# DOMESTIC VIOLENCE REPORT™

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## Mother's Death Complicates Hague Abduction Case

by Lynn Hecht Schafran

Narkis Aliza Golan, 41 years old, was found dead in her New York City apartment at 8:45 PM on October 18, 2022. Her sudden death was a shock to her family, her friends, and the cadre of lawyers and amicus organizations that had supported her for four years in her case under the Hague Convention on the Civil Aspects of International Child Abduction (Convention or Hague Convention).[1] It also raised the tragic question of what was to become of her son, a six year old boy with severe autism, who was the focus of a landmark case before the U.S. Supreme Court.

Ms. Golan was the survivor of severe domestic violence. She sought to keep her son in the U.S., rather than in Italy where his father was located, to protect the boy from the daily exposure to domestic violence that was so harmful to every aspect of his development. The U.S. Supreme Court decided her case, **Golan v. Saada**[2] in 2022. Ruling in the mother's favor, it held that trial courts cannot be required to consider "ameliorative measures" (which are often inadequate and enforceable) before granting the Convention's Article 13(b)

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## Texas Court's Radical Firearms Decision Jeopardizes Domestic Violence Survivors

by Julia Weber

### Introduction

Earlier this year, a federal court in Texas found unconstitutional the prohibition preventing those restrained by qualifying domestic violence orders of protection from having or owning or possessing firearms and ammunition during the time a qualifying civil protective domestic violence order is in place under 18 U.S.C. § 922(g)(8). In striking down the prohibition and vacating the defendant's sentence resulting from a series of violent firearms-related incidents, the court came to a dangerous, extreme, and unnecessary conclusion that puts survivors and communities at risk, and prevents enforcement of this lifesaving domestic violence prevention policy in the three states directly impacted.

In **United States v. Rahimi**, 61 F.4th 443 (5th Cir. March 2, 2023)[1] the Court of Appeals for the Fifth Circuit referred to last year's U.S. Supreme Court decision in **New York State Rifle & Pistol Association, Inc. v. Bruen (Bruen)**, 142 S. Ct. 2111 (2022). In **Bruen**, the Supreme Court set out a two-part test for firearm regulations: (1) First, determine whether the Second Amendment's plain text covers the conduct and, (2) if so, decide whether the government has demonstrated that the prohibition at issue is consistent with the U.S. historical tradition of firearms regulation. **Id.** at 2129-30. After determining that § 922(g)(8) addresses Second Amendment conduct, the **Rahimi** court rejected that the extensive examples provided by the government demonstrated a longstanding history of relevantly similar restrictions on firearm access. Writing for the panel, the Hon. Cory T. Wilson concluded:

> 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."

**United States v. Rahimi**, 61 F.4th 443, 461 (5th Cir. March 2, 2023).

The legally problematic ruling in **Rahimi** involved an individual who had committed multiple acts of

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firearms-related violence after agreeing to a domestic violence restraining order that prohibited him from having firearms and ammunition because of its several dangerous and disconcerting consequences, namely: (1) significantly increasing risks for people being threatened and abused by intimate partners in the states in the court's jurisdiction (Texas, Louisiana, and Mississippi); (2) creating nationwide confusion and enforcement challenges around how this ruling impacts similar state-level firearm prohibitions and other jurisdictions; and (3) highlighting, along with other recent district court rulings, the current precarious nature of firearm and ammunition prohibitions designed to reduce gun violence. **Rahimi** also provides an important opportunity to address issues some federal courts may have understanding the modern way domestic violence is handled in the states nationally.

