

No. 22-915

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

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UNITED STATES OF AMERICA,

*Petitioner,*

*v.*

ZACKEY RAHIMI,

*Respondent.*

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

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**BRIEF OF *AMICI CURIAE*  
DC COALITION AGAINST DOMESTIC  
VIOLENCE AND OTHER DOMESTIC  
VIOLENCE ORGANIZATIONS  
IN SUPPORT OF PETITIONER**

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* include nonprofit organizations devoted to remedying domestic violence through legislative, legal, and other initiatives, as well as organizations dedicated to serving and supporting survivors of domestic violence. Among other things, they provide shelter, counseling, and advocacy services, as well as serving as leaders in developing and implementing the Violence Against Women Act and other laws that provide safety and independence for survivors of domestic violence. *Amici* have hundreds of years of collective experience working with such survivors, including extensive efforts to improve both the criminal and civil justice systems' responses to and prevention of domestic violence.

Over the past decade, *amici* gathered extensive first-hand data and histories from domestic violence survivors, collectively demonstrating that domestic violence abusers frequently engage in a pattern of abusive conduct that includes the use of firearms to control and terrorize their victims. *Amici* thus have advocated for decades for safety protections for survivors, including helping champion the federal prohibition of firearm possession by those subject to domestic violence orders at issue in this case. What the lower court decision misunderstands is that this prohibition is not a removal of a right historically protected in this Country. To the contrary, it reflects the historical preference of Americans to protect both individuals and society from further violence and

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<sup>1</sup> No part of this brief was authored in whole or in part by counsel for any party, and no person or entity has made any monetary contribution to the preparation or submission of the brief other than *amici curiae* and their counsel.

harms to individuals judicially determined to be a dangerous risk. Nothing can make that clearer than the stories, *infra*, of survivors and their family members who live—or have lost their lives to—the daily reality of that risk.

### SUMMARY OF ARGUMENT

Respondent, like other abusers determined by courts to be societal risks, are not “responsible, law-abiding” citizens and can therefore be disarmed consistent with the Second Amendment’s text, historical foundation, and this Court’s precedent. Indeed, nothing about Respondent’s behavior could be reasonably characterized as “responsible” or “law-abiding.” Police officers ultimately obtained a warrant to search Respondent’s home having identified him as a suspect in multiple shootings, including into a residence, of a constable’s car, and into the air at a fast food restaurant. Notably, this behavior occurred after Respondent already had been violent toward his prior partner and the mother of his minor child. As discussed below, similarly problematic behavior is not uncommon amongst those subject to domestic violence orders.

*Amici* know all too well the danger Respondent and those like him pose. *Amici* represent those whose lives intimate partner violence has upended. *Amici* see the impacts on family of domestic violence victims. *Amici* are friends of domestic violence victims. *Amici* are neighbors, co-workers, peers, and acquaintances of domestic violence victims. *Amici* know those whose lives 18 U.S.C. § 922(g)(8) saved. *Amici* know those for whom § 922(g)(8) was not enough. *Amici* are those who know firsthand what is at stake here.

*Amici's* experiences illustrate that nothing less is at stake than lives. As these stories make clear, intimate partner violence not only affects the victim of the abuse; it affects society writ large, extending to family, friends, law enforcement officers and neighbors. Two stories provide a juxtaposition of a world with § 922(g)(8), and one without. One individual:<sup>2</sup>

was brutally assaulted in May 2022 by her son's father. She was hospitalized for a month, suffered from multiple brain hematomas, teeth knocked out of her mouth, multiple facial fractures, and she lost a significant amount of blood. The medical team did not know if she would survive, and, if she did, what her quality of life would be. Her significant physical injuries notwithstanding, there were also mental effects and her fifteen-month-old son witnessed the incident.

Following the brutal attack by her abuser, the survivor obtained a protective order against her abuser that includes gun prohibitions. This survivor has not been threatened since, and receives peace of mind knowing that her abuser is banned from possessing a firearm.

Without a protective order that prohibits her abuser from possessing a firearm, it is impossible to

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<sup>2</sup> The survivor stories recounted in this brief were collected by *Amici* and have been included anonymously with permission from the survivors and their families. Anonymity is paramount to protect the identities of the survivors from the real and immediate danger posed by their abusers.

know what might happen to her. She may not even be here to share her story.

Tragically, not every victim survives:

AW was seeking a permanent Civil Protection Order against her abuser. While she had a temporary protective order and was awaiting a court date for the civil protective order, AW's abuser shot and killed her in her home with her five young children nearby. AW's abuser was taken into custody by law enforcement, but ultimately determined to be unfit to stand trial. AW's great-aunt has been caring for the children since AW was killed and her abuser was incarcerated. Caring for the children has been a struggle for AW's great-aunt emotionally and financially. Had AW received the civil protective order and her abuser's ability to legally possess firearms been removed, AW may still be alive today.

