

No. 20-843

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

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NEW YORK STATE RIFLE &  
PISTOL ASSOCIATION, INC., et al.,

*Petitioners,*

*v.*

KEVIN P. BRUEN, in his official capacity as  
Superintendent of New York State Police, et al.,

*Respondents.*

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

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**BRIEF OF AMICI CURIAE FORMER  
NATIONAL SECURITY OFFICIALS IN  
SUPPORT OF RESPONDENTS**

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## INTEREST OF AMICI CURIAE<sup>1</sup>

Amici are former federal national security and law enforcement officials who have significant experience protecting our communities from acts of terror and domestic extremist violence. Amici represent a broad cross section of the national security community, including former career and politically appointed officials from the National Security Council staff, Office of the Director of National Intelligence, National Counterterrorism Center, Central Intelligence Agency, Department of Defense, Department of Homeland Security, Department of Justice, Federal Bureau of Investigation, and Department of State.

As experienced counterterrorism officials, prosecutors, and law enforcement officers, Amici understand that unfettered access to firearms poses a grave national security and public safety threat to the Nation. In particular, Amici know that preventing foreign terrorists and domestic extremists from obtaining dangerous weapons—including high-powered, concealable firearms—must be a top priority in the effort to protect the safety and security of our citizens. Accordingly, Amici have a strong interest in ensuring

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for amici certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amici and their counsel, made a monetary contribution intended to fund this brief's preparation or submission. All parties consented to the filing of this brief.

that states and localities maintain sufficient flexibility to impose reasonable restrictions on who can carry concealed firearms and for what purpose.

### INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has made clear that the Second Amendment right to keep and bear arms is not absolute: It is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). Instead, the Constitution permits certain restrictions on firearms possession designed to protect national security and public safety. *Id.* Consistent with this principle, courts have long accepted that government regulation of carrying concealed weapons in public is lawful. *Id.* (“[T]he majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.”).

For good reason. As Amici know from experience, unchecked access to firearms in the United States poses serious national security and public safety challenges for communities. Foreign terrorist organizations have long urged their followers to take advantage of lax U.S. gun laws to plan attacks in the United States. In several instances, their followers have listened, carrying out mass shootings that have resulted in the loss of lives. The country has also seen a recent resurgence in armed political violence perpetrated by domestic anti-government extremist groups. Such violence—which culminated in a violent

assault on the U.S. Capitol on January 6, 2021—threatens national security by destabilizing our democratic institutions and undermining the safety of the American people.

An unfettered ability to carry concealed firearms in public would only escalate these already fraught situations. Petitioner’s approach, however, ignores these countervailing national security interests, instead leaving virtually no room for states and localities to regulate the concealed carry of firearms. Concealable, high-firepower weapons add a dangerous element of surprise and allow more easily for pre-planned, coordinated attacks. And such firearms, which are used in the vast majority of mass shootings in the United States, can be particularly lethal, especially in target-rich environments like New York City and other densely populated American cities. Accordingly, there is a paramount interest in ensuring that the Nation’s national security and law enforcement officials have sufficiently flexible tools to combat these evils—including the ability to ensure that dangerous concealed weapons stay out of the hands of those who would use them to do harm.

## ARGUMENT

### **I. Regulation of Concealed Carry of Firearms Protects Paramount National Security and Public Safety Interests**

#### **A. Ready Access to Firearms in the United States Poses Unique National Security and Public Safety Challenges**

The ready availability of firearms in the United States—including high-powered concealable handguns like semi-automatic pistols—creates special national security and public safety challenges. Effective methods of regulating access to such weapons are indispensable in protecting the American people from foreign terrorists and domestic extremists who wish to commit violence on U.S. soil.

- 1. Foreign terrorist organizations capitalize on the ubiquity of firearms in the United States to encourage U.S.-based attacks*

National security and law enforcement officials have long been vigilant against attacks by foreign terrorist organizations in this country. The ease with which these groups and their individual followers can obtain powerful firearms—and their strategic exploitation of this ready availability—only compounds the threat they pose to the Nation and underscores the paramount government interest in effective gun-safety regulations.

