COMMENTS

CRACKING LAWS TRAPPED IN AMBER: THE CASE FOR FIREARM REMOVAL LAWS TO PROTECT AGAINST CREDIBLE THREATS*

"All too often, the only difference between a battered woman and a dead woman is the presence of a gun."[1]

I. INTRODUCTION

The Lautenberg Amendment, championed by Senator Paul Wellstone, passed into law with nearly unanimous congressional support.[2] Codified in 18 U.S.C. Section 922(g), the Amendment prohibits anyone convicted of a misdemeanor crime of domestic violence from possessing a firearm or ammunition.[3] A felony punishment for a violation of the statute represents Congress's recognition that "anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms."[4] Congress adopted Section 922(g)(8) just over thirty years ago to prohibit individuals subject to civil domestic violence protection orders (DVPOs) from possessing any firearm or ammunition[5] to, "*inter alia*, combat crimes against women by punishing perpetrators, supporting survivors, and equipping law enforcement with the tools needed to do both."[6]

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1. 142 CONG. REC. S10378 (daily ed. Sept. 12, 1996) (statement of Sen. Paul Wellstone).

2. *Id.* at 22986, 26674–77; *CRM 1117. Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence*, U.S. DEP'T OF JUST. [hereinafter *CRM 1117.*], https://www.justice.gov/archives/jm/criminal-resource-manual-1117-restrictions-possession-firearms-individuals-convicted [https://perma.cc/ER79-NE79] (July 2013).

3. *CRM 1117.*, *supra* note 2.

4. 142 CONG. REC. 26675 (1996) (statement of Sen. Frank Lautenberg) (consideration of the Omnibus Consolidated Appropriations Act of 1997).

5. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified in scattered sections of 18 U.S.C.).

6. Brief Amici Curiae for Senator Amy Klobuchar, Representative Brian Fitzpatrick, and Representative Debbie Dingell in Support of Petitioner at 2, United States v. Rahimi, 144 S. Ct. 1889 (2023) (No. 22-915).

The Supreme Court's conclusion in *United States v. Rahimi* evinces a gap in protection for victims of domestic violence.[7] Due to remaining unclarity in the interpretation of historical analogues of the Second Amendment, and the fact that challenges to the Amendment will continue to be decided on a case-by-case basis, greater civil protection is needed where criminal remedies may not be available until it is too late. Because ensuring safety and preventing further harm are paramount goals of the federal government,[8] statutory law that focuses on protecting victims of intimate partner violence while upholding the Supreme Court's interpretation of Second Amendment rights is imperative.

This Comment advocates for legislative action in conjunction with incentivization measures for states to enact meaningful firearm relinquishment and removal laws upon a judicial determination that an individual is a credible threat to the safety of others. The proposed law components aim to strike a balance between an individual's Second Amendment right and the need to ensure safety for victims and the public—mirroring the constitutionality outlined in the *Rahimi* majority's analysis of historical surety laws.[9] Section II of this Comment details the facts and procedural history of *Rahimi* and provides a comprehensive overview of the history of gun laws and domestic violence in the United States. It demonstrates the need for a policy that addresses firearm retention in civilly adjudicated intimate partner violence situations and that an adequate step towards the actual surrender of firearms by an abuser does not currently exist but would be lifesaving. Additionally, Section II provides the Supreme Court's analysis of the constitutionality of Section 922(g)(8) in deciding *Rahimi*. Section III proposes integral components of a model law that Congress should incentivize states to adopt to prevent further violence when individuals are subject to a domestic violence protection order.

II. OVERVIEW

Second Amendment and other firearm-related history and jurisprudence paved the path for cases such as *Rahimi* to be heard by the U.S. Supreme Court. This Section documents the history of gun regulations and their integration into American statutory and case law. Part II.A.1 discusses European precursors to the Second Amendment and examines pre-Second Amendment colonial American laws that limited one's right to firearms. Part II.A.2 analyzes the Second Amendment's text, examines its relatively newfound gain of political attention, and critiques the Supreme Court's ad hoc textualism and interpretation of the Second Amendment through a lens of historical inaccuracies. Part II.A.3 explores the historical role of surety laws, focusing on their preventative nature for gun violence. This Part also shows the implementation of surety laws in pre-Bill of Rights Massachusetts, the pre-American Civil War South, and today

7. United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), *rev'd*, 144 S. Ct. 1889 (2024).

8. *See U.S. National Plan To End Gender-Based Violence: Strategies for Action*, THE WHITE HOUSE 58 (May 2023), https://www.whitehouse.gov/wp-content/uploads/2023/05/National-Plan-to-End-GBV.pdf [https://perma.cc/7UZ6-3Z4G] ("The Federal Government can further the goal of reducing violence through enforcement of existing firearm laws that prohibit anyone convicted of a misdemeanor crime of domestic violence or subject to a domestic violence protective order from possessing or purchasing a firearm.").

9. See *infra* Part II.C.1 for a discussion of the *Rahimi* majority's analysis of historical surety laws.

in Canada. Going armed laws are discussed in Part II.A.4. Part II.A.5 details the codification of the Gun Control Act of 1968 (GCA) and the impact of current policies addressing domestic violence.

Part II.B summarizes Supreme Court decisions that have shaped gun jurisprudence in the United States. *District of Columbia v. Heller*,[10] *McDonald v. City of Chicago*,[11] and *New York State Rifle & Pistol Association v. Bruen*[12] are three formative cases that interpret Second Amendment rights and govern analyses of legislative restrictions today. Part II.C provides the Supreme Court's analysis in deciding *United States v. Rahimi*.

A. Our Nation's History

1. Before the Second Amendment

For centuries before guns were brought to America's shores, European countries implemented restrictions on firearms to protect their people.[13] Although the Supreme Court now requires that historical gun laws used as analogues to current laws be as similar as possible to those in existence at the time the Second Amendment was ratified,[14] gun laws restricting where firearms could be carried,[15] when firearms could be carried,[16] and who could carry a firearm[17] existed in Europe centuries before colonial settlers arrived in the United States. A notable example, the Statute of

10. 554 U.S. 570 (2008); *see also infra* Part II.B.1.

11. 561 U.S. 742 (2010); *see also infra* Part II.B.2.

12. 142 S. Ct. 2111 (2022); *see also infra* Part II.B.3.

13. *See infra* notes 15–20 and accompanying text.

14. *See infra* Part II.B; United States v. Rahimi, 61 F.4th 443, 454 (5th Cir. 2023) ("To carry its burden, the Government must point to 'historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation.'" (alteration in original) (quoting *Bruen*, 142 S. Ct. at 2131–32)), *rev'd*, 144 S. Ct. 1889 (2024).

15. *See, e.g.*, A Statute Forbidding Bearing of Armor, 7 Edw. 2, at 2 (1313) (Eng.), https://firearmslaw.duke.edu/assets/1313,-uk,-7-edw.-2,-a-statute-forbidding-the-wearing-of-armour.pdf [https://perma.cc/FC3M-TS5G] ("Provision [shall] be made by Us, and the common assent of the Prelates, Earls, and Barons, that in all Parliaments, [Treatises,] and other Assemblies, which should be made in the Realm of England [for ever,] that every Man shall come without all Force and Armour, well and peaceably . . . ." (alterations in original)).

16. *See, e.g.*, 2 Edw. 3, c. 3 (1328) (Eng.), *reprinted in* 1 THE STATUTES: REVISED EDITION, HENRY III TO JAMES II. A.D. 1235-6—1685, at 144–45 (1870) ("[N]o man great nor small, of what condition soever he be, except the King's servants in his presence . . . be so hardy to come before the King's . . . ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure.").

17. *See, e.g.*, 4 Hen. 4, c. 29 (1403) (Eng.), *reprinted in* 2 DANBY PICKERING, THE STATUTES AT LARGE, FROM THE FIFTEENTH YEAR OF KING EDWARD III TO THE THIRTEENTH YEAR OF KING HEN. IV, INCLUSIVE 443 (1762) ("[I]t is ordained and established, That from henceforth no man be armed nor bear defensible armour to merchant towns churches nor congregations in the same, nor in the high ways, in affray of the peace or the King's liege people, upon pain of imprisonment, and to make fine and ransom at the King's will, except those which be lawful liege people to our sovereign lord the King.").

Northampton of 1328, empowered justices of the peace to confiscate arms carried with the intent to terrify or threaten others or when deemed dangerous and unusual.[18]

The Second Amendment very likely draws its inspiration from the English Bill of Rights of 1689, which declared that "subjects . . . may have arms for their defence suitable to their conditions and as allowed by law."[19] In contrast to how modern law characterizes the use of firearms in terms of the intent of the user, under English common law, "firearms were always considered as offensive weapons independent of any intent or action."[20] Defensive weapons were categorized as a different class of arms entirely, alongside protective gear such as body armor and shields.[21] The Founders were part of a generation which feared that governments were inclined to use soldiers to oppress their people.[22] Formal armies were raised only during times of war.[23] During impromptu invasion, "ordinary civilians who supplied their own weapons and received some part-time, unpaid military training" fought.[24] English law generally prohibited the concealed carry of a firearm, with exceptions for the elite political and economic classes and subjects who were required to assist agents of the Crown in preserving the peace and protecting the sovereign.[25]

Nearly one hundred years before the Second Amendment codified this "pre-existing right,"[26] the newly arrived settlers in America began to create restrictive gun laws in the colonies.[27] These early laws are evidence that the developing legislatures chose to restrict an individual's ability to bear arms if his conduct

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18. Jonah Skolnik, *Observations Regarding the Interpretation and Legacy of the Statute of Northampton in Anglo-American Legal History*, DUKE CTR. FOR FIREARMS L. (Sept. 17, 2021), https://firearmslaw.duke.edu/2021/09/observations-regarding-the-interpretation-and-legacy-of-the-statute-of-northampton-in-anglo-american-legal-history/ [https://perma.cc/F3E5-Q5JD] ("The Statute provided that 'no man great nor small, of what condition soever he be, except the king's servants in his presence . . . come before the King's justices, or other of the King's ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers.'" (omission in original)).

19. NEIL H. COGAN, THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES, & ORIGINS 279 (2d ed. 2015).

20. Saul Cornell, *The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328–1928*, 55 U.C. DAVIS L. REV. 2545, 2556 (2022) [hereinafter Cornell, *The Long Arc*].

21. *Id.*

22. Nelson Lund & Adam Winkler, *The Second Amendment: Common Interpretation*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/amendments/amendment-ii/interpretations/99 [https://perma.cc/VS62-E9PW] (last visited Mar. 20, 2025).

23. *See id.*

24. *Id.*

25. Cornell, *The Long Arc*, *supra* note 20, at 2560.

26. District of Columbia v. Heller, 554 U.S. 570, 592 (2008) (emphasis omitted) (asserting that the individual right to possess and carry weapons in case of confrontation is confirmed because "[t]he very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed'" (quoting U.S. CONST. amend. II)).

27. Robert J. Spitzer, *America's Original Gun Control*, ATLANTIC (Aug. 12, 2023), https://www.theatlantic.com/ideas/archive/2023/08/america-history-gun-control-supreme-court/674985/ [https://perma.cc/3FJH-GEPF] (quoting the United States' first gun law, written in 1619: "That no man do sell or give any Indians any piece, shot, or powder, or any other arms offensive or defensive, upon pain of being held a traitor to the colony and of being hanged as soon as the fact is proved, without all redemption.").

suggested that he would not use them responsibly.[28] Some early American statutes codified rules similar to the Statute of Northampton of 1328,[29] while others penalized offenses such as unsafe storage of guns and gun powder by compelling forfeiture of the firearm.[30]

2. The Second Amendment

The Second Amendment to the U.S. Constitution states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[31] Although several states proposed restrictive amendments to James Madison's initial draft of the Second Amendment,[32] the First Congress rejected these proposals and transmitted to the states the language enshrined in the Constitution today.[33]

The Second Amendment was practically ignored for its first two centuries of existence.[34] The decades leading up to the Supreme Court's decision in *Heller* reveal a gradual political schism between Americans who interpret the Second Amendment to guarantee an individual the right to a gun and those who do not.[35] The National Rifle Association (NRA) remains a leading force behind the shift in politics and public opinion surrounding guns and gun rights.[36] The Second Amendment right persists as a loaded political messaging point that is often used to sway swing voters.[37]

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28. Brief for the United States at 24, United States v. Rahimi, 144 S. Ct. 1889 (2024) (No. 22-915).

29. *Id.* at 23; *see also* Act of Nov. 1, 1692, ch. 18, § 6, *reprinted in* 1 ACTS AND RESOLVES OF THE PROVINCE OF MASSACHUSETTS BAY, 1692 – 1714, at 52–53 (1869); Act of June 14, 1701, ch. 7, *reprinted in* 1 LAWS OF NEW HAMPSHIRE 679 (1904); Act of Nov. 27, 1786, ch. 21, *reprinted in* A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, OF A PUBLIC AND PERMANENT NATURE, AS ARE NOW IN FORCE 33 (1794)).

30. Brief of the United States, *supra* note 28, at 23; *see also* Act of Mar. 1, 1783, ch. 46, *reprinted in* 5 ACTS AND RESOLVES OF MASSACHUSETTS, 1782–1783, 119–120 (1890); Act of Feb. 18, 1794, § 1, *reprinted in* 6 LAWS OF NEW HAMPSHIRE (1917); Ordinance of Oct. 9, 1652, *reprinted in* LAWS AND ORDINANCES OF NEW NETHERLAND, 1638–74, at 138 (E.B. O'Callaghan ed., 1868); Act of Mar. 15, 1788, ch. 81, § 1, 2 LAWS OF THE STATE OF NEW-YORK, 191–93 (1792); Act of Dec. 6, 1783, ch. 1059, § 1, *reprinted in* 11 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, at 209–10 (1906).

31. U.S. CONST. amend. II.

32. *Historical Background on Second Amendment*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt2-2/ALDE_00013262/ [https://perma.cc/GR8L-B9X7] (last visited Mar. 20, 2025) (rejecting standing armies due to lack of consent of the legislature or limiting standing armies in times of peace).

33. *Id.*

34. Michael Waldman, *How the NRA Rewrote the Second Amendment*, BRENNAN CTR. FOR JUST. (May 20, 2014), https://www.brennancenter.org/our-work/research-reports/how-nra-rewrote-second-amendment [https://perma.cc/GZF5-F2KU].

35. *Id.*

36. *See id.* ("In 2000, gun activists strongly backed Governor George W. Bush of Texas. After the election, Bush's new attorney general, John Ashcroft, reversed the Justice Department's stance. The NRA's head lobbyist read the new policy aloud at its 2001 convention in Kansas City: 'The text and original intent of the Second Amendment clearly protect the right of individuals to keep and bear firearms.'").