Statistics demonstrate that prohibitions like Section 922(g)(8) make society safer. As one study found, the risk of intimate-partner homicide increases 500% when abusers have access to a firearm. Doris Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study Femicide Cases*. Am. J. of Pub. Health, 93(7), 1089-97. (July 2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/pdf/0931089.pdf>. Another determined that an average of seventy (70) women are shot and killed by intimate partners per month. Everytown Rsch. & Pol'y for Everytown for Gun Safety, *Guns & Violence Against Women: America's*

*Uniquely Lethal Intimate Partner Violence Problem*, Oct. 17, 2019 (last updated Apr. 10, 2023), <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem> [hereinafter *Guns & Violence*].

Disarming dangerous individuals like those in the foregoing and following stories falls squarely within this Nation's history and tradition of firearm regulation. This Court should reverse the lower Court's decision and uphold this nation's tradition of protecting its citizens.

## ARGUMENT

### **I. A Finding That 18 U.S.C. § 922(g)(8) Is Unconstitutional Will Mean More Domestic Violence Related Deaths**

The federal Gun Control Act of 1968 prohibits firearm possession by certain individuals, including felons, fugitives, drug addicts, and the mentally ill. *See* § 922(g)(1)-(4). In 1994, Congress enacted § 922(g)(8), extending that prohibition to individuals subject to domestic violence orders. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110401(c), 108 Stat. 1796, 2014–15.

Section 922(g)(8) applies if three conditions are met:

- (1) a court issues an order after the individual receives notice and an opportunity to be heard;
- (2) the order restrains the individual from “harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate

partner in reasonable fear of bodily injury to the partner or child”; and

(3) the order “includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child” or “explicitly prohibits the use, attempted use, or threatened use of physical force . . . that would reasonably be expected to cause bodily injury[.]”

18 U.S.C. § 922(g)(8).

The Congressional intent behind the 1994 amendment was simple: save lives. As stated in the Conference Report accompanying the House bill:

Congress finds with respect to this provision that domestic violence is the leading cause of injury to women in the United States between the ages of 15 and 44; firearms are used by the abuser in 7 percent of domestic violence incidents and produces an adverse effect on interstate commerce; and individuals with a history of domestic abuse should not have easy access to firearms.

H.R. Conf. Rep. No. 103-711, at 391, 103d Cong., 2d Sess. (1994).

Section 922(g)(8) is a success story. As Congress intended, the provision has mitigated deadly intimate partner violence. The number of women killed by an intimate partner—stable between 1976 and 1993—declined 23% between 1993 (the year prior to passage of Section 922(g)(8)) and 1997. Callie Marie Rennison & Sarah Welchans, U.S. Dep’t of Justice, Bureau of Justice Statistics, NCJ 178247, *Intimate Partner*

*Violence* 1, 3 (May 2000), <https://bjs.ojp.gov/content/pub/pdf/ipv.pdf>. Intimate partners committed fewer murders in 1996, 1997, and 1998, than in any year since 1976. *Id.* at 1. In 1998, roughly 1,830 murders were attributable to intimate partners, compared with 3,000 such murders in 1976. *Id.*

But the work is not finished. Rates of domestic and intimate partner violence remain high. As of 2022, approximately one in three women and one in four men report having experienced severe physical violence from an intimate partner in their lifetime. U.S. Centers for Disease Control and Prevention (“CDC”), *Fact Sheet: Preventing Intimate Partner Violence*, (2022) [https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet\\_2022.pdf](https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet_2022.pdf). On average, three women are killed by a current or former partner *every day* in the United States. Shannon Catalano, PhD, U.S. Dep’t of Justice Programs, Bureau of Justice Statistics, *Intimate Partner Violence: Attributes of Victimization, 1993–2011* (Nov. 2013) at 3, <https://bjs.ojp.gov/content/pub/pdf/ipvav9311.pdf>. More than half are killed with firearms. April M. Zeoli & Amy Bonomi, *Pretty in Pink? Firearm Hazards for Domestic Violence Victims*, 25 *Women’s Health Issues* 1, 3 (2015), [https://www.whijournal.com/article/S1049-3867\(14\)00112-1/pdf](https://www.whijournal.com/article/S1049-3867(14)00112-1/pdf). Likewise, in 2021 alone, 204 men and women were killed by their intimate partners in Texas, and between 2019 and 2021 reported incidents of family violence in Texas increased from 196,902 to 232,840. Texas Council on Family Violence, *Honoring Texas Victims Family Violence Homicides in 2021* at 4-5, [https://tcfv.org/wp-content/uploads/tcfv\\_htv\\_rprt\\_2021.pdf](https://tcfv.org/wp-content/uploads/tcfv_htv_rprt_2021.pdf). A backstep could be catastrophic.

*Amici* offer these domestic violence victim and survivor stories to showcase both the lifesaving effect of Section 922(g)(8), but also as a cautionary tale about what will flourish should the Court find Section 922(g)(8) unconstitutional.