This is a critical time for those working on domestic violence and gun violence prevention to elevate the history and importance of current regulations in this area to prevent harm and help save lives. Currently, the **Rahimi** case is the only circuit court opinion on § 922(g)(8) since last year's decision in **Bruen**; however, other similar cases have been decided at the trial court level,[2] including a federal district court in the Tenth Circuit that upheld § 922(g)(8) post-**Bruen**.[3] It is anticipated courts will continue to issue a variety of decisions on the prohibitions in § 922(g) as judges across the country wrestle with applying the two-part **Bruen** test. Immediately after the decision, Attorney General Garland issued this statement:

> Nearly 30 years ago, Congress determined that a person who is subject to a court order that restrains him or her from threatening an intimate partner or child cannot lawfully possess a firearm. Whether analyzed through the lens of Supreme Court precedent, or of the text, history, and tradition of the Second Amendment, that statute is constitutional. Accordingly, the Department [of Justice] will seek further review of the Fifth Circuit's contrary decision.[4]

***We can assume the issues, analysis, and decision in* Rahimi *will have long-lasting repercussions across the country for efforts to reduce risk around the intersection of guns and intimate partner violence.***

On March 17, the Solicitor General filed a writ of *certiorari*, requesting the U.S. Supreme Court to hear the appeal. Whatever the outcome, we can assume the issues, analysis, and decision in **Rahimi** will have long-lasting repercussions across the country for efforts to reduce risk around the intersection of guns and intimate partner violence.

### Background of the Case, 18 U.S.C. § 922(g)(8), and Related Prohibitions

In 2020, Mr. Zackey Rahimi agreed to a civil domestic violence order of protection in a case involving allegations that he assaulted his ex-girlfriend with whom he shares a child. That order included language prohibiting Mr. Rahimi from having firearms and ammunition pursuant to 18 U.S.C.

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§ 922(g)(8). Within a few months thereafter, Mr. Rahimi had been involved in five separate firearms-violence related incidents in the Arlington, Texas area, including: shooting at someone's home; shooting at a car after he was in a car accident; leaving and coming back to shoot the car again; shooting a constable's car; and firing shots into the air outside a WhataBurger restaurant when his friend's credit card was declined. As part of the investigation into Mr. Rahimi's shooting spree, law enforcement obtained a search warrant and found a handgun and a rifle. He was subsequently indicted by a federal grand jury for possession of a firearm while subject to a qualifying civil domestic violence order of protection (also referred to as a restraining or protective order). **Rahimi**, 61 F.4th at 448-450.

When he agreed to the civil protection order, Mr. Rahimi became what is referred to as a "prohibited purchaser" or "prohibited person." These are individuals who have lost the right to own, buy, or possess firearms and ammunition under either federal or state law (and sometimes both). Many of these prohibitions are permanent, remaining in place for the rest of the person's life unless his or her firearms rights are reinstated at some later date. In the case of § 922(g)(8), the prohibition lasts only as long as the order of protection is in place.

It is important to note that domestic violence cases provide one of several ways people may be deemed "prohibited." People convicted of felonies were first prohibited under federal law pursuant to the Federal Firearms Act of 1934 (FFA). While the FFA was repealed by the Gun Control Act of 1968 (GCA), many of the provisions from the FFA were reenacted as part of the GCA, including the felony prohibition. The first federal domestic-violence-specific prohibition was added to the GCA in 1994 when the Federal Crime Control and Law Enforcement Act (FCCLEA) added certain qualifying protection orders as prohibiting under § 922(g)(8). The GCA was amended again when the Lautenberg Amendment was adopted in 1996 prohibiting those convicted of domestic violence misdemeanors (as defined) from having firearms and ammunition under § 922(g)(9). Today the list of the categories of prohibited persons (*i.e.*, people who cannot have firearms or ammunition under federal law) can be found at 18 U.S.C. § 922(g) and includes any person:

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;[5]

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance…

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien –

(A) is illegally or unlawfully in the United States; or

(B) except as provided ..., has been admitted to the United States under a nonimmigrant visa…

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that –

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear

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of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence.

