

No. 20-634

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IN THE  
**Supreme Court of the United States**

FELICIA ROBINSON,  
*Petitioner,*

v.

WEBSTER COUNTY, MISSISSIPPI, *et al.*,  
*Respondents.*

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

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**MOTION FOR LEAVE TO FILE AND BRIEF OF  
NETWORK FOR VICTIM RECOVERY OF DC  
AS *AMICUS CURIAE* SUPPORTING  
PETITIONER**

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**MOTION FOR LEAVE TO FILE BRIEF  
AS *AMICUS CURIAE* IN SUPPORT OF  
PETITIONER**

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As required by Supreme Court Rule 37.2(b), Network for Victim Recovery of DC (“NVRDC”) moves this Court for leave to file the attached brief as *amicus curiae* in support of Petitioner Felicia Robinson. NVRDC timely notified the parties of its intention to submit an *amicus curiae* brief in this case pursuant to Rule 37.2(a). Petitioner consented to this filing, but Respondents have not replied to NVRDC’s timely notice.

Founded in 2012, NVRDC provides free legal, case management, and advocacy services to survivors of crime in Washington, D.C. NVRDC’s clients include survivors of: domestic violence, intimate partner violence, sexual assault, child abuse, and stalking. The organization zealously represents these clients in

seeking civil protection orders, pursuing Title IX claims, and participating in the criminal justice process in suits brought against perpetrators. In addition, NVRDC also provides training to various audiences on topics related to crime victims' rights and trauma. Through its work, NVRDC understands that state and local actors sometimes fail to respond effectively to crimes, and for this reason, it is important that crime victims be afforded access to adequate legal remedies, to hold those actors accountable in egregious circumstances.

This case presents an ideal opportunity for this Court to confirm greater availability of the state-created danger doctrine, which authorizes individuals whose injuries were created or worsened by state actors to pursue constitutional claims under 42 U.S.C. § 1983. As detailed below, the Fifth Circuit is in conflict with ten other federal courts of appeals, all of which recognize this doctrine. As *amicus curiae*, NVRDC hopes to assist the Court by expounding on the particular importance this doctrine plays in offering domestic violence victims recourse against state actors whose egregious conduct exacerbated the injuries these victims suffered. Extending the doctrine will offer more equitable opportunities for redress to such victims across the country, and in addition, will promote public safety and law enforcement accountability.

Accordingly, NVRDC requests that this Court grant its motion to file the attached brief as *amicus curiae*.

Respectfully submitted,

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**BRIEF OF *AMICUS CURIAE* IN SUPPORT OF  
PETITIONER**

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**STATEMENT OF INTEREST<sup>1</sup>**

Network for Victim Recovery of DC (“NVRDC”) respectfully submits this brief as *amicus curiae*. NVRDC provides free legal, case management, and advocacy services to survivors of crime in Washington, D.C., including survivors of domestic violence, intimate partner violence, sexual assault, child abuse,

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<sup>1</sup> All parties were notified of *amicus curiae*’s intent to submit this brief at least 10 days before it was due. Petitioner consented to the filing of this brief, but Respondents have not replied. No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae*, its members, or counsel made any monetary contribution intended to fund the preparation or submission of this brief.

and stalking.<sup>2</sup> NVRDC attorneys represent clients seeking civil protection orders, pursuing Title IX claims, and participating in the criminal justice process in proceedings brought against perpetrators.

NVRDC is well aware of the particular challenges that victims of domestic violence face in seeking and receiving help from law enforcement to protect themselves and their children—and the dire consequences when law enforcement officials create dangers for the victims they are meant to protect. NVRDC advocates are dispatched, 24 hours a day and seven days a week, to meet survivors of sexual assault at the hospital, provide support throughout the sexual assault forensic exam and recovery process, and accompany survivors during interviews with police. NVRDC also provides training to various audiences on topics related to crime victims’ rights and trauma. For example, NVRDC trains law enforcement officers on trauma-informed investigation techniques in cases involving crime victims. Based on its longstanding work with victims of crime—particularly victims of domestic violence and intimate partner violence—NVRDC is aware that state actors sometimes fail to fulfill their obligations so severely that they cause or exacerbate private violence. Through its legal, advocacy, and training work, NVRDC is well-positioned to address the grave need for law enforcement officials both to have proper policies in place and to respond effectively and promptly to calls for help.

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<sup>2</sup> NVRDC and other organizations use various terms when discussing the concepts presented in this brief, including “intimate partner violence,” “power-based violence,” and “domestic violence.” For purposes of this brief, *amicus curiae* generally uses the term “domestic violence.”