## **II. The Following Survivors' Stories Demonstrate Both Individual and Societal Need for the Protections of Section 922(g)(8)**

### **A. Perpetrators of Domestic Violence Like Respondent Are Not Within the Scope of the Second Amendment**

Section 922(g)(8) does not regulate “law-abiding, responsible citizens” and thus falls outside the scope of the Second Amendment’s protections. Both *District of Columbia v. Heller* and *New York State Rifle & Pistol Association, Inc. v. Bruen* repeatedly characterize the holders of Second Amendment rights as “law abiding” citizens. *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, – U.S. –, 142 S. Ct. 2111, 2122, 2125, 2131, 2133–34, 2135 n.8, 2138 & n.9, 2150, 2156, 213 L. Ed. 2d 387 (2022); *Dist. of Columbia v. Heller*, 554 U.S. 570, 625, 635, 128 S. Ct. 2783 (2008). That qualifier has meaning. And Respondent is not of that ilk.

Persons subject to domestic violence orders under Section 922(g)(8) are not “law abiding” or “responsible” citizens. Section 922(g)(8) applies only to those judicially determined, “after a hearing” for which they had “actual notice,” to present a “credible threat” or “real threat” to the physical safety of

another person. § 922(g)(8)(A), (C)(i).<sup>3</sup> Often the conduct leading to a domestic violence order constitutes a crime—such as assault, battery, or criminal threat. How these determinations are made must be considered to defuse some of the lower court’s assumptions. First, criminal proceedings rarely offer a victim of domestic violence a meaningful or realistic path to protection. To begin, it requires someone who has been threatened or physically assaulted to actively seek the affirmative criminal prosecution of their abuser. Next, the prosecution and enforcement of a criminal determination rarely results in affirmative protections, as it unfortunately does not percolate to the top of priorities for most agencies. Finally, the criminal path often results in the domestic violence allegations being dropped in plea agreements, providing no protection for the survivor. One of the purposes of the criminal legal system is to hold a criminal defendant accountable for crimes, not to fully consider and address the ongoing safety concerns and protection of the victim. The closest, quickest, and most tailored protection a survivor can seek is through the civil system of receiving a protective order.

Second, it is important to recognize that civil protective orders are never granted by right, as the lower court seemed to assume. Merely requesting a protective order does not mean that the protective order will be issued. That is particularly true when the protective order is contested by the abuser:

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<sup>3</sup> Although § 922(g)(8)(C)(ii), does not specifically require a finding of a “credible threat,” it requires that a court explicitly prohibit the use, attempted use, or threatened use of physical violence.

In 2020, a survivor met a man and immediately fell in love. He would soon become her mental and physical abuser.

Shortly after she started a new job in the legal field, the abuse began. It culminated with her abuser holding a loaded firearm to her head. She tried to leave the relationship, but he threatened to ruin her legal career before it began and she stayed with her abuser.

The following year, her abuser left her. She filed for a protective order shortly after and was granted a temporary *ex parte* protective order. Her abuser filed a competing protective order against the survivor. Following a contested protective order hearing in which she testified about more than 20 instances of abuse and stalking for more than four hours, the survivor's protective order was denied for a supposed failure to show that future abuse would occur. Her abuser's attorney then offered a permanent mutual injunction. It did not require the abuser to relinquish his firearms or include any prohibition on possessing firearms. The survivor feels no safer with the permanent mutual injunction and remains understandably frightened knowing that her abuser is out there and can, and likely does, legally possess firearms.

For these reasons, the criminality of a respondent's behavior should not factor into the Court's calculus, as history is legion with restrictions

on firearm possession directed to citizens who are not law-abiding and responsible, despite any formal charges or determinations. For example, English subjects in the 1760s had a right to arms for their defense, “suitable to their condition and degree” and “under due restrictions[.]” 1 William Blackstone, *Commentaries on the Laws of England* 139 (1765). Much the same was true in this country. Samuel Adams proposed at the Massachusetts Ratifying Convention that Congress be forbidden from preventing “the people of the United States, *who are peaceable citizens*, from keeping their own arms.” Journal of Convention: (Feb. 6, 1788), *reprinted in Debates and Proceedings in the Convention of the Commonwealth of Massachusetts Held in the Year 1788* 86 (Boston, William White 1856) (emphasis added). Pennsylvania delegates in 1787 similarly proposed that “no law shall be passed for disarming the people or any of them unless for crimes committed, *or real danger of public injury from individuals*.” The Address and Reasons of Dissent of the Minority of the Convention of the States of Pennsylvania to Their Constituents, *reprinted in* Bernard Schwartz, 2 *The Bill of Rights: A Documentary History* 662, 665 (1971) (emphasis added).

It makes sense that the Second Amendment makes room for restrictions on firearm possession by dangerous individuals. After all, this Court’s repeated references to “law-abiding” and “responsible” exclude not only those who commit crimes (felonies, dangerous misdemeanors) but also those who are not responsible possessors of firearms (minors, the mentally ill). *See supra* at 8-9. Domestic abusers like Respondent fall into this latter category (not

responsible gun owners) and can therefore be disarmed consistent with the Second Amendment's text, historical foundation, and this Court's precedent.

