

No. A137771

In the Court of Appeal of the State of California  
First Appellate District, Division Three

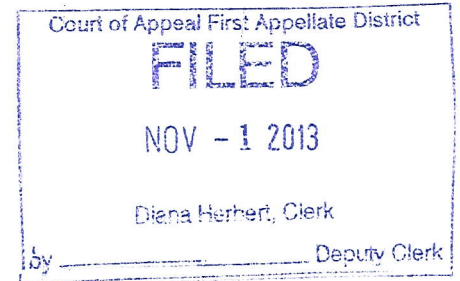
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QING HUI GOU,  
Petitioner and Appellant,

vs.

BI GUANG XIAO,  
Respondent and Respondent.

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APPLICATION FOR LEAVE TO FILE AMICI CURIAE  
BRIEF AND AMICI CURIAE BRIEF OF FAMILY  
VIOLENCE APPELLATE PROJECT, ET AL., IN  
SUPPORT OF APPELLANT QING HUI GOU

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Appeal From An Order Denying An Application For A Restraining Order  
San Francisco County Unified Family Court  
Case Nos. FCS-12-347915, FDI-12-777831  
The Honorable Ronald E. Albers

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---	---

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*Action Plan For Justice*, Report of Cal. Comm’n on Access to Justice, at 7 (2007), [http://www.calbar.ca.gov/Portals/0/documents/access Justice/2007\\_Summary\\_Edition\\_Action-Plan-Justice%207.2.12.pdf](http://www.calbar.ca.gov/Portals/0/documents/access%20Justice/2007_Summary_Edition_Action-Plan-Justice%207.2.12.pdf) ..... 9

Cathy S. Widom & Michael G. Maxfield, *An Update on the “Cycle of Violence”*, National Institute of Justice Research in Brief (February 2011), <http://www.ncjrs.gov/pdffiles1/nij/184894.pdf> ..... 14

Janet Carter, *Domestic Violence, Child Abuse, and Youth Violence: Strategies for Prevention and Early Intervention*, Family Violence Prevention Fund (Jan. 11, 2011), <http://www.mincava.umn.edu/link/documents/fvpf2/-fvpf2.shtml> ..... 15, 18

Lonna Davis et al., *Domestic Violence Agencies and Shelters, Moving From Evidence to Action: The Safe Start Center Series on Children Exposed to Violence*, (September 2012), [http://www.safestartcenter.org/pdf/issue-brief-5\\_dv\\_2012.pdf](http://www.safestartcenter.org/pdf/issue-brief-5_dv_2012.pdf) ..... 15, 17

Lundy Bancroft, *The Batterer as Parent*, 6 Synergy, No. 1 (2002), <http://www.ncjfcj.org/sites/default/files/synergy-6-1.pdf> ..... 16

Lyungai F. Mbilinyi et al., *What Happens to Children When Their Mothers Are Battered? Results from a Four City Anonymous Telephone Survey*, 22 J. Fam. Viol. 309 (2007) ..... 17

Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 Fam. Ct. Rev. No. 3 500 (July 2008) ..... 17

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Toolsi Gowin Meisner & Diana Korn, <i>Protecting Children of Domestic Violence Victims with Criminal No-Contact Orders</i> , Strategies, No. 4 (April 2011), <a href="http://www.aequitasresource.org/Protecting-Children-of-Domestic-Violence-Victims-with-Criminal-No-Contact-Orders.pdf">http://www.aequitasresource.org/Protecting-Children-of-Domestic-Violence-Victims-with-Criminal-No-Contact-Orders.pdf</a> .....	15, 16, 17

**APPLICATION FOR LEAVE TO FILE  
AMICI CURIAE BRIEF**

The Family Violence Appellate Project, California Partnership to End Domestic Violence, National Family Justice Center Alliance, Family Violence Law Center, Los Angeles Center for Law and Justice, Domestic Violence Legal Empowerment and Appeals Project, Legal Aid Foundation of Los Angeles, Leadership Council on Child Abuse and Interpersonal Violence, Child Abuse Forensic Institute, and Dr. Jeffrey L. Edleson, Dean and Professor at the University of California, Berkeley, School of Social Welfare, respectfully request permission to file the attached amici curiae brief in support of Appellant Qing Hui Gou. No party, any counsel for a party, person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, and its counsel in the pending appeal. Cal. Rules of Court, Rule 8.200(c)(3).

This appeal addresses whether a parent may obtain a restraining order under the Domestic Violence Prevention Act (DVPA), California Family Code section 6200 et seq., upon a showing that his or her spouse abused their child. The trial court denied Ms. Gou's application for a five year restraining order on the ground that only her son, but not Ms. Gou, was being abused. Under those circumstances, the trial court reasoned, the DVPA does not permit the restraining order that Ms. Gou was seeking.



