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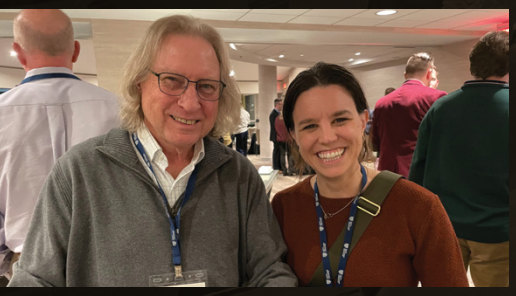

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Summary and Update: The U.S. Supreme Court Continues to Scope Out Second Amendment Protections

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Gina L. Wehby, of Monnat & Spurrier, Chtd., holds a keen interest and enjoyment in legal research and writing. Ms. Wehby graduated from the University of Kansas with a Bachelor's in Political Science and a minor in global and international studies. She also has completed courses in law and master's level courses in public health, health management, and health policy at Saint Louis University. Ms. Wehby returned to her hometown of Wichita where she has collaborated with Mr. Monnat in his criminal defense practice as his paralegal for the past six years.

"**Trump injured but 'fine' after attempted assassination at rally, shooter and one attendee are dead**."[1]

"**Manhunt underway for suspect in Kentucky mass shooting near highway**."[2]

"**A 14-year-old student fatally shot 4 people in a rampage at a Georgia high school, officials say**."[3]

With headlines like these, it is unsurprising that gun rights, gun violence, and gun control remain hot-button issues in American homes, politics, and courtrooms – with the Second Amendment in the crosshairs. With the advent of *District of Columbia v. Heller* (2008),[4] the U.S. Supreme Court drastically shifted from defining "the people['s]" Second Amendment right "to keep and bear arms"[5] in connection with military service[6] to defining an individual right[7] to keep and bear firearms for traditionally lawful purposes,[8] including "the core lawful purpose of self-defense."[9] This article will briefly review (1) the landmark U.S. Supreme Court decisions that set up the target for the *Heller* court to expand Second Amendment rights, (2) *Heller* and its progeny as the U.S. Supreme Court scopes out the Second Amendment in the modern era, and (3) some issues criminal defense lawyers might wish to consider when representing a convicted felon or a person charged with an offense involving "Arms."[10]

Image 1. The Ferguson Rifle: A Revolutionary Weapon, Institute of Military Technology (2019), accessed at: *https://www.instmiltech.com/the-ferguson-rifle-a-revolutionary-weapon/*

The Historical Short Range of the Second Amendment

As a new nation recovering from the rule of a tyrannical government, our Founding Fathers swiftly established the right of the people to keep and bear arms in connection with military service in defense of the nation.[11] Like any good legal analysis, we begin with the plain text of the amendment in question:

1791: The Second Amendment
"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." – U.S. Const., Amend. II (1791)

The first questions the people had for the U.S. Supreme Court were "who" does the Second Amendment protect the people from and what type of "arms" are permissible. The Court answered these limited questions in four opinions:

1875: *United States v. Cruikshank*
The Court overseen by Chief Justice Morrison R. Waite ruled that "[t]he second amendment . . . shall not be infringed by Congress."[12] It "has no other effect than to restrict the powers of the national government . . . ."[13]

1886: *Presser v. Illinois*
Less than a decade later, the Court revised its opinion to include protection from infringement by state governments. An opinion by Justice William Burnham Woods reasoned that "all citizens capable of bearing arms constitute the reserved military force or reserve militia of the Unted States as well as of the states." Therefore, "the states cannot . . . prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government."[14] However, the U.S. Supreme Court recognized the power of state governments "to control and regulate the organization, drilling, and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States."[15]

1939: *United States v. Miller*
The court once again reaffirmed the connection between the Second Amendment and military service when it was asked to consider the legality of a "firearm" – "a shotgun having a barrel less than eighteen inches in length."[16] Justice James Clark McReynolds succinctly delivered the court's ruling:

"In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense."