Indeed, Courts have concluded, in light of the foregoing, that regulation of firearm possession by dangerous individuals is within this Nation's history and tradition. As the Eighth Circuit explained, Section 922(g)(8)'s prohibition on firearm possession by those deemed "a credible threat to the physical safety of an intimate partner or child" is "consistent with a common-law tradition that the right to bear arms is limited to peaceable or virtuous citizens." *United States v. Bena*, 664 F.3d 1180, 1184 (8th Cir. 2011) (quoting 18 U.S.C. § 922(g)(8)(C)(i)). The Eighth Circuit further observed that Section 922(g)(8) "is focused on a threat presented by a specific category of presumptively dangerous individuals" and does not "apply in perpetuity, but only so long as a person is 'subject to' a qualifying court order." *Id.* The Eighth Circuit accordingly concluded that "the Second Amendment does not preclude this type of regulatory measure." *Id.*

In light of the foregoing, it is illogical to construe the "law abiding" qualifier, as does the Fifth Circuit, as mere "shorthand" for a holding that *Bruen* does not upend laws prohibiting the possession of firearms by felons or the mentally ill—and may similarly be construed to mean *Bruen* does not upend laws prohibiting the possession by those subject to domestic violence orders.

**B. Individuals Like Respondent are a Threat Not only to Their Partners, But Society at Large**

Domestic violence does not just affect one individual overnight; it grows across society over long-periods of time throughout entire social networks. According to The National Intimate Partner and Sexual Violence Survey published in October 2022 by the CDC, as of 2016 and 2017, 47.3% of women in the United States reported contact sexual violence, physical violence, and/or stalking victimization by an intimate partner at some point in their lifetimes. Ruth Leemis, *et al.*, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence*, 4, [https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsreportonipv\\_2022.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsreportonipv_2022.pdf). Nearly three-quarters of female victims of intimate partner violence reported that they were first victimized before age 25, and more than 25% were first victimized before age 18. *Id.* at 8. The impacts of intimate partner violence are varied, and can include: injury (74.6%), post-traumatic stress disorder symptoms (71.3%), concern for safety (63.3%), fear (60.2%), and needing help from law enforcement (38.6%). *Id.* at 12. According to the CDC's research, the most frequent forms of injury reported by female victims were mental or emotional harm (60.1%), minor bruises or scratches (54.9%), and cuts, major bruises, or black eyes (33.3%). *Id.* While statistics hold power, hearing the voices of those who have survived (and, sadly, tales of those who have not) shows the necessity of § 922(g)(8).

### **1. Abusers are a Danger to Their Victims and Themselves**

We have progressed too far as a society to bury our heads about the negative impact gun violence has on our citizens. These survivor stories emphasize the risk to all those around an abuser. These stories are from all over the Nation, but reflect the same terrifying effects of domestic violence. In one instance:

[a] survivor of domestic violence in Washington State was able to leave her abusive husband of more than twenty years and was granted a temporary domestic violence protective order. However, the Washington State Court system refused the survivor's request to require her ex-husband to surrender the weapons in his possession. The Washington Court eventually entered a full order of protection, which included language that the survivor's husband not possess, access, or transfer any weapons, but did not order him to surrender them to the police. Following issuance of the order, the survivor's husband threatened to kill himself by holding a loaded firearm to his head and said he would take the whole family with him. After the survivor was able to escape the home, the abuser violated the protective order and a criminal no contact order by emailing the survivor hundreds of times. The survivor has had to take serious precautions to keep herself and her children safe. For example, she has trimmed bushes where she is staying so she can be sure to see anyone who approaches

the residence as the husband knows where she is. She is terrified for the safety of herself and her children.

One survivor recounts the abuse endured at the hands of her abuser and how her abuser weaponized everything she loved to terrify and control her.

CM suffered physical, psychological, financial, verbal, emotional abuse, and sexual abuse from her now ex-husband. CM's ex-husband also happened to be in the military and was an expert in weapons systems. The latter proved to intensify the intentional systematic abusive control that pervaded the family's interactions.

Everything CM and her children loved was weaponized. CM focused on removing her children from the abusive home. When her husband recognized that was CM's goal, her children and their pets were regularly threatened and leveraged to maintain control and fear. CM's abuser often told her that "if she could not prove it; it did not happen." Eventually, the psychological abuse culminated with her husband killing their eighteen-month old dog.

CM was eventually able to escape the house and relationship, but not before her husband physically abused her son and nearly killed him at a crowded beach. She was able to get some help from military spouse resources, but was told there was nothing more they could do to ensure that her husband would not come looking for her.

Another survivor explains the terror she feels every day, even though she has escaped her abusive relationship.

MW is a survivor of domestic violence and guns were used to control her. Her former partner has a variety of weapons (documented and undocumented) that he has hidden around his property. During their relationship, he frequently held a gun to MW's head and frequently threatened to kill her if she left him. One of his guns was equipped with a silencer and laser. He also has an AK-47. He even told MW that if war ever broke out, he had a list of people he was going to kill. His home is on a cliff down the street from a police officer range and once told MW he would love to go down there to "unload on them."

One day, he followed MW in her car with a tracking device and had a firearm with him. MW drove to the police station, the police found the tracking device, and wrote a report. Another day he pointed a firearm at MW in a public place. The police again were called and conducted a stop. MW's abuser told her that if she said anything, he would kill their son.

