

Senator Dick Durbin
Hearing before the Committee on the Judiciary on
“Protecting Public Safety After *New York State Rifle & Pistol Association v. Bruen*”
Questions for the Record
March 22, 2023

Questions for Ruth M. Glenn

1. **Can you elaborate on the impact you are seeing from the *Rahimi* decision in which a panel of 5th Circuit judges deemed the domestic violence restraining order prohibitor unconstitutional? Please discuss the impact both in states covered by the 5th Circuit’s ruling as well as nationwide.**

At the National Coalition Against Domestic Violence (NCADV), we have heard anecdotally that both within and outside of the geographic jurisdiction of the 5th Circuit, law enforcement, prosecutors, and judges are confused about the continued enforcement not only of the federal domestic violence protective order prohibitor but also the federal domestic violence misdemeanor prohibitor, state laws restricting adjudicated abusers’ firearm access, and protective orders prohibiting firearm access in the text of the order. Moreover, media coverage to date has mostly failed to clarify the limits of the ruling, and many people who are not legal experts mistakenly believe as a result that *Bruen* applies nationwide and to state as well as federal laws.

As we discussed, the ruling in *Rahimi* applies only to the 5th Circuit (Texas, Louisiana, and Mississippi) and applies only to federal law, not to state law or to relief written into the text of a protective order. Given the general confusion, many respondents to final protective orders who are either outside the 5th Circuit or are prohibited under state law or in the terms of a court order may erroneously believe they are allowed to have firearms, and survivors may believe they can no longer rely on the courts for protection from abusive partners with firearms.

In the aftermath of *Rahimi*, we at the National Domestic Violence Hotline, of which NCADV is now a part, have seen a massive spike in contacts mentioning firearms in Texas, Louisiana, and Mississippi, the states covered by the 5th Circuit ruling. Contacts mentioning firearms between February 2 and March 9 increased 56.6% in these three states compared to the same time period last year. Broken down by state, contacts mentioning firearms have increased 121.4% in Louisiana, 50.3% in Texas, and 23.5% in Mississippi.

2. Ms. Swearer emphasized the role of criminal convictions in addressing domestic violence. However, my understanding is that law enforcement agencies frequently direct members of the public who are experiencing abuse or may be at risk for future violence to obtain domestic violence protective orders. **Why are the same acts of domestic violence that could be handled as felonies or misdemeanors often handled instead by civil courts?**

Domestic violence protective orders (DVPOs) and criminal prosecutions play different but complementary roles. They both address dangerous, life-threatening behaviors, but they approach these behaviors from different angles. Courts have many different interests, and they have different tools to promote those interests. DVPOs are designed to protect and meet the

needs of survivors by regulating the relationship between the victim and the abusive intimate partner, while criminal prosecutions are designed to protect and meet the needs of society. Survivors do not decide whether to investigate or prosecute criminal violations, although their wishes may be consulted – those decisions are made by law enforcement and prosecutors. In contrast, DVPOs were designed to give survivors control over whether to initiate a case, how to initiate a case, and what relief to pursue. To be clear, prosecutors often care deeply about the needs of the survivor and make charging decisions with the survivor in mind, but unlike civil courts, the criminal system simply does not have the power to regulate relationships to protect survivors.

DVPOs and criminal prosecutions are not mutually exclusive. The civil and criminal legal systems often work in tandem in domestic violence cases. Violating a protective order can lead to criminal charges, because civil court proceedings are serious undertakings with real consequences. Many states allow law enforcement officers to seek a civil emergency domestic violence protective order on behalf of the survivor if an incident occurs when courts are closed, which provides space for a survivor to seek a DVPO during regular court hours. As noted in the question, law enforcement officers responding to domestic violence incidents often suggest the survivor file for a protective order. Alternatively, a survivor may seek a DVPO as a first step, and the safety afforded by the order may enable them to report intimate partner violence to law enforcement, speak with prosecutors, or serve as a witness if charges are brought, without as much fear of retaliation. A survivor may seek a DVPO while prosecutors are developing their case, or they may seek a DVPO after a conviction if they are concerned about ongoing or future contact, harassment, or abuse by an intimate partner or if they need additional protective remedies such as child custody orders or economic relief. Courts may issue a criminal protective order once charges are brought against an abusive intimate partner, although those orders are often more limited than DVPOs, and are sought by the prosecutor rather than the survivor, who has no standing in criminal cases.