This Court should grant certiorari and resolve the current circuit split by recognizing the state-created danger doctrine. Currently, victims of domestic violence within the Fifth Circuit—unlike those elsewhere in the country—are unable to hold government officials accountable under the state-created danger doctrine. Clarifying the rule of liability for state actors will help state and local government officials nationwide understand their obligations, promoting public confidence in state actors and encouraging victims to report crimes to the appropriate authorities.

### **SUMMARY OF THE ARGUMENT**

This case presents an ideal opportunity for this Court to confirm that the state-created danger doctrine is available to crime victims across the country. The Fifth Circuit is starkly at odds with ten other federal courts of appeals, all of which recognize the state-created danger doctrine and hold that liability under 42 U.S.C. § 1983 extends to state or local government actors who, under egregious circumstances, create or enhance the danger of private violence resulting in harm to victims.

In addition to the reasons articulated in the Petition, the Court should grant certiorari because extension of the state-created danger doctrine will afford crime victims more equitable opportunities for redress—regardless of their state of residence—and will promote important policy goals related to public safety and law enforcement accountability. The availability of the state-created danger doctrine is particularly important given the prevalence and seriousness of domestic violence in the United States. Extending the state-created danger doctrine to the Fifth Circuit will promote justice by ensuring that crime victims in



Louisiana, Mississippi, and Texas—three states that exhibit high rates of domestic violence—have available the same opportunities for redress under section 1983 as victims in other jurisdictions. Finally, recognizing the validity of the doctrine will enhance public safety by promoting accountability and oversight of law enforcement officials. That, in turn, will have the dual effect of encouraging effective enforcement of laws meant to protect victims from violence and building greater trust among crime victims in reporting crimes to those officials.

### ARGUMENT

The state-created danger doctrine supplies a vital exception to the general rule that the state has no affirmative obligation to protect its citizens from the violent acts of private individuals. *See DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 202 (1989) (holding that the government does not have a general duty to protect people from privately inflicted harms). It permits victims whose injuries resulted from danger, created or enhanced by state actors, to pursue constitutional claims under 42 U.S.C. § 1983. Ten federal appellate courts—all that have squarely considered the validity of the state-created danger doctrine except the Fifth Circuit—recognize a carve-out from the general rule when “the state actor played an affirmative role in creating or exacerbating a dangerous situation that led to the individual’s injury.” *McClendon v. City of Columbia*, 305 F.3d 314, 324 (5th Cir. 2002); *see* Pet. at 10–19 (surveying the circuit split over the validity of the state-created

danger doctrine).<sup>3</sup> Only the Fifth Circuit has directly considered the question presented here and declined to recognize the doctrine. *See, e.g., Bustos v. Martini Club, Inc.*, 599 F.3d 458, 466 (5th Cir. 2010).<sup>4</sup> Reversing the Fifth Circuit’s decision and upholding the state-created danger doctrine as a valid theory of liability will afford domestic violence victims important legal remedies to hold state and local officials accountable, which in turn will encourage more effective law enforcement and greater trust in reporting crimes to proper authorities in the future.

**I. THE STATE-CREATED DANGER DOCTRINE PROVIDES AN IMPORTANT AVENUE FOR REDRESS UNDER EXCEPTIONAL CIRCUMSTANCES.**

Domestic violence is pervasive throughout the United States. Through years of legal reforms, state and local governments have devoted greater attention to this societal ill in an effort to protect victims from harm. Too often, however, state actors still fail

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<sup>3</sup> Since the Petition was submitted, the First Circuit joined nine other federal appellate courts in holding that, “[u]nder the state-created danger substantive due process doctrine, officers may be held liable for failing to protect plaintiffs from danger created or enhanced by their affirmative acts.” *Irish v. Fowler*, 979 F.3d 65, 67 (1st Cir. 2020). The 9-1 circuit split outlined in the Petition is now 10-1.

<sup>4</sup> The Eleventh Circuit no longer expressly recognizes the state-created danger doctrine, but it has not barred recovery in cases of “conscience[-]shocking” conduct by a state actor. *Waddell v. Hendry Cnty. Sheriff’s Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003).

domestic violence victims in circumstances where those victims most need help.

Historically, domestic violence was considered a private matter to be addressed in the home, not by the state.<sup>5</sup> This perception hampered any formal law enforcement response to domestic violence.<sup>6</sup> By the

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<sup>5</sup> See, e.g., Atinuke O. Awoyomi, *The State-Created Danger Doctrine in Domestic Violence Cases: Do We Have a Solution in Okin v. Village of Cornwall-on-Hudson Police Department?*, 20 COLUM. J. GENDER & L. 1, 7 (2011) (explaining that “the antiquated notion that a man and woman had become one upon marriage, and their relationship was therefore no longer a matter for public scrutiny, remains firmly ensconced in our society even today.” (citation omitted)); see Ida M. Johnson, *Victims’ Perception of Police Response to Domestic Violence Incidents*, 35 J. CRIM. JUST. 498, 498 (2007) (“Historically, assaults between domestic partners that occurred in domestic settings were ignored [by law enforcement]. Rarely was violence between intimates viewed as criminal or as a serious social problem.” (citation omitted)); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1662 (2004) (describing the “policy of toleration”—whereby “men who assaulted their wives were granted immunity from prosecution on grounds of marital privacy and preservation of domestic harmony”—that “continued up through the 1970s”).

