24-7281

No. 24A496

In the
Supreme Court of the United States

Lawrence Watson
Petitioner

v.

COMMISSIONER OF PROBATION PAMERSON IFILL
Respondent

Lawrence Watson

Petitioner

v.

COMMISSIONER OF PROBATION EDWARD DOLAN

Respondent

On Petition for Writ of Certiorari to the

United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

Lawrence Watson

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January 16, 2025

QUESTIONS PRESENTED

Whether subjects of abuse prevention orders are "in custody" under Title 28 U.S.C. § 2254, pursuant to Jones v. Cunningham, 371 US 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963)

Whether the state can terminate permanently the right to bear arms in abuse prevention proceedings, pursuant to the decision in United States v. Rahimi,144 S. Ct. 1889, 602 US 680, 219 L. Ed. 2d 351 (2024)

Whether acts of fraud on the court by court officers supersede and/or tolls the statute of limitations in Title 28 U.S.C. § 2244

RELATED PROCEEDINGS

Docket 24-7498 Lawrence Watson v Pamela Ifill, U.S. Supreme Court

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Lawrence Watson is an individual no corporate disclosure is required.

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I. PETITION FOR A WRIT OF CERTIORARI

Petitioner Lawrence Watson respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

II. OPINIONS BELOW

The judgments of the United States Court of Appeals for the First Circuit in the matter of Docket 23-1263 Lawrence Watson v Diane Fasano is unreported and attached. **Petitioner's Appendix ("Pet. App.") at 1,2**

The judgment of the District Court of Massachusetts in the matter of Docket 22-10546 Watson v Edward Dolan is unreported and attached. **Pet. App. at 3**

III. JURISDICTION

The First Circuit entered final judgment on August 19, 2024. **Pet. App. at 1** The jurisdiction of This Court is invoked under Title 28 U.S.C. § 1254(1) and Title 28 U.S.C. § 2254(a).

IV. STATUTORY PROVISIONS INVOLVED

This case involves the First, Second, Fourth, Sixth and Fourteenth Amendments of the U.S. Constitution, Title 28 U.S. Code § 2244(d) and Title 28 U.S. Code § 2254(a). The text of the statutes are contained in the appendix. **Pet. App. at 69-71**

V. STATEMENT OF THE CASE

A. Introduction

Since 2003, Petitioner has been a subject of an abuse prevention order under M.G.L. c.209A. Since 2006, said abuse prevention order was made permanent, maintaining its provision that denied him access to his child SLW and the right to own firearms.

This petition arises from Petitioner's effort to address the violation of his constitutional rights under the First, Second, Fourth, Fifth and Fourteenth Amendments and the repeated acts of fraud that were committed by Massachusetts' court officers.

As a result, through no fault of Petitioner's, there has never been judicial review of his contention that Massachusetts court officers repeatedly committed acts of fraud throughout the c.209A proceedings or that, absent these constitutional violations, there is a high probability that Petitioner would never have been a defendant of a c.209A proceeding.

Petitioner maintains that he is "in custody", pursuant to Rex v. Clarkson, 1 Str. 444, 93 Eng. Rep. 625 (K. B. 1722) and Jones v. Cunningham, 371 US 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963}.

Petitioner maintains that the use of the preponderance of evidence standard in abuse prevention proceedings is unconstitutional, pursuant to Matthews v Eldridge, 424 US 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) and Santosky v Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)

Petitioner maintains that permanent prohibition and/or permanent termination of the right to bear arms in abuse prevention proceedings is

unconstitutional, pursuant to United States v. Rahimi, 144 S. Ct. 1889, 602 US 680, 219 L. Ed. 2d 351 (2024)

Petitioner maintains that the effect of fraud on the court supersedes and tolls the statute of limitations in Title 28 U.S. Code § 2244(d)

B. STATEMENT OF PROCEEDINGS

In 2002 Petitioner began dating S. Walker; minor child SLW was produced from the relationship. Throughout the relationship Walker was physically, emotionally and financially abusive to Petitioner. In early 2003 Petitioner ended the relationship.

On April 4, 2003 Petitioner filed a complaint for visitation and joint custody against Walker in the Probate and Family Court for Suffolk County (the "Probate Court") in the matter of Docket 03W0810 Lawrence Watson v S. Walker ["Docket 810"]. **Petitioner's Appendix ("Pet, App.") at 41,42** The initial hearing was scheduled for May 13, 2003. **Pet. App. at 42**

After suffering continued physical assault since ending the relationship (**Exhibit A App. at 1**), on April 16, 2003 Petitioner applied for and obtained an abuse prevention order in the Probate and Family Court for Suffolk County (herein the "Probate Court) under M.G.L. c. 209A, s.3 against Walker in the matter of Docket 03RO0093 Lawrence Watson v Walker ["Docket 93"] **Exh. A App. at2-5** Although Walker failed to appear, on April 26, 2003 the Probate Court denied the extension of the order of Docket 93 (**Exh. A App. at 6**), in violation of M.G.L. c, 209A, s4. ("If the defendant does

not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.") **Pet. App. at 85**

On May 5, 2003 in the Dorchester District Court (the "DDC") Walker applied for and received an abuse prevention order under M.G.L, c209A, s3 against Petitioner in the matter of Docket 0307RO0378 Walker v Lawrence Watson ["Docket 378"] (**Pet. App. at 48,49**); the order contained a provision that prevented Petitioner from having contact with his daughter SLW. **Exh. A App. at 10 Box A7** The DDC failed and refused to issue specific findings of facts, as required by M.G.L. c. 209A, s3 (**Pet. App. at 77 2nd paragraph**)

