No. 22-915

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ZACKEY RAHIMI,

Respondent.

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

BRIEF OF *AMICI CURIAE* AMERICAN MEDICAL ASSOCIATION, AMERICAN ACADEMY OF PEDIATRICS, AMERICAN COLLEGE OF SURGEONS, AMERICAN PUBLIC HEALTH ASSOCIATION AND TEXAS MEDICAL ASSOCIATION IN SUPPORT OF PETITIONER AND REVERSAL

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INTEREST OF AMICI CURIAE

The American Medical Association is the largest professional association of physicians, residents and medical students in the United States. Its purpose is to promote the science and art of medicine and the betterment of public health. Substantially all U.S. physicians, residents and medical students are represented in its policy-making process through state and specialty medical societies and other physician groups seated in its House of Delegates.[1]

The American Academy of Pediatrics represents approximately 67,000 pediatricians nationwide. It is dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

The American College of Surgeons is a scientific and educational association of over 84,000 surgeons founded to improve the quality of care for surgical patients. Members are indispensable leaders in the provision of care to injured patients.

The American Public Health Association, with 26,000 members, champions the health of all people and all communities; strengthens the profession of public health; promotes best practices; and advocates for public health issues and policies grounded in scientific research.

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[1] This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

The Texas Medical Association is a private, voluntary, nonprofit association of over 57,000 Texas physicians, residents, and medical students, in all fields of medical specialization. It promotes the health of all Texans.

Amici respectfully submit this brief to offer their unique perspective, as healthcare providers, on the compelling need to uphold 18 U.S.C. 922(g)(8), which prohibits a person who is subject to a domestic violence restraining order ("DVRO") from possessing a firearm.

At least once every 16 hours, a woman in this country is fatally shot by a current or former intimate partner. Pregnancy, in particular, is a significant risk factor for domestic violence. Homicide is the leading cause of death during pregnancy, and most of those women are killed with firearms. When an abuser has access to a firearm, the likelihood that a victim of domestic violence will end up dead increases by 500 percent or more. Firearms also increase the risk of injury and death to the victims' children and other family members, to first responders, and to neighbors and other bystanders.

When abusers possess firearms, victims of intimate partner violence ("IPV") face a heartbreaking choice. It is harder to leave because the victims and their children may be killed if they are located. But it is also more dangerous to stay.

Amici's members have first-hand knowledge of the deaths and injuries inflicted by domestic abusers with firearms. They also witness the devastating and often life-long psychological harm that domestic violence

victims and their children suffer when firearms are involved.

Amici's members understand the importance of protecting our constitutional rights. They include many individuals who grew up with and value the recreational use of firearms or choose to own a firearm for self-defense. But *amici* share the strong conviction, informed by their healthcare work and research, that barring domestic violence abusers from access to firearms when the requirements of Section 922(g)(8) are satisfied is critical to save lives and is and must be constitutionally permissible.

Amici respectfully submit that this is the rare case in which this Court's decision will directly affect whether countless people, mostly women and children, will live or die. The stakes can hardly be higher.

STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

The issue presented is whether Section 922(g)(8), which prohibits the possession of firearms by persons subject to DVROs, violates the Second Amendment. The Court should answer "no" and reverse the decision below.

Point I presents the firsthand experiences of some of *amici*'s members who treat victims of domestic violence, including children. They show that when firearms are involved, domestic violence is far more likely to result in death and/or lasting psychological harm.

Point II summarizes the wealth of research that documents the lethal nexus between domestic violence and access to firearms, and the proven fact that disarming domestic abusers saves lives.

Point III shows Section 922(g)(8) is consistent with the Second Amendment.

ARGUMENT

I. *AMICI'S* PHYSICIAN MEMBERS HAVE FIRSTHAND KNOWLEDGE OF THE DEADLY CONSEQUENCES OF ALLOWING DOMESTIC ABUSERS TO HAVE ACCESS TO FIREARMS

A. Dr. Priyanka Amin

Dr. Amin is an emergency psychiatrist and the Medical Director of Patient Safety at University of Pittsburgh Medical Center Western Psychiatric Hospital, and an assistant professor in the University of Pittsburgh Department of Psychiatry.

She has treated many IPV victims. Domestic abuse is increasing, partly due to the isolation and stress caused by the pandemic. About one in three women and one in four men experience severe physical abuse due to IPV over their life.[2] Dr. Amin has witnessed victims' terror when the abuser has access to firearms.

The abuse tends to follow a cycle. First, there is violence. Then there are efforts to make amends. But the violence returns. When the abuser has access to a firearm, the violence can escalate until the victim, children, or bystanders are killed. Some victims consider suicide, or become involved in substance use, because they do not see any other way out.

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[2] National Intimate Partner and Sexual Violence ("NIPSVS"), 2015, https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf.

The most dangerous time for survivors is when they leave their abuser. That danger is significantly heightened when abusers have access to firearms. Dr. Amin recalls one patient who came to the ER wearing a mask. Dr. Amin could not initially see that her lower face and jaw were severely bruised. The woman explained her partner assaulted her and threatened to kill her if she left—and he had a firearm. She felt powerless to leave. When a firearm is present, domestic violence is also particularly traumatizing for children.

Many healthcare workers are killed by intimate partners. Dr. Amin has had many conversations with hospital co-workers who have experienced IPV. She helps provide resources and training to protect hospital staff and patients.

