IN THE UTAH COURT OF APPEALS

DAVID AMMON JAKEMAN, Appellant, v. **SPENCER J. COX, DEREK BROWN, JESS L. ANDERSON, JEFFREY S. GRAY, STEVE EARL, STATE OF UTAH,** Appellees.	Case No. 20260371-CA ____ Appeal from the Fourth District Court, Utah County The Honorable Shawn R. Howell District Court No. 250401696

OPENING BRIEF OF APPELLANT

DAVID A. JAKEMAN (*pro se*)
57 N Archmore St.
Saratoga Springs, UT 84043
Tel: (509) 306-2673
Email: jakemandav@gmail.com

Appellant, pro se

MATTHEW D. CHURCH #15574
mchurch@mc2b.com
MARGARET KELLY #18978
mkelly@mc2b.com

201 South Main Street, Suite 750
Salt Lake City, Utah 84111
(801) 363-5678

Attorneys for Appellees Gray and Earl

DAVID N. WOLF (6688)
dnwolf@agutah.gov
JASON N. DUPREE (17509)
jndupree@agutah.gov
JORDEN W. TRUMAN (19718)
jwtruman@agutah.gov

P.O. Box 140856
Salt Lake City, Utah 84114
(385) 584-6509

Attorneys for Appellees Cox, Brown, and Anderson

LIST OF CURRENT AND FORMER PARTIES AND COUNSEL

Pursuant to Utah Rule of Appellate Procedure 24(a)(1), the following is a complete list of all parties to the proceeding in the court below and the names, addresses, and bar numbers of their respective counsel.

Appellant

David Ammon Jakeman (Plaintiff below),
pro se
57 N Archmore St
Saratoga Springs, UT 84043
(509) 306-2673
jakemandav@gmail.com

State Appellees

Derek Brown, in his official capacity as Attorney General of the State of Utah

Jess Anderson, in his official capacity as Commissioner of the Utah Department of Public Safety

Spencer Cox, in his official capacity as Governor of Utah State

Represented by:
David N. Wolf (6688)
Jason N. Dupree (17509)
Jorden W. Truman (19718)
Assistant Utah Attorneys General
P.O. Box 140856
Salt Lake City, UT 84114

City and County Appellees

Jeffrey S. Gray, in his official capacity as Utah County Attorney, and

Steve Earl, in his official capacity as Orem City Attorney (Defendants below)

Represented by:
Matthew D. Church (15574)
Margaret H. Kelly (18978)
201 South Main Street, Suite 750
Salt Lake City, UT 84111

TABLE OF CONTENTS

LIST OF CURRENT AND FORMER PARTIES AND COUNSEL i
TABLE OF AUTHORITIES v
INTRODUCTION 1
STATEMENT OF JURISDICTION 2
STATEMENT OF THE ISSUES 2
STATEMENT OF THE CASE 4
A. Nature of the Case 4
B. The Statutory Scheme 4
C. The Orders Entered Against Jakeman 6
D. The Civil Action and Its Course 8
E. The Prior Criminal Proceedings 11
SUMMARY OF THE ARGUMENT 12
ARGUMENT 15
I. Both substantive-due-process rulings rest on a single threshold error: the district court never applied any substantive-due-process standard to the statute, treating "no set of circumstances" as the whole inquiry instead of the conclusion of one. 15
A. A facial challenge is adjudicated by applying the governing constitutional standard to the statute's own terms and operation. 16
B. The "no set of circumstances" formulation describes the result of that analysis—and this Court can so hold without questioning Gillmor. 17
C. Rahimi and Gordon—the very authorities the State pressed below—confirm this methodology. 19
D. The Utah authorities on which the district court relied are consistent with this methodology; none establishes "no set of circumstances" as a substantive-due-process merits bar. 19
E. The district court substituted a hypothetical for the constitutional merits. 22
F. The error originated at the first hearing and persisted unexamined through final judgment. 22
G. To the extent any authority is read to install "no set of circumstances" as a freestanding merits bar, that question is preserved for the Utah Supreme Court. 23
H. Disposition. 24

II. The March 16 ruling independently erred by resolving the pleaded facial claim on an unpleaded — and never-litigated — as-applied basis. 24

A. Facial and as-applied challenges are distinct, and the pleadings determine which is before the court. 24

B. Yet the March 16 ruling's dispositive reasoning was as-applied. 25

C. The "a fortiori" move requires an actual, litigated determination that the statute is valid as applied — a determination that never existed in this case. 26

D. No court has ever determined, on the merits, that section 78B-7-804 was constitutionally applied to Jakeman. 29

E. The court's own "master of the complaint" principle forbids the move it made. 30

F. Even on its own terms, the court's as-applied reasoning was circular. 31

G. Disposition. 32

III. Applying the governing article I, section 7 standard, sections 78B-7-804(3) through (5) cannot survive: they work a permanent, termination-grade severance of a fundamental parental right without the findings that severance demands. 32

A. Parental rights are fundamental under article I, section 7, and a law that burdens them is subject to strict scrutiny. 32

B. As to non-victim minor children, the statute works the functional equivalent of termination—yet demands none of the findings termination requires. 34

C. The statute fails strict scrutiny, and the orders entered against Jakeman show the defect is in the terms. 35

D. The defect is facial, and subsections (4) and (5) entrench rather than cure it. 37

E. Persuasive authority confirms the conclusion, and this Court has already recognized the question is open. 38

F. Disposition. 39

IV. The August 4, 2025 dismissal of the federal substantive-due-process claim must be reversed. 39

A. The dismissal is reviewed de novo, and on the face of the complaint the federal claim was stated. 39

B. No stated ground supports dismissal, and the only theory advanced—"no set of circumstances"—cannot defeat a facial claim at the threshold. 41

C. The same order's treatment of the equal-protection claim is irreconcilable with dismissing the due-process claim with prejudice. 41

D. At a minimum, the order's disposition of an "as-applied" claim with prejudice must be vacated. 42

E. Law-of-the-case poses no obstacle to reversal. 43

F. Disposition. 43
V. The January 14 and March 19 rulings on the federal equal-protection claim must be reversed: the classification is sentencing form, and it bears no rational relationship to the rationales offered to defend it. 44
A. The classification the statute draws is sentencing form, not dangerousness. 44
B. Under rational-basis review, faithfully applied, the classification fails. 45
C. Pointing out that the line drawn by the classification trigger fails its own rationale is rational-basis review, not "strict scrutiny in disguise." 50
D. The district court's own initial analysis was correct, and nothing changed to justify abandoning it. 51
E. In the alternative, the classification warrants heightened scrutiny. 51
F. Disposition. 52
CONCLUSION 52
CERTIFICATE OF COMPLIANCE 53
CERTIFICATE OF SERVICE 54

TABLE OF AUTHORITIES

Cases

City of Chicago v. Morales, 527 U.S. 41 (1999) 20
City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) 46, 49, 50
City of Los Angeles v. Patel, 576 U.S. 409 (2015) 17, 22, 25
Copelin-Brown v. New Mexico State Personnel Office, 399 F.3d 1248 (10th Cir. 2005) 49
Dias v. City & County of Denver, 567 F.3d 1169 (10th Cir. 2009) 49
Doe v. City of Albuquerque, 667 F.3d 1111 (10th Cir. 2012) 16, 18, 25, 38
FCC v. Beach Communications, Inc., 508 U.S. 307 (1993) 45
F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) 44
Gallivan v. Walker, 2002 UT 89, 54 P.3d 1069 ..... 14, 50, 51
Gillmor v. Summit County, 2010 UT 69, 246 P.3d 102 ..... passim
Greenwood v. City of North Salt Lake, 817 P.2d 816 (Utah 1991) 12, 18, 23, 26
Helf v. Chevron U.S.A., Inc., 2009 UT 11, 203 P.3d 962 ..... 3, 39
Heller v. Doe, 509 U.S. 312 (1993) 46, 49
Ho v. Department of Commerce, Division of Occupational & Professional Licensing, 2020 UT App 37, 462 P.3d 808 28
Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 46
Hudgens v. Prosper, Inc., 2010 UT 68, 243 P.3d 1275 40
iMatter Utah v. Njord, 774 F.3d 1258 (10th Cir. 2014) 16
In re B.T.B., 2020 UT 60, 472 P.3d 827 ..... 34, 35
In re E.K.S., 2016 UT 56, 387 P.3d 1032 21
In re J.P., 648 P.2d 1364 (Utah 1982) ..... passim
In re K.T.B., 2020 UT 51, 472 P.3d 843 ..... 20, 34, 52
Jensen ex rel. Jensen v. Cunningham, 2011 UT 17, 250 P.3d 465 33
Johnson v. United States, 576 U.S. 591 (2015) 17
Jones v. Jones, 2015 UT 84, 359 P.3d 603 33
Lassiter v. Department of Social Services, 452 U.S. 18 (1981) 21, 40
Lehi City v. Rickabaugh, 2021 UT App 36, 487 P.3d 453 20
Loving v. Virginia, 388 U.S. 1 (1967) 44
Malan v. Lewis, 693 P.2d 661 (Utah 1984) 14, 49

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976).....51
Meyer v. Nebraska, 262 U.S. 390 (1923).....33, 40
Orem City v. Jakeman, 2025 UT App 107.....6, 7, 11
Orem City v. Jakeman, 2025 UT App 187.....passim
Pierce v. Society of Sisters, 268 U.S. 510 (1925).....33, 40
Reed v. Reed, 404 U.S. 71 (1971).....44
Romer v. Evans, 517 U.S. 620 (1996).....46, 50
Santosky v. Kramer, 455 U.S. 745 (1982).....33, 40
SECSYS, LLC v. Vigil, 666 F.3d 678 (10th Cir. 2012).....45, 51
Stanley v. Illinois, 405 U.S. 645 (1972).....33, 40
Stary v. Ethridge, 712 S.W.3d 584 (Tex. 2025).....34, 38
State v. Allred, 2026 UT App 1.....35
State v. Angilau, 2011 UT 3, 245 P.3d 745.....3
State v. Garcia, 2022 UT App 77, 526 P.3d 1238.....13, 27
State v. Herrera, 1999 UT 64, 993 P.2d 854.....13, 20, 26, 27
State v. Lafferty, 2001 UT 19, 20 P.3d 342.....13, 26, 27
State v. Lopez, 2020 UT App 101, 468 P.3d 604.....13, 28
State v. Mohi, 901 P.2d 991 (Utah 1995).....14, 49
State v. Pharris, 846 P.2d 454 (Utah Ct. App. 1993).....13, 27
Steffel v. Thompson, 415 U.S. 452 (1974).....12, 18, 23, 38
StreetMediaGroup, LLC v. Stockinger, 79 F.4th 1243 (10th Cir. 2023).....16
Tischmak v. Utah State Tax Commission, 2025 UT 24, 574 P.3d 63.....passim
Troxel v. Granville, 530 U.S. 57 (2000).....33, 37, 40
United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973).....46, 49, 50
United States v. Gordon, 137 F.4th 1153 (10th Cir. 2025).....passim
United States v. Rahimi, 602 U.S. 680 (2024).....passim
United States v. Salerno, 481 U.S. 739 (1987).....8, 18, 20, 21
Utah Public Employees' Ass'n v. State, 2006 UT 9, 131 P.3d 208.....21, 23
Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982).....28
Washington v. Glucksberg, 521 U.S. 702 (1997).....17
Wells v. Children's Aid Society of Utah, 681 P.2d 199 (Utah 1984).....13, 33, 35, 36
Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955).....46
Zobel v. Williams, 457 U.S. 55 (1982).....46