On May 9th and May 16th of 2003 in the DDC Petitioner attempted to reschedule the hearing for the extension of the order of Docket 378 but was denied by Clerk Leslie Martines, in violation of M.G.L. c. 209A, s.4 ("**Exh. A App. at 8, 9"**). ("The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than ten court business days after such orders are entered.") **Pet. App at 85**

On May 19, 2003 the DDC extended the order of Docket 378 for one year (**Exh. A App. at 11**). Petitioner was not present at the hearing because he was scheduled previously to appear in another court for an unrelated matter. **Exh. A App. at 7** Clerk Martines refused to allow Petitioner to file a timely notice of appeal, pursuant to Massachusetts Rules of Appellate Procedure ("M.R.A.P.") Rules 3 and 4. **Pet. App. at 86,87**

On June 8, 2003 in the DDC Petitioner filed a motion to dismiss and vacate nunc pro tunc the order of Docket 378. **Exh. A App at 15** On June 18, 2003 in the DDC Justice Timothy Gailey extended the order of Docket 378 for one year from date of the hearing before him. **Exh. A App. at 11, 15**

Despite Petitioner's filing of a timely notice of appeal at subsequent hearings, the DDC extended the order of Docket 378 several times without initiating appellate measures. **Exh. A App. at 16** Despite Petitioner's filing of motions to assemble and to forward the record to the Appeals Court, the DDC failed and refused to initiate appellate measures, pursuant to M.R.A.P. 9. **Exh. A App. at 18, 25-27, Pet. App. at 87**

On account of the failure and the refusal of the DDC to initiate appellate measures in the matter of Docket 378 and to provide Petitioner with court documents and court tapes, starting in 2005 Petitioner sought relief under M.G.L. c. 211, s.3 and M.G.L. c.249, s5 in Massachusetts' Supreme Judicial Court (the "SJC") but was repeatedly denied relief. Watson v Walker & others (and five consolidated cases), 447 Mass. 1014 (2006); Watson v Justices of the Dorchester Division of the District Court, 452 Mass 1025 (2008); Watson v Walker & others, 915 N.E.2d 1064, 455 Mass. 1004 (2009); Watson v Clerk-Magistrate of the Dorchester Division of the District Court, 453 Mass 1007 (2009); Watson v A Justice of the Boston Division of the Housing Court, Lawrence Watson v Sherry Walker & Others, Lawrence Watson v Sherry Walker & Others, Watson v A Justice of the Suffolk Division

of the Probate and Family Court Department, Watson v Five Justices of the Dorchester Division of the Boston Municipal Court Department & Others, 458 Mass 1025 (2011) In each argument before the SJC, Petitioner was required to argue multiple separate petitions for relief simultaneously. .

On November 29, 2006 Petitioner filed a complaint in the Appeals Court for Suffolk County (the "Appeals Court"), requesting an order for the DDC to assemble and forward the record of Docket 378 to the Appeals Court. 2006-J-0598 Sherry Walker v Lawrence Watson ["Docket 598"] **Exh. A App. at 37 Item #2** On November 30, 2006 the Appeals Court issued an order for the DDC to assemble and to forward the transcripts of the record of Docket 378 to the Appeals Court. **Exh. A App. at 37 Item 33** On December 13, 2006 in the Appeals Court in the matter of Docket 598 Petitioner filed motion to compel the DDC to provide him with court documents and court tapes, pertaining to the proceedings of Docket 378 . **Exh. A App. at Item 5** The Appeals Court refused to act on Petitioner's motion. **Exh. A App. at Item 6**

Per the order of Docket 598, on December 15, 2006 Petitioner's appeal of Docket 378 was docketed in the Appeals Court (**Exh. A App. at 38 Item 2**). 2006-P-1945 S.W. v L.W. ("Docket 1945")

On December 15, 2006 in the DDC Justice Michael Coyne made the order of Docket 378 permanent; the order maintained the provision that restricted Petitioner's access to his daughter SLW. **Exh. A App. at 13** Petitioner filed a timely notice of appeal. **Exh. A App. at 14** To date, the

DDC has failed and has refused to issue written specific findings of facts for issuing the permanent status, as required by M.G.L. c. 209A, s3. ("If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child") **Pet. App. at 77 2nd paragraph**

On April 20, 2007 Petitioner filed a motion in the Appeals Court to extend the filing date of his brief in the matter of Docket 1945 because he was unable to obtain court tapes and court documents of the proceedings of Docket 378 that would allow him to create a record for his appeal. **Exh, A App. at 38 Item #6** On April 24, 2007 the Appeals Court denied Petitioner's motion for an extension. **Exh. A App. at 38** On July 5, 2007 the Appeals Court dismissed the complaint of Docket 1945 for lack of prosecution because Petitioner was unable to create a record in the matter without court documents and court tapes. **Exh. A App. at 38 at 15, 16**

On July 30, 2007 the DDC assembled and forwarded the record of Docket 378 to the Appeals Court for Petitioner's appeal of Justice Coyne's decision on December 15, 2006 (**Exh. A App. at 14**). Docket 2007-P-1274 Walker v Lawrence Watson ["Docket 1274"] On July 30, 2008 the Appeals Court denied Petitioner's appeal of Justice Coyne's issuance of the permanent order in the matter of Docket 378. **Exhibit A App. at 48-49** Petitioner

sought further appellate review from the SJC but was denied. FAR-17211 Walker v Lawrence Watson

In 2010 Petitioner filed complaints in the SJC, challenging the constitutionality of MG.L. c. 209A, declaring the order of Docket 378 void ab initio, and seeking accountability for misconduct by clerks and justices of the DDC.

