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Public Good Meets Private Property: the Hydra-Headed Takings Clause

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By: Ravinder Arneja, IMLA Associate Counsel

The Supreme Court recently declared that constitutional questions are to be analyzed through the societal lens in effect when that seminal document was written. A current firearms case illustrates the complexity of applying Eighteenth Century norms in a contemporary context. An opinion later this Term should provide further insights into the Court's "history and tradition" jurisprudence.

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PRIVATE PROPERTY AND PUBLIC GOOD: THE HYDRA-HEADED TAKINGS CLAUSE

By: Erich Eiselt, IMLA Deputy General Counsel and Director of Legal Advocacy

America's founders enshrined in twelve words the principle that private property may not be taken for public use without just compensation. That tenet continues to spawn ever-increasing debate, challenging the meaning of property, the parameters of a Taking, and the character of use. Local governments are at the epicenter of that conflict.

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Rahimi: The Challenges of Second Amendment History and Tradition

By: RAVINDER ARNEJA,
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Introduction

"You don't have any doubt that your client is a dangerous person, do you?" Chief Justice Roberts asked pointedly, his tone implying that the answer about Respondent Zackey Rahimi was self-evident. Matthew Wright, however, refused to concede the point on behalf of his client without clarification. "I would want to know what dangerous person means," he countered.

The Chief Justice, seemingly incredulous, replied, "Someone who is shooting at people," sparking soft chuckles from the gallery.

A sheepish Wright conceded, "That's fair."[1]

While the courtroom exchange offered glimpses into the legal complexities at play, the true import of *United States v. Rahimi* will be revealed in the months ahead. As the Supreme Court deliberates, we delve deeper into the ever-shifting landscape of Second Amendment law and assess how the Court's *Bruen* decision continues to reshape gun rights in America. This article analyzes the arguments and explores the potential impact on pending cases.

Rahimi's Road to SCOTUS

Zackey Rahimi's appearance on the Supreme Court docket first began to materialize in February 2020, when his escalating violence led a Texas state court to issue a domestic violence restraining order against him.[2] The order followed Rahimi's assaulting his girlfriend and firing a handgun at a passerby who witnessed the incident. The court deemed these and numerous other actions by Rahimi to be "family violence" with a high likelihood of recurrence, and consequently prohibited him from possessing firearms during the term of the order.[3]

Between December 2020 and January 2021, Rahimi engaged in a disturbing string of shootings in and around Arlington, Texas. The underlying facts were detailed by the district court in a pre-sentencing report and stipulated by Rahimi.[4] His pattern of accelerating criminality included firing multiple shots into an individual's residence after a narcotics sale, shooting at another driver in a road rage incident, and even firing at a constable's vehicle. Rahimi was indicted for possessing a firearm while under a domestic violence restraining order, a violation of 18 U.S.C. §922(g)(8). He pleaded guilty to the federal charges and received a prison sentence exceeding six years.[5]

By way of explanation, Section 922(g)(8) aims to protect individuals from potential harm by prohibiting firearm possession for those subject to domestic violence-based restraining orders.[6] Its application is limited to individuals who have received due process, ensuring they have a hearing with notice and an opportunity to participate before being subject to firearm prohibition. Furthermore, the restraining order itself must contain specific findings of a credible physical threat or a prohibition against force likely to cause harm.[7]

Rahimi appealed to the Fifth Circuit on the grounds that the law violated his Second Amendment rights.[8] On June 8, 2023, the Circuit upheld the statute. [9]

The *Bruen* Sea-Change

Fifteen days later, the Supreme Court decided *New York Pistol and Rifle Club v. Bruen*.[10] In *Bruen*, the Court ruled that New York's licensing regime for carrying a firearm in public violated the Second Amendment.[11] The 6-3 decision overturned a lower court ruling and dramatically reshaped the landscape of gun control legislation nationwide. The majority opinion, authored by Justice Thomas, established

a new "text-history-tradition" test for evaluating Second Amendment challenges.[12] This framework replaced the previous two-step approach that combined historical analysis with means-end scrutiny.