Constitutional Provisions

U.S. Const. amend. XIV .....passim
Utah Const. art. I, § 7.....passim
Utah Const. art. I, § 24.....9

Statutes

Utah Code § 64-14-203 .....47, 48
Utah Code § 76-5-108 47
Utah Code § 77-18-105 47
Utah Code § 77-18-108 47
Utah Code § 77-36-1.1 47
Utah Code § 78A-3-102.....2
Utah Code § 78A-4-103.....2
Utah Code § 78B-7-804.....passim
Utah Code § 78B-7-805.....35
Utah Code § 80-4-104 .....6, 34
Utah Code § 80-4-301 .....6, 34

Rules

Utah R. App. P. 4(a) 2
Utah R. App. P. 21.....54
Utah R. App. P. 24(g) 53
Utah R. App. P. 42.....2, 11
Utah R. Civ. P. 12(b)(6).....3, 39
Utah R. Civ. P. 54(b) 10, 11

INTRODUCTION

Utah Code section 78B-7-804 sorts offenders convicted of the same domestic-violence offenses into two tracks by a single variable—whether the sentence includes incarceration to be served after conviction. The offender whose sentence does receives a mandatory, permanent continuous protective order that can bar all contact with his own non-victim minor children, exclude him from every place they live, learn, and worship, and be lifted only on clear and convincing proof that the victim has no reasonable fear of future harm. The otherwise identical offender whose sentence does not include post-conviction incarceration receives, at most, a discretionary order that expires with his sentence. The statute requires no finding that the parent is unfit, no finding specific to any child, and no consideration of less restrictive alternatives before it permanently severs a parent's bond with children who were never victims of the offense.

David Jakeman challenged that scheme on its face under the substantive-due-process guarantees of the Utah and federal constitutions and under the federal Equal Protection Clause. The district court never reached the merits of any challenge under the governing standard. It dismissed the federal due-process claim with prejudice on the theory that a facial challenger must prove the statute invalid in every conceivable application—a proposition that describes the *result* of a constitutional analysis, not a substitute for one. It granted summary judgment against the Utah due-process claim on that same threshold theory, compounded by resolving an as-applied claim Jakeman never pleaded and had expressly disclaimed. And it upheld the equal-protection classification as

rational only by reversing its own earlier conclusion—entered months before, on the same record—that the sentencing-form line bears "not a rational tie to the legitimate state interest."

Every issue is a question of law, arising on the face of signed written orders and the pleadings, and reviewed for correctness. This Court should reverse. At a minimum, it should vacate the two substantive-due-process rulings and remand them for first-instance adjudication under the standards the district court never applied. This Court has already observed that "the law in this matter is far from settled." *Orem City v. Jakeman*, 2025 UT App 187, ¶ 14. This civil action squarely presents that question, on a record built to decide it.

STATEMENT OF JURISDICTION

The district court entered final judgment disposing of all claims and all parties on March 28, 2026. R.3277–79. Jakeman filed a timely notice of appeal on March 30, 2026. R.3280–3326; *see* Utah R. App. P. 4(a). The Utah Supreme Court had jurisdiction under Utah Code section 78A-3-102(3)(j); it declined to retain the appeal and transferred it to this Court, which has jurisdiction under Utah Code section 78A-4-103(2)(j) and Utah Rule of Appellate Procedure 42. R.3331–33; R.3377–79.

STATEMENT OF THE ISSUES

Issue I. Whether the district court erred in granting summary judgment against Jakeman's facial claim that Utah Code section 78B-7-804(3) through (5) violates the substantive-due-process guarantee of article I, section 7 of the Utah Constitution—both

because it treated the "no set of circumstances" formulation as a threshold merits bar rather than applying the governing constitutional standard, and because it resolved the pleaded facial claim on an unpleaded, expressly disclaimed as-applied basis.

Standard of review. The constitutionality of a statute, and a grant of summary judgment, are questions of law reviewed for correctness. *State v. Angilau*, 2011 UT 3, ¶ 7, 245 P.3d 745; *Gillmor v. Summit County*, 2010 UT 69, ¶ 16, 246 P.3d 102.

Preservation. R.2791–2826; R.2913–21; R.2922–38; R.1014–60.

Issue II. Whether the district court erred in dismissing with prejudice, under Rule 12(b)(6), Jakeman's facial claim that the statute violates the substantive component of the Due Process Clause of the Fourteenth Amendment.

Standard of review. The propriety of a Rule 12(b)(6) dismissal is a question of law reviewed for correctness, accepting the complaint's well-pleaded allegations as true. *Helf v. Chevron U.S.A., Inc.*, 2009 UT 11, ¶ 14, 203 P.3d 962.

Preservation. R.220–84; R.631–69; R.694–733; R.1014–60.

Issue III. Whether the district court erred in granting summary judgment against Jakeman's facial claim that the statute violates the Equal Protection Clause of the Fourteenth Amendment, by upholding the sentencing-form classification under rational-basis review and declining to apply heightened scrutiny.

Standard of review. Correctness. *State v. Angilau*, 2011 UT 3, ¶ 7, 245 P.3d 745; *Gillmor v. Summit County*, 2010 UT 69, ¶ 16, 246 P.3d 102.

Preservation. R.2521–34; R.2701–33; R.3138–69; R.3233–41.

STATEMENT OF THE CASE

A. Nature of the Case

This is a civil action for declaratory and injunctive relief challenging the facial constitutionality of Utah Code section 78B-7-804(3)–(5) — Utah's continuous-protective-order statute. Jakeman alleged that subsections (3) through (5) violate the substantive component of the Due Process Clauses of the Utah and federal constitutions, Utah Const. art. I, § 7 and U.S. Const. amend. XIV, and that the statute violates the Equal Protection Clause of the Fourteenth Amendment. R.1–51; R.843–62.

Three rulings, all merged into the final judgment of March 28, 2026, are before this Court: the August 4, 2025 order dismissing the federal substantive-due-process claim with prejudice (R.687–89); the January 14, 2026 order granting summary judgment against the federal equal-protection claim (R.3051–56); and the March 16, 2026 order granting summary judgment against the facial Utah substantive-due-process claim (R.3249–55). R.3277–79. Each ruling disposed of a facial constitutional claim without applying the governing constitutional standard to the statute's own terms and operation.

B. The Statutory Scheme

Section 78B-7-804 creates two tracks for protective orders following a domestic-violence conviction, and a single variable selects the track: whether incarceration is served after conviction.

The sentencing-protective-order track. Before a convicted perpetrator may be placed on probation, the court "shall consider the safety and protection of the victim and

any member of the victim's family or household," Utah Code § 78B-7-804(1), and "may" condition probation or a plea in abeyance on a sentencing protective order (SPO) that restrains threats, harassment, and contact and that may include "any other condition necessary to protect the victim," *id.* § 78B-7-804(2). An SPO is discretionary and temporary; it expires with the sentence.

The continuous-protective-order track. "[I]f a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is *to be served after conviction*, the court shall issue a continuous protective order at the time of the conviction or sentencing," unless, after a hearing, the court finds by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse. *Id.* § 78B-7-804(3)(b)–(c). A continuous protective order (CPO) "is permanent." *Id.* § 78B-7-804(3)(d). It may prohibit all contact and communication, exclude the perpetrator from protected locations, and include "any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member." *Id.* § 78B-7-804(3)(d)(v). Under subsection (4), a CPO may be modified or dismissed "only if" the court determines, again by clear and convincing evidence, that all requirements of subsection (3) are met and that "the victim does not have a reasonable fear of future harm or abuse." *Id.* § 78B-7-804(4). Under subsection (5), a victim may petition for such an order "at any time." *Id.* § 78B-7-804(5).

The Legislature stated its rationale in the statute's text: "[b]ecause of the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence

subsequent to the *release* of a perpetrator who is convicted of or adjudicated for domestic violence," continuous protective orders are warranted "because of the need to provide ongoing protection for the victim." *Id.* § 78B-7-804(3)(a).

Nothing in subsections (3) through (5) requires a finding of parental unfitness, a child-specific best-interest or necessity finding, proof of any ground for termination of parental rights under Title 80, or consideration of less restrictive alternatives before a permanent order severs all contact between a parent and minor children who were not victims of the offense. *Compare id.* § 78B-7-804(3)–(5), *with id.* §§ 80-4-104, -301.

C. The Orders Entered Against Jakeman

Jakeman is the father of seven children. *Orem City v. Jakeman*, 2025 UT App 107, ¶ 2; R.843–62. On August 22, 2023, he was convicted of eight misdemeanor domestic-violence offenses across five cases prosecuted by Orem City: Nos. 221300408, 221300553, 231300069, 231300079, and 231300162. R.14; *Orem City v. Jakeman*, 2025 UT App 187, ¶ 2. One of those convictions, in case 221300408, was for misdemeanor child abuse; the victim was Jakeman's daughter A.J., who was seventeen at the time of the incident and an adult by the time the orders at issue were entered. *Orem City v. Jakeman*, 2025 UT App 107, ¶¶ 1-6, 24-26. The remaining four convictions were for violation of a protective order. R.230-31. On November 3, 2023, the court imposed a sentence that included a term of incarceration to be served after conviction — the condition that, under subsection (3)(b), placed Jakeman within the mandatory continuous-protective-order track. R.188.

On September 27, 2024, the court entered five continuous protective orders, one in each case. R.843–62; R.22–47 ("Exhibit A"). Each order identifies the protected person as "an intimate partner of the defendant" — the children's mother. R.24; R.22–47. Each order then names as additional protected parties the couple's children, and on the face of each order the children's relationship to Jakeman is recorded not as "Child" but as "Child of an Intimate Partner (formerly Child)." R.23; R.22–47.

Five of those children were minors when the orders issued — referred to here by their initials to protect their privacy: S.J., H.J., J.J., M.J., and G.J. R.843–62. None of the five was a victim of any offense of conviction; the sole child victim was A.J., who was already an adult when the orders entered. R.15; R.231; *Orem City v. Jakeman*, 2025 UT App 107, ¶¶ 1, 25. As to the five non-victim minor children, the orders prohibit Jakeman from telephoning, contacting, or otherwise communicating with any of them, directly or indirectly; bar him from their residences, schools, workplaces, and places of worship; and require him to leave if he encounters any of them. R.15; R.22–47. Each order is permanent. Utah Code § 78B-7-804(3)(d).

