

No. 22-915

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ZACKEY RAHIMI,

Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

**BRIEF OF *AMICI CURIAE* LEGAL AID
CHICAGO AND OTHER ILLINOIS
ORGANIZATIONS IN SUPPORT OF
PETITIONER**

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**STATEMENT OF INTEREST OF *AMICI*
*CURIAE*¹**

Amici curiae are 21 organizations dedicated to serving survivors of domestic violence in Illinois. Collectively, these organizations provide a wide range of services to thousands of survivors each year. Each of these organizations has seen the devastating impact that firearm possession by those causing harm can have on survivors and their families and understands that survivors need access to legal remedies such as civil orders of protection and 18 U.S.C. § 922(g)(8). Below is a brief description of each organization.

Anew: Building Beyond Violence and Abuse (f/k/a South Suburban Family Shelter) has been serving survivors of domestic violence since 1980. Anew's mission is to provide comprehensive, coordinated services to families in which domestic violence exists without imposing any one solution. Anew works to create safe places for survivors while using survivor-led solutions. Anew sees the effect of gun violence each day in our work with survivors, and recognizes that safety planning and civil remedies, including gun forfeiture, are often the best and safest options for the survivors that we serve.

Apna Ghar, Inc. is a nonprofit organization committed to providing critical, comprehensive,

¹ This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. Sup. Ct. R. 37.6.

culturally competent services, and conducting outreach and advocacy across marginalized communities to end gender-based violence. We serve immigrant and refugee survivors, and those marginalized by race, ethnicity, and religion. Through our programs and services, we ensure that survivors of gender-based violence gain safety, stability and self-sufficiency. Our support of civil remedies for survivors, including gun forfeiture remedies, comes from our experience working with and for survivors and seeing first-hand how firearms increase the risk and level of harm survivors face.

Ascend Justice is a 501(c)(3) non-profit organization based in Chicago, Illinois. Our mission is to empower individuals and families impacted by gender-based violence or the child welfare system to achieve safety and stability through holistic legal advocacy and system reform. Formerly the Domestic Violence Legal Clinic, Ascend Justice has provided free legal services for survivors of gender-based violence since 1982. Ascend Justice has an interest in ensuring that survivors have access to the full range of legal remedies enumerated in federal and Illinois law necessary to support victims' efforts to avoid further abuse.

CAWC (f/k/a Connections for Abused Women and their Children) has been providing survivor-led, trauma-informed, and trauma-sensitive services to survivors of domestic violence in the Chicagoland area for over 45 years. CAWC's mission focuses on empowering survivors and their families with the skills

and support they need to heal and live a life free of violence. Given our work in the community, CAWC advocates see first-hand the consequences of perpetrators of harm having access to a firearm and understand how this access creates increased safety barriers and harm for survivors.

Chicago Children's Advocacy Center ("ChicagoCAC") has worked to unite public, private and community partners to ensure the safety, health and well-being of abused children for the past 20 years. ChicagoCAC and our partners are the frontline responders to reports of child sexual abuse. Every year we respond to over 2,000 reports of child sexual abuse and other serious child maltreatment. Through our work with vulnerable children, we have seen the impact of domestic and firearm violence on children, families, and the community, and understand that gun forfeiture is a remedy that often prevents violence in survivors' homes.

Chicago Alliance Against Sexual Exploitation ("CAASE") is a not-for-profit that opposes sexual abuse and exploitation by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in prevention and community engagement work and policy reform. Through its legal department, CAASE provides direct legal services to survivors of sexual assault and exploitation. CAASE is interested in seeing that state and federal laws related to sexually discriminatory violence—such as domestic violence—are appropriately interpreted and applied so as to

further efforts to hold perpetrators of sexual violation accountable.

Civitas ChildLaw Center is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship, and service. Through its ChildLaw Clinic, the ChildLaw Center provides representation to child clients in child custody, child protection, and other cases. A significant number of the Clinic's cases involve allegations of family violence and domestic violence orders of protection. Through its ChildLaw Policy Clinic, the Center advocates for laws and practices that benefit vulnerable populations.

Family Rescue works to end domestic violence by providing support services, advocating for change, and encouraging prevention through education. In our 42 years serving the Chicago area, we have seen an alarming rise in shootings in domestic violence cases. Over 30 years ago, Family Rescue pioneered the first collaboration in the country between a domestic violence agency and a police department, placing advocates on-site in a police station to assist victims. Our experience has taught us that we must use every means available to combat domestic violence.

Illinois Coalition Against Sexual Assault (ICASA) is a statewide non-profit organization comprised of 31 community-based rape crisis centers working together to end sexual violence and support

survivors. The Illinois centers provide 24-hour crisis intervention, as well as free counseling and advocacy for survivors of sexual harm and their significant others. An important part of the legal advocacy we offer survivors is assistance with petitions for civil protective orders. ICASA's mission includes advocacy for public policy and laws that support victims and advance justice.

KAN-WIN is a nonprofit organization with a mission to eradicate gender-based violence through comprehensive, survivor-centered services, education, and outreach within Asian American communities and beyond in Chicago and the surrounding suburbs. KAN-WIN offers a wide range of survivor-centered services, including crisis intervention, counseling, transitional housing, legal advocacy, and more. We often work with survivors who have faced the threat of firearm use by their harm-doers. We see a crucial need to preserve existing options that create critical safeguards for survivors, including gun forfeiture through civil orders of protection.

Land of Lincoln Legal Aid is a non-profit whose mission is to provide free high quality civil legal services to low-income and senior residents in 65 counties of central and southern Illinois in order to obtain and maintain their basic human needs. For over 50 years, we have represented thousands of domestic violence survivors and their children in seeking orders of protections and other related matters. We are very familiar with the experiences of persons escaping domestic violence, the dynamics

underlying intimate partner violence, and the vital role statutes play in ensuring the safety of survivors.