The Court determined that the Second Amendment's text "presumptively guarantees" the right to public carry for self-defense, placing the burden on the government to demonstrate that any restriction on public carry is consistent with the nation's historical tradition of firearm regulation.[13] Justice Thomas's analysis concluded that New York's "proper-cause" requirement, which obligated applicants to demonstrate a special need for self-defense beyond general public safety concerns, lacked sufficient historical justification.[14] The Court found no evidence for a tradition of broadly prohibiting the carrying of commonly used firearms to defend oneself.

A concurring opinion, penned by Justice Kavanaugh and signed by Chief Justice Roberts, clarified that the decision does not affect other aspects of gun control, such as restrictions on who may possess firearms, the types of weapons allowed, or purchasing requirements.[15] Additionally, states may still impose objective licensing requirements for public carry, provided they do not grant excessive discretion to officials or require a showing of special need.[16]

Justice Breyer's dissenting opinion, joined by Justices Kagan and Sotomayor, argued that the majority's rigid historical approach is impractical and undermines consensus on Second Amendment rights.[17] The dissent also criticized the decision for being based on a limited record and failing to consider the practical implications of its ruling.[18]

A Reversal in the Fifth Circuit

Within two weeks after *Bruen*, the Fifth Circuit withdrew its *Rahimi* opinion, asking for supplemental briefings in light of the new analytic paradigm.[19] The government attempted to justify §922(g)(8) using three categories of historical analogues: laws disarming "dangerous" individuals, "going armed" regulations, and colonial-era surety laws.[20] However, the court found none of these sufficiently supported the New York restriction. These historical references were deemed too old, unspecific, focused solely on terrorism, or ineffective in actually disarming individuals.[21] In March 2023, the Circuit reversed itself, finding the statute unconstitutional and vacating Rahimi's conviction:

> Doubtless, 18 U.S.C. § 922(g)(8) embodies salutary policy goals meant to protect vulnerable people in our society. Weighing those policy goals' merits through the sort of means-end scrutiny our prior precedent indulged, we previously concluded that the societal benefits of § 922(g)(8) outweighed its burden on Rahimi's Second Amendment rights. But *Bruen* forecloses any such analysis in favor of a historical analogical inquiry into the scope of the allowable burden on the Second Amendment right. Through that lens, we conclude that § 922(g)(8)'s ban on possession of firearms is an "outlier[] that our ancestors would never have accepted." *Id*. Therefore, the statute is unconstitutional, and Rahimi's conviction under that statute must be vacated.[22]

The panel found that deprivation of a fundamental constitutional right cannot be based on the relatively lower procedural protections afforded defendants in civil proceedings: "[t]he distinction between a criminal and civil proceeding is important because criminal proceedings have afforded the accused substantial protections throughout our Nation's history," and that §922(g)(8) disarms individuals "subject merely to civil process."[23] According to the Fifth Circuit, while *Heller* suggested that "felons" may be deprived of gun possession, Rahimi's restraining order was merely a civil disposition; if the Second Amendment meant that Rahimi could be deprived of firearm possession merely because he was not "law-abiding," could "speeders" or "[p]olitical nonconformists" also be deprived of their Second Amendment rights?[24]

While acknowledging that previous rulings have circumscribed Second Amendment rights as belonging solely to "ordinary, law-abiding citizens," the court expanded the Second Amendment's protective reach by excluding only specific groups: "felons," "the mentally ill," and those historically stripped of their Second Amendment prerogatives.[25]

Under this calculus, the Fifth Circuit concluded that Rahimi wasn't a convicted felon or otherwise excluded from the Amendment's scope, notwithstanding his prior violent behavior.[26] Therefore, he fell within the ranks of "law-abiding citizens" entitled to Second Amendment protections.[27]

Rahimi Meets *Bruen* at the Supreme Court

Challenging the Fifth Circuit's *Rahimi* determination that § 922(g)(8) was facially unconstitutional, the government successfully petitioned