37. *See* Meredith McGraw, *Trump Promises NRA that if Elected, 'No One Will Lay a Finger on Your Firearms*,*'* POLITICO (Feb. 9, 2024, 8:29 PM), https://www.politico.com/news/2024/02/09/trump-promises-nra-that-if-elected-no-one-will-lay-a-finger-on-your-firearms-00140818 [https://perma.cc/8AQP-K24Y].

The oft-dissected and debated Amendment has undergone meticulous interpretation by the Supreme Court over the past two decades.[38] There is consensus amongst Justices and scholars that, like all rights guaranteed by the Constitution, the Second Amendment has restrictions[39] and the freedoms must be balanced with the need to ensure the safety of the public.[40]

Any discussion of Second Amendment historical analogues should be prefaced by acknowledging that neither lower court judges nor Justices of the Supreme Court are historians.[41] Scholars have recognized this lack of expertise in instances of "ad hoc textualism, creating historical myths with circumstantial or no historical evidence," and have criticized judges for their "minimalist understanding of the ideological and intellectual origins of the right to arms."[42] Commonly a critique of the Court, "one's historical view of a given constitutional provision is often not based upon the search for the truth, but by latching onto a textual interpretation for an ideal already maintained."[43]

3. Sureties and Peace Bonds

As previously addressed, English law sought to prevent any encroachment on the sovereign's authority[44] through surety laws designed "to both prevent future crime and punish those who violated the prohibition on arming in public and disturbed the peace."[45] English surety laws were "intended merely for prevention [of crime], without any crime actually committed by the party, but arising only from a probable suspicion, that some crime is intended or likely to happen; and consequently it is not meant as any degree of punishment."[46]

Surety laws originated from the ancient practice of frankpledges, where adult men formed groups of ten called "tithings" and every member pledged to ensure the good

38. *See, e.g.*, District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, 561 U.S. 742 (2010); N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022).

39. *See Heller*, 554 U.S. at 626 (noting that the Second Amendment right, like other constitutional rights, is not unlimited in that there is no right to keep and carry any weapon, in any manner, for whatever purpose).

40. *See* State v. Rupp, 282 N.W.2d 125, 130 (Iowa 1979) (recognizing that the Second Amendment has limits, and that "[t]he constitutional protection extends only to situations bearing some 'reasonable relationship to the preservation or efficiency of a well regulated militia'" (quoting Cody v. United States, 460 F.2d 34, 37 (8th Cir. 1972))); *see also In re* Application of Atkinson, 291 N.W.2d 396, 399 (Minn. 1980) (holding that the Second Amendment "does not guarantee to individuals the right to carry loaded weapons abroad at all times and in all circumstances").

41. *See* Patrick J. Charles, *The Second Amendment in Historiographical Crisis: Why the Supreme Court Must Reevaluate the Embarrassing "Standard Model" Moving Forward*, 39 FORDHAM URB. L.J. 1727, 1730 (2012).

42. *Id.* at 1731. For examples of such critiques, see Saul Cornell, *Originalism on Trial: The Use and Abuse of History in* District of Columbia v. Heller, 69 OHIO ST. L.J. 625, 629 (2008); Saul Cornell, Heller*, New Originalism, and Law Office History: "Meet the New Boss, Same as the Old Boss*,*"* 56 UCLA L. REV. 1095, 1106–07 (2009).

43. Charles, *supra* note 41, at 1752.

44. Cornell, *The Long Arc*, *supra* note 20, at 2553.

45. *Id.* at 2555.

46. 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 148 (1769).

behavior of the others.[47] If one member broke the law, "the remaining nine would be responsible for producing him in court, or else face punishment in his stead."[48] This communal surety system evolved to allow "magistrates to require individuals suspected of future misbehavior to post a bond" or be jailed.[49] If a bond was posted but the individual nonetheless broke the peace, he would forfeit the bond entirely.[50]

Preventative justice for spousal abuse is also "well entrenched" in common law and, at least in theory, allowed wives and husbands to demand such sureties against each other by requiring them to pledge to "keep the peace" or behave well.[51]

Massachusetts was the first of at least ten states to require a gun owner to post a bond if he lacked a special need for self-defense and his conduct created "reasonable cause to fear an injury, or breach of the peace."[52] Massachusetts surety statutes provide evidence that there were early laws imposing special firearm restrictions on irresponsible individuals, but not on law-abiding citizens.[53] Reaffirming and expanding the principles embodied in the Statute of Northampton of 1328,[54] Massachusetts first issued a restrictive carrying law in 1795, prohibiting anyone who "shall ride or go armed offensively, to the fear or terror of the good citizens of th[e] Commonwealth."[55]

The landmark case *Commonwealth v. Selfridge*[56] questioned the "legality of Selfridge's decision to pre-emptively arm himself because he believed that an imminent and specified threat to his life existed."[57] The court decided that "if an individual had a reasonable fear of serious injury or death[or] faced a specified threat, arming [oneself] was . . . legal."[58] The *Selfridge* standard was codified in the Massachusetts revised criminal code in the 1830s, reaffirming "the right of any person to seek a peace bond against any individual who threatened the peace" and recognizing "a good cause exception for armed travel."[59]

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47. United States v. Rahimi, 144 S. Ct. 1889, 1899 (2024).

48. *Id.* at 1899.

49. *Id.* at 1899–1900 ("Under the surety laws, a magistrate could 'oblig[e] those persons, [of] whom there is a probable ground to suspect of future misbehaviour, to stipulate with and to give full assurance . . . that such offence . . . shall not happen[,] by finding pledges or securities.'" (alterations in original) (omissions in original) (quoting 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 251 (10th ed. 1787))).

50. *Id.* at 1900.

51. *Id.* (quoting 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 252–54 (10th ed. 1787)).

52. Brief for the United States, *supra* note 28, at 24; 1836 Mass. Acts ch. 134, § 16 (1836); *see also* N.Y. Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2148 n.23 (2022).

53. Brief for the United States, *supra* note 28, at 24.

54. *See* Skolnik, *supra* note 18.

55. Cornell, *The Long Arc*, *supra* note 20, at 2573–74.

56. 2 Am. St. Trials 544 (Mass. 1806).

57. Cornell, *The Long Arc*, *supra* note 20, at 2576.

58. *Id.* at 2576–77.

59. *Id.* at 2577; *see also* 1836 Mass. Acts 750, ch. 134, § 16 ("If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.").

Surety laws afforded communities a more reasonable approach to penalizing abusers than common "public shaming" or "vigilante justice."[60] These laws also addressed firearm misuse, exemplified by a 1795 Massachusetts law that allowed justices to arrest and require bonds from those armed offensively.[61] Later amendments of this law targeted specific weapons such as dirks, daggers, swords, or pistols—a practice adopted by at least nine other states.[62] Surety laws provided significant procedural protections by requiring either a complaint by someone with reasonable cause to fear harm or a breach of the peace before an accused person could be compelled to post a bond for "going armed."[63] The magistrate took evidence and summoned the accused to respond to the allegations.[64] If imposed, bonds were limited to six months and exceptions were allowed for legitimate self-defense needs.[65]

The right to carry firearms in the antebellum South was always conditioned on an identifiable reason for bearing arms.[66] During a time when firearms were not routinely carried by peace officers or police forces, concealed carry was banned, but open carry was permitted in cases of "specified threats and other specific lawful purposes."[67] In determining whether carry of a pistol could be limited to open carry by a state constitution, *State v. Reid* held that the legislature was not proscribed from restricting the carrying of arms.[68] The *Reid* court recognized that sureties were a "primary mechanism for the enforcement of the peace in the early republic and was among the core powers of [law enforcement]."[69] The court concluded that a peace bond was the proper legal course of action if one faced a threat and carry was limited otherwise.[70] Although habitual carry was forbidden, carrying weapons for a specified lawful purpose was permitted.[71] Lawful purposes included specific activities "that merited being armed[, such as] hunting, target practice, traveling beyond one's community, or self-defense in response to a clear and specific threat."[72]

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60. United States v. Rahimi, 144 S. Ct. 1889, 1900 (2024).

61. *Id.*; *see also* Act of Jan. 31, 1795, *reprinted in* ACTS AND RESOLVES OF MASSACHUSETTS, 1794–1795, at 66–67 (1896).

62. *Rahimi*, 144 S. Ct. at 1900; *see also* 1836 Mass. Acts 750, ch. 134, § 16 (authorizing surety bonds from individuals "[who went] armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon").

63. *Rahimi*, 144 S. Ct. at 1901.

64. *Id.*

65. *Id.*

66. Cornell, *The Long Arc*, *supra* note 20, at 2566–67.

67. *Id.*

68. State v. Reid, 1 Ala. 612, 616 (1840) ("[T]he authority of the Legislature has no other limit than its own discretion.").

69. Cornell, *The Long Arc*, *supra* note 20, at 2570–71.

70. *Reid*, 1 Ala. at 621 ("If the emergency is pressing, there can be no necessity for concealing the weapon, and if the threatened violence will allow of it, the individual may be arrested and constrained to find sureties to keep the peace, or committed to jail."); Cornell, *The Long Arc*, *supra* note 20, at 2571 (stating *Reid*'s holding that the sheriff-defendant could be prosecuted for carrying a concealed pistol because there was no necessity to arm).

71. Cornell, *The Long Arc*, *supra* note 20, at 2572.

72. *Id.*

Surety bonds remain law outside of the United States. The practice of "peace bonds" is used in Canada to help prevent anticipated harmful conduct from occurring, particularly in situations of domestic violence.[73] Canada allows any person who fears injury to themselves, their family, or damage to their property to obtain a peace bond when it appears likely that a harmful offense may be committed but has not been committed yet.[74] Although initially adopted in Canada as an anti-terrorism measure,[75] peace bonds are used by judges as a tool for specialized domestic violence courts "to abide by conditions to keep the peace, report to a probation officer, attend and complete mandated treatment for domestic violence or substance abuse, or attend a parenting course."[76] The opportunity to enter into a peace bond is restricted "to low risk accused who do not have a criminal record or have a minor unrelated criminal record and have expressed a willingness to take responsibility for the incident."[77] The individual subject to a peace bond is closely supervised by a probation officer who ensures that all conditions of the bond are met.[78] In Canada, breach of a peace bond is a criminal offense that carries a maximum punishment of four years imprisonment and forfeiture of any cash surety.[79]

4. Going Armed Laws

Going armed laws, also called affray laws, originated from the Statute of Northampton of 1328 and included prohibitions on fighting in public and arming oneself to terrify the people.[80] These proscriptions were often codified together in statutes, aiming to prevent public disorder and potential violence.[81] Violations of these laws resulted in the forfeiture of arms and imprisonment.[82] Prohibitions on affrays and going armed became a part of common law and were even expressly codified in states such as Massachusetts, New Hampshire, North Carolina, and Virginia.[83]

The Massachusetts law allowed justices of the peace to arrest, imprison, and seize armor or weapons from "all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride, or go armed offensively."[84] The New Hampshire statutes also

73. Arturo J. Carrillo, *The Price of Prevention: Anti-Terrorism Pre-Crime Measures and International Human Rights Law*, 60 VA. J. INT'L L. 571, 590–91 (2020).

74. *Peace Bond Fact Sheet*, GOV'T OF CAN., https://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/peace-paix.html [https://perma.cc/RQ8A-JM3B] (Jul. 7, 2021).

75. Michael MacDonald, *Peace Bonds in Terrorism Cases Rarely Used, Shrouded in Secrecy: Experts*, CANADIAN PRESS (Mar. 25, 2015, 3:58 PM) https://globalnews.ca/news/1903609/peace-bonds-in-terrorism-cases-rarely-used-shrouded-in-secrecy-experts/ [https://perma.cc/CBM9-GCMD].

76. Leslie M. Tutty & Jennifer Koshan, *Calgary's Specialized Domestic Violence Court: An Evaluation of a Unique Model*, 50 ALBERTA L. REV. 731, 735, 737 (2013).

77. *Id.* at 745.

78. *Id.* at 746.

79. *Peace Bond Fact Sheet*, *supra* note 74.

80. United States v. Rahimi, 144 S. Ct. 1889, 1901 (2024) (noting that the term "affray" is derived from the French word "affraier," meaning "to terrify").

81. *Id.*

82. *Id.*

83. *Id.*

84. An Act for the Punishment of Criminal Offenders (Nov. 1, 1692), *reprinted in* 1 ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY 52–53 (1869).

authorized justices of the peace to "cause the arms or weapons so used by the offender, to be taken away."[85] Virginia's law prohibited any man from "go[ing] [or] rid[ing] armed by night nor by day, in fairs or markets, or in other places, in terror of the Country," and if he was convicted of doing so, would "forfeit his armour to the Commonwealth."[86] The North Carolina law was contained in the constable's oath, having each officer swear to "arrest all such persons as, in [their] sight, shall ride or go armed offensively, or shall commit or make any riot, affray, or other breach of his Majesty's peace."[87]

5. Domestic Violence

The discussion of firearm restriction historically excluded domestic violence but now the two are closely entangled. Domestic violence, also known as intimate partner violence,[88] is a pattern of abusive "physical, sexual, emotional, economic, psychological, or technological actions or threats of actions" used by one partner to gain and maintain power and control over another intimate partner.[89] In 2022, the Centers for Disease Control and Prevention reported that approximately "41% of women and 26% of men experienced contact sexual violence, physical violence, or stalking by an intimate partner [and reported an intimate partner violence-related impact] during their lifetime."[90] Of these individuals, 75% of female survivors and 48% of male survivors experience physical injury from intimate partner violence.[91]

Domestic violence existed long before and has persisted long after the founding of our nation and the ratification of the Second Amendment.[92] For much of the nation's history, domestic violence was an issue left undiscussed, ignored, and even accepted.[93] It was not until the 1970s that states began to enact laws protecting victims of intimate partner violence and holding abusers accountable.[94] Initial federal protections for

85. An Act for Establishing and Regulating Courts of Public Justice Within This Province (Aug. 17, 1699), *reprinted in* ACTS AND LAWS OF HIS MAJESTY'S PROVINCE OF NEW-HAMPSHIRE IN NEW-ENGLAND WITH SUNDRY ACTS OF PARLIAMENT 2 (1761); *see also* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2142–43 (2022) (noting that Massachusetts and New Hampshire laws "were substantively identical").

86. An Act Forbidding and Punishing Affrays (Nov. 27, 1786), *reprinted in* A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, OF A PUBLIC AND PERMANENT NATURE, AS ARE NOW IN FORCE 33 (1794).

87. An Act, To Appoint Constables (1741), *reprinted in* A COLLECTION OF ALL THE PUBLIC ACTS OF ASSEMBLY, OF THE PROVINCE OF NORTH-CAROLINA: NOW IN FORCE AND USE 131 (1751) (cleaned up).

88. *Intimate Partner Violence Prevention*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/intimate-partner-violence/about/index.html [https://perma.cc/VE6K-QAXC] (May 16, 2024).

89. Off. on Violence Against Women, *Domestic Violence: What is Domestic Violence?*, U.S. DEP'T OF JUST., https://www.justice.gov/ovw/domestic-violence [https://perma.cc/T62V-AYZL] (Jan. 22, 2025).

