

Note

Minimum Deadly Contacts

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INTRODUCTION

Domestic violence is a “pervasive, insidious, and life-threatening crime.”¹ While it has traditionally been regarded as a “private, family matter,” the statistics demonstrate that it is a public health crisis.² Roughly one in three women will experience some form of domestic violence during their lifetime.³ It is also a leading cause of death for women, with nearly half of all female hom-

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1. *Domestic Violence: A Public Problem and a Public Health Concern*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (Apr. 7, 2016), https://nnedv.org/latest_update/domestic-violence-public-health-concern [<https://perma.cc/G3Z8-6M6T>]. This Note defines “domestic violence” as “a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner.” *What Is Domestic Abuse?*, UNITED NATIONS, <https://www.un.org/en/coronavirus/what-is-domestic-abuse> [<https://perma.cc/2CMM-A3EW>]. Domestic violence includes actual or threatened physical, sexual, emotional, economic, or psychological action to influence another person. *Id.*

2. *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*, WORLD HEALTH ORG. 2 (2013), <https://www.who.int/publications/i/item/9789241564625> [<https://perma.cc/4JAT-CH2M>] (“Violence against women is a significant public health problem, as well as a fundamental violation of women’s human rights.”).

3. Sharon G. Smith, Xinjian Zhang, Kathleen C. Basile, Melissa T. Merrick, Jing Wang, Marcie-jo Kresnow & Jieru Chen, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief—Updated Release*, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CDC 7–8 (2018), <https://stacks.cdc.gov/view/cdc/60893#tabs-2> [<https://perma.cc/AT8K-CBQB>].

icide victims killed by a current or former male intimate partner.⁴ And women are *seventy* times more likely to be killed in the two weeks after leaving their intimate partner than at any other time during their relationship.⁵ As a result, the only safe haven available to those who escape their abusers is often located outside of the state where the violence occurred.⁶

But the problem doesn't end for the survivor who is able to move to another state. If she wants to obtain a lifesaving⁷ protection order,⁸ she may be denied legal protection because the

4. Emiko Petrosky, Janet M. Blair, Carter J. Betz, Katherine A. Fowler, Shane P.D. Jack & Bridget H. Lyons, *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003–2014*, 66 MORBIDITY & MORTALITY WKLY. REP. 741, 741 (2017).

5. *Myths and Facts*, ASPEN (2022), <https://www.aspenmt.org/mythsandfacts> [<https://perma.cc/EP2V-M6DQ>]; *Domestic Violence Statistics*, HOPE DOMESTIC VIOLENCE HOMICIDE HELP, <https://domesticviolencehomicidehelp.com/statistics> [<https://perma.cc/474Q-K6DZ>]; see also Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*, U.S. DEPT' OF JUST., OFF. OF JUST. PROGRAMS 37 (2000), <https://www.ojp.gov/pdffiles1/nij/181867.pdf> [<https://perma.cc/Y9QR-V25Q>] (finding in one study that the two most common precipitating events that led to a battered wife's murder were threats of separation or actual separation).

6. Although it is unclear how many survivors actually leave a state to escape their abusers, a recent study found that in just *one* day, emergency shelters and housing programs provided refuge for 38,586 survivors of domestic violence who had recently fled their abusers, some presumably arriving from out-of-state. *15th Annual Domestic Violence Counts Report*, NAT'L NETWORK TO END DOMESTIC VIOLENCE 5 (2021), <https://nnev.org/resources-library/15th-annual-domestic-violence-counts-report-full-report> [<https://perma.cc/778Y-S3ET>].

7. See Victoria L. Holt, Mary A. Kernic, Thomas Lumley, Marsha E. Wolf & Frederick P. Rivara, *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 JAMA 589, 593 (2002) (finding that a permanent protection order was associated with an eighty percent reduction in police-reported physical violence in the twelve months after a domestic violence incident); see also Christopher T. Benitez, Dale E. McNiel & Renée L. Binder, *Do Protection Orders Protect?*, 38 J. AM. ACAD. PSYCHIATRY & L. ONLINE 376, 385 (2010) (“Although there is some controversy about their effectiveness, available research supports the conclusion that [protection orders] are associated with reduced risk of violence toward the victim.”).

8. Domestic violence protection orders have also been called “restraining orders,” “civil protection orders,” “orders of protection,” “stay-away orders,” “protection from abuse orders,” “domestic violence restraining orders,” “civil harassment restraining orders,” “no-contact orders,” and “anti-harassment orders.” Benitez et al., *supra* note 7, at 376. For clarity, the term “protection order” is used throughout the Note to refer to the civil order issued by a court to enjoin an abuser from contacting or abusing his intimate partner. See *Domestic Violence Civil Protection Orders (CPOs)*, A.B.A. COMM'N ON DOMESTIC & SEXUAL VIOLENCE (Mar. 2014), <https://www.americanbar.org/content/dam/aba/>

court refuses to exercise personal jurisdiction over the out-of-state abuser.⁹ Personal jurisdiction ensures that a defendant has certain “minimum contacts” with the state before it renders a judgment—such as a domestic violence protection order—personally binding on him.¹⁰ But this is often difficult to establish when the abuser has no ties to the new state and is unaware that the survivor now resides there.

A survivor is therefore left with two untenable choices: she can return to her abuser’s home state and file her protection order there; or, alternatively, she can remain in the new state and wait for her abuser to commit additional acts of domestic violence.¹¹ This Note argues that survivors escaping abuse should not be placed in such a difficult position. The Due Process Clause of the Fourteenth Amendment protects an out-of-state defendant from being subject to personal jurisdiction in a state with which he has no connection.¹² But it is an entirely different situation when a person engages in a pattern of abusive conduct toward another based on a preexisting relationship. Because these procedural issues affect everyday women¹³ seeking protection, this

administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20CPO%20Availability%20Chart.authcheckdam.pdf [https://perma.cc/H4RR-H9YT].

9. See, e.g., *Mucha v. Wagner*, 861 S.E.2d 501, 512 (N.C. 2021) (declining to assert personal jurisdiction over a defendant-abuser since it was not evident that he knew where the plaintiff-survivor resided when he made harassing phone calls to her after she moved to the forum state); *Becker v. Johnson*, 937 So. 2d 1128, 1131 (Fla. Dist. Ct. App. 2006) (same).

10. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In some states, a court may grant a valid protection order without personal jurisdiction based on the status of the woman as a protected person. See *infra* Part II.B.2.

11. See *J.N. v. D.S.*, 693 A.2d 571, 572–73 (N.J. Super. Ct. Ch. Div. 1996) (“Were the court to deny jurisdiction in this case, the victim who seeks shelter in this state would be unprotected, unable to use the procedures established in this state which permit law enforcement officers and the courts to respond, promptly and effectively, to domestic violence cases. The victim would have to wait, in fear, for the alleged abuser to commit an additional act of domestic violence, this time in New Jersey, before having recourse to the law and to the courts of this state.”).

12. U.S. CONST. amend. XIV, § 1.

13. This Note focuses on women subjected to male-perpetrated domestic violence because the research shows that it is the most prevalent type of domestic violence. See Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476, 481–82 (2008) (identifying women more often harmed than men by “Coercive Controlling Violence,” which is physical and emotional violence characterized by power and control); Callie Marie Rennison,

Note makes two arguments for authorizing jurisdiction. First, a survivor should be able to obtain a protection order before the abuser reaches out to the new state. Second, if the abuser does reach out to the new state by, for example, calling the survivor's cellphone that he does not realize is in the new state, then courts have an even stronger basis for jurisdiction.

Part I provides a summary of today's domestic violence epidemic and the imperfect solution of protection orders. Part II outlines the problems survivors often experience in interstate domestic violence cases,¹⁴ particularly the federal and state restrictions on the issuance and enforcement of protection orders across state lines. Part III then introduces two personal jurisdiction standards—"purposeful availment" and "purposeful direction"—and examines their application in the domestic violence context. It then argues that courts should apply the "purposeful direction" standard when the abuser reaches out to the survivor in her new state. Finally, it proposes an alternative approach to jurisdiction when the survivor is harmed before, but not after, she moves to another state. By shifting the focus away from the abuser's purported knowledge and toward the effects experienced by the survivor and the forum state, this approach provides survivors a critical legal remedy that is consistent with the Fourteenth Amendment's Due Process Clause.

I. THE PROBLEM

Interstate domestic violence cases present difficult personal jurisdiction issues that courts have struggled to grapple with. These cases are also important to discuss because they have enormous implications for the parties involved. This Part therefore focuses on the practical challenges survivors experience in interstate domestic violence cases. Section A discusses the physical, psychological, and economic harm domestic violence survivors experience, particularly when they attempt to leave their

Intimate Partner Violence, 1993–2001, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT. 1 (Feb. 2003), <https://bjs.ojp.gov/content/pub/pdf/ipv01.pdf> [<https://perma.cc/S2DH-P3JT>] (indicating that eighty-five percent of persons subjected to abuse are women); see also Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1110 n.4 (2009) ("[T]he research shows that [this] is the most prevalent type of domestic violence.").

14. This Note uses the phrase "interstate domestic violence case" to refer to the situation in which a survivor is subjected to domestic violence in State A, escapes her abuser, moves to State B, and then files her protection order in a court in State B.

abusers. Section B then addresses the legal remedies available to survivors and their shortcomings in interstate domestic violence cases.

A. DOMESTIC VIOLENCE: THE SILENT EPIDEMIC

Domestic violence is one of the most underreported crimes worldwide.¹⁵ Nevertheless, statistics show that domestic violence affects every country, region, and community.¹⁶ According to the World Health Organization, roughly *one third* of all women worldwide have experienced domestic violence.¹⁷ Women in the United States fare no better. *More than* one third of all American women will experience domestic violence in their lifetime,¹⁸ while a quarter have already experienced some form of severe physical violence (*e.g.*, beating, burning, strangling) by an intimate partner.¹⁹ For American women between ages fifteen and forty-four, domestic violence is the leading cause of injury—more than cancer deaths, muggings, and car accidents combined.²⁰ Domestic violence also accounts for fifteen percent of all violent crime committed in the country.²¹

For those who experience domestic violence, the consequences are severe. The acute health effects of a domestic violence incident may include bruises, broken bones, head injuries,

15. BRYAN STRONG, CHRISTINE DEVAULT & THEODORE F. COHEN, *THE MARRIAGE AND THE FAMILY EXPERIENCE: INTIMATE RELATIONSHIPS IN A CHANGING SOCIETY* 447 (2011).

16. The 2020 coronavirus pandemic and the subsequent lockdowns may have also contributed to an increase in domestic violence. *See* Alisha Haridasani Gupta & Aviva Stahl, *For Abused Women, a Pandemic Lockdown Holds Dangers of Its Own*, N.Y. TIMES (Mar. 24, 2020), <https://www.nytimes.com/2020/03/24/us/coronavirus-lockdown-domestic-violence.html> [<https://perma.cc/2K2Q-D5U9>]. For example, in New York, domestic violence calls to police increased by fifteen to twenty percent in March 2020. Marina Fang, *UN Chief Condemns 'Horrific Global Surge' in Domestic Violence Amid Pandemic*, HUFFINGTON POST (Apr. 6, 2020), https://www.huffpost.com/entry/coronavirus-covid-19-domestic-violence-surge_n_5e8b137fc5b6e7d76c672a4c [<https://perma.cc/UFK2-7RJJ>].

17. WORLD HEALTH ORG., *supra* note 2, at 1.

18. *Statistics*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, <https://ncadv.org/statistics> [<https://perma.cc/VV9U-BCWT>].

19. *Id.*

20. STAFF OF S. COMM. ON THE JUDICIARY, 102D CONG., *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA* 3 (Comm. Print 1992).

