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18 U.S.C. § 922(g)(8) Case Law

Updated Through May 31, 2025

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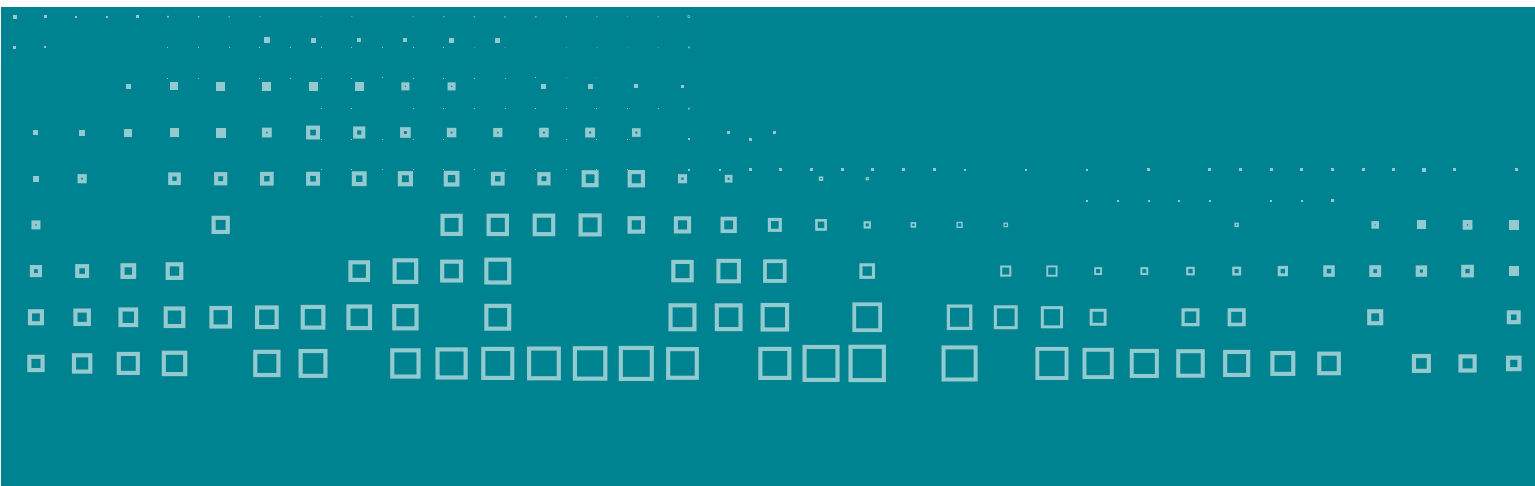
Acknowledgments

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The National Center of Protection Orders and Full Faith & Credit and the Firearms Technical Assistance Project are deeply grateful to Manatt, Phelps & Phillips, LLP, whose attorneys volunteered numerous hours conducting research and writing on the critical and complex intersection of domestic violence and firearms law. That this firm chose to give so freely of its time and expertise—on subject matter this serious—speaks to its commitment not only to the law, but to the survivors that the law is meant to protect. To each member of Manatt who contributed to this effort: we are grateful for your dedication, your professionalism and your commitment to supporting prosecutors, attorneys, law enforcement and judges with the tools that they need to support survivors of intimate partner violence at a time that is most dangerous. Pro bono work of this depth and thoroughness is a testament to Manatt's leadership and commitment to increasing survivor safety. We sincerely appreciate Manatt's partnership and generosity.

About National Center on Protection Orders and Full Faith & Credit

The National Center on Protection Orders and Full Faith & Credit (NCPOFFC), a project of the Battered Women's Justice Project, provides training, technical assistance, and resources to improve the issuance, service, enforcement, and interstate recognition of protection orders. Established to support implementation of the Full Faith and Credit provisions of the Violence Against Women Act (VAWA), the Center works with judges, attorneys, advocates, law enforcement, prosecutors, court personnel, and other professionals to address challenges that arise across jurisdictions and to enhance survivor safety and offender accountability.



About Battered Women's Justice Project

The BWJP is a national nonprofit organization dedicated to improving legal and systemic responses to domestic violence, dating violence, sexual assault, stalking, human trafficking, and other forms of gender-based violence. BWJP provides policy development, research, training, technical assistance, and consultation to professionals across civil and criminal justice systems. Through its national centers and initiatives, BWJP works to advance survivor safety, strengthen community responses, and promote systemic change that supports justice and accountability.

About Firearms Technical Assistance Project (FTAP)

The Firearms Technical Assistance Project (FTAP) is a BWJP initiative funded by the U.S. Department of Justice, Office on Violence Against Women, that helps communities develop and strengthen responses to domestic violence cases involving firearms. FTAP provides training, technical assistance, and practical strategies to support the implementation of firearm prohibition and enforcement practices, improve multidisciplinary collaboration, and enhance survivor safety. The project is supported through a partnership with Esperanza United.

Preface

The Gun Control Act and its amendments, including the Violence Against Women Act, prohibit certain classes of persons from possessing, shipping or transporting any firearm or ammunition. Two classes of such prohibited persons are those who are subject to “qualifying” protection orders and those who have been convicted of a misdemeanor crime of domestic violence, pursuant to 18 U.S.C. §§ 922(g)(8) and (g)(9), respectively. The National Center on Protection Orders and Full Faith & Credit—an initiative of the Battered Women’s Justice Project—publishes resources like these Case Law Summaries to provide information on cases interpreting these subsections of 18 U.S.C. § 922.ⁱ

Many of the cases in these resources concern the constitutionality of 18 U.S.C. §§ 922(g)(8) and (g)(9) under the Second Amendment, including facial and as-applied challenges. Readers should keep in mind two important recent U.S. Supreme Court decisions when reviewing the Case Law Summaries—*New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) (“*Bruen*”) and *United States v. Rahimi*, 602 U.S. 680 (2024) (“*Rahimi*”).

In 2022, the U.S. Supreme Court issued a decision in *Bruen* that established a new framework for courts to determine whether a regulation restricting a person’s right to possess a firearm unlawfully burdens that individual’s Second Amendment rights.ⁱⁱ Under *Bruen*, a court must first determine whether a challenged law in some way burdens an individual’s Second Amendment rights. If the answer is in the affirmative, the court must then determine whether the law is consistent with the Nation’s historical tradition of firearm regulation. Following this framework, the Supreme Court held

i. These resources do not identify or provide a Case Law Summary of every decision that cites to or references 18 U.S.C. §§ 922(g)(8) and (g)(9). Courts also continue to issue decisions concerning these provisions. Readers are reminded of the importance of doing their own independent research, analysis and verification.

ii. Prior to *Bruen*, courts generally used a two-step test wherein the court first assessed whether the regulated conduct fell within the Amendment’s original scope and then performed means-end scrutiny, applying intermediate scrutiny when the text and history of the challenged regulation were unclear in delineating the scope of the right.

that a New York law restricting New York’s issuance of public-carry licenses was an unconstitutional violation of the Second Amendment because it was inconsistent with “history and tradition.”

In 2024, the application of the *Bruen* framework returned to the U.S. Supreme Court in *Rahimi*. There, the defendant was convicted of unlawful possession of a firearm under § 922(g)(8) while subject to a domestic violence protection order and challenged the constitutionality of the statute. The Supreme Court conducted a review of the history of temporary disarmaments targeting individuals found to be a threat to others and upheld § 922(g)(8) as constitutional. The Supreme 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.” The Supreme Court emphasized that the *Bruen* framework did not require finding a “historical twin” for modern firearm regulations, as laws are not “trapped in amber,” and clarified that the modern regulation need only be “consistent with the principles that underpin the Nation’s regulatory tradition” (such as laws protecting public safety).

Prior to *Rahimi*, there was significant variance in how lower courts nationwide applied the *Bruen* framework. Post *Rahimi*, there has been less variance as regards to both § 922(g)(8) and (g)(9). This updated resource includes additional post *Rahimi* decisions, many of which directly address or apply the *Bruen* framework. Certain Case Law Summaries now also include a “Note” indicating when a case has received direct negative treatment as of the preparation of this update. It is important to note that cases included in this resource that were decided **prior to *Bruen* or *Rahimi*** may not have received direct negative treatment but have been implicitly abrogated or called into question since those two decisions were rendered. Accordingly, readers are encouraged to independently review each case before relying upon it, including to evaluate it in light of *Bruen* and *Rahimi*, and to confirm that no subsequent case law or statutory change has put the holding or reasoning in question.

This document is for informational purposes only. Nothing contained in this document is intended as legal advice to any person or entity. Statutes are constantly changing. Please independently verify the information found in this document.

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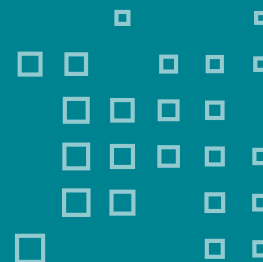


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First Circuit (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)

***Pierpoint v. United States*, No. 4:18-CR-00347-RK-1, 2024 WL 4713901, 2024 U.S. Dist. LEXIS 202888 (W.D. Mo. Nov. 7, 2024)**

Facts/Procedural History: Defendant pled guilty under 18 U.S.C. § 922(g)(8) for possession of ammunition while subject to a court order. Defendant did not appeal either his conviction or sentence. Subsequently, Defendant's supervised release was revoked after a revocation proceeding. Defendant then moved to vacate, set aside or correct his sentence for ineffective assistance of counsel.

Issue: Defendant argued his assistance was ineffective because during his revocation proceedings, counsel did not challenge his original conviction or the overall constitutionality of § 922(g)(8) following *Bruen*.

Holding: The district court denied Defendant's motion. The district court found that Defendant's counsel was not ineffective because counsel's account that Defendant had never requested an appeal was credible. Further, because a revocation proceeding was not the forum to collaterally attack an underlying conviction, counsel was not ineffective for failing to seek dismissal of Defendant's indictment in light of *Bruen* at such a proceeding. The court further noted that, because *Rahimi* (which left "open the question whether [922(g)(8)] might be unconstitutional as applied in particular circumstances") had been decided after Defendant's motion was briefed, counsel was not ineffective for failing to raise a novel argument based on an unsettled legal question.

Key Issue(s): Second Amendment (*Bruen* and *Rahimi*)

***United States v. Cirilo*, 803 F.3d 73 (1st Cir. 2015)**

Facts/Procedural History: Defendant entered into a plea agreement for unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(8). At sentencing, the district court imposed a 60-month term of imprisonment after adopting the presentence report's recommendation, which was based on different guideline calculations than the plea agreement. Defendant appealed.

Issue: Defendant argued that the facts of the presentence report used to calculate the sentencing were disputed and violated Federal Rule of Criminal Procedure 32.

Holding: The First Circuit affirmed the district court’s judgment. It found that, among other things, Defendant and defense counsel did not challenge the “substance of the factual allegations” in the presentence report. Under Federal Rule of Criminal Procedure 32, facts in the presentence report must have been “sufficiently ‘controverted’” by Defendant to prevent the district court from relying on those facts, which Defendant’s objections to the presentence report did not do.

Key Issue(s): Plea Agreement; Sentencing

United States v. Knight, 574 F. Supp. 2d 224 (D. Me. 2008)

Facts/Procedural History: Defendant was subject to a protective order restraining him from harassing, stalking or threatening an intimate partner. Later, Defendant attempted to purchase a firearm and answered “no” on the ATF form asking whether he had ever been subject to a restraining order. He was indicted for making materially false statements. Defendant moved to dismiss in light of the Supreme Court’s decision in *Heller*.

Issue: The district court considered whether 18 U.S.C. § 922(g)(8)’s prohibition on people subject to a restraining order from carrying firearms was unconstitutional under *Heller*, thereby rendering the truthfulness of Defendant’s answer on the ATF form immaterial.

Holding: The district court denied Defendant’s motion. It held that under *Heller*, reasonable restrictions on firearm access such as § 922(g)(8) were not unconstitutional. The district court found that *Heller* pertained to a complete firearm ban, whereas § 922(g)(8) was not an outright ban on firearms and only lasted while the Defendant was under a protective order. Therefore, the restriction was narrowly tailored and decreasing domestic violence was a compelling Government interest, making § 922(g)(8) constitutional. Because § 922(g)(8) was constitutional, the district court also held that Defendant’s answer to the ATF form regarding restraining orders was material.

Key Issue(s): Second Amendment (*Heller*); Intimate Partner Requirement

In re Peirano, 155 N.H. 738 (N.H. 2007)

Facts/Procedural History: Petitioner was subject to an ex parte restraining order towards his then-wife, who was the Respondent. As part of the parties’ divorce proceedings, Petitioner was ordered by the trial court to sell his firearms and retain the proceeds as part of the division of assets. Among other things, Petitioner appealed the trial court’s order of sale.

Issue: The Supreme Court of New Hampshire considered whether the trial court had the authority under New Hampshire state law to order Petitioner to relinquish his firearms or order a sale and whether the deprivation of his firearms violated his right to bear arms under the Second Amendment and New Hampshire Constitution.

Holding: The Supreme Court of New Hampshire reversed the trial court’s order requiring the sale of Petitioner’s firearms. The Supreme Court of New Hampshire held that the trial court had the authority to order Petitioner to relinquish his firearms pursuant to 18 U.S.C. § 922(g)(8) because Petitioner was subject to a restraining order. However, the trial court did not have the authority to order a sale between the parties because it was not for the purpose of dividing the proceeds between the marital parties. The Supreme Court of New Hampshire did not review Petitioner’s constitutional arguments.

Key Issue(s): State Authority to Enforce § 922(g)(8)

United States v. Coccia, 446 F.3d 233 (1st Cir. 2006)

Facts/Procedural History: In 2001, Defendant was subject to a domestic restraining order while in the midst of a divorce. Defendant told a psychiatrist that he was contemplating a terrorist attack, and the psychiatrist notified the FBI. Officers impounded Defendant’s car and conducted an inventory search of it, where they found a firearm and ammunition. Defendant was indicted for possessing a firearm while subject to a domestic restraining order, in violation of 18 U.S.C. § 922(g)(8). During Defendant’s trial, he claimed that seizure of the car violated his Fourth Amendment rights and moved to suppress the firearm evidence. Defendant was convicted and sentenced to 60 months’ imprisonment. Defendant appealed.

Issue: The First Circuit considered whether the district court erred in denying Defendant’s motion to suppress; whether the restraining order contained the restrictions required by § 922(g)(8)(C)(ii); and whether § 922(g)(8) violated the Second Amendment, the Commerce Clause, the Fifth Amendment’s Due Process Clause and the Tenth Amendment.

Holding: The First Circuit affirmed Defendant’s conviction and sentence. First, the court held that Defendant’s motion to suppress was properly denied because the impoundment and subsequent search of Defendant’s car was reasonable under the circumstances. Next, the court held that a restraining order did not have to use verbatim the language of § 922(g)(8) to meet the statute’s requirements, because such a requirement would impermissibly narrow Congress’ intent. Given the restraining order prohibited Defendant from “abusing” his wife, this included violent acts of “physical force” as referred to in § 922(g)(8)(C)(ii). On the Second Amendment claim, the court held that the procedural requirements required by § 922(g)(8) were adequate, and Defendant conceded that he had notice of his hearing in family court, attended the hearing, participated in the hearing and that the prohibition contained in the restraining order was clear. As to Defendant’s Commerce Clause challenge, the First Circuit summarily rejected this argument because such arguments to § 922(g) were previously unsuccessful in the First Circuit. The First Circuit also rejected Defendant’s Fifth Amendment Due Process claim on the grounds that the First Circuit had previously held that § 922(g)(8) met due process requirements because it explicitly set forth the proscribed conduct and

the affected class of persons. Further, Defendant's restraining order specifically forbade him from possessing firearms. Lastly, the First Circuit held that there were no Tenth Amendment concerns implicated by § 922(g)(8) because the statute did not intrude upon state actors in the administration of domestic relations laws.

Key Issue(s): Second Amendment; Fifth Amendment; Due Process Clause; Tenth Amendment; Language of Protection Order

***Magoon v. Thoroughgood*, 148 N.H. 139, 803 A.2d 1070 (N.H. 2002)**

Facts/Procedural History: Parties divorced in 1999, and the divorce decree included a provision which restrained Defendant from "interfering with the person or liberty of [Plaintiff], from harassing, intimidating or threatening [Plaintiff], and from entering the residence or workplace of [Plaintiff]." A year later, Plaintiff obtained an ex parte stalking protection order against Defendant. Following the issuance of the order, the local sheriff's department confiscated approximately 17 firearms from Defendant. After the final hearing, the trial court dismissed the petition, finding that Plaintiff had not been stalked. Defendant moved for return of his firearms, which the trial court granted. However, the sheriff's department intervened and argued against the return of Defendant's firearms. The trial court reversed its previous ruling and held that it could not return the firearms to Defendant because Defendant was subject to a protective order (the restraint provision in the divorce decree) pursuant to 18 U.S.C. § 922(d)(8)(B)(ii). Defendant appealed.

Issue: Defendant argued that the divorce decree did not meet the threshold requirements under § 922(d)(8)(B)(ii), which required that Defendant be subject to a protective order that by its terms "explicitly prohibit[ed] the use, attempted use or threatened use of physical force against such intimate partner...that would reasonably be expected to cause bodily injury."

Holding: The New Hampshire Supreme Court reversed the trial court's decision. The New Hampshire Supreme Court held that the language of the divorce decree did not "explicitly" prohibit the use, attempted use or threatened use of physical force involving bodily injury, as required under § 922(g)(8)(B)(ii). Instead, the New Hampshire Supreme Court found that, though the provision implicitly barred the Defendant from "using, or attempting to use physical force," explicit language was needed to prohibit physical force involving bodily injury. Because the divorce decree did not reference physical force, the restraint provision required inferences, and therefore, the divorce decree did not implicate § 922(g)(8)(B)(ii).

Note: Although this case interprets 18 U.S.C. § 922(d)(8), it is relevant to 18 U.S.C. § 922(g)(8) because both subsections use the same language to define the type of restraining order that would trigger the federal firearm prohibition.

Key Issue(s): Language of Protection Order

United States v. Miles, 238 F. Supp. 2d 297 (D. Me 2002)

Facts/Procedural History: Defendant was subject to a protection order against his wife and children. On two occasions, while subject to the protection order, Defendant attempted to purchase firearms from a federally licensed dealer. Defendant indicated on ATF Form 4473 that he was not subject to a protection order, as defined under 18 U.S.C. § 922(g)(8). Defendant was indicted on two counts of making a false statement in connection with his attempts to purchase firearms. Defendant filed a motion to dismiss the indictment.

Issue: The district court considered whether § 922(g)(8) was facially unconstitutional and unconstitutional as applied to Defendant, violating the Equal Protection Clause and substantive and procedural due process.

Holding: The district court denied Defendant's motion. The district court ruled that the application of § 922(g)(8) was reasonable and narrow, even under strict scrutiny, because Defendant's protection order contained a specific finding of violence and Defendant had knowledge that he was prohibited from possessing a firearm. The district court dismissed Defendant's argument that § 922(g)(8) was a "blanket prohibition" because the issuing court made a specific finding of violence in issuing Defendant's protection order. In holding that § 922(g)(8) was narrowly tailored to support a compelling Government interest, the district court cited Congress' intent behind enacting the statute, emphasizing that preventing family violence was a compelling Government interest. Regarding the Due process claims, the district court held that § 922(g)(8) provided sufficient notice because Defendant knew of the protection order against him while completing the ATF form.

Key Issue(s): Second Amendment; Due Process (Notice); Equal Protection

United States v. Bunnell, 280 F.3d 46 (1st Cir. 2002)

Facts/Procedural History: Defendant's ex-wife filed an ex parte protection order against him, which required that Defendant appear at a hearing in order to oppose it. Defendant did not appear, and the court issued a permanent protection order that would be valid for two years. Thereafter, local police received information that Defendant had been seen in possession of an AR-15 assault rifle. Police subsequently obtained a search warrant and recovered the firearm and its magazines, and also obtained a copy of the protection order. A federal grand jury indicted the Defendant with one count of possession of a firearm while subject to a protection order in violation of 18 U.S.C. § 922(g)(8). Defendant filed a motion to dismiss the indictment, arguing that § 922(g)(8) violated the Commerce Clause, Tenth Amendment and Due Process Clause and also moved to suppress certain statements and physical evidence. The district court denied his motion to dismiss and denied the part of his motion to suppress related to physical evidence. 106 F. Supp. 2d 60 (D. Me. 2000). The district court held that, because § 922(g)(8) contained a jurisdictional element and specifically regulated the possession of goods, it was a valid exercise of Congress' Commerce Clause authority. With respect

to Defendant's due process claim, the district court held that Defendant received sufficient notice of the hearing on the protection order and chose not to avail himself of it, and therefore, was not denied due process. The district court rejected Defendant's Tenth Amendment challenge, holding that § 922(g)(8) was within Congress's enumerated powers and thus, did not violate the Tenth Amendment. Defendant was convicted after a jury trial and sentenced to 37 months' imprisonment. Defendant appealed.

Issue: The First Circuit considered, among other things, whether Defendant consented voluntarily to the search that produced the physical evidence and whether admission at trial of the AR-15 rifle unfairly prejudiced the jury.

Holding: The First Circuit upheld Defendant's conviction. The First Circuit reviewed the underlying record and rejected Defendant's evidentiary arguments.

Key Issue(s): Commerce Clause; Tenth Amendment; Due Process (Notice)

United States v. Meade, 175 F.3d 215 (1st Cir. 1999)

Facts/Procedural History: Defendant, while subject to a protection order, threatened to shoot his wife while pounding on her apartment door. Upon Defendant's arrest, police retrieved a loaded handgun from Defendant's car. He was charged with and found guilty of violating 18 U.S.C. §§ 922(g)(8) and (g)(9) and was sentenced to 78 months' imprisonment. Defendant appealed, arguing that both §§ 922(g)(8) and (g)(9) were unconstitutional.

Issue: The First Circuit considered, among other things, whether the district court erred in treating his previous conviction as a misdemeanor crime of domestic violence within the purview of § 922(g)(9) because the statute did not have as an element the relationship status between misdemeanant and victim; whether § 922(g)(9) was unconstitutionally vague; and whether § 922(g)(8) violated the Tenth Amendment and the Commerce and Due Processes clauses of the Constitution.

Holding: The First Circuit affirmed Defendant's conviction. The First Circuit held that Defendant's conviction was a misdemeanor crime of domestic violence within the meaning of § 922(g)(9) because Congress's intent behind enacting the statute was to include only the mode of aggression, not relationship status, as an element of the predicate offense. The First Circuit also held that § 922(g)(9) was not unconstitutionally vague because it contained no ambiguity as to the proscribed conduct and the persons to whom the prohibitions applied. In striking down Defendant's § 922(g)(8) claims, the First Circuit held that the statute did not invoke the Tenth Amendment, as it did not intrude on state court proceedings or the authority of state agents. The First Circuit also found that the statute was a valid exercise of Congress's power under the Commerce Clause. Finally, the First Circuit held that § 922(g)(8) did not violate Due Process because the statute involved conduct that was not "presumptively innocent" such that an exception under *Lambert v. California*, 355 U.S. 225 (1957), would apply.

Key Issue(s): Tenth Amendment; Commerce Clause; Intimate Partner Requirement; Due Process; Vagueness

Second Circuit (Connecticut, New York, Vermont)

United States v. Zamborowski, No. 24-CR-93-A, 2025 WL 378397 (W.D.N.Y. Feb. 4, 2025)

Facts/Procedural History: Defendant was indicted for unlawful possession of a firearm by a person subject to a protective order, in violation of 18 U.S.C. § 922(g)(8), among other statutes. Defendant filed a motion to dismiss the indictment, claiming that § 922(g)(8)(C)(ii) was unconstitutional as applied to him. A magistrate judge recommended denying the motion. Defendant objected, and the district court conducted a de novo review, ultimately adopting the recommendation and denying the motion.

Issue: Defendant argued that the indictment was defective because the restraining order had not been issued after proper notice and a hearing, and § 922(g)(8)(C)(ii) was unconstitutional as applied to Defendant under the Second Amendment, in light of *Rahimi* and *Bruen*.

Holding: The district court held that the indictment was legally sufficient. The district court rejected Defendant's as-applied challenge to § 922(g)(8)(C)(ii) as premature, emphasizing that the government would need to prove at trial that the restraining order met all statutory requirements. Accordingly, the Court adopted the magistrate judge's report in full and denied Defendant's motion to dismiss.

Key Issue(s): Second Amendment (*Bruen* and *Rahimi*)

United States v. Lewis, No. 7:21-CR-00789, 2023 WL 6066260 (S.D.N.Y. Sept. 18, 2023)

Facts/Procedural History: Defendant was subject to two protection orders against two separate individuals when he was discovered by police to be in possession of ammunition. He was charged with, among other things, violating 18 U.S.C. § 922(g)(8). Defendant filed a motion to dismiss.

Issue: Defendant argued that § 922(g)(8) was facially unconstitutional under the Second Amendment and was inconsistent with the country's historical tradition of firearms regulation under *Bruen*.

Holding: The district court denied Defendant's motion. The district court held, agreeing with Defendant, that the Second Amendment protected individuals subject to § 922(g)(8). However, the district court held that § 922(g)(8) was consistent with the historical tradition of firearm regulation and disarming dangerous individuals, and therefore restrictions imposed by § 922(g)(8) were justified under the Second Amendment. The district court highlighted two historical types of firearm

regulation (1) Going-Armed Laws (early laws allowing seizure of firearms from individuals carrying arms offensively or with intent to disturb the space); and (2) Surety Laws (laws requiring individuals posing a threat to post a surety before carrying weapons in public).

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Witcher*, No. 20-CR-116 (KMW), 2021 WL 5868172 (S.D.N.Y. 2021)**

Facts/Procedural History: Defendant had previously been convicted of a felony and was subject to a domestic violence protective order. He was later arrested after police observed him in an altercation with a woman during which he dropped a loaded handgun. He was charged with possessing a semi-automatic pistol while a convicted felon in violation of 18 U.S.C. § 922(g)(1). After proceedings in the case were adjourned several times, the Government produced evidence of the protective order and obtained a superseding indictment for violating 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the § 922(g)(8) indictment.

Issue: The district court considered whether the § 922(g)(8) indictment was the result of undue delay in prosecution; whether the Government had sufficient evidence in support of a § 922(g)(8) violation; and whether § 922(g)(8) was unconstitutional as applied to Defendant by restricting his Second Amendment rights when he had not been convicted of a crime before the protection order was issued.

Holding: The district court denied Defendant's motion. Applying the speedy trial balancing test found in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the district court found that Defendant was unable to show he had been significantly prejudiced by the months between his arrest and the superseding indictment. The district court then held that Defendant's sufficiency-of-evidence argument was premature because he did not point to any flaws in the indictment itself, so the issue could only be raised after trial. Finally, the district court held that § 922(g)(8) did not "burden the core" of the Second Amendment right to self-defense in the home, which applied to law-abiding and responsible citizens, citing to *Heller*. The district court held that § 922(g)(8) was sufficiently tailored to the Government's interest of preventing domestic violence and ensuring public safety and therefore passed intermediate scrutiny. Further, the district court found that the restrictions imposed by the statute were temporary, individualized and applying only while a person was under a qualifying protective order that was issued at a hearing of which he had actual notice and an opportunity to object.

Key Issue(s): Second Amendment (*Heller*); Sufficiency of Evidence

***United States v. Bramer*, 956 F.3d 91 (2d Cir. 2020)**

Facts/Procedural History: Defendant was convicted of providing false information to a licensed dealer in purchasing a firearm, after he incorrectly filled out ATF Form 4473 by answering that he was not subject to a protection order. He was sentenced to a term of imprisonment of 43 days and three years of supervised release. Defendant appealed.

Issue: The Second Circuit considered whether the Government provided sufficient evidence that the protective order which served as the basis for his conviction for providing false information was issued in accordance with the requirements of 18 U.S.C. § 922(g)(8), which required that individuals receive actual notice and an opportunity to participate in a hearing before the order was issued.

Holding: The Second Circuit reversed Defendant's conviction. The Second Circuit held that there was insufficient evidence that Defendant's response in the ATF form was knowingly false. To prove that Defendant answered the question falsely, the Government had the burden of proving that Defendant was subject to a protection order as defined by § 922(g)(8) and that the order was issued after a hearing for which Defendant received actual notice and an opportunity to participate. The Second Circuit saw no evidence that the issuing court engaged with Defendant in a way that conveyed the terms of the protection order or gave him an opportunity to object to the order, citing to the factors established in *United States v. Young*, 458 F.3d 998 (9th Cir. 2006). The Second Circuit held that there was only evidence that Defendant attended the hearing, that Defendant was "not physically prevented from speaking," and that the judge explained the charges to the Defendant. The Second Circuit further stated: "In order to prove that [Defendant] had an 'opportunity to participate' under § 922(g)(8)(A), we hold that the government must present sufficient evidence for a jury to be able to conclude that a reasonable person in [Defendant's] position would have understood that he was permitted to interpose objections or make an argument as to why an order of protection should not be imposed."

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

***United States v. Crespo*, No. 16-CR-536 (PKC), 2017 WL 685572 (S.D.N.Y. Feb. 21, 2017)**

Facts/Procedural History: Defendant was charged with unlawful possession of a firearm while subject to a protection order in violation of 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: The district court considered whether the protection order failed to meet the requirements of § 922(g)(8) and failed to establish that it was issued on behalf of an intimate partner.