On January 11, 2011 the SJC refused to address Petitioner's challenges to the constitutionality of M.G.L. c209A, the voidness of the order of Docket 378, and the request for accountability of court officers but issued an order that prohibited him from future filings in the SJC without prior approval. *Watson*, supra 458 Mass 1025 (2011)

On September 21, 2011 in the U.S District Court for Massachusetts [the "District Court"] Petitioner filed a petition for a writ of habeas corpus in the matter of Docket 378, pursuant to § 2254. Docket 11-11698-DJC Watson v O'Brien ["Docket 11698"] On October 11, 2011 the District Court denied Petitioner's petition for a writ of habeas corpus and a certificate of appealability in the matter of Docket 11698. **Exhibit A App. at 69-72** Petitioner filed a timely notice of appeal.

On July 2012 the U.S. Court of Appeals for the First Circuit (the "Court of Appeals") denied Petitioner's request for a certificate of appealability and terminated his appeal (**Pet. App. at 4**). Docket 11-2403 Watson v Coakley On December 10, 2012 This Court denied Petitioner's

petition for a writ of certiorari (**Pet. App. at 5**). Docket 12-6859 Watson v Coakley

On January 21, 2022 in the U.S. District Court in the Eastern District of Louisiana (the "Eastern District") Petitioner filed a petition for a writ of habeas corpus in the matter of Docket 378. Docket 22-153 Watson v Dolan etal ("Docket 153"), **Pet. App. at 6, 7**

On February 18, 2022 the Eastern District issued a recommendation to transfer the petition of Docket 153 to the District Court. **Pet. App. at 8-10** On March 3, 2022 Petitioner filed a motion to transfer the petition of Docket 153 to the U.S.C.A. for the 1st Circuit. **Pet. App. at 11, 12** On April 11, 2022 the Eastern District transferred the petition of Docket 153 to the U.S. District Court in Massachusetts (the "District Court"). **Pet. App. at 7**

On April 11, 2022 the matter of Docket 153 was transferred to the District Court (Pet. App. at 14 Item 12). Docket 22-10546 Watson v Dolan etal ("Docket 10546") On March 7, 2023 the District Court dismissed Petitioner's petition as "untimely" without addressing the merits and issued a certificate of appealability. **Pet. App. at 3, 16 Item 37** Petitioner filed a timely notice of appeal. **Pet. App. at 16 Item 40**

On March 28, 2023 Petitioner's appeal of Docket 10546 was docketed in the Court of Appeals. **Pet. App. at 19** On April 17, 2023 in the Court of Appeals Petitioner filed a motion for the issuance of a certificate of appealability and a memorandum in support of said motion. **Exh. A**

On May 10, 2023 the Court of Appeals requested the District Court to specify, "as to which issues the certificate was granted." **Pet. App. at 16 Item 44, 21**

On July 6, 2023 the District Court declared, "[T]he certificate of appealability is limited to the issue of timeliness of the petition. As noted in its order, this Court did not address the merits."

On July 12, 2024 the Court of Appeals affirmed the dismissal of Petitioner's petition. **Pet. App. at 2** On July 14, 2024 in the Court of Appeals Petitioner filed a petition for rehearing. **Pet. App. at 23-35** On August 19, 2024 the Court of Appeals denied Petitioner's petition for rehearing. **Pet. App. at 1**

On November 4, 2024 Petitioner filed a motion for the extension of the filing date of a petition for a writ of certiorari before the U.S. Supreme Court. This Court granted the extension to January 16, 2025. **Pet. App. at 36**

VI. REASONS FOR GRANTING THE WRIT

In 1978, the Massachusetts Legislature established a judicial framework to protect victims of domestic violence; the statute was M.G.L. c. 209A. Every state and every territory of the United States and the District of Columbia have similar legislation to Chapter 209A that is classified as civil in nature and apply the preponderance of evidence standard. (**Exhibit B at 1, 4, 9, 11, 16, 17, 23, 30, 33, 39, 41, 46, 49**) In other jurisdictions abuse prevention orders are known as temporary restraining orders ("TROs")

Abuse prevention orders can restrict, deny and/or terminate permanently parental rights, gun ownership, housing and/or employment. There are between 2 to 3 million temporary restraining orders issued annually in the United States. (US DOJ, 2009) Most of these orders are issued ex parte and a significant number are made permanent. There is no national standard for habeas corpus review of these proceedings and such authority as exists in the lower federal courts is neither definitive nor forthcoming.

