

No. 22-915

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IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,  
*Petitioner,*

v.

ZACKEY RAHIMI,  
*Respondent.*

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**On Writ of Certiorari to the  
United States Court of Appeals for the Fifth  
Circuit**

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**BRIEF OF MARCH FOR OUR LIVES ACTION  
FUND AS *AMICUS CURIAE* IN SUPPORT OF  
PETITIONER**

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**STATEMENT OF INTEREST<sup>1</sup>**

*Amicus Curiae* March For Our Lives Action Fund (“MFOL”) is a non-profit organization of young people from across the country fighting for sensible gun violence prevention policies that will save lives. Formed after the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida,

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<sup>1</sup> No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

MFOL immediately began organizing the largest single day of protests against gun violence in U.S. history. Hundreds of thousands of people joined its March 24, 2018 march in Washington, D.C. and sibling marches all over the world.<sup>2</sup> Since then, students seeking change have formed hundreds of MFOL chapters across the country. These young people have a vital interest in ensuring that the Constitution is interpreted correctly to allow the enactment of gun violence prevention measures that will protect themselves, their peers, and all Americans.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

At its core, this case is about keeping firearms out of the hands of dangerous individuals. The challenged statute, 18 U.S.C. § 922(g)(8), is designed to keep firearms from domestic abusers subject to active restraining orders. The protection Section 922(g)(8) affords is critical: as the stories and statistics included in this brief demonstrate, domestic abusers pose a danger to their own households and the broader public. In approximately 68% of fatal mass shootings between 2014 and 2019, the perpetrator either shot and killed at least one partner or family member as part of the incident or

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<sup>2</sup> “[T]he March for Our Lives event brought out 1,380,666 to 2,181,886 people at 763 locations.” Kanisha Bond et al., *Did You Attend the March for Our Lives? Here’s What it Looked Like Nationwide*, Wash. Post (Apr. 13, 2019), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/13/did-you-attend-the-march-for-our-lives-heres-what-it-looked-like-nationwide/>.

had a history of domestic violence.<sup>3</sup> And this impact is often borne by young people; nearly two in three children and teens killed in fatal mass shootings died in an incident involving domestic violence.<sup>4</sup>

This brief presents the voices and experiences of young survivors of gun violence committed at the hands of domestic-violence perpetrators. Gun violence forever altered the course of their lives. They tell their stories to underscore the unspeakable devastation those shootings caused and the danger these perpetrators posed to their families and others.

In enacting Section 922(g)(8), Congress recognized the clear danger persons subject to a domestic-violence restraining order pose. Section 922(g)(8) is similar to past measures this nation's lawmakers designed to protect society from dangerous persons and thus is valid under *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

The Fifth Circuit, in deciding otherwise, applied *Bruen* far too narrowly. Valid modern-day gun-control law need not have a precise historical twin. *Bruen*, 142 S. Ct. at 2133. The Government's merits brief identifies historical analogues to Section 922(g)(8) that show a well-established tradition of

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<sup>3</sup> Lisa B. Geller et al., *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014–2019*, 8 *Injury Epidemiology* 1 (2021).

<sup>4</sup> Everytown for Gun Safety, *Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem*, <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/> (last updated Apr. 10, 2023).

protecting society from dangerous persons. The Fifth Circuit instead imposed the very “regulatory straightjacket” that this Court disavowed in *Bruen*. *Bruen*, 142 S. Ct. at 2133. MFOL urges the Court to adhere to its promise that its Second Amendment jurisprudence “by no means eliminates” the ability of Americans and their governments “to devise solutions to social problems that suit local needs and values.” *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010). The Court should uphold Section 922(g)(8).

## ARGUMENT

### I. The Prevention of Gun Violence Is A Critically Important Issue to Young People

Numerous individuals affiliated with MFOL have been affected, directly or indirectly, by gun violence at the hands of domestic violence perpetrators. Many of these incidents of gun violence are mass shootings that go far beyond the four walls of the perpetrator’s own household. Although they did not ask for it, and no one would have wished it upon them, these young survivors, like the rest of the “Mass Shooting Generation,”<sup>5</sup> are uniquely qualified

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<sup>5</sup> See Audra Burch et al., *A ‘Mass Shooting Generation’ Cries Out for Change*, N.Y. Times (Feb. 16, 2018), <https://www.nytimes.com/2018/02/16/us/columbine-mass-shootings.html>; Indeed, “the pervasiveness of lockdowns and school-shooting drills in the U.S. has created a culture of fear that touches nearly every child across the country.” Joe Pinsker, *When Was the Last Time American Children Were So Afraid?*, The Atlantic (May 9, 2019), <https://www.theatlantic.com/education/archive/2019/05/lockdown>

to participate in the public debate about gun violence prevention efforts at the state, local, and national levels.

Several personal accounts are shared here to acquaint the Court with the pain and trauma that gun violence caused by domestic-violence perpetrators has inflicted on Americans—and primarily young people. These voices represent tens of thousands of other young people who, weighed down by the daily threat of gun violence,<sup>6</sup> want Congress to do all it can to make this country safer.

