

No. 25-5067

IN THE
Supreme Court of the United States

KIRA KRISTINA ZIELINSKI,
Petitioner,

v.

UNITED STATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**BRIEF OF *AMICI CURIAE* BATTERED
WOMEN'S JUSTICE PROJECT (BWJP),
NATIONAL LEGAL CENTER ON CHILDREN
AND DOMESTIC VIOLENCE (NLCCDV), AND
NATIONAL NETWORK TO END DOMESTIC
VIOLENCE IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

Amici Battered Women’s Justice Project (BWJP) serves as a national legal resource center on criminal and legal responses to domestic violence. BWJP provides cutting-edge resources, training, and technical assistance to attorneys, advocates, victims, judges, policy makers, and other stakeholders engaged in justice system responses to domestic violence. Since 1993, BWJP has been an affiliated member of the federally supported Domestic Violence Resource Network and currently functions as a designated technical assistance provider for the U.S Department of Justice Office on Violence Against Women.

The National Legal Center on Children and Domestic Violence (NLCCDV) is one of eight national policy and practice centers within BWJP. NLCCDV provides tailored training, technical assistance, and policy guidance to professionals working at the intersection of domestic violence, child custody, child protection, and family law. NLCCDV trains lawyers and judges around the country on best practices in family court matters and has brought BWJP’s renowned SAFeR Approach for enhancing domestic violence practice to communities across the United States and beyond. NLCCDV’s work emphasizes trauma-informed, evidence-based approaches that prioritize the safety of victims and their children while promoting accountability for perpetrators.

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The contents of this Brief were authored by *amicus curiae* and its counsel. The San Diego Criminal Defense Bar and the San Diego Criminal Defense Lawyers Club made monetary contributions to fund production of this brief.

NLCCDV has worked with communities around the country to overcome the many challenges protective parents face when attempting to shield their children from abuse, and is gravely concerned about the Eighth Circuit’s erroneous interpretation of the federal parental kidnapping statute. Excluding child abuse from the statutory defense of “fleeing domestic violence” is contrary to the statute’s purpose of protecting children and to this nation’s key federal child protection laws and initiatives. The lower court’s construction leads to cruel outcomes for children and impossible dilemmas for protective parents. NLCCDV has a strong interest in ensuring that laws designed to protect victims of domestic violence protect their children too, and respectfully requests that this Court grant review.

Amici National Network to End Domestic Violence (NNEDV) represents the 56 U.S. state and territorial coalitions against domestic violence. NNEDV was instrumental in the passage and implementation of the Violence Against Women Act. NNEDV is dedicated to creating a social, political, and economic environment in which domestic violence no longer exists. NNEDV works to make domestic violence a national priority, change the way society responds to domestic violence, and strengthen domestic violence advocacy at every level. NNEDV has a strong interest in ensuring the law protects all victims of abuse, including children and the parents who seek to protect them.

STATEMENT OF THE CASE

Amici curiae adopts petitioner’s statement of the case.

SUMMARY OF ARGUMENT

The abuse of children presents a grave problem with tragic consequences, both for the abused child and the greater society. The serious consequences of child abuse have led to a myriad of federal and state laws, intended to further the protection of the child.

Despite the importance of child protection, a goal recognized since the turn of the last century, the United States Court of Appeals for the Eighth Circuit has adopted a reading of 18 U.S.C. § 1204(c)(2) that explicitly rejects the goal of child protection as a relevant part of the statutorily-created affirmative defense, that the defendant is fleeing from an incidence or pattern of domestic violence. Instead, a split panel of the court ruled that only evidence of domestic violence against the defendant personally may be presented to support a defense.