1980: *Lewis v. United States*
Consistent with its previous deference to the powers of the states, the U.S. Supreme Court fired a particularly devastating blow at convicted felons when an opinion authored by Justice Harry Blackmun declared: "Congress could rationally conclude that any felony conviction, even an allegedly invalid one, is sufficient basis on which to prohibit the possession of a firearm."[17]

Image 2. A soft-nose constructed bullet going through different stages of expansion, Norma Academy Ammunition (Oct. 16, 2020) accessed at: *https://www.norma-ammunition.com/en-gb/norma-academy/dedicated-components/bullets/the-basics-of-expanding-bullets*

Expanding Second Amendment Rights in the Modern Era

In the modern era, about one-third of Americans own a gun, and about one-fourth of Americans live in a household with a gun. Of gun owners, approximately 72% own a gun primarily for self-defense,[18] and handguns are "the quintessential self-defense weapon."[19] When the District of Columbia enacted a law that amounted to a total ban on possession of handguns, the people revolted, and the U.S. Supreme Court substantially expanded Second Amendment rights to provide long range protections.

2008: *District of Columbia v. Heller*
In a shocking opinion that defied most precedent, Justice Antonin Scalia delivered the Court's ruling that "law-abiding, responsible citizens"[20] of the United States have an individual, inherent fundamental Second Amendment right[21] to keep and "wear, bear, or carry"[22] firearms for "traditionally lawful purposes"[23] including the "core lawful purpose of self-defense"[24] "in case of confrontation" "in defense of hearth and home."[25] It is a "right of the whole people, old and young, men, women and boys, and not militia only."[26]

This "unqualified command"[27] is subject only to "presumptively lawful regulatory measures"[28] "consistent with this Nation's historical tradition"[29] including "the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on commercial sale of arms."[30]

2010: *McDonald v. City of Chicago*
Two years later, the Court doubled down on its new position when Justice Samuel A. Alito, Jr. announced that the U.S. Supreme Court "hold[s] that the Second Amendment right is fully applicable to the States."[31]

In response, many states incorporated the *Heller* and *McDonald* Courts' revolutionary rulings into their state statutes and constitutions. For example, the State of Kansas amended §4 of its bill of rights to include:

> ***"A person has the right to keep and bear arms for the defense of self, family, home . . . ." Kan. Const. Bill of Rights §4 (2010)***

and created one of the most robust self-defense statutory schemas in the United States, which embraces castle doctrine, stand your ground, and a grant of immunity from "arrest, detention in custody and charging or prosecution."[32] For a more in-depth review of Kansas' use of deadly force statutory schema and grant of immunity, please refer to our article: *Update on Kansas Self-Defense: Castle Doctrine, Stand Your Ground, and Immunity*, published in the November 2022 issue of this Journal.

2016: *Caetano v. Massachusetts*
In response to a lower court ruling that a stun gun was not a protected "bearable arm" under the Second Amendment, the U.S. Supreme Court reiterated in a per curium opinion two maxims from *Heller* and *McDonald*:

1. "[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."[33]

2. "[T]his Second Amendment right is fully applicable to the States."[34]

2022: *New York State Rifle & Pistol Association v. Bruen*
Having established that an individual has Second Amendment rights to keep and bear a handgun "in defense of hearth and home,"[35] Justice Clarence Thomas delivered the opinion of the Court that an individual also has a right to carry a handgun (read: "bearable arm") for self-defense outside the home.[36]

Then, in this same opinion, the U.S. Supreme Court readjusted it sights to reign in the powers of federal and state governments to regulate firearms. Justice Thomas penned what many attorneys and lower courts find to be a confusing, unworkable,[37] and anti-innovative[38] test that requires them to scour obscure historical sources[39] to determine if the government has affirmatively proven there is a "historical analogue"[40] to the government regulation under fire.

