

No. 22-915

IN THE
Supreme Court of the United States

UNITED STATES,

Petitioner,

– v. –

ZACKEY RAHIMI

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

**AMICUS CURIAE BRIEF OF
HOUSTON AREA WOMEN’S CENTER
IN SUPPORT OF PETITIONER**

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<i>United States v. Skoien</i> , 614 F.3d 638 (7th Cir. 2010).....	11, 13
<i>Vongontard v. Tippit</i> , 137 S.W.3d 109 (Tex. App.— Houston [1st Dist.] 2004).....	14

<i>Voorhees v. Jackson</i> , 35 U.S. 449 (1836).....	14
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Law of April 19, 1979, ch. 98, § 1, 1979 Tex. Gen. Laws 182	12
Law of May 27, 1991, ch. 662, § 1, 1991 Tex. Gen. Laws 2412	19
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139 Cong. Rec. E1024-01 (Apr. 26, 1993).....	11
139 Cong. Rec. S16288-03 (Nov. 19, 1993)	11
140 Cong. Rec. S7884-01 (June 29, 1994).....	11
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Andrew Anglemyer, Tara Horvath, and George Rutherford, “The Accessibility of Firearms and Risk for Suicide and Homicide Victimization among Household Members: A Systematic Review and Meta-analysis,” <i>Annals of Internal Medicine</i> 160 (2014).....	6, 8
1 William Blackstone, <i>Commentaries on the Laws of England</i> 442 (1765).....	17

Shana Chen & Karen Cunningham, <i>Violence Against Women Act</i> , 1 Geo. J. Gender & L. 711 (Spring 2000)	18
Educ. Fund to Stop Gun Violence, <i>Domestic Violence and Firearms</i> (July 2020), https://efsgv.org/learn/type-of-gun-violence/domestic-violence-and-firearms/#:~:text=Laws%20that%20reduce%20abusers'%20	8
Everytown for Gun Safety Support Fund, <i>Mass Shootings in the United States</i> , March 2023, https://everytownresearch.org/mass-shooting-report/	8, 10
Jeffrey Fagan, Nat'l Inst. of Justice Programs, U.S. Dep't of Justice, <i>The Criminalization of Domestic Violence: Promises and Limits</i> (1996).....	18
FBI, Crim. Just. Info. Servs. Div., <i>Law Enforcement Officers Feliciously Killed</i> , Table 23 (2019), https://ucr.fbi.gov/leoka/2019/tables/table-23.xls	13

Clare Fonstein, <i>Houston Woman Killed in Murder-Suicide had Plans to File Restraining Order: “She Couldn’t Breathe,”</i> Houston Chronicle, Oct. 18, 2022	3
Katherine A. Fowler et al., Childhood Firearm Injuries in the United States, 140 <i>Pediatrics</i> 1 (2017).....	9
Lisa B. Geller et al., <i>The role of domestic violence in fatal mass shootings in the United States, 2014-2019</i> , <i>Inj. Epidemiol.</i> 8 (2021), https://doi.org/10.1186/s40621-021-00330-0	10
Joseph G.S. Greenlee, <i>Disarming the Dangerous: The American Tradition of Firearm Prohibitions</i> , 16 <i>Drexel L. Rev.</i> (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4317000	15
Elizabeth Gregory et al., Univ. of Hous. Inst. For Research on Women, Gender, and Sexuality, <i>Houston Area Domestic Violence Providers Study Initial Local DV Data Aggregation</i> 14 (Feb. 2023), https://www.uh.edu/class/ws/irwgs/_docs/2023/dv-providers-study-report-final-feb-2023.pdf	1

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Arthur L. Kellermann et al., <i>Gun Ownership as a Risk Factor for Homicide in the Home</i> , 329 New Eng. J. Med. 1084 (1993), http://www.nejm.org/doi/pdf/10.1056/ NEJM199310073291506	7
Alyssa Lukpat, <i>More People Arrested After Texas Mass Shooting and Manhunt</i> , Wall St. J. (May 3, 2023).....	2
Matt McGough et al., <i>Child and Teen Firearm Mortality in the U.S. and Peer Countries</i> (July 2022), https://www.kff.org/global-health- policy/issue-brief/childand-teen- firearm-mortality-in-the-u-s-and- peer-countries	8
Antonio Planas and Jon Schuppe, <i>Suspect in Massacre of 5 Neighbors in Texas Allegedly Beat His Wife Last Year, Prosecutor Says</i> , NBC News (May 2, 2023)	2