This brief explains why the trial court's narrow interpretation of the DVPA is inconsistent with the statute's plain meaning and purpose and frustrates California's public policy against domestic violence. This brief also surveys the social science research that describes the overlap between domestic violence and child abuse. That research explains why the trial court's restrictive interpretation, if upheld, would establish a dangerous precedent by removing an essential avenue of relief for parents who risk their own well-being when they intercede in another parent's violence against their shared children.

As more fully outlined below, *amici* represent the interests of domestic violence survivors in California. *Amici* are California-based local and state nonprofit organizations, as well as two national organizations and a nationally distinguished professor. *Amici* collectively work with thousands of domestic violence survivors each year, including survivors who receive temporary restraining orders from trial courts and then seek longer term protection orders. *Amici* are committed to ensuring that domestic violence survivors receive justice in the civil courts in this state. *Amici* have first-hand knowledge of the legal standards applied in Domestic Violence Prevention Act cases and the dynamics of domestic violence.

*Family Violence Appellate Project* ("FVAP") is a nonprofit organization founded by members of the University of California, Berkeley School of Law community to ensure, through

the appellate legal system, the safety and well-being of domestic violence survivors and their children. The goal of FVAP is to aid in creating a body of precedent that will help protect families across California. To that end, FVAP provides direct appellate representation for survivors of domestic violence in collaboration with pro bono attorneys, and offers training to domestic violence attorneys and advocates on issues pertinent to domestic violence appeals. In addition, FVAP monitors California litigation and identifies those cases that have the potential to impact the interests of domestic violence victims and their children statewide. This is one of those cases.

*California Partnership to End Domestic Violence* (“The Partnership”) is the federally-recognized State Domestic Violence Coalition for California. The Partnership has a 30-year history of providing statewide leadership, and has successfully achieved passage of more than 100 pieces of legislation to ensure safety and justice for domestic violence survivors and their children.

The *National Family Justice Center Alliance* (“The Alliance”) is the non-profit comprehensive federal technical assistance and training provider for the United States Department of Justice for all federally funded Family Justice Centers. There are currently 85 Family Justice Centers across the U.S. with 17 of those Centers in California including Oakland, West Contra Costa, Fairfield, Santa Rosa, and San Jose. Family Justice Centers assist thousands of California residents with applications for domestic

violence restraining orders each year. The Alliance has an interest in ensuring that the Domestic Violence Prevention Act is interpreted according to its plain terms and that victims of domestic violence receive full access to California’s legal protections.

Founded by domestic abuse survivors, *Family Violence Law Center* (“FVLC”) has been working to end domestic violence in Alameda County since 1978. FLVC’s integrated service model focuses on comprehensive, free legal services that help domestic violence survivors achieve long-term safety and self-sufficiency. FLVC provides life-saving services to more than 2,500 survivors and their children annually and believes the issue raised in this case will have a significant impact on the ability of domestic violence survivors—in Alameda County and across California—to obtain enforceable relief under the Domestic Violence Prevention Act.

The mission of *Los Angeles Center for Law and Justice* (“LACLJ”) is providing legal representation and education to low income families facing the greatest barriers to justice. To that end, LACLJ prioritizes serving clients who would not otherwise be represented because of the complexity of their family law cases. LACLJ is committed to ensuring that domestic violence victims have meaningful access to justice in order to increase family stability, decrease homelessness, and promote safe, violence-free homes.

*Domestic Violence Legal Empowerment and Appeals Project* (“DV LEAP”) has spent over a decade fighting to advance

legal protections for victims and their children through expert appellate advocacy; training lawyers, psychologists and judges on best practices; and spearheading domestic violence litigation in the U.S. Supreme Court. DV LEAP is committed to ensuring that courts understand the realities of domestic violence and the law when deciding cases, such as this one, with significant implications for domestic violence litigants and their children.

The *Legal Aid Foundation of Los Angeles* (“LAFLA”) has been the frontline law firm providing civil legal services to poor and low-income people in Los Angeles County for over 85 years. With six neighborhood offices, three Domestic Violence Clinics and four Self Help Legal Access Centers, LAFLA serves diverse communities and is the first place thousands of poor people turn to when they need legal assistance for a crisis that threatens their shelter, health and livelihood. LAFLA's Family Law Unit advocates provide direct legal and case management services to survivors of domestic violence/intimate partner abuse and their families, including direct representation at the trial and appellate court levels. In recent years LAFLA has filed successful appeals in civil domestic violence cases, including *Quintana v. Guijosa*, 107 Cal. App. 4th 1077 (2003), *Monterroso v. Moran*, 135 Cal. App. 4th 732 (2006) and *Gonzalez v. Munoz*, 156 Cal. App. 4th 413 (2007). LAFLA joins in support of this brief because a court's failure to protect a custodial parent in a child's restraining order against the abusive parent places both the protecting parent and the child at risk of future harm.