This Court should grant certiorari to clarify the "in custody" status of defendants of abuse prevention orders, to determine the constitutionality of c. 209A/TROs, and to determine the protection of Second Amendment rights in c. 209A/TRO proceedings.

1. The deprivation and/or termination of parental rights by abuse prevention orders/TROs places an individual "in custody", pursuant to Title 28 U.S. Code § 2254

In construing the habeas statute, reference may be made to the common law and to practices in the states and England. In England, courts have long recognized the writ as a proper remedy even though the restraint is something less than close physical confinement. Detention need not be by governmental authorities to confer § 2241 jurisdiction. The Great Writ, habeas corpus ad subjiciendum, was even in Blackstone's time a remedy "in

all manner of illegal confinement," including false imprisonments by private persons. 3 W. Blackstone, Commentaries 127-132.

The King's Bench as early as 1722 held that habeas corpus was appropriate to question whether a woman alleged to be the applicant's wife was being constrained by her guardians to stay away from her husband against her will. Rex v. Clarkson, 1 Str. 444, 93 Eng. Rep. 625 (K. B. 1722) The test used was simply whether she was "at her liberty to go where she please[d]." *Id.*, at 445, 93 Eng. Rep., at 625. Also, habeas corpus was used in 1763 to require the production in court of an indentured 18-year-old girl who had been assigned by her master to another man "for bad purposes." Rex v. Delaral, 3 Burr. 1434, 97 Eng. Rep. 913 (K. B. 1763) Although the report indicates no restraint on the girl other than the covenants of the indenture, the King's Bench ordered that she "be discharged from all restraint, and be at liberty to go where she will." *Id.*, at 1437, 97 Eng. Rep., at 914 Finally, an English court permitted a parent to use habeas corpus to obtain his children from the other parent, even though the children were "not under imprisonment, restraint, or duress of any kind." Earl of Westmeath v. Countess of Westmeath, 37 E.R. 797 (1821)

The writ has been issued in several child custody cases decided by federal courts, albeit in special and largely distinguishable circumstances. Davis v. Page, 640 F. 2d 599 at 602 (Court of Appeals, 5th Circuit 1981) (habeas corpus granted to mother who was under supervision of social

services in regards to custody of her child); Nguyen Da Yen v. Kissinger, 528 F.2d 1194 (9th Cir. 1975) (a challenge to the legality of the custody of child refugees of the Vietnam War under Title 28 U.S. Code § 2241); United States ex rel. Cobell v. Cobell, 503 F.2d 790 (9th Cir. 1974), cert. denied, 421 U.S. 999, 95 S.Ct. 2396, 44 L.Ed.2d 666 (1975) (habeas corpus review granted in custody dispute involving Tribal Court jurisdiction of habeas corpus); Young v. Minton, 344 F.Supp. 423 (W.D.Ky.1972) (a writ was issued to compel a mother to turn her children over to a United States Marshall, when she had, in defiance of a North Carolina court order awarding custody of the children to the father, taken the children to Kentucky.); Bell v. Leonard, 102 U.S.App.D.C. 179, 251 F.2d 890 (1958) (habeas corpus review granted to mother in child custody dispute with guardian)

However, in Sylvander v. New England Home for Little Wanderers, 584 F. 2d 1103 (1978) the First Circuit said, "...we can see no real parallel in child custody matters between state and federal use of the habeas remedy." Id, at 1111 Further, the First Circuit added, "The federal government, however, has no parallel substantive interest in child custody matters that federal habeas would serve." *Id*, at 1111

As Jones v. Cunningham, 371 US 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963) and its progeny make clear, while the requirement of physical custody historically served to restrict access to habeas relief to those most in need of judicial attention, physical custody is no longer an adequate proxy for

identifying all circumstances in which federal adjudication is necessary to guard against governmental abuse in the imposition of "severe restraints on individual liberty." Hensley v. Municipal Court, San Jose-Milpitas Judicial Dist., Santa Clara Cty, 411 US at 351, 93 S. Ct. 1571 at 1574, 36 L. Ed. 2d 294 (1973); see Larry W. Yackle, Explaining Habeas Corpus, 60 N.Y.U. L. REV. 991, 998-99 (1985). See generally 1 James S. Liebman & Randy Hertz, *Federal Habeas Corpus Practice and Procedure* 191-210 (2d ed.1994).

In *Jones*, This Court discussed his restrictions in housing and employment, the constant fear of rearrest, and the scarcity, if any, of the procedural safeguards that normally must be and are provided to those charged with crime." Id, 371 U.S. 236 at 242 (1963) The Supreme reasoned that the petitioner's release from physical confinement under the sentence in question was not unconditional; instead, it was explicitly conditioned on his reporting regularly to his parole officer, remaining in a particular community, residence, and job, and refraining from certain activities. *Id.*, at 242; see also Braden v. 30th Judicial Circuit Court of Ky., 410 U. S. 484 (1973).

The inquiry into whether a petitioner has satisfied the jurisdictional prerequisites for habeas review requires a court to determine if petitioner's liberty to do those things which in this country free men are entitled to do are significantly restrained. See Dow v. Circuit Court of the First Circuit Through Huddy, 995 F.2d 922, 923 (9th Cir.) (per curiam) (petitioner

sentenced to fourteen hours of attendance at alcohol rehabilitation program "in custody" for purposes of federal habeas relief), cert. denied, --- U.S. ----, 114 S.Ct. 1051, 127 L.Ed.2d 372 (1994) If habeas corpus review was appropriate in *Dow*, a subject of an abuse prevention order is entitled to habeas corpus review, considering the restraints.