Given the limiting language and definitions in § 922(g)(8), not all domestic violence civil protection orders result in a prohibition. For the prohibition to apply, the order must meet both: (1) the criteria listed in the statute; and (2) the definition of intimate partner under § 921(a)(32), which requires that the order must be issued against the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, or an individual who cohabitates or has cohabited with the person. 18 U.S.C. § 921(a)(32).[6] These orders are issued exclusively by state and municipal courts, not federal court. Therefore, in states that permit dating or former dating partners (who have never lived together) to request orders of protection, the *federal* firearm and ammunition prohibition does not apply even when those courts find there has been domestic violence and issue the restraining order.

The same is true for criminal domestic violence cases. Like civil orders of protection, these state convictions are handled in state and local courts; however, to be prohibited under § 922(g)(9), the state conviction must meet the federal definition of what constitutes a "misdemeanor crime of domestic violence."[7] Until last year, the lifetime prohibition post-conviction applied only in those cases where domestic violence was perpetrated against a current or former spouse, parent, or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or a person similarly situated to a spouse, parent, or guardian of the victim. Last year, however, Congress expanded the definition through the Bipartisan Safer Communities Act (BSCA) to include dating partners as defined under 18 U.S.C. § 921(a)(37).[8] The prohibition for dating partners is limited to five years for those with one misdemeanor domestic violence conviction unless during those five years they otherwise become prohibited under § 922(g). Therefore, currently there is significant variation around whether and how long someone identified as engaging in dangerous behavior resulting in a protective order or conviction associated with a domestic violence incident might become prohibited from having firearms and ammunition under federal law:

- Felony conviction (for domestic violence or other crimes) or domestic violence misdemeanor conviction for perpetration against a spouse, former spouse, child in common, or someone similarly situated: lifetime prohibition.
- Domestic violence misdemeanor conviction for perpetration against a serious dating partner: five-year prohibition.
- Domestic violence protective order: spouses, former spouses, child in common: while order is in place.

In addition to the federal framework, states have also adopted various firearm prohibitions. For example, 28 states currently prohibit those subject to a domestic violence protective/restraining order issued after notice and a hearing from possessing firearms, and another 15 states authorize courts to disarm restrained parties if certain additional conditions are met.[9] Definitions as to what makes an order qualifying or not also vary by state with 29 states and the District of Columbia having closed or partially closed the so-called "dating partner" or "boyfriend loophole" in civil orders of protection.[10] **Rahimi** only addressed the *federal civil* firearm and ammunition prohibition — not any state prohibition or the federal prohibition for criminal conviction — and the decision only applies in the Court of Appeals for the Fifth Circuit. Of note, Texas[11] and Louisiana[12] have state firearm and ammunition prohibitions not addressed in *Rahimi* associated with civil restraining orders.

***The majority of domestic violence homicides result from the use of a firearm and over two-thirds of mass shootings involve some connection to domestic violence.***

Of course, any of these prohibitions only can be effective if implemented. The three ways they are generally enforced are to: (1) have procedures in place at the time the prohibition is issued that separate the prohibited person from any firearms and ammunition they currently possess;[13] (2) ensure information about the prohibition is entered into appropriate databases so that if they attempt to purchase, they will be denied;[14] and (3) enforce the prohibition upon violation, which is what happened with Mr. Rahimi after he engaged in additional violent acts specifically involving firearms while the prohibition was in place.

**Significance**

Much has been written about the serious implications of this decision given the significant role firearms play in domestic violence homicides, injuries, and threats.[15] There is no question that removing the federal firearms and ammunition prohibition for those subject to civil domestic violence orders will increase dangerousness for victims and their children

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and/or their families and community members not only in the three states directly impacted but anywhere previously prohibited individuals from those jurisdictions may travel with firearms they may now be able to keep or obtain.[16] The multiple acts of firearms violence Mr. Rahimi is described as engaging in points to the importance of understanding that domestic violence itself is a "red flag" for future acts of violence.[17] His use of violence against not only his ex-partner but also the broader community is one of the policy reasons firearms prohibitions in domestic violence cases are so important. The majority of domestic violence homicides result from the use of a firearm[18] and over two-thirds of mass shootings involve some connection to domestic violence.[19] At the same time, laws requiring people who have abused their partners to turn in their firearms are associated with a 16% reduction in domestic violence homicides.[20]