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Rahimi *cont'd from page 7*

the Supreme Court for review.[28] The petition highlighted the prevalence of domestic violence in our society and the lethal potential of firearms in such situations, arguing that effective gun control measures are necessary to protect public safety.[29]

Oral argument in *United States v. Rahimi* took place on November 7, 2023.[30] The crux of the government's position was that the Second Amendment protects the rights of "law abiding, responsible citizens."[31] Chief Justice Roberts promptly questioned this proposition, painting a broad canvas of civic responsibility encompassing mundane actions like recycling routines or behavior at a basketball game.[32] He illustrated the challenge of basing a fundamental constitutional right on a subjective term such as "responsible," emphasizing the difficulty in establishing a model for responsibility, where actions deemed irresponsible by some might appear inconsequential to others.[33]

Pivoting away from this grammatical roadblock, Solicitor General Elizabeth Prelogar steered the conversation around "irresponsibility" towards a more definitive and actionable term: danger.[34] This refocusing proved beneficial to the government. Chief Justice Roberts inquired whether "irresponsible" served as a placeholder for "dangerous" when applied to firearm ownership, and Prelogar agreed, confirming that "Our understanding of what history and tradition reflect and how this Court has used the term is that it's identifying those whose possession of firearms presents an unusual danger beyond the ordinary citizen."[35]

This assertion prompted Justice Kavanaugh to probe the potential distinction between "not responsible" and "dangerous."[36] Prelogar acknowledged a nuanced difference, explaining that "not responsible" encompasses individuals who may not intend harm but still pose a threat due to factors like mental illness or age.[37] She clarified that responsibility, in this context, signifies a heightened risk associated with firearm access, regardless of intent.[38] Prelogar further elaborated on the connection between responsibility and danger by drawing an analogy to established precedents regarding sensitive places and dangerous weapons.[39] In these instances, the Court identifies specific contexts and objects that elevate the risk associated with firearms, justifying restrictions based on the potential for harm. The exchange illuminated the government's position on the relationship between responsibility and firearm ownership. By emphasizing the potential danger posed by certain individuals, the government attempted to justify restrictions on access to firearms, even for those who might not pose an immediate or intentional threat. However, the question of how to distinguish between "not responsible" and "dangerous" seems open to further analysis.

Navigating the *Bruen* Uncertainty in Lower Courts

Justice Kagan addressed the uncertainties surrounding the application of the *Bruen* framework in lower courts, prompting an illuminating exchange with General Prelogar.[40] Recognizing the "fair bit of division and fair bit of confusion," Justice Kagan sought guidance beyond the immediate case to assist lower courts in navigating *Bruen's* complexities.[41]

In response, General Prelogar identified three key errors in lower courts' methodologies.[42] First, she highlighted their overly restrictive focus on regulations. Citing *Heller*, she emphasized the importance of considering diverse historical evidence, including "English practice, state constitutional precursors, treatises, commentary, and state judicial decisions" to understand the Second Amendment's scope.[43] This perspective challenges the narrow "regulation-only" interpretation adopted by *Rahimi* and other courts.

Secondly, Prelogar criticized lower courts' tendency to excessively scrutinize historical evidence; their meticulous search for minor discrepancies between past regulations and contemporary provisions disregards the conventional approach to constitutional interpretation.[44] As Prelogar aptly stated, "constitutional interpretation usually proceeds" by using "history and regulation to identify principles," necessitating a level of generality when finding historical analogues.[45]

Finally, Prelogar addressed the erroneous reliance on the absence of regulations in interpreting the Second Amendment.[46] She cautioned against assuming significant weight from the lack of regulations, illustrating this point with the example of disarming domestic abusers.[47] Without substantial counter-evidence, she said, such absence should not be a decisive factor in constitutional interpretation.

The oral arguments exposed potential disparities in interpreting "responsibility" and its connection to firearm possession. This underlying tension raises concerns about subjective interpretations and unequal application of the law. The Court's ultimate decision in *Rahimi* will be challenged to address these concerns and establish a clear and objective framework for assessing responsibility within the context of the Second Amendment.

