

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO**

LIZBETH MENDEZ,

Petitioner and Appellant,

vs.

JESUS GABRIEL SALCIDO,

Respondent.

On Appeal from the Superior Court of the State of California for the
County of Los Angeles
Los Angeles County Superior Court Case No. 18CHRO00443
Honorable Susan Lopez-Giss, Judge Presiding;
Honorable Susan K. Weiss, Commissioner;
Honorable David A. Rosen, Judge

**APPLICATION BY CALIFORNIA WOMEN'S LAW CENTER FOR
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
APPELLANT; PROPOSED BRIEF**

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**APPLICATION TO FILE BRIEF OF AMICUS CURIAE
AND INTEREST OF AMICUS**

The California Women’s Law Center (“CWLC” or “Amicus Curiae”) hereby applies under California Rules of Court, rule 8.200(c) for permission to file an amicus curiae brief supporting Appellant Lizbeth Mendez (“Mendez”). The proposed amicus brief is attached to this application.

CWLC is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. CWLC represents the interests of domestic violence survivors and their families throughout California and is uniquely situated to provide assistance to this Court because of the nature of the work we do. CWLC works to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy, and education. Since its inception in 1989, CWLC has placed an emphasis on eradicating all forms of discrimination and violence against women. Part of CWLC’s mission is to ensure that women and children have access to resources to protect against and overcome violence, including creating innovative programs to raise awareness, while bringing

expanded services to victims of domestic violence.

CWLC has appeared as amicus in numerous cases presenting issues related to domestic violence. CWLC's amicus briefs have argued for clarity in the interpretation of the statutory scheme surrounding domestic violence restraining orders in family court and in the interpretation and application of California Family Code section 3044 relating to the presumption against child custody for domestic violence abusers. Two of these appeals resulted in published opinions. (*Garcia v. Escobar* (2017) 17 Cal.App.5th 267; *Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208.) Most recently, CWLC submitted an amicus brief leading to a published opinion reversing the trial court's holding that a civil restraining order could not be granted because a criminal protective order was in place. (*Lugo v. Corona* (2019) 35 Cal.App.5th 865.)

The issues presented in this case will significantly impact the women who CWLC assists, as well as CWLC's provision of services to these individuals and their advocates. Here, Mendez argues on appeal that the trial court erred by failing to consider all of Mendez's evidence, not allowing Mendez to cross-examine the Respondent, and improperly concluding that the

Respondent's physical violence was justified. (Op. Br., p. 12.)

Reversal is necessary because such errors are common and the vast majority of domestic violence victims are representing themselves. In addition, many domestic violence litigants are monolingual Spanish speakers. If upheld, these errors will harm women in California.

CWLC requests leave to submit this brief to provide the Court with additional argument and authority supporting Mendez's arguments that the trial court should be reversed.

No party, counsel for a party, or any person or entity other than CWLC and its counsel has made a monetary contribution intended to fund the preparation or submission of the brief, and no party or counsel for a party has authored this brief in whole or in part.

Dated: August 19, 2019

Respectfully submitted,

CALIFORNIA WOMEN'S LAW CENTER

By: s/ Amy Poyer

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PROPOSED BRIEF

I. INTRODUCTION AND SUMMARY OF ARGUMENT

If upheld, the trial court's order denying Petitioner Lizbeth Mendez's request for a restraining order against her abusive then-boyfriend will harm women in California seeking protection from domestic violence. California has expressed a strong public interest in protecting its citizens from abusers, batterers, and other violent individuals.

Reversal is critical to the many domestic violence survivors, like Mendez, who must represent themselves in Domestic Violence Restraining Order (DVRO) hearings. In addition, reversal is required because many survivors are monolingual Spanish speakers or have limited English proficiency, making them more vulnerable to harm as a result of the trial court's errors.