This Court should grant certiorari to correct the decision of the United States Court of Appeals for the Eighth Circuit. The split panel decision adopts an unreasonable and legally mistaken view of the scope of the affirmative defense in 18 U.S.C. § 1204(c)(2). The Eighth Circuit misapprehended the scope of the term “domestic violence,” and does so in a way that substantially harms parents seeking to protect their children from physical or sexual harm. The panel decision is likely to chill parents from attempting to protect their children. The panel decision also is likely to result in unwarranted guilty pleas and the surrender of children to an abusive parent.

**ARGUMENT IN SUPPORT OF GRANTING
CERTIORARI**

a. The Eighth Circuit’s Decision Misapprehends the Relationship Between Domestic Violence and Child Abuse, Including Child Sexual Abuse.

There is little daylight between spousal or intimate partner abuse and child abuse. Decades of social science research demonstrate a substantial degree of co-occurrence between violence between intimate partners and the physical and sexual abuse of children. U.S. Dep’t of Just., Off. of Just. Programs, *Child Abuse: Overview*, OJP.gov, (last visited June 17, 2025). The correlation between spousal violence and the abuse of children is well-documented and represents an additional risk beyond the serious harm children already face from merely witnessing violence in the home.²

Where there are children in the home, perpetrators who abuse their partners also abuse the children in 30-60% of cases. See Peter G. Jaffe, *Children of Domestic Violence: Special Challenges in Custody and Visitation Dispute Resolution*, in *Domestic Violence and Children: Resolving Custody and Visitation Disputes*, A National Judicial Curriculum 3-31 (Family Violence Prevention Fund, 1995) (stating that the most conservative estimates suggest at least a 30% overlap between wife assault and child abuse). Unsurprisingly, therefore, a parental kidnapping study showed that almost half of the parents

2. Peter G. Jaffe, Et. Al., Risk Factors For Children In Situations Of Family Violence In The Context Of Separation And Divorce 12-13 (2014), available at <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>.

who were contemplating abduction wished to protect their children from abuse, a motivation commonly held by domestic violence survivors.³

Child sexual abuse is one form of domestic violence—which, simply put, involves violence or coercion against a member of the domestic group. A survey of 2,030 children, conducted between December 2002 and February 2003, revealed that approximately one in twelve of the national sample of children and youth experienced a sexual victimization in the study year.⁴ Approximately a quarter to one-third of offenders are family members.⁵

3. Geoffrey L. Greif and Rebecca L. Hegar, *WHEN PARENTS KIDNAP: THE FAMILIES BEHIND THE HEADLINES* 8 (1993); *see also*, Mildred Daley Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 7(4) *MEDIATION Q.* 348 (1990).

4. David Finkelhor, Richard Ormrod, Heather Turner, Sherry Hamby, *The Victimization of Children and Youth: A Comprehensive, National Survey*, 10 *CHILD MALTREATMENT* No. 1 (2005).

5. Emily Douglas and David Finkelhor, *Childhood Sexual Abuse Fact Sheet*, Crimes against Children Research Center, University of New Hampshire (2005); *see also* *See Darkness To Light, Child Sexual Abuse Statistics: Perpetrators* (2015), http://www.d2l.org/wp-content/uploads/2017/01/Statistics_2_Perpetrators.pdf [<https://perma.cc/SX4H-DCKE>] (one-third or more of child sexual abuse is committed by parents or other family members); *Children and Teens: Statistics*, RAINN, 4<https://www.rainn.org/statistics/children-and-teens> [<https://perma.cc/ZSE7-2NFF>] (last visited Feb. 18, 2022); *see also* Lisa DeMarni Cromer & Rachel E. Goldsmith, *Child Sexual Abuse Myths: Attitudes, Beliefs, and Individual Differences*, 19 *J. CHILD SEXUAL ABUSE* 618, 631, 636 (2010) (recognizing that both policymakers and the media often mislead the public by treating child sexual assault as a problem of stranger-danger).

