



Statement on Behalf of Ruth M. Glenn and the National Coalition Against Domestic Violence/The National Domestic Violence Hotline

Submitted for the hearing on

Protecting Public Safety After New York State Rifle and Pistol Association v. Bruen

Senate Judiciary Committee

March 15, 2023

My name is Ruth M. Glenn, and I am the President of Public Affairs at the National Coalition Against Domestic Violence (NCADV), which is a project of the National Domestic Violence Hotline (The Hotline). Prior to NCADV's merger with The Hotline, I served as the President & CEO of NCADV for more than eight years. I am also a survivor. In my testimony, I am speaking on behalf of NCADV, of The Hotline, and on my own behalf. I am also speaking on behalf of the millions of people¹ who experience intimate partner violence every year in the United States. Other witnesses will discuss the legal merits of *Bruen*. I am here to tell you about its impact on real people.

The National Coalition Against Domestic Violence and the National Domestic Violence Hotline

The National Coalition Against Domestic Violence is America's oldest national grassroots domestic violence organization, amplifying the voices of victims, survivors, and advocates in our nation's capital. Our mission is to lead, mobilize, and raise our voices to support efforts that demand a change of conditions that lead to domestic violence such as patriarchy, privilege, racism, sexism, and classism. We are dedicated to supporting survivors and holding offenders accountable and supporting advocates. NCADV envisions a national culture in which we are all safe, empowered, and free from domestic violence.

In October of 2022, NCADV merged with the National Domestic Violence Hotline to create Project Opal. The National Domestic Violence Hotline was created as part of the original

Violence Against Women Act. The Hotline answers the call to support and shift power back to those affected by relationship abuse. 24 hours a day, seven days a week, 365 days a year, the National Domestic Violence Hotline provides essential tools and support to help survivors of domestic violence so they can live their lives free of abuse. The Hotline envisions a world where all relationships are positive, healthy, and free from violence.

The intersection between intimate partner violence and firearms

At NCADV, we define ‘intimate partner violence’ (used interchangeably with ‘domestic violence’) as the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, psychological violence, and emotional abuse. The frequency and severity of domestic violence can vary dramatically; however, the one constant component of domestic violence is one partner’s consistent efforts to maintain power and control over the other. According to the Centers for Disease Control, approximately 40% of women and 25% of men in the United States experience physical violence, contact sexual violence, or stalking in their lifetimes with intimate partner violence-related impacts.² Intimate partner violence-related impacts include being injured, requiring medical care, needing law enforcement help, requiring legal services or other victim services, experiencing PTSD, missing work, feeling fearful, and being worried about their safety.³

Abusive partners often use firearms as a tool with which to exert power and coercive control. They threaten to kill their victims, their victims’ children, family members, friends, pets, co-workers, strangers, and themselves. An estimated 13.6% of women and 5.9% of men in America today have been threatened by an intimate partner with a firearm.⁴ Of women threatened by a firearm, 43% have been shot, pistol whipped, sexually assaulted, or otherwise physically injured with a firearm.⁵ A 2014 survey of contacts to the Hotline found that, of respondents whose abusive partners had access to firearms, 10% said the abusive partner had fired a gun during an argument, and 67% said they believed the abusive partner was capable of killing them.⁶ In 2022, 21,225 contacts to The Hotline reported firearms were used in abuse, a 22.2% increase over 2021.

Far too often, abusive partners make good on their threats to murder their intimate partners. When an abusive intimate partner has access to a firearm, the risk of intimate partner homicide increases at least five-fold⁷; one study puts the increased risk at 1,000%.⁸ When an abusive partner has used a firearm in the past, the risk of homicide increases more than forty-one-fold.⁹

Most women who are murdered are killed by someone they know, usually by intimate partners, and most intimate partner homicides are committed using firearms.¹⁰ According to calculations based on the FBI’s Uniform Crime Report, a person is shot and killed by an intimate partner on average at least approximately every 7 hours,¹¹ although due to data limitations,¹² this is likely based on an undercount of annual intimate partner homicides, and they occur even more frequently. While intimate partner homicides decreased substantially beginning the mid-1990s with the passage of the Violence Against Women Act, and intimate partner homicides

committed using means other than firearms continue to decrease, the rate of intimate partner homicide is now increasing, driven entirely by an increase in firearm homicides.¹³

While the perpetrator's intimate partner is typically the direct target, 20% of casualties of intimate partner homicide are individuals other than the intimate partner, including children, law enforcement, and others.¹⁴ At NCADV, we have a project called Remember My Name, which memorializes victims of intimate partner homicide. Every year, we release a poster with the names of victims who have been submitted by their loved ones. The poster is alphabetized by last name and includes the age of the victim and the state in which the homicide occurred. Far too often, the poster includes an adult's (usually a woman's) name surrounded by the names of children with the same last name in the same state, children aged zero, two, ten, twelve. Intimate partner homicides committed with firearms are more likely than those committed by other means to have 'collateral' victims,¹⁵ so we can infer that two generations of a family have been murdered by an intimate partner with a gun.