The Boundaries of *Bruen's* History and Tradition Test

Justice Ketanji Brown Jackson questioned General Prelogar about the potential inconsistencies arising if historical evidence concerning dangerousness, specifically regarding domestic violence, clashed with modern-day interpretations: "I'm just trying to understand how the *Bruen* test works in a situation in which there is at least some evidence that domestic violence was not considered to be…

subject to the kinds of regulation that it is today," she stated.[48]

While acknowledging the importance of historical context and relevant analogues, Prelogar argued that the primary focus should be on establishing the underlying principle of the proposed legislation, such as disarming dangerous individuals.[49] Once established, detailed historical analysis becomes less crucial, and the focus shifts to evaluating the specific regulation based on factors like its scope, evidence of dangerousness, and consensus among other legislatures.[50] Justice Jackson pressed further, highlighting the dilemma faced by legislators grappling with novel situations where established principles might not yet exist.[51] Prelogar conceded that in such cases, a more extensive historical analysis may be necessary to identify and establish relevant principles for future legislation.[52]

This exchange hints at the Court's potential approach to *Rahimi*, suggesting a possible clash between the law's interpretation and the need for sensible gun regulations. While a narrow ruling in favor of the restriction in *Rahimi* might be expected to align with precedent, this nuanced debate could expose the limitations of the underlying ruling rather than solidify its legitimacy. Justice Jackson's inquiries highlight the ongoing challenges of navigating Second Amendment precedents while acknowledging the necessity for reasonable regulations.

An Uphill Battle for Rahimi

James Matthew Wright, representing Rahimi, faced the daunting task of defending his client under the *Bruen* framework. While he diligently argued that there's no history or tradition of gun bans that "applies to rights-holding American citizen," many of the Justices seemed unconvinced.[53] Justice Jackson emerged as a leading voice of skepticism regarding the viability of the *Bruen* framework: "I'm a little troubled by having a history and traditions test that also requires some sort of culling of the history so that only certain people's history counts."[54]

Wright defended the *Bruen* framework while acknowledging the historical exclusion of certain groups. He argued that the focus should remain on the Founding era and the rights-holding citizens of the time.[55] He emphasized that historical laws targeting marginalized individuals "were not people who were part of the community" and therefore should not be considered in the Court's analysis.[56] Wright also stressed the importance of considering the historical understanding of "dangerousness" when evaluating gun control measures.[57] He argued that Founding era societies recognized the existence of dangerous individuals but consistently rejected broad disarmament measures like the one proposed by the government in this case.

"Violence, interpersonal violence, dueling, any robbery," Wright stated. "So, in other words, society understood violence, understood dangerous people. But they rejected at every point the type of dangerousness disarmament principle that the government is advocating."[58]

Other Justices focused on the consequences of adopting Rahimi's interpretation. Justice Kagan questioned the implications of Wright's argument for individuals deemed mentally unfit to possess firearms. Wright conceded that historically, restrictions on the sale of weapons to the mentally ill have existed, but he argued that such restrictions might be unconstitutional under the *Bruen* framework.[59] Justice Kagan's pointed question, "Do you think that the Congress can disarm people who are mentally ill, who have been committed to mental institutions?" directly challenged that proposition.[60] Wright, hesitant to fully embrace the potential consequences of his argument, responded by suggesting that there might be "an enumerated powers problem" and that the historical record regarding restrictions on the mentally ill is "post-Civil War."[61] Justice Kagan, unconvinced, expressed her belief that Wright was "running away from his argument" due to its "untenable" implications.[62] She argued that Wright's logic could potentially apply to a "wide variety of disarming actions, bans, what have you" that are currently considered commonplace and necessary to protect public safety.[63]

Several Justices voiced confusion and frustration with Wright's argument that protective order hearings do not generally afford the due process required to deprive a Constitutional right. Justice Barrett grappled with Wright's procedural argument. "I'm so confused, because I thought your argument was that there was no history or tradition, as Justice Kagan just said, of this kind -- of disarmament in this circumstance. But now it kind of sounds like your objection is just to the process."[64]

Despite Wright's passionate advocacy, his historical focus and narrow definition of "rights-holding citizens" left many Justices skeptical of the *Bruen* framework's viability for domestic violence cases. Justice Jackson's pointed questions highlighted the potential exclusion of marginalized groups and the framework's difficulty in adequately addressing contemporary issues. While Wright defended the principle of considering dangerousness in historical context, his hesitancy to fully engage with the potential consequences of his argument further cast doubt on the framework's application in this particular case.