Holding: The district court denied Defendant’s motion. The district court found that the protection order satisfied the requirements of § 922(g)(8) because, even though the protection order did not precisely track the statutory language, several of the offenses prohibited in the protection order included an element of physical force, thereby satisfying the statutory requirements. The protection order also specifically referred to § 922(g)(8), evincing the state’s intent that the protective order qualify under the statute. The district court also rejected Defendant’s argument that the individual named in the protection order was not an “intimate partner” because § 922(g)(8) did not require that the intimate partner status be made explicit on the face of the protective order.

Key Issue(s): Language of Protection Order; Physical Force Requirement; Intimate Partner Requirement

***United States v. Londonio*, No. 15-CR-340 (VM), 2016 WL 297422 (S.D.N.Y. Jan. 13, 2016)**

Facts/Procedural History: In 2014, two officers approached Defendant and another passenger in a stopped car at an intersection known for criminal activity, where they noticed a bullet on the floorboard of the car. Officers found firearms and ammunition in the car. At the time the firearms were seized, Defendant was subject to a protection order. A grand jury charged Defendant with possession of firearms in and affecting commerce while subject to a domestic order of protection, in violation of 18 U.S.C. §§ 922(g)(8) and 924(a)(2). Defendant moved to suppress the evidence seized from the car on Fourth Amendment grounds.

Issue: The district court considered whether Defendant had a reasonable expectation of privacy in the car such that the police were required to obtain a warrant before searching the car.

Holding: The district court denied Defendant’s motion and found that the search of the car was a valid search. The district court held that the Defendant did not adequately establish that he had a reasonable expectation of privacy in the car, since he was not the owner of the vehicle and no exception applied.

Key Issue(s): Fourth Amendment

***Joseph v. United States*, No. 3:13-CV-00168 (JCH), 2016 WL 3349214 (D. Conn. June 14, 2016)**

Facts/Procedural History: In 2009, a federal grand jury indicted Defendant with one count of possessing a firearm while subject to a restraining order, in violation of 18 U.S.C. §§ 922(g)(8) and 924(a)(2). Defendant’s counsel had advised him that going to trial would be “foolish” because the Government had sufficiently satisfied elements under § 922(g)(8). The Government proceeded with the indictment, and once again, Defendant’s counsel informed him that the Government had enough

evidence to convict him of the violations charged. Defendant subsequently pled guilty and was sentenced to 120 months' imprisonment. Defendant appealed his sentence, and the Second Circuit affirmed. Defendant then filed a Motion to Vacate, Set Aside or Correct Sentence, as well as an Amended Motion for Relief with the district court.

Issue: The district court considered whether Defendant's counsel provided ineffective assistance of counsel and whether the district court failed to ensure that Defendant's plea was knowing and voluntary and that the elements of the charged offense were met prior to the entry of the plea.

Holding: The district court granted Defendant's Amended Motion for Relief and denied the Motion to Vacate as moot. The district court held that Defendant's counsel provided ineffective assistance during the plea negotiations and did not reach the other issues raised by Defendant. The district court found that, had Defendant been granted an opportunity to argue his case, he may not have pled guilty and that defense counsel's actions were objectively unreasonable and prejudiced Defendant. Specifically, the district court found that while all elements of § 922(g)(8)(A)-(C) must have been satisfied, elements (C)(i) and (C)(ii) did not both need to be met for prosecution under § 922(g)(8). Subsection (C)(i) required the state court to make an explicit finding that Defendant was a credible threat, and there was no such finding. Defendant's counsel failed to research the elements of § 922(g)(8) and did not investigate whether the facts of Defendant's case actually satisfied the statute's requirements. The district court further held that a reasonable person would not have pled guilty if they had understood the potential insufficiency of their restraining order under § 922(g)(8).

Key Issue(s): Ineffective Assistance of Counsel

Panzella v. Cnty. of Nassau, No. 13-CV-5640 JMA SIL, 2015 WL 5607750 (E.D.N.Y. Aug. 26, 2015)

Facts/Procedural History: Plaintiff's ex-husband obtained a temporary ex parte order of protection against her issued by New York state family court, and the sheriff's department seized Plaintiff's longarms. After a hearing at which Plaintiff appeared, the family court extended the protection order; however, Plaintiff's ex-husband later withdrew his petition for a protection order, resulting in a dismissal of the protection order proceeding. Plaintiff then requested the return of her longarms on several occasions, but the sheriff's department refused to return them or hold a hearing regarding their return, citing a policy that required retention of the firearms until the department received a court order directing their return. Plaintiff filed a class action lawsuit against the county, the sheriff's department and other county Government officials, alleging among other things Due Process and Second Amendment violations. Both parties moved for summary judgment.

Issue: The district court considered whether the sheriff's department's refusal to hold a hearing regarding the return of Plaintiff's firearms violated her Fourteenth Amendment Due Process rights; and whether the sheriff's department's retention policy created a "chilling effect" on Plaintiff's Second Amendment rights by leading her to believe that she could not possess any guns at all.

Holding: The district court granted Plaintiff's motion for summary judgment as to Defendant's Fourteenth Amendment due process claim, but it denied Plaintiff's Second Amendment claims. The district court held that the county had not articulated any basis for retaining Plaintiff's longarms and that the county was required to hold a post deprivation hearing within 30 days consistent with *Razzano v. County of Nassau*, 765 DF. Supp. 2d 176, 180 (E.D.N.Y. 2011). As to Plaintiff's Second Amendment claims, the district court held that the Plaintiff did not present evidence of a specific objective harm or of specific future harm.

Note: This decision was affirmed in part under the name *Panzella v. Sposato*, 863 F.3d 210 (2d Cir. 2017) (as amended July 18, 2017).

Key Issue(s): Fourteenth Amendment; Second Amendment

***United States v. Huertas*, No. 3:14CR141 JBA, 2015 WL 1517403 (D. Conn. Apr. 1, 2015)**

Facts/Procedural History: After police received a tip from a woman that Defendant was nearby and carrying a gun, police located and briefly questioned Defendant. Defendant fled but was apprehended and arrested. Following Defendant's arrest, police located Defendant's duffle bag that Defendant had dropped during his escape from officers, which contained a gun. Defendant was charged with, among other things, one count of unlawful possession of a firearm by a person subject to a protection order, in violation of 18 U.S.C. §§ 922(g)(8) and 924(a)(2). Defendant filed a motion to suppress the seized firearm.

Issue: The district court considered whether the firearm was the fruit of an illegal seizure under the Fourth Amendment.

Holding: The district court denied Defendant's motion. It held that Defendant was not seized until he was arrested, at which point he had already abandoned the firearm. Therefore, the firearm was not the fruit of an unlawful seizure and did not violate Defendant's Fourth Amendment rights.

Note: This decision was affirmed by 864 F.3d 214 (2d Cir. 2017). As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Fourth Amendment

***Milcarek v. Sisak*, No. CIV.A. 13-1625, 2014 WL 1413869
(W.D. Pa. Apr. 11, 2014)**

Facts/Procedural History: Defendant was a police officer who stopped Plaintiffs' son because the son's license plate was allegedly suspended. During the traffic stop, Defendant discovered that Plaintiffs' son was subject to a protection order, which contained weapons prohibition language to the effect that the son "may be charged with a federal offense under 18 U.S.C. § 922(g)(8)." The victim who sought the order was a passenger in the car with Plaintiffs' son. Defendant officer also allegedly saw a shotgun round on the driver's seat, which the officer believed was in violation of the protection order. The son was arrested for violating the protection order, and Defendant officer later obtained a search warrant for the son's residence based on his possession of the round. Plaintiffs filed a 42 U.S.C. § 983 claim against Defendant officer, and Defendant filed a motion to dismiss.

Issue: The district court considered whether Defendant's search violated the son's Fourth Amendment rights, in light of alleged false statements about the protection order made to obtain the search warrant.

Holding: The district court denied Defendant's motion. It held that Plaintiffs adequately pled that the protection order's weapons prohibition was not in effect and that Defendant's use of the weapons prohibition to secure a warrant was a potentially false statement.

Key Issue(s): Fourth Amendment

***United States v. Montalvo*, No. 08-CR-004S, 2009 WL 667229
(W.D.N.Y. Mar. 12, 2009)**

Facts/Procedural History: Defendant, a police officer, was charged with possessing a firearm while subject to an order of protection in violation of 18 U.S.C. § 922(g)(8). Defendant moved, among other things, to dismiss the indictment. The magistrate judge recommended denying Defendant's motion.

Issue: Among other things, the district court considered whether § 922(g)(8) violated Defendant's Second Amendment rights in light of *Heller*.

Holding: The district court adopted the Magistrate Judge's recommendation to deny Defendant's motion. The district court rejected Defendant's argument that *Heller* provided a basis for finding § 922(g)(8) unconstitutional, because the decision noted that rights under the Second Amendment were not unlimited. The district court also determined that the indictment adequately alleged the elements of a § 922(g)(8) violation, namely that Defendant was in possession of a firearm while he was the subject of a protective order issued after a hearing of which Defendant had actual notice that restrained him from harassing his intimate partner and explicitly prohibited the use of physical force expected to cause bodily injury.

Key Issue(s): Second Amendment (*Heller*)

***Matteo v. Town of Guilderland*, No. 1:08-CV-00763NPMRFT,
2008 WL 2810275 (N.D.N.Y. July 21, 2008)**

Facts/Procedural History: A protection order was issued against Plaintiff after he was arrested and charged with harassment following a verbal altercation with his wife. Plaintiff was also ordered to return his gun collection to the police as a condition of the protection order, but this condition was later removed pursuant to state criminal procedure law. However, the police department denied his request for return of his firearms pursuant to 18 U.S.C. § 922(g)(8). Plaintiff filed a motion for a temporary restraining order and preliminary injunction seeking return of his gun collection.

Issue: The district court considered whether Plaintiff had adequate notice of the hearing at which the protection order was entered and an opportunity to participate in the hearing pursuant § 922(g)(8)(A).

Holding: The district court granted Plaintiff's motion. Defense counsel had stipulated that Plaintiff had not received notice and an opportunity to be heard within the meaning of § 922(g)(8)(A), and the district court relied on this stipulation as the sole reason for granting the motion.

Key Issue(s): Due Process (Notice)

***United States v. Erwin*, No. 1:07-CR-556 LEK, 2008 WL 4534058
(N.D.N.Y. Oct. 6, 2008)**

Facts/Procedural History: Defendant was charged with knowingly making false statements to a firearms dealer and possessing certain weapons in violation of a protective order as described in 18 U.S.C. § 922(g)(8). Among other things, Defendant filed a motion to dismiss his indictment.

Issue: The district court considered whether § 922(g)(8) was unconstitutional in light of *Heller* because the statute categorically prohibited people from possessing any type of firearm based on impermissible considerations.

Holding: The district court denied Defendant's motion to dismiss. It held that *Heller* did not make the prohibitions in § 922(g)(8) unconstitutional, because *Heller* distinguished between "broad proscriptions of constitutional rights generally among all people" and statutes that restricted or regulated the sale of firearms, such as § 922(g)(8). Since the statute was not an outright ban but rather a narrow, time-limited restriction, and because reducing domestic violence was a compelling Government interest, the district court held that the statute was narrowly tailored and constitutional.

Key Issue(s): Second Amendment (*Heller*)

***United States v. Russell*, No. 106-CR-113, 2007 WL 1768711 (D. Vt. June 15, 2007)**

Facts/Procedural History: Defendant's ex-girlfriend notified police officers that he had violated his restraining order against her. Police went to Defendant's home and handcuffed Defendant outside. Police asked if Defendant wanted to go inside his home to get his shoes, since he was barefoot. Police accompanied Defendant back into his home, and Defendant asked police to retrieve his phone so he could prove that he had not violated his restraining order. When looking for the phone, police discovered two guns in Defendant's bedroom. Defendant was arrested again several days later for possessing firearms while under a restraining order in violation of 18 U.S.C. § 922(g)(8). Defendant filed a motion to suppress the physical evidence found in his home (the phone and guns).

Issue: The district court considered whether the warrantless search of Defendant's home was unlawful.

Holding: The district court denied Defendant's motion. The district court held that Defendant was lawfully arrested outside his home, and therefore the police were permitted to enter his home. Further, Defendant consented to the search when he asked the police officers to retrieve his phone, and the search was limited to the area around the phone, where officers discovered the firearms. Therefore, the search was voluntary.

Key Issue(s): Fourth Amendment

***Benson v. Muscari*, 769 A.2d 1291 (Vt. 2001)**

Facts/Procedural History: Plaintiff sought a relief-from-abuse order against Defendant following a violent incident in Plaintiff's home. Although they had a prior sexual relationship, Plaintiff and Defendant had never cohabitated or shared children. On the night in question, Defendant entered Plaintiff's home without permission and assaulted her, punching her in the face, dragging her downstairs and causing substantial property damage. Plaintiff was found covered in blood and testified that Defendant had previously threatened to kill her if she was found with another man. The trial court issued a relief-from-abuse order that included a 1,000-foot buffer zone, a no-contact provision with respect to Plaintiff's child and a restriction on Defendant's possession of firearms and dangerous weapons. Defendant appealed.

Issue: The Vermont Supreme Court considered whether the relief-from-abuse order—specifically the 1000-foot buffer zone, the firearm and weapons restriction, the inclusion of Plaintiff's child and the five-year duration—violated Defendant's constitutional or statutory rights.

Holding: The Vermont Supreme Court upheld the trial court's order in most respects. It found that the 1,000-foot restriction served the legitimate public purpose of protecting abuse victims and was not unconstitutional, as any such violation required intent and therefore the order did not deny him

due process. The Vermont Supreme Court upheld the firearm restriction as valid under 18 U.S.C. § 922(g)(8), which prohibited firearm possession by individuals subject to qualifying protective orders. However, the Vermont Supreme Court held that the term “dangerous weapons” in the relief-from-abuse order was impermissibly vague and remanded for clarification. The Vermont Supreme Court also upheld the inclusion of Plaintiff’s child under Vermont law allowing protection of at-risk household members and found the five-year duration reasonable given the severity of the assault and prior threats.

Key Issue(s): State Court Authority to Restrict Firearms; Language of Protection Order

Third Circuit (Delaware, New Jersey, Pennsylvania, U.S. Virgin Islands)

State v. Rumpff, 308 A.3d 169 (Del. Super. Ct. 2023)

Facts/Procedural History: A family court issued an emergency ex parte protection from abuse (PFA) order based on allegations that Defendant engaged in domestic violence against his ex-wife. After a full adversarial hearing on the matter, the court issued a PFA against Defendant requiring that he relinquish his firearms. Defendant was indicted for possession of a firearm and ammunition by a prohibited person after refusing to comply with the PFA order requiring him to surrender his firearms in violation of state law (10 Del. C. § 1045(a)(8)). Defendant moved to dismiss the indictment.

Issue: The trial court considered whether the PFA violated Defendant's Second Amendment and Due Process rights, because at the time the PFA was issued, he had not been convicted or charged with any criminal offense and he did not have sufficient notice prior to the issuance of the emergency ex parte PFA.

Holding: The trial court denied Defendant's motion. It held that the PFA's temporary firearm surrender requirement was constitutional under both the Second Amendment and due process. Citing Third Circuit precedent as well as *Bruen* and *Heller*, the trial court held that persons subject to PFAs fell outside of Second Amendment protection because they were "presumptively dangerous," and therefore Defendant was protected by the Second Amendment during the duration of the PFA and had no standing to raise a Second Amendment violation. The trial court also held that firearm restrictions disarming dangerous individuals were consistent with history and tradition. The trial court also rejected Defendant's due process claims because the PFA order was temporary, served an important public interest in preventing domestic violence and provided Defendant a full opportunity to be heard. In its decision, the trial court cited and analogized to case law addressing 18 U.S.C. § 922(g)(8) issues, even though the statute was not at issue in the case.

Key Issue(s): Second Amendment (*Heller*, *Bruen*); Due Process (Notice)

***United States v. Boyd*, 999 F.3d 171 (3d Cir. 2021)**

Facts/Procedural History: Defendant's ex-wife was granted a protection order against him in Oklahoma state court. Defendant was later arrested with a loaded handgun in Pennsylvania while the protection order was still in effect. A federal grand jury convicted him of possessing a firearm while subject to a domestic violence protection order in violation of 18 U.S.C. § 922(g)(8). Defendant appealed.

Issue: The Third Circuit considered whether Defendant's trial was compromised by, among other things, improper jury instructions; and whether the firearm prohibition under § 922(g)(8) violated his Second Amendment rights.

Holding: The Third Circuit affirmed Defendant's conviction. Addressing Defendant's claim on the district court's failure to include a jury instruction requiring knowledge of the protection order as decided in *Rehaif v. United States*, 588 U.S. 225 (2019), the Third Circuit held that the error was harmless and that the record contained sufficient evidence of Defendant's knowledge. With respect to Defendant's constitutionality claim, the Third Circuit held that § 922(g)(8) did not violate Defendant's Second Amendment rights. Applying *Heller* and Third Circuit precedent, the Third Circuit held that Defendant failed to demonstrate that this conduct distinguished him from a class of presumptively dangerous persons who had historically been excluded from the Second Amendment's protections. In striking down Defendant's formalistic argument that the protection order did not require a finding that he posed a "credible threat" to another's safety, the Third Circuit pointed out that the state court did not just issue a "no contact" order but instead issued an order that would be expected of someone who posed a credible danger to their family. The Third Circuit then held that even if Defendant could distinguish himself from presumptively dangerous persons, § 922(g)(8) survived heightened scrutiny because the statute was substantially related to the goal of reducing domestic violence, an indisputably important state interest.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Jury Instructions; Second Amendment

***United States v. Ollie*, 624 F. App'x 807 (3d Cir. 2015)**

Facts/Procedural History: Defendant was involved in two criminal proceedings. In the first, he was charged with falsifying a firearm purchase form by falsely certifying that he had no prior felony convictions, despite previous convictions for rape and forgery. He pled guilty but later moved to withdraw the plea, asserting actual innocence and ineffective assistance of counsel. The district court denied the motion. In the second proceeding, Defendant was charged with being a felon in possession of a firearm, possession of a firearm while subject to a domestic violence protective order in violation of 18 U.S.C. § 922(g)(8) and possession of a stolen firearm under § 922(j). The

charges stemmed from a burglary during which a shotgun was stolen and later discarded from a car in which Defendant was riding. He was convicted at trial and filed a motion for judgment of acquittal, which was denied. No. 12-18E, 2014 U.S. Dist. LEXIS 108769 (W.D. Pa. Aug. 6, 2014). Defendant appealed the denial of his motion to withdraw his plea in the first proceeding and of his motion for acquittal in the second proceeding.

Issue: The Third Circuit considered whether, among other things, there was insufficient evidence to support his conviction under § 922(g)(8).

Holding: The Third Circuit affirmed the district court. The Third Circuit found no abuse of discretion in the denial of Defendant's motion to withdraw his guilty plea in the first proceeding, noting that his previous in-court admissions contradicted his claim of innocence. With respect to the firearm possession charges in the second proceeding, the Third Circuit held that the jury had sufficient evidence to convict, including credible witness testimony and corroborating circumstantial evidence. The Third Circuit emphasized that credibility determinations rested with the jury and were not subject to reevaluation on appeal.

Key Issue(s): Sufficiency of Evidence; Credibility Determinations

***United States v. Levy*, No. CRIM.A. 15-22, 2015 WL 630432 (W.D. Pa. Feb. 13, 2015)**

Facts/Procedural History: In 2012, Defendant was subject to a protection from abuse order listing both his son and son's mother as protected persons. In 2015, the Government filed a criminal complaint against Defendant for conspiring to commit a robbery in violation of 18 U.S.C. § 1951(a) and possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). Defendant made an initial appearance and was temporarily detained. After preliminary examination and a detention hearing, the magistrate judge found that probable cause existed for both charges and that Defendant should be released on bond subject to a number of conditions. The Government filed a motion for an emergency stay of the pretrial release order and a de novo hearing. The district court held a de novo hearing, after which a grand jury returned a four-count indictment against Defendant, including a count for violating § 922(g)(8) by possessing a firearm while subject to a protective order.

Issue: The district court considered whether at the de novo hearing it should enter an order of detention pending trial against Defendant.

Holding: The district court entered an order of detention pending trial. Because the count for violating § 922(g)(8) was not before the district court at the de novo hearing, it did not factor into the court's decision. The district court concluded that there was no assurance of the safety of the community if Defendant were released pending trial and that the Government sufficiently met its

burden to show by clear and convincing evidence that Defendant posed a risk of danger to the community. Among other things, the district court considered Defendant's troubled past, lack of financial resources and willingness to violate court orders to support its conclusion.

Key Issue(s): Pretrial Detention

***United States v. Ollie*, No. CRIM. 12-18E, 2014 WL 3891634
(W.D. Pa. Aug. 7, 2014)**

Facts/Procedural History: Defendant was accused of stealing a shotgun from someone else's home. He was charged with three firearm-related offenses: being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), possession of a firearm while subject to a domestic violence protective order in violation of § 922(g)(8), and possession of a stolen firearm in violation of § 922(j). At trial, the Government presented multiple eyewitnesses, physical evidence and forensic analysis, including a glove recovered at the scene that matched one found in Defendant's possession. A jury found Defendant guilty on all counts. His trial counsel moved for a judgment of acquittal, which the district court denied. Defendant, acting *pro se*, later filed a second motion raising additional arguments, including ineffective assistance of counsel, prosecutorial misconduct and jury misconduct.

Issue: The district court considered whether Defendant's post-trial motion for judgment of acquittal should be granted based on insufficient evidence, alleged constitutional violations and a conflict of interest involving trial counsel.

Holding: The district court denied the motion. The district court ruled that the motion was untimely under Rule 29(c) and that Defendant had not demonstrated excusable neglect. Even if considered on the merits, the district court concluded the evidence was more than sufficient to support the conviction, including consistent witness identifications and corroborating forensic evidence. The court also rejected Defendant's claim of ineffective assistance, finding no evidence that an alleged conflict of interest impacted counsel's performance.

Key Issues: Sufficiency of Evidence; Ineffective Assistance of Counsel; Rule 29 Motion

***United States v. Dunbar*, No. CRIM.A. 06-386, 2007 WL 1451437
(W.D. Pa. May 15, 2007)**

Facts/Procedural History: Defendant was the subject of an FBI search pursuant to a warrant authorizing seizure of documents and other items related to a protection from abuse order. During the search, agents found a box of rifle ammunition, which was not listed in the warrant. An agent, aware that Defendant was subject to a restraining order that prohibited him from possessing firearms or ammunition under 18 U.S.C. § 922(g)(8), seized the ammunition. Defendant moved

to suppress the evidence, arguing the seizure violated the Fourth Amendment because the ammunition was not identified in the warrant and did not fall under a recognized exception to the warrant requirement.

Issue: The district court considered whether the plain view exception to the Fourth Amendment's warrant requirement permitted seizure of ammunition that was not listed in the warrant but was allegedly illegal under § 922(g)(8).

Holding: The district court denied the motion to suppress. It held that the seizure of the ammunition was lawful under the plain view doctrine because: (1) the agents were lawfully present during execution of the warrant; (2) the incriminating nature of the ammunition was immediately apparent to the agents, given their knowledge that Defendant was subject to a restraining order; and (3) the agents had lawful access to the area where the ammunition was found. The district court rejected Defendant's claim that agents needed to review the text of the restraining order before seizing the ammunition, concluding that the agents' prior knowledge of the order was sufficient to establish probable cause.

Key Issue(s): Plain View Exception; Fourth Amendment

***United States v. LaBohne*, No. 97-CR-382, 2002 U.S. Dist. LEXIS 12167 (E.D. Pa. March 22, 2002)**

Facts/Procedural History: Defendant's wife obtained a civil protection order against him. Over a month later, he showed up at the day care center where she worked and fired a gun at her while she was surrounded by a large group of children. Defendant was arrested and charged for a violation of 18 U.S.C. § 922(g)(8). He pled guilty and was sentenced to a 57-month term of imprisonment. He appealed his sentence to the Third Circuit, which affirmed the sentence. Defendant subsequently filed *pro se* a Motion to Vacate, Set Aside or Correct Sentence.

Issue: The district court considered whether, among other things, Defendant received ineffective assistance of counsel because his attorney had failed to argue that Defendant did not receive notice and fair warning that his possession of the firearm violated federal law; and whether § 922(g)(8) was an unconstitutional violation of his due process rights to notice and fair warning.

Holding: The district court denied the portion of Defendant's motion regarding ineffective assistance of counsel on the notice and fair warning issues. Pointing to the decisions of other Circuits that rejected a notice and fair warning challenge to § 922(g)(8), as well as to Third Circuit precedent rejecting similar challenges to analogous laws, the district court rejected Defendant's argument that his defense counsel should have raised that argument, as to do so would have been without merit. As to Defendant's constitutionality argument, the district court did not substantively address it because Defendant had not raised it on direct appeal; however, the district court noted that it was "essentially" the same question as Defendant's ineffective assistance of counsel claim.

Key Issue(s): Due Process (Notice); Ineffective Assistance of Counsel

***Travieso v. Lopez*, 23 F. Supp. 2d 576 (D. V.I. 1998)**

Facts/Procedural History: Defendant appealed the Territorial Court of the Virgin Islands' decision to extend a 1994 domestic violence restraining order. The original order prohibited Defendant from contacting Plaintiff and was set to expire unless extended for good cause. In 1996, Plaintiff alleged that Defendant had threatened to shoot her in violation of the order, though she later retracted the allegation. Nonetheless, following a hearing, the district court extended the restraining order based on testimony that Defendant had frightened Plaintiff and broken a window during a dispute. The district court also found that Defendant had failed to comply with court-ordered counseling. The extended order included a prohibition on firearm possession under 18 U.S.C. § 922(g)(8) for the duration of the order. Defendant appealed the extension and the prohibition on firearm possession.

Issue: The district court considered whether there was good cause to extend the restraining order and whether the firearm restriction imposed under § 922(g)(8) was lawful.

Holding: The district court upheld the decision. It found that Plaintiff's testimony and Defendant's noncompliance with the original order provided sufficient justification to extend the restraining order. The district court also affirmed the firearm restriction, concluding that the original order met the statutory criteria under § 922(g)(8), as it restrained Defendant from harassing or threatening Plaintiff and explicitly prohibited physical abuse. Further, § 922(g)(8) required only actual notice and opportunity to participate in a hearing, which resulted in a restraining order against Defendant, and the district court found that these requirements were met.

Note: As of the date of this 2025 update, this case has received direct negative treatment (superseded by statute).

Key Issue(s): Good Cause for Restraining Order Extension; Due Process (Notice); Due Process (Opportunity to Participate)

***State v. S.A.*, 290 N.J. Super. 240, 675 A.2d 678 (N.J. Super. Ct. App. Div. 1996)**

Facts/Procedural History: Defendant was the subject of a domestic violence restraining order after allegations of threats, property damage and physical assault. Pursuant to the restraining order, law enforcement confiscated Defendant's firearms and firearms purchaser identification card. Under New Jersey law, the Government was required to initiate a forfeiture proceeding within 45 days, but it failed to do so. Defendant petitioned for the return of his firearms and ID card. The trial court granted the request, finding that the State's failure to act within the statutory period mandated return of the seized items. However, it stayed its decision to permit the Government to appeal the issue of whether 18 U.S.C. § 922(g)(8) applied.

Issue: The appellate court considered whether § 922(g)(8) prohibited the return of firearms to Defendant, preempting the State's forfeiture law.

Holding: The appellate court reversed. It held that while New Jersey's 45-day deadline governed state forfeiture procedures, § 922(g)(8) independently barred Defendant from possessing firearms while subject to a qualifying restraining order. The appellate court found that the federal statute did not preempt state law but imposed a separate prohibition that remained in effect regardless of state procedural lapses. As a result, Defendant had no current lawful right to the firearms under federal law.

Key Issue(s): Return of Seized Firearms; Federal-State Law Interaction

Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

***United States v. Owens*, No. 19-4229, 2022 WL 17819294, 2022 U.S. App. LEXIS 35124 (4th Cir. 2022)**

Facts/Procedural History: Defendant was convicted in a bench trial of possessing firearms and ammunition while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8) and § 924(a)(2). He was sentenced to 80 months in prison. Defendant appealed, arguing that his conviction was invalid under *Rehaif v. United States*, 588 U.S. 176 (2019), because the indictment did not allege—and the Government did not prove—that he knew he was prohibited from possessing firearms at the time of the offense. He also argued that the protective order could not support a § 922(g)(8) conviction and that the district court failed to orally pronounce all conditions of supervised release at sentencing.

Issue: The Fourth Circuit considered whether Defendant’s conviction under § 922(g)(8) was invalid under *Rehaif*, whether the underlying protective order was a valid predicate and whether the district court erred in imposing unpronounced supervised release conditions.

Holding: In a per curiam decision, the Fourth Circuit affirmed the conviction but vacated the sentence and remanded for resentencing. The Fourth Circuit held that the *Rehaif* error did not affect Defendant’s substantial rights because the record showed he had received a copy of the protective order that expressly notified him of the federal firearms prohibition. The Fourth Circuit also concluded that the protective order satisfied the criteria of § 922(g)(8). However, the Fourth Circuit agreed that the district court failed to orally pronounce certain discretionary supervised release conditions, which warranted remand.

Key Issue(s): Knowledge of Prohibited Status (*Rehaif*); Sentencing Procedure

***Petitioner Mudlock v. United States*, No. 1:10CR115-1, 2021 WL 7630505 (M.D.N.C. Nov. 17, 2021)**

Facts/Procedural History: Petitioner was convicted in 2010 of possessing a firearm while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8), and was sentenced to 42 months’ imprisonment and three years of supervised release. His conviction was affirmed on appeal. In 2019, Petitioner was convicted again—this time for possession of a firearm by a felon under § 922(g)(1)—and sentenced to 48 months. He subsequently filed a petition for a writ of error

coram nobis to vacate his 2010 conviction, arguing that under *Rehaif v. United States*, 588 U.S. 176 (2019), the Government was required to prove he knew he was prohibited from possessing a firearm at the time of the offense. He further argued that invalidating his 2010 conviction would also undermine the basis for his 2019 conviction. The Government moved to dismiss.

