No. 22-915

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ZACKEY RAHIMI,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF GUN VIOLENCE AND DOMESTIC VIOLENCE PREVENTION GROUPS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

INTEREST OF *AMICI CURIAE*[1]

Amici curiae, listed in the Appendix, are nonpartisan, nonprofit organizations dedicated to ending gun violence and domestic violence through education, research, and advocacy. This Court has recognized the devastating risks firearms pose when possessed by perpetrators of domestic violence. "[T]he presence of a firearm increases the likelihood that [domestic violence] will escalate to homicide." *United States v. Castleman*, 572 U.S. 157, 160 (2014). Recent research has also confirmed the substantial risk to the public from armed domestic abusers. *Amici* have a substantial interest in ensuring that the Constitution is construed to allow democratically elected officials to address the Nation's interconnected gun and domestic violence crises, and to safeguard the interest of everyone in America in living safe and secure lives in their homes and communities. The health and safety—indeed, the lives—of thousands of people depend on keeping guns out of the hands of dangerous individuals, especially domestic abusers.

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[1] Pursuant to Supreme Court Rule 37, *amici* state that no counsel for any party authored this brief in whole or in part, and that no entity or person other than *amici* and their counsel made any monetary contribution toward the preparation and submission of this brief. *Amici* timely notified all parties of their intent to file this brief.

SUMMARY OF THE ARGUMENT

The United States has a deeply rooted tradition of disarming individuals who pose a danger to others or to the community at large. *Amici* thus agree with petitioner that history and tradition support the constitutionality of laws that disarm dangerous persons. Pet. 7-10. *Amici* also agree that 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to a domestic-violence restraining order, falls directly within that tradition and thus is valid under *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). Pet. 11-13. The Fifth Circuit's invalidation of Section 922(g)(8) warrants review for that reason alone.

Amici submit that certiorari is particularly warranted here for two additional reasons. First, not only is the Fifth Circuit's invalidation of Section 922(g)(8) deeply flawed; it is symptomatic of wider disagreement over *Bruen*'s methodology. This Court's intervention is necessary to confirm that *Bruen*'s analogical approach is not a "regulatory straightjacket," 142 S. Ct. at 2133, and that it permits disarming dangerous individuals through laws like Section 922(g)(8). Second, this case presents an especially compelling example of why legislatures have historically passed, and why this Court should sustain, laws that disarm dangerous individuals. For thousands of women, children, and other potential victims of domestic violence, as well as potential other victims of mass shootings by domestic abusers, the stakes are literally life or death.

I. This Court's review is necessary to correct the Fifth Circuit's erroneous interpretation of *Bruen* and

to dispel confusion in the lower courts over how to apply *Bruen*'s historical-analogical test.

A. In *Bruen*, this Court articulated the Second Amendment framework for reviewing restrictions on the possession and carrying of firearms. Under *Bruen*, the government may justify a modern restriction by showing that it is "relevantly similar" to historical regulations. "[A]nalogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*." *Bruen*, 142 S. Ct. at 2133.

In holding that Section 922(g)(8) violates the Second Amendment on its face, the Fifth Circuit committed two analytical errors in applying *Bruen*'s principles.

1. First, the Fifth Circuit applied an excessively restrictive approach to assessing whether Section 922(g)(8) is analogous to historical regulations. The court parsed each historical firearms regulation with an eye to distinguishing it, effectively requiring a "historical twin" to Section 922(g)(8). The court thus missed the broader principle that emerges from multiple lines of historical firearms regulation: jurisdictions have historically—and can today—disarm dangerous people, including persons subject to domestic-violence restraining orders.

2. Second, the Fifth Circuit failed to appreciate the significance of modern efforts to grapple with domestic violence. *Bruen* stated that regulations addressing "unprecedented societal concern[s]" require a "nuanced" analysis of historical firearms regulations. 142 S. Ct. at 2132. Only in the past 50 years

have governments begun to adopt measures to address the distinctive and heightened risks of intimate-partner violence. This emerging recognition should play a role in evaluating historical analogies, and it makes the Fifth Circuit's narrow approach all the more erroneous.