Fallout from *Bruen*

Rahimi and scores of other cases nationwide confirm that *Bruen* is profoundly influencing gun control policy in American. But that influence is inconsistent. Undoubtedly, the history and tradition test was intended to provide a clear framework

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for assessing the constitutionality of gun legislation. However, as Jacob D. Charles argues in "The Dead Hand of a Silent Past: *Bruen*, Gun Rights, and the Shackles of History," implementing this test has proven challenging.[65] Different courts have interpreted and applied it in varying ways, resulting in disparate outcomes for seemingly similar cases.

Charles' analysis is based on a review of nearly 470 federal court decisions citing *Bruen* in the year following its issuance.[66] He found a significant number of cases reaching irreconcilable judgments, with courts offering inconsistent conclusions about what the test requires and how it works in practice.[67] This lack of clarity leaves conscientious lawmakers uncertain about the scope of their authority and creates conflicting and incompatible legal rules across the country.[68]

More Gun Cases After *Rahimi*

As Charles aptly describes, *Bruen* has unleashed a torrent of uncertainty and inconsistency into the Second Amendment landscape. The Court's silence on these critical questions has only exacerbated the problem, and the inadequacies of the *Bruen* framework were on full display in the *Rahimi* arguments. The general consensus of those observing the *Rahimi* proceedings was that the Court would attempt to preserve the federal law which criminalizes gun possession after firearm prohibition incident to a domestic abuse restraining order, at least where the accused has an opportunity to be heard and challenge the restraint.[69] It is too early to know whether and how *Bruen's* "history and tradition" mandate will be moderated to accommodate a more generalized "dangerousness" inquiry. In the meantime, several additional gun cases have arising which seem destined for Supreme Court consideration in the wake of *Bruen* and *Rahimi*.

Bevis v. City of Naperville

In Illinois, The Protect Illinois Communities Act ("PICA"), signed into law by Governor Pritzker on January 10, 2023, established new regulations for the sale and distribution of assault weapons, high-capacity magazines, and switches within Illinois.[70] PICA took immediate effect, with existing owners of these items required to register them through their Firearm Owner's Identification Card account by January 1, 2024. Unsurprisingly, the gun restriction was quickly challenged. As the Seventh Circuit put it, "The ink was barely dry on the pages of the Act when litigation began."[71] Six unsuccessful Second Amendment challenges against the law were consolidated into *Bevis v. City of Naperville*, involving 26 plaintiffs.[72]

While the Second Amendment's guarantee is undeniable, as affirmed in landmark cases like *Heller* and *Bruen*, the *Bevis* court acknowledged that "even the most important personal freedoms have their limits."[73] The task before the Seventh Circuit was to define the scope of "arms" protected under the Second Amendment.[74] The court observed that, while everyone may agree that a handgun for self-defense falls within this category, everyone can also easily agree that "the now-retired M388 Davy Crockett system, with its 51-pound W54 warhead," should be reserved for military use, "even though it is light enough for one person to carry."[75] The court's task was to draw the line between personal arms and military-grade weaponry, specifically regarding assault weapons and high-capacity magazines.

Analyzing history and tradition, the court determined that the state and municipalities have a "strong likelihood of success" in their argument.[76] On November 3, 2023, the Seventh Circuit upheld the lower court's decision not to enjoin the law and vacated the injunctions previously imposed on it.[77] Following the Seventh Circuit's denial of their *en banc* petition, Bevis and several Second Amendment organizations filed an emergency injunction request with Justice Barrett, seeking to halt the Illinois' gun restriction.[78] That request was denied in early December 2023.[79] Despite facing ongoing legal challenges regarding its constitutionality, PICA went into effect on January 1, 2024. Consequently, Illinois residents are currently required to adhere fully to its restrictions.