The orders were entered under subsection (5), during a hearing the court had convened on Jakeman's own motion to modify the then-existing sentencing protective orders. R.14; R.188; *Orem City v. Jakeman*, 2025 UT App 187, ¶¶ 3–4. At that hearing, Jakeman proposed several less-restrictive alternatives to a total bar — including supervised visitation with his minor children, in person and electronically, which he offered to fund himself through a named provider. R.193. The court denied the requested modifications and, on the prosecution's motion, replaced the sentencing orders with five

continuous protective orders. R.189; *Orem City v. Jakeman*, 2025 UT App 187, ¶¶ 3–4. In doing so, the court found only that the victim had a reasonable fear of future harm or abuse — the determination subsections (3)(c) and (4) prescribe. R.200. It made no finding that Jakeman was an unfit parent, no child-specific finding as to any of the five minor children, and no determination that permanent, total no-contact was necessary as to them — nor does the statute provide any mechanism for weighing the alternatives he proposed.

D. The Civil Action and Its Course

In April 2025, Jakeman filed this action, challenging the facial constitutionality of subsections (3), (4), and (5) under the federal Due Process and Equal Protection Clauses and the Utah Constitution. R.1–51. His supporting memorandum developed the substantive-due-process theory at length. R.220–84. Two related actions he filed challenging subsections (4) and (5) were consolidated into this case. R.923–24. The State Defendants moved to dismiss on a single threshold theory: that a facial challenger must establish "no set of circumstances" under which the statute would be valid, relying on *United States v. Salerno*, 481 U.S. 739 (1987), *United States v. Rahimi*, 602 U.S. 680 (2024), and *United States v. Gordon*, 137 F.4th 1153 (10th Cir. 2025). R.295–307.

The first ruling. The court heard argument on July 3, 2025, and on August 4, 2025 entered a written order adopting the State's threshold theory. The order dismissed the federal substantive-due-process claim with prejudice, "either as a facial challenge or as an 'as-applied' challenge," without stating reasons. R.687–89. In the same order, the

court declined to dismiss the equal-protection claim, concluding that "the timing of when a sentence is served, whether it is prior to sentencing in the form of time served, or after sentencing, is not necessarily a reflection on the harshness or severity of the underlying event," and that "there is not a rational tie to the legitimate state interest that warrants the disparate treatment of individuals within the same class." R.688–89.

Jakeman moved for reconsideration and filed a dedicated memorandum addressing the "no set of circumstances" language, explaining that the phrase describes the result of a completed facial analysis rather than a threshold test that displaces it. R.631–733; R.1014–60. On September 16, 2025, the court denied reconsideration, stating that it "stands on its prior ruling." R.1061–63.

On August 22, 2025, Jakeman filed the operative amended complaint. R.843–62. Count I alleged that subsections (3) through (5) are facially unconstitutional under the Due Process Clauses of the Utah and federal constitutions; Count II alleged that the statute is facially unconstitutional under the Fourteenth Amendment's Equal Protection Clause. R.843–62. In this action, Jakeman pleaded facial challenges only; he pleaded no as-applied claim. The court later denied leave to file a further amended complaint that would have added a standalone uniform-operation-of-laws theory under article I, section 24 of the Utah Constitution. R.3242–48. That theory is therefore not separately before this Court; Utah's uniform-operation decisions are cited only as persuasive support for the federal equal-protection analysis in Part V.

The equal-protection ruling. The parties cross-moved for summary judgment on the federal equal-protection claim. R.2521–34; R.2638–62. By order entered January 14,

2026, the court granted the State's motion and denied Jakeman's. R.3051–56. The order recorded that Jakeman "confirmed in the hearing that he has not brought an as-applied challenge; he brings only a facial challenge." R.3052 n.4. The court applied rational-basis review, reasoning that the period after release from incarceration "can be especially fraught" because the victim's fear is "magnified," and that an offender's "incentive to maintain good behavior" diminishes after sentencing; it added that the availability of hearings "diminish[es] the mandatory nature of a continuous protective order and strengthen[s] the CPO Statute's rationality"; and it concluded that Jakeman "has not met his burden in showing that the CPO Statute operates unconstitutionally in all its applications." R.3053–54. The same order denied Jakeman's motion for Rule 54(b) certification. R.3054–55.

The parties then cross-moved for summary judgment on the remaining claim, the facial Utah substantive-due-process claim. R.2791–2826; R.2851–72. By ruling entered March 16, 2026, the court granted the State's motion and denied Jakeman's. R.3249–55. The court held that Utah facial-challenge doctrine required Jakeman to establish that "no set of circumstances exists under which the statute would be valid." R.3251–53. It reasoned that the statute "broadly applies to perpetrators of domestic violence, many of whom do not have children, or whose children were the direct victims of the abuse," and therefore "undoubtedly operates constitutionally in at least some circumstances." R.3253. The court then held that "a facial challenge must fail a fortiori if the challenged statute is constitutional as applied to the plaintiff," concluded that the statute "operated constitutionally as applied to" Jakeman based on his convictions and the September 27,

2024 hearing, and cited no authority for that proposition. R.3253. Finally, invoking the principle that "[a] plaintiff is the master of his complaint," the court declined to address a Uniform Operation of Laws theory it found Jakeman had not pleaded. R.3253–55.

Reconsideration of the equal-protection ruling. On March 19, 2026, the court denied Jakeman's amended Rule 54(b) motion to reconsider the equal-protection ruling. R.3266–73. It reaffirmed the release-risk and diminished-incentive rationales, invoked the Legislature's findings in subsection (3)(a), and characterized Jakeman's argument as "demand[ing] a level of tailoring incompatible with rational basis review." R.3269–72.

Final judgment disposing of all claims and parties entered March 28, 2026. R.3277–79. Jakeman filed a timely notice of appeal on March 30, 2026. R.3280–3326. The Utah Supreme Court declined to retain the appeal and transferred it to this Court under rule 42(a) of the Utah Rules of Appellate Procedure on May 14, 2026. R.3379.

Across all three rulings, no court identified the liberty interest at stake, fixed the level of scrutiny that article I, section 7 or the Fourteenth Amendment requires, or measured the terms of subsections (3) through (5) against any substantive constitutional standard; and at no point in this action was an as-applied claim pleaded or litigated.

E. The Prior Criminal Proceedings

Two criminal appeals preceded this civil action, and neither adjudicated the constitutional questions presented here. In *Orem City v. Jakeman*, 2025 UT App 107, this Court affirmed Jakeman's convictions, addressing only the sufficiency of the evidence, a claim of structural error, and claims of ineffective assistance of counsel; it reached no

constitutional question concerning section 78B-7-804. In *Orem City v. Jakeman*, 2025 UT App 187, this Court affirmed the continuous protective orders on invited-error and plain-error grounds. It declined to entertain a facial challenge raised for the first time in a reply brief, *id.* ¶ 13 n.3, and held that any alleged constitutional error could not have been obvious to the district court "because the law in this matter is far from settled," *id.* ¶ 14. The Utah Supreme Court denied certiorari. Neither decision adjudicated — or forecloses — the facial questions presented here, which are litigated for the first time in this civil declaratory action on a record built for that purpose.

SUMMARY OF THE ARGUMENT

I. Both substantive-due-process rulings rest on one threshold error. A facial challenge is resolved by identifying the governing constitutional standard and applying it to the statute's terms; the requirement that the challenger show "no set of circumstances" under which the statute would be valid describes the *result* of that analysis, not a substitute for it. The phrase entered Utah law in *Greenwood* as a vagueness result borrowed from *Steffel*, and the Utah Supreme Court has treated it that way ever since, including in *Tischmak*, which recited the formulation but resolved the claim by identifying the right and fixing the level of scrutiny—not by treating the formulation as the test. *Rahimi* and *Gordon*—the authorities the State pressed below—did the same. The district court did neither. It recited the formulation, identified no liberty interest and no level of scrutiny, and stopped. Because the court can correct this on existing law, without

disapproving *Gillmor*, the substantive-due-process rulings should be reversed and remanded for the analysis that was never performed.

II. The March 16 ruling independently erred. The court resolved Jakeman's pleaded facial claim by holding that the statute was constitutional "as applied" to him and that his facial claim therefore "must fail a fortiori." But Jakeman pleaded only a facial challenge and expressly confirmed he brought no as-applied claim. The "a fortiori" formulation the court borrowed comes from *Lafferty* and *Herrera*, and in both—as in *Pharris*, *Garcia*, *Ho*, and *Lopez*, and in the State's own *Rahimi* and *Gordon*—the facial claim failed only *because* a litigated as-applied challenge had first been decided on the merits. No such adjudication ever occurred here, in this action or any other; the court supplied a missing predicate by deciding, against a party who never raised it, a question no one had litigated. The same "master of the complaint" principle the court invoked to refuse Jakeman's unpleaded theory forbade the court from resting judgment on an unpleaded theory of the State's.

III. On the merits, the article I, section 7 standard the rulings skipped resolves the Utah claim. Utah treats the parent-child relationship as fundamental, so a statute burdening it must survive strict scrutiny—a compelling interest pursued through narrowly tailored means. *Wells v. Children's Aid Society of Utah*, 681 P.2d 199, 206 (Utah 1984). Sections 78B-7-804(3) through (5) cannot. As to non-victim minor children they work the functional equivalent of termination, yet require none of the findings termination demands—unfitness, best interest, or strict necessity, including consideration of less restrictive alternatives. The statute triggers on the timing of confinement,

commands a permanent order, reaches the children through the "household member" sweep, and keys the only exit to the victim's (not the children's) fear. *In re J.P.* struck a termination statute facially, on a motion to dismiss and without an as-applied record, because its substantive standard was inadequate to the right; the same defect is fatal here.

IV. The August 4 dismissal of the federal substantive-due-process claim was error for the threshold reason in Part I and for three more: the dismissal stated no ground and rested only on the insufficient "no set of circumstances" theory; the same order found the companion classification may lack "a rational tie to the legitimate state interest," which cannot be squared with dismissing with prejudice a claim that draws *more* demanding scrutiny; and the order dismissed an "as-applied" claim that was never pleaded.

V. The equal-protection rulings must be reversed. The statute's only classifying line is the timing of confinement—post-conviction incarceration—not danger, fitness, or recidivism. Under rational-basis review faithfully applied, every rationale offered for that line fails to track it: the release-risk concern applies equally to offenders outside the class; the "diminished-incentive" rationale is backwards, because the post-conviction offender enters supervision (probation, parole, revocation, and statutory enhancement) rather than escaping it; and the release-gap concern is addressed for both classes by sentencing protective orders and by the victim's standing to petition "at any time." Utah's uniform-operation decisions—*Malan*, *Mohi*, and *Gallivan*—confirm that a line of this kind is the sort courts strike, and *a fortiori* it fails the more deferential federal standard. The district

court reached the correct answer in its August 4 order, then abandoned it on a pure question of law with nothing changed.