The danger of domestic violence—to partners and children—does not end with separation or divorce. When survivors of spousal abuse take steps to leave abusive partners, they are at increased risk for physical violence and murder.⁶ Since 1976, the percentage of female murder victims killed by intimate partners has remained at approximately 30%.⁷ Abuse is not limited to the partner: in some tragic cases, a partner injures or kills the children to punish the spouse.⁸ Child sexual abuse, too, does not end upon divorce or separation.

Family courts do not provide a comprehensive solution to the problem of domestic violence, including child abuse; in fact, family law courts frequently fail to recognize or deal effectively with the problem. Abusive partners have been shown to use access to children or legal custody

6. Callie Marie Rennison, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: INTIMATE PARTNER VIOLENCE 1, 5 (May 2000). *See also*, Mindy Abel, DENVER METRO DOMESTIC VIOLENCE FATALITY REVIEW 5 (2002) (finding that in 67% of the homicides, the victim had expressed a desire to leave or to end the relationship).

7. Rennison, *supra*, note 6.

8. *See Myers WC, Lee E, Montplaisir R, Lazarou E, Safarik M, Chan HCO, Beauregard E. Revenge filicide: An International Perspective Through 62 Cases*, BEHAV SCI LAW. 2021 Apr;39(2):205-215. doi: 10.1002/bsl.2505. Epub 2021 Feb 21. PMID: 33611814. Where courts are mistaken, children may be subjected to ongoing abuse, and in some cases, horrific deaths. Nikita Stewart, *She Went to Court to Save Her 3-Year-Old Daughter. Days Later, the Child Was Dead*, N.Y. TIMES (July 22, 2019), <https://www.nytimes.com/2019/07/22/nyregion/queens-car-fire-toddler-death.html>.

proceedings to control and punish their former partners.⁹ Family law, however, both in theory and practice, treats domestic violence and child abuse as exceptions to the norm and family courts tend to “view such allegations as illegitimate despite longstanding empirical evidence suggesting abuse histories are common in custody cases.” Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 GEO. L.J. 835 (2022) (hereafter *Denial of Family Violence*).

When custodial mothers make an allegation of child sexual abuse, fathers receive custody in 68% of cases. Meier, J. & Dickson, S. *Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse & Alienation*, 35 LAW & INEQUALITY 311, 313 (2017). Multiple studies have described between 50% to 72% of child sexual abuse allegations in custody litigation as likely valid and approximately one-third as “uncertain.” *Id.* at 850 (citing Kathleen Coulborn Faller, *The Parental Alienation Syndrome: What Is It and What Data Support It?*, 3 CHILD MALTREATMENT 100, 107–08 (1998)).¹⁰ Only a small minority of child sexual abuse claims—7.7% and 4.6%— were found to be malicious or pathological. *Denial of Family Violence, supra*, at 850. Yet, even well-supported allegations of sexual abuse are frequently held against the parental accuser. See Kathleen Coulborn Faller & Ellen DeVoe, *Allegations of Sexual*

9. Jaffe, *supra* note 1 at § 2.1.

10. See also Nancy Thoennes & Patricia G. Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 CHILD ABUSE & NEGLECT 151, 161 (1990).

Abuse in Divorce, 4 J. CHILD SEXUAL ABUSE 1, 17–18 (1995) (describing how some courts sanctioned mothers for reporting child sexual abuse, especially those with *more* corroborative evidence); Amy Neustein & Michael Leshner, FROM MADNESS TO MUTINY: WHY WOMEN ARE RUNNING FROM THE FAMILY COURTS-AND WHAT CAN BE DONE ABOUT IT (2005) (examining cases in which mothers who believed that their children had experienced sexual abuse at the hands of their fathers were doubted, distrusted, or punished for reporting their concerns to the court); Sharon R. Lowenstein, *Child Sexual Abuse in Custody and Visitation Litigation: Representation for the Benefit of Victims*, 60 UMKC L. REV. 227, 239, 278 (1991) (finding that, of thirty-six cases alleged sexual abuse cases, two-thirds of the alleged perpetrators retained unsupervised visitation); R. Lundy Bancroft, et al., THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 107-22 (2nd ed. 2012); Madelyn Simring Milchman, *Misogyny in New York Custody Decisions with Parental Alienation and Child Sexual Abuse Allegations*, 14 J. CHILD CUSTODY 234, 236–37 (2017).

