BATTERED WOMEN'S JUSTICE PROJECT
National Center on Protection Orders and Full Faith & Credit

18 U.S.C. § 922(g)(8) Case Law Summaries

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18 U.S.C. § 922(g)(8) Case Law

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

In re Peirano, 155 N.H. 738 (N.H. 2007).
The Court ruled that a portion of a divorce settlement requiring a husband in violation of 18 U.S.C. 922(g)(8) to sell his firearms and give the proceeds to his ex-wife was not permissible under New Hampshire law. *In the Matter of Beal & Beal*, 153 N.H. 349, 350 (2006). The Court also said that the trial court was correct in prohibiting Peirano from owning the firearms. The Court then required him to dispose of them in a legally permissible way.
Key Issue: Disposal of Illegal Firearms.

Magoon v. Thoroughgood, 148 N.H. 139, 803 A.2d 1070 (2002).
Magoon and Thoroughgood were divorced in 1999. The divorce decree included a provision that restrained Thoroughgood from "interfering with the person or liberty of [Magoon], from harassing, intimidating or threatening [Magoon], and from entering the residence or workplace of [Magoon]." A year later, Magoon obtained an ex parte stalking protection order against Thoroughgood. Following the issuance of the order, the local sheriff's department confiscated approximately 17 firearms from Thoroughgood. After the final hearing, the judge dismissed the petition, finding that Magoon had not been stalked. Thoroughgood moved for return of his firearms. The court granted the motion. However, the sheriff's department subsequently intervened and argued against the return. The court reversed its previous ruling and held that it could not return the firearms because Thoroughgood was subject to a protection order (the divorce decree) satisfying the requirements of 922(g)(8). Thoroughgood appealed and the Hew Hampshire Supreme Court reversed the trial court's decision. The Supreme court held that the language of the divorce decree does not "explicitly" prohibit the use, attempted use, or threatened use of physical force involving bodily injury, as required under section 922(g)(8)(B)(ii). Instead, the court found that, though the provision implicitly states the "use" language, explicit language is needed to satisfy the requirements for a ban on possession. The Supreme Court's language contrasted the provision in the

divorce decree with the domestic violence final order form used by the New Hampshire courts. The Court found the domestic violence form better mirrors the requirements of the statute's requirements.
Key Issue: Nature of prohibitory language in order.

United States v. Bunnell, 106 F. Supp. 2d 60 (D. Me. 2000), *aff'd* 280 F.3d 46 (1st Cir. 2002).
Steven Bunnell's ex-wife applied for, and was granted, an ex parte protection order. The order contained a warning in bold text that if the respondent failed to appear at the hearing, a protection order may be granted for a maximum of two years. Further, the order stated that, if the respondent planned to oppose the order, he appear at the hearing. Bunnell was served with the ex parte order on the day it was issued. Bunnell did not appear at the hearing, and the court issued a permanent order that prohibited Bunnell from: harassing, stalking, or threatening his ex-wife, and from the use, attempted use, or threatened use of physical force that could be reasonably expected to cause bodily injury. Bunnell was served with the permanent order on the same day it was issued. Thereafter, the local police department received information from a man who served with Bunnell in the National Guard. The man said he had heard Bunnell make threats against his ex-wife during a training exercise while Bunnell was firing an M-60 machine gun, and that he had seen Bunnell in possession of a Colt AR-15 (a civilian version of the M-16 assault rifle). The local police department subsequently obtained a search warrant, recovered the firearm, four loaded magazines for the weapon, and a copy of the protection order. Bunnell was indicted on one count of violating § 922(g)(8). Bunnell filed a motion to dismiss the indictment. He argued that the statute (1) is an unconstitutional exercise of Congress's Commerce Clause power, (2) violated his rights to due process, equal protection, and counsel under the 5th, 6th, and 14th Amendments of the U.S. Constitution, and (3) violates the 10th Amendment. The District Court denied the motion. Regarding the Commerce clause argument, the court rejected it because, unlike the statute in *United States v. Lopez*, 514, U.S. 549 (S. Ct. 1995), § 922(g)(8) contains a jurisdictional element requiring that a firearm moved in interstate commerce. Regarding his due process argument, Bunnell argued that the order was issued at a hearing which he did not attend. Further, Bunnell contended that he was not represented by counsel and claimed the lack of counsel invalidated the hearing. The court noted that the statute requires only that the order be issued after a hearing of which a defendant received notice and had an opportunity to participate. Bunnell was personally served with the ex parte order but chose not to participate in the hearing. The court decided could not claim that he was denied due process because he was afforded all rights due to him by the statute. Bunnell failed to articulate any argument for a violation of his equal protection and right to counsel rights, so the claimed were waived. Finally, the court rejected the claim that Bunnell's 10th Amendment challenge. The Court cited *United States v. Meade, supra,* in which the 1st Circuit held that § 922(g)(8) does not violate the 10th Amendment.
Key Issue: Commerce Clause; Due Process (hearing); 10th Amendment.

United States v. Cirilo, 803 F.3d 73 (Sept. 24, 2015).
The defendant was convicted for one count of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(8). Defendant entered into a plea agreement that set forth sentencing recommendations. It stipulated that the judge was not bound by them. Cirilo initially agreed to a stipulated base offense level of 20, pursuant to U.S.S.G § 2k2.1(a)(4) but he was eligible for a three-level deduction. However, the District Court adopted the presentence report's recommendation that was based on different guidelines calculations than in the plea. Based on Cirilo's prior criminal conduct, Cirilo qualified for a four-level enhancement for possessing a firearm during the commission of an attempted burglary. Cirilo had been seen wearing an official police insignia during the crime, which qualified defendant for an upward departure under U.S.S.G § 5K2.24. The government recommended a sentence at the lower end, while the District Court imposed a 60-month term of imprisonment. Defense counsel did not object to the specific facts in the presentence report. The court found that the limited nature of the objections was not grounds

for departure under U.S.S.G § 5K2.24. Cirilo did not meet his burden for the affirmative defense that the factual findings were erroneous. Once again, defense counsel did not contest the substance of the factual allegations. The Court of Appeals affirmed the low court's judgments: (1) the court did not err by imposed a sentence based on disputed facts in the presentence report, and (2) the factual determinations of the lower court were not erroneous.

Key Issue: plea agreement, sentencing

United States v. Coccia, 249 F. Supp. 2d 79 (D. Mass 2003).

After his conviction under § 922(g)(8), Coccia moved for a judgment of acquittal. In denying the motion, the court noted that it had incorrectly permitted the jury to be instructed that § 922(g)(8) requires that the defendant actually knew of the existence of the protection order issued against him. Upon further consideration, the Court concluded that § 922(g)(8) does not require that a defendant have actual knowledge of the particular court order at issue. The court concluded that, although actual notice of a hearing is a requirement under the plain language of the statute, actual knowledge of a court order is not. The court supported its conclusion by citing cases holding that knowledge of the federal law or of a state court order is not necessary to sustain a conviction under § 922(g)(8). Despite its error, the court held that the conviction should stand. The court elaborated by stating the error was harmless because it introduced an additional element requiring proof beyond a reasonable doubt and the jury nonetheless found Coccia guilty. Further, the court held that knowledge that an order has been issued is a required element. Additionally, the court stated Coccia's motion failed because the defense itself had alleged sufficient evidence to indicate Coccia knew of the order.

Key Issue: Due Process (notice).

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

Larry Coccia appeals his conviction by a District Court of possession of a firearm while subject to a domestic restraining order under 18 U.S.C. §922(g)(8). The restraining order was issued while Coccia was in the midst of a difficult divorce in 2001. He was found to be in violation of the order after he told a psychiatrist that he was contemplating a terrorist attack. During his trial, Coccia moved to suppress the firearm found in a search of his car. He claimed that seizure of the car violated his Fourth Amendment Rights. He also contended that the Pennsylvania restraining order did not contain the restrictions explicitly required by 18 U.S.C. §922(g)(8)(C)(ii), and that §922(g)(8) is unconstitutional. The Court held that there was no violation of the Fourth Amendment because law enforcement officials have the authority to remove vehicles that impede traffic or threaten public safety or convenience (the "community caretaking" function). *S. Dakota v. Opperman,* 428 U.S. 364 (1976). The Court held that a restraining order does not have to state verbatim the restrictions required by 18 U.S.C. §922(g)(8)(C)(ii). *United States v. Bostic*, 168 F.3d 718, 722 (4th Cir. 1999). Finally, the Court said that §922(g)(8) is constitutional. *United States v. Emerson*, 270 F.3d 203, 261-65 (5th Cir. 2001) (discussing that the procedural requirements to be followed before imposing § 922(g)(8)'s restrictions adequately safeguard the right to possess firearms); United States v. Cardoza, 129 F.3d 6, 10-11 (1st Cir. 1997) (calling challenges to §922(g)(8)'s constitutionality under the commerce clause "hopeless").

Key Issue: Fourth Amendment, Wording of Protective Orders.

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

Karl Knight moved to dismiss his indictment for charges related to making materially false statements when attempting to purchase a firearm. Knight was charged with answering question 12.h falsely, which asks: "Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner?" Knight answered "no" although subject to such an order as of August 26, 2004. Pursuant to 18 U.S.C. § 922(a)(6), such a false statement is unlawful when

purchasing a firearm. Knight relied on *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), which recognized an individual right to bear arms under the Second Amendment. However, the district court found *Heller* inapplicable to the materiality of the answer to the 12.h question. First, the court differentiated *Heller* by nothing *Heller* pertained to a complete firearm ban, whereas § 922(g)(8) is not an outright ban on firearms and lasts only while the defendant is under a court order. The court also noted that *Heller* did not eliminate the crime of false statements, which is at issue here. Furthermore, the court stated *Heller* did not make 18 U.S.C. § 922(g)(8) unconstitutional, (if it did, the crime would no longer exist and therefore the 12.h question would not be material). Motion to dismiss denied.
Key Issue: 2nd Amendment.

United States v. Meade, 175 F.3d 215 (1st Cir. 1999).
Meade, while subject to an active protection order, threatened to shoot his wife while pounding on her apartment door. When police arrived, they instructed him to lie face down and show his hands. Instead, he crouched down and thrust his hand into his parked car. After his arrest, police retrieved a loaded handgun from the car. Meade was found guilty in district court of violating §§ 922(g)(8) and (g)(9). On appeal, he argued that both §§ 922(g)(8) and (g)(9) are unconstitutional. In terms of (g)(8), he asserted that the section violates the 10th Amendment because it promotes interference by the federal government in state civil proceedings. Further, he asserted a violation of the Due Process Clause because it does not require notice of the statute or the consequences of violating it. The 1st Circuit rejected all of Meade's arguments and affirmed his conviction.
Key Issue: 10th Amendment; due process (notice).

United States v. Miles, 238 F. Supp. 2d 297 (D. Me 2002).
Miles's wife filed for an order of protection against him in a Texas court. Miles was personally served in Maine, but did not participate in the hearing. The order was issued by default, and the court made a specific finding that family violence had occurred and was likely to occur again in the future. It also prohibited Miles from committing family violence as defined by the relevant section of the Texas Family Code and it further mandated that Miles be prohibited from communicating directly with his wife and children "in a threatening or harassing manner" or engaging in any conduct directed specifically toward these family members, including following them, that was "reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass" his wife and children. On two occasions after receiving a copy of the final protection order, Miles attempted to purchase firearms from federally licensed dealers. During both attempts, Miles indicated on ATF Form 4473 that he was not subject to a protective order, as defined under § 922(g)(8). He was subsequently indicted for violating 18 U.S.C. § 922(a)(6) (making a false statement in connection with the acquisition of a firearm) and filed a motion to dismiss the indictment, arguing that § 922(g)(8), the basis for the § 922(a)(6) indictment, is an unconstitutional infringement of his Second Amendment right to keep and bear arms. Citing *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 2362 (June 10, 2002), Miles argued that the Second Amendment right is an individual one and that strict scrutiny must be applied in evaluating section 922(g)(8)'s effect on this fundamental right. In addition, Miles argued that he fell under 922(g)(8)(C)(ii) as a prohibited person. Further, he contended that it is this particular provision that is unconstitutional as a violation of the Equal Protection Clause and substantive and procedural due process. The court refused to address Miles's Second Amendment challenge, noting that it must avoid considering constitutional questions where they are not necessary to the decision. The court held that "[r]egardless of whether there is such a fundamental individual right, the restriction imposed by section 922(g)(8) is a narrow and reasonable one, and it passes constitutional muster even under a strict scrutiny test." The court cited the reasoning in *Emerson* to reject Miles's assertions that the court order used boilerplate language to track the federal requirement. Further, the court dismissed the assertion that the order did not reflect any consideration

or conclusion that Miles himself posed a threat of future harm. The Court instead agreed with the *Emerson* court that state courts only issue domestic violence protection orders after making explicit findings with respect to the defendant at issue and the likelihood of injury that the defendant poses. The court found it was reasonable to restrict access to firearms to those who were issued qualifying protective orders. Moreover, the court found that Miles's argument failed because the court *did* make a specific finding of violence in issuing the protection order. The court further found that § 922(g)(8) survives strict scrutiny because: it is narrowly tailored to support a compelling government interest; Miles had sufficient notice to satisfy due process because he knew that the protection order had been entered against him; and Miles need not have been told about the consequences of entry of the protection order vis-à-vis his ability to possess a firearm in order for his due process rights to be satisfied.
Key Issue: 2nd Amendment; Due Process (notice).

Second Circuit (Connecticut, New York, Vermont)

Benson v. Muscari, 769 A.2d 1291 (Vt. 2001).
Benson obtained a protection order against Muscari that included a provision ordering Muscari "not to be in possession or control of any firearm or dangerous weapons …." Muscari appealed, contending among other things, that the provision was overbroad and unsupported by the record. Muscari supported his reasoning by asserting that no weapon was used in the underlying assault. The court rejected Muscari's challenges, finding that a firearm prohibition is authorized by the "catch-all" provision of Vermont's protection order code, and that inclusion of such a prohibition is appropriate in light of the federal prohibition in 18 U.S.C. § 922(g)(8). Further, the court recognized the limited capacity of the federal authorities to enforce the federal prohibition. Finally, the court noted that the federal restriction does not preempt the court's ability to impose a parallel provision.
Key Issue: Authority of State Court to Impose Firearm Prohibition.

Joseph v. United States, 2016 U.S. Dist. Lexis 77622 (D. Conn. June 14, 2016).
In 2009, a federal grand jury returned an indictment charging Joseph with one count of possessing a firearm while subject to a restraining order. It was found that Joseph was a credible threat to the physical safety of a protected person in violation of 18 U.S.C. 922(g)(8) and § 924(a)(2). Joseph appealed his conviction. However, the Second Circuit affirmed Joseph's assessment in 2012. In 2016, Joseph moved to vacate his conviction, vacate his sentence, and for such other relief as authorized under 28 U.S.C § 2255. Joseph argued that he received ineffective assistance of counsel. Defense counsel told Joseph that going to trial would be foolish because the government had a case against him under § 922(g)(8)(C)(i) and § 922(g)(8)(C)(ii). Defense counsel advised Joseph that he would risk losing a reduction in his offense level for acceptance of responsibility if he elected to go to trial instead of signing the plea agreement. After several months without committing to the plea agreement, the government proceeded with the indictment. Once again Joseph's counsel informed him that he believed the government had enough evidence to convict him of the violations charged. After the arraignment, Joseph informed his counsel that he wanted to plead guilty. Unfortunately, defense counsel never researched the elements of a violation of § 922(g)(8) beyond reading the text of the statute and the text of the state restraining order statute, Conn. Gen. Stat. § 46b-15. The court analyzed § 922(g)(8) from an objective perspective and whether it could be implied that the finding was sufficient to meet the element of § 922(g)(8)(C)(i). The court found that defense counsel's actions were objectively unreasonable. However, the court had to assess whether Joseph was prejudiced by defense counsel's ineffective counsel. A finding of the court showed that Joseph was prejudiced. The court found that § 922(g)(8)(A)-(C) must all be satisfied for an individual to be guilty of unlawful possession of a firearm while subject to a restraining order. U.S. v. Sanchez, 639 F.3d 1201,

1204 (9th Cir. 2011). However, (C)(i) and (C)(ii) do not both need to be met for prosecution under § 922(g)(8). Section (C)(i) required the state court to have made an explicit finding that the defendant is a credible threat to the physical safety of the protected party. Joseph was not found to be a threat. The court granted Joseph's amended Motion for Relief.
Key Issue: Ineffective assistance of counsel, restraining order.