The *Leadership Council on Child Abuse and Interpersonal Violence* (“The Council”) is a non-profit independent scientific organization composed of respected scientists, clinicians, educators, legal scholars, journalists and public policy analysts. The Council’s mission includes preserving society’s commitment to protect its most vulnerable members. The Council’s goals include promoting and disseminating high quality scientific and medical research concerning the prevalence and consequences of child abuse and other forms of interpersonal violence, and providing officers of the court with the latest scientific information on issues that may affect the public health and safety of society’s most vulnerable members.

The *Child Abuse Forensic Institute* is a non-profit resource and referral organization created to assist litigants in family violence cases in California.

Dr. Jeffrey L. Edleson is the Dean and Professor at the University of California, Berkeley, School of Social Welfare. His current national service includes membership on the National Institute of Justice’s Scientific Review Panel on Family Violence and Violence Against Women and on the recently concluded National Advisory Committee on Violence Against Women. Dr. Edleson has published more than 120 articles and 12 books, and is co-author of 1999’s *Effective Intervention in Domestic Violence and Child Maltreatment Cases*, a best-practices guide widely known as “the Greenbook.”

## POINTS AMICI WILL ARGUE

1. Ms. Gou was entitled to a protective order under the plain meaning of the Domestic Violence Prevention Act (“DVPA”).

2. The trial court’s denial of the restraining order is inconsistent with the DVPA’s purpose and California’s public policy against domestic violence.


3. Social science research documents the overlap between domestic violence and child abuse and demonstrates that, because child abuse often threatens the non-abusive parent’s well-being, the parent of an abused child must be able to obtain protection under the same restraining order that protects the child.

DATED: October 31, 2013.

Respectfully submitted,

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DATED: October 30, 2013.

Respectfully submitted,

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## **AMICI CURIAE BRIEF**

### **I.**

#### **INTRODUCTION**

Appellant Qing Hui Gou and her son Joshua are survivors of family violence. Ms. Gou's husband, Respondent Bi Guang Xiao, abused Joshua physically and emotionally. Ms. Gou first became aware of Mr. Xiao's abuse of Joshua when she was living in China, awaiting a visa to join her family in the United States. After Ms. Gou arrived in the U.S., she observed Mr. Xiao's violence toward their son. Ms. Gou and her son were fearful of Mr. Xiao and Ms. Guo put herself at risk every time she interceded to protect her son.

Ms. Gou applied for a temporary restraining order under the Domestic Violence Prevention Act ("DVPA"), which authorizes trial courts to issue restraining orders upon a showing of a past act of abuse or domestic violence. Abuse occurs when a person causes another to reasonably fear that he or she or another person will suffer imminent serious bodily injury. Domestic violence includes the abuse of a spouse or a child.

Although the trial court granted and twice extended Ms. Gou's temporary restraining order, it denied Ms. Gou's application for a five-year restraining order. The court found that



because only Joshua was subjected to his father's violence, Ms. Gou could not obtain a restraining order to protect both her and her son.

As we demonstrate in this brief, the trial court's ruling constitutes an abuse of discretion because it is premised upon an untenably narrow interpretation of the DVPA. The DVPA's plain meaning classifies Ms. Gou as a victim of abuse and domestic violence based on the abuse toward her son. The ruling also is at odds with the statute's purpose—to prevent a recurrence of domestic violence.

Furthermore, that purpose is cognizant of, and consonant with, the social science research that forms the backdrop of the DVPA. As we discuss, numerous studies have shown that child abuse and domestic violence occur together frequently. This research exposes the fallacy in the assumption underlying the trial court's order—that abuse of a child does not also constitute, or at a minimum does not realistically threaten, abuse of the child's parent. Because nonabusive *parents* are at risk of domestic violence when they seek to protect their *child* from an abusive parent, they need protection under the same order that protects their child.

Orders like the trial court's, if upheld, would foreclose an important avenue for parents to protect their children *and themselves* from abuse. This Court should clarify that a mother like Ms. Gou may obtain a domestic violence restraining order where

both she and her child face abuse from a father like Mr. Xiao. This Court should therefore reverse the order.

## **II. ARGUMENT**

### **A. Under The DVPA’s Plain Language, Ms. Gou Is Entitled To A Restraining Order**

While this Court reviews the trial court’s order for abuse of discretion, it is settled that a trial court abuses its discretion when its ruling is based on incorrect legal criteria or on an incorrect interpretation of a statute. *Gonzalez v. Munoz*, 156 Cal. App. 4th 413, 420-421 (2007); *Horsford v. Board of Trustees of Cal. State Univ.*, 132 Cal. App. 4th 359, 393 (2005). That is the case here.