B. The Fifth Circuit is not alone in struggling to interpret *Bruen*. Other lower courts are similarly grappling with its historical test, with several courts taking unduly narrow approaches. This Court's review is necessary to confirm that the proper approach to reviewing Second Amendment challenges permits governments to rely on historical traditions of the past to disarm dangerous individuals today.

II. This Court's review is also necessary to ensure that federal, state, and local governments can reduce the threat of lethal violence by prohibiting domestic abusers from possessing firearms while subject to protection orders.

A. Domestic violence is pervasive, deadly, and inextricably linked with firearms in the United States. More than one-third of women in the United States report experiencing domestic violence in their lifetime. And domestic-violence offenders regularly use guns to kill or terrorize their intimate partners: every month, on average, 70 women are shot and killed by an intimate partner. Domestic abusers also use guns to wound, threaten, intimidate, and terrorize victims. Children are not spared: up to 20% of violent deaths of intimate partners also involve deaths of children or other family members. And the risks of violence extend to the public and law enforcement officers. In most recent mass shootings, the perpetrator either

had a history of domestic violence or killed at least one partner or family member during the shooting. And for law enforcement officers, responding to domestic violence calls accounts for the highest number of service-related fatalities.

B. In enacting Section 922(g)(8), Congress recognized the gravity of the threat posed by domestic abusers with access to firearms. States have equally recognized the importance of this issue; at least thirty-one states have criminal prohibitions on firearm possession by persons subject to domestic violence restraining orders. These regulations are effective. They are associated with a 13% reduction in intimate-partner firearm homicides statewide, and an even greater 25% reduction in cities within these states.

States have taken a variety of steps to address the dangers of firearms in the domestic-violence context, including enacting regulations that go beyond federal law. Twenty-four states, for example, have extended their laws beyond Section 922(g)(8) to reach dating partners, and twelve states' prohibitions include temporary restraining orders—both of which have proven even more effective than the baseline federal prohibition. Many states also require domestic abusers to relinquish their firearms in connection with protection orders. Others rely on extreme risk protection order ("red flag") laws to disarm persons determined to pose a danger of using firearms to harm others. The Fifth Circuit's decision raises unjustified constitutional questions not only about Section 922(g)(8), but also

about the array of measures that states have successfully used to reduce the threat of firearms-related domestic violence.

For all of these reasons, this Court should grant certiorari and reverse the Fifth Circuit's erroneous decision.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THAT *BRUEN*'S HISTORICAL METHODOLOGY IS NOT A REGULATORY STRAIGHTJACKET

The Court's review is warranted to clarify interpretive questions that *Bruen* has produced and to confirm that the appropriate historical methodology for resolving Second Amendment claims allows laws like Section 922(g)(8).

A. *Bruen* Adopted An Analogical Approach That Permits Regulation of Dangerous Persons' Access To Firearms

In *Bruen*, the Court announced a new historical-analogical test for reviewing restrictions on the possession and carrying of firearms. Under *Bruen*, a challenger must first establish that a restriction implicates conduct protected by the Second Amendment's plain text. 142 S. Ct. at 2129-30. If the challenger meets that burden, the government must justify the modern restriction by showing how it is "relevantly similar" to historical analogues. Two "metrics" the Court identified for establishing that a law is "relevantly similar" to historical laws involve showing how the modern restriction "impose[s] a comparable burden on the right of armed self-defense and . . . is comparably justified." *Id.* at 2133.

Bruen was explicit that, under this framework, "analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*," so "even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Id.* The Court also recognized that "regulatory challenges posed by firearms today are not always the same as" historical concerns, and such "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *Id.* at 2132.