***Bruen* Test:** "In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify a firearm regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"[41]

In *Bruen*, Justice Thomas acknowledged the difficulties associated with this analogical reasoning and listed a few principles to attempt to guide attorneys and lower courts in their analysis:

1. "[W]hen it comes to interpreting the Constitution, not all history is created equal."[42]

2. There are five periods of history from the late 1200s to the early 1900s: "(1) medieval to early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; (4) Reconstruction; and (5) the late-19th and early-20th centuries."[43]

3. "Courts must be careful when assessing evidence concerning English common-law rights"[44] to avoid "rely[ing] on an 'ancient' practice that had become 'obsolete in England at the time of the Constitution' and never 'was acted upon or accepted in the colonies.'"[45]

4. "The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years."[46] "[T]here is an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868."[47]

5. "We must also guard against giving postenactment history more weight than it can rightly bear."[48]

He also cautioned courts that this analogical reasoning is not a bright line rule:

> "[A]nalogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not 'uphold every modern law that remotely resembles a historical analogue,' because doing so 'risk[s] endorsing outliers that our ancestors would never have accepted.' *Drummond v. Robinson*, 9 F.4th 217, 226 (CA3 2021). On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster."[49]

2022 and Beyond: Applying the *Bruen* Test

Despite Justice Thomas' attempted guidance, it seems he may have missed the bullseye. Attorneys and lower courts remain confused by the *Bruen* historical analogue test, leading to "disarray among the lower courts"[50] with scattershot outcomes when firearm regulations are put to the test. As one federal court judge articulated:
"[O]ne could easily imagine a scenario where separate courts can come to different conclusions on a law's constitutionality, but both courts would be right under *Bruen*. Say the Government in Court A develops an in-depth historical analysis to uphold a regulation, and Court A finds that the Government met the burden imposed by *Bruen* . . . The Government in Court B, in contrast, could face the same regulation as in Court A on the same day, but develop no analysis or fail to respond at all. An inflexible reading of *Bruen* then, would require Court B to declare the regulation unconstitutional. On that basis, the same regulation gets different results based on how adept at historical research the Government's attorneys are in a particular location or the time they have to devote to the task."[51]

Accordingly, "federal judges appointed by Presidents Reagan, Clinton, George W. Bush, Obama, Trump, and Biden have all questioned the opinion, warning that history is an unworkable basis for deciding constitutional questions that pushes courts toward unreliable, unreasonable, and unjust conclusions."[52]

Unsurprisingly, state and federal courts continue to wrestle with Second Amendment questions with varied results that have required the U.S. Supreme Court to step in and clear up what might be considered misapprehensions and misapplications of *Bruen*. This term alone, the U.S. Supreme Court ruled on two new Second Amendment cases:

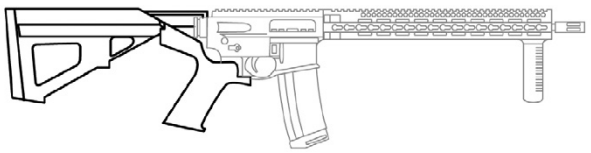

Image 3. Bump Stock, What Is a Bump Stock and How Does It Work? New York Times (Jun. 14, 2024), accessed at: *https://www.nytimes.com/interactive/2017/10/04/us/bump-stock-las-vegas-gun.html*

2024: *Garland v. Cargill*
Justice Clarence Thomas obliquely referenced the U.S. Supreme Court's *Bruen* framework when he reasoned that "Congress has long restricted access to 'machinegun[s],' a category of firearms defined by the ability to 'shoot, automatically more than one shot . . . by a single function of the trigger."[53]

But the case ultimately boiled down to a factual inquiry about the nature of bump stocks – "an accessory for a semiautomatic rifle that allows the shooter to rapidly reengage the trigger (and therefore achieve a high rate of fire)"[54] in relation to the federal statute's definition of a "machinegun." The U.S. Supreme Court reasoned that "[n]o one disputes that a semiautomatic rifle without a bump stock is not a machinegun because it fires only one shot per 'function of the trigger.'"[55] For many years over several administrations, ATF "consistently took the position that semiautomatic rifles equipped with bump stocks were not machineguns."[56] But tragedy struck in Las Vegas in 2017 when a shooter used semiautomatic rifles equipped with bump stocks to fire over 1,000 rounds into a crowd at Mandalay Bay, killing 60 people and wounding more than 500 more.[57] As one of the deadliest mass shootings in modern American history,[58] the "Las Vegas Massacre" galvanized the ATF with the support of former President Trump to issue a Rule banning bump stocks and requiring bump stock owners to destroy or relinquish to the ATF any bump stocks in their possession. The U.S. Supreme Court struck down the ATF Rule, articulating that a "bump stock does not convert a semiautomatic rifle into a machinegun any more than a shooter with a lightning-fast trigger finger does. Even with a bump stock, a semiautomatic rifle will fire only one shot for every 'function of the trigger.' So, a bump stock cannot qualify as a machine gun" under federal law.