Legal Aid Chicago fights to secure the rights of financially vulnerable people to personal safety, economic stability, affordable housing, fair working conditions, and basic healthcare. We represent survivors not only in proceedings to obtain civil protective orders and in family law cases stemming from intimate partner violence, but also in proceedings addressing the other civil legal issues that survivors face. Having represented thousands of individual survivors, we have developed valuable insight into the complex dynamics that underlie violent intimate relationships and the particular risk factors that can escalate violence into lethality—including the presence of firearms.

Legal Aid Society of Metropolitan Family Services (LAS) provides free legal services to families experiencing poverty in the Chicago area. LAS and MFS provide wraparound services, including social services, counseling, financial assistance, legal advice, and legal representation through community centers located in Chicago and its suburbs. LAS was one of the first legal service programs in the nation to provide representation and services to victims of domestic violence in family law and order of protection cases. As an agency that represents victims of domestic violence in both civil and criminal courts, LAS has a special interest in matters that impact the ability of victims and their families to access legal protections that ensure their safety.

Life Span Center For Legal Services and Advocacy is a non-profit, founded in 1978, which provides counseling, advocacy, and legal services to more than 3,500 victims of domestic violence and their children each year. Located in Chicago, we provide representation to domestic violence victims in order of protection cases, child-related matters, and immigration cases. In addition to direct service work, we provide training to judges, prosecutors, mental health professionals, advocates, and attorneys throughout Illinois and across the country. We engage in systemic advocacy aimed at improving meaningful access to legal remedies and relief for victims of domestic violence.

Mujeres Latinas en Acción, founded in 1973, is a bicultural nonprofit organization that is dedicated to providing social service and advocacy services centered around promoting non-violence, and supporting survivors of domestic and sexual violence through financial empowerment, civic engagement, leadership, and parenting programs. Mujeres is the longest standing Latina-led organization in the country. Mujeres works with many survivors who also identify as immigrants and children of immigrants. Throughout our 50-year history, Mujeres has experienced the enormous loss of domestic violence participants to homicides, particularly gun violence. Gun forfeiture with orders of protection is a critical remedy to increase safety for survivors.

Neopolitan Lighthouse has been dedicated to promoting the safety, emotional, educational, and

practical needs of survivors of domestic violence for over 35 years, particularly on Chicago's West Side. We prioritize supporting survivors overcoming violence and feeling in control of their path forward. Our programming covers a spectrum of needs, including counseling, advocacy, case management, health services, and financial services, and we operate a shelter for survivors. We have seen the aftermath when a perpetrator owns or has access to a firearm, and the harms that creates. We support survivors accessing all available remedies survivors may choose as the best option for their family.

The Network: Advocating Against Domestic Violence is a collaborative membership organization dedicated to improving the lives of those impacted by domestic violence through advocacy work, education, connecting the public to services, and by providing centralized resources to DV service providers. We are the leading systemic advocacy voice in the Cook County domestic violence services community. We also provide victims and survivors immediate connection to direct service providers through a statewide DV hotline. We stay abreast of and respond to survivor needs and trends affecting service delivery and also help shape public policy.

Prairie State Legal Services, Inc., a non-profit legal aid organization, provides free legal services to low income persons and those age 60 and over who have serious civil legal problems and need legal help to solve them. We serve 36 counties in northern and central Illinois. In 2019, we assisted over 15,000

clients, almost 2,300 of which involved domestic violence. Through our long history of advocating for survivors of domestic violence we have become very familiar with protective order statutes, our clients' experiences, and the dynamics involved in domestic abuse.

Resilience is a non-profit organization that provides crisis intervention, individual and group trauma therapy, and medical and legal advocacy in the greater Chicago metropolitan area to thousands of survivors each year. Resilience also provides public education and institutional advocacy in order to improve the treatment of sexual assault survivors and to impact change in public attitudes towards gender-based violence. Resilience understands the necessity of remedies outside of the criminal legal process to keep survivors safe. Without complementary civil court remedies relating to gun forfeiture, protective orders cannot achieve their purpose: preventing further violence.

Sarah's Inn is a nonprofit domestic violence agency working to improve the lives of those impacted by domestic violence and break the cycle of violence. We are committed to programming, including 24-hour emergency support, trainings, and youth prevention work, that responds appropriately to the needs of those families already impacted by violence, as well as working to prevent future violence. Sarah's Inn is deeply interested in ensuring that statutory provisions designed to protect victims of domestic

violence are maintained and enforced to the maximum extent possible.

YWCA Evanston/North Shore is a nonprofit social justice organization dedicated to promoting racial and gender equity. Focusing on promoting women and girls' health and safety, economic advancement, civil rights and racial justice, we provide domestic violence services serving northeast Cook County. Because of our 30-plus years providing domestic violence services and training first responders on appropriate responses to domestic violence, we have a strong interest in this matter. It is critical that survivors of domestic violence are able to seek legal remedies, including gun forfeiture, to keep them and their communities safe.