Matteo v. Town of Guilderland, No. 1:08-CV-00763 (NPM/RFT), 2008 WL 281027(N.D.N.Y. July 21, 2008).
A protection order was issued against Matteo following his arrest and charge for harassment of his wife. He was ordered to surrender his gun collection to police pursuant to the order. In accordance with state criminal procedure law, the order was under contemplation of dismissal and modified to remove the condition that he surrender the gun collection. However, the police department denied his request for return of the firearms pursuant to 18 U.S.C. § 922(g)(8). Matteo argued he did not have adequate notice of the hearing for the protection order as required under 18 U.S.C. § 922(g)(8)(A). Counsel for defendant had stipulated that Matteo did not receive notice. The defense was successful and the court granted Matteo's motion for a temporary restraining order and preliminary injunction seeking return of property.
Key Issue: Due Process (notice).

Panzella v. Cnty. of Nassau, 2015 U.S. Dist. Lexis 133475 (Aug. 26, 2015), *aff'd sub nom. Panzella v. Sposato,* 863 F.3d 210, 219 (2d Cir. 2017).
Christine Panzella claimed violations of the Second, and Fourteenth Amendments under 42 U.S.C. § 1983. A New York State Family Court issued temporary orders of protection against plaintiff. Police took the plaintiffs longarms but refused to return them when the orders expired. The question at issue came down to the definition of a "longarm." Longarms to not require a license for purchase or possession. *Razzano v. Cnty. Of Nassau*, 765 DF. Supp. 2d 176, 180 (E.D.N.Y. 2011). The policy of the Nassau County Sheriff's Department's was to retain any firearms confiscated in connection with an order until the department receives an order directing its return. The plaintiff argued that the Department's retention policy violated her Fourteenth Amendment due process rights. The temporary order of protection did not direct that the respondent's longarm should be returned nor directed that defendant's longarm should be returned after the expiration of orders. Section 1983 provides remedies for constitutional deprivations occasioned by state actors. Defendants argued that the retention of the longarms were pursuant to the policy and practice of the County. However, it was concluded in *Razzano* that due process required a prompt post-deprivation hearing. The county had 30 days to hold a due process hearing for Panzella. The court granted the Panzella's motion for summary judgment against the County on her due process claim concerning the Retention Policy. The Court granted the defendant's motion concerning the Second Amendment claims because Panzella did not provide adequate evidence in to demonstrate a violation of her rights.
Key Issue: Fourteenth Amendment, Second Amendment.

United States v. Bramer, 956 F.3d 91 (2nd Cir. 2020).
Michael Bramer, Jr. was convicted of providing false information to a licensed dealer in an attempt to purchase a firearm, after he incorrectly filled out the form, stating that he was not subject to a protection order. He appealed the district court's denial of his motion for judgement of acquittal.
Bramer argued that the protective order he was subject to did not meet the requirements of 922(g)(8). He argued that he did not have an opportunity to participate in a hearing before the order was issued. The appellate court found that there was not sufficient evidence that Bramer had a hearing in which he had the opportunity to participate. The court saw no evidence that the issuing court engaged with Bramer in a way that conveyed the terms of the protection order or gave him an opportunity to object to the order. As such, the court held that the hearing did not satisfy 922(g)(8), and that the district court's denial of Bramer's motion for judgment of acquittal was vacated, and his conviction was

reversed.
Key Issue: Due Process (hearing).

United States v. Crespo, No. 16-CR-536 (PKC), 2017 WL 685572 (S.D.N.Y. Feb. 21, 2017).
Crespo was indicted on violation of § 922(g)(8). Crespo moved to dismiss because the underlying protective order fails to meet the requirements of § 922(g)(8). Consensus in the Second Circuit has held that the underlying court order need not employ the precise language of § 922(g)(8)(C)(ii) in order to qualify under the statute. In this case, the court found that the language of the underlying protective order did not track the exact language of the statute or the exact language analyzed in other Second Circuit Courts. However, the Court still found the language of the protective order has the same meaning as that of the statute. In addition, notice of §922(g)(8) prohibition in the protective order indicates that the court intended it as a predicate to the statute. Crespo also argued that the victim named on the protective order was not identified on the protective order as an intimate partner and that minutes of the grand jury proceeding should be disclosed. All motions were denied.
Key issue: predicate requirements of § 922(g)(8)

United States v. Erwin, No. 1:07-CR-566 (LEK), 2008 WL 4534058 (Oct. 6, 2008).
Erwin was charged with knowingly making false statements to a firearms dealer and possessing certain weapons in violation of 18 U.S.C. § 922(g)(8). Erwin moved to dismiss his indictment in reliance on *Columbia v. Heller*, 128 S. Ct. 2783 (2008). The court found that reducing domestic violence is a compelling government interest, and that the statute was narrowly tailored in its limitation on possession of a firearm. Therefore, the court found § 922(g)(8) constitutional. Motion to dismiss indictment denied.
Key Issue: 2nd Amendment.

United States v. Huertas, 2015 U.S. Dist. Lexis 43406 (D. Conn. April 1, 2015).
Defendant was charged with one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), and one count of unlawful possession of a firearm by a person subject to a protective order in violation of 18 U.S.C. §§ 922(g)(8) and 924(a)(2). Tom Lattanzio, a police officer, testified that a woman pulled her car next to his to ask him how to change an already completed police report. During the conversation, she told him that a man named Branden had a gun in a bag. She pointed toward the location of the man but the officer did not see anyone. The woman did not provide any personal information about herself before driving away. Lattanzio drove towards where the woman pointed and saw a man carrying a black bag. As he approached the suspect in his car, the suspect spoke with him for a few seconds. The officer got out of the car to inquire about what was in the bag. The suspect, Mr. Huertas began to flee. Officer Lattanzio and other officers began to pursue Mr. Huertas. The officers found a revolver in the suspect's bag. Huertas argued that if the officer did not approach and questioned him, the contents of the bag would not have been illegally seized. According to *U.S. v. Baldwin, 496 F.3d 215, 218 (2d Cir. 2007),* in order "to comply with an order to stop– and thus become seized– a suspect must do more than halt temporarily; he must submit to police authority." The court found that Huertas' brief stop and verbal exchange did not constitute "submission." Mr. Huertas was not seized until he was arrested by police. The items that he dropped were not "fruit of an unlawful seizure" and did not need to be suppressed, regardless of the reasonableness of Lattanzio's questioning. The court denied the defendants Motion to Suppress.
Key Issue: Fourth Amendment

United States v. Londonio, 2016 U.S. Dist. Lexis 8472 (Jan. 13, 2016).
A grand jury charged Christopher Londonio 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 18 U.S.C. § 924(a)(2). On

November 8, 2014, two NYPD officers encountered an Acura sedan stopped near an intersection. The intersection was known for criminal activity. As the officers approached the vehicle, they spotted Londonio, a passenger. One of the officers noticed a bullet lying on the floorboard behind the driver's seat. The officers asked the two men to step out of the car. As Londonio moved out of the car, an officer spotted a firearm under his leg. Both men were handcuffed. The officers searched the car with permission of the driver. A Hi-Point 9mm pistol, a Glock. 40-caliber pistol with a laser-aiming device attached, and a bag containing loose ammunition were found. Pursuant to the domestic order of protection, Londonio was prohibited from possessing firearms in and affecting commerce. The defendant sought to suppress to fruits of the search by reason of a violation of the Fourth Amendment. However, the defendant must show he had a 'legitimate expectation of privacy' in the area searched, and the expectation of privacy must be one that society accepted as reasonable. *Rakas v. Illinois, 439 U.S. 128, 143 (1978). Rakas* also established that non-owner passengers, in the context of warrantless searches, could not bring a Fourth Amendment challenge. The fact that defendants were legitimately on the premise with the permission of the owner is not determinative of whether they had a legitimate expectation of privacy in the areas searched. *Rakas, 439 U.S.* at 148-149. Londonio did not adequately establish that he had a reasonable expectation of privacy in the Acura. He failed to address the standing issue in its entirety. The court denied the Motion to Suppress the evidence found in the car.
Key Issue: reasonable expectation of privacy, Fourth Amendment

United States v. Montalvo, No. 08-CR-004S, 2009 WL 667229 (Mar. 12, 2009).
Montalvo, a police officer, was charged with a violation of 18 U.S.C § 922(g)(8) *inter alia*, for possession of a firearm while subject to an order of protection. Montalvo relied on *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) to argue § 922(g)(8) violated his Second Amendment right to possess a firearm. The district court rejected his argument and quoted *Heller*, which stated that the Second Amendment was not without limitations. Motion to dismiss denied.
Key Issue: 2nd Amendment.

United States v. Montalvo, 2015 U.S. Dist. Lexis 141450 (Feb. 9, 2015).
The defendant moved to dismiss the indictment for suppression of evidence and pretrial discovery. Defendant relied on *Heller* to argue that his Second Amendment right to possess a firearm had been violated. The defendant had standing to challenge § 922(g)(8), according to *U.S. v. Manneh, 645 F.Supp. 2d 98,20008 WL 5435885, *15 (E.D.N.Y. 2008).* Montalvo argued that a protection order was not an appropriate restriction in this case for four reasons. First, the order of protection was intended to be a "no offensive conduct order" as opposed to a "no contact stay away order." Second, there was no finding by the court that defendant posed a physical threat to his ex-wife. Next, he was convicted of a non-criminal violation that led to the order of protection. Lastly, there was no notice with an opportunity to be heard. The defendant relied heavily on *U.S. v. Spruill, 292 F.3d 207, 221 (5th Cir. 2002),* a fifth circuit opinion that vacated a judgment of conviction that found that an order of protection charge should not be entered after a hearing of which the defendant received actual notice. Magistrate Judge recommended that the motion to dismiss indictment and motion to suppress evidence made by the defendant should be denied. The pretrial discovery motion was denied in part and granted in part.
Key Issue: second Amendment, discovery, protection order

United States v. Russell, 2007 U.S. Dist. LEXIS 44125 (Vt. 2007).
Police officers, responding to a complaint that the defendant had been calling his ex-girlfriend in violation of a restraining order, discovered guns in the defendant's home in violation of 18 U.S.C. §922(g)(8) and calls to her from his cellular phone. Russell filed a Motion to Suppress evidence. He contends that this was a warrantless search, but the Court says that Russell had voluntarily let the officers into his home so

that he could get his shoes, and that he had told them to look at the phone as proof that he had **not** called his ex-girlfriend. A warrantless search does not violate the Fourth Amendment where the search is conducted pursuant to the free and voluntary consent of an authorized person. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).
Key Issue: Fourth Amendment.

Third Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands)

Milcarek v. Sisak, 2014 U.S. Dist. Lexis 50207 (Apr. 11, 2014).
Defendant Sisak sought a Motion to Dismiss plaintiffs' complaint for failure to state a claim for which relief could be granted pursuant to Fed. Rule of Civ. Pro 12(b)(6). The motion was denied. The plaintiffs are the parents of Joseph. Defendant Sisak, a Police Officer, stopped Joseph "because the license plate on the car was allegedly suspended." The defendant discovered that Joseph was the defendant in an active Protection from Abuse (PFA) proceeding. The victim seeking the order was the passenger in the vehicle Joseph was driving. He was arrested during the stop. Defendant also allegedly observed a shotgun in the stop. Later that day, Sisak requested a search warrant of Plaintiff's residence. Sisak's affidavit contends that he believed Joseph possessed additional ammunition in his residence in violation of 18 Pa.C.S. § 6105. Plaintiffs contend that Defendant Sisak and other unknown offices' conduct amounted to a violation of their Fourth Amendment rights and invasion of privacy. No one was home at the time of the search. Sisak argued that the Plaintiffs' complaint should have been dismissed for failure to state a claim because probable cause for the search warrant was established in the PFA. The prohibition in the PFA to possess weapons and ammunition barred the Plaintiffs' from arguing Fourth Amendment and Invasion of Property claims. The Defendant asserts that he was entitled to qualified immunity because he acted reasonably in relying on information provided by the Pennsylvania State Police. The Court denied the Defendant's Motion to Dismiss because Sisak submitted an affidavit that contained incorrect statements.
Key Issue: Fourth amendment, invasion of privacy

New Jersey v. S.A., 675 A.2d 678 (N.J. Super. Ct. App. Div. 1996).
A final restraining order was issued against the defendant in October 1994. The defendant's firearms had already been seized by law enforcement pursuant to a previous order entered by the court in September 1994. Upon issuance of the October order, the defendant petitioned for the return of his firearms, but the judge denied the request, stating that the guns would be returned if the state failed to file a forfeiture motion within 45 days, as required by New Jersey law. The state never did so, and the defendant petitioned the court in September 1995 for return of the firearms. The trial judge ordered that the guns be returned but stayed his order to permit the state to appeal the issue of whether section 922(g)(8) forbade the return. On appeal, the Superior Court, Appellate Division, found that though New Jersey law calls for the return of seized weapons in the event that the state fails to initiate a forfeiture action within 45 days, the law also contemplates that guns should not be returned if the court finds that the defendant continues to pose a threat to the victim of domestic violence. The continued existence of the restraining order satisfied that requirement, according to the court, and in any event, the federal law barred defendant from possessing the guns because the order satisfied section 922(g)(8)'s requirements. The appellate court ruled that the trial judge should not have ordered the return of the guns because it was illegal for the defendant to possess those guns under federal law. The court also noted that the New Jersey firearm provisions are not preempted by the federal laws because the two sets of laws are not in conflict and the former do not act as an impediment to the application of the latter.
Key Issue: Return of firearms; Federal Preemption.

Travieso v. Lopez, 23 F. Supp. 2d 576 (D. V.I. 1998).
Travieso contended that the court's orders against him failed to include the findings necessary to support the application of 18 U.S.C. § 922(g). The court held that, since he appeared at both of his scheduled hearings, the notice requirement of § 922(8)(A) was satisfied, and since the order contains specific information enjoining, restraining, and prohibiting him from performing abusive, threatening, and/or harassing conduct, §§ 922(8)(B) and (C) are satisfied.
Key Issue: Due Process (notice).

United States v. Dunbar, 2007 U.S. Dist. Lexis 35473 (W. Dist. Pa. 2007).
Dunbar filed a motion to suppress ammunition seized during a search on the grounds that it exceeded the scope of the search warrant. Court found that the ammunition fell under the plain view doctrine, so the officers could seize it without a warrant. *United States v. Menon*, 24 F.3d 550, 559 (3d. Cir. 1994). The Court said that the fact that the agents may not have read the protective order prior to the search was not relevant.
Key Issue: Fourth Amendment.

United States v. LaBohne, No. 97-CR-382, 2002 U.S. Dist. LEXIS 12167 (E.D. Pa. March 22, 2002).
Just over a month after LaBohne's wife obtained a civil protection order against him, 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. LaBohne pled guilty to a one-count indictment for violation of section 922(g)(8) and ultimately was sentenced to a 57-month term of imprisonment. He subsequently appealed the sentence, claiming, among other things, that he received ineffective assistance of counsel because his attorney had failed to argue that LaBohne did not receive notice and fair warning that his possession of the firearm violated federal law. The court rejected LaBohne's argument that it likely would have dismissed the indictment had the argument been made, noting that every federal appellate court that has considered the issue has rejected a notice and fair warning challenge to section 922(g)(8).
Key Issue: Due Process (notice).