This ruling poses an interesting potential Second Amendment question that these authors believe the U.S. Supreme Court has yet to address: Are accessories that modify the function of a firearm, such as a bump stock, embraced by Second Amendment protections such that "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation" under the *Bruen* framework before it might ban or otherwise regulate individual or a class of firearm accessories?

2024: *United States v. Rahimi*
In a more direct application of *Bruen*, the U.S. Supreme Court reviewed a federal law prohibiting an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he 'represents a credible threat to the physical safety of [an] intimate partner,' or a child of the partner or individual."[59] The *Rahimi* court first clarified for the lower courts that the *Bruen* framework does not require that a regulation have a "historical twin" – only a "historical analogue."[60] Then, the U.S. Supreme Court reviewed our Nation's longstanding historical tradition of regulating and disarming people who bear arms for the purpose of causing terror or public affrays.[61] Contrary to the Fifth Circuit, it concluded that it "fits neatly within the tradition"[62] and is "consistent with the Second Amendment"[63] and "common sense"[64] for "[a]n individual found by a court to pose a credible threat to the physical safety of another [to] be temporarily disarmed."[65] Advocates for victims and survivors of domestic violence hail this U.S. Supreme Court decision authored by Chief Justice John Roberts as a victory.

What Criminal Defense Lawyers in Kansas Will Want to Target in Light of Modern Second Amendment U.S. Supreme Court Rulings:

This is a rapidly evolving area of law. Whether specifically affected by these most recent U.S. Supreme Court cases or not, the modern Kansas criminal defense attorney may wish to have at least some of the following included in checklists for possible substantive defenses:

- Should the criminal defense lawyer file a motion to dismiss because the predicate state or federal law violates the Second Amendment?
- Is the accused charged with an offense involving a firearm or other "bearable arm?"
- Does the prosecutor have a reasonable chance of bearing its burden of adducing a "historical analogue" under the *Heller, Bruen,* and *Rahimi* frameworks?
- Does any firearm include any sort of accessory that might modify its function under state or federal law?
- Should the criminal defense lawyer file a Motion to Dismiss because the accused is immune from prosecution for using reasonable force in self-defense under Kansas state law?

A Kansas criminal defense lawyer who has been offered a plea agreement may also want to include some of the following in any checklist:

- Will pleading to the charged offense cause the accused to lose their gun rights? Be careful here: Kansas[66] and the federal government[67] have different laws.
- Is the prosecutor requesting that the client stipulate to facts involving the possession or use of a firearm?[68]
- Are there any firearm-specific sentencing enhancements or registration requirements that might be triggered by the accused's conviction?
- If convicted as charged, does the accused have any chance of regaining their gun rights?[69]

Kansas criminal defense lawyers will also want to keep an eye on opinions involving the Second Amendment in their jurisdiction. Recently, U.S. District Court Judge for the District of Kansas John W. Broomes granted the accused's motion to dismiss two counts of possessing a machine gun on Second Amendment grounds using the frameworks established by *Bruen* and *Rahimi*.[70] He acknowledged that "the *Bruen* analysis is not merely a suggestion;" therefore, he was unable to make a final determination about the constitutionality of the federal statute at issue because, "the government has not met its burden under *Bruen* and *Rahimi* to demonstrate through historical analogs that regulation of the weapons in this case are consistent with the nation's history of firearms regulation. Indeed, the government has barely tried to meet that burden." The constitutionality of the federal law under fire in the Broomes opinion remains an open question. In fact, the prosecutors in that case have already filed an appeal.[71]

It would also be wise for Kansas criminal defense attorneys to keep an eye on Second Amendment litigation in other jurisdictions. Lower courts have been attempting to chip away at the U.S. Supreme Court's expansion of Second Amendment protections under the *Bruen* analysis.[72] As we have seen with *Rahimi*, some of these cases just might work their way up to the U.S. Supreme Court for a final determination.