Federal and state laws

18 USC 922(g)(8)

Recognizing the deadly intersection between domestic violence and firearms, Congress included a provision in the 1994 Violent Crime Control and Law Enforcement Act restricting certain respondents to final domestic violence protective orders from possessing, receiving, shipping, or transporting firearms or ammunition for the duration of the order ("DVPO prohibitor" or "protective order prohibitor").¹⁶ When the protective order expires, the individual's firearm access is no longer restricted. To be clear, the protective order prohibitor temporarily delays a respondent's firearm access, but most protective orders only last between six months and a year.

Civil court orders, in this case domestic violence protective orders, are the only survivor-led legal remedy to which survivors have access. Unlike other legal proceedings such as prosecutions, in which prosecutors choose whether to charge the abusive partner and with what to charge them, survivors make the choice whether to apply for a protective order, what relief to request, and when to seek an order. Domestic violence protective orders can provide an array of relief to meet the survivor's needs holistically, including requiring the respondent to stay away from the survivor and their children and pets, requiring the respondent to seek counseling, requiring the respondent to refrain from using drugs or alcohol, addressing child custody and visitation (including restricting access or requiring supervised visitation if the respondent poses a danger to the safety of children), and addressing financial and property issues.

For a DVPO to trigger the protective order prohibitor, it must meet several requirements. First, as noted previously, it must be a final order. This means that it must be issued after a hearing of which the respondent has notice and at which the respondent has an opportunity to appear and make their case.

Also, the respondent and the petitioner or protected must have a certain relationship. For the purposes of the protective order prohibitor, the respondent and the petitioner must be 1) current

or former spouses; 2) current or former cohabitants; 3) share a child in common; or 4) the protected party must be the child of either the petitioner or the respondent.

Finally, the order must restrain the respondent from harassing, stalking, or threatening the intimate partner or child or engaging in conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child. The order must also *either* include a finding that the respondent represents a credible threat to the physical safety of the intimate partner or the child *or* explicitly prohibit the use, attempted use, or threatened use of physical force against the intimate partner or the child that would reasonably be expected to cause bodily injury.

18 USC(g)(9)

In 1996, Congress further restricted certain individuals convicted of a misdemeanor crime of domestic violence from possessing, receiving, shipping, or transporting firearms or ammunition (“MCDV prohibitor” or “misdemeanor domestic violence prohibitor”).¹⁷ Due to the relationship between the victim and the perpetrator, prosecutions for domestic violence crimes frequently result in plea agreements, reduced charges, or diversion programs that end up treating felony-level violence as a misdemeanor offense.¹⁸

As with the protective order prohibitor, the MCDV prohibitor requires the perpetrator to have one of the following relationships with the victim: current or former spouse; current or former cohabitant; share a child in common; parent; guardian; similarly situated to a spouse, parent, or guardian; or current or recent dating relationship.

The defendant must have been convicted of or pled guilty to a misdemeanor crime under federal, state, tribal, or local law involving the use or attempted use of force or a threat with a deadly weapon. The defendant must also have been afforded appropriate due process protections. They must have either been represented by counsel or knowingly and intelligently waived their right to counsel, and if they are entitled to a jury trial under the laws of the jurisdiction, they must either have had a jury trial or knowingly and intelligently waived their right to a jury trial. And if the conviction has been expunged, set aside, the individual has been pardoned, or the individual has had their rights restored (unless the restoration of rights stipulates they cannot possess firearms), the MCDV prohibitor no longer applies.¹⁹ For first-time offenders who are convicted of a qualifying domestic violence crime against someone with whom they are or were recently in a dating relationship, the MCDV prohibitor also only applies for five years after the completion of their sentence.²⁰

To be clear, both the DVPO and MCDV prohibitors require a court adjudication and provide robust due process protections to the respondent or defendant.