21. Jennifer L. Truman & Rachel E. Morgan, *Nonfatal Domestic Violence, 2003–2012*, U.S. DEP'T OF JUSTICE, OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT. 15 (2014), <https://bjs.ojp.gov/content/pub/pdf/ndv0312.pdf> [<https://perma.cc/TNC6-9D73>].

lacerations, internal bleeding, and death.²² Beyond the immediate injuries, a survivor may also suffer chronic health conditions, such as chronic pain, psychosomatic disorders, internal injuries, and psychological disorders.²³ Survivors who are pregnant during a domestic violence relationship also experience an increased risk of miscarriage, pre-term labor, and injury to, or death of, the fetus.²⁴ Despite the “catastrophic medical and social outcomes” of domestic violence, it is “frequently unrecognized or viewed as a ‘private’ event by health professionals.”²⁵ In fact, for many survivors who have sought medical treatment, their health providers failed entirely to recognize their injuries and conditions.²⁶

Survivors are also more likely to face economic barriers. For example, if a survivor leaves her abuser, she will often have very little money of her own and few people to rely on for financial support due to the abuse and isolation.²⁷ This is because abusers often intentionally separate their partners from people who care about them, since it gives them greater power and control over the relationship and the survivor.²⁸ As a result, a survivor may lack the necessary skills, education, and training to find employment.²⁹ If a survivor was employed during the relationship, she

22. See *Understanding and Addressing Violence Against Women*, WORLD HEALTH ORG. 2 (2012), https://apps.who.int/iris/bitstream/handle/10665/77431/WHO_RHR_12.43_eng.pdf [<https://perma.cc/2WKV-7RDS>].

23. Daniel C. Berrios & Deborah Grady, *Domestic Violence: Risk Factors and Outcomes*, 155 W.J. MED. 133, 134–35 (1991).

24. R.F. Jones III & D.L. Horan, *The American College of Obstetricians and Gynecologists: A Decade of Responding to Violence Against Women*, 78 INT’L J. GYNECOLOGY & OBSTETRICS 43, 45 (1997).

25. Berrios & Grady, *supra* note 23, at 135. This view is analogous to the legal system’s historical “hands off” approach to domestic violence. See *infra* note 39 and accompanying text.

26. Susan V. McLeer, Rebecca A.H. Anwar, Suzanne Herman & Kevin Maquiling, *Education Is Not Enough: A System’s Failure in Protecting Battered Women*, 18 ANNALS EMERGENCY MED. 651, 651 (1989).

27. *Domestic Violence and Housing*, ADVOC. FOR HUM. RTS. (Aug. 2013), https://web.archive.org/web/20151002061435/http://www.stopvaw.org/domestic_violence_and_housing.html [<https://perma.cc/X862-5Y8B>].

28. *Tips on Rebuilding and Maintaining Support After the Isolation of Abuse*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/tips-on-rebuilding-and-maintaining-support-after-the-isolation-of-abuse> [<https://perma.cc/53A9-QRKP>].

29. See *Barriers to Employability and Employment for Women Survivors of Intimate Partner Violence*, INTERVAL HOUSE 1 (2016), <http://intervalhouse.ca/wp-content/uploads/2018/05/Barriers-Report.pdf> [<https://perma.cc/D42Y-9DK4>].

has a twenty-five to fifty percent chance of losing her job.³⁰ Without work, she may become homeless.³¹ This appears to occur with some frequency. About half of all homeless women and children seeking shelter on the streets are the products of domestic violence.³² In addition, a 2005 survey found that fifty percent of U.S. cities surveyed cited domestic violence as one of the primary causes of homelessness in their areas.³³

The prevalence of domestic violence also carries serious consequences for the broader community. Researchers have found that domestic violence significantly impedes economic growth and development.³⁴ Because of the health effects and the barriers to employment, survivors are often forced to rely on state resources, including social services, the legal system, and health-care agencies.³⁵ This imposes substantial economic costs on the state.

For example, a 1995 study estimated the total cost of domestic violence in the United States, which included the costs of providing services to survivors and lost economic output, to be approximately \$5.8 billion per year.³⁶ Adjusted for inflation, this

30. *Violence Against Women Act 2005: Title VII – Economic Security*, NAT'L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE AGAINST WOMEN 1 (2005), <http://www.ncdsv.org/images/TitleVIIIEconomicSecurityVAWA2005.pdf> [<https://perma.cc/ZC67-NJ3F>].

31. *See Domestic Violence and Homelessness*, AM. CIV. LIBERTIES UNION 1 (2013), https://www.aclu.org/sites/default/files/field_document/factsheet_homelessness_2008.pdf [<https://perma.cc/C5BA-D3L2>].

32. Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421, 421 (1991).

33. AM. CIV. LIBERTIES UNION, *supra* note 31, at 2.

34. Tanis Day, Katherine McKenna & Audra Bowlus, *The Economic Costs of Violence Against Women: An Evaluation of the Literature*, UNITED NATIONS 11–13 (2005), <https://www.un.org/womenwatch/daw/vaw/expert%20brief%20costs.pdf> [<https://perma.cc/RJ48-DYZA>]; *Intimate Partner Violence: High Costs to Households and Communities*, INT'L CTR. FOR RSCH. ON WOMEN 1 (2009), <https://www.icrw.org/wp-content/uploads/2016/10/Intimate-Partner-Violence-High-Cost-to-Households-and-Communities.pdf> [<https://perma.cc/T5WA-7YBZ>].

35. *The Economic Costs of Violence Against Women*, UN WOMEN (Sept. 21, 2016), <https://www.unwomen.org/en/news/stories/2016/9/speech-by-lakshmi-puri-on-economic-costs-of-violence-against-women> [<https://perma.cc/ZJ45-8PJJ>].

36. Wendy Max, Dorothy P. Rice, Eric Finkelstein, Robert A. Bardwell & Steven Leadbetter, *The Economic Toll of Intimate Partner Violence Against Women in the United States*, 19 VIOLENCE & VICTIMS 259, 259 (2004) (“Intimate partner violence against women cost \$5.8 billion dollars . . . in 1995, including \$320 million (\$136 to \$503 million) for rapes, \$4.2 billion (\$2.4 to \$6.1 billion)

amounts to \$10.8 billion per year.³⁷ A study in the United Kingdom, which also calculated pain and suffering, estimated that domestic violence costs the survivor and the state roughly £23 billion or \$31.1 billion per year.³⁸ Regardless of the precise dollar amount, domestic violence imposes substantial monetary and non-monetary costs on survivors and the community.

B. THE DOMESTIC VIOLENCE PROTECTION ORDER: A PARTIAL SOLUTION

The legal system's response to domestic violence is relatively recent. Historically, courts treated marriage as a sacred relationship which existed outside of the law, in a "sphere separate from civil society."³⁹ A husband had a legal prerogative to beat his wife, as she was considered his property.⁴⁰ Wife beating was largely condoned by the state until the 1970s, when state legislatures started to pass domestic violence legislation.⁴¹ In 1976, Pennsylvania became the first state to allow individuals to petition a court for a domestic violence protection order.⁴² By the

for physical assaults, \$342 million (\$235 to \$449 million) for stalking, and \$893 million (\$840 to \$946 million) for murders.”).

37. *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/LV9G-7B62>].

38. *Case Study Two: The United Kingdom*, UNITED NATIONS ECON. & SOC. COMM'N FOR W. ASIA 6, https://archive.unescwa.org/sites/www.unescwa.org/files/case_study_two_-_the_united_kingdom.pdf [<https://perma.cc/HD8Z-7QNJ>].

39. Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2167–68 (1996).

40. *See id.* at 2120 (implying that prior to the Reconstruction Era, husbands had a legal prerogative to beat their wives); *id.* at 2169 (explaining that husbands were vested with property rights in the economic value of their wives “services,” and had the right to use “physical chastisement”).

41. *See* Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1018–19 (2014) (noting that the civil and criminal justice systems did not begin responding to intimate partner violence until the 1970s).

42. Maureen Sheeran & Emilie Meyer, *Civil Protection Orders: A Guide for Improving Practice*, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES 2 n.8 (2010), https://www.ncjfcj.org/wp-content/uploads/2012/02/cpo_guide.pdf [<https://perma.cc/X73W-DT32>]. I call these orders “domestic violence protection orders” here, but depending on the state, they may be called “restraining orders,” “civil protection orders,” “orders of protection,” “stay-away orders,” “protection from abuse orders,” “domestic violence restraining orders,” “civil harassment restraining orders,” “no-contact orders,” and “anti-harassment orders.” *See supra* note 8 and accompanying text.

early 1980s, most states had enacted domestic abuse statutes.⁴³ Today, all fifty states have legislation authorizing courts to grant a protection order to survivors of domestic violence.⁴⁴

A domestic violence protection order is an injunction specifically designed to prevent further violence by enjoining an abuser.⁴⁵ If a survivor demonstrates to the court that her immediate safety or welfare is endangered by her abuser, the court may issue a temporary *ex parte* protection order.⁴⁶ This means that a survivor can obtain a temporary protection order before the abuser has an opportunity to challenge the order in court.⁴⁷ However, the order is not enforceable against the abuser until he is served.⁴⁸ In general, these orders grant limited relief and are only valid until there is a hearing for a permanent protection order, usually between seventy-two hours to two weeks after the survivor obtains a temporary protection order.⁴⁹ After an eviden-

43. Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits*, NAT'L INST. JUST. 9 (1996), <https://www.ojp.gov/pdffiles/crimdom.pdf> [<https://perma.cc/TEN5-B4WW>] (“By 1980, 47 States had passed domestic violence legislation mandating changes in protection orders . . .”).

44. See ELIZABETH M. SCHNEIDER, CHERYL HANNA, JUDITH G. GREENBERG & CLARE DALTON, *DOMESTIC VIOLENCE AND THE LAW: THEORY & PRACTICE* 21 (Robert C. Clark et al. eds., 3d ed. 2013); see also A.B.A. COMM'N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 8.

45. Stoever, *supra* note 41, at 1019.

46. See, e.g., MINN. STAT. ANN. § 518B.01, subdiv. 7 (West 2021) (authorizing the issuance of a temporary *ex parte* order when the petitioner alleges an “immediate and present danger” of domestic violence by the respondent).

47. See ISABELLE SCOTT & NANCY MCKENNA, *DOMESTIC VIOLENCE PRACTICE AND PROCEDURE* § 4:42 (2022), Westlaw DOMVIOL (noting that temporary *ex parte* protection orders allow immediate emergency relief before the defendant has received notice or a hearing). Although the constitutionality of temporary *ex parte* protection orders has been challenged as a Due Process violation under the Fourteenth Amendment, state courts have uniformly found them to be constitutional, provided that the abuser is afforded an opportunity to challenge the order within a short period. See *id.*

48. However, in all fifty states, there is no filing fee to serve a petition for a domestic violence protection order. See *State Protection Order Statutes: Prohibiting Fees for Filing, Issuance, Registration, Modification, Enforcement, Dismissal, Withdrawal or Service of Process for a Protection Order or Petition for a Protection Order*, BATTERED WOMEN'S JUST. PROJECT (2019), <https://www.bwjp.org/2019-11-05-no-fee-statutes.pdf> [<https://perma.cc/8EPT-SHNB>].

49. SCOTT ET AL., *supra* note 47; see, e.g., ARIZ. REV. STAT. ANN. § 13-3624(E) (West 2022) (“An emergency order of protection expires at the close of the next day of judicial business following the day of issue or seventy-two hours after issuance, whichever is longer, unless otherwise continued by the court.”);

tiary hearing, a court may award the survivor a permanent protection order; despite the name, these orders generally only last for one or two years.⁵⁰

Protection orders are an important, if not essential, remedy to prevent further abuse. For one, they are the “predominant legal remedy victims use to extricate themselves from the violence.”⁵¹ According to the U.S. Department of Justice, approximately seventeen percent of women who are physically assaulted by an intimate partner will obtain a protection order against their abuser.⁵² Although more abused women contact the police than apply for protection orders, most of the police contacts do not result in any legal action, such as arrest or prosecution.⁵³

In addition, protection orders are considered by several experts to be the most effective legal remedy against domestic violence.⁵⁴ Unlike criminal prosecutions, which often involve overwhelmed court dockets and other procedural delays, protection orders provide immediate relief by enjoining an abuser’s conduct; an initial hearing may be scheduled within a day or two after the woman files her complaint.⁵⁵ Because protection orders

D.C. CODE § 16-1004(e)(1) (2022) (“A temporary protection order shall remain in effect for an initial period not to exceed 14 days as necessary to complete service and the hearing on the petition.”).