The opinion and concurrence in **Rahimi** seem to be developed in a vacuum, without any real understanding of the violence civil orders address or § 922(g)(8)'s similarities to longstanding prohibitions associated with dangerousness resulting in a holding not necessitated under **Bruen**. As part of the second step in the process (whether the government has demonstrated that the prohibition at issue is consistent with the U.S. historical tradition of firearm regulation), the court rejects the various historical analogues the government presented. In rejecting the government's argument that there have been historic prohibitions against classes of "dangerous people," the court concludes:

> ...these laws fail on substance as analogues…because out of the gate, why they disarmed people was different. The purpose of laws disarming "disloyal" or "unacceptable" groups was ostensibly the preservation of political and social order, not the protection of an identified person from the threat of "domestic gun abuse," (citing **McGinnis**, 956 F.3d at 758), posed by another individual.

**Rahimi**, 61 F.4th at 457.

However, in writing for the majority in **Bruen**, as the court in **Rahimi** notes, Justice Thomas indicated that, "[w]hile the historical analogies here and in **Heller** are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." **Bruen**, 142 S. Ct. at 2132.

Here it can be argued that § 922(g)(8) regulates a set of "unprecedented societal concerns" including the current prevalence of domestic violence firearm threats, injuries, lethal outcomes, and the undeniable connection between domestic violence and danger to the broader community, including government officials. Mr. Rahimi's shooting at a government official's vehicle and others in the community, in addition to the domestic violence he perpetrated against his ex-partner, warrant regulation in line with a history of regulating firearms access to address dangerousness. Additionally, if today's Congress cannot enact regulations that prohibit those who engage in these acts of violent and dangerous behaviors and the government cannot enforce these prohibitions to protect victims and the public generally, how can "political and social order" be preserved?

The court in **Rahimi** is particularly concerned that § 922(g)(8) is a burden imposed on Second Amendment rights in a civil proceeding contending that, "[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 minimizing the built-in due process protection in civil proceedings by describing what court-issued protective orders do as subjecting participants, "merely to civil process." **Rahimi**, 61 F.4th at 455 note 7. Here and even more significantly in the concurrence, the court takes a radical and demeaning approach to U.S. judicial proceedings and judges by suggesting that notice, opportunity to be heard, the right to counsel, and rules of evidence are somehow absent in the nation's civil courts.

Further emphasizing that prohibitions in criminal cases may be permissible, Judge Ho in his concurrence in **Rahimi** acknowledges that law enforcement intervention may involve limitations on certain rights, including imposition of firearm prohibitions. He notes that, "…the government can detain and disarm, based not just on acts of violence, but criminal threats of violence as well. After all, to the victim, such actions are not only life-threatening — they're life-altering, even if they don't eventually result in violence." **Rahimi**, at 61 F.4th at 464 (citations omitted).

Judge Ho points to two cases in support of disarming people before trial: **Chimel v. California**, 395 U.S. 752, 762–63 (1969) ("When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape."); and **State v. Buzzard**, 4 Ark. 18, 21 (1842) (Ringo, C.J.) ("Persons accused of crime, upon their arrest, have constantly been divested of their arms, without the legality of the act having ever been questioned."). **Rahimi,** 61 F.4th at 464. And yet, Judge Ho goes on to criticize and dismiss the validity of civil judicial proceedings designed to address dangerous behavior when he wrongly asserts, "...civil protective orders are too often misused as a tactical device in divorce proceedings — and issued without any actual threat of danger." **Id.** at 465.