Stephanie E. Stupakis, *What the Future
May Hold for Victims of Domestic
and Sexual Violence Without the
Violence Against Women Act*, 30
Hastings Women’s L.J. 261 (2019).....18

Tex. Council on Fam. Violence,
*Honoring Texas Victims: Analysis of
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James Martin Truss, *The Subjection of
Women . . . Still: Unfulfilled
Promises of Protection for Women
Victims of Domestic Violence*,
26 St. Mary’s L.J. 1149 (1995).....19

*Which States Prohibit Domestic Abusers
Under Restraining Orders from
Having Guns?*, Everytown Rsch. &
Pol’y (Jan. 12, 2023),
[https://everytownresearch.org/ranki
ngs/law/relinquishment-for-
domestic-abusers-under-restraining-
orders/](https://everytownresearch.org/rankings/law/relinquishment-for-domestic-abusers-under-restraining-orders/).....11

INTEREST OF AMICUS CURIAE¹

Since 1977, the Houston Area Women’s Center has worked directly with people facing domestic and sexual violence. Seventy percent of HAWC’s clients are women; thirty percent are children. The Center runs a 24-hour hotline call center that averages more than 50,000 calls each year. It provides a 120-bed emergency shelter for those in imminent danger. And it assists clients with personalized safety plans—the centerpiece of which is often obtaining protective orders from judges.

HAWC is on the frontlines of thought leadership. It advances vital protections for women and children by lobbying for changes in state laws and law enforcement procedures, and has worked to overhaul sexual assault laws, pass state rape laws, and increase arrests in domestic violence cases. At a national level, HAWC advocated for the Violent Crime Control and Law Enforcement Act of 1994, which includes 18 U.S.C. § 922.

HAWC is acutely interested in domestic violence acts involving firearms. In the Houston area, 73% of deaths caused by intimate partners from 2019-2022 involved guns.²

¹ Amicus curiae affirms that no counsel for a party authored this brief in whole or part, and that no party, counsel for a party, or any person other than amicus curiae or its counsel made a monetary contribution toward the preparation and submission of this brief.

² Elizabeth Gregory et al., Univ. of Hous. Inst. For Research on Women, Gender, and Sexuality, *Houston Area Domestic Violence Providers Study Initial Local DV Data Aggregation 14* (Feb. 2023), https://www.uh.edu/class/ws/irwgs/_docs/2023/dv-providers-study-report-final-feb-2023.pdf.

ACTUAL STORIES

HAWC clients have seen the effects of *Rahimi* first-hand. Since the Fifth Circuit's decision issued, clients with existing protective orders have begun to receive photos and videos from their abusers waving guns at the camera. These abusers send a message of intimidation without even firing their weapons, and victims who escape death or injury by firearm still live in fear of their power.

Francisco Oropesa has a drinking problem and a temper. In 2022, he brutally assaulted his wife, leaving her with a broken rib, broken nose, and skull fracture. Although she did not wish to press criminal charges, she did file for a civil protective order, which barred him from possessing firearms. However, less than three months after the decision in *Rahimi*, Oropesa entered his neighbors' home with an AR-15 semi-automatic rifle and opened fire. He shot execution style, from the neck up, killing five people, including a nine-year-old boy.

According to reports, Oropesa's neighbor had asked him to stop shooting a rifle so close to their home, as it was disturbing their sleeping newborn baby. The only clues of danger in Oropesa's past were a 2009 arrest for driving while intoxicated and a current civil protective order supported by evidence that on two occasions, he brutally battered his wife.³

³ Antonio Planas and Jon Schuppe, *Suspect in Massacre of 5 Neighbors in Texas Allegedly Beat His Wife Last Year, Prosecutor Says*, NBC News (May 2, 2023); Alyssa Lukpat, *More People Arrested After Texas Mass Shooting and Manhunt*, Wall St. J. (May 3, 2023).

“Ann” experienced significant trauma as a child. Sexually abused by a male family member living in the home along with gang members, she awoke frequently at night, in fear of her life from her abuser and his guns. By age 11, she had attempted suicide. When Ann finally obtained a protective order with the help of Houston Area Women’s Center, her mother reported, “I can’t erase the past, but at least I know she’ll be able to sleep now.”