Properly applied, *Bruen* does not preclude disarming persons subject to domestic-violence restraining orders. In this case, the Fifth Circuit erred in reaching the opposite conclusion, and its invalidation of Section 922(g)(8) is the result of two key analytical errors. First, the Fifth Circuit analyzed each of the government's proffered historical regulations individually with an eye to distinguishing them, thus missing the broader principle that jurisdictions have historically disarmed dangerous people.[2] Second, the Fifth Circuit failed to appreciate that the government's historical refusal to intervene in intimate-

[2] Historical judgments about what constitutes a threat have changed over time. Nevertheless, the point remains that these historical examples establish a tradition accepted by earlier generations. *See United States v. Rowson*, 2023 WL 431037, at *22 (S.D.N.Y. Jan. 26, 2023) ("It goes without saying that, in our modern era, a law that would disarm a group based on race, nationality, or political point of view—or on the assumption that these characteristics bespoke heightened dangerousness—would be anathema, and clearly unconstitutional. But the Second Amendment's inquiry into historical analogues is not a normative one.").

partner violence means that Section 922(g)(8) reflects an "unprecedented societal concern" and, under *Bruen*, requires a "more nuanced" analysis. *Bruen*, 142 S. Ct. at 2132.

1. In its briefing before the Fifth Circuit, the government demonstrated that myriad historical laws disarmed people considered "dangerous." *See* Pet. App. 17a-26a. But the Fifth Circuit rejected the government's argument that these historical laws were "relevantly similar" to Section 922(g)(8) such that they could properly serve as historical analogues. *Id.* at 27a. This was error.

The Fifth Circuit arrived at this incorrect holding by applying *Bruen* unduly narrowly. Rather than acknowledging that the government's proffered historical examples revealed a clear principle permitting disarming individuals considered dangerous, the Fifth Circuit evaluated each of the government's historical analogues individually and granularly, parsing and rejecting each for not operating exactly like Section 922(g)(8). For instance, the court rejected as insufficiently analogous colonial laws disarming groups of people considered to be dangerous because the court found that the purpose of those laws was "not the protection of an identified person from the threat of 'domestic gun abuse.'" Pet. App. 20a. This analysis applies analogical reasoning like a "regulatory straightjacket," requiring an historical "*twin*" to the challenged provision—exactly the opposite of *Bruen*'s guidance. *Bruen*, 142 S. Ct. at 2133.

2. The Fifth Circuit's incorrect analysis also flows from an additional methodological flaw: the failure to recognize that domestic violence reflects an "unprece-

dented societal concern" prompting modern regulatory efforts and thus warrants a more "nuanced" historical analysis. *Id.* at 2132.

Through the founding era, governments did not recognize, much less intervene directly in, intimate-partner violence because of Anglo-American common law's treatment of domestic relations: a husband had a legal right to subject his wife to physical violence—what was called "chastisement"—if she defied his authority. *See* 1 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 442-45 (1765) ("[T]he law thought it reasonable to entrust [the husband] with this power of restraining [the wife], by domestic chastisement, in the same moderation that a man is allowed to correct his servants or children . . . and the courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehavior."). Societal views of violence in marital and other personal contexts have changed significantly in the intervening centuries.

Those changes in societal views were followed by legal changes, but it was not until the late twentieth century that the governmental response to domestic abuse began to assume its modern form, including the enactment of state and federal legislation to protect victims and survivors of domestic violence (*e.g.*, the Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1796 (1994)). *See* Reva B. Siegel, *The Rule of Love: Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2170-71 (1996) (describing the shift in the government's approach to domestic violence in the late 1970s); Emily J. Sack, *Battered Women & the State: The Struggle for the Future of Domestic Violence Policy*, 2004 Wis. L. Rev. 1657, 1662 (2004)

("This policy of [state] toleration of [domestic violence] continued up through the 1970s, and wife-beating was considered a private matter between husband and wife in which the state should not intrude."). Given the relatively recent societal recognition of intimate-partner violence as a threat to individual and public safety, regulations like Section 922(g)(8) reflect an "unprecedented societal concern" and would have been "unimaginable at the founding." *Bruen*, 142 S. Ct. at 2132.

