, and instead chose to make threats on social media regarding Mr. Brent's appeal (App 65)

REASONS FOR GRANTING CERTIORARI

Most state have some form of Domestic relations injunctive relief. Michigan, however is the only state that prevents any meaningful defense against such actions. In Michigan the Courts are striped of any meaningful decision making and are required to enter a Personal Protection Order whenever there is reason to believe the person to be restrained “may” commit an offense. (MCL 600.2950). To make matters worse, Michigan also limits information to be considered to only that which supports the issuance of an injunction (MCL. 600.2950(4)(a)). Put plainly, once a person is accused they have no means of contesting the issuance of the injunction. This is clearly shown in the instant case were the allegations themselves were enough to meet the burden of proof (App 52).

This Court has emphasized that the minimum standard of proof is a matter of federal law for the courts to determine (*Santosky v. Kramer*, 455 U.S. 745 (1982)). In contradiction, the Michigan Court of Appeals simply deferred to the Michigan Legislature, without any meaningful discussion of the factors identified in *Mathews v. Eldridge*, 424 U. S. 319 (1976). Further, this Court has only recognized three standards of proof in court proceedings. Those are 1) “preponderance of the evidence” 2) “beyond a reasonable doubt” and 3) “clear, unequivocal and convincing” (*Addington v. Texas*, 441 US 418, 423-424 (1979)). This Court has never approved of the “reasonable cause to believe” standard as ever justifying a court order.

Similarly this Court has made clear that “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ *Mathews* at 424 U.S. 333 quoting *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965). Yet, Michigan denies any meaningful defense as all that the Court is to consider is “Testimony, documents, or other evidence offered in support of the request for a personal protection order” and “Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or

more of the acts listed in subsection (1).” (M.C.L. 600.2950 (4) (a) and (b)). Thus, any hearing challenging the issuance of the order is a farce, as no evidence presented in opposition of the issuance of the order is considered.

I. Eldridge factors

“The ‘minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.’” *Santosky v. Kramer* 455 U.S. 745 (1982) quoting *Vitek v. Jones*, 445 U. S. 480, 445 U. S. 491 (1980). This Court has identified a three part balancing test to determine the minimum requirements of due process.

Those are:

“first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 425 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) Each of these factors are discussed below.

A. Interests of Aaron Brent

The liberty interests of the accused varies to some degree depending on what conduct is to be enjoined. Thus, Petitioner will only discuss the liberty interests involved in the instant case. First and foremost in any case, the accused Second Amendment rights are infringed upon (see MCL 600.2950 (1) (e) and 18 U.S. C. § 922 (g)(8)). Similarly any PPO issued carries the same lifelong stigma as a criminal conviction as it is entered into the Law Enforcement Information Network (L.E.I.N.) (see MCL 600.2950 (17)) and is not removed absent a court order resending

the PPO (see MCL 600.2950 (20) and (*TM v MZ*, 501 Mich 312; 916 NW2d 473 (2018))). Thus, the accused forever faces the adverse effects of being listed on L.E.I.N. including but not limited to employment opportunities in which a background check is required. As Mr. Brent is now labeled as a violent offender, his employment opportunities have seriously diminished. Further if a person fails to obey all of the provisions of the PPO they are subject to criminal contempt proceedings (see MCL 600.2950 (23)) which are punitive in nature as they “must be imprisoned” (id).

In addition to those constants listed above, in the instant case, Mr. Brent was also stripped of his right to reside in his own residence, as well as any ability to obtain his personal belongings from said residence. Including but not limited to his clothing, electronic equipment, furnishings, personal documents (i.e. birth certificate, social security card, lease agreement, financial records) etc. As the record of this case shows, Ms. Workman did not make any claim that she had any legally recognizable interest in any of the property, it was the Court that made these claims on her behalf, and chose to reassign the leasehold interest to Ms. Workman without any input from the owners of the building. (App 49) This is even after Ms. Workman admitted that she voluntarily vacate the apartment (App 42-43). To the extent the Michigan Court of Appeals found that this was not a protected interest, they apparently ignored the taking clause of the Fifth Amendment that protects a person from an uncompensated taking by the government. Nor did the Court look at the very text of the due process clause of the Fifth and Fourteenth amendments that clearly states that a person shall not be deprived of life, liberty, or property, without due process of law.” The Michigan Courts refused to address what due process is required before the court deprives a person of their personal property, and their ability to reside in their own home.

B. Interests of Ashley Workman

Although it is not clear what if any constitutional interest Ms. Workman would have in this private civil case, Mr. Brent concedes that Ms. Workman has a basic human interest in not being subject to undue abuse and/or harassment. However, she does not have any legally recognizable interest in having an erroneous PPO issued, nor in improperly obtaining possession of Mr. Brent's residence and personal belongings. This is especially true in the instant case where Ms. Workman publicly announced that she was abandoning the criminal case against Mr. Brent (App 67).

C. Risk of an erroneous deprivation of interest

The current law in Michigan essentially make it a must issue state. The law requires that the court shall issue a PPO whenever there is reasonable cause to believe a person may commit an offense.(MCL 600.2950 (4)) The Michigan Courts have interpreted similar language as removing all discretionary decision making (*Williams v. Coleman*, 488 NW 2d 464; 194 Mich. App. 606 at 616-618 (1992)).