The trial court in this case valued its own concerns about expediency and alleged judicial efficiency over the right of a domestic violence petitioner to have a full and fair hearing with meaningful consideration of the evidence. These types of errors are far too common. The trial court's errors, outlined in

Appellant’s opening brief, must be corrected to ensure that all domestic violence survivors are afforded true and meaningful justice in accordance with the laws and the expressed intent of the Legislature.

II. THIS COURT SHOULD REVERSE BECAUSE THE TRIAL COURT’S ERRORS WILL HARM WOMEN IN CALIFORNIA IF UPHELD

In 1993, the California Legislature enacted the Domestic Violence Prevention Act (“DVPA”) as Division 10 of the Family Code, section 6200 et seq. “The purpose of this division is to prevent acts of domestic violence, abuse and sexual abuse and to provide for separation of the persons involved in the domestic violence[.]” (Fam. Code, § 6220.) The Legislature has since published findings affirming the importance and effectiveness of the DVPA, including a finding that civil protective orders “increase a victim’s safety, decrease a victim’s fear of future harm, and improve a victim’s overall sense of well-being and self-esteem.” (2014 Cal. Stats. Ch. 635, § 1, subd. (f).)

Social science research shows that restraining orders are effective in reducing domestic violence. For example, in a recent study of survivors of abuse in rural and urban settings, domestic violence restraining orders were found to be effective as

measured by the elimination or reduction of violence and improved quality of life for survivors. (See Logan & Walker, CARSEY INSTITUTE, UNIVERSITY OF NEW HAMPSHIRE, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement* (Spring 2011) at p. 3-4.)

Studies also show that the majority of persons that experience domestic violence are women. (Bugarin, *The Prevalence of Domestic Violence in California* (Nov. 2002) CALIFORNIA RESEARCH BUREAU, California State Library at p. 3 [“The Bureau of Justice estimates that ’90 to 95 percent of domestic violence victims are women.”].) As a result, 72% of the restraining orders issued by various divisions of the Superior Court “involved a restrained male and a protected female.” (See Sorenson & Shen, *Restraining Orders in California: A Look at Statewide Data* (July 2005) 11 VIOLENCE AGAINST WOMEN 912, 920.)

Severe harm can result from domestic violence if not addressed by the courts. The Centers for Disease Control reports that more than half of homicides against women are connected to domestic violence. (Petrosky et al., *Racial and Ethnic Differences*

in Homicides of Adult Women and the Role of Intimate Partner Violence - United States, 2003-2004, 66 CENTERS FOR DISEASE CONTROL & PREVENTION MMWR WEEKLY 28, 741-6 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf>.)

Experiencing domestic violence often leads to depression and suicidal behavior. (Hamby et al., U.S. Dep't of Justice, *Children's Exposure to Intimate Partner Violence and Other Family Violence* 2 (2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf>.)

Restraining orders are vitally important in protecting women in California, but they can only be effective when litigants are given a full opportunity to present their case before the trial court. “[T]he effective issuance and enforcement of civil protective orders are of paramount importance in the State of California as a means for promoting safety, reducing violence and abuse, and preventing serious injury and death.” (2014 Cal. Stats. Ch. 635, § 1, subd. (i).) Unfortunately, trial courts often fall short in giving domestic violence litigants the full and careful consideration they are entitled to. In this case, the trial court’s errors in refusing to consider certain evidence led to an extremely short hearing, consisting of only 11 transcript pages for the entire hearing, including interpretation. (*See generally*, RT 1:1-11:15.) These

types of errors are common when courts are considering domestic violence. For example, in child custody cases where one parent has engaged in domestic violence against the other, the court is required to apply a rebuttable presumption that includes seven statutory factors before awarding custody to a domestic abuser. (Fam. Code, § 3044.)