Many of these stories, including the D.C. sniper killings and the tragic mass shootings in Uvalde, Texas and Newtown, Connecticut, are familiar. These tragic acts of gun violence were heavily reported in the news and will be deeply etched in the memories of the American public. These stories may trigger feelings of fear and terror for some, especially for those who have been touched by gun violence themselves or gripped by anxiety as these tragedies played out in real time in the media. But what may not be well-known is that these tragedies were rooted

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n-drill-fear/589090/; see also MFOL, *Generation Lockdown*, YouTube (Apr. 29, 2019),

<https://www.youtube.com/watch?v=0IM4p62p3M0>.

<sup>6</sup> According to the American Psychological Association, 75% of “Gen Z” youth, aged 15 to 21, cite mass shootings as a primary source of stress, and more than 20% report that the possibility of a shooting at their school is a source of stress on a day-to-day basis. Am. Psych. Assoc., *Stress in America: Generation Z* 1–2 (2018),

<https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf>.

in domestic violence. In each case, the perpetrator committed acts of domestic violence prior to committing broader acts of violence outside of their immediate household. These stories demonstrate the critical importance of acting upon the all-too-common red flag of domestic violence to prevent dangerous individuals from acts of gun violence inside and outside of their households.

### **A. Jocelin Rivera**

Jocelin Rivera does not know much about her mother, Lori Ann Lewis-Rivera. She knows Lori devoted her life to caring for other people's children as if they were her own. From her father and the families for whom Lori worked as a nanny, Jocelin knows Lori was quiet, warm, and kind.

After dropping Jocelin off at preschool on October 3, 2002, Lori, then twenty-five years old, drove to a local Shell gas station in Kensington, Maryland to vacuum crumbs from under Jocelin's car seat. At 9:58 a.m., Lori was gunned down on the side of her car, the latest victim in a mass killing spree by a pair that would come to be known as the D.C. snipers. Just three years old, Jocelin barely understood what death was. At Lori's funeral, thinking her mother lay asleep in her casket, Jocelin asked her father, Nelson, if her mother would be waking up. He had no choice but to tell her no.

Now twenty-four and approaching her mother's age on that fateful day, Jocelin understands how much more life Lori had left to live. She cannot imagine her own life being cut short so soon, as it had been for Lori. Jocelin will forever live with the survivor's

guilt she feels. She wonders what might have happened if Lori had instead stopped at the gas station before dropping her off at preschool. If Jocelin, too, would have been the victim of a sniper's bullet and buried next to her mother.

In the years following her mother's death, Jocelin became an angry child, often lashing out at others when she felt frustrated. Around the age of nine, she began to recognize that her anger came from the same place as her grief. Jocelin would lay on her bed alone, locked in her room, and stare at the ceiling, thinking about how she barely knew her mother. The magnitude of Lori's murder continues to reverberate throughout Jocelin's life. She feels Lori's absence at every major life event, through graduating high school, getting a car and her first job, and going to college. When she gets married and has children herself, she will not have her mother by her side.

To this day, Jocelin feels intense anger and sadness at the constant barrage of news from tragic mass shootings happening around the country, not unlike the one that stole the life of her mother. She feels no comfort knowing that there will be more who can relate to her loss. To Jocelin, the parents who will never get to see their children again and the children who, like her, will not grow up with their parents should matter as much as the Second Amendment. Although it hurts to remember, Jocelin will tell as many people who will listen about her soft-hearted mother, Lori.

Jocelin has since learned that the man responsible for taking Lori's life repeatedly abused his wife and

was subject to a domestic-violence restraining order.<sup>7</sup> In fact, a primary motivation behind the shootings was to kill his wife.<sup>8</sup> He was prohibited from possessing a gun pursuant to Section 922(g)(8), the very law at issue in this case.<sup>9</sup> Had Section 922(g)(8) been properly enforced, Lori might still be here today. It is frustrating to Jocelin that, even today, the Court must decide whether demonstrably dangerous people like him should be lawfully granted access to firearms.<sup>10</sup> Jocelin wants the Court to understand the importance of the issue at hand—that there are too many people like her walking around the United States, everywhere, every day, who have lost loved ones to gun violence at the hands of domestic abusers.

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<sup>7</sup> Ernesto Londoño, *Muhammad's ex-wife speaks of abuse, fears*, NBC News (Mar. 25, 2006), <https://www.nbcnews.com/id/wbna12963650>; Petula Dvorak, *20 Years After D.C. Sniper Attacks, We Keep Ignoring What It Was All About*, Wash. Post (Oct. 6, 2022), <https://www.washingtonpost.com/dc-md-va/2022/10/06/dc-sniper-mildred-muhammad/>.

<sup>8</sup> Dvorak, *supra* note 7.

<sup>9</sup> Fox Butterfield, *THE HUNT FOR A SNIPER: THE WEAPON; Officials Say Records Show Gun Was Illegally Owned*, N.Y. Times (Oct. 25, 2002), <https://www.nytimes.com/2002/10/25/us/hunt-for-sniper-weapon-officials-say-records-show-gun-was-illegally-owned.html>.

<sup>10</sup> In fact, such people disproportionately commit mass shootings. Dvorak, *supra* note 7 (“what the majority of [mass shootings] have in common — long before online manifestos — is the abuse of their intimate partners, from the 1984 shooter who killed 21 people in a California McDonald’s to the killer of 49 people at Pulse nightclub in Orlando in 2017”).