Issue: The district court considered whether Petitioner’s 2010 conviction under § 922(g)(8) should be vacated based on *Rehaif* and whether coram nobis relief was warranted.

Holding: The district court denied the petition and granted the Government’s motion to dismiss. It held that Petitioner failed under *Rehaif* to demonstrate that the absence of a knowledge-of-status instruction to the jury had a fundamental impact on his case. The district court found that Petitioner had received and signed a copy of the protective order, establishing that he was aware of his prohibited status. The district court also concluded that there was no reasonable probability the jury would have acquitted him had a *Rehaif*-compliant instruction been given. Petitioner’s claimed ignorance of federal law was not a valid defense. As such, he failed to meet the standard for coram nobis relief.

Key Issue(s): Knowledge of Prohibited Status (*Rehaif*); Coram Nobis Standard

***United States v. Cornett*, 515 F. Supp. 3d 367 (E.D.N.C. Jan. 27, 2021)**

Facts/Procedural History: Defendant pled guilty to making a false statement in connection with the purchase of a firearm and to possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(8). At the time, Defendant was subject to a domestic violence protective order that prohibited him from possessing firearms. He later brought firearms onto the property of his estranged wife, prompting the Government to argue that she qualified as a “crime victim” under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771. Prior to sentencing, Defendant moved to withdraw his guilty plea, claiming it was not made knowingly or voluntarily.

Issue: Among other things, the district court considered whether Defendant should be permitted to withdraw his guilty plea and whether his estranged wife qualified as a crime victim under the CVRA based on the conduct underlying the § 922(g)(8) offense.

Holding: The district court denied Defendant’s motion to withdraw his guilty plea. It found no fair and just reason under Federal Rule of Criminal Procedure 11(d)(2)(B). Applying the factors in *United States v. Moore*, 931 F.2d 245, 248 (4th Cir. 1991), the district court found that the plea had been entered knowingly and voluntarily. The district court also held that Defendant’s estranged wife did not meet the statutory definition of a crime victim under § 3771, as the harm she experienced did not result directly from conduct constituting the elements of the offenses of conviction. Specifically, the

district court found that Defendant violated the protective order when he came onto his estranged wife's property, regardless of whether he had firearms in his possession. Nonetheless, she was permitted to offer testimony at sentencing.

Key Issue(s): Guilty Plea Withdrawal; Crime Victims' Rights Act (CVRA)

***United States v. Travis*, 149 F. Supp. 3d 596 (E.D.N.C. 2016)**

Facts/Procedural History: Defendant had been convicted under North Carolina law for assault by strangulation, a felony. He was later indicted for possession of a firearm by a felon under 18 U.S.C. § 922(g)(1) and for possession of a firearm while subject to a domestic violence protective order under § 922(g)(8). Defendant pled guilty to the § 922(g)(8) charge, and the § 922(g)(1) charge was dismissed. In preparing for sentencing, the U.S. Probation Office recommended a base offense level of 20 under the sentencing guidelines, based on Defendant's prior conviction for assault by strangulation, which the Probation Office determined was a crime of violence. The district court sentenced Defendant to 57 months' imprisonment. At sentencing, Defendant objected to the crime of violence classification.

Issue: The district court considered whether assault by strangulation under North Carolina law qualified as a crime of violence for purposes of calculating Defendant's base offense level under the Sentencing Guidelines.

Holding: The district court overruled Defendant's objection and upheld the sentence of 57 months' imprisonment. The district court held that: (1) the offense involved physical force capable of causing pain or injury, meeting the "violent force" requirement under *Johnson v. United States*, 559 U.S. 133 (2010); (2) the statute required intentional conduct, as strangulation could not be committed through negligence or recklessness; and (3) strangulation inherently involved force sufficient to impede breathing or blood flow, rendering it categorically violent. Defendant appealed the district court's decision to the Fourth Circuit, which affirmed. 671 F. App'x 877 (4th Cir. 2016).

Key Issue(s): Sentencing Enhancement; Crime of Violence Definition

***Harris v. United States*, No. 5:13–CR–67–FL, 2015 WL 5944026 (E.D.N.C. Oct. 12, 2015)**

Facts/Procedural History: Defendant pled guilty to possessing ammunition while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8) and § 924(a)(2). He was sentenced to six months' imprisonment, six months' house arrest and three years' supervised release. Following his release, Defendant was arrested for new criminal conduct and later found to have violated the terms of his supervised release. The district court imposed a revocation sentence of nine months. Defendant then filed a motion to vacate his conviction and sentence under 28 U.S.C.

§ 2255. He argued, among other things, that the federal court lacked jurisdiction to prosecute him under § 922(g)(8) and that his counsel was constitutionally ineffective for failing to move to suppress evidence, investigate relevant state proceedings and properly advise him during plea negotiations. The Government filed a motion to dismiss. The magistrate judge made a Memorandum and Recommendation to grant the motion to dismiss.

Issue: The district court considered whether Defendant’s conviction and revocation sentence under § 922(g)(8) should be vacated due to lack of federal jurisdiction and ineffective assistance of counsel.

Holding: The district court adopted the magistrate judge’s recommendation and dismissed all claims. The district court rejected the jurisdictional challenge, holding that prosecutions under § 922(g)(8) fall squarely within federal authority. It also denied Defendant’s ineffective assistance claims, concluding that his counsel’s performance was not deficient and that Defendant failed to show resulting prejudice, as required under *Strickland v. Washington*, 466 U.S. 668 (1984). The district court found Defendant’s suppression and protective-order-based arguments legally unsupported and factually inaccurate. A certificate of appealability was denied.

Key Issue(s): Federal Jurisdiction Under § 922(g)(8); Ineffective Assistance of Counsel; Revocation of Sentence

***United States v. Travis*, No. 7:14-CR-104-FL-1, 2015 U.S. Dist. LEXIS 83994 (E.D.N.C. June 29, 2015)**

Facts/Procedural History: Defendant was under a domestic violence restraining order and was subsequently charged with possessing a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year in violation of 18 U.S.C. §§ 922(g)(1) and 924, and with possessing a firearm in violation of 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the § 922(g)(1) charge.

Issue: Defendant argued that his prior convictions—including one for assault by strangulation—were not ones for which he could have received a term of imprisonment exceeding one year.

Holding: The district court denied the motion. It held that at least one of his prior offenses was punishable by imprisonment for a term exceeding one year. As such, the district court found that Defendant failed to establish a basis for dismissal because he was previously subject to punishment for more than one year, even if he had never served a sentence longer than one year.

Key Issue(s): Sentencing

***United States v. Myers*, 581 F. App'x 171 (4th Cir. 2014)**

Facts/Procedural History: A protective order had been issued against Defendant after a state court hearing which Defendant attended with counsel. Later, Defendant was charged with possessing a firearm while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8). At trial, Defendant acknowledged the order but contested its scope and enforceability, asserting that it purported to prohibit firearm possession for “one hundred years.” Defendant was convicted and sentenced to 18 months’ imprisonment. Defendant appealed.

Issue: The Fourth Circuit considered whether Defendant’s conviction under § 922(g)(8) should be reversed due to purported defects in the jury instructions, notice of the protective order, evidentiary rulings or the constitutionality of the underlying order.

Holding: The Fourth Circuit affirmed the conviction. It held that Defendant invited any error in the jury instructions by expressly opposing revisions proposed by the district court, thus waiving appellate review. The Fourth Circuit also rejected the argument that Defendant lacked adequate notice of the protective order hearing, emphasizing that actual notice is sufficient under § 922(g)(8) and that Defendant’s presence at the hearing with counsel satisfied the statutory requirement. It further concluded that § 922(g)(8) did not require the defendant to have received a final copy of the order before possessing a firearm. Finally, the Fourth Circuit rejected Defendant’s challenge to the constitutionality of the order on the basis that its 100-year prohibition on his ability to possess firearms violated his Second Amendment rights. The Fourth Circuit held that the validity of the order was not relevant to the determination of whether Defendant violated § 922(g)(8).

Key Issue(s): Enforcement of § 922(g)(8); Actual Notice Requirement; Collateral Attack; Jury Instruction Waiver

***Bey ex rel. Graves-Bey v. Jacobs*, No. 3:14–cv–511–JAG, 2014 WL 3871348 (E.D. Va. Aug. 6, 2014)**

Facts/Procedural History: *Pro se* plaintiffs filed a civil action on behalf of themselves and their daughter challenging the issuance and enforcement of a state child protective order. The suit named four state court judges, four attorneys and a social worker as defendants. Plaintiffs alleged the protective order was fraudulent or improperly issued and claimed violations of various constitutional rights—including under the Second Amendment—citing 18 U.S.C. § 922(g)(8) and asserting that the protective order impaired their right to possess firearms. Plaintiffs moved to proceed in forma pauperis, prompting the district court to review the sufficiency and jurisdictional basis of the complaint under 28 U.S.C. § 1915.

Issue: The district court considered whether plaintiffs could proceed with their constitutional and statutory claims, including under § 922(g)(8), based on alleged improprieties in the issuance of a state protective order and related proceedings.

Holding: The district court granted the motion to proceed in forma pauperis but dismissed the complaint without prejudice pursuant to § 1915(e)(2)(B). The district court held that (i) the defendant judges were entitled to absolute judicial immunity for actions taken in their official capacities; (ii) the *Rooker–Feldman* doctrine barred federal jurisdiction to review the validity of a state court protective order; and (iii) the claims against the attorneys and social worker were vague and conclusory, failing to meet basic pleading standards. The district court emphasized that § 922(g)(8) applied based on the existence of a qualifying protective order and did not authorize federal review of the order’s legitimacy. Plaintiffs were cautioned against future frivolous filings.

Key Issue(s): Second Amendment; Rooker–Feldman Doctrine; Federal Jurisdiction Limits

***Boles v. United States*, 3 F. Supp. 3d 491 (M.D.N.C. 2014)**

Facts/Procedural History: Plaintiff was shot by a civilian U.S. Coast Guard employee who was subject to a domestic violence protective order and had a documented history of mental illness. Despite these disqualifiers to the employee possessing firearms under 18 U.S.C. § 922(g)(4) and § 922(g)(8), Coast Guard personnel returned the individual’s privately owned firearms, which he later used in the attack that injured Plaintiff. Plaintiff brought suit under the Federal Tort Claims Act (FTCA), alleging, among other things, that at least one Coast Guard employee knew that employee who shot Plaintiff was prohibited from possessing firearms under § 922(g)(8). The Government moved to dismiss under the FTCA’s intentional tort exception, asserting that Plaintiff’s claims were barred as arising out of assault or battery. Plaintiff moved to amend the complaint to assert theories of negligence and negligence per se based on the Coast Guard’s conduct.

Issue: Among other things, the district court considered whether Plaintiff’s claims based on the negligent return of firearms were barred by the FTCA’s intentional tort exception and sovereign immunity.

Holding: The district court granted in part and denied in part the motion to dismiss. It held that the intentional tort exception did not bar claims premised on the Coast Guard’s independent negligence in returning firearms to a prohibited person under § 922(g)(4) and § 922(g)(8). Those counts could proceed. However, one count based solely on the shooter’s employment status was dismissed as barred by sovereign immunity. The district court granted Plaintiff’s motion to amend the complaint.

Key Issue(s): FTCA Liability; Firearm Return to Prohibited Person; Sovereign Immunity; Intentional Tort Exception

***United States v. Larson*, 502 F. App'x 336 (4th Cir. 2013)**

Facts/Procedural History: Defendant pled guilty to violating 18 U.S.C. § 922(g)(8) by possessing a firearm while subject to a domestic violence protective order. The order, entered after a hearing attended by Defendant, prohibited him from harassing or threatening an intimate partner. Defendant appealed.

Issue: The Fourth Circuit considered whether the protective order satisfied the statutory requirements of § 922(g)(8) and whether Defendant's conviction violated due process or the Second Amendment.

Holding: In a per curiam decision, the Fourth Circuit affirmed. The Fourth Circuit held that the protective order met all statutory elements of § 922(g)(8), including notice, a hearing and prohibitions against threatening conduct. Defendant's due process claim failed because he had received notice and attended the hearing. Citing to *Heller* and applying intermediate scrutiny, the Fourth Circuit upheld § 922(g)(8) as a constitutional restriction aimed at preventing domestic violence. It found that Defendant was within the narrow category of individuals whose Second Amendment rights could be burdened, and therefore the Second Amendment did not bar his prosecution.

Key Issue(s): Due Process; Second Amendment

***United States v. Elkins*, 780 F. Supp. 2d 473 (W.D. Va. 2011)**

Facts/Procedural History: Defendant was arrested and convicted of simple assault of his child's mother for holding her against her will, assaulting her and threatening her with a handgun. She later obtained a protective order against Defendant after he followed her with a firearm. After Defendant married someone else, he subsequently made a series of threats against his wife and other family members, destroyed property and fired numerous rounds from an AK-47 after his wife and children fled the house. Defendant was charged with a violation of 18 U.S.C. § 922(g)(8) for possessing a firearm while subject to a domestic violence protective order. Defendant moved to dismiss the indictment.

Issue: Defendant argued that the Government could not prove his knowledge of the existence of a domestic protective order beyond a reasonable doubt because he was not aware of the § 922(g)(8) provision preventing the possession of a firearm. Defendant argued that criminal prosecution under § 922(g)(8) violated his Second Amendment rights as established in *Heller*.

Holding: The district court denied Defendant's motion. Following *Heller* and Fourth Circuit case law, and applying intermediate scrutiny, the district court found that the Government had a substantial interest in preventing gun violence and that the procedural and temporal limitations imposed by § 922(g)(8) were a reasonable fit to this interest. Defendant could therefore be deprived of his right to bear arms so long as it could be shown he posed a current threat of violence to his family.

Note: This decision was affirmed by 495 F. App'x 330 (4th Cir. 2012).

Key Issue(s): Second Amendment; Knowledge Requirement

***Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (S.C. 2008)**

Facts/Procedural History: Wife sought a protection order against Husband following an incident involving alleged physical abuse and threats with a weapon, leading to Husband's arrest. A hearing was held within 24 hours of service; both parties appeared *pro se*. The trial court issued a protection order awarding Wife custody of the children, exclusive possession of the home, temporary support and ordering Husband to relinquish firearms. Husband moved for reconsideration, arguing due process and equal protection violations. The motion was denied. Husband appealed.

Issue: The South Carolina Supreme Court considered whether the emergency hearing, conducted shortly after service and without counsel, violated Husband's due process and equal protection rights, and whether the findings had improper long-term implications under 18 U.S.C. § 922(g)(8).

Holding: The South Carolina Supreme Court affirmed the order as modified. The South Carolina Supreme Court held that the emergency hearing process under the Protection from Domestic Abuse Act did not violate due process because it was designed to prevent imminent harm and allowed for later modification. It found no equal protection violation and emphasized that findings at emergency hearings are not final and should not carry long-term legal consequences unless confirmed at a merits hearing. The South Carolina Supreme Court acknowledged that such protective orders may implicate firearm restrictions under § 922(g)(8) but clarified the limited nature of the initial findings.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

***United States v. Leary*, 86 F. App'x 559 (4th Cir. 2004)**

Facts/Procedural History: Defendant was charged with possessing firearms while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8). At trial, the Government alleged the order was issued after a hearing of which Defendant had actual notice and an opportunity to participate. However, Defendant proffered witness testimony that domestic violence issues were not discussed at the hearing. Defendant was convicted. Defendant appealed, claiming that the court improperly excluded his witness's testimony.

Issue: The Fourth Circuit considered whether the exclusion of testimony regarding the nature of the protective order hearing violated Defendant's right to challenge the § 922(g)(8) element requiring notice and opportunity to participate.

Holding: The Fourth Circuit affirmed the conviction. It held that the statutory requirements were met because Defendant attended the hearing with counsel and was aware of its purpose. Testimony that the hearing did not specifically address domestic violence did not undermine that opportunity. Therefore, the exclusion of the testimony was not an abuse of discretion.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

United States v. Bostic, 168 F.3d 718 (4th Cir. 1999)

Facts/Procedural History: Defendant was subject to a protective order against his estranged wife. Defendant later used a firearm to threaten his wife and child, leading to his arrest and the discovery of additional weapons. He pled guilty and was convicted under 18 U.S.C. § 922(g)(8). Although the order did not mention firearms, Defendant was sentenced and appealed, raising constitutional objections under the Fifth and Tenth Amendments and the Commerce Clause.

Issue: The Fourth Circuit considered whether § 922(g)(8) was unconstitutional under the Fifth and Tenth Amendments and exceeded Congress’s authority under the Commerce Clause.

Holding: The Fourth Circuit upheld the conviction and sentence. It held that the protective order met the requirements of § 922(g)(8)(C)(ii), since it directed Defendant to “refrain from abusing” his estranged wife, satisfying the statutory requirement an order prohibit the use, attempted use or threatened use of physical force. The Fourth Circuit also found that Defendant’s constitutional challenges lacked merit. The Fourth Circuit reaffirmed that actual knowledge of the illegality was not required—only knowledge of the facts (i.e. Defendant’s knowledge that he was possessed a firearm and was subjection to a domestic violence restraining order), so there was no Fifth Amendment violation. It found § 922(g)(8) valid under the Commerce Clause and did not run afoul of the Tenth Amendment because it did not infringe state sovereignty.

Negative Treatment: As of this 2025 update, this case has received negative treatment.

Key Issue(s): Due Process (Notice); Commerce Clause; Tenth Amendment

United States v. Henson, 55 F. Supp. 2d 528 (S.D.W. Va. 1999)

Facts/Procedural History: Defendant’s ex-wife obtained a protective order against him. After he harassed his ex-wife outside her residence, police searched Defendant’s car and discovered a loaded gun. Among other things, Defendant was indicted for violating 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(8) infringed upon individual Second Amendment rights and lacked sufficient due process protections under the Fifth Amendment.

Holding: The district court denied the motion to dismiss. The district court rejected Defendant’s Second Amendment argument, citing Fourth Circuit precedent that the Second Amendment confers only a collective, not individual, right to bear arms. It also rejected Defendant’s Fifth Amendment claim by relying on Fourth Circuit precedent, finding that because Defendant was a convicted felon, he had prior notice of his loss of any right to bear arms.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Due Process (Notice)

Fifth Circuit (Louisiana, Mississippi, Texas)

United States v. Perez-Gallan, 125 F.4th 204 (5th Cir. 2024)

Facts/Procedural History: In May 2022, Defendant was arrested for assaulting his domestic partner. A state court judge released Defendant on bond and issued a protective order prohibiting Defendant from harassing or committing acts of domestic violence against his domestic partner, as well as prohibiting Defendant from possessing a firearm. One month later, Defendant consented to a search during a border crossing checkpoint and admitted to carrying a firearm. Defendant was arrested on suspicion of possession of a stolen firearm. Defendant was indicted under 18 U.S.C. § 922(g)(8)(C)(ii), and the district court granted Defendant's motion to dismiss the indictment. The Fifth Circuit summarily affirmed the district court's decision, relying on its own precedent in *United States v. Rahimi*, 61 F.4th 443, 461 (5th Cir. 2023), which held that § 922(g)(8) was facially unconstitutional. The United States Supreme Court reversed the Fifth Circuit's decision in *Rahimi* and granted certiorari in this case. The Supreme Court vacated the judgment in this case and remanded to the Fifth Circuit to reconsider whether § 922(g)(8)(C)(ii) was facially unconstitutional based on the Court's new precedent in *Rahimi*.

Issue: On remand to the Fifth Circuit, Defendant argued that because the Fifth Circuit's *Rahimi* decision found that § 922(g)(8) was facially unconstitutional, and because the Supreme Court's *Rahimi* decision reversed only on the ground that § 922(g)(8)(C)(i) was facially constitutional, the Fifth Circuit's *Rahimi* holding that (g)(8) was facially void was still good law in the Fifth Circuit as to § 922(g)(8)(C)(ii).

Holding: The Fifth Circuit first found that the Supreme Court's interpretation of *Rahimi* implicitly overruled the portion of the Fifth Circuit's *Rahimi* decision concerning § 922(g)(8)(C)(ii), meaning that the Fifth Circuit was not bound by its previous decision. The Fifth Circuit next determined that § 922(g)(8)(C)(ii) was not facially unconstitutional. The Fifth Circuit reasoned that, because § 922(g)(8)(C)(ii) applies to protective orders that by their own terms explicitly prohibit the use, attempted use or threatened use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury, such orders necessarily imply that the defendant poses a clear threat of violence to another and are therefore consistent with the Supreme Court's direction that an individual who poses a clear threat of physical violence to another may be disarmed consistent with the Second Amendment. Accordingly, the Fifth Circuit reversed the judgment dismissing the indictment and remanded the case back to the district court to determine whether § 922(g)(8)(C)(ii) was unconstitutional as applied to Defendant.

Key Issue(s): Second Amendment (*Rahimi*)

***United States v. Jones*, No. 22-30633, 2024 WL 4481853, 2024 U.S. App. LEXIS 25809 (5th Cir. 2024)**

Facts/Procedural History: Defendant was charged with possession of a firearm by a person subject to a domestic violence order, in violation of 18 U.S.C. § 922 (g)(8), among other charges. Defendant pled guilty. In sentencing, the district court departed upwards from the sentencing guidelines in imposing a term of imprisonment and also imposed a three-year supervised release term with mandatory drug testing and participation in a substance abuse treatment program. As reasons for the upwards departure, the district court cited the facts of Defendant's offense, Defendant's criminal history and Defendant's pending domestic violence charges. Defendant appealed.

Issue: Defendant argued the district court abused its discretion in sentencing him above the guidelines range and plainly erred by imposing conditions of supervised release related to drug treatment.

Holding: The Fifth Circuit affirmed in part and vacated in part the district court's sentencing. First, the Fifth Circuit disagreed with Defendant that the district court abused its discretion in departing upwards from the sentencing guidelines. The Fifth Circuit held that the district court weighed reliable information, such as Defendant's criminal history, and made a proper determination that an increased sentence was warranted given Defendant's conduct. Second, the Fifth Circuit agreed with Defendant that the district court plainly erred in imposing conditions of supervised release related to drug treatment. The Fifth Circuit highlighted that Defendant's conduct and criminal history did not involve drugs or alcohol. Also, the district court failed to make any specific factual finding to establish imposing conditions for Defendant's supervised release. The Fifth Circuit vacated the conditions of Defendant's supervised release and remanded back to the district court for re-sentencing.

Key Issue(s): Sentencing

***United States v. Rahimi*, 117 F.4th 331 (5th Cir. 2024)**

Facts/Procedural History: Defendant was subject to a domestic violence restraining order that prohibited him from firearm possession and suspended his gun license for two years. Defendant was later suspected of participating in several shootings and police obtained a warrant to search his home. Upon searching, police found a copy of the restraining order and a handgun. Defendant was indicted for violating 18 U.S.C. § 922(g)(8). The district court and a panel of the Fifth Circuit both upheld Defendant's conviction, rejecting Defendant's facial challenge to § 922(g)(8). The panel withdrew their opinion after *Bruen* was decided and requested additional briefing in light of that ruling. A second Fifth Circuit panel reevaluated the case, holding that under *Bruen*, § 922(g)(8) was

unconstitutional, and vacated Defendant's conviction. After granting certiorari, the U.S. Supreme Court held (602 U.S. 680 (2024)) that § 922(g)(8) was constitutional and reversed and remanded for the Fifth Circuit to evaluate Defendant's conviction in light of the Supreme Court's decision.

Issue: On remand from the Supreme Court, Defendant argued again that § 922(g)(8) was facially unconstitutional and also that the district court was mistaken in ordering his sentence to be served consecutively with any state sentences.

Holding: In a per curiam decision, the Fifth Circuit affirmed Defendant's conviction and sentence. Because Defendant did not make an as-applied or due process challenge to § 922(g)(8) or otherwise challenge his conviction, the Fifth Circuit relied on the Supreme Court's ruling that § 922(g)(8) was constitutional to uphold Defendant's conviction. As to Defendant's consecutive sentencing argument, the Fifth Circuit held that the district court had the discretion whether to order that sentences be served consecutively or concurrently. The Fifth Circuit found that the record supported consecutive state and federal sentences because of the district court's finding that Defendant's pending state charges involved separate conduct from Defendant's possession of a firearm in violation of his restraining order and § 922(g)(8).

Key Issue(s): Second Amendment (*Rahimi*); Sentencing

***United States v. Moore*, No. 3:18cr18, 2023 U.S. Dist. LEXIS 15237 (M.D. La. 2023)**

Facts/Procedural History: In May 2018, Defendant pled guilty to unlawful possession of a firearm while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8). He was sentenced to 21 months' imprisonment followed by three years of supervised release. On July 27, 2022, the U.S. Probation Service initiated revocation proceedings, alleging that Defendant violated the terms of his supervised release due to a charge of domestic abuse battery involving a heated argument with Victim, resulting in physical altercations and visible injuries. Defendant denied the allegations and claimed Victim often injured herself. Victim later recanted her statement, claiming she was drinking and her injuries were from other sources. Despite the recantation and dismissal of the battery charge, revocation proceedings continued. At the preliminary revocation hearing, probable cause was found, but Defendant was released on conditions pending the final hearing. The final revocation hearing took place on January 24, 2023.

Issue: The district court considered whether probable cause existed that Defendant committed battery.

Holding: At the final revocation hearing, the district court concluded that probable cause existed that Defendant committed battery, but the Government failed to prove the charge. Victim's testimony established that Defendant did not touch her, and her injuries were from other sources. Consequently, the Petition to revoke Defendant's supervised release was denied, and the revocation proceedings were dismissed with prejudice.

Key Issue(s): Sufficiency of Evidence

***United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023)**

Facts/Procedural History: Between December 2020 and January 2021, Defendant was involved in five shootings. Police identified Defendant as a suspect in the shootings and obtained a warrant to search his home. Upon execution of the warrant, police found a rifle and a pistol. Defendant admitted that he possessed the firearms. He also admitted that he was subject to a civil protective order entered February 5, 2020, by a state court after Defendant's alleged assault of his ex-girlfriend. The protective order prohibited Defendant from, as relevant here and among other things, possessing a firearm. A federal grand jury indicted Defendant for possessing a firearm while under a domestic violence restraining order in violation of 18 U.S.C. § 922(g)(8). Defendant appealed and moved to dismiss the charge.

Issue: Defendant argued that § 922(g)(8) was unconstitutional under *Bruen*, which mandated that a gun regulation's constitutionality hinged solely on a historical inquiry.

Holding: The Fifth Circuit found that the Government did not prove that § 922(g)(8) aligned with the historical tradition of firearm regulation under *Bruen*. As a result, the Fifth Circuit held that § 922(g)(8) was unconstitutional under *Bruen*'s framework and granted Defendant's motion to dismiss.

Note: As of the date of this 2025 update, this case has received direct negative treatment (overruled by *United States v. Rahimi*, 602 U.S. 680 (2024)).

Key Issue(s): Second Amendment

***United States v. Perez-Gallan*, 640 F.Supp.3d 697 (W.D. Tex. Nov. 10, 2022)**

Facts/Procedural History: Defendant driving near the Mexico-United States border in Texas was asked at a border patrol checkpoint whether he was armed. Defendant said yes; he had a pistol with him. Defendant consented to a search, and border patrol agents found the pistol in Defendant's backpack. Agents also found a Kentucky state court order in Defendant's wallet outlining Defendant's conditions of release with respect to a May 2022 arrest for assault. The Government later discovered a separate restraining order against Defendant from a Kentucky family court. Defendant was indicted in June 2022 for possessing a firearm while subject to a protective order, in violation of 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(8) was unconstitutional under *Bruen*, mandating that a gun regulation's constitutionality hinge solely on a historical inquiry.

Holding: The district court granted Defendant's motion to dismiss, holding that § 922(g)(8) was unconstitutional under *Bruen*'s framework. The district court found that the Government did not prove that § 922(g)(8) aligned with the historical tradition of firearm regulation under *Bruen*.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment

***United States v. McGinnis*, 956 F.3d 747 (5th Cir. 2020)**

Facts/Procedural History: Defendant was convicted of possessing a firearm while subject to a domestic violence protective order, in violation of 18 U.S.C. § 922(g)(8). Defendant appealed the conviction.

Issue: Defendant argued, among other things, that § 922(g)(8) prohibiting firearm possession by individuals subject to domestic violence protective orders was facially unconstitutional.

Holding: As relevant here, the Fifth Circuit found that § 922(g)(8) did not facially violate the Second Amendment under intermediate scrutiny and upheld the conviction. The Fifth Circuit remanded the case to correct the written judgment for other reasons.

Key Issue(s): Second Amendment; Language of Protection Order

***Pierre v. United States*, No. 1:17-CV-272, 2020 WL 3579215 (E.D. Tex. May 8, 2020)**

Facts/Procedural History: Defendant was charged with knowingly possessing a firearm while under a protective order restraining him from harassing, stalking or threatening an intimate partner and a child, in violation of 18 U.S.C. § 922(g)(8). Defendant pled guilty. Defendant filed an appeal, which was dismissed for want of prosecution. He then challenged his sentence and conviction.

Issue: Defendant argued that his plea was made unknowingly.

Holding: The magistrate judge recommended that the district court accept the guilty plea and defer acceptance of the plea agreement until after reviewing the presentence report. The magistrate judge found that Defendant's plea was made knowingly, freely and voluntarily, supported by an independent factual basis.