Takara Hightower was filing a domestic violence complaint against her husband, her one-year-old baby in her arms, when her husband shot and killed her. Two days earlier, Takara had reached out to the sheriff’s office to ask how to file for a restraining order. When investigators went to speak with Takara in her home, her husband opened fire. Takara died holding her baby, attempting to flee.⁴

Tamara Sawyer planned to request an order of protection but never got the chance. Tamara’s ex-boyfriend had been stalking and harassing her, calling from random telephone numbers after she blocked him, sending unwanted messages, and showing up at her door. Before she could follow through on her plan to obtain a protective order, her ex-boyfriend visited her home for the last time, shooting Tamara in her bed. She did not survive.⁵

⁴ Mirna Alsharif, *Texas Woman is Fatally Shot by Husband as She Files a Domestic Violence Complaint Against Him*, *Officials Say*, NBC News (Oct. 4, 2022).

⁵ Clare Fonstein, *Houston Woman Killed in Murder-Suicide Had Plans to File Restraining Order: “She Couldn’t Breathe,”* *Hous. Chron.* (Oct. 18, 2022).

SUMMARY OF ARGUMENT

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court first recognized the right for individuals “to keep and bear Arms” in their home. The premise in *Heller* was that the home is safe, and it is outsiders who are dangerous. The premise falls apart, however, when home is where one faces abuse, threats, coercion, and life-threatening violence. In those cases, the home itself is not safe, and the core “self-defense” purpose of the Second Amendment may be limited to account for the dangers within the home. In homes with domestic violence victims, safety means protection *from* guns.

The statistics are staggering, and the Court will be inundated with them. There is no debate that people suffering domestic abuse are largely women and children, and that their risk of injury, death, and extreme psychological abuse from threats and coercion, is far greater when their abuser possesses a firearm. Congress recognized the need to restrict abusers’ firearm possession while subject to protective orders, as have the majority of states. Protective orders are issued by judges, after findings to support the need for them, and they save lives.

Founding-era governments took guns away from people who were dangerous. This alone is sufficient to uphold modern statutes protecting women, who have only recently enjoyed legal rights and standing to advocate for protection from domestic violence. Historical regulations disarming dangerous persons are compatible with an evolved understanding of women’s rights and that domestic violence is a broad societal problem in need of legislation separating dangerous persons from firearms.

ARGUMENT

The Fifth Circuit charitably described Rahimi as “hardly a model citizen,” while accurately recounting his record of participating in five shootings over two months, including shooting at a witness to his assault of his girlfriend, threatening women with guns, shooting into a home and into multiple cars, and shooting into the air in the presence of children.

The use of understatement severely discounts the risk that armed abusers pose to women, children, law enforcement, and society at large.

I. In Domestic Violence Cases, Defense of the Home Requires Protection *from* Firearms.

“[H]ome [is] where the need for defense of self, family, and property is most acute.” *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). The perceived need for firearms to defend the home against dangerous intruders animated the decision in *Heller* to recognize an individual right to keep and bear arms. After all, home is supposed to be a haven. It is a refuge from the outside world. For some people to feel safe in their home, they need a gun.

Other people need a home that is free of guns. No one knows that better than domestic violence victims. “Every month, an average of 70 women are shot and killed by an intimate partner.” *Gun Violence in America*, Everytown Rsch. & Pol’y (Feb. 13, 2023).⁶ Out of 204 Texans killed by intimate partners in 2021, 72% were killed at home, and 75% of the homicides were committed with a firearm. Tex. Council on Fam. Violence, *Honoring Texas*

⁶ <https://everytownresearch.org/issue/domestic-violence>.

Victims: Analysis of Family Violence Homicides 4, 13, 23 (2021).⁷

The use of firearms against intimate partners also involves coercion, control, psychological abuse, and nonfatal injuries. Examples include brandishing a firearm, threatening to shoot a person or pet, using a firearm to pistol-whip or beat a person, shooting into the air, or actually shooting the victim. The risk of harm is pervasive. In the United States, 25 million adults have been threatened or nonfatally injured by an intimate partner with a firearm. Avanti Adhia et al. *Nonfatal Use of Firearms in Intimate Partner Violence: Results of a National Survey*, 147 *Preventive Med.* 106500 (June 2021).

A. Women face higher risks at home when their abuser possesses a gun.

A major premise in *Heller* is that the home's inhabitants are safe, and it is those outside the home who are dangerous. In cases of domestic violence, this premise is inverted. “[E]mpirical evidence suggests that most homicide victims know their assailant, which suggests an interpersonal dispute within the household or other domestic violence and not an unknown intruder.” Andrew Anglemeyer et al., *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization among Household Members: A Systematic Review and Meta-analysis*, 160, no. 2 *Annals of Internal Med.* 101, 107 (2014).

