

Questions for the Record from Senator Lindsey O. Graham for Rafael A. Mangual,
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“Protecting Public Safety After *New York State Rifle & Pistol Association v. Bruen*”
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1. What do you say to those who are concerned that these lower court cases after *Bruen* are taking away prosecutors’ tools to deal with criminals—such in the Fifth Circuit *Rahimi* case?

I would say that the concerns can, as Judge Ho noted in his concurrence in Rahimi, be addressed via the arrest and (importantly) incarceration (both pretrial and post-conviction) of criminal defendants who (like Mr. Rahimi, who, as Amy Swearer noted in her testimony, had two cases pending prior to the shootings that led to the warrant that led to the 922(g) charge) pose a significant risk to the public’s safety. As I noted in my testimony, those worried about gun violence would do well to redirect their concern from the recognition of 2nd Amendment rights by courts to the ineptitude of so many of our nation’s criminal justice systems when it comes to incapacitating violent criminals.

2. Considering all of the severe challenges to public safety, including police recruitment and retention problems, progressive prosecutors, bail reform laws, and so forth, does the *Bruen* decision and its effects thus far present an impediment to public safety comparable to these severe challenges? Please explain.

Bruen is unlikely to deteriorate public safety to a measurable degree through its command that the right to bear arms be respected by state and local governments. This is based on a review of the available empirical evidence developed by efforts to assess the impact of prior expansions of gun carriage rights on crime. (see, e.g., Robert VerBruggen, [More Guns, Same Amount of Crime? Analyzing the Effect of Right-to-Carry Laws on Homicide and Violent Crime](#), Manhattan Institute (Oct. 2022)). Any impact of the Bruen decision on crime is going to be even smaller in comparison to the potential effects of systematic efforts to lower the transaction costs of crime and raise the transaction costs of enforcing the law. Such efforts are illustrated by the following sampling of examples from New York State/City:

- *Bail Reforms* (see, <https://media4.manhattan-institute.org/sites/default/files/reforming-ny-bail-reformRM.pdf> and <https://manhattan.institute/article/more-criminals-more-crime>)
- *Discovery Reforms* (see, <https://manhattan.institute/article/destroyed-by-discovery-how-new-york-states-discovery-law-destabilizes-the-criminal-justice-system>)
- *Parole Reforms* (see, <https://manhattan.institute/article/is-less-always-more-the-unintended-consequences-of-new-york-states-parole-reform>)
- *Police Defundings* (see, <https://manhattan.institute/article/defund-the-police-new-york-city-already-did>)
- *Criminalized Restrictions on Police Grappling Techniques* (see,

<https://www.police1.com/use-of-force/articles/nycs-diaphragm-law-which-bans-certain-police-restraints-is-reinstated-0cbeeZO24dzmOGTs/>

- *Restrictions on Consent Searches by Police* (see, <https://www.city-journal.org/article/wrong-footing-the-nypd>)
- *Restrictions on Civil Defenses Available to Police* (see, <https://www.cbsnews.com/news/nyc-qualified-immunity-police-misconduct/>)
- *The Elections of “Progressive” Prosecutors in Brooklyn and Manhattan* (see, <https://www.city-journal.org/article/justice-for-whom> and <https://www.city-journal.org/article/nothing-to-bragg-about>)
- *Sharp Declines in Prison and Jail Populations* (see, <https://www.nextnewyork.net/reforms-2/restoring-public-safety/>)

Such efforts will have the effect of putting/leaving more repeat offenders (a subset whom pose a risk of committing gun violence) on the street.

3. What would be a more effective and efficient way to stop violent gun crime, to go after the small group of repeat offenders in various localities who commit a disproportionately high percentage of gun crimes, or to restrict possession of firearms by law abiding citizens through measures like New York’s old “may issue” licensing scheme? Please explain.

The most effective and efficient crime suppression plan will prioritize law enforcement-centric approaches aimed at both maintaining public order, as well as identifying and incapacitating the relatively small number of high-risk, high-rate offenders driving gun violence in our nation’s cities. As noted in the response to Question 1., the existing literature does not support the contention that we can expect the adoption of “may issue” concealed carry licensing schemes in the jurisdictions that didn’t already have that rule will cause crime to spike. But there is quite a bit of research supporting the proposition that proactive policing and incarceration have historically reduced crime—gun violence, in particular. (see, e.g., <https://nap.nationalacademies.org/catalog/24928/proactive-policing-effects-on-crime-and-communities> and <https://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf>).

4. Do self-defense capabilities by law abiding citizens become more important as crime rates increase and law enforcement capabilities diminish on a relative basis? Please explain.

As jurisdictions across the country become less safe (and recent crime spikes indicate that many have in important ways) and the public perceives traditional institutions of law enforcement to be less effective (whether due to policy shifts or resource shortages or other reasons), many will naturally consider taking measures to make themselves less vulnerable to criminal acts of aggression. One example of this phenomenon may be the massive spike in civilian gun purchases in 2020—a year in which homicides across the U.S. rose approximately 30%. (see,

<https://www.ipr.northwestern.edu/news/2021/survey-gun-sales-spike-in-2020.html>
(showing that 70% of survey respondents say they purchased a weapon in 2020 to protect themselves from crime).