MW explains the effects of the abuse: "Over the years, the abuse became so bad that I did not want to live anymore. This is the only way I escaped. I realized nothing I did was going to save me. Either I was going to end my life or he was going to end it for me. He told me he would bury my body under

one of his construction sites and that no one would find me. I believe he will try to kill me one day. I've had to accept this and try to live with this reality. The hyper vigilance and pain this has caused me is significant. I stopped long distance running which was a hobby I had since the second grade. I avoid going out at night or in the early morning, in general. I live in an almost constant state of fear.”

MW suffers from post-traumatic stress disorder from the abuse she suffered.

Abusers will use anything they can to terrorize their victims, including their own children. GA's story shows just how terrifying it can be for a survivor to try to protect her own or her partner's children while experiencing domestic violence.

GA has a domestic violence protection order that protects both her and her daughter against her daughter's father, MC. The order includes a surrender of weapons, which helps GA feel immense relief. MC has been physically, sexually, emotionally, and economically abusive and has used coercive tactics to control and intimidate GA.

MC is former U.S. Army infantry. He kept a handgun and rounds of ammunition that he stored on top of a safe – not in it – because he wanted “easy access to his gun if he ever needed it.” GA asked repeatedly for MC to lock his gun in the safe, but he refused, and would check to ensure that GA had not touched or moved his gun.

GA recalls when MC's son found his gun: "One day, his teenage son was in his room looking for a hoodie and found the gun and ammunition behind a pile of sweatshirts in his dad's closet. There had just been a bomb threat at school and they had started practicing active shooter drills. MC's son was distressed. He approached me and told me I had to get rid of the gun. I took the gun and ammunition and hid it in my car. When MC got home, his teenage son told him he'd found the gun and ammunition and that I'd taken them. MC was furious with me. He knew I hadn't had enough time to take the gun anywhere and searched my car. Frantic by how agitated he was, I gave him the gun back under the condition he put the gun and ammunition in the safe - I stood over his shoulder while he put them in the safe. As soon as his teenage son's visitation was up for the weekend, MC took the gun and ammunition back out of the safe and put them back in the pile of hoodies in his closet."

After that day, GA thought she would leave and cut off contact with MC. She then learned she was pregnant with MC's child. MC moved the gun safe behind the television and stored the gun and ammunition on top of it. One day, after an argument about sleep training, MC shoved GA while she was holding their three-month-old daughter. GA remembers thinking how the gun was only feet away from her and her daughter.

GA eventually was able to hire an attorney and MC moved out of their home. After moving out, MC physically attacked GA at several exchanges for visitations with their daughter. MC blamed GA for revealing the abuse that could cost him his job and his children, or put him in jail. MC also threatened to commit suicide. GA was terrified that MC would bring a gun and shoot her or her daughter at a custody exchange. She had heard horror stories of abusers shooting the children, custody supervisors, and themselves to exact the “ultimate revenge,” and was scared that would be MC’s strategy to terrorize GA. After working with her attorney, the court ordered a domestic violence protective order and a surrender of weapons. Custody exchanges began to be professionally supervised. Eventually, MC lost visitation and can only have professionally-supervised visitation.

## **2. The Criminal Justice System Cannot Protect Survivors Alone and History Supports Civil Restrictions on Individual Liberties**

As this Court has held, dangerous people are committed to custody, sometimes for extended periods, based on civil proceedings. *See Kansas v. Hendricks*, 521 U.S. 346, 357-60 (1997) (explaining that the Constitution allows the involuntary civil confinement of those rendered dangerous due to a mental illness or disorder); *see also* 18 U.S.C. §§ 4246 (providing for civil commitment based on mental

disease or defect), 4248 (providing for civil commitment of sexually dangerous persons); *see also Heller*, 554 U.S. at 626 (noting prohibitions on possession of firearms by the mentally ill). And other constitutional rights are regularly restrained via civil processes. *See, e.g., Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (content-neutral civil injunction burdening speech is constitutional if “challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest”). Nor would categorical limits on the possession of firearms be a constitutional anomaly. The First Amendment, for example, has long had categorical limits, including obscenity, defamation, incitement to violence, and others. *See United States v. Stevens*, 559 U.S. 460, 468 (2010).

Thus, this Court's lodestar should be an individual's “dangerousness,” not whether they have yet to enter the criminal justice system. *See Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting) (explaining that legislatures can disarm “dangerous people who have not been convicted of felonies”).

Real life events support disregarding the Fifth Circuit's contrived civil-versus-criminal distinction, especially when the criminal justice system frequently fails survivors:

CT was shot and killed by her husband in October 2013. There had been many domestic violence calls to her house and there was a gun in the house. During one police visit, CT's mother told the officers that CT's husband had a gun and was going to try to kill her daughter. Police told CT's

mother there was nothing they could do. One night when CT went to pick up her daughter from her husband and CT was shot seven times. The first shot killed CT. Her ten-year-old daughter witnessed the shooting and her mother's murder. CT's mother believes that if the gun had been removed, this may never have happened and CT would be alive today.

As another example:

After informing her now ex-husband that she was finished living in a violent and abusive marriage, one survivor's ex-husband went to the gun cabinet in their home to get a firearm and told her that if he could not have her, no one could. The survivor was able to send her children to a neighbor before her ex-husband caught up with her, would not let her leave the house, and held a loaded gun to her head. Police arrived and encircled the house. Eventually, the ex-husband released the survivor and was taken by the police to the hospital for an evaluation. He was not arrested, but the firearms were removed from the home.