United States v. Levy, No. 15-22, 2015 U.S. Dist. Lexis 18039 (W.D. Pa. Crim. R. 1, Feb. 15, 2015).
The grand jury returned a four-count indictment on January 15, 2015. Count three alleged that Levy violated 18 U.S.C. § 922(g)(8). However, the count did not go before the court at the de novo detention hearing. It did not affect the court's decision. Based on Levy's troubled past, the court was worried that Levy would be a danger to the community if he was released. If a rebuttable presumption applied, the defendant would have to "produce… credible evidence forming a basis for his contention that he [would] appear and [would] not pose a threat to the community." *U.S. v. Carbone, 792 F.2d 559, 560 (3d Cir. 1986).* The four factors include: (1) the nature and circumstances of the offense charged, (2) the weight of evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. The court held that the defendant would be held for confinement in a corrections facility pending trial.
Key Issue: Detention, Clear and convincing evidence

United States v. McLaughlin, 2014 U.S. Dist. Lexis 100599 (July 23, 2014).
McLaughlin' count 4 stated that he was in violation of 18 U.S.C. § 922(g)(8). The defendant pled guilty to count 1,3, and 5. However, McLaughlin decided to retain new counsel after the plead guilty. Through newly retained counsel, he filed an instant motion to withdraw his guilty plea. He sought to withdraw his guilty plea pursuant to Fed. R. Civ. Pro. 11(d). However, the defendant failed to assert his innocence or

offer a sufficient reason for the court to allow him to withdraw his guilty plea. The court denied the motion to withdraw his guilty plea.
Key Issue: Nolo Contendere Plea

United States v. McLaughlin, 647 F. App'x 136 (3d Cir. 2016).
Edward McLaughlin plead guilty to conspiracy to use a facility of interstate commerce to commit a murder for hire and other related crimes. In late May 2012, police in Pennsylvania responded to a 911 call made by a victim of domestic violence. Williams tried to flee from an apartment building after beating his girlfriend, Gloria Soto and fired a Mauser rifle. Police learned from Soto that Williams had been hired by McLaughlin to kill his ex-wife. Both men were indicted on federal crimes and the trial court severed their cases. A grand jury charged McLaughlin with nine crimes in a Third Superseding Indictment. Williams plead guilty to counts 1,3, 9; (1) conspiracy to use interstate facilities in the commission of a murder-for-hire; (3) carrying or possessing a firearm during and in relation to, or in furtherance of a crime of violence as an aider and abettor; and (9) solicitation to commit a crime of violence (attempting to forcibly tamper with a witness). All the other charges were dropped. Prior to sentencing, defendant hired a new counsel. He filed a motion to withdraw his guilty plea, contending his trial counsel suggested he would only be sentenced five to eight years. McLaughlin could not show ineffective assistance of counsel. No evidence showed that the government promised a reduction of sentencing nor the promise to investigate his ex-wife's alleged maltreatment of their children. It was found that defendant was competent and understood the significance of testifying under oath. Plain error was not found in the court's failure to warn McLaughlin about the consequences of perjury.
Key Issue: sentence, plea agreement

United States v. Ollie, No. 12-18E, 2014 U.S. Dist. LEXIS 108769 (W.D. Pa. Aug. 6, 2014).
A jury found the defendant guilty of violating 18 U.S.C. § 922(g)(1), 18 U.S.C. § 922(g)(8) and 18 U.S.C § 922(j). Mr. Ollie had been seen at the home of Eugene Hart and Stephanie Carneiwski stealing a shotgun. After the guilty verdict, the defendant filed a *pro se* Motion for Judgment of acquittal on all counts. However, the defendant failed to file the motion on time. New evidence allowed the defendant entitlement to a new trial. Premised upon the newly discovered evidence, the defendant alleged that his trial attorney should have been disqualified from representing him. He believed that his Sixth Amendment rights were violated. However, the defendant failed to provide the court with evidence as to how he had been prejudiced during the trial proceedings. The evidence introduced at trail established beyond a reasonable doubt that Mr. Ollie had committed the crime. The court held that it could only grant a new trial in the interest of justice. The *pro se* motion for Judgment of Acquittal was denied.
Key Issue: Conflict of interest, Sixth Amendment, Ineffective Assistance of Counsel.

United States v. Ollie, 624 Fed. App'x 807 (3rd. Cir. 1.2, 2015).
In Ollie's second case, he was charged in violation of 18 U.S.C. § 922(g)(1), 18 U.S.C. § 922(g)(8) and 18 U.S.C § 922(j). He appealed, after being found guilty of all charges. Ollie was stopped by Pennsylvania police, after he stole a shotgun from a home. Ollie had knowledge that he should not be around firearms. During the trial, the defendant claimed that his own testimony was "arguably more credible" than the government's key witness. The key witness was granted leniency with her sentencing. However, the jury believed the victims. The court denied the motion to withdraw after it found without merit the defendant's constant changing theory of innocence, and insufficient argument to suppress his claim.
Key Issue: insufficient information

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

Barefoot v. United States, 2013 U.S. Dist. Lexis 65091 (E.D.N.C. May 6, 2013).
The petitioner, Mr. Barefoot motioned the court to vacate, set aside or correct his sentencing. Mr. Barefoot was sentenced to twenty-seven months in prison due to pleasing guilty to a count of possession of a firearm while being subjected to a domestic violence restraining order, thus violating 18 U.S.C. § 922(g)(8). Mr. Barefoot filed a motion to vacate, set aside or correct the sentence in 2004, which was denied. He filed a second motion in 2012 providing new evidence of prosecutorial misconduct. The motion was dismissed due to lack of subject matter jurisdiction. Because the motion in question was previously brought to the court attempting to vacate the same conviction and sentence, and that motion was dismissed on the merits, the court lacked jurisdiction to hear this instant case.
Key Issue: Sentencing, Motion to Vacate, Domestic Violence Restraining Order

Bey ex rel. Graves-Bey v. Jacobs, 2014 U.S. Dist. Lexis 108472 (Aug. 6, 2014).
The Prince William County Juvenile and Domestic Relations District Court renewed a child protection order for the daughter of a plaintiff. Plaintiff's claimed that the order was forged and stated that there was no hearing, trial or any acknowledgment by any party. Plaintiff alleged violations of the 2nd, 4th, 5th, 6th, 14th, Constitution of Virginia Article 1 Bill of Rights Section 11, right to counsel, and 18 U.S.C § 922(g)(8). On July 17, 2014, the plaintiff commenced an action against the four judges, four attorneys, and one employee of the Richmond Department of Social Services. Under 28 U.S.C. § 1915(e)(2)(B), the defendants are immune. The plaintiffs are unable to get monetary relief from the defendants. The plaintiffs also asked that court to compel the judges to recuse themselves or dismiss the order. The Court had no authority in that matter. The Rooker-Feldman Doctrine (*Rooker v. Fidelity Trust Co.,* 263 U.S. 412 (1923)) serves as a jurisdictional bar to a federal district courts review of a state court judgment. In this instance, the Rooker-Feldman doctrine prohibited the Court from reviewing and passing upon the merits of the protective order due to lack of jurisdiction.
Key Issue: protection order, immunity.

Boles V. United States, 3 F. Supp. 3d 491 (Feb. 26, 2014).
The facts were viewed in favor of Boles. In or around September 2009, Terry Porter, a civilian employee of the U.S. coast guards in Portsmouth, VA, was hospitalized for mental illness. As a result of his hospitalization for mental illness, his Coast Guard security access was suspended. Fellow employees encouraged Porter to store his privately-owned firearms in the Coast Guard Armory. Amy Kritz was one of those employees that helped Porter transfer his nine firearms. The Suffolk Juvenile and Domestic Relations District Court of the Commonwealth of Virginia entered a two-year protective order against Porter. The protective order prohibited Porter from possessing firearms or ammunition. Kritz monitored and attended the hearing of the progress of Porter's protection order. Porters family moved to Lexington, North Carolina. In March 2010, Porter removed his firearms with the assistance of several Coast Guard employees. After finding out the location of his family ten months later, Porter traveled to Lexington. Using firearms obtained from the Armory, he threatened his wife at gunpoint. Boles overheard Mrs. Porter's cry for help. In response to Boles' attempt to assist Mrs. Porter, Trevor Porter shot Boles several times. Boles was permanently injured and his property was damaged.

Boles contended that the shooting was a result of the Coast Guard's negligence in allowing Porter to reclaim the firearms he used from the Armory, despite the fact that the Coast Guard employees were

aware that he had voluntarily committed himself to a mental hospital and has a domestic violence protective order. Boles' original complaint sought relief under two counts of negligence. Count I of the proposed amended complaint alleged that Kritz assumed a duty to act with reasonable care and breached it by failing to communicate Porter's mental health status and protective order restriction to Coast Guard employees and failing to prevent the return of the firearms to Porter. Boles alleged that Kritz knew that Porter was prohibited from possessing the firearms pursuant to the Gun Control Act of 1968, 18 U.S.C. § 921; § 922 (g)(4); and § 922 (g)(8). Count II alleged that Coast Guard employees at the Armory assumes a duty to act reasonably when they accepted Porter's personal firearms for storage and breached it by, among other things under the circumstances and failing to warn Mrs. Porter and others. Count III alleged negligence *per se* as to unnamed Coast Guard employees for returning Porter's firearms to him in violation of § 922 (d)(8). Count IV alleges negligence per se as to an unnamed Coast Guard employee for returning Porter's firearms to him in violation of § 922 (d)(4) of the Act. Count V alleged negligence *per se* as to unnamed Coast Guard employees for returning Porter's firearms to him in violation of Va. Code Ann. § 18.2-56.1(A). The government's inability to meet the burden of proof required the Court to grant Boles' motion to amend the complaint for negligence and negligence *per se* based on an assumed duty under Virginia law (count I and II). Motions granted in part and denied in part.
Key Issue: proposed amended complaint, negligence

Harris v. United States, 2015 U.S. Dist. Lexis 139222 (June 18, 2015).
Petitioner pleaded guilty to one count of possessing ammunition in violation of the Domestic Violence Protection Order entered against him pursuant to § 922 (g)(8) and § 924 (a)(2). He was sentenced to six months' imprisonment, six months of house arrest and three years of supervised release. After concluding his six months' imprisonment, petitioner was arrested for misdemeanor assault with a deadly weapon. The Court found the petitioner guilty of violating the terms and conditions of his supervised release. He was sentenced to nine months' imprisonment. On May 15, 2013, the Petitioner pleaded guilty, pursuant to a plea agreement to one count of possessing ammunition in violation of a court order restraining him from harassing, stalking, or threatening an intimate partner in violation of 18 U.S.C. § 922 (g)(8) and § 924 (a)(2). Petitioner requested that the court vacate his conviction and sentence or remand his case for resentencing. Petitioner argued ineffective assistance of counsel. In the context of a plea, a petitioner must "show that there is a reasonable probability that, but for the counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart,* 474 U.S. 52, 59 (1985). The petitioner did not provide sufficient facts to prove his claims. The Court recommended that the government's motion to dismiss be granted and the claims in Petitioner's motion to vacate be dismissed for failure to state a claim.
Key Issue: ineffective assistance of counsel

Harris v. United States, 2015 U.S. Dist. Lexis 139222 (Oct. 12, 2015).
Petitioner challenged both the subject matter and personal jurisdiction of the federal court. Petitioner was charged under federal statute 18 U.S.C. § 922 (g)(8). The petitioner claimed that he had no way of knowing that federal law could apply in the case of a domestic violence protection order (DVPO). However, the DVPO explicitly stated that "federal law makes it a crime for you to possess, transport, ship or receive any firearm or ammunition while this order is in effect." Petitioner challenged the magistrate judges' recommendation that his claim of ineffective assistance of counsel was faulty. The court found that Petitioner's claim needed to be dismissed for failure to provide enough evidence that his attorney acted unreasonably by failing to file a motion to suppress the ammunition recover from petitioner's care. The court granted the governments' motion to dismiss.
Key Issue: ineffective assistance of counsel, motion to dismiss

Moore v. Moore, 376 S.C. 467 (Sup. Ct. S.C. 2008).
Husband alleged the issuance of the order violated due process and denied him equal protection based on the fact that he did not receive ample notice and an opportunity to answer his wife's charges with the assistance of counsel, and based on the fact that his request for a continuance was denied whereas his wife was offered a continuance to retain counsel. He claims that the short notice and denial of a continuance prohibited him from procuring counsel and resulted in the issuance of a protective order that deprived him of access to his children and his right to own a firearm. Since he is employed in law enforcement, the firearm prohibition may impact his ability to perform his job. The Court says that while the husband's due process rights are implicated in this case, the Court must balance those rights against the state's interest in protecting the petitioner and household members from abuse. *Arnett v. Kennedy*, 416 U.S. 134. 167-68 (1974). The short period between the service of the petition and the hearing was intended to protect the petitioner and her children, advances a legitimate state interest, and was not a violation of due process. However, the Court *is* concerned that a factual finding of physical abuse was finally adjudicated at the emergency hearing. The emergency hearing is temporary in nature, and should be confined to the order of protection and should not have "collateral consequences" for the alleged abuser. *State v. Dispoto*, 189 N.J. 108 (N.J. 2007). An order of protection issued pursuant to an emergency hearing is temporary and that a hearing on the merits of the action should, if necessary, be conducted by the family court at a later date.
Key Issue: Notice and Opportunity.

Scott v. United States, 2015 U.S. Dist. Lexis 62635 (May 12, 2015).
Petitioner waived indictment and pleaded guilty in a written plea agreement, to a two-count criminal information charge: (1) conspiracy to possess with intent to distribute cocaine and cocaine base in violation of U.S.C. § 846; and (2) possession of firearms and ammunition by a prohibited person in violation of 18 U.S.C. § 922 (g)(8). After petitioner's sentencing, his counsel disappeared. Petitioner could not file a timely appeal. The petitioner tried on multiple occasions to gather his case files and file a motion to appeal. The Court of Appeals stated that the petitioners claim that his attorney failed to file a notice of appeal after being directed to do so must have been brought in a 28 U.S.C. § 2255 motion, to allow for the adequate development of the record. The 28 U.S.C. § 2255(f)(1) motion required the petitioner to file within a one-year period. Scott did not adequately file within the statute of limitations period set forth. However, the statute has an equitable tolling. The court in *Hill v. Braxton,* 277 F.3d 701, 704 (4th Cir. 2002), stated that "in rare instances where – due to circumstances external to the party's own conduct– it would be unconscionable to enforce the limitation against the party." Both requirements of equitable tolling should be met. Petitioner must demonstrate that (1) he had been pursuing his rights diligently, and (2) extraordinary circumstances stood in the way and prevented him from timely filing. Scott did not meet the requirements of equitable tolling. The court granted the government's motion to dismiss. Petitioner's 28 U.S.C. § 2255 motion was dismissed and his motions for discovery and service of response were denied as moot.
Key Issue: timely filing of motion to appeal

United States v. Barefoot, 754 F.3d 226 (Mar. 20, 2014).
Barefoot's convictions were affirmed in part, count 5 and 6 were reversed in part, the 180- month sentence of imprisonment was affirmed and the case remanded with instruction to enter an amended judgment. The Sheriff's Department stopped Barefoot's van in traffic. While searching the van with Barefoot's consent, the deputy found two loaded semiautomatic handguns. While searching the defendant's residence, component materials for explosives, Ku Klux Klan clothing and propaganda, and twenty-five firearms were discovered. In 2002, an order was entered after it was found that Barefoot held a 9mm pistol to the head of his wife and threatened to kill her. He pleaded guilty. Barefoot was sentenced

in 2003 to 27 months for violations of § 922(g)(8). The Court of Appeals found that the lower court did not err in ascertaining a connection between the firearms offenses and explosive offenses. Barefoot's conduct took place at the same time as the ongoing firearms conspiracy. *U.S. v. McVey*, No. 13-4285, 752 F.3d 606 (4th Cir. Apr. 23, 2014) states that a time interval is one factor appropriate to the determination of whether offenses are sufficiently connected or related to each other to be considered as part of the same course of conduct. The method of calculating the level of offense was properly evaluated by the District Court.

Key Issue: Mental competency standard, Statutory interpretation, sentencing.

United States v. Bostic, 168 F.3d 718 (4th Cir. 1999), *cert. denied*, 527 U.S. 1029 (1999).

While subject to a protection order, Bostic tricked his estranged wife into coming to his home, brandished a .20-gauge shotgun, and threatened to kill her. After his arrest, execution of a search warrant yielded four firearms and numerous rounds of ammunition. Bostic filed a motion to dismiss, arguing that § 922(g)(8) is unconstitutional because it violates the notice and fair warning principles of the 5th Amendment, Congress's power under the Commerce Clause, and the 10th Amendment. The district court rejected these challenges, and Bostic appealed, after pleading guilty to possessing one of the firearms. The 4th Circuit affirmed.

Key Issue: Due Process (notice); Commerce Clause; 10th Amendment.

United States v. Cornett, 2020 U.S. Dist. Lexis 100536 (E.D.N.C. 2020).