Note: As of this 2025 update, the Fifth Circuit Court of Appeals affirmed the district court's denial of Defendant's motions.

Key Issue(s): Plea Agreements

***United States v. Mohr*, 773 Fed. Appx. 232 (5th Cir. 2019)**

Facts/Procedural History: Defendant was convicted for possession of a firearm while subject to a protective order under 18 U.S.C. § 922(g)(8). He appealed his conviction.

Issue: Defendant argued that the protective order at issue did not satisfy the requirements of § 922(g)(8) and that there were not enough facts to show that his possession of a firearm had a sufficient connection to interstate commerce.

Holding: The Fifth Circuit affirmed the district court's judgment upholding the conviction. The Fifth Circuit found that (1) the protective order satisfied § 922(g)(8), and (2) the firearm's connection to interstate commerce was sufficiently established because the firearm was manufactured outside Texas.

Key Issue(s): Language of Protection Order; Commerce Clause

***United States v. Mirabal*, 608 Fed. App'x 201 (5th Cir. 2015)**

Facts/Procedural History: Defendant threatened to kill his wife and son and used a gun to coerce his wife into performing a sexual act. When law enforcement arrived at the scene, they found Defendant in possession of a firearm. At the time of the incident, Defendant was under a protective order prohibiting him from communicating, being near, and threatening his wife and child. Defendant pled guilty to possession of a firearm and was convicted of possessing a firearm while subject to a qualifying protective order, in violation of 18 U.S.C. § 922(g)(8). The district court sentenced Defendant to 72 months' imprisonment, outside the U.S. Sentencing Guidelines range of 57–71 months' imprisonment. Defendant appealed.

Issue: Defendant argued that he should not have been denied a one-level sentence reduction for acceptance of responsibility because he had refused to waive his right to appeal his sentence.

Holding: The Fifth Circuit affirmed Defendant's sentence. The Fifth Circuit found that the sentencing difference of a single month between the actual sentence and the U.S. Sentencing Guidelines range did not cause a significant error affecting Defendant's rights.

Key Issue(s): Sentencing

***United States v. Ladouceur*, 578 Fed. App'x 430 (5th Cir. 2014)**

Facts/Procedural History: Defendant was convicted under 18 U.S.C. § 922(g)(8) for possessing a firearm while subject to a domestic violence protective order obtained by his girlfriend. Defendant appealed.

Issue: Defendant argued that the evidence at trial was insufficient to prove he was an “intimate partner” of his girlfriend, as required under § 922(g)(8), because he and his girlfriend never “cohabited.” At trial, the jury was instructed that being “intimate partners” was an element of the crime and that the term meant, “with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, or an individual who cohabitates or has cohabited with the person.” It was undisputed that Defendant and the girlfriend were never spouses and had no children together. Thus, the only issue was whether they “cohabited.”

Holding: The Fifth Circuit affirmed the conviction. The Fifth Circuit found ample evidence presented at trial to support a rational jury’s finding that Defendant and the girlfriend cohabited, including that Defendant (i) stayed at the girlfriend’s apartment most or often all days out of the week, (ii) kept clothing and personal effects at the girlfriend’s apartment to go directly to work in the mornings, (iii) had a key to the girlfriend’s apartment and (iv) was able to come and go as he pleased.

Key Issue(s): Intimate Partner Requirement

***United States v. Pennywell*, 544 F. App'x 252 (5th Cir. 2013)**

Facts/Procedural History: Defendant was convicted of multiple offenses, including possession with intent to distribute crack cocaine and possession of a firearm while being subject to a protective order, in violation of 18 U.S.C. § 922(g)(8). He argued that he was entitled to a sentence reduction based on retroactive amendments to the crack cocaine guidelines. The district court denied Defendant’s sentence reduction request, finding that Defendant’s sentence was based both on the Career Offender Guidelines and applicable guidelines range. Defendant appealed.

Issue: Defendant argued that he was entitled to sentence reduction.

Holding: On appeal, the Fifth Circuit affirmed the district court’s denial of Defendant’s request for a sentence reduction.

Key Issue(s): Sentencing

***United States v. Banks*, 480 Fed. App'x 314 (5th Cir. 2012)**

Facts/Procedural History: Defendant was subject to a state-issued protective order that included a firearm possession prohibition. Defendant was then charged with assaulting a federal officer with a firearm. After being arrested, Defendant acknowledged he knew he should not have possessed the firearm because of the existence of the protective order. Defendant pled guilty to a single-count indictment of assaulting a federal officer with a dangerous weapon. At sentencing, the district court adopted the probation officer's recommendation to apply a two-step offense level increase because the offense involved a violation of an order of protection. Defendant appealed the two-level sentence enhancement.

Issue: On appeal, Defendant argued that though his possession of a firearm may be in violation of § 922(g)(8), which he was not charged with, it did not constitute a violation of the protective order itself warranting a two-level increase in his sentence because the protective order did not protect the federal officer.

Holding: The Fifth Circuit vacated Defendant's sentence and remanded for resentencing. The Fifth Circuit agreed with the Defendant that his possession of a firearm, though potentially a violation of § 922(g)(8), did not violate the terms of the protective order itself which would be required to impose a two-step enhancement in his sentence. Defendant's acknowledgement after his arrest that he was not supposed to possess a firearm was not an indication that he understood possessing a firearm was a violation of the state protective order, but instead an indication that he understood he could not possess a firearm because of the fact he had a protective order against him.

Key Issue(s): Sentencing

***United States v. Miles*, No. 05-30045, 2006 WL 1044143 (W.D. La. Apr. 19, 2006)**

Facts/Procedural History: A state judge issued a temporary restraining order against Defendant, which was served on Defendant by a sheriff. The temporary restraining order included a notice of a hearing for Defendant so he could object to the imposition of the protective order. Defendant failed to appear at the hearing, and a protective order was entered against him and mailed to his address. Defendant did not appeal the protective order or otherwise contest its validity in state court. Later, Defendant was found in possession of a firearm and charged with violating 18 U.S.C. § 922(g)(8). Defendant filed a motion for release from pretrial detention on the basis that he was never served with the protective order. The Government filed a motion *in limine* preventing Defendant from presenting evidence or argument at trial that he was not served with the protective order.

Issue: In opposing the Government's motion *in limine*, Defendant argued that he did not receive adequate notice of the protective order.

Holding: The district court granted the Government’s motion *in limine* and prohibited Defendant from introducing evidence or presenting argument that he was not served with the protective order. The district court held that notice was sufficient under § 922(g)(8) when a defendant received notice of a hearing regarding a protective order; actual notice of the protective order was not necessary. Defendant admitted he was served with the temporary protective order that contained notice of the hearing. Thus, the district court ruled that the hearing requirement of § 922(g)(8) was satisfied.

Key Issue(s): Due Process (Notice and Opportunity to Participate)

***Spruill v. Watson*, 157 Fed. App’x 741 (5th Cir. 2005)**

Facts/Procedural History: Defendant officer arrested Plaintiff and had him charged with violating 18 U.S.C. § 922(g)(8). The Fifth Circuit vacated Plaintiff’s conviction after finding that the predicate protective order had not been issued with sufficient notice required under § 922(g)(8) and thus fell outside the scope of the law. On remand, the district court entered a judgment of acquittal. Plaintiff subsequently sued Defendant officer under 42 U.S.C. § 1983 for false arrest and deprivation of liberty without due process of law. The district court granted Defendant’s motion for summary judgment on the basis that Defendant officer was entitled to qualified immunity. Plaintiff appealed.

Issue: Plaintiff argued that Defendant officer deprived his liberty without due process.

Holding: The Fifth Circuit upheld the district court’s grant of summary judgment, affirming that Defendant officer was entitled to qualified immunity. Among other things, the Fifth Circuit noted that Defendant officer had probable cause to arrest Plaintiff. It would not have been clear to a reasonable officer that an arrest was unlawful because the officer could not reasonably make the legal determination whether the protective order was issued without due process when arresting and charging the offending party.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice and Opportunity to Participate)

***United States v. Emerson*, 86 Fed. App’x 696 (5th Cir. 2004)**

Facts/Procedural History: Defendant was convicted for possession of a firearm while subject to a protective order under 18 U.S.C. § 922(g)(8). Defendant appealed his conviction.

Issue: On appeal, Defendant argued that § 922(g)(8) violated the Fifth Amendment, facially and as applied, and that the jury was not sufficiently instructed on the defense of entrapment by estoppel.

Holding: The Fifth Circuit affirmed the district court’s judgment. The Fifth Circuit rejected Defendant’s due process challenges, relying in part on prior proceedings and on the fact that firearm possession was active conduct and that § 922(g)(8) did not criminalize passive conduct. The Fifth

Circuit also rejected Defendant's argument that the jury was not properly instructed on entrapment by estoppel, holding that defense required that a federal official actively misled Defendant about the legality of his firearm possession, which did not happen in this case.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice); Fifth Amendment

***United States v. Banks*, 339 F.3d 267 (5th Cir. 2003)**

Facts/Procedural History: Defendant's ex-girlfriend applied for a temporary protective order against him. Defendant received notice of a hearing regarding the temporary protective order. Two months later, the assistant district attorney obtained a temporary ex parte protective order on the ex-girlfriend's behalf. Defendant was served with a copy of the temporary ex parte protective order while in court for another matter and the presiding district judge advised him of the new hearing date for the temporary protective order application. Defendant appeared in court for the hearing on the temporary protective order and consented to an agreed protective order; neither the ex-girlfriend nor Defendant called witnesses or presented evidence. Both the temporary ex parte protective order and the consent protective order expressly stated Defendant could not possess firearms. Later, Defendant was charged with possession of a firearm while subject to a temporary protective order in violation of 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the § 922(g)(8) charges on the grounds that he was not subject to a protective order after a hearing. The district court dismissed the counts related to the § 922(g)(8) charges, relying on *United States v. Spruill*, 292 F.3d 207 (5th Cir. 2002) to require a hearing with witnesses called and evidence presented. The Government appealed.

Issue: On appeal, the Government argued that Defendant received a hearing within the meaning of § 922(g)(8).

Holding: The Fifth Circuit reversed the district court's dismissal and remanded to the district court for further proceedings. The Fifth Circuit noted that the statute required that a defendant receive actual notice of a hearing and be afforded an opportunity to participate in the hearing, which was met in this case. The judge gave Defendant actual notice of the hearing, Defendant appeared in court represented by counsel, and Defendant had an opportunity to participate but chose not to present evidence. The Fifth Circuit distinguished these facts from *Spruill*, in which case no hearing date was set, the defendant never appeared before a judge and the protective order did not specify that defendant could not possess a firearm, among other distinctive factors.

Key Issue(s): Due Process (Notice and Opportunity to Participate)

***United States v. Henry*, 288 F.3d 657 (5th Cir. 2002)**

Facts/Procedural History: Defendant was subject to a protective order, after having received notice of a hearing and opportunity to participate. Law enforcement found Defendant in possession of a firearm, and thus in violation of the protective order. Defendant was indicted on one count of violating 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment on grounds that it was unconstitutional under the Second and Fifth Amendments. Adopting the magistrate judge's report and recommendation, the district court denied Defendant's motion. Defendant pled guilty. Defendant appealed his conviction.

Issue: On appeal, Defendant argued that (1) the indictment was defective because it failed to allege that he knew that it was unlawful to possess a firearm while subject to the protective order, or that he knowingly possessed the firearm while subject to the order, and (2) § 922(g)(8) violated the Second Amendment.

Holding: The Fifth Circuit affirmed the district court's judgment of conviction. First, the Fifth Circuit found that the indictment was not defective because the necessary *mens rea* did not require knowledge that an individual was violating the law, but rather knowledge of the legally relevant facts, and the knowledge requirement could be reasonably inferred by the allegations set forth in the indictment. Second, the Fifth Circuit rejected Defendant's Second Amendment challenge in view of its previous holding in *Emerson, infra*.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice); Second Amendment

***United States v. Spruill*, 292 F.3d 207 (5th Cir. 2002)**

Facts/Procedural History: Defendant had consented to a protective order by conversation with an assistant district attorney—without counsel, without appearing before a judge or having a hearing date set and after having told the assistant district attorney he could not read. Defendant was not informed that the protective order would restrict his right to possess a firearm. Defendant was later found in possession of firearms and charged by indictment with a violation of 18 U.S.C. § 922(g)(8). Defendant pled guilty. Defendant appealed his conviction.

Issue: On appeal, Defendant argued he did not receive legally sufficient notice of the protective order.

Holding: The Fifth Circuit vacated Defendant's conviction and remanded the case for further proceedings. The Fifth Circuit ruled that the protective order did not satisfy § 922(g)(8)'s requirement that an order be "issued after a hearing of which [respondent] received actual notice, and at which [respondent] had an opportunity to participate." Among other things, the Fifth Circuit found that the

protective order was served without a date or place set for a hearing, without any notice of hearing having been issued or received by Defendant, without Defendant appearing before the judge and without Defendant having an opportunity to present evidence to the judge. The facts that Defendant was illiterate and not represented by counsel, and that a judge did not explain the protective order to him, indicated he did not receive proper notice.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice and Opportunity to Participate)

United States v. Emerson, 270 F.3d 203 (5th Cir. 2001)

Facts/Procedural History: Defendant was subject to a protective order prohibiting the use, attempted use or threatened use of physical force against an intimate partner or child. Defendant was later indicted for possession of a firearm while subject to a protection order, in violation of 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment, arguing that § 922(g)(8) was unconstitutional under the Second, Fifth and Tenth Amendments, and an unconstitutional exercise of congressional power under the Commerce Clause. The district court granted the motion to dismiss, holding that § 922(g)(8) was unconstitutional on its face under the Second Amendment and as applied to Defendant under the Due Process Clause of the Fifth Amendment. The Government appealed.

Issue: On appeal, the Government argued that § 922(g)(8) did not violate the Second and Fifth Amendments and it was not unconstitutional under the Commerce Clause.

Holding: The Fifth Circuit reversed the district court's dismissal of the indictment on Second and Fifth Amendment grounds, ruling § 922(g)(8) was constitutional under all claims, and remanded the case for further proceedings. First, the Fifth Circuit ruled that § 922(g)(8) did not require only that a protective order include a specific finding of a credible threat of violence, but it could be satisfied if the order expressly prohibited the use, attempted use or threatened use of physical force. The Fifth Circuit found that Defendant had sufficient notice of the firearm prohibition under § 922(g)(8) to satisfy Fifth Amendment due process requirements because he signed a form at firearm purchase indicating that possession would be illegal under federal law so long as he was subject to a protective order. Second, the Fifth Circuit ruled that the Second Amendment protected the right for individuals to possess and bear firearms for private purposes, but § 922(g)(8) as applied to Defendant did not infringe his Second Amendment rights because sufficient information was provided through the protective order notice and hearing process to support the deprivation of rights. Third, the Fifth Circuit summarily found the district court did not err in denying Defendant's motion to dismiss the indictment on Commerce Clause grounds.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Due Process (Notice and Opportunity to Participate)

Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee)

United States v. Thomas, No. 3:20-CR-634, 2025 WL 696791, 2025 U.S. Dist. LEXIS 38176 (N.D. Ohio Mar. 4, 2025)

Facts/Procedural History: Defendant was charged in 2021 with, among other things, possession of a firearm while subject to a protection order in violation of 18 U.S.C. § 922(g)(8). The protection order mandated that Defendant “shall not abuse, harm, attempt to harm, threaten, follow, stalk, harass, force sexual relations upon or commit sexually oriented offenses against the protected persons named in this Order.” Defendant moved for judgment of acquittal on the basis that § 922(g)(8) did not apply because the protection order did not explicitly forbid physical force. The district court denied his motion and Defendant was found guilty. Defendant moved for reconsideration.

Issue: Defendant argued the Supreme Court’s recent decision in *Rahimi* was an intervening change in controlling law that would alter the district court’s conclusion that Defendant’s protection order prohibited the use, attempted use or threatened use of physical force.

Holding: The district court denied Defendant’s motion for reconsideration. *Rahimi* did not address whether language in a protection order enjoining future “abuse” was explicit enough to qualify as a protection order under § 922(g)(8)(C)(ii)—it addressed constitutionality questions under the Second Amendment.

Key Issue(s): Language of Protection Order; Second Amendment

United States v. Combs, No. 23-5121, 2024 WL 4512533, 2024 U.S. App. LEXIS 26435 (6th Cir. 2024)

Facts/Procedural History: Defendant was under a restraining order with respect to his ex-wife. The restraining order prohibited him from possessing or purchasing firearms. Defendant violated the order by purchasing a gun and contacting his ex-wife. A federal grand jury charged Defendant for possessing a firearm while subject to a protection order, in violation of 18 U.S.C. § 922(g)(8), among other charges. Defendant moved to dismiss the indictment, arguing that § 922(g)(8) was facially unconstitutional in violation of his Second Amendment rights, under *Bruen*. The district court agreed and dismissed the indictment. The Government subsequently appealed.

Issue: The Government argued that the district court misapplied *Bruen* and that § 922(g)(8) was constitutional as consistent with historical tradition.

Holding: The Sixth Circuit reversed the district court’s ruling and found § 922(g)(8) constitutional. The Sixth Circuit looked to *Rahimi*’s application of *Bruen*, which found evidence of historical tradition of surety and going-armed laws analogous to the contested regulation prohibiting possession of firearms by individuals who were found to be dangerous or who posed a clear threat of physical violence to another. Thus, the Sixth Circuit found that historical traditions, such as surety and going-armed laws, supported the disarmament of those posing a threat to others under both subsections in § 922(g)(8).

Key Issue(s): Second Amendment (*Bruen* and *Rahimi*)

***Smith v. Smith*, No. 2023-CA-1005, 2024 Ky. App. Unpub. LEXIS 149 (Ky. Ct. App. 2024)**

Facts/Procedural History: Defendant received an order from family court dispossessing him from his firearms. During Defendant’s domestic violence order hearing, Defendant did not raise a Second Amendment challenge to the family court. Defendant appealed.

Issue: On appeal, the appellate court considered whether Defendant preserved his right to appeal on Second Amendment grounds even though he did not raise constitutional objections in the lower court.

Holding: The appellate court affirmed the family court order prohibiting Defendant from possessing firearms while subject to a domestic violence order. The appellate court ruled that Defendant did not adequately notify the family court that he was challenging the restriction’s constitutionality on Second Amendment grounds, and so he failed to preserve the claim on appeal.

Key Issue(s): Second Amendment

***Lazor v. Souders*, 2024-Ohio-774, 2024 WL 912009 (Ohio Ct. App. Mar. 4, 2024)**

Facts/Procedural History: After having conversations on a dating app, Plaintiff blocked Defendant on social media following warnings from other women about Defendant’s behavior. Defendant used a fake Facebook account to continue contacting Plaintiff. Plaintiff obtained a civil stalking protection order, which imposed a firearm restriction under 18 U.S.C. § 922(g)(8). Defendant appealed.

Issue: Defendant argued that the trial court erred when it imposed a firearm restriction prohibiting him from possessing, using, carrying or obtaining any deadly weapon because (1) there was no nexus between Defendant’s conduct and the firearm restriction, and (2) Defendant did not qualify as a family or household member.

Holding: The appellate court affirmed the protection order but vacated the firearm restriction. The appellate court held that Defendant was not an “intimate partner” and did not own or use a firearm in connection with the stalking. In addition, the parties had never met in person, and there was no evidence that Defendant used or threatened to use a weapon to cause mental distress to Plaintiff. The firearm restriction therefore did not bear a sufficient nexus to the conduct the trial court was attempting to prevent.

Key Issue(s): Sufficiency of Evidence

***United States v. Thomas*, No. 3:20-cr-634, 2023 U.S. Dist. LEXIS 115433 (N.D. Ohio 2023)**

Facts/Procedural History: Defendant was convicted for making false statements during the purchase of a firearm, in violation of 18 U.S.C. § 922(a)(6), and possession of a firearm while subject to a protective order, in violation of 18 U.S.C. § 922(g)(8). Defendant filed a motion for leave to file a post verdict motion for acquittal or a new trial.

Issue: Defendant argued that the Fifth Circuit decision in *United States v. Rahimi*, which ruled § 922(g)(8) unconstitutional under the Second Amendment, warranted an acquittal or new trial. The Government opposed the motion, arguing it was untimely under Federal Rules of Criminal Procedure 29 and 33.

Holding: The district court denied Defendant’s motion as untimely, citing the jurisdictional nature of the 14-day deadline for filing post verdict motions under Federal Rules of Criminal Procedure 29 and 33. Defendant’s motion was filed well beyond this period, leading the district court to conclude it lacked jurisdiction to hear the motion.

Note: As of the date of this 2025 update, this case has received direct negative treatment (overruled by *United States v. Rahimi*, 602 U.S. 680 (2024)).

Key Issue(s): Second Amendment

***United States v. Sanchez-Cruz*, No. 2:23-cr-043, 2023 U.S. Dist. LEXIS 83466 (S.D. Ohio 2023)**

Facts/Procedural History: Defendant was indicted for being an alien in possession of firearms in violation of 18 U.S.C. §§ 922(g)(8), 924(a)(8). Defendant entered a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(A). The plea proceeding was conducted with a Spanish interpreter, and the court confirmed that Defendant was competent, understood the charges and the consequences of his plea. The plea was found to be voluntary, and the factual basis for the charge was established.

Issue: The magistrate judge considered whether Defendant’s plea agreement was valid.

Holding: The magistrate judge recommended that the guilty plea, with the decision on the plea agreement, deferred until after the presentence investigation report by the district judge.

Key Issue(s): Plea Agreement

***Chouk v. Cameron*, No. 2022-CA-1193, 2023 Ky. App. Unpub. LEXIS 121 (Ky. Ct. App. 2023)**

Facts/Procedural History: Defendant's daughter petitioned for a domestic violence order against Defendant for domestic violence and abuse. The court granted a domestic violence order, which included a provision restricting Defendant's right to possess firearms. Defendant appealed.

Issue: The appellate court considered whether Defendant's challenge against the domestic violence order on the grounds that 18 U.S.C. § 922(g)(8) violated his Second Amendment rights was ripe for review.

Holding: The appellate court ruled that Defendant's constitutional claim was not ripe for review and affirmed the domestic violence order. The appellate court noted that the domestic violence order was not based on the federal statute but rather on Kentucky state law, KRS 403.740(1)(c), which allowed a court to issue orders to prevent future acts of domestic violence. The appellate court had previously opined that the Kentucky state law was sufficiently broad to include restraining Defendant from possessing firearms.

Key Issue(s): Second Amendment; Ripeness

***United States v. Travis*, No. 21-6177, 2022 U.S. App. LEXIS 5840 (6th. Cir. 2022)**

Facts/Procedural History: During a traffic stop, a police officer observed Defendant making movements towards the glove compartment, where a loaded pistol was found. Defendant admitted he knew about a protection order prohibiting him from possessing a firearm. Defendant was convicted for being a prohibited person in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(8). Defendant appealed.

Issue: Defendant argued that the evidence was insufficient to prove beyond a reasonable doubt that he knowingly possessed the firearm and ammunition as required by the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Holding: The appellate court vacated Defendant's conviction and remanded the case for a judgment of acquittal. Under § 922(g)(8), the Government had to prove both that Defendant knowingly possessed the firearm and that he knew he belonged to the category of persons prohibited from possessing firearms due to a protection order. Actual possession required that a defendant had

immediate possession or control of the firearm. The appellate court found the evidence insufficient to prove actual possession, noting the lack of corroborative evidence such as DNA or fingerprint analysis and the absence of a jury instruction on constructive possession. The omission of the jury instruction was deemed erroneous as it left the jury without a proper legal basis to consider the alternative theory of constructive possession.

Key Issue(s): Sufficiency of Evidence

***United States v. Garland*, No. 3:20-cr-10, 2021 U.S. Dist. LEXIS 223856 (W.D. Ky. 2021)**

Facts/Procedural History: Defendant was convicted of knowingly possessing a firearm while subject to a protective order, in violation of 18 U.S.C. § 922(g)(8). During a traffic stop, Defendant admitted he had a gun in the glovebox and that he knew he could not possess a firearm due to his domestic violence order. At trial, Defendant’s mother testified that it was her gun that was in Defendant’s car and that she accidentally left her gun in the car. Defendant was convicted and filed a motion for judgment of acquittal under Rule 29.

Issue: Defendant argued that he did not have “knowing” possession of a firearm, in violation of the statute, and argued that the Government could not prove the knowing element beyond a reasonable doubt. The Government contended that the gun’s presence in Defendant’s car, coupled with his admission that he had a gun in the car, sufficed to prove Defendant’s knowing possession despite his mother’s testimony.

Holding: The district court denied Defendant’s motion. The district court held that the jury’s finding—that the knowing element was satisfied—must be preserved given the jury’s province to weigh the evidence. In addition, case law supported that the “knowing” element was satisfied when defendants were in a car with a gun. Therefore, the jury’s decision to assign greater weight or credibility to the Government’s evidence than to Defendant’s evidence did not undermine the evidentiary basis for the jury’s conviction.

Key Issue(s): Sufficiency of Evidence

***United States v. Koehler*, No. 20-5583, 2020 U.S. App. LEXIS 37321 (6th. Cir. 2020)**

Facts/Procedural History: Defendant entered a guilty plea to the charge of possession of firearms by a person prohibited by a domestic-violence order, under 18 U.S.C. § 922(g)(8) and (9), for which he was sentenced to 18 months’ imprisonment and 18 months’ supervised release, under the condition that he waive his right to appeal his conviction and sentence. Defendant appealed his conviction.

Issue: Defendant argued his waiver of appeal rights was invalid because he could not research the meaning of the waiver due to lack of access to a law library and trouble with his vision, which he claimed interfered with understanding the agreement.

Holding: The appellate court affirmed the district court's judgment. The appellate court found that Defendant's appeal waiver was valid because he knowingly and voluntarily entered into the guilty plea. A defendant who clearly "represents in open court that his guilty plea is voluntary 'may not ordinarily' repudiate his statements" thereafter. The validity of the appeal waiver meant that Defendant had waived any right to challenge his conviction or sentence on any basis.

Key Issue(s): Plea Agreement

***United States v. Shaughnessy*, No. 3:20-CR-00060, 2020 U.S. Dist. LEXIS 163342 (W.D. Ky. 2020)**

Facts/Procedural History: Defendant was indicted on three counts, including possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(8), which had stemmed from a domestic violence order issued against him. Police then arrested Defendant at a traffic stop and found weapons in his car, violating his domestic violence order. Defendant moved to dismiss the count under § 922(g)(8).

Issue: Defendant argued that his domestic violence order could not serve as a predicate offense for § 922(g)(8) because he was not given a proper opportunity to participate in the domestic violence order hearing as required by § 922(g)(8).

Holding: The district court denied Defendant's motion to dismiss. The district court found that Defendant had indeed been given the opportunity to participate, satisfying the statutory requirements. For example, the hearing was attended by Defendant, his ex-wife who was seeking the domestic violence order and her husband. Additionally, the hearing lasted 42 minutes, Defendant's ex-wife and her husband testified jointly for roughly ten minutes and were cross-examined by Defendant's attorney for well over 20 minutes, and Defendant then testified for ten minutes, plus cross-examination.

Key Issue(s): Due Process (Opportunity to Participate)

***Hopson v. Commonwealth Attorney's Office*, No. 3:12-CV-00744, 2013 WL 1411234 (W.D. Ky. Apr. 8, 2013)**

Facts/Procedural History: Plaintiff filed a *pro se* private civil complaint against 13 defendants in federal district court, asserting, among other things, that one of the defendants violated 18 U.S.C. § 922(g)(8).

Issue: Plaintiff argued that his private civil cause of action should proceed because of the alleged violations of federal criminal statutes.

Holding: The district court held that § 922(g)(8) did not provide Plaintiff with a private civil cause of action. Plaintiff failed to state a claim upon which relief may be granted and therefore had not invoked the court's jurisdiction. The same reasoning applied for Plaintiff's other claims under federal criminal statutes. Additionally, Plaintiff failed to establish diversity jurisdiction, so the district court *sua sponte* dismissed the complaint for lack of subject matter jurisdiction.

Key Issue(s): Private Civil Cause of Action

***United States v. McQueen*, No. 6:04-CR-00060, 2012 WL 6757349 (E.D. Ky. Nov. 8, 2012)**

Facts/Procedural History: A judgment was entered against Defendant for possessing a firearm while under a domestic violence protective order in violation of 18 U.S.C. § 922(g)(8), among other violations of federal criminal statutes. He was sentenced to 46 months' imprisonment and three years of supervised release. Subsequently, Defendant was found to have violated his release (twice), the second time due to possession of marijuana. The Government recommended revocation of Defendant's release and a range of imprisonment from 5 to 11 months, and a maximum term of supervision per the Sentencing Guidelines.

Issue: Defendant argued the length of imprisonment was excessive.

Holding: The district court held that (i) by statute, the district court must revoke the Defendant's release because he possessed a controlled substance, and (ii) imprisonment of five months was appropriate and sufficient with an additional supervised release term of 29 months, given Defendant had breached the district court's trust during his release.

Key Issue(s): Sentencing

***United States v. Collins*, No. 5:07-CR-00155, 2008 WL 817089 (E.D. Ky. Mar. 19, 2008)**

Facts/Procedural History: A federal grand jury returned a superseding indictment against Defendant. Defendant moved to dismiss Counts 3 and 4 of the indictment, which charged him with possession of a firearm by a person subject to a domestic violence order, in violation of 18 U.S.C. § 922(g)(8).