The Court should reverse all three rulings. The narrowest disposition is to vacate the substantive-due-process rulings and remand for adjudication under the correct standard, and to reverse the equal-protection rulings; on the merits, the Court should hold sections 78B-7-804(3) through (5) facially invalid insofar as they permanently sever a parent's bond with non-victim minor children without the findings the constitution requires.

ARGUMENT

Part I identifies a single threshold error common to both substantive-due-process rulings. Parts II and III concern the Utah claim (Issue I)—its independent as-applied error and its merits. Part IV concerns the federal substantive-due-process dismissal (Issue II), which shares Part I's threshold error. Part V concerns the equal-protection rulings (Issue III).

I. Both substantive-due-process rulings rest on a single threshold error: the district court never applied any substantive-due-process standard to the statute, treating "no set of circumstances" as the whole inquiry instead of the conclusion of one.

The August 4 dismissal of the federal substantive-due-process claim and the March 16 summary judgment on the Utah substantive-due-process claim share a single,

dispositive flaw. In neither ruling did the district court identify the liberty interest at stake, fix the level of scrutiny the constitution requires, or measure the terms of sections 78B-7-804(3) through (5) against any substantive standard. Instead, in each ruling the court treated a single formulation—that a facial challenger must show "no set of circumstances exists under which the [statute] would be valid"—as though it were the entire constitutional inquiry. R.687–89; R.3251–53. It is not. That formulation describes the *conclusion* of a completed facial analysis; it does not supply, or substitute for, the analysis itself. Because the court never performed the analysis, both rulings must be reversed.

A. A facial challenge is adjudicated by applying the governing constitutional standard to the statute's own terms and operation.

A facial challenge tests the statute as written: it asks whether the statute's terms and necessary operation can be reconciled with the constitutional guarantee invoked. Resolving such a challenge therefore requires the court to do two things—identify the controlling constitutional standard, and apply it to the statute. The Tenth Circuit has stated the point directly: in a facial challenge, "the claim and the relief that would follow . . . reach beyond the particular circumstances of th[e] plaintiff[]," and the court's task is to test the statute against "the relevant constitutional test," not to search the record for one permissible application. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1123–24 (10th Cir. 2012); *accord iMatter Utah v. Njord*, 774 F.3d 1258, 1264–66 (10th Cir. 2014); *StreetMediaGroup, LLC v. Stockinger*, 79 F.4th 1243, 1248–49 (10th Cir. 2023). The

Supreme Court applies the same method. In *City of Los Angeles v. Patel*, the Court resolved a facial Fourth Amendment challenge by applying the governing standard to the statute's operation and squarely rejected the argument that a facial challenge fails whenever the statute has *some* valid applications. 576 U.S. 409, 415–20 (2015). And in *Johnson v. United States*, the Court held a statute facially void for vagueness notwithstanding that it plainly had valid applications, because the constitutional defect inhered in the statute's terms. 576 U.S. 591, 602–03 (2015).

Identifying the governing standard is not optional. Where a statute burdens a liberty interest, substantive-due-process review requires the court first to give "a careful description of the asserted fundamental liberty interest," and then to apply the level of scrutiny that interest commands. *Washington v. Glucksberg*, 521 U.S. 702, 719–21 (1997). A court cannot determine whether "any set of circumstances exists under which the [statute] would be valid" without first determining what the constitution requires of the statute. The "no set of circumstances" inquiry presupposes the constitutional standard; it cannot replace it.

B. The "no set of circumstances" formulation describes the result of that analysis—and this Court can so hold without questioning *Gillmor*.

The Utah cases that recite the "no set of circumstances" language do not hold otherwise; they describe what a successful facial challenge looks like once the merits analysis is complete. This Court can apply that settled understanding without disturbing *Gillmor v. Summit County*, 2010 UT 69, 246 P.3d 102, or any other decision.

The formulation's own pedigree shows it is a description, not a test. It entered Utah law in *Greenwood v. City of North Salt Lake*, a vagueness case, where the Court drew the phrase directly from *Steffel v. Thompson*: a facial challenger "must show that [the statute] is 'invalid in toto—and therefore incapable of any valid application.'" 817 P.2d 816, 819 (Utah 1991) (quoting *Steffel v. Thompson*, 415 U.S. 452, 474 (1974)). In that vagueness setting, the phrase did real work as a standing-and-sequence rule: "[u]nless the enactment is vague in all its applications, it is ordinarily not unconstitutional on its face," so the court first examines "whether the ordinance is vague in its application to the facts of the case." *Id.* The phrase thus came into Utah law describing the *outcome* of a vagueness analysis—"incapable of any valid application"—not as a freestanding bar that excuses a court from conducting the analysis. *Steffel* itself confirms the point: "incapable of any valid application" is the definition of a facially invalid statute, *i.e.*, the result, reached only after the constitutional standard has been applied. 415 U.S. at 474; *accord Doe*, 667 F.3d at 1127 (the *Salerno* formulation "describ[es] the result of the analysis, not the analysis itself").

Gillmor is consistent with this reading. There the Utah Supreme Court recited the "no set of circumstances" language only to contrast facial and as-applied challenges, and it decided the case on entirely separate, statute-of-limitations grounds. 2010 UT 69, ¶ 27. The language was descriptive dictum, not the engine of the decision. Reading the formulation as a description of the result—rather than as a merits test that displaces scrutiny—therefore takes nothing away from *Gillmor*; it reads *Gillmor* for what it actually held.

C. *Rahimi* and *Gordon*—the very authorities the State pressed below—confirm this methodology.

The State built its threshold defense on *United States v. Rahimi*, 602 U.S. 680 (2024), and *United States v. Gordon*, 137 F.4th 1153 (10th Cir. 2025). R.295–307. Those cases defeat the method the district court adopted. In *Rahimi*, the Supreme Court did not stop at the "no set of circumstances" phrase; it applied the governing Second Amendment standard to the statute's terms—examining the statute's findings, its temporary duration, and its fit with the historical tradition of disarming dangerous persons—and *then* concluded that the challenger had not shown the statute invalid in all applications. 602 U.S. at 693–702. The phrase described where the analysis ended; it did not substitute for the analysis. *Gordon* proceeded identically, applying the *Rahimi* framework to the statute before reaching any conclusion about facial validity. 137 F.4th at 1155. Neither court treated "no set of circumstances" as a license to skip the constitutional standard and hunt for a single valid hypothetical—which is precisely what the district court did here.

D. The Utah authorities on which the district court relied are consistent with this methodology; none establishes "no set of circumstances" as a substantive-due-process merits bar.

Surveyed honestly, the Utah decisions invoking the "no set of circumstances" language confirm that it has never operated as a freestanding substantive-due-process test. In each, the court either (i) used the phrase descriptively while deciding on other grounds, (ii) applied it in the vagueness or overbreadth setting from which it came, or (iii)

reached it only after adjudicating an as-applied challenge the litigant actually raised (the pattern addressed in Part II).

Tischmak v. Utah State Tax Commission is the clearest illustration. There the Utah Supreme Court recited the very formulation at issue—observing that a facial challenger "must prove that no set of circumstances exists under which the [s]tatute would be valid," 2025 UT 24, ¶ 27, 574 P.3d 63 (quoting *Herrera* and *Salerno*)—but that recitation did no work in the disposition. The Court instead turned to the analysis the district court here skipped: it identified the governing framework—"if a fundamental right . . . is implicated, we apply strict scrutiny; if not, only rational basis review is required," *id.* ¶ 39 (citing *In re K.T.B.*, 2020 UT 51, ¶ 32, 472 P.3d 843)—and determined which standard governed before reaching the merits, *id.* ¶ 40. The claim then failed not on the "no set of circumstances" recitation but because the challenger "ha[d] not advanced any argument that the Statute fails rational basis review." *Id.* ¶ 41. *Tischmak* thus confirms the method these rulings skipped: the formulation is not the test—identifying the liberty interest and fixing the level of scrutiny is. The district court never reached that analysis; and unlike the challenger in *Tischmak*, Jakeman squarely argued that the statute fails the governing standard. *Lehi City v. Rickabaugh* used the phrase only to distinguish facial from as-applied challenges and then conducted "a robust and traditional overbreadth analysis," not a search for one valid application. 2021 UT App 36, ¶¶ 35–36, 487 P.3d 453. *State v. Herrera* adopted the language directly from *Salerno*'s dictum, 1999 UT 64, ¶ 4 & n.2, 993 P.2d 854, and *Salerno*'s formulation has itself been recognized as dictum that does not state a universal rule, *see City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999)

(plurality) (the *Salerno* "dictum" "has never been the decisive factor in any decision of this Court"). Indeed, the Utah Supreme Court has declined to treat *Salerno* as controlling outside its setting, applying ordinary constitutional analysis instead. *See Utah Pub. Emps. Ass'n v. State*, 2006 UT 9, ¶¶ 20–25, 131 P.3d 208; *State v. Gardner*, 947 P.2d 630, 645 (Utah 1997) (rejecting the State's argument that *Salerno*'s "no set of circumstances" standard governed a facial challenge, and applying the governing substantive standard instead).

The one Utah decision in which "no set of circumstances" logic arguably carried the holding, *In re E.K.S.*, 2016 UT 56, ¶¶ 15–20, 387 P.3d 1032, does not support the district court's use of it here. *E.K.S.* was a *procedural* due-process case governed by the *Mathews/Lassiter* framework for appointment of counsel, not a substantive-due-process challenge under article I, section 7. *See Lassiter v. Department of Social Services*, 452 U.S. 18 (1981). The court did not announce a rule that the "no set of circumstances" formulation must thereafter displace substantive-due-process scrutiny, and no Utah decision has read it to do so. Reading *E.K.S.* to license what the district court did would extend a procedural-due-process disposition into a domain it never addressed.

In short, the authorities the district court invoked do not support converting a descriptive formulation into a substitute for substantive-due-process analysis. They confirm the opposite.

E. The district court substituted a hypothetical for the constitutional merits.

Having treated "no set of circumstances" as the whole inquiry, the court resolved the Utah claim by positing applications in which the challenged feature never operates. It reasoned that the statute "broadly applies to perpetrators of domestic violence, many of whom do not have children, or whose children were the direct victims of the abuse," and concluded that the statute therefore "undoubtedly operates constitutionally in at least some circumstances." R.3253. But Jakeman's challenge is directed at the statute's operation *where it permanently severs a parent's relationship with non-victim minor children without the findings the constitution requires.* That a childless offender, or an offender whose child was the victim, might be validly restrained says nothing about whether the statute is valid in the applications the challenge targets. *Patel* forecloses exactly this move: a facial challenge is not defeated by "applications . . . in which" the challenged feature "would not be unconstitutional," because the proper denominator is the set of applications the statute actually reaches in its challenged operation. 576 U.S. at 418–20. Pointing to circumstances in which the defect cannot arise does not answer whether the statute is constitutional where the defect does arise. The court answered a question Jakeman did not ask and left the question he did ask unanswered.