Adam Cornett was arrested with violating a domestic violence protection order. Officers searched Cornett's vehicle, which was parked in front of the residence he was ordered to stay away from. Officers found two firearms in the vehicle. Cornett was charged with possession of a firearm in violation of 922(g)(8). Cornett filed a motion to suppress all evidence that came from a search of his vehicle, as Cornett never consented to the search. The court held that Cornett's lack of consent was not enough to indicate that the search was conducted in bad faith, especially when the search followed the police department's procedures for an inventory search and towing of Cornett's vehicle, and the circumstances reasonably justified such search and impoundment. The court denied Cornett's motion to suppress.

Key Issue: 4th Amendment.

United States v. Elkins, 2:10CR00017, 2011 WL 1642271 (W.D. Va. May 2, 2011).

Elkins was charged with a violation of 18 U.S.C. 922(g)(8) for possessing a firearm when there was an existing domestic violence protection order. Elkins claims that the government cannot prove his knowledge of the existence of a domestic protection order beyond a reasonable doubt, because he was not aware of the 922(g)(8) provision preventing the possession of a firearm. The court determined that because the protection order specifically states in the section labeled "WARNINGS TO RESPONDENT" that the government has penalties for the possession of a firearm, this requirement is satisfied. Ignorance of the law is not a defense, and the government is required to show that the respondent was aware of the protection order, and is not required to show that the respondent was aware of the prohibition on the possession of firearms.

Key Issue: Ignorance is not a defense.

United States v. Hayes, 129 S.Ct. 1079 (2009).

On grant of certiorari, the Supreme Court, Justice Ginsburg, held that a domestic relationship need not be a defining element of the predicate offense to support a conviction for possession of a firearm by a person convicted of misdemeanor crime of domestic violence.

Key Issue: Domestic Violence, element, firearm.

United States v. Henson, 55 F. Supp. 2d 528 (S.D. W.V. 1999).
Henson's wife obtained a final protection order that prohibited Henson from harassing, stalking and threatening her or engaging in other conduct that would place her in reasonable fear of bodily injury. Henson drove to his wife's residence one night, saw her outside with a friend, and chased her and her companion into the apartment building. He was indicted for violating § 922(g)(8) after being arrested and found with a loaded .22 caliber revolver in his jeep. Henson moved to dismiss the indictment on the grounds that § 922(g)(8) violates the 2nd and 5th Amendments. In support of his arguments, the defendant did not provide a memorandum of law, but simply attached to his motion a copy of the *Emerson* district court opinion. The court rejected both arguments because the 4th Circuit has consistently held that the 2nd Amendment confers a collective, rather than an individual right to bear arms, and the statute does not violate the notice and fair warning principles embodied in the 5th Amendment because of the fundamental principle that "ignorance of the law is no excuse."
Key Issue: 2nd Amendment; Due Process (notice).

United States v. Larson, 502 Fed. App'x 336 (4th Cir. Va. 2013).
Larson was sentenced to twelve months after pleading guilty to possessing a firearm while being subjected to an order which prevented him from harassing, stalking, or threatening his intimate partner. Possessing a firearm while under this order violated 18 U.S.C. § 922(g)(8). Larson contends that the order did not satisfy the statute, and that his due process rights and the second amendment were violated. The Court found that the order which prohibited him from harassing, stalking or threatening his intimate partner was sufficient under 18 U.S.C. § 922(g)(8)(C)(ii) was backed by sufficient evidence to show that he was a credible threat. The Court chooses not to address whether the conduct regulated by 18 U.S.C. § 922(g)(8) implicates the second amendment, and instead concludes that Larson falls into the category of those who's rights may be burdened but the second amendment doesn't bar him from being prosecuted. The appellate court affirmed the district court's judgment.
Key Issue: Firearms, Domestic Violence Restraining order, Second Amendment, due process

United States v. Leary, 86 Fed. App'x 559 (4th Cir. 2004) (unpublished).
On appeal from his conviction, Leary argued that the district court improperly excluded evidence tending to show that he was not given an opportunity to participate at the hearing that led to the issuance of the predicate protection order. Specifically, Leary had proffered testimony by a witness to the hearing who had stated that domestic violence issues were not discussed during the hearing. The Fourth Circuit rejected Lear's contention, finding that Lear had received actual notice of the hearing (including notice that the hearing's purpose was to determine whether an *ex parte* order against him should remain in effect) and that he was present at the hearing and represented by counsel. The court held that the district court had not abused its discretion and that the witness's testimony does not tend to prove that Leary was not given an opportunity to participate at the hearing. The court noted that Leary was on notice that the hearing would determine whether a domestic violence protective order would continue in effect and that there was no evidence that Leary or his counsel were prevented from discussing issues related to the order.
Key Issue: Due Process (notice and hearing).

United States v. Myers, 581 Fed. App'x. 171 (2014).
John Charles Myers was found guilty of possession of a firearm in violation of 18 U.S.C. § 922(g)(8). Myers was subject to a domestic violence protection order. On appeal, Myers challenged the validity of the underlying state-court order ("the final order") entering and extending the duration of the terms of the previously-entered state-court domestic violence protection order. The court rejected Myers' challenge to the constitutionality of the final order on the basis that the one-hundred-year prohibition on his

possession of firearms violated his right under the Second Amendment to bear arms. Defendant challenged his conviction by arguing that the district court erred in granting the Government's motion in limine and in instructing the jury. He also sought to challenge the validity of the underlying state-order entering and extending the duration of the terms of the previously entered state-court domestic violence order. The court affirmed. However, Myers failed to support his claim in accordance with Fed. R. App. P. 28(a)(8)(A). The court abandoned the claim for those reasons. The contention that the court erred in instructing the jury on the second and third elements of 18 U.S.C. § 922(g)(8) offence was incorrect. The validity of the final order was not relevant to the determination of whether Myers violated §922(g)(8). "[N]othing in the language of § 922(g)(8) indicates that it applies only to person's subject to a valid, as opposed to an invalid, protective order." United States v. Hicks, 389 F.3d 514, 535 (5th Cir. 2004). The Court affirmed the lower court's judgment.

Key Issue: Enforcement of statute

United States v. Travis, 2015 U.S. Dist. Lexis 83994 (June 29, 2015).

The government filed a one-count indictment charge against Travis after he violated 18 U.S.C. § 922(g)(1) and § 924. Months later, the government filed a superseding two count indictment which charged the defendant for violations of 18 U.S.C. § 922(g)(1) and charged defendant in count two with possessing a firearm and ammunition while under domestic restraining order, in violation of 18 U.S.C. § 922(g)(8) and § 924. Defendant argued against count one on the basis that the one-year term of imprisonment was too excessive. Prior to the violation of § 922(g)(8), defendant was in violation of assault by strangulation (N.C. Gen. Stat. § 14-32.4(b)). Defendant argued that his prior convictions did not count as crimes punishable by more than one year of imprisonment, instead it was punishable by eight months of imprisonment, at most. The court found that the defendant's argument raised in support of the dismissal of count one to be without merit. Defendant's prior convictions caused him to fail to establish a basis for dismissal of count one of the indictment. The court denied defendant's motion to dismiss count one.

Key Issue: prior conviction, sentencing

United States v. Travis, 2016 U.S. Dist. Lexis 25017 (Mar. 1, 2016).

The defendant's objection regarding his base offense level of 20 was overruled. On September 15, 2016, with the benefit of a written plea agreement, defendant pleaded guilty to Count Two of the superseding indictment, with Count One to be dismissed at sentencing. The court determined that the defendant's prior assault by strangulation conviction is a "crime of violence." *U.S. v. Montes-Flores, 736 F.3d 357, 364 (4th Cir. 2013).* The Court's assessment showed that assault by strangulation required the "use of physical force" that the court required to analyze two discrete aspects of the "use of physical force" provision. The court determined that strangulation is "a crime requiring violent force." A crime of assault by strangulation necessarily required the purposeful or knowing application of force against a victim. *U.S. v. Vinson, 803 F.3d 120, 125 (4th Cir. 2015).* Both provisions were met. The plain review of the Johnson opinion compelled to disagree with the defendant.

Key Issue: sentencing

Fifth Circuit (Louisiana, Mississippi, Texas)

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

Spruill was charged with violating 18 U.S.C. §922(g)(8), and Watson was the officer who filed the criminal complaint against him. The conviction was vacated because the Court found that the restraining order in question had not been issued "after a hearing of which Spruill received actual notice and accordingly was not within the scope of section 922(g)(8)." Spruill then sued Watson for violation of his due process rights

under the Fourth and Fourteenth Amendments. The Fifth Circuit upholds dismissal of the action because Watson acted with probable cause. *Brown v. Lyford*, 243 F.3d 185, 189 (5th Cir. 2001). There was probable cause even though the recitation of facts in the restraining order was incorrect in asserting that the applicant and Spruill each "appeared in person and announced ready," and that the court entered the order after "having . . . heard the evidence and argument of counsel."
Key Issue: Notice and Opportunity.

United States v. Banks, 339 F.3d 267 (5th Cir. 2003).
Banks, after threatening the personal safety of his former live-in girlfriend in numerous ways, was served with a temporary *ex parte* order by the presiding district judge. The judge advised him that a hearing on the application for the temporary protective order was set for October 22, 2001. On Oct. 22, Banks appeared in court and consented to an agreed temporary protective order. He later signed the agreed order in his attorney's office. In January of 2002, police suspected Banks of causing an explosion in his former girlfriend's house. The police obtained permission to search his home and truck. Along with materials implicating Banks in the explosion, the police also found two firearms. The police then obtained a warrant and found two other firearms as well as further evidence implicating him in the explosion. He was charged with five counts of possession of a firearm while subject to a restraining order in violation of 18 U.S.C. § 922 (g)(8). The district court agreed with Bank's argument that the agreed order was not issued after a "hearing" within the meaning of the statute. 18 U.S.C. (g)(8)(A) states: It shall be unlawful for any person who is subject to a court order that "was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate." The Fifth Circuit held that the hearing requirement was met in this case. The presiding judge gave him actual notice of the hearing that was set for a particular date, and Banks appeared in court with his attorney in front of a judge, which provided him opportunity to participate. The court stated that it was Banks himself who did not choose to present evidence. The court distinguished this case from *United States v. Spruill*, 292 F.3d 207 (5th Cir. 2002), *infra*, because the defendant in that case did not have an actual hearing date, the protection order did not specify that Spruill could not possess a firearm, and Spruill never appeared before a judge.
Key Issue: Due Process (hearing).

United States v. Banks, 480 Fed. App'x 314 (5th Cir. La. 2012).
Police apprehended Banks while in possession of firearm. During the apprehension by ATF and DEA agents, Banks ran away while holding the firearm with the barrel pointed under his left arm toward Special Agent Evanoski. Banks is appealing the two-level enhancement of his sentencing for violating a state issued protection order, because Special Agent Evanoski was not privy to the protection order. Under a clear error standard of review, the Appellate court must decide whether the violation of the protection is an enhancement or a separate violation under federal law. The court held that, despite Banks's acknowledgement that he was not permitted to have a gun, it could not be determined that Banks knew he had a protection order filed against him that prevented gun ownership.
Key Issue: Protection Order, Firearms, enhanced sentencing, federal agents

United States v. Emerson, 86 Fed. App'x 696 (5th Cir. 2004).
Emerson appealed his conviction under § 922(g)(8) (after the Fifth Circuit reversed the district court's original order dismissing the indictment on constitutional grounds—see summary *supra*), claiming among other things that the jury should have been instructed on the defense of entrapment by estoppel and that the statute violates due process because (1) it does not require express notice of the prohibition on keeping and bearing arms, (2) as applied against him, the statute is fundamentally unfair because it was impossible for him to both maintain the marital estate's assets and forfeit his guns, and (3) the statute

criminalizes "passive" activity, in violation of *Lambert v. California*, 355 U.S. 225 (1957). The court rejected the entrapment by estoppel claim, holding that the defense requires that a *federal official* actively mislead the defendant about the legality of his firearms possession, which did not happen in this case. In addition, the court noted that Emerson had been placed on constructive notice of the existence of the federal law, and that to the extent he perceived a conflict in his duties under the federal law and the state court order, he could have sought clarification from the state court. The Fifth Circuit also rejected Emerson's due process challenges, citing its decision in the first appeal (see *infra*) and noting that possession of a firearm is active, not passive, conduct.

Key Issue: Due Process (notice); Entrapment by Estoppel.

United States v. Emerson, 270 F.3d 203 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 2362 (June 10, 2002).

Emerson was indicted for possession of a firearm while subject to a protection order in violation of § 922(g)(8). He moved to dismiss the indictment, arguing that § 922(g)(8) is an unconstitutional exercise of congressional power under the Commerce Clause, and the 2nd, 5th, and 10th Amendments. The district court granted the motion to dismiss, finding that the statute violates the 2nd Amendment because all that is required for prosecution under the statute is a boilerplate order with no particularized findings, and has "no real safeguards against an arbitrary abridgement of Second Amendment rights." On appeal, the Fifth Circuit upheld the constitutionality of section 922(g)(8) against the Second Amendment and other challenges. In addition, the court rejected the defendant's argument that Section 922(g)(8) must be construed to require that the order of protection include "a specific finding that the person enjoined posed a credible threat of violence to his spouse or child." Instead, the panel found that the statute requires either that the terms of the order expressly prohibit the use, attempted use, or threatened use of physical force or that there be a specific finding of credible threat of violence. The court also ruled Section 922(g)(8) prosecution is not permitted to undertake a collateral review of the validity of the predicate order of protection unless it is "transparently invalid as to have only a frivolous pretense to validity." The court also joined several of its sister circuits in holding that due process under the Fifth Amendment is satisfied despite the defendant's claim of lack of notice about the Section 922(g)(8) prohibition. They also noted that Emerson was aware that on the relevant date he actively possessed a firearm covered by the statute while subject to an active protection order. Unlike every other circuit court to consider the issue, however, the majority found that the Second Amendment "protects the rights of individuals, including those not then actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms, such as the pistol involved here, that are suitable as personal, individual weapons and are not of the general kind or type excluded by [*United States v. Miller*, 59 S. Ct. 816 (1939) – generally sawed-off shotguns]." In reaching its decision, the majority produced a lengthy treatise on the history and evolving interpretation of the Constitution and Bill of Rights generally, and the Second Amendment specifically. The majority concluded that the *Miller* decision (cited above) does not, as all of its sister circuits have found, reject an individual right to bear arms and that the other appellate courts acted "either on the erroneous assumption that *Miller* resolved [the] issue or without sufficient articulated examination of the history and text of the Second Amendment." The third judge on the panel, who entered a special concurrence, strongly criticized the majority for addressing the Second Amendment issue at all; he argued that the lengthy analysis was unnecessary and had no bearing on the judgment and so constitutes non-binding dicta.

Key Issue: 2nd Amendment; Due Process (notice and hearing); Commerce Clause; 10th Amendment.

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

Police arrested Henry after he entered his wife's home with a rifle. At the time, he was subject to a protection order entered by a Texas court. Henry was indicted on one count of possessing a firearm in violation of section 922(g)(8). After his motion to dismiss the indictment failed, Henry pled guilty and filed

an appeal to the Fifth Circuit. On appeal, Henry argued that the indictment was defective because it failed to allege that he knew that it was unlawful to possess a firearm under the state protection order. Henry also said that it was defective because the state did not allege that he knowingly possessed the firearm while under the order. He also argued that section 922(g)(8) violates the Second Amendment and the Commerce Clause. The appellate court rejected the argument that the indictment should have alleged knowledge of the federal law, citing its recent decision in *Emerson*, *infra*. Regarding the alternative argument that the indictment lacks the requisite mens rea allegation, the court agreed that knowing possession is required to support a conviction under §§ 922(g)(8) and 924(a)(2) but held that the indictment must be read with maximum liberality and in light of the fact that the proper statutory citations were provided. Under such circumstances, the court found that the indictment was not fatally defective. The court also rejected the Second Amendment and Commerce Clause claims in view of its previous holdings in *Emerson, infra* and *U.S. v. Pierson*, 139 F.3d 501 (5th Cir. 1998).
Key Issue: Due Process (notice); 2nd Amendment; Commerce Clause.