Add to this the fact that only evidence that supports the issuance of the PPO is to be considered, it becomes obvious that many if not most of the PPO's are issued in error based solely on the accusations of the petitioner. The Michigan Supreme Court has explicitly held "The express mention of one thing in a statute implies the exclusion of other similar things." (*In re MCI Telecommunications Complaint*, 460 Mich. 396, 596 NW 2d 164, 176(1999) citing *Jennings v. Southwood*, 446 Mich. 125, 142, 521 N.W.2d 230 (1994)). Thus, as the statute only mentions evidence offered in support of issuance, any conflicting evidence is to be disregarded. This is clearly shown in the instant case where the trial court did not make any findings of fact regarding the allegations, and instead found that the allegations themselves meet the burden of proof (App 52).

The instant case shows how easy it is to obtain a PPO for improper purposes. First Ms. Workman did not make any claims of domestic violence until after Mr. Brent terminated their relationship. She even admitted that prior to the breakup, there were no incidents of violence (App 43). After receiving the PPO she decided to abandon the criminal case (App 67). Although she voluntarily vacated Mr. Brent's apartment, after having Mr. Brent arrested she took possession and control over Mr. Brent's apartment and all of his possessions. The police report only mentions a single incident, and does state that there was no injuries (App 68), yet a week later in her petition she claims another incident occurred the day before (App 62) Even Ms. Workman commented on how easy it was for her to obtain a PPO (App 66) As her other social media posts show, the purpose of Ms. Workman's actions was to punish and harass Mr. Brent for terminating their relationship (App 65)

D. Value of additional/substitute safeguards

In the very least Due Process requires that these cases have the same standards of any other private civil matter requiring a preponderance of evidence after evaluation all relevant and admissible evidence. However Mr. Brent believes a higher standard is required due to the criminal nature of the allegations. Mr. Brent was arrested based upon the allegations made to the police and latter included in her Petition for a PPO. This Court has recognized that clear and convincing evidence is appropriate "in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant" (*Addington v. Texas*, 441 US 418, at 424 (1979)). It is Mr. Brents contention that a Domestic Relations injunctive order should not be issued except after a petitioner proves by clear and convincing evidence that the person to be enjoined has harmed and/or threatened to harm the petitioner and that such harm is likely to occur in the

future. Such should also include findings of fact regarding the allegations made against the accused.

This standard would not diminish immediate protections available to a true victim of domestic violence. As this case shows, Mr. Brent was arrested and the criminal court entered a no contact order (App 55). At this point the PPO issued by the Circuit Court was simply surplus and redundant as a protective order was already in place when Ms. Workman applied for the PPO. Such would greatly reduce the number of erroneous Injunctions issued, and prevent the abuses that occurred here, of using the criminal law system as a tool to obtain a civil order then abandoning the criminal case.

E. State interests

As Michigan Law classifies these cases as a private civil matter between private citizens, it is unclear what if any legitimate interest the state has in the outcome, or standards used. However the State does have an interest in preventing domestic violence, these interest are protected under the criminal statutes (MCL 750.81). In the instant case a criminal case was initiated against Mr. Brent. This case was dismissed. Thus, in situations such as this, it would appear to be in the States interest not to have an abundance of unwarranted PPO's on file that they are charged with enforcing.

II. The issue should not be determined to be Moot

Although the PPO in question expired on October 23, 2016 the issue should not be considered moot. First, the order stays on Mr. Brent's record and he is forever listed in L.E.I.N. as a domestic violence offender. Further, this case is demonstrative as how the orders will always expire before final review can be obtained. Mr. Brent filed his original appeal the following day on November 19, 2015 the day after the trial court hearing. Yet the initial appeal was not ruled

upon until April 20, 2017 (App 17-18) Thus, this is a classic case where the conduct is “capable of repetition, yet evading review.” *Southern Pacific Terminal Co. v. ICC*, 219 U. S. 498, 515 (1911). Further since the parties have a child in common, and had lived together Ms. Workman can seek a new PPO whenever she wishes (MCL 600.2950 (1)) and Mr. Brent would be subject to the same treatment by the courts. Mr. Brent still visits Michigan on a regular bases, and has intention to again reside within Michigan.

III. If the issue is moot, then the orders should be vacated

Although Mr. Brent has a vested interest in this appeal, it appears that Ms. Workman and/or the State of Michigan does not have any interest in maintaining an expired order. The Michigan Court of Appeals originally denied the appeal as moot (App 17-18), and denied Mr. Brents request to vacate the trial court’s orders on that same ground (App 19-33) On remand, the Michigan Court of Appeals still found several issues moot due to the expiration of the order (see APP 3). The Michigan Supreme Court did not address the issue of vacating the trial court in either petition for review.

This Court has long held that when a case becomes moot on appeal the proper remedy is to vacate the lower court’s orders and remand for a dismissal of the case. *Camreta v. Greene*, 131 S. Ct. 2020 at 2035 (2011) citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39, 71 S.Ct. 104, 95 L.Ed. 36 (1950), *Alvarez v. Smith*, 558 U.S. 87, 130 S.Ct. 576, 581, 175 L.Ed.2d 447 (2009). *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994). Thus, if this Court finds that this appeal has become moot then it should vacate the lower court rulings and remand to the Wayne County Circuit Court with instructions to dismiss the case as moot. This is the only relief to prevent Mr. Brent from being subject to the

use of this order in future proceedings and not suffer the adverse effects of having such an order on his record.

RELIEF REQUESTED

Wherefore and for the above stated reasons this Court should grant the instant petition to determine the minimum requirements of due process before a Court enters and order that strips the accused of his interests of his own home and personal possessions, and forever labels him as a violent offender. Alternatively if this Court finds the case to be moot, then it should vacate the lower court orders and remand for an order of dismissal.

Respectfully submitted,

Dated September 27, 2019

A handwritten signature in black ink, appearing to read "Aaron Brent", is written over a horizontal line.

Aaron Brent

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