90. *Intimate Partner Violence Prevention*, *supra* note 88.

91. *Id.* (noting that harm may be caused by the violence itself or other injury may result from emotional abuse, sexual abuse, economic abuse, psychological abuse, or technological abuse).

92. *See* Brief for the National Rifle Ass'n of America, Inc. as Amicus Curiae in Support of the Respondent at 8, United States v. Rahimi, 144 S. Ct. 1889 (2024) (No. 22-915).

93. *See id.* at 8–9.

94. Elizabeth Tobin-Tyler, *Intimate Partner Violence, Firearm Injuries and Homicides: A Health Justice Approach to Two Intersecting Public Health Crises*, 51 J.L. MED. & ETHICS 64, 65 (2023).

victims of domestic violence were provided by the Violence Against Women Act (VAWA).[95] Major expansion of these protections occurred when Congress linked intimate partner violence and firearms and barred firearm possession by individuals convicted of felony domestic violence in the GCA.[96]

The prevalence of firearms accessibility by individuals facing civil and criminal charges is a matter of great concern to society, as most individuals who have perpetrated mass shootings had prior criminal records and histories of violence—many including domestic violence.[97] As gun ownership becomes more ubiquitous, protecting victims of domestic violence becomes increasingly difficult.[98] It is statistically proven that "[n]early half of all women murdered in the United States are killed by a current or former intimate partner, and more than half of these intimate partner homicides are by firearm."[99] The likelihood of domestic homicides increases fivefold when the abuser has access to a firearm.[100] This poses an exponentially heightened threat to victims because "a gun can be fired from far away, with some anonymity, and without much visual warning."[101] Individuals who face civil or criminal charges—especially for crimes involving violence—pose a serious risk to public safety if they continue to have access to firearms while awaiting their trial.[102] Due to the complicated nature of protecting those impacted by intimate partner violence, victims rely on civil remedies,

95. Kaitlin N. Sidorsky & Wendy J. Schiller, *Biting the Bullet: Will the Supreme Court Uphold Firearm Removal Laws for Domestic Violence Abusers?*, ROCKERFELLER INST. OF GOV'T (Oct. 30, 2023), https://rockinst.org/blog/biting-the-bullet-will-the-supreme-court-uphold-firearm-removal-laws-for-domestic-violence-abusers/ [https://perma.cc/4F7P-FZ54] (noting that the VAWA, passed in 1994 after sponsorship by then-Senator Joe Biden, was "the first major domestic violence legislation" and was expanded by the Lautenberg Amendment in 1996, "extending restrictions to those who were convicted of domestic violence misdemeanors as well").

96. Gun Control Act of 1968, Pub. L. No. 90-618, sec. 102, § 922, 82 Stat. 1213, 1220 (codified as amended at 18 U.S.C. § 922); Tobin-Tyler, *supra* note 94, at 65.

97. *Public Mass Shootings: Database Amasses Details of a Half Century of U.S. Mass Shootings with Firearms, Generating Psychosocial Histories*, NAT. INST. OF JUST. (Feb. 3, 2022), https://nij.ojp.gov/topics/articles/public-mass-shootings-database-amasses-details-half-century-us-mass-shootings#mass-shooting-demographics [https://perma.cc/L6PH-LWGS] (showing statistics that 64.5% of individuals who carried out mass shootings had a criminal record, 62.8% had a history of violence, and 27.9% had a history of domestic violence).

98. *See* Katherine Schaeffer, *Key Facts About Americans and Guns*, PEW RSCH. CTR. (Jul. 24, 2024), https://www.pewresearch.org/short-reads/2023/09/13/key-facts-about-americans-and-guns/ [https://perma.cc/757Q-XFA8] ("About four-in-ten U.S. adults say they live in a household with a gun . . . .").

99. Ctr. for Gun Violence Sols., *Domestic Violence and Firearms*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, https://publichealth.jhu.edu/center-for-gun-violence-solutions/solutions/domestic-violence-and-firearms [https://perma.cc/V62X-376S] (last visited Mar. 20, 2025).

100. *Id.*

101. 139 CONG. REC. 30579 (1993) (statement of Sen. John Chafee).

102. *See* 18 U.S.C. § 3142(c)(1)(B)(viii). This provision states that a judicial officer may impose a condition of the release of a defendant pending trail and that the defendant must "refrain from possessing a firearm, destructive device, or other dangerous weapon." *Id.* In 2023, this statutory requirement was held to be "presumptively lawful." *See* United States v. Perez-Garcia, No. 22-CR-1581, 2022 WL 17477918, at *5 (S.D. Cal. Dec. 6, 2022), *aff'd*, No. 22-50314, 2023 WL 2596689, at *1 (9th Cir. Jan. 26, 2023).

such as DVPOs, for fortification where criminal remedies are not sufficiently expedient or effective.[103]

Civil remedies may include ex parte temporary or final DVPOs. An ex parte order may be issued by a judge even when the defendant is "absent from the proceedings and given no prior notice."[104] Procedural due process requires that both parties have notice and an opportunity to be heard by a judge before a final DVPO is issued.[105]

In the case of temporary ex parte orders, Extreme Risk Protection Orders (ERPOs) may serve as a successful means of protection. An ERPO is "a civil court order that temporarily restricts firearm access for an individual who is behaving dangerously or presents a high risk of harm to self or others."[106] As of March 2025, ERPO laws exist in twenty-one states and Washington, D.C.[107] Similar to DVPOs, an ERPO may be ex parte—available quickly and with a duration of only a couple of weeks, or final—available after due process and typically lasting up to one year.[108] Uniquely, sixteen ERPO states[109] allow the pressure to be taken off victims by allowing family members to ask the court to "temporarily remove guns from a relative who they believe is at risk of harming themselves or others."[110]

Today, with increased public awareness of and policy responses to domestic violence, more programs and resources are available to victims attempting to leave intimate partner violence situations.[111] These policies and programs effectively reduce the time that those in a violent relationship are exposed to one another.[112] Although an increase in exposure reduction methods[113] may influence the behavior of would-be

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103. *See* CAROLYN COPPS HARTLEY & ROXANN RYAN, TRIAL STRATEGIES IN DOMESTIC VIOLENCE FELONIES 3–5 (1998); *Evidence Necessary for a Protective Order Involving Family Violence*, HG.ORG, https://www.hg.org/legal-articles/evidence-necessary-for-a-protective-order-involving-family-violence-40047 [https://perma.cc/C9F7-QBFM] (last visited Mar. 20, 2025) (noting that the standard of proof needed to obtain a protective order "is generally much lower than the 'by proof beyond a reasonable doubt' standard that is used in other criminal matters").

104. *Ex Parte Order*, BLACK'S LAW DICTIONARY (12th ed. 2024).

105. U.S. CONST. amend. XIV.

106. Ctr. for Gun Violence Sols., *Extreme Risk Protection Orders (ERPOs)*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH [hereinafter Ctr. for Gun Violence Sols., *ERPOs*], https://publichealth.jhu.edu/center-for-gun-violence-solutions/solutions/extreme-risk-protection-orders-or-red-flag-laws [https://perma.cc/6KZS-PNYM] (last visited Mar. 20, 2025).

107. *National Extreme Risk Protection Order (ERPO) Resource Center*, NAT'L ERPO RES. CTR., https://erpo.org/ [https://perma.cc/AL3T-GSXL] [hereinafter *ERPO Resource Center*] (last visited Mar. 20, 2025).

108. Ctr. for Gun Violence Sols., *ERPOs*, *supra* note 106.

109. *ERPO Resource Center*, *supra* note 107.

110. Ctr. for Gun Violence Sols., *National Survey of Gun Policy*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (July 21, 2023), https://publichealth.jhu.edu/center-for-gun-violence-solutions/research-reports/americans-agree-on-effective-gun-policy-more-than-were-led-to-believe [https://perma.cc/5PKN-PDA8] (including responses that of Americans surveyed, 72.3% of gun owners, 78.4% of non-gun owners, 89.7% of Democrats, and 68.5% of Republicans support family initiated ERPOs).

111. *See* Laura Dugan, Richard Rosenfeld & Daniel S. Nagin, *Exposure Reduction or Retaliation? The Effects of Domestic Violence Resources on Intimate-Partner Homicide*, 37 LAW & SOC'Y REV. 169, 169–70 (2003).

112. *See id.* at 174.

113. *See id.* (defining exposure reduction as "shortening the time that participants in a violent relationship are in contact with one another").

offenders or victims, violence persists.[114] In fact, an offender may be even more likely to retaliate against a victim who takes such exposure reduction measures.[115] The necessity of a judicial determination that an individual is a credible threat for final DVPOs delays protective measures, which subjects victims to increased risk during this waiting period.[116] This danger is compounded by the reality that those attempting to leave violent relationships may face retaliation from their abusers during the time it takes to secure a court's ruling.[117] Even once a judicial determination is made, in numerous states, firearm relinquishment and removal may not be compelled or even requested by the ordering court.[118]

B. Seminal Supreme Court Decisions Interpreting the Scope of the Second Amendment

Three significant Supreme Court decisions built the foundational jurisprudence for *Rahimi*, and their analyses form the platform upon which Second Amendment challenges are to be argued and decided.

1. *District of Columbia v. Heller*

In *District of Columbia v. Heller*, the Supreme Court conducted its "first in-depth examination of the Second Amendment" with the forewarning that "one should not expect [the decision] to clarify the entire field" of Second Amendment law.[119] At issue were three District of Columbia ordinances (1) prohibiting handguns generally;[120] (2) prohibiting assembled, functional firearms inside one's home;[121] and (3) prohibiting carrying firearms without a license, which applied inside the home.[122]

In evaluating whether the ordinances prevented a special police officer authorized to carry a handgun while on duty from keeping his gun at home,[123] the Court held that "the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home

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114. *See Intimate Partner Violence Prevention*, *supra* note 88.

115. Dugan et al., *supra* note 111, at 175 (citing sources that explain this phenomenon and stating that "men react violently when they perceive their 'right' to dominate and control their female partners is violated by the provision of protective resources").

116. 18 U.S.C. § 922(g)(8)(C)(i).

117. *See* Dugan et al., *supra* note 111, at 174 ("Substantial evidence shows that the highest homicide risk is during the period when a battered victim leaves the relationship, suggesting a potential 'retaliation effect' from exposure reduction associated with domestic violence interventions . . . [such as a] restraining order, arrest, [or] shelter protection . . . ." (citations omitted)).

118. *See Gun Law Navigator*, EVERYTOWN FOR GUN SAFETY SUPPORT FUND, https://maps.everytownresearch.org/navigator/states.html?dataset=domestic_violence&states=PA [https://perma.cc/KB4P-UXFE] (last visited Mar. 20, 2025) (showing on interactive maps that, in 2024, twenty-two states and Washington, D.C. "require all people under final domestic violence restraining orders to turn in their firearms when they become prohibited from having them").

119. 554 U.S. 570, 635 (2008).

120. *See* D.C. CODE ANN. § 7-2502.01(a) (West 2025).

121. *See id.* § 7-2507.02.

122. *See id.* § 22-4504(a).

123. *Heller*, 554 U.S. at 575.

operable for the purpose of immediate self-defense."[124] Barring that the defendant was disqualified from carrying a gun for other reasons,[125] the Court ordered that "the District must permit him to register his handgun and must issue him a license to carry it in the home."[126]

Informed by historical tradition, the *Heller* Court looked to the words, phrases, and clauses of the Second Amendment and the relationships between them.[127] Looking at the operative clause,[128] the Court evaluated the phrase "right of the people."[129] Noting that the First, Fourth, and Ninth Amendments use nearly identical terminology, the interpretation is one that unambiguously refers to individual rights, not "collective" rights.[130] Specifically, "the people" refers to all members of the political community,[131] while "militia," in the prefatory clause, refers to those in the subset of citizens who were "male, able bodied, and within a certain age range."[132] The Court declared that there is "a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans."[133]

Next, the Court evaluated the phrase "to keep and bear Arms."[134] Deciding that the eighteenth century meaning of "arms" is no different than it is today, the Court cited several dictionary definitions from the late 1700s and early 1800s.[135] The definitions excluded weapons specifically designed for military use and employed in a military capacity.[136] The Court rejected the idea that only arms in existence in the eighteenth century were protected and stated that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms."[137] To "keep arms" meant possessing arms for militiamen and everyone else.[138] To "bear" arms meant "carry" for the purpose of "offensive or defensive action."[139] The majority also rejected the

124. *Id.* at 635.

125. *See id.* at 626 (recognizing that there is a "longstanding prohibition[] on the possession of firearms by felons and the mentally ill").

126. *Id.* at 635.

127. *Id.* at 576–603.

128. U.S. CONST. amend. II ("[T]he right of the people to keep and bear Arms, shall not be infringed.").

129. *Heller*, 554 U.S. at 579.

130. *Id.*

131. *Id.* at 580.

132. *Id.*

133. *Id.* at 581.

134. *Id.*

135. *Id.* ("The 1773 edition of Samuel Johnson's dictionary defined 'arms' as '[w]eapons of offence, or armour of defence.' Timothy Cunningham's important 1771 legal dictionary defined 'arms' as 'any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.'" (alteration in original) (first quoting 1 DICTIONARY OF THE ENGLISH LANGUAGE 106 (4th ed. reprt. 1978); and then quoting 1 A NEW AND COMPLETE LAW DICTIONARY (1771))).

136. *Id.*

137. *Id.* at 582.

138. *Id.* at 583.

139. *Id.* at 584 (quoting Muscarello v. United States, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

dissent's argument that to "bear arms" is idiomatic to serving as a soldier in the military.[140]

The Court combined the analysis of the textual elements and decided that the operative clause of the Second Amendment "guarantee[d] the individual right to possess and carry weapons in case of confrontation."[141] Highlighting that the Second Amendment merely codified a *pre-existing* right, the Court firmly asserted that this constitutional right shall not be infringed.[142]

Leaving many possible applications of the Second Amendment right unclear, the Court assured the nation that it would "expound upon the historical justifications for the exceptions . . . mentioned if and when those exceptions come before [it]."[143]

2. *McDonald v. City of Chicago*

Two years after the *Heller* decision, the Supreme Court had the opportunity to impart the historical justification previously promised, but it ultimately provided no further guidance when evaluating similar gun-restricting ordinances.[144] In *McDonald v. City of Chicago*, Chicago residents hoping to keep guns in their homes for self-defense argued that city ordinances prohibiting possession of firearms without a valid registration certificate[145] and prohibiting the registration of most handguns[146] violated the Second and Fourteenth Amendments to the U.S. Constitution.[147] The Court declined to disturb the *Slaughter-House Cases*,[148] holding that rights predating the creation of the federal government and that "the State governments were created to establish and secure" were not protected by the Privileges or Immunities Clause of the Fourteenth Amendment.[149] The *McDonald* Court decided that selective incorporation through the Due Process Clause of the Fourteenth Amendment was the appropriate way to apply the *Heller* Court's interpretation of the Second Amendment to state and local governments.[150]

3. *New York State Rifle & Pistol Association, Inc. v. Bruen*

In June of 2022, the Supreme Court ruled that New York State's law prohibiting anyone from possessing "any firearm without a license, whether inside or outside the

140. *Id.* at 588–89.