The rules governing this Court’s interpretation of the DVPA also are well-settled. When construing a statute, a court’s “fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.” *In re Marriage of Nadkarni*, 173 Cal. App. 4th 1483, 1497 (2009) (citations omitted). Courts first look to the plain meaning of the statute, which governs if the terms of the statute are unambiguous. *Id.*

Here, the DVPA’s plain language broadly authorizes trial courts to issue orders “to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period

of separation of the persons involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.” Fam. Code § 6300. “Abuse” is defined as “plac[ing] a person in reasonable apprehension of imminent serious bodily injury to that person *or to another*.” Fam. Code § 6203(c) (emphasis added). Abuse includes physical violence as well as verbal harassment and abuse. *Nadkarni*, 173 Cal. App. 4th at 1496. The DVPA permits a petitioner to obtain a temporary restraining order *ex parte*, and after a notice and hearing, the trial court has discretion to extend the duration of the order up to five years. *See* Fam. Code § 6345.

The DVPA also authorizes a court to grant a restraining order to any person who is a victim of “domestic violence.” Fam. Code § 6301. “Domestic violence” is defined as “abuse perpetrated against,” among other persons, a “spouse or former spouse” and a “*child of a party . . . .*” Fam. Code § 6211(a), (e) (emphasis added). The Legislature intentionally included “children” in subdivision (e) to “eliminate[ ] any implication that children are not covered by this statute.” Fam. Code Ann. § 6211 (West 2013) (Law Revision Comm’n Comments).

Ms. Gou applied for a DVPA restraining order under section 6200 et seq. Her application was based on the following undisputed facts: Ms. Gou first heard about Mr. Xiao’s abuse of their son Joshua from members of her church. CT 39, 60. Joshua also reported the beatings to her. CT 59, 60. Further, during a

video chat session, Ms. Gou saw Mr. Xiao assault her son for failing to clean up the house. CT 60. And, after she came to the U.S., she saw Mr. Xiao hold Joshua in a chokehold when Joshua did not unload the car. CT 39, 59-60. When Ms. Gou attempted to intervene, Mr. Xiao bit her. CT 39. That night, Ms. Gou and Joshua were so afraid of Mr. Xiao that they placed furniture against the bedroom door to prevent an attack by Mr. Xiao while they slept. *Id.*

Mr. Xiao now faces criminal charges for child abuse. CT 59-60, 64-65. Mr. Xiao was charged with assaulting Joshua while Ms. Gou was taking an English exam at her college. The assault was recorded on campus security video. CT 39, 59, 61, 63, 67-69; Appellant's Motion to Augment Record on Appeal ("AR"), Ex. 1, at pp. 2-3; AR, Ex. 2, at p. 8.

This evidence entitled Ms. Gou to a restraining order under the DVPA's plain language, including that statute's definitions of "abuse" and "domestic violence." *See* Fam. Code §§ 6203, 6211, 6300-01. Ms. Gou was entitled to a restraining order pursuant to section 6300 because she was subjected to "abuse" as defined in section 6203. As noted, the statute requires only that the applicant have a reasonable fear based on abuse of the applicant *or* "another" person. Fam. Code § 6203(c). Ms. Gou's husband was physically violent toward Joshua, which placed Ms. Gou in reasonable apprehension of future imminent harm to Joshua.

As the definition of “abuse” in section 6203 does not require that the reasonable apprehension of harm be attributable to the physical abuse directed at the applicant, it is immaterial, let alone dispositive, that much of the abuse was directed toward a third party like Ms. Gou’s son. Even assuming Mr. Xiao abused only Joshua, Ms. Gou’s unquestionable apprehension of serious harm to Joshua alone justified the restraining order. The trial court incorrectly interpreted section 6203, and its order should be reversed.

Ms. Gou was entitled to a restraining order under section 6301 as well. That statute authorizes restraining orders upon a showing of “domestic violence,” which is defined as “abuse perpetrated against” a spouse *or* a child. Fam. Code § 6211. Because Ms. Gou presented evidence that Mr. Xiao abused Joshua, she was entitled to a restraining order under section 6301. The trial court’s ruling, therefore, was incorrect under the plain meaning of this provision as well.

In denying Ms. Gou’s application on the erroneous ground that the DVPA does not afford her protection based on the abuse of her son, the trial court applied incorrect legal criteria and thus abused its discretion. The trial court also overlooked the undisputed evidence of Mr. Xiao’s violence toward Ms. Gou herself. It was undisputed that Mr. Xiao bit Ms. Gou on the arm when she interceded to stop him from strangling Joshua. CT 39. Ms. Gou was also entitled to a restraining order on the basis of this

evidence pursuant to section 6300 because she was subjected to “abuse” as defined in section 6203. “Abuse” includes intentionally or recklessly causing or attempting to cause bodily injury. Fam. Code § 6203(a).<sup>1</sup>