Victims of domestic abuse are often reluctant to speak up, let alone press criminal charges. Moving for a restraining order is a very difficult decision. Many feel shame for remaining in a demeaning and abusive relationship or putting their children's safety at risk, yet do not have a safe exit. They do not want to be judged for that. Many mistrust the legal system and their ability to obtain justice. Testifying about the abuse compounds the trauma. Going to Court can lead to escalation and retaliation, particularly when firearms are involved. Dr. Amin has worked with individuals who have been served with DVROs, and express rage and intent to hurt or kill their partner.

Dr. Amin believes the Second Amendment could not possibly have been intended to give the right to possess a firearm to people who commit acts of violence, or have been found to be a threat to the

safety of their intimate partners or children and subjected to a restraining order. The evidence shows overwhelmingly that people who commit IPV are likely to continue to engage in other acts of violence, including mass violence and homicide. One in five homicides in this country, including about half of all female homicides, are committed by a current or former intimate partner.[3] They should not be allowed to possess firearms.

B. Dr. Amy Barnhorst

Dr. Barnhorst is a clinical and emergency psychiatrist at UC Davis Health. She works in crisis clinics, emergency rooms and jails. Dr. Barnhorst grew up in a family that hunted with firearms. She goes to the shooting range a few times a year.

Dr. Barnhorst has treated many patients who suffer from mental health issues as a result of domestic violence, including anxiety, depression, and PTSD. When the abuser has a firearm, the mental health consequences can be even more extreme. Firearms are used to terrorize, threaten, manipulate, harass, or injure domestic partners, even if they are not discharged. 50% of female homicide victims are killed by intimate partners or family members and over 50% of those homicides are committed with firearms.[4]

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[3] Petrosky et al., Racial & Ethnic Differences in Homicides of Adult Women, https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm?s_cid=mm6628a1_w

[4] *See* n.3.

The presence of firearms significantly increases the risk of death for domestic violence victims. They often find it difficult to leave because they are dependent on their partners for financial support, housing and childcare. The presence of a firearm makes leaving even more perilous because they risk being shot and killed. The inability to extricate themselves leads many victims to succumb to feelings of resignation.

Domestic abusers do not typically make advance plans to engage in violence. Rather, in the heat of the moment, they lose impulse control and confrontations quickly escalate to violence. In these situations, if a firearm is present, there is a high likelihood that the abuser will use it. By the time the abuser regains self-control, it is too often too late and the firearm has been fired. Dr. Barnhorst has worked with perpetrators of domestic violence who express deep regret after shooting their intimate partner. She has also worked with abusers who are grateful, after engaging in domestic violence, that they did not have access to a firearm.

Dr. Barnhorst believes individuals who have engaged in IPV should not have access to firearms. An abuser may use other weapons to inflict harm, but no other object is as lethal as a firearm.

C. Dr. Obianuju Berry

Dr. Berry is the Director of the New York City Health and Hospitals Domestic Violence Mental Health Initiatives and a clinical associate professor in

New York University's Department of Child and Adolescent Psychiatry.

Of all the domestic violence cases Dr. Berry encounters, those involving firearms are the most frightening. It takes a multi-disciplinary team to determine when and how to discharge victims from hospitals and locate safe spaces for them when their abuser has access to a firearm. There is enormous fear of repeat harm, and that the victim will not recover. That fear can become crippling. Many are afraid to leave their homes, unable to work, and unable to care for their children.

Dr. Berry and her team use a standardized risk assessment to determine the likelihood that a patient will be killed by an intimate partner. The second question is whether the abuser has access to a firearm. In domestic violence situations, there is an extremely strong correlation between access to firearms and risk of death.

Pregnant and postpartum women are especially at risk. Studies have shown the most common cause of their death is homicide, not pregnancy-related complications. The vast majority of those homicides involve firearms.

Dr. Berry is also acutely aware of the effects of firearm related domestic violence on children. The presence of a firearm in a home is a huge risk factor for children, particularly when there is a history of domestic violence.

Dr. Berry believes people who have engaged in domestic violence should not have access to firearms.

D. Dr. Reed Caldwell

Dr. Caldwell is Chief of Service of the Perelman Emergency Department at Tisch Hospital, EMS Medical Director at NYU Langone Health, and an Assistant Professor at Ronald O. Perelman Department of Emergency Medicine at NYU Grossman School of Medicine. He has worked in emergency medicine in Colorado and New York for over twenty years.

Dr. Caldwell and his team treat victims of domestic violence on a weekly basis. On multiple occasions he has witnessed the tragic consequences when domestic violence abusers have access to firearms. In one particularly awful example, a five-year-old boy with asthma arrived in the emergency department for care with his mother. When the boy was ready to be discharged, he expressed reluctance to return home, explaining it was a "rough" situation because his father was abusive. Knowing the father had a handgun, a social worker helped relocate the mother and her two sons to the home of a family member, where they believed the father was unlikely to find them. Two days later, the same woman arrived in the ER as a trauma patient. The father had discovered where they were staying and arrived with a gun. He tied her up and made her watch while he shot and killed their two children. Then he removed her eyeballs with a spoon so the death of her children would be the last thing she saw.