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1 Jill Colvin, Julie Carr, Smyth, Coleen Long, Eric Tucker, Michael Balsamo, and Michelle L. Price, *Trump injured but 'fine' after attempted assassination at rally, shooter and one attendee are dead,* The Associated Press (Jul. 14, 2024, 5:36 a.m. CDT), accessed at: Trump survives apparent assassination attempt, one attendee killed, FBI investigates | AP News.

2 Charlie Gile, Cristian Santana, Freddie Clayton, Doha Madani, Mirnal Alsharif, and Dennis Romero, *Manhunt underway for suspect in Kentucky mass shooting near highway*, NBC News (Sept. 8, 2024, 9:28 p.m.), accessed at: Manhunt underway for suspect in Kentucky mass shooting near highway (msn.com).

3 Jeff Amy, *A 14-year-old student fatally shot 4 people in a rampage at a Georgia high school, officials say*, The Associated Press (Sept. 5, 2024, 12:09 a.m. CDT), accessed at: 14-year-old student fatally shot 4 at Georgia high school, officials say | AP News.

4 ***District of Columbia v. Heller***, 554 U.S. 570 (2008).

5 *See*, U.S. Const., Amend II (1791); *Compare*, Kan. Const. Bill of Rights §4 (1861) ("The people have the right to bear arms for their defense and security….")

6 *See*, ***United States v. Cruikshank***, 92 U.S. 542, 553 (1875); ***Presser v. People of the State of Illinois***, 116 U.S. 252, 261-62 (1886); ***United States v. Miller***, 307 U.S. 174, 178 (1939).

7 ***Heller***, 554 U.S. at 576-81.

8 *See, e.g.*, *Id*. at 620 (citing ***Cruikshank***, 92 U.S. at 553).

9 ***Heller***, 554 U.S. at 630.

10 U.S. Const., Amend. II (1791).

11 *See generally*, U.S. Const., Amend II (1791); ***United States v. Cruikshank***, 92 U.S. 542, 553 (1875); ***Presser v. People of the State of Illinois***, 116 U.S. 252, 261-62 (1886); ***United States v. Miller***, 307 U.S. 174, 178 (1939).

12 ***Cruikshank***, 92 U.S. 542, 553 (1875).

13 *Id*.

14 ***Presser***, 116 U.S. at 265.

15 *Id*. at 267-68.

16 Some historical context may be useful here. Under 26 U.S.C.A. §1132 (1934, rev'd 1936), a "firearm" was "a shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition," "but does not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller and if its barrel is sixteen inches or more in length." ***Miller***, 307 U.S. at 175 n.1. Modern federal law defines a "firearm" much more broadly as: "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D)

any destructive device. Such term does not include an antique firearm." 18 U.S.C. §921(a)(3).

17 ***Lewis v. United States***, 445 U.S. 55, 66 (1980).

18 Katherine Schaeffer, *Key facts about Americans and guns*, PEW Research Center (Jul. 24, 2024), accessed at: https://www.pewresearch.org/short-reads/2024/07/24/key-facts-about-americans-and-guns/

19 ***Heller***, 554 U.S. at 629.

20 *Id*. at 635.

21 *Id*. at 628-29.

22 *Id*. at 584.

23 *Id*. at 577.

24 *Id*. at 630.

25 *Id*. at 635.

26 *Id*. at 612 (quoting ***Nunn v. State***, 1 Ga. 243, 251 (1846)).

27 ***New York State Rifle & Pistol Ass'n Inc. v. Bruen***, 597 U.S. 1, 17 (2022) (citing ***Konigsberg v. State Bar of Cal.***, 366 U.S. 36, 50, n.10 (1961)).