SUMMARY OF THE ARGUMENT

Enforcement of 18 U.S.C. § 922(g)(8) following the entry of a civil protective order prevents homicides of domestic violence survivors and their loved ones, shielding them from an abuser who is a proven threat. Without Section 922(g)(8) and analogous state laws², survivors of domestic violence would face increased risk of serious harm or death by firearm at the hands of their proven abusers. People experiencing domestic

² For a description of the state laws regarding domestic violence restraining orders and firearms, see Brief of Illinois et al. as Amici Curiae in Support of Petitioner at Add. at 1–31, *United States v. Rahimi*, No. 22-915 (Apr. 20, 2023).

violence are *five times more likely to die* when their abusers have access to firearms.³

Contrary to the Fifth Circuit’s decision, criminal prosecution and incarceration of domestic violence offenders is not a simple or adequate replacement for effective enforcement of Section 922(g)(8). Sometimes, it may be the right legal answer that domestic violence offenders “be detained, prosecuted, convicted, and incarcerated,”⁴ but civil orders play a crucial role in combating this epidemic. Civil orders of protection empower survivors in a way that the criminal legal system cannot—giving them control over the process and the flexibility to pursue remedies that are appropriate for their unique circumstances while avoiding potential collateral consequences of criminal legal system involvement. Domestic violence survivors do not control whether their abusers are arrested, prosecuted, and convicted. It is well-recognized that domestic violence very often does not result in arrests, charges, or convictions. That is a reality for domestic violence survivors, no matter the reasons.

For many domestic violence survivors, criminal prosecution and incarceration of their abuser may not be feasible or possible, may not be their preferred course of action, and often may not comport with

³ See Jacquelyn C. Campbell et al., *Risk factors for femicide in abusive relationships*, 93 Am. J. of Pub. Health 1089, 1092 (2003).

⁴ *United States v. Rahimi*, 61 F.4th 443, 463 (5th Cir. 2023) (Ho, J., concurring).

common sense and their best interests. The criminal legal system has many unintended consequences for survivors including the loss of sometimes desperately-needed child support from the abuser, increased risk of eviction, and increased risk of government family services agencies' intervention in survivors' and their children's lives. These risks are most profound for Black, Indigenous, and People of Color (BIPOC) groups who disproportionately constitute the population of domestic violence survivors who seek court intervention.

Further, domestic violence survivors may be reluctant to rely on the criminal legal system based on the ineffectiveness of post hoc law enforcement from their point of view. For many survivors, prosecution may fail to serve their particular needs and interests, and they therefore choose to pursue civil orders of protection, an option that Congress expressly endorsed and provided in Section 922(g)(8), rather than seeking to have abusers prosecuted through the criminal legal system.

Amici curiae—who work with such survivors daily and have witnessed their challenges first-hand—urge the Court to reverse the Fifth Circuit's decision and affirm the constitutionality of Section 922(g)(8).

ARGUMENT

I. Enforcement of Section 922(g)(8) saves lives.

Intimate partner violence is an epidemic in the United States. As Congress and this Court recognized, “all too often the only difference between a battered woman and a dead woman is the presence of a gun.”⁵ Every year, more than 1800 persons are killed by their intimate partners, and approximately half of these homicides are committed with firearms.⁶ In Chicago, there were 62 domestic violence related homicides in 2022, a 38 percent increase over the prior year.⁷ More than half of these homicides involved firearms.⁸ In Illinois, there were 52 domestic violence related

⁵ 142 Cong. Rec. 210378 (daily ed. Sept. 12, 1996) (statement of Sen. Wellstone); *United States v. Castleman* 572 U.S. 157, 160 (2014).

⁶ Carolina Díez et al., *State Intimate Partner Violence-Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 *Annals Internal Med.* 536, 536 (2017).

⁷ *Measuring Safety, Gender-Based Violence in Illinois Data Report 2022*, at 19, The Network (2023), <https://the-network.org/measuring-safety-2023/> (2022 Network Report).

⁸ *Id.* Although only 29 percent of Chicago’s population is composed of people who identify as Black, 66 percent of domestic violence related homicides impacted Black victims. *Id.* at 20.

homicides with a firearm in 2022.⁹ Sixty-seven additional victims were injured by firearms.¹⁰

While the rate of domestic violence related homicide is intolerable, it would be even higher absent Section 922(g)(8) and analogous state laws. Studies show that such statutes have served to reduce intimate partner homicides between 10 and 14 percent.¹¹ Put simply, prohibiting abusers from purchasing weapons and imposing criminal penalties for continued possession results in significant reduction in firearm violence. Across the country, that means hundreds of lives saved every year.

One only needs to read the news to see the result of the deadly combination of firearms and domestic violence. Recently in Illinois, three separate women were killed by firearms related to domestic violence in a matter of days. On July 12, 2023, two women were shot and killed in Waukegan in an apparent domestic-related incident.¹² In another case,

⁹ *Id.* at 24.

¹⁰ *Id.*

¹¹ April M. Zeoli et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187 *Am. J. Epidemiology* 2365, 2366 (2018) (finding 10 percent reduction in intimate partner homicide in States with relinquishment laws); Díez et al., 167 *Annals Internal Med.* at 541 (finding 14 percent reduction in States with such laws).

¹² *Waukegan shooting: Alleged boyfriend charged with murder of 2 women in north suburbs*, ABC 7 (July 13, 2023)

an order of protection was issued against Armoni Henry in April, but the order was never served and expired.¹³ On July 14, 2023, Henry entered a Mariano's grocery store in the Chicago-area and opened fire in the employee break room, killing his girlfriend.¹⁴

When civil orders of protection and firearm related laws operate as intended, tragedy is averted. D.S., a client of *amicus curiae* Legal Aid Chicago, is one such example. After suffering abuse from her former partner for years, D.S. sought an order of protection and assistance from Legal Aid Chicago. D.S. shared with her attorney the hundreds of messages from her former partner with very specific, graphic threats to harm her with his guns. The threats were shocking, including photos of his gun collection and threats to kill D.S. and her new partner. Thankfully, D.S. was able to secure an order of protection and an order revoking her abuser's FOID card and ordering firearm turnover. With the threat of Section 922(g)(8) and Illinois' analogous statute looming, the respondent complied with the order and D.S. no longer lives in fear for her life at the hands of her abuser.