The trial court also committed two other legal errors. First, the trial court erred in focusing on Joshua’s statements and mental state. The court observed that Joshua “has expressed to everybody from day one that he is not afraid of dad.” 2 RT 23. This was an improper reason to deny the restraining order. Although section 6203(c)’s definition of “abuse” includes reasonable apprehension of harm, because Ms. Gou, not Joshua, applied for the restraining order, only her mental state, not Joshua’s, was relevant. In addition, the abused child’s mental state is irrelevant because parents have a duty to prevent child abuse without regard to the child’s apparent preference to remain in contact with an abusive parent. If a mother like Ms. Gou fails to protect her child from harm caused by another, she may lose custody of her child. *See* Welf. & Inst. Code § 300(b) (juvenile court has jurisdiction to remove child where “child has suffered, or there is a substantial risk

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<sup>1</sup> As appellant does not argue that the trial court’s failure to issue a restraining order to Ms. Gou based on the physical violence toward herself is grounds for reversal, neither do *amici*. *Amici* do, however, bring it to the Court’s attention to demonstrate the multiple ways in which Ms. Gou was a victim of abuse. In addition, as explained further in footnote 2, *infra*, if the trial court had held an evidentiary hearing in this matter, or if this Court decides to remand for the trial court to hold such a hearing, this argument will likely be presented as a basis for the restraining order protecting Ms. Gou.

that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child”); *In re Angelia P.*, 28 Cal. 3d 908, 924 (1981) (“Child abuse includes . . . a failure to protect the child from harm caused by others.”); *In re Rico W.*, 179 Cal. App. 3d 1169, 1177 (1986) (same).

Child abuse affects children emotionally and prevents them from fully appreciating the dangerousness of the abuse. Indeed, Joshua’s statements of bravado are consistent with those of abused children. *See State v. Moran*, 728 P.2d 248, 254 (Ariz. 1986) (permitting expert testimony to explain why an abused child would say she wants to return to her abuser’s home); *Wissink v. Wissink*, 749 N.Y.S.2d 550, 552 (N.Y. App. Div. 2002) (requiring psychological testing of abused child who expressed preference to live with abusive parent). Because abused children may lack the maturity or ability to seek legal protection on their own, that task falls on parents. For this reason, the DVPA enables parents to protect their children by obtaining restraining orders that will protect the children from further abuse.

The trial court’s second error arose from its misunderstanding of the guardian ad litem procedure—and specifically, the nature of relief available through that procedure. The court held that Ms. Gou would have to be appointed as Joshua’s guardian ad litem in order to seek a restraining order protecting Joshua. 2 RT 21. In so holding, the trial court correctly observed

that the DVPA permits parents to be appointed guardians ad litem to seek protective orders on their children's behalf. *Id.*; Fam. Code § 6301. The trial court lost sight of the fact, however, that the guardian ad litem's role is to represent the interests of the minor—here, Joshua. *Sarracino v. Superior Court*, 13 Cal. 3d 1, 13 (1974). A guardian ad litem is not a party-litigant—he or she is an officer of the court and an agent of the minor. *Palay v. Superior Court*, 18 Cal. App. 4th 919, 928 n.9 (1993). As such, any order Ms. Gou might be able to obtain as Joshua's guardian ad litem would not also necessarily protect her. Thus, the guardian ad litem procedure would not necessarily have fully accomplished the DVPA's purposes—to protect *all* victims of abuse and domestic violence.

In addition to solving only half the problem, the guardian ad litem procedure is cumbersome and would add another layer of procedural complexity in Ms. Gou's path to judicial relief. Navigating the legal system to obtain guardian ad litem status is especially challenging for immigrants with limited English who either represent themselves or require legal assistance. *See Action Plan For Justice*, Report of Cal. Comm'n on Access to Justice, at 7 (2007), [http://www.calbar.ca.gov/Portals/0/documents/accessJustice/2007\\_Summary\\_Edition\\_Action-Plan-Justice%207.2.12.pdf](http://www.calbar.ca.gov/Portals/0/documents/accessJustice/2007_Summary_Edition_Action-Plan-Justice%207.2.12.pdf) (discussing need for assistance to self-represented litigants, expansion of language access, and improved services for clients with modest means). A parent who is facing extremely difficult circumstances, like Ms. Gou, should not be forced to bear this extra



burden when the DVPA affords a simpler and more straightforward path to relief—and one that protects both parent and child.

Moreover, there is no guarantee that Ms. Gou's application to act as Joshua's guardian ad litem would have been granted. In making a determination to appoint a guardian ad litem, the court must consider whether the minor and the guardian have divergent interests. Civ. Code § 372(b)(1)(D). Here, Joshua's stated interest—that he was not afraid of his father and did not want a restraining order—was divergent from his mother's interest in protecting Joshua. These divergent interests might prevent Ms. Gou from being appointed as Joshua's guardian ad litem, further demonstrating the limitations of the trial court's suggested procedure and underscoring why the DVPA explicitly allows parents to apply for restraining orders to protect their children.