141. *Id.* at 592.

142. *Id.* The Court then looked to the prefatory clause which evaluated the phrases "well regulated militia" and "security of a free state." *Id.* at 595–98. This Comment does not address this part of the Court's analysis.

143. *Id.* at 635.

144. McDonald v. City of Chicago, 561 U.S. 742 (2010).

145. *See* CHI. MUN. CODE § 8-20-040(a) (2009), *invalidated by* McDonald v. City of Chicago, 561 U.S. 742 (2010).

146. *See id.* § 8-20-050(c).

147. *McDonald*, 561 U.S. at 752.

148. The Slaughter-House Cases, 83 U.S. 36, 57 (1872).

149. *McDonald*, 561 U.S. at 754 (citing *The Slaughter-House Cases*, 83 U.S. at 76).

150. *Id.* at 791; *see also* District of Columbia v. Heller, 554 U.S. 570, 599 (2008).

home" contravened the Second Amendment.[151] The two individual petitioners were law-abiding, adult citizens of New York and were both members of the lead petitioner's public interest group—the New York State Rifle & Pistol Association—organized to defend the Second Amendment rights of New Yorkers.[152] One petitioner was prohibited from concealed carry in any public location and the other petitioner was prohibited from carrying except to and from his work.[153] Both individuals "faced no special dangers, wanted a handgun for general self-defense, and had only a restricted license permitting [them] to carry a handgun outside the home for hunting and target shooting."[154]

In New York, if an individual wanted to possess a firearm at home or in their place of business, they needed to apply and "convince a 'licensing officer'—usually a judge or law enforcement officer—that . . . [they were] of good moral character, [had] no history of crime or mental illness, and that 'no good cause exist[ed] for the denial of the license.'"[155] To acquire a license for carrying a firearm outside of one's home or place of business for self-defense, the applicant needed to obtain an unrestricted license by proving that a "special need" exist[ed] to issue it.[156] If the licensing officer rejected the cause, an individual could still obtain a restricted license, which allowed public carry for "a limited purpose, such as hunting, target shooting, or employment."[157]

Although "proper cause" had not been statutorily defined, state courts have held that it can be established by "demonstrat[ing] a special need for self-protection distinguishable from that of the general community."[158] The "special need" standard is not fulfilled merely by living or working in a high-crime area, but rather requires a showing "of particular threats, attacks or other extraordinary danger to personal safety."[159] If an application was denied, New York courts would uphold the licensing officer's decision so long as "the record shows a rational basis for it."[160]

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151. N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2122 (2022) (internal quotation mark omitted) (citing N.Y. PENAL LAW §§ 265.01-b (McKinney 2017), 261.01(1) (West Cum. Supp. 2022), 70.00(2)(e), 70.00(3)(b), 80.00(1)(a) (McKinney 2025), 70.15(1), 80.05(1)).

152. *Bruen*, 142 S. Ct. at 2125.

153. *Id.*

154. *Id.*

155. *Id.* at 2123 (quoting N.Y. PENAL LAW § 400.00(1)(a)–(n) (McKinney 2022), *declared unconstitutional by* Kamenshchik v. Ryder, 216 N.Y.S.3d 831 (N.Y. Sup. Ct. 2024)).

156. *Id.* (citing § 400.00(2)(f)).

157. *Id.*

158. *Id.*; *see also, e.g.*, Klenosky v. N.Y.C. Police Dep't, 428 N.Y.S.2d 256, 257 (N.Y. App. Div. 1980) (holding that "a fifty-two-year-old attorney engaged in matrimonial and criminal law practice, did not sufficiently demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession").

159. *Bruen*, 142 S. Ct. at 2123; *see* Martinek v. Kerik, 743 N.Y.S.2d 80, 81 (N.Y. App. Div. 2002) (holding that "[t]he fear felt by . . . a bank president" travelling "to and from high crime areas" to inspect buildings and transporting large sums of cash "is too vague to constitute 'proper cause' within the meaning of Penal Law § 400.00(2)(f)").

160. *Bruen*, 142 S. Ct. at 2123.

While most states require a permit to carry a handgun in public,[161] New York was in the minority of states that had licensing laws that gave officials discretion to deny concealed-carry licenses—even when the applicant met the statutory requirements—for failing to show cause or suitability for the license.[162] Additionally, New York was one of just seven states that had a proper-cause requirement.[163]

The *Bruen* Court declined to use the two-step framework it had established in *Heller* and had enforced in lower court cases over the preceding twelve years.[164] The Court maintained that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct."[165] Straying from *Heller* and rejecting the traditional means-end scrutiny of the law in question's burden on the Second Amendment right, the Court stated that the government "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."[166]

The Court offered that, by requiring lower courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding, the inquiry would be a "straightforward" approach to addressing "perceived societal problem[s]."[167] In application to New York's proper-cause requirement—intended to address handgun violence in urban areas—the Court found "no such tradition in the historical materials."[168] Acknowledging that the regulatory challenges posed by firearms today may differ from those in 1791, the Court stated that the determination of whether a historical regulation is analogous should be whether the two regulations are "relevantly similar."[169] The Government's historical precedent must point to a regulation "from before, during, and even after the founding [that] evinces a comparable tradition of regulation."[170] The precedent must look at both "*how* the challenged law burdens the right to armed self-defense, and *why* the law burdens that right."[171] While not every modern law resembling a historical analogue must be upheld, a relevant similarity between the challenged law and proffered analogue is essential.[172] If the regulation addresses a longstanding societal issue without historical

161. Forty-three states are considered "shall issue" jurisdictions that require authorities to issue concealed-carry licenses so long as an applicant satisfies certain threshold requirements. *Id.* In these shall issue jurisdictions, licensing officials do not have the ability "to deny licenses based on a perceived lack of need or suitability." *Id.*

162. *Id.* at 2123–24.

163. *Id.* at 2124.

164. *Id.* at 2126.

165. *Id.*

166. *Id.*

167. *Id.* at 2131.

168. *Id.* at 2131–32.

169. *Id.* at 2132 (quoting Cass R. Sunstein, Commentary, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 773 (1993)).

170. United States v. Rahimi, 61 F.4th 443, 454 (5th Cir. 2023) (alteration in original) (quoting *Bruen*, 142 S. Ct. at 2131–32), *rev'd*, 144 S. Ct. 1889 (2024).

171. *Id.* (citing *Bruen*, 142 S. Ct. at 2133).

172. *Id.* (citing *Bruen*, 142 S. Ct. at 2132).

precedent, or if it uses significantly different means, it may be deemed inconsistent with the Second Amendment and therefore rendered unconstitutional.[173]

Applying this new standard to New York's proper-cause requirement, the Court held that it was undisputed that the petitioners were part of "the people," their handguns were weapons "in common use," and carrying these handguns publicly for self-defense was within the Second Amendment's plain-text meaning.[174] Respondents provided historical sources spanning centuries, which permitted a state to condition public carry on showing a "nonspeculative need for armed self-defense in those areas."[175] Rejecting each historical analogue, the Court concluded that the respondents failed to identify an exemplary limitation on public carry relevantly similar to New York's proper-cause requirement, resulting in the statutory requirement being held unconstitutional.[176] The Court decided that "New York's proper-cause requirement violate[d] the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms."[177]

Justice Alito concurred with the majority opinion but wrote separately to question the relevance of the dissent's presentation of statistics on gun-related issues such as mass shootings,[178] suicide,[179] and domestic disputes.[180] Justice Alito emphatically addressed the constitutional right of law-abiding citizens to carry guns for self-defense established in *Heller*.[181] Justice Kavanaugh, joined by Chief Justice Roberts, concurred with the opinion and further specified that the *Bruen* decision does not prohibit states from imposing licensing requirements; it only forbids the problematic features of New York's statute, such as the unusual discretion for licensing officials and the special-need requirement.[182] Additionally, the Second Amendment permits "shall-issue" licensing regimes, already used in forty-three states, as long as they

173. *Id.* (citing *Bruen*, 142 S. Ct. at 2132).

174. *Bruen*, 142 S. Ct. at 2134.

175. *Id.* at 2135–36 (2022) (categorizing the historical periods by "(1) medieval to early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; (4) Reconstruction; and (5) the late-19th and early-20th centuries").

176. *Id.* at 2138–56 (2022) ("The Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions. . . . Apart from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor, subject to a few late-in-time outliers, have American governments required law-abiding, responsible citizens to 'demonstrate a special need for self-protection distinguishable from that of the general community' in order to carry arms in public." (first quoting District of Columbia v. Heller, 554 U.S. 570, 581 (2008); and then quoting Klenosky v. N.Y.C. Police Dep't, 428 N.Y.S.2d 256, 257 (N.Y. App. Div., 1980))).

177. *Id.* at 2156.

178. *Id.* at 2157 (Alito, J., concurring) ("Does the dissent think that laws like New York's prevent or deter such atrocities? . . . And how does the dissent account for the fact that one of the mass shootings near the top of its list took place in Buffalo? The New York law at issue in this case obviously did not stop that perpetrator.").

179. *Id.* ("Does the dissent think that a lot of people who possess guns in their homes will be stopped or deterred from shooting themselves if they cannot lawfully take them outside?").

180. *Id.* ("How many of the cases involving the use of a gun in a domestic dispute occur outside the home, and how many are prevented by laws like New York's?").

181. *Id.* at 2161.

182. *Id.* at 2161 (Kavanaugh, J., concurring).

neither grant open-ended discretion nor require a special need for self-defense.[183] Justice Barrett also concurred, writing separately to highlight that the Court did not "conclusively determine the manner and circumstances in which postratification practice may bear on the original meaning of the Constitution" and also did not address "whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868, or when the Bill of Rights was ratified in 1791."[184] Contrary to the idea that the Court endorsed uninhibited reliance on mid- to late nineteenth-century laws to establish the intended meaning of the Bill of Rights, Justice Barrett argued that "the Court is careful to caution 'against giving postenactment history more weight than it can rightly bear.'"[185]

Justice Breyer, Justice Sotomayor, and Justice Kagan dissented, listing statistics depicting the dangers of gun violence and explaining that New York's law is a way to limit who may purchase, carry, and use a firearm.[186] The Justices noted that access to firearms not only makes mass shootings more likely but also increases gun violence in instances of road rage, protests, and interactions with police officers.[187] With regards to New York's concealed carry licensing requirements, the dissent argued that the majority's characterization of the law lacked evidentiary support[188] and therefore unnecessarily restricted legislative authority without a comprehensive understanding of how the law operates in practice.[189] The dissenting Justices critiqued the majority for relying too heavily on historical analysis and not considering "whether New York has a compelling interest in regulating the concealed carriage of handguns or whether New York's law is narrowly tailored to achieve that interest."[190] The dissent argued that the Court should use a two-step framework, considering both historical context and means-end scrutiny, as done by the *Heller* Court and lower courts.[191] The dissenting Justices concluded that, "even applying the Court's history-only analysis, New York's law must be upheld because 'historical precedent from before, during, and . . . after the founding evinces a comparable tradition of regulation.'"[192] Although *Heller* recognized an individual's right to possess firearms for self-defense,[193] the dissenting Justices in *Bruen* said that a more comprehensive examination of laws—including means-end scrutiny—is still needed to consider the state's interest in preventing gun violence and protecting public safety.[194]

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183. *Id.* at 2162.

184. *Id.* at 2162–63 (Barrett, J., concurring) (internal quotation mark omitted) (quoting *id.* at 2138 (majority opinion)).

185. *Id.* at 2163.

186. *Id.* at 2163–67 (Breyer, J., dissenting) (noting that, "[i]n 2020, 45,222 Americans were killed by firearms" and only halfway through 2022, there were 277 reported mass shootings).

187. *Id.* at 2166.

188. *Id.* at 2174.

189. *Id.*

190. *Id.*

191. *Id.* at 2174–75.

192. *Id.* at 2181–89 (omission in original) (quoting *id.* at 2131 (majority opinion)) (referencing historical laws of England, the Colonies, the Founding Era, the nineteenth century, Postbellum Regulation, and the twentieth century).

193. *Id.* at 2190.

194. *Id.* at 2191.

C. United States v. Rahimi

The formative Second Amendment cases—*Heller*, *McDonald*, and *Bruen*—collectively shaped, but left unresolved, key aspects of Second Amendment interpretation. These apertures in Second Amendment interpretation led the Supreme Court to grant certiorari in *United States v. Rahimi*.

In December 2019, Zackey Rahimi "grabbed [C.M., his girlfriend and the mother of their child] by the wrist, dragged her back to his car, and shoved her in, causing her to strike her head against the dashboard."[195] Upon noticing a bystander watching the altercation, Rahimi retrieved his gun and began firing as C.M. narrowly escaped.[196] Later, Rahimi called C.M. and threatened to shoot her if she reported the incident to the police.[197] Notwithstanding the threat, C.M. sought a restraining order from Rahimi, citing numerous assaults, including the parking lot incident and endangerment of their child.[198] Despite having the opportunity to contest C.M.'s claims, Rahimi chose not to.[199] On February 5, 2020, a state court in Tarrant County, Texas, issued a restraining order with both parties' consent, finding that Rahimi had committed family violence and posed a credible threat to C.M. and their child.[200] The order prohibited Rahimi from threatening or contacting C.M. and her family for two years, unless to discuss their child, and suspended Rahimi's gun license for the same period.[201] If Rahimi was imprisoned during that time, the order would extend by one or two years after his release.[202] The judge did not order Rahimi to perform further action to prevent or reduce the likelihood of family violence.[203]

Rahimi violated the restraining order just three months after its imposition.[204] Six months later, he was charged with aggravated assault with a deadly weapon for threatening a different woman with a gun.[205] Again, there were no additional court ordered protections or mandated actions to remove Rahimi's firearms.[206]

A month after his second domestic violence charge, between December 2020 and January 2021, Rahimi was involved in a series of five shootings within six weeks.[207] First, Rahimi shot an AR-15 into an individual's residence after a person he sold narcotics to trash-talked him online.[208] Second, Rahimi shot at another driver after a car accident, fled the scene, and later returned to shoot at the other driver's car a second

195. United States v. Rahimi, 144 S. Ct. 1889, 1894–95 (2024).

196. *Id.* at 1895.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* (noting that the length of extension would depend on the length of any imprisonment).

203. *See* 4 TEX. FAM. CODE ANN. § 85.022(a) (West 2023) (including completing a battering intervention and prevention program or counseling with a court-approved specialist).

204. *Rahimi*, 144 S. Ct. at 1895.