<sup>6</sup> See, e.g., Johnson, *supra* note 5 at 498; Sack, *supra* note 5 at 1663 (“Because these cases were considered noncriminal, police assigned domestic violence calls low priority and often did not respond to them for several hours or ignored them altogether.” (citation omitted)). Deeply ingrained stereotypes and misconceptions about violence between intimates—such as myths that domestic violence is a family matter in which government officials should not interfere, that victims provoke incidents of domestic violence, and that female victims can easily leave these relationships—have hindered effective law enforcement responses. See, e.g., *Developments in the Law: Legal*

1970s, however, social movements in the United States placed domestic violence on the national agenda, and law enforcement faced scrutiny (and civil lawsuits) for failing to intervene effectively in aid of victims.<sup>7</sup> In response, states across the country adopted legal reforms that effectively criminalized domestic violence. Specifically, states enacted “mandatory arrest” statutes designed to “counter police resistance to arrests in domestic violence cases by removing or restricting police officer discretion[.]”<sup>8</sup> Mandatory arrest policies—together with novel training for law enforcement on the dynamics of domestic violence—increased awareness and provided victims with more options and safety measures.<sup>9</sup> In addition, aggressive prosecution policies underscored the transformation of domestic violence from a purportedly private matter to a public safety concern.<sup>10</sup>

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*Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1502–1503 (1993) (citations omitted).

<sup>7</sup> See, e.g., Awoyomi, *supra* note 5 at 8–9; Johnson, *supra* note 5 at 498–499; Sack, *supra* note 5 at 1666–1668.

<sup>8</sup> Sack, *supra* note 5 at 1670; see also *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 780 (2005) (Stevens, J., dissenting) (describing the “nationwide movement of States that took aim at the crisis of police underenforcement in the domestic violence sphere by implementing ‘mandatory arrest’ statutes”).

<sup>9</sup> Johnson, *supra* note 5 at 499 (noting that “mandatory arrest policies send a strong message that domestic violence is a serious crime and should be treated as such” (citation omitted)).

<sup>10</sup> See, e.g., Sack, *supra* note 5 at 1672–1674. State actors are charged with enforcing numerous laws that protect victims of domestic violence, including assault, threats (or menacing), endangerment, criminal coercion, kidnapping, unlawful imprisonment, sexual assault, rape, trespassing, harassment, and stalking. See

Despite decades of progress, domestic violence remains a startlingly prevalent, pressing problem in the United States.<sup>11</sup> More than one in three women and about one in three men in the United States have experienced contact sexual violence, physical violence, and/or stalking by an intimate partner.<sup>12</sup> And the danger posed by domestic violence is real. One in four women and one in seven men over the age of 18 have suffered *severe* physical violence at the hands of an intimate partner in their lifetime.<sup>13</sup> More than half of

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*Crimes*, WomensLaw.org, <https://www.womenslaw.org/laws/general/crimes> (last visited Dec. 8, 2020).

<sup>11</sup> Indeed, the Supreme Court has “recognize[d] that domestic abuse is a serious problem in the United States.” *Georgia v. Randolph*, 547 U.S. 103, 117 (2006) (citations omitted). Other courts across the country have done the same. *See, e.g., United States v. Staten*, 666 F.3d 154, 164 (4th Cir. 2011) (noting the “unfortunately indisputable proposition that domestic violence is a serious problem in the United States”); *Okin v. Vill. of Cornwall-On-Hudson Police Dep’t*, 577 F.3d 415, 431 n.10 (2d Cir. 2009) (“The statistics demonstrate that domestic violence remains dangerous, serious and prevalent.”).