Issue: Defendant argued that the state court amended domestic violence order at issue failed to satisfy the statutory requirements of § 922(g)(8)(A) and failed to comport with constitutional due process requirements. Specifically, he argued that the state court failed to provide sufficient notice and an opportunity to participate in the hearing prior to entering the amended domestic violence order.

Holding: The district court agreed that even if Defendant received actual notice of the hearing at which the amended domestic violence order was entered, he was not afforded a meaningful opportunity to participate. The record reflected that the first-time Defendant was informed of it was at a hearing on the same day that the order was extended. There was no evidence that the judge was prepared to hear from either party about it or that Defendant had any opportunity to object to the entry of it. The district court also held that any ambiguity must be resolved in favor of the defendant under the rule of lenity, *Jones v. United States*, 529 U.S. 848 (2000).

Key Issue(s): Fifth Amendment; Due Process (Notice); Due Process (Opportunity to Participate)

***Mann v. Helmig*, No. CIV.A.05 153 WOB, 2007 WL 1035015 (E. Dist. Ky. Mar. 30, 2007)**

Facts/Procedural History: Plaintiff's sister obtained a domestic violence order against Plaintiff, which restrained Plaintiff from purchasing, owning or possessing firearms under 18 U.S.C. § 922(g)(8). Plaintiff then fired guns in his backyard. Police were notified and confiscated Plaintiff's firearms. Plaintiff petitioned to amend the restraining order to lift its firearm restrictions.

Issue: Plaintiff alleged violations of his federal constitutional rights, among other things, on the basis that he and his sister were not "intimate partners" within the meaning of 18 U.S.C. § 922(g).

Holding: The district court agreed with Plaintiff that he was wrongfully deprived of his property and held that only a person who had been restrained by a protective order from harassing, stalking or threatening an "intimate partner" was prohibited by 18 U.S.C. § 922(g) from possessing firearms. An "intimate partner" was defined as "one who cohabitates or has cohabited with the person," and "cohabitates" implied a sexual relationship.

Key Issue(s): Intimate Partner Requirement

***United States v. Jones*, 155 Fed. App'x 204 (6th Cir. 2005)**

Facts/Procedural History: Defendant was charged for publishing counterfeit currency and an arrest warrant was issued. In an attempt to serve the warrant, police attempted to prevent Defendant from leaving the area and arrested him about 10–15 feet from his car. The arresting officer unlocked Defendant's car and observed a handgun under the seat. Defendant was indicted for a violation

of 18 U.S.C. § 922(g)(8). Defendant moved to suppress the gun, alleging that the search for and seizure of the weapon violated his Fourth Amendment protections because there was no warrant. Defendant's motion was denied. Defendant appealed.

Issue: Defendant argued the district court's erred in denying his motion because his Fourth Amendment rights were violated.

Holding: The Sixth Circuit affirmed the district court's ruling. The Sixth Circuit held that since Defendant was a recent occupant of the car, it was permissible for the police to search his automobile. Defendant was under lawful, custodial arrest and it was not required that he was within reach of his car.

Key Issue(s): Fourth Amendment

United States v. Cline, 362 F.3d 343 (6th Cir. 2004)

Facts/Procedural History: The district court convicted Defendant of, among other crimes, violating 18 U.S.C. § 922(g)(8) after a violent attack on his wife and her friend. The § 922(g)(8) violation was based on a protective order that previously included "no contact" provisions and was issued on December 12, 2000 and scheduled to terminate December 12, 2003. In April 2001, Defendant's wife petitioned to reinstate the "no contact" provisions based upon renewed abuse. This petition was denied when Defendant's wife failed to appear at a hearing on the issue. During pretrial proceedings in the federal prosecution, Defendant moved to dismiss the § 922(g)(8) charges, arguing that because the April 2001 domestic violence petition was dismissed, any order in force against him had been removed. The Government responded by producing an affidavit from the issuing judge, which affirmed that the December 2000 order remained in effect after April 2001. The district court thereafter denied Defendant's motion to dismiss. Defendant appealed.

Issue: On appeal, among other claims, Defendant argued that the last order obtained by his wife had been marked as "dismissed" and so could not support his conviction of violating the domestic violence order. The Government countered that the "dismissed" order was merely a modification of an existing and valid order and did not revoke the prior order.

Holding: The Sixth Circuit rejected Defendant's arguments. The Sixth Circuit found, among other things, that the affidavit of a state court judge was evidence of the status of the protection order. The Sixth Circuit also noted that there was no plain error violation of Defendant's substantial rights that would overcome his failure to reserve this issue for appellate review.

Key Issue(s): Sufficiency of Evidence

***United States v. Sizemore*, 76 F. App'x 708 (6th Cir. 2003)**

Facts/Procedural History: Defendant was convicted of being felon in possession of firearms and of being felon in possession of firearms while being subject to domestic violence order, in violation of U.S.C. § 922(g)(1) and (g)(8). Defendant appealed.

Issue: Defendant argued, among other things, that there was insufficient evidence to find that he had “knowingly possessed a firearm.”

Holding: The Sixth Circuit rejected Defendant’s argument, noting that possession may be either actual or constructive. It found that there was sufficient evidence for a rational juror to find that Defendant stayed in a small bedroom in which the firearms were found and that he knowingly had the power and the intention to exercise dominion and control over the firearms. The Sixth Circuit based its finding on the testimony of a federal agent stating that, among other things, the bedroom contained Defendant’s pants next to the bed, the weapons were in reach of anyone lying on the bed, men’s clothing was found in the bedroom near a firearm, various personal documents of the defendant were found in the bedroom and both the defendant and the bed were warm despite the defendant’s assertion that he lived in an unheated trailer on the property.

Key Issue(s): Definition of Possession

***United States v. Cope*, 312 F.3d 757 (6th Cir. 2002)**

Facts/Procedural History: Among numerous other charges, Defendant was charged with violating 18 U.S.C. § 922(g)(8) for possessing a firearm while subject to a domestic violence protection order. The Government needed to prove (1) Defendant knowingly possessed a firearm, (2) at a time when he was subject to a domestic violence protection order and (3) the firearm was “in or affecting commerce.” The jury accepted the Government’s argument that Defendant had traveled with a gun from his home in Tennessee to the victim’s home in Kentucky in order to carry out the shooting. Defendant was convicted and appealed.

Issue: Defendant argued that there was no proof that the gun used in the shooting was “in or affecting commerce.”

Holding: The Sixth Circuit held that Defendant’s travel from his home in Tennessee to the victim’s home in Kentucky was sufficient to satisfy the “in-or-affecting-commerce” element.

Note: As of this 2025 update, this case has received negative treatment but not on the issue related to the count five violation of § 922(g)(8).

Key Issue(s): Commerce Clause

United States v. Calor, 172 F. Supp. 2d 900 (E.D. Ky. 2001)

Facts/Procedural History: Defendant's wife filed a domestic violence petition against him in state court. The trial court issued an ex parte order against Defendant and set a date for a hearing three days later. The local sheriff's department seized a gun from him after entry of the order, which required relinquishment of firearms pursuant to Kentucky law. On the date set for the hearing, the trial court granted a request by Defendant's attorney for an extension. Two days later, while the order was still in effect, law enforcement seized several additional guns from Defendant. Defendant was indicted in federal court for possession of firearms in violation of U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that the Kentucky court order was not issued after a hearing as required by the federal statute, because the district court held a hearing merely to consider whether to grant an extension of time without addressing the merits.

Holding: The district court rejected Defendant's argument, finding that the plain language of § 922(g)(8) did not require a hearing on the merits but only a hearing of which the Defendant had received actual notice and at which he had an opportunity to participate. The district court found that Defendant had received notice of the hearing at which the court granted his extension. Further, he had the opportunity to participate and raise any objections to the ex parte order, but he did not avail himself of that opportunity.

Key Issue(s): Due Process (Opportunity to Participate); Due Process (Notice)

United States v. Hopper, 28 F. App'x 376 (6th Cir. 2001)

Facts/Procedural History: Defendant was subject to a Kentucky state protection order obtained by his wife. Defendant filled out an application to purchase firearms from a gun shop, on which he stated that he was not subject to a protection order. Defendant thereafter purchased guns. A few days later, he purchased a rifle from the same shop. Two months later, the gun shop owner informed Defendant that agents of the Bureau of Alcohol, Tobacco and Firearms had inquired about the purchases. Defendant returned the first set of guns he had bought, but he kept the rifle. During a subsequent search of his residence, agents found four firearms, including the rifle. Defendant was indicted for violating 18 U.S.C. § 922(g)(8) and for falsifying the firearm application forms. He subsequently pled guilty and appealed to the Sixth Circuit.

Issue: Defendant argued that his conviction violated due process because he did not receive fair notice that the state protection order disqualified him from firearm possession under federal law and that the order itself did not satisfy the requirements of § 922(g)(8).

Holding: The Sixth Circuit held that his conviction did not violate due process because being subject to a domestic violence order provided him with notice that his conduct was subject to increased Government scrutiny and it would be unreasonable for someone in his position to expect to possess dangerous weapons free from extensive regulation. The Sixth Circuit also rejected Defendant's second argument, noting that though the order's language was broad, it was sufficiently explicit to include actual, attempted and threatened physical force within its meaning.

Key Issue(s): Due Process (Notice); Language of Protection Order

United States v. Jacobs, 244 F.3d 503 (6th Cir. 2001)

Facts/Procedural History: Defendant's wife obtained a protection order against him in 1996, and she subsequently moved from Kentucky to Indiana. One month later, Defendant told his wife that she should come to his parents' home in Kentucky, so he could give her money. When his wife arrived, Defendant punched her in the face, injuring her mouth and teeth. Armed with a shotgun and a knife, Defendant forced the wife into his truck and drove her into Tennessee. The next day, Defendant returned his wife to Kentucky, where she received treatment for her injuries and reported the incident to the police. Defendant was then arrested and held on bond until his bond was reduced in April 1997. After his release, the Defendant traveled from Kentucky to his wife's home in Indiana. Defendant crashed through a closed window, brandishing a gun. Defendant dragged his wife by her hair, injuring her leg. His wife eventually escaped and was discovered along the highway and taken to a hospital. The defendant pled guilty in Indiana state court to abducting his wife in Indiana and was sentenced to 15 years' imprisonment. He was then charged in a federal indictment with four counts related to the Tennessee abduction and three counts related to the Indiana abduction, including possession of a firearm while subject to a protection order in violation of 18 U.S.C. § 922(g)(8). Defendant was found guilty on all counts and was sentenced to 70 months' imprisonment on six counts, to run concurrently with any sentence imposed on any other matter, and 300 months' imprisonment for the convictions for use of a deadly weapon during a crime of violence, to run consecutively with any other sentence. Defendant appealed.

Issue: Among other things, Defendant argued that the federal charges violated his double jeopardy rights given he had pled guilty to state court charge arising from the same incident.

Holding: The Sixth Circuit affirmed the conviction and sentence. Among other things, the Sixth Circuit found that the federal charges did not violate double jeopardy rights because dual prosecutions did not violate double jeopardy.

Key Issue(s): Double Jeopardy

***United States v. Napier*, 233 F.3d 394 (6th Cir. 2000)**

Facts/Procedural History: Defendant was subject to two domestic violence protection orders, one entered in 1996 and 1998, which restrained Defendant from committing acts of domestic violence against his wife and children and contained notice relating to 18 U.S.C. § 922(g)(8). Defendant received notice and an opportunity to participate in both hearings prior to entry of the orders. On January 30, 1999, Defendant's wife called the police to report an assault by her husband. Responding police officers stopped Defendant's car, and they subsequently found a pistol and ammunition on the floorboard of the car. Defendant was arrested and later indicted for two counts of violating § 922(g)(8). Defendant contended that domestic violence orders did not fulfill the substantive requirements of § 922(g)(8). The district court denied all motions, and Defendant entered a conditional guilty plea. He admitted that he had knowingly possessed the firearm and ammunition while subject to two protection orders. Defendant appealed.

Issue: Defendant challenged § 922(g)(8) on due process grounds for failing to provide notice of its prohibitions.

Holding: The Sixth Circuit rejected Defendant's argument because Defendant was provided with adequate notice of the protection order hearings and appeared at both hearings. The Sixth Circuit found that Defendant's status as a person subject to a domestic violence protection order was sufficient to preclude him from claiming that he was not given fair warning of § 922(g)(8).

Key Issue(s): Due Process (Notice); Second Amendment

***United States v. Trabue*, No. 99-6406, 2000 WL 1828671 (6th Cir. 2000)**

Facts/Procedural History: Defendant stuck a gun at his girlfriend's stomach and pulled the trigger. Defendant then poured lighter fluid on her clothing and flicked a cigarette at her, telling her that killing her was not a threat but a promise. Defendant's girlfriend obtained a protection order against him. Less than two months after Defendant's former girlfriend obtained the protection order, Defendant struck her and her son in the head with a gun and held two of his children hostage. A SWAT team was called in, and Defendant was subsequently arrested. Defendant was indicted on one count of possessing a firearm while subject to a protection order, in violation of 18 U.S.C. § 922(g)(8), and one count of possessing a firearm after having previously been convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant entered a guilty plea for both counts, and the district court sentenced him to 57 months' imprisonment and two years of supervised release. He appealed.

Issue: Defendant argued the length of his sentence was excessive.

Holding: The Sixth Circuit affirmed the district court’s sentence, noting that the Sixth Circuit gave due deference to a district court’s application of the sentencing guidelines to the facts of a case.

Key Issue(s): Sentencing

United States v. Baker, 197 F.3d 211 (6th Cir. 1999)

Facts/Procedural History: Defendant had a history of abusive relationships with women. He was subject to three restraining orders, one of which indicated that “it is a federal violation to purchase, receive or possess a firearm while subject to this order.” While subject to the order, Defendant purchased an assault rifle and thereafter shot someone accidentally. Defendant was convicted for unlawful possession of firearm while subject to domestic violence protection order, in violation of 18 U.S.C. § 922(g)(8). Defendant claimed that § 922(g)(8): (1) violated the procedural and equal protection aspects of the Due Process Clause of the Fifth Amendment; (2) violated the Cruel and Unusual Punishment Clause of the Eighth Amendment; and (3) reflected an impermissible exercise of Congress’ power to regulate commerce under the Commerce Clause found in Article I. The district court denied his motion. He appealed.

Issue: Defendant argued that § 922(g)(8) violated the Fifth Amendment, the Cruel and Unusual Punishment Clause of the Eighth Amendment and the Commerce Clause.

Holding: The Sixth Circuit rejected Defendant’s arguments and affirmed the conviction. The Sixth Circuit held that § 922(g)(8) was rationally related to the legitimate aim of preventing domestic violence and therefore did not infringe on Defendant’s due process or equal protection rights.

Key Issue(s): Due Process (Notice); Commerce Clause; Eighth Amendment

United States v. Visnich, 65 F. Supp. 2d 669 (N.D. Ohio 1999)

Facts/Procedural History: Defendant was subject to a restraining order prohibiting him from abusing his wife and daughters and from possessing, using, carrying or obtaining deadly weapons. Defendant was arrested for breaking into the home of a friend’s ex-wife to retrieve the friend’s possessions. A post arrest search of his vehicle produced 16 firearms and ammunition. Defendant was indicted for violating 18 U.S.C. § 922(g)(8). Defendant filed a motion to dismiss the indictment.

Issue: Defendant argued that the statute was an unconstitutional exercise of Congress’s Commerce Clause powers and violated his Second, Fifth and Tenth Amendment rights.

Holding: The district court denied the motion to dismiss on all grounds concluding that: (1) there was no Commerce Clause violation given guns were an instrumentality transported in interstate commerce; (2) the Second Amendment allowed for certain restrictions on gun ownership; (3) the

Defendant's due process rights were not violated because he knew his conduct subjected him to some form of criminal liability; and (4) the statute did not violate the Tenth Amendment given it did not commandeer state power or override state authority.

Key Issue(s): Due Process (Notice); Commerce Clause; Second Amendment; Tenth Amendment

Woolum v. Woolum, 723 N.E.2d 1135 (Ohio Ct. App. 1999)

Facts/Procedural History: Plaintiff's protection order against her husband Defendant expired. Plaintiff filed a renewal petition. Among other things, she sought and received a provision ordering Defendant to surrender his firearms. Defendant appealed.

Issue: Defendant argued that the firearm prohibition was unlawful because it exceeded the scope of the original order, which did not mention firearms.

Holding: The appellate court upheld the firearms provision. It found that Defendant was subject to a protection order meeting the requirements of 18 U.S.C. § 922(g)(8) and that the trial court was "within its discretion to incorporate the remedy provided by congress in the Gun Control Act of 1968." The appellate court noted that judges had broad discretion to order proper relief by the domestic violence statute such that a judge could require Defendant to surrender all firearms in his possession, even if such requirement was not imposed in the original protection order.

Key Issue(s): State Court Authority to Prohibit Firearms

Conkle v. Wolfe, 722 N.E.2d 586 (Ohio Ct. App. 1998)

Facts/Procedural History: An Ohio court entered a protection order against Defendant to enjoin him from contacting or harassing Plaintiff, which included a firearm prohibition. Defendant appealed.

Issue: Defendant argued, among other things, that the court erred by applying 18 U.S.C. § 922(g)(8) without specifically finding him to be a credible threat to the safety of an intimate partner or child.

Holding: The appellate court rejected Defendant's argument, finding that although the court did not make that finding, it was not required to do so because the order was not issued pursuant to the federal law. Rather, the appellate court had invoked its authority under Ohio law to prohibit firearms as part of the protection order. The court determined that Ohio's power to restrict firearms in this manner was not preempted by the federal firearms laws.

Key Issue(s): Federal Preemption; State Court Authority to Prohibit Firearms

Seventh Circuit (Illinois, Indiana, Wisconsin)

B.B. v. K.B., 175 N.E.3d 352 (Ind. Ct. App. 2021)

Facts/Procedural History: Defendant had a series of incidents involving his ex-wife, Plaintiff, including physical altercations and unauthorized entries into Plaintiff's home. A protective order was issued against Defendant. Defendant appealed.

Issue: Defendant argued that (1) the evidence against him was insufficient to support the issuance of the protective order based on domestic or family violence, and (2) the trial court "err[or]ed in concluding [he] is Brady Disqualified" and disqualified from possessing firearms under 18 U.S.C. § 922(g)(8).

Holding: The appellate court found that the protective order was warranted based on two independent grounds—domestic violence and stalking. The appellate court found sufficient evidence of domestic violence and stalking to justify the protective order because Plaintiff testified to multiple instances of Defendant placing her in fear of physical harm, including an incident where he forcibly dragged her through their house and another where he entered her home and handled her firearms in a threatening manner. The appellate court also concluded that Defendant's actions, including the incidents of physical violence and stalking, demonstrated a credible threat to Plaintiff's physical safety, justifying the Brady disqualification.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Sufficiency of Evidence

United States v. Taylor, No. 16-CR-143-PP, 2017 WL 3054833 (E.D. Wis. July 19, 2017)

Facts/Procedural History: After a traffic stop for a cracked windshield, officers discovered that both the driver and passenger (Defendant) had active arrest warrants and both were arrested. Because the vehicle was parked illegally in a bus stop, one of the officers asked for and received consent to move it. When the officer got into the vehicle, she noticed a handgun in the driver side door. Officers then searched the vehicle and found another gun under the passenger seat. A grand jury then returned a superseding indictment for two counts of knowingly possessing a firearm while subject to a domestic violence injunction in violation of 18 U.S.C. §§ 922(g)(8) and 924(a)(2). Defendant moved to dismiss the superseding indictment.

Issue: Defendant argued, among other things, that § 922(g)(8) unconstitutionally violated his Second Amendment and Fifth Amendment due process rights. Specifically, he challenged (i) the court’s ability to issue a qualifying restraining order without a finding that the subject of the order had engaged in domestic violence, (ii) the process under § 922(g)(8) as insufficient to safeguard the constitutional right to bear arms, (iii) whether there was any historical precedent for extending the ban of felons’ possession of firearms to those subject to a domestic abuse order, (iv) whether the prohibition could survive intermediate or strict scrutiny and (v) whether the Seventh Circuit’s arguments for upholding § 922(g)(9) could be applied to § 922(g)(8).

Holding: The district court denied Defendant’s motion to dismiss. The district court found that most of Defendant’s challenges were addressed and rejected in *United States v. Harris*, Dkt. No. 15-CR-193-pp, 2016 WL 660888 (E.D. Wis. Feb. 2, 2016), in which the defendant argued that Wisconsin law defined “domestic abuse” without requiring any physical contact with the subject of the domestic abuse injunction and that the burden of proof associated with issuing a domestic injunction was too minimal.

Key Issue(s): Fourth Amendment; Second Amendment; Due Process

***United States v. Gainer*, No. 3:13-cr-91 JD, 2014 WL 1571328 (N.D. Ind. Apr. 15, 2014)**

Facts/Procedural History: Defendant was charged with lying on a ATF form, in violation of 18 U.S.C. § 922(g)(8). The ATF form contained a provision that defined a restraining order as one that was issued after a hearing in which the individual received actual notice and had an opportunity to participate. Defendant challenged the charge.

Issue: Defendant argued he was not subject to a protective order in which he had an opportunity to participate. He argued that no testimony was taken as to the validity of the protective order, no evidence was produced and no future hearing date was set despite Defendant’s statement that he wanted to challenge the order, which he argued shows that he was not actually provided with an opportunity to participate at the hearing.

Holding: The district court rejected Defendant’s argument. The district court found that Defendant was reading more into the language of “opportunity to participate” than the plain language of the provision required. The language did not require the opportunity to formally present evidence or witnesses. Rather, the district court found that it means merely what it says—the opportunity to participate in the hearing. A jury could find based on the record that Defendant had exactly that, as he in fact participated in the hearing and objected to the protective order.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

***United States v. Clements*, No. 06-CR-9, 2007 WL 2288064 (E.D. Wis. Aug. 6, 2007)**

Facts/Procedural History: Defendant was convicted of possessing a firearm as a felon under a domestic abuse injunction, in violation of 18 U.S.C. § 922(g)(8). Defendant had a significant record, including as to juvenile drug distribution, adult drug distribution, adult drug possession and bail jumping. Defendant was to be sentenced for the conviction.

Issue: At sentencing, the Government argued enhancements to Defendant's sentence due to prior convictions and Defendant's commission of perjury at his § 922(g)(8) trial and requested a sentence of 54 months. The district considered whether to apply an enhancement of Defendant's sentence based on his prior conviction of a controlled substance offense and his alleged perjury during the § 922(g)(8) trial.

Holding: The district court found that a sentence of 48 months' imprisonment was determined to be sufficient but not greater than necessary. The district court evaluated the 18 U.S.C. § 3553(a) factors, including nature and circumstances of the offense and history of the defendant, and held that although Defendant's record was not slight, the prior charges were old and the record did not suggest that he would likely engage in firearm violence.

Key Issue(s): Sentencing

***Garmene v. LeMasters*, 743 N.E.2d 782 (Ind. App. 2001)**

Facts/Procedural History: An Indiana state court issued a permanent protection order against Petitioner, including a firearm prohibition after Respondent alleged that Petitioner had abused or threatened to abuse Respondent. Petitioner appealed.

Issue: Petitioner argued that "he did not receive sufficient notice that the court would make certain findings under the *Violence Against Women Act of 1994* [under which] a court may prohibit the possession of certain firearms when the court finds the respondent is a 'credible threat to the safety of the petitioner' and the respondent is an 'intimate partner' within the meaning of VAWA" (citing 18 U.S.C. § 922(g)(8)).

Holding: The appellate court rejected Petitioner's argument. The appellate court held that the protection order statute itself, regardless of federal law, authorized the firearms prohibition and that there was no requirement that the petition advise the respondent of all possible consequences.

Key Issue(s): Due Process (Notice)

United States v. Wilson, 159 F.3d 280 (7th Cir. 1998)

Facts/Procedural History: Defendant was arrested for an outstanding warrant while subject to a protection order. He was found to be in possession of a shotgun, rifle and handgun. Defendant was convicted at trial for violating 18 U.S.C. § 922(g)(8) and was sentenced to 41 months' imprisonment and three years of probation after release. Defendant appealed.

Issue: Defendant challenged the constitutionality of § 922(g)(8) as a violation of Congress' power under the Commerce Clause, the Tenth Amendment and Fifth Amendment.

Holding: The Seventh Circuit affirmed the conviction. The Seventh Circuit held that: (1) § 922(g)(8) was a valid exercise of Congress's power under the Commerce Clause; (2) the statute did not violate Tenth Amendment because Congress acted within its Commerce Clause power when it enacted the statute so it did not interfere with state power; and (3) the statute violate did not due process because lack of knowledge of the existence of statute prohibiting a person from possessing a gun in interstate commerce while subject to a protective order did not mean that he was unable to form requisite mens rea to violate the statute and therefore did not prevent his conviction under the statute.

Key Issue(s): Due Process (Notice); Commerce Clause; Tenth Amendment

Eighth Circuit (Arkansas, Iowa, Missouri, Minnesota, Nebraska, North Dakota, South Dakota)

***United States v. Reuter*, No. 4:21 CR 425 RWS/DDN, 2023 U.S. Dist. LEXIS 101852 (E.D. Mo. Apr. 24, 2023)**

Facts/Procedural History: In 2017, Defendant's ex-wife petitioned a Missouri state court for an ex parte order of protection against Defendant. Defendant was served with an ex parte order days later. After a hearing was held, the state court issued a full order of protection against Defendant. The order was effective for a period of two years, but there was no record of service of the full order upon Defendant. Four days before the protective order was scheduled to expire, Defendant went to the personal residences of three judges and left letters requesting injunctive relief and monetary damages from them. Police obtained an arrest warrant for Defendant and discovered a firearm in Defendant's possession. Defendant was indicted for knowingly possessing firearms while subject to a protective order restraining him from harassing, stalking or threatening an intimate partner, in violation of 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment on Second Amendment grounds as well as filed motions for the disclosure of the federal grand jury record, the disclosure of evidentiary material, and the suppression of the firearm and statements made by him during his arrest.

Issue: Defendant argued, among other things, that § 922(g)(8) was facially unconstitutional and unconstitutional as applied to him under *Bruen*. He argued that the statute was facially unconstitutional because it operates as a disarmament law addressing a persistent social problem and is not supported by historical tradition, and that the statute was unconstitutional as applied to him because there were no facts to show he had a history of violence and his firearm was discovered during a warrantless search.

Holding: The district court denied Defendant's motion to dismiss. As to Defendant's facial challenge, the district court concluded that the Eighth Circuit's precedent in *United States v. Bena*, 664 F.3d 1180 (8th Cir. 2011), which upheld the constitutionality of Section 922(g)(8), remained controlling law because the historical analysis done by the Eighth Circuit was "similar enough" to the standard set out in *Bruen*. As to Defendant's applied challenge, the district court found that it lacked sufficient evidence to determine whether the Defendant was more dangerous than a typical law-abiding citizen and that factual questions remained concerning Defendant's conduct while under the order of protection and whether Defendant had notice of the final order of protection. The district court

therefore denied Defendant's as-applied challenge without prejudice, subject to reconsideration after trial. The district court further denied Defendant's other motions for disclosure and suppression of evidence.

Key Issue(s): Historical Analysis (*Bruen*); Due Process (Notice)

***United States v. Robinson*, No. 4:22 CR 165 RLW (JMB), 2023 U.S. Dist. LEXIS 75188 (E.D. Mo. Mar. 28, 2023)**

Facts/Procedural History: Defendant was indicted for knowingly possessing a firearm while subject to an order of protection in violation of 18 U.S.C. § 922(g)(8) and moved to dismiss the indictment on Second Amendment grounds.

Issue: Defendant argued that the statute was facially unconstitutional and unconstitutional as applied to him under the Second Amendment. Defendant argued that under *United States v. Bena*, 664 F.3d 1180 (8th Cir. 2011), all firearm regulations must pass a strict test: if the Second Amendment's plain text covers an individual's conduct, that conduct is presumptively protected by the Constitution, and the Government can overcome that presumption only by demonstrating that the challenged law is consistent with the Nation's historical tradition of firearm regulation.

Holding: The district court denied Defendant's motion to dismiss. The district court conducted a thorough analysis of the effect of *Bruen* on the Eighth Circuit's *Bena* decision and found that *Bena* remained controlling law. The district court held that under *Bena*'s analysis, the statute's restrictions on firearm possession did not implicate conduct protected by the Second Amendment because the statute targeted individuals deemed a credible threat to intimate partners, a category historically excluded from Second Amendment protections. The district court also denied Defendant's as-applied challenge without prejudice, noting that factual issues concerning the legitimacy of the order of protection and whether Defendant received proper notice would need to be determined at trial.

Key Issue(s): Second Amendment

***United States v. Marin*, 31 F.4th 1049 (8th. Cir. 2022)**

Facts/Procedural History: In October 2016, Defendant pled guilty to domestic abuse assault in violation of Iowa Code §§ 708.2A(1) and 708.2A(2)(c), and a no-contact order was issued. In December 2018, police found a shotgun, ammunition, marijuana and a smoking pipe in Defendant's possession, and he was charged with, among other things, illegal firearm possession under 18 U.S.C. § 922(g)(8). Defendant was convicted on all counts and sentenced to 66 months in prison.

Issue: On appeal, Defendant challenged his conviction under 18 U.S.C. § 922(g)(8) on the ground that there was insufficient evidence to show that he knew he was prohibited from owning a firearm at the time of his arrest. Defendant also raised challenges on the grounds of prosecutorial misconduct and improper sentence enhancement.

