

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 *AMICUS CURIAE* CITIZENS
CRIME COMMISSION OF NEW YORK CITY
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Founded in 1978 by concerned members of the business community in New York City, for over 40 years the Citizens Crime Commission of New York City (“Crime Commission”) has been a leader in converting into action ideas that address crime and protect the economic and social viability of New York City. One of the Crime Commission’s first ideas to be put into action was a plan to make the criminal justice system more effective as a means to reduce street crime that plagued New York City during the 1980s and 90s. As the criminal justice landscape of New York City has changed, the Crime Commission’s work has evolved with it. By issuing reports, holding forums, providing commentary to national and local media, and creating innovative projects, the Crime Commission has continued to generate new ideas and convert them into action.

Since its formation, the Crime Commission has remained an independent, non-partisan, non-profit organization working to reduce crime and to improve the criminal justice system and the safety of New York City. In recent years, under the direction of Richard Aborn and his colleagues, the Crime Commission has been a national leader in the area of harm reduction from firearm-related violence and has pursued initiatives in areas ranging from the reduction of mass shooting incidents to advocating against interstate firearms trafficking. Through its work, the Crime Commission has developed a wealth

¹ No party in this case authored this brief in whole or in part or made any monetary contribution to its preparation and submission.

of knowledge regarding crime in New York City and other major metropolitan areas.

INTRODUCTION AND SUMMARY OF ARGUMENT

According to this Court, the Second Amendment’s guarantee of “the right . . . to keep and bear Arms” is a fundamental right that extends to ordinary, law-abiding, responsible citizens. The federal statute at issue in this case only regulates the possession of firearms by individuals who have been found to be dangerous and who are outside of this broad category of responsible, law-abiding citizens. As discussed in the other briefs filed in this case, including the Government’s brief, the statute is sufficiently similar to relevant historical analogues and therefore withstands constitutional scrutiny.²

This Court’s precedent anticipated the issue presented in this appeal, which is whether dangerous people who do not obey the law may still freely possess and use firearms. In multiple decisions, the Court has excluded from the protection of the Second Amendment those dangerous individuals who do not follow the law. First, in *District of Columbia v. Heller*, this Court held that the Second Amendment protects the right of “*law-abiding, responsible citizens* to use arms in defense of hearth and home” with respect to federal regulation. 554 U.S. 570, 635 (2008) (emphasis added). Two years later in *McDonald v. City of Chicago*, the Court held that the Second Amendment also protected the right of “*law-abiding members of the community*” to “possess[] . . .

² Government Br. 11-27.

handguns in the home for self-defense” with respect to state regulation. *McDonald v. City of Chicago*, 561 U.S. 742, 790 (2010) (Alito, J. plurality) (emphasis added). More recently, in *New York State Rifle & Pistol Ass’n v. Bruen*, this Court characterized the holdings in those cases as the “Second and Fourteenth Amendments protect[ing] the right of *an ordinary, law-abiding citizen* to possess a handgun in the home for self-defense.” 142 S. Ct. 2111, 2122 (2022) (emphasis added). Relying on its prior decisions, this Court concluded that the Second Amendment limits a state’s ability to prevent “*law-abiding citizens* with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* at 2156 (emphasis added).

The Fifth Circuit’s decision in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023) *cert. granted*, 143 S. Ct. 2688 (2023), striking down 18 U.S.C. § 922(g)(8) as facially unconstitutional is at odds with this line of precedent and therefore should be reversed. The individuals encompassed by Section 922(g)(8)’s prohibition on the possession of firearms are only those who have been found by a court to “represent[] a credible threat to the physical safety of [an] intimate partner or child” or who have been prohibited from using “physical force against [an] intimate partner or child that would reasonably be expected to cause bodily injury.” 18 U.S.C. § 922(g)(8)(C). Individuals who are subject to such a finding are dangerous to the community and not “law-abiding citizens.”

In this brief, the Crime Commission offers the experience of New York City and other American

cities in support of the petitioner. This experience and the ample evidence collected by law enforcement and public policy experts confirms that Section 922(g)(8) does not prevent ordinary, law-abiding citizens from owning and using firearms. This experience reinforces the importance of regulating access to firearms for those who have been found by courts to have engaged in domestic violence against an intimate partner, thereby presenting a grave risk of dangerousness to others in the community.

Domestic and intimate partner violence remain significant problems in New York City and other major metropolitan centers throughout the country. As one might expect, the possession of firearms by perpetrators of domestic violence significantly increases the danger to victims of such violence. Less well-known, however, is the fact that these statutes also are vital to the protection of law enforcement officers who respond to such crimes, and to the community at large.

For example, as the data presented in this brief explains:

- In a recent two-year period, 41% of police officer deaths occurring when officers responded to a call involved domestic violence incidents, all of which involved officer death by shooting.
- Half of domestic violence homicides in the United States involve the use of a firearm, relatively few of which occur when the shooter is subject to an order of protection.

- According to a recent study, in 59.1% of mass shootings, the perpetrator shot a partner or family member as one of the victims.

Despite this evidence, the Fifth Circuit invalidated a federal statute that protects persons who have suffered from domestic abuse, law enforcement personnel, and the broader public. This Court should reject this drastic move, which would impair the ability of the government and law enforcement to prevent dangerous individuals from having access to firearms and put law enforcement personnel at greater risk of death. *Heller, McDonald*, and *Bruen* do not support the Fifth Circuit's decision and indeed they expressly require a contrary conclusion. Section 922(g)(8) permissibly regulates access to firearms for individuals who are neither law-abiding nor responsible, and this Court should reverse.

ARGUMENT

I. **Armed Domestic Violence Offenders Represent a Unique Risk to Law Enforcement.**

In January 2022, New York Police Department (“NYPD”) Officers Jason Rivera, 22, and Wilbert Mora, 27, were shot and killed in the line of duty. Both were ambushed responding to the same domestic violence call (one that did not involve intimate partner violence).³ Their deaths represent

³ Tom Winter & David K. Li, *Second NYPD Officer Dies After Shooting in Harlem*, NBC News (Jan. 25, 2022)

the most recent NYPD fatalities suffered while serving the New York City community. This tragic episode demonstrates that domestic violence offenders pose a danger not only to their victims, but to local law enforcement whose risk of life and limb will be increased if the Fifth Circuit's decision is upheld.

New York is not alone in seeing this correlation between officer shootings and domestic violence. Simply put, domestic incidents are highly dangerous for police officers. Based on data from the Federal Bureau of Investigation's ("FBI") Law Enforcement Officers Killed and Assaulted database ("LEOKA"), between 2011 and 2022, 43 officers were killed responding to domestic disturbance or domestic violence calls.⁴ This represented approximately 8.5% of all officers killed in the line of duty during that time period.⁵

When considered in the more specific context of "calls for service," that is, when officers are asked to intervene in a specific situation in order to protect individuals in the community, domestic disputes represent an even more dangerous situation for officers. In 2015 and 2016 alone, 18 officers were killed responding to domestic violence calls, representing "41 percent of the fatal calls for service"

<https://www.nbcnews.com/news/us-news/second-nypd-officer-dies-shooting-harlem-rcna13517> (last visited Aug. 21, 2023)

⁴ Emma Tucker, *Domestic Incidents Are Highly Dangerous for Police Officers, Experts Say*, CNN.com (Jan. 22, 2022)

<https://www.cnn.com/2022/01/22/us/domestic-incidents-police-officers-danger/index.html> (last visited Aug. 21, 2023).

⁵ *Id.*

in that period.⁶ Each of the 18 officers was shot and killed by an armed assailant.⁷

The vast majority of the perpetrators of these homicides have a prior history of domestic violence. A 2008 study analyzed 143 separate incidents of firearm assaults on officers responding to domestic violence calls.⁸ An overwhelming majority of assailants, nearly 90%, had a prior criminal arrest, and over 75% previously had been arrested for domestic violence.⁹ Neither drug use nor mental illness was particularly prevalent among the assailants.¹⁰ What was a common factor, however, was the absence of an order of protection that would have restricted the assailant's access to guns: "only 16.9% of the assailants had an active order of protection against them."¹¹

Inevitably, affirming the Fifth Circuit decision will result in more officers being shot and killed with firearms when responding to domestic violence calls. The data shows that officer assaults are more likely to occur when there is no order of protection that would bar an assailant from possessing a firearm. Those individuals who have been found by a court to

⁶ Nick Breul & Desiree Luongo, *Making It Safer: A Study of Law Enforcement Fatalities Between 2010-2016* at 22 (Dec. 2017) <https://portal.cops.usdoj.gov/resourcecenter/ric/Publications/cops-w0858-pub.pdf> (last visited Aug. 21, 2023).

⁷ *Id.* at 26

⁸ Richard R. Johnson, *Officer Firearms Assaults at Domestic Violence Calls: A Descriptive Analysis*, 81 *The Police J.* 25, 25 (2008)

⁹ *Id.* at 34.

¹⁰ *Id.*

¹¹ *Id.*

pose a danger to a family member, making them subject to Section 922(g)(8), are nothing like the “ordinary” and “law-abiding” citizens whose rights were recognized in *Heller*, *McDonald* and *Bruen*. Upholding the Fifth Circuit’s ruling in *Rahimi* would exacerbate the risk of officer shootings by stripping the federal government of its ability to protect police officers by ensuring that only law-abiding citizens have firearms.

II. Perpetrators of Domestic Violence Are Not Ordinary, Law-abiding Citizens: They Pose an Ongoing Threat to Their Victims.

Of course, the risk posed by arming the perpetrators of domestic violence who are subject to restraining orders goes well beyond the risk to law enforcement. Those dangerous individuals pose a direct risk to their victims.

Again, this is not mere anecdote; it is observable in the relevant data. Consistent with a nationwide trend, New York City has witnessed a dramatic decline in rates of violent crime since 1990, making it “America’s safest big city.”¹² Alongside this overall reduction, major crimes related to domestic violence have increased as a proportion of the overall crime rate. Between 2007 and 2016, the percentage of major crimes in New York City related to domestic

¹² Philip Marcelo, *FACT FOCUS: NYC Crime Is Not Worst Ever, Despite Claims*, Associated Press (Apr. 18, 2023) <https://apnews.com/article/trump-bragg-new-york-manhattan-nypd-4c0cb6ef067b2e3f2358ec9542c900cd> (last visited Aug. 21, 2023).

violence spiked from 4.8% to 11.6%.¹³ More recently, in 2022, 15.4% of all felony complaints in New York City involved a domestic incident.¹⁴ Most tragically, domestic violence plays a leading role in many homicides, accounting for nearly 17% of all such crimes in New York City between 2010 and 2021.¹⁵

Statistics prove that domestic violence offenders are not the sort of ordinary, non-dangerous, law-abiding citizens who are protected by the Second Amendment.

Firearms play a significant role in many of domestic violence homicides. Domestic abusers committed nearly a quarter of their homicides in New York City between 2010 and 2021 with guns.¹⁶ Outside New York City, the statistics are even starker. Guns are used in nearly 40% of domestic violence homicides and over 45% of intimate partner homicides in the remainder of New York State.¹⁷ And

¹³ New York City Domestic Violence Task Force, *2017 Goals and Recommendations* at 2 (May 2017), <https://www.nyc.gov/assets/ocdv/downloads/pdf/DVTF-2017-Recommendations.pdf> (last visited Aug. 21, 2023).

¹⁴ New York Police Department, *2022 Annual Complaint and Radio Run Statistics*, <https://www.nyc.gov/assets/nypd/downloads/excel/domestic-violence/2022/dv-complaint-radio-run-2022.xlsx> (last visited Aug. 21, 2023).

¹⁵ New York City Domestic Violence Fatality Review Committee, *2022 Annual Report* at 1, <https://www.nyc.gov/assets/ocdv/downloads/pdf/2022-Annual-FRC-Report.pdf> (last visited Aug. 21, 2023)

¹⁶ *Id.* at 8.

¹⁷ New York State Division of Criminal Justice Services, *Domestic Homicide in New York State 2020* at 9, <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL2020->

the nationwide statistics paint a similar picture with over half of domestic violence homicides involving a gun.¹⁸ An 11-city study analyzing data from 1994 through 2000, found the likelihood that a woman would be killed by her abuser increased more than fivefold if the abuser had access to a gun.¹⁹

Even in non-fatal encounters, domestic abusers will often brandish or threaten to use a firearm. A 2004 study based on interviews with 417 respondents in battered women’s shelters found that where at least one gun was kept in the home “nearly two thirds (64.5%)” of the women had experienced a “partner us[ing] one of the guns to scare, threaten, or harm” them.²⁰ Five percent of women reported that their partner had shot at them.²¹

Domestic-Homicide-Report12-21.pdf (last visited Aug. 21, 2023). According to New York City data, approximately 70% of domestic violence crimes involve intimate partner violence, the specific type of illegal activity addressed by Section 922(g)(8). See New York State Division of Criminal Justice Services, *Domestic Violence Victim Data by County: 2022, New York City*, https://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence2022/nypd_data_web.xls (last visited Aug. 21, 2023).

¹⁸ April M. Zeoli & Jennifer K. Prauk, *Potential to prevent mass shootings through domestic violence firearm restriction*, 19 *Criminology & Pub. Policy* 129, 130 (2020)

¹⁹ Jacquelyn C. Campbell, et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 *Am. J. of Pub. Health* 1089, 1091 (July 2003), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.93.7.1089>

²⁰ Susan B. Sorenson & Douglas J. Wiebe, *Weapons in the Lives of Battered Women*, 94 *Am. J. Pub. Health* 1412 (Aug. 2004) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448464/>

²¹ *Id.*; see also Susan B. Sorenson & Rebecca A. Schut, *Non-fatal Gun Use in Intimate Partner Violence: A Systematic Review of*

Domestic violence homicides are more likely to happen in the absence of restraining orders that restrict firearm possession. The dangerous and illicit use of firearms by domestic abusers is consistent with other datapoints indicating that domestic abusers have a propensity to break the law in order to commit further acts of domestic violence.²² NYPD crime statistics demonstrate that while temporary restraining orders are frequently violated, domestic violence homicides occur disproportionately in cases where no temporary restraining order—and so no firearm possession restriction—is in place.

In 2022, the NYPD reported that nearly a third of crime related to domestic violence against an intimate partner (9,032 incidents out of 27,527) involved the violation of a protective order.²³ More than a quarter of all incidents of domestic violence against any family member—not just an intimate partner—involved the violation of a protective order (11,794 incidents out of 39,224).²⁴ And the NYPD reports numerous incidents of chronic domestic violence. For the 18 months between July 1, 2021 and

the Literature, 19 *Trauma, Violence, & Abuse* (Sept. 14, 2016) <https://repository.upenn.edu/server/api/core/bitstreams/4b9dcf15-55f8-4c31-9922-d43e2360e528/content>

²² Similar to 18 U.S.C. 922(g)(8), New York law allows a court to suspend an individual's right to possess firearms when the individual is subject to an order of protection. See Family Court Act § 842-a.

²³ New York State Division of Criminal Justice Services, *Domestic Violence Victim Data by County: 2022, New York City*, https://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence2022/nypd_data_web.xls (last visited Aug. 21, 2023).

²⁴ *Id.*

December 31, 2022, the NYPD received 5,219 complaints of such repeated violence.²⁵

While at first blush these statistics might appear to show that orders of protection are ineffectual in the face of a group of determined repeat offenders, the opposite is true. The most serious consequences of domestic violence—domestic violence homicides—overwhelming occur in cases where there is no active order of protection. In particular, an order of protection was in force with respect to 48 intimate partner homicides in New York City between 2010 and 2021.²⁶ By contrast, in the vast majority of incidents ending in an intimate partner homicide over that same time period—341 cases—no order of protection was in effect to prevent the domestic abuser from possessing firearms.²⁷

Given that the overwhelming majority of domestic-violence homicides occur in the absence of an order of protection, one can conclude that many of the thousands of incidents involving the violation of an order of protection might have ended in death if the perpetrator was not barred from possessing guns.

²⁵ New York Police Department, *2022 Total Number of Chronic Domestic Violence Complaints; Disaggregated by Borough*, https://www.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/domestic-violence/chronic_complaints_dv_borough.pdf (last visited Aug. 21, 2023).

²⁶ New York City Domestic Violence Fatality Review Committee, *2022 Annual Report* at 10, <https://www.nyc.gov/assets/ocdv/downloads/pdf/2022-Annual-FRC-Report.pdf> (last visited Aug. 21, 2023).

²⁷ *Id.*

Domestic violence abusers are prone to high levels of recidivism. New York City’s experience with chronic domestic abusers and the violation of protection orders (as discussed above at 11) is sadly par for the course in other major urban centers.²⁸ For example, a 2008 study reviewed data from 273 felony domestic violence offenders in a suburban county of Chicago, who received probation between August 1, 1992 and July 31, 1999. Inside 24 months of the original offense, “112 (41 percent) were found to have been re-arrested within the judicial circuit for a new violent offense[.]”²⁹

Some more recent data suggests that the recidivism rate may be even higher today than it was in the past. Data collected by the Public Policy Institute of California from 12 counties in the state, including 7 out of the 10 most populous, for 2011 to 2014, indicated that “[t]hree-fifths of individuals convicted of domestic violence are rearrested within two years” and “67% of this group are rearrested for another domestic violence offense.”³⁰ These

²⁸ See, e.g., Christopher T. Benitez, Dale E. McNiel & Renée L. Binder, *Do Protection Order Protect?*, 38 J. of the Am. Acad. of Psychiatry & the Law 376, 384-85 (Sept. 2010) <https://jaapl.org/content/38/3/376> (noting prior studies finding “the rate of violation ranged from 3 to 79 percent with a mean of 40 percent” but observing that nonetheless “research supports the conclusion that they are associated with reduced risk of violence toward the victim).

²⁹ Richard R. Johnson, *Correlates of Re-arrest Among Felony Domestic Violence Probationers*, 72 Federal Probation at 3-4 (Dec. 2008),

https://www.uscourts.gov/sites/default/files/72_3_6_0.pdf.

³⁰ Viet Nguyen & Mia Bird, *Tailoring Domestic Violence Programs to Reduce Recidivism*, PPIC (June 12, 2018)

individuals on average had “nine prior arrests for any kind of offense” including “one prior domestic violence arrest.”³¹

Suffice it to say, the individuals who are subject to the prohibition in Section 922(g)(8) are not ordinary, law-abiding citizens. They commit crimes more often than do other individuals and require a level of specific deterrence that is beyond what is generally required in our society. Their offenses do not relate to failing to recycle aluminum cans, or to using a gas-powered car, as the Fifth Circuit worried might be the basis for denial of access to firearms. *Rahimi*, 61 F.4th at 453. In short, they are individuals who courts have determined pose a danger to others—most of all, to their spouses or intimate partners. Prohibiting their possession of firearms is consistent with the Second Amendment.

III. Domestic Abusers Are More Likely to Commit Mass Shootings and Therefore Pose a Grave Danger to Broader Society.

All of society—not only domestic violence victims and police officers—is put at grave risk when domestic abusers are given access to firearms. A growing literature demonstrates the nexus between domestic violence and mass shootings. Defined as a shooting in which there are four or more victims, mass shootings are particularly insidious, inflicting harm on multiple direct victims while instilling fear and terrorizing the public.

<https://www.ppic.org/blog/tailoring-domestic-violence-programs-to-reduce-recidivism/> (last visited Aug 21, 2023).

³¹ *Id.*

Data collected on the thousands of mass shooting victims between 2015 and 2022 show that “nearly two in three children and teens killed in mass shootings . . . died in an incident connected to domestic violence.”³² Examining data on the 128 mass shootings between January 1, 2014 and December 31, 2019, a 2021 study observed that in 59.1% of those shootings the perpetrator shot a partner or family member and an additional 9.1% of shooters had a history of domestic violence.³³ The average number of victims in these domestic-violence-related mass shootings was 7.8.³⁴

Even worse, domestic violence is not simply tied to the incidence of mass shootings; it also correlates with the lethality of the episode. The 2021 study observed that only 16.3% of the victims survived in domestic-violence-related mass shootings compared with 36.9% of victims in non-domestic-violence-related mass shootings.³⁵ At any rate the survivors, the victims’ loved ones, and the community often suffer long-term consequences from these shootings. In addition to physical trauma, survivors often must cope with long-term psychological effects, including

³² Everytown for Gun Safety, *Guns and Violence Against Women* (last updated Apr. 10, 2023) <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/> (last visited Aug. 21, 2023).

³³ Lisa B. Geller, Marisa Booty & Cassandra K. Crifasi, *The role of domestic violence in fatal mass shootings in the United States, 2014-2019*, 8 *Injury Epidemiology* (May 31, 2021) <https://link.springer.com/article/10.1186/s40621-021-00330-0>.

³⁴ *Id.*

³⁵ *Id.*

post-traumatic stress disorder.³⁶ The same is true for those close to the victims and the affected communities.³⁷ Research indicates that these shootings are also taking an increasing toll on the entire American public.³⁸

The pernicious confluence of domestic violence, firearms, and multiple victim shootings seen in the national data is consistent with data collected by New York City related to intimate partner homicide-suicides. Between 2010 and 2018, there were 47 intimate homicide-suicide cases in the city.³⁹ In eight cases, there were multiple victims. Those cases involved the death of nine intimate partners, nine children, and one additional relative.⁴⁰ Although domestic-violence homicides during that timeframe generally only involved a firearm in about a quarter of cases, in these multiple-victim cases, firearms were

³⁶ Sarah R. Lowe & Sandro Galea, *The Mental Health Consequences of Mass Shootings*, 18 *Trauma, Violence, & Abuse* 62, 62 (June 21, 2016)

<https://journals.sagepub.com/doi/abs/10.1177/152483801559157>.

³⁷ *Id.*

³⁸ Zara Abrams, *Stress of Mass Shootings Causing Cascade of Collective Traumas*, Monitor on Psychology (last updated Sept. 1, 2022) <https://www.apa.org/monitor/2022/09/news-mass-shootings-collective-traumas> (last visited Aug. 21, 2023) (reporting that “[f]ear of mass shootings has left a large majority of Americans feeling stressed, including a third of adults who say they now avoid certain places and events as a result”).

³⁹ Kara Noesner & Edward Hill, *Intimate Partner Homicide-Suicide in New York City (2010-2018)*, NYC Mayor's Office to End Domestic and Gender-Based Violence (Mar. 2020) <https://www.nyc.gov/assets/ocdv/downloads/pdf/intimate-partner-homicide-suicide-in-new-york-city-2010-2018.pdf> (last visited Aug. 21, 2023).

⁴⁰ *Id.* at 2.

used 84% of the time.⁴¹ That is, as the number of victims increased the prevalence of guns also increased. An order of protection had been issued in none of these cases, removing the deterrent that Section 922(g)(8) creates.⁴² Once again we see an inverse correlation between these gun deaths and the issuance of a protective order. Take away the ability to restrict the possession of firearms in the domestic violence context, and inevitably there will be more mass shootings and more deaths.

The connection between multiple-victim shootings and domestic violence highlights a particular infirmity in the Fifth Circuit's reasoning related to the historical analogues proffered by the United States below. According to the Fifth Circuit, the "going armed" laws cited by the United States were not sufficiently analogous because they "appear to have been aimed at curbing terroristic or riotous behavior, i.e., disarming those who had been adjudicated to be a threat to society generally, rather than to identified individuals." *Rahimi*, 61 F.4th at 459. In reaching such a conclusion, the Fifth Circuit did not consider and failed to appreciate the mounting evidence that domestic violence represents such terroristic behavior, inflicting wounds beyond the abusers' intimate partners or family members. If the Fifth Circuit had understood these facts, it would have recognized that Section 922(g)(8) is, in fact, analogous to the relevant historical precedent. *See Bruen*, 142 S. Ct. at 2133 ("[A]nalogical reasoning requires only that the government identify a well-

⁴¹ *Id.*

⁴² *Id.*

established and representative historical *analogue*, not a historical *twin*.”)

CONCLUSION

For the reasons set forth above, this Court should reverse the Court of Appeals’ decision in this case.

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