Moreover, survivors facing imminent danger may not have the luxury of time. Civil DVPOs provide immediate protection, with an ex parte order taking effect upon service (ex parte orders issued without notice or an opportunity to be heard do not trigger the federal DVPO prohibitor) and a final order taking effect after the full hearing, which, depending on the state, can be anywhere between a few days to a few weeks later. Criminal prosecutions, on the other hand, are lengthier processes. The survivor faces a substantially increased risk of homicide during this period. If a survivor does choose to engage with the criminal system, the time period after a survivor has reported abuse to law enforcement is often also a time period in which the violence escalates; the survivor has taken a step toward leaving, and the abusive intimate partner recognizes that they may ultimately lose control over the survivor. In this case, a DVPO may be necessary to ensure the victim survives long enough for the criminal process to play out.

While DVPOs provide a measure of accountability for the respondent, their primary purpose is not to punish the respondent but to protect the victim. They are forward looking, seeking to prevent future violence. Past violence and threats of violence are considered by courts in order to establish the existence of danger to the petitioner, their children, and others, but any accountability stems from measures to decrease risk of further violence rather than from intentional punishment. In contrast, criminal prosecutions are, at their heart, punishment for a

crime against the social order, and the needs and safety of the victim are secondary to the needs of society; victims are not parties in criminal cases. Firearms restrictions for DVPO respondents are critical to the basic function of a protective order, because armed abusive intimate partners pose a clear risk of injury or death to their victims. Although the length of final protective orders differs by state, they typically last for a few months to a few years. Firearms restrictions expire when the protective order expires.

Civil protective orders provide a variety of forms of relief, touching on many aspects of the everyday life of the survivor. Not only do they restrict the respondent from abusing, stalking, harassing, or otherwise harming the survivor and other protected parties (typically children), they can require the respondent to stay away from the survivor and other protected parties; require the respondent to seek counseling or batterer intervention programs; require the respondent to obtain treatment for drug or alcohol misuse; assign child custody and visitation in most states (including safe child exchanges and supervised visitation when necessary); assign custody of pets; require the respondent to move out of a shared residence; assign the use of a shared residence or car; provide temporary financial support to the survivor and children in common; and provide other relief to protect the petitioner and their children and to enable them to reestablish their lives after abuse. Moreover, DVPOs are afforded full faith and credit across state lines, providing flexibility for a survivor who may need to relocate. Again, temporarily delaying a respondent's access to firearms is a core form of relief necessary for protective orders to fulfill their basic function. Most of these forms of relief are not provided to the survivor in a criminal prosecution. The primary purpose of a prosecution is to protect society from the defendant and hold the defendant accountable by punishing them; separating the victim and the perpetrator is a side benefit of convicting the perpetrator. In contrast, punishment accrues in the case of a DVPO only when the respondent violates the order.

While intimate partner violence is, at its core, violence by one person against another, the intermingled lives of the two parties can create complications that do not exist when the parties are strangers or mere acquaintances, which may necessitate a different type of approach for the sake of the victim. Consider the following example: a woman is injured by her husband and needs back surgery as a result. She is on her husband's insurance plan, and insurance will cover the cost of the surgery. She can seek a DVPO, which will provide her with a variety of forms of relief, including requiring the respondent to stay away from her and to relinquish any firearms, and which can also require the respondent to keep her on his insurance. While a criminal conviction might ultimately also lead to the husband staying away from her and relinquishing firearms, with the husband incarcerated and thus no longer employed, she will no longer have access to the insurance necessary to address her injuries. In this case, accountability to the victim and accountability to society diverge. Had the victim and the perpetrator been strangers or acquaintances, prosecuting the perpetrator is a logical outcome and does not harm the victim. However, in the scenario described above, prosecuting the husband would actively harm the victim. A DVPO, in contrast, would provide the victim with both safety and the opportunity to get the necessary care to heal from the injury.