## **B. Josh Diesenhaus**

On paper, Josh Diesenhaus, now twenty-five, had a great childhood. As the son of two lawyers, living in a quiet D.C. neighborhood and attending private school there, he knows he is luckier than most. And he was even luckier because his nanny, Lori Ann Lewis-Rivera, was always there when his parents waved goodbye for work. To Josh, Lori was a second mother, and she was an integral part of the Diesenhaus family. Josh can still remember Lori's smile, her warmth, and the way that she always made him feel safe. He remembers being excited when Lori would pick him up from school every afternoon in her blue Dodge minivan and make him the fried bologna sandwiches his parents never let him have. Josh's parents had purchased the car for Lori to transport their two sons, four-year-old Josh and one-year-old Simon, as well as Lori's own child, three-year-old Jocelin.

Josh can still remember seeing the blue Dodge minivan on the nightly news, with the headline that a twenty-five-year-old woman was the latest victim of the D.C. sniper shootings, shot and killed while vacuuming crumbs from her car at a gas station in suburban Maryland. Josh ran into his parents' room and found them in shambles at the news of Lori's death. He asked his mother, Jill, where Lori was. Jill could barely eke out, "Lori won't be coming anymore." At these memories, Josh feels a profound, swelling sadness, one that words could never properly convey.

To Josh and those around him, the effects of Lori's death were immediately noticeable: he could not

sleep; he developed a debilitating phobia of anything that could be perceived as “dangerous,” such as germs or medicine; and he did not respond well to stress or change. As his mother now recounts, on that day, Josh seemed to change from the sweet, fun-loving kid he had always been into a reserved, fearful child. Josh’s childhood anxiety persisted into adulthood. When he was a sophomore in college, he finally conquered his aversion to medicine and sought help from a therapist for his anxiety.

Five years later, Josh still sees his therapist once a week. Though he can now make sense of how Lori’s death has affected his behavior into adulthood, he knows there are some things that will never fade even with counseling: the pain he feels when thinking of Lori, the deep sadness that overcomes him every October as the anniversary of Lori’s death approaches, and the guilt he feels for not keeping in better touch with her daughter, Jocelin.

While Josh’s anxiety has improved, it still affects every decision he makes. He has many friends, but very few who he feels truly know him and understand the trauma he endured. Josh also has difficulty forming close relationships—he lives in fear of having another person whom he loves and trusts torn away from him. This has manifested into a feeling of perpetual loneliness, directly traceable back to Lori’s murder. Josh wants the Court to understand that the immeasurable, preventable loss he experienced can happen to anyone. And *that* is what is at stake in this case.

### **C. Kate Ranta**

In 2007, Kate Ranta, a single mother living in Washington, D.C., met Tom, an officer in the Air Force. Tom had multiple degrees, was successful, and seemed to really like Kate. Their relationship quickly progressed: they moved in together on a military base, got married, and, in 2008, Kate gave birth to their child, Will. The couple soon experienced issues. When Will was three months old, Tom picked a fight with Kate and tried to take Will away. He threatened to call military police to have Kate jailed if she tried to stop him.

The family moved to Parkland, Florida, where Tom's behavior continued to escalate, fueled by his addiction to pain pills and Ambien. He exhibited jealous and controlling tendencies with a terrifying and increasing frequency. In 2011, Kate mentioned a funny Facebook comment posted by a man that she knew from high school. Tom, enraged at Kate's interaction with another man, went out, got drunk and then returned home late that night and locked Kate out of their bedroom. As Kate cried outside of the bedroom door, she heard Tom chamber a round in one of his guns. She ran out of the house, hoping to find help—or at least a witness in the event that Tom decided to shoot her—and called the police. Tom walked out of the garage with two-year-old Will and got into the driver's seat of the car with Will on his lap. With the emergency operator still on the phone, Kate, scared for her son, jumped into the passenger seat. Tom threw Kate's phone into the backseat, pulled out of the driveway, and sped off down the street. He then abruptly stopped the car,

raised his fist, and threatened to punch Kate if she did not get out of the car. Kate tried to get Tom to pass Will to her, but he refused and continued to threaten Kate. She got out of the car and ran, knocking on nearby doors, screaming for help. Nobody answered. When Kate returned home, Tom was there, talking with the police officers who responded to Kate's 911 call. One of the officers took Kate aside and advised her to get a restraining order.

The next morning, Kate and her father went to the courthouse to file for a restraining order against Tom. The process took nearly all day and was daunting for Kate, who had little experience with the legal system. That afternoon, the judge granted a temporary restraining order. The police went to their home to remove any firearms. Kate had not realized until that moment just how many firearms Tom owned, including shotguns and handguns; some secured, some not. At a hearing two weeks later, Kate asked the court for a permanent restraining order, and, over Tom's objections, the court extended the temporary restraining order for nine months.

Unfortunately, by manipulating Kate's financial situation, Tom forced himself back into their lives. He soon retreated into his old patterns. A few months after he moved back in, Tom gave a sick young Will an unknown substance, possibly Ambien, that caused him to vomit and act like he was hallucinating. Kate took Will to the hospital, where a sheriff called Child Protective Services ("CPS"). The agent assigned to Kate's case told her that if she got back together with Tom, CPS would take Will

away. The next year, after CPS had closed its case and Kate had filed for divorce, Kate and Will moved to a new apartment in Coral Springs, Florida. She was careful not to share the address with Tom. The temporary restraining order against Tom had expired, and the court on three separate occasions rejected her attempts to get a permanent restraining order.