<sup>12</sup> *See, e.g.,* Sharon G. Smith et al., *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, Ctrs. for Disease Control & Prevention 8–9 (Nov. 2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>. Further, about one in four women and one in ten men in the United States have experienced contact sexual violence, physical violence, and/or stalking by a partner that impacted their ability to function. *Id.*

<sup>13</sup> *Domestic Violence Statistics*, Nat’l Domestic Violence Hotline, <https://www.thehotline.org/stakeholders/domestic-violence-statistics/> (last visited Dec. 8, 2020) [hereinafter “*Domestic Violence Statistics*”] (emphasis added) (citing M.C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*, Ctrs. for Disease Control & Prevention (Nov. 2011),

female murder victims (and about one in 13 male murder victims) are killed by a current or former intimate partner.<sup>14</sup> And of those women who have experienced rape, physical violence, and/or stalking by an intimate partner, more than eight in ten reported significant short- and long-term impacts, such as injuries or symptoms of post-traumatic stress disorder.<sup>15</sup>

The effects of domestic violence are not limited to adults. Children also suffer—both as victims and from exposure to domestic violence committed against their parents and/or siblings. More than one in four children in the United States have been exposed to some form of domestic violence; most of them were direct eyewitnesses.<sup>16</sup> Proximity to domestic violence

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[https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf) [hereinafter “2010 Summary Report”]).

<sup>14</sup> Allison Ertl et al., *Surveillance for Violent Deaths — National Violent Death Reporting System, 32 States, 2016*, Ctrs. for Disease Control & Prevention (Oct. 4, 2019), <https://www.cdc.gov/mmwr/volumes/68/ss/ss6809a1.htm>. And a study of intimate partner homicides revealed that 20% of victims were not the intimate partners themselves, but rather family members, friends, neighbors, persons who intervened, law enforcement responders, or bystanders. See, e.g., Sharon G. Smith et al., *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003–2009*, 104 AM. J. OF PUB. HEALTH 461, 463 (2014).

<sup>15</sup> *Domestic Violence Statistics*, supra note 13 (citing 2010 Summary Report, supra note 13). Such harm is not limited to women: 35% of men reported the same significant impacts from experiences of rape, physical violence, and/or stalking from an intimate partner. *Id.* (citing 2010 Summary Report, supra note 13).

<sup>16</sup> Sherry Hamby et al., *Children’s Exposure to Intimate Partner Violence and Other Family Violence*, Juv. Just. Bull.: U.S.

also significantly increases the risk of abuse to children; one study found that children exposed to violence at home were 15 times more likely to be physically and/or sexually assaulted.<sup>17</sup> And data suggest a strong link between child abuse and continuing the cycle of domestic violence later in life.<sup>18</sup>

The dangers posed by domestic violence are nothing new, but they are particularly acute amid the COVID-19 pandemic and attendant lockdowns that place victims at home with violent partners. The pandemic has caused significant economic devastation, disconnected people from community resources and support systems, and created widespread uncertainty. Economic instability, unsafe living situations, neighborhood violence, and lack of safe and/or stable child care can worsen situations where family violence already exists, and stimulate violence where it did not previously exist.<sup>19</sup> Indeed, historical data reveal that rates

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Dep't of Just. 8 (Oct. 2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf>.

<sup>17</sup> *Behind Closed Doors: The Impact of Domestic Violence on Children*, UNICEF 7 (2006), <https://www.unicef.org/media/files/BehindClosedDoors.pdf> (citation omitted).

<sup>18</sup> *See id.* (“The single best predictor of children becoming either perpetrators or victims of domestic violence later in life is whether or not they grow up in a home where there is domestic violence.”).

<sup>19</sup> *See, e.g.,* Megan L. Evans et al., *A Pandemic Within a Pandemic — Intimate Partner Violence During Covid-19*, THE NEW ENG. J. OF MED. 1 (Sept. 16, 2020). Moreover, because mandated reporters, such as teachers, child care providers, and clinicians, have fewer interactions with children and families, there are fewer opportunities to assess, recognize, and report signs of abuse or neglect than pre-pandemic. *Id.* at 2.

of violence between intimate partners increases during pandemics and times of economic upheaval.<sup>20</sup> This current pandemic era is no different; agencies across the United States are reporting an increase in domestic violence.<sup>21</sup>

Despite the dramatic and persistent presence of domestic violence in the United States, victims do not always receive the protection they desperately need from law enforcement. Although law enforcement is now among the first potential sources of protection and assistance to which domestic violence victims turn,<sup>22</sup> officers sometimes fail to respond

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<sup>20</sup> See, e.g., Eve Valera, *When Lockdown Is Not Actually Safer: Intimate Partner Violence During COVID-19*, Harv. Health Blog (July 7, 2020), <https://www.health.harvard.edu/blog/when-lockdown-is-not-actually-safer-intimate-partner-violence-during-covid-19-2020070720529> (citations omitted).