While her ex-husband was at the hospital, the survivor took her children and left for another city. The survivor was able to check into a motel using cash and called a friend, who told her that the police had been asking for the survivor's location. Her ex-husband had called the police and told them that the survivor had kidnapped

their children. She called the police from a pay phone, who convinced her to return to her original location by telling her that she would be put in jail if she did not. Though terrified of what would happen upon seeing her ex-husband, the survivor returned home at law enforcement's insistence.

These stories show how the criminal system can fail victims of domestic violence.<sup>4</sup> That survivor was able to escape her abuser with her children, but was forced back to the extremely dangerous situation by the very police that were called in to help her and the children get and stay safe. It demonstrates how abusers can manipulate the justice system to their advantage to exert even more control over their victims.

Broad mistrust of the criminal justice system can also prevent women from seeking help when they experience domestic violence. Citing U.S. Department of Justice Statistics, a 2019 New York Academy of Medicine Report determined that domestic violence and sexual violence (“SV”) are among the most underreported violent crimes, with 46% and 65% non-report rates for intimate partner violence and SV, respectively, between 2006 and 2010. Those authors posit that lack of confidence in the justice system increasingly explains non-reporting (20% in 2010 up from 7% in 2005). Michele R. Decker *et al.* “*You Do*

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<sup>4</sup> And as this Court has held, law enforcement has no obligation to act to keep victims safe, or to enforce protection orders. *See, e.g., Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005) (holding that wife did not have protected property interest in police enforcement of restraining order).

(continued...)

*Not Think of Me as a Human Being”: Race and Gender Inequities Intersect to Discourage Police Reporting of Violence against Women.* *Am. J. Urban Health*, 96(5): 772–83 (Oct. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6814672/>.<sup>5</sup>

RC’s story demonstrates why survivors may not be comfortable involving law enforcement. Her abuser was, after all, a police officer:

RC’s abuser was her husband and an auxiliary police officer in Illinois. On one occasion he had RC in the car, drove her to a deserted parking lot, and held a gun to her head. He wanted RC to promise that she would not leave him, and to say that all of the problems in their marriage were RC’s fault.

On another occasion, after she had moved out and had an order of protection, her husband kicked in the front door of the house RC was in, held a gun to her head, and told her to call 911 because after he shot RC, he was going to shoot himself and someone needed to come get their eighteen-month-old baby.

Whenever RC’s abuser violated the order of protection, RC would inform the police that he had access to a weapon, but the gun was never taken from him by law enforcement.

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<sup>5</sup> Similarly, in a 2019 study, 76% of domestic violence advocates report that immigrant survivors have concerns about contacting police. See Alliance for Immigrant Survivors, *Immigrant Survivors Fear Reporting Violence*, (May 2019), <https://www.immigrantsurvivors.org/s/2019-Advocate-Survey-Final.pdf>.

Her abuser had no respect for the order of protection and would tell RC that it “was just a piece of paper that he would leave on my dead body for them to identify me with.”

### **3. § 922(g)(8) Protects Society at Large**

Domestic violence is not just an issue for individuals. It is a broad societal concern that affects every American. The CDC calls intimate partner violence “a serious preventable public health problem that affects millions of Americans[.]” CDC, *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices* at 7 (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>. Similarly, the recently released U.S. National Plan to End Gender-Based Violence: Strategies for Action recognized gender-based violence as a “public safety and public health crisis” in the United States. The White House, *U.S. National Plan to End Gender-Based Violence: Strategies for Action* (May 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/National-Plan-to-End-GBV.pdf>. Studies reflect this characterization. In more than two-thirds (68.2%) of mass shootings in the United States between 2014 and 2019 in which four or more people were killed, the shooter had a history of domestic violence or killed at least one dating partner or family member during the shooting. Lisa B. Geller *et al.*, *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014–2019*, 8 *Injury Epidemiology* 38 (2021), <https://pubmed.ncbi.nlm.nih.gov/34053458/>. The deadlier the incident, the higher the chances of a domestic violence history or gender-based motive.

**(a) § 922(g)(8) Protects  
Women and Pregnant  
Women**

Although intimate partner firearm violence affects all people, it disproportionately affects women. As of 2019, an average of 70 women were fatally shot by a partner every month. *Guns & Violence* at 4-5. In 2019, nearly two-thirds of domestic violence homicides in the United States were committed with a gun. *Id.* Between 1980 and 2014, more than half of women killed by intimate partners were killed with guns. April M. Zeoli & Amy Bonomi, *supra* at 7. Nearly 1 million women in the United States as of 2019 reported being shot or shot at by intimate partners, and more than 4.5 million women reported being threatened with a gun by an intimate partner. Giffords Law Center, Domestic Violence, <https://giffords.org/issues/domestic-violence/> (last visited Aug. 14, 2023).