On November 2, 2012, Kate picked up four-year-old Will from preschool, made him a snack, and prepared to go out for dinner. When Kate walked outside, she saw that her tire had been slashed and immediately knew Tom had tracked her down. Kate called her father and the police, and both arrived. The police could not help because Kate had neither an active restraining order against Tom nor actual proof of who slashed her tires. Kate and her father made plans for Kate to take Will back to her parents' house, and as Kate's father left, he spotted Tom on the property. Kate redialed 911 and her father attempted to barricade the apartment door.

Suddenly, they heard three loud bangs. Tom had shot through the door; Kate and her father were on the other side, with Will a few feet behind them. One of the bullets hit Kate's left breast. Miraculously, Will was spared. Kate and her father backed away from the door, and Tom burst into the apartment.

Kate screamed, pleaded, apologized, and begged for her life. Tom shot her again. The bullet tore through Kate's hand and sent blood splattering halfway up the wall. With Kate collapsed on the floor in a pool of her own blood, Tom shot Kate's

father at point-blank range. Kate heard her father grunt. She assumed he was dead.

Using every ounce of strength she could muster, Kate crawled to her son, who was hiding under the kitchen table. Tom kneeled next to Will and pointed the gun at Kate's head. The gun's red laser target shone on Kate's face. She heard Will beg his father, "Don't do it, Daddy! Don't shoot Mommy."

Eventually, Tom let Kate go. She ran outside and fell into the grass. The police had arrived but because Tom was still armed inside, they would not enter the home. Kate was bleeding out in the grass, too far from the police barricade to receive assistance. Kate's father—who had been shot in the left arm and left side—walked out of the apartment, carrying Will. Believing Kate to be dead, he proceeded carefully to avoid seeing his daughter's dead body. But then, he and Kate locked eyes and both realized the other was somehow still alive. Kate was taken by helicopter to a nearby hospital. She was sure, based on the looks on the paramedics' faces, that she would not make it.

Both Kate and her father required surgery and remained in the hospital for several days. The bullet in Kate's chest had narrowly missed her heart. The surgeon repaired her hand, and Kate endured months of excruciating physical and occupational therapy to recover her range of motion. Kate has made a near-full physical recovery but her father remains disabled to this day, with his arm atrophied and without use of his left hand.

Although Will was not physically injured, he has suffered long-lasting trauma and was diagnosed with complex post-traumatic stress disorder (“PTSD”). The first months and years after the shooting were particularly tough. Will worried that his mother would get injured again; he would walk behind his mother in public spaces, wary of men. Will slept in the same bed as Kate for years. He would constantly text her when she was running errands. He had extreme anxiety whenever he felt his mother was away for too long. Once, Kate took her dog for a longer-than-usual walk and returned to Will standing in the window hysterically crying, fearing something had happened to Kate. It took Will a long time to gain independence and to trust his mother leaving the house. Although Will’s condition has improved over the past decade, he still battles with the trauma and its impact. Kate and her father also suffer from complex PTSD as a result of the shooting. Kate intentionally relocated to Massachusetts, a state with some of the strictest gun laws in the country, because of the terror that firearms have inflicted on her and her family.

Kate has spent the last decade advocating for domestic-violence survivors. She made the decision to speak out about her experience as she lay in the hospital recovering from her gunshot wounds in 2012. Kate believes in the need for preventative laws and protections to restrict access to firearms by dangerous individuals, particularly in situations where there is a risk or history of domestic violence. To Kate, if someone has gone so far as to manifest violent tendencies toward their own family, they

should not have the right to possess a deadly weapon.

#### **D. Brian VanVels**

Brian VanVels grew up in Grand Rapids, Michigan. Until high school, he thought that he and his family lived a normal life. He assumed that all parents argued, screaming at each other so loud you could hear it through the walls. No one outside their family knew about his father's abuse. As Brian entered high school, the fights got louder and his father became increasingly physical. After his father choked him for intervening in an argument, Brian begged his mother, Sharon, to get a divorce.

Brian's father owned several guns. As the domestic violence escalated, firearms became part of his father's abuse. He would threaten to commit suicide or shoot another person if Sharon ever divorced him.

After learning Sharon had filed for divorce, Brian's father drove Brian and his brother Matt to school while screaming and punching the roof of the truck. Brian was scared for his life. For the first time, he understood his father was a danger not just to his family, but to others. Watching his father recklessly drive away through the high school parking lot, Brian realized that he hardly knew what his father was capable of.

When Brian was seventeen and Matt was fourteen, Brian's father was arrested after another drunken argument with Sharon. After holding him for less than twenty-four hours, police confiscated the firearms that they were able to find, but Brian's



father hid the fact that several guns remained inside the home.

A few days later, something felt off in the house: it felt too quiet, and his father was not acting like himself. Brian was on high alert. Looking for a distraction, he and Matt went to a West Michigan Whitecaps baseball game. When they returned, groceries and papers were strewn about the home, the aftermath of an argument between his parents. The argument quickly resumed. At first things were “normal”—Brian’s parents screaming at each other—but then Brian’s father retrieved a large rifle and threatened to shoot himself. When Sharon asked if the gun was loaded, Brian’s father simply shrugged and said, “Maybe it is; maybe it isn’t.”