While it is true that § 922(g)(8) is imposed in civil proceedings, this analysis ignores the fact that civil domestic violence protective orders and firearms relinquishment or seizure may be closely tied to arrests and parallel criminal proceedings. In many instances, for example, a law enforcement officer arriving at a domestic violence scene may end up arresting the dominant aggressor and requesting a judge to issue a civil emergency protective order to restrain the person arrested from contacting the victim of domestic violence. These orders generally last for a few days, allowing time for the protected party to seek a longer civil order after a hearing that provides a host of other remedies designed to reduce risk and protect the victim and any children

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involved. Such remedies may include child custody schedules, financial orders, attorneys' fees, ordering the restrained party to attend a batterer intervention program, and more. The restrained party who was arrested may or may not remain in custody as the prosecuting agency determines whether charges will be brought.

In the meantime, given the dangerousness of the situation, the civil restraining order process provides protection, including in most instances under federal law after a hearing, by prohibiting the restrained party's access to firearms and ammunition. The notion that the criminal process works in such a way that a person facing potential domestic violence charges would be detained, quickly charged, and rapidly convicted, has little connection to reality. Instead, the civil domestic violence order of protection process provides a legal process that affords parties due process (notice and the opportunity to be heard), the right to counsel, and access to judges who hear evidence and make rulings that, where appropriate and due to the dangerousness of the situation, result in a limited time period (while the order is in place) when the person who has perpetrated domestic violence cannot have firearms and ammunition.[21] Without this process, because of the relationship of the parties and the nature of the violence, intimate partners and others would be extremely vulnerable while the state contemplated any next steps involving criminal charges. Importantly, in proceedings where § 922(g)(8) would apply, parties must be afforded notice, the opportunity to be heard, and the right to counsel — key characteristics that make civil proceedings similar to criminal proceedings; the most significant differences are that liberty is not at stake, the state is not a party at the order after hearing stage, and the government does not pay (in most instances) for attorneys.

In the United States, civil domestic violence restraining orders are and have been for many years "the primary form of protection for domestic violence victims."[22] This stems in large part not from a lack of historical criminal remedies for physical violence and personal injury but from the inconsistent, and ineffective application of non-domestic violence specific remedies in intimate partner violence situations prior to nationwide adoption of the civil protection order framework.[23] While laws against assault and battery are firmly rooted in the nation's history, they were (and are) infrequently applied to situations involving intimate relationships. However, as the court in **U.S. v. Kays,** 2022 U.S. Dist. LEXIS 154929 at *8 (W.D. Okla. 2022), found in its post-**Bruen** review and upholding of § 922(g)(8), "[a]lthough the historical record regarding domestic violence prohibitions is problematic, that does not prevent the government from carrying its burden here. Those subject to a domestic violence protective order should logically be denied weapons for the same reasons that domestic violence misdemeanants are. Like § 922(g)(9), § 922(g)(8)'s prohibition is consistent with the longstanding and historical prohibition on the possession of firearms by felons…"

There are historic and current-day reasons why victims of domestic violence have not been able to rely on the criminal legal framework the **Rahimi** court imagines is available to address domestic violence. In a 2015 ACLU survey on concerns regarding how police respond to domestic violence and sexual assault, respondents provided multiple reasons for not contacting the police or cooperating with criminal interventions, including police inaction, hostility, and dismissiveness. Eighty-eight percent said that "sometimes or often" law enforcement officers do not believe survivors or blamed survivors for the violence and 83% reported that police "sometimes" or "often" do not take allegations of sexual assault and domestic violence seriously. The report provides several additional important insights describing:

> ...examples where law enforcement increased the risk of a batterer's retaliation by, for example, taking no action or by dismissing the claims . . . [a] majority (55%) of respondents said that police bias against particular groups of people or with regard to domestic violence and sexual assault was a problem in their community. Over 80% believed that police-community relations with marginalized communities influenced survivors' willingness to call the police. A significant number of respondents raised concerns about police bias against women as a group, as well as gender/race/ethnicity/religion bias against African American women, Latinas, Native American women, Muslim women, and women of other ethnic backgrounds. Fifty-four percent (54%) reported that police are biased against immigrants "sometimes" or "often"; sixty-nine percent (69%) reported bias "sometimes" or "often" against women; fifty-eight (58%) reported bias "sometimes" or "often" against LGBTQ-identified individuals; and sixty-six (66%) reported bias sometimes or often against poor people . . . Respondents gave examples of other negative collateral consequences that may ensue from involvement with the criminal justice system [including] . . .that contact with the police "sometimes" (43%) or "often" (18%) leads to criminal charges that could then trigger immigration/deportation proceedings. Many reported that they did not want their partners to be arrested because they relied on their income for support for themselves and their children. Seventy percent (70%) reported that contact with the police "sometimes" or "often" results in the loss of housing, employment, or welfare benefits for either the victim or the abuser."[24]

The report identifies three themes that emerged in the survey: "(1) survivors were looking for options other than punishment for the abuser, options that were not necessarily focused on separation from the abuser; (2) survivors feared that once they were involved in the criminal justice system, they would lose control of the process; and (3) survivors were reluctant to engage the system because they believed that it was complicated,

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lengthy, and would cause them to suffer more trauma."[25] Judge Ho himself provides additional evidence of why domestic violence victims may not turn to the courts because their trust and confidence in the legal system has been undermined, when he asserts that "civil protective orders [are] a tempting target for abuse [by petitioners seeking protection]. Judges have expressed 'concern[] . . . with the serious policy implications of permitting allegations of…domestic violence' to be used in divorce proceedings." **Rahimi**, 61 F.4th at 465.

For all of these reasons, the civil protection order system must continue to be available to victims of domestic violence and remain as robust as possible. Additionally, invalidating the federal protection order prohibition undermines, as a matter of policy, the many state statutes and case law that have evolved over almost three decades to regularly consider prohibiting access to firearms to those who have committed acts of domestic violence. Until **Rahimi** is overturned, communities in the Fifth Circuit are left with a two-tier system, where prohibiting firearms and ammunition in some cases may be federally unconstitutional, but still permissible given the state and/or local laws. This will inevitably create enforcement challenges and increase the potential for gun violence nationally.

In **Bruen**, the Supreme Court recognized the importance of carefully reviewing modern regulations that burden Second Amendment rights by looking at the how and the why, both of which, in the case of § 922(g)(8), have historical analogues in U.S. jurisprudence that the **Rahimi** erroneously failed to recognize. Instead, in considering the court's analysis in **Rahimi** as compared with the decision in **Kays**, we see what Justice Breyer raised as a question in his dissent in **Bruen**: "will the [Supreme] Court's approach [in **Bruen**] permit judges to reach the outcomes they prefer and then cloak those outcomes in the language of history?" **Bruen**, 142 S. Ct. at 2177 (Breyer, J., dissenting).

Going forward, advocates and others who work in this field must continue to raise awareness about the importance of maintaining domestic violence remedies informed by the experiences of survivors and grounded in the history of this country's efforts to reduce dangerousness — remedies that include due process safeguards and provide protections necessary to help increase safety for domestic violence victims and the community at large.

## *End Notes*

1. The court initially issued its opinion on February 2, but then withdrew it (59 F.4th 163 (5th Cir. Feb. 2, 2023)), and refiled it on March 2, 2023 as **United States v. Rahimi**, 61 F.4th 443 (5th Cir. Mar. 2, 2023).