205. *Id.*

206. Rahimi was additionally charged with aggravated assault with a deadly weapon. *Id.*

207. United States v. Rahimi, 61 F.4th 443, 448–49 (5th Cir. 2023).

208. Petition for Writ of Certiorari at 3, *Rahimi*, 144 S. Ct. 1889 (No. 4:21-CR-83-1).

time.[209] Third, Rahimi fired his gun in the air in a residential neighborhood while children were present.[210] Fourth, Rahimi "slammed his brakes, cut across the highway, [and] followed a truck off an exit" before he shot at a vehicle that flashed its headlights at him.[211] Finally, he fired shots in the air after his friend's credit card was declined at a fast-food restaurant.[212]

Authorities identified Rahimi in the string of shootings, executed a search warrant, and discovered a pistol, a rifle, firearm magazines, ammunition, about $20,000 in cash, and a copy of the restraining order from C.M. in his home.[213] Rahimi admitted that he was subject to the DVPO, which he understood to expressly prohibit him from possessing a firearm for the duration of the order.[214]

Rahimi was indicted for violating 18 U.S.C. Section 922(g)(8),[215] punishable by up to ten years' imprisonment at the time and fifteen years' today.[216] The Court listed three conditions that must be met for a prosecution to proceed. First, "the defendant must have received . . . notice and an opportunity to be heard before the order was entered."[217] Second, "the order must prohibit the defendant from either 'harassing, stalking, or threatening' his 'intimate partner' or his or his partner's child, or 'engaging in other conduct that would place [the] partner in reasonable fear of bodily injury' to the partner or child."[218] Third, the restraining order must either "contain a finding that the defendant 'represents a credible threat to the physical safety' of his intimate partner

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209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. United States v. Rahimi, 61 F.4th 443, 449 (5th Cir. 2023), *rev'd*, 144 S. Ct. 1889 (2024).

215. Section 922(g)(8) states that it is unlawful for any person who is subject to a court order that—

> (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
>
> (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
>
> (C)
>
> > (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
> >
> > (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury
>
> . . .
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition.

18 U.S.C. § 922(g)(8).

216. *Rahimi*, 144 S. Ct. at 1895 (first citing 18 U.S.C. § 924(a)(8); and then citing Bipartisan Safer Communities Act, Pub. L. No. 117–159, § 12004(c)(2), 136 Stat. 1313, 1329 (2022) (codified as amended at 18 U.S.C. § 924(a)(8))).

217. *Id.* at 1896 (citing § 922(g)(8)(A)).

218. *Id.* (alteration in original) (quoting § 922(g)(8)(B)) (defining "intimate partner[s]" as provided in Section 921(a)(32), including "his spouse or any former spouse, the parent of his child, and anyone with whom he cohabitates or has cohabitated" (alteration in original)).

or his or his partner's child,"[219] or "by its terms explicitly prohibit[] the use, attempted use, or threatened use of 'physical force' against those individuals."[220] It was undisputed that Rahimi's restraining order from C.M. met each prong.[221]

Rahimi filed a motion to dismiss the resulting indictment, arguing that Section 922(g)(8) was a prima facie violation of his Second Amendment rights.[222] The district court denied his motion, holding that Fifth Circuit precedent foreclosed this argument.[223] Exactly two weeks after the U.S. Supreme Court's decision in *Bruen*, a three-judge panel withdrew the *Rahimi* opinion and dismissed the pending petition for rehearing en banc as moot.[224] Both the United States and Rahimi were ordered to file additional briefings addressing the effect of the *Bruen* decision on Rahimi's case.[225] In March of 2023, the Fifth Circuit reversed the prior panel's decision and vacated Rahimi's conviction, concluding that Section 922(g)(8) does not "fit within our tradition of firearm regulation."[226] Judge Ho wrote a concurring opinion explaining that the dutiful application of the Second Amendment is, in his belief, compatible with protecting victims of domestic violence.[227]

The Supreme Court granted certiorari[228] to examine the constitutionality of Section 922(g)(8) and whether this provision could be enforced against Rahimi consistent with the Second Amendment.[229]

1. Majority Opinion

The *Rahimi* Court held that Section 922(g)(8), as applied to Rahimi's case, "fits comfortably within" the nation's tradition of firearm laws.[230] First, the Court acknowledged its precedent that the right to keep and bear arms is a "fundamental right[] necessary to our system of ordered liberty,"[231] which safeguards an agency of self-defense,[232] and was protected from State interference through incorporation by the Fourteenth Amendment.[233] The Court stated that the Second Amendment right is, of

219. *Id.* (quoting § 922(g)(8)(C)(i)).

220. *Id.* (alteration in original) (internal quotation mark omitted) (quoting § 922(g)(8)(C)(ii)).

221. *Id.*

222. *Id.*

223. *Id.*; *see also* United States v. Emerson, 270 F.3d 203, 264–65 (5th Cir. 2001) (holding that there was adequate evidence that the restrained party posed a realistic threat of imminent physical injury to the protected party sufficient to support the deprivation of the defendant's Second Amendment rights and upholding Section 922(g)(8)'s prima facie constitutionality), *abrogated by* United States v. Diaz, 116 F.4th 458 (5th Cir. 2024); United States v. McGinnis, 956 F.3d 747, 753 (5th Cir. 2020) (reaffirming *Emerson*'s holding that Section 922(g)(8) is facially constitutional).

224. *Rahimi*, 144 S. Ct. at 1896.

225. *Id.*

226. *Id.* (citing United States v. Rahimi, 61 F.4th 443, 460–61 (5th Cir. 2023), *rev'd*, 144 S. Ct. 1889 (2024)).

227. *Id.*; *see also Rahimi*, 61 F.4th at 461–67 (Ho, J., concurring).

228. United States v. Rahimi, 143 S. Ct. 2688 (2023).

229. *Rahimi*, 144 S. Ct. at 1894.

230. *Id.* at 1896–97.

231. *Id.* at 1897 (quoting McDonald v. Chicago, 561 U.S. 742, 778 (2010)).

232. *Id.* (citing N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2125 (2022)).

233. *See id.* at 1897 (citing *McDonald*, 561 U.S. at 771–76).

course, not unlimited;[234] restrictions on gun use have existed since the nation's founding.[235]

The Court clarified that its methodology of looking to constitutional text and history to examine the nation's tradition of firearm regulation, determining if a challenged regulation fits within that tradition, and placing the burden upon the government to "justify its regulation" was not meant to "suggest a law trapped in amber."[236] Rather, the proper historical analysis of the Second Amendment requires examining "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition."[237] It is the responsibility of courts to determine whether a modern law is "relevantly similar" to traditionally permissible laws.[238] Looking to why and how a regulation burdens one's Second Amendment right indicates the strength of resemblance between a challenged regulation and a historical analogue.[239] The challenged law "must comport with the principles underlying the Second Amendment," but need not be a "historical twin."[240]

The Court recognized that Rahimi's prima facie challenge of Section 922(g)(8) was the utmost difficult challenge to prove because it required him to establish that the regulation was invalid under every conceivable circumstance.[241] In contrast, the Government needed only to show that Section 922(g)(8) is constitutional in at least one application. The Court determined that not only was the provision applicable to some cases, but it was "constitutional as applied to the facts of Rahimi's *own* case."[242] The Court's analysis focused only on Section 922(g)(8)(C)(i)—liability based on whether the restraining order included a finding that Rahimi posed "a credible threat to the physical safety of a protected person"—because the Government presented sufficient evidence that disarming individuals who pose a credible threat to others' safety is consistent with the Second Amendment.[243] The constitutional permissibility of Section 922(g)(8)(C)(ii) was left undecided.[244]

The Court recounted that in *Heller* and *Bruen* it extensively reviewed the history of American gun laws, noting that regulations against the misuse of weapons "to harm or menace others" date back to the common law and early English statutes, evolving through the centuries.[245] By America's founding era, political disarmament was largely

234. *Id.* (citing District of Columbia v. Heller, 554 U.S. 570, 626 (2008)).

235. *Id.* (providing examples of regulations such as rules dictating safe firearm storage, restrictions on gun use by drunken partygoers on New Year's Eve, and concealed carrying limits).

236. *Id.* (quoting *Bruen*, 142 S. Ct. at 2126).

237. *Id.* at 1898 (citing *Bruen*, 142 S. Ct. at 2131–33).

238. *Id.* (quoting *Bruen*, 142 S. Ct. at 2132).

239. *Id.*

240. *Id.* (quoting *Bruen*, 142 S. Ct. at 2133).

241. *Id.* (citing United States v. Salerno, 481 U.S. 739, 745 (1987)) (discussing *Salerno*'s holding that if an act might operate unconstitutionally under some conceivable set of circumstances, it is insufficient to render it wholly invalid).

242. *Id.* (emphasis added).

243. *Id.* at 1898–99 (quoting 18 U.S.C. § 922(g)(8)(C)(i)).

244. *Id.*

245. *Id.* at 1899. English law first disarmed those considered threats to the King through the Militia Act of 1662, then lessened prohibitions following the Glorious Revolution. *Id.* Out of strong criticism, Parliament adopted the right to bear arms, as allowed by law, through the English Bill of Rights. *Id.*

curtailed through individual state constitutions and the Second Amendment.[246] Regulations targeting individuals posing physical threats towards others continued through prohibitionary criminal laws and civil actions.[247] Shortly after the ratification of the Second Amendment, two distinct types of laws to combat firearm violence emerged: surety laws and going armed laws.[248]

The Court stated that, when looking at the history of surety and going armed laws together, their purposes "confirm what *common sense* suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."[249] The Court recognized that Section 922(g)(8) is not a historical twin to surety and going armed laws, but concluded that the statute's "prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition the surety and going armed laws represent."[250] Section 922(g)(8) is "relevantly similar" in why and how it restricts one's Second Amendment right to "mitigate demonstrated threats of physical violence."[251]

Distinguishing Section 922(g)(8) from the New York regulation deemed unconstitutional in *Bruen*, the Court noted that Section 922(g)(8) is much narrower in its application to the public.[252] The Court clarified that the burden imposed by Section 922(g)(8) is parallel to surety and going armed laws because it does not apply until a judicial determination is made that a defendant "represents a credible threat to the physical safety of another."[253] Additionally, in application to Rahimi, Section 922(g)(8)'s prohibition on firearm possession for only one to two years after release from prison is comparable to the limited duration of surety bond laws.[254] Lastly, because the penalty of temporary disarmament under Section 922(g)(8) is lesser than the punishment of imprisonment for violating the going armed laws, Section 922(g)(8)'s burden was found to be permissible.[255]

Rahimi argued that the Court's holding in *Heller* required the Court affirm the Fifth Circuit's decision because Section 922(g)(8) similarly bans possession of guns in the home, specifically applied to those subject to restraining orders.[256] The Court rejected this argument, clarifying that the *Heller* opinion in fact explicitly stated that prohibitions on firearm possession by "felons and the mentally ill" are "presumptively lawful."[257] Additionally, the analysis of surety laws discussed in *Bruen* did not support Rahimi's argument. In *Bruen*, the Court distinguished that surety laws assumed individuals had a right to carry firearms, while New York's law required proof of a

246. *Id.*

247. *Id.*

248. *Id.* at 1899–1901. See *supra* Part II.A.3 for a discussion of surety laws and *supra* Part II.A.4 for a discussion of going armed laws.

249. *Id.* at 1901 (emphasis added).

250. *Id.*

251. *Id.* (quoting N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2132 (2022)).

252. *Id.*

253. *Id.* at 1901–02 (internal quotation marks omitted) (quoting 18 U.S.C. § 922(g)(8)(C)(i)).

254. *Id.* at 1902.

255. *Id.*

256. *Id.* at 1902.

257. *Id.* (quoting *Heller*, 554 U.S. at 626).

special need to carry.[258] Section 922(g)(8)(C)(i), however, aligns more closely with the surety laws, as it only restricts Second Amendment rights when a defendant is found by a court to pose a credible threat to the safety of others.[259] Additionally, in *Bruen*, the Court emphasized the different penalties of the surety laws to highlight what it perceived to be New York's harsh treatment of citizens' rights.[260] Expounding that the tradition of firearm regulation differentiates between those posing credible threats and those who do not, the Court stated that while surety laws are not a historical analogue for broad prohibitory regimes, they can be appropriate for narrow, focused regulations.[261]

The Court addressed Justice Thomas's concerns in his dissenting opinion and reemphasized that Section 922(g)(8) has historical analogues for both why and how the provision is sufficiently similar to historical regulations.[262] The Court explicitly stated two errors made by the Fifth Circuit panel in its determination that Section 922(g)(8) was unconstitutional.[263] First, it noted that, like Justice Thomas's dissent, the panel incorrectly demanded a "historical twin" instead of a "historical analogue," as required by *Bruen*.[264] Second, the panel incorrectly applied the Court's precedent to prima facie challenges by "focus[ing] on hypothetical scenarios where Section 922(g)(8) might raise constitutional concerns" rather than assessing when the regulation could be constitutional.[265]

The Court clarified that its holding in favor of Section 922(g)(8)'s constitutionality does not accept the Government's contention that Rahimi's Second Amendment right can be revoked because he is not "responsible."[266] The Court declined to define the term "responsible" further than previously done in *Heller* and *Bruen* "to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right."[267] Last, the Court acknowledged the continuation of its sixteen-year tradition of sidestepping "undertak[ing] an exhaustive historical analysis . . . of the full scope of the Second Amendment."[268] For the time being, the Court held only that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."[269]

258. *Id.* (citing N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2122 (2022)).
259. *Id.*
260. *Id.*
261. *Id.*
262. *Id.* at 1902–03.
263. *Id.* at 1903.
264. *Id.* (quoting N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2133 (2022)).
265. *Id.*
266. *Id.*
267. *Id.*; *see also, e.g.*, United States v. Heller, 554 U.S. 570, 635 (2008); *Bruen*, 142 S. Ct. at 2156.
268. *Rahimi*, 144 S. Ct. at 1903 (quoting *Bruen*, 142 S. Ct. at 2128).
269. *Id.*

2. Concurrences

a. Concurrence by Justices Sotomayor and Kagan

Justices Sotomayor and Kagan jointly concurred with the majority opinion that a regulation must align with the Second Amendment's principles without needing an exact historical precedent,[270] emphasizing how the Court's interpretation of the *Bruen* framework, unlike the dissent's overly stringent approach, allows for a relevant and practical historical analysis.[271] The Justices reiterated that the shared principles between the historical surety and going armed laws and Section 922(g)(8)—the restriction of one's Second Amendment right "to mitigate demonstrated threats of physical violence"—were sufficient to serve as an analogy.[272]

Justices Sotomayor and Kagan criticized the dissent's "strictest possible interpretation of *Bruen*" and view that any differences in the Government's presented analogues were fatal to their similarity.[273] This concurrence defended the Court's interpretation of *Bruen* "to sustain common-sense regulations necessary to our Nation's safety and security."[274] *Rahimi* highlighted the dangers of the dissent's insistence that modern laws addressing persistent societal problems must not differ materially from eighteenth century solutions, despite the evolution of weapons and changing societal perceptions.[275] Under Justice Thomas's *Bruen* analysis, Justices Sotomayor and Kagan argued that rigid adherence to outdated contexts weakens constitutional interpretation and hinders democratic progress.[276]

This concurrence expressed concern that *Bruen*'s narrow focus on history and tradition neglects the current issues of gun violence.[277] Rather than solely relying on historical perspectives, Justice Sotomayor stated that the Second Amendment provides legislators the opportunity to consider current realities and craft new, suitable solutions to gun violence.[278] Although rejected in *Bruen*, Justice Sotomayor argued that under a means-end scrutiny analysis, "the constitutionality of [Section] 922(g)(8) is even more readily apparent."[279] The Government has a compelling interest in preventing domestic abusers from accessing firearms, as intimate partner violence is becoming increasingly deadly and prevalent.[280] This interest extends further because abusers often harm others

270. *Id.* at 1904 (Sotomayor, J., concurring).