F. The error originated at the first hearing and persisted unexamined through final judgment.

The defect that disables both rulings traces to a single source. The State's motion to dismiss advanced one theory—that the facial challenge failed unless Jakeman could

show "no set of circumstances under which the statute's application could be valid," R.295–307—and the court adopted it at the July 3 hearing and entered it, without elaboration, in the August 4 order, stating no constitutional standard, no liberty-interest analysis, and no scrutiny determination. R.687–89. When Jakeman's reconsideration memorandum explained that the phrase states the result of a facial analysis rather than a threshold that displaces it, the court declined to revisit the question and "stand[s] on its prior ruling." R.1014–60; R.1061–63. The same framing then carried into the March 16 ruling, which again invoked "no set of circumstances," again identified no substantive standard, and resolved the claim on a single hypothetical. R.3251–53. This is not a series of independent missteps but one unexamined premise, adopted early and never tested against the governing law—and correcting it requires only that the facial claims be adjudicated under the standards the constitution supplies.

G. To the extent any authority is read to install "no set of circumstances" as a freestanding merits bar, that question is preserved for the Utah Supreme Court.

Jakeman's position does not require this Court to disapprove any decision: on the correct reading, the "no set of circumstances" formulation describes the result of a facial analysis, and the rulings below failed because they never conducted that analysis. *See* §§ A–B, *supra*. Should this Court conclude that *Gillmor* or its progeny instead install the formulation as a substantive merits test that displaces ordinary scrutiny, that reading would stand in tension with *Utah Public Employees Ass'n* and *Gardner* and with the formulation's vagueness-doctrine origins in *Greenwood* and *Steffel*. Jakeman preserves

for further review the argument that any such rule should be expressly disavowed. This Court, however, can resolve this appeal on existing law by reading the formulation as the Utah Supreme Court has applied it—as a description of the result, not a substitute for the analysis.

H. Disposition.

Because both substantive-due-process rulings rest on the same threshold error, both must be reversed. The federal claim was dismissed at the pleading stage and should be reinstated (Part IV); the Utah claim was resolved on cross-motions presenting a pure question of law and should be reversed with directions to adjudicate it under the governing article I, section 7 standard (Part III), or, at a minimum, vacated and remanded for that purpose.

II. The March 16 ruling independently erred by resolving the pleaded facial claim on an unpleaded — and never-litigated — as-applied basis.

A. Facial and as-applied challenges are distinct, and the pleadings determine which is before the court.

A facial challenge and an as-applied challenge are analytically separate. A facial challenge asks whether the statute's own terms and operation are constitutionally valid; an as-applied challenge "concedes that the challenged statute may be facially constitutional, but argues that under the particular facts of the party's case, the statute was applied in an unconstitutional manner." *Gillmor v. Summit County*, 2010 UT 69, ¶ 27,

246 P.3d 102; *accord City of Los Angeles v. Patel*, 576 U.S. 409, 415–20 (2015); *Doe v. City of Albuquerque*, 667 F.3d 1111, 1123–27 (10th Cir. 2012). Which challenge is before a court is fixed by the pleadings.

Here, every operative pleading presented a facial challenge and only a facial challenge. The original complaint challenged the facial constitutionality of subsections (3), (4), and (5). R.1–51. The operative amended complaint did the same. R.843–62. The State litigated the claim as facial from first motion to last; its dispositive summary-judgment motion was expressly directed to the "Facial Utah Substantive Due Process Claim." R.2851–72. The district court's January 14 order memorialized that Jakeman "confirmed in the hearing that he has not brought an as-applied challenge; he brings only a facial challenge." R.3052 n.4. And the March 16 ruling itself recognized that Jakeman raised "a facial substantive due process challenge under Article I, Section 7." R.3250–51. In this action, Jakeman pleaded no as-applied claim, and the district court so understood the case.

B. Yet the March 16 ruling's dispositive reasoning was as-applied.

After invoking the "no set of circumstances" formulation, the court held that "a facial challenge must fail a fortiori if the challenged statute is constitutional as applied to the plaintiff," and then adjudicated the as-applied question. R.3253. It reasoned that Jakeman had been convicted, that he received a hearing on September 27, 2024, that the hearing court heard his spouse's testimony, and that the resulting order was "grounded in evidence of risk and tailored to protect his family" — and it concluded that "the statute

was constitutionally applied to him," so that "his facial challenge must fail a fortiori." R.3253. Once Jakeman-specific application became dispositive, the court stopped answering the question actually presented: whether sections 78B-7-804(3), (4), and (5), by their own terms and operation, satisfy article I, section 7. *See* Part I, *supra*.

Nor was the as-applied framing Jakeman's doing; it entered the case through the defense. The State's motion to dismiss demanded that Jakeman show "no set of circumstances under which the statute's application could be valid," R.295–307, and its summary-judgment papers argued both that the statute had valid applications and that it "operated constitutionally as applied to" Jakeman, R.2851–72. If the court treated Jakeman-specific application as dispositive, it was not because Jakeman pleaded an as-applied claim; it was because the State's facial-defense theory invited the court to substitute the easier proposition that the statute was validly applied to one person for the facial question that was actually pleaded.

C. The "a fortiori" move requires an actual, litigated determination that the statute is valid as applied — a determination that never existed in this case.

The district court cited no authority for its "a fortiori" holding, R.3253, but the phrase is not original to it. The formulation traces to *State v. Lafferty*, where the Utah Supreme Court wrote that "[b]ecause we have already upheld the validity of [the statute] as applied to defendant, his facial challenge must fail a fortiori." 2001 UT 19, ¶ 78, 20 P.3d 342 (citing *State v. Herrera*, 1999 UT 64, ¶ 50, 993 P.2d 854, and *Greenwood v. City of North Salt Lake*, 817 P.2d 816, 819 (Utah 1991)). And *Lafferty* shows precisely

why the move cannot be made here: the "a fortiori" inference runs *from* a litigated as-applied holding *to* the facial claim, and it presupposes that an as-applied challenge was raised and decided on the merits first. In *Lafferty*, the defendant challenged the statute "both on its face and as applied to him"; the court announced that it would "first address the constitutionality of the statute as it applies to defendant," upheld the statute as applied after a merits analysis, and only then concluded that "his facial challenge must fail a fortiori." *Id.* ¶¶ 72, 78. The facial claim failed not because the court declined to analyze it, but because a fully litigated as-applied holding logically entailed its rejection. The decision *Lafferty* relied on did the same. In *State v. Herrera*, the Utah Supreme Court "first address[ed]" the defendant's as-applied contentions, upheld the challenged statutes "as applied to Herrera," and only then held that "his facial challenge fails a fortiori." 1999 UT 64, ¶¶ 34, 50, 993 P.2d 854. Two Utah Supreme Court decisions thus employ the "fail a fortiori" formulation, and both employ it the same way—as the conclusion of a completed as-applied adjudication, never as a substitute for one.

That sequence is the rule, not an outlier. In *State v. Pharris*, the defendant argued the statute was "invalid both on its face and as applied to the facts of his case"; the court of appeals held the statute "valid as applied to the facts of defendant's case" and, on that basis, "[did] not address defendant's challenge of the facial validity of the statute." 846 P.2d 454, 465–66 (Utah Ct. App. 1993). *State v. Garcia* is identical: presented with a challenge "both facial and as-applied," the court resolved the as-applied claim on the merits and then held that "because we conclude that the statute withstands his as-applied challenge, his facial challenge also necessarily fails." 2022 UT App 77, ¶ 54 & n.14, 526

P.3d 1238, 1251. The same pattern controls *Ho* and *Lopez*: in each, the court first resolved the challenger's as-applied contention on the merits, and the facial challenge then failed *a fortiori* or did not need to be separately reached. *See Ho v. Department of Commerce, Division of Occupational & Professional Licensing*, 2020 UT App 37, ¶¶ 14–15, 462 P.3d 808, 812–13 ("[b]ecause we conclude that [the statute] is constitutional as applied to Ho, her facial challenge fails"); *State v. Lopez*, 2020 UT App 101, 468 P.3d 604, 607 & n.3 ("because we hold that the statute is not unconstitutional as applied to Lopez, we need not separately consider any potential claim of it being unconstitutional on its face").

The federal cases the State pressed below follow the identical logic, and expose the error. *Rahimi* reached the facial attack only after holding "Section 922(g)(8) is constitutional as applied to the facts of Rahimi's own case"—an actual person, subject to an actual order, whose own application was adjudicated on the merits. 602 U.S. 680, 700–02 (2024). *Gordon* did the same, rejecting the facial claim only after holding the statute valid "as applied to the facts of [the defendant's] own case." 137 F.4th 1153, 1158 (10th Cir. 2025). The vagueness-context source of the rule is no different: a challenger "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 495, 500 (1982).

In each of these cases there was a litigated, merits determination that the statute was valid as applied to the challenger — the predicate the "a fortiori" inference requires. This case has no such predicate. Jakeman pleaded only a facial challenge, R.843–62, and

expressly confirmed on the record that he brought no as-applied challenge, R.3052 n.4. There was thus no as-applied claim for the court to resolve, and no litigated as-applied determination from which a facial claim could "fail a fortiori." The court did not apply the doctrine; it supplied the missing predicate by deciding, sua sponte and against a party who never raised it, an as-applied question no one had litigated.

D. No court has ever determined, on the merits, that section 78B-7-804 was constitutionally applied to Jakeman.

The defect is not merely that the as-applied theory was unpleaded; it is that the constitutional validity of the orders as applied to Jakeman has never been litigated or decided on the merits — not in this action, and not in any other court.

In this civil action, Jakeman disclaimed any as-applied challenge, and the issue was never briefed, developed, or submitted. R.3052 n.4; R.843–62. In the criminal proceedings, Jakeman did argue on appeal that subsection (5) was unconstitutional "as applied," but this Court resolved that claim on invited-error and plain-error grounds *without reaching the merits*, holding that any error could not have been obvious "because the law in this matter is far from settled." *Orem City v. Jakeman*, 2025 UT App 187, ¶¶ 13–15. And at the September 27, 2024 hearing itself, the court made only the statutory finding subsections (3)(c) and (4) prescribe — that the victim had a reasonable fear of future harm or abuse. R.199. It made no constitutional ruling, no finding of parental unfitness, and no child-specific finding as to any of the five non-victim minor children. That the summary-judgment court recited "undisputed facts" about the September 27

hearing — that it heard the spouse's testimony and "found it clear under the evidence . . . that his family had good reason to be afraid of him," R.3250 — does not supply the missing predicate. Those are findings of fear and safety: precisely the inquiry subsections (3)(c) and (4) direct, and precisely the inquiry whose constitutional sufficiency Jakeman's facial challenge contests. None is a finding of parental unfitness, a child-specific finding of necessity as to any of the five non-victim minor children, or an adjudication that the statute is constitutional as applied. A summary-judgment court's after-the-fact recitation of a hearing held in a separate proceeding is not the litigated, merits as-applied determination the "a fortiori" inference requires. No court has ever held — on a developed record, after litigation directed to the question — that section 78B-7-804 is constitutional as applied to Jakeman.