2. See Andrew Williger, "Litigation Highlight: Western District of Oklahoma Strikes Down the Federal Ban on Gun Possession by Unlawful Users of Controlled Substances," discussing **U.S. v. Harrison**, 2023 U.S. Dist. LEXIS 18397 (W.D. Okla. Feb. 3, 2023); the day after the **Rahimi** decision was issued, the district court judge in **Harrison** struck down as unconstitutional the firearms and ammunition prohibition involving an unlawful user of a controlled substance under 18 U.S.C. § 922(g)(3). See also **United States v. Combs**, 2023 U.S. Dist. LEXIS 17608 (E.D. Ky. Feb. 2, 2023), *w*here a district court judge in Kentucky similarly found § 922(g)(8) unconstitutional.

3. **United States v. Kays**, 2022 U.S. Dist. LEXIS 154929 (W.D. Okla. 2022).

4. Available at *https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-regarding-united-states-v-rahimi.*

5. A "crime punishable by imprisonment for a term exceeding one year" excludes state law misdemeanors unless they are punishable by over two years. 18 U.S.C. § 921(a)(20).

6. 18 U.S.C. § 921(a)(32) provides: "The term 'intimate partner' means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who cohabitates or has cohabited with the person."

7. 18 U.S.C. § 921 (a)(33).

8. 18 U.S.C. § 921(a)(37) provides in pertinent part: "...a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature. (B) Whether a relationship constitutes a dating relationship under subparagraph (A) shall be determined based on consideration of— (i) the length of the relationship; (ii) the nature of the relationship; and (iii) the frequency and type of interaction between the individuals involved in the relationship. (C) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship under subparagraph (A).

9. Giffords Law Center to Prevent Gun Violence (February 26, 2023). Who can have a gun: Domestic violence and firearms. Available at *https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/*.

10. **Id.**

11. Tex. Penal Code Ann. §§ 25.07, 46.04; Tex. Fam. Code Ann. §§ 71.001 et seq., 85.022(b)(6), (d); Tex. Crim. Proc. Code Ann. art. 17.292(c)(4).

12. La. Rev. Stat. § 46:2136.3 requires prohibition if the person presents a credible threat and the order informs them that they are prohibited from possessing a firearm.

13. A first and critical step for relinquishment, surrender, or dispossession to occur as close to the time of prohibition as possible is to make sure the prohibited person has notice of the prohibition. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (2005 VAWA) required states and local governments, as a condition of certain funding, to certify that their judicial administrative policies and practices included notification to domestic violence offenders of both of the federal firearm prohibitions and any applicable related federal, state, or local laws. There is no federal requirement for states or local governments to establish a procedure to ensure that people convicted of domestic violence crimes or subject to domestic violence protective orders actually relinquish their firearms although many jurisdictions have implemented local processes and procedures.

14. Between November 30, 1998 and January 31, 2023, 2,180,048 people have been denied when attempting to purchase a firearm pursuant to the federal background check system. The majority of denials (51%) are due to felony convictions. Twelve percent of the total denials (261,719) are due to specific domestic violence prohibitions: denials based on a misdemeanor crime of domestic violence conviction are the fourth most likely; and denials due to a protective order is the seventh most likely. Federal Bureau of Investigation (2023). Federal denials: Reasons why the NICS system denies, November 30, 1998 – January 31, 2023. Available at *https://www.fbi.gov/file-repository/federal_denials.pdf/view*

15. Consider also the lethal outcomes every year involving more than 600 women in the U.S. who are shot to death by intimate partners (see Federal Bureau of Investigation, Uniform Crime Reporting Partner: Supplementary Homicide Reports (SHR), 2014–2018), reporting that 4.5 million alive today report having been threatened with a firearm by an intimate partner. See Susan B. Sorenson and Rebecca A. Schut (2018). Nonfatal gun

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use in intimate partner violence: A systematic review of the literature. *Trauma, Violence, & Abuse, 19(4)*, 431–442.

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23. **Id.** at 362: "Only two jurisdictions had civil restraining order legislation prior to the Pennsylvania Protection from Abuse Act of 1976,16 but by 1994, all fifty states had adopted some form of protective order legislation."

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25. **Id.** at 2.

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