Despite this mandate, courts frequently misapply the factors or fail to consider each of them. (Garvin, *The Unintended Consequences of Rebuttable Presumptions to Determine Child Custody in Domestic Violence Cases*, 50 FAMILY L.Q. 173, 178-79 (2016) [the application of the presumption is inconsistent and often distorted by judges]; Lemon and Dorfman Wagner, *Family Violence Appellate Project Finds Many Family Law Judicial Officers Fail to Respond Appropriately in Domestic Violence Cases*, 39 ST. B. OF CAL. FAM. L. NEWS 27, 28 (2017) [finding that 90% of California domestic violence service providers surveyed reported issues with custody and visitation, including a judge's refusal to apply the correct standards mandated by law].)

Even with a statutory mandate to consider all seven factors, courts fall short in their duty to give full consideration to the law and thereby ensure domestic violence survivors are

effectively protected. This problem is even worse in DVRO hearings, where judges are not guided by statutory factors to consider. Given the proven correlation between restraining orders and the safety of domestic violence survivors, it is of the utmost importance that courts effectively issue DVROs, including considering all relevant evidence in a full and fair hearing. Indeed, the DVPA itself directs courts to “consider the totality of the circumstances in determining whether to grant or deny” a DVRO. (Fam. Code, § 6301.) The trial court here did not do so, and if its decision is not reversed, domestic violence survivors will continue to be unfairly and disproportionately harmed.

III. THIS COURT SHOULD REVERSE BECAUSE DOMESTIC VIOLENCE SURVIVORS ARE OFTEN UNREPRESENTED BY COUNSEL AND MONLINGUAL SPANISH SPEAKERS

Domestic violence victims are overwhelmingly unrepresented by attorneys at the trial level, and thus are tasked with navigating complex legal issues without assistance or clear guidance on the law or their legal rights. (Hough, *Self-Represented Litigants in Family Law: The Response of California’s Courts* (Jan. 2010) 1 CAL. L. REV. CIRCUIT 15, 16 (70-80% of California family court litigants are unrepresented); Ross

v. Figueroa (2006) 139 Cal.App.4th 856, 861 [litigants in domestic violence restraining order hearings are *pro per* 90 percent of the time].) Without representation, domestic abuse victims are also at risk for more abuse by their aggressors in the court setting. (Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 55 (2017) ["the batterer can use the power differential between himself and the victim to his advantage in court"].)

This is particularly true for the many women in California who, like Mendez, are monolingual Spanish speakers who lack access to representation when seeking protection from domestic violence. Monolingual Spanish-speaking women facing domestic violence are in particular need of the DVPA's protections.

Because the "immigration process often leads to the fragmentation of the extended family which Latina women could traditionally rely upon to resolve conflict," they can experience "[s]ocial isolation, exacerbated by lack of social contacts, geographic isolation, and limited mastery of English or cultural alienation." (Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources & Service Needs of Battered Immigrant*

Latinas: Legal and Policy Implications (2000) 7 GEO. J. POVERTY
L. & POL'Y 245, 252.)

These circumstances make it easier for an abuser “to ignore social sanctions, promote[] increased marital dependence and increase[] intra-familiar exclusivity and intensity,” all of which combine to “increase[] the risk for family violence.” (*Ibid.*) Accordingly, “[i]mmigrant women who encounter language barriers, cultural differences, and stereotyping by mainstream society are often invisible [even] to the anti-domestic violence movement.” (Orloff et al., *Battered Immigrant Women’s Willingness to Call for Help & Police Response* (2003) 13 UCLA WOMEN’S L.J. 43, 46 [footnote omitted].)