Domestic violence incidents can escalate rapidly. In the heat of the moment, abusers, often intoxicated or on drugs, are furious and act impulsively. It is not uncommon for abusers later to express regret for their

impulsive and violent behavior. But the presence of firearms in such fraught situations makes it more likely that one or more people will be killed before the abuser comes to their senses. Dr. Caldwell believes that removing abusers' access to firearms is one important way to prevent already violent situations from becoming fatal.

First responders, police and neighbors are also at risk when domestic abusers are armed. Dr. Caldwell is medical director of 370 EMT's and paramedics. They regularly face the threat of firearms when responding to domestic violence emergencies.

In many cases, domestic violence victims and survivors are women and children who would otherwise be homeless. They may have no choice but to rely on their abuser for shelter, even when the abuse is chronic. For them, staying can be the lesser of two evils. But domestic violence and lethal domestic violence affects individuals (mostly women) of all ethnic, racial and socio-economic backgrounds, in all parts of the country. Everyone is at risk.

Victims often prefer to obtain civil protective orders, because they fear the violence will escalate if they go to the police or other authorities. But wherever the DVROs are issued, they often fail because domestic abusers violate them. In Dr. Caldwell's view, that is all the more reason to prevent abusers who are subject to DVROs from having access to firearms.

E. Dr. David Callaway

Dr. Callaway, a Professor of Emergency Medicine and Chief of Crisis Operations at the Carolinas Medical Center—the region's only Level 1 Trauma Center—was a Battalion Surgeon for the U.S. Navy and Marine Corps. He now serves as a sworn law enforcement officer on the U.S. Marshals Fugitive Task Force. He joins them on high-risk missions and treats Marshals, parolees, and fugitives who are injured.

When Dr. Callaway deployed to Kuwait and Iraq in 2003, he knew he would be treating people who were shot with firearms—that is the nature of warfare. But when he returned home, he was not ready for the same war-zone injuries and deaths in our homes and schools and on our streets.

Not a shift goes by at his hospital when his trauma team does not care for an IPV victim. But the team does not usually treat IPV gunshot victims. Most of those victims are shot dead at close range in their homes.

Domestic violence is generally about intimidation and control. Victims often arrive at the hospital for treatment of health issues such as abdominal pain that at first may not appear to be directly related to domestic violence. Those visits may be a cry for help. Dr. Callaway's colleagues are trained to try to learn whether an individual is experiencing domestic violence, and to provide support. One of the questions they ask is whether there are firearms in their home. When an abuser has a firearm it enhances their ability to threaten, terrorize, and kill their victims.

Victims often explain that their abuser has told them the abuser will kill them if they leave.

Approximately 25% of women will experience domestic violence in their lifetimes.[5] About 80% of women who are murdered are killed by a man they know.[6] And domestic violence is a health equity issue. It disproportionately affects women of color and lower income women.

Dr. Callaway carried a firearm when he was in the military. He carries one today when he works with the U.S. Marshals. His firearm is either with him on a mission or at home in a biometric safe, separate from the ammunition. He understands firearms are tools designed with a purpose to inflict physical damage on another living being. We claim to be a country of accountability and responsibility. Dr. Callaway believes that when individuals are subjected to a DVRO, it is because there is a significant risk that they will engage in violence again. Leaving a lethal firearm in their hands increases the likelihood of a catastrophic and deadly outcome. Common sense dictates that should not be allowed to happen. The Second Amendment should not be interpreted to enable it.

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[5] NIPSVS, 2010, https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf

[6] Campbell et al., Risk Factors for Femicide in Abusive Relationships, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/

F. Dr. Cindy Christian

Dr. Christian is an attending physician at the Children's Hospital of Philadelphia. She holds the Anthony A. Latini Endowed Chair in the Prevention of Child Abuse and Neglect. She treats children who have experienced or witnessed domestic abuse involving firearms, and has seen the physical and psychological harm it inflicts.

When a domestic abuser has a firearm, children can be intentionally shot by the abuser, accidently shot when caught in the cross-fire, shot while trying to intervene to protect the victim, or killed in a murder/suicide. In some cases, both parents end up dead and the children are orphaned. Children can also be terrorized and suffer life-long psychological and emotional trauma, even if the abuser does not actually fire the firearm.

There is a robust association between domestic violence and child abuse. Sadly, it is not uncommon for victims of domestic violence, and the perpetrators of that violence, to physically abuse their children. For example, Dr. Christian's hospital treated a child for serious injuries that appear to have resulted from physical abuse, seemingly by the mother. The father arrived and repeatedly said he would kill the mother. Within months, the father did exactly that.

Studies have shown that young children who are exposed to child abuse and domestic violence have a higher risk of adult morbidity, including from cancer,

heart disease and mental illness.[7] This is partly due to complex biological consequences of trauma and exposure to domestic violence involving immune, endocrine, neurologic and metabolic physiology that leads to chronic stress and inflammation.

Dr. Christian respects the Second Amendment and strongly believes it does not give individuals subject to DVROs a right to own firearms. Domestic violence is rarely, if ever, a one-time event. Permitting individuals who have already acted violently to have access to firearms enormously increases the likelihood that people will be shot and killed.

G. Dr. Brittany Haage

Dr. Haage is a clinical health psychologist at Cooper University Hospital in Camden, N.J. She treats patients who have suffered from interpersonal violence, including assaults between intimate partners.