In sum, the trial court's consideration of irrelevant facts and legal criteria was an abuse of discretion. *Gonzalez*, 156 Cal. App. 4th at 423 (denial of relief under DVPA based on irrelevant facts constitutes an abuse of discretion). Under the DVPA, Ms. Gou was a victim of abuse and domestic violence by virtue of the violence perpetrated against her son. As such, the rationale the trial court used to deny Ms. Gou the restraining order has no footing in the text of sections 6203 and 6211, whose broad definitions of "abuse" and "domestic violence," respectively, make clear that

someone like Ms. Gou is entitled to a restraining order based on the abuse of her child.<sup>2</sup>

**B. The Trial Court's Ruling Undermines The DVPA's Protective Purpose And Is Inconsistent With California Public Policy**

California has a strong public policy against domestic violence. *See In re Marriage of Freitas*, 209 Cal. App. 4th 1059, 1068 (2012) (noting the “strong public policy against domestic violence”); *In re Marriage of Cauley*, 138 Cal. App. 4th 1100, 1106-07 (2006) (“there is a significant public policy against domestic violence”). Consistent with that policy, the DVPA serves the broad purpose of preventing the recurrence of domestic violence. *Nadkarni*, 173 Cal. App. 4th at 1498; *Quintana v. Guijosa*, 107 Cal. App. 4th 1077, 1079 (2003); Fam. Code Ann. § 6211 (West

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<sup>2</sup> Like Ms. Gou, *amici curiae* request a reversal of the order denying Ms. Gou's request for a restraining order. AOB 20. Ms. Gou has argued alternatively that the trial court should have, at a minimum, allowed a full hearing on the merits in order to give her an opportunity to present additional evidence. *See* AOB 2, 20; *Nakamura v. Parker*, 156 Cal. App. 4th 327, 337 (2007) (reversing order denying a restraining order where the trial court summarily denied the restraining order without providing any explanation as to its reasons or indicating that it had considered the applicant's evidence, and remanding to the trial court for full evidentiary hearing). Here, the trial court denied Ms. Gou's application based on its incorrect interpretation of the statute. As a matter of law, as discussed above, the evidence before the trial court was sufficient to warrant issuance of the restraining order. However, if the Court does not reverse that order with directions to grant Ms. Gou's application, it should reverse the order with directions to conduct a full hearing on the merits.

2013) (Law Revision Comm'n Comments) (The Legislature's inclusion of the word "children" in the definition of "domestic violence" manifests an intent to protect children as well as parents).

The DVPA serves a "protective purpose" by protecting survivors of both intimate partner violence and child abuse. *See Nadkarni*, 173 Cal. App. 4th at 1498 (quoting *Caldwell v. Coppola*, 219 Cal. App. 3d 859, 863 (1990)). The DVPA thus is "broad both in its stated intent and its breadth of persons protected." *Id.* It "was intended to 'provide more protective orders to a broader class of victims of domestic violence.'" *Id.* (citation omitted). Further, courts have interpreted the scope of its protections liberally because "[i]t is virtually impossible for a statute to anticipate every circumstance or need of the persons whom it may be intended to protect.'" *Id.* (citation omitted).

A trial court abuses its discretion when its ruling essentially disregards the DVPA's purpose. *Quintana*, 107 Cal. App. 4th at 1079 (trial court abused its discretion by deciding case "on facts entirely irrelevant to the Domestic Violence Prevention Act, the purpose of which is . . . to 'prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence'" (citation omitted)).

Here, the trial court adopted an erroneously narrow view of the class of persons that DVPA restraining orders protect. In the trial court's view, a court may issue a restraining order in only three circumstances: First, upon a finding "that *petitioner* is the victim of domestic violence," the court may "make protective orders protecting *other people*, which would include their son." 2 RT 22 (emphasis added). Second, the petitioner's "son could petition for [a] protective order and [the trial court] could protect mom under that order." *Id.* And third, the mother could file for a protective order on her son's behalf as guardian ad litem. *Id.*

This restrictive view of the DVPA is inconsistent with the statute's broad protective purpose. That is because the DVPA also permits parents of abused children to obtain restraining orders to protect either or both the parent and child based on a showing of abuse toward the child. As discussed above, the guardian ad litem procedure is an insufficient remedy because it protects only the child and not the guardian. Obtaining a guardian ad litem is also unnecessary. The DVPA recognizes that, when a child is abused, the parent is also a victim of domestic violence. As Ms. Gou argued to the trial court, the DVPA does not require the child to petition for the restraining order under these circumstances; the mother's petition is sufficient to obtain the requested protection for both child and mother. *See* 2 RT 22. The trial court thus failed to effectuate the statute's protective purpose and its ruling is inconsistent with California's public policy against domestic violence.