<https://abc7chicago.com/waukegan-shooting-domestic-violence-serenity-childs-briana-hall/13500410/>.

¹³ Nicole Acosta, *Man Allegedly Killed Girlfriend After She Took an AirTag Off Her Car That he Placed There*, People (July 17, 2023), <https://people.com/man-allegedly-killed-girlfriend-who-took-airtag-off-car-7562160>.

¹⁴ *Id.*

Another client of Legal Aid Chicago, A.Y., faced a similar situation. A.Y.'s husband of many years had become controlling and threatened to hurt her. A.Y.'s fears grew when she discovered that her husband had purchased a new holster for his gun. A.Y. also learned from friends that her husband had been bragging about his shooting skills. Fearing for her and her children's safety, A.Y. sought an order of protection, which was granted. The Court found that the respondent was a credible threat to A.Y.'s safety and ordered him to surrender all firearms. Like D.S., A.Y. was able to protect herself and her children through an order of protection and laws prohibiting her abuser from owning firearms.

Intimate partners are not the only people whose lives may be saved by Section 922(g)(8) and analogous laws. Guns in the hands of abusers are also extremely dangerous for first responders. A study of line of duty deaths from 2010 to 2014 in the National Law Enforcement Officer Memorial Fund's database found that, of the 91 police officer deaths following a call for service, 22 percent of them occurred during calls for domestic disturbance.¹⁵ Nineteen of these deaths were caused by a firearm.¹⁶ Another report found that, of the 73 non-accidental line of duty deaths in 2021, seven of

¹⁵ Nick Bruel & Mike Keith, *Deadly Calls and Fatal Encounters: Analysis of U.S. Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement, 2010-2014*, at 14 (2016), <https://www.valorforblue.org/Clearinghouse/283/Deadly-Calls-and-Fatal-Encounters>.

¹⁶ *Id.* at 16.

those occurred while the officers were responding to disturbances, including domestic disturbances.¹⁷ From 2011 to 2020, 43 officers were killed while responding to domestic disturbance or domestic violence calls, which is nearly nine percent of all officers killed during that period.¹⁸ By way of example, earlier this year, Chicago Police Officer Andres Vasquez-Lasso was shot and killed while responding to a domestic incident.¹⁹

Moreover, domestic violence related homicides are also connected to mass shootings. One study found that in nearly 60 percent of the mass shootings analyzed from 2014 to 2019, at least one fatal or non-fatal victim was a partner or family member of the shooter.²⁰ In another nine percent of cases, the shooter had a history of domestic violence, but none of the victims were intimate partners.²¹

These statistics demonstrate how domestic violence affects not only victims but also those who

¹⁷ Megan Hickey, *Domestic disturbances especially dangerous for police officers, experts say*, CBS News (March 2, 2023), <https://www.cbsnews.com/chicago/news/dangerous-domestic-police/>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Lisa B. Geller et al., *The role of domestic violence in fatal mass shootings in the United States, 2014-2019*, 8 *Injury Epidemiology* 1, 4 (2021). A “mass shooting” is defined as “shootings that result in four or more deaths by gunfire, excluding the perpetrator.” *Id.* at 3.

²¹ *Id.* at 4–5.

come into contact with abusers, and further confirm how everyone's safety improves when firearms are removed from domestic violence perpetrators. Section 922(g)(8) represents a key tool to achieve that desired end.

II. The criminal legal system is not a suitable alternative to Section 922(g)(8) enforcement.

Survivors of domestic violence cannot rely solely on the criminal legal system to protect them from their abusers. Civil orders of protection are a key component of protecting survivors and their loved ones, and that protection requires enforcement of Section 922(g)(8) and analogous state laws.

As discussed in detail below, many survivors of domestic violence cannot or will not rely on the criminal justice system for a myriad of reasons including financial and other legal reasons. Moreover, even survivors who seek to secure protection by cooperating with prosecutors in criminal cases are not guaranteed to receive the protection they need because they have little control over the process. Civil orders of protection, which offer survivors far more control over the timing and other aspects of the proceedings, are therefore the better—and oftentimes only—vehicle for protecting survivors of domestic violence. And without laws like Section 922(g)(8), survivors cannot adequately protect themselves from their abusers.

A. Civil orders of protection are necessary and distinct from any protection of survivors available through the criminal legal system.

In its opinion, the Fifth Circuit stressed that Rahimi’s conviction and subsequent loss of Second Amendment rights was predicated on a prior civil proceeding²²—an apparent cause for concern, noting that “criminal proceedings have afforded the accused substantial protections throughout our Nation’s history.”²³ It seems the Fifth Circuit was most concerned with protecting an abuser’s Second Amendment rights; however, the underlying fear that drove the conclusion was alarmist and wrong: “§ 922(g)(8) works to disarm . . . every party to a domestic proceeding (think: divorce court) who, with no history of violence whatever, becomes subject to a domestic restraining order.”²⁴

This is false.²⁵ Contrary to the Fifth Circuit’s belief, the civil order of protection process affords the respondents substantial protections.

²² See *Rahimi*, 61 F.4th at 459. (“[I]t bears emphasis that the order at issue here was entered by agreement, in a civil proceeding.”)

²³ *Id.* at 455 n.7.

²⁴ *Id.* at 459.

²⁵ We note that the Fifth Circuit never received briefing on the

In Illinois, a person alleging abuse by a household or family member initiates an order of protection case by filing a petition pursuant to the Illinois Domestic Violence Act (“IDVA”). 750 ILCS 60/203(a). The petition can be filed as an independent cause of action or in conjunction with certain other civil proceedings such as a domestic relations or guardianship case. 750 ILCS 60/202(a)(1–2). The rules of civil procedure apply and the standard of proof is preponderance of the evidence. 750 ILCS 60/205(a).