In all contexts under *Bruen*, historical analogies need not be historical twins, but the social shift that animates Section 922(g)(8) requires a particularly "nuanced approach" that recognizes that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* The Fifth Circuit rejected historical laws disarming dangerous people as not "relevantly similar" to Section 922(g)(8) because, it stated, the purpose of the historical laws "was ostensibly the preservation of political and social order, not the protection of an identified person from the threat of 'domestic gun abuse.'" Pet. App. 20a. That demand for identical purposes is fundamentally wrong. In light of its purpose to address a societal problem not recognized until recently, Section 922(g)(8) protects a relevantly similar "political and social order"—now understood as one "in which women as well as men are entitled to the equal protection of the civil and criminal law." Joseph Blocher & Reva B. Siegel, *Guided by History: Protecting the Public Sphere From Weapons Threats Under* Bruen, 98 N.Y.U. L. Rev. (forthcoming 2023) (manuscript at 26).

B. The Fifth Circuit's Erroneous Approach Reflects A Broader Problem That Merits This Court's Review

The court of appeals' error in applying *Bruen* particularly merits review because lower courts have taken inconsistent approaches to *Bruen*'s call to look to historical analogies.

Some courts have correctly hewed to *Bruen*'s recognition that analogical reasoning is not a straightjacket and have relied on analogues that demonstrate an overarching tradition of regulation. For example, in *Fried v. Garland*, the Northern District of Florida found that historical laws keeping arms from "those whose status or behavior would make it dangerous for them to possess firearms" were sufficiently analogous to a modern regulation prohibiting possession by unlawful users of controlled substances. 2022 WL 16731233, at *1, *5-8 (N.D. Fla. Nov. 4, 2022). It reasoned that the modern regulation and historical analogues shared similar concerns about keeping guns "from those in whose hands they could be dangerous," and rejected the challenger's argument that the government had to proffer a more exact analogy as "demand[ing] too much specificity in the historical tradition." *Id.* at *6-8; *see also United States v. Kelly*, 2022 WL 17336578, at *5 (M.D. Tenn. Nov. 16, 2022) (holding that historical evidence showing a common law tradition of disarming certain classes of individuals for not being "'peaceable' and/or 'law abiding'" is sufficiently analogous to a modern regulation precluding the shipping or receiving of arms by individuals under felony indictments because both address "the same general inquiry").

But other courts, like the Fifth Circuit in this case, have taken an exceedingly narrow view, requiring evidence of a nearly exact historical analogue. For example, in *United States v. Perez-Gallan*, the Western District of Texas struck down Section 922(g)(8) because the court found that all of the government's proffered analogues slightly differed from the modern regulation disarming domestic abusers subject to restraining orders. *See* 2022 WL 16858516, at *8-12 (W.D. Tex. Nov. 10, 2022). It distinguished historical surety laws by noting that those laws applied only to "public mischief" and not to "private vices (like spousal disputes)" and contained different "procedural safeguards" than Section 922(g)(8), *id.* at *9-10, and distinguished a variety of historical laws disarming "dangerous persons" as applying only to individuals who threatened state security rather than other private individuals. *Id.* at *10-11. The Western District of Oklahoma took a similarly strict approach, holding that Section 922(g)(3), which prohibits firearm possession by unlawful drug users, was not sufficiently similar to historical laws restricting gun use or access by actively intoxicated individuals in part because the historical laws were aimed at preserving "the ability of the colonists to defend against Indian attacks" rather than mitigating general concerns about the dangers of intoxicated individuals using firearms. *United States v. Harrison*, 2023 WL 1771138, at *8 (W.D. Okla. Feb. 3, 2023), *appeal filed*, No. 23-6028 (10th Cir. Mar. 3, 2023).

Courts are also evaluating how exactly to identify "this Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2126. For example, some courts have concluded that identifying a few instances of relevantly similar historical analogues is enough to

justify a modern regulation. *See Fried*, 2022 WL 16731233, at *5-8 (finding two historical analogues sufficient to deem a modern regulation constitutional). But others have found that numerous instances of states adopting an analogue are insufficient to demonstrate a clear historical pattern. *See Hardaway v. Nigrelli*, 2022 WL 16646220, at *15-16 (W.D.N.Y. Nov. 3, 2022) (concluding that four states and two U.S. territories banning guns from churches did not constitute a sufficiently "enduring American tradition" of prohibiting firearms in places of worship).