Brian’s father began shoving Sharon around the house. Brian fled to the enclosed porch, where his father lunged at him through the screen door. Brian was repeatedly forced by his father from the porch into the yard and then back onto the porch, as Brian begged his mother to escape. Knowing his father had a firearm and not knowing what he might do with it, Brian called 911. The operator instructed him to quietly gather Sharon and Matt and walk down the street without looking back. But Matt yelled at Brian for calling the police, alerting their father. Matt ran down the other side of the street alone. Brian and his mother walked down the street together, passing a group of police officers headed toward their home.

About four houses from the end of the block, Brian heard several loud pops. At the time, he was in shock. The sounds echoed over and over in his ears;

he did not believe the gunshots were real. Later, Brian learned that his father had shot and killed a police officer.

Brian and Matt have both taken years to recover. As a child, Brian's father's abuse rendered Brian socially isolated, reserved, and insecure. As an adult, Brian has struggled to trust others and form relationships, and refused to touch alcohol for many years. The officer his father killed was twenty-nine years old. When Brian turned twenty-nine, he grappled with survivor's guilt on top of his guilt that the officer had died to save Brian's family but left behind a three-year-old daughter of his own. For years, Brian felt responsibility for what happened and regretted calling the police. He could not accept that a police officer had died to save his family. It was not fair. Brian's healing process included creating a Facebook page called "Domestic Violence Affects Everyone" as a resource for children who live in homes affected by domestic violence. He wanted to push back against the societal perception that domestic violence impacts only a limited number of people, and show that domestic violence affects intimate partners, children, neighbors, bystanders, and even law enforcement officers trying to protect victims. Brian no longer considers himself a victim of domestic violence—he is a survivor.

Brian believes in the right to keep and bear arms. But he also strongly believes that laws like Section 922(g)(8) are necessary to protect families and the public. To Brian, allowing lethal weapons to remain in the hands of dangerous individuals who commit domestic violence predictably leads to more terror.

Brian wonders how many more families have to suffer what he went through and how many more men, women, children, and law enforcement officers will be lost before something changes. Brian says that he would feel terrified if this Court struck down laws like Section 922(g)(8) that help to keep firearms out of the hands of domestic abusers.

### **E. Camille Paradis**

Camille Paradis, now nineteen, thought her elementary school was the best one in Newtown, Connecticut. She remembers Sandy Hook Elementary as a small, peaceful school, where nothing bad happened and there was never a moment where people felt unsafe. The principal would visit all the classrooms dressed as a book fairy, complete with a sparkling ball gown that Camille adored, and Camille knew the names of everyone in her grade. There were no bullies, no serious fights—and no active shooter drills.

The morning of December 14, 2012, Camille, then eight years old, went to school like any other day. She woke up early to watch television until her mom made her waffles and packed her favorite little white purse with toys and animal erasers. Her parents drove her to Sandy Hook Elementary early for before-school care, and she waited for her friends to arrive while snacking on little donuts. It was a Friday, and Camille was excited.

When all the classroom doors began shutting and the blackout curtains were drawn, including in Camille's third-grade classroom, Camille did not know exactly what to think. Then she saw the

adults' faces. They were terrified. Camille had never seen that expression on a teacher's face before, had never even seen a teacher get scared. She remembers huddling in the small book corner with the rest of her classmates and trying to keep quiet. A boy near her whispered, "We're going to die, we're going to die" under his breath. Camille was petrified.

Eventually, the police evacuated her classroom. They ordered Camille and her classmates to walk single file out of the room with their hands on the shoulders of the child in front of them. The children were instructed not to look around, so they would not be frightened by the bullets, blood, and bodies all around them.

The students were taken to a local fire station, where Camille watched as her classmates searched for their siblings. She remembers a girl in her class reuniting with her sister, who was in first grade; she remembers several kids looking for their siblings but never finding them; she remembers the boy who whispered "We're going to die" losing his sister.

The rest of Camille's third-grade year has disappeared from her memory, along with most memories from her childhood. New memories from the shooting resurface from time to time. She recently recalled her parents reading her the list of twenty students and six faculty members who would not be coming back to school. Camille's life and the very ways in which she interacts with the world have been irreparably and fundamentally altered. The shooting taught Camille not only about guns and gun

violence, but about death itself—devastation, loss, and true grief.

As with the other stories included in this brief, the Sandy Hook Elementary shooter began his killing spree in his own home, killing his mother before going on to murder twenty-six elementary students and faculty at Sandy Hook, and ultimately turning the gun on himself.<sup>11</sup> The shooter's initial act of domestic violence was the catalyst for further violence that day.

Despite over a decade of therapy, Camille still never feels safe in public. When contemplating her future, she thinks about how when new people come into her life, she will have to tell them at some point she survived a school shooting; that at her job one day, she will likely feel trapped in an office building with limited escape routes; that when she has children, she will explain to them what she went through at their age. Each time Camille hears about other mass shootings, she feels devastation all over again. She remembers the grief, which threatens to consume her if she focuses too closely on it.