United States v. Ladouceur, 578 Fed. App'x 430 (5th Cir. Tex. 2014).
David Chance Ladouceur was convicted under § 922(g)(8) for possessing a firearm while being the subject of a domestic violence protective order. He appealed, alleging that the evidence was insufficient to prove he was an "intimate partner" of the protective order applicant. Ladouceur alleged that the relationship was insufficient because he and his girlfriend never "cohabited" as required by the statute. The jury instructions did not define cohabitation. Rather, the jury was told that being "intimate partners" was an element of the crime and that "the term 'intimate partner' means, 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." The court found ample evidence presented at trial to support a rational jury's finding that Ladouceur and Colorado cohabited. The evidence showed that the two had a relationship as boyfriend and girlfriend that went beyond casual dating. During this time, over the span of several months, Ladouceur stayed over at Colorado's apartment most or often all days out of the week. Further, he kept clothing and personal effects there to go directly to work in the mornings. Additionally, he had a key to her apartment and was able to come and go as he pleased. Last, he rarely visited an apartment leased under his own name. Therefore, the defendant's conduct met the definition of cohabitation under § 922(g)(8) and the order is valid.
Key Issue: Definition of cohabitate

United States v. McGinnis, 956 F.3d 747 (5th Cir. 2020).
Eric McGinnis was convicted of violating 922(g)(8), after he was found to be in possession of a firearm while he was the subject of an active protective order. He appealed his conviction, arguing that the statute violated his 2nd Amendment rights, and that the language of the protective order did not meet the requirements of 922(g)(8). The court found that 922(g)(8) is constitutional, as the statute is reasonably adapted to an important government interest. The court also found that the language of the protective order satisfies 922(g)(8) despite not using the exact verbiage of the statute. The court held that the language of the protective order only has to be similar enough in meaning to satisfy 922(g)(8). As such, the court affirmed McGinnis's conviction.
Key Issue: 2nd Amendment; protection order.

United States v. Miles, 2006 U.S. Dist. LEXIS 27123 (W. Dist. La. 2006).
A protective order against Miles meeting the requirements of 18 U.S.C. §922(g)(8) was signed on August 13, 2004 with an expiration date of February 13, 2006. Miles did not show up at the hearing, appeal the order, or otherwise contest its validity in state court. A copy of the order was mailed to his address. When found to be in possession of a gun, Miles filed a Motion for Release from Pre-trial Detention on the basis

that he was never served with the August 13, 2004 protective order. The Court said that the notice requirement was met if the defendant had actual notice of the hearing. Further, actual notice of the order itself was not needed. *United States v. Banks*, 339 F.3d 267, 270 (5th Cir. 2003). His own actions in not attending the hearing prevented his participation, and so the order is valid.
Key Issue: Notice and Opportunity.

United States v. Mirabal, 608 Fed. App'x 201 (2015).
The court conducted a review for plain error when affirming Mirabal's sentence. According to a presentence report, Mirabal was involved in a nine-hour domestic disturbance involving his estranged wife, J.M, and their three-year-old son. Mirabal was prohibited from communicating, being near, and threatening or harassing his wife or child. The defendant threatened to kill both JM and the child, and he used a gun to coerce J.M into performing a sexual act. The presentencing order showed that Mirabal assaulted J.M., causing black eyes, a fractured left eye orbital bone, and abrasions to her neck and upper arm. When law enforcement arrived at the home, they found Mirabal in possession of a firearm. He plead guility to possession of a firearm.

At sentencing, the District Court sentenced the defendant to 72 months, rather than going by the range of 57-71 that is imposed by the U.S. Sentencing Guidelines Manuals. Mirabal appealed. Mirabal argued that the government erred in withholding the third-level reduction under U.S.S.G § 3E1.1(b) on grounds that he did not waive his appellate rights.

To establish plain error, Mirabal had to show: (1) there is an error, (2) the error is clear or obvious, and (3) the error affected his substantial rights. *U.S. v. Salinas, 480 F.3d 750, 756 (5th Cir. 2007).* It was found that the first two prongs of the plain-error review were satisfied. However, the sentencing difference of a single month does not cause a significant error affecting Mirabal's rights. Mirabal failed to prove "reasonable probability" that an error was made. The court affirmed the defendant's sentence.
Key Issue: plain error, sentence

United States v. Mohr, 773 Fed. Appx. 232 (5th Cir. 2019).
Brian Mohr appealed his conviction for possession of a firearm in violation of 922(g)(8). He argued that the protective order did not satisfy the requirements of 922(g)(8), and that there was not enough facts to show that his possession of a firearm had a sufficient connection to interstate commerce. The court noted that Mohr did not make such argument regarding the protective order prior to the appeal, and that he is unable to show a clear or obvious error in the district court's finding of there to be a valid protective order. Furthermore, the court determined that the protective order satisfied 922(g)(8). Regarding Mohr's interstate commerce claim, because his firearm was manufactured outside of Texas, the court found no error in the district court's judgment. District court's judgment was affirmed.
Key Issue: protection order, interstate commerce.

United States v. Pierre, 2015 U.S. Dist. Lexis 172314 (Dec. 23, 2015).
Brandon Christopher Pierre was adjudged guilty of the charged offense under 18 § 922(g)(8). The Magistrate Judge recommended that the court accept Defendant's guilty plea. The Judge further recommended that the court should deem Pierre guilty of Count One.
Key Issue: recommendation, plea

United States v. Pennywell, 544 F. App'x 252 (5th Cir. 2013).
Marcus Pennywell pleaded guilty to possession with intent to distribute crack cocaine, possession of a firearm to further drug trafficking crime, possession of a firearm by a convicted felon, and possession of

a firearm while being subject to a protection order which is a violation of 18 U.S.C. § 922(g)(8). He was sentenced as a career offender. In the appeal, he contended that he was eligible for a sentence reduction because one of his counts was not based upon Career Offender Guidelines. The court found that Mr. Pennywell's sentence was based both on the Career Offender Guidelines and applicable guidelines range. Based upon this the circuit court was within its range when assigning a punishment of 276.
Key Issue: sentencing guidelines, drug trafficking, domestic violence, protection order

United States v. Spruill, 292 F.3d 207 (5th Cir. 2002).
After a Texas court issued a consent restraining order against Spruill, he told a friend that he intended to shoot his wife. The friend contacted law enforcement. Federal agents asked the friend to phone Spruill and set up a transaction to exchange firearms. Police recorded the phone call and federal agents were present when Spruill met his friend to perform the transaction. Spruill was arrested and indicted for violating § 922(g)(8). He filed a motion to dismiss. Spruill challenged the statute by claiming it unconstitutionally violates the 2nd and 5th Amendments. The district court denied the motion to dismiss. The court relied on the reasoning in *Wilson*, *supra*., for rejecting Spruill's due process attack. Further, the court held that the 2nd Amendment does not prohibit the federal government from imposing "some restrictions on private gun ownership." Spruill pled guilty but then appealed to the Fifth Circuit, which vacated the district court's judgment of conviction. The Fifth Circuit ruled that the protection order issued against Spruill did not satisfy section 922(g)(8)'s requirement that the order be "issued after a hearing of which [respondent] received actual notice, and at which [respondent] had an opportunity to participate." The court based its decision upon the fact that the order had been issued under Texas law as an "Agreed Order." Agreed orders are served without any process having been issued. Further, the order was served without any time or place for hearing having been set, and therefore without any notice of hearing having been issued or received by Spruill, without Spruill ever appearing before the judge, without any evidence having been presented to the judge, and without any hearing. The court noted also that Spruill was illiterate and that the order was explained to him by a prosecuting attorney, not a judge, and Spruill had not been represented by counsel. The court contrasted these facts with those of the *Wilson* case, *infra*, in which the Seventh Circuit found that a consent order triggered the section 922(g)(8) prohibition.
Key Issue: Due Process (hearing); 2nd Amendment.

Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee)

Cline v. United States, 2005 U.S. Dist. LEXIS 21614 (E. Dist. Ky. 2005).
Cline argues that his counsel was ineffective for failing to argue under Federal Criminal Rule 29 that the government failed to prove an element of an offense charged under 18 U.S.C. § 922(g)(8). He claims the government failed to present evidence that he was given notice of a hearing and the opportunity to be present on the DVO. The Court says that the actual notice requirement was met by proof of a summons written into an emergency protective order that had been presented to the defendant. *United States v. Calor*, 340 F.3d 428, 431 (6th Cir. 2003). Thus, the Rule 29 motion would have been overruled and Cline's counsel had no duty to file it.
Key Issue: Notice and Opportunity.

Conkle v. Wolfe, 722 N.E.2d 586 (Ohio Ct. App. 1998).
An Ohio court entered a protection order against Wolfe, including a firearm prohibition. Wolfe appealed, arguing among other things that the court erred by applying the remedy in 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. The appellate court rejected this 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 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: Federal Preemption, State Court Authority to Prohibit Firearms.

Hopson v. Commonwealth Attorney's Office, 2013 U.S. Dist. LEXIS 49991 (W.D. Ky. Mar. 29, 2013).
Plaintiff DeAndre Hopson filed a pro se complaint against 13 defendants. Of these complaints is a violation of 18 U.S.C. § 922(g)(8) by defendant Ruth Ann Spencer. However, the statute does not provide the Plaintiff with a private cause of action, and therefore has not invoked the court's jurisdiction. There is no diversity, and the court sua sponte dismissed the complaint for lack of subject matter jurisdiction.
Key Issue: Diversity, Subject Matter Jurisdiction

Mann v. Helmig, 2007 U.S. Dist. LEXIS 23839 (E. Dist. Ky. 2007).
Suit arises from confiscation of plaintiff's firearms. Plaintiff alleges violations of his federal constitutional rights under the Second, Fourth, Fifth, and Fourteenth Amendments, as well as a state law claim for conversion. In 2002, Mann had petitioned the court to amend a restraining order to lift the firearm restrictions claiming he and his sister were not "intimate partners" within the meaning of 18 U.S.C. §922(g). The Court says that only a person who has been restrained by a court order from harassing, stalking or threatening an "intimate partner" is prohibited by this subsection from possessing firearms. An "intimate partner" is defined as "one who cohabitates or has cohabited with the person." "Cohabitates" implies a sexual relationship. *Webster's II New College Dictionary* 218 (2001). However, the Court also says that there is no liability on the part of the Sheriff or County under 42 U.S.C. §1983 because Mann cannot prove that his alleged constitutional injury resulted from a "policy" or "custom" attributable to the County. *Monell v. Dep't of Soc. Servs*., 436 U.S. 658 (1978).
Key Issue: Relationship Requirement.

United States. v. Baker, 197 F.3d 211 (6th Cir. 1999), *cert. denied*, No. 99-8027, 2000 U.S. LEXIS 1727 (Feb. 28, 2000).
Baker accidentally shot himself while he was subject to multiple protection orders. He was indicted for violating § 922(g)(8). He filed a motion to dismiss the indictment, arguing that the statute is unconstitutional. The district court denied his motion, and Baker was convicted. He appealed to the 6th Circuit, arguing that § 922(g)(8) violates the 5th Amendment, the Cruel and Unusual Punishment Clause of the 8th Amendment, and the Commerce Clause. The 6th Circuit rejected Baker's arguments and affirmed the conviction.
Key Issue: Due Process (notice); Commerce Clause; 8th Amendment.

United States v. Calor, 172 F. Supp. 2d 900 (E.D. Ky. 2001), aff'd, 340 F.3d 428 (6th Cir. 2003).
Mary Beth Calor filed a domestic violence petition against her husband, Alexander Calor, in a Kentucky state court. The court issued an ex parte order against Alexander 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 court granted a request by Alexander's attorney for an extension. Two days later, while the order was still in effect, law enforcement seized several additional guns from Alexander. Thereafter, Alexander was indicted in federal court for being in possession of firearms in violation of section 922(g)(8). Alexander moved to dismiss the indictment, arguing that the Kentucky court order was not issued after a hearing as required by the federal statute, because the court held the hearing merely to consider whether to grant an extension of time and the merits of the order were never addressed. The district court rejected Alexander's argument, finding that the plain language of section 922(g)(8) does not require a hearing on the merits but only a hearing of

which the defendant has received actual notice and at which he had an opportunity to participate. The court found that this more permissive requirement had been satisfied because Alexander 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: Due Process (hearing).**

United States v. Cline, 362 F.3d 343 (6th Cir. 2004).
The district court convicted Cline of, among other crimes, violating § 922(g)(8) after an extremely violent attack on his wife and her friend. The § 922(g)(8) violation was based on an order that was issued originally on December 12, 2000 and scheduled to terminate December 12, 2003. In April 2001, court amended the prior order by removing the "stay away" and "no contact" provisions. All other provisions of the December 2000 order remained in force. Later in April 2001, Cline's wife petitioned to reinstate the "no contact" and "stay away" provisions based upon renewed abuse. This petition was denied when Cline's wife failed to appear at a hearing on the issue. During pretrial proceedings in the federal prosecution, Cline moved to dismiss the § 922(g)(8) charges, arguing that the "dismissal" of the April 2001 domestic violence petition removed any order then in force against him. 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 Cline's motion to dismiss. On appeal, Cline argued that the last order obtained by his wife had been marked as "dismissed" and so could not support his conviction. The government countered that the "dismissed" order was merely a modification of an existing and valid order and did not revoke the prior order. In his affidavit, the issuing judge supported the government's interpretation. The Sixth Circuit rejected Cline's arguments. The court instead accepted the interpretation of the lower court. The affidavit of a state court judge was evidence of the status of the protection order. The court found no violation of his right to confront witnesses against him. Cline further argued that the district court erred when it granted the government's motion *in limine* to bar the defense from challenging the status of the protection order at trial. Cline contended that the jury should have been allowed to determine the order's status because it was an element of the offenses charged. The Sixth Circuit rejected this challenge as well, holding that "[d]etermining the legal meaning of the [protection order] did not require trial of the general issue of guilt on any count and thus did not invade the province of the jury."
Key Issue: Evidence Regarding Status of Protection.

United States v. Collins, 2008 U.S. Dist. LEXIS 22627 (E. Dist. Ky. Cent. Div. 2008).
Collins argued that the state court's Amended Domestic Violence Order (DVO) 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 Order. The Court agreed that even if Collins received actual notice of the hearing where the Amended DVO was entered, he was not afforded a meaningful opportunity to participate. The record reflects that the first time Collins was informed that an Amended DVO would be entered was at a hearing on the same day that the order was extended. There is no evidence that the judge was prepared to hear from either party about the DVO, or that Collins had any opportunity to object to entry of the amended DVO. Therefore, Collins was not afforded a meaningful opportunity to participate in the hearing. Court also says that any ambiguity must be resolved in favor of the defendant under lenity. *Jones v. United States*, 529 U.S. 848 (2000).
Key Issue: Fifth Amendment, Notice and Opportunity.

United States v. Cope, 312 F.3d 757 (6th Cir. 2002).
Among numerous other charges, Terry Cope was convicted of violating § 922(g)(8) when he possessed a firearm while subject to an order of protection. On appeal, Cope contended that there was no proof that

the gun used in a shooting was "in or affecting commerce." The court found that the government could not identify the actual gun used in the shooting. However, the jury had accepted the government's argument that Cope had traveled with a gun from his home in Tennessee to the victim's home in Kentucky in order to carry out the shooting. The court held that such travel was sufficient to satisfy the "in-or-affecting-commerce" element.
Key Issue: Commerce Clause.

United States v. Hopper, 28 F. App'x 376 (6th Cir. 2001).
Hopper was subject to a Kentucky protection order obtained by his wife when he filled out an application to purchase firearms from a gun shop. On the form, he said that he was not subject to a protection order and was allowed to purchase several guns. A few days later, he purchased a rifle from the same shop. Two months later, the gun shop owner informed Hopper that agents of the Bureau of Alcohol, Tobacco and Firearms had inquired about the purchases. Hopper returned the majority of the guns but kept the rifle. During a subsequent search of Hopper's residence, agents found four firearms, including the rifle. Hopper was named in an eight-count indictment for violating section 922(g)(8) and for falsifying the firearm application forms. He subsequently pled guilty and appealed to the Sixth Circuit. He 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 section 922(g)(8). The Sixth Circuit rejected the first argument, citing its decision in *Baker*, *infra*. It also rejected Hopper's second argument, noting though the order's language was broad, it was sufficiently explicit to include actual, attempted, and threatened physical force within its meaning.
Key Issue: Due Process (notice); Nature of Prohibitory Language.