The timing of historical analogues has also produced different approaches. Noting that "not all history is created equal," *Bruen* advised that "[h]istorical evidence that long predates" the passage of the Second and Fourteenth Amendments may not be illuminating when reasoning by analogy, but also stated that post-enactment history should not be given "more weight than it can rightly bear." 142 S. Ct. at 2136. Lower courts have interpreted this guidance in inconsistent ways. In *Firearms Policy Coalition v. McCraw*, the Northern District of Texas found that a pattern of more than twenty states enacting laws in the mid-nineteenth century restricting gun access for individuals under 21 was insufficient to demonstrate an enduring historical tradition of age-based regulations because these laws were too modern. 2022 WL 3656996, at *11 (N.D. Tex. Aug. 25, 2022). But in *National Rifle Association v. Bondi*, 61 F.4th 1317 (11th Cir. 2023), *pet'n for rh'g en banc filed* (Mar. 30, 2023), the Eleventh Circuit upheld a Florida law restricting firearm purchases by individuals under 21 in light of those same nineteenth-century laws. *See id.* at 1323; *see also Nat'l Ass'n for Gun Rights, Inc., v. City of San*

Jose, 2022 WL 3083715, at *11-12 (N.D. Cal. Aug. 3, 2022) (accepting several mid-nineteenth century state surety laws as sufficient evidence that the challenged regulation imposing an insurance requirement and fees to support gun-harm reduction programs was "consistent with the Nation's historical traditions").

As is evident, the substantive variations that have emerged among the district courts in their efforts to apply *Bruen* are significant. Only this Court can provide the necessary guidance to clarify the proper methodology for resolving Second Amendment challenges.

II. THIS CASE PROVIDES A COMPELLING CONTEXT FOR REVIEW BECAUSE OF THE CRITICAL DANGERS POSED BY ARMED DOMESTIC ABUSERS

Review is especially warranted because of the vital need to ensure that federal, state, and local governments retain the power to prevent domestic abusers from possessing firearms while subject to protection orders. That protection is critical to saving the lives of family members—who face an imminent threat of being killed—and members of the public more broadly, as the majority of mass shootings are committed by domestic abusers and responding to domestic-violence calls all too often results in death by firearm for law enforcement officers.

A. Domestic Violence Offenders Pose An Extraordinary Public-Safety Threat, Which Is Heightened When Those Offenders Have Access To Firearms

Domestic violence is pervasive, deadly, and inextricably linked with firearms in the United States. More than one in three women report experiencing abuse from their partner in their lifetime. Sharon G.

Smith et al., Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief—Updated Release* 8 (Nov. 2018).[3] Violence against women regularly involves gun violence. As of 2019, an average of 70 women were shot—and killed—by an intimate partner every month. Everytown for Gun Safety, *Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem* (updated Apr. 10, 2023).[4] Nearly 1 million women in the United States as of 2019 reported being shot or shot at by intimate partners, and more than 4.5 million women have reported being threatened with a gun by an intimate partner. *Id.*; Giffords Law Center, Domestic Violence.[5]

The link between firearms and lethal domestic violence is well documented. In 2019, nearly two-thirds of domestic homicides in the United States were committed with a gun. Everytown for Gun Safety, *supra.* Between 1980 and 2014, more than half of women killed by their intimate partners were killed with guns. April M. Zeoli & Amy Bonomi, *Pretty in Pink? Firearm Hazards for Domestic Violence Victims*, 25 Women's Health Issues 1, 3 (2015). And direct access to guns increases the likelihood of intimate-partner homicide of women by 11 times. Chelsea M. Spencer & Sandra M. Stith, *Risk Factors for Male Perpetration*

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[3] https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf (last visited Apr. 18, 2023).

[4] https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/ (last visited Apr. 11, 2023).