Yet Camille has also found a deep sense of community with the people of Newtown and those fighting for gun violence prevention. Camille has shared her story at national vigils, joined youth gun

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<sup>11</sup> Vogel et al., *Sandy Hook Massacre: New Details, but Few Answers*, Wash. Post (Dec. 15, 2012), [https://www.washingtonpost.com/national/gunman-kills-mother-then-26-in-grade-school-rampage-in-connecticut/2012/12/15/9017a784-46b6-11e2-8061-253bccfc7532\\_story.html](https://www.washingtonpost.com/national/gunman-kills-mother-then-26-in-grade-school-rampage-in-connecticut/2012/12/15/9017a784-46b6-11e2-8061-253bccfc7532_story.html).

violence prevention groups, organized rallies, and met with legislators. Through her work, she has been able to turn sadness into anger, energy, and ultimately, hope. Camille understands the impact that gun violence can have, especially when experienced at only eight years old, and how it persists throughout someone's lifetime.

### **F. Caitlyne Gonzales**

Ten-year-old Caitlyne Gonzales was excited to go to school on May 24, 2022. That day, she was to receive honors awards in math, science, computer lab, arts, and robotics. It was the last day before summer break, and she looked forward to getting her awards, watching a movie in class with her best friends, and then being released into the summer heat of Uvalde, Texas until August.

During the movie, Caitlyne and her classmates at Robb Elementary School suddenly heard two loud bangs. At first, she thought maybe a book had fallen or someone had slammed a door. Then she heard three more loud bangs. Mrs. Salas, Caitlyne's teacher, paused the movie and went into the hallway to make sure everything was okay. The door locked behind her. Seeing the look on her teacher's face and sensing something was wrong, the students rushed to let their teacher back in and hid in the corner of the room. It quickly became clear what was happening when Caitlyne heard the cries and screams of her classmates down the hall.

The gunman made his way to Caitlyne's classroom. As he struggled to open the door, Caitlyne and her friend held their hands over the mouths of her other

classmates, muffling their screams in an effort to avoid attracting attention. Caitlyne sat in agony, listening for sounds outside the classroom. She heard gunshots ringing in the classroom across the hallway, screams from children she knew and grew up with. She heard conversations between law enforcement officers and the gunman. She remembers the smell of smoke, like something was burning. Then it went silent. Mrs. Salas hugged the children and told them to be quiet. Caitlyne's thighs began to hurt, as her friend was sitting on top of her as the students crouched behind desks.

After what felt like hours, law enforcement officers announced themselves and shattered the classroom window to let Caitlyne and her classmates out to safety. They ran out, jumping over desks and each other, toward a nearby funeral home, where they made arrangements to reunite with their families.

That evening, Caitlyne stayed up all night watching the news. As the media started to identify the victims, she texted her best friend Jackie Cazares to let her know that their mutual friend, Ellie, was missing. Caitlyne thought it odd that Jackie did not respond, until she learned that Jackie too, was one of the twenty-one victims who lost their lives that day.

Caitlyne still feels uneasy at the sound of sirens, loud bangs, and the smell of smoke. She has frequent flashbacks to the shooting, often multiple times per day. Her mother, Gladys, started sleeping in Caitlyne's bedroom because Caitlyne could not sleep alone, plagued by nightmares related to the

shooting. Gladys has frequently driven Caitlyne to visit the graves of her friends she lost.

Similar to what happened at Sandy Hook Elementary nearly ten years earlier, the gunman at Robb Elementary School also began his day with a horrific instance of domestic violence—shooting a close family member, his grandmother—before continuing on to the school to murder twenty-one and injure seventeen elementary students and faculty.<sup>12</sup>

Caitlyne knows that what happened on May 24, 2022 will affect her for the rest of her life. Her feeling of safety has been compromised forever. In the wake of the shooting, Caitlyne and her family have turned to advocacy to help fight for the innocent children and teachers who lost their lives in Uvalde and the hundreds of other Robb Elementary School students and faculty whose lives will never be the same.<sup>13</sup> Gladys, Caitlyne’s mother, has seen the impact that gun violence has had on her family, and wishes Americans could “put politics aside, because thousands of lives have been changed.”

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<sup>12</sup> Arelis R. Hernández et al., *A Grisly Checklist and a Sickening Rampage: Inside the Uvalde Massacre*, Wash. Post (May 26, 2022),

<https://www.washingtonpost.com/nation/2022/05/25/reconstructi-on-timeline-ualde-school-shooting/>.

<sup>13</sup> *Id.*



## II. Domestic Abusers Are Dangerous to Their Own Households and Society

These stories illustrate the brutal reality of what can happen when domestic-violence perpetrators have access to firearms. Statistics further demonstrate this: domestic abusers are dangerous not only to those inside their household, but also to society at large.<sup>14</sup> The link between domestic violence and gun violence in the United States is well established.<sup>15</sup> Perpetrators use firearms to inflict both physical and emotional abuse. Research shows that in relationships where intimate partner violence exists, a woman is five times more likely to be killed if the abusive partner has access to a firearm.<sup>16</sup> On average, 70 women in the United States are shot and killed by an intimate partner each month.<sup>17</sup>

A survey conducted by the National Domestic Violence Hotline highlights the ways in which firearms are used to perpetrate emotional abuse. Of those surveyed whose partners have access to firearms, fifty-two percent said they would feel safer if law enforcement took away their partner's firearms.<sup>18</sup> Sixty-seven percent of respondents

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<sup>14</sup> In addition to the statistics identified in this brief, MFOL directs the Court's attention to the Government's brief at pages 29–32.