These prohibitors have been updated over the years to better protect victims and survivors from armed abusers. In 2006, Congress clarified that convictions for a misdemeanor crime of domestic violence under Tribal law triggers the MCDV prohibitor.²¹ In 2021 (took effect in 2022), Congress further clarified that convictions for a misdemeanor crime of domestic violence under local law triggers the MCDV prohibitor.²² Most recently, in 2022, Congress expanded the MCDV

prohibitor to include individuals convicted of a misdemeanor crime of domestic violence against a person with whom they have or have recently had a dating relationship.²³

Most states also have laws addressing firearm possession by domestic violence misdemeanants and/or respondents to domestic violence protective orders.²⁴ Some states' laws provide more expansive protections, some states' laws provide less expansive protections, and some state laws mirror or reference federal laws. All states have some mechanism by which a judge issuing a final protective order can address the respondent's access to firearms.²⁵

The Supreme Court of the United States ("SCOTUS" or "the Supreme Court") has considered and upheld the federal MCDV prohibitor in three cases: *United States v. Hayes*,²⁶ *United States v. Castleman*,²⁷ and *Voisine v. United States*.²⁸ In *United States v. Hayes*, the Court held that the state statute under which the defendant had been charged did not need to explicitly be called 'domestic violence;' as long as the elements of the statute were satisfied, the prohibitor applied. In *United States v. Castleman*, the Court ruled that the MCDV prohibitor was triggered by a crime involving the degree of force necessary for a common law battery conviction, which could include offensive touching. Most recently, in *Voisine v. United States*, the Court found that a conviction for reckless domestic assault constitutes a misdemeanor crime of domestic violence for the purpose of the MCDV prohibitor. The Supreme Court has not heard challenges to the DVPO prohibitor.

New York State Rifle and Pistol Association, Inc. v. Bruen

In September, 2021, NCADV led an amicus brief²⁹ by the domestic field in the case of *New York State Rifle and Pistol Association, Inc. v. Bruen* ("*Bruen*"). In our brief, we urged the Supreme Court to rule narrowly on the provision of New York concealed carry permitting law that was being challenged and warned of the consequences of a broad ruling. We feared a broad ruling would undermine critical protections for survivors that keep firearms out of the hands of individuals found by the courts to have committed domestic violence or to pose an ongoing threat to the safety of their victims.

Our brief was disarmingly prescient. The SCOTUS ruling was so broad as to upend centuries of jurisprudence pertaining to firearms regulation. For the first time, SCOTUS declared an individual right to carry a firearm outside of the home. Furthermore, it rejected the two-part test courts had been using after SCOTUS's ruling in *District of Columbia v. Heller*,³⁰ in which SCOTUS declared an individual right to have a firearm in the home. Under a new test endorsed by four of the six justices ruling in favor of the plaintiffs, courts could no longer consider whether there was a compelling public interest undergirding laws addressing firearms; the government must now prove that any firearms regulations are part of a "historical tradition."³¹

Unsurprisingly, the *Bruen* decision caused considerable consternation in the domestic violence field. American society has advanced in many ways over the past several centuries, and tethering laws exclusively to those existing hundreds of years ago, with no other considerations, has the potential to undo many of the advances we have made, particularly in areas such as gender equality.

The lack of historical laws restricting firearms access by domestic abusers is not evidence that such laws are unconstitutional. Rather, it is a reflection of the legally subordinate status of and general disregard for the rights and needs of women in early America. Until the mid-to-late 1800s, married women were not permitted to own property independently of their husbands. Mississippi became the first state to allow this in 1839.³² Women only gained suffrage in 1920.³³ In 1871, Alabama became the first state to rescind a husband's right to beat his wife through a court ruling,³⁴ and in 1882, Maryland became the first state to criminalize wife-beating.³⁵ Interstate domestic violence did not become a federal crime until 1994.³⁶ Until 1976, marital rape was legal in all fifty states.³⁷ History, and the historical record, are not neutral arbiters - recorded history represents primarily the history of those with power, and thus has, with notable exceptions, excluded the concerns of women.

Moreover, *Bruen's* framework for assessing the constitutionality of firearms laws is far from exact. Not only does it unreasonably expect courts to possess the specialized expertise of professional historians, it fails to provide guidance on a number of issues. For example, while it recognizes that changes in society may require analogical reasoning, it fails to establish parameters around how closely analogous laws must be to establish a 'historical tradition.' Moreover, it fails to establish what, specifically, constitutes a 'tradition.' It is so vague that two courts considering the same law can come to very different conclusions - and they have.

Post-*Bruen*

The post-*Bruen* landscape is littered with contradictory rulings. This includes conflicting rulings on the constitutionality of the federal DVPO prohibitor. Rulings against the domestic violence prohibitors were not inevitable, but they are unsurprising. To be clear, we fully expect both domestic violence prohibitors to ultimately be upheld. However, *Bruen's* lack of clarity allows courts to read into it what they want.

For example, courts have issued contradictory rulings about the constitutionality of the DVPO prohibitor. A judge in Western Texas asks whether *Bruen* requires courts to take a scalpel or a chainsaw to 2nd Amendment jurisprudence - and the judge in this case chose a chainsaw.³⁸ In contrast, a court in Western Oklahoma upheld the DVPO prohibitor with very little fuss and no extended metaphors.³⁹

In early February, a three-judge panel of the 5th Circuit Court of Appeals released their ruling in *United States v. Rahimi* ("*Rahimi*"),⁴⁰ declaring the federal protective order prohibitor to be unconstitutional (a fact sheet about this case can be found in the appendix). This ruling, which was reissued with revisions in early March, has caused substantial harm to survivors of domestic violence. Not only did the *Rahimi* ruling inappropriately limit the federal government's ability to protect Americans from armed, adjudicated abusers, it has caused substantial confusion - even chaos - across the nation.