Once the respondent has been served with the petition, the case moves toward hearing.²⁶ If a respondent appears in court but informs the court they would like time to obtain a lawyer, a continuance is generally granted. Both parties have the right to issue written discovery and take depositions. At the hearing, both parties have the right to call and cross-examine witnesses, and present other evidence.

If a judge finds the respondent abused the petitioner, an order of protection must issue. 750 ILCS 60/214(a). The judge must then decide which of the available remedies are necessary to prevent future abuse. 750 ILCS 60/214(b). Orders of protection typically first prevent abusers from “continuing threats and abuse” and order them to “stay away from

broader issues of domestic violence and civil orders of protection; such briefing could have dispelled the Court’s misconceptions.

²⁶ Petitioners can seek a 21-day ex parte emergency order of protection, which has less available remedies, to more immediately order that the respondent stay away from them. 750 ILCS 60/217.

[the survivor] and other persons protected by the order and/or bar abuser from [the survivor's] work, school, or other specific locations.”²⁷ As the Illinois Appellate Court explained, the IDVA provides 19 possible remedies available to the trial court when issuing an order of protection “to tailor an order of protection to address individual circumstances and needs, improve victim safety and hold the perpetrator accountable for his or her actions.” *Sanchez v. Torres*, 48 N.E.3d 271, 275 (Ill. App. Ct. 2016).

A plenary order of protection is typically in effect for up to two years. 750 ILCS 60/220(b)(0.05). Plenary orders of protection entered in conjunction with other types of cases may last longer and may be extended as necessary upon good cause shown. 750 ILCS 60/220(b)(1–2); 50 ILCS 60/220(e).

Civil orders of protection are necessary because many aspects of the criminal legal system are not within the control of survivors. Even if survivors wish to pursue criminal charges—which, as discussed below, is not always the case—they have very little control over that process. It is up to law enforcement to make arrests and prosecutors to pursue cases, both of which are outside of the victim’s control. In 2019, of the more than 193,000 calls to the Chicago Police Department for domestic violence, there were only

²⁷ *Illinois Domestic Violence Act: Orders of Protection*, Ill. Att’y Gen., <https://ag.state.il.us/women/ordersofprotection.html>; see also generally 750 ILCS 60/214 (Illinois’ civil order of protection statute).

around 10,000 arrests.²⁸ Of the cases in which domestic battery charges were actually filed in 2019, more than half of the felony charges were ultimately dropped.²⁹ As the Supreme Court recognized years ago, “many perpetrators of domestic violence are convicted only of misdemeanors.” *United States v. Castleman*, 572 U.S. 157, 160 (2014) (citing *United States v. Hayes*, 555 U.S. 415, 426 (2009)).

Further, studies suggest that the criminal legal system’s response to domestic violence is not necessarily effective. As summarized by a leading researcher, “[r]eplication studies have failed to find that arrest consistently deters further violence.”³⁰ Indeed, since the passage of the Violence Against Women Act (VAWA), “the overall violent crime rate decreased the same amount or more than declines in rates of intimate partner violence and rape and sexual

²⁸ *Data Report: State of Domestic Violence in Illinois*, at 8, The Network (2020), <https://the-network.org/wp-content/uploads/2020/07/Data-Report-State-of-Domestic-Violence-in-Illinois.pdf>.

²⁹ *Id.* at 16–17. The United States prison system could not handle full prosecution and incarceration of domestic violence offenders. “Incarceration rates could dramatically increase if each of the approximately 847,000 incidents of intimate partner violence committed in the United States in 2018 was addressed through criminalization.” Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 *Violence Against Women* 84, 90 (2020).

³⁰ Goodmark, 27 *Violence Against Women* at 89.

assault, and the number of incidents of intimate partner violence increased[.]”³¹ These studies cast doubt on the effectiveness of the criminal legal system’s response to domestic violence, which, often times, also comes too late to prevent harm to a victim.

Civil protective orders, on the other hand, tend to be more effective at deterring further violence. While there is limited research on the issue, one study found that a civil protective order stopped the violence for half of the women in the study, and the other half experienced significantly reduced violence and abuse following the entry of a protective order.³² Given these results, civil orders of protection are critical in protecting survivors and their loved ones.

³¹ Leigh Goodmark, *Assessing the Impact of the Violence Against Women Act*, 5 Ann. Rev. Criminology 115, 122 (2022). The study notes that the “the number of arrests, prosecutions, and convictions has increased since VAWA’s passage and that law enforcement and community-based agencies are more tightly enmeshed as a result of VAWA’s funding incentives,” but concludes that “VAWA is not decreasing rates of gender-based violence.” *Id.* at 123–24.

³² TK Logan and Robert Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence*, at 1, Carsey Instit. (2011)
<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1130&context=carsey>.

B. The civil legal system better protects the safety and interests of many domestic violence survivors.

In the context of domestic violence, the criminal legal system cannot serve as a wholesale replacement for the civil legal system, contrary to the Fifth Circuit’s suggestion.³³ While the criminal legal system can “disable[] [abusers] from engaging in further crimes”³⁴ through incarceration, the statistics prove it does not adequately protect survivors. Nor does it provide necessary resources or give them the control they deserve over their own safety and fate.

Many survivors instead strongly prefer to rely on civil legal remedies for various reasons. Between 2019 and 2022, the Illinois Domestic Violence Hotline experienced a 50 percent increase in calls.³⁵ Meanwhile, during that same period, domestic violence-related calls to the Chicago Police Department decreased by 12 percent.³⁶ This disconnect suggests not a decreased need for help, but rather a reluctance to seek help from law enforcement. Clients of the *amici curiae* organizations frequently report “a desire to

³³ See, e.g., *Rahimi*, 61 F.4th at 463 (Ho., J., concurring) (abusers “should be detained, prosecuted, convicted, and incarcerated.”).