IPV often follows a pattern of escalation, or cycle of abuse. It often starts with verbal aggression, intensifies to physical aggression, and then escalates to the use of deadly objects or weapons. When a firearm is available, it tends to amplify the level of aggression, increasing the capacity for and likelihood of severe or fatal injury.

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[7] Zhu et al., Adverse Childhood Experiences and Intimate Partner Violence, https://www.cambridge.org/core/journals/development-and-psychopathology/article/adverse-childhood-experiences-and-intimate-partner-violence-a-metaanalysis/E931CC81FDD035698C4E0CCBB44CE214

The effects on mental health can also be significant, including anxiety, depression, acute stress disorder, and PTSD. It can include panic attacks, low mood, inability to experience positive emotions, flashbacks, nightmares, changes in personality, hypervigilance, self-blame, exaggerated negative beliefs that the world is unsafe, difficulty forming trusting relationships, and psychological and physiological distress in response to trauma. When those who inflict IPV have easy access to firearms, their victims' distress and perception of risk are seriously elevated.

The mere presence of a firearm can cause them to live in a persistent state of fear. They fear for themselves and very often for their children, who may suffer physical injuries and lasting mental and emotional harm from witnessing armed violence in their home. Children rely on their caregivers, model their own behavior on their caregivers, and mirror how their caregivers resolve interpersonal conflicts. Children exposed to firearm violence can begin to perceive firearms as an acceptable instrument for conflict resolution, further perpetuating the cycle of violence.

Dr. Haage believes it is critical to have laws that bar known IPV perpetrators from possessing firearms.

H. Dr. Stephen Hargarten

Dr. Hargarten is a professor of Emergency Medicine and Founding Director of the Comprehensive Injury Center at the Medical College of Wisconsin. He has practiced emergency medicine for over 35 years and has treated many survivors of

domestic violence. He is a member of the National Academy of Medicine.

Dr. Hargarten recalls the mass shooting in Milwaukee when a domestic abuser followed his partner into a spa, and then used a firearm to kill her and shoot others. Dr. Hargarten's trauma center treated the survivors. But he does not typically see victims of domestic violence who have been shot. Those victims usually die before they can be brought to a hospital.

Most of the victims of domestic violence he sees arrive in the emergency room in the morning, after their abusers have left for work. The acute stress and fear of having a firearm in the home often presents in symptoms such as headaches and abdominal pain. These victims seek treatment but are generally afraid to disclose that their injuries and symptoms are the result of domestic violence and abuse. Emergency medicine physicians and nurses are increasingly being trained to ask probing questions to determine the causes of presenting complaints and develop and recommend the best treatment strategies, including finding a safe place to go.

Dr. Hargarten believes individuals who have committed domestic violence should not have access to firearms. When an abuser has already threatened, intimidated or attacked an intimate partner, permitting the abuser to keep a firearm dramatically increases the risk that the victim will be shot and killed. Domestic violence tends to occur in repetitive cycles. Confrontations escalate quickly, commonly alcohol fueled. It is much easier to kill an intimate partner with a firearm than with any other object.

I. Ms. Lynn Frederick-Hawley

Ms. Frederick-Hawley is the Executive Director of the Mount Sinai Obstetrics and Gynecology Department's Sexual Assault and Violence Intervention Program. She oversees a team of licensed therapists who provide crisis intervention services to IPV survivors in emergency room and urgent care settings throughout New York City. Ms. Frederick-Hawley has worked with IPV survivors for over thirty years.

When a domestic abuser has access to firearms, the victim's fear and anxiety increase exponentially. The risk of being killed by their abuser is significantly higher. Firearms also increase the risk of death for co-workers, bystanders and others. In one case, the domestic abuser of a woman who worked with Ms. Frederick-Hawley arrived at the hospital with a firearm. A co-worker, who tried to intervene, was shot and killed. When a victim of domestic abuse is sent to a shelter, its other residents are also at greater risk if the abuser owns a firearm and locates the victim.

Domestic violence victims often develop survival strategies to keep themselves and their children safer. But that is impossible when firearms are involved. Shots can be fired across a room, through a door, or from a different floor. Abusers act impulsively. When they are armed with a firearm, confrontations are far more likely to be lethal.

Ms. Frederick-Hawley believes individuals who have committed domestic abuse should not have access to firearms.

J. Dr. Megan Bair-Merritt

Dr. Bair-Merritt, a pediatrician, is the Chief Scientific Officer for Boston Medical Center and a professor at the Boston University Chobanian & Avedisian School of Medicine. She has devoted her career as a clinician and professor to research on the impact of IPV on children and how to support survivors.

The risk of domestic violence significantly increases in the first two years after childbirth. Research shows exposure to trauma, even at that young age, can have lasting adverse effects on mental and physical health, even if the child has no memory of witnessing the violence.[8]

Domestic violence adversely affects children's mental and physical health in many ways, often for their lifetimes. Children who witness or experience IPV have higher rates of depression, anxiety, attention disorders and aggressive behavior. The stress and trauma can also have physical manifestations, leading to asthma, obesity, and other health conditions.[9] When firearms are involved, domestic violence is even more damaging to a child's mental and physical health.