In *Rahimi*, whether intentionally or not, the 5th Circuit sent a very powerful message to victims and survivors of domestic violence: their right to live free from fear and violence - and to live at

all - is less important than their abusive partner's access to a firearm. Abusive intimate partners isolate their victims, telling them that no one will help them and no one else cares about them. With this ruling, the 5th Circuit affirmed that narrative, siding with abusers over victims.

The refiled ruling includes a concurrence that emphasizes this point. The concurrence's underlying message is, 'you shouldn't believe survivors.' The author repeats the long-debunked myth that courts 'give out protective orders like candy' and hints at widespread perjury by unscrupulous petitioners with ulterior motives. Any domestic violence advocate or survivor who has sought a protective order can tell you from bitter experience that protective orders are difficult to obtain. Moreover, it takes courage and resilience to recount some of the most painful and traumatic experiences of a person's life to a stranger, knowing that the very act of seeking a protective order may cause the abusive partner to escalate, and if the order is denied, the survivor may be worse off than if they had not petitioned in the first place.

While the focus of this written testimony is not the ruling in *Rahimi*, I will nonetheless use this opportunity to address some of the most egregious falsehoods mentioned therein. Chief among these is the repeated assertion that DVPOs do not provide for due process. This simply is not true. As discussed earlier, contrary to what the judges in *Rahimi* seem to believe, a petitioner cannot simply make unsubstantiated allegations of abuse and obtain a DVPO without the respondent having the opportunity to defend themselves. As with any other court proceeding, there are basic standards and processes. The respondent must have notice and the opportunity to participate in the court proceeding, and the respondent can be represented by a lawyer. The petitioner must provide evidence, and the respondent or their lawyer has the opportunity to refute that evidence and provide contrary evidence.

The judges in this case emphasize that Rahimi waived his right to a hearing as evidence that he did not have sufficient due process. However, I draw the opposite conclusion. First, the fact that he waived his right to a hearing simply reinforces the fact that he had such a right. Second, respondents may choose to waive their hearing specifically to avoid any findings of fact or evidentiary hearing that could later be used against the respondent in a criminal trial. In other words, he benefited from waiving the hearing; he was not a hapless victim of a predatory system.

Moreover, under Texas law, had Rahimi chosen to have his hearing, the court would have had to find both that family violence had occurred and that family violence is likely to occur in the future in order to issue a DVPO.⁴¹ The claim that the protective order prohibitor unintentionally disarms individuals with no history of violence due to 'boilerplate language' in non-abuse-related domestic proceedings 'that tracks' the federal DVPO prohibitor is patently absurd and has no basis in reality of which NCADV or the Hotline is aware - and even if we were to entertain this as a hypothetical scenario, the obvious remedy would be to fix the form in question, not to overturn a basic protection upon which survivors rely.

While, again, this is not the forum to contest every claim made in the *Rahimi* decision, a multivariate analysis based on protective order hearings in a large Southwestern city illustrates

many other inaccuracies. For example, more than one third of petitions were denied, and of those petitions that were granted, less than 40% were for protective orders lasting more than six months⁴² - judges do not simply issue protective orders on a whim. Also, contrary to claims in the concurrence about mutual orders of protection, federal law makes very clear that full faith and credit shall not be accorded to mutual orders of protection unless both parties petition for protection and there were findings in both cases (unlike the scenario envisioned in the concurrence)⁴³ and state laws also intentionally limit the use of mutual orders of protection.⁴⁴ To the extent that judges continue to issue mutual orders, the solution is to provide better training and support for judges, not strip away a critical tool survivors use to seek safety. Finally, research shows that judges routinely discount women's claims of abuse in child custody cases, and are actually more likely to grant custody to abusive men when a woman alleges abuse.⁴⁵ In fact, in direct contrast to the claims in the concurrence, judges in some jurisdictions are instructed during onboarding and judicial training to be skeptical of abuse claims.⁴⁶ Given that courts ignore real abuse, people have no incentive to falsely allege abuse.

In general, the quotes and examples highlighted in *Rahimi* are 'the exceptions that prove the rule' - the few cases in which the process failed to work, rather than the vast majority of unremarkable cases in which it did. In contrast, I will draw your attention to some of the many cases in which the judge failed to disarm an abuser who subsequently murdered the petitioner.⁴⁷ These are true tragedies, yet this is the outcome *Rahimi* promotes.

