

No. 25-1249

In the Supreme Court of the United States

BART XAVIER PESTARINO,
Petitioner,

v.

DANIELLE TETRAULT PESTARINO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF WASHINGTON
DIVISION 1

BRIEF IN OPPOSITION

Danielle Tretault, f/k/a Pestarino

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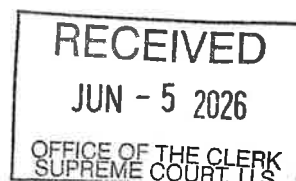
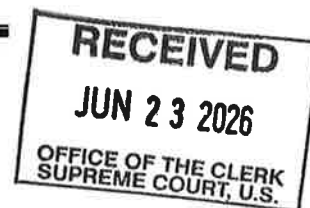


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STATEMENT

1. Introduction

Bart Pestarino is a twice-adjudicated perpetrator of domestic violence—toward both his ex-wife Danielle Tetrault (formerly Danielle Pestarino) and their daughter, Liliana, who was 23-days old at the time of the events in question. He has beaten, choked, and threatened to shoot Danielle. Aside from physical violence, he has urinated on her clothes and threatened to not fill out Danielle’s immigration paperwork (she is a Canadian citizen) if she does not comply with his demands.

This petition for certiorari is in line with Bart’s war path against Danielle since their divorce proceedings commenced in 2024. Bart—acting pro se, armed with money and time—has sued Danielle across multiple jurisdictions for various reasons. The Courts have always shot down his chaotic arguments which, like trying to hit a moving target, change from one brief to another (and often even within briefs).

Here, Bart is broadly challenging the constitutionality of both Washington State and federal statutes that he believes led to a Domestic Violence Protection Order (DVPO) being entered against him.¹ These are all new arguments never raised before. Regardless, the Washington Courts correctly recognized that Bart did not meaningfully rebut Danielle’s claims of physical domestic violence, and appropriately entered a

¹ Bart calls them CPOs for “Civil Protection Order”; this brief uses DVPO because it is a more specific form of Civil Protection Order in Washington. See Rev. Code Wash. § 7.105.010.

DVPO. The Superior Court's credibility determination cannot be reweighed.

2. Underlying Facts Leading to DVPO

In February 2024, Bart filed for Legal Separation. He pressured Danielle to sign legal separation pleadings, assuring her that she "d[id] not need a lawyer to look at them" and that this would ultimately help them reconcile. Bart, who owns a firearm, told her in February that "[w]e won't survive if you do this again," an ambiguous statement that caused Danielle great consternation. She inferred from context that he was saying he did not want her to leave with Liliana. The next day, Danielle fled the home with Liliana, finding refuge at a domestic violence shelter.

In her petition for a DVPO, Danielle presented a spate of terrible incidents during their 2-year marriage. Amongst other things, Danielle described how Bart: (1) threw a wooden chair at Danielle while she was holding Liliana in a baby carrier on her body, then pushed Danielle (still holding Liliana) into the basement and prevented her from calling 911; (2) urinated in a box of her clothes during a verbal argument; (3) threatened not to fill out necessary immigration paperwork (as she is a Canadian citizen) as a means of coercive control; (4) placed her in a headlock; and (5) successfully revoked her completed petition from USCIS for spousal a green card. She also described Bart's firearm possession and how his past statements make her concerned for not only her own safety, but also for Liliana and even police responding to the scene. During their short marriage, police were called to the home at least 4 times.

Despite a Temporary Order of Protection being entered (pending a full hearing on whether a DVPO should be entered), Bart sent a photo of a firearm to her, violating the Temporary Order. On March 14, 2024, the Skagit County Superior Court for the State of Washington entered a 1-year DVPO.

3. Washington Appellate Decisions Affirming DVPO

Bart appealed the DVPO's entry to the Court of Appeals of Washington. Notably, Bart never challenged any of the Superior Court's findings. Under Washington Law, "[u]nchallenged findings of fact are verities on appeal and unchallenged conclusions of law become the law of the case." *In re Marriage of Laidlaw*, 2 Wn. App. 2d 381, 386 (2018).

At the Court of Appeals, Bart argued that (1) Danielle's DVPO petition was a fraudulent ruse to get Green Card; and (2) Danielle only sought a DVPO to gain an advantage in their divorce.

The Court of Appeals rejected his arguments and found that the statutory requirement for a DVPO was met. As to Bart's claims that there was insufficient evidence to establish a DVPO because of "coercive control"—a type of domestic violence in Washington, defined as "a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty," Rev. Code Wash. § 7.105.010(4)(a)—the Court didn't need to reach this question because there were other, unchallenged findings from the Superior Court of *physical* domestic violence. Because there were

counts of physical violence, this was enough to affirm the DVPO.

As for Bart's claims that his due process was violated for evidentiary reasons, the Court of Appeals noted that this was a brand-new argument, raised for the first time on appeal. Regardless, Bart did not object to any hearsay at the hearing (when he was represented by an attorney), nor did he request live testimony. Bart too relied on evidence he challenged on appeal: "Indeed, Bart expressly relied on out-of-court statements, including those in medical reports Danielle provided, to argue that the evidence established 'domestic discord but not domestic violence.'"