a. For years, national security and law enforcement officials have been sounding the alarm that permissive U.S. gun laws make the United States a prime target for firearms-based terrorist attacks. In 2017, for instance, the then-director of the National Counterterrorism Center explained that easy access to firearms in the United States undermines national security officials' efforts to protect the Nation against terrorism: "We find ourselves in a more dangerous situation because our population of violent extremists has no difficulty gaining access to weapons that are quite lethal."<sup>2</sup> These comments followed "years" of "[c]ounterterrorism officials . . . quietly voic[ing] frustration about the matter."<sup>3</sup> Similarly, the Federal Bureau of Investigation recently warned that "non-immigrant visa holder extremists and criminal actors almost certainly are capable of exploiting" vulnerabilities in U.S. gun laws "to legally purchase firearms . . . to conduct a violent attack in the homeland."<sup>4</sup> The FBI further assessed that foreign terrorist organizations "likely will issue additional messages encouraging U.S.-based extremists to exploit perceived gaps in

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<sup>2</sup> Greg Miller, *Senior Counterterrorism Official Expresses Concern About Access in U.S. to Lethal Weaponry*, Wash. Post (Dec. 22, 2017), <https://perma.cc/DSP8-UK97>.

<sup>3</sup> *Id.*

<sup>4</sup> Josh Margolin & Bill Hutchinson, *Would-Be Terrorists Could Exploit Gun Law Loophole Used by Saudi Pilot in Pensacola Shooting Rampage: FBI*, ABC News (Dec. 24, 2019), <https://perma.cc/YR6B-6WZU>.



gun laws to obtain weapons for a homeland attack in the near term.”<sup>5</sup>

b. Indeed, foreign terrorist organizations themselves have repeatedly made clear that they seek to take advantage of the ubiquity of firearms in the United States to recruit new members and plan terror attacks. As one prominent American al-Qaeda member told potential recruits:

America is absolutely awash with easily obtainable firearms. . . . You can go down to a gun show at the local convention center, and come away with a fully automatic assault rifle without a background check and most likely without having to show an identification card. So what are you waiting for?<sup>6</sup>

Similarly, a 2017 Islamic State propaganda video featured an American fighter, wearing fatigues and a holstered pistol, urging sympathizers in the United States to “[t]ake advantage of the fact that you can easily obtain a rifle or a pistol in America” and “[s]pray the kuffar [infidels] with bullets.”<sup>7</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Adam Taylor, *The Islamic State Likes America’s ‘Dumb’ Gun Laws, Defector Says*, Wash. Post (Aug. 4, 2016), <https://perma.cc/786P-JWXY>.

<sup>7</sup> Nick Miroff, *ISIS Fighter with American Accent Urges Supporters to Take Advantage of U.S. Gun Laws*, Wash. Post (Dec. 27, 2017), <https://perma.cc/WBJ6-X7Q4>.

Terrorist training manuals and recruitment materials likewise encourage followers to exploit vulnerabilities in America’s gun laws to obtain training and weapons that can then be deployed in domestic attacks. For example, a pamphlet entitled “How Can I Train Myself for Jihad,” reportedly found in terrorist safe houses in Kabul, Afghanistan, and disseminated on websites connected to al-Qaeda in the early 2000s, instructs would-be terrorists on how to make “suitable preparations for battle.”<sup>8</sup> Suggestions include attending the “many firearms courses available to the public in USA,” such as “sniping, general shooting and other rifle courses,” as well as “[h]andgun courses.”<sup>9</sup> The pamphlet further advises recruits to “avoid dealing in illegal firearms,” noting that in the United States, “[o]ne can learn to operate many arms legally, so there is no need to spend years in prison for dealing in small, illegal firearms. Learn the most you can according to your circumstances and leave the rest to when you actually go for Jihad.”<sup>10</sup>

More recently, the Islamic State, through its propaganda magazine, *Rumiya*, urged recruits to capitalize on the ready availability of guns in the United

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<sup>8</sup> Violence Pol’y Ctr., *Firearms Training for Jihad in America*, <https://perma.cc/YCD8-FGVP> (quoting pamphlet) (last visited Sept. 14, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

States to “arm [themselves] for an attack.”<sup>11</sup> In a 2017 article entitled “Just Terror Tactics,” the publication explained, “[i]n most U.S. states, anything from a single-shot shotgun all the way up to a semi-automatic AR-15 rifle can be purchased at showrooms or through online sales—by way of private dealers—with no background checks, and without requiring either an ID or a gun license.”<sup>12</sup> The article concluded, “[w]ith approximately 5,000 gun shows taking place annually within the United States, the acquisition of firearms becomes a very easy matter.”<sup>13</sup>

c. Unfortunately, these statements are not merely aspirational: On multiple occasions, individuals affiliated with or inspired by foreign terrorist organizations have in fact used firearms—including concealable, high-capacity handguns—to carry out attacks in the United States. To take just a few examples, in 2015, a married couple killed 14 people and wounded 22 others in a mass shooting at a San Bernardino, California, office building.<sup>14</sup> The couple, who carried