At 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 DVPO prohibitor but also the federal MCDV 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.

Given the general confusion, many respondents to final protective orders who are either outside the 5th Circuit or 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. We appreciated the joint statement released by the US Attorney's Office for the District of Maine, the Maine Attorney General's Office, and the Maine District Attorneys, clarifying for Mainers that federal and state law still applies in Maine,⁴⁸ as well as the efforts of some of the Members of this Committee to educate individuals in their own states.

In the aftermath of *Rahimi*, the National Domestic Violence Hotline, of which NCADV is now a part, we 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. While we recognize correlation is not causation, these numbers are certainly suggestive.

Conclusion

Domestic violence is not a new problem; it existed at the time of the founding of the United States. The lack of protections for victims of domestic violence from gun violence in the late 18th and early 19th centuries is not an indication that the Founders would have found such restrictions unconstitutional had they considered domestic violence to be a pressing social concern; it is simply a reflection of the widespread societal acceptance of domestic violence at that time and throughout most of human history. We believe that even under the *Bruen* framework, laws restricting adjudicated abusers' access to firearms will ultimately be upheld, by the Supreme Court if necessary, when historical analogies are appropriately considered. Given the change in attitudes toward domestic violence over the past two-and-a-half centuries, the DVPO prohibitor certainly falls into the category of "cases implicating unprecedented societal concerns . . . [that] may require a more nuanced approach"⁴⁹ mentioned in *Bruen*.

However, in the interim, some abusive intimate partners will legally access firearms they were previously forbidden from having, and some will use those firearms to terrorize or even kill their victims and others. Other individuals may inadvertently break the law, wrongfully believing they are permitted to possess firearms, and some courts and law enforcement agencies will fail to take the necessary action to protect survivors. In short, the uncertainty created by *Bruen* has placed victims and their children in fear for their lives and safety.

Appendix



***U.S. v. Rahimi* Summary and Impact**

Background: 18 U.S.C. § 922(g)(8) prohibits respondents subject to qualifying domestic violence protection orders (issued after a hearing of which the respondent has notice and in which they have the opportunity to participate) from possessing, receiving, shipping, or transporting firearms while the order is in place. The provision, called the ‘protection order prohibitor,’ was enacted as part of the 1994 Violent Crime Control and Law Enforcement Act. 18 U.S.C. § 922(g)(8) applies to situations in which the respondent has one of the following relationships to the protected person: is or was married to the protected person; cohabits or cohabited with the protected person; shares or shared a child in common with the protected person; is the parent of the protected person; or is the intimate partner of the parent of the protected person. Law enforcement and military personnel are exempt from this prohibition while carrying out official duties.

What happened: A three-judge panel of the 5th Circuit Court of Appeals found this law (18 U.S.C. § 922(g)(8)) unconstitutional and vacated the sentence of the defendant, Zackey Rahimi, resulting from his conviction under that provision. This decision applies in Texas, Mississippi, and Louisiana. This decision does not address the state (Texas, Louisiana) firearm prohibition for those restrained by a protection order, firearms restrictions ordered by a judge, or 18 U.S.C. § 922(g)(9) (the federal firearm prohibition addressing criminal convictions).

Why this happened: In June, the Supreme Court ruled in *NYSRPA v. Bruen* that courts should no longer use a two-part test to determine whether a law related to firearms is constitutional under the Second Amendment, which was the framework developed after the 2008 *Heller* ruling. The two-part test allowed courts to consider both historical precedent and whether there was a compelling government interest. Under *Bruen*, courts can only consider historical precedent. However, recognizing that the world has changed in the past 250 years, the Supreme Court ruling directed courts to consider analogous historical laws in addition to identical historical laws. The 5th Circuit decided that there is not a sufficiently analogous historical law to uphold the protection order prohibitor.

What this means: Those subject to domestic violence protection orders issued after notice and a hearing in Texas, Louisiana, and Mississippi, who have been found by a court to pose a

danger to an intimate partner or child, are no longer prohibited under federal law from possessing, receiving, shipping, or transporting firearms under 18 U.S.C. § 922(g)(8), although they may be prohibited for other reasons. This does NOT impact the rest of the country.

This decision is incorrect: This ruling is not a surprising outcome of the *Bruen* decision, but it is not the inevitable or correct outcome. Nearly 30 years ago, Congress determined that a person who is subject to a court order that restrains them from threatening an intimate partner or child cannot lawfully possess a firearm. Whether analyzed through the lens of Supreme Court precedent, or of the text, history, and tradition of the Second Amendment, that statute is constitutional.