50. See, e.g., COLO. REV. STAT. ANN. § 13-14-105(j)(II) (West 2022) (one year); IOWA CODE ANN. § 236.5(2) (West 2022) (one year); NEB. REV. STAT. ANN. § 42-924(3)(a) (West 2022) (one year); DEL. CODE ANN. tit. 10, § 1045(b) (West 2022) (two years); 750 ILL. COMP. STAT. ANN. § 60/220(b) (West 2021) (two years). *But see* 23 PA. STAT. AND CONS. STAT. ANN. § 6108(d) (West 2022) (three years); OHIO REV. CODE ANN. § 3113.31(E)(3)(a) (West 2022) (five years). For an argument that courts should be able to issue indefinite domestic violence protection orders, see Stoever, *supra* note 41.

51. Sheeran & Meyer, *supra* note 42, at 2.

52. Tjaden & Thoennes, *supra* note 5, at 52.

53. *Id.* at 53 (indicating that out of 1,188,365 reports of domestic assault, an alleged perpetrator was arrested in only 432,565 cases, and prosecuted in only 324,909 cases).

54. See Fagan, *supra* note 43, at 24 (describing domestic violence protection orders as “the primary source of legal sanction and protection for battered women”); Victoria L. Holt, Mary A. Kernic, Marsha E. Wolf & Frederick P. Rivara, *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?*, 24 AM. J. PREVENTIVE MED. 16, 21 (2003) (finding that protection orders are one of the few available interventions for domestic violence that has demonstrated effectiveness); Carolyn N. Ko, Note, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy,”* 11 S. CAL. INTERDISC. L.J. 361, 367 (2002) (“Although [protection] orders are not the only remedies available to battered women, they are probably the most attractive.”).

55. Ko, *supra* note 54.

are civil in nature, a survivor can demonstrate that she is in immediate danger of abuse by a preponderance of the evidence, rather than proof beyond a reasonable doubt—the stricter standard used in criminal cases.⁵⁶ These orders also provide protection against abuse that may not rise to criminal conduct, such as intimidation or harassment.⁵⁷

Statistically, survivors who have obtained protection orders are at a reduced risk of being abused in the future.⁵⁸ But for those who have only begun the process—in particular, for those who have just moved to a new state and now filed for a protection order—their lives are in the greatest danger. This is because an abuser will often intensify his abuse when the survivor decides to end the relationship or seek help.⁵⁹ To maintain his control in the relationship, an abuser will often stalk, harass, and threaten the survivor even after she has left.⁶⁰ In fact, it is during the two weeks following a survivor's departure when she is *seventy* times more likely to be murdered by her abuser than at any other time during the relationship.⁶¹ It is therefore imperative that courts remain open to survivors who have recently fled their abusers and now seek immediate relief.

* * *

As the research demonstrates, domestic violence is a pernicious epidemic that harms women, their communities, and the country. Although the legal system has historically condoned domestic violence, states have dramatically increased the number of protections available to survivors over the past several decades. Today, the domestic violence protection order is the most effective and widely utilized remedy to prevent abuse. However, given the increased risk a survivor experiences after leaving her abuser, courts must exercise caution before dismissing a survivor's protection order because of an obscure procedural doctrine: personal jurisdiction.

56. *Id.*

57. *Id.* at 367 n.61.

58. See Holt et al., *supra* note 54.

59. *What Happens When the Abusive Relationship Ends?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/learn-more> [<https://perma.cc/HK2T-ZLDC>].

60. *Id.*

61. *Domestic Violence Statistics*, *supra* note 5.

II. DOMESTIC VIOLENCE PROTECTION ORDERS BEYOND STATE BORDERS

The laws that criminalize and enjoin domestic violence are largely creatures of state law.⁶² Yet lawmakers rightly recognized that, to address the sheer magnitude and cost of domestic violence, federal action was needed.⁶³ As a result, Congress enacted the Violence Against Women Act (VAWA) in 1994.⁶⁴ Although VAWA implemented several reforms, this Part focuses primarily on 18 U.S.C. § 2265, the Full Faith and Credit Provision. This provision was intended to help survivors fleeing from their abusers across state lines by requiring all fifty states, Indian tribes, and U.S. territories to accept and enforce a qualifying protection order.⁶⁵ Yet Congress's goals have been partially thwarted by two major restrictions on federal power: the Due Process Clause of the Fourteenth Amendment and state long-arm statutes. Both restrictions limit an individual's ability to sue an out-of-state defendant and thus impose additional barriers for women fleeing abuse across state lines.

This Part begins by discussing VAWA, its Full Faith and Credit Provision, and its application in interstate domestic violence cases. It then examines the two limitations on VAWA's nationwide enforcement of protection orders—personal jurisdiction and state long-arm statutes—and argues that the former poses the greatest challenge to federal efforts to combat domestic violence.

A. A FEDERAL RESPONSE TO DOMESTIC VIOLENCE: THE VIOLENCE AGAINST WOMEN ACT

By the 1990s, the domestic violence epidemic grabbed the attention of a new source: Congress.⁶⁶ In 1994, Congress enacted

62. See SCHNEIDER ET AL., *supra* note 44.

63. See 140 Cong. Rec. S7218 (daily ed. June 21, 1994) (statement of Sen. Boxer) (calling for the passage of the Violence Against Women Act).

64. The Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified in scattered sections of 18 & 42 U.S.C.).

65. 18 U.S.C. § 2265(a) (providing that “any [qualifying] protection order” issued by “the court of one State, Indian tribe, or territory” shall be “accorded full faith and credit by the court of another State, Indian tribe, or territory” and “enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe”).

66. See Michelle W. Easterling, Note, *For Better or Worse: The Federalization of Domestic Violence*, 98 W. VA. L. REV. 933, 938–39 (1996) (surveying testimony provided during the congressional hearings on VAWA). Prior to the

VAWA, “the beginning of a more comprehensive federal response that would deter, punish, and rehabilitate batterers in order to prevent abuse.”⁶⁷ Lawmakers were concerned about the pervasiveness and interstate effects of domestic violence, particularly for survivors fleeing across state borders.⁶⁸ To protect these survivors, Congress adopted a Full Faith and Credit Provision in VAWA.⁶⁹ This provision provides that any qualifying protection order “shall be accorded full faith and credit by the court of another state [or] Indian tribe . . . and enforced . . . as if it were the order of the enforcing State or tribe.”⁷⁰ In effect, if a survivor obtains a protection order in State A, and then later moves to State B, VAWA’s Full Faith and Credit Provision ensures the order issued by State A is fully enforceable against the abuser in State B. In fact, once the survivor obtains the protective order, it is enforceable anywhere in the United States.⁷¹

States have responded to this provision by implementing several important reforms. To comply with this provision, states have created computerized registration systems or updated their existing registers, which contain convicted abusers’ identifying information and valid local and foreign protection orders.⁷² In addition, states have offered training and guidance to law enforcement and judicial personnel to aid in registering and enforcing out-of-state orders.⁷³ However, while VAWA’s Full Faith and Credit Provision provides a more uniform and comprehensive system for the enforcement of protective orders, it does not address all of the interstate issues in domestic violence cases. Most

1990s, domestic violence was dealt with only at the state and local level. *See id.*

67. Developments in the Law, *Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1528, 1544 (1993).

68. *See id.*; Olivia DeBlasio, *Addressing Violence Against Women: Where Are We Today?*, 11 PERSP. 4, 7 (2002) (“Congress intended to help states deal with these interstate offenses that encompass domestic violence when it passed VAWA.”); Judith Resnik, *The Programmatic Judiciary: Lobbying, Judging, and Invalidating the Violence Against Women Act*, 74 S. CAL. L. REV. 269, 274 (2000) (noting that VAWA provides “money for shelters and educational programs” and aims to “eas[e] the enforcement of restraining orders, with criminal penalties for crossing state lines to harm an intimate partner protected by a valid state protection order . . .”).

69. 18 U.S.C. § 2265(a).

70. *Id.*

71. *Id.*

72. Carolyne R. Dilgard, *Crossing the Line: The Interstate Implications of Issuing and Enforcing Domestic Violence Protection Orders: An Examination of New Jersey*, 35 RUTGERS L.J. 253, 268 (2003).

73. *Id.* at 268–69.

relevant here, it does not cover cases in which a survivor flees to another state, without a protection order from her home state, and then seeks a protection order in the new state. These cases are particularly challenging because they require courts to determine whether the new state has personal jurisdiction over the out-of-state abuser.

B. RESTRAINTS ON FEDERAL PROTECTION

There are two important limitations on the federal protection afforded to survivors under VAWA. First, while VAWA protects a survivor who flees a state *after* she obtains a protection order,⁷⁴ it does not protect a survivor who flees a state *before* she obtains an order from a state which has personal jurisdiction over the abuser. This is because VAWA's Full Faith and Credit Provision only kicks in once the survivor has obtained a "protection order."⁷⁵ However, her "protection order" must be granted by a "court [that] has jurisdiction over the parties" before it may be enforced.⁷⁶ In other words, the survivor must obtain her protection order from a court that has personal jurisdiction over the abuser. But these courts are typically located in the state in which the abuse occurred or where the abuser resides.⁷⁷ As a result, the Due Process Clause of the Fourteenth Amendment imposes a limitation on the survivor's ability to obtain a protection order and, by extension, VAWA's nationwide enforcement.

Second, a state may also limit a court's jurisdiction through a long-arm statute. A state long-arm statute is a statute that typically enumerates certain acts that authorize the state's court to exercise personal jurisdiction over a non-resident defendant.⁷⁸

74. See *Fox v. Fox*, 2014 VT 100, ¶ 23, 197 Vt. 466, 477, 106 A.3d 919, 927 ("A victim of domestic abuse can secure an abuse-prevention order that is enforceable in Vermont by petitioning in a state that does have personal jurisdiction over the alleged abuser.") (citing 18 U.S.C. § 2265 (2014)).

75. See 18 U.S.C. § 2265(a) (requiring full faith and credit for every "protection order" issued that is consistent with the statute).

76. *Id.* § 2265(b)(1).

77. See *supra* note 11 and accompanying text.

78. *Long-Arm Statute*, BLACK'S LAW DICTIONARY (11th ed. 2019); see, e.g., N.Y. C.P.L.R. 302 (McKinney 2022).

1. Personal Jurisdiction Under the Due Process Clause of the Fourteenth Amendment

The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a particular defendant.⁷⁹ If the defendant is not subject to general jurisdiction in the forum state⁸⁰ and no other exception applies,⁸¹ a state court may exercise jurisdiction if the defendant has certain "minimum contacts" with the forum state such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."⁸²

The proper test for determining minimum contacts often varies depending on the context. For example, in cases involving business-related claims and conduct, the test is often whether the defendant "purposefully avail[ed]" himself of the "privilege of conducting activities within the forum State."⁸³ This may be demonstrated by showing that the defendant "deliberately 'reached out beyond' [his] home—by, for example, 'exploit[ing] a market' in the forum State or entering a contractual relationship centered there."⁸⁴ In intentional tort cases, by contrast, the test often requires that the defendant "purposefully directed" his conduct at residents of the forum state.⁸⁵

79. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

80. A defendant is subject to general personal jurisdiction when his "affiliations with the State are so 'continuous and systematic' as to render [him] essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). Therefore, in a typical domestic violence protective order case, personal jurisdiction is easily established because the victim will likely file her petition in the abuser's home state where the abuser is subject to general jurisdiction.

81. This includes situations where the defendant consents to jurisdiction, waives his objections, or is served while present in the forum. *See* 1 ROBERT C. CASAD, WILLIAM M. RICHMAN & STANLEY E., *JURISDICTION IN CIVIL ACTIONS: TERRITORIAL BASIS AND PROCESS LIMITATIONS ON JURISDICTION OF STATE AND FEDERAL COURTS* §§ 1.01(2)(a), 1.03(1)(b), 2.04(4) (4th ed. 2014).

82. *Int'l Shoe Co.*, 326 U.S. at 316.

83. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

84. *Ford Motor Co.*, 141 S. Ct. at 1025 (second alteration in original) (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

85. *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984). The two Supreme Court personal jurisdiction cases involving intentional torts—*Calder v. Jones*, 465 U.S. 783, 790 (1984) and *Walden v. Fiore*, 571 U.S. 277 (2014)—do not explicitly mention "purposeful direction." *See* Allan Erbsen, *Personal Jurisdiction Based on the Local Effects of Intentional Misconduct*, 57 WM. & MARY L.