³⁴ *Id.*

³⁵ 2022 Network Report 42.

³⁶ *Id.* at 5.

avoid the arrest of the person causing them harm due to emotional, financial, or logistical reasons[.]”³⁷

On the whole, survivors report a more positive experience working within the civil legal system, which provides them with more control over the pursuit of appropriate remedies. Criminal prosecution is not the only remedy, and certainly not a suitable replacement for civil protective orders and corresponding criminal enforcement laws, like Section 922(g)(8).

1. The civil legal system provides survivors with more control over their pursuit of safe and flexible options.

The civil legal system provides domestic violence survivors with desirable outcomes in a challenging situation. The civil legal system allows survivors a measure of control over the process and the ability to assert their needs in a way that the criminal legal system cannot. Survivors are frequently juggling a host of concerns related to their safety and well-being, including access to housing, child custody and support, and immigration-related concerns, to which the civil order of protection process is more well-suited. Survivors are able to utilize the civil legal system and obtain orders of protection tailored to their individual needs—just like the ones contemplated in Section 922(g)(8).

³⁷ *Id.* at 17.

As discussed in detail above, civil orders of protection are court orders “intentionally crafted to be comprehensive of survivor needs.”³⁸ They are “prospective” because they are “designed to prevent future violence.”³⁹ Perhaps their most important preventive feature is their ability to remove a firearm from an abuser’s possession.⁴⁰

Using civil process to remove those firearms protects survivors from serious harm or death. In domestic violence situations, the presence of a firearm increases survivors’ risk of death by 500 percent.⁴¹ It is therefore both imperative and effective to remove firearms from domestic violence situations before they become deadly.

This is true regardless of who actually owns the firearm. Sometimes, both parties obtain competing orders of protection against each other. But the Fifth Circuit’s suggestion that Section 922(g)(8) “effectively disarms [survivors] of domestic violence” when

³⁸ *Id.* at 138.

³⁹ Jeannie Suk, *Criminal Law Comes Home*, 116 Yale L. J. 2, 15 (2005).

⁴⁰ See 750 ILCS 60/214(b)(14.5) (prohibits an abuser “from possessing any firearms during the duration of the order [of protection]”); see also 2022 Network Report 138 (“Remedies available to survivors include . . . the removal of a firearm”).

⁴¹ *Statistics*, Nat’l Coal. Against Domestic Violence, <https://ncadv.org/statistics>.

competing orders of protection are granted,⁴² thereby placing survivors in “greater danger than before,”⁴³ is contradicted by the evidence. A survivor’s possession of a firearm is not effective at preventing gun violence; in fact, it actually “doubles the risk of firearm homicide by an abusive partner.”⁴⁴ Therefore, even if competing orders of protection disarm survivors, removing firearms from their abusers is the most effective method to protect their safety and the safety of others.

Besides their obvious lethality concerns, firearms also exacerbate domestic violence by serving as tools of control. Research shows that one in eight persons convicted of domestic violence admits to having used guns to threaten their partners.⁴⁵ Civil orders of protection can thus achieve dual purposes when temporarily removing firearms from abusers’ possession: saving survivors’ lives and preventing further abuse.

And, crucially, civil orders of protection offer a number of possible remedies that the survivor has the choice and power to specifically seek from the court in

⁴² Mutual orders of protection are prohibited in Illinois, see 750 ILCS 60/215, along with most states.

⁴³ *Rahimi*, 61 F.4th at 446 (Ho, J., concurring).

⁴⁴ Campbell et al., 93 Am. J. of Pub. Health at 1089–97.

⁴⁵ Elizabeth Tobin-Tyler, *Intimate Partner Violence, Firearm Injuries and Homicides: A Health Justice Approach to Two Intersecting Public Health Crises*, 51 J. L., Med. & Ethics 64, 66 (2023).

order to meet their individual needs. In addition to addressing the clearest and most direct threat to survivors' safety (firearms), orders of protection can also address the numerous other less-obvious issues (overlooked by the Fifth Circuit) that survivors experience, including child financial support, child custody, housing needs, and immigration concerns:

- *Child Financial Support.* In most states, including Illinois, civil orders of protection can address child financial support, which is important because most survivors have dependent children. In Illinois, for example, there was an increase of 106 percent of survivors seeking child-related services between 2021 and 2022.⁴⁶ If a survivor's abuser is incarcerated, this removes a potential avenue of financial support for victims and leaves the survivor as the sole financial support for their dependent children—a potentially devastating financial burden threatening both the survivor and the children. By thoughtfully addressing child support issues, orders of protection help to ensure survivors' financial needs are met because the abuser can be obligated to continue providing monetary support, achieving the dual goals of safety and financial support for victims.⁴⁷

⁴⁶ 2022 Network Report 88.

⁴⁷ See 750 ILCS 60/214(b)(12) (an abuser can be ordered “to pay temporary support for the petitioner or any child in the petitioner’s care or over whom the petitioner has been allocated parental responsibility”).

D.C., a client of Legal Aid Chicago, was suffering abuse from her partner, with whom she had a young child. Her partner abused her not only physically, but also financially, becoming angry when D.C. would work. When D.C. made the brave decision to file for an order of protection for herself and her children, she also sought financial support. Without such support, D.C. would inevitably be forced to return to her partner and his abusive behavior. Had D.C. filed a police report, she would have risked the arrest and potential incarceration of her partner, which would have deprived her of the opportunity to seek an order requiring him to support his children.