This ruling is extreme:

- Firearms in the hands of those who have been violent increases the risk of lethal outcomes and serious injuries not only for the person who is protected by a court order but also for the community generally.
- There is a broad consensus among policy makers across the political spectrum and throughout society at large that domestic abusers who have had their day in court should not have guns.
- The judges on the panel value an abuser's access to firearms over the right of the victim, their family, and the broader community to be protected from firearms violence.
- This court's view of the acceptability of interpersonal and firearm violence, historically and in our current climate, is unacceptable and dangerous.

This matters, because:

- People who use violence against intimate partners and family members use firearms as a tool with which to exert power and control.
 - They threaten to shoot their victims, their victims children, pets, other family members, co-workers, community members, and themselves.
 - An estimated 13.6% of American women have been threatened by an intimate partner with a firearm, and 43% of these have been physically injured with a firearm (shot, pistol whipped, sexually assaulted, etc.).⁵⁰
 - A survey of contacts to the National Domestic Violence Hotline found that, of respondents whose abusive intimate partners had firearms, 10% reported the intimate partner had fired a gun during an argument, and 67% believed their intimate partner was capable of killing them.⁵¹
- Firearms are the tool of choice for intimate partner homicides and increase community violence risks.
 - Most intimate partner homicides are committed using firearms.⁵²
 - Access by an intimate partner who uses violence to a firearm increases the risk of intimate partner homicide at least five-fold.⁵³
 - Domestic violence incidents involving firearms are twelve times more likely than those involving other weapons or bodily force to result in death.⁵⁴

- 59.1% of mass shootings between 2014 and 2019 were related to domestic violence, and in 68% of mass shootings, the shooter had a history of domestic violence or killed a family member or intimate partner.⁵⁵
- In many cases, 18 U.S.C. § 922(g)(8) is the only way a survivor can get legal protection from an intimate partner with a firearm.

Why are many domestic violence cases handled in the civil rather than the criminal context?

- Prosecutors choose whether or not to bring a criminal case, not survivors.
- Civil court orders (in this case, domestic violence protection orders) are the only survivor-led legal remedy to which survivors have access. They specifically protect the named survivor and provide a host of other remedies.
- Survivors decide what, when, and how to petition for a protection order. Protection orders can be modified to respond to changing circumstances to enhance survivor safety.
- Domestic violence protection orders provide a holistic response to intimate partner violence. Relief can include ordering the respondent to stay away from the victim and the victim's children and pets, requiring the respondent to seek counseling or participate in a batterer intervention program, providing a custody and visitation/parenting time schedule or supervised/restrictive access to a child who may be at risk of violence, addressing financial issues, assigning the use of a residence and car, etc.
- In order to exert power and control, many abusers undermine their victim's employment, withhold household cash, register shared property in their names, and otherwise make the victim financially dependent on them. In these cases, if an abuser is incarcerated, the survivor may be left without financial support, including child support. A protection order can permit the respondent to continue working and supporting their children while also protecting the victim from further violence.

Next steps:

- The government attorneys will be deciding next steps procedurally which could include an appeal to the 5th Circuit or the US Supreme Court.
- 18 U.S.C. § 922(g)(8) should be found to be constitutional.

Myth-busting:

- The protection order prohibitor provides robust due process (notice and the opportunity to be heard) protections to the respondent.
- Protection orders require a court adjudication, based on evidence. In a final protection order, the respondent has the opportunity to refute the petitioner's claims, to be represented by a lawyer, and to provide contrary evidence. Protection orders are not 'handed out like candy.'
- Survivors in the geographic area covered by the 5th Circuit should not respond to this ruling by purchasing firearms with which to protect themselves.
 - Research shows that possessing a firearm is not a protective factor.⁵⁶

- An abused woman’s purchase of a firearm increases the risk of intimate partner homicide by 50% and doubles the risk of firearm homicide by an abusive partner.⁵⁷
- Even NYPD officers, who train constantly, hit their targets less than half of the time from seven yards away.⁵⁸
- Survivors who use firearms in self-defense are often prosecuted, particularly survivors who are women of color.

Additional Background on *US v Rahimi*:

- Zackey Rahimi was subject to a civil protection order after being accused of assaulting his ex-girlfriend (with whom he shared a child in common). The order restrained him from harassing, stalking, or threatening his ex-girlfriend and their child and also expressly prohibited him from possessing a firearm. After the order was issued, Rahimi was involved in five shootings in and around Arlington, Texas. On December 1, 2020, the defendant, after selling narcotics to an individual, fired multiple shots into that individual’s residence. The following day he was involved in a car accident where he shot at the other driver. On December 22, 2020, he shot at a constable’s vehicle. Finally, on January 7, 2021, he fired multiple shots in the air after his friend’s credit card was declined at a restaurant. A federal grand jury indicted him for possessing a firearm while subject to a qualifying domestic violence restraining order in violation of 18 U.S.C. § 922(g)(8), and he pled guilty to that offense. The defendant appealed his conviction, and the appeals court issued the ruling at hand.
- Rahimi was not convicted of domestic violence; he agreed to a civil protection order that resulted in him being prohibited under the federal firearm prohibition under 18 U.S.C. § 922(g)(8).
- He was sentenced to violating that restriction subsequently when he admitted to having firearms he used in the commission of other crimes and had that sentence vacated in this decision.
- The panel was not persuaded by the historical parallels put forward by the U.S. Department of Justice, which was defending the conviction. The Justice Department argued that the domestic violence law was analogous to 17th-and 18th century regulations that disarmed “dangerous” persons.
- The court found that the prohibition on firearm possession by people subject to qualifying protection orders is unconstitutional for several reasons:
 - 18 U.S.C. § 922(g)(8) burdened Rahimi’s 2nd Amendment right to bear arms under *Bruen*;
 - The federal prohibition is not supported historically and is an “outlier”;
 - The court did not find the arguments the government put forth to ground the prohibition in history supportable.
- The court noted that other prohibitions were not at issue here.

The full text of the ruling can be found at <https://www.ca5.uscourts.gov/opinions/pub/21/21-11001-CR1.pdf>.

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- ¹ Leemis, R. W., Friar, N., Khatiwada, S., Chen, M. S., Krewsnow, M., Smith, S., Caslin, S., & Basile, K. C. (2022). *The national intimate partner and sexual violence survey: 2016/2017 report on intimate partner violence*. United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Violence Prevention. https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf
- ² Ibid.
- ³ Ibid.
- ⁴ Adhia, A., Lyons, V. H., Moe, C. A., Rowhani-Rahbar, A., & Rivara, F. P. (2021). Nonfatal use of firearms in intimate partner violence: Result of a national survey. *Preventive Medicine*. <https://doi.org/10.1016/j.ypmed.2021.106500>
- ⁵ Ibid.
- ⁶ National Domestic Violence Hotline. (2014). *Firearms and domestic violence*. <http://www.thehotline.org/resources/firearms-dv/#tab-id-2>
- ⁷ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*(7), 1089-1097. doi: 10.2105/ajph.93.7.1089
- ⁸ Spencer, C. M. & Stith, S. M. (2020). Risk factors for male perpetration and female victimization of intimate partner homicide: A meta-analysis. *Trauma, Violence, & Abuse, 21*(3), 527-540. doi: 10.1177/1524838018781101
- ⁹ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*(7), 1089-1097. doi: 10.2105/ajph.93.7.1089
- ¹⁰ Violence Policy Center. (2021). *When men murder women: An analysis of 2019 homicide data*. <http://www.vpc.org/studies/wmmw2021.pdf>
- ¹¹ Federal Bureau of Investigation (2022). *Crime data explorer*. <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/home>
- ¹² Data in the FBI's Crime Data Explorer covers 64% of the total population.
- ¹³ Fridel, E. E. & Fox, J. A. (2019). Gender differences in patterns and trends in U.S. homicide, 1976-2017. *Violence and Gender, 6*(1), 27-36. doi: 10.1089/vio.2019.0005
- ¹⁴ Smith, S., Fowler, K. & Niolon, P. (2014). Intimate partner homicide and corollary victims in 16 states: National violent death reporting system, 2003-2009. *American Journal of Public Health, 104*(3), 461-466. <https://doi.org/10.2105/AJPH.2013.301582>
- ¹⁵ Kivisto, A. J. & Porter, M. (2020). Firearm use increases risk of multiple victims in domestic violence homicides. *Journal of the American Academy of Psychiatry and the Law, 48*(1), 1-9. DOI:10.29158/JAAPL.003888-20
- ¹⁶ 18 USC 922(g)(8)
- ¹⁷ 18 USC 922(g)(9)
- ¹⁸ 142 Cong. Rec. S11872-01
- ¹⁹ 18 USC 921(a)(33)(B)
- ²⁰ 18 USC 921(a)(33)(C)
- ²¹ Pub. L. 109-162
- ²² Pub. L. 117-103
- ²³ Pub. L. 117-159
- ²⁴ See disarmdv.org for more information
- ²⁵ See disarmdv.org for more information
- ²⁶ *United States v. Hayes*, 555 U.S. 415 (2009)
- ²⁷ *United States v. Castleman*, 134 S. Ct. 1405 (2014)
- ²⁸ *Voisine v. United States*, 136 S.Ct. 2272 (2016)
- ²⁹ A copy of the brief can be found at https://www.supremecourt.gov/DocketPDF/20/20-843/193233/20210921151336047_20-843%20bsac%20National%20Coalition%20Against%20Domestic%20Violence.pdf