It is well established in federal court that Petitioner's liberty and property interests and right to the care and companionship of his child is so fundamental as to be guaranteed protection by the U. S. Constitution. Santosky v. Kramer, 102 S Ct 1388 (1982) "Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life"; Meyer v Nebraska, 262. U.S. 390 (1923) "The interest of parents in the care, custody and control of their children – is perhaps the oldest of fundamental liberty interests recognized by this court"

Equally important, the fundamental right of Petitioner to be with his child has been recognized in Massachusetts. Adoption of Eugene, 415 Mass. 431, 435 (1993) "Parents have a constitutionally protected interest in maintaining a relationship with their children"; Care & Protection of Robert, 408 Mass. 58, 68, 60 (1990) "due process rights must be honored whenever a parent is deprived of the right to raise his/her child."

While most private detentions (and child custody conflicts) do not rise to the level of constitutional violations, the governmental involvement in

facilitating and maintaining the deprivation of Petitioner's parental rights does present that possibility here, and habeas jurisdiction is proper.

In the instant matter without arguing the merit of Walker's claims in her application for the order of Docket 378, Walker made no claims that Petitioner abused or was an imminent threat to SLW, pursuant to M.G.L. c. 209A, s1. (**Pet. App at 49**) Nevertheless, the order prohibited Petitioner from having contact with his daughter. Walker filed the application soon after a complaint for abuse that was filed against her was dismissed improperly and immediately before an appearance in the Probate Court for visitation issues.

Equally disturbing, Petitioner can be rearrested for circumstances beyond his control. See Commonwealth v Stoltz, 73 Mass. App. Ct. 642 (2009) (Defendant arrested after dinner with a friend at a restaurant because alleged victim was present unbeknownst to Defendant); See Also Commonwealth v Delaney, 425 Mass 587, 595-597, 682 N.E.2d 611 (1997) (SJC stated that a violation prosecuted under G.L. c. 209A, § 7, "requires no more knowledge than that the defendant knew of the order," Id. at 596-597, and that a violation of G.L. c. 209A, prosecuted under § 7, does not require proof that the defendant actually intended to abuse the victim.)

On account of the state's continuous impediments of Petitioner's efforts to contest and to vacate the order of Docket 378, the instant matter is best explained by *Hensley*. "The State has emphatically indicated its determination to put him behind bars, and the State has taken every possible

step to secure that result. His incarceration is not, in other words, a speculative possibility that depends on a number of contingencies over which he has no control." *Id*, at 551-552 (1973)

As a result of the issuance of Docket 378, Petitioner has been denied familial relations with his daughter, has been prohibited from possessing firearms permanently, has had his freedom of movement restricted, and has been denied employment. City of Boston Zero Tolerance for Violence Policy (2000) ("If an employee who is under the hiring and firing authority of the Mayor is convicted of charges relating to domestic violence or is in violation of a restraining order, that employee shall be dismissed") The issuance of the abuse prevention order of Docket 378 placed Petitioner "in custody" and he was entitled to habeas corpus review.

A. Chapter 209A is unconstitutional

Chapter 209A is unconstitutional and violates established case law from This Court.

At all times the issuance and the extensions of c. 209a abuse prevention orders apply the preponderance of evidence standard under M.G.L. c. 209A, s3. **Pet. App. at 76 2nd paragraph** In Santosky v. Kramer, 455 US 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982), This Court held that before a State could sever completely and irrevocably the rights of parents in their natural child, due process required that the State support its allegations by at least clear and convincing evidence. *Id*, at 747 This Court

found that the "fair preponderance of the evidence" standard was inconsistent with due process because the private interest in parental rights affected was substantial and the countervailing governmental interest favoring the preponderance standard was comparatively slight. *Id*, at 758

In furtherance of the unconstitutionality of c. 209A, in Stanley v. Illinois, 405 US 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), This Court held that the State of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent. This Court concluded, on the one hand, that a father's interest in the "companionship, care, custody, and management" of his children is "cognizable and substantial," *id.*, at 651-652, and, on the other hand, that the State's interest in caring for the children is "de minimis" if the father is in fact a fit parent, *id.*, at 657-658.

Chapter. 209A's restriction and deprivation of parental rights infringes upon Petitioner's rights under the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). Guidelines for Judicial Practice: Abuse Prevention Proceedings 8:00; see also Guidelines for Judicial Practice: Abuse Prevention Proceedings 12:06 Commentary **(Pet. App. at 97-98)**

In relevant part M.G.L. c209A, s3B states requires a defendant in a c. 209A proceeding to surrender his firearms, "...**if** the plaintiff demonstrates a

substantial likelihood of immediate danger of abuse..." (emphasis added) **Pet. App. at 83** However, the Commonwealth's Guideline for Judicial Practice – Abuse Prevention Proceedings requires gun license suspension and gun surrender orders to be mandatory. Guidelines for Judicial Practice: Abuse Prevention Proceedings 4:04 Commentary (2011); Guidelines for Judicial Practice: Abuse Prevention Proceedings 6:05 Commentary (**Pet. App at 90**) In violation of Massachusetts' Articles XX and XXX of the Massachusetts Constitution, Part the First. Massachusetts legislators made the requirement to surrender firearms discretionary but its judiciary made said requirement ministerial. **Pet. App at 73**

Chapter 209A is unconstitutional for violation of the Supremacy Clause of the U.S. Constitution because it violates Title 18 U.S.C. 921 by failing to provide legal counsel to the accused or the opportunity to waive his right legal counsel (Id, (a)(33)(B)(i)(I)) and by failing to grant a jury or the opportunity to waive his right to a jury (*Id*, (a)(33)(B)(i)(II)(aa)& (bb)).