Determining personal jurisdiction in interstate domestic violence cases is particularly difficult for several reasons. For one, there is no clear test for deciding whether a court may exercise personal jurisdiction over a non-resident abuser. The Supreme Court has never addressed the issue, and lower courts have taken different approaches.⁸⁶ In addition, regardless of the test adopted, applying it will likely pose challenges because domestic violence often lacks a focal point or geographical connection. For example, when an abuser commits an act of violence, he targets his intended victim—not the state in which she resides. This is because an abuser’s goal is to maintain control over the survivor by placing her in perpetual fear, *wherever she may go*.⁸⁷ Thus, despite the availability of protection orders, survivors who have fled the state where their abuse occurred are often unable to obtain protection because the issuing court lacks personal jurisdiction over the abuser.

This creates a procedural anomaly. Theoretically, a survivor may obtain a protection order anywhere in the United States because all fifty states have domestic abuse statutes authorizing them.⁸⁸ Practically, however, a survivor is often only able to obtain an order in one state: the abuser’s home state.⁸⁹ This has

REV. 385, 447 n.273 (2015) [hereinafter Erbsen, *Effects*]. Nonetheless, both cases have been interpreted to require conduct that is in some way directed at the forum. *See id.* As a result, *Calder* and *Walden* will be explored more fully in Part III.B.1, discussing the “purposeful direction” standard.

86. *Compare* A.R. v. M.R., 799 A.2d 27, 28 (N.J. Super. Ct. App. Div. 2002) (upholding personal jurisdiction over a non-resident defendant-abuser who placed several telephone calls into the plaintiff-survivor’s new home state), *with* Becker v. Johnson, 937 So. 2d 1128, 1131 (Fla. Dist. Ct. App. 2006) (declining to uphold personal jurisdiction over a defendant-abuser who placed several telephone calls into the plaintiff-survivor’s new home state).

87. *See generally* Rachel Pain, *Everyday Terrorism: How Fear Works in Domestic Abuse*, CTR. FOR SOC. JUST. & CMTY. ACTION 6 (2012), <https://womensaid.scot/wp-content/uploads/2017/07/EverydayTerrorismReport.pdf> [<https://perma.cc/7R2H-JVDK>] (discussing the “long-lasting fear and trauma” caused by domestic violence, which “reinforce[s] the abuser’s control” over the survivor).

88. SCHNEIDER ET AL., *supra* note 44; A.B.A. COMM’N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 8.

89. In some jurisdictions, a state court may still enter a valid protection order even without personal jurisdiction based on the status of the victim. This status determination is an exception to the constitutional requirement of personal jurisdiction that allows a state court to enter a binding judgment against non-resident defendants in certain types of cases. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 7 cmt. b (AM. L. INST. 1982). As a result, some scholars argue

devastating implications. Approximately seventy-seven percent of domestic violence-related homicides occur upon separation.⁹⁰ Thus, personal jurisdiction would seem to force survivors who have just escaped violence to return to their abuser's home state at a time when they are in the greatest danger. Although premised on "fair play and substantial justice,"⁹¹ this approach to personal jurisdiction effectively closes the courthouse doors to those in greatest need of its protection.

2. State Long-Arm Statutes: Another Jurisdictional Barrier in Interstate Domestic Violence Cases?

Even if there are "minimum contacts" under the Fourteenth Amendment's Due Process Clause, a state court can exercise jurisdiction over an out-of-state defendant only if it is also authorized by the state's long-arm statute.⁹² A state's long-arm statute may authorize jurisdiction to the "limits of due process."⁹³ In other words, if the exercise of personal jurisdiction would be proper under the Due Process Clause of the Fourteenth Amendment, then no additional requirement is necessary before a state court can exercise jurisdiction over the parties.⁹⁴

that the difficult personal jurisdiction issues inherent in interstate domestic violence cases could be avoided under the status exception. *See, e.g.*, Jessica Miles, *We Are Never Ever Getting Back Together: Domestic Violence Victims, Defendants, and Due Process*, 35 CARDOZO L. REV. 141, 146 (2013) (proposing that courts employ the status exception to enter a temporary, renewable civil protective order providing only prohibitory relief). However, even in states that recognize a status-based exception, the woman is denied full legal protection because she may only obtain prohibitory relief. *See, e.g.*, *Bartsch v. Bartsch*, 636 N.W.2d 3 (Iowa 2021). Thus, although the status exception may be a shortcut around jurisdiction in some states, it provides only limited relief and leaves important jurisdictional questions unresolved.

90. *Eighteen Months After Leaving Domestic Violence Is Still the Most Dangerous Time*, BATTERED WOMEN'S SUPPORT SERVS. (June 11, 2020), <https://www.bwss.org/eighteen-months-after-leaving-domestic-violence-is-still-the-most-dangerous-time> [<https://perma.cc/3CCS-PTG7>].

91. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

92. Brian Kuhl, Comment, *Long-Arm to Protect the Unarmed from Harm by the Armed: Why Wisconsin Needs a New Statute to Ensure Its Residents Can Obtain Restraining Orders Against Foreign Residents Who Threaten Them*, 2012 WIS. L. REV. 1041, 1058.

93. *Id.*; *see, e.g.*, CAL. CIV. CODE § 410.10 (West 2022) ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.").

94. *See* CAL. CIV. CODE § 410.10 (West 2022).

Alternatively, a state court may have an “enumerated” long-arm statute, which defines specific circumstances or conduct that may subject a defendant to personal jurisdiction in the state’s court.⁹⁵ Jurisdiction in these states is only proper if it comports with due process *and* involves a situation that is specifically enumerated in the statute.⁹⁶ As a result, the state’s long-arm statute may be another barrier for survivors who have fled their abusers and seek protection in another state. Yet, the majority of state long-arm statutes permit courts to exercise jurisdiction to the “limits of due process.”⁹⁷ Therefore, because the jurisdictional analysis under most state’s long-arm statutes is the same as the due process analysis under the Fourteenth Amendment, this Note focuses principally on the latter.

* * *

Although all fifty states and the federal government have enacted laws to protect survivors of domestic violence, there are significant procedural barriers that frustrate their full implementation. First, and most relevant, is the Fourteenth Amendment’s Due Process Clause, which requires a state court to have personal jurisdiction over the defendant before issuing a judgment that is personally binding upon him. This requirement is most challenging to satisfy in interstate domestic violence cases, where the survivor files her protection order in a new state. Second is the state long-arm statute, which may further limit the situations in which a state court can exercise personal jurisdiction over the defendant, beyond the requirements under the Due Process Clause. Because most state long-arm statute’s authorize jurisdiction to the limits of due process, personal jurisdiction presents the greatest challenge in interstate domestic violence cases.

95. Kuhl, *supra* note 92; *see, e.g.*, WIS. STAT. ANN. § 801.05 (West 2022).

96. *See, e.g.*, WIS. STAT. ANN. § 801.05(3) (West 2022) (providing for personal jurisdiction over non-resident defendants “[i]n any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant”). The Wisconsin statute grants Wisconsin courts jurisdiction over tortious acts that occur within Wisconsin. *See id.* This is arguably more narrow than due process might otherwise allow since courts may possess personal jurisdiction over non-resident defendants who commit tortious acts *outside* of the forum state. *See, e.g.*, *Calder v. Jones*, 465 U.S. 783, 790 (1983).

97. *See Miles, supra* note 89, at 159–60.

III. PERSONAL JURISDICTION IN INTERSTATE DOMESTIC VIOLENCE CASES

For a survivor who has just fled her abuser and now seeks a domestic violence protection order in her new home state, personal jurisdiction is a real, yet obscure, obstacle to obtaining relief. However, this Section attempts to show why the Fourteenth Amendment's Due Process Clause does not necessarily compel this result. *International Shoe* tells us that personal jurisdiction requires certain "minimum contacts" with the forum state.⁹⁸ At the same time, the Supreme Court has recognized that—in a due process inquiry like *International Shoe's* "minimum contacts" test—context matters.⁹⁹

For example, the general standard courts apply to determine "minimum contacts" is "purposeful availment." Under this approach, the court will ask whether "the defendant purposely avail[ed]" [him]self of the "privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."¹⁰⁰ But in intentional tort cases, it would be odd to ask whether a tortfeasor has sufficiently availed himself of the "privilege" and "benefits and protections" of the state.¹⁰¹ A tortfeasor does not seek a benefit from the forum state; he seeks to inflict a harm that may be experienced in the forum state. As a result, in these cases, courts often apply a different standard, which asks whether the defendant "purposefully directed" his conduct at the residents of the forum state.¹⁰²

98. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

99. *See, e.g., J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011) (plurality opinion) ("As a general rule, the sovereign's exercise of power requires some act by which the defendant 'purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws' . . . though in some cases, as with an intentional tort, the defendant might well fall within the State's authority by reason of his attempt to obstruct its laws.") (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

100. *Hanson*, 357 U.S. at 253.

101. *Id.*

102. *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984); *see, e.g., Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (distinguishing the two standards and applying the "purposeful direction" standard). *But see* Andrew F. Halaby, *You Won't Be Back: Making Sense of "Express Aiming" After Schwarzenegger v. Fred Martin Motor Co.*, 37 ARIZ. ST. L.J. 625, 626 (2005) (arguing that the Ninth Circuit practically ignored the distinction between "purposeful availment" and "purposeful direction" in *Schwarzenegger*).

This Part begins by describing the “purposeful availment” standard and its application in two types of cases which are commonly analogized to interstate domestic violence cases: “stream of commerce” cases and domestic relations cases. It then considers the “purposeful direction” standard and argues that this standard is more appropriate in the domestic violence context when the abuser reaches out to his victim in her new home state. Finally, this Part proposes an alternative test for determining jurisdiction in cases when a survivor is harmed before, but not after, she flees to another state.

A. THE PURPOSEFUL AVAILMENT STANDARD SHOULD NOT GOVERN DOMESTIC VIOLENCE CASES

The Supreme Court has recognized that certain cases may warrant applying the “purposeful direction” standard instead of the “purposeful availment” standard.¹⁰³ Yet, state courts routinely fail to distinguish the two, applying the latter when they should be applying the former.

Fox v. Fox helps illustrate the point. In *Fox*, the Supreme Court of Vermont considered whether one of its residents could obtain a protection order against an abuser who assaulted the resident in neighboring New Hampshire.¹⁰⁴ The court concluded: “By attacking plaintiff in New Hampshire, defendant did not *avail himself of any benefits or protections* of Vermont’s laws, or subject himself to the authority of Vermont’s courts.”¹⁰⁵ Under the Supreme Court of Vermont’s approach, a defendant who does business in the forum state and negligently causes harm there would be subject to jurisdiction; meanwhile, a defendant who intentionally assaults a resident of the forum state, but commits the assault in another state, would not. If this is a correct interpretation of the Supreme Court’s personal jurisdiction cases, it would be a curious application of “due process.”

This Section therefore aims to illuminate the important differences between the cases in which courts often apply the “purposeful availment” standard and interstate domestic violence cases. It focuses on two types of cases which fall under the “purposeful availment” standard and are often analogized to interstate domestic violence cases. The first includes the “stream of

103. See, e.g., *Nicastro*, 564 U.S. at 880 (plurality opinion).

104. 2014 VT 100, ¶ 2, 197 Vt. 466, 469, 106 A.3d 919, 921.

105. *Id.* at 2014 VT at ¶ 30, 197 Vt. at 480, 106 A.3d at 929 (emphasis added).

commerce” cases.¹⁰⁶ Under this line of cases, jurisdiction is appropriate when the non-resident defendant “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”¹⁰⁷ Although the “stream of commerce” doctrine would seem to involve a distinct subset of business suits, courts¹⁰⁸ and commentators¹⁰⁹ have drawn on this doctrine when analyzing personal jurisdiction in interstate domestic violence cases. The second type includes cases that fall in the general sphere of domestic relations, including child-support and custody cases.