271. *Id.*

272. *Id.*

273. *Id.* at 1905.

274. *Id.* (quoting N. Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2180 (2022) (Breyer, J., dissenting)).

275. *Rahimi*, 144 S. Ct. at 1905 (noting that late eighteenth-century law "was more likely to protect husbands who abused their spouses than offer some measure of accountability, it is no surprise that that generation did not have an equivalent to [Section] 922(g)(8)").

276. *Id.*

277. *Id.* at 1906 (Sotomayor, J., concurring).

278. *Id.*

279. *Id.* (noting that means-end scrutiny is regularly used in determining the constitutionality of provisions).

280. *Id.*; *see also* Aaron J. Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 J. AM. ACAD. PSYCHIATRY & L. 26, 26 (2020) (citing statistics that a woman who

outside of the relationship, with one-quarter of intimate partner homicides involving third-party victims and domestic disputes being the most dangerous calls for responding officers.[281] Recognizing that "the Second Amendment does not yield automatically to the Government's compelling interest," Justices Sotomayor and Kagan stated that "[Section] 922(g)(8) is tailored to the vital objective of keeping guns out of the hands of domestic abusers,"[282] joining the Court's opinion in full and concluding Section 922(g)(8) is constitutional.[283]

b. Concurrence by Justice Gorsuch

Justice Gorsuch concurred with the majority's opinion that Rahimi failed to facially challenge Section 922(g)(8) "in all its applications."[284] Justice Gorsuch stated that the "comparable burden" test is required to honor the Second Amendment's codification of a preexisting right with the same scope today as when it was adopted, in spite of the recognized associated risks of an armed citizenry.[285] He concluded that the Court had no authority to question the Constitution's directions "trapped in amber."[286]

Justice Gorsuch wrote that constitutional modifications must be made by the American people through the legislative process; without such drastic amendment, it is the role of litigants and courts to carefully consult history to thoroughly interpret constitutional provisions.[287] He warned that courts must avoid extrapolating values or policies from the Constitution's text and history so that "the right of confrontation as originally understood at the time of the founding" is preserved, applying the same careful approach to historic firearms regulations to avoid undermining constitutional guarantees.[288] Because Section 922(g)(8) works in the same way as surety and going armed laws, Justice Gorsuch reasserted that courts are allowed to disarm individuals after notice and an opportunity to be heard if they pose a threat to others, without infringing on the Second Amendment as originally understood.[289]

Justice Gorsuch addressed Justice Thomas's dissent, stating that although different conclusions may be reached, the proper judicial inquiry is whether Section 922(g)(8) aligns with historical practices understood to be outside the scope of the

lives in a house with a domestic abuser is five times more likely to be murdered if the abuser has access to a gun); Everytown Rsch. & Pol'y, *Guns and Violence Against Women*, EVERYTOWN FOR GUN SAFETY SUPPORT FUND, https://everytownresearch.org/report/guns-and-violence-against-women/ [https://perma.cc/746X-QDR8] (Nov. 20, 2024) (showing that an average of seventy-six women are shot and killed by an intimate partner in the United States each month). See *supra* Part II.A.5 for a discussion of domestic violence.

281. *Rahimi*, 144 S. Ct. at 1906 (Sotomayor, J., concurring).

282. *Id.*

283. *Id.* at 1906–07.

284. *Id.* at 1907 (Gorsuch, J., concurring) (citation omitted).

285. *Id.*

286. *Id.* at 1908.

287. *Id.*

288. *Id.*

289. *Id.* at 1908–09.

Second Amendment.[290] This approach ensures judges adhere to the supreme law rather than imposing their own will, creating succinct and clear rulings.[291]

Justice Gorsuch recognized that the Court "necessarily leaves open the question whether [Section 922(g)(8)] might be unconstitutional as applied in 'particular circumstances.'"[292] He acknowledged that the Court does not address broader questions because Article III limits the Court to deciding the specific case brought before it, and future litigants should not interpret the *Rahimi* decision beyond its specific context.[293] Reinforcing *Bruen*'s textual, historical, and traditional analyses, Justice Gorsuch concurred with the Court.[294]

c. Concurrence by Justice Kavanaugh

Justice Kavanaugh also joined the Court's opinion in full, writing separately "to review the proper roles of text, history, and precedent in constitutional interpretation."[295] He stated that constitutional interpretation foremost looks to the text of the Constitution and, unless the language is amended, it is indefinitely binding.[296] The Constitution's "strikingly clean prose"[297] renders "resort[ing] to collateral aids to interpretation . . . unnecessary and cannot be indulged in to narrow or enlarge the text."[298]

Justice Kavanaugh opined that the individual rights provisions of the Constitution—such as the First and Second Amendments—are vaguer and, when read literally, may appear to grant "*absolute* protection" from government regulation,[299] but have both been determined to have restrictions.[300] He explicitly stated that when judicial precedent does not provide a clear guide to interpreting vague constitutional text, "[h]istory, not policy, is the proper guide" due to its lack of subjectivity.[301]

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290. *Id.* at 1909.

291. *Id.* ("Faithful adherence to the Constitution's original meaning may be an imperfect guide, but I can think of no more perfect one for us to follow.").

292. *Id.* at 1909–10 (quoting United States v. Salerno, 481 U.S. 739, 751 (1987)) (listing determinations not yet made by the Court such as if it would be unconstitutional for the government to disarm a person who is a credible threat to others *without* a judicial finding, for the government to disarm an individual permanently, or if the provision can be used to disarm one who uses their weapon for self-defense).

293. *Id.* at 1910.

294. *Id.*

295. *Id.* at 1910 (Kavanaugh, J., concurring).

296. *Id.* at 1910–11 (stating that "[t]he text of the Constitution is the 'Law of the Land'" and it "says what it means and means what it says").

297. *Id.* at 1911 (citations omitted) (listing twenty-one provisions of the Constitution that are "relatively clear" and often unchallenged in their meaning such as term limits for the President and Senators, a two-thirds House vote to expel members of the House or Senate, nomination and confirmation proceedings, Congress meets on January 3 at noon, residents of D.C. can vote in Presidential elections, etc.).

298. *Id.* (quoting McPherson v. Blacker, 146 U.S. 1, 27 (1892)).

299. *Id.*

300. Since its ratification, the First Amendment has been interpreted to prohibit content of speech that is deemed "obscenity, defamation, fraud, and incitement." *Id.* at 1912 (citing United States v. Stevens, 559 U.S. 460, 468 (2010)).

301. *Id.* at 1912.

Justice Kavanaugh explained how courts use "pre-ratification history, post-ratification history, and precedent when analyzing vague constitutional text."[302] He reasoned that the language of the Articles of Confederation and state constitutions written pre-ratification and adopted in the Constitution provides strong evidentiary support of constitutional meaning by demonstrating how the American people understood the wording post-ratification.[303] Conversely, some pre-ratification history may be indicative of "what the Constitution does *not* mean," as evidenced by the Constitution adopting contrary laws to the existing Articles of Confederation[304] and British laws.[305] In summary, Justice Kavanaugh concluded that courts must carefully "rely only on the history that the Constitution actually incorporated and not on the history that [it] left behind."[306]

When pre-ratification history is "elusive or inconclusive," the Court next relies on post-ratification history to interpret vague constitutional wording.[307] Federal and state government actors interpret and apply the Constitution's text when "enact[ing] laws and implement[ing] practices to promote the general welfare."[308] Justice Kavanaugh likened the late Justice Scalia's use of post-ratification history and tradition in *Heller* to James Madison's and to Chief Justice Marshall's in *McCulloch v. Maryland*.[309] Justice Kavanaugh exemplified the Court's use of post-ratification history to decide pivotal constitutional interpretation issues by citing Supreme Court cases spanning over 200 years.[310]

Justice Kavanaugh discussed the importance of precedent as a "judicial [p]ower established in Article III" and highlighted that there are few issues for which precedent does not exist.[311] He recognized that, although precedent is the initial step in the Court's constitutional analysis, "on occasion [it] may appropriately be overturned."[312]

Justice Kavanaugh rejected the use of any balancing tests to determine whether a law is constitutional or not; he stated that such an approach "is policy by another name."[313] He argued that, even when these balancing tests were applied, history was still a more prominent factor that "judicial policymaking."[314] Warning against the "subjective balancing approach" for issues such as the Second Amendment, Justice

302. *Id.* at 1913.

303. *Id.*

304. *Id.* at 1914 (recounting the Framers' rejection of the Articles of Confederation during the Constitutional Convention).

305. *Id.* (highlighting the "many objections to British laws and the system of oppressive British rule over the Colonies" expressed by colonial Americans).

306. *Id.* at 1915.

307. *Id.* at 1916.

308. *Id.*

309. *Id.* at 1917 ("Chief Justice Marshall invoked post-ratification history to conclude that Congress's authority to establish a national bank could 'scarcely be considered as an open question.'" (quoting McCulloch v. Maryland, 17 U.S. 316, 401 (1819))).

310. *Id.* at 1918–19 (listing thirty-one cases decided between 1819 and 2024 that cover a vast range of constitutional issues).

311. *Id.* at 1920.

312. *Id.*

313. *Id.*

314. *Id.* at 1921.

Kavanaugh maintained that weighing benefits and burdens of a law "vests judges with 'a roving commission to second-guess' legislators and administrative officers 'concerning what is best for the country.'"[315] Justice Kavanaugh stressed that, while the historical approach to interpreting constitutional text is imperfect and sometimes inconclusive, it narrows the range of possible meanings, provides direction, and "imposes a neutral and democratically infused constraint on judicial decisionmaking."[316] He deemed the historical approach superior to balancing, as it relies on reasoned analysis of historical evidence and acknowledges rights established through constitutional history while leaving other rights to be decided by the people.[317]

Justice Kavanaugh concluded that *Heller*, *McDonald*, *Bruen*, and *Rahimi* are all "entirely consistent with the Court's longstanding reliance on history and precedent to determine the meaning of vague constitutional text."[318]

d. Concurrence by Justice Barrett

Justice Barrett wrote separately to deconstruct the theory of originalism that is consistently used by the Court for Second Amendment interpretation.[319] The pillars of originalism are (1) "that the meaning of constitutional text is fixed at the time of its ratification," and (2) "that the 'discoverable historical meaning . . . has legal significance and is authoritative in most circumstances.'"[320] When conducting an originalist inquiry for the Second Amendment, the history surrounding the ratification of the text is the most influential; post-enactment history is reenforcing and clarifying but not illuminating as to the meaning to the text.[321] Justice Barrett restated her conviction that "evidence of 'tradition' unmoored from original meaning is not binding law."[322]

The *Rahimi* Court used "original history" to "determin[e] the scope of the pre-existing right that the people enshrined in our fundamental law."[323] The Court's analogical reasoning approach, as highlighted by the *Bruen* decision, rejects the notion of a "regulatory straightjacket," instead advocating for a broader interpretative lens where historical regulations inform underlying principles rather than serve as strict restrictions.[324] This approach avoids overly specific analogues, recognizes that modern regulations should not be rigidly confined to eighteenth century policy choices, and acknowledges that originalism does not mandate maximal exercise of regulatory power by founding-era legislatures.[325] Justice Barrett resolved that the Court used the

315. *Id.* (quoting William Rehnquist, *The Notion of a Living Constitution*, 54 TEX. L. REV. 693, 698 (1976)).

316. *Id.* at 1922.

317. *Id.*

318. *Id.* at 1922–24.

319. *Id.* at 1924 (Barrett, J., concurring).

320. *Id.* (omission in original) (quoting Keith Whittington, *Originalism: A Critical Introduction*, 82 FORD. L. REV. 375, 378 (2013)).

321. *Id.*

322. *Id.* at 1925.

323. *Id.*

324. *Id.* (quoting N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2133 (2022)).

325. *Id.*

appropriate amount of generality to conclude that individuals who threaten physical harm to others, such as Rahimi, may be restricted by laws, such as Section 922(g)(8)(C)(i), that limit their Second Amendment right.[326]

e. Concurrence by Justice Jackson

Justice Jackson began her concurrence by stating that while she disagrees with the *Bruen* methodology, the Court properly applied its history-and-tradition test in *Rahimi*.[327] She wrote separately to recognize that in the two years post-*Bruen*, "lower courts appear to be diverging in both approach and outcome as they struggle to conduct the inquiry *Bruen* requires," evidencing the need for clarity.[328]

The *Bruen* Court's rejection of the two-step framework used in *Heller* and *McDonald*[329] and adoption of a history-only two-step framework[330] resulted in problematic analysis highlighted in *Rahimi*.[331] Rahimi successfully argued that "there is little or no historical evidence suggesting disarmament for those who committed domestic violence; and there is certainly no tradition of disarming people subject to a no-contact order related to domestic violence."[332] Although the Government cited historical surety and going armed laws as analogues, the Fifth Circuit panel found these insufficient and deemed Section 922(g)(8) unconstitutional.[333] Regardless of the Court's outcome in *Rahimi*, Justice Jackson recognized that "gauging the sufficiency of such evidence is an exceedingly difficult task"[334] and courts will likely continue to hold divergent outcomes due to the variability in historical sources and the level of generality courts apply.[335] Many answers to questions that would greatly aid lower courts remain unaddressed by the Supreme Court and inhibit stability, consistency, and predictability of decisions.[336]

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326. *Id.* at 1926.

327. *Id.* (Jackson, J., concurring).

328. *Id.* at 1926–27.

329. *Bruen*, 142 S. Ct. at 2118 (describing the two-step framework as first looking at the history and then applying means-end scrutiny).

330. *Id.* at 2129–30 ("When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.").

331. Justice Jackson recognized that policymakers, lawyers, parties, and judges are forced to be "amateur historians" in their task of sifting through centuries-old laws in search of supportive historical analogues. *Rahimi*, 144 S. Ct. at 1928 n.2 (Jackson, J., concurring).

332. *Id.* at 1928 (citations omitted).