- *Child Protective Services.* Civil orders of protection are also an important tool in addressing child custody and safety, while reducing the risk of child protective services' entanglement, which often accompanies calls to law enforcement. Many survivors do not call 911 for a domestic violence incident due to fear that this could lead to losing custody of their children.⁴⁸ This fear of losing child custody is valid: in a nationwide study, law enforcement called child protective services in 15

⁴⁸ *Law Enforcement Experience Report* at 10, Nat'l Domestic Violence Hotline, https://www.thehotline.org/wp-content/uploads/media/2022/09/2209-Hotline-LES_FINAL.pdf (Hotline Report).

percent of domestic violence calls.⁴⁹ And, in 19 percent of those cases, the child was actually removed from the survivor's custody.⁵⁰ In particular, female survivors are disproportionately subject to "failure to protect" charges, despite the fact that they are almost always the survivors of abuse, not the perpetrators.⁵¹

For example, the Illinois Department of Children & Family Services (DCFS) can investigate whether a child lives in an "environment injurious to health and welfare," which includes being exposed to domestic violence.⁵² If DCFS determines that the domestic violence survivor did not take sufficient "precautionary measures" to prevent or mitigate potential harm, then they will be deemed neglectful.⁵³ Orders of protection, however, can remove both survivors and their children from abusive situations, while decreasing the likelihood that child protective services unnecessarily separates children from non-offending parents.⁵⁴

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Colleen Henry, et al., *Substantiated allegations of failure to protect in the child welfare system: Against whom, in what context, and with what justification?*, 116 *Child. & Youth Servs. Rev.* 1, 6 (2020).

⁵² 89 Ill. Admin. Code § 300, App'x B.

⁵³ *Id.*

⁵⁴ See 750 ILCS 60/214(b)(5).

When it comes to involvement of child protective services and the risk of separation from their children, BIPOC survivors are especially vulnerable. Black and Native American children are significantly overrepresented in all stages of the child welfare system, including in removals from their parents for suspected neglect or abuse.⁵⁵ To take just one current example, in Cook County, Illinois, Black children make up just over 70 percent of youth in foster care as of July 2023,⁵⁶ despite Black people comprising less than 15 percent of the state's population.⁵⁷ Thus for BIPOC survivors, the risk of child protective service involvement is particularly intense, which can in turn discourage use of the police to address domestic violence.

- *Housing & Shelter.* Civil orders of protection also prioritize survivors' housing needs—a top concern of many survivors. In fact, 34 percent of all calls to the Illinois Domestic Violence Hotline requested

⁵⁵ *Racial Disproportionality and Disparity in Child Welfare* (2016), U.S. Dep't of Health and Hum. Servs. (2016), https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf.

⁵⁶ *Number of Children in Foster Care by Demographics*, Illinois Dep't. of Child. and Fam. Servs. (2023), <https://dcfs.illinois.gov/content/dam/soi/en/web/dcfs/documents/about-us/reports-and-statistics/documents/youth-in-care-by-demographic.pdf>.

⁵⁷ *Quick Facts: Illinois*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/IL/PST045222>.

help with individual housing needs.⁵⁸ Civil orders of protection specifically allow survivors to safely remain in their own homes—without the abusers present.⁵⁹ Alternatively, survivors can end rental leases early or have their locks changed under Illinois’ Safe Homes Act.⁶⁰ The civil legal system thus allows survivors to pursue options to address both their safety and housing needs.

In contrast, involvement of law enforcement may jeopardize survivors’ housing in other ways. In Illinois, as in other states, some municipalities enforce “compulsory eviction” ordinances, whereby landlords are *required* to evict tenants who interact with the criminal legal system—such as by calling for law enforcement at the property—even when the tenants are survivors.⁶¹ Of the 75 municipalities in Illinois that have Crime-Free Ordinances, less than half have a carve-out to protect survivors of domestic violence.⁶² For this reason, survivors may prefer not to involve law

⁵⁸ 2022 Network Report 78.

⁵⁹ See 750 ILCS 60/214(b)(2) (granting survivors the “exclusive possession of residence”).

⁶⁰ See 765 ILCS 750/15, 750/20.

⁶¹ Austin Berg, *How Illinois Families Can Face Eviction for Crimes They Didn’t Commit*, Ill. Pol’y (Aug. 16, 2019), <https://www.illinoispolicy.org/how-illinois-families-can-face-eviction-for-crimes-they-didnt-commit/>.

⁶² 2022 Network Report 101.

enforcement and instead rely on a civil order of protection.

- *Immigration.* Police involvement can also lead to referrals to immigration-related inquiries, further jeopardizing survivors' well-being. Law enforcement reported either the survivor or their abuser to the U.S. Immigration and Customs Enforcement in 1 percent of all cases nationwide.⁶³

* * *

Civil orders of protection provide survivors with effective options to remove firearms from an abuser's possession, which drastically decreases their risk of serious injury or death. At the same time, they also offer survivors the power to pursue flexible remedies that can effectively and realistically address a number of secondary safety and well-being issues caused by domestic violence, including child financial support, child custody, housing, and immigration.

2. *The criminal legal system cannot be survivors' only option to seek protection.*

Upon finding Section 922(g)(8) unconstitutional, the Fifth Circuit—and, more forcefully, the concurring opinion by Judge Ho—suggested that the “proper” way to handle domestic violence is criminal

⁶³ Hotline Report 10.

prosecution and incarceration.⁶⁴ But this narrow (and paternalistic) view of domestic violence remedies rests on numerous unspoken assumptions, including that criminal prosecution is the only way to protect survivors, that it is effective in doing so, and that it is even preferable for survivors themselves. These assumptions are unsupported.