Lastly, as to Bart's claims that "coercive control" violates his Second Amendment rights, the Court of Appeals pointed out that *United States v. Rahimi*, 602 U. S. 680 (2024) foreclosed this argument. The *Rahimi* Court held that an "individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 702. And again, the DVPO was based on a finding of physical assault, so Bart's fixation on coercive control alone was inconsequential.

Bart requested review at the Supreme Court of Washington, which was denied. This petition for writ of certiorari follows.

REASONS FOR DENYING THE PETITION

We hope the Court can quickly identify that Bart's sprawling brief—amok with eight Questions Presented, brimming with constitutional challenges left and right—is not worth the Court's time. Because it can be hard to follow at times, we offer this summary for why the Court should deny his petition.

1. Challenges to RCW 7.105

Bart's sprawling brief begins by challenging RCW 7.105—Washington's entire Chapter on Protection Order with ~70 individual statutes—as unconstitutional “on its face and as-applied.” He says RCW 7.105 violates the Supremacy Clause “by displacing federal immigration law,” violates the Bill of Attainder Clause “since Washington State passed a bill of attainder,” and violates the Second Amendment.

First, Bart's challenge of an entire Chapter for an individual state is beyond the pale of realistic. Second, Bart never in the proceedings below challenged the constitutionality of the entire Chapter, and this is the very first time he has ever mentioned the Bill of Attainder clause under Article I of the federal constitution. Third, as to the Second Amendment claim, Bart wants to relitigate this Court's recent decision in *United States v. Rahimi*, asserting that 18 U.S.C. § 922(g)(8) is unconstitutional. This Court foreclosed that argument when it held “Section 922(g)(8) is constitutional as applied to Rahimi.” *Rahimi*, 602 U. S. at 701. “[W]e have no trouble concluding that Section 922(g)(8) survives Rahimi's facial challenge. Our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others.” *Id.* at 700.

Bart likewise asserts how RCW 7.105 violates the Fifth, Sixth, and Fourteenth Amendments because the Civil Protection Order proceedings deprive respondents of due process. This argument immediately fails because Bart is looking at criminal constitutional amendments for guidance. But Civil Protection Orders offer a civil remedy with less serious consequences compared to a criminal prosecution. Indeed, “[c]ivil protection orders are a unique hybrid: ‘a victim-initiated intervention with the power of enforcement by the criminal justice system.’”² This is standard across every jurisdiction, not just Washington. And virtually all of Bart’s grievances related to RCW 7.105 and Civil Protection Orders were already raised by 20 amicus briefs on Rahimi’s behalf in *Rahimi*;³ those arguments failed to carry the day then and now.

2. Challenges to Federal Statutes

Bart also claims that 18 U. S. C. § 2265, Title II of the Violence Against Women Act from 1994, is also an unconstitutional bill of attainder. Under Section 2265, protection orders issued by any court with jurisdiction shall be accorded full faith and credit by the courts of every other state. Like his claim that 18 U. S. C. § 922(g)(8) is a bill of attainder, Bart never raised this

² Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1509 (2008) (quoting Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUB. POL’Y REV. 51, 53 (2000)).

³ See, e.g., Brief of Amicus Curiae FPC Action Foundation in Support of Respondent, at 35–36, 602 U. S. 680 (2024) (No. 22-915).

argument in the state courts or on appeal. Like his claim that 18 U. S. C. § 922(g)(8) is unconstitutional, Bart cites no case law in support of his claim. “Challenges to the constitutionality of these provisions of the VAWA have been rejected.”⁴ Indeed, in *United States v. Young*, 208 F. 3d 216, (CA6 2000), the Court rejected the defendant’s “quixotic literalism” in arguing that a restraining order issued by a clerk did not fall within the definition of a “protection order” under 18 U. S. C. § 2265. Bart’s challenge to the constitutionality of 18 U. S. C. § 2265 is baseless.

Other portions of the Violence Against Women Act that Bart challenges as unconstitutional, 8 U. S. C. § 1101(a)(51) and 8 U. S. C. § 1367, were also never raised below, but instead are being raised for the first time in this petition for certiorari. Those statutes were never cited or mentioned once, let alone alongside a bill of attainder argument (which was also never mentioned below). Moreover, 8 U.S.C. § 1101(a)(51) is merely a definition. There is nothing unconstitutional about a definition. With respect to Section 1367, Bart takes issue with how the Violence Against Women Act “creates an irrational and one-sided system that encourages fraud.” Pet. 28).⁵ He cites some district court cases in which there has apparently been “sham” petitions under the Act’s domestic abuse program; but this is evidence that the judicial process is working. Weeding out false claims is

⁴ Deborah F. Buckman, 12 A.L.R. 3D ART. 2 (Published 2016).

⁵ Bart cites a page from the U.S. Citizenship and Immigration Services’ website about how USCIS has “restore[d] integrity” to the Act’s domestic abuse program, undermining his claim that this is an ongoing issue.

part of the due process. This is not a ground for a constitutional challenge.

3. As Applied Challenge.

Based on the foregoing, Danielle need not respond to Bart's as-applied challenge. Bart relitigates the facts of his case, which were subject to an abuse-of-discretion standard at the lower courts. The Court should not entertain this screed

CONCLUSION

This Court should deny certiorari.

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