333. United States v. Rahimi, 61 F.4th 443, 459–61 (5th Cir. 2023), *rev'd*, 144 S. Ct. 1889 (2024).

334. Justice Jackson noted that this task "suggests that only those solutions that States implemented in the distant past comport with the Constitution." *Rahimi*, 144 S. Ct. at 1929 n.3 (Jackson, J., concurring). This regressive policymaking "stifles both helpful innovation and democratic engagement," resulting in limited legislative solutions and the creation of chaos. *Id.*

335. *Id.* at 1928–29.

336. *Id.* at 1929 ("Who is protected by the Second Amendment, from a historical perspective? To what conduct does the Second Amendment's plain text apply? To what historical era (or eras) should courts look to divine a historical tradition of gun regulation? How many analogues add up to a tradition? Must there be evidence that those analogues were enforced or subject to judicial scrutiny? How much support can nonstatutory sources lend?").

Justice Jackson warned that legislatures are hindered in policymaking by the Court's inability to create "a clear, workable test for assessing the constitutionality of their proposals," and she emphasized that the public equally deserves transparency as to their Second Amendment right.[337]

3. Dissent by Justice Thomas

Justice Thomas was the sole dissenter; he argued that the historical analogue directive from *Bruen* was not met in *Rahimi* and therefore Section 922(g)(8) was not justified.[338] He began by explaining that Section 922(g)(8)'s broad scope and criteria, lack of due process, and severe penalties should have caused the Court to deem the statute unconstitutional.[339] First, he argued that the statute's application occurs without the necessity of a criminal conviction or history of domestic violence, differentiating it from other subsections of Section 922(g).[340] Second, Justice Thomas asserted that the ban is automatic and incontestable, relying solely on the underlying restraining order's process without a separate hearing or opportunity to challenge the firearm prohibition.[341] Third, he noted that the penalties for violating Section 922(g)(8)—a felony with penalties up to fifteen years' imprisonment and a conviction leading to a lifelong ban on firearm possession—are harsh in conjunction with the broadness and lack of due process.[342]

Justice Thomas wrote that Section 922(g)(8) violates the Constitution because it targets the possession of firearms explicitly protected in the text of the Second Amendment and because he believed the Government failed to show a historical law analogous to Section 922(g)(8)'s encumbrance and rationalization.[343] He stated that Section 922(g)(8)'s prohibition of an individual from possessing or receiving firearms or ammunition, even for self-defense, is "irreconcilable" with the Second Amendment.[344] Additionally, Justice Thomas asserted that Rahimi is "a member of the political community," so therefore the Second Amendment applies to him.[345]

Justice Thomas vehemently disagreed with the majority and argued that "the Government [did] not identify even a single regulation with an analogous burden and justification," which was unsurprising given that Section 922(g)(8) addresses a societal problem—the risk of domestic violence—"that has persisted since the 18th century" yet was addressed "through [the] materially different means" of surety laws.[346] According to Justice Thomas, laws targeting "dangerous" persons, historically driven by the need to quash treason and rebellion, were unsuitable historical analogues for Section 922(g)(8), which addresses domestic violence, as these early English laws

337. *Id.* at 1930.

338. *Id.* (Thomas, J., dissenting).

339. *Id.*

340. *Id.*

341. *Id.*

342. *Id.* at 1931 (citing 18 U.S.C. § 924(a)(8)).

343. *Id.* at 1932.

344. *Id.*

345. *Id.* at 1933.

346. *Id.* (alteration in original) (quoting N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2131 (2022)).

aimed to suppress nonconformist religious and political insurrections rather than prevent violence between domestic partners.[347]

Justice Thomas next dismissed the Government's presentation of "historical commentary referring to the right of 'peaceable' citizens to carry arms" because it relied on pre-ratification drafts of amendments rejected by the states, questioning "why or how language *excluded* from the Constitution could operate to limit the language actually ratified."[348] He refused to accept the Government's examples of mid- to late nineteenth-century firearm laws that include the word "peaceable."[349] The phrase "loyal and peaceable" was used to differentiate between former rebels who were disarmed to prevent further rebellion and loyal citizens who would assist in resisting them, with many sources either briefly mentioning the concept or offering personal views on firearms policy.[350]

The Government's examples of regulations such as firearm storage practices, treason, and mental illness were deemed irrelevant by Justice Thomas because he thought they did not impose a "comparable burden" nor a similar punishment to the revocation of one's Second Amendment right in Section 922(g)(8).[351] Additionally, he argued that the Government failed to provide a historical basis for comparing laws on firearm storage practices to Section 922(g)(8) by merely suggesting both target individuals deemed likely to use firearms irresponsibly.[352] Justice Thomas suggested that the prevention of "irresponsible" or "unfit" persons from accessing firearms was too broad, such that it would "eviscerate the general right to publicly carry arms for self-defense."[353]

Justice Thomas found the Government's inability to identify analogous laws "unsurprising" because the surety laws were used at the founding of the nation to "respond[] to the societal problem of interpersonal violence through a less burdensome regime."[354] Treatises and founding-era court records from before and after the Second Amendment's ratification are evidence of the right to demand sureties to prevent domestic violence, which allowed spouses to seek protection against feared future violence.[355] Despite acknowledging that "surety laws shared a common justification with [Section] 922(g)(8)," Justice Thomas differentiated the surety laws because they allowed individuals to retain and acquire firearms, with penalties limited to financial sums in case of a breach of the peace.[356] In contrast, he argued that Section 922(g)(8)

347. *Id.* at 1934–35. See also *supra* notes 14–25 and accompanying text for a discussion of early English laws.

348. *Rahimi*, 144 S. Ct. at 1935–36 (Thomas J., dissenting).

349. *Id.* at 1936.

350. *Id.* at 1936–37.

351. *Id.* at 1937 (using the Government's example of firearm storage laws to show that a law that allowed "a person to keep their other firearms or obtain additional ones" is not analogous to Section 922(g)(8)'s revocation of one's Second Amendment right and stating that "there is surely a distinction between having *no* Second Amendment rights and having *some* Second Amendment rights").

352. *Id.* at 1938.

353. *Id.* (citing N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2134 (2022)).

354. *Id.*

355. *Id.* at 1939.

356. *Id.*

enacts an absolute revocation of one's Second Amendment rights by broadly criminalizing conduct related to firearms and ammunition possession, prohibiting even brief or indirect possession.[357] Justice Thomas insisted that the Court ignored evidence which showed that Section 922(g)(8) is not supported by surety laws and avoided fully comparing the respective burdens, ultimately misinterpreting *Bruen*'s distinction that surety laws imposed less severe restrictions than a public carry ban.[358]

He distinguished affray laws from Section 922(g)(8) because they did not prohibit carrying firearms at home or generally in public—only public carry that terrified the public—and did not address interpersonal violence in the home.[359] Affray laws regulated only specific public conduct with dangerous weapons under certain conditions and imposed a narrow burden on Second Amendment rights, unlike Section 922(g)(8), which broadly bans all firearm possession for covered individuals and is triggered by civil orders aiming to prevent future behavior rather than penalize past actions.[360] Justice Thomas argued that the Court's attempt to combine elements from surety and affray laws to justify Section 922(g)(8) is flawed, as precedent requires identifying a *single* historical law with a comparable burden and justification to the modern regulation, not a composite of multiple laws.[361]

Justice Thomas contended that the Government incorrectly "trie[d] to rewrite the Second Amendment to salvage its case" by arguing that Congress may "disarm anyone who is not 'responsible' and 'law-abiding.'"[362] He described the Government's arguments as all quashed by the text of the Second Amendment: "[T]he people . . . unambiguously refers to all members of the political community" and the "law-abiding, dangerous citizen test . . . has no doctrinal or constitutional mooring."[363] Justice Thomas rejected the Government's law-abiding, dangerous citizen test altogether, citing fears that consequentially Congress would have sole control "to determine who can and cannot exercise their constitutional rights" and the "historical understanding of the Second Amendment right would be irrelevant."[364] He stated that the Court correctly dismissed the Government's approach by requiring modern regulations to be justified by specific historical precedents but must remain cautious of future theories that might replace the clear Second Amendment boundary with imprecise principles subject to the interpretation of the federal majority.[365] Justice Thomas concluded that the Government lacks the authority to revoke the Second

357. *Id.* at 1939–40 (citing court of appeals cases where convictions were upheld for an individual who "picked up . . . three firearms for a few seconds to inspect," an individual who "made direct contact with [a] firearm by sitting on it," and when "ammunition [was] found in a jointly occupied home" (omission in original) (first quoting United States v. Matthews, 520 F.3d 806, 807 (7th Cir. 2008); and then quoting United States v. Johnson, 46 F.4th 1183, 1189 (10th Cir. 2022))).

358. *Id.* at 1941–42.

359. *Id.* at 1942.

360. *Id.* at 1942–43.

361. *Id.* at 1944 (adding to *Bruen*'s analogue analysis that a court must only look to a *single* historical regulation and that "mixing and matching . . . defeats the purpose of a historical inquiry altogether").

362. *Id.*

363. *Id.* at 1944–45 (internal quotation marks omitted) (quoting District of Columbia v. Heller, 554 U.S. 570, 580 (2008)).

364. *Id.* at 1945–46.

365. *Id.* at 1946.

Amendment rights of individuals who have neither been accused nor convicted of a crime through DVPOs due to absence of historical precedent for such measures.[366] Finally, he emphasized his belief that the *Rahimi* majority decision jeopardizes the Second Amendment rights of numerous individuals.[367]

III. DISCUSSION

As evidenced by modern law and supported by our nation's history, dispossessing abusive individuals like Zackey Rahimi of firearms is not a Second Amendment issue.[368] The Supreme Court's majority opinion and concurrences in *Rahimi* support the overwhelming view of American gun owners, non-gun owners, Democrats, and Republicans alike: Individuals subject to DVPOs should be prohibited from having a gun "for the duration of the order."[369]

Although the *Bruen* analysis constrains the flexibility of courts to interpret modern, evidence-based gun control measures that address current societal conditions,[370] the Second Amendment was not intended to "suggest a law trapped in amber."[371] Even under the limited holding in *Rahimi*, addressing only Section 922(g)(8)(C)(i), state legislatures retain the ability to create meaningful laws prohibiting firearm possession by individuals under restraining orders for domestic violence violations.[372] The *Rahimi* decision emphasizes the ability of legislators to encourage the enactment of laws that remove firearms from individuals legally prohibited from having them due to a judicial finding of "a credible threat to the physical safety" of another.[373]

Although the federal government has made strides in protecting victims of domestic violence from firearms since its passage of the Lautenberg Amendment, "all [federal statutes] contain one substantial omission—none . . . include a provision specifying how the law is to be enforced."[374] Without "detail[ed] enforcement

366. *Id.* at 1947.

367. *Id.*

368. *See, e.g.*, 18 U.S.C. § 922(g)(8)(B) (prohibiting a person who has been "subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child" from possessing a firearm); § 922(g)(4) (prohibiting an individual who has "been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older" from possessing a firearm).

369. Ctr. for Gun Violence Sols., *ERPOs*, *supra* note 106 (citing a 2023 study that recorded 79.2% of American gun owners, 81.7% of non-gun owners, 88.8% of Democrats, and 76.5% of Republicans supporting "temporarily removing guns during a domestic violence protection order").

370. *Rahimi*, 144 S. Ct. at 1929 n.3 (Jackson, J., concurring) ("[*Bruen*'s historical analysis] also suggests that only those solutions that States implemented in the distant past comport with the Constitution. That premise is questionable because, given the breadth of some of the Constitution's provisions, it is likely that the Founders understood that new solutions would be needed over time, even for traditional problems, and that the principles they were adopting would allow for such flexibility.").

371. *Id.* at 1897 (majority opinion).

372. *See id.* at 1906 (Sotomayor, J., concurring).

373. *See id.* at 1908 (Gorsuch, J., concurring) (quoting 18 U.S.C. § 922(g)(8)(A), (C)(i)).

374. Natalie Nanasi, *Disarming Domestic Abusers*, 14 HARV. L. & POL'Y REV. 559, 569 (2020) (referencing the GCA and the VAWA).

mechanisms or outline[d] . . . procedure for relinquishing or seizing firearms from prohibited possessors," the threat of intimate partner violence and firearm-related homicide lingers after a DVPO is instituted.[375] It is imperative that legislative remedies for firearm removal are enacted to guarantee more than a paper order as protection for victims of domestic violence.

Even with Section 922(g)(8) still intact after *Rahimi* for the time being,[376] there is a gap between a court's judicial determination under Section 922(g)(8)(C)(i) that an individual poses a "credible threat" and actual relinquishment or removal of firearms.[377] Existing relinquishment and removal statutes depend on individuals in the state system—legislators, judges, and law enforcement officers—being invested in ensuring deprivation.[378] In the case of Zackey Rahimi, even after a court determined that he was a credible threat to his intimate partner, her family, and their child,[379] Rahimi maintained possession of his firearms and ammunition, allowing him to threaten another women with a gun and engage in five shootings within a mere six weeks.[380] If the issuing judge of the DVPO had also ordered the removal of firearms at the point of a judicial determination that Rahimi was a credible threat to the safety of others, this single step could have prevented numerous shootings, thereby conserving law enforcement and judicial resources.

A DVPO mandating that a defendant surrender their firearms is not alone sufficient to protect victims. Once a judge makes a judicial determination that an individual is a credible threat to others, it should trigger an imperative process for courts to coordinate the actual relinquishment or removal of all firearms and confirm confiscation from the hands of abusers for the duration of the DVPO to which they are subjected.

While the following policy proposal does not detail all aspects for consideration in creating a model law ready for implementation, it serves as a framework for effective, much needed policy to protect victims of domestic violence from firearm-wielding abusers. Part III.A details a comparative analysis between the most stringent Second Amendment state, California, and the jurisdiction where Rahimi was issued a DVPO, Texas. Part III.B.1 proposes components of a model law that would be crucial in a comprehensive statute for state legislatures to adopt. Finally, Part III.B.2 compares the components of the model law to the burden and duration of historical surety laws to demonstrate their constitutionality.

375. *Id.*

376. Because Rahimi only facially challenged Section 922(g)(8)'s constitutionality, the law may still be found unconstitutional when applied in "particular circumstances." *See Rahimi*, 144 S. Ct. at 1909 (Gorsuch, J., concurring).

377. *See id.*

378. Nanasi, *supra* note 374, at 596–97.

379. *Rahimi*, 144 S. Ct. at 1895.

380. *See id.*

A. Comparative Analysis with Other Jurisdictions

To better understand the discrepancies in current state relinquishment and removal laws, this Part compares a state with one of the highest removal protections, California, to a state with far lower removal protections, Texas, home of Zackey Rahimi.