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- ³⁰ *District of Columbia v. Heller*, 554 U.S. 570 (2008).
- ³¹ *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 US___ (2022).
- ³² National Park Service. (2021). *Betsy Love - the first married American woman to gain rights to property*. <https://www.nps.gov/articles/000/betsy-love-the-first-american-woman-to-gain-rights-to-property.htm>
- ³³ National Archives. (2022). *19th Amendment to the Constitution: Women's right to vote (1920)*. <https://www.archives.gov/milestone-documents/19th-amendment>
- ³⁴ Garcia, V. & McManimon, P. (2011). *Gendered justice: Intimate partner violence and the criminal justice system*. Rowman & Littlefield Publishers.
- ³⁵ The Pennsylvania Child Resource Center. (n.d.). *310: Domestic violence issues: An introduction for child welfare professionals*. <http://www.pacwrc.pitt.edu/Curriculum/310DomesticViolenceIssuesAnIntroductionforChildWelfareProfessionals/Handouts/HO3DomesticViolenceTimeline.pdf>
- ³⁶ Pub. L. 103–322
- ³⁷ McMahon-Howard, J., Clay-Warner, J., & Renzulli, L. (2009). Criminalizing spousal rape: The diffusion of legal forms. *Sociological Perspectives*, 52(4), 505-531. <https://doi.org/10.1525/sop.2009.52.4.505>
- ³⁸ *United States v. Perez-Gallan*, (W.D. Tex. 2022)
- ³⁹ *United States v. Kays* (W.D. Okla. 2022)
- ⁴⁰ *United States v. Rahimi* (5th Cir. 2023)
- ⁴¹ Tex. Fam. Code 85.001(a)
- ⁴² Bejinariu, A., Troshynski, E. I., & Miethe, T. D. (2019). Civil protection orders and their courtroom context: The impact of gatekeepers on legal decisions. *Journal of Family Violence*, 34, 231-243. <https://doi.org/10.1007/s10896-018-9999-7>
- ⁴³ 18 USC 2265
- ⁴⁴ National Center on Protection Orders and Full Faith and Credit, Battered Women's Justice Project. (2022). *State statutory provisions addressing mutual protection orders*.
- ⁴⁵ Meier, J. S. (2021). Denial of family violence in court: An empirical analysis and path forward for family law. *GW Law Faculty Publications & Other Works*. https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2792&context=faculty_publications
- ⁴⁶ Ibid.
- ⁴⁷ Gollan, J. (2021, October 26). *When abusers keep their guns*. Reveal. <https://revealnews.org/when-abusers-keep-their-guns/>
- ⁴⁸ U.S. Attorney's Office, District of Maine (2023). *U.S. Attorney and Maine prosecutors' joint statement regarding domestic violence-related protective orders and firearm possession*. <https://www.justice.gov/usao-me/pr/us-attorney-and-maine-prosecutors-joint-statement-regarding-domestic-violence-related>
- ⁴⁹ *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 US___ (2022).
- ⁵⁰ Adhia, A., Lyons, V. H., Moe, C. A., Rowhani-Rahbar, A., & Rivara, F. P. (2021). Nonfatal use of firearms in intimate partner violence: Result of a national survey. *Preventive Medicine*. <https://doi.org/10.1016/j.ypmed.2021.106500>
- ⁵¹ National Domestic Violence Hotline. (2014). *Firearms and domestic violence*. <http://www.thehotline.org/resources/firearms-dv/#tab-id-2>
- ⁵² Violence Policy Center. (2021). *When men murder women: An analysis of 2019 homicide data*. <http://www.vpc.org/studies/wmmw2021.pdf>
- ⁵³ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097. doi: 10.2105/ajph.93.7.1089
- ⁵⁴ Saltzman, L. E., Mercy, J. A., O'Carroll, P. W., Rosenberg, M. L., & Rhodes, P. H. (1992). Weapon involvement and injury outcomes in family and intimate assaults. *JAMA*, 267(22), 3043-3047.
- ⁵⁵ Geller, L. B., Booty, M., & Crifasi, C. K. (2021). The role of domestic violence in fatal mass shootings in the United States, 2014-2019. *Injury Epidemiology*, 8(38). <https://doi.org/10.1186/s40621-021-00330-0>
- ⁵⁶ Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097.

⁵⁷ Wintemute, G. J., Wright, M. A., & Drake, C. M. (2003). Increased risk of intimate partner homicide among California women who purchased handguns. *Annals of Emergency Medicine*, 41(2), 281-283. <https://doi.org/10.1067/mem.2003.66>

⁵⁸ Rostker, B. D., Hanser, L. M., Hix, W. M., Jensen, C., Morral, A. R., Ridgeway, G., & Schell, T. L. (2008). *Evaluation of the New York City Police Department firearm training and firearm-discharge review process*.