28 ***Heller***, 554 U.S. at 626-267 & n.26.

29 ***Bruen***, 597 U.S. at 17.

30 ***Heller***, 554 U.S. at 626-267 & n.26.

31 ***McDonald v. Chicago***, 561 U.S. 742, 791 (2010).

32 *See*, K.S.A. 21-5222, *et seq.;* K.S.A. 21-5230, *et seq.*

33 ***Caetano v. Massachusetts***, 577 U.S. 411, 411 (2016) (quoting ***Heller***, 554 U.S. at 582).

34 ***Caetano***, 577 U.S. at 411 (quoting ***McDonald v. Chicago***, 561 U.S. at 750).

35 ***Heller***, 554 U.S. at 635.

36 ***Bruen***, 597 U.S. at 8-10.

37 For a deeper analysis of the potential pitfalls of the ***Bruen*** test, please see Jacob D. Charels, *The Dead Hand of a Silent Past:* ***Bruen***, *Gun Rights, and the Shackles of History,* 73 Duke L. Journal 67 (2023).

38 "It insults both [the] legacy of [18th-century Americans] and their memory to assume they were so short-sighted as to forbid the people, through their elected representatives, from regulating guns in new ways." ***United States v. Holden***, No. 3:22-CR-30, 2022 WL 17103509, 7-8 (N.D. Ind. Oct. 31, 2022) (Judge Robert Miller Jr.).

39 ***Bruen*** "requires original historical research into somewhat obscure statutory and common law authority form the eighteenth century by attorneys with no background or expertise in such research." ***United States v. Nutter***, No. 2:21-CR-001142, 2022 WL 3718518, 3 n.6 (S.D. W. Va. Aug. 29, 2022) (Judge Irene Berger).

40 ***Bruen***, 597 U.S. at 28-30.

41 *Id*. at 17 (citing ***Konigsberg v. State Bar of Cal.***, 366 U.S. 36, 50, n.10 (1961)).

42 ***Bruen***, 597 U.S. at 34.

43 *Id*.

44 *Id*. at 35.

45 *Id*. (citing ***Dimick v. Schiedt***, 293 U.S. 474, 477 (1935)).

46 *Id*. at 34.

47 *Id*. at 37.

48 *Id*. at 35.

49 *Id*. at 30.

50 ***United States v. Bartucci***, No. 1:19-CR-00244, 2023 WL 2189530, 4 (E.D. Cal. Feb. 23, 2023).

51 ***United States v. Perez-Gallan***, No. 4:22-CR-0042, 2022 WL 16858516, 13 (W.D. Tex. Nov. 10, 2022) (Judge David Counts).

52 Clara Fong, Kelly Percival, and Thomas Wolf, *Judges Find Supreme Count's Bruen Test Unworkable*, Brennan Center for Justice (Jun. 26, 2023), accessed at: https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable.

53 ***Garland v. Cargill***, 602 U.S. 406, 410 (2024) (citing 26 U.S.C. §5845(b) and 18 U.S.C. §922(o)).

54 ***Cargill***, 602 U.S. at 410.

55 *Id*. at 416.

56 *Id*. at 406, 412.

57 Andrew Blankstein, Pete Williams, Rachel Elbaum, and Elizabeth Chuck, *Las Vegas Shooting: 59 Killed and More Than 500 Hurt Near Mandalay Bay***,** NBC News (Oct. 2, 2017, 9;33 a.m. CDT), accessed at: https://www.nbcnews.com/storyline/las-vegas-shooting/las-vegas-police-investigating-shooting-mandalay-bay-n806461; *The Las Vegas shooter had a cheap modification that made his rifles more deadly*, PBS (Oct. 3, 2017, 6:24 p.m. ET), accessed at: https://www.pbs.org/newshour/nation/las-vegas-shooter-cheap-modification-made-rifles-deadly.