Holding: The Eighth Circuit affirmed the conviction, holding that the no-contact order and the circumstances of his previous assault conviction was sufficient evidence to establish that Defendant possessed a firearm with knowledge that he was subject to a no-contact order involving an intimate partner in violation of 18 U.S.C. § 922(g)(8). The Eighth Circuit further held that any alleged misconduct by the prosecutor did not prejudice Defendant’s right to a fair trial, and any error in sentencing was harmless.

Key Issue(s): Sufficiency of Evidence

United States v. Sholley-Gonzalez, 996 F.3d 887 (8th Cir. 2021)

Facts/Procedural History: An Iowa state court issued a protection order against Defendant in 2017, restraining him from abusing or contacting a protected person, who qualified as an “intimate partner” under federal law. However, the protection order did not expressly state the “intimate partner” classification on its face. Defendant later attempted to purchase a firearm and falsely stated on the federal transaction form that he was not subject to a protection order protecting an intimate partner. Law enforcement discovered ammunition in Defendant’s home and indicted him under 18 U.S.C. § 922(g)(8) for possessing ammunition while subject to a qualifying protective order and under § 922(a)(6) for knowingly making a false statement. The district court denied Defendant’s motion to dismiss for failure to state an offense and denied his motion for acquittal or new trial based on *Rehaif v. United States*, 588 U.S. 225 (2019) knowledge-of-status grounds. The district court further declined to apply the sporting-use sentencing reduction under U.S.S.G. § 2K2.1(b)(2), concluding it was unclear whether all ammunition and firearms Defendant purchased—or intended to purchase—was done solely for lawful sporting purposes. Defendant appealed.

Issue: Defendant argued that the indictment was insufficient because the protection order did not expressly designate the protected person as an “intimate partner,” that *Rehaif* required proof that he knew his status prohibited firearm and ammunition possession and that the district court erred in denying the sporting-use reduction.

Holding: The Eighth Circuit affirmed the district court’s determinations on the indictment and knowledge requirements, holding that § 922(g)(8) does not require a protective order to explicitly state “intimate partner” if the relationship qualifies in fact and that the knowledge-of-status error was harmless because Defendant stipulated to facts showing he knew the facts making him part of the restricted category. The Eighth Circuit found plain error in the district court’s refusal to apply the sporting-use reduction because the district court analyzed the Defendant’s intentions with

attempted firearm purchases and did not limit its analysis to only the firearms actually purchased. The case was remanded for resentencing so the district court could properly evaluate the applicability of the sporting-use reduction.

Key Issue(s): Knowledge Requirement; Intimate Partner Requirement

United States v. Bena, 664 F.3d 1180 (8th Cir. 2011)

Facts/Procedural History: Defendant was charged in Iowa state court with assault against his wife. Defendant was not represented by counsel in state court, and a “no-contact order” was issued against him. Defendant was subsequently charged with possession of multiple firearms while subject to an order of protection in violation of 18 U.S.C. § 922(g)(8) in the U.S. district court for the Northern District of Iowa. Defendant moved to dismiss the indictment, and the district court denied the motion. Defendant then pled guilty to the unlawful firearm possession charge but reserved his right to appeal.

Issue: On appeal, Defendant argued that § 922(g)(8) was unconstitutional on its face under the Second Amendment and unconstitutional as applied to him under the Fifth and Sixth Amendments because he did not have the assistance of counsel or a meaningful opportunity to participate in the underlying state action where the “no-contact order” was issued.

Holding: The Eighth Circuit held that 18 U.S.C. § 922(g)(8) did not violate the Second Amendment because the statute was consistent with a common-law tradition that the right to bear arms was limited to peaceable or virtuous citizens and the prohibition on possession of a firearm did not apply in perpetuity. The Eighth Circuit further rejected Defendant’s Fifth and Sixth Amendment challenges as impermissible collateral attacks on the predicate “no-contact order.”

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Fifth Amendment; Sixth Amendment; Due Process

United States v. Miller, 646 F.3d 1128 (8th Cir. 2011)

Facts/Procedural History: A year-long protective order was entered against Defendant in Iowa state court that restrained Defendant from committing further acts or threats of abuse against the mother of his child. The order contained a warning in bold typeface that federal law provides penalties for possessing a firearm under 18 U.S.C. § 922(g)(8) and indicated that the Defendant and the protected party met the definition of “intimate partners.” Later that same year, Defendant was arrested for driving under the influence of alcohol and threatening a police officer. While arresting Defendant, an uncased shotgun and 17 rounds of ammunition were found in his vehicle. Defendant was charged with possessing a firearm while being subject to a predicate protective order. Defendant moved to dismiss the indictment on the ground that he did not knowingly possess a firearm because the state

court judge who issued the protective order had allegedly told him that the order would not affect his rights to possess or acquire a firearm or ammunition under federal law. The district court denied the motion, and Defendant later pled guilty to the charge. The district court sentenced Defendant to 69 months imprisonment, which was beyond the established sentencing guidelines because of Defendant's threatening conduct, criminal history and dangerousness. Defendant appealed.

Issue: Defendant argued that his conviction violated his Fifth Amendment right to due process because he did not have actual or constructive knowledge that he was subject to a restraining order that prohibited him from possessing a firearm. Defendant also argued his sentencing was unreasonable.

Holding: The Eighth Circuit affirmed Defendant's conviction and sentencing. The Eighth Circuit held that Defendant's conviction under 18 U.S.C. § 922(g)(8) did not violate his Fifth Amendment right because the text of the protective order clearly warned that federal law restricts the possession of firearms by individuals subject to protective orders and the order established that Defendant and the protected party were intimate partners under federal law. The Eighth Circuit also reasoned that the fact that Defendant was subject to an order that restrained him from "threatening, assaulting, stalking, molesting, attacking, harassing or otherwise abusing" another person was sufficient to give Defendant reason to be on notice that his conduct was subject to increased scrutiny. The Eighth Circuit also upheld Defendant's sentence as reasonable based on the aggravated nature of his offense, the danger he posed to the community and his criminal history.

Key Issue(s): Due Process (Notice); Sentencing; Fifth Amendment; Language of Protection Order

United States v. Stanley, 270 Fed. Appx. 454 (8th Cir. 2008)

Facts/Procedural History: Defendant was found in possession of five firearms while subject to an order of protection in violation of 18 U.S.C. § 922(g)(8). Defendant pled guilty and was sentenced to 24 months in prison and three years of supervised release. Defendant attempted to withdraw his plea, but the district court denied his request. Defendant appealed.

Issue: On appeal, the Eighth Circuit directed the parties to file briefs addressing whether the district court established an adequate factual basis for the guilty plea, including whether Defendant received actual notice of the state court hearing that resulted in the order of protection being issued. Defendant argued that he was unaware of the protection order because he did not receive a copy of the earlier temporary ex parte order, which included the date for the formal hearing. He claimed that the ex parte order may have been served at his mother's house while he was in jail.

Holding: The Eighth Circuit reversed the conviction and remanded the case for further proceedings. The Eighth Circuit reasoned that they could not conclude, based on the record presented, that the district court had an adequate factual basis to find that Defendant received actual notice of the order

of protection hearing and an opportunity to participate in it. Because the evidence presented at Defendant's change-of-plea hearing was insufficient for the district court to reasonably determine that Defendant likely committed the offense, the Eighth Circuit determined that the district court committed clear error by accepting the guilty plea.

Key Issue(s): Due Process (Notice)

***Weissenburger v. Iowa Dist. Court for Warren County*, 740 N.W.2d 431 (Iowa 2007)**

Facts/Procedural History: An Iowa district court issued a criminal no-contact order against Defendant regarding his ex-wife. The order included a provision that explicitly banned Defendant from possessing firearms. Months later, Defendant filed an application to have the no-contact order amended so he could use firearms for hunting. The Iowa district court ruled that the no-contact order should remain in effect but that the order should be amended to allow Defendant to possess firearms for hunting. The Iowa district court issued an amended no-contact order in which the court removed portions indicating that the protected party was an "intimate partner" and crossed out the prohibition stating Defendant "shall not possess firearms while this order is in effect." Defendant's ex-wife filed a petition for writ of certiorari with the Supreme Court of Iowa arguing that the Iowa district court's amended order was illegal under federal law. The Supreme Court of Iowa granted the petition.

Issue: Defendant's ex-wife argued, among other things, that the Iowa district court exceeded its authority in modifying the no-contact order to allow Defendant to possess firearms because it was illegal under federal law.

Holding: The Supreme Court of Iowa sustained the writ of certiorari and annulled the district court order allowing Defendant to possess firearms. The Supreme Court of Iowa ruled that amending the order to effectively allow firearm possession by a person subject to an intimate partner no-contact protective order was illegal under 18 U.S.C. § 922(g)(8). Further, the Supreme Court of Iowa found that state courts must apply relevant federal law because of the U.S. Constitution's Supremacy Clause.

Key Issue(s): Supremacy Clause

***United States v. Olvey*, 437 F.3d 804 (8th Cir. 2006)**

Facts/Procedural History: Defendant was subjected to a protection order in Nebraska. Under the Nebraska Protection from Domestic Abuse Act, a hearing to appeal an ex parte protection order must be requested within five days of the order. Although Defendant tried to make such a request, the paperwork was not filed on time. He was subsequently arrested for possession

of a shotgun found at his residence in violation of 18 U.S.C. § 922(g)(8). The district court denied Defendant's motion to suppress evidence obtained from the search of his residence, and Defendant appealed the decision.

Issue: Among other things, Defendant argued that the evidence seized from his residence should be suppressed because the warrant issued for the search was not based on sufficient probable cause. Specifically, Defendant claimed that the warrant application did not adequately demonstrate that he was a prohibited person under § 922(g)(8). Defendant argued that the firearm prohibition under § 922(g)(8) should not apply because he was not given an opportunity to participate in challenging the protection order because of the stringent Nebraska five-day rule, which he asserted violated § 922(g)(8)'s due process requirements.

Holding: The Eighth Circuit affirmed the district court's order. The Eighth Circuit held that the protection order satisfied the requirements of § 922(g)(8) because it restrained Defendant from threatening, assaulting, molesting, attacking or otherwise disturbing the peace of his wife and was issued after a hearing of which Defendant received actual notice and at which Defendant had an opportunity to participate. The Eighth Circuit also rejected Defendant's argument that he was unable to litigate the merits of the protection order without having requested a hearing within five days because the Nebraska state court retained inherent authority to address the full merits of the order. The Eighth Circuit further observed that Defendant had requested and actually received a hearing and modification of the protection order and thus had the opportunity to address the merits of the protection order.

Key Issue(s): Due Process (Opportunity to Participate)

***United States v. McCall*, No. 05-CR-4130, 2006 U.S. Dist. LEXIS 25018 (N.D. Iowa 2006)**

Facts/Procedural History: Defendant was charged with possession of ammunition after having been previously convicted of a misdemeanor in violation of 18 U.S.C. § 922(g)(9) and was charged with a second count of possession of the same ammunition while being subject to a restraining order in violation of 18 U.S.C. § 922(g)(8). Defendant filed a motion to dismiss the second charge under § 922(g)(8) on the ground that it is multiplicitous with the first charge. The motion was referred to a magistrate judge, who recommended that the motion be granted but the Government be forced to choose between the charges. The Government filed an objection to the magistrate judge's report and recommendation.

Issue: The Government argued that, under *United States v. Richardson*, 439 F.3d 421, 422 (8th Cir.2006), multiple violations of § 922(g) can be brought against a single defendant and are only required to be merged into a single count for sentencing purposes.

Holding: The district court accepted the magistrate’s report and recommendation requiring the Government to elect between the two charges but rejected a portion of the report, which permitted the Government to file a superseding indictment containing a single count with both disqualifying statuses. The district court reasoned that permitting the presentation of evidence on multiple disqualifying statuses would unfairly prejudice the Defendant and increase the risk of a false impression.

Key Issue(s): Multiplicitous Charges

United States v. Terry, 400 F.3d 575 (8th Cir. 2005)

Facts/Procedural History: Defendant was charged with possessing a firearm in violation of 18 U.S.C. § 922(g)(8). A tribal officer responded to a domestic violence complaint at Defendant’s wife’s home, which was located on a reservation. Upon arriving at the residence, the officer asked Defendant to exit his truck; he then handcuffed him and placed him in custody. The officer searched the truck after observing ammunition in plain sight and found a rifle and pack of beer behind Defendant’s seat. Defendant moved to suppress the firearm and ammunition seized from his vehicle and statements that he made after the seizure. The district court denied his motion, and Defendant appealed.

Issue: Defendant argued that police violated his Fourth Amendment rights because the officer who arrested him lacked reasonable cause to search or interrogate him. Defendant claimed that the officer had no reason to suspect that his possession of ammunition was criminal, which was the reason for the search and interrogation, because the officer did not know of the protection order against Defendant at the time he noticed the ammunition.

Holding: The Eighth Circuit affirmed the district court’s order denying the motion to suppress. The Eighth Circuit first observed that the district court expressly found that the officer knew of the protection order against Defendant at the time he saw the ammunition in plain view in Defendant’s truck. However, even if the officer did not have personal knowledge of the protection order, the Eighth Circuit found that a different officer’s knowledge of the protection order could be imputed to the officer who saw the ammunition based on a “collective knowledge theory.”

Key Issue(s): Fourth Amendment

United States v. Lippman, 369 F.3d 1039 (8th Cir. 2004)

Facts/Procedural History: Defendant was convicted of possessing firearms in violation of 18 U.S.C. § 922(g)(8) after U.S. customs agents found weapons in his possession at the U.S.-Canada border. At the time, Defendant was subject to a California protection order. Upon questioning, he admitted that he was aware of the protection order but that he did not think that it prohibited him from possessing

firearms. Defendant claimed that when the protection order was issued, the California state court judge did not inform him of the federal firearms law. However, the protection order contained a notice of § 922(g)(8)'s applicability. Defendant appealed the conviction.

Issue: On appeal, Defendant argued that his conviction should be overturned because the district court failed to give two jury instructions he proposed and because § 922(g)(8) was unconstitutional under the Second Amendment. Defendant contended that the jury should have been instructed that (1) the “hearing” required under § 922(g)(8) is “a proceeding in which witnesses testify and evidence is received,” and (2) the Government had to prove that Defendant knew both that he possessed a firearm and that such possession was prohibited by the protection order.

Holding: The Eighth Circuit affirmed the conviction. The Eighth Circuit held that the district court did not err by declining to adopt the Defendant’s jury instructions because (1) § 922(g)(8) did not require the submission of evidence or witness testimony at the hearing on the applicable order of protection and (2) § 922(g)(8) did not require knowledge of the law nor the intent to violate it. The Eighth Circuit also rejected Defendant’s Second Amendment challenge based on a long line of cases holding that the Second Amendment protected the right to bear arms only when it was reasonably related to the maintenance of a well-regulated militia. Because Defendant had not shown that his firearm possession was reasonably related to a well-regulated militia, the Eighth Circuit found that his Second Amendment argument could not succeed. Finally, the Eighth Circuit reasoned that even if there were a freestanding individual right to bear arms under the Second Amendment, § 922(g)(8) is sufficiently narrowly tailored and based upon a sufficiently compelling Government interest to be constitutional.

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate); Second Amendment

***United States v. Medicine Eagle*, 266 F. Supp. 2d 1039 (D.S.D. 2003)**

Facts/Procedural History: Defendant was charged by indictment with four firearm offenses in violation of 18 U.S.C. §§ 922(g)(8), 922(g)(9) and 924(a)(2) based upon his possession of firearms while subject to a protection order issued by a South Dakota court and after being convicted of a misdemeanor crime of violence. Defendant moved to dismiss the indictments.

Issue: Defendant argued that the state protection order did not satisfy the requirements of § 922(g)(8) because the state court did not make the necessary findings and conclusions that Defendant and the petitioner were “family or household members,” that domestic violence had occurred and that he had actual notice of the hearing and an opportunity to participate.

Holding: The district court denied Defendant’s motion to dismiss. The district court found that the state protection order met the notice requirements of § 922(g)(8) because it plainly stated that Defendant was present at the hearing, that he waived further hearings and that he stipulated to the entry of the order and to its terms and conditions. The district court further found that the remaining elements of § 922(g)(8) were satisfied by the state court’s directives in the order that “[t]he Respondent shall be restrained from committing any acts resulting in physical harm . . . against family or household members.”

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice); Language of Protection Order

Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands)

United States v. Van Dyke, No. 4:23-cr-00193-BLW, 2024 U.S. Dist. LEXIS 65037 (D. Idaho Apr. 8, 2024)

Facts/Procedural History: Defendant was charged with violating 18 U.S.C. § 922(g)(8) for possessing a firearm while subject to a domestic violence restraining order. The restraining order reportedly prohibited Defendant from using, threatening to use or attempting to use physical force against an intimate partner, but it did not contain a finding that Defendant posed a credible threat to anyone's physical safety. Defendant filed a motion to dismiss the indictment.

Issue: Defendant argued that § 922(g)(8) was unconstitutional under the Second Amendment as applied to him because he was not a violent criminal, he did not threaten anyone with the firearm and he had no other convictions that would justify restricting his right to possess firearms.

Holding: The district court granted the motion to dismiss and dismissed the indictment. The district court found that the state court's restraining order did not contain a finding that Defendant posed a credible threat to anyone's physical safety to satisfy the requirements under the statute. Absent a finding that Defendant was unusually dangerous, the district court held that history and tradition did not support disarming an individual based solely on the mere fact that a state court prohibited the person from using, threatening to use or attempting to use physical force against another.

Note: As of this 2025 update, this case is on appeal.

Key Issue(s): Second Amendment; Credible Threat

Crane v. Crane, No. 1 CA-CV 22-0777 FC, 2024 WL 367925 (Ariz. Ct. App. Feb. 1, 2024)

Facts/Procedural History: Defendant's wife petitioned for a protection order against Defendant, citing incidents of harassment, intimidation with a firearm and physical violence. The trial court determined that there was reasonable cause to believe Defendant had committed two acts of domestic violence within the last year and issued a protection order forbidding Defendant from committing any crimes against his wife. The protection order further prohibited Defendant from having physical contact with his wife, granted the wife exclusive use of their residence and

prohibited Defendant from going near the residence. Although the trial court expressly declined to restrict Defendant's firearm use under Arizona law, the trial court issued a notice of Brady indicator, which notified Defendant that he was disqualified from purchasing or possessing a firearm or ammunition for the duration of the protection order under federal law. Defendant appealed the trial court's order.

Issue: On appeal, Defendant argued that the trial court erred by (1) failing to provide him notice that he could be a prohibited possessor under federal law, (2) issuing a notice of Brady indicator absent a request by his wife and (3) issuing a notice of Brady indicator without first finding that Defendant posed a credible threat to his wife.

Holding: The appellate court affirmed the order of protection. The appellate court held that Defendant had received adequate notice of the potential federal firearm restriction through the protection order and hearing request form and that no request from the wife was necessary to trigger the Brady indicator, as the restriction arises by operation of law once the statutory elements are met. The appellate court further determined that a specific finding of credible threat under § 922(g)(8)(C)(i) was unnecessary. The appellate court clarified that a Brady notice may be triggered either by a finding of credible threat or by a protection order that explicitly prohibits the use, attempted use or threatened use of physical force. In this case, the protection order included such prohibitive language, satisfying the statutory requirement without the need for a separate threat finding.

Key Issue(s): Brady Indicator; Language of Protection Order

***United States v. Deborba*, 713 F. Supp. 3d 1042 (W.D. Wash. 2024)**

Facts/Procedural History: Defendant, a Brazilian citizen and undocumented immigrant, was charged with a domestic violence misdemeanor and became subject to a no-contact order with his then-wife, prohibiting him from possessing firearms. Defendant was later arrested for violating the no-contact order and numerous firearms were discovered in his possession. Defendant was convicted of fourth-degree assault and violation of the domestic violence no-contact order, and a second no-contact order was issued prohibiting him from possessing firearms. Defendant was later caught sport-shooting in violation of his no-contact order, and multiple firearms, ammunition and other firearm accessories were found in his possession following a search of his home. Defendant was indicted on six felony charges, including violation of 18 U.S.C. § 922(g)(8), and Defendant moved to dismiss the indictments.

Issue: Defendant argued, among other things, that the indictment under § 922(g)(8) violated his Second Amendment right under *Bruen*.

Holding: The district court denied Defendant’s motion to dismiss. The district court held that § 922(g)(8) was constitutional under the analytical framework required under *Bruen* because it was consistent with the United States’ historical tradition of firearm regulation. The district court reached its conclusion by analogizing § 922(g)(8) to surety laws, which historically restricted the Second Amendment rights of individuals that the public had “just cause to fear.”

Note: As of this 2025 update, this case is on appeal.

Key Issue(s): Second Amendment

***Flynn v. Flynn*, 543 P.3d 269 (Ariz. Ct. App. 2024)**

Facts/Procedural History: A wife filed an ex parte petition for an order of protection, alleging that her husband had committed several acts of domestic violence against her, and the trial court preliminarily granted the petition after holding an expedited hearing. The trial court then held a contested evidentiary hearing on the order of protection. No evidence of the husband’s firearm access or credible threat was presented, but the trial court affirmed the order of protection and issued a notice directing that the husband was disqualified from purchasing or possessing a firearm under U.S.C. § 922(g)(8). The husband moved to modify the order to remove the firearm restriction. The trial court denied the motion, and the husband appealed.

Issue: On appeal, the husband argued that the trial court erred by not finding he posed a credible threat or inquiring about his access to firearms, as required by Arizona’s Criminal Code and procedural rules for protective orders.

Holding: The appellate court held that the trial court’s failure to follow the state’s procedural rules requiring a credible-threat finding did not result in reversible error because such a finding is not required to trigger the federal firearm restrictions under § 922(g)(8)(C)(ii). Because the order of protection satisfied all the elements of § 922(g)(8) without a credible-threat finding, the appellate court affirmed the trial court’s order.

Key Issue(s): Credible Threat

***United States v. Sloan*, No. 20-cr-00022-DAD-1, 2023 U.S. Dist. LEXIS 204679 (E.D. Cal. Nov. 15, 2023)**

Facts/Procedural History: Defendant was charged with possessing a firearm while subject to a domestic violence restraining order in violation of 18 U.S.C. § 922(g)(8) following a search of his home. Defendant moved to dismiss the indictment.

Issue: Defendant argued, among other things, that § 922(g)(8) had no historical analogue and was therefore unconstitutional under *Bruen*.

Holding: The district court denied Defendant’s motion to dismiss. The district court applied the two-step framework from *Bruen* and determined that, while the Second Amendment’s plain text covers the Defendant’s conduct, § 922(g)(8) was consistent with the nation’s historical tradition of firearm regulation. In so finding, the district court relied on numerous district court opinions from across the country that had upheld § 922(g)(8) post *Bruen*.

Key Issue(s): Second Amendment

***United States v. Stone*, No. CR 22-93-BLG-SPW, 2023 U.S. Dist. LEXIS 34411 (D. Mont. Mar. 1, 2023)**

Facts/Procedural History: In 2017, an order of protection was issued against Defendant following a state court hearing that found he posed a danger to his intimate partner. The order banned Defendant from contacting, threatening or harassing his former partner and was to remain in effect for three years unless extended. In 2020, another order was issued that extended the protection order indefinitely without holding a new hearing. A year later, Defendant was charged with violating 18 U.S.C. § 922(g)(8) by possessing a firearm and ammunition. Defendant moved to dismiss the indictment.

Issue: Defendant argued that the 2017 and 2020 protection orders were separate and distinct and, because the state court did not hold a new hearing, the 2020 order was not an applicable protection order under § 922(g)(8) to support a violation of the statute.

Holding: The district court granted Defendant’s motion to dismiss the indictment, holding that neither protection order could be the basis for a charge under § 922(g)(8) because (1) the 2020 protection order was not issued after a hearing at which Defendant had notice and an opportunity to participate and (2) the 2017 protection order expired prior to the date of Defendant’s alleged possession of a firearm and ammunition.

Key Issue(s): Due Process (Opportunity to Participate)

***Hodges v. Hodges*, No. 1 CA-CV 22-0362, 2023 WL 1458100 (Ariz. Ct. App. Feb. 2, 2023)**

Facts/Procedural History: Plaintiff ex-wife petitioned for an order of protection against Defendant, her ex-husband, alleging three instances of misconduct: (1) Defendant had law enforcement conduct a welfare check on her home; (2) Defendant attempted to break into her home that same night; and (3) Defendant trespassed onto her property and picked up their children two hours before his visitation time. Plaintiff also alleged past physical and verbal aggression by Defendant. At the Defendant’s request, the trial court held a hearing where each party was given 15 minutes to present his or her case. Plaintiff testified about Defendant’s violent tendencies and abusive

behaviors, the three incidents alleged in her petition and a conversation between Defendant and her boyfriend. Defendant denied the allegations. The trial court found Defendant's behavior constituted harassment and an act of domestic violence and issued an order of protection against the Defendant, which included a firearm restriction under 18 U.S.C. § 922(g)(8). Defendant appealed the trial court's order.

Issue: On appeal, Defendant argued, among other things, that the trial court abused its discretion by invoking the firearm restriction when there was no evidence that Defendant posed a credible threat of harm to Plaintiff and issuing the protection order when no articulable act of domestic violence occurred.

Holding: The appellate court vacated the order of protection, finding that the superior court abused its discretion. The appellate court determined that the trial court erred by including a firearms restriction in the order of protection without making inquiries into Defendant's use of or access to firearms as required by Arizona law. The appellate court emphasized that firearm restrictions under § 922(g)(8) should be based on a credible threat of physical harm by the specific person whose rights are impacted and should not follow automatically from an order of protection.

Key Issue(s): Sufficiency of Evidence; Credible Threat

***United States v. Souza*, No. CR 22-48-BLG-SPW, 2022 U.S. Dist. LEXIS 167095 (D. Mont. Sep. 15, 2022)**

Facts/Procedural History: When Defendant was 17 years old, he was served with a temporary order of protection and request for hearing. A hearing was then held on the order of protection, but neither Defendant nor any representative for Defendant was in attendance. At the hearing, the Montana state court granted a final protective order, which was served on Defendant. Defendant was later indicted for possessing a firearm while under a protection order in violation of 18 U.S.C. § 922(g)(8), and Defendant moved to dismiss the indictment.

Issue: Defendant argued that the protection order was invalid because he was a minor at the time, and the Montana state court did not appoint a guardian *ad litem* for him during the hearing, which violated Montana state law and prevented him from participating in the hearing as required by § 922(g)(8)(A).

Holding: The district court denied the motion, holding that Defendant's argument was an improper collateral attack on the validity of the protection order and not permissible to challenge a federal indictment. Further, the court interpreted the "opportunity to participate" requirement of § 922(g)(8)(A) minimally, finding that actual participation is not necessary so long as the Defendant had an opportunity to engage in the proceeding. Because Defendant received notice of the hearing on the

protection order but chose not to attend or seek relief afterward, the district court found he had sufficient opportunity to participate under § 922(g)(8)(A) even if the Montana state court failed to appoint him a guardian *ad litem*.

Key Issue(s): Due Process (Opportunity to Participate)

***Saxena v. Saxena*, No. 2:21-cv-02197, 2022 U.S. Dist. LEXIS 245020 (D. Nev. Apr. 5, 2022)**

Facts/Procedural History: Plaintiff, proceeding *pro se* under 28 U.S.C. § 1915, filed a complaint against his ex-wife in federal court asserting various claims for violations related to immigration law, assault, domestic protection orders and disability rights. Plaintiff alleged that his ex-wife married him to obtain immigration status in the United States and began abusing him and pretending to be the victim herself upon learning that she could petition for her visa independently if she accused her spouse of domestic abuse.

Issue: Plaintiff claimed federal question jurisdiction under several statutes, including 18 U.S.C. § 922(g)(8), and, on its own motion, the district court “screened” the complaint for pleading and jurisdiction deficiencies.

Holding: The district court dismissed the complaint, holding that Plaintiff’s complaint lacked specific factual allegations connecting his ex-wife’s actions to violations of the cited federal statutes. In regard to 18 U.S.C. § 922(g)(8), the district court determined that the statute does not provide a basis for a private civil suit and emphasized that Plaintiff’s references to federal statutes were conclusory and did not meet the pleading standards required under Rule 8 of the Federal Rules of Civil Procedure and the standards set by Supreme Court precedent.

Key Issue(s): Federal Question Jurisdiction

***Melone v. FBI*, 597 F. Supp. 3d 1371 (D. Ariz. 2022)**

Facts/Procedural History: Plaintiff filed a *pro se* civil rights complaint under 42 U.S.C. § 1983 against the FBI, Maricopa County Sheriff’s Office and various individuals involved in a search of his residence and arrest, alleging violations of his Fourth and Second Amendment rights. Among other things, Plaintiff alleged that the seizure of his firearms under 18 U.S.C. § 922(g)(8) during the search of his residence constituted an infringement of his Second Amendment rights.

Issue: The district court considered whether the complaint must be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(a)-(b).

Holding: The district court dismissed the complaint for failure to state a claim upon which relief could be granted. With respect to Plaintiff's Second Amendment claim, the district court held that Defendants did not violate Plaintiff's Second Amendment rights by seizing his firearms during a search of his residence because Plaintiff was subject to an order of protection at the time of the search, and § 922(g)(8) was a constitutional restriction on the Plaintiff's right to possess weapons.

Key Issue(s): Second Amendment; Seizure of Firearms

***Gurley v. Gurley*, No. 1 CA-CV 21-0025 FC, 2021 WL 4869547
(Ariz. Ct. App. Oct. 19, 2021)**

Facts/Procedural History: The trial court issued an ex parte order of protection based on Mother's accusations of domestic violence and concerns for the safety of her child. At the Father's request, the trial court held a contested order of protection hearing. The Mother testified to several instances of physical assault and threatening behavior by Father, including incidents involving firearms and unsafe parenting practices. Father contested the allegations. Based on the evidence presented, the trial court continued the order of protection against the Father and issued a Brady Notice under 18 U.S.C. § 922(g)(8)(C). Father appealed.