The Supremacy Clause instructs courts to give federal law priority when state and federal law clash. McCulloch v. Maryland, 17 US 316 (1819); Gibbons v. Ogden, 22 US 1, 6 L. Ed. 23, 1824 US LEXIS 370 (1824); Alessi v. Raybestos-Manhattan, Inc., 451 U. S. 504 (1981)

Massachusetts determined incorrectly that a jury trial is not required in c. 209A proceedings because, "the order does not confiscate property as a punishment for the commission of a crime." Frizado v. Frizado, 420 Mass. 592

at 594 (1995) M.G.L. c. 209A, s3, M.G.L. c.209A, s3C and the Guideline for Judicial Practice require defendants of abuse prevention orders to surrender their gun license and their firearms, in violation of the Fourth Amendment and Article XIV of the Massachusetts Constitution (**Pet. App. at83, 84**)

Like provisions of similar legislation throughout the states and the territories (**Exh. B**), under M.G.L. c. 209a, s3 a defendant can be removed from his household, regardless if he is the sole tenant on the lease, the sole owner of the mortgage or the sole owner of the residence. **Pet. App. at 76 1st paragrah** In essence this is an eviction with governmental intrusion and violates the Fourth Amendment. Soldal v. Cook County, 506 US 56, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992) The order to vacate cannot exceed one year but can be extended upon request by the plaintiff under M.G.L. c. 209A, s3. **Pet. App. at 77 1st paragraph**

The initial service of c. 209A complaints violates the Fifth Amendment and Article XII because defendants are not informed of the charges of which they are accused. Flynn v. Warner, 421 Mass. 1002, 1002 (1995) (Rescript). The "necessary papers" to be served include a copy of the order and the complaint, but not the affidavit. In Greene v. McElroy, 360 US 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959), This Court stated:

> "[C]ertain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action

depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.

Id, at 496

In violation of the Fifth Amendment and Article XII, Massachusetts declared that a defendant's invocation of the Fifth Amendment right to avoid self-incrimination can be used against him. Frizado, *supra* at 596 (1995) ("[A]n inference adverse to a defendant may properly be drawn, however, from his or her failure to testify in a civil matter such as c. 209A proceedings..."

Chapter 209A proceedings are administered in a discriminating manner against males who are involved in domestic disputes against males, in violation of the equal protection clause of the Fourteenth Amendment and Article X of the Massachusetts Constitution (**Pet. App at)**, as set forth in Yick Wo v Hopkins, 118 US 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

The improper dismissal of the order of Docket 93 are indicative of the disparate treatment males receive in c. 209A proceedings. see Santiago v. Young, 844 N.E.2d 610, 446 Mass. 1006 (2006) (**Exh. A at App. at 77-79**)

On February 8, 1995 in the DDC Petitioner obtained an abuse prevention order against his former girlfriend Teal McRae. In violation of M.G.L. c. 209A, on February 9, 1995 McRae obtained improperly an abuse prevention order against Petitioner; the DDC failed to issue specific written

findings of fact, as required. **Pet. App. at** Petitioner filed a timely notice of appeal in the SJC. **Pet. App. at** In violation of M.R.C.P. Rule 4, the SJC denied Petitioner any relief and failed and refused to transmit the notice to the DDC. **Pet. App. at 40,** To date McRae's order against Petitioner remains intact and Petitioner has never been granted an appeal.

On March 16, 2005 in the Probate Court in the matter of Docket 03W1170 Adele Riesenberg v Michael Watson Sr. ["Docket 1170"], Riesenberg and Watson signed an agreement that granted Riesenberger custody of minor child MW and child support and Watson visitation. One provision of said agreement required Watson to enroll in a parenting course which would allow him telephone contact with MW. Watson satisfied the criteria to call his son and called his son but Riesenberger ended the call upon hearing his voice.

Within days after Watson's call, on June 16, 2005 Riesenberger applied for and obtained an abuse prevention under M.G.L. c209A against Watson in the West Roxbury District Court. Docket 0506RO0280 Adele Riesenberg v Michael Watson Sr. ["Docket 280"] The order of Docket 280 contained a provision that prevented Watson from having contact with his son MW. On July 1, 2005 the order was extended until June 30, 2006. On July 5, 2005 Watson filed a timely notice of appeal, On June 30, 2006 the order was made permanent. To date Watson has not seen his son MW or been granted an appeal.