<sup>21</sup> See, e.g., Andrew M. Campbell, *An Increasing Risk of Family Violence During the Covid-19 Pandemic: Strengthening Community Collaborations to Save Lives*, 2 FORENSIC SCI. INT'L: REPS. 1, 1–3 (2020); see also Arielle Avila & Cat Cardenas, *Domestic Violence Calls Spike in Texas Cities, While Falling in Rural Areas*, TexasMonthly.com (May 19, 2020), <https://www.texasmonthly.com/news/domestic-violence-pandemic/> (reporting a 40% increase in calls and requests for shelter at the Houston Area Women's Center; 20% increases in reported domestic violence reports to the Dallas Police Department between February and March 2020; and an 18% spike in domestic violence calls to the San Antonio Police Department for March 2020 compared to March 2019).

<sup>22</sup> See, e.g., Johnson, *supra* note 5 at 502 (examining police response to domestic violence incidents and identifying aspects of police intervention that victims of domestic abuse find “most” and “least” helpful); see also Joanne Belknap et al., *The Levels and Roles of Social and Institutional Support Reported by*



appropriately or take effective steps to help victims.<sup>23</sup> And, in some instances—as in the case of Petitioner—that failure is egregious.<sup>24</sup>

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*Survivors of Intimate Partner Abuse*, 4 FEMINIST CRIMINOLOGY 377, 380 (2009) (“In terms of research on potential institutional support, traditionally, the police have been called but were not deemed supportive[.]”). Indeed, victims of domestic violence often rely on law enforcement to respond to 911 calls, issue police reports, enforce court-issued protective orders, escort abusers out of a shared dwelling, and arrest and detain abusers. *See, e.g., Domestic Violence Restraining Orders*, WomensLaw.org, <https://www.womenslaw.org/laws/general/restraining-orders> (last visited Dec. 8, 2020); *Building Your Case: How to Document Abuse*, Nat’l Domestic Violence Hotline, <https://www.thehotline.org/resources/building-your-case-how-to-document-abuse/> (last visited Dec. 8, 2020).

<sup>23</sup> *See* T.K. Logan & Roberta Valente, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, Nat’l Domestic Violence Hotline 2, 6 (2015), <https://www.thehotline.org/wp-content/uploads/media/2020/09/NDVH-2015-Law-Enforcement-Survey-Report-2.pdf> (although “[a] large number of survivors do call the police,” “[m]any survivors report that law enforcement fails to investigate domestic violence cases appropriately,” and only one in five victims felt safer after calling the police); *see also* Belknap, *supra* note 22 at 395 (explaining that “the police, prosecutors, and other legal advisers were rated the least supportive ratings among all the sources of both social and institutional supporters”).

<sup>24</sup> The facts of this case illustrate how egregiously deficient responses by state actors create or enhance the dangers victims of domestic violence face. *See* Pet. at 4–8 (describing the horrific acts of violence suffered by Petitioner after law enforcement failed to take appropriate steps to secure her safety); *see also* *Okin*, 577 F.3d at 430–431 (applying the state-created danger doctrine where a factfinder could reasonably determine that the state actors “enhanced the danger to [the plaintiff-appellant] because they conveyed to [her partner] that he could continue to engage in domestic violence with impunity”); *Freeman v.*

The state-created danger doctrine provides an important avenue for redress of such egregious failures through 42 U.S.C. § 1983, which is designed to “deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.” *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) (citation omitted). The emphasis is on “egregious”; the state-created danger doctrine does not “impos[e] liability whenever someone cloaked with state authority causes harm.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 848 (1998). Instead, to establish a violation of substantive due process rights, a domestic violence victim must show that the conduct of law enforcement personnel was “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Id.* at 847 n.8. The doctrine thus serves as an important check on state actors, promoting responsible law enforcement and creating civil liability only in circumstances when state action was shockingly deficient. And given the breadth and seriousness of America’s domestic violence problem, it is well-warranted.

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*Ferguson*, 911 F.2d 52, 54–55 (8th Cir. 1990) (reasoning that the lawsuit brought on behalf of a woman and her daughter killed by the woman’s estranged husband may show that state actors increased the danger faced by the decedents).

## II. UNIVERSAL AVAILABILITY OF THE STATE-CREATED DANGER DOCTRINE WILL PROMOTE JUSTICE IN LIGHT OF THE SIGNIFICANT DOMESTIC VIOLENCE RISKS POSED TO INDIVIDUALS WITHIN THE FIFTH CIRCUIT.

The current circuit split over the applicability of the state-created danger doctrine has significant practical consequences for individuals residing in the states covered by the Fifth Circuit, who do not have access to the same legal remedies as do those in most of the country, despite facing the same threats and acts of domestic violence. Indeed, extending this doctrine to the Fifth Circuit is particularly important in light of the troubling frequency of domestic violence incidents in Louisiana, Texas, and Mississippi—the three states located within the Fifth Circuit’s jurisdiction.