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<sup>11</sup> Derek Hawkins, *Islamic State Magazine Steers Followers to U.S. Gun Shows for ‘Easy’ Access to Weapons*, Wash. Post (May 5, 2017), <https://perma.cc/4PG4-T79R>.

<sup>12</sup> *Id.*

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

<sup>14</sup> Mark Berman, *One Year After the San Bernardino Attack, Police Offer a Possible Motive as Questions Still Linger*, Wash. Post (Dec. 2, 2016), <https://perma.cc/4ZBD-ELN4>.

out the attack with assault-style rifles and two semi-automatic handguns,<sup>15</sup> were “radicalized for some time before the attack” and had publicly pledged allegiance to the leader of the Islamic State on Facebook.<sup>16</sup> They had also exchanged online messages “showing signs in their communication of their joint commitment to jihad and to martyrdom,” according to the FBI.<sup>17</sup>

In 2016, an attacker who had pledged allegiance to the Islamic State shot and killed 49 people at Pulse nightclub in Orlando, Florida.<sup>18</sup> The attacker was armed with a Glock 17 9-millimeter semi-automatic pistol, among other weapons.<sup>19</sup> At the time, the shooting was the deadliest terror attack on U.S. soil since September 11, 2001.<sup>20</sup>

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<sup>15</sup> Sari Horwitz, *Guns Used in San Bernardino Shooting Were Purchased Legally from Dealers*, Wash. Post (Dec. 3, 2015), <https://perma.cc/V6KP-72G9>.

<sup>16</sup> Berman, *supra* note 14.

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

<sup>18</sup> Ralph Ellis, et al., *Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance*, CNN (June 13, 2016), <https://perma.cc/72SW-X4R7>.

<sup>19</sup> Bart Jansen, *Weapons Gunman Used in Orlando Shooting Are High-Capacity, Common*, USA Today (June 15, 2016), <https://perma.cc/B6TL-GU3L>.

<sup>20</sup> Ellis, *supra* note 18.

And in 2019, a Saudi military pilot killed three people and injured eight at Naval Air Station Pensacola with a Glock 9-millimeter pistol he had obtained lawfully in the United States.<sup>21</sup> The shooter, who had been radicalized abroad, coordinated with al-Qaeda in the Arabian Peninsula regarding planning and tactics.<sup>22</sup> FBI Director Christopher Wray described the attack as “the brutal culmination of years of planning and preparation” and noted the shooter helped the terrorist organization “mak[e] the most it could out of his murders.”<sup>23</sup>

All told, an alarming number of attacks enabled or inspired by foreign terrorist organizations since September 11 have been committed with guns.<sup>24</sup> And national security officials have drawn a direct connection between the ready availability of firearms in the United States and an increasingly dangerous situation domestically. As the former director of the National Counterterrorism Center explained, far from deterring terrorist attacks, “[m]ore weapons, more

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<sup>21</sup> Eric Tucker, *FBI: Shooter at Pensacola Navy Base Coordinated with Al-Qaida*, Military Times (May 18, 2020), <https://perma.cc/XT6U-78BG>.

<sup>22</sup> *Id.*

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

<sup>24</sup> Peter Bergen, et al., *Jihadist Terrorism 16 Years After 9/11: A Threat Assessment 27* (2017) (“With one exception, every lethal jihadist attacker in the U.S. since 2014 has used one or more firearms.”), <https://perma.cc/YSY5-BE5V>.

readily available, increases the lethality of those that would pick them up and use them.”<sup>25</sup>

2. *Unchecked access to firearms poses national security and public safety concerns related to domestic political violence*

The national security and public safety issues resulting from the ubiquity of firearms in the United States are not limited to foreign terrorist organizations. In recent decades, the United States has seen a rise in political violence, often perpetrated by domestic extremists who harbor anti-government views. Ready access to firearms of any kind only makes this volatile situation more dangerous.

a. Violence committed in furtherance of a political ideology—whether in the form of a premeditated attack or an outbreak of gunfire during a protest—threatens the safety and security of the United States. As a Department of Justice official observed earlier this year, “[t]he rise of domestic violent extremism is a serious and growing public safety and national security threat.”<sup>26</sup>

Most obviously, political violence harms the safety of individuals and their communities. In the past decade alone, ideologically driven violence in America

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<sup>25</sup> Miller, *supra* note 2.