Finally, the use of the preponderance of evidence standard in c. 209A proceedings is constitutionally deficient under the criteria for procedural due process protections in Matthews v Eldridge, 424 US 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)

In Opinion of the Justices to the Senate, 691 N.E.2d 911, 427 Mass. 1201 at 1205-1210 (1998), the SJC incorrectly applied the analysis contained in *Mathews* to justify the use of the preponderance of evidence standard in c. 209A proceedings.

2. Massachusetts cannot show that Chapter 209A's permanent prohibition of the right to bear arms is consistent with the history and tradition of gun regulation in the United States

The Second Amendment guarantees that "the right of the people to keep and bear Arms, shall not be infringed." The Second Amendment "codified a right 'inherited from our English ancestors.'" District of Columbia v. Heller, 554 U.S. 570 at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 63 (2008), 554 U.S. at 599 (citation omitted). This Court has affirmed the right to bear arms is a substantive right in cases such as *Heller* and McDonald v. City of Chicago, 561 US 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) The Second Amendment right belongs to all Americans." *Heller*, 554 U.S. at 581. This Court has declared that the right, however, is "not unlimited." *Heller*, 554 U.S. at 595 (2008).

This Court has received a chronological review of the nation's history of firearms prohibition. United States v. Rahimi, Petitioner's Brief at 8-10 Nevertheless, the practice of permanently prohibiting the right to bear arms through the issuance of abuse prevention orders and TROs would have been unthinkable to the founding generation and to most of the Congresses convened in our nation's history.

In United States v. Rahimi, 144 S. Ct. 1889, 602 US 680, 219 L. Ed. 2d 351 (2024), This Court dismissed the concept that the Second Amendment allows Congress to disarm anyone who is not "responsible" and "law-abiding.". *Id*, at 1944 In New York State Rifle & Pistol Assn, Inc. v. Bruen 597 US 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), This Court declared that when the Government regulates arms-bearing conduct, the government must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. *Id*, at 2130

The Commonwealth's involvement in c. 209A proceedings is considerable and manifest, giving rise to a constitutional duty. Little v Streater, 452 U.S. 1 at 9-13, 101 S.Ct. 2202, 68 L.Ed.2d 627 (1981) (This Court discusses state involvement in paternity proceedings) The Commonwealth is inextricably involved in domestic violence proceedings and responsible for an imbalance and disparity between the parties.

As stated previously, defendants are not granted counsel in c. 209A proceedings but plaintiffs are granted advocates, which can include

"employees of the district attorney". Guidelines for Judicial Practice: Abuse Prevention Proceedings 2:08 **(Pet. App. at 88)** Such a practice is irreconcilable with the command of the Due Process Clause. Dunn v Blumstein, 405 US 330 at 343, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) ("In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity.")

Without applying at least the clear and convincing evidence which would include physical evidence and witnesses, applying the preponderance of evidence standard in c. 209A proceedings amount to "he said, she said", as in the instant matter. Without applying at least the clear and convincing evidence, there is no verifiable evidence of imminent threat of harm or abuse, as in the instant matter.

The use of the preponderance of evidence standard in c. 209A proceedings in the restriction, the prohibition and/or the termination of the right to bear arms is constitutionally deficient under the criteria for procedural due process protections in *Matthews*.

The private interests implicated here are substantial. Defendants can desire firearms for defense to protect their safety and/or for employment such as security, law enforcement and the military. Petitioner was employed as an armed security but had to resign due to the issuance of an abuse prevention order.

Given the usual absence of physical evidence and witnesses, the self-interest coloring the testimony of the plaintiff for potential leverage in child custody, child support and divorce proceedings, and the aforementioned bias that is created by the state in the proceedings, the risk is not inconsiderable that a defendant (especially if he is indigent) will be erroneously denied the right to bear arms.

Undoubtedly the State has a legitimate interest in the protecting citizens from abuse and possible murder and as parens patriae, a compelling interest in protecting the physical and psychological well-being of minors. Nevertheless, this state interest cannot overcome a defendant's constitutional right to a fair hearing. Snyder v. Massachusetts, 291 US 97 127 , 54 S. Ct. 330, 78 L. Ed. 674 (1934) ("It is fundamental that there can be no due process without reasonable notice and a fair hearing."); see also Hagar v. Reclamation District No. 108, 111 US 701 at 708 (1884); Hooker v. Los Angeles, 188 US 314 at 318, 23 S. Ct. 395, 47 L. Ed. 487 (1903); Twining v. New Jersey, 211 US 78 at 111, 29 S. Ct. 14, 53 L. Ed. 97 – (1908) .

Finally in *Rahimi*, Justice Gorsuch admitted This Court left undetermined whether, "the government may disarm a person without a judicial finding that he poses a "credible threat" to another's physical safety whether the government may disarm an individual permanently. *Id*, at 1909

3. Acts of fraud on the court supersede and toll the statute of limitations in Title 28 U.S. Code § 2244(d)

The District Court denied Petitioner's petition for a writ as untimely without addressing the merits of the petition. **Pet. App. at 3, 16 Item 37, 17 Item 46** The Court of Appeals affirmed the decision and denied Petitioner's petition for a rehearing **Pet. App. at 1, 2** Petitioner argued that his claims were not untimely because the order of Docket 378 was void ab initio. **Exh. A at 32**