[5] https://giffords.org/issues/domestic-violence/ (last visited Apr. 6, 2023).

and Female Victimization of Intimate Partner Homicide: A Meta-Analysis, Trauma, Violence & Abuse 1, 9 (2018); *see also* Brady: United Against Gun Violence, *Beyond Bullet Wounds: Guns in the Hands of Domestic Abusers* 4 (2021).[6]

Domestic-abuse offenders' access to and use of guns leads to an increase in deadly domestic violence. Firearms account for the 6% increase in intimate-partner homicides of women between 2011 and 2020: during that same period, domestic homicides by guns increased by 15% while domestic homicides by all other means decreased 4%. Everytown for Gun Safety, *supra*.

Armed domestic abusers also use firearms to commit nonfatal but severe forms of abuse. According to one U.S. study, 13.6% of women (approximately 25 million) reported experiencing nonfatal firearm abuse in their lifetime as of 2020. Avanti Adhia, et al., *Nonfatal Use of Firearms in Intimate Partner Violence: Results of a National Survey*, 147 Prev. Med. 106500 (June 2021); Brady: United Against Gun Violence, *supra*, at 4. Armed domestic abusers use guns to threaten or nonfatally shoot their partners or inflict other bodily harm. Adhia, *Nonfatal Use of Firearms, supra*. These forms of abuse facilitated by guns "perpetuate coercive control . . . which plays a critical role in the micromanagement of victims' daily lives and chronic abuse." *Id*.; *see also* Brady: United Against Gun Violence, *supra*, at 7-8; Susan B. Sorenson & Rebecca A. Schut, *Nonfatal Gun Use in Intimate Partner*

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[6] https://brady-static.s3.amazonaws.com/Guns-Domestic-Violence.pdf (last accessed Apr. 18, 2023).

Violence: A Systematic Review of the Literature, 19 Trauma, Violence, and Abuse 431 (2018).

Children and teens are not spared from the risk of death at the hands of armed domestic abusers, and in fact face heightened risks. In 2020, firearms became the leading cause of death for children and teens, following a 42% increase in firearm deaths for that age group between 2000 and 2020. Matt McGough et al., *Child and Teen Firearm Mortality in the U.S. and Peer Countries*, Kaiser Family Foundation Global Health Policy (July 2022).[7] Many of these gun-related deaths of children and teens are linked to domestic violence. For children under age 13 who were victims of gun homicide as of 2017, nearly one-third were related to intimate-partner or family violence. Katherine A. Fowler et al., *Childhood Firearm Injuries in the United States*, 140 Pediatrics 1, 18 (2017). And in 6% to 20% of events in which an abuser kills his or her intimate-partner, that individual also kills at least one other person, most commonly a child or other family member. April M. Zeoli & Jennifer K. Paruk, *Potential to Prevent Mass Shootings through Domestic Violence Firearm Restrictions*, 19 Criminology & Pub. Pol'y 129, 130 (2020) (citing sources).

Emerging data on the link between firearms and domestic violence-related deaths of children paint a sobering picture. Nearly two-thirds of all child fatalities related to domestic violence involved guns. Avanti Adhia et al., *The Role of Intimate Partner Violence in Homicides of Children Aged 2–14 Years*, 56 Am. J. Preventive Med. 38 (2019). And between 2017

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[7] https://www.kff.org/global-health-policy/issue-brief/child-and-teen-firearm-mortality-in-the-u-s-and-peer-countries/ (last visited Apr. 11, 2023).

and 2022, more than two-thirds of the 866 children ages 17 and younger shot during acts of domestic violence succumbed to their injuries. Jennifer Mascia, *Dangerous Homes: Guns and Domestic Violence Exact a Deadly Toll on Kids*, THE TRACE (Mar. 28, 2023).[8] Children (like other domestic violence victims) face exceptionally high mortality rates after being shot during acts of domestic violence because of the close-range and targeted nature of the shooting. *Id*.