“[D]ata strongly suggest[s] that the risk of homicide is markedly increased in homes where a person has previously been hit or hurt in a family

⁷ https://tcfv.org/wp-content/uploads/tcfv_htv_rprt_2021.pdf.

fight.” Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 *New Eng. J. Med.* 1084, 1090 (1993)⁸; *Guns and Violence Against Women*, Everytown Rsch. & Pol’y (Apr. 10, 2023).⁹

The Kellermann study, still widely recognized as authoritative, examined nearly 2,000 homicides in the home to determine whether possession of a firearm in the home conferred protection or increased the risk of violent crime. It made several significant findings:

- “Gun ownership was most strongly associated with homicide at the hands of a family member or intimate acquaintance”
- “Living in a household where someone had previously been hit or hurt in a fight in the home was also strongly and independently associated with homicide”
- “Previous family violence was linked to an increased risk of homicide among men as well as women, blacks as well as whites, and younger as well as older people. Virtually all of this increased risk was due to a marked association between prior domestic violence and homicide at the hands of a family member or intimate acquaintance”

Kellermann, *supra*, at 1087.

⁸ <http://www.nejm.org/doi/pdf/10.1056/NEJM199310073291506>.

⁹ <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/>.

“Access to a firearm by an abusive partner is one of the leading risk factors for intimate partner homicide.” Tex. Council on Fam. Violence, *supra* p.6, at 13. “Nearly all homicide-suicides and homicides of pregnant victims were perpetrated with a firearm.” *Id.* Indeed, “[a]ccess to a gun makes it five times more likely that a woman will die at the hands of a domestic abuser.” Everytown for Gun Safety, *Domestic Violence*.¹⁰

One might argue that risk to women from their abusers is mitigated if they, too, possess a gun. But the data does not bear this out. “[W]omen with firearm access have a higher risk for homicide victimization.” Anglemyer, *supra* p.7, at 107. Instead, the data shows that fewer guns in the hands of abusers is far more effective. “Laws that reduce abusers’ access to firearms are associated with reductions in intimate partner homicide.” Educ. Fund to Stop Gun Violence, *Domestic Violence and Firearms* (July 2020).¹¹

B. Children face higher risks at home when their abuser possesses a gun.

Firearms present the leading cause of death for U.S. children and teens. Matt McGough et al., *Child and Teen Firearm Mortality in the U.S. and Peer Countries*, KFF (July 2023).¹² Many of these gun-related deaths are linked to family violence.

¹⁰ <https://everytownresearch.org/issue/domestic-violence>.

¹¹ <https://efsgv.org/learn/type-of-gun-violence/domestic-violence-and-firearms/#:~:text=Laws%20that%20reduce%20abusers'%20access,from%20purchasing%20and%20possessing%20firearms>.

¹² <https://www.kff.org/mental-health/issue-brief/child-and-teen-firearm-mortality-in-the-u-s-and-peer-countries/>.

Katherine A. Fowler et al., *Childhood Firearm Injuries in the United States*, 140 *Pediatrics* 1, 6–7 (2017).

To the extent gun advocates believe firearms enhance safety, that logic obviously does not apply to children facing armed abusers. Subject to limited exceptions, federal law prohibits the possession of a handgun or handgun ammunition by any person under the age of 18. *See* 18 U.S.C. § 922(x)(2), (5). State legislatures likewise restrict minors’ access to firearms by imposing age limits on possession and/or purchase.¹³ Thus, even more so than women, children are defenseless against abusers with guns.