### A. *Louisiana*

Louisiana has ranked among the worst in the nation in domestic killings since 2001.<sup>25</sup> There was at least one domestic homicide in every parish in Louisiana—all 64 of them—between 2010 and 2014.<sup>26</sup> According to the Violence Policy Center, Louisiana had the fifth-

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<sup>25</sup> See Jacqueline Derobertis, *In Louisiana, Authorities Battle Domestic Violence Problem That’s Worse Than Most Other States*, *The Advocate* (Dec. 22, 2018), [https://www.theadvocate.com/baton\\_rouge/news/crime\\_police/article\\_3e81caec-02e1-11e9-b213-d38d90828a6c.html](https://www.theadvocate.com/baton_rouge/news/crime_police/article_3e81caec-02e1-11e9-b213-d38d90828a6c.html).

<sup>26</sup> See, e.g., *2015 Legislative Guide: Domestic Violence in Louisiana*, La. Coal. Against Domestic Violence 1 (2015), <https://lcadv.org/wp-content/uploads/2015-LCADV-Legislative-Guide2.pdf> (last visited Dec. 8, 2020) [hereinafter “*2015 Legislative Guide*”].

highest homicide rate of female victims killed by male offenders in 2018.<sup>27</sup> In fact, Louisiana's rate was nearly double the national average for that year.<sup>28</sup> Notably, these murders primarily occurred within domestic relationships: 81% of female homicides in Louisiana are committed by a partner or former partner.<sup>29</sup> And these incidents have involved a diverse group of victims.<sup>30</sup>

The statistics for non-fatal domestic violence events in Louisiana are equally as stark. More than 5,000 adult women residing in Louisiana experience domestic violence each year.<sup>31</sup> And more than one in three women and one in three men in the State experience

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<sup>27</sup> See *When Men Murder Women: An Analysis of Homicide Data*, Violence Pol'y Ctr. 4 (2020), <https://vpc.org/studies/wmmw2020.pdf> (last visited Dec. 8, 2020) [hereinafter "*When Men Murder Women 2018 Analysis*"].

<sup>28</sup> See *id.*

<sup>29</sup> See *Domestic Violence in Louisiana*, Nat'l Coal. Against Domestic Violence (2016), [https://assets.speakcdn.com/assets/2497/louisiana\\_2019.pdf](https://assets.speakcdn.com/assets/2497/louisiana_2019.pdf) (last visited Dec. 8, 2020).

<sup>30</sup> See *When Men Murder Women 2018 Analysis*, *supra* note 27 at 15 (of the 54 reported female homicide victims in Louisiana in 2018, 34 were black, 19 were white, and 1 was of unknown race); *When Men Murder Women: An Analysis of Homicide Data*, Violence Pol'y Ctr. (2019), <https://vpc.org/studies/wmmw2019.pdf> (last visited Dec. 8, 2020) (of the 63 reported female homicide victims in Louisiana in 2017, 36 were Black, 25 were white, 1 was Asian or Pacific Islander, and 1 was of unknown race).

<sup>31</sup> See *2015 Legislative Guide*, *supra* note 26 at 2 (citation omitted).

physical violence, sexual violence, and/or stalking from intimate partners in their lifetimes.<sup>32</sup>

### **B. Texas**

Like Louisiana, Texas faces significant domestic violence issues. In 2017, law enforcement officers responded to 195,315 incidents of family violence, approximately 40% of which were intimate partner violence.<sup>33</sup> These figures are concerning, yet unsurprising, given the number of Texans who reportedly experience domestic violence in their lifetimes. More than one in three women and more than one in three men in the State experience physical violence, rape, and/or stalking from intimate partners in their lifetimes.<sup>34</sup> The statistics reveal a problem that is even more widespread among youth; fully 75% of Texans aged 16 to 24 have either experienced dating violence or know another young person who has suffered it.<sup>35</sup>

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<sup>32</sup> See *Domestic Violence in Louisiana*, Nat'l Coal. Against Domestic Violence (2020), [https://assets.speakcdn.com/assets/2497/ncadv\\_louisiana\\_fact\\_sheet\\_2020.pdf](https://assets.speakcdn.com/assets/2497/ncadv_louisiana_fact_sheet_2020.pdf) (last visited Dec. 8, 2020); see also Derobertis, *supra* note 25 (highlighting “limited resources for victim assistance, inadequate batterer intervention programs and a criminal justice system that fails to hold offenders accountable as obstacles to domestic violence prevention across [Louisiana]”).

<sup>33</sup> See *Honoring Texas Victims: Family Violence Fatalities in 2017*, Tex. Council on Fam. Violence 5, [http://tcfv.org/wp-content/uploads/2019/02/2017HTV\\_FullReport\\_PROOF3\\_8.5x11.pdf](http://tcfv.org/wp-content/uploads/2019/02/2017HTV_FullReport_PROOF3_8.5x11.pdf) (last visited Dec. 8, 2020).