58 Mark Abadi, James Pasley, Taylor Ardrey, and Grace Eliza Goodwin, *The 30 deadliest mass shootings in modern US history include Monterey Park and Uvalde*, Business Insider (Jan. 23, 2023, 10:21 a.m. CST), accessed at: The 30 Deadliest Mass Shootings in Modern US History - Business Insider.

59 ***United States v. Rahimi***, 602 U.S. ___, 144 S.Ct. 1889, 1894 (2024) (quoting 18 U.S.C. §922(g)(8)).

60 ***Rahimi***, 144 S.Ct. at 1898 (citing ***Bruen***, 597 U.S. at 28-30).

61 ***Rahimi***, 144 S.Ct. at 1899-1901.

62 *Id*. at 1901.

63 *Id*. at 1903.

64 *Id*. at 1901.

65 *Id*. at 1903.

66 *See, e.g.*, K.S.A. 21-6304.

67 *See, e.g.*, 18 U.S.C. §922(g).

68 For example, such a stipulation might necessitate the accused's registration as a "violent offender" under K.S.A. 22-4902(e) or may result in a permanent loss of the offender's gun rights if the accused is convicted of a person felony and "was found by the convicting court to have used a firearm in the commission of the crime" under K.S.A. 21-6304(a)(1).

69 A federal felon may not be able to regain their gun rights except through a presidential pardon. *See generally*, 18 U.S.C. 922(g). Yet post-***Bruen*** appellate opinions continue to question the constitutionality of permanently disarming non-violent federal felons. *See, e.g.*, ***Vincent v. Garland***, 80 F.4th 1197 (10th Cir. 2023), *vacated*, ***Vincent v. Garland***, 144 S.Ct. 2708 (Jul. 2, 2024); ***Jackson v. United States***, 69 F.4th 495 (8th Cir. 2023), *vacated*, ***Jackson v. United States***, 144 S.Ct. 2710 (2024); ; ***Doss v. United States***, No. 22-3662, 2023 WL 8299064 (8th Cir. Dec. 1, 2023), *vacated*, ***Doss v. United States***, 144 S.Ct. 2712 (2024); ***Cunningham v. United States***, 70 F.4th 502 (8th Cir. 2023), *vacated*, ***Cunningham v. United States***, 144 S.Ct. 2713 (2024). Such cases have been remanded to their respective circuits for reconsideration in light of ***Rahimi***. This remains a rapidly evolving area of criminal law. Alternatively, Kansas felons may be able to regain their gun rights, but it depends on the type of felony of conviction (person, drug, non-person) and if the convicting court found that a firearm was used in the commission of the crime. *See* K.S.A. 21-6304.

70 ***United States v. Tamori Morgan***, Case No. 23-10047-JWB, 2024 WL 3936767 at *4 (D. Kan. Aug. 26, 2024) (John W. Broomes, U.S. District Judge).

71 KWCH Staff and Matt Heilman, *U.S. government appeals ruling after judge throws out machine gun possession charge against Kansas man*, KWCH (Sept. 24, 2024, 10:18 a.m. CDT), accessed at: https://www.kwch.com/2024/09/25/us-government-appeals-ruling-after-judge-throws-out-machine-gun-possession-charge-against-kansas-man/.

72 As of October 2, 2024, there are 157 cases published to Westlaw that treat ***Bruen*** negatively: *See, e.g.*, ***Range v. Attorney General United States of America***, 69 F.4th 96 (3d Cir. 2023), *vacated,* ***Garland v. Range***, No. 23-374, 144 S.Ct. 2706 (Jul. 2, 2024) (in light of ***Rahimi***); ***United States v. Harper***, No. 1:21-CR-0236, 689 F.Supp.3d 16 (M.D. Pa. Sept. 1, 2023); ***United States v. Brunner***, No. 23-cr-30088-SMY, 2024 WL 1406190 (S.D. Ill. Apr. 2, 2024); ***United States v. Jones***, No. 23-20275, 2024 WL 3297060 (E.D. Mich. Jul. 2, 2024); and ***United States v. Diaz***, ___ F.4th ____, No. 23-50452, 2024 WL 4223684 (5th Cir. 2024) (most negative).