Analysis of mass shootings shows that the majority are linked to domestic violence, further demonstrating that armed domestic abusers pose a grave threat to society more broadly. Specifically, in more than two-thirds (68.2%) of mass shootings in the United States between 2014 and 2019 in which four or more people were killed by gunfire, the shooter had a history of domestic violence or killed at least one dating partner or family member during the shooting. Lisa B. Geller et al., *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014–2019*, 8 Injury Epidemiology 38 (2021). In at least 46% of mass shootings with four or more people killed between 2015 and 2022, the perpetrator shot a current or former intimate partner or family member, undermining the myth that mass shootings are random acts of violence. Everytown for Gun Safety Support Fund, *Mass Shootings in the United States* (Mar. 2023)[9]; *see also* Brady: United Against Gun Violence, *supra*, at 4-5. Domestic violence-related mass shootings are particularly lethal for children and teens: in

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[8] https://www.thetrace.org/2023/03/guns-domestic-violence-child-deaths/.

[9] https://everytownresearch.org/mass-shootings-in-america/ (last visited Apr. 11, 2023).

nearly two-thirds of such incidents with four or more people killed between 2015 and 2022, the victim included at least one child or teen. Everytown for Gun Safety Support Fund, *Mass Shootings in the United States*, *supra*.

Domestic violence also poses a grave risk to first responders. A five-year study found that responding to domestic disputes accounted for the highest number of service-related fatalities for police officers. Nick Breul & Mike Keith, *Deadly Calls and Fatal Encounters: Analysis of US Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement (2010–2014)*, Nat'l Law Enforcement Officers Memorial Fund (2016). And 95% of law enforcement officer deaths in response to domestic disturbances between 1996 and 2010 involved a firearm. Cassandra Kercher et al., *Homicides of Law Enforcement Officers Responding to Domestic Disturbance Calls*, 19 Injury Prevention 331 (2013).

B. States Have Taken A Variety Of Measures To Address The Risks That Firearms Present In The Domestic-Violence Context, And Review Is Warranted To Confirm Their Validity

In recent decades, governments at all levels have taken steps to protect against firearm possession by dangerous persons in the domestic-violence context.

1. Almost 30 years ago, Congress recognized the gravity of the threat detailed above in enacting Section 922(g)(8). A sponsor of one of the bills that became Section 922(g)(8) recounted some of the "far too many dreadful cases in which innocent people—and usually they are women—have been wounded or killed by a former boyfriend or girlfriend, partner, or

other intimate using a gun—despite the fact that the attacker was subject to a restraining order." 139 Cong. Rec. S16,288 (daily ed. Nov. 19, 1993) (statement of Sen. Chafee). Another sponsor cited research from the *New England Journal of Medicine* finding that among domestic abusers with a "history of battering, if there is a gun in the house or in the home, that [abuser's intimate partner] is five times more likely to be murdered." 140 Cong. Rec. S7884 (daily ed. June 29, 1994) (statement of Sen. Wellstone). The Conference Report for the final bill, noting "that domestic violence is the leading cause of injury to women in the United States between the ages of 15 and 44" and that abusers use firearms "in 7 percent of domestic violence incidents," concluded that "individuals with a history of domestic abuse should not have easy access to firearms." H.R. Conf. Rep. No. 103-711, at 391 (1994). Section 922(g)(8) thus reflects Congress's understanding—which this Court has reiterated—that domestic violence and firearms "are a potentially deadly combination nationwide." *United States v. Hayes*, 555 U.S. 415, 427 (2009).

2. State and local governments have equally recognized the importance of laws similar to Section 922(g)(8)—indeed, the federal legislation prompted many states to examine the issue and enact legislation of their own. *See* Kaitlin N. Sidorsky & Wendy J. Schiller, *Can Government Protect Women from Domestic Violence? Not If States Do Not Follow Up*, Brookings (Mar. 21, 2023).[10] At least thirty-one

[10] https://www.brookings.edu/blog/fixgov/2023/03/21/can-government-protect-women-from-domestic-violence-not-if-states-do-not-follow-up/.

states have criminal prohibitions on firearm possession by persons subject to domestic-violence restraining orders. *Which States Prohibit Domestic Abusers Under Restraining Orders from Having Guns?*, Everytown Rsch. & Pol'y (Jan. 12, 2023).[11] These states' experiences show that these regulations are effective. States with laws prohibiting firearm possession by domestic-violence abusers subject to restraining orders have seen an associated 13% reduction in intimate-partner firearm homicides. April M. Zeoli et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187 Am. J. Epidemiology 2365, 2367 (2018); *see also* Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 Evaluation Rev. 313, 334 (2006) (earlier study based on smaller sample finding that, on average, states that passed such laws had reduced intimate-partner homicide rates by 9%). The impact of these laws is even more striking in urban settings: cities in states that employ these regulations have experienced a 25% reduction in intimate-partner firearm homicide rates. April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large U.S. Cities*, 16 Inj. Prevention 90, 92 (2010).