Studies show children who thrive as adults tend to have a strong and sustained relationship with a "safe"

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[8] Moffitt et al., Child Exposure to Violence, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3869039/

[9] *See* n.7.

adult.[10] When that safe adult is injured or killed by an intimate partner, that is extremely detrimental to the health and well-being of the surviving children.

Charting the best and safest path for domestic violence victims and survivors is particularly dire when an abuser has access to firearms. The risk of homicide increases significantly. The most perilous time is often after the victim leaves the abusive partner.

Dr. Bair-Merritt believes that allowing domestic abusers who are already subject to DVROs to possess firearms would put their intimate partners, their children and others at grave risk and inevitably lead to increased risk of deaths.

K. Dr. Paul Nestadt

Dr. Nestadt is an Associate Professor of Psychiatry at The Johns Hopkins School of Medicine and an Associate Professor at Johns Hopkins Bloomberg School of Public Health.

His research shows IPV is a public health crisis in this country. The majority of homicides of women result from domestic violence.[11] When the abuser has access to a firearm, the victim is five times more likely to be killed. IPV is also a risk factor for suicide. Access to a firearm increases the risk threefold. Domestic violence confrontations tend to escalate and turn violent very quickly. In the heat of the moment,

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[10] Bellis et al. Does Continuous Trusted Adult Support in Childhood Impart Life-Course Resilience, https://pubmed.ncbi.nlm.nih.gov/28335746/

[11] *See* n.3.

abusers act impulsively, trying to inflict as much harm as quickly as possible. If a firearm is accessible, the abuser is highly likely to use it.

Dr. Nestadt has published articles on the efficacy of Maryland's extreme risk protection orders ("ERPOs"). He understands their critical importance because he has seen what happens in their absence. Dr. Nestadt vividly remembers one patient who wanted to leave her abusive partner but was afraid that if she did, she and her daughter would not be safe because her partner had a firearm. This stark reality creates a tragic paradox: the presence of the firearm makes it harder to leave, while also making it more dangerous to stay. Laws like Section 922(g)(8) were designed to address this problem.

In Maryland, the law allows a doctor to petition for firearm removal. Dr. Nestadt has used this vital tool. It has saved the lives of his patients. Because Maryland ERPOs do not involve the local district attorney or prosecutor, they can be especially important for patients who fear that alerting authorities to domestic abuse will further compromise their and their children's safety.

Federal and state laws that disarm individuals who have committed domestic violence do not protect only the abused family member. When abusers subject to DVROs have access to firearms everyone is at greater risk. Domestic violence is a key contributor to all three main causes of firearm-related deaths: homicides, suicides, and mass shootings. For example, a 2021 study found that in 68% of mass shootings from 2014-2019, the perpetrator killed at

least one partner or family member and/or had a history of domestic violence.[12]

L. Dr. Michelle Patch

Dr. Patch is an advanced practice clinical nurse specialist and an assistant professor at the Johns Hopkins School of Nursing. She served as a Navy Nurse Corps Officer and was deployed to Kuwait. Dr. Patch and her husband own firearms and use them for recreation.

The statistics on the intersection between firearm violence and domestic abuse are staggering. At least 4.7% of women and 1.4% of men in this country—approximately 8 million people—report having experienced and survived IPV involving a firearm at some point in their lives.[13] And that does not account for the unknown number of victims who do not report or do not survive.

For domestic abusers, a firearm is a tool of power and control. It exponentially increases the risk of death. Even if a victim manages to extricate herself from a physical confrontation, a firearm can be shot across a room. And even if the firearm is just flaunted but not fired, it can cause terror and trauma.

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[12] Geller et al., The Role of Domestic Violence in Fatal Mass Shootings, https://injepijournal.biomedcentral.com/articles/10.1186/s40621-021-00330-0

[13] NIPSVS, 2016-2017, https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf

Dr. Patch has been a member of many clinical and research teams that have worked with people shot by their intimate partners. On multiple occasions, these teams have had to inform family members that their loved-one has died. Witnessing the consequences of armed domestic violence also takes a significant toll on healthcare workers. On many occasions Dr. Patch provides emotional support to her colleagues.

Of the many cases of firearm-related domestic violence Dr. Patch has encountered, two stand out. In one, a female patient barely escaped being killed when her abusive partner chased her up the stairs with a firearm and fired several shots that penetrated the door of the room where she was hiding. In another, a man was shot and killed by his partner. As is all too common, their two children, both under ten, were effectively orphaned: their father was dead and their mother was incarcerated.

One of the main predictors of future violence is past violence. It is imperative to prevent domestic abusers who have demonstrated violent behavior and are subject to DVROs from having access to firearms.

M. Dr. Maya Ragavan

Dr. Ragavan is a pediatrician, and conducts research on domestic violence prevention. She serves on a mayoral IPV task force.

Domestic violence is rooted in issues of power and control. Abusers engage in escalating behavior to control, coerce, manipulate, harass and threaten their victims. Access to a firearm significantly increases the risk of death in an already dangerous situation.

61% of women who are murdered by their partner are killed with a firearm. Often, the victim is at greatest risk when they try to leave. The cycle of leaving and returning is all too common. When that happens, the violence tends to increase.

The presence of a firearm also makes it more difficult for a domestic violence victim and their children to leave. And it makes it more dangerous for them to return home.

Dr. Ragavan has treated patients whose caregivers have been threatened, injured or killed by an intimate partner with a firearm. For example, the mother of one school-aged patient was shot and killed by her boyfriend. The mother of another patient, just a few months old, was afraid to leave her partner because he had a firearm. When pediatric patients live in a home where there is domestic violence, Dr. Ragavan recommends asking whether the abuser has access to a firearm and connecting survivors to victim services agencies to provide support.

Witnessing domestic violence has a severe and often life-long impact on children's physical and mental health, and their academic performance. It causes developmental delays, stress and depression. The stress and trauma can have other effects, including asthma and other illnesses. These effects are even more acute when firearms are involved.

Dr. Ragavan believes individuals who are the subjects of DVROs should not be entitled to possess a firearm.

N. Dr. Kimberly Randell

Dr. Randell is a pediatric emergency physician and researcher at Children's Mercy Hospital in Kansas City, Missouri and Professor of Pediatrics at the University of Missouri-Kansas City School of Medicine. She recalls reading, during her residency, an article in the local newspaper with a photograph of parents and children evacuating a school. A father, waiting at his son's school, shot and killed the boy and shot his mother when she picked him up from school. Since then, Dr. Randell has focused on domestic violence interventions in healthcare settings and the impact of domestic violence on children. She has conducted federally funded research and lectures nationally.

Caregivers who disclose domestic violence during their child's medical visit at Children's Mercy are provided a domestic violence advocate consult, which includes assessing each victim's risk of being killed by an intimate partner. Access to a firearm is a significant indicator of homicide risk. A victim's attempt to seek help or report the abuse can trigger an escalation in violence.

In one study, a group of 127 parents or caregivers of pediatric patients disclosed they had experienced domestic violence. They completed a questionnaire to assess their risk of intimate partner homicide. 58% responded that their abuser had possession of or easy access to a firearm. 85% were at high risk of intimate

partner homicide.[14] The risk of death and grave injury for survivors and children increases significantly when an abusive partner has access to a firearm. Children carry the mental health effects of domestic violence related firearm injury for the rest of their lives.

Dr. Randell grew up in a family that owned firearms for hunting and recreation. But she believes the risk of having firearms in her own home outweighs the benefits, and that individuals who engage in domestic violence should not be allowed to possess firearms.

O. Dr. Megan Ranney

Dr. Ranney, Dean of the Yale School of Public Health, and Professor of Public Health and Emergency Medicine, is an emergency physician, injury prevention researcher and public health leader and advocate.

Dr. Ranney has treated countless victims of domestic violence. Many were threatened or injured by their abuser with a firearm. The only victims she knows of who have died were shot by their abuser. In one tragic instance, a woman's ex-partner waited outside her workplace and shot and killed her as she left work. In another, a pregnant woman was shot and killed by her domestic partner. Sadly, pregnancy is a risk factor for domestic violence.

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[14] Randell et al., Risk of Intimate Partner Homicide Among Caregivers
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6583439/

A domestic violence victim's risk of death is five times higher when the abuser has access to a firearm.[15] The states where Dr. Ranney works—Rhode Island and Connecticut—have relatively low rates of firearm-related deaths overall. The presence of domestic violence-related shootings is therefore all the more striking. In many cases, the risk of fatal abuse was known, but the police did not take the abuser's firearms.

Countless women physicians have been shot and killed by their intimate partners. These women were highly educated, often highly paid, and well aware of the dangers of domestic violence. In 2018, one of Dr. Ranney's colleagues, a young emergency physician, ended her engagement to her partner. When she walked out of the hospital, her ex-partner shot and killed her. If he had not had access to a firearm, Dr. Ranney's colleague likely would still be alive.

Domestic violence also causes severe psychological harm, particularly when firearms are involved. Victims who are threatened with or experience firearm violence are more likely to have PTSD, anxiety and severe depression. They know their lives can be taken at any moment. They often turn to substance abuse in an effort to cope.

Women are frequently reluctant to leave their abusers because they fear for their children's safety. They worry about giving their partner unsupervised time with their children, particularly when firearms are present. Many victims are afraid to report their

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[15] https://efsgv.org/learn/type-of-gun-violence/domestic-violence-and-firearms/

abuse to the police, because they know their abuser has a firearm, they fear the violence will escalate, and they believe (often from prior experience) the police will not arrive in time to protect them and their children.

Domestic violence shootings are among the most emotionally traumatizing cases for hospital care teams who treat the victims. Many of the deaths are preventable. Dr. Ranney strongly supports restricting individuals who are subject to DVROs from having access to firearms. Enforcing laws like Section 922(g)(8) saves lives. And women are far more likely to report domestic violence if they know their partners will not have access to firearms.

P. Dr. Joseph Sakran

Dr. Sakran is the Executive Vice Chair of Surgery, Director of Clinical Operations of Surgery and Director of Emergency General Surgery at Johns Hopkins Hospital. He is also an Associate Professor of Surgery and Nursing at Johns Hopkins Medicine.

Dr. Sakran has seen the devastating effects of domestic abuse—physical, mental and emotional—on its victims. Adding firearms to an already violent situation tragically multiplies the risks of injury and death. A woman is shot by an intimate partner in this country every sixteen hours.[16] When a domestic abuser has access to a firearm, a victim's risk of death increases by 500%.[17] Victims of domestic abuse are

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[16] Mascia, *Domestic Violence,* The Trace (Feb. 9, 2016) ("Mascia").
[17] *See* n.6.

often afraid to leave their partner. Knowledge that their abuser has access to a firearm enhances that fear. Dr. Sakran and his colleagues often enlist the help of social workers and others to create a safety plan before discharging a domestic violence victim. Until that is in place, they sometimes keep victims of domestic violence in the hospital so they do not return to an unsafe and abusive environment.

Victims of armed domestic violence are often forgotten, even though such violence is a critical component of the public health crisis we face in America, extending beyond mass shootings, suicide and other forms of gun violence. Domestic violence affects individuals—mostly women—from all backgrounds and communities. It typically occurs in a repetitive cycle, with the violence escalating each time. And it severely impacts family members and loved ones in addition to the abused partner.

Dr. Sakran is himself a survivor of gun violence. While there is no single solution to the problem of IPV, he strongly believes that preventing known abusers from having access to firearms will save lives.

Q. Dr. Ian Wittman

Dr. Wittman is Chief of Service for the Emergency Department at New York University (NYU) Langone Hospital in Brooklyn. He and his team treat domestic violence victims who have been shot. Some arrive at the hospital dead or close to death, sometimes as a result of a murder-suicide. Those who survive often have devastating injuries that will affect them and their families for the rest of their lives. It is heartbreaking to have to inform their families.

Dr. Wittman and his staff ask domestic violence victims, as part of their standard risk assessment, whether there is a firearm in their home. When the answer is "yes", many are afraid to go to the police or the authorities because they are concerned their partner will shoot them. It is often a challenge to find a safe place for the victims to go.

Domestic violence involving firearms also has devasting effects on children. They often experience life-long physical and emotional trauma. It is one thing for a child to witness domestic abuse. It is quite another to see a parent, sibling, or other household member killed or seriously injured by a firearm.

Dr. Wittman believes laws like Section 922(g)(8) are logical prohibitions that save lives. They are imperative because the presence of a firearm in a home exponentially increases the likelihood of a fatal tragedy. The harsh reality is that domestic abuse escalates rapidly to violence. Firearms make that escalation easier and faster. They are incredibly efficient and lethal weapons, designed to kill. It is unquestionably extremely dangerous for an individual who has engaged in violence towards a partner or a child to possess a firearm.

II. PREVENTING ABUSERS WHO ARE SUBJECT TO DOMESTIC VIOLENCE RESTRAINING ORDERS FROM POSSESSING FIREARMS SAVES LIVES

Domestic violence occurs with staggering frequency. It impacts people—mostly women—of all races and socio-economic classes, in urban and rural areas, in all fifty states. Stockman et al., *Intimate*

Partner Violence and Its Health Impact, 24 J. Womens Health 62 (2015). More than one in three women experience abuse from an intimate partner.[18]

There is a vast body of evidence establishing the lethal nexus between domestic violence and access to firearms. More than one in four homicides are related to domestic violence. Kivisto et al., *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides,* 48 J. Am. Acad. Psychiatry Law 26 (2019). The majority are committed with firearms. Everytown for Gun Safety, *Guns and Violence Against Women* (updated Apr. 10, 2023).[19] At least once every 16 hours, a woman is fatally shot by a current or former intimate partner. Mascia.

An abusive partner with access to a firearm is five times more likely to kill his victim. *Id*. A meta-analysis of seventeen studies concerning the risk factors for male domestic abusers to kill their intimate partners explains, "[t]he risk factor that increased the odds of [homicide] occurring the most was the perpetrator's direct access to guns." Spencer et al., *Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide 1, 8 (2018).* There are often multiple victims, including co-workers, friends, the victim's new dating partners, strangers, police officers, and the victim's children or

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[18] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4302952/; NIPSVS, 2018, https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf.

[19] https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/.

family. Zeoli, *Multiple victim homicides,* BWJP (2018).

Firearms are the leading cause of death for children and teens. McGough et al., *Child and Teen Firearm Mortality,* Kaiser Family Foundation Global Health Policy (July 2023).[20] Many of these deaths are linked to domestic violence. Fowler et al., *Childhood Firearm Injuries,* 140 Pediatrics 1, 18 (2017); Adhia et al., *The Role of Intimate Partner Violence in Homicides of Children,* 56 Am. J. Preventive Med. 38 (2019). According to a 2019 study, "approximately 7% of adolescent homicides (aged 11 to 18 years) were committed by intimate partners." Adhia et al., *Intimate Partner Homicide of Adolescents*, 173 JAMA Pediatrics 571 (2019).

Pregnancy is "a particularly dangerous time for [IPV] victims." Tobin-Tyler, *Intimate Partner Violence, Firearm Injuries and Homicides,* 51 J. Law Med. Ethics 64 (2023). Homicide is the leading cause of death during pregnancy and postpartum. Wallace et al., *Homicide during Pregnancy and the Postpartum Period,* 138 Obstetrics and Gynecology 762 (2021). Researchers at Harvard T.H. Chan School of Public Health found, "[w]omen in the U.S. who are pregnant or who have recently given birth are more likely to be murdered than to die from obstetric causes—and these homicides are linked to a deadly mix of [IPV] and firearms." *Homicide leading cause of death for pregnant women in U.S.,* Oct. 21, 2022.

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[20] https://www.kff.org/global-health-policy/issue-brief/child-andteen-firearm-mortality-in-the-u-s-and-peer-countries/.

The linkage between firearms and domestic violence is also a root cause of other tragedies plaguing this country. For example, in the majority of mass shootings in which four or more people were killed by firearms, the shooter had a history of domestic violence or killed at least one dating partner or family member during the shooting. Geller et al., *The Role of Domestic Violence in Fatal Mass Shootings,* 8 Injury Epidemiology 38 (2021). A five-year study found police officers are at greatest risk of being killed when they respond to domestic disputes. Breul et al, *Deadly Calls and Fatal Encounters,* Nat'l Law Enforcement Officers Memorial Fund (2016).

Urban areas in states that adopted statutes like Section 922(g)(8) have had a 25% reduction in intimate partner firearm deaths. Zeoli et al., *Effects of Domestic Violence Policies,* 16 Inj. Prevention 90, 92 (2010); Diez et al., *State Intimate Partner Violence-Related Firearm Laws*, 167 Annals of Internal Med. 536 (Oct. 17, 2017).

III. SECTION 922(g)(8) COMPLIES WITH THE SECOND AMENDMENT

The Fifth Circuit erred in holding that Section 922(g)(8) violates the Second Amendment as construed in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). Less than one year earlier, before *Bruen* was decided, the Fifth Circuit correctly found that Section 922(g)(8) does not violate the Second Amendment as interpreted in *District of Columbia v. Heller,* 554 U.S. 570 (2008). *See United States v. Rahimi*, 2022 WL 2070392 (5th Cir. June 8, 2022). That ruling should not have changed after *Bruen*. Nothing in *Bruen* suggests it was intended to

expand the Second Amendment to provide new firearm rights for perpetrators of domestic violence against whom a DVRO has been entered. Quite the contrary, *Bruen* reiterated that the Second Amendment protects "the right of law-abiding, responsible citizens to use arms for self-defense." 142 S. Ct. at 2131. Section 922(g)(8) does not impinge on that right. It is far narrower than the statutes at issue in *Bruen* and *Heller*.

The law that was challenged and struck down in *Bruen* required *anyone* seeking a concealed carry license in New York to prove that "proper cause exists," 142 S. Ct. at 2123, whether or not the applicant was a law-abiding, responsible citizen. The petitioners in *Bruen* alleged they were "law-abiding" citizens who wanted to carry a handgun for self-defense." *Id.* at 2125. The law that was challenged and struck down in *Heller* involved "a flat ban on the possession of handguns in the home" of *all* D.C. residents and a trigger-lock requirement for *all* guns in the home. *Bruen,* 142 S. Ct at 2131. The petitioner was a D.C. special police officer who was authorized to carry a handgun while on duty but was denied a license to keep a handgun in his home. 554 U.S. 576.

Section 922(g)(8) is completely different. It does not apply to all firearm owners or all firearms. It applies to a small, dangerous subset of non-law-abiding and highly irresponsible citizens who are subject to DVROs based on a judicial finding after notice and an opportunity to be heard.

The respondent here, in the remarkably understated words of the Court of Appeals, is "hardly a model citizen." *United States v. Rahimi*, 61 F.4th

443, 453 (5th Cir. 2023). He is a drug dealer who was found by a Texas state court to have committed family violence. The court imposed a DVRO, but he violated it. He threatened another woman with a firearm, and then participated in a series of five shootings. He was ultimately indicted and convicted for violating Section 922(g)(8).

The Fifth Circuit held Section 922(g)(8) is unconstitutional because "Rahimi was not a convicted felon," and the Government failed to identify any "historical precedent" that "evinces a comparable tradition of regulation." 61 F.4th at 452, 454. According to that court, the Government's "gloss" on and "interpretation" of "law-abiding" and "irresponsible" lacks any "limiting principle" and "risks swallowing the text of the amendment." *Id.* at 453. The court asked, "[c]ould speeders be stripped of their right to keep and bear arms?" What about political nonconformists, or those who refuse to recycle or drive an electric vehicle? *Id.* These fanciful hypotheticals are utterly inapposite and overlook what is at stake.

Section 922(g)(8) does not implicate the purported "slippery slope" imagined by the Fifth Circuit and does not risk "swallowing" the Second Amendment. It applies only to individuals found by a court to pose a sufficient risk of domestic violence to warrant the issuance of a DVRO. It is beyond question that when domestic abusers have access to firearms, they are significantly more likely to kill not just the person they are abusing but also children, other family members, bystanders and first-responders. In stark contrast to *Heller* and *Bruen*, Section 922(g)(8) does

not burden the right of "law-aiding" or "responsible citizens" to armed self-defense, under any plausible interpretation of those words.

This Court reiterated in *Bruen* that "the right secured by the Second Amendment is not unlimited." 142 S. Ct. at 2128. Historically, the right to armed self-defense "was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id*. One such limitation, in eighteenth and nineteenth century statutes, was a prohibition against "bearing arms in a way that spreads fear or terror among the people." *Id*. at 2119. Domestic abusers with access to firearms do exactly that—and far worse. Those statutes are more than sufficiently analogous to Section 922(g)(8) to satisfy *Bruen*.

CONCLUSION

The judgment below should be reversed.

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Respectfully submitted,

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