When mothers allege their former partners are committing child abuse, such allegations are held against them, creating a significantly heightened risk of losing custody to the parent alleged to be causing harm. Joan S. Meier et al., *U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations*, 42 J. SOC. WELFARE & FAM. L. 92 (2020). In an examination of over 2,000 child custody matters, Dr. Meier determined that a mother who accused her partner of abusing their child was 1.7% more likely to lose custody than if she alleged domestic violence only. *Denial of Family Violence in Court*, 110 GEO. L.J. at 852. Courts

credited only one-fifth of all child abuse claims, despite the data supporting a far higher rate of abuse. *Id.* at 849. Frequently, allegations of child sexual abuse are viewed as an attempt at parental alienation by the parent—usually the mother—who brings up the matter. Family courts believed only one in 49 cases of child sexual abuse when the accused father cross-complained that the mother was attempting to alienate him from the child. *Id.* at 886.

Indeed, “while courts credited (believed) mothers’ claims of intimate partner abuse 42.6% of the time, they believed mothers’ claims of child abuse only 20.8% (physical) and 19.4% (sexual) of the time.” *Denial of Family Violence*, 110 GEO. L. JOUR. at 848. Courts thus credit claims of child abuse 2.8 times less than partner violence and sexual abuse 3.1 times less than partner violence. *Id.* at 848-49.

Finally, despite family courts’ unwillingness to credit accounts of child abuse, parents can be and are held responsible for the physical or sexual abuse of children by an intimate partner. They may face criminal or civil “failure to protect” or “neglect” charges, or they may have their children removed from them. *See, e.g., Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002) (issuing preliminary injunction against state agency from continuing its practice of separating children, without a court proceeding, from their mothers who were considered to have “engaged in domestic violence” because they were victims of abuse). For example, Iowa Code § 726.6(e) allows a defendant to be convicted of felony child endangerment if the defendant “knowingly permits the continuing physical

or sexual abuse of a child or minor.”¹¹ In some cases, a parent may even be convicted of felony murder on the basis that she failed to protect her child.¹²

Conversely, parents may be penalized for attempting to protect their children, if by doing so, they interfere with the other parent’s rights. Parents may be prosecuted if they remove them from the jurisdiction where the other parent resides, including internationally. When law enforcement agents track down parents fleeing from domestic abuse, they often are forced to return to dangerous jurisdictions and their children are usually returned to the abuser. Even if victims eventually are acquitted of parental kidnapping charges, they may have served jail time after an arrest, and they usually lose custody of their children. That, of course, is precisely what occurred here: the petitioner has been incarcerated and lost custody of her child.

b. The Term Domestic Violence, used in the Statute, Encompasses the Abuse of Family or Household Members, not Merely Partners or Spouses.

18 U.S.C. § 1204 does not define the term domestic violence. When Congress enacted section 1204 in 1993, however, one well-established, common meaning of the term “domestic,” encompassed all persons who belonged to a given family or household. *See* Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/domestic>. (Accessed 18 Jul. 2025)

11. Iowa Ann. Stat. (2021).

12. *See e.g., State v. Mott*, 187 Ariz. 536, 538-39, 931 P.2d 1046 (Ariz. 1997).

(defining domestic as of or relating to the household or family); *see also* Oxford English Dictionary (Oxford English Press 2025). The 1999 edition of Black’s Law Dictionary defined domestic as including “Of or relating to the family or the household.” BLACK’S LAW DICTIONARY at 500 (7th ed. 1999). The Eighth Circuit’s definition of domestic violence as pertaining only to violence between spouses or partners thus conflicts with the common understanding of the word domestic.