United States v. Jacobs, 244 F.3d 503 (6th Cir. 2001).
Lauretta Jacobs obtained a protection order against her husband Elisha Jacobs in 1996. She then moved from Kentucky to Indiana. One month later, the defendant called Lauretta and told her that she should come to his parents' home in Kentucky, so he could give her some money to assist with living expenses. When Lauretta arrived, the defendant immediately accosted her and punched her in the face, injuring her mouth and damaging her teeth. Armed with a shotgun and a knife, the defendant forced Lauretta into his truck and drove her into Tennessee. The next day, the defendant returned Lauretta to Kentucky, where she received treatment for her injuries and reported the incident to the police. The 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 Lauretta's home in Indiana. He turned off the electricity to her home, restored the power a few minutes later, and then knocked on the front door. Lauretta did not open the door, and the defendant crashed through a closed window, brandishing a gun. The defendant dragged Lauretta by her hair out of her home, across cornfields, and a barbed wire fence, injuring her bare leg. Lauretta eventually escaped and was discovered along the highway and taken to a hospital. The defendant pled guilty in Indiana state court to abducting Lauretta in Indiana and was sentenced to 15 years in state prison. He was then charged in a federal indictment with four counts related to the Tennessee abduction: Kidnapping, interstate domestic violence in violation of 2261(a)(2), use of a deadly weapon during a crime of violence, and interstate violation of a protective order, in violation of 2262. The indictment also contained three counts related to the Indiana abduction: Violation of 2261(a)(1), possession of a firearm while subject to a protection order in violation of 922(g)(8) and use of a deadly or dangerous weapon during a crime of violence. The defendant was found guilty on all seven counts and sentenced to 70 months on six counts, to run concurrently with any sentence imposed on any other matter, and 300 months for the convictions for use of a deadly weapon during a crime of violence, to run consecutively with any other sentence. The defendant appealed the sentence, but the 6th Circuit affirmed.
Key Issue: Joinder of Offenses; Double Jeopardy.

United States v. Jones, 155 Fed. App'x 204 (6th Cir. 2005).
Jones was indicted for a violation of 18 U.S.C. §922(g)(8) when a U.S. Secret Service agent found a gun under the seat of his car during an arrest. Jones 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. The Court held that defendant was a recent occupant of the car, and when a policeman has made a lawful custodial arrest of the occupant or recent occupant of an automobile, he may search the vehicle.

United States v. McQueen, 2012 U.S. Dist. LEXIS 183346 (E.D. Ky. Nov. 8, 2012).
A judgment was entered against Mr. McQueen for: possessing a firearm while being an unlawful user of a controlled substance in violation of 18 U.S.C. § 922(g)(3) for possessing a firearm while under a domestic violence order in violation of 18 U.S.C. § 922(g)(8) for receiving, possessing, or concealing stolen firearms in violation of 18 U.S.C. § 922(j) for possessing an unregistered sawed-off shotgun in violation of 26U.S.C. § 5861(d). D.E. 41. He was sentenced to 46 months of imprisonment to be followed by three years of supervised release. Mr. McQueen was found to have violated his release due to marijuana possession. Congress mandates revocation of rights and release by statute. The court recommends revocation of Mr. McQueen's rights and imprisonment for five months and an additional supervised release term of twenty-nine months.
Key Issue: Sentencing, Supervised release, Violation, Possession

United States v. Napier, 233 F.3d 394 (6th Cir. 2000).
Harvey Napier was subject to two domestic violence protection orders, one entered on December 9, 1996, and the other entered by another court on September 28, 1998. Both orders restrained Napier from committing acts of domestic violence against his wife and children and contained notice of § 922(g)(8). Napier received notice and an opportunity to participate in both hearings prior to entry of the orders. On January 30, 1999, Napier's wife called the police to report an assault by Napier. Responding police officers stopped Napier's car, and subsequently found a 10 mm Glock Model 20 semi-automatic pistol and 22 rounds of 10 mm ammunition on the floorboard of the car. Napier was arrested and later indicted for two counts of violating § 922(g)(8). Napier filed three motions to dismiss, arguing that the statute violates the Second and Fifth Amendments of the Constitution, is an unconstitutional exercise of the Congress's commerce power and that the underlying protection orders were either void or did not qualify as predicate offenses. Further, he contended that domestic violence orders do not fulfill the substantive requirements of § 922(g)(8). The district court denied all motions, and Napier entered a conditional guilty plea. He admitted that he had knowingly possessed the firearm and ammunition and was subject to two protection orders. Napier appealed the district court's denial of his motions to dismiss to the 6th Circuit. Napier challenged the statute on due process grounds on its face because it fails to require notice of its prohibitions. He argued enforcement as applied in his case because he contended that he did not receive notice that his conduct violated the statute. The court referred to *Baker*, *infra* which held that the general rule that citizens are presumed to know the law is not absolute. *Baker* further held that the rule may not apply where the law is very technical and obscure and thus threatens to ensnare individuals engaged in seemingly innocent conduct. The court, in light of *Baker*, found it was not necessary in that case to determine whether the statute violates due process because Baker received adequate notice of § 922(g)(8)'s prohibitions (each of the protection orders entered against Baker contained a bold print warning). Napier attempted to distinguish *Baker* because he never received copies of either protection order entered against him. The court rejected his argument because Napier was provided with adequate notice of the protection order hearings and appeared at both hearings. Additionally, whether he received or read the orders is irrelevant. His 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). Regarding Napier's Commerce Clause challenge, the court rejected that argument, as well, relying on *Baker*, and holding that Congress did not exceed its powers under the Commerce Clause. Relying on *Emerson, supra,* Napier also contended that the statute violates his 2nd Amendment right to bear arms. The 2nd Circuit disagreed, holding that the 2nd Amendment does not guarantee an individual right to bear arms, and the statute does not violate the 2nd Amendment.
Key Issue: Due Process (notice); Commerce Clause; 2nd Amendment.

United States v. Sizemore, 76 F. App'x 708 (6th Cir. 2003) (unpublished).
On appeal from his conviction for violating §922(g)(1) and (8), Sizemore argued, among other things, that there was insufficient evidence to find that he had "knowingly possessed a firearm." The Sixth Circuit rejected this argument, noting that possession may be either actual or constructive. It found that there was sufficient evidence for a rational juror to find that Sizemore 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 court based its finding on the testimony of a federal agent that, among other things, the bedroom contained Sizemore'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: Definition of "Possession."

United States v. Trabue, No. 99-6406, 2000 U.S. App. LEXIS 31926 (6th Cir. Dec. 5, 2000) (unpublished).
Trabue's girlfriend petitioned for, and was granted, a protection order after Trabue poured lighter fluid on her clothing and flicked a cigarette at her, telling her that killing her was not a threat, but a promise. Five days before, Trabue had also threatened to kill her. He stuck a gun in her stomach and pulled the trigger. Less than two months after Trabue's former girlfriend obtained the protection order, Trabue struck her and her son in the head with a gun. He then held two of his children hostage. A SWAT team was called in and Trabue was then arrested. Trabue was indicted on one count of possessing a firearm while subject to a protection order in violation of § 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 § 922(g)(9). Trabue entered a guilty plea for both counts and the district court sentenced him to 57 months in prison. Following the 57 months, he was to be subject to two years of supervised release. He appealed the sentence but the 6th Circuit affirmed the lower court's judgment.
Key Issue: Sentencing.

United States v. Visnich, 65 F. Supp. 2d 669 (N.D. Ohio 1999).
While subject to a restraining order that prohibited Visnich from abusing his wife and daughters and from possessing, using, carrying, or obtaining deadly weapons, he 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 sixteen firearms and ammunition. After an indictment for violating § 922(g)(8), Visnich filed a motion to dismiss where he argued that the statute is an unconstitutional exercise of Congress's Commerce Clause powers, and violated his 2nd, 5th, and 10th Amendment rights. The district court denied the motion to dismiss.
Key Issue: Due Process (notice); Commerce Clause; 2nd Amendment; 10th Amendment.

Woolum v. Woolum, 723 N.E.2d 1135 (Ohio Ct. App. 1999).
After Bonnie Woolum's protection order against her husband Randall had expired, Bonnie filed a renewal petition. Among other things, she sought and received a provision ordering Randall to surrender his firearms. He appealed, arguing that the firearm prohibition was unlawful because it exceeded the scope

of the original order, which did not mention firearms. After noting the broad discretion given to judges to order proper relief by the domestic violence statute, the appellate court upheld the firearms provision. They noted that Randall 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."
Key Issue: State Court Authority to Prohibit Firearms.

Seventh Circuit (Illinois, Indiana, Wisconsin)

Garmene v. LeMasters, 743 N.E.2d 782 (Ind. App. 2001).
An Indiana state court issued a protection order against Garmene, including a firearm prohibition. Garmene appealed and 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)).The court rejected this argument. The 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: Due Process (Notice).

United States v. Clements, 2007 U.S. Dist. LEXIS 57272 (E. Dist. Wi. 2007).
Clements was convicted of possessing a firearm in violation of 18 U.S.C. §922(g)(8). In this decision, the Court considered whether to apply an enhancement of his sentence based on his prior conviction of a controlled substance offense and his alleged perjury during the §922(g)(8) trial. The government agreed to dismiss the §922(g)(8) count at sentencing. *United States v. Richardson*, 439 F.3d 421, 422 (8th Cir. 2006) (stating that the defendant may be convicted under only one §922(g) classification based on a single incident of possession).
Key Issue: Sentencing.

United States v. Gainer, 2014 U.S. Dist. LEXIS 53059 (N.D. Ind. Apr. 15, 2014).
Gainer is charged with lying on an ATF form where he stated that he was not subject to an order in which he had an opportunity to participate in. The Defendant argues 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 the Defendant's statement that he wanted to challenge the order, which he argues shows that he was not actually provided with an opportunity to participate at the hearing. The Court found that the Defendant was reading more into the language "opportunity to participate" than the plain language of the provision requires. The language does not require the opportunity to formally present evidence or witnesses, as the Defendant suggested. The court found that it means merely what it says—the opportunity to participate in the hearing. A jury could find based on the recording that the Defendant had exactly that, as he in fact participated in the hearing and objected to the Protective Order, even though the judge ultimately sustained the Order.
Key Issue: Definition of Opportunity to Participate.

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

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). Taylor moved to suppress evidence of the gun found under the seat as a Fourth Amendment violation against unlawful search and seizure. He argued that, although the car did not belong to him, he was a close friend of the owner and therefore had a right to privacy in the contents of the vehicle. The magistrate judge, whose recommendations the court adopted, found that Taylor had a possessory interest in the gun, but not in the vehicle. He had no expectation of privacy within the vehicle that was searched. The Court found that, consistent with other case law, possessory interest in the thing seized is not enough. Further, the court held the defendant must also have an expectation of privacy in the place searched in order to successfully assert a 4th Amendment violation.

In addition, Taylor was the subject of a 2013 domestic abuse restraining order that included a 3-year domestic abuse injunction set to expire on April 30, 2017. As the result of the traffic stop, he was indicted with a violation of § 922(g)(8). Several months later, he was treated at a hospital for a self-inflicted gunshot, which resulted in a superseding indictment that included another violation of § 922(g)(8). Taylor moved to dismiss the superseding indictment on grounds that § 922(g)(8) unconstitutionally violates his Second amendment and Fifth Amendment due process rights. Specifically, he claimed that a court could issue a qualifying restraining order without a finding that the subject of the order had engaged in domestic violence, the process under § 922(g)(8) was insufficient to safeguard the constitutional right to bear arms, there was no historical precedent for extending the ban of felons' possession of firearms to those subject to a domestic abuse order, the prohibition could not survive intermediate or strict scrutiny, and the Seventh Circuit's arguments for upholding § 922(g)(9) could not be applied to § 922(g)(8). The Court found that most of Taylor's challenges were addressed in *United States v. Harris*, Dkt. No. 15-CR-193-pp, 2016 WL 660888 (E.D. Wis. Feb. 2, 2016). After considering *Harris* and other relevant authority, the Court denied defendant's motion to dismiss.

Key Issue: 4th Amendment, 2nd Amendment, and 5th Amendment Due Process

United States v. Wilson, 159 F.3d 280 (7th Cir. 1998), *cert. denied*, 527 U.S. 1024, 119 S. Ct. 2371 (1999).
Wilson was subject to a protection order and was arrested for an outstanding warrant. He was found to be in possession of a .12 gauge shotgun, a MAC 90 Sportster rifle, and a loaded .9 mm Locrin handgun. Wilson was convicted at trial in the U.S. District Court for the Southern District of Illinois for violating § 922(g)(8), and was sentenced to 41 months in prison and 3 years of probation after release. Wilson appealed, challenging the constitutionality of § 922(g(8)). The 7th Circuit affirmed the conviction, holding that § 922(g)(8) is a valid exercise of Congress's power under the Commerce clause, and does not violate the 10th or 5th Amendments of the Constitution.

Key Issue: Due Process (notice); Commerce Clause; 10th Amendment.

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

United States v. Bena, 664 F.3d 854 (8th Cir. 2011).
Bena plead guilty to the possession of 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, and was sentenced to three years' probation. On appeal, Bena 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. The Eight Circuit found that limiting an individual's right to bear arms because of their categorization as a potentially

dangerous individual was consistent with common-law tradition under the Second Amendment. In addition, the court found that Bena's arguments concerning the Fifth and Sixth Amendments were "an impermissible collateral attack on the predicate no-contact order" because he was subject to a qualifying protection order (having had notice and an opportunity to participate).
Key Issue: Second Amendment, Fifth Amendment, Sixth Amendment, Due Process (qualifying protection order).

United States v. Eagle, 266 F. Supp. 2d 1039 (D.S.D. 2003).
Eagle was charged with a violation of § 922(g)(8) based upon his possession of firearms while subject to a protection order issued by a South Dakota court. Eagle moved to dismiss the indictment and argued that the state court did not make the necessary findings and conclusions that he and the petitioner were "family or household members." Further, he alleged insufficient evidence that domestic abuse had occurred and that he had actual notice of the hearing and an opportunity to participate. The court denied Eagle's motion and instead found that the protection order plainly stated that Eagle was present at the hearing. Additionally, the court found that he waived further hearing and that he stipulated to the entry of the order and to its terms and conditions. The court further found that the remaining elements of § 922(g)(8) were likewise 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, bodily injury, or attempting to cause physical harm or bodily injury, or from inflicting fear of imminent physical harm of bodily injury against family or household members…."
Key Issue: Due Process (notice); Nature of Prohibitory Language in Order.

United States v. Lippman, 369 F.3d 1039 (8th Cir. 2004).
Lippman was convicted of possessing firearms in violation of § 922(g)(8) after U.S. customs agents found weapons in his possession at the U.S.-Canada border. At the time, Lippman was subject to a California protection order. Upon questioning, he admitted that he was aware of the order but that he did not think that it prohibited him from possessing firearms. The order had been entered after Lippman stipulated to its entry, despite his disagreement with the factual allegations in the application. The judge took note of Lippman's statement and issued the order based upon the stipulation, but the judge did not inform Lippman of the federal firearms law. The order did contain notice of § 922(g)(8)'s applicability, however.

On appeal, Lippman cited three grounds for reversal. First, he contended that the district court improperly refused to instruct the jury that the "hearing" required under § 922(g)(8) is "a proceeding in which witnesses testify and evidence is received." The Eighth Circuit rejected this argument and held instead that the statute does not require that evidence have been offered or witnesses called. The court cited *United States v. Wilson*, 159 F.3d 280 (7th Cir. 1998), *supra*, and *United States v. Banks,* 339 F.3d 267 (5th Cir. 2003), *supra,* in reaching its decision, and it distinguished *United State v. Spruill*, 292 F.3d 207 (5th Cir. 2002), *supra*, noting that defendant in *Spruill* had not received notice of a hearing, never appeared before a judge, and never had an opportunity to participate because no hearing had been scheduled nor convened. As his second grounds for reversal, Lippman argued that the jury should have been instructed that he could be convicted only if he knew both that he possessed a firearm and that his possession was prohibited by the protection order. The court rejected this challenge and noted that every federal circuit that has addressed the issue has found that neither knowledge of the law nor intent to violate it is required. Finally, the court rejected Lippman's Second Amendment challenge, citing the Eighth Circuit's longstanding, consistent holding that the Second Amendment protects the right to bear arms only when it is reasonably related to the maintenance of a well-regulated militia. The court further held 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.
Key Issue: Due Process (notice and hearing); 2nd Amendment.