The March 16 ruling therefore did more than decide an unpleaded claim; it resolved an *un-litigated* constitutional question against the party it burdened, without notice and without any opportunity to develop a record directed to it — for example, a record establishing the absence of any child-specific finding at the September 27 hearing. Adjudicating an unlitigated claim against a party who never received notice of it, and who expressly disclaimed it, is error of the most basic kind.

E. The court's own "master of the complaint" principle forbids the move it made.

The March 16 ruling cannot be reconciled with the pleading principles the same order embraced. The court held that "[a] plaintiff is the master of his complaint" and "holds the prerogative of identifying the claims for relief to be submitted to the court for

decision," that the operative complaint defines the claims before the court, and that "a court may not grant judgment for relief that is not within the theory on which the case was tried." R.3253–55. The court invoked those principles to refuse a theory it found Jakeman had not pleaded. R.3253–55. They bind the court evenhandedly. Just as a party may not inject a new theory to *save* its case, a court may not adjudicate an unpleaded theory to *defeat* one. The very principle the court used to decline Jakeman's unpleaded theory barred the court from resting judgment against him on an unpleaded as-applied theory of the State's making.

F. Even on its own terms, the court's as-applied reasoning was circular.

Finally, the as-applied conclusion assumed the answer to the constitutional question. The court reasoned that the statute was validly applied to Jakeman because he received "procedural safeguards" — a conviction, a hearing, and a victim-fear determination. R.3253. But the hearing Jakeman received was precisely the hearing the statute prescribes: one directed to whether "the victim . . . [has] a reasonable fear of future harm or abuse." Utah Code § 78B-7-804(3)(c), (4). Jakeman's claim is that this victim-fear inquiry is constitutionally *inadequate* where the resulting order permanently severs a parent's relationship with non-victim minor children, because Utah law requires findings of unfitness, child-specific necessity, and consideration of less restrictive alternatives before the State may impose the functional equivalent of termination. R.2791–2826; R.220–84. Holding the statute valid as applied *because* Jakeman received the statute's own process is circular: it treats the sufficiency of the challenged process as

proof of its sufficiency. The constitutional question — whether that process is enough — was never answered.

G. Disposition.

The mismatch between the claim pleaded and the claim decided independently requires reversal of the March 16 ruling. At a minimum, the ruling should be vacated and the facial claim remanded for adjudication under the governing article I, section 7 standard. *See* Part III, *infra*.

III. Applying the governing article I, section 7 standard, sections 78B-7-804(3) through (5) cannot survive: they work a permanent, termination-grade severance of a fundamental parental right without the findings that severance demands.

This claim was decided on cross-motions presenting a pure question of law, R.2791–2826, and is reviewed for correctness. When the threshold error identified in Part I is corrected and the governing standard is supplied, the statute cannot stand in the operation the challenge targets—the permanent, total severance of a parent's relationship with minor children who were not victims of the offense.

A. Parental rights are fundamental under article I, section 7, and a law that burdens them is subject to strict scrutiny.

For more than four decades the Utah Supreme Court has treated a parent's relationship with his child as a fundamental right. In *In re J.P.*, the Court held that "the

right of a parent not to be deprived of parental rights without a showing of unfitness, abandonment, or substantial neglect is so fundamental to our society and so basic to our constitutional order" that it is among the liberties article I, section 7 protects. *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1982); *see id.* at 1374–77. The Court has reaffirmed that holding repeatedly. *See Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶¶ 72–74, 250 P.3d 465. The federal constitution is in accord. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

Because the right is fundamental, a statute that infringes it is not measured against the deferential standard reserved for economic and social legislation. The Utah Supreme Court so held in *Wells v. Children's Aid Society of Utah*, which applied "a more stringent standard of review than 'arbitrariness' or the rational basis test" to a statute infringing parental rights and required its proponent to show "(1) a compelling state interest in the result to be achieved and (2) that the means adopted are narrowly tailored to achieve the basic statutory purpose." 681 P.2d 199, 203, 206 (Utah 1984). The Court has applied that standard in the parental-rights setting itself: in *Jones v. Jones*, it held a grandparent-visitation statute that infringes a parent's fundamental right "subject to strict scrutiny," requiring the resulting order to be narrowly tailored to a compelling interest. 2015 UT 84, ¶¶ 2, 20, 359 P.3d 603. And *Tischmak* confirms that when a law substantially burdens a fundamental right, strict scrutiny applies. 2025 UT 24, ¶ 39, 574 P.3d 63 (citing *In re*

K.T.B., 2020 UT 51, ¶ 32, 472 P.3d 843). That is the standard the district court was required to apply to sections 78B-7-804(3) through (5)—and never did. *See* Part I, *supra*.

B. As to non-victim minor children, the statute works the functional equivalent of termination—yet demands none of the findings termination requires.

A continuous protective order is "permanent." Utah Code § 78B-7-804(3)(d). Where it names a parent's minor children as protected parties, it forbids all contact and communication with them, for life. That is termination in all but name. The Supreme Court of Texas recently confronted the identical mechanism and held that a no-contact order of such duration "profoundly interferes with a parent's fundamental right to exercise care, custody, and control of her children," is "tantamount to a termination of parental rights," and so may not be entered without clear and convincing evidence. *Stary v. Ethridge*, 712 S.W.3d 584, 588–89 (Tex. 2025). It reached that holding over the very argument the State presses here—that such orders need no heightened safeguards because, unlike a formal termination, they leave residual rights intact and allow periodic review. What triggers heightened protection, the court held, is the gravity and permanence of the severance, not the label affixed to it. *Id.* at 589–90.

Utah treats the permanent severance of a parent-child relationship as a deprivation of the highest order, permitted only after demanding findings. Termination requires clear-and-convincing proof of a statutory ground—unfitness, abandonment, or neglect—*and* a separate determination that severance is in the child's best interest. *In re J.P.*, 648 P.2d at 1377; *In re B.T.B.*, 2020 UT 60, ¶ 46, 472 P.3d 827; *see* Utah Code §§ 80-4-104, -301.

Even then, the State may sever the relationship only where doing so is "strictly necessary," which obligates the court to "explore whether other feasible options exist that could address the specific problems or issues facing the family, short of imposing the ultimate remedy." *In re B.T.B.*, 2020 UT 60, ¶ 30 (quotation simplified); *see id.* ¶ 31. Sections 78B-7-804(3) through (5) impose the same ultimate consequence while demanding none of these safeguards. The sole trigger is that the perpetrator received a sentence of incarceration to be served after conviction, Utah Code § 78B-7-804(3)(b); the children are reached through the open-ended authorization to enter "any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member," *id.* § 78B-7-804(3)(d)(v); and no provision requires a finding that the parent is unfit, that severance serves any child's best interest, or that no less restrictive measure would protect the victim.[1]

C. The statute fails strict scrutiny, and the orders entered against Jakeman show the defect is in the terms.

Measured against the compelling-interest, narrow-tailoring standard of *Wells* and *Tischmak*, the statute cannot survive in the operation the challenge targets. The State's interest in protecting domestic-violence victims is compelling. But a permanent bar on all contact between a parent and his non-victim minor children is not narrowly tailored to

[1]*State v. Allred*, 2026 UT App 1, is not to the contrary. That criminal appeal decided only statutory-authorization, notice, procedural-due-process, and sufficiency questions, *id.* ¶¶ 11–15; it raised no facial substantive-due-process or equal-protection challenge to the statute. The order there issued under the discretionary mechanism of section 78B-7-805, *id.* ¶ 25, and was sustained on individualized findings that the perpetrator endangered the specific children, *id.* ¶ 38, and on a weighing of less restrictive alternatives, *id.* ¶ 39—the very findings that sections 78B-7-804(3) through (5) require no court to make.

that interest when the only predicate the statute requires is a finding directed at someone else—that the victim of the underlying offense "ha[s] a reasonable fear of future harm or abuse." *Id.* § 78B-7-804(3)(c), (4). A victim-fear finding addressed to the adult victim is not tailored to the distinct question whether a parent should be permanently separated from a child who was not the victim of that offense.

Wells itself illustrates both the method and the failure. The Court there upheld the provision before it, but only after applying strict scrutiny and confirming that "[n]o infringement of the unwed father's rights not essential to the statute's purposes has been identified." 681 P.2d at 206–07. Sections 78B-7-804(3) through (5) fail precisely that inquiry: the permanent severance of a parent's relationship with non-victim minor children is not essential to—and is largely untethered from—the statute's purpose of protecting the victim from future harm.

The orders entered against Jakeman show the defect operating on the statute's own terms. Within his five orders, the statute treats two constitutionally distinct groups identically. As to the children's mother (the named victim) and the adult daughter who was the victim of the child-abuse conviction, an order grounded in the victim's reasonable fear raises no parental-rights concern. But the same orders sweep in five minor children—none a victim of any offense of conviction—and impose a permanent, total no-contact bar on the strength of the identical victim-fear finding and nothing more. R.14-15; R.230-31; R.22–47. The statute drew no line between victim and non-victim children; it authorized the same permanent severance as to both through the "household member" sweep of subsection (3)(d)(v). That is not a complaint about how the orders were applied;

it is the statute operating as written, against any parent in subsection (3)'s class whose minor children are added as household members.

D. The defect is facial, and subsections (4) and (5) entrench rather than cure it.

Utah resolves a challenge of this kind without an as-applied record. *In re J.P.* is dispositive of the method: the challenge there arrived on a motion to dismiss, with "no evidentiary hearing" and "no other facts . . . before" the Court, which nonetheless held the termination statute unconstitutional because, by its terms, it permitted severance of a fit parent's rights without the findings the right requires. 648 P.2d at 1366, 1372–77. The same posture controls here. The standard the statute supplies—post-conviction incarceration plus the victim's reasonable fear—is no substitute for the unfitness, best-interest, and strict-necessity findings a severance-grade intrusion demands. *Troxel* confirms the vice is exactly an undisciplined standard untethered to findings about the protected relationship. 530 U.S. at 67–73.

Subsections (4) and (5) do not save the scheme; they perpetuate the defect. Subsection (4) makes the modification standard harsher than the standard for entry and directs it at the wrong person: relief is available "only if" the victim is found to lack a reasonable fear, Utah Code § 78B-7-804(4), so a parent may regain contact with his non-victim children only by litigating the victim's state of mind, never by showing anything about the children or his own fitness. Subsection (5)'s standing to petition "at any time" is the entry side of that same one-sided mechanism. A purported safeguard that conditions

the parent-child relationship on a third party's fear does not cure the absence of child-directed findings; it entrenches it.