Definitional sources addressing domestic violence support a conclusion that the term, as used in § 1204, is not limited to spouses or intimate partners. For example, in 1999, Black’s Law Dictionary defined “domestic violence” as:

Violence between members of a household, usu. spouses; an assault or other violent act committed by one member of a household against another.

BLACK’S LAW DICTIONARY (7th ed. 1999). By 2009, Black’s had expanded its definition, including the aforementioned definition, but adding:

2. The infliction of physical injury, or the creation of a reasonable fear that physical injury or harm will be inflicted, by a parent or a member or former member of a child’s household, against a child or against another member of the household. . . .

BLACK’S LAW DICTIONARY 1705-06 (9th ed. 2009). Section 1204 was enacted in 1993 and last amended in 2003.

Next, the Model Code on Domestic and Family Violence defines domestic violence as acts against a family member, including minor children, to wit:

Sec. 102. Definitions.

Unless the context otherwise requires, as used in the Model Code:

1. “Domestic or family violence” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

(a) Attempting to cause or causing physical harm to another family or household member;

(b) Placing a family or household member in fear of physical harm; or

(c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

2. “Family or household members” include:

(a) Adults or minors who are current or former spouses;

(b) Adults or minors who live together or who have lived together;

(c) Adults or minors who are dating or who have dated;

(d) Adults or minors who are engaged in or who have engaged in a sexual relationship;

(e) Adults or minors who are related by blood or adoption;

(f) Adults or minors who are related or formerly related by marriage;

(g) Persons who have a child in common; and

(h) Minor children of a person in a relationship that is described in paragraphs (a) through (g).

(approved 1994); *see also* Model Code on Domestic & Family Violence (Nov. 2024) https://ncjfcj.org/wp-content/uploads/2024/11/Revised-Ch.-4-Model-Code_Nov-2024-1-1.pdf.¹³

Congress has weighed in on domestic violence in varying contexts. The Violence Against Women Act, 34 U.S.C. § 12291(12)(D) defines domestic violence to include one who “commits acts against a youth or adult victim who

13. The National Council of Juvenile and Family Court Judges (“NCJFCJ”) developed the Model Code to help create effective responses to domestic violence in the civil, criminal, and family courts, centered on the child’s safety.

is protected from those acts under the family or domestic violence laws of the jurisdiction.” *See also* 42 U.S.C. § 10402 (using VAWA definition of domestic violence).

VAWA’s broader definition of domestic violence is consistent with the definition of domestic violence contained in other federal statutes. For example, 10 U.S.C. § 928b, part of the Uniform Code of Military Justice, defines domestic violence to include a violent or threatening offense committed by an immediate family member. The statute utilizes the definitions found in 10 USCS § 930, which defined immediate family as a parent and/or child. *See id.* at (4) and (5).

Similarly, a misdemeanor crime of domestic violence, as used in 18 U.S.C. § 922(g)(9), includes acts committed against children by a parent. 18 U.S.C. § 921(33)(A); *see United States v. Castleman*, 572 U.S. 157, 161134 S. Ct. 1405, 188 L. Ed. 2d 426 (2014). Even 12 U.S.C. § 1831x(e) (3), which prohibits discrimination in insurance on the basis that an applicant or insured is a victim of domestic violence, defines domestic violence as one or more specified acts committed by a current or former family member, household member, intimate partner, or caretaker.

The Eighth Circuit’s truncated interpretation of domestic violence, as used in § 1204(c)(2), conflicts with the ordinary meaning of the term, as well as the definitions of domestic violence in other federal statutes.

c. The Eighth Circuit’s Decision Undermines Policies Designed to Protect Children.