Issue: On appeal, the Father argued that the Brady Notice must be quashed because the trial court did not explicitly find that he posed a credible threat, and no evidence would have supported such a finding.

Holding: The appellate court affirmed the Brady Notice, reasoning that the firearms prohibition applied if the Father "represent[ed] a credible threat to the physical safety of" his intimate partner **or** if the order of protection "by its terms explicitly prohibit[ed] the use, attempted use or threatened use of physical force against such intimate partner." Therefore, the appellate court concluded that the federal statute does not require a finding of a credible threat so long as the second prong of the statute is met, as it was in this case.

Key Issue(s): Brady Notice

***United States v. Soud*, No. 3:20-cr-00036-SLG, 2021 U.S. Dist.
LEXIS 147497 (D. Alaska Aug. 6, 2021)**

Facts/Procedural History: Defendant was indicted under 18 U.S.C. § 922(g)(8) for allegedly violating a protective order that prohibited him from possessing firearms. However, the Government presented no evidence that Defendant was ever made aware of the protective order against him. After being convicted, Defendant moved for a new trial under Federal Rule of Criminal Procedure 33.

Issue: Defendant argued that a miscarriage of justice occurred due to the lack of evidence against him. Federal Rule of Criminal Procedure 33 allows a court to grant a new trial if the interest of justice requires it, particularly when the evidence heavily preponderates against the verdict.

Holding: The district court granted Defendant's motion for a new trial, emphasizing that this was a rare exceptional case where the Government failed to definitively prove that Defendant received or understood the terms of the protective order, which specifically prohibited the use of physical force.

Key Issue(s): Sufficiency of Evidence

***United States v. Treselyan*, No. CR-20-00549-001-PHX-DWL, 2021 U.S. Dist. LEXIS 135107 (D. Ariz. July 20, 2021)**

Facts/Procedural History: Defendant was charged with illegally possessing a firearm while being a person subject to an order of protection in violation of 18 U.S.C. § 922(g)(8), among other charges. The following month, the district court ordered Defendant detained as a flight risk, noting that he was not a citizen of the U.S. and no longer had lawful status in the country. While Defendant was detained, United States Citizenship and Immigration Services extended his green card retroactively. Additionally, he obtained a \$289,256.29 insurance settlement related to the destruction of his home during a 2018 wildfire. At the time of detention, he was not aware of the full extent of his access to financial resources. Over six months later, Defendant moved to reopen bail proceedings and grant pretrial release.

Issue: Defendant argued that the changed circumstances warranted the reopening of detention proceedings and granting him pretrial release.

Holding: The district court granted the motion. Because of the Defendant's changed circumstances, and his agreement to additional conditions of release, the district court concluded that the risk of flight was sufficiently mitigated.

Key Issue(s): Pretrial Release; Bond; Flight Risk

***Kinkaid v. Thurston Cty. Sheriff*, 845 Fed. Appx. 621 (9th Cir. 2021)**

Facts/Procedural History: Defendant appealed a district court decision prohibiting him from receiving a concealed pistol license pursuant to 18 U.S.C. § 922(g)(8) because he was subject to a permanent protection order issued in 1996. He was not present during the 1996 hearing.

Issue: Defendant argued that his absence from the 1996 hearing established that he did not receive notice or have an opportunity to participate as required by § 922(g)(8)(A).

Holding: The Ninth Circuit affirmed the district court’s determination that Defendant was still prohibited from receiving a concealed pistol license under his protection order. The Ninth Circuit found that actual participation in a § 922(g)(8) hearing is not necessary so long as the Defendant had the opportunity to participate. The Ninth Circuit found that Defendant had received notice of the petition for protection order because he requested to be present at the hearing. Additionally, a month after the 1996 order was issued, Defendant sought, and was granted, a modification to the order. Accordingly, the Ninth Circuit held that Defendant had sufficient opportunity to participate in the hearing on the protective order against him.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

***Derrig v. Alexander*, No. 2 CA-CV 2029-0193, 2020 Ariz. App. Unpub. LEXIS 1370 (Ariz. Ct. App. Dec. 18, 2020)**

Facts/Procedural History: An order of protection and Brady Notice was issued against Defendant after Plaintiff alleged that he secretly photographed her during sexual intercourse, distributed the images and stalked her. A Brady Notice is triggered by an order of protection if the order includes a finding that a person represents a credible threat to the physical safety of their intimate partner or by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner that would reasonably be expected to cause bodily injury. Defendant appealed.

Issue: Defendant argued that the trial court abused its discretion in issuing the ex parte order of protection because it failed to make specific findings on the record that he committed an act of domestic violence, and there was insufficient evidence for the court to issue such an order. Defendant additionally argued that the trial court erred in issuing a Brady Notice against him under 18 U.S.C. § 922(g)(8)(C) because the plaintiff did not request a Brady Notice, the trial court assumed he posed a credible threat to the Plaintiff’s physical safety and the order of protection did not contain any explicit prohibition on the use, attempted use or threatened use of physical force.

Holding: The appellate court affirmed the order of protection, finding that a court does not need to find that someone poses a credible threat in order to issue a Brady Notice. The appellate court held that because the order of protection explicitly included language from § 922(g)(8)(C)(ii), and Defendant did not contest that he and Plaintiff were “intimate partners,” the Brady Notice was automatically triggered.

Key Issue(s): Brady Notice; Sufficiency of Evidence

***Quezada v. Servin*, No. 1 CA-CV 20-0014 FC, 2020 WL 684323 (Ariz. Ct. App. Nov. 19, 2020)**

Facts/Procedural History: Defendant was the subject of an amended order of protection issued by a trial court after his ex-wife petitioned for relief based on repeated harassment through calls, emails and messages. The order was issued ex parte and later upheld following a contested hearing at which the trial court heard only partial testimony. The trial court's amended order prohibited Defendant from possessing firearms under 18 U.S.C. § 922(g)(8). Defendant filed a motion for reconsideration, arguing that the trial court erred by imposing the federal firearm restriction without the required finding that he posed a credible threat to the physical safety of his ex-wife. The trial court denied the motion, and Defendant appealed.

Issue: On appeal, Defendant renewed his argument that the trial court failed to make a specific finding that Defendant represented a credible threat to his ex-wife's physical safety. He argued that the record contained no evidence supporting that finding and claimed that his due process rights were violated because he was not allowed to testify fully at the hearing.

Holding: The appellate court vacated the amended order of protection. The appellate court held that, under Arizona law, a firearms prohibition pursuant to § 922(g)(8) was triggered only when an order of protection included a finding that the person represented a credible threat to the physical safety of the intimate partner or child. Because the trial court did not make that finding and instead assumed the prohibition was automatic once certain language was included in the order, the appellate court concluded this was legal error. The case was remanded for further proceedings so that the trial court could take additional evidence and make the required findings.

Key Issue(s): Credible Threat; Sufficiency of Evidence; Language of Protection Order; Intimate Partner Requirement

***United States v. Wilkey*, No. CR 20-05-H-BMM, 2020 U.S. Dist. LEXIS 138928 (D. Mont. Aug. 4, 2020)**

Facts/Procedural History: In 2015, a Florida court issued a permanent order of protection against Defendant based on alleged domestic violence against his ex-partner. The Florida court first granted an ex parte temporary injunction, then held a hearing at which Defendant appeared, participated and ultimately consented to entry of the final protection order. The final protection order explicitly prohibited Defendant from possessing firearms, but Defendant moved to Montana before the order was formally served. More than four years later, law enforcement in Montana discovered multiple firearms and ammunition in Defendant's possession, and Defendant was indicted for unlawful possession of firearms by a prohibited person under 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued, among other things, that § 922(g)(8) violated his due process and equal protection rights because it imposed firearm prohibitions based on a civil protection order without the same Fifth and Sixth Amendment protections required in criminal proceedings under § 922(g)(9). He also argued that § 922(g)(8) improperly permitted a defendant's Second Amendment rights to be revoked with no right to a jury trial.

Holding: The district court denied Defendant's motion to dismiss. The district court held that the procedural safeguards in § 922(g)(8) were limited to actual notice and an opportunity to be heard, both of which were satisfied by Defendant's participation in the Florida court proceeding. The district court further observed that Defendant remained free to petition the Florida court to remove the restrictions on his possession of firearms. Accordingly, the district court held that no Fifth or Sixth Amendment violation occurred based on the different treatment of defendants under § 922(g)(8) and § 922(g)(9). Finally, the district court held that temporarily restricting firearm possession does not amount to punishment comparable to historically impermissible penalties like denationalization, especially in light of the fact that a person subject to a protection order may petition to have the order amended or dismissed.

Key Issue(s): Second Amendment; Fifth Amendment; Sixth Amendment; Due Process (Notice); Due Process (Opportunity to Participate); Equal Protection

***Kinkaid v. United States*, No. 19-cv-5867-RJB-JRC, 2020 U.S. Dist. LEXIS 93508 (W.D. Wash. May 28, 2020)**

Facts/Procedural History: In 1995, Plaintiff's ex-wife obtained a one-year protection order against him in Washington state court based on alleged domestic violence. In 1996, while incarcerated, Plaintiff received actual notice of a hearing to modify the order to a permanent protection order but was unable to attend because the jail was short-staffed and could not transport him. The court proceeded in his absence and entered a permanent protection order, which was later served on him in jail. Plaintiff subsequently obtained a limited modification but did not otherwise challenge or appeal the order. More than 20 years later, Plaintiff applied for a concealed pistol license but was denied under 18 U.S.C. § 922(g)(8) due to the protection order. He filed suit against the United States seeking a declaratory judgment and moved for summary judgment.

Issue: Plaintiff argued that he did not have the required opportunity to participate in the hearing for the protection order, and therefore § 922(g)(8) did not apply.

Holding: The district court denied Plaintiff's motion for summary judgment. The district court held that the "opportunity to participate" requirement under § 922(g)(8) was satisfied when a person received actual notice and had a meaningful chance to engage with the court, even if not

physically present. Because Plaintiff was served with the final order, successfully obtained a limited modification and never appealed the permanent order, the district court concluded that he had the opportunity to participate as required by the statute.

Key Issue(s): Due Process (Opportunity to Participate)

United States v. Bachler, 831 F. App'x 836 (9th Cir. 2020)

Facts/Procedural History: Defendant was prohibited from possessing firearms under 18 U.S.C. § 922(g)(8) due to a domestic violence protective order. Defendant attempted to recover a collection of military firearms from the Phoenix Police Department's Property Management Bureau and was given ten firearms due to incorrect paperwork. Law enforcement later executed a search warrant for "firearms and ammunition" at Defendant's apartment and vehicle and seized additional items. Defendant was charged under §§ 922(g)(8) and 924(a)(2). He moved to suppress the seized firearms and ammunition, arguing that the warrant was unconstitutionally overbroad because the probable cause affidavit only identified ten specific firearms. The district court granted the motion to suppress, and the Government appealed.

Issue: Defendant continued to argue on appeal that the search warrant for "firearms and ammunition" was unconstitutionally overbroad because the probable cause affidavit only established probable cause for ten specific firearms.

Holding: The Ninth Circuit reversed the district court's suppression order. The Ninth Circuit held that, under the totality of the circumstances, there was a substantial basis for the magistrate judge to find probable cause that additional firearms could be found in Defendant's apartment, given his repeated violations of the protective order, his stated intent to possess a "collection" of military firearms and the likelihood that other unlisted firearms or ammunition might be present. The Ninth Circuit concluded that the warrant's broader language was not unconstitutionally overbroad because it reasonably matched the probable cause established in the agent's affidavit.

Key Issue(s): Fourth Amendment; Probable Cause

United States v. Schoendaller, No. 1:18-cr-00179-DCN, 2019 U.S. Dis. LEXIS 111618 (D. Idaho July 1, 2019)

Facts/Procedural History: In 2017, Defendant's ex-wife obtained a protective order against him. Defendant received notice of the hearing and attended by telephone, where he consented to the entry of the order. As a result, the state court did not make a finding that Defendant committed an act of domestic violence but ordered that he could not possess firearms while the order was in

effect. While still subject to the protective order, Defendant was stopped by an Idaho State Police trooper and found in possession of firearms. He was arrested and later indicted under 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that the indictment violated his Second Amendment rights because, under *Heller*, he should be considered a “law-abiding responsible citizen” since there was no formal finding that he committed domestic violence.

Holding: The district court denied the motion to dismiss. The district court first observed that when a protective order is issued, it means the issuing court has found sufficient justification to suspend the Second Amendment rights of the respondent. Because Defendant received notice, attended the hearing and consented to the protective order, the district court held that there was no need for there to be a finding of domestic abuse or credible threat in order to apply 922(g)(8).

Key Issue(s): Second Amendment; Credible Threat; Due Process (Notice); Due Process (Opportunity to Participate)

***United States v. Daniel*, No. CR 19-102-BLG-DLC, 2019 U.S. Dist. LEXIS 191923 (D. Mont. Nov. 5, 2019)**

Facts/Procedural History: Defendant was subject to a protective order prohibiting him from possessing firearms under 18 U.S.C. § 922(g)(8). After a disturbance call, law enforcement responded to Defendant’s residence and observed him carrying an AR-15 rifle while inside the home. Defendant was charged under § 922(g)(8) and moved to suppress the evidence, arguing that officers illegally remained at his doorway and observed the firearm during an unlawful warrantless search.

Issue: Defendant argued that the officers’ actions violated the Fourth Amendment because the warrantless entry and search were not justified by an exception to the warrant requirement.

Holding: The district court denied the motion to suppress. The district court found that although the Government did not establish exigent circumstances to justify the warrantless entry, the emergency exception applied because officers had reasonable grounds to believe that Defendant’s girlfriend and her children were still in danger inside the home. The district court concluded that the officers’ limited entry and observation were primarily motivated by the need to protect life and were reasonably associated with the emergency situation, satisfying all three requirements for the emergency exception under the Fourth Amendment.

Key Issue(s): Fourth Amendment; Probable Cause; Emergency Exception

***United States v. Chad Well*, No. CR 13-14-BLG-DWM, 2016 WL 7410555 (D. Mont. Dec. 21, 2016)**

Facts/Procedural History: Defendant was convicted under 18 U.S.C. § 922(g)(8) for unlawful possession of a firearm while subject to a protective order that explicitly prohibited him from possessing firearms. Two firearms were found in a car Defendant was driving following a search of the vehicle during a traffic stop. During the trial, Defendant's attorney failed to move to suppress evidence from the traffic stop, failed to subpoena a material witness, did not object to Defendant's criminal history calculation or a sentence enhancement, failed to adequately advise Defendant about the federal firearm prohibition related to the protective order and incorrectly predicted Defendant's likely sentence if convicted at trial. After trial and sentencing, Defendant filed a motion under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence for ineffective assistance of counsel.

Issue: Defendant argued that he received ineffective assistance of counsel. He also argued that the search of the vehicle violated his Fourth Amendment rights because he did not own the car, and the firearms did not belong to him.

Holding: The district court denied the motion, finding that Defendant did not show deficient performance or resulting prejudice from his counsel. With respect to Defendant's awareness of his status as a prohibited person, the district court found that the order clearly prohibited firearm possession on its face, thus giving Defendant adequate notice of his status under § 922(g)(8). The district court also held that the search of the vehicle did not violate Defendant's Fourth Amendment rights because he could not avoid a lawful search simply by driving someone else's car and that "possession" of the firearms required only knowledge and control, not ownership.

Key Issue(s): Fourth Amendment; Ineffective Assistance of Counsel; Definition of Possession; Due Process (Notice)

***United States v. Garretson*, No. 2:13-cr-029-APG-GWF, 2013 U.S. Dist. LEXIS 154246 (D. Nev. Oct. 28, 2013)**

Facts/Procedural History: On November 5, 2012, Las Vegas Metropolitan Police Department officers executed a warrant at Defendant's property and seized numerous firearms. At the time, Defendant was subject to an extended order of protection against domestic violence that explicitly prohibited him from possessing firearms. The order of protection did not specify the nature of Defendant's relationship with the protected person. He was arrested and later indicted under 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(8) should not apply because the underlying protective order did not expressly identify the protected person as an “intimate partner” as defined in the statute. Alternatively, Defendant argued that § 922(g)(8) was unconstitutional as applied to him under the Second Amendment because Nevada law provided a more restrictive standard than federal law for determining when a party should be prohibited from possessing a firearm.

Holding: The district court denied the motion to dismiss. The district court held that § 922(g)(8) did not require an order of protection to explicitly label the protected person as an “intimate partner.” Instead, the district court directed that whether the protected person qualified as an intimate partner under § 921(a)(32) was a matter of fact for the Government to prove at trial. The district court also rejected Defendant’s argument that § 922(g)(8) was unconstitutional as applied, holding that Congress lawfully determined the circumstances in which firearm possession may be prohibited under federal law and that the statute does not violate the Second Amendment because it furthers an important Governmental interest and there is a reasonable fit between the law and its objective.

Key Issue(s): Language of Protection Order; Intimate Partner Requirement; Second Amendment

United States v. Sanchez, 639 F.3d 1201 (9th Cir. 2011)

Facts/Procedural History: Defendant was convicted of possessing a firearm while subject to a no-contact restraining order in violation of 18 U.S.C. § 922(g)(8). The underlying court order prohibited Defendant from having any contact with his former girlfriend but did not include any finding that he posed a credible threat to her safety nor did it explicitly prohibit the use, attempted use or threatened use of physical force. Defendant moved for acquittal, arguing the order did not meet the statutory requirements, but the district court denied the motion and entered a conviction. Defendant appealed.

Issue: Defendant argued that a no-contact order that does not contain an explicit finding of credible threat under § 922(g)(8)(C)(i) or language expressly prohibiting the use, attempted use or threatened use of physical force under § 922(g)(8)(C)(ii) does not forbid the possession of firearms.

Holding: The Ninth Circuit reversed the conviction, holding that to satisfy § 922(g)(8), the underlying order of protection must either include a finding that the defendant represents a credible threat or must, by its terms, explicitly prohibit the use, attempted use or threatened use of physical force. The Ninth Circuit held that a no-contact order alone is insufficient because it does not satisfy the statutory requirement that such prohibitions be explicit.

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Language of Protection Order; Credible Threat

***Rodvik v. Rodvik*, 151 P.3d 338 (Alaska 2006)**

Facts/Procedural History: During divorce and child custody proceedings, multiple domestic violence protective orders were entered against Husband based on findings that he committed acts of domestic violence and posed a threat to the physical safety of his wife and children. The trial court awarded Husband's gun collection to Wife, concluding that federal law under 18 U.S.C. § 922(g)(8) barred Husband from possessing firearms while the qualifying protective orders were in effect. Husband appealed the award of his gun collection.

Issue: Husband argued that the trial court abused its discretion in awarding his entire gun collection to Wife on the ground that § 922(g)(8) does not prohibit mere possession of firearms that he already owned.

Holding: The Alaska Supreme Court upheld the award of the gun collection to Wife, holding that the trial court did not err in finding that § 922(g)(8) precluded Husband from possessing firearms because he was subject to valid protective orders that met all statutory criteria. The Alaska Supreme Court noted that federal law prohibits both receipt and simple possession of firearms by a person subject to a qualifying protective order. Therefore, it was reasonable for the trial court to conclude that awarding the firearms to Husband would violate federal law.

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Definition of Possession; Property Division after Divorce

***United States v. Henderson*, No. CR 05-0322 PJH, 2006 U.S. Dist. LEXIS 62387 (N.D. Cal. Aug. 17, 2006)**

Facts/Procedural History: Defendant pled guilty to misdemeanor domestic violence and was placed on probation. A year later, Defendant's new girlfriend accused him of assault, and the state court issued a pretrial "stay away" protective order while the prosecution pursued a motion to revoke Defendant's probation. The prosecutor later withdrew the revocation motion, but Defendant was charged under 18 U.S.C. § 922(g)(8) for possessing a firearm while subject to the protective order. Defendant moved to dismiss the charge.

Issue: Defendant argued that the protective order was no longer valid when he possessed the firearm because the revocation proceeding had concluded and the order's only purpose was to protect a witness in that proceeding.

Holding: The district court granted the motion to dismiss, holding that under California Penal Code § 136.2 and controlling precedent, a pretrial protective order remains valid only for the duration of the underlying criminal proceeding. Once the prosecution withdrew the revocation motion, the protective order expired by operation of law. As a result, Defendant was not subject to a qualifying protective order under § 922(g)(8) when he possessed the firearm.

Key Issue(s): Duration and Purpose of Protective Order

United States v. Young, 458 F.3d 998 (9th Cir. 2006)

Facts/Procedural History: Defendant was convicted by a jury under 18 U.S.C. § 922(g)(8) for possessing a firearm while subject to a state domestic violence no-contact order. After trial, the district court set aside the jury verdict, holding there was insufficient evidence that Defendant had “actual notice” of the protective order hearing or a meaningful “opportunity to participate.” The district court reasoned that due process required advance notice of the no-contact order and more robust participation rights. The Government appealed.

Issue: On appeal, the Ninth Circuit considered whether “actual notice” and “opportunity to participate” under § 922(g)(8)(A) required the heightened due process standards articulated by the district court.

Holding: The Ninth Circuit reversed the district court’s judgment of acquittal and order for a new trial, holding that the statute’s plain language required only that the defendant received notice of the hearing itself and had an opportunity to participate—nothing more. The Ninth Circuit found that Defendant was given actual notice by being told of his arraignment and provided counsel, and he had an opportunity to participate by being present at the hearing where the no-contact order was issued.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

United States v. Heintz, No. CR-05-0109-WFN, 2005 U.S. Dist. LEXIS 27773 (E.D. Wash. Oct. 31, 2005)

Facts/Procedural History: Defendant was arraigned on state domestic violence charges in Yakima Municipal Court. During the arraignment, the judge asked the prosecutor whether the city wanted a no-contact order; the prosecutor agreed, and the judge issued the order as standard procedure without allowing Defendant or defense counsel to respond. Defendant was later found in possession of two firearms and was indicted under 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that the protective order did not satisfy § 922(g)(8) because he did not receive actual notice of a protective order hearing and was not given an opportunity to participate or present evidence in opposition.

Holding: The district court granted the motion to dismiss. The district court held that notice of an arraignment alone does not satisfy the statutory requirement for actual notice of a protective order hearing. The district court further found that because the state court judge did not allow Defendant to present evidence, recite facts or make arguments as to why the protective order should not be issued, Defendant was deprived of a meaningful opportunity to participate. Without both elements, the protective order could not form the basis for a firearms prohibition under § 922(g)(8).

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

United States v. Gill, 39 Fed. App'x 548 (9th Cir. 2002)

Facts/Procedural History: Defendant was convicted of possessing a firearm in violation of 18 U.S.C. § 922(g)(8) while subject to a domestic violence restraining order. Defendant appealed his conviction to the Ninth Circuit.

Issue: On appeal, Defendant argued that § 922(g)(8) as applied to him exceeded Congress's authority under the Commerce Clause because his possession of firearms in his residence lacked a sufficient connection to interstate commerce.

Holding: The Ninth Circuit affirmed the conviction. The Ninth Circuit held that proof that the firearms were manufactured out of state was sufficient to satisfy the statutory jurisdictional element requiring a nexus to interstate commerce. The Ninth Circuit found that because the firearms had previously moved in interstate commerce, § 922(g)(8) did not exceed Congress's Commerce Clause authority as applied.

Key Issue(s): Commerce Clause; Jurisdictional Nexus

United States v. Jones, 231 F.3d 508 (9th Cir. 2000)

Facts/Procedural History: Defendant, a federally licensed firearms dealer, was subject to a restraining order issued by a California superior court that prohibited him from contacting or threatening his former girlfriend. While subject to that order, Defendant applied to renew his federal firearms license and falsely stated that he was not subject to a domestic violence restraining order. Defendant continued to violate the order and was convicted in California superior court for stalking. ATF agents later arrested Defendant after he falsely certified on federal firearms forms that he was not subject to a restraining order and was not a felon. Defendant was indicted in federal court on

four counts: possession of a firearm while subject to a protective order under § 922(g)(8), being a felon in possession and making false statements on firearms records and applications. The jury convicted him on all counts, and Defendant appealed.

Issue: On appeal, Defendant argued that 18 U.S.C. § 922(g)(8) was unconstitutional as applied because it exceeded Congress’s Commerce Clause authority and infringed on powers reserved to the states under the Tenth Amendment.

Holding: The Ninth Circuit affirmed the conviction, finding that § 922(g)(8) did not exceed Congress’s Commerce Clause authority because the statute’s jurisdictional element requiring that the firearm move in or affect interstate commerce provided a sufficient nexus between firearm possession and interstate commerce. The Ninth Circuit further held that § 922(g)(8) did not violate the Tenth Amendment because it did not conscript state officers to enforce federal law or intrude on states’ authority to regulate domestic relations.

Key Issue(s): Commerce Clause; Tenth Amendment

United States v. Kafka, 222 F.3d 1129 (9th Cir. 2000)

Facts/Procedural History: Defendant was subject to a domestic violence restraining order issued by a Washington state court after a hearing at which Defendant appeared and participated. The order prohibited Defendant from causing harm or threatening his ex-wife and her daughter. Defendant was later stopped by police for a traffic violation and informed officers that he was carrying a pistol. He was indicted under 18 U.S.C. § 922(g)(8) for possession of a firearm while subject to a qualifying protective order. The United States district court denied Defendant’s motion to dismiss. Defendant entered a conditional guilty plea preserving his right to appeal the denial.

Issue: Defendant argued on appeal that § 922(g)(8) violated due process because it failed to require that persons subject to protective orders receive notice that they would be federally prohibited from possessing firearms.

Holding: The Ninth Circuit affirmed Defendant’s conviction, holding that the “actual notice” and “opportunity to participate” requirements in § 922(g)(8) refer to notice of and participation in the protective order hearing, not notice of the federal firearms prohibition itself. The Ninth Circuit found that Defendant’s conduct did not involve circumstances “so presumptively innocent” as to fall within any exception to the traditional rule that ignorance of the law was no defense.

Key Issue(s): Due Process (Notice and Opportunity to Participate); Knowledge Requirement

Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

United States v. Gordon, 137 F.4th 1153 (10th Cir. 2025)

Facts/Procedural History: Two Defendants were each indicted for possession of a firearm while subject to a domestic violence restraining order, in violation of 18 U.S.C. § 922(g)(8). One Defendant sent text messages to his ex-partner threatening to hurt or kill her if Defendant did not get to see his daughter. He then stipulated to a protective order which explicitly prohibited the possession of firearms. One month later, police officers found a gun in Defendant's car. The second Defendant violently attacked his live-in girlfriend. He was then subject to a protective order, which prevented him from carrying firearms. A year later, police arrested him while he was carrying a stolen gun. Defendants pled guilty and were sentenced. Defendants appealed.

Issue: On appeal, Defendants argued that § 922(g)(8)(C)(ii), which prohibited possession of a firearm by someone "subject to a court order that ... by its terms explicitly prohibits the use, attempted use or threatened use of physical force against [an] intimate partner or child," violated the Second Amendment on its face.

Holding: The Tenth Circuit affirmed Defendants' convictions. The Tenth Circuit held that § 922(g)(8)(C)(ii) was constitutional on its face. The Tenth Circuit found among other things, that the statute was consistent with traditional firearms regulations that allow for the disarming of individuals who pose a clear threat of physical violence to others. This threat was established by reasonable inference that the Defendant was subject to an order prohibiting such behavior.

Key Issue(s): Second Amendment (*Bruen* and *Rahimi*)

Diaz v. United States, No. 2:25CV00058 DAK, 2025 WL 906276, 2025 U.S. Dist. LEXIS 55604 (D. Utah Mar. 25, 2025)

Facts/Procedural History: Petitioner was serving a 37-month sentence after pleading guilty to possessing a firearm and ammunition while subject to a protective order, in violation of 18 U.S.C. § 922(g)(8). Petitioner filed a motion to vacate his sentence under 28 U.S.C. § 2255.

Issue: Petitioner argued, among other things, that (1) his lawyer failed to adequately research his case and rendered constitutionally ineffective assistance and (2) § 922(g)(8) violated his Second Amendment rights.

Holding: The district court denied Petitioner’s motion to vacate. The district court held that Petitioner’s nonspecific allegation about his attorney’s lack of “research” could not overcome the “strong presumption” that his attorney provided reasonable professional assistance and that Petitioner failed to allege the necessary element that the outcome of his plea process would have been different with competent representation. The district court also found that Petitioner had procedurally defaulted his Second Amendment challenge by not raising it on direct appeal and had expressly waived his right to collaterally attack his sentence in his plea agreement and change-of-plea hearing. Finally, the district court rejected Petitioner’s Second Amendment challenge on the merits, finding that Petitioner’s constitutional claim was foreclosed by the United States Supreme Court’s decision in *Rahimi*.

Key Issue(s): Ineffective Assistance of Counsel; Procedural Default; Second Amendment

***United States v. Thornton*, No. CR-21-347-F, 2024 U.S. Dist. LEXIS 27339 (W.D. Okla. Feb. 16, 2024)**

Facts/Procedural History: Defendant pled guilty to being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(8). The presentence investigation report recommended a sentence of 24 to 30 months of imprisonment based on the offense level and Defendant’s criminal history. The district court sentenced Defendant to 30 months. Defendant did not appeal the decision but filed a motion for a sentence reduction.

Issue: Defendant argued that his sentence should be reduced because he had no criminal history.