¹³ *See* Ala. Code § 13A-11-72(b); Alaska Stat. § 11.61.220(a)(3); Ariz. Rev. Stat. § 13-3109(A); Ark. Code Ann. § 5-73-119(a)(1), (e); Cal. Penal Code §§ 29610, 29615; Colo. Rev. Stat. § 18-12-108.5(1), (2); Conn. Gen. Stat. § 29-36f; Del. Code Ann. tit. 11, § 1445; D.C. Code Ann. § 7-2502.03(a)(1); Fla. Stat. § 790.22(3); Ga. Code Ann. § 16-11-132(b); Haw. Rev. Stat. § 134-2(a), (d); Idaho Code § 18-3302F(1); 430 Ill. Comp. Stat. 65/4(a)(2)(i); Ind. Code § 35-47-10-5; Iowa Code § 724.22; Kan. Stat. Ann. § 21-6301(a)(14); Ky. Rev. Stat. Ann. § 527.100(1); La. Stat. Ann. § 14:95.8(A); Me. Rev. Stat. tit. 17-A, § 554-B; Md. Code Ann., Pub. Safety § 5-133(d); Mass. Gen. Laws ch. 140, § 131(iv); Mich. Comp. Laws § 750.234f; Minn. Stat. § 624.713, subd. 1(1); Miss. Code Ann. § 97-37-14; Mo. Ann. Stat. § 571.060; Mont. Code Ann. § 45-8-344; Neb. Rev. Stat. § 28-1204(1); Nev. Rev. Stat. § 202.300(1); N.H. Rev. Stat. Ann. § 159:12; N.J. Stat. Ann. § 2C:58-6.1b; N.M. Stat. Ann. § 30-7-2.2; N.Y. Penal Law § 400.00(1)(a); N.C. Gen. Stat. § 14-269.7; N.D. Cent. Code § 62.1-02-01(1)(d); Ohio Rev. Code Ann. § 2923.211; Okla. Stat. Ann. tit. 21, § 1273(C); Or. Rev. Stat. § 166.250(1)(c)(A); 18 Pa. Cons. Stat. Ann. § 6110.1(a); 11 R.I. Gen. Laws § 11-47-33; S.C. Code Ann. § 16-23-30(B); S.D. Codified Laws § 23-7-44; Tenn. Code Ann. § 39-17-1319(b); Tex. Penal Code Ann. § 46.06; Utah Code Ann. § 76-10-509.4; Vt. Stat. Ann. tit. 13, § 4008; Va. Code Ann. § 18.2-308.7; Wash. Rev. Code Ann. § 9.41.240; W. Va. Code § 61-7-8; Wis. Stat. § 948.60(2)(a); Wyo. Stat. Ann. § 6-8-404(d).

C. The public faces higher risks when abusers possess a gun.

In *New York State Rifle & Pistol Association v. Bruen*, the Court extended an individual’s right to keep and bear arms to public places. 142 S. Ct. 2111, 2122 (2022). Like *Heller*, the Court’s premise is that the person bearing arms is safe (“ordinary, law-abiding”) and it is other people who are dangerous. *Id.* at 2134, 2156.

That premise does not hold for a person who commits domestic violence. While domestic abusers present the most acute danger to their intimate partners and family members, their propensity for dangerousness extends far beyond the home. “59.1% of mass shootings between 2014 and 2019 were [related to domestic violence]” and “in 68.2% of mass shootings, the perpetrator either killed at least one partner or family member or had a history of [domestic violence].” Lisa B. Geller et al., *The role of domestic violence in fatal mass shootings in the United States, 2014–2019*, *Inj. Epidemiology* 1, 8 (2021).¹⁴

The evidence is clear that domestic violence and mass shooting share a high correlation. In nearly half of “mass shootings with four or more people killed, the perpetrator shot an intimate partner or family member.” Everytown for Gun Safety Support Fund, *Mass Shootings in the United States*, (Mar. 2023).¹⁵

¹⁴ <https://doi.org/10.1186/s40621-021-00330-0>.

¹⁵ <https://everytownresearch.org/mass-shooting-report/>.

D. Firearm restrictions for persons under domestic violence protective orders are essential to public safety.

Courts have long recognized that the need to protect domestic violence victims is ongoing. Estimates of domestic violence recidivism rates from survey research “range from 40% to 80%.” *United States v. Skoien*, 614 F.3d 638, 644 (7th Cir. 2010); see also *United States v. Booker*, 644 F.3d 12, 26 (1st Cir. 2011) (“[T]he recidivism rate for domestic violence is high . . .”).

Voters have addressed this issue with legislation. Congress enacted § 922(g)(8) to prevent gun possession by intimate partners subject to protective orders, responding to empirical proof of the extreme and intolerable risk firearms pose in the hands of abusers. See, e.g., 139 Cong. Rec. S16288-03 (Nov. 19, 1993); 140 Cong. Rec. S7884-01 (June 29, 1994); 139 Cong. Rec. E1024-01 (Apr. 26, 1993).