It follows—returning to Part I—that in the operation the challenge targets, the statute is "incapable of any valid application": there is no set of circumstances in which sections 78B-7-804(3) through (5) may permanently sever a parent's relationship with non-victim minor children consistent with article I, section 7, because the statute never requires the findings that alone could justify such a severance. *See Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (10th Cir. 2012); *Steffel v. Thompson*, 415 U.S. 452, 474 (1974). That conclusion is the *result* of applying the governing standard to the statute's terms—which is what the district court never did.

E. Persuasive authority confirms the conclusion, and this Court has already recognized the question is open.

Stary is persuasive authority only, but its logic is directly on point: the more permanent and total the severance of the parent-child relationship, the more exacting the findings and proof the constitution requires—precisely what sections 78B-7-804(3) through (5) omit. And this Court has already acknowledged the question is unsettled. Affirming Jakeman's orders on preservation grounds in the criminal appeal, it declined to reach the merits because "the law in this matter is far from settled," noting *Stary* in the same breath. *Orem City v. Jakeman*, 2025 UT App 187, ¶ 14 & n.4. This civil action squares that open question, presented for the first time on a record built to decide it.

F. Disposition.

This Court should reverse the March 16 ruling and direct entry of judgment declaring sections 78B-7-804(3) through (5) facially invalid under article I, section 7 to the extent they authorize the permanent severance of a parent's relationship with non-victim minor children without the findings the fundamental right requires. At a minimum, the ruling should be vacated and the claim remanded for adjudication under that standard.

IV. The August 4, 2025 dismissal of the federal substantive-due-process claim must be reversed.

The August 4, 2025 order dismissed Jakeman's federal substantive-due-process claim with prejudice, "either as a facial challenge or as an 'as-applied' challenge," and stated no reasons. R.687–89. The dismissal was wrong for the threshold reason developed in Part I—the court resolved a facial claim without applying any substantive-due-process standard—and for three further reasons specific to this order and its posture.

A. The dismissal is reviewed de novo, and on the face of the complaint the federal claim was stated.

A rule 12(b)(6) dismissal presents a question of law reviewed for correctness, with "no deference" to the district court's ruling. *Helf v. Chevron U.S.A. Inc.*, 2009 UT 11, ¶ 14, 203 P.3d 962. The motion admits the complaint's well-pleaded facts but challenges the plaintiff's right to relief on those facts, and may be granted only if, accepting the allegations as true and drawing all reasonable inferences in the plaintiff's favor, the

plaintiff is plainly not entitled to relief. *Hudgens v. Prosper, Inc.*, 2010 UT 68, ¶ 14, 243 P.3d 1275. Taken as true, Jakeman's allegations state a federal substantive-due-process claim.

The interest Jakeman invokes lies at the core of the Due Process Clause. A parent's interest "in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests this Court has recognized." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality); *see Meyer v. Nebraska*, 262 U.S. 390, 399–401 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925). The State may not permanently sever that relationship without process and substantive justification commensurate with the right. *Santosky v. Kramer*, 455 U.S. 745, 753–54, 768–70 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651–58 (1972); *see Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981). The amended complaint alleged that sections 78B-7-804(3) through (5) permanently bar all contact between a parent and his non-victim minor children, on a trigger unrelated to parental fitness and with no child-specific findings, and thus deprive the parent of that fundamental liberty interest without the substantive safeguards the Constitution requires. R.843–62; R.220–84. Whether that claim ultimately prevails is a merits question reserved for Parts I and III; at the pleading stage, it cannot be said that Jakeman "is not entitled to relief." *Hudgens*, 2010 UT 68, ¶ 14.

B. No stated ground supports dismissal, and the only theory advanced—"no set of circumstances"—cannot defeat a facial claim at the threshold.

The order supplies no analysis to support dismissal. It neither identifies the liberty interest, fixes the standard of review, nor explains why the allegations fail; it recites only that the claim is dismissed with prejudice. R.687–89. The sole theory the State had advanced was that Jakeman could not show "no set of circumstances" under which the statute would be valid. R.295–307. For the reasons developed in Part I, that formulation describes the result of a completed facial analysis and cannot substitute for it; a court does not dispose of a facial substantive-due-process claim by reciting the formulation and going no further. *See* Part I, §§ A–E, *supra*. Because the only ground offered for dismissal was legally insufficient to defeat the claim, the dismissal cannot stand.

C. The same order's treatment of the equal-protection claim is irreconcilable with dismissing the due-process claim with prejudice.

The August 4 order is internally inconsistent. In the very ruling that dismissed the substantive-due-process claim with prejudice, the court declined to dismiss the equal-protection claim—because it found, on the same pleadings, that "the timing of when a sentence is served . . . is not necessarily a reflection on the harshness or severity of the underlying event," and that "there is not a rational tie to the legitimate state interest that warrants the disparate treatment of individuals within the same class." R.688–89. That is a determination that the statute's classifying line may lack even a rational basis.

The two rulings cannot coexist. The substantive-due-process claim and the equal-protection claim challenge the same statutory architecture—the permanent, mandatory continuous protective order that subsections (3) through (5) impose on the post-conviction-incarceration class. If the court thought it at least plausible that this architecture lacks a rational tie to a legitimate interest (so that the equal-protection claim survived), it could not simultaneously conclude that the companion claim—directed at the same architecture's permanent intrusion on a *fundamental* right, and therefore subject to *more* demanding scrutiny—was so clearly meritless as to warrant dismissal with prejudice. A claim implicating a fundamental liberty interest is not weaker than a rational-basis equal-protection claim attacking the same line; it is stronger. Dismissing the stronger claim with prejudice while allowing the weaker one to proceed, in one order and on one set of allegations, is a contradiction that itself requires reversal.

D. At a minimum, the order's disposition of an "as-applied" claim with prejudice must be vacated.

The order dismissed the federal claim "either as a facial challenge or as an 'as-applied' challenge." R.687–88. But Jakeman pleaded no as-applied claim, and he later confirmed on the record in this action that he "has not brought an as-applied challenge; he brings only a facial challenge." R.3052 n.4; R.843–62. A court cannot dismiss with prejudice a claim that was never pleaded, foreclosing a claim the litigant never made and may be entitled to bring on a different record. *See* Part II, *supra*. At a minimum, the "as-

applied" component of the August 4 dismissal must be vacated so that it does not operate as a preclusive bar to a claim that has never been litigated.

E. Law-of-the-case poses no obstacle to reversal.

That the district court declined to revisit the August 4 ruling on reconsideration, stating that it "stands on its prior ruling," R.1061–63, does not insulate the dismissal from review. Law-of-the-case is a discretionary doctrine that governs a trial court's reconsideration of its own interlocutory rulings; it does not constrain an appellate court's review of those rulings once they merge into a final judgment. Correcting an erroneous interlocutory dismissal is precisely the office of an appeal from the final judgment. The August 4 order is properly before this Court, and the district court's adherence to it is not a reason to leave the error uncorrected.

F. Disposition.

The August 4, 2025 order should be reversed and the federal substantive-due-process claim reinstated for adjudication under the governing standard. *See* Part I. At a minimum, the dismissal's "with prejudice" designation and its disposition of an unpleaded "as-applied" claim should be vacated.

V. The January 14 and March 19 rulings on the federal equal-protection claim must be reversed: the classification is sentencing form, and it bears no rational relationship to the rationales offered to defend it.

The January 14, 2026 order granted summary judgment against the federal equal-protection claim under rational-basis review, and the March 19, 2026 order denied reconsideration. R.3051–56; R.3266–73. The equal-protection claim presents a pure question of law and is reviewed for correctness. On that review, the classification cannot stand: the only thing separating the two groups is when an offender's incarceration is served, and none of the State's rationales—nor the court's—is rationally advanced by sorting offenders that way.

A. The classification the statute draws is sentencing form, not dangerousness.

Equal-protection analysis begins by identifying the line the statute draws between the classes it creates. *See Reed v. Reed*, 404 U.S. 71, 75–76 (1971) (classification must bear "a fair and substantial relation to the object of the legislation" (quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920))); *Loving v. Virginia*, 388 U.S. 1 (1967). Section 78B-7-804 draws a single line. Two perpetrators convicted of the identical domestic-violence offenses—same number, same type, same degree, against the same victim—are sorted into two classes by one variable: whether the perpetrator received a sentence of incarceration to be served after conviction. Utah Code § 78B-7-804(3)(b). The perpetrator who served incarceration *after* conviction is subject to a continuous protective order that the court "shall issue," that is "permanent," and that may

be modified "only if" the victim is later found to lack a reasonable fear. *Id.* § 78B-7-804(3)(b), (3)(d), (4). The otherwise-identical perpetrator who served no post-conviction incarceration—including one who served an equal or greater period *before* conviction—is subject at most to a discretionary sentencing protective order that expires with the sentence. *Id.* § 78B-7-804(1)–(2).

The classification, in other words, is built on the timing and placement of confinement relative to conviction. It is not built on dangerousness, recidivism risk, the severity of the offense, the identity of the victim, or any finding about the perpetrator's threat to anyone. Two people equally dangerous, convicted of identical crimes against identical victims, are treated categorically differently because of where their jail time fell on the calendar. The relevant constitutional question is whether *that* line—post-conviction incarceration—rationally serves a legitimate governmental purpose. *See SECSYS, LLC v. Vigil*, 666 F.3d 678, 685–88 (10th Cir. 2012) (rational-basis review tests the relationship between the legitimate end and the actual classification the legislature drew).

B. Under rational-basis review, faithfully applied, the classification fails.

Jakeman does not shade the standard. Rational-basis review is deferential: a classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis"; the burden is on the challenger "to negative every conceivable basis which might support it"; and the legislature "has no obligation to produce evidence" or to articulate its reasons. *FCC v. Beach Communications, Inc.*, 508

U.S. 307, 313–15 (1993); *Heller v. Doe*, 509 U.S. 312, 319–20 (1993); *see Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955).

But deference is not abdication. Even under rational-basis review, the classification must bear a rational relationship to the purpose offered for it, and the Supreme Court has repeatedly invalidated classifications that rest on a rationale the classification does not actually serve. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446–50 (1985); *Romer v. Evans*, 517 U.S. 620, 632–35 (1996); *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 534–38 (1973); *see also Zobel v. Williams*, 457 U.S. 55, 61–63 (1982), and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618–23 (1985) (striking distinctions drawn among similarly situated persons on a fixed criterion not rationally related to the asserted purpose). Deference describes the lens; it does not answer the question. The question is whether each justification offered for distinguishing the post-conviction-incarceration class is one that the sentencing-form line actually advances. None is.

1. The release-risk rationale does not track the line. The court's principal rationale, drawn from the statute's findings, was that the period after a perpetrator's *release* from incarceration "can be especially fraught" because the victim's fear is "magnified." R.3053; *see* Utah Code § 78B-7-804(3)(a). But that concern, if valid, is not unique to the post-conviction-incarceration class and does not distinguish it. A perpetrator who served his time *before* conviction is also released; one who served no incarceration at all is at large continuously. If post-release danger is the worry, the perpetrator who served no time is no less a concern—yet the statute subjects only the

post-conviction class to a mandatory, permanent order. The release-risk rationale, applied honestly, cuts across the line rather than along it. The difference between the classes is not danger; it is bookkeeping about when confinement occurred.