1. The Stream of Commerce Doctrine

Personal jurisdiction is the state’s power to compel individuals to submit to adjudication in a particular forum.¹¹⁰ That power, however, has changed as social, political, and economic conditions have evolved. The Supreme Court’s stream of commerce doctrine developed in response to territorial and economic expansion and the resulting increase in the number of products traveling across state borders.¹¹¹ While personal jurisdiction was historically limited by the state’s geographical boundaries,¹¹² the Court articulated a new approach to product liability cases in *World-Wide Volkswagen Co. v. Woodson*.¹¹³ Instead of focusing on the defendant’s physical “presence” in the forum state, this approach asks whether the defendant placed its products into the stream of commerce with the expectation that they will be purchased by consumers in the state.¹¹⁴

106. See generally Cody J. Jacobs, *The Stream of Violence: A New Approach to Domestic Violence Personal Jurisdiction*, 64 UCLA L. REV. 684, 726 (2017) (proposing a new personal jurisdiction approach in interstate domestic violence cases based, in part, on the “stream of commerce” doctrine).

107. *World-Wide Volkswagen Co. v. Woodson*, 444 U.S. 286, 298 (1980).

108. See, e.g., *Mucha v. Wagner*, 861 S.E.2d 501, 507 (N.C. 2021) (concluding that the Supreme Court’s “stream of commerce” cases support the defendant-abuser’s position and declining to exercise jurisdiction).

109. Jacobs, *supra* note 106.

110. See *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

111. Kaitlyn Findley, *Paddling Past Nicastro in the Stream of Commerce Doctrine: Interpreting Justice Breyer’s Concurrence as Implicitly Inviting Lower Courts to Develop Alternative Jurisdictional Standards*, 63 EMORY L. J. 695, 702 (2014).

112. See *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878).

113. 444 U.S. 286 (1980).

114. *Id.* at 297–98 (“The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that

a. *World-Wise Volkswagen Co. v. Woodson and the Emergence of the Stream of Commerce Doctrine*

In *Volkswagen*, the plaintiffs purchased an Audi in New York and drove it to Oklahoma while on their way to Arizona.¹¹⁵ There, they got into a car accident and suffered severe burns because of an alleged defect in the car.¹¹⁶ They brought a products liability suit in Oklahoma against the Audi manufacturer and the retail dealer, both New York citizens.¹¹⁷ As to the manufacturer, the Court concluded that jurisdiction is proper when the non-resident manufacturer “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”¹¹⁸ According to the Court, jurisdiction in these cases depends on the “foreseeability” that the non-resident manufacturer’s “conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”¹¹⁹ In other words, the defendant who attempts to serve, directly or indirectly, the forum state’s market, should foresee being haled into the state’s courts.¹²⁰

The defendants in *Volkswagen*, however, never interacted with the forum state by, for example, selling or advertising its products there.¹²¹ As a result, the Court concluded that they did not intend to serve its market and thus could not reasonably anticipate being into the state’s courts.¹²²

b. *The Stream of Commerce Doctrine Is Unworkable: Asahi and Nicastro*

Although the Court clarified some aspects of the stream of commerce doctrine, it failed to provide further guidance on the precise quality and quantity of contacts that would cause a non-resident defendant to “reasonably anticipate being haled into court” in the forum state.¹²³ Two subsequent decisions—*Asahi*

delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”) (citation omitted).

115. *Id.* at 288.

116. *Id.*

117. *Id.*

118. *Id.* at 298.

119. *Id.* at 297.

120. *Id.*

121. *Id.* at 295.

122. *Id.*

123. *Id.* at 297.

*Metal Industry Co. v. Superior Court*¹²⁴ and *J. McIntyre Machinery, Ltd. v. Nicastro*¹²⁵—added additional confusion to the doctrine. In *Asahi*, the Court unanimously agreed that the exercise of jurisdiction over a Japanese manufacturer was unconstitutional because it would not comport with fair play and substantial justice.¹²⁶ They disagreed, however, on the minimum contacts analysis.

Justice O'Connor proposed a "stream of commerce plus test"¹²⁷ requiring "additional purposeful actions directed at the forum besides simply putting a product in the stream of commerce with knowledge that the product would be sold in the forum state."¹²⁸ Examples that connect the defendant to the state under Justice O'Connor's proposed test include products with a state-specific design or targeted advertising.¹²⁹ Meanwhile, Justice Brennan proposed a "pure stream of commerce test"¹³⁰ since putting a product in the "stream of commerce" with knowledge that "the final product is being marketed in the forum state," should be sufficient to sustain jurisdiction in the forum where that product causes injury.¹³¹

More than twenty years later, the Court finally returned to the stream of commerce doctrine. In *Nicastro*, the Court rejected the exercise of jurisdiction over a British company by a vote of six to three. However, once again, the Court disagreed on the reasoning, producing another fractured decision with no majority opinion. A plurality of four justices endorsed Justice O'Connor's *Asahi* opinion requiring a showing that the defendant "targeted the forum."¹³² Because the defendant "directed marketing and sales efforts at the United States" without "engag[ing] in conduct purposefully directed at [the forum state]," jurisdiction was improper.¹³³

Justice Breyer, in a concurring opinion, argued instead that the Court should not adopt a new standard to stream of com-

124. 480 U.S. 102 (1987) (plurality opinion).

125. 564 U.S. 873 (2011) (plurality opinion).

126. *Asahi*, 480 U.S. at 113–16.

127. Findley, *supra* note 111, at 711.

128. *Asahi*, 480 U.S. at 112.

129. *Id.*

130. Findley, *supra* note 111, at 712.

131. *Asahi*, 480 U.S. at 117 (Brennan, J., concurring).

132. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011).

133. *Id.* at 885–86.

merce cases because jurisdiction was improper under either approach in *Asahi*.¹³⁴ Consistent with both Justice O'Connor and Justice Brennan's *Asahi* opinions, the concurrence found that the facts did not demonstrate a "regular . . . flow' or 'regular course' of sales in New Jersey," nor did it indicate "something more,' such as special state-related design, advertising, advice, marketing, or anything else."¹³⁵

Justice Breyer's concurrence is particularly important since under the *Marks* rule,¹³⁶ "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of [a majority], the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."¹³⁷ As a result, Justice Breyer's concurrence based on existing precedent is the holding of *Nicastro*; in other words, the *Asahi* split still controlled.¹³⁸

Volkswagen and the Court's fractured opinions in *Asahi* and *Nicastro* have important implications for the current doctrine of personal jurisdiction. At a minimum, they require a showing that the defendant-manufacturer had knowledge—actual or constructive—that its conduct would have some effect in the forum.¹³⁹ But this simple conclusion leaves many important questions unresolved in the domestic violence context. For example, does a survivor also need to show that her abuser had knowledge that his conduct (*i.e.*, abuse) would have some effect in the forum? If so, is it enough that the abuser knew the survivor resided in the forum state when he contacted her or is "something more"¹⁴⁰ required? These questions highlight how ambiguities in the "stream of commerce" doctrine make its application in the domestic violence context unworkable.

134. *Id.* at 887–89, 893 (Breyer, J., concurring).

135. *Id.* at 889 (Breyer, J., concurring).

136. *Marks v. United States*, 430 U.S. 188, 193 (1977).

137. *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003) (first alteration in original) (internal quotation marks omitted) (quoting *Marks*, 430 U.S. at 193).

138. Findley, *supra* note 111, at 723.

139. *Jacobs*, *supra* note 106, at 720. Unsurprisingly, the Court's fractured decisions caused substantial confusion among lower courts hearing "stream of commerce" cases. Findley, *supra* note 111, at 723.

140. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 111 (1987) (plurality opinion).

c. The Stream of Commerce Doctrine Governs Distinct Questions in Product Liability Cases and Should Not Apply to Interstate Domestic Violence Cases

Another question left unresolved by the “stream of commerce” cases is whether this doctrine should apply in interstate domestic cases in the first place. While some commentators have argued that the principles underlying the “stream of commerce” doctrine should guide the personal jurisdiction analysis in interstate domestic violence cases,¹⁴¹ there are several reasons why the two types of cases should be distinguished.

First, the stream of commerce doctrine concerns whether the defendant “purposefully avail[ed]” itself of the “privilege of conducting activities within the forum State.”¹⁴² The defendant does not purposefully avail itself if its products were merely distributed through a nationwide distribution system that might result in those products being sold in any of the fifty states.¹⁴³ Rather, purposeful availment requires at least some specific forum targeting, beyond merely “the occurrence of a product-based accident in the forum State.”¹⁴⁴ But as the *Nicastro* plurality opinion recognized, in intentional tort cases, “the defendant might well fall within the State’s authority by reason of his attempt to obstruct its laws.”¹⁴⁵

Like an intentional tortfeasor, an abuser does not avail himself of the benefits and privileges of conducting activities in the forum state; he threatens to obstruct the state’s laws through his relationship with the survivor. Thus, the stream of commerce doctrine—and its emphasis on forum targeting—need not control the analysis in interstate domestic violence cases.

Second, many of the concerns that animated the Court in its stream of commerce cases do not exist in interstate domestic violence cases. For example, in his concurrence in *Nicastro*, Justice Breyer argued against authorizing jurisdiction over the British manufacturer because of the potential effect on the market:

A rule [authorizing the exercise of jurisdiction in this case] would permit every State to assert jurisdiction in a products-liability suit against any domestic manufacturer who sells its products (made anywhere in the United States) to a national distributor, no matter how large or

141. See Jacobs, *supra* note 106.

142. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

143. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 891 (2011) (Breyer, J., concurring).

144. *Id.*

145. *Id.* at 880 (plurality opinion).

small the manufacturer, no matter how distant the forum, and no matter how few the number of items that end up in the particular forum at issue.¹⁴⁶

Whether this concern should affect the jurisdictional analysis in a products liability suit is debatable.¹⁴⁷ However, the potential “chilling effect” of a rule exposing small manufacturers to nationwide jurisdiction for merely placing a product on the stream of commerce clearly does not apply in an ordinary domestic violence case.

For one, the abuser is an individual, not a business entity. If he is subjected to jurisdiction, he may be restrained from contacting a forum resident and from committing further acts of domestic violence.¹⁴⁸ However, requiring an abuser to refrain from such conduct does not implicate the same economic concerns that exist in stream of commerce cases. In addition, the abuser does not rely on an intermediary to reach the forum state. He intentionally and directly targets—*i.e.*, stalks, threatens, or abuses—a forum resident.¹⁴⁹

Lastly, the stream of commerce doctrine governs product liability suits where the standard is either negligence or strict liability. This lower evidentiary standard arguably justifies applying a stricter jurisdictional rule because of the increased risk of liability. In actions for domestic violence protection orders, however, the plaintiff must demonstrate that the defendant engaged in intentional conduct.¹⁵⁰ Intent, combined with the abuser’s pre-existing relationship with the plaintiff, distinguishes his ongoing

146. *Id.* at 891–92 (Breyer, J., concurring) (“What might appear fair in the case of a large manufacturer which specifically seeks, or expects, an equal-sized distributor to sell its product in a distant State might seem unfair in the case of a small manufacturer (say, an Appalachian potter) who sells his product (cups and saucers) exclusively to a large distributor, who resells a single item (a coffee mug) to a buyer from a distant State (Hawaii).”).

147. *See* Findley, *supra* note 111.

148. *See, e.g.*, MINN. STAT. ANN. § 518B.01, subdiv. 7 (West 2022).

149. There is a potential counterargument that courts should afford individuals greater jurisdictional immunity because it’s harder for individuals to “structure their primary conduct” to avoid jurisdiction than it is for businesses. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). This argument may have some salience when an individual negligently causes a harm in another state. However, it lacks merit in intentional tort cases, including domestic violence cases, because tortfeasors have an easy way to avoid jurisdiction: “they can refrain from committing intentional torts when they are unable to predict the results.” Erbsen, *Effects*, *supra* note 85, at 446.