This is also the majority policy among the states. More than 30 states have criminal prohibitions on firearm possession by persons subject to domestic-violence restraining orders. *Which States Prohibit Domestic Abusers Under Restraining Orders from Having Guns?*, Everytown Rsch. & Pol’y (Jan. 12, 2023).¹⁶ “Statutes in at least 16 more jurisdictions specifically permit, or have been read by appellate courts to permit, the imposition of a firearm disqualification as part of a protective order.” Pet’r Br. at 34–35.

¹⁶ <https://everytownresearch.org/rankings/law/relinquishment-for-domestic-abusers-under-restraining-orders/>.

In this case, Rahimi was subject to a domestic violence protective order issued by a state court in Texas, where “[o]ne of the primary tools used in the battle against family violence is the protective order.” *Rodriguez v. Doe*, 614 S.W.3d 380, 385 (Tex. App.—Houston [14th Dist.] 2020). When the Texas legislature created the family violence protective order in 1979, it intended to “provide protection and temporary shelter . . . for victims of family violence and members of their family” Law of April 19, 1979, ch. 98, § 1, 1979 Tex. Gen. Laws 182, 182.

The statute “provide[s] an expedited procedure for victims of domestic violence . . . to give immediate protection to the [victim].” *Roper v. Jolliffe*, 493 S.W.3d 624, 634 (Tex. App.—Dallas 2015); *see also Johnson v. Simmons*, 597 S.W.3d 538, 542 (Tex. App.—Fort Worth 2020) (“[T]he purpose . . . [is] to provide an expedited procedure to protect victims of family violence and to reduce the number of deaths and injuries to those victims”). The purpose of protective orders is therefore both “humanitarian and preventative,” to assist victims and prevent future violence. *Boyd v. Palmore*, 425 S.W.3d 425, 430 (Tex. App.—Houston [1st Dist.] 2011).

The Texas legislature also stated its intent “to reduce the high incidence of deaths and injuries sustained by law enforcement officers in handling family disturbances” Law of April 19, 1979, ch. 98, § 1, 1979 Tex. Gen. Laws 182, 182; *see Johnson*, 597 S.W.3d at 542 (noting that the protective-order statute is intended to “reduce the number of deaths and injuries . . . to the law enforcement officers charged with handling family disturbances”); *see also Roper*, 493 S.W.3d at 629 (same).

“Responding to a domestic-disturbance call is among an officer’s most risky duties.” *Skoien*, 614 F.3d at 644. Between 2015 and 2019, the FBI reports that nearly 10% of law enforcement officers killed in the line of duty were responding to domestic disturbances or domestic violence. FBI, Crim. Just. Info. Servs. Div., *Law Enforcement Officers Feloniously Killed*, Table 23 (2019).¹⁷

The need to protect victims, their families, and law enforcement only gains urgency when an abuser has a gun. “Firearms and domestic strife are a potentially deadly combination nationwide.” *United States v. Hayes*, 555 U.S. 415, 427 (2009). There is “an established link between domestic abuse, recidivism, and gun violence,” *United States v. Mahin*, 668 F.3d 119, 128 (4th Cir. 2012). And there can be no doubt that “preventing armed mayhem” is “an important governmental objective.” *Skoien*, 614 F.3d at 642.

Judge Ho’s concurring opinion expressed concern that domestic violence protective orders may be susceptible to abuse if people seek them for tactical reasons apart from safety. 61 F.4th at 465–66. This concern overlooks the procedural safeguards that ensure the orders restrain dangerous persons.

In Texas, family-court orders of protection carry substantive and procedural safeguards. There must be a judicial finding that family violence has occurred; there must be a hearing; and respondent must receive service of the application and notice of the hearing. Tex. Fam. Code §§ 85.001, 85.006.

¹⁷ <https://ucr.fbi.gov/leoka/2019/tables/table-23.xls>.

Further, the evidence supporting the issuance of a protective order must be “legally and factually sufficient,” and the respondent may appeal the order. *Peña v. Garza*, 61 S.W.3d 529, 530, 532 (Tex. App.—San Antonio 2001); see *Vongontard v. Tippit*, 137 S.W.3d 109, 110, 112 (Tex. App.—Houston [1st Dist.] 2004). Thus, in a prior case addressing § 922(g)(8), the Fifth Circuit observed that Texas’s “procedural requirements” ensure that a “protective order was issued only after an adversarial hearing where the respondent was entitled to present his own account of the alleged abuse.” *United States v. McGinnis*, 956 F.3d 747, 758 (5th Cir. 2020).