<sup>34</sup> See *Domestic Violence in Texas*, Nat'l Coal. Against Domestic Violence (2016), [https://assets.speakcdn.com/assets/2497/texas\\_2019.pdf](https://assets.speakcdn.com/assets/2497/texas_2019.pdf) (last visited Dec. 8, 2020).

<sup>35</sup> See *id.*

Consistent with these reports, the number of domestic homicides in Texas is also high. According to the Violence Policy Center, Texas ranked 13th among all states for the highest rate of homicide of female victims by male offenders in 2018.<sup>36</sup> That same year, 174 women were killed by a male intimate partner in Texas—averaging nearly one such homicide every two days.<sup>37</sup> In 2019, 185 Texans, 150 of whom were female, were killed by intimate partners.<sup>38</sup> Adding to these troubling statistics is the reality that many of these relationships involved known risk factors: In 27% of these homicides, the perpetrator had a known prior history of violence.<sup>39</sup>

### **C. Mississippi**

Domestic violence is also extremely prevalent in Mississippi. More than four in ten women and one in four men in the state experience physical violence, rape, and/or stalking from an intimate partner in their lifetimes.<sup>40</sup> Although Mississippi has made laudable progress in certain areas—such as, for example, establishing the Attorney General’s Domestic Violence Unit in 2006—instances of domestic violence

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<sup>36</sup> See *When Men Murder Women 2018 Analysis*, *supra* note 27 at 10.

<sup>37</sup> See *Honoring Texas Victims: Summary Facts 2019*, Tex. Council on Fam. Violence, [http://tcfv.org/wp-content/uploads/2020/10/2019HTV-SF-Women\\_final.pdf](http://tcfv.org/wp-content/uploads/2020/10/2019HTV-SF-Women_final.pdf) (last visited Dec. 8, 2020).

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> See *Domestic Violence in Mississippi*, Nat’l Coal. Against Domestic Violence (2016), [https://assets.speakcdn.com/assets/2497/mississippi\\_2019.pdf](https://assets.speakcdn.com/assets/2497/mississippi_2019.pdf) (last visited Dec. 8, 2020).

have remained staggeringly high. The State's homicide rate of female victims killed by male offenders ranked 16th-highest in the nation in 2018.<sup>41</sup> And according to former Mississippi State Attorney General Jim Hood, during a mere twelve-month period from 2018 to 2019, there were 5,177 domestic abuse protection orders issued and 9,756 domestic violence offense reports entered into the State's system.<sup>42</sup>

Given the staggering domestic violence risks posed to individuals within jurisdictions embraced by the Fifth Circuit, extending the state-created doctrine will promote justice by ensuring that these individuals have access to civil remedies that are widely available in the United States for holding state actors accountable for egregious failures.

**III. THE STATE-CREATED DANGER DOCTRINE PROMOTES ACCOUNTABILITY AND TRUST IN LAW ENFORCEMENT AND IMPROVES PUBLIC SAFETY.**

The state-created danger doctrine will also promote accountability of state actors charged with enforcing domestic violence laws and improve public safety. A rule of liability for grossly inadequate responses to domestic violence will create the right incentive for law

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<sup>41</sup> See *When Men Murder Women 2018 Analysis*, *supra* note 27 at 9.

<sup>42</sup> See Ray Van Dusen, *Domestic Violence Cases Dangerous for Law Enforcement*, *Monroe J.* (Oct. 24, 2019), [https://www.djournal.com/monroe/news/domestic-violence-cases-dangerous-for-law-enforcement/article\\_3c545519-eeb5-55bf-a4c0-4a4cbf7f8da5.html](https://www.djournal.com/monroe/news/domestic-violence-cases-dangerous-for-law-enforcement/article_3c545519-eeb5-55bf-a4c0-4a4cbf7f8da5.html).

enforcement personnel to handle these situations properly and effectively. Effective enforcement of existing domestic violence laws builds trust between law enforcement and the communities they serve, thereby encouraging more accurate reporting of dangerous criminal behavior.<sup>43</sup>

Because it creates an avenue for civil liability in actions against law enforcement, the state-created danger doctrine encourages law enforcement to address domestic violence matters more effectively in the first instance, before such disputes escalate further.<sup>44</sup> Extending this doctrine to the Fifth Circuit will likely motivate agencies to develop uniform guidelines for officers to follow, which in turn will enhance public safety. Such policies are sorely needed, particularly in the Fifth Circuit.