While firearm-possession prohibitions mirroring Section 922(g)(8) are among the most common state-level efforts to reduce the lethal threat of firearm violence by domestic abusers, states have taken a variety

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[11] https://everytownresearch.org/rankings/law/prohibition-for-domestic-abusers-under-restraining-orders/.

of approaches in their efforts to combat this problem—including measures going beyond federal law. Of the thirty-one states with criminal prohibitions on firearm possession by domestic abusers subject to restraining orders, for instance, twenty-two states "have closed the 'boyfriend loophole'" by "going beyond the federal prohibition"—which applies only to current and former spouses and co-habitants, and those who share a child—to cover all dating partners. *Which States Prohibit Domestic Abusers Under Restraining Orders from Having Guns?*, Everytown Rsch. & Pol'y, *supra*. States that have passed these more comprehensive laws have experienced a notable 16% reduction in intimate-partner firearm homicides. Zeoli et al., *Analysis*, *supra*, at 2367. Among the same thirty-one states, twelve also prohibit firearm possession by domestic abusers subject to temporary restraining orders—*i.e.*, short-term orders issued during the emergency period before the hearing for a longer-term order can occur. *Which States Prohibit Domestic Abusers Under Temporary Restraining Orders from Having Firearms?*, Everytown Rsch. & Pol'y (Jan. 12, 2023).[12] These state laws are also associated with a 16% reduction in firearm-related intimate-partner homicides. Zeoli et al., *Analysis*, *supra*, at 2369.

Twenty-two states not only prohibit domestic abusers from possessing firearms while subject to restraining orders, as the federal government does, but also explicitly require them to relinquish any firearms they already possess. *Which States Require Prohib-*

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[12] https://everytownresearch.org/rankings/law/emergency-restraining-order-prohibitor/.

ited Domestic Abusers to Turn In Any Guns While Under a Restraining Order?, Everytown Rsch. & Pol'y (Jan. 12, 2023).[13] These relinquishment laws are associated with 15% lower firearm-related intimate-partner homicide rates. Carolina Díez et al., *State Intimate Partner Violence–Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 Annals of Internal Med. 536, 539 (2017). Assuming a causal relationship, these state relinquishment laws prevented 75 intimate-partner homicides in 2015—and another 120 intimate-partner homicides could have been prevented if all fifty states had these laws in place. *Id.* at 541. And twenty jurisdictions rely on extreme risk protection order ("red flag") laws to permit the advance disarming of persons who have been determined to pose a danger of using firearms to, among other things, inflict "harm on innocent persons." *Caniglia v. Strom*, 141 S. Ct. 1596, 1601 (2021) (Alito, J., concurring); *see* Johns Hopkins Bloomberg Sch. of Pub. Health, *Extreme Risk Protection Order: A Tool to Save Lives*.[14]

3. The Fifth Circuit's decision casts unjustified doubt not only on the prohibition in Section 922(g)(8), but also on the variety of alternative measures, such as those described above, used to disarm dangerous persons and prevent gun violence in the domestic context. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court concluded that the Second Amendment affords protection to "law-abiding, responsible citizens to use arms in defense of hearth and home."

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[13] https://everytownresearch.org/rankings/law/relinquishment-for-domestic-abusers-under-restraining-orders/.

[14] https://americanhealth.jhu.edu/implementERPO (last visited Apr. 9, 2023).

Id. at 635. Nothing in *Heller* or *Bruen* suggests that the Amendment gives a right to dangerous, non-law-abiding persons to have arms available for inflicting harm on other persons—particularly in their own homes. This Court should grant review to confirm that it does not, and to make clear that "[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns." *Kanter v. Barr,* 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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