Holding: The district court determined that Defendant did not qualify for a sentence adjustment because sentencing guidelines do not allow adjustments when a defendant possessed a firearm in connection with the offense, notwithstanding Defendant’s lack of criminal history.

Key Issue(s): Sentence Reduction

***United States v. Brown*, 684 F. Supp. 3d 1158 (D. Utah 2023)**

Facts/Procedural History: In May 2021, Defendant’s former romantic partner obtained a civil protective order against Defendant. About one year later, Defendant was arrested while in possession of a firearm and charged with violating 18 U.S.C. § 922(g)(8). Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(8) was facially unconstitutional under the Second Amendment in light of *Bruen* and the Fifth Circuit’s ruling in *Rahimi*.

Holding: The district court denied the motion and rejected Defendant’s constitutional challenges. First, the district court found that § 922(g)(8) regulated conduct protected by the Second Amendment. The Defendant fell within “the people” covered by the Second Amendment, which included individuals deemed dangerous and subject to civil protective orders, and thus had a right to possess a firearm. Second, the district court concluded that § 922(g)(8) was consistent with the United States’ historical tradition of firearm regulation and thus a valid restriction on the constitutional right to bear arms. Although domestic violence was not considered a social problem throughout much of the nation’s history, the district court determined that other historical firearm restrictions, such as surety laws, were sufficiently analogous to § 922(g)(8).

Key Issue(s): Second Amendment

***United States v. Kays*, No. CR-22-40-D, 2022 U.S. Dist. LEXIS 196524 (W.D. Okla. Oct. 28, 2022)**

Facts/Procedural History: Defendant was charged with possessing a firearm while subject to a protective order in violation of 18 U.S.C. § 922(g)(8). The Government filed motions requesting that the district court exclude evidence on the facts and circumstances related to Defendant’s protective order and state felony charge.

Issue: The Government argued that such evidence was not relevant and would be more prejudicial than probative.

Holding: The district court denied the motions. The district court could not conclude that the evidence was irrelevant: although the details surrounding Defendant’s protective order and state felony charge were not required to determine whether Defendant committed the crimes, they provided structure and context, and they were appropriate to tell the complete story of the crime. The district court also held that the Government failed to articulate how or why the evidence was unfairly prejudicial and deferred any evidentiary rulings to trial.

Key Issue(s): Relevancy of Evidence

***United States v. Haas*, No. 22-5054, 2022 WL 15048667 (10th Cir. 2022)**

Facts/Procedural Background: Defendant pled guilty to one count of possession of a firearm and ammunition while subject to a protective order in violation of 18 U.S.C. § 922(g)(8), among other charges. As part of the plea agreement, Defendant agreed to waive his right to appeal his conviction and sentence unless his sentence exceeded the statutory maximum. The district court sentenced Defendant within the stipulated range of terms of imprisonment. Defendant filed an appeal. The Government moved to enforce the appeal waiver.

Issue: Defendant argued that his appeal was not subject to the appeal waiver because his principal claim concerned the constitutionality of § 922(g)(8) following *Bruen*.

Holding: The Tenth Circuit dismissed Defendant's appeal. Among other reasons, the Tenth Circuit concluded that Defendant's challenge to the constitutionality of § 922(g)(8) fell within the scope of his appeal waiver as an argument that the conviction was unlawful.

Key Issue(s): Appeal Waiver

***United States v. Jordan*, No. CR-22-00339-JD, 2022 U.S. Dist. LEXIS 240859 (W.D. Okla. Oct. 25, 2022)**

Facts/Procedural History: Defendant was charged with possessing a firearm while subject to a protective order in violation of 18 U.S.C. § 922(g)(8). Defendant filed a motion to dismiss his indictment.

Issue: Defendant argued that § 922(g)(8) was facially unconstitutional.

Holding: The district court denied Defendant's motion to dismiss the indictment, concluding that § 922(g)(8) was not facially unconstitutional. The district court found that the Second Amendment covered the possession of firearms for lawful purposes by individuals subject to a protective order, meaning the conduct proscribed by § 922(g)(8) was protected by the Second Amendment. Nonetheless, the district court held that § 922(g)(8) was consistent with the United States' tradition of firearm regulation because it restricts the Second Amendment rights of a discrete category of potentially dangerous individuals for a limited period of time to prevent violent use of firearms.

Key Issue(s): Second Amendment

***United States v. Hill*, No. 21-6136, 2022 WL 2118441 (10th Cir. 2022)**

Facts/Procedural History: Defendant pled guilty to one count of being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(8) after he was found with a firearm while being subject to a protective order. Defendant filed a timely notice of appeal.

Issue: Defendant's counsel filed a brief asserting that there were no nonfrivolous grounds on which Defendant could appeal and moved to withdraw.

Holding: The Eighth Circuit dismissed Defendant's appeal and granted his counsel's motion to withdraw. The Eighth Circuit agreed that there were no nonfrivolous grounds for Defendant's appeal, finding that Defendant's written plea conceded all of the essential elements required to convict him

under § 922(g)(8). Defendant knew he possessed a firearm and was subject to a protective order, and Defendant did not challenge the calculation of his sentencing range. The Eighth Circuit further found that the record provided no basis for an affirmative defense to the § 922(g)(8) charge.

Key Issue(s): Frivolous Appeal; Plea Agreement

***United States v. Kaspereit*, No. CR-18-297-R, 2022 WL 49194
(W.D. Okla. Jan. 5, 2022)**

Facts/Procedural History: After purchasing firearms, Defendant was found guilty of two counts: (1) making a false statement during the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6) and (2) possession of a firearm while subject to a protective order in violation of 18 U.S.C. § 922(g)(8). After his § 922(g)(8) conviction, Defendant filed a “Motion to Vacate Temporary Protective Order and Determine Protective Order Unenforceable” in the state court that issued the underlying protective order. The state court granted Defendant’s motion and issued an order to vacate. Defendant then moved for a new trial in the federal district court.

Issue: Defendant argued that the order to vacate constituted newly discovered evidence that was uncovered after trial and that he could not have discovered this evidence by exercising more diligence because the order to vacate did not exist until after his jury trial.

Holding: The district court denied Defendant’s motion for a new trial. The district court held that the order to vacate did not constitute newly discovered evidence and was unlikely to result in an acquittal if offered in a new trial. The district court determined that whether the protective order was void at the time of Defendant’s firearms purchase that led to the § 922(g)(8) conviction was irrelevant. It only mattered that the protective order was in effect at the time of the purchase, and Defendant had the requisite knowledge of the protective order at that time he came into possession of the firearm.

Key Issue(s): Vacated Protective Order

***United States v. Crouch*, No. CR-17-278-F, 2021 WL 9080410
(W.D. Okla. Aug. 24, 2021)**

Facts/Procedural History: Defendant was sentenced to 84 months in prison for possession of a firearm by a prohibited person in violation of 18 U.S.C. § 922(g)(8). Defendant filed an emergency motion to reduce or modify his sentence to time served.

Issue: Defendant argued that his medical conditions put him at significant risk of severe and life-threatening illness from COVID-19 and that, because of the present pandemic, his medical conditions and his current housing, extraordinary and compelling reasons existed to reduce his sentence to time served.

Holding: The district court denied Defendant's motion for reduction of sentence. The district court found that the following factors weighed against compassionate release: (1) the nature and circumstance of defendant's offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to provide just punishment for the offense; and (3) to protect the public from further crimes of the defendant. The district court reasoned that Defendant's possession of a firearm in violation of § 922(g)(8) was a serious offense that did not support an early release.

Key Issue(s): Compassionate Release

United States v. Kaspereit, 994 F.3d 1202 (10th Cir. 2021)

Facts/Procedural History: Defendant was subject to a domestic violence protective order issued by an Oklahoma state court following incidents involving his ex-wife. While the protective order remained in effect, Defendant purchased two handguns from a licensed dealer, falsely certifying on an ATF form that he was not subject to a qualifying restraining order. A federal grand jury indicted him under 18 U.S.C. § 922(g)(8) for unlawful possession and § 922(a)(6) for making false statements. A jury convicted him on both counts, and the district court sentenced him to concurrent 120-month terms. Defendant appealed.

Issue: Defendant challenged his § 922(g)(8) conviction on four grounds: (1) the Government failed to prove under *Rehaif v. United States*, 588 U.S. 225 (2019), that Defendant knew his prohibited status made firearm possession unlawful; (2) Defendant lacked knowledge he was subject to a protective order; (3) Defendant had no "opportunity to participate" in the protective order hearing; and (4) the protective order was no longer in effect during the charged conduct.

Holding: The Tenth Circuit affirmed. The Tenth Circuit held that *Rehaif* required only proof that Defendant knew he possessed firearms and was subject to a qualifying protective order, not that he knew his status was legally disqualifying. Substantial evidence showed Defendant knew of the protective order, based on testimony that he repeatedly acknowledged it and tried to have it dissolved. The Tenth Circuit also found he had a meaningful opportunity to participate in the protective order hearing, as he appeared with counsel, presented witnesses and addressed the merits. Finally, the Tenth Circuit held the protective order remained in effect during the charged conduct, as no evidence showed it was dissolved, and both parties understood that it still applied.

Key Issue(s): Knowledge Requirement; Due Process (Opportunity to Participate); Status of Protection Order; Sufficiency of Evidence

***United States v. Goodin*, No. 4:20-CR-00181-GKF-1, 2021 WL 293314 (N.D. Okla. Jan. 18, 2021)**

Facts/Procedural History: Defendant was charged with unlawful possession of a firearm while subject to an order of protection in violation of 18 U.S.C. § 922(g)(8). Prior to his arrest, two emergency orders of protection were issued against Defendant by an Oklahoma state court. The Oklahoma state court scheduled two hearings on the orders of protection, but Defendant did not attend the hearings. Defendant moved to dismiss his indictment under § 922(g)(8).

Issue: Defendant argued that he could not be convicted under § 922(g)(8) because he never attended a hearing on the underlying protection orders.

Holding: The district court denied Defendant's motion to dismiss. The district court explained that § 922(g)(8) only required that the Defendant receive actual notice of a hearing at which the defendant had an opportunity to participate and did not require Defendant's attendance at the hearing. Therefore, because Defendant had actual notice of the hearings but decided to agree to the protection orders before the hearings were held, the district court determined § 922(g)(8)'s hearing requirement was satisfied.

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

***United States v. Kaspereit*, No. CR-18-297-R, 2019 WL 5684509 (W.D. Okla. Nov. 1, 2019)**

Facts/Procedural History: Defendant was convicted of making a false statement in connection with the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6) and possessing a firearm while subject to a qualifying protective order in violation of § 922(g)(8). The protective order had been issued by an Oklahoma state court following proceedings involving Defendant and his ex-wife. At trial, the Government introduced testimony from Defendant and others establishing that Defendant had knowledge of the protective order and had tried to have it dismissed. Following Defendant's conviction, the Supreme Court issued its decision in *Rehaif v. United States*, 588 U.S. 225 (2019). Defendant moved for judgment of acquittal or, in the alternative, a new trial.

Issue: Defendant argued post-trial that his conviction under § 922(g)(8) was invalid because the Government failed to prove he knew he was subject to a qualifying protective order, as required by *Rehaif*, and that the jury instructions failed to include the knowledge requirement.

Holding: The district court denied the motion in full. Even applying *Rehaif*, the district court found that the Government presented sufficient evidence to show that Defendant knew he was subject to a protective order during the period of firearm possession, including his own testimony and his filing of a motion to dismiss the protective order. The district court also rejected Defendant's request

for a new trial, concluding that while the omission of the *Rehaif* knowledge requirement in the jury instructions constituted plain error, there was no reasonable probability the verdict would have been different, as the jury necessarily found the knowledge element in convicting Defendant on the false statement charge.

Key Issue(s): Knowledge Requirement; Sufficiency of Evidence; Jury Instruction

***United States v. Edwards*, No. 19-CR-20-JED, 2019 U.S. Dist. LEXIS 112265 (N.D. Okla. July 8, 2019)**

Facts/Procedural History: Defendant was charged in a three-count indictment with: (1) possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2); (2) possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(8); and (3) using persuasion and misleading conduct to prevent his girlfriend from testifying against him in violation of 18 U.S.C. § 1512(b)(1). Defendant filed a motion to compel election, motion *in limine*, motion for a Daubert hearing and a motion to suppress evidence, which the district court considered together.

Issue: In his four motions, Defendant argued (1) that his firearm possession charges were improperly multiplicitous because they arose from the same conduct; (2) that evidence of Defendant's prior domestic assault should not be admitted because such evidence was unrelated to his charges; (3) that a separate Daubert hearing should be conducted to test the Government's methodology in determining that the firearms Defendant possessed had previously been a part of interstate commerce; and (4) that the search warrant, which led to the discovery of Defendant's firearms, failed to establish probable cause.

Holding: The district court denied the motion to compel election, finding that the court can dismiss one of the firearm possession charges after trial if Defendant is found guilty on both counts so he will not have multiple convictions. The district court also denied in part and granted in part the motion *in limine*, finding that evidence of Defendant's prior domestic abuse was relevant to proving Defendant's knowledge that he could not possess a firearm but that some other factual allegations were not relevant to the firearms charges. The district court also denied the motion for a Daubert hearing, finding that the Government agent that testified on the Government's methodology for determining that Defendant's firearm had been a part of interstate commerce appeared qualified and reliable. Finally, the district court denied the motion to suppress, finding that there was a sufficient nexus between Defendant, his possession of a firearm and the place that was searched to establish probable cause.

Key Issue(s): Multiplicitous Charges; Relevancy of Evidence; Daubert; Fourth Amendment (Probable Cause)

United States v. Edge, 238 F. App'x 366 (10th Cir. 2007)

Facts/Procedural History: Defendant was indicted under 18 U.S.C. § 922(g)(8) for possession of a firearm while subject to a protection order. He pled not guilty but was convicted by a jury. During his trial, Defendant testified that he never received notice of a hearing regarding the protection order and was never given an opportunity to object to such an order. However, a deputy sheriff also testified that she served Defendant with notice and that the state court judge who issued the protection order had stated that the order itself indicated that Defendant and his wife had both agreed to the protection order in lieu of presenting evidence at a hearing. Defendant appealed his conviction.

Issue: On appeal, Defendant argued, among other things, that there was insufficient evidence to support his § 922(g)(8) conviction because the protection order was issued without notice or opportunity to participate. He further argued that the protection order could comply with the statute's opportunity requirement only if he were represented by counsel.

Holding: The Tenth Circuit affirmed the conviction. The Tenth Circuit found that the testimonial evidence by the deputy sheriff established that Defendant had notice and opportunity to participate in a hearing on the protection order as required by statute. Further, the Tenth Circuit found that having an attorney present is not necessary for an "opportunity to participate."

Key Issue(s): Due Process (Notice); Due Process (Opportunity to Participate)

United States v. Arledge, 220 F. App'x 864 (10th Cir. 2007)

Facts/Procedural History: The mother of Defendant's child filed for a protection order against him, alleging physical violence. That same day, an emergency protective order and notice of hearing were issued, which were served on Defendant the following day. The order informed Defendant that if he did not appear for the hearing, then the order would become permanent (three years) without further notice and informed him of the federal ban on firearm possession while subject to the protection order. Defendant did not appear for the hearing, and the protection order was made permanent for three years. Months later, Defendant was arrested while in possession of a firearm and was convicted under 18 U.S.C. § 922(g)(8). Defendant appealed the conviction.

Issue: On appeal, Defendant argued that the district court violated his due process rights by preventing him from informing the jury that he was acquitted of the allegations underlying the protection order, that there was insufficient evidence he was aware of the protection order and that his conviction violated the Second Amendment.

Holding: The Tenth Circuit affirmed the conviction. The Tenth Circuit ruled that the district court properly prohibited Defendant from informing the jury of his acquittal because a state-court's acquittal of charges underlying a protection order was irrelevant to a conviction under § 922(g)(8).

As long as there was a qualifying protection order in effect at the time of firearm possession, that ended the inquiry necessary to satisfy § 922(g)(8). On Defendant's second claim, the Tenth Circuit ruled that because the Sheriff testified that he served Defendant with the protection order and submitted a "Sheriff's Return" showing the order had been served, there was sufficient evidence to show Defendant was aware of the protection order to support a conviction. Finally, the Tenth Circuit summarily concluded based on a brief overview of Tenth Circuit precedent that § 922(g)(8) did not violate the Second Amendment.

Key Issue(s): Merit of Protective Order as a Defense; Due Process (Notice); Second Amendment

United States v. Rogers, 371 F.3d 1225 (10th Cir. 2004)

Facts/Procedural History: Defendant was indicted by a federal grand jury for possession of a firearm while subject to a domestic protection order in violation of 18 U.S.C. § 922(g)(8) and following a misdemeanor conviction of domestic violence in violation of 18 U.S.C. § 922 (g)(9). A magistrate found that there was "a serious risk that the defendant will endanger the safety of another person in the community" based on his outstanding domestic protection orders and detained Defendant pending trial under 18 U.S.C. § 3142(f)(1) of the Bail Reform Act. Defendant filed an objection to the detention order, and the district court initially overruled his objection, agreeing with the magistrate's finding that he presented a danger to the community. Defendant moved for further review of the detention order, and the district court then determined that weapon-possession crimes—including possessing a weapon while subject to a protection order or following a misdemeanor conviction for domestic violence—were not "crimes of violence" pursuant to § 3142(f)(1) because "nothing inherent" in § 922(g) creates a "substantial risk" of violence. The Government appealed.

Issue: On appeal, the Government argued that the district court erred in concluding that possession of a firearm while subject to a domestic protection order and possession of a firearm following a misdemeanor conviction of domestic violence were not crimes of violence for purposes of the Bail Reform Act.

Holding: The Tenth Circuit reversed the district court and directed it to order Defendant detained, holding that possession of a firearm while subject to a domestic protection order and following a misdemeanor conviction of domestic violence were "felonies that by their very nature involve a substantial risk that physical force may be used against the person or property of another in the course of committing the offense" as set forth by 18 U.S.C. § 3156(a)(4)(B). The Tenth Circuit reasoned that a criminal conviction or protection order for domestic violence reflect a defendant's "demonstrated propensity for the use of physical violence against others" and the possession of guns in violation of §§ 922(g)(8) and 922(g)(9) increases the risk that individuals subject to a domestic protection order or convicted of a misdemeanor crime of domestic violence may engage in violent

acts. The Tenth Circuit found that such a risk is “undoubtedly substantial” because the underlying actions leading to the prohibitions in §§ 922(g)(8) and 922(g)(9) necessarily involve actual violence or credible threats of violence and occur “in the course of committing” the weapon offense.

Key Issue(s): Pretrial Detention

***United States v. Wynne*, No. 01-6386, 2003 WL 42508 (10th Cir. 2003)**

Facts/Procedural History: Petitioner obtained a temporary victim protective order (VPO) against Defendant in 1994. Defendant received a copy of the temporary VPO, which provided notice of the date and time of the hearing for the order. Defendant did not appear at the hearing, and the court entered the VPO by default. In 1997, Petitioner sought amendment of the VPO to reflect her new address. Defendant stipulated that he received a copy of the 1997 amended VPO. On April 2, 1999, Defendant purchased a firearm and attested that he was not subject to a protection order against an intimate partner. As of April 22, 1999, Defendant believed the VPO was pending against him. Defendant was indicted for violating 18 U.S.C. §§ 922(g)(8) and 922(a)(6) in 2001 and convicted in 2001 after a bench trial. Defendant appealed.

Issue: On appeal, Defendant argued that § 922(g)(8) was unconstitutional on its face and as applied to him under the Second and Fifth Amendments. Defendant further argued that the 1997 amended VPO displaced the 1994 order and that it was defective because he did not receive notice and a hearing before it was entered against him.

Holding: The Tenth Circuit affirmed the conviction. The Tenth Circuit rejected Defendant’s Second Amendment argument because Defendant did not provide credible evidence that he was a member of a state militia that was well regulated by the state, that his firearms were used by the militia and that his possession of the firearms were reasonably connected to his militia service. The Tenth Circuit also summarily rejected Defendant’s Fifth Amendment challenge based upon prior circuit precedent, noting that the circuit court had “recently rejected a virtually identical Fifth Amendment challenge to § 922(g)(8).” With respect to Defendant’s due process challenge, the Tenth Circuit agreed that the 1997 amended VPO would have been defective for failing to afford Defendant notice or an opportunity to be heard but affirmed the district court’s finding that the conviction was properly sustained by the 1994 VPO. The Tenth Circuit agreed with the district court that the address change in 1997 “did not extinguish the 1994 order and replace it with a new [order]; nor did the 1997 amendments ‘specifically modify’ the 1994 [order],” but rather the 1997 amendments “had no effect at all.” Therefore, the Tenth Circuit concluded that the 1994 VPO “was in full force and effect” when Defendant purchased the firearm in 1999. Because Defendant was given notice and an opportunity to be heard in connection with the 1994 VPO, the requirements of § 922(g)(8) were met.

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Fifth Amendment; Due Process (Notice)

United States v. Bayles, 310 F.3d 1302 (10th Cir. 2002)

Facts/Procedural History: Defendant was subject to a protective order issued by a state court. Defendant's attorney did not know whether Defendant could legally possess a firearm while subject to the protective order but suggested that he not possess a firearm in an abundance of caution. Defendant told an undercover law enforcement official that he possessed multiple firearms; he stored most away from his house to avoid violating the protective order, but he kept some in the house for hunting and some in his truck. Defendant was arrested and pled guilty to possessing a firearm while subject to a protective order in violation of 18 U.S.C. § 922(g)(8). During sentencing, the district court departed from established guidelines by ordering a reduced sentence based in part on the fact that Defendant was unaware of § 922(g)(8). Defendant appealed the conviction and sentencing.

Issue: On appeal, Defendant argued that § 922(g)(8) violated the Second Amendment and that the district court erred in refusing to reduce his offense level based on guidelines providing for a reduction where a defendant possesses firearms solely for sporting or collection purposes. The Government challenged the district court's decision to depart far below the sentencing guidelines.

Holding: The Tenth Circuit affirmed the conviction but vacated Defendant's sentence and remanded the case for resentencing. The Tenth Circuit rejected Defendant's Second Amendment argument because Defendant did not establish that he was a member of a state militia that was well regulated by the state, that his firearms were used by the militia and that his possession of the firearms were reasonably connected to his militia service. In terms of sentencing, the Tenth Circuit affirmed the district court's decision not to reduce Defendant's offense level because Defendant possessed handguns (as opposed to other types of firearms) and carried his firearms with ammunition, which indicated his firearms were not for sporting or collection. However, the Tenth Circuit reversed the district court's sentence reduction on two grounds. First, the Tenth Circuit found that Defendant's ignorance of § 922(g)(8) was not a permissible factor for reducing his sentence. Second, the Tenth Circuit found that Defendant's conduct was not "aberrant behavior," but rather demonstrated a pattern of harassing behavior and impermissible firearm possession.

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Sentencing

United States v. Rolle, 19 F. App'x 812 (10th Cir. 2001)

Facts/Procedural History: Defendant was arrested for possession of a firearm while subject to a restraining order in violation of 18 U.S.C. § 922(g)(8), among other charges. Defendant was convicted after a jury trial and appealed.

Issue: Defendant argued on appeal that the restraining order did not meet the requirements of § 922(g)(8) for two reasons: it did not specifically contain the words “stalking or threatening,” as used in § 922(g)(8)(B) to describe the prohibited conduct under the order, and it did not contain all language required by § 922(g)(8)(C) demonstrating that he represented a credible threat to his intimate partner.

Holding: The Tenth Circuit affirmed the conviction, holding that the restraining order satisfied the requirements of § 922(g)(8) because its terms sufficiently described the credible threat that Defendant posed to the Petitioner and the conduct prohibited under the order. Specifically, the Tenth Circuit found that the order satisfied § 922(g)(8)(B) by stating that Defendant “must not harass, annoy or disturb the peace of” the Petitioner and prohibiting him from engaging in conduct “that would place an intimate partner in reasonable fear of bodily injury.” In addition, the order complied with § 922(g)(8)(C) because it satisfied the “credible threat” requirement by including a finding that the Petitioner “[was] in danger of harm,” and also explicitly prohibited Defendant from using or attempting to use physical force against the Petitioner. The mere fact that the order did not contain the exact words “stalking or threatening” did not invalidate the restraining order.

Key Issue(s): Language of Protection Order

Eleventh Circuit (Alabama, Florida, Georgia)

United States v. Lucas, No. 22-12855, 2023 U.S. App. LEXIS 25674 (11th Cir. 2023)

Facts/Procedural History: Defendant signed a plea agreement. Defendant was sentenced to 60 months' imprisonment for possessing a firearm while subject to a protection order, in violation of 18 U.S.C. § 922(g)(8). Defendant appealed.

Issue: Defendant argued that the Government breached the plea agreement by (1) failing to recommend a sentence at the low end of the guidelines range and (2) presenting witness testimony that contributed to an upward variance in the district court's sentencing.

Holding: The Eleventh Circuit affirmed the Defendant's sentence. The Eleventh Circuit held that the Government complied with the plea agreement by recommending a low-end sentence in writing and did not breach the agreement by introducing testimony relevant to sentencing.

Key Issue(s): Plea Agreement; Sentencing

United States v. Cadet, 819 F. App'x 815, 2020 U.S. App. LEXIS 21129 (11th Cir. 2020)

Facts/Procedural History: Defendant was subject to a protection order that included a prohibition against using, attempting to use or threatening the use of physical force that would place an intimate partner in fear of bodily harm. He was later convicted of possessing a firearm in violation of 18 U.S.C. § 922(g)(1) and (g)(8). Defendant pled guilty and was sentenced to consecutive sentences. Defendant appealed arguing that the conviction and sentences on two subdivisions of the same statute were a violation of the Double Jeopardy Clause. The Eleventh Circuit held that the consecutive sentences were a violation of the Double Jeopardy clause and remanded. The district court, on remand, sentenced Defendant to concurrent sentences. Defendant appealed.

Issue: On this second appeal, Defendant argued that (1) the indictment's failure to allege that he had knowledge of his status as a prohibited purchaser deprived the court of subject matter jurisdiction and (2) imposing separate convictions and consecutive sentences under two subdivisions of § 922(g), when the offenses arose from the same incident, violated the Double Jeopardy Clause.

Holding: The Eleventh Circuit affirmed, in part, Defendant's conviction but vacated Defendant's sentences for the convictions. The Eleventh Circuit held that because the alleged errors in the indictment were nonjurisdictional and Defendant did not previously challenge the validity of his

plea, Defendant's guilty plea waived his claim that the indictment was jurisdictionally deficient. The Eleventh Circuit also held that Defendant must be sentenced on only one count of violating § 922(g) and thus remanded the case and instructed the district court to vacate and merge one of the two convictions into the other and sentence the Defendant on a single count.

Key Issue(s): Double Jeopardy

***United States v. Hamm*, 134 F. App'x 328 (11th Cir. 2005)**

Facts/Procedural History: Defendant was convicted under 18 U.S.C. § 922(g)(8) for possessing a weapon while subject to a protective order. Defendant appealed.

Issue: Defendant argued that the Alabama statute under which his protective order was issued was unconstitutional, because it authorized a temporary protection order to be issued ex parte upon a showing of worthy cause but without due process including a notice and a hearing before issuance.

Holding: The Eleventh Circuit affirmed the conviction. The Eleventh Circuit found that the Alabama statute did not violate due process because it provided a notice and an opportunity for a hearing with representation present within 14 days, following a showing of good cause for an ex parte temporary order.

Key Issue(s): Due Process (Notice and Opportunity to Participate)

District of Columbia Circuit

United States v. Chase, 179 F. App'x 57 (D.C. Cir. 2006)

Facts/Procedural History: Officers stopped the car Defendant was driving and removed Defendant and the other two occupants. An officer recovered a bag from the back seat and asked what was in the bag. Defendant replied, “a rifle.” Defendant was convicted of unlawful possession of a firearm and ammunition by a person subject to a protective order, in violation of 18 U.S.C. § 922(g)(8). Defendant appealed.

Issue: Defendant argued that the district court erred in (1) refusing to suppress Defendant’s statement regarding the rifle that he made prior to receiving Miranda warnings and (2) excluding evidence of a fingerprint examiner’s unfulfilled request for the palm prints of the two other car occupants.

Holding: The D.C. Circuit (1) remanded the case to the district court for further consideration to determine whether Defendant was interrogated before receiving his Miranda warnings and whether the officer’s question was directed at Defendant as opposed to the two other occupants and (2) held that the district court did not abuse its discretion in excluding evidence of the fingerprint examiner’s request by concluding that the risk of unfair prejudice to the Government outweighed the probative value of the evidence.

Key Issue(s): Suppression of Evidence; Fourth Amendment

U.S. Supreme Court

United States v. Lopez, 514 U.S. 549 (1995)

Facts/Procedural History: Defendant, a high school student in Texas, was arrested after bringing a concealed handgun and ammunition into his school. Defendant was charged in a Texas district court under the Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q)(1)(A). The district court convicted Defendant after a bench trial. The Fifth Circuit reversed, finding that the statute exceeded Congress's authority under the Commerce Clause.

Issue: Defendant argued that 18 U.S.C. § 922(q), which criminalized the knowing possession of a firearm in a school zone, was unconstitutional because it exceeded Congress's authority "[t]o regulate Commerce ... among the several States."

Holding: The Supreme Court affirmed the Fifth Circuit's decision and held that § 922(q) exceeded Congress's authority under the Commerce Clause. The Supreme Court found that the Act regulated neither a commercial activity nor required that firearm possession be connected in any way to interstate commerce, and thus the statute did not regulate an activity that "substantially affects" interstate commerce.

Note: As of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Commerce Clause

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