

LM in Action: June 26, 2024**The Supreme Court's Decision in U.S. v. Rahimi – Common Sense Prevails****By: Lynn Hecht Schafran, Director, National Judicial Education Program**

On June 21, 2024, the Supreme Court announced its decision in U.S. v. Rahimi, a gun safety case with literally life-or-death potential consequences for all of us. Extensive research shows that domestic abusers harm and kill not only their intimate partners, but also their children, family, friends, law enforcement and, in mass shootings, the public at large. The weapon is almost always a gun. Zackey Rahimi assaulted his girlfriend and perpetrated multiple non-DV shootings in violation of state law while under a Texas state court civil protection order for alleged family violence.

Rahimi challenged the 1994 federal gun safety law barring domestic abusers subject to restraining orders from owning firearms. Legal Momentum joined an amicus (friend of the court) brief which argued that although the Second Amendment guaranteed (white, male citizens) the right to bear arms, Founding era (1791) gun laws exempted individuals considered dangerous, a category which certainly encompasses domestic abusers. That excursion into history was necessary because history controlled in 2022 in New York State Rifle and Pistol Association v. Bruen. That case held that modern gun law must be “consistent with the nation’s historical tradition of firearm regulation,” which led to the Rahimi challenge. We were concerned that the court’s conservative majority would again insist that if the challenged 1994 law did not have a twin during the 1791 Founding era, it would be declared unconstitutional. After the November oral argument, we published an LM in Action titled “A Glimmer of Hope,” because it appeared that a majority of the court would support our argument. Fortunately, it did.

In an 8-1 decision Chief Justice John Roberts wrote, “When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may – consistent with the Second Amendment – be banned from possessing firearms while the order is in effect.” “Since the founding our nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.”

Justice Thomas was the lone dissenter, writing “The court and government do not point to a single historical law revoking a citizen’s Second Amendment right based on possible interpersonal violence.”

Justice Sotomayor, joined by Justice Elena Kagan. responded, ““The court’s interpretation permits a historical inquiry calibrated to reveal something useful and transferable to the present day, while the dissent would make the historical inquiry so exacting as to be useless ...” “Under the dissent’s approach the legislature of today would be limited not by a distant generation’s determination that such a law was unconstitutional, but by a distant generation’s failure to consider that such a law might be necessary.”

Justice Ketanji Brown Jackson asked, “Who is protected by the Second Amendment from a historical perspective?” In other words, why are we accepting as precedent to be respected laws that benefit only white, male, citizens?

The Rahimi decision is welcome, but it does not tell us where the court will go with the many gun law cases working their way through state courts. A few cases are already at the Supreme Court, and one was already decided. What should we make of the recent decision in which a 6-3 party-line court struck down the federal ban on bump stocks – a gun accessory that enables semi-automatic rifles to fire like machine guns (Garland v. Cargill)? A bump stock was used in the deadliest mass murder in U.S. history, a 2017 Las Vegas music festival massacre in which sixty people died and hundreds were injured. The shooter fired more than 1,000 rounds in eleven minutes. With this ruling, SCOTUS legalized “bump stocks,” which convert semiautomatic rifles into fully automatic ones.

On June 25, 2024, U.S. Surgeon General Dr. Vivek Murthy [issued an Advisory on Firearm Violence](#), declaring it to be a public health crisis.