United States v. McCall, 2006 U.S. Dist. LEXIS 25018 (N.D. Iowa 2006).
Police arrested and charged McCall with violations under 922(g)(8) and 922(g)(9). The magistrate judge recommended that the prosecution be forced to choose between the charges. The prosecution argued that the two charges should be combined at sentencing, if necessary (to avoid a "double sentence"). The district court judge ruled that the prosecution had to choose between the two charges, as making "duplicitous" charges prejudices the jury, i.e., if there is a litany of offenses, then jurors think the defendant must have committed at least one crime.
Key Issue: Duplicituous Charges under 922(g).

United States v. Miller, 646 F.3d 1128 (8th Cir. 2011).
Miller plead guilty to the possession of a firearm, while subject to a domestic violence protection order, in violation of 18 U.S.C. §§ 922(g)(8) and 924(a)(2), in the U.S. District Court for the Northern District of Iowa. The court sentenced Miller to 69 months imprisonment. The sentence was beyond the sentencing guidelines because of the aggravating factor that he had threatened a state trooper. On appeal, Miller argued that he did not know his possession of a firearm was unlawful and that his sentence was unreasonable. The Eighth Circuit affirmed the district court and found that § 922(g)(8) does not require the defendant to have knowledge that their possession of a firearm is unlawful. Further, the court found that Miller's restraining order provided notice that his possession of firearms may be restricted. The court also found that the district court did not abuse its discretion by imposing an upwards variance of the sentencing guidelines, because of both Miller's criminal history and the aggravating factor of his having threatened a state trooper.
Key Issue: Due Process (notice).

United States v. Olvey, 437 F.3d 804 (8th Cir. 2006).
Olvey 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 Olvey tried making such a request, the paperwork was not filed on time. He was subsequently arrested for possession of a sawed-off shotgun in violation of 922(g)(8). He claimed that he was not given an opportunity to participate in challenging the protection order because of the stringent Nebraska five-day rule, which he asserted violates 922(g)(8)'s due process requirements. The Eighth Circuit notes that despite the Domestic Abuse Act's five-day requirement, a district court in Nebraska has the power to vacate or modify its decision within the same term. In fact, Olvey's own protection order was modified under this inherent power. Because Olvey's protection order was modified, and could have been dismissed entirely, the court finds that 922(g)(8)'s opportunity to participate requirement was satisfied.
Key Issue: Due Process (opportunity to participate).

United States v. Stanley, 2008 U.S. App. LEXIS 5944 (8th Cir. 2008) (unpublished).
Defendant Stanley pled guilty to possessing five firearms in violation of 18 U.S.C. § 922(g)(8). The lower court accepted his guilty plea and sentenced him to two years in prison. Stanley later tried to withdraw his plea, which was denied by the court. Stanley testified that he was unaware of the protection order. He testified that he did not receive a copy of the earlier temporary ex parte order, which listed the date for the formal hearing. He explained that the order may have been served at his mother's house while he was in jail. On appeal, the Eighth Circuit determined that, while withdrawing the plea was not allowed,

there was not an adequate factual basis for accepting the guilty plea specifically regarding actual notice of the relevant protection order. The court equated "actual notice" with receipt of notice. *See Dusenbery v. United States*, 534 U.S. 161, 169 n. 5 (2002); *see also Black's Law Dictionary* 1090 (8th ed. 2004). The court remanded for further proceedings.
Key Issue: Due Process (notice).

United States v. Terry, 400 F.3d 575 (8th Cir. 2005).
Terry contends that police violated his Fourth Amendment rights because the officer who arrested him lacked reasonable cause to search or interrogate him. Terry claimed that there was no reason the officer would have to suspect that his possession of ammunition was criminal, which was the reason for the search and interrogation. The court found that the officer knew Terry was subject to a qualifying protective order under 922(g)(8) that made his possession of the ammunition box—which was in plain sight—illegal. Therefore, the officer had the right to seize the ammunition and interrogate Terry without violating his Fourth Amendment rights.
Key Issue: Fourth Amendment.

Weissenburger v. Iowa Dist. Court for Warren County, 740 N.W.2d 431 (Iowa 2007).
The Iowa District Court for Warren County issued a criminal no-contact order against an ex-husband regarding his ex-wife. The order included a provision that explicitly banned him from possessing firearms. The husband sought to have the no-contact order amended so he could use firearms for hunting; the order was amended. On appeal, 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 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. Therefore, the amended order that violated 922(g)(8) was nullified.
Key Issue: Supremacy Clause.

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

Kinkaid v. United States, 2020 U.S. Dist. Lexis 93508 (W.D. Wash. 2020).
Charles Kinkaid attempted to buy a pistol, despite having an active protection order against him. Kinkaid was denied, and told that he could not possess a firearm under both federal and state law due to an existing protection order against him. Kinkaid filed a Motion for Summary Judgment contending that 922(g)(8) did not apply to him because he did not have the opportunity to participate at the hearing for the protection order. While Kinkaid had received notice of the hearing and intended to attend, the jail was short-staffed and he was unable to be brought to the hearing to contest the entry of a permanent protective order. The court held that while Kinkaid was not able to object to the order at the hearing, he could have otherwise challenged or appealed the permanent protection order, which he did not do. As such, Kinkaid had opportunity to participate, and 922(g)(8) applied to him. The court denied his Motion for Summary Judgment.
Key Issue: Due Process (hearing).

Rodvik v. Rodvik, 151 P.3d 338 (Alaska 2006).
The Supreme Court of Alaska finds that the lower court did not err by awarding a husband's gun collection to his wife during divorce proceedings because the husband was subject to a qualifying 922(g)(8) protective order.

Key Issue: Property division after divorce based on § 922(g)(8) gun prohibition

United States v. Bachler, 2020 U.S. Dist. Lexis 10312 (D. Ariz. 2020).
John Bachler was charged with possession of a firearm and ammunition in violation of 922(g)(8) and 924(a)(2), after the firearm and ammunition were seized during the execution of a search warrant. Bachler filed a motion to suppress, arguing that the warrant was broader than the probable cause on which it was based. The court found that the affidavit by the ATF agent listed ten specific firearms, but the search warrant only listed a generic "firearms and ammunition" as evidence to be searched for. As such, the court agreed that the search warrant was broader than the probable cause, and Bachler's motion to suppress was granted.
Key Issue: 4th Amendment

United States v. Chad Well [sic], No. CR 13-14-BLG-DWM, 2016 WL 7410555 (D. Mont. Dec. 21, 2016).
Chadwell was convicted of violation of § 922(g)(8) and he moved to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. He argued that the police search resulting in discovery of weapons was a violation of his 4th Amendment rights because he did not own the car he drove, and the weapons did not belong to him. The court noted that "[l]egitimate law enforcement interests would obviously be unreasonably thwarted if persons engaged in criminal activity could prevent search of a vehicle just by driving a car that belongs to someone else." It also defined "possession" as occurring "if the person knows of its presence and has physical control of it or knows of its presence and has the power and intention to control it." Accordingly, Chadwell's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 was denied.
Key issue: 4th Amendment

United States v. Daniel, No. CR 19-102-BLG-DLC, 2019 U.S. Dist. LEXIS 191923 (D. Mont. Nov. 5, 2019).
Daniel was charged with violation of § 922(g)(8) and sought suppression of evidence on the basis that law enforcement saw him carrying an AR-15 assault rifle while the officers were illegally in his house. The government argued that the evidence was still admissible because although it was found through a warrantless search, this was justified through exigency and emergency exceptions. The court found the warrantless situation was not justified by an exigency exception because for exigency to exist, it must be likely that there is evidence of a crime inside the home, which did not occur in this instance. The court did find, however, that this was an emergency situation because it satisfied three elements: (1) the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for assistance, (2) the search was primarily motivated by intent to arrest and seize evidence, and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area to be searched. The court reasoned that (1) at the time of arrival, Daniel's girlfriend was still in harm's way in the house, (2) the search was motivated by the assurance of the safety of the individuals involved, and (3) the area that was searched was sufficiently connected to the emergency to justify the search. Therefore, the court asserted that the search was not unreasonable under the fourth amendment by way of the emergency exception.
Key Issue: 4th Amendment

United States v. Garretson, 2013 U.S. Dist. LEXIS 154246 (D. Nev. 2013).
Garretson argued that for an individual to be subject to prosecution under §922(g)(8), the order upon which the charge is based must contain all of the elements set forth in the statute. He contended that this includes that the person for whom the order is entered is "an intimate partner" of the Defendant. Because the order did not expressly identify Ruchelle Stuart as Defendant's intimate partner, he argued that Count Six must be dismissed. The court held that there is no requirement that an order expressly name the

person seeking protection as the "intimate partner" of the person whom the order is against. However, the court held that the prosecution must prove that Ruchelle Stuart was the Defendant's intimate partner as that term is defined in 18 U.S.C. §921(a)(32).
Key Issue: Requirements

United States v. Gill, 39 Fed. App'x 548 (9th Cir. 2002).
Gill was convicted of possessing a firearm in violation of section 922(g)(8). On appeal to the Ninth Circuit, he argued that the statute as applied to him exceeds Congress' Commerce Clause authority. The Ninth Circuit rejected his argument and cited several decisions that establish that proof that the firearm was manufactured out of state is sufficient to establish the requisite jurisdictional element of the statute and thus to survive an as-applied challenge to the statute.
Key Issue: Commerce Clause.

United States v. Heintz, 2005 U.S. Dist. LEXIS 27773 (E.D. Wash. 2005) (unpublished).
On February 18, 2005, Heintz was arraigned on domestic violence criminal charges. The judge asked the prosecutor if the city wanted a no-contact order, and the city responded affirmatively. The judge did not allow Heintz to respond, commenting that such an order was standard procedure under the circumstances.

On March 11, 2005, police found Heintz in possession of two firearms and indicted him under 922(g)(8), with the February 18 no-contact order as the predicate protection order. Heintz claimed in his motion to dismiss that he was not given actual notice of the hearing nor was he given an opportunity to participate. The court ruled that notice of a criminal arraignment is not the same as a notice of a protection order hearing and cited *United States v. Banks*, 339 F.3d 267, 270-71 (5th Cir. 2003), *United States v. Wilson*, 159 F.3d 280, 290 (7th Cir. 1998), *United States v. Calor*, 340 F.3d 428, 431 (6th Cir. 2003) as examples where the defendant was given notice of a no-contact order hearing and as an example of when the court says a specified kind of notice is necessary for actual notice. Further, the court held that even if actual notice were given, Heintz was not given an opportunity to participate because the judge did not allow him to present evidence, recite facts, or make contra arguments as to why the protective order should not be given. The ninth circuit held that the court did not provide a proper hearing, again citing *Banks*, *Calor*, and *Wilson* as examples where the order-subjected party was given a chance to refute the charges against him. Therefore, because the court found insufficient notice and opportunity to participate, it dismissed the indictment under 922(g)(8).
Key Issue: Due Process (actual notice + opportunity to participate).

United States v. Henderson, 2006 U.S. Dist. LEXIS 62387 (N.D. Cal. 2006).
On February 10, 2003, Henderson pled guilty to misdemeanor domestic violence regarding then-girlfriend Lakisha Powell and was placed on probation. On June 7, 2004, Henderson's current girlfriend filed a police report alleging assault. The prosecutor filed a probation revocation motion based on this incident. Henderson was subjected to a "stay away" order pending the adjudication of the probation revocation motion. On September 10, 2004, the prosecutor withdrew the motion to revoke probation. Subsequently, Henderson was charged under 922(g)(8). He contended that the underlying protective order had expired at the time he was in possession of a gun, while the prosecutor asserted that the protective order was in effect for three years from the date of issuance. The court found that under California law, the type of protective order issued to Henderson was limited to the duration of the relevant criminal proceeding. Therefore, it expired when the prosecutor dropped the motion to revoke probation; therefore, there was no underlying protective order to support a 922(g)(8) charge.
Key Issue: Expired Protective Order.

United States v. Jones, 231 F.3d 508 (9th Cir. 2000).
Charles Jones, a federally licensed firearms dealer, was subject to a restraining order issued on March 26, 1997, in California pursuant to a petition filed by his former girlfriend. The order prohibited Jones from contacting, threatening, or coming within 100 yards of the petitioner's residence, and was to remain in effect until March 26, 2000. The following year, Jones filed an application to renew his firearms license with the U.S. Treasury Department, Bureau of Alcohol, Tobacco, and Firearms. The renewal application asked whether Jones was subject to a domestic violence restraining order, and Jones answered no. Jones continued to stalk and harass the petitioner and was convicted of a stalking charge in a California court in June 1997. The ATF later learned that Jones had pawned firearms in a pawn shop. The ATF arrested Jones when he returned to the pawn shop to redeem his firearms, falsely stated that he was not subject to a domestic violence restraining order and that he was not a felon when he received the firearms. Jones was indicted for violating 18 U.S.C. § 922(g)(8), for being a felon in possession of firearms, for making false statements on firearms records, and for making a false statement on a firearms license renewal application. The court convicted him on all four counts. On appeal to the 9th Circuit Court of Appeals, Jones raised several arguments, including that § 922(g)(8) exceeds Congress' authority under the Commerce Clause and infringes on rights reserved to the states under the Tenth Amendment. The Ninth Circuit affirmed the conviction (but vacated and remanded as to the sentence). The court found that the *Kafka* decision trumped the due process argument. Jones argued that (g)(8) violates the Commerce Clause based on the reasoning in *United States v. Lopez*, 514 U.S. 549 (1995). This argument failed, because in *Lopez*, the statute in question lacked a jurisdictional element ensuring that the firearm in affected interstate commerce. Jones also contended that the recent U.S. Supreme Court decisions in *United States v. Morrison* (529 U.S. 598 (2000)) and *Jones v. United States* (529 U.S. 848 (2000)) support his argument that the statute violates the Commerce Clause. The Ninth Circuit distinguished these cases; the statute in *Morrison* did not contain the requisite jurisdictional element, and in *Jones*, the statute regulated non-economic activity (arson of a private residence). Since Congress did not exceed its authority under the Commerce Clause and therefore properly acted under one of its enumerated powers, 922(g)(8) does not violate the Tenth Amendment of the Constitution.
Key Issue: Commerce Clause; 10th Amendment.

United States v. Kafka, 222 F.3d 1129 (9th Cir. 2000).
Kafka was subject to a restraining order issued in Washington state court that prohibited him from "causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening or stalking" his wife. When subsequently stopped for a traffic violation, he advised the officers that he was carrying a pistol in the waistband of his pants. He was indicted for violating § 922(g)(8) and filed a motion to dismiss. He entered a conditional guilty plea and appealed the denial of the motion to dismiss. In his appeal, Kafka argued that the statute violates due process by failing to require that notice of the statute be provided to persons subject to protection orders. The 9th Circuit affirmed the conviction, distinguishing the case from *Lambert v. California* (355 U.S. 225 (1957) (where the defendant was convicted of violating an ordinance making it a crime for felons to remain in the city for more than five days without registering with the police). Kafka's conduct did not involve conduct or circumstances "so presumptively innocent as to fall within Lambert's exception to the traditional rule that ignorance of the law is no defense."
Key Issue: Due Process (notice).

United States v. Perkins, 2:12-CR-00354-LDG CW, 2012 WL 6089664 (D. Nev. Dec. 6, 2012).
Defendant was charged with two counts of violating 18 U.S.C. § 922(g)(8) after he was convicted of battery domestic violence. The defendant claims that he did not know he was prohibited from possessing a

firearm, but the court ruled the defendant's mental state was immaterial and inadmissible. Perkins alleged without evidence that being denied the ability to raise the defense of lack of knowledge violated due process. However, the court excluded the defendant's motion to provide evidence of the defendant's ignorance of the law.

Key Issue: Knowledge.