Garland v. Range

In a major win for Second Amendment advocates, the Third Circuit Court ruled that Bryan Range, convicted of a minor income misstatement in 1995, cannot be barred from owning guns.[80] This comes despite a federal law--the Gun Control Act (18 U.S.C. §922(g)(1))—which prohibits individuals convicted of a crime carrying a potential imprisonment of over a year from possessing firearms or ammunition.[81] The decision, likely heading to the Supreme Court, throws open gun rights for people with minor offenses and raises concerns about community safety. Though Range has been an upstanding citizen for decades, Pennsylvania's lengthy and difficult process for restoring gun rights casts a shadow on fairness and accessibility.[82] *Garland v. Range* may reshape the landscape of Second Amendment rights for minor offenders, requiring careful consideration of both individual rights and public safety.

The government has petitioned for certiorari, and the case is currently being considered by the Court.[83] *Range* presents a critical opportunity to define the scope of permissible gun restrictions in light of *Bruen's* history and tradition analysis. Adding further intrigue to *Range's* potential Supreme Court journey was a brief exchange during oral argument in *Rahimi*. Justice Barrett, in a pointed question to General Prelogar, hinted at a possible alternative approach: "Why can't I just say that [dangerousness] is the

standard?" she asked, suggesting a potential willingness to move beyond the historical and traditional justifications for felon disarmament and focus on individual risk assessment.[84] This exchange, while brief, underscores the potential for a significant shift in the Court's approach to gun rights for minor offenders, with implications far beyond the *Range* case itself. For example, what impact would a narrower interpretation of felon disarmament laws have on existing gun control measures, and how might a decision in *Range* affect future gun control legislation and legal challenges?

Antonyuk v. Chiumento

New York's Concealed Carry Improvement Act ("CCIA") was enacted following *Bruen*.[85] Initially, New York's laws mandated applicants to demonstrate "good moral character" and a unique "proper cause" for carrying firearms outside their homes, irrespective of employment or location.[86] However, no such requirements existed for possessing firearms at home.

Under the CCIA, both in-home and concealed-carry license applicants must exhibit "good moral character," defined as possessing essential qualities needed for firearm trustworthiness and responsible usage.[87] Specific additional requisites for concealed-carry licenses include disclosing personal contacts, providing character references, divulging social media accounts, and meeting training requirements, including in-person firearm safety courses and live-fire range training.[88] Furthermore, the CCIA designates numerous "sensitive locations" where carrying firearms, even with a concealed-carry permit, is prohibited.[89] These sites include government buildings, schools, places of worship, healthcare facilities, and behavioral care centers, among others.[90] The law also criminalizes possessing firearms in "restricted locations" without explicit consent, even on private property where firearms are not permitted through clear signage, barring express approval.[91]

In *Antonyuk v. Chiamento*, the Second Circuit dealt a blow to certain provisions of the CCIA, adding another layer to the ongoing legal battles surrounding Second Amendment rights.[92] Amidst diverse legal challenges to the CCIA, the Second Circuit heard an interlocutory appeal filed by the state, consolidating four major cases encompassing numerous plaintiffs.[93]

The court invalidated requirements

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for concealed carry permit applicants to disclose their social media accounts and for a default ban on gun possession on private property.[94] It also prevented the state from enforcing a ban on gun possession at places of worship against a group of plaintiffs.[95] However, the ruling emphasized that it does not conclusively determine the ultimate constitutionality of the challenged provisions, leaving room for further legal developments.[96]

The Second Circuit's December 8, 2023 decision brought both clarity and uncertainty to the legal battle surrounding New York's CCIA.[97] While it clarified jurisdictional boundaries and narrowed the scope of injunctions, it left the ultimate fate of several contested provisions hanging in the balance. The court's affirmation of the "good moral character" requirement offered a temporary victory for the state, but restrictions on social media disclosure, location bans, and the overall constitutionality of the law remain open questions.