Section 922(g)(8) only applies to an order that is issued by a court, after a hearing in which the respondent receives actual notice and an opportunity to participate, and it includes findings and prohibitions to protect intimate partners and children. The statute thus balances any request for an order of protection with safeguards for the respondent. These safeguards are intended to prevent the issuance of meritless orders and, should the trial judge err, relief is available on appeal. Judge Ho indulged the assumption that judges routinely succumb to tactical requests and issue orders of protection in violation of the law, and without correction by courts of appeals, which flouts the presumption that judges follow the law. See, e.g., *Voorhees v. Jackson*, 35 U.S. 449, 472 (1836) (“There is no principle of law better settled, than that every act of a court of competent jurisdiction shall be presumed to have been rightly done, till the contrary appears,” including as to “every judgment or decree”).

II. Historical Analogues Need Not be Perfect to Uphold Modern Safety Protections.

The Fifth Circuit correctly upheld the constitutionality of § 922(g)(8) in the landmark decision of *United States v. Emerson*, 270 F.3d 203, 210 (5th Cir. 2001), and again after *Heller* in *McGinnis*, 956 F.3d at 759, and again in *United States v. Rahimi*, 59 F.4th 163 (5th Cir. 2023)—before it withdrew the opinion and reversed decades of circuit precedent after attempting to apply the analogical reasoning required by *Bruen*. The holding is contrary to the Second Amendment’s text and misapplies *Bruen*’s framework, dismissing historical regulations disarming dangerous persons as inadequate simply because specific protections for women and children are a modern creation.

A. Dangerous persons may be disarmed.

The Second Amendment protects “the right of the people to keep and bear Arms,” with longstanding historical exceptions for “the people” who are dangerous. U.S. Const. amend. II. As the Fifth Circuit recently recognized, “there is an undeniable throughline in [the] historical sources: Founding-era governments took guns away from persons perceived to be dangerous.” *United States v. Daniels*, ___ F.4th ___ (5th Cir. Aug. 9, 2023). The “sheer number of disarming statutes at the time of the Founding . . . suggest a public understanding that when a class of individuals was thought to pose a grave danger to public peace, it could be disarmed.” *Id.*¹⁸

¹⁸See also Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev.

The text of the Second Amendment includes a critical link between a “well regulated Militia” and “the right of the people to keep and bear Arms.” The Framers stated that the right they were fashioning is one “necessary to the security of a free State.” Thus, unlike “textually unbounded pledges assuring freedom of speech and conscience,” the right vested in “the people” by the Second Amendment “is more designed to assure ‘domestic Tranquility [and] . . . the general Welfare.’” *Daniels*, ___ F.4th ___ (Higginson, J., concurring) (citing U.S. Const. pmb.).

Assuring domestic tranquility and the general welfare is a right to protect the State, which, as this Court has recognized in *Heller*, *McDonald v. City of Chicago*, and *Bruen*, incorporates significant public safety exceptions. *Heller*, 554 U.S. at 607–08, 612, 626–27; *McDonald*, 561 U.S. 742, 786 (2010); *Bruen*, 142 S. Ct. at 2133.

The Court’s framework in *Bruen* is therefore consistent with historical traditions of restricting firearm rights of dangerous persons. While the government must justify regulation of protected conduct “by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation,” the analogy need only be “relevantly similar.” 142 S. Ct. at 2130, 2132.

Further, in conducting analogical reasoning, courts consider “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 2133. This case therefore differs from *Bruen* in a key respect: Section 922(g)(8) does not

(forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4317000 (collecting historical regulations).

burden the “*central component*” of the Second Amendment—“individual self-defense”—as did the law at issue in *Bruen*. 142 S.Ct. at 2118, 2133. Rather, the law itself serves to restrict the rights of dangerous persons as a means of defending people who are particularly vulnerable to gun abuse.

B. *Bruen* allows room to uphold modern safety protections.

“[A]nalogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* at 2133. Analogical reasoning is not a “regulatory straightjacket.” *Id.* It allows for the recognition that historically unprotected people are worthy of protection. Searching for a historical “twin” for § 922(g)(8) is vain—and unnecessary under *Bruen*—because domestic violence protections are a modern creation.

“Through the founding era, governments did not recognize, much less intervene directly in, intimate-partner violence because of Anglo-American common law’s treatment of domestic relations: a husband had a legal right to subject his wife to physical violence—what was called ‘chastisement’—if she defied his authority.” Amicus Br. of Gun Violence and Domestic Violence Prevention Groups at 9 (citing 1 William Blackstone, *Commentaries on the Laws of England* 442–45 (1765) (“[T]he law thought it reasonable to entrust [the husband] with this power of restraining [the wife], by domestic chastisement, in the same moderation that a man is allowed to

correct his servants or children . . . and the courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehavior.”)).

