On November 7, 2023, the Supreme Court heard oral arguments in *US v Rahimi*, a case that will have monumental implications for the 1 in 3 women who experience domestic violence each year and the government’s ability to address the epidemic of gun violence through the federal Violence Against Women Act (VAWA). Specifically, the Supreme Court considered whether to uphold a decision by the Fifth Circuit Court of Appeals that the federal government’s prohibition on firearm possession by individuals subject to court-ordered domestic violence restraining orders (issued after they have received notice and had an opportunity to be heard in court) violates the Second Amendment.

Reports of domestic violence, a problem that disproportionately affects the health and safety of women, have risen in recent years. The Supreme Court’s decision in *US v Rahimi* threatens to jeopardize further the health and safety of those experiencing domestic violence by inhibiting the government’s ability to protect them through state courts. This decision also has serious implications for public safety, indicating how far the Supreme Court is willing to go to prioritize individuals’ rights to possess and carry firearms over the government’s ability to protect public health and safety.

The Rise of Originalism

In June 2022, the Supreme Court’s decision in *New York Rifle & Pistol Association v Bruen* dramatically reinterpreted the Second Amendment and the expansiveness of individual rights. It was the first major Supreme Court case challenging gun regulations since *District of Columbia v Heller* in 2008. In that case, the court interpreted the text and original meaning of the Second Amendment to provide an individual right to possess firearms in the home but recognized that, under certain circumstances, the government may restrict that right to protect public safety. In the meantime, however, as the conservative supermajority has gained power on the Supreme Court, originalism, once considered a peripheral legal theory, has become the central focus for cases implicating individual rights, such as abortion and gun rights. Originalism posits that the Constitution should be interpreted through the lens of the framers’ original intent or its original public meaning—what would have been understood at the time the Constitution and subsequent amendments such as the Bill of Rights were adopted.

In *New York Rifle & Pistol Association v Bruen*, the Supreme Court struck down New York’s regulatory scheme that gave public officials discretion in issuing permits for individuals to carry firearms in public. The court overtly dismissed considerations related to public health and safety, including the rising rates of gun violence and gun-related injury and death. Instead, the court set a high bar for the legislators and policymakers seeking to address the growing problem of gun violence. To limit an individual’s Second Amendment rights, the government must demonstrate not that it has a compelling interest in protecting public safety, but instead that it can point to a historical analogue—similar laws from the time of the founding of the country or in the 19th century when the Bill of Rights was applied to the states—that mirrors its current regulation. Writing for the majority, Justice Clarence Thomas asserted that “analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin.” But the Supreme Court’s vague historical analysis has left lower court judges with vast discretion to determine what laws are “consistent with the nation’s history and tradition.” For example, since *New York Rifle & Pistol Association v Bruen* was decided, courts have struck down a federal ban on
possessing a gun if the serial number has been removed and a state ban on homemade “ghost” guns, suggesting that there are no historical analogues to support these firearm regulations.  

**US v Rahimi**

In *US v Rahimi,* the Fifth Circuit Court of Appeals considered whether the section of the VAWA prohibiting possession of a firearm by a person subject to a court-ordered domestic violence restraining order violates their Second Amendment right to possess and bear arms. Constrained by the originalist mode of analysis put forth by the Supreme Court in *New York Rifle & Pistol Association v Bruen,* the Department of Justice argued that in the early days of the US formation, analogous laws restricted firearm possession by individuals deemed to be dangerous. But the Fifth Circuit Court rejected this argument, finding that these laws were not sufficiently analogous to domestic violence restrictions. Those laws, the Fifth Circuit Court said, "disarmed people by class or group, not after individualized findings of 'credible threats' to identified potential victims." The Fifth Circuit Court treated as irrelevant the facts that in the early 19th century married women were considered the property of their husbands, enslaved Black women were the property of enslavers, and "wife beating" was legal.

Limiting its analysis to whether VAWA’s firearm restriction resembled state laws over 2 centuries ago, the Fifth Circuit Court did not weigh evidence related to the current public health and public safety crises of domestic violence or gun violence. Under a strictly originalist approach to the Constitution, the data demonstrating close linkages among firearm access and domestic violence-related gun injury and death are irrelevant. Women are 5 times more likely to be killed by an intimate partner who has access to a firearm than by one who does not, and more than 60% of homicides committed by intimate partners involve a firearm.

Although firearm prohibitions for people subject to court-ordered domestic violence restraining orders do not protect every person experiencing domestic abuse from violence or homicide, research demonstrates that these laws are associated with reduced risk of these occurrences. Court-ordered prohibitions on firearm possession by perpetrators of domestic abuse subject to restraining orders are associated with a 14% reduction in gun-related homicides. Furthermore, domestic violence-related firearm violence is closely linked to mass shootings. A 2021 study showed that in 68% of mass shootings (in which ≥4 people are killed), the perpetrator killed an intimate partner or family member or had a history of domestic violence.

Much is at stake for women’s health and safety, in particular, and public health and safety as a whole in the Supreme Court’s upcoming decision in *US v Rahimi.* If the Supreme Court upholds the Fifth Circuit Court’s reasoning in this case and strikes down firearm restrictions for perpetrators of domestic abuse, many more women’s lives, health, and safety will be put at risk. The evidence is clear that firearm restrictions for domestic violence perpetrators not only protect those experiencing domestic violence but also have the potential to reduce gun violence overall. Upholding the Fifth Circuit Court’s decision would also cement the Supreme Court’s extremely broad reading of the Second Amendment rights, thereby eschewing contemporary public health and firearm safety concerns that are amenable to government intervention.

During Supreme Court oral arguments in *US v Rahimi,* some justices who were in the majority in *New York Rifle & Pistol Association v Bruen* appeared to be amenable to the federal government’s argument that history and tradition support (at least temporary) restrictions on firearm possession by people deemed to be dangerous to public health and safety. But even if the Supreme Court concedes in *US v Rahimi* that those subject to domestic violence restraining orders can be prevented from possessing guns under the Second Amendment, it is unlikely to fundamentally alter the originalism approach of *New York Rifle & Pistol Association v Bruen* regardless of the compelling public health evidence and government interests supporting greater firearm regulation.