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

Sanchez appealed his conviction of possessing a firearm while subject to a restraining order in violation of 18 U.S.C. §922 (g)(8). Sanchez contended at trial and on appeal that the no contact order placed upon him was insufficient to qualify him as a prohibited possessor under §922 (g)(8) because it was not accompanied by a finding that Sanchez was a credible threat. He alleged that the contact order also did not explicitly prohibit him from: using, threatening to use, or attempting to use force against an intimate partner or child. The court agreed with Sanchez, holding that in order for §922 (g)(8) to be satisfied there must either be a finding that the defendant was a credible threat under §922 (g)(8)(C)(i) or the language in the court order must contain terms substantially similar to those found in §922 (g)(8)(C)(ii). The court further held that while identical language is not required to satisfy §922(g)(8)(C)(ii), the terms used must clearly prohibit the use, threatened use, or attempted use of force against an intimate partner or child. This was a case of first impression in the 9th Circuit and the court relied upon decisions by the Eleventh, First, and Fourth Circuits. *See United States v. DuBose*, 598 F.3d 726, 730–31 (11th Cir.2010) (per curiam); *United States v. Coccia*, 446 F.3d 233, 242 (1st Cir.2006); *United States v. Bostic*, 168 F.3d 718, 722 (4th Cir.1999).

Key Issue: Sufficiency of Protection Order to Trigger 18 U.S.C. §922 (g)(8)

United States v. Schoendaller, 2019 U.S. Dis. Lexis 111618 (D. Idaho 2019).

In 2017, Travis Schoendaller's ex-wife Amber petitioned for, and was granted, a protective order against Schoendaller. Schoendaller received notice of the hearing for the protective order, and attended it via telephone. During the hearing, Schoendaller consented to the order, and as a result the judge stated that there would be no finding on the record that Schoendaller committed an act of domestic violence. The judge ordered that Schoendaller could not possess firearms while the protection order was in effect (until after September 8, 2018). On February 23, 2018, Schoendaller was stopped by an Idaho State Police trooper, and was found to be in possession of firearms. He was arrested and charged, and subsequently indicted by a Grand Jury under 922(g)(8). Schoendaller filed a Motion to Dismiss Indictment, arguing that the indictment violated his Second Amendment rights.

The court found that such indictment did not violate Schoendaller's Second Amendment rights. While Schoendaller argued that his Second Amendment rights should be upheld following *Heller*, as he should be considered a "law-abiding responsible citizen" because there was no official finding that he had committed an act of domestic violence, the court disagreed with his reasoning. The court noted that when one is subject to a protective order, the issuing court found sufficient justification to suspend the Second Amendment rights of the respondent. The court also found that there is no need for there to be a finding of domestic abuse or credible threat in order to apply 922(g)(8) when the respondent consents to a protective order. As such, the court held that because Schoendaller was afforded due process and consented to the order, his Second Amendment rights were not violated, and his indictment would not be dismissed.

Key Issue: 2nd Amendment.

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

In a federal district court in Washington, a jury convicted Young of a 922(g)(8) violation. The U.S. District

Court overturned the jury's verdict, explaining there was insufficient evidence of both "actual notice" and "opportunity to participate" to support a conviction. The District Court reasoned that "actual notice" in the statute really meant "advanced notice" that a protection order might be issued, and that without the advanced notice, the defendant was not given a meaningful opportunity to participate because he could not prepare ahead of time to fight the protection order. The government appealed.

On appeal, the Ninth Circuit found that "actual notice" and "opportunity to participate" should be given their normal meaning —i.e. that actual notice meant the defendant was made aware of the scheduled hearing and that opportunity to participate meant he was allowed to take part in the hearing. Despite Young's "advance notice" argument, the Ninth Circuit deduced that was "emphatically *not* what the statute says," noting that Congress chose "actual" rather than "advance" when it wrote the statute. The appeals court concluded that because the lower court appointed an attorney and told Young of his December 8 formal arraignment that this constituted actual notice.

As to Young's argument that "opportunity to participate" required actual participation, the court joined the Fifth and Seventh Circuits in ruling that "opportunity to participate" was a minimal requirement. *See United States v. Banks*, 339 F.3d 267, 268 (5th Cir. 2003) (finding that even though a hearing had no witnesses or evidence and the judge signed the order ex parte, this still gave an opportunity to participate); *see also United States v. Wilson*, 159 F.3d 280, 284 (7th Cir. 1998) (ruling that a defendant who represented himself had an opportunity to participate). The court concluded that the prosecution need only show that there was a proceeding where the defendant could have objected to the order, and that the December 8 hearing met that standard.
Key Issue: Due Process (actual notice; opportunity to participate).

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

United States v. Arledge, 220 F. App'x 864 (10th Cir. 2007) (unpublished).
Donley filed for a protective order against co-habitant Arledge, alleging physical violence. (Arledge was later acquitted of domestic assault and maiming.) The court granted and served emergency protective order on Arledge. The order informed Arledge that if he did not show up for an October 12 hearing, then the order would become "permanent" (3 years) without further notice, and also informed him of the federal ban on firearm possession while subject to the protective order.

Arledge did not show up for the hearing, and the protective order was made permanent. He was arrested by an ATF agent in Oklahoma while the protective order was still in effect with a firearm. Arledge was convicted under 922(g)(8). On appeal, Arledge asserted that he should have been allowed to introduce his acquittals for the underlying charges of the protective order as a defense, i.e., challenge the protective order's merit. He also contended that he was not given notice of the permanent protective order hearing. The court ruled that an acquittal for the charges underlying a protective order is irrelevant to a 922(g)(8) conviction. If there is a qualifying protective order in effect at the time of firearm possession, then that ends the inquiry for that element of 922(g)(8). The court cited *United States v. Young*, 458 F.3d 998, 1004-05 (9th Cir. 2006) and *United States v. Hicks*, 389 F.3d 514, 534 (5th Cir. 2004) in ruling that attacking the protective order's merit is not a legitimate defense to a 922(g)(8) charge. On the second claim, the court ruled that since the Sheriff testified that he served Arledge with the protective order and submitted a "Sherriff's Return" showing that the order had been served on Arledge that there was enough evidence to support a conviction.
Key Issue: Merit of Protective Order as a Defense; Due Process (evidence of notice).

United States v. Bayles, 310 F.3d 1302 (10th Cir. 2002).
Bayles pleaded guilty to possessing a firearm while subject to a domestic violence protective order. Bayles argued that 18 U.S.C. § 922(g)(8) violated the Second Amendment. However, the case law which he primarily relied upon had been reversed. The district court, when sentencing Bayles, departed far below the sentencing guidelines. The government challenged this and stated that the sentence should not reflect a defendant's knowledge or ignorance of the statute. The court determined that Bayles' ignorance of § 922(g)(8) was not a permissible basis for departure from the sentencing guidelines, and that there were no circumstances to find otherwise. Bayles' sentence was vacated and the case was remanded for resentencing.
Key Issue: 2nd Amendment; Sentencing.

United States v. Edwards, 2019 U.S. Dist. Lexis 112265 (N.D. Okla. 2019).
Raytjuan Edwards was charged in a three-count indictment: (1) possession of a firearm and ammunition in violation of 922(g)(1) and 924(a)(2); (2) possession of a firearm and ammunition in violation of 922(g)(8); and (3) he used corrupt persuasion and misleading conduct to prevent his girlfriend from testifying against him, in violation of U.S.C. § 1512(b)(1). Edwards filed four motions in response to his charges. In Edwards motion to compel election, he argued that Counts 1 and 2 were multiplicitous because they arose from the same conduct. The court denied the motion, as the court can dismiss one of the charges after trial if Edwards is found guilty on both counts so he will not have two convictions. In Edwards' second motion, a motion in limine, he argued that admission of evidence of allegations of domestic assault would violate his rights as it is criminal conduct not related to his charges. The court found that such evidence is relevant to proving Edwards' knowledge that he could not possess a firearm, but that some of the factual allegations were not relevant to the firearms charges. As such the motion in limine was denied in part and granted in part. In Edwards' third motion, a motion for a *Daubert* hearing, he argued that a separate hearing be conducted to test that the ATF agent's methodology in determining that the firearms Edwards possessed had previously been a part of interstate commerce. The court found that the agent appeared qualified, and his testimony was reliable, and as such denied Edwards' motion for a *Daubert* hearing. In Edwards' final motion, a motion to suppress, he argued that the search warrant, that led to the discovery of his firearms, failed to establish probable cause. The court found that there was a nexus between Edwards, his possession of a firearm, and the place that was searched, and as such denied the motion.
Key Issue: Multiplicitous charges, Evidence, *Daubert*, 4th Amendment.

United States v. Edge, 238 F. App'x 366 (10th Cir. 2007) (unpublished).
Edge was indicted on under 922(g)(8). He pled not guilty but was convicted by a jury. On appeal, Edge argued 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 testified that he never received notice of a hearing regarding a permanent protective order and was never given an opportunity to object to such an order. A deputy sheriff, however, testified that she served Edge with notice, and the judge in charge stated that the protective order itself was by agreement of the parties. Thus, Edge consented to the order and waived his opportunity to participate. Further, the court finds that having an attorney present is not necessary for "opportunity to participate," citing *United States v. Wilson*, 159 F.3d 280, 289-90 (7th Cir. 1998).
Key Issue: Due Process (notice; opportunity to be heard).

United States v. Kaspereit, No. CR-18-297-R, 2019 U.S. Dist. LEXIS 189900 (W.D. Okla. Nov. 1, 2019).

Kaspereit was found guilty of making a false statement on an ATF form while purchasing a firearm in violation of 18 U.S.C. § 922(a)(6) and for being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(8). Kaspereit filed a motion of acquittal on the grounds that the jury was improperly instructed on the knowledge standard that required Kaspereit's knowledge that he was a prohibited person under g(8). The court reviewed the jury instructions for plain error, which requires (1) an error (2) that is plain (3), affects a defendant's substantial rights, and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings. The court found that Kaspereit did not meet the third prong, which requires that the defendant show that, but for the error, the outcome would have been different. To be convicted for violation of (a)(6), making a false statement on an ATF form, Kaspereit had to also know that he was subject to a protection order when he falsely filled out the form to purchase the firearm and would therefore be in violation of g(6). After failing to meet one of the prongs to satisfy plain error, the court denied Kaspereit's motion for acquittal.

Key Issue: Knowledge

United States v. Rogers, 371 F.3d 1225 (10th Cir. 2004).

Rogers was indicted by a federal grand jury for possession of a firearm while subject to a 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 protective orders and detained Rogers under 18 U.S.C. §3142(f)(1) of the Bail Reform Act. Rogers filed an objection to the detention order, and the district court overruled his objection, agreeing with the magistrate's finding that he presented a danger to the community. Rogers appealed, arguing that his conviction did not fit within the "crime of violence" required by § 3142(f)(1). The court determined that possession of a firearm while subject to a domestic protection order and following a misdemeanor conviction of domestic violence "are 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)(defining "crime of violence").

The court found that convictions under § 922(g)(8) and (9) fit each of the elements of the definition in §3156(a)(4)(B). First, the court acknowledges the crimes are felonies. Second, the court held that possession of a firearm while subject to a domestic protection order and following a misdemeanor conviction of domestic violence both involve a substantial risk, resulting from the nature of the offense, that physical force may be used against the person or property of another. The court found this to be particularly true in this case. Third, the court found that the possession of guns in violation of § 922(g)(8) and (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. Fourth, the court determined that such a risk is "undoubtedly substantial" since the underlying actions leading to the prohibitions in § 922(g)(8) and (9) necessarily involve actual violence or credible threats of violence. Finally, the court held that the substantial risk of physical force created by the possession of a firearm in violation of § 922(g)(8) and (9) occurs "in the course of committing" the weapon-offense. The court found reasoning for any violent use of the firearm would have inevitably occurred in the course of the commission of the offense of illegal possession. Thus, the court concluded that § 922(g)(8) and (9) are crimes of violence for the purpose of the Bail Reform Act, and the government was entitled to a detention hearing under 18 U.S.C. §3142(f)(1).

Key Issue: Pre-Trial Detention.

United States v. Rolle, 19 F. App'x 812 (10th Cir. 2001) (Unpublished Opinion).

Rolle was arrested for, among other things, possessing a firearm in violation of section 922(g)(8), based

upon a restraining order entered against him by a Montana court. Rolle was convicted after a jury trial. He appealed to the Tenth Circuit. Rolle argued on appeal that because the restraining order did not specifically contain the words "stalking or threatening," as used in section 922(g)(8)(B), it did not meet the requirements of the federal law. He also argued that the order did not satisfy the requirements of section 922(g)(8)(C) because it did not contain all of the language required by that section. The Tenth Circuit examined the language of the order and concluded that it indeed satisfied all requirements of section 922(g)(8), including both the "credible threat" finding under 922(g)(8)(C)(i) and the alternative explicit prohibition on conduct requirement under 922(g)(8)(C)(ii).
Key Issue: Nature of Prohibitory Language in Order.

United States v. Wynne, 2003 U.S. App. LEXIS 186 (10th Cir. Jan. 7, 2003) (unpublished).
Wynne was convicted of violating §922(g)(8) and § 922(a)(6) (making a false statement in connection with the acquisition of a firearm). He appealed his conviction on the grounds that § 922(g)(8) and 922(a)(6) are facially unconstitutional or unconstitutional as applied under the Second Amendment. Further, the same arguments about the Fifth Amendment and that the notice and hearing requirements of § 922(g)(8) and 922(a)(6) were not met. The Tenth Circuit rejected the Second and Fifth Amendment arguments with little discussion based upon prior circuit precedent. Regarding the notice and hearing requirements, the court rejected Wynne's assertion that a 1997 amendment (to change the petitioner's address) to the original 1994 protection order was a "new" protection order of which Wynne had received no notice or opportunity to be heard. The court found agreed with the district court that the 1997 attempted address change "did not extinguish the 1994 order and replace it with a new [order]; nor did the 1997 amendments 'specifically modify' the 1994 [order]. Indeed, for purposes of § 922(g)(8)'s notice and hearing requirements, the 1997 change-of-address amendment had no effect at all, and the 1994 [order] was in full force and effect when Wynne purchased the firearm in 1999." The court further found that § 922(g)(8)'s notice and hearing requirements were satisfied when the original 1994 order was issued, although it was issued by default because Wynne did not appear at the hearing.
Key Issue: 2nd Amendment; Due Process (notice).

Eleventh Circuit (Alabama, Florida and Georgia)

United States v. Cadet, 2020 U.S. App. Lexis 21129 (11th Cir. 2020).
Terry Cadet was convicted of possessing a firearm under both 922(g)(1) and 922(g)(8), and given separate sentences for both. Cadet appealed the conviction, arguing that the district court did not have jurisdiction because the indictment didn't allege that he had knowledge he could not possess a firearm, and that imposing separate convictions and sentences under 922(g), when the offenses arose from the same incident, violated the Double Jeopardy Clause. The appellate court held that because Cadet had pleaded guilty, he abandoned the issue of the error in the indictment, and as such waived any claim. The court also held that the district court erred in convicting Cadet of two separate offenses and imposing two sentences. The court vacated Cadet's sentences and remanded the case with instructions that one of the convictions be vacated and merged into the other in order to sentence Cadet on a single count of violating 922(g).
Key Issue: Double Jeopardy, Jurisdiction, Knowledge.

United States v. Hamm, 134 F. App'x 328 (11th Cir. 2005) (unpublished).
Hamm was convicted under 922(g)(8) and he appealed the conviction claiming the Alabama statute

under which the restraining order was issued is unconstitutional. The Alabama statute authorizes a temporary protection order to be issued ex parte upon a showing of worthy cause. The statute also has a provision that states within fourteen days the court holds a hearing where the party seeking the protection order must prove the allegations. Hamm asserted that for a protection order not to offend due process the defendant must have notice and a hearing in front of a jury before it is issued. The court finds such a contention to be "without merit," and notes that the Alabama protection order statute mandates that a hearing be held within fourteen days and that a subjected party must be advised the he may be represented by counsel at that hearing.
Key Issue: Due Process (immediacy of hearing).

District of Columbia Circuit

United States v. Chase, 179 F. App'x 57 (D.C. Cir. 2006).
Chase appeals his conviction under 18 U.S.C. §922(g)(8) claiming the court should have suppressed a statement that he made about a gun being in a bag in his car before he was read his Miranda rights. The Court remanded the case to the D.C. District Court for further consideration because it was not clear whether the question that Chase provided the incriminating answer to was actually directed at him.
Key Issue: Self Incrimination, Fifth Amendment.