<sup>26</sup> Alexander Mallin & Luke Barr, *Domestic Violent Extremism ‘Growing Public Safety and National Security Threat,’ DOJ Says*, ABC News (Feb. 26, 2021), <https://perma.cc/HQA8-W6UR>.

has resulted in scores of lives lost and significant economic cost.<sup>27</sup> However, “political violence, *by design*, expands that harm[,] . . . impos[ing] costs on society well beyond the violent incident itself.”<sup>28</sup>

More broadly, images of political unrest in American streets undermine confidence in the strength and stability of our democracy and hurt our standing around the world. According to several academic studies, “political violence deteriorates the functioning of government[] and its consequent ability to support the populace in three ways: (1) by deteriorating government systems necessary for daily living, (2) by weakening the public sector, and (3) by destroying democratic processes.”<sup>29</sup> Indeed, in the latest Fragile States Index, which measures the political stability of countries across the globe, the United States saw the greatest decrease in overall stability of any country in 2020, driven in large part by increasing political polarization and associated violence.<sup>30</sup>

In such a highly charged political environment, the ready availability of firearms only increases the likelihood of violence. According to a study conducted

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<sup>27</sup> Andrew Blum, *The Costs of Political Violence in the United States* 12, 16-17 (2021), <https://perma.cc/PPM6-SUJH>.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> Cindy A. Sousa, *Political Violence, Collective Functioning and Health: A Review of the Literature*, 29 *Med. Conflict & Survival* 169 (2013) (author manuscript), <https://perma.cc/W2DS-7JU7>.

<sup>30</sup> Fund for Peace, *Fragile States Index Annual Report 2021* 10, 14 (2021), <https://perma.cc/29NL-6GFJ>.

by the nonpartisan Armed Conflict Location & Event Data Project, “at recent demonstrations, the presence of an armed person is correlated to more—not less—violence and destruction, and is a detriment to public safety and the right to organize, compared to demonstrations with unarmed participants.”<sup>31</sup> Specifically, political demonstrations where participants carry guns “are nearly six times as likely to turn violent or destructive compared to unarmed demonstrations.”<sup>32</sup> Moreover, the presence of firearms at political demonstrations correlates with an increased risk of deadly violence: “A fatality was reported at approximately one out of every 2,963 demonstrations where no firearm was identified, compared to about one out of every 62 demonstrations where there was a firearm identified.”<sup>33</sup>

The carrying of firearms at highly charged political events can also fuel a dangerous mob-mentality dynamic, leading otherwise law-abiding citizens to engage in lawless behavior. Not only does the presence of firearms often directly result in violence—*i.e.*, gun violence carried out by armed participants—but also firearms can “*indirectly* contribut[e] to a more dangerous environment” by escalating tensions overall, as reflected by statistics that also show increased

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<sup>31</sup> Armed Conflict Location & Event Data Project & Everytown for Gun Safety, *Armed Assembly: Guns, Demonstrations, and Political Violence in America* 4 (2021), <https://perma.cc/77HN-VNPC>.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 3.



violence and destruction by unarmed people at armed demonstrations.<sup>34</sup>

b. Since January 2020, more than half of all armed demonstrations in the United States have involved private “militias or militant social movements.”<sup>35</sup> Such militias—which are unlawful in all 50 states<sup>36</sup>—comprise “antigovernment . . . extremists” who are “often organized into paramilitary groups that follow a military-style rank hierarchy” and stockpile “weapons and ammunition.”<sup>37</sup> As the National Security Council recently explained, these “violent extremists . . . take steps to violently resist government authority or facilitate the overthrow of the U.S. Government based on perceived overreach.”<sup>38</sup>

Indeed, national security officials have recently warned about the danger that such private militias pose to national security and public safety, particularly in light of today’s political polarization. In March of this year, the Intelligence Community

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<sup>34</sup> *Id.* at 4.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> See Institute for Constitutional Advocacy and Protection, *Prohibiting Private Armies at Public Rallies* (3d ed. 2020) (cataloