

No. 22-915

In The
Supreme Court of the United States

UNITED STATES, PETITIONER

v.

ZACKEY RAHIMI, RESPONDENT.

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

**BRIEF FOR CALIFORNIA GOVERNOR
GAVIN NEWSOM AS AMICUS CURIAE
SUPPORTING PETITIONER**

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INTEREST OF AMICUS CURIAE¹

Gavin Newsom is the Governor of California. As the executive of the nation's largest State, the Governor has an obligation to ensure the safety of California's residents from the horrors of gun violence—including gun violence by intimate partners and family members. In pursuing that goal, the Governor has consistently advocated for commonsense gun regulations that save lives without infringing on individuals' constitutional rights. Those regulations include requirements for background checks and mental-health reporting, prohibitions on marketing firearms-related products to minors, restrictions on so-called "ghost guns" designed to stymie law-enforcement investigations of gun crimes, and limitations on weapons of war.

The Governor has demonstrated a particular commitment to protecting survivors of domestic violence by signing legislation and launching a campaign to bolster the efficacy of gun-violence restraining orders. These laws, known as "red flag laws," allow law-enforcement officers, family, coworkers, or friends to petition a court to temporarily remove weapons from individuals the court finds are dangerous to themselves or others.

¹ No counsel for a party authored this brief in whole or in part, and no person other than amicus or his counsel made a monetary contribution to its preparation or submission.

California's gun safety laws work. The State's gun-death rate is the 43rd lowest in the country and 39 percent lower than the national average.² Californians are 25 percent less likely to die in a mass shooting compared to residents of other States. And since the early 1990s, when some of California's most significant gun safety laws took effect, California has cut its gun death rate by more than half. The Governor has a profound interest in ensuring that California can continue to protect its residents through these commonsense, effective laws.

² Giffords Law Center, *Annual Gun Law Scorecard—California*, <https://giffords.org/lawcenter/resources/scorecard/?scorecard=CA> (last visited Aug. 18, 2023).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Second Amendment is not a suicide pact. In *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022), as in previous Second Amendment decisions, this Court took care to emphasize that the Second Amendment right “is not unlimited.” *Id.* at 2128 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). While it protects “the right of *law-abiding, responsible* citizens to use arms’ for self-defense,” it does not disable the government from enacting a variety of gun regulations for which there is a longstanding historical tradition—including restrictions on gun possession by dangerous individuals. *Id.* at 2128, 2131 (emphasis added) (quoting *Heller*, 554 U.S. at 635). But simply because it could identify no exact historical replica, the Fifth Circuit struck down one of those regulations: a federal statute prohibiting firearms possession by individuals who a court has found pose a credible threat to the safety of an intimate partner or child. In reaching that radical conclusion, the Fifth Circuit failed to heed this Court’s instructions.

The Fifth Circuit is not the only court to employ such erroneous reasoning in attempting to interpret and apply *Bruen*. *Bruen* instructed that when invoking historical statutes, the government need identify only a “historical *analogue*, not a historical *twin*.” *Id.* at 2133 (emphasis in original). It further explained that an even “more nuanced approach” is necessary when assessing regulations that address

“unprecedented societal concerns or dramatic technological changes.” *Id.* at 2132. Yet multiple courts have either ignored this instruction or expressed confusion as to what that more nuanced approach entails. As a result, courts have wrongly struck down a number of longstanding, commonsense gun regulations. This Court should confirm that *Bruen* requires a broader and more flexible historical analysis, especially in cases concerning laws predicated on the significant social and technological changes since the enactment of the Second and Fourteenth Amendments. Such an approach is necessary if, as this Court explained, “the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Ibid.*

This clarification is particularly needed for public officials confronting the modern challenges that firearms pose. The rigid historical analysis adopted by some lower courts thwarts the ability of those officials charged with protecting public safety to adopt and enforce the regulations that *Bruen* intended to preserve. That result will threaten the lives of countless Americans and enable entirely foreseeable acts of gun violence.

The decision below should be reversed.³

³ Although Governor Newsom believes *Bruen* was wrongly decided, he assumes for purposes of this brief that the *Bruen* standard governs and does not challenge it here.

ARGUMENT**THIS COURT SHOULD REAFFIRM THAT
COMMONSENSE GUN SAFETY REGULATIONS
REMAIN CONSTITUTIONAL****A. *Bruen* Maintained The Government's
Power To Address New Social Problems
Through Gun Regulations**

In *Bruen*, the Court rejected the two-step approach the federal courts of appeals had uniformly applied in assessing Second Amendment challenges. *See* 142 S. Ct. at 2126-27. Instead, *Bruen* held, “when the Second Amendment’s plain text covers an individual’s [regulated] conduct,” *id.* at 2126, “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127. But even as the Court revised the Second Amendment analysis to focus on text and history, rather than means-ends balancing, it repeated its prior assurances that this constitutional right “is not unlimited.” *Id.* at 2128 (quoting *Heller*, 554 U.S. at 626); *see also id.* at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-27 & n.26) (same).

In particular, *Bruen* maintained two limitations important here. First, the Court reiterated that the Second Amendment is concerned primarily with “the right of *law-abiding, responsible* citizens to use arms’ for self-defense.” *Id.* at 2131 (emphasis added) (quoting *Heller*, 554 U.S. at 635). Second, the Court held that for the government to justify a firearms

regulation by analogizing it to a historical law, it need only “identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 2133 (emphasis in original). “[E]ven if a modern-day regulation is not a dead ringer for historical precursors,” it withstands constitutional scrutiny if it is “relevantly similar” to a historical law. *Id.* at 2132-33. Thus, the Court emphasized, the “analogical reasoning” *Bruen* describes is not “a regulatory straightjacket.” *Id.* at 2133.

These principles are especially important when assessing firearms regulations that address new social or technological concerns. As *Bruen* acknowledged, “[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868.” *Id.* at 2132. And when a problem is new, “there obviously will not be a history or tradition of *** imposing” regulations addressing it. *Heller v. District of Columbia*, 670 F.3d 1244, 1275 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). But that does not “mean that the government is powerless.” *Ibid.* Rather, federal, state, and local governments maintain the authority to meet those new challenges: “[T]he Founders created a Constitution—and a Second Amendment—‘intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.’” *Bruen*, 142 S. Ct. at 2132 (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 415 (1819)). Because “the Constitution can, and must, apply to circumstances beyond those the Founders specifically

anticipated,” *Bruen* clarified that “cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach” when drawing “historical analogies.” *Ibid.*

Three members of the six-Justice *Bruen* majority separately highlighted these important limits on the Court’s decision. As Justice Alito’s concurrence observed, *Bruen* “decide[d] nothing about who may lawfully possess a firearm” or “the kinds of weapons that people may possess.” *Id.* at 2157 (Alito, J., concurring). And Justice Kavanaugh, joined by the Chief Justice, confirmed that “[p]roperly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.” *Id.* at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636). These concurring opinions made clear that this Court had not intended to remove all guardrails on courts’ application of the Second Amendment.

B. The Fifth Circuit Disregarded *Bruen*’s Instructions In Invalidating A Longstanding Gun Regulation

In the decision below, the Fifth Circuit crashed through those guardrails. The court assessed the constitutionality of 18 U.S.C. § 922(g)(8), which protects against domestic gun violence by prohibiting an individual from possessing firearms if a judge has issued a restraining order premised on a determination that the individual poses a threat to the physical safety of an intimate partner or child. *See* 18 U.S.C. § 922(g)(8). According to the Fifth Circuit,

this longstanding federal law does not “fit[] within our Nation’s historical tradition of firearm regulation.” Pet. App. 27a.

While the Fifth Circuit purported to apply this Court’s new framework, it flouted *Bruen*’s instructions. Rather than engage in a meaningful analogical inquiry, the court rejected a host of “relevantly similar” historical regulations based on irrelevant and immaterial differences, effectively demanding a “historical twin” for § 922(g)(8). Only by fundamentally misapplying *Bruen* did the Fifth Circuit reach the perverse conclusion that § 922(g)(8)—which assures “the protection of an identified person from the threat of domestic gun abuse” posed by another, as found by a court—bears no relationship to historical laws that sought to protect “society” and “political and social order” by “disarming dangerous classes of people.” Pet. App. 20a, 24a (quotation marks omitted).

The Fifth Circuit’s excessively rigid historical analysis is particularly misguided because § 922(g)(8) was enacted in response to the relatively recent recognition of a social problem. Domestic violence was not civilly or criminally prohibited at the founding, at ratification, or during the Reconstruction period; rather, “most states” made intrafamily abuse illegal only in “the late nineteenth century.” Deborah Epstein, *Effective Intervention in Domestic Violence Cases*, 11 *Yale J.L. & Feminism* 3, 3 (1999). Similarly new is the widespread consensus that domestic-violence victims are at heightened risk of gun-related

abuse from their domestic partners.⁴ Given these developments, both of which significantly postdate the founding and Reconstruction period, § 922(g)(8) would be unlikely to have any historical “twin”—*i.e.*, a law treating threatened domestic abusers as dangerous individuals who should be disarmed. *See* Jacob D. Charles, *The Dead Hand of a Silent Past*, 73 Duke L.J. ___ (forthcoming 2023), at 40 (examining reasons for the absence of historical disarmament of domestic abusers);⁵ U.S. Br. 40-41 (same).

Contrary to the Fifth Circuit’s reasoning (Pet. App. 16a-27a), that should not end the inquiry. There is no

⁴ *See, e.g.*, Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships*, 93 Am. J. Pub. Health 1089, 1092 (2003) (domestic violence victims are five to eight times more likely to be killed when their abuser has access to a gun), <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.93.7.1089>; Avanti Adhia et al., *Nonfatal Use of Firearms in Intimate Partner Violence*, 147 Preventive Med. 106500 (2021) (25 million adults in the United States have been threatened or nonfatally injured by an intimate partner with a firearm), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8096701/pdf/nihms-1694140.pdf>; Matthew R. Durose et al., U.S. Dep’t of Just., Bureau of Just. Stat., *Family Violence Statistics* 64 (2005) (nearly half of inmates convicted of family violence and over two-thirds of those convicted of a violent crime against their spouse were subject to a restraining order at some time in their lives), <https://bjs.ojp.gov/content/pub/pdf/fvs.pdf>; Ctrs. for Disease Control & Prevention, *Preventing Intimate Partner Violence* (Oct. 11, 2022), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> (one in five homicide victims are killed by an intimate partner and more than half of female victims are killed by a current or former male intimate partner); *see also* U.S. Br. 29-32 (documenting the danger armed domestic abusers pose to their partners, family members, and other members of society).

⁵ <https://ssrn.com/abstract=4335545>.

question that our historical tradition allows elected leaders to define new crimes and enact new laws to reflect contemporary morals and address modern social ills: *Heller* itself “tell[s] us that * * * the legislative role did not end in 1791.” *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc) (Easterbrook, J.) (citing *Heller*, 554 U.S. at 626-27). And *Bruen* recognized that the “Second Amendment” is “intended * * * to be adapted to the various crises of human affairs” and the corresponding “regulatory challenges posed by firearms today.” 142 S. Ct. at 2132 (quoting *McCulloch*, 4 Wheat. at 415). Nor should there be any dispute that *Bruen* and *Heller*’s emphasis on “the right of *law-abiding, responsible* citizens to use arms’ for self-defense” referred to those who adhere to *today*’s laws and responsibilities. *Id.* at 2131 (emphasis added) (quoting *Heller*, 554 U.S. at 635). Especially in cases implicating “unprecedented societal concerns,” *Bruen* demands a flexible and “more nuanced approach” in drawing “historical analogies.” *Id.* at 2132.

The Fifth Circuit’s mistaken understanding of the historical inquiry led to its erroneous conclusion that § 922(g)(8) violates the Second Amendment. As members of the *Bruen* majority assured, the Constitution permits “a ‘variety’ of gun regulations,” *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636), and the Court’s decision did nothing to expand the group of people “who may lawfully possess a firearm,” *id.* at 2157 (Alito, J., concurring). If those assurances mean anything, § 922(g)(8)’s restriction must be one of those permissible limits on the right to bear arms. Indeed,

as the United States has explained, “[f]rom the earliest days of the Republic to modern times * * * legislatures have disarmed individuals who could not be trusted with firearms”—that is, “individuals who are not law-abiding, responsible citizens.” U.S. Br. 27; *accord Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns.”); *N.Y. State Rifle & Pistol Ass’n v. City of New York*, 140 S. Ct. 1525, 1541 (2020) (Alito, J., dissenting) (recognizing the “constitutionality” of laws prohibiting possession of firearms by “dangerous individuals”). In enacting § 922(g)(8), Congress exercised that longstanding power by disarming only those individuals whom a court has determined “have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety.” *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting); *see United States v. Boyd*, 999 F.3d 171, 188-89 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 511 (2021) (upholding constitutionality of § 922(g)(8)).

In these respects, § 922(g)(8) mirrors many other long-accepted firearms regulations: while “enacted * * * to address modern conditions,” the statute fits comfortably within the historical tradition of laws keeping firearms out of the hands of those most likely to misuse them. *United States v. Jackson*, 69 F.4th 495, 504 (8th Cir. 2023) (upholding constitutionality of § 922(g)(1)). By adopting an inflexible, cramped approach to analogizing the historical statutes identified by the government to § 922(g)(8), the Fifth

Circuit failed to follow this Court’s instructions. Its failing was especially egregious because § 922(g)(8) seeks to address an “unprecedented societal concern[],” calling for the “more nuanced approach” that *Bruen* mandates in these circumstances. 142 S. Ct. at 2132.

C. The Fifth Circuit’s Error Reflects Broader Confusion In Applying *Bruen*

The decision below is just one example of courts failing to faithfully apply *Bruen*’s “more nuanced approach.” 142 S. Ct. at 2132. This Court should use this opportunity to make clear that when a challenged regulation addresses “unprecedented societal concerns or dramatic technological changes” (*ibid.*), courts should accept broader historical analogies in determining whether prior laws provide support for the modern regulation.

Bruen held that a historical law is “relevantly similar” to a modern regulation as long as it “impose[s] a comparable burden on the right of armed self-defense” and “that burden is comparably justified.” *Id.* at 2133. Properly understood, this inquiry does not require a “dead ringer” from the historical record. *Ibid.* Yet the lower courts that have had to apply *Bruen* in the year since it issued “are struggling at every stage of the *Bruen* inquiry.” *United States v. Daniels*, ___ F.4th ___, 2023 WL 5091317, at *17 (5th Cir. Aug. 9, 2023) (Higginson, J., concurring); *see, e.g., Worth v. Harrington*, No. 21-cv-1348, 2023 WL 2745673, at *5 n.10 (D. Minn. Mar. 31, 2023) (“Courts have struggled with deciphering exactly how to apply *Bruen*’s instruction to consider only ‘relevantly similar’ historical analogues

through evaluation of how and why they burden the right to keep and bear arms.”); *United States v. Quiroz*, 629 F. Supp. 3d 511, 522 (W.D. Tex. 2022) (“[O]ne could easily imagine why historical analogies from the 18th century would be difficult to find * * * [b]ut the only framework courts now have is *Bruen*’s two-step analysis.”); *United States v. Bullock*, ___ F. Supp. 3d ___, 2023 WL 4232309, at *25 (S.D. Miss. June 28, 2023) (opining that *Bruen*’s “new standard has no accepted rules for what counts as evidence”).⁶

⁶ In attempting to interpret *Bruen*, some courts and commentators have also read the opinion as concluding that “historical silence” is conclusive “evidence that the public did not approve of” a gun regulation whenever “the public experienced the harm the modern-day regulation attempts to address.” *Daniels*, 2023 WL 5091317, at *5. Yet such a reading implies that “historical legislatures always legislated to the maximum extent of their constitutional authority”—a position that makes “assumptions about historical lawmaking that do not seem justified.” Charles, *supra*, at 39. To state the obvious, “[p]ast generations may have declined to regulate for any number of reasons that do not illuminate the question of constitutionality.” *Id.* at 40; see also *United States v. Kelly*, No. 22-cr-0037, 2022 WL 17336578, at *2 (M.D. Tenn. Nov. 16, 2022) (“[A] list of the laws that *happened to exist* in the founding era is, as a matter of basic logic, not the same thing as an exhaustive account of what laws would have been theoretically *believed to be permissible* by an individual sharing the original public understanding of the Constitution.”). And in the domestic-violence context specifically, the “malevolent explanations for past inaction”—including the widespread condoning of such violence and the view that intrafamily matters were not the law’s concern—surely cannot shed light on a law’s constitutionality under contemporary conditions. Charles, *supra*, at 41. For these reasons as well, evidence other than mirror-image historical statutes illuminates the Second Amendment’s original meaning. See U.S. Br. 41-42.

As a result of this confusion, courts have repeatedly misread *Bruen* to require invalidating reasonable restrictions well-grounded in our nation’s tradition of regulating firearms. Perhaps most strikingly, courts have held 18 U.S.C. § 922(g)(1), the federal felon-in-possession ban, unconstitutional as applied. *Range v. United States Att’y General*, 69 F.4th 96 (3d Cir. 2023) (en banc); *Bullock*, 2023 WL 4232309. They did so despite *Heller*’s clear statement that “prohibitions on the possession of firearms by felons” are “presumptively lawful.” 554 U.S. at 626 & n.26.⁷ Other courts have similarly deemed unconstitutional longstanding and commonsense gun regulations, using overly rigid analogical reasoning mirroring that of the Fifth Circuit’s decision here. *See, e.g., Daniels*, 2023 WL 5091317 (holding 18 U.S.C. § 922(g)(3), which prohibits possession of firearms by users of unlawful substances, unconstitutional as applied); *Quiroz*, 629 F. Supp. 3d 511 (concluding that 18 U.S.C. § 922(n), which prohibits a person under felony indictment from receiving firearms, is unconstitutional); *United States v. Price*, 635 F. Supp. 3d 455 (S.D. W. Va. 2022) (concluding that 18 U.S.C. § 922(k), which prohibits possession of a firearm with an altered, obliterated, or removed serial number, is unconstitutional); *Wolford v. Lopez*, No. 23-cv-0265, 2023 WL 5043805 (D. Haw. Aug. 8, 2023) (enjoining portions of state law banning firearms in certain sensitive areas, including beaches,

⁷ *See also United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023) (rejecting a similar challenge and concluding that “there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)”).

as likely unconstitutional); *Rigby v. Jennings*, 630 F. Supp. 3d 602 (D. Del. 2022) (enjoining ban on untraceable ghost guns as likely unconstitutional).

Much like the Fifth Circuit’s decision below, these decisions failed to take a sufficiently flexible approach to the historical inquiry, even when the regulations at issue addressed concerns “unknown at the Founding,” *Range*, 69 F.4th at 120 (Krause, J., dissenting), thus calling for an even more nuanced analysis. In doing so, these decisions impose precisely the “regulatory straightjacket” that *Bruen* disavowed, quashing any firearms regulation regardless of how narrow, effective, or reasonable it may be. *See* 142 S. Ct. at 2133; *id.* at 2162 (Kavanaugh, J., concurring) (explaining that “[p]roperly interpreted, the Second Amendment allows a ‘variety’ of gun regulations” and approving of the “43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense”) (quoting *Heller*, 554 U.S. at 636).

D. Public Officials Must Be Able To Enact Reasonable Gun Regulations

This widespread confusion stymies elected officials’ ability to enact and enforce even those gun regulations that fit within our nation’s historical tradition. And it poses immediate and profound public-safety implications, putting countless individuals at risk of injury and death.

The consequences of lower courts’ misunderstandings of *Bruen* are both predictable and tragic. Over 47,000 individuals died from firearms in 2021.

Ctrs. for Disease Control & Prevention, *Increases in Firearm Homicide & Suicide Rates* (Oct. 7, 2022).⁸ In that year, 81% of all homicides and 55% of all suicides involved firearms—the highest rates recorded in the past 28 and 31 years, respectively. *Ibid.* This risk is even greater for domestic-violence victims: Approximately one in five homicide victims in the United States are killed by an intimate partner. Alexia Cooper & Erica L. Smith, U.S. Dep’t of Just., Bureau of Just. Stat., *Homicide Trends in the United States, 1980-2008* 17-18 (2011).⁹ And more than half of all female homicide victims are killed by a current or former male intimate partner. Ctrs. for Disease Control & Prevention, *Preventing Intimate Partner Violence* (Oct. 11, 2022).¹⁰

While important to every individual in the United States, this issue has special importance to state executives like Governor Newsom, who is responsible for protecting California’s nearly 40 million residents from the modern horrors of gun violence. California’s many efforts to combat this scourge have kept Californians safer from gun violence than residents of most other States. *See* Ctrs. for Disease Control & Prevention, *Firearm Mortality by State* (Mar. 21, 2022).¹¹

⁸ <https://www.cdc.gov/mmwr/volumes/71/wr/pdfs/mm7140a4-H.pdf>.

⁹ <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>.

¹⁰ <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

¹¹ https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm.

Nonetheless, 3,576 Californians were killed by guns in 2021. *Ibid.* And gun-inflicted deaths stemming from domestic violence persist, making § 922(g)(8)'s protections vital. See David M. Studdert et al., *Homicide Deaths among Adult Cohabitants of Handgun Owners in California, 2004 to 2016*, 175 *Annals Internal Med.* 804-11 (2022) (Californians living with a handgun owner have a sevenfold-increased risk of being shot and killed at home by a spouse or intimate partner).

Yet public officials like Governor Newsom are hampered in their efforts to address this crisis—not just by erroneous judicial decisions striking down specific gun regulations, but also by the more general uncertainty regarding how *they* as policymakers should apply *Bruen*. To meaningfully fulfill his responsibilities, the Governor (and other state leaders) must be able to rely on this Court's explication of the Second Amendment's scope and limits. But just as implementing *Bruen* is proving challenging for lower courts, it also presents challenges for those making law and policy at the state level. State officials must now, with little guidance or expertise, determine which historical gun regulations are appropriate analogues as they work to develop firearm regulations, a question that has divided dozens of courts considering the very same laws. Because officials cannot accurately predict whether the gun regulations they seek to pass will survive Second Amendment scrutiny, they may be dissuaded from even attempting to enact life-saving measures.

Thus, in correcting the Fifth Circuit’s errors, this Court should clarify *Bruen*’s mandate that, in all cases, Second Amendment historical analysis requires reasoning by analogy, not an inflexible search for an identical twin—and that an even “more nuanced” inquiry is necessary when assessing whether a regulation that addresses modern social problems or technological changes falls within a historical category of permissible regulations. Those modern developments include, but are by no means limited to, “the lethality of today’s weaponry, the ubiquity of gun violence, the size and anonymity of the population, and the extent of interstate travel,” *Range*, 69 F.4th at 120 (Krause, J., dissenting), as well as the density of the population and technological advancements allowing sophisticated weapons to be manufactured or assembled at home. And the Court should confirm that a nuanced historical inquiry requires a court to “broaden its conception of what constitutes an analogue” to account for those changed circumstances. *Antonyuk v. Hochul*, No. 22-cv-0986, 2022 WL 16744700, at *41 (N.D.N.Y. Nov. 7, 2022) (quotation marks omitted). Only with such further guidance from this Court can lower courts and elected officials meaningfully and consistently apply *Bruen*’s framework to regulations that seek to protect the public from uniquely modern dangers.

CONCLUSION

This Court should reverse the decision of the Fifth Circuit.

Respectfully submitted,

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