“In 1871, Alabama became the first State to rescind a husband’s right to beat his wife,” but “there were few prosecutions under [Alabama’s] or any other State laws for violence toward wives, and the doctrine of family privacy continued to prevail over these largely symbolic statutes.” Jeffrey Fagan, Nat’l Inst. of Justice Programs, U.S. Dep’t of Justice, *The Criminalization of Domestic Violence: Promises and Limits* 7 (1996). Real change did not come until much later.

It was not “[u]ntil the legal reforms of the late 1970’s” that a woman could obtain a restraining order against a violent husband without filing for divorce at the same time. *Id.* at 3, 8.

And it was not until 1994, with the passage of the Violence Against Women Act, that Congress “[c]omprehensively addresse[d] the nationwide problem of gender-motivated crimes of violence.” Shana Chen & Karen Cunningham, *Violence Against Women Act*, 1 *Geo. J. Gender & L.* 711, 711 (Spring 2000). It represented the first “push[] for [a] nationwide solution to address the lack of a cohesive legal response to domestic violence and related crimes of sexual assault.” Stephanie E. Stupakis, *What the Future May Hold for Victims of Domestic and Sexual Violence Without the Violence Against Women Act*, 30 *Hastings Women’s L.J.* 261, 264–65 (2019).

Texas, the state which issued a family order of protection against Rahimi, carries a similar history. “When the Texas Constitution was adopted, civil law did not address domestic violence cases between spouses because of the doctrine of interspousal tort immunity.” *Roper*, 493 S.W.3d at 631. “A woman’s disability during coverture was an essential ingredient in fostering the doctrine.” *Price v. Price*, 732 S.W.2d 316, 316 (Tex. 1987). “At common law the husband and wife were regarded as one,—the legal existence of the wife during coverture being merged in that of the husband.” *Id.* (quoting *Thompson v. Thompson*, 218 U.S. 611, 614–15 (1910)). Coverture also included “the concept of superiority of the husband over the wife even to the extent of restraining her liberty or disciplining her.” *Id.* Texas did not formally abolish interspousal immunity for all causes of action until 1987. *Id.* at 319.

In the late 1970s, attitudes about women, marriage, and equality began to evolve. See James Martin Truss, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 St. Mary’s L.J. 1149, 1154, 1178 (1995). Only then did the Texas Legislature finally address domestic violence, enacting in 1979 a law regarding orders of protection in matters of family violence. See Law of Apr. 19, 1979, ch. 98, § 11, 1979 Tex. Gen. Laws 185–189, (current version at Tex. Fam. Code §§ 71.001-88.008). That same year, the Texas Legislature amended the assault statute to make explicit that it included assaults against spouses, Act of May 3, 1979, Ch. 164, § 2, 1979 Tex. Gen. Laws 366-68 (current version at Tex. Penal Code § 22.01), although it did not criminalize sexual

assault between spouses until 1991. Law of May 27, 1991, ch. 662, § 1, 1991 Tex. Gen. Laws 2412, 2412–13 (current version at Tex. Penal Code § 22.011).

Given the historical tradition of coverture, the Fifth Circuit was unable to find Founding-era regulations barring domestic abusers from possessing firearms. Protective orders did not yet exist. And domestic abuse was considered a private matter. But historical bias against vulnerable classes of people is irrelevant when the person whose rights are being restricted falls within the general class of dangerous people. One who “represents a credible threat to the physical safety of [an] intimate partner or child,” as defined in § 922(g)(8)(C)(i) is a dangerous individual whose rights can be restricted.

As the collective understanding of society has grown to encompass groups of previously excluded and disenfranchised classes of people, such as women, laws to protect society have evolved too. A Government’s effort to safeguard society may be tailored to protect its most at-risk members. Section 922 represents a specific application of general laws regulating dangerous individuals, which brings it within the ambit of historical analogues that were aimed at protecting society more broadly.

The statute effectively addresses the pressing problem of domestic violence. That this societal problem was ignored until recently should not matter under *Bruen*, because the law aligns with historical analogues that have limited gun rights to protect society from harm.

CONCLUSION

The Court should uphold essential firearm restrictions for dangerous persons and reverse the judgment of the court of appeals.

Respectfully submitted,

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