Conclusion

The Court's upcoming decision in *Rahimi* promises to be a landmark moment in the ongoing saga of Second Amendment rights. While the oral arguments revealed a Court grappling with the complexities of "dangerousness," "responsibility," and the *Bruen* framework's historical limits, the ultimate outcome remains shrouded in uncertainty. Lower courts, meanwhile, face the daunting task of navigating *Bruen's* inconsistencies, with cases like *Bevis* and *Garland* further highlighting the potential for disparate interpretations and conflicting legal landscapes. As the legal battle over gun control intensifies, one thing is clear: the ripples of *Bruen* will continue to reshape the American gun landscape for years to come. ML

Notes

1. Transcript of Oral Argument at 79, United States v. Rahimi ___S. Ct. __ (2023)(No. 22-915) [hereinafter *Transcript*].
2. United States v. Rahimi, 59 F.4th 163, 168 (5th Cir. 2023).
3. Petition For Writ of Certiorari at 2, *Rahimi*.
4. *Id.* at note 1.
5. *Id.*
6. Unlawful Acts, 18 U.S.C. §922(g)8.
7. *Id.*
8. *Id.* at 169.
9. *Id.*
10. New York State Rifle & Pistol Assn., Inc. v. Bruen, 142 S.Ct. 2111 (June 23, 2023).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* (Justice Kavanaugh and Chief Justice Roberts concurring).
16. *Id.*
17. *Id.* (Justice Breyer dissenting, joined by Justice Sotomayer and Justice Kagan).
18. *Id.*
19. *Supra*, note 5.
20. *Id.*, at 15-24.
21. *Id.* at 24.
22. *Id.* at 25.
23. *Id.* at note 7.
24. *Id.* at 8-10.
25. *Id.* at 8-9.
26. *Id.*
27. *Id.*
28. Petition For Writ of Certiorari at 2, *Rahimi*.
29. *Id.*
30. *Transcript*, at 1.
31. *Id.* at 3-5.
32. *Id.* at 9.
33. *Id.*
34. *Id.* at 10.
35. *Id.* at 11.
36. *Id.*
37. *Id.* at 12.
38. *Id.*
39. *Id.*
40. *Id.* at 38.
41. *Id.*
42. *Id.* at 38-40.
43. *Id.*
44. *Id.*
45. *Id.* at 40.
46. *Id.* at 40-41.
47. *Id.* at 40.
48. *Id.* at 16-17.
49. *Id.* at 56.
50. *Id.* at 56.
51. *Id.* at 56.
52. *Id.*
53. *Id.* at 76.
54. *Id.* at 84.
55. *Id.* at 87.
56. *Id.*
57. *Id.* at 88.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* at 88-89.
64. *Id.* at 80.
65. Jacob D. Charles, *The Dead Hand of A Silent Past: Bruen, Gun Rights,* and *The Shackles of History*, 73 Duke L. J. 123 (2023).
66. *Id.*
67. *Id.*
68. *Id.*
69. *See*, Jay Willis, *The Supreme Court's Big Gun Case Was Humiliating for the Justices,* Slate, (Nov. 7, 2023), http://tinyurl.com/5ef5my7x; Andrew Chung and John Kruzel, *US Supreme Court leans toward allowing domestic-violence gun curbs*, Reuters, (Nov. 7, 2023), http://tinyurl.com/2v3msj5n; Josh Gerstein, *Supreme Court looks poised to uphold ban on guns for accused domestic abusers*, Politico, (Nov. 7, 2023), http://tinyurl.com/2axujdfx; Ariane de Vogue, *Takeaways from the Supreme Court oral arguments on the Second Amendment and domestic violence*, CNN, (Nov. 7, 2023), http://tinyurl.com/ajmhsubb; Kelly Rissman and Alex Woodward, *Supreme Court seems poised to keep guns away from domestic abusers*, The Independent, (Nov. 7, 2023), http://tinyurl.com/3tt5tuap.
70. Bevis v. City of Naperville, No. 23-1353 (7th Cir. Nov. 3, 2023).
71. *Id.* at 8.