As discussed above in Part II.A, the criminal and civil legal systems are fundamentally different in aim and orientation. Given the criminal system's reactive nature, the Fifth Circuit's opinion sits atop a paradox: in its view, the preferred method—indeed the *only* constitutionally sound method—to protect survivors from gun violence requires them to *first* be physically harmed or murdered, and then seek solace from criminal prosecution. That cannot be so, and this logical contradiction is exactly why state legislatures developed preventative civil remedies like orders of protection.

This strategy is based on common sense, given that firearms are used in the majority of intimate partner homicides.⁶⁵ This finding matches local data in Illinois: in 2022, firearms accounted for nearly 60

⁶⁴ See *Rahimi*, 61 F.4th at 463 (“Those who commit violence, including domestic violence, shouldn’t just be disarmed—they should be detained, prosecuted, convicted, and incarcerated.”); *Id.* at 464 (“The only way to protect the victim may be to detain as well as disarm the violent criminal.”).

⁶⁵ *Domestic Violence & Firearms*, Nat’l Coal. Against Domestic Violence (2022), https://assets.speakcdn.com/assets/2497/guns_and_dv_2022.pdf.

percent of domestic violence homicides in Chicago.⁶⁶ Given the inherently lethal nature of firearms, scholars have found that, in comparison to domestic violence incidents involving only physical force or other weapons, incidents involving firearms are 12 times more likely to result in death.⁶⁷ The stakes here are obvious and the problem clear: waiting to disarm abusers until the violence has escalated (or completed) will often mean waiting until it is too late.⁶⁸ Limiting survivors' options to criminal remedies—oftentimes the last response in a long cycle of domestic violence—is the equivalent of leaving them with no protection in many cases.

While the criminal legal system certainly plays an important role in addressing domestic violence (including statutes like Section 922(g)(8)), it is not the panacea the Fifth Circuit makes it out to be. As addressed above, domestic violence is notoriously under-prosecuted. In 2022, the Chicago Police Department reported that a meager 3 percent of calls for assistance related to gender-based violence ended in an arrest—and the rate continues to fall.⁶⁹ And

⁶⁶ 2022 Network Report 20.

⁶⁷ Domestic Violence & Firearms.

⁶⁸ We further note that proactively restricting firearms also better protects the lives of police officers, neighbors, family members, and other intervenors or bystanders, given that they ultimately account for 1 in 5 fatalities in intimate partner homicide incidents. *Statistics*, Nat'l Coal. Against Domestic Violence, <https://ncadv.org/statistics>.

⁶⁹ 2022 Network Report 147.

arrests, of course, are only the entry point to criminal prosecution: it is well-established that most domestic violence prosecutions ultimately end in dismissals.⁷⁰ But even if arrest and incarceration rates were higher, this would represent an unduly narrow conception of what it means to “protect” survivors.

Many survivors *do not want* their abusive partners prosecuted or incarcerated. *Amici curiae’s* clients report a range of reasons for not seeking criminal prosecution: some survivors harbor feelings of distrust toward the police. Survivors may distrust the criminal system for any number of reasons, including personal experience, or membership in a gender or racial group with a history of negative interactions with police. One national survey found that 55 percent of survivors who did call police later reported feelings of discrimination, the majority of whom felt discriminated against because of their gender.⁷¹ In Illinois, domestic violence situations also tend to disproportionately involve members of racial minorities (compared to their overall representation in the State), which may further complicate survivors’ trust in police.⁷² Prosecution is simply not always the answer to the complicated epidemic of domestic violence, which, in many instances, demands a more tailored approach than simply locking up the perpetrator.

⁷⁰ See Suk, 116 Yale L. J. at 55 n.232.

⁷¹ Hotline Report 8.

⁷² 2022 Network Report 58.

Some survivors also see incarceration as its own form of violence, which may end up reinforcing the circumstances that produce domestic violence.⁷³ In the words of one: “Incarceration isn’t the solution I want and that’s the best police have to offer. That kind of violence—police and incarceration—only escalates a situation and makes it less safe for me and my family.”⁷⁴ That is why it is now well-established that the criminal system does not always meet survivors’ needs.⁷⁵

While the Fifth Circuit purported to recognize the “salutary policy goals meant to protect vulnerable [survivors]” in this case,⁷⁶ it failed to appreciate the nuances of domestic violence, given its apparent belief that the criminal legal system is readily equipped to address such a complex and sensitive issue. But nuanced problems require nuanced solutions, and domestic violence is a complex phenomenon. The criminal legal system on its own is inadequate to

⁷³ We further note the perverse implications for abusive partners under the Fifth Circuit’s approach, which would seem to prefer in every case forced, protracted, physical confinement—with permanent revocation of some rights, including the right to bear arms—over the option of civil orders and temporary disarmament that would allow some abusive partners to participate in productive society: holding jobs, supporting dependents, and hopefully reforming themselves.

⁷⁴ Hotline Report 9.

⁷⁵ See Elizabeth Topliffe, *Why Civil Protection Orders are Effective Remedies for Domestic Violence but Mutual Protective Orders Are Not*, 67 Ind. L. J. 1039, 1041–42 (1992).

⁷⁶ *Rahimi*, 61 F.4th at 461.

protect survivors. The civil legal system provides a safe, flexible, and necessary remedy that this Court should not undermine.

CONCLUSION

The combination of domestic violence and firearm possession is incredibly deadly. Survivors of domestic violence rely on civil orders of protection to protect them, and Section 922(g)(8)'s prohibition on gun ownership is a key component of that safety, one that cannot be replaced by the criminal legal system. For these and the foregoing reasons, *amici curiae* respectfully urge this Court to reverse the Fifth Circuit's decision and hold that Section 922(g)(8) is constitutional.

Respectfully submitted,

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