2. The "diminished-incentive" rationale is foreclosed by Utah's own supervision architecture. The court reasoned that an offender's "incentive to maintain good behavior" diminishes after sentencing, justifying a stronger order for the post-conviction class. R.3053. The rationale fails on its own terms before it reaches Utah law. The classification compares offenders who are *all* convicted and sentenced; the only variable is whether the period of incarceration falls before or after conviction. A justification that turns on the waning of an offender's *pre*-sentencing incentive to behave therefore cannot distinguish the two classes, because both stand on the same side of sentencing. The premise is mistaken on Utah law besides. A perpetrator who serves a sentence after conviction does not exit the State's supervisory reach; he enters it. He is subject to the conditions of probation or parole and to revocation for any violation, Utah Code §§ 77-18-105, -108; he is actively supervised by the Division of Adult Probation and Parole, which must report his noncompliance to the court and notify the victim and may impose graduated sanctions, including short terms of incarceration, *id.* § 64-14-203(1)(h), (2)(b); any violation of a protective order is itself a class A misdemeanor and a domestic-violence offense, *id.* § 76-5-108(2)–(4); and he faces statutorily enhanced penalties, escalating to a felony, for any subsequent domestic-violence offense, *id.* § 77-36-1.1.

3. The "release-gap" rationale is addressed by tools the statute already supplies to both classes. To the extent the concern is a gap in protection upon release, the statute

already addresses it without sorting offenders by when their incarceration is served. A sentencing protective order may restrain a perpetrator upon and after release, *id.* § 78B-7-804(1)–(2); while that order is in force and the perpetrator is supervised, the division must report any violation of it to the court and notify the victim, *id.* § 64-14-203(1)(k); and a victim may petition for a continuous protective order "at any time," *id.* § 78B-7-804(5)—a tool available regardless of where the perpetrator's confinement fell. Whatever protective gap might exist exists for both classes and is fillable for both by the same means. It supplies no reason to make a permanent, mandatory order automatic for one class and unavailable as a matter of course to the other.

4. The court's "safety valve" reasoning cannot rescue the line drawn by the classification trigger. The order reasoned that the availability of hearings "diminish[es] the mandatory nature of a continuous protective order and strengthen[s] the CPO Statute's rationality." R.3053–54. But the hearings the statute provides are directed solely to the victim's reasonable fear, *id.* § 78B-7-804(3)(c), (4); they test neither the rationality of the classification nor anything about the non-victim children swept into the order. A hearing that can only ask whether the victim remains afraid does not supply a rational basis for sorting identically-situated offenders by sentencing form; it administers the very classification mechanism whose rationality is in question.

In sum, each rationale offered either applies equally to both classes (release risk, release gap) or applies with greater force to the class the statute treats *more* leniently (diminished incentive). This is not the imprecision that rational-basis review tolerates. A legislature may draw imperfect lines, proceed one step at a time, and adopt classifications

that produce some inequality in practice. *Heller v. Doe*, 509 U.S. at 321. But that latitude presupposes a line that advances the asserted end at all; it does not extend to a line whose every justification reaches the excluded class with equal force or runs in reverse. To identify that defect is not to demand precise tailoring or mathematical nicety — the objection the court attributed to Jakeman, R.3269 — it is to apply the minimal rational connection that rational-basis review still requires. A classification whose every proffered justification fails to track the line drawn does not survive even rational-basis review. *Cleburne*, 473 U.S. at 446–50; *Moreno*, 413 U.S. at 534–38; *see also Dias v. City & County of Denver*, 567 F.3d 1169, 1181–83 (10th Cir. 2009); *Copelin-Brown v. New Mexico State Personnel Office*, 399 F.3d 1248, 1254–55 (10th Cir. 2005).

5. Utah's uniform-operation cases confirm the point. Although Jakeman presses this claim under the Fourteenth Amendment, Utah's decisions under the cognate uniform-operation guarantee confirm that a line of exactly this character is constitutionally infirm—reinforcing that it fails even the more deferential federal standard. Utah has repeatedly struck classifications that single out identically-situated persons on a basis untethered to the law's purpose. *Malan v. Lewis*, 693 P.2d 661, 669–71 (Utah 1984) (guest statute; "it is unconstitutional to single out one person or group of persons . . . on the basis of a tenuous justification that has little or no merit"). Most pointedly, *State v. Mohi* struck a statute that allowed identically-accused offenders to be sorted into materially different tracks—there, juvenile court versus adult court—because the State could identify no reasonable basis for "permitting identically situated [persons] to receive disparate treatment." 901 P.2d 991, 997–1003 (Utah 1995). The sentencing-

form line in section 78B-7-804 is the same species: identically-convicted domestic-violence offenders sorted into a permanent-order track and a temporary-order track on a basis the offered rationales do not support. *See also Gallivan v. Walker*, 2002 UT 89, ¶¶ 37–43, 54 P.3d 1069 (a discriminatory classification must "actually and substantially further" a legitimate purpose). That a classification of this kind has been struck under Utah's guarantee confirms that it cannot satisfy the federal one.

C. Pointing out that the line drawn by the classification trigger fails its own rationale is rational-basis review, not "strict scrutiny in disguise."

The March 19 order recast Jakeman's argument as "demand[ing] a level of tailoring incompatible with rational basis review." R.3269–72. It is not. Jakeman does not ask that the statute be narrowly tailored, employ the least restrictive means, or be perfectly calibrated to risk. He asks only what rational-basis review itself requires: that the classification bear *some* rational relationship to a legitimate purpose the classification trigger actually advances. Demonstrating that a classification's stated justifications apply equally to the excluded class, or point toward the favored class, is the ordinary work of rational-basis review—it is precisely what the Court did in *Cleburne*, *Romer*, and *Moreno*. Identifying a mismatch between a line of classification and its rationale is not heightened scrutiny; it is the minimum scrutiny, conducted rather than skipped.

D. The district court's own initial analysis was correct, and nothing changed to justify abandoning it.

The court reached the right answer the first time. In the August 4 order, on the same statute and the same allegations, the court found that "the timing of when a sentence is served . . . is not necessarily a reflection on the harshness or severity of the underlying event," and that "there is not a rational tie to the legitimate state interest that warrants the disparate treatment of individuals within the same class." R.688–89. That is the correct conclusion, and it is the conclusion the foregoing analysis compels. Between the August 4 ruling and the January 14 ruling, no fact changed—the equal-protection claim turned throughout on a pure question of law about the statute's classification. The court's later reversal of its own position was not the product of a developed record; it was a change of view. On de novo review, this Court owes no deference to the second view over the first, and the first was right.

E. In the alternative, the classification warrants heightened scrutiny.

The Court need not go beyond rational-basis review to reverse. But the classification independently demands more, because it does not distribute an ordinary economic benefit—it singles out one group of parents and subjects them, and only them, to the permanent severance of the fundamental parent-child relationship. Laws "selectively burdening fundamental rights" are "carefully scrutinized." *SECSYS, LLC v. Vigil*, 666 F.3d 678, 687 (10th Cir. 2012); *see Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 312 (1976); *Gallivan v. Walker*, 2002 UT 89, ¶ 40, 54 P.3d 1069

(heightened scrutiny where a classification implicates a "fundamental or critical right"). Because the classification operates on a fundamental right, strict scrutiny applies for the reasons set out in Part III. *See Tischmak v. Utah State Tax Commission*, 2025 UT 24, ¶ 39, 574 P.3d 63; *In re K.T.B.*, 2020 UT 51, ¶ 32, 472 P.3d 843. And for the same reasons the statute fails strict scrutiny as a substantive-due-process matter—the absence of narrow tailoring to the compelling interest, and the availability of less restrictive alternatives, *see* Part III, *supra*—the classification cannot survive heightened equal-protection scrutiny either. Whether reviewed under the deferential standard the district court applied or the heightened standard the classification in fact requires, the rulings should be reversed.

F. Disposition.

The January 14, 2026 order and the March 19, 2026 order should be reversed. Because the equal-protection claim presents a question of law on which the record is complete, this Court should direct entry of judgment for Jakeman on that claim; at a minimum, the rulings should be vacated and the claim remanded for application of the correct standard.

CONCLUSION

For the foregoing reasons, the Court should reverse the district court's August 4, 2025, January 14, 2026, March 16, 2026, and March 19, 2026 rulings, and the March 28, 2026 final judgment, and grant the following relief:

1. As to the substantive-due-process claims (Parts I, II, and IV): Vacate the August 4, 2025 dismissal and the March 16, 2026 summary judgment and remand both claims for adjudication under the governing constitutional standard; and, at a minimum, vacate the August 4 dismissal's "with prejudice" designation and its disposition of an unpleaded "as-applied" claim.
2. As to the merits of the Utah claim (Part III): Hold that sections 78B-7-804(3) through (5) are facially unconstitutional under article I, section 7 of the Utah Constitution to the extent they authorize the permanent severance of a parent's relationship with non-victim minor children without the findings the fundamental right requires, and direct entry of judgment accordingly.
3. As to the equal-protection claim (Part V): Reverse the January 14, 2026 and March 19, 2026 rulings and direct entry of judgment for Jakeman, or, in the alternative, remand for application of the correct standard.

Dated: June 30, 2026

/s/ David Ammon Jakeman
DAVID AMMON JAKEMAN, pro se

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limit of Rule 24(g) because, excluding the parts exempted by Rule 24(g)(2) (the table of contents, the table of authorities, the addendum, and the certificates of counsel), this brief contains 13,876

words, as counted by the word-processing system used to prepare it, which is fewer than the 14,000 words permitted for a principal brief.

This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman font.

Public/private records (Utah R. App. P. 21). I certify that this brief complies with Rule 21 regarding public and private records, and that any non-public information has been omitted or appropriately classified.

Dated: June 30, 2026

/s/ David Ammon Jakeman
DAVID AMMON JAKEMAN, pro se

CERTIFICATE OF SERVICE

I certify that on June 30, 2026, I served the foregoing and all attachments/exhibits on all Defendants or their Representatives through email as listed below.

MATTHEW D. CHURCH #15574
mchurch@mc2b.com
MARGARET KELLY #18978
mkelly@mc2b.com

Attorneys for Appellees Gray and Earl

DAVID N. WOLF (6688)
dnwolf@agutah.gov
JASON N. DUPREE (17509)
jndupree@agutah.gov
JORDEN W. TRUMAN (19718)
jwtruman@agutah.gov

Attorneys for Appellees Cox, Brown, and Anderson

Dated: June 30, 2026

/s/ David Ammon Jakeman
DAVID AMMON JAKEMAN, pro se