**C. Social Science Research Underscores The Problems With The Trial Court’s Unduly Restrictive Interpretation Of The DVPA**

“[B]ackground information regarding domestic violence may be crucial in order to understand its essential characteristics and manifestations.” *Hernandez v. Ashcroft*, 345 F.3d 824, 836 (9th Cir. 2003) (considering social science studies regarding cycle of domestic violence to interpret federal Violence Against Women Act). As discussed above, California’s Legislature has recognized the overlap between domestic violence and child abuse. *See, e.g.*, Fam. Code § 3020(a). The social science literature illuminates public policy’s abhorrence of both forms of abuse and its recognition of the connections between them.

California law and the field of domestic violence recognize three primary types of child abuse—physical abuse, sexual abuse, and neglect. Cathy S. Widom & Michael G. Maxfield, *An Update on the “Cycle of Violence”*, National Institute of Justice Research in Brief, at 2-3 (February 2011), <http://www.ncjrs.gov/pdffiles1/nij/184894.pdf>; *see also* Penal Code § 11165.6 (“the term ‘child abuse or neglect’ includes physical injury or death inflicted by other than accidental means upon a child by another person, [and] sexual abuse . . . .”). Physical abuse occurs when the child suffers injuries including bruises, burns and fractures. Widom & Maxfield, *supra*, at 2. One survey reported that approximately ten percent of children in the U.S. are victims of physical abuse, emotional abuse,

neglect, and/or family abduction. Lonna Davis et al., *Domestic Violence Agencies and Shelters*, Moving From Evidence to Action: The Safe Start Center Series on Children Exposed to Violence, at 2 (September 2012), [http://www.safestartcenter.org/pdf/issue-brief-5\\_dv\\_2012.pdf](http://www.safestartcenter.org/pdf/issue-brief-5_dv_2012.pdf). A 2009 survey revealed that over 60 percent of children had been exposed to crime, abuse or violence within the previous year. Davis et al., *supra*, at 2. Approximately 50 percent of those children surveyed were assaulted at least once, and more than 10 percent were injured in the assault. *Id.*

Social science literature has established the overlap between child abuse and intimate partner violence. Child abuse is especially prevalent in families with domestic violence. Janet Carter, *Domestic Violence, Child Abuse, and Youth Violence: Strategies for Prevention and Early Intervention*, Family Violence Prevention Fund (Jan. 11, 2011), <http://www.mincava.umn.edu/link/documents/fvpf2/-fvpf2.shtml>. One article noted that approximately 50 percent of men who frequently assaulted their wives also frequently assaulted their children. *Id.*; see also Toolsi Gowin Meisner & Diana Korn, *Protecting Children of Domestic Violence Victims with Criminal No-Contact Orders*, *Strategies*, No. 4 (April 2011), at 1, <http://www.aequitasresource.org/Protecting-Children-of-Domestic-Violence-Victims-with-Criminal-No-Contact-Orders.pdf>. (citing studies finding where male partner is violent toward spouse, children experience physical or sexual abuse in approximately 30 to 60 percent of cases).

The overlap is further manifested in the reality that abusers often use child abuse to manipulate and hurt their adult partner. Lundy Bancroft, *The Batterer as Parent*, 6 Synergy, No. 1 (2002), at 6-8, <http://www.ncjfcj.org/sites/default/files/synergy-6-1.pdf> (“Many men who batter use children as a vehicle to harm or control the mother . . . .”). Batterers may retaliate against the mother for her efforts to protect her child or use children as weapons to harm the mother. *Id.* Sometimes abusers “intentionally injure children in an effort to further harm, intimidate, and control their adult victim.” Meisner & Korn, *supra*, at 2. When batterers use children as “weapons” of violence against a spouse, child abuse constitutes domestic violence against the child’s parent. *See id.* The DVPA’s definition of domestic violence is consonant with this understanding of the dynamics of domestic violence and child abuse.

Abusers also may use child abuse to threaten spouses. As Ms. Gou has argued, when a parent abuses a child in front of the nonabusive parent, the abuser creates ““a very high-level threat to the victim as to the ability of the perpetrator to not only threaten to do something incredibly harmful but to actually act it out in front of them.”” *People v. Kovacich*, 201 Cal. App. 4th 863, 895 (2011) (quoting expert testimony that abuse of an animal in front of family members constitutes domestic violence); AOB 12. In *Kovacich*, for example, the Court of Appeal concluded that the assault of the family dog, in the presence of the perpetrator’s wife and children, constituted “abuse” and amounted to “domestic violence” within the meaning of Family Code sections 6203 and 6211. *Id.*

Further, child abuse harms children psychologically. Children who are victims of abuse and domestic violence experience a phenomenon called “polyvictimization,” which occurs when a person experiences multiple victimizations of different types. Davis et al., *supra*, at 3. When such abuse is ongoing, children experience a form of “toxic stress or complex trauma,” which causes their stress response to remain “on” at all times. *Id.* This stress affects children’s behavior. *Id.* at 4. Some children develop symptoms of post-traumatic stress disorder, which can lead to problems with social interaction and drug use. *Id.* The significance of this phenomenon to the issues in this case is that these psychological effects may prevent abused children such as Joshua from appreciating the danger of their circumstance and also from seeking to separate themselves from the abusive parent. *See generally* Davis et al. *supra*, at 2; see also Lyungai F. Mbilinyi et al., *What Happens to Children When Their Mothers Are Battered? Results from a Four City Anonymous Telephone Survey*, 22 J. Fam. Viol. 309 (2007).