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<sup>43</sup> Federal studies demonstrate significant reporting issues for domestic violence. During the 10-year period from 2006 to 2015, an average of 1.3 million nonfatal domestic violence victimizations occurred annually in the United States, but nearly half (44%) of those incidents were not reported to police. U.S. Dep't of Just., *Police Response to Domestic Violence, 2006-2015*, NCJ 250231 (May 2017), <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf> (last visited Dec. 8, 2020) [hereinafter "NCJ 250231"].

<sup>44</sup> Law enforcement agencies report that approximately one-third of femicide victims nationwide contacted law enforcement in the year prior to their killing. See, e.g., *Lethality Assessment Program*, N.H. Dep't of Just. Off. of the Att'y Gen., <https://www.doj.nh.gov/criminal/victim-assistance/lethality-assessment-program.htm> (last visited Dec. 8, 2020); Nick Judin, *Byram Police: A Model for Domestic-Abuse Response?*, The Jackson Free Press (June 10, 2020), <https://www.jacksonfree-press.com/news/2020/jun/10/byram-police-model-domestic-abuse-response/>.



In Louisiana, for example, there is *no* statewide policy or best practice doctrine in place for law enforcement agencies responding to intimate partner violence.<sup>45</sup> Although the state legislature has passed some laws regarding when officers must arrest perpetrators and when they have discretion to do so, “this is only one element of the response.”<sup>46</sup> No Louisiana agency is required to maintain an internal policy on domestic violence policing apart from the New Orleans Police Department, which is required to do so by a Federal Consent Decree.<sup>47</sup> Because Louisiana and its individual agencies lack a uniform policy on domestic violence, and “many agencies are, at best, not using the most up-to-date best practices and, at worst, misunderstanding the law,” many officers act in ways that harm domestic violence victims.<sup>48</sup> Moreover, because training can vary both by department and by the individual officer, victims’ treatment can vary significantly purely because of the law enforcement personnel involved.<sup>49</sup> As one victim reported, “I heard a policeman say, ‘oh this is just a domestic violence

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<sup>45</sup> See *Fragmented and Unequal: A Justice System that Fails Survivors of Intimate Partner Violence in Louisiana, USA*, Amnesty Int’l 9 (2019), <https://www.amnesty.org/download/Documents/AMR5111602019ENGLISH.PDF> (last visited Dec. 8, 2020) [hereinafter “*Fragmented and Unequal*”].

<sup>46</sup> *Id.*

<sup>47</sup> See *id.* Law enforcement accountability in Louisiana is hampered by the state’s lack of legitimate oversight. For all but one of Louisiana’s 64 parishes, no independent body exists to which domestic violence survivors can submit a complaint. *Id.* at 82.

<sup>48</sup> *Id.* at 9.

<sup>49</sup> See *id.*

case.’ And he was not five feet from where I’m fighting for my life and my child was dead, so there wasn’t nothing ‘just’ about it.”<sup>50</sup> The specter of civil liability raised by the state-created danger doctrine will mobilize improvements to training and guidelines—particularly in the domestic violence context—and thereby ensure that officers respond more effectively to victims in need.

Recognizing the state-created danger doctrine nationwide also will promote confidence in the criminal justice system and encourage victims to report domestic violence incidents with greater frequency. Currently, victims are sometimes uncomfortable reporting their circumstances to law enforcement, which impedes meaningful resolution of these issues and further endangers victims.<sup>51</sup> In the absence of the state-created danger doctrine, this lack of trust in state actors meant to protect domestic violence victims has led to disastrous outcomes in the Fifth Circuit. For instance, domestic violence victims in Louisiana reported that they are often “reluctan[t] \* \* \* to call the police because of a lack of trust that the police will help them.”<sup>52</sup> Other victims avoid law enforcement because they fear for their own safety, doubtful that officers will assist or believe them, and worried that involving the authorities will only make matters worse.<sup>53</sup> The state-created danger doctrine

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<sup>50</sup> *Id.*

<sup>51</sup> See, e.g., Logan & Valente, *supra* note 23 at 2–12; NCJ 250231, *supra* note 43 at 3, 5, 23.

<sup>52</sup> *Fragmented and Unequal*, *supra* note 45 at 61.

<sup>53</sup> See generally, e.g., Logan & Valente, *supra* note 23.

encourages accurate reporting of domestic violence incidents and thereby promotes the public health.

Women, men, and children all over the country suffer incidents of domestic violence every day. In many instances, law enforcement responds effectively to a victim's call for help. But in a rare but terrible set of cases, law enforcement's response is so outrageously deficient that it causes or exacerbates harm. The state-created danger doctrine is a necessary and powerful tool in those egregious cases to ensure that those victims, who have suffered so much, have recourse against the state that augmented their suffering.

### CONCLUSION

For the forgoing reasons, and those discussed in the Petition, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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