The Eighth Circuit opinion ruled that a defendant seeking to present an affirmative defense based on domestic violence could not argue that she fled to protect the child nor present evidence concerning child abuse. The panel majority concluded that the question of child abuse was left to the family courts. *United States v. Zielinski*, 128 F.4th 961, 964 (8th Cir. 2025). The majority adopted a rule of convenience rather than one of correct statutory construction. As explained *supra* at 6-9, contrary to the Eighth Circuit’s conclusion, family courts often give short shrift to claims of child abuse, even well-supported ones. *Id.* Moreover, because of a strong preference for joint custody, family courts tend to minimize and discount evidence of domestic violence. *See Denial of Family Violence*, 110 GEO. L.J. at 861-64 and n.168.¹⁴

Furthermore, the Eighth Circuit decision conflicts with a key provision of the Hague Convention on

14. Congress has weighed in, unanimously urging state courts to improve the adjudication of custody in cases involving allegations of family violence. *See* Expressing the Sense of Congress That Child Safety Is the First Priority of Custody and Visitation Adjudications, and That State Courts Should Improve Adjudications of Custody Where Family Violence Is Alleged, H.R. Con. Res. 72, 115th Cong. (2017). The Resolution’s unanimous adoption by the House of Representatives in 2018 was the culmination of years of education and advocacy by a small group of “protective parent” advocates and parents whose children had been killed after a family court failure. *See House Concurrent Resolution 72 Passes in United States House of Representatives*, CAL. PROTECTIVE PARENTS ASS’N, <https://perma.cc/4SK3-RZEA> (last visited Mar. 7, 2022); *Our Work*, DV LEAP, <https://www.dvleap.org/our-work> [<https://perma.cc/J7SU-LQ5T>] (last visited Mar. 7, 2022).

International Parental Kidnapping. *See* Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, 1343 U.N.T.S. 89. The Hague Convention is designed to protect the interests of children and their parents. *Golan v. Saada*, 596 U.S. 666, 679-80, 142 S. Ct. 1880, 213 L. Ed. 2d 203 (2022). With the interests of the child in mind, Article 13(b) of the Hague Convention provides that, in a child abduction case, a child should not be returned if the return of the child would expose him or her to a grave risk of physical or psychological harm or place them in an intolerable situation. Child sexual abuse is recognized, unsurprisingly, as intolerable. *Golan v. Saada*, 596 U.S. at 680; *Danaipor v. McLarey*, 286 F.3d 1, 18-19 (1st Cir. 2002)(court must determine whether sexual abuse occurred and level of risk faced by the children); *Baran v. Beaty*, 526 F.3d 1340, 1346 (11th Cir. 2008)(violence and drunkenness found to present grave risk of harm). “The safety of children is paramount.” *Van De Sande v. Van De Sande*, 431 F.3d 567, 571 (7th Cir. 2005). Indeed, one of the few bases to avoid having a child returned to his or her customary home is that the child’s safety would be endangered. *See Colchester v. Lazaro*, 16 F.4th 712, 718 (9th Cir. 2021).

The Hague Convention recognizes child sexual abuse as a defense to abduction, allowing the abductor to prevent a child being returned to his habitual residence, but the Eighth Circuit’s decision does not. The decision creates an impossible conflict between the preferred civil remedy provided by the Hague Convention and a criminal prosecution under section 1204. *See* 18 U.S.C. § 1204(d). The Eighth Circuit’s decision allows for the possibility that one district court could rule that a child need not be returned to the noncustodial parent under the Hague

Convention, but deprives the parent of a defense in an ensuing a criminal prosecution under section 1204.

CONCLUSION

The Eighth Circuit’s decision limiting the defense articulated in § 1204(c)(2) to spousal or partner abuse disregards the common meaning of the term “domestic.” And, the court’s mistaken interpretation of the term “domestic violence” effectively undermines one of the government’s most important interests—child protection. Accordingly, this Court should grant a writ of certiorari to review—and reverse—the judgment of the United States Court of Appeals for the Eighth Circuit.

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Respectfully submitted,

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