<sup>15</sup> See *Everytown for Gun Safety*, *supra* note 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Hotline Focus Survey Provides Firsthand Look at Intersection of Firearms & Domestic Violence; Highlights Need for Stronger Laws and Equal Protection*, Nat'l Domestic Violence Hotline (June 18, 2014), <https://www.thehotline.org/news/hotline-focus->

believe their partner is capable of killing them.<sup>19</sup> One respondent recounted how her partner sleeps with loaded firearms under his pillow, and she recently awoke to the sound of him releasing the safety next to her head.<sup>20</sup> Studies show that women who are threatened with firearms by their abusers or fear that a firearm may be used against them suffer from more severe PTSD than those who are not.<sup>21</sup>

Abusers pose a harm not only to their victims, but also themselves. Fifty-four percent of respondents in the National Domestic Violence Hotline survey who reported that their partner had threatened them with a firearm said that their partner had also threatened to take their own lives.<sup>22</sup> More than half of all domestic-violence-related mass shootings ended in the perpetrator's death by firearm suicide.<sup>23</sup>

And critically, when abusers are able to possess firearms, the potential for mass violence is greatly increased. Preventing domestic abusers from accessing firearms is crucial to protecting the public from mass shootings. In 68.2% of fatal mass shootings between 2014 and 2019, the perpetrator shot and killed at least one partner or family member, or had a history of domestic violence.<sup>24</sup>

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survey-provides-firsthand-look-at-intersection-of-firearms-highlights-need-for-stronger-laws-and-equal-protection/.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Everytown for Gun Safety, *supra* note 4.

<sup>22</sup> Nat'l Domestic Violence Hotline, *supra* note 18.

<sup>23</sup> *Id.*

<sup>24</sup> Geller, *supra* note 3 at 5.

Both domestic violence and gun violence have lasting effects on American youth. Firearms are the leading cause of death for children and teens in 2020 and 2021.<sup>25</sup> And of the children and teens who were killed in fatal mass shootings, nearly two in three were killed in an incident involving domestic violence.<sup>26</sup> Children who survive but witness the death of a parent at the hands of an abuser may suffer severe PTSD, behavioral issues, suicidal thoughts and other psychological consequences.<sup>27</sup> Such consequences lead to adverse life outcomes, impacting physical and mental health, lifespans, educational attainment, financial stability, and numerous other aspects of an individual's life.<sup>28</sup>

Allowing perpetrators of domestic violence to acquire and possess firearms poses a danger to individuals and society. Section 922(g)(8) is designed to address that danger by restricting access to firearms for persons who pose a threat to their intimate partners or children.

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<sup>25</sup> Matt McGough et al., *Child and Teen Firearm Mortality in the U.S. and Peer Countries*, Kaiser Family Found. Global Health Pol'y (July 18, 2022), <https://www.kff.org/mental-health/issue-brief/child-and-teen-firearm-mortality-in-the-u-s-and-peer-countries/>.

<sup>26</sup> Everytown for Gun Safety, *supra* note 4.

<sup>27</sup> *Id.*

<sup>28</sup> Exposure to gun violence during childhood is associated with long-term chronic health outcomes. Jodi L. Ford, Christopher R. Browning, *Effects of Exposure to Violence with a Weapon During Adolescence on Adult Hypertension*, 24 *Annals of Epidemiology* 193 (2014), <https://doi.org/10.1016/j.annepidem.2013.12.004>.

### **III. Congress Properly Exercised Its Authority to Regulate Access to Guns For Dangerous People**

The victims and perpetrators profiled in this brief—and countless others like them—exemplify the danger domestic violence perpetrators pose to society given access to firearms.

This Court has recognized the same. *See United States v. Hayes*, 555 U.S. 415, 427 (2009) (“Firearms and domestic strife are a potentially deadly combination.”); *United States v. Castleman*, 572 U.S. 157, 160 (2014) (“All too often, [] the only difference between a battered woman and a dead woman is the presence of a gun.”); *see also Georgia v. Randolph*, 547 U.S. 103, 117 (2006) (“[D]omestic abuse is a serious problem in the United States.”).

Congress appreciated the gravity of this threat and enacted Section 922(g)(8) to prevent these dangerous individuals from keeping guns. That prohibition is narrowly tailored and has a significant limiting factor—the presence of an active restraining order. It comes into operation only if a court finds, after notice and a hearing, that a person poses a credible threat to the physical safety of an intimate partner or child or if the court expressly forbids the person from using, attempting to use, or threatening to use physical force against the intimate partner or child. The prohibition is only valid as long as the restraining order remains in effect. Rather than create a categorical exclusion for people who have committed domestic violence, Section 922(g)(8) requires a much narrower, case-by-case assessment of a person’s dangerousness. It is of critical

importance—truly a life or death scenario—to act upon these early warning signs to prevent acts of gun violence, both inside and outside the home.

**A. Even After *Bruen*, the Second Amendment Right Is Not Absolute**

The Second Amendment provides an individual the right to keep and bear arms, but “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). This Court has described the right to keep and bear arms as a right belonging to “law-abiding, responsible citizens.” *Id.* at 635.

Last year, this Court announced a new test for reviewing restrictions on the possession and carrying of firearms. *Bruen*, 142 S. Ct. at 2129–30. The analysis under *Bruen* is twofold: one challenging the law must first establish that a restriction implicates conduct protected by the Second Amendment’s plain text. *Id.* If the challenger meets that burden, the Government then must justify the modern restriction by showing how it is “relevantly similar” to historical analogues. *Id.*

This Court identified two “metrics” for establishing that a law is “relevantly similar” to historical laws, which involve showing how the modern restriction “impose[s] a comparable burden on the right of armed self-defense and . . . is comparably justified.” *Id.* at 2133. “[A]nalogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* Accordingly, “even if a modern-day regulation is not a dead ringer for historical

precursors, it still may be analogous enough to pass constitutional muster.” *Id.*<sup>29</sup>

### **B. The United States Has a Tradition of Disarming Dangerous Individuals**

The Fifth Circuit found that Rahimi satisfied the first step under *Bruen*—that Section 922(g)(8) does indeed implicate a Second Amendment right. The Government then identified numerous historical analogues. Nevertheless, the Fifth Circuit held that Section 922(g)(8) violates the Second Amendment on its face.

The Government’s merits brief again identifies ample historical support that Section 922(g)(8) fits within the tradition of disarming dangerous persons. *See* Gov’t’s Br. at 13–27. Such examples include laws disarming rebels, *id.* at 22–23, 26, individuals under a certain age, *id.* at 24, intoxicated persons, *id.* at 25–26, those who stored guns and gunpowder in an unsafe manner, *id.* at 23, and convicted felons, *id.* at 26. Those examples and others that the Government identified evidence the rich history of crafting legislation to address the threat of letting dangerous people possess and carry firearms. *See id.* at 13–27. These examples are sufficiently analogous to the threat at issue here: persons subject to domestic-violence restraining orders. Indeed, the Government

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<sup>29</sup> The Court also recognized that “regulatory challenges posed by firearms today are not always the same as” historical concerns, and such “cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.” *Bruen*, 142 S. Ct. at 2132.

identified among its examples laws disarming domestic-violence offenders. *Id.* at 27. And as the Government correctly points out, it would be illogical to allow Congress to make categorical determinations as to which groups of persons are dangerous but restrict it from making the same decisions on a case-by-case basis. *Id.* at 28.

### **C. Read and Applied Properly, *Bruen* Requires Reversal of the Fifth Circuit**

This Court should reverse the Fifth Circuit and uphold Section 922(g)(8). Section 922(g)(8) falls squarely within the established contours of valid gun regulations. *Bruen* makes clear that the Government retains substantial power to regulate firearms to protect public safety and that the historical test did not create a “regulatory straightjacket.” 142 S. Ct. at 2133. *Bruen* “decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun.” *Id.* at 2157 (Alito, J., concurring). Under the Court’s decision, the Second Amendment “allows a ‘variety’ of gun regulations.” *Id.* at 2162 (Kavanaugh, J., concurring) (citation omitted).

To find otherwise contradicts this Court’s assurances and precedents. The Fifth Circuit treated even minor and immaterial distinctions between historical laws and their modern counterparts as grounds to find the modern laws unconstitutional. It disregarded historical analogues identified by the Government and in effect did precisely what this Court has warned against and searched for a historical “twin.” *Bruen*, 142 S. Ct. 2133; *see also* Gov’t’s Brief at 38–40. This approach,

if adopted, would invalidate effectively all modern statutes; most modern gun regulations differ from historically analogous laws by virtue of being enacted centuries later.

Real-life examples further demonstrate the fallacy of interpreting *Bruen* to require identical historical analogues. Focusing solely on harm from domestic-violence perpetrators occurring within the four walls of the home ignores the substantial threat those same individuals pose to others. Instead, as evident from stories in Section I and the studies identified in Section II, *supra*, those inclined to commit violence inside the home also pose a danger to society as a whole.

Finally, *Bruen* does not foreclose a statute that addresses a novel harm analogous to historical harms from which Congress has always sought to protect society. Recent technological advances in firearms available to the public have exponentially increased the number of victims killed, maimed, or psychologically scarred by domestic-violence-related shootings. If the Court finds it cannot locate appropriate historical analogues for Section 922(g)(8) in the Government's examples, it may simply be that our forefathers did not craft laws to address threats that did not exist at the time. But contrary to the Fifth Circuit's decision, the promises made in *Bruen* do in fact allow Congress to address those modern-day ills.

## CONCLUSION

The threat of gun violence permeates American society, especially the lives of young people.



Individuals subject to domestic-violence restraining orders are demonstrably dangerous to members of their own household. As the stories and statistics included in this brief show, these individuals pose an even broader danger to society. They should not be afforded access to firearms. Gun violence forever shapes the lives of young people like those in this brief. Jocelin Rivera will never know her mother; Josh Diesenhaus will forever miss the warm and comforting face of his childhood caregiver; Kate Ranta and her father live with physical and psychological wounds while Kate's son Will, too, is burdened by his trauma; Brian VanVels cannot see his family whole; Camille Paradis's childhood is lost forever; Caitlyne Gonzales will never enter a new school year with her best friends Jackie and Ellie by her side.

MFOL urges the Court to uphold Section 922(g)(8) and confirm Congress's ability to regulate access to firearms for dangerous people. Such a holding is consistent with this Court's decision in *Bruen* and this country's traditions of disarming dangerous people, including domestic abusers.

For the foregoing reasons, and for those in the Government's brief, the Fifth Circuit's decision should be reversed.

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