1. California: A State of Protective Gun Laws

For 2025, California was ranked to have the strongest gun safety laws in the United States.[381] In California, persons subject to both ex parte temporary and final DVPOs are prohibited from possessing and purchasing firearms.[382] Spouses, former spouses, cohabitants, former cohabitants, dating partners, a child of a party, or any other related person "by consanguinity or affinity within the second degree" may petition California courts for a protective order.[383] Part of the California DVPO process includes a criminal history search to investigate whether an individual

> has a prior criminal conviction for a violent . . . or a serious felony . . . ; has a misdemeanor conviction involving domestic violence, weapons, or other violence; has an outstanding warrant; is currently on parole or probation; has a registered firearm; or has a prior restraining order or a violation of a prior restraining order.[384]

Once a California court issues a DVPO, even without a "credible threat" determination, the court is *required* to order relinquishment of "any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control."[385] Additionally, the DVPO prohibits the individual subject to the order "from possessing or controlling a firearm or ammunition for the duration of the order."[386] The order itself must state "that the firearm or ammunition shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order."[387] California law specifies that firearms must be relinquished "immediately . . . , upon request of a law enforcement officer," or "within 24 hours of being served with the order . . . to the control of local law enforcement officials, or by selling, transferring, or

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381. Everytown Rsch. & Pol'y, *Gun Laws in California*, EVERYTOWN FOR GUN SAFETY SUPPORT FUND, https://everytownresearch.org/rankings/state/california/ [https://perma.cc/SP2W-G6F8] (Jan. 15, 2025).

382. CAL. FAM. CODE §§ 6218, 6389 (West 2024).

383. *Id.* §§ 6211, 6220, 6300. This is different from states which only allow for current or former spouses to petition for DVPOs. *See Protection Orders and Firearm Removal Policies*, DISARM DOMESTIC VIOLENCE, https://www.disarmdv.org/protection-orders-and-firearm-removal-policies/ [https://perma.cc/F6X2-8PSX] (last visited Mar. 20, 2025) (providing a comparison of state firearm regulations filtered by relationship).

384. FAM. § 6306.

385. *Id.* § 6389(c)(1).

386. *Id.* § 6389(g).

387. *Id.* § 6389(f). This is different from states that allow relinquishment of a firearm to a family member for the duration of the order, which often fails to actually remove the firearm from the immediate possession or control of the individual subject to the order. *See, e.g.*, IOWA CODE ANN. § 724.26(4) (West 2024); TENN. CODE ANN. § 39-13-111(c)(6) (West 2024); MINN. STAT. ANN. § 609.2242 (West 2024).

relinquishing for storage . . . to a licensed gun dealer."[388] Upon surrender, the "law enforcement officer or licensed gun dealer taking possession of the firearm or ammunition . . . [must] issue a receipt to the person relinquishing the firearm or ammunition."[389] Failure to comply with the prescribed procedures for surrendering the firearm may result in the issuance of a search warrant authorizing law enforcement to locate and confiscate the firearm(s).[390] It is then the responsibility of the subjected person to file the receipt confirming surrender with the court,[391] and "with the law enforcement agency that served the protective order."[392] Failure to file the receipt to either or both places within forty-eight hours "constitute[s] a violation of the protective order."[393]

If an individual subject to a DVPO retains, possesses, purchases, receives, or attempts to purchase or receive a firearm, they will be "guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both."[394] Upon completion of a DVPO, "the local law enforcement agency shall return possession of the surrendered firearm or ammunition to the respondent, within five days after the expiration."[395] Comprehensive removal laws, like those in California, lower the rate of gun violence in domestic violence situations.[396]

2. Texas: A State Allowing Guns To Slip Through the Cracks of DVPOs

The exacting California relinquishment laws provide protections that are in stark contrast with the Texas laws Zackey Rahimi was subject to. In 2024, Texas was ranked number thirty-two in the country for gun law strength.[397] In Texas, a person subject to either an ex parte or final protective order for family violence[398] is prohibited from

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388. FAM. § 6389(c)(2).

389. *Id.*

390. CAL. PENAL CODE § 1524(a)(11) (West 2024).

391. FAM. § 6389(c)(2)(A).

392. *Id.* § 6389(c)(2)(B).

393. *Id.* § 6389(c)(2)(A), (B).

394. *Id.* § 6389(m); PENAL § 29825(a).

395. FAM. § 6389(g) (noting that local law enforcement will not return the firearm if it is determined that "the firearm or ammunition has been stolen," the person is prohibited from possession by another section of the Penal Code, or "another successive restraining order is issued against the respondent").

396. Everytown Rsch. & Pol'y, *Gun Safety Policies Save Lives*, EVERYTOWN FOR GUN SAFETY SUPPORT FUND, https://everytownresearch.org/rankings/ [https://perma.cc/JR5D-TKC9] (Jan. 15, 2025).

397. Everytown Rsch. & Pol'y, *Gun Laws in Texas*, EVERYTOWN FOR GUN SAFETY SUPPORT FUND, https://everytownresearch.org/rankings/state/texas/ [https://perma.cc/R9SS-U542] (Jan. 15, 2025).

398. TEX. FAM. CODE ANN. § 71.004 (West 2023).

"Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse . . . ; or

(3) dating violence . . . .

Id.

possessing firearms for the duration of the order if the respondent has received notice of the order.[399] Additionally, with the issuance of any protective order, Texas courts will "suspend a [defendant's] license to carry a handgun."[400] Conspicuously different from California gun laws, Texas law does *not* require persons subject to DVPOs to have their firearms removed by judges.[401] The decision to "order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence" is left to the issuing judge of a final DVPO to create and order.[402]

B. Proposed Model Law Components for State Adoption

"Although violation of [Section 922(g)(8)(C)(i)] is a federal crime, [the provision's] central underlying predicates, a protection order or a misdemeanor conviction, are most likely to be based on state law, and . . . handled in state courts,"[403] warranting state-level legislative action rather than federal action. Section 922(g)(8)'s effectiveness is undermined when courts fail to implement procedures to enforce firearm surrender. Without proper disarmament measures, victims remain at heightened risk of violence, despite the legal prohibition on firearm possession. This gap can be greatly narrowed by establishing a model firearm removal law ("Proposed Model Law"),[404] directing courts to coordinate the timely and secure surrender of firearms in cases where an individual is deemed a "credible threat." Additionally, this approach ensures that individuals who should not have guns are disarmed while upholding their due process protections.

The proposed components of an ideal removal law aim to close loopholes in final DVPOs by mandating the immediate surrender of firearms from individuals deemed credible threats, including intimate partners and certain relatives. Notably, it establishes clear timelines for surrender, coordination with law enforcement, and penalties for noncompliance, ensuring that firearms are securely relinquished to protect victims. Overall, the Proposed Model Law would strengthen public safety by reducing

399. *Id.* § 46.04(c).

400. *Id.* § 85.022(d).

401. *Id.* § 85.022(b)(6) ("In a protective order, the court *may* prohibit the person found to have committed family violence from . . . possessing a firearm, unless the person is a peace officer . . . ." (emphasis added)).

402. Additionally, an issuing judge in Texas may order a defendant to "complete a[n accredited] battering intervention and prevention program," "complete a program or counsel with a provider that has begun the accreditation process," or receive "counsel[ing] with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor who has completed family violence intervention training that the community justice assistance division of the Texas Department of Criminal Justice has approved." *Id.* § 85.022(a)(1)–(3).

403. Nanasi, *supra* note 374, at 576 (quoting Emily J. Sack, *Confronting the Issue of Gun Seizure in Domestic Violence Cases*, 6 J. CTR. FOR FAMS., CHILD. & CTS. 3, 7–8 (2005)).

404. In the context of this Comment, "model laws" would be developed by an informed group such as the American Law Institute, whose purpose is "to clarify, modernize, or otherwise improve the law to promote the better administration of justice" through "publish[ing] Restatements of the Law, Principles of the Law, and Model Codes." *Frequently Asked Questions: What Is the American Law Institute?*, AM. L. INST., https://www.ali.org/faq [https://perma.cc/RUT6-6SCH] (last visited Feb. 25, 2025).

firearm-related violence in domestic abuse cases and enhancing enforcement consistency across states.

As an incentive, states should enact comprehensive laws with the critical components outlined below and take advantage of existing funding opportunities. For example, in September 2024, the Justice Department announced "over $690 million in grant funding administered by the Office on Violence Against Women."[405] Specifically, states could apply to receive the over $24 million designated to help communities improve their criminal justice responses "to bring together effective partners from the local government, law enforcement agencies, prosecutors' offices and courts, nonprofit organizations, and population-specific organizations to address [domestic violence] crimes."[406]

1. Critical Components of the Proposed Model Law for the Relinquishment or Removal of Firearms from Final DVPOs

"Federal law only prohibits DVPO respondents who are current or former spouses and dating partners who have cohabitated or have children with the victim from accessing firearms."[407] This should be expanded to parallel California's law, which allows dating partners (regardless of cohabitation or offspring), a child of a party, or any other related person "by consanguinity or affinity within the second degree" to be able to petition for a DVPO.[408]

After an opportunity for both parties' evidence and testimony to be heard[409] and a judicial finding that an individual subject to a domestic violence restraining order poses a credible threat to the safety of the victim,[410] the court should issue an immediate firearm removal order. This order would mandate the individual to surrender all firearms in their possession, custody, or control, regardless of ownership.

Then, the individual deemed a credible threat must comply with the firearm surrender order within twenty-four hours of the issuance.[411] Law enforcement or a licensed firearms dealer must provide a receipt upon successful surrender,[412] which the individual must submit to the court as proof of compliance within forty-eight hours.[413] The court should maintain records of all firearm-surrender orders and compliance to ensure accountability and effectiveness in reducing domestic violence risks.

The court should coordinate with local or federal law enforcement agencies and licensed firearms dealers to facilitate the safe surrender of firearms. The court would be tasked with notifying the individual of their obligation to surrender firearms and law

405. Press Release, U.S. Dep't of Just., Justice Department Announces More Than $690 Million in Violence Against Women Act Funding (Oct. 2, 2024), https://www.justice.gov/opa/pr/justice-department-announces-more-690-million-violence-against-women-act-funding [https://perma.cc/KNB3-8ZA4].

406. *Id.*

407. *Protection Orders and Firearm Removal Policies*, *supra* note 383.

408. CAL. FAM. CODE §§ 6300, 6220, 6211 (West 2024).

409. 18 U.S.C. § 922(g)(8)(A).

410. *Id.* § 922(g)(8)(B).

411. *See* FAM. § 6389(c)(2).

412. *See id.*

413. *See id.* § 6389(c)(2)(A).

enforcement should oversee the process, including securing firearms from the individual's residence or other locations if necessary.

Firearms surrendered under the components of the Proposed Model Law would be held by law enforcement or a court-approved third-party storage facility.[414] Firearms should not be transferred or returned to a family member of the individual during the period of surrender because of the difficulty to certify that they will remain out of the possession or control of the individual subjected to the final DVPO. The return of firearms should only occur after the expiration of the final DVPO.

Individuals who fail to comply with the firearm-surrender order within the required timeframe should face penalties, including contempt of court charges, fines, and additional criminal penalties as allowed by federal and state laws.[415] Law enforcement should also have the authority to seize firearms under an emergency warrant if the individual refuses or fails to comply.

2. Constitutionality

Like historical surety laws requiring individuals to post bond as a pledge to "keep the peace" or behave well,[416] the Proposed Model Law components are limited in duration, provide procedural safeguards, are not unduly burdensome, focus on the safety of the public, and maintain reasonable penalties for noncompliance.

The Proposed Model Law provisions only mandate the surrender of firearms for the duration of the DVPO. Once the order expires, the individual is entitled to regain possession of their firearms if they are not subject to additional prohibitions. This is in line with the Court's holding in *Rahimi* that a judicial determination that an individual is a credible threat warrants their temporary disarmament, "consistent with the Second Amendment."[417]

Both surety laws and the Proposed Model Law components provide the accused with procedural due process notice and an opportunity to be heard.[418] Requiring a judicial determination that an individual is a credible threat to another person's physical safety serves as a safeguard that gun removal is not arbitrary and is only applied in situations where there is a substantiated risk that another individual or individuals will be harmed.[419] The procedural protections embedded in these laws help preserve the fundamental Second Amendment right while addressing the urgent need to prevent potential harm.

Like surety laws, the Proposed Model Law aims to mitigate risks while avoiding being overly punitive or burdensome to the individual whose Second Amendment rights are temporarily revoked. The requirements of surety bonds and the model gun removal law are clear, time-limited, and involve reasonable steps—like providing proof of compliance—ensuring the law does not permanently deprive individuals of their property rights or subject them to disproportionate penalties.

414. *See id.* § 6389(c)(2).

415. *See id.* § 6389(m); CAL. PENAL CODE § 29825(a) (West 2024).

416. United States v. Rahimi, 144 S. Ct. 1889, 1900 (2024).

417. *Id.* at 1903.

418. *See id.* at 1896.

419. *See* 18 U.S.C. § 922(g)(8)(C)(i).

The above outlined Proposed Model Law provisions also would likely effectively reduce the burden on judges and law enforcement from dealing with repeat domestic violence offenders and ongoing threats to the same victims. Surety laws and the model gun removal law both focus on preventing future harm by requiring individuals proven to be a credible threat to surrender firearms as a precautionary measure.[420] Both laws use a preventive approach rather than punitive measures, aiming to protect public safety while balancing individual rights. In the case of the Proposed Model Law components, the firearm surrender requirement is temporary, tied to the duration of a DVPO, and ceases once the conditions of the order are met or it expires. This should allow the firearm to be removed when the defendant is most likely to retaliate or threaten public safety. Similarly, surety laws require individuals to post bond or take specific action for a defined period to ensure compliance with legal obligations.

Surety laws include penalties for noncompliance such as bond forfeiture or jail, which parallel the Proposed Model Law components.[421] Striking a similar balance, fining violators or imposing other criminal penalties for failing to surrender firearms within the designated timeframe under the Proposed Model Law reinforces the seriousness of the order and encourages timely compliance. The legal consequences for failing to adhere to the model law requirements would strengthen the deterrent effect while maintaining a focus on promoting compliance rather than punishment.

IV. CONCLUSION

To ensure that protections from firearms are afforded to those who need it most in the wake of the increasing number of guns in the hands of Americans, a model law, which states can be incentivized to adopt by federal funding opportunities, is needed to enact firearm removal laws that actually work. When a judge determines that an individual is a credible threat and a DVPO is issued, immediate processes should be triggered to remove firearms from their possession to greatly enhance the safety of victims. By coordinating judicial processes with law enforcement and establishing strict timelines for relinquishment and removal, this proposal strengthens the protective intent of Section 922(g)(8) and helps safeguard victims of domestic violence from potential harm. Like historical surety laws, the Proposed Model Law provisions presented strike a balance between protecting the public and preserving individual rights by imposing limited, time-bound restrictions that are tied to specific legal determinations, are enforceable through procedural mechanisms, and are not unduly burdensome. Adoption of such provisions would assist the fight to keep firearms out of the hands of individuals who commit domestic violence to avoid future cases comparable to *Rahimi*.

420. *See* Cornell, *The Long Arc*, *supra* note 20, at 2555.

421. *See Rahimi*, 144 S. Ct. at 1900.