If not reversed, the trial court’s legal errors and failure to consider relevant evidence in denying Mendez’s DVRO will make it more difficult for victims who are unrepresented and have limited English proficiency. If a victim does not speak English and does not have an attorney, it is less likely that she will be able to participate effectively in her hearing, present her evidence, make arguments before the judge, and otherwise object or fully participate. Unrepresented monolingual Spanish-speaking domestic violence victims also face unique difficulties in

navigating the procedures of enforcing existing restraining orders even when they are granted. (*See Wood, VAWA's Unfinished Business: The Immigrant Women Who Fall Through the Cracks* (2004) 11 DUKE J. GENDER L. & POL'Y 141, 151 [noting that even when translating services are available, "Spanish-speaking immigrants may have difficulty understanding law enforcement and court procedures"].) The threat of enforcement is integral to a restraining order's effectiveness, particularly in the period immediately following its issuance, which can be the "most dangerous time" for a victim. (Fischer et al., *Culture of Battering & the Role of Mediation in Domestic Violence Cases* (1993) 46 S.M.U. L.REV. 2117, 2121–2122, at p. 2138.) The DVPA's express call to courts to appoint counsel to represent petitioners in protective-order enforcement proceedings (see Fam. Code, § 6386, subd. (a)) provides a crucial tool in protecting monolingual Spanish-speaking victims who otherwise lack access to such assistance, and reinforces the importance of having representation in such hearings.

“For immigrant Latinas, the issues inherent in their immigration and residency status in the U.S., together with their having fewer personal resources and limited access to community

resources as new arrivals, add to their disadvantage and entrap them further in the intimate violence.” (Dutton, *supra*, at p. 250.) As a result, “[i]mmigrant women . . . face greater financial risks in separating from an abusive partner.” (Carey & Solomon, *Impossible Choices: Balancing Safety & Security in Domestic Violence Representation* (2014) 21 CLINICAL L.REV. 201, 229.) The DVPA’s financial protections are meant to resolve this exact problem, but if victims are not afforded a full and fair hearing, they will not be able to take advantage of those protections.

Because restraining orders are vital to victims’ escape from the cycle of abuse, the trial court’s legal errors must be reversed.

IV. CONCLUSION

Because of the harm it will cause to women in California if upheld, the California Women's Law Center respectfully requests that this Court reverse the trial court's decision to deny Mendez's DVRO.

Dated: August 19, 2019

Respectfully submitted,

By: s/ Amy C. Poyer
Senior Staff Attorney
California Women's Law Center

WORD COUNT CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Proposed Brief of Amicus Curiae contains 3250 words, not including the application, table of contents, table of authorities, the caption page or this certification page.

Dated: August 19, 2019

By: s/ Amy C. Poyer
Senior Staff Attorney
California Women's Law Center

PROOF OF SERVICE

I, Amy Poyer, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is 360 N. Pacific Coast Highway, Suite 2070, El Segundo, CA 90245. On August 19, 2019, I served the following: **APPLICATION BY CALIFORNIA WOMEN’S LAW CENTER FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT; PROPOSED BRIEF** on the interested parties in this action addressed as follows:

<p><i>(Via U.S. Mail)</i> Jesus Gabriel Salcido 11549 Kagel Canyon Street Sylmar, CA 91342 Telephone: (818) 321-5301</p>	<p><i>Respondent</i></p>
<p><i>(Via U.S. Mail)</i> Hon. Susan Lopez-Giss Los Angeles Superior Court Chatsworth Courthouse 9425 Penfield Avenue Chatsworth, CA 91311</p>	<p><i>For delivery to Hon. Susan Lopez-Giss</i></p>
<p><i>(Via TrueFiling)</i> Sarah Reisman Erica Carroll Los Angeles Center for Law and Justice 5301 Wittier Blvd., Fl. 4 Los Angeles CA 90022</p> <p>Theane Evangelis Jeremy S. Smith Lori C. Arakaki Gibson, Dunn & Crutcher 333 South Grand Avenue Los Angeles, CA 90071</p>	<p><i>Counsel for Petitioner and Appellant</i></p>

- (BY U.S. MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at the California Women's Law Center, El Segundo, California following ordinary business practice. I am readily familiar with the practice at the California Women's Law Center for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

- (BY ELECTRONIC MAIL)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via the Court's Electronic Filing System (EFS) operated by TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on **August 19, 2019**.



Amy Poyer