Pregnancy is an especially dangerous time in an abusive relationship. Abusive partners often try to control pregnancy outcomes, including the use of violence to induce a miscarriage. See Elizabeth Miller & Jay G. Silverman, *Reproductive Coercion and Partner Violence: Implications for Clinical Assessment of Unintended Pregnancy*, Expert Rev Obstet Gynecol. 2010 Sep; 5(5): 511–515, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3282154/>. Homicide is a leading cause of pregnancy-associated mortality in the United States, with the majority committed by intimate partners. See Rebecca B. Lawn & Karestan C. Koenen, *Homicide is a Leading Cause of Death for Pregnant Women in US*, BMJ Oct. 2022; at 379 <https://www.bmj.com/content/379/bmj.o2499.full>.

Intimate partner violence during pregnancy has been correlated with preterm birth and low birth weight; both contributing factors to infant mortality. Jeanne L. Alhusen, *et al.*, *Intimate partner violence during pregnancy: maternal and neonatal outcomes*, *J Womens Health* 2015 Jan. 1; 24(1):100-6, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4361157/>.

**(b) § 922(g)(8) Protects  
Children**

Children are some of the most vulnerable members of American society. Domestic violence can be harmful to children that experience it. Likewise, firearm injuries to children are a significant public health concern. When the two are combined, the consequences can be catastrophic. According to Everytown for Gun Safety, nearly one-third of gun homicides in children under age 13 are connected to intimate partner or family violence. *Guns and Violence* at 4-5 (citation omitted). Similarly, data drawn from sixteen (16) states indicate that nearly two-thirds of child fatalities involving intimate partner violence were caused by guns. *Id.* (citing Avanti Adhia *et al.*, *The Role of Intimate Partner Violence in Homicides of Children Aged 2–14 Years*, *Am. J. Prev. Med.*, 56, no. 1 at 38-46 (2019)).

Survivors' stories underscore the intersection between public health and domestic violence, particularly in protecting children. Civil protective orders that prohibit abusers from possessing a firearm do not only protect the direct adult recipients of abuse. For example, one survivor recounts a story in which her civil protective order extended derivative protections to her abuser's children from a prior

relationship to whom she did not have legal custody.  
That survivor:

was in an abusive marriage and her then-husband threatened her and held a loaded firearm to her head. Her abuser also threatened to shoot his children from a prior relationship, the survivor, and himself while brandishing a loaded firearm. Following that incident, the survivor left her marriage, but did not call the police as she was concerned what would happen if she reported to law enforcement. Instead, she got in touch with her local domestic violence women's program, where she received safety planning and emergency legal advocacy, and was accompanied to court to file for a Civil Protection Order that required her abuser to relinquish his firearm. The order was granted and the survivor did not return to the home. She summarized the importance of that order preventing her abuser from possessing firearms: "It was of great relief to me that his firearm was removed and he no longer had the ability to get another firearm. Having the firearm removed was the best way I could protect his children. It was one of the very few things I could do for them because they were not my children, and I could not take them with me when I left."

A child of another survivor is grateful that an unknown ex-girlfriend of her mother's abuser was able to get a protection order that prohibited her mother's abuser from possessing or owning a firearm.

This survivor's child believes it saved both her and her mother's lives.

This anonymous survivor recalls that her mother dated an abusive man when she was a child. She knew that her mother's abuser had abused women before her mother and he was not legally allowed to own a gun. When his abuse escalated to the point that he was threatening her and her mother's lives, she was grateful that there was never a firearm in the house. As an adult, this survivor's child learned that another woman had a protective order against him, and it prohibited him from having a gun. She believes that the woman who got a protective order against her mother's abuser probably saved her and her mother's lives with her bravery.

There are many stories showing myriad ways an abuser uses the children of adult domestic violence victims as pawns in the abuse. For example, one child of a survivor recalls an instance where her mother's abuser surrounded her sister with firearms and sent a photo to her mother to show the power he had over all of them.

KP's mother is a survivor of domestic violence. KP's father was abusive towards her mother until their divorce when she was approximately six years old. Her father was a hunter and owned numerous firearms. He would regularly threaten KP and her mother with those guns. She recalls one instance when her mother allowed her father to watch KP and her

younger sister, and he sent her mother a picture of KP's sister surrounded by guns as a threat to KP's mother. KP's father used his guns as a means of control.

Yet another example is LP's story. Her abuser threatened to kill her and her children with a firearm, but having a protective order gave her the courage to report the abuse to law enforcement:

LP's ex-partner had made death threats against her and their children. LP had left years before and their two children were about to get out of the home. Their father threatened to kill them and himself while pacing with a gun in front of them. LP got a protective order prohibiting him from owning a firearm. Even after the protective order was issued, he traveled over forty miles to the city LP lived in so much that police in that city accused her of moving him into her house. She explained to the police that her and her children's lives were in danger. She felt comfortable doing so because she had a protective order against him.

One day, LP's ex-partner ran his vehicle into a bus stop full of people, but thankfully, everyone was able to scatter to avoid being run over. LP's ex-partner did not bring a gun when he came to the city where she was because he was afraid to get caught with guns. LP believes her life and her children's lives were saved because he could not have a firearm.

**(c) § 922(g)(8) Protects Peace  
Officers**

Section 922(g)(8) also protects law enforcement officers. One such survivor's story demonstrates how dangerous domestic violence incidents are—not only for the survivor and her children—but also for anyone caught in the crossfire, including police officers who respond.