150. *See, e.g.*, MINN. STAT. ANN. § 518B.01, subdiv. 7 (West 2022).

control from more “random, fortuitous, or attenuated” contacts.¹⁵¹ Thus, a non-resident abuser who intentionally targets his victim is far more likely to “reasonably anticipate being haled into court.”¹⁵²

2. Domestic Relations

Although the “purposeful availment” test often arises in a commercial setting, the Supreme Court has also applied it in cases involving domestic relations. A case particularly pertinent to the domestic violence context is *Kulko v. Superior Court*.¹⁵³ Like interstate domestic violence cases, *Kulko* involved a situation in which the plaintiff left her former partner’s home state, relocated to a new state, and then sought relief in a court in her new home state. Because of these similarities, courts often apply *Kulko* in interstate domestic violence cases,¹⁵⁴ typically when declining to exercise jurisdiction.¹⁵⁵ This Section examines *Kulko* and its potential relevance to interstate domestic violence cases. It then argues that courts should not apply *Kulko* in these cases because a survivor’s decision to move to another state is not a “unilateral activity”¹⁵⁶ that fails to provide “reasonable notice”¹⁵⁷ to an abuser that he may face litigation in the forum state.

151. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 (1985) (internal quotation marks and citations omitted).

152. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (“The Due Process Clause, by ensuring the ‘orderly administration of the laws,’ . . . gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.”) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

153. 436 U.S. 84 (1978).

154. *See, e.g., T.L. v. W.L.*, 820 A.2d 506, 513 (Del. Fam. Ct. 2003) (“Just as the United States Supreme Court in the *Kulko* case weighed the interest of the state towards protecting children and obtaining child support against an individual’s rights of due process, this Court must weigh an individual’s rights of due process against Delaware’s strong interest in preventing abuse, and the necessity for taking prompt action.”).

155. *See, e.g., id.* at 514 (“[U]nder the given facts of this case, husband’s rights of due process vastly outweigh the state’s legitimate concerns to protect its residents and children from domestic violence.”).

156. *Kulko*, 436 U.S. at 93 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

157. *Id.* at 91 (citing *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 313–14 (1950)).

a. *Kulko v. Superior Court: The Separated Woman Problem*

Kulko arose from a mother's child support and custody suit against her ex-husband.¹⁵⁸ Prior to their separation, the couple had lived together with their two children in New York.¹⁵⁹ After the divorce, the mother moved to California, and both children later joined her, while the father remained in New York.¹⁶⁰ Although the mother filed her child support suit in a reasonable forum—her home state of California—the father contested personal jurisdiction because of the “burden and inconvenience” of defending himself in California.¹⁶¹

The Supreme Court sided with the father and held that the California court lacked personal jurisdiction over the mother's suit.¹⁶² First, the Court rejected the argument that the father “purposefully availed” himself of California by purchasing a one-way ticket for his daughter so she could live in California with her mother.¹⁶³ According to the Court: “A father who agrees, in the interests of family harmony and his children's preferences, to allow them to spend more time in California than was required under a separation agreement can hardly be said to have ‘purposefully’ availed himself of the ‘benefits and protections’ of California's laws.”¹⁶⁴ Even though the state of California provided numerous protections and benefits to the daughter,¹⁶⁵ these services “were essentially benefits to the child, not the father” and, most importantly, were not benefits that the father “purposefully sought for himself.”¹⁶⁶

In addition to the father's purported lack of contacts with California, the Court also cited “basic considerations of fairness” to deny jurisdiction over the mother's suit.¹⁶⁷ The Court noted the “substantial financial burden and personal strain” that litigating the child support suit “in a forum 3,000 miles away”

158. *Id.* at 86–87.

159. *Id.* at 87.

160. *Id.*

161. *Id.* at 91.

162. *Id.* at 95.

163. *Id.* at 94.

164. *Id.* (internal citation omitted).

165. In particular, these protections and benefits included fire and police protection, school and hospital services, recreational facilities, and museums. *Kulko v. Superior Ct.*, 564 P.2d 353, 356 (Cal. 1977).

166. *Kulko*, 436 U.S. at 94 n.7.

167. *Id.* at 97.

would impose on the father.¹⁶⁸ The Court justified its decision to prioritize the father's burden because the father had remained in the state of marital domicile, whereas the mother was the one who moved across the continent.¹⁶⁹

b. *The Aftermath of Kulko*

An initial reading of *Kulko* would seem to suggest that jurisdiction is also foreclosed in many interstate domestic violence cases. For one, if a father who intentionally sent his daughter to the forum state to live and attend school did not “purposefully avail” himself of the state, how can an abuser be said to have done so in the absence of any comparable action? In addition, the lack of weight afforded to the state's and the mother's interests suggests that the state's and the survivor's interests will also receive little weight in protection order cases. According to the Court, the father's burden outweighed both California's “substantial interest[.]” in protecting the welfare of its children¹⁷⁰ and the reciprocal burden placed on the mother who had to either abandon her suit or file it in a forum—*also* 3,000 miles away—while shouldering the additional stress and expense of finding childcare for her two children.¹⁷¹

Unfortunately, these concerns are not merely speculative. As one commentator observed: “One of the most disturbing examples of the consequences of *Kulko* is in its application to cases involving domestic violence.”¹⁷² Courts applying *Kulko* have exercised jurisdiction when the survivor and her children move to the forum state after being expelled from their home by the non-resident abuser,¹⁷³ but have declined to do so when the survivor

168. *Id.*

169. *Id.*

170. *Id.* at 98.

171. See Allan Erbsen, *Impersonal Jurisdiction*, 60 EMORY L.J. 1, 26–28 (2010) [hereinafter Erbsen, *Impersonal*]; Roy L. Brooks, *Feminist Jurisdiction: Toward an Understanding of Feminist Procedure*, 43 U. KAN. L. REV. 317, 350 (1995).

172. Rosemarie T. Ring, *Personal Jurisdiction and Child Support: Establishing the Parent-Child Relationship as Minimum Contacts*, 89 CALIF. L. REV. 1125, 1130 (2001).

173. See, e.g., *Franklin v. Commonwealth*, 497 S.E.2d 881, 885–86 (Va. Ct. App. 1998) (exercising personal jurisdiction where “husband ordered wife and the children from their home in Africa” after “several physical altercations”); *In re Marriage of Malwitz*, 99 P.3d 56, 61 (Colo. 2004) (exercising personal jurisdiction where “[husband] engaged in a course of conduct designed to terrorize

does so on her “own volition,”¹⁷⁴ presumably to escape further abuse. But neither *Kulko* nor any other Supreme Court case requires courts to subject abusers to jurisdiction when they expel their victims from the state, but to immunize those who continue to pursue their victims.

c. Kulko Does Not Address the Unique Circumstances in Interstate Domestic Violence Cases and Thus Is Unsuitable Precedent

Kulko's seemingly similar fact pattern to interstate domestic violence cases obscures several critical distinctions between custody and child support cases and interstate domestic violence cases. First, *Kulko* centered on a mother's suit against her ex-husband to obtain custody of her children and to increase the father's child support payments.¹⁷⁵ By contrast, it did not involve any intentional misconduct, which is often analyzed under the “purposeful direction” standard.¹⁷⁶ As a result, the Court properly applied the “purposeful availment” test to determine whether the California court could exercise jurisdiction over the father.¹⁷⁷

Yet, “purposeful availment,” and the Court's analysis of whether the father obtained a benefit from his daughter's presence in California, should not apply to domestic violence cases. As discussed in Part III.A.1, an abuser does not *avail* himself of the benefits and privileges of conducting activities in the forum state when he commits an act of domestic violence.¹⁷⁸ It is therefore unhelpful to analogize the mother's suit in *Kulko* to the survivor's petition for a protection order because an abuser may be

[wife] and her family, essentially forcing [wife] to seek safety” in the forum state).

174. See, e.g., *Windsor v. Windsor*, 700 N.E.2d 838 (Mass. App. Ct. 1998) (declining to exercise jurisdiction because father's “cruel and abusive treatment” during the marriage did not “cause” her and her children to flee); *McNabb v. McNabb*, 65 P.3d 1068, 1075 (Kan. Ct. App. 2003) (declining to exercise jurisdiction because father's “one incident of physical abuse” did not “cause” mother and child to flee).

175. *Kulko*, 436 U.S. at 88.

176. See *infra* Part III.B.

177. *Kulko*, 436 U.S. at 94 (“[I]t is essential in each case that there be some act by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum State . . .”) (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

178. See *supra* Part III.A.1.c.

subject to the court's jurisdiction even in the absence of "purposeful availment."¹⁷⁹

Second, in *Kulko*, the Court justified its decision to prioritize the father's burden because it was the mother, and not the father, who moved to another state and thus created the need to travel.¹⁸⁰ Even if that fact justified placing the burden on the mother in *Kulko*,¹⁸¹ a survivor's decision to flee to a new state presents an entirely different situation. Whereas the mother's decision to move to California may be considered her own "unilateral activity" which does not connect the father to the state,¹⁸² the survivor's decision to flee to another state is a direct result of the abuser's violence.¹⁸³ That forum connection, established by the abuser's ongoing control over the victim, suggests that a survivor may still obtain a protective order despite *Kulko*'s emphasis on the defendant's burden.

One potential challenge to this distinction is the scope of the abuser's conduct. For example, the abuser may argue that although he caused the survivor to leave the state, her decision to move to the particular forum state—one of forty-nine options—was a unilateral choice. However, there is no sound jurisdictional basis for distinguishing between an abuser who causes his victim to flee to an unknown state and an abuser who causes his victim to flee to a state of his choosing.¹⁸⁴ In both situations, the survivor is compelled by the threat of (further) violence to leave her home state. By contrast, the mother's decision to leave New York in *Kulko*, even if it reflected her desire to move on with her life following a divorce with the father, was a volitional act.¹⁸⁵

179. See *infra* Part III.B.

180. *Kulko*, 436 U.S. at 97.

181. The Court's decision to place the burden on the party necessitating the need for travel in *Kulko* may have been unjustified. For example, the mother apparently moved to California to start a new life following a divorce and to raise her children in a place she believed was in their best interest. Erbsen, *Impersonal*, *supra* note 171, at 27 n.109. By ignoring the mother's side of the story, the Court discounted her interest without providing any legitimate justification. *Id.*

182. *Kulko*, 436 U.S. at 93–94 (citing *Hanson*, 357 U.S. at 253).

183. See *In re Marriage of Malwitz*, 99 P.3d 56, 61–62 (Colo. 2004) (recognizing that the defendant-abuser's "course of conduct designed to terrorize" plaintiff-survivor were "purposeful actions" that "caused" her to flee to the forum state).

184. See Erbsen, *Effects*, *supra* note 85, at 405.

185. *Kulko*, 436 U.S. at 97.

* * *

The Fourteenth Amendment's Due Process Clause requires a state court to establish personal jurisdiction over the defendant before it compels the defendant to court. Following *International Shoe*, courts must determine whether an out-of-state defendant established "minimum contacts" with the forum state.¹⁸⁶ To determine whether the defendant established sufficient contacts with the state, courts often apply the "purposeful availment" standard, which asks whether the defendant purposely availed himself of the benefits and protections of the state. In interstate domestic violence cases, courts have drawn on the Supreme Court's "stream of commerce" cases and its decision in *Kulko* to make sense of what constitutes "purposeful availment."

However, as this Note argues above, this approach is misguided. Abusers do not avail themselves of the forum state; they present an ongoing threat to the state's residents and to its ability to protect them from outside danger. This makes the application of the "stream of commerce" cases and *Kulko* unsuitable. But courts have an alternative. They can follow the Supreme Court's own guidance to consider the particular nature of the suit and whether it warrants the state's exercise of authority.¹⁸⁷

B. COURTS SHOULD APPLY THE PURPOSEFUL DIRECTION STANDARD WHEN ABUSERS REACH OUT TO SURVIVORS IN THEIR NEW STATES

If "purposeful availment" is not the proper standard for determining personal jurisdiction when the defendant is accused of committing an act of domestic violence,¹⁸⁸ then jurisdiction must be determined under a different approach. In many interstate domestic violence cases, the "purposeful direction" standard may be a suitable alternative.¹⁸⁹ For example, when the abuser reaches out to the victim after she has moved to another state, jurisdiction may exist because the abuser purposefully directed

186. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

187. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880–81 (2011) (plurality opinion) (distinguishing between "stream of commerce" and intentional tort suits).

188. *See supra* Part III.A.

189. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)); *see* Brief of Appellee at 21–22, *Mucha v. Wagner*, 861 S.E.2d 601 (N.C. 2021) (No. 307PA20), 2020 WL 8026697, at *21–22 (arguing that "purposeful direction" is the proper standard to determine personal jurisdiction over a non-resident abuser).

his abuse at the forum. This is because the “purposeful direction” standard asks whether the defendant targeted his intentional conduct at the forum state. This standard therefore avoids asking whether an abuser derived some benefit from the state itself, which is a difficult burden to prove because abusers typically don’t seek a benefit from their victim’s new state.

This Section begins by introducing the “purposeful direction” standard the Supreme Court developed in *Calder v. Jones*¹⁹⁰ and *Walden v. Fiore*.¹⁹¹ It argues that this standard is preferable to the “purposeful availment” standard because domestic violence is analogous to an intentional tort suit. This Section then considers two different approaches to “purposeful direction”—the “Knowledge Test” and the “Effects Test”—and discusses their potential applicability in interstate domestic violence cases.

The Knowledge Test asks whether the abuser knew, or should have known, that his conduct would cause the survivor to flee to the specific forum state.¹⁹² By contrast, the Effects Test asks whether the abuser could predict that the effects of his abuse would be experienced by the survivor *somewhere*, even if the specific forum was unpredictable.¹⁹³ This Section concludes by arguing that the “Effects Test” is a more viable approach under the “purposeful direction” standard because it shifts the inquiry away from the abuser’s purported knowledge and toward the effects experienced by the state and the survivor.

1. Purposeful Direction

The “purposeful direction” standard is preferable in many domestic violence cases because domestic violence is most analogous to an intentional tort suit.¹⁹⁴ In both types of cases, the

190. 465 U.S. 783 (1984).

191. 571 U.S. 277 (2014).

192. See Jacobs, *supra* note 106, at 727 (“[I]t is proper to subject domestic violence defendants to jurisdiction in any forum where the defendant knows or should know his victim may flee.”).

193. See Erbsen, *Effects*, *supra* note 85, at 449 (“[C]ourts analyzing effects cases should consider whether the defendant could predict that the effect would occur and generate litigation somewhere, even if the specific forum was unpredictable.”).

194. See Jennifer Wriggins, *Domestic Violence Torts*, 75 S. CAL. L. REV. 121, 123–24 (2001) (“People who commit domestic violence generally are, in theory, liable under intentional tort theories, in addition to whatever liability they may face under criminal law.”).

defendant is alleged to have intentionally committed a harmful act against the plaintiff.¹⁹⁵

Neither *Calder* nor *Walden* specifically refer to the “purposeful direction” standard.¹⁹⁶ Nonetheless, both cases require some conduct directed at the forum.¹⁹⁷ In addition, lower courts interpreting *Calder* and *Walden* have applied the “purposeful direction” test in intentional tort cases.¹⁹⁸ Thus, because domestic violence is intentionally tortious conduct,¹⁹⁹ courts deciding whether to exercise jurisdiction over a non-resident abuser should follow *Calder* and *Walden*.

a. *Calder v. Jones*

The Supreme Court first addressed personal jurisdiction in an intentional tort suit in *Calder v. Jones*.²⁰⁰ The dispute in *Calder* centered on an allegedly libelous article in the National Enquirer.²⁰¹ The article at issue alleged that Shirley Jones, a famous actress and singer, was an alcoholic.²⁰² Jones sued the Enquirer, its distributor, the author of the article (South), and the tabloid’s editor-in-chief (Calder) in California.²⁰³ Although the publisher and distributor did not challenge jurisdiction,²⁰⁴ jurisdiction over the author and editor was contested.²⁰⁵ The author’s only relevant contacts with California involved his fre-

195. *See id.* at 122.

196. *See* Erbsen, *Effects*, *supra* note 85.

197. *See infra* Parts III.B.1.a, III.B.1.b.

198. *See, e.g.*, *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (“[Purposeful] availment and [purposeful] direction are, in fact, two distinct concepts. A purposeful availment analysis is most often used in suits sounding in contract. A purposeful direction analysis, on the other hand, is most often used in suits sounding in tort.”) (internal citations omitted).

199. *See* Wriggins, *supra* note 194.

200. 465 U.S. 783 (1984).

201. *Id.* at 783.

202. In particular, the article alleged that Jones’ husband, Marty Ingels, was a “crazy man” who drove Jones to drink so heavily—she “pour[ed] down vodka”—so that her film crew had “to stop shooting.” John South, *Husband’s Bizarre Behavior is Driving Shirley Jones to Drink*, NAT’L ENQUIRER (Oct. 9, 1979), <http://prawfsblawg.blogs.com/files/shirley-jones-enquirer.pdf> [<https://perma.cc/Z6VT-HMKV>].

203. *Calder*, 465 U.S. at 785.

204. *Id.* at 786–87.

205. *Id.*

quent business trips into the state and a few phone calls to California sources to collect information for the article.²⁰⁶ The editor had visited California twice before publishing the article but had no other relevant contacts with the state.²⁰⁷ Besides the author's California sources, neither defendant had any other contact with California in connection with the article.

In a unanimous opinion, the Court held that both defendants were subject to personal jurisdiction because they had “expressly aimed” their allegedly tortious conduct at the plaintiff in California.²⁰⁸ Less clear, however, is how the Court's reasoning in *Calder* applies in interstate domestic violence cases. One interpretation of *Calder* is that the defendant's knowledge of the plaintiff's presence in the specific forum state is dispositive. The Court emphasized that South wrote, and Calder edited, an article that they “knew” would have a potentially harmful effect on Jones; and they “knew” that Jones would experience the injury—*i.e.*, the reputational harm caused by the defamatory article—in California.²⁰⁹ This is the Knowledge Test. Another interpretation may require only that the defendant aim his wrongful conduct at the plaintiff who, unbeknownst to the defendant, is injured in the forum. In another part of the opinion, the *Calder* Court seemed to endorse this approach when it concluded that jurisdiction was proper in California based on the “effects” of the defendant's Florida conduct in California.²¹⁰ This is the Effects Test.

These two possible interpretations of *Calder* have important implications in interstate domestic violence cases. For example, say the survivor has fled her abuser in State A and moved to State B. Once in State B, her abuser calls her numerous times, insisting that she return to State A. Terrified that her abuser will find her, the survivor suffers a panic attack. Under the Knowledge Test, jurisdiction is only appropriate if the abuser knew that the survivor was in State B when he called her. Under the Effects test, jurisdiction is appropriate because the abuser could reasonably anticipate that his phone call would frighten the survivor and cause effects somewhere, even if he did not

206. *Id.*

207. *Id.*

208. *Id.* at 789–90.

209. *Id.*

210. *Id.* at 789–90 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980)); see RESTATEMENT (SECOND) OF CONFLICTS OF L. § 37 (AM. L. INST. 1971).

know it would occur in State B. Unfortunately, *Calder*'s ambiguity went unresolved until the Supreme Court decided to consider the issue again thirty years later.

b. *Walden v. Fiore*

The next case to deal with personal jurisdiction over intentional tortfeasors is *Walden v. Fiore*.²¹¹ In that case, the plaintiffs were two Nevada residents who alleged that the defendant, a federal Drug Enforcement Agency (DEA) agent, improperly seized their money and detained them while traveling through Atlanta's airport.²¹² According to the plaintiffs, the defendant filled out an affidavit with false information in an effort to justify the seizures.²¹³ As a result, the plaintiffs sued the DEA agent in Nevada, arguing that their constitutional rights were violated.²¹⁴

In another unanimous decision, the Supreme Court held that the Nevada court lacked personal jurisdiction over the non-resident defendant.²¹⁵ The Court emphasized that the plaintiff's residency alone cannot form the necessary link between the defendant and the forum state.²¹⁶ Rather, the defendant must engage in conduct that forms the "necessary connection" with the forum.²¹⁷ However, in this case, the Court noted that the conduct that gave rise to the suit—the seizure and filing of the false affidavit—took place entirely in Georgia.²¹⁸ "Unlike the broad publication of the forum-focused story in *Calder*"—i.e., the tabloid article defaming a Hollywood celebrity living and working in California—the effects of the defendant's conduct on the plaintiffs were not "tethered" or connected to the forum in any "meaningful way."²¹⁹

It is unclear how *Walden*'s references to "meaningful" connections with the forum state apply in the domestic violence context. One interpretation of *Walden* might require some additional conduct, beyond mere knowledge that the survivor resides in the forum state, to link the abuser to the forum. Alternatively,

211. 571 U.S. 277 (2014).

212. *Id.* at 280–81.

213. *Id.*

214. *Id.* at 281.

215. *Id.* at 288.

216. *Id.* at 285.

217. *Id.*

218. *Id.* at 288–90.

219. *Id.* at 290.

Walden may be entirely distinguishable, since in that case, the harm occurred outside of the forum state; in the hypothetical where the abuser calls the survivor after she has fled, causing her to suffer a panic attack, the harm (*i.e.*, the panic attack) occurs inside the forum state.

c. *Mucha v. Wagner*

Following *Calder* and *Walden*, state courts routinely dismiss protection orders when the non-resident abuser's violence lacks "purposeful direction" or a sufficient nexus with the forum state itself.²²⁰ *Mucha v. Wagner* is one illustrative example.

In *Mucha*, the North Carolina Supreme Court held that a trial court lacked personal jurisdiction over an abuser because he purportedly did not know that the survivor resided in North Carolina when he called and harassed her.²²¹ The court based its decision on "two important principles": (1) conduct directed at a person is not necessarily the same as conduct directed at a forum state; and (2) a defendant's knowledge that a plaintiff could be somewhere other than the state in which the plaintiff typically resides is not sufficient to establish personal jurisdiction in any state where the plaintiff happens to be.²²² According to the court, without any forum targeting or knowledge that the victim resided in the forum state, the trial court lacked personal jurisdiction over the abuser.²²³ In other words, the non-resident abuser must take some additional action to purposefully establish a connection with the forum state itself, which is impossible if he does not know where the victim resides when he harasses her over the phone.²²⁴

220. *See, e.g.*, *Mucha v. Wagner*, 861 S.E.2d 501, 512 (N.C. 2021). State courts also declined to assert personal jurisdiction over non-resident abusers in interstate domestic violence cases before *Walden* was decided. *See, e.g.*, *Becker v. Johnson*, 937 So. 2d 1128, 1131 (Fla. Dist. Ct. App. 2006) (holding that the court lacked personal jurisdiction over defendant-abuser since it was not evident that he knew where the plaintiff-victim resided when he made threatening phone calls to her after she moved to the forum state).

221. *Mucha*, 861 S.E.2d at 512.

222. *Id.* at 508.

223. *Id.* ("Applying these principles to this case, Wagner has not purposefully availed himself of the benefits and protections of the laws of North Carolina. While Wagner purposefully directed conduct at Mucha, he had no way of knowing that in doing so he was establishing any connection with the State of North Carolina.")

224. But it is less clear whether *forum* targeting is an additional, necessary factor in the Due Process inquiry. The court admitted that while placing several

The North Carolina Supreme Court gave little or no weight to two relevant factors—the state’s interest in protecting its residents from non-resident abusers and the survivor’s interest in obtaining relief in a convenient and effective forum. While the court acknowledged the state’s interest in “enabling its residents to live free from harassment, abuse, and violence,” it emphasized that “other state courts examining personal jurisdiction claims in the context of domestic violence orders have not jettisoned the purposeful availment requirement.”²²⁵ While a protection order case presents “very different governmental interests than the need for orderly resolution of contract disputes” involved in other personal jurisdiction cases, the court feared exercising jurisdiction in this case would “open the door to the abandonment of due process protections in other settings where the State’s interest is also compelling.”²²⁶

The court also refused to weigh the victim’s interest in obtaining relief in the forum state—the state where she was forced to take refuge in.²²⁷ According to the court: “the due process in-

harassing calls to a North Carolina resident’s *cellphone* is insufficient, “it would likely alter the jurisdictional analysis if the defendant had called the plaintiff in North Carolina on a phone number linked to a *physical address* in North Carolina.” *Id.* at 510 (emphasis added) (citing *Hughes v. Cole*, 572 N.W.2d 747, 751 (Minn. Ct. App. 1997) (concluding that trial court had personal jurisdiction because “[t]he record indicates [the defendant] made repeated telephone calls to respondent’s home” in Minnesota while maintaining a relationship with his son who lived there)). However, in both scenarios, the abuser is still targeting the victim, not the forum state. The only difference is the abuser’s knowledge. In the former case, the abuser presumably has no reason to suspect that the victim resides in the forum state; in the latter case, the abuser knows that the victim resides in the forum state since she receives the calls from a specific physical location.