Even when the parties separate, family violence does not necessarily end. In some cases, the violence becomes more intense. Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 Fam. Ct. Rev. No. 3 at 500, 501-02, 508 (July 2008). Separation often causes the abuser to feel a loss of control, which makes post-separation domestic violence more likely to be lethal. Meisner & Korn, *supra*, at 5. Indeed, domestic violence may be the “single major precursor to child abuse and



neglect fatalities in this country.” Carter, *supra*, at 2 (emphasis omitted).

Mr. Xiao’s violence toward Joshua had already escalated to a lethal level by the time Ms. Gou applied for the restraining order. On one occasion, Mr. Xiao held Joshua in a chokehold—Ms. Gou saw “Joshua’s face turn red and his veins pop out of his face and neck as he struggled to breathe.” CT 39. Strangulation and suffocation include “impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.” Penal Code § 273.5(c). Obviously, a chokehold is extremely dangerous and likely to result in brain damage or death.

Because of the frequent overlap between child abuse and domestic violence, public policy as expressed in the DVPA does not attempt to distinguish between the two when it comes to the protection of victims of such violence. The scientific data leaves no doubt as to the societal need for the DVPA’s broad protective purpose. By documenting the overlap between child abuse and domestic violence and the inability of child victims of such circumstances to seek help for themselves, the social science data adds even more support to the conclusion that the trial court misread the statute to forbid judicial intervention to protect *both* parent and child, regardless of which of them sought the restraining order. The trial court’s finding that only Joshua was a victim of abuse—which disregarded Ms. Gou’s victim status under the statute—is at odds

with the DVPA's language and broad protective purpose and with the scientific evidence.

### III. CONCLUSION


The trial court abused its discretion in denying Ms. Gou's application for a restraining order. Not only did the court misread the DVPA's plain language, but its ruling is at odds with the DVPA's fundamental purpose and California public policy. The social science literature, which underscores the need for broad protections of persons like Ms. Gou and her son, adds further support to the conclusion that the trial court's order should be reversed.

DATED: October 31, 2013.

Respectfully submitted,

REED SMITH LLP


By

  
\_\_\_\_\_  
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DATED: October 30, 2013.

Respectfully submitted,

FAMILY VIOLENCE APPELLATE  
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**Certification of Word Count Pursuant To  
California Rules Of Court, Rule 8.204(c)(1)**

I, Zareh A. Jaltorossian, declare and state as follows:

1. The facts set forth herein below are personally known to me, and I have first-hand knowledge thereof. If called upon to do so, I could and would testify competently thereto under oath.


2. I am one of the appellate attorneys principally responsible for the preparation of the Amici Curiae Brief of Family Violence Appellate Project in Support of Appellant Qing Hui Gou in this case.

3. The Amici Curiae Brief of Family Violence Appellate Project in Support of Appellant Qing Hui Gou was produced on a computer, using the word processing program Microsoft Word 2010.

4. According to the Word Count feature of Microsoft Word 2010, the Amici Curiae Brief of Family Violence Appellate Project in Support of Appellant Qing Hui Gou contains 4,540 words, including footnotes, but not including the table of contents, table of authorities, and this Certification.

5. Accordingly, the Amici Curiae Brief of Family Violence Appellate Project in Support of Appellant Qing Hui Gou complies with the requirement set forth in Rule 8.204(c)(1), that a brief produced on a computer must not exceed 14,000 words, including footnotes.

I declare under penalty of perjury that the forgoing is true and correct and that this declaration is executed on October 31, 2013, at San Francisco, California.

  
\_\_\_\_\_  
Zareh A. Jaltorossian

## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071. On October 31, 2013, I served the following document(s) by the method indicated below:

### APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF FAMILY VIOLENCE APPELLATE PROJECT, ET AL., IN SUPPORT OF APPELLANT QING HUI GOU

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
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- by transmitting via email to the parties at the email addresses listed below:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 31, 2013, at Los Angeles, California.

  
Rebecca R. Rich

**SERVICE LIST**

*Quing Hui Gou v. Bi Guang Xiao*  
Court of Appeal Case No. A137771  
(San Francisco County Unified Family Court,  
Case Nos. FCS-12-347915, FDI-12-777831)

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