Two years after this survivor left the abusive relationship, her ex-husband came to her home and was watching her, their shared children, and her new fiancé through the house's basement windows late at night. Her neighbors saw her ex-husband on the property and called the police. Soon after, the survivor heard gunshots, and discovered that her ex-husband fired five gunshots at a police officer, wounding him in the legs. Her ex-husband then indiscriminately fired eight rounds into the basement where she and her family were located, including his own children who were only six and two-years old.

Her ex-husband then jumped head-first through the basement window and into the house. Her ex-husband and fiancé fought and the ex-husband held a gun to the fiancé's head and pulled the trigger, though, thankfully, the clip was empty. The six-year-old hid under a bed with his two-year-old sister while the survivor ran outside to find someone to help her. She screamed for the police to go into the house

to retrieve the children, but was told there was nothing the police could do. The survivor then ran back into the house to save her children.

And when law enforcement intervenes, their lives are at risk as well. According to the United States Federal Bureau of Investigation information about police deaths, of the sixty (60) police feloniously killed in 2022, forty-nine (49) were killed with firearms. U.S. Dep't of Justice Uniform Crime Report, *Law Enforcement Officers Killed and Assaulted, 2022* (May 8, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#>. Of those sixty officers feloniously killed, 10% (6 officers) responded to disorders/disturbances and 10% (6 officers) were involved in “tactical situations,” including barricaded/hostage situations and active shooter situations. *Id.* A five-year study found that responding to domestic violence disputes accounted for the highest number of service-related fatalities for police officers, and 51% of such fatalities involved shootings. See Nick Breul & Mike Keith, *Deadly Calls and Fatal Encounters: Analysis of US Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement* (2010–2014), Nat'l L. Enft Officers Mem'l Fund, 1, 27 (2016), <https://www.hsdl.org/c/view?docid=794863>. Similarly, 95% of law enforcement officer deaths in response to domestic violence disturbances between 1996 and 2010 involved a firearm. See Cassandra Kercher *et al.*, *Homicides of Law Enforcement Officers Responding to Domestic Disturbance Calls*, 19 *Injury Prevention* 331 (2013), <https://injuryprevention.bmj.com/content/19/5/331>.

Clearly, responding to domestic violence situations where firearms are involved are some of the most dangerous calls to which a police officer responds.

**(d) § 922(g)(8) Protects  
Abusers from Themselves**

Section 922(g)(8) also protects abusers. Absent a firearm, abusers are far, far less likely to die by suicide. As is clear from the stories throughout this Brief, abusers often use threats of violence against the survivors, their children, and themselves as means of control and terror. The survivor story below demonstrates the loss of life that can happen when an abuser has access to firearms.

This survivor met her fiancé in late 2021, dated briefly, and they were engaged a few weeks later. Shortly after the engagement, her abuser began exhibiting explosive behavior and unpredictable emotions. Following several months of abuse, the survivor's fiancé was arrested for domestic violence. The survivor filed for a protective order, and her abuser pled guilty to domestic violence in the fall of 2022.

In October, the survivor attended a concert with her fiancé. Prior to arriving at the concert, he began to drink alcohol, and he continued drinking after they arrived at the venue. The survivor recalls a feeling that something was wrong and removed herself from his presence. After she left her fiancé, she received more than fifty calls, texts, voicemails, and videos from her

abuser. She planned to respond after giving him time to calm down.

However, the situation went from bad to worse. The messages went from loving to angry and trying to lure the survivor to the parking lot. The messages then suddenly stopped. The survivor went back to their seats and he was gone. She then went to a police officer to ask the police to check on him. The police informed her that he had called the police, shot himself, and the police returned fire. A bit later she was told that he had died. She had not listened to the last voicemail he left until days later, but then discovered that he was angry with her because he could not find her to “take her with him.”

While the survivor in this story is fortunate to be alive, if her abuser’s firearms had been removed, he may still be alive today as well.

**(e) § 922(g)(8) Provides an Economic Value to Society**

Beyond the immense personal and societal costs, there are also significant economic costs of intimate partner violence. One study reported that as of 2017, the lifetime economic cost associated with medical services for intimate partner violence-related physical injuries, lost productivity from paid work, criminal justice, and other costs, is \$3.6 trillion. Cora Peterson, PhD *et al.*, *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, *Am. J. Prev. Med.*, 55(4): 433–44 (Oct. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6161>

830/. Broken down by individuals, the same study concluded that the cost of IPV over a victim's lifetime was \$103,767 for women and \$23,414 for men. *Id.*

The costs, both financial and in human lives, of finding that § 922(g)(8) is unconstitutional are vast.

### CONCLUSION

For all the foregoing reasons, and those stated in the United States brief, the decision of the Fifth Circuit should be reversed.

Respectfully submitted,

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Association for Women in Psychology  
Ayuda  
California Partnership to End Domestic Violence  
Colorado Coalition Against Domestic Violence dba Violence Free Colorado  
Connecticut Coalition Against Domestic Violence  
DC Volunteer Lawyers Project  
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