The DDC lacked the jurisdiction to issue the order of Docket 378 on May 5, 2003 because Petitioner and Walker were scheduled to appear in the Probate Court for child custody on May 13, 2003. Guidelines for Judicial Practice: Abuse Prevention Proceedings 3:07 Commentary (2000) **(Pet App. at)**

The DDC lacked the jurisdiction on May 5, 2003 to prohibit Petitioner from having contact with his daughter because Walker made no claims that Petitioner was an imminent treat to or abused his daughter. Guidelines for Judicial Practice: Abuse Prevention Proceedings 3:07 Commentary (2000) **(Pet. App. at 89 2nd paragraph)**

The DDC lacked the authority to maintain the order of Docket 378 and to grant said order permanent status on December 15, 2006 because Petitioner and Walker appeared initially in the Probate Court on May 13, 2003 and said proceedings have been ongoing. Guidelines for Judicial Practice: Abuse Prevention Proceedings 3:07 Commentary (2000) **(Pet. App. at89 2nd paragraph)**

Although it was aware that Petitioner was required to appear in a previously schedule court matter, the DDC refused to reschedule the hearing for the initial extension of Docket 378 and on May 19, 2003 extended the order of Docket 378

without granting Petitioner an opportunity to contest the matter (**Exh. A Pet. App. at 7-9, Pet. App at 50-51**), in violation of the due process clause and Article 12 of the Massachusetts Constitution. Mullane v. Central Hanover Tr. Co., 339 US 306 at 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"); see also Armstrong v Manzo, 380 US 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)

A judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally by habeas corpus if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition. In Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357, the court was declared to have lost its jurisdiction in a trial for crime when it denied the constitutional right to the assistance of counsel.

In United States v. Swift & Co., 286 U.S. 106, 52 S.Ct. 460, 76 L.Ed. 999 (1932), This Court held that it was the inherent right of a court of equity to modify an injunction in adaptation to changed circumstances which rendered the injunction an instrument of wrong.

Massachusetts Rules of Civil Procedure Rule 60 provides relief from judgment. **Pet. App. at 98-100** Rule 60(b)(3) entails fraud, Rule 60(b)(4) incorporates voidness, and Rule 60(b)(6) allows for any other reason justifying relief from the operation of the judgment.

On June 8, 2003 in the DDC Petitioner filed a motion to dismiss and to vacate the order of Docket 378 because he was denied the opportunity to contest the order. **Pet. App. at 53 lines 12-16, Exh. A App. at 15** On June 18, 2003 the motion was denied and the order was extended for one year. **Pet. App. at 66-68, Exh. A App. at 15**

Throughout the proceedings of Docket 378, Massachusetts court officers and justices defied state statutes, state rules of the court and established case law and committed perjury (**Exh. A at 12-16, 20, 37-38, Exh. A App. at 19-24**), resulting in acts of fraud on the court.

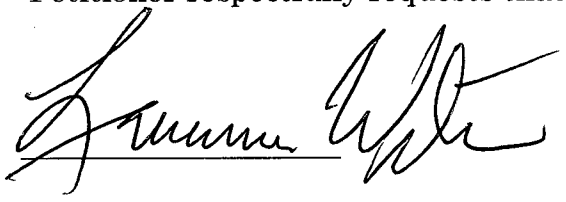
The SJC's order for Petitioner to argue multiple separate complaints simultaneously was an act of fraud on the court.

"`Fraud upon the court' should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself, or is a fraud **perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**". Kenner v. CIR, 387 F. 2d 689 at 691 (1968) (emphasis added) A decision produced by fraud on the court is not in essence a decision at all, and never becomes final. *Kenner*, Id at 691

Therefore, on account of the voidness of the order of Docket 378 and the acts of fraud on the court by court officers and judges, the statute of limitations is inapplicable. In relevant part, the 1-year period of limitation of Title 28 USC 2244 begins from, "the date on which the judgment became **final** by the conclusion of direct review or the expiration of the time for seeking such review." (emphasis added) A decision produced by fraud on the court is not in essence a decision at all, and never becomes **final**. *Kenner*, supra at 691 (emphasis added)

CONCLUSION

Petitioner respectfully requests that This Court issue a writ of certiorari.



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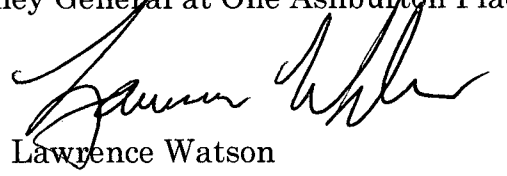
Date: January 16, 2025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by first class mail on January 16, 2025 upon Gabriel Thomas Thornton of the Office of the Attorney General at One Ashburton Place in Boston, MA 02108



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CERTIFICATE OF COMPLIANCE

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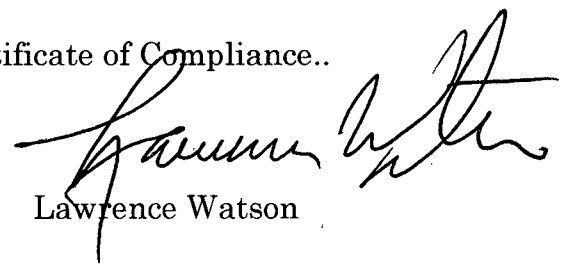

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