225. *Id.* at 509–10 (citing *Fox v. Fox*, 2014 VT 100, 197 Vt. 466, 106 A.3d 919) (concluding that the Vermont trial court lacked personal jurisdiction to enter protective order because the “defendant did not avail himself of any benefits or protections of Vermont’s laws, or subject himself to the authority of Vermont’s courts”); *Shah v. Shah*, 875 A.2d 931, 940 (N.J. 2005) (concluding that the trial court lacked personal jurisdiction over a defendant who “has not ‘purposefully availed’ himself of the laws of New Jersey”).

226. *Mucha*, 861 S.E.2d at 510.

227. *See id.* at 506–10. *But see Parocha v. Parocha*, 2018 CO 41, ¶ 22, 418 P.3d 523, 529–30 (“Wife sought refuge from Husband’s alleged domestic abuse with her family in this state. She should not have had to wait until he arrived at her door to seek the court’s protection from his threats in light of the history

quiry is focused on the nature and extent of the defendant's relationship to the forum State."²²⁸

2. The Knowledge Test Conflates Purposeful Availment with Purposeful Direction and Should Be Rejected in Interstate Domestic Violence Cases

Although the court in *Mucha* applied the "purposeful direction" standard,²²⁹ its emphasis on the defendant's knowledge conflated "purposeful direction" with "purposeful availment." In stream of commerce cases, "purposeful availment" requires some knowledge that the manufacturer's product would be marketed in the forum.²³⁰ The knowledge requirement in this context therefore ensures that the defendant can "structure [its] primary conduct"²³¹ by giving it "fair warning" that a particular activity may subject it to jurisdiction.²³² Otherwise, it would be difficult for a manufacturer to structure its business to avoid litigation in distant fora if the mere act of placing a product in the stream of commerce subjected it to jurisdiction in every state where the product caused an unforeseeable harm.

The Knowledge Test makes less sense, however, when the defendant is accused of intentional misconduct. For example, an abuser who harasses his victim by calling her cellphone numerous times after she has moved to another state does not lack "fair warning" that his conduct may result in litigation somewhere other than his home state.²³³ After all, all fifty states allow victims of domestic violence to petition for a protective order against an abuser.²³⁴ Moreover, if the abuser wants to avoid litigation, he can structure his primary conduct by refraining from

of violence and coercion in their marriage. Her interest in convenient and effective relief from potential further domestic abuse through a civil protection order entered by a court in the state in which she resides is weighty.").

228. *Mucha*, 861 S.E.2d at 506 (internal quotation marks omitted) (citing *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021)).

229. *See id.* at 508–10.

230. *See supra* Part III.A.

231. *World-Wide Volkswagen Co. v. Woodson*, 444 U.S. 286, 297 (1980).

232. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment)).

233. *Id.*

234. SCHNEIDER ET AL., *supra* note 44; A.B.A. COMM'N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 8.

engaging in abuse that he knows will cause harm.²³⁵ Thus, applying the Knowledge Test in domestic violence cases obscures the critical distinctions between harm caused by intentional misconduct and harm caused from negligent, or even non-negligent, business decisions.

3. The Effects Test Is a More Viable Test to Apply Under the Purposeful Direction Standard

Given the deficiencies in the Knowledge Test, lower courts should instead apply the Effects Test when the abuser reaches out to his victim after she flees to another state. Although *Calder* and *Walden* both focus, in part, on the defendant's knowledge,²³⁶ an effects approach still maintains consistency with existing precedent.²³⁷ *Calder* requires conduct "expressly aimed" at the forum and "calculated" to cause injury in the forum.²³⁸ *Walden* requires conduct that is connected to the forum in a "meaningful way."²³⁹ However, in an interstate domestic violence case, the abuser's conduct is calculated to cause injury, but it lacks a focal point or geographical connection. Because this situation is different than those the Court considered in *Calder* and *Walden*, lower courts should return to *International Shoe*'s functional approach.²⁴⁰ This would require courts to consider whether the abuser could predict that the effect of his abuse would occur and produce litigation *somewhere*, even if the specific forum was unpredictable.²⁴¹ It would also allow courts to weigh the competing interests, including the interests of the victim, the abuser, and the forum state.²⁴²

235. See Erbsen, *Effects*, *supra* note 85, at 447 ("If potential defendants do not like uncertainty, they can mitigate exposure by not engaging in wrongful conduct that they know will cause harm.").

236. See *Calder v. Jones*, 465 U.S. 783, 789–90 (1984) (noting that defendants edited an article that would have a potentially devastating impact on the plaintiff who they "knew" resided and worked in California); *Walden v. Fiore*, 571 U.S. 277, 279 (2014) (acknowledging that the defendant "knew" his allegedly tortious conduct in Georgia would delay the return of funds to plaintiffs with "connections" to Nevada).

237. See Erbsen, *Effects*, *supra* note 85, at 431–32.

238. *Calder*, 465 U.S. at 789.

239. *Walden*, 571 U.S. at 290.

240. See Erbsen, *Effects*, *supra* note 85, at 450.

241. See *id.* at 449.

242. See *id.* at 450.

The New Jersey court in *A.R. v. M.R.* applied this functional approach.²⁴³ In determining whether the abuser had established sufficient contacts with the forum, the court considered the state's interest in providing a forum to victims of domestic violence.²⁴⁴ It also considered the victim's interest in accessing the forum, acknowledging that the case at hand was "no ordinary suit for money damages, but an action whose result may determine whether plaintiff and her children live or die."²⁴⁵ Finally, the court considered the abuser's interest, but found that based on the parties' history and the context of the precipitating violence, his harassing telephone calls were analogous to physically pursuing the survivor there.²⁴⁶ The court's analysis in *A.R. v. M.R.* illustrates how other courts deciding whether to exercise personal jurisdiction in interstate domestic violence cases can apply the Effects Test.

C. EXTENDING CALDER'S EFFECTS TEST IN INTERSTATE DOMESTIC VIOLENCE CASES

The Effects Test may provide a viable pathway to jurisdiction when an abuser reaches out and harms his victim after she moves to another state. However, the Effects Test does not apply to situations where the abuser harms his victim before, but not after, she moves to another state. Yet nothing in the Fourteenth Amendment's Due Process Clause suggests that a court lacks the power to subject an abuser to its authority in this situation. Courts should therefore extend the Effects Test in situations where the victim seeks a protection order against an abuser who has harmed her before, but not after, she moved to a new state.

First, interstate domestic violence cases present unique and novel facts that make them readily distinguishable from typical interstate tort cases, such as libel (*Calder*) or fraud (*Walden*). To obtain a protection order, the victim must allege recent violence or a threat creating an imminent risk of future violence.²⁴⁷ The

243. 799 A.2d 27, 28 (N.J. Super. Ct. App. Div. 2002).

244. *Id.* at 31 ("In deciding whether defendant's conduct was such that he should have reasonably anticipated plaintiff's seeking our protection in New Jersey, we cannot lose sight of the purposes of the [Domestic Abuse] Act.").

245. *Id.*

246. *Id.* at 32.

247. SCHNEIDER ET AL., *supra* note 44, at 255–57.

significant safety threat to the victim²⁴⁸ and the relatively minimal burden placed on the abuser²⁴⁹ are factors that are absent in more run-of-the-mill intentional tort cases and lend support to a court's decision to assume jurisdiction over out-of-state defendants.

Another critical distinction is the nature of the relief sought. In *Calder and Walden*, the plaintiffs sought monetary damages to remedy past harms.²⁵⁰ But in a protection order case, the victim seeks relief to protect herself from harm she believes is certain to occur in the future, absent judicial intervention. In one, the court looks backward to remedy a past harm; in the other, the court looks forward to prevent an imminent, future harm. As a result, strictly applying the current Effects Test to interstate domestic violence contexts overlooks numerous qualitative differences between domestic violence and the run-of-the-mill intentional tort.

Instead of requiring a victim to wait for her abuser to commit another act of domestic violence, courts should determine jurisdiction based on whether the victim's claim arose in the forum state. This approach is well-suited to interstate domestic violence cases for two main reasons. First, to obtain a protective order, a victim typically must show a *current* fear or likelihood of further violence.²⁵¹ When a victim flees to another state and seeks a protective order, this element is not established until she actually arrives in the new state and files her claim while in a continuing state of fear or danger. If the victim establishes that she is presently in fear or danger of domestic violence, the abuser has likely already been placed on "notice" that he may be subject

248. *Domestic Violence Statistics*, *supra* note 5 (finding that women are seventy-seven percent more likely to be killed by their male partners during separation than at any other time during the relationship).

249. G. Kristian Miccio, *With All Due Deliberate Care: Using International Law and the Federal Violence Against Women Act to Locate the Contours of State Responsibility for Violence Against Mothers in the Age of Deshaney*, 29 COLUM. HUM. RTS. L. REV. 641, 645 (1998) (emphasizing the minimal burden on the abuser because of the expedited nature of the civil protective order hearings).

250. *But see* *Kulko v. Superior Ct.*, 436 U.S. 84 (1978) (holding that a California court could not assert jurisdiction over a non-resident non-custodial father who refused to pay child support).

251. *See, e.g.*, Eric C. Surette, 28 C.J.S. *Domestic Abuse and Violence* § 5, Westlaw (database updated Aug. 2022) ("Generally, in order to obtain relief under a statute providing for protection from abuse, the plaintiff must show that the defendant has engaged in misconduct as specified in the statute, and, in seeking temporary or emergency relief, the victim must show *imminent or immediate and present* danger of harm from domestic violence.") (emphasis added).

to suit somewhere. The abuser's conduct typically is part of a *pattern* of coercive control, designed to place the victim in a continued state of fear²⁵²—not a “random, isolated, or fortuitous” event.²⁵³

Second, to obtain a protection order, a survivor must also demonstrate that the parties are, or were, in a qualifying relationship.²⁵⁴ The presence of a pre-existing relationship does not ensure that the abuser knows his harmful conduct will have an effect in the forum state. However, it does establish a greater connection to the state since his prior relationship to a forum resident may produce ongoing effects in the state.

* * *

Although most of the Supreme Court's personal jurisdiction cases apply the “purposeful availment” standard, the Court developed an alternative “purposeful direction” standard in two intentional tort cases: *Calder* and *Walden*. Although imprecise at times, these cases demonstrate that when an abuser reaches out to the survivor in her new state and causes a harm, jurisdiction is proper under the Effects Test. A natural extension of *Calder*'s Effects Test also supports the conclusion that jurisdiction is proper even before the abuser reaches out to the survivor in the new state.

CONCLUSION

A survivor of domestic violence should not have to choose between her own physical safety and a protection order. The two can—and should—be compatible under a fair and reasonable procedural system. The Due Process Clause of the Fourteenth Amendment protects an out-of-state defendant from being subject to personal jurisdiction in a state with which he has no connection. But an abuser does not lack a connection to the state in which his victim seeks refuge in. As a result, this Note makes

252. *Understanding the Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROJECT, <https://www.theduluthmodel.org/wheels/faqs-about-the-wheels> [https://perma.cc/CQ2J-35NF].

253. *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984).

254. Mitchell Waldman, 25 AM. JUR. 2D *Domestic Abuse and Violence* § 8, Westlaw (database updated Aug. 2022) (explaining that states generally require a victim to show that she has been subjected to domestic violence by a person who is a present or former family or household member, dating partner, or person with whom the victim has a child in common or anticipates having a child in common if the victim is pregnant).

two main arguments for allowing courts to exercise personal jurisdiction over out-of-state abusers in these circumstances. First, a survivor should be able to obtain a protection order before the abuser reaches out to the new state. This can be established by extending *Calder's* Effects Test. Second, if the abuser does reach out to the new state by, for example, calling the victim's cell-phone that the abuser does not realize is in the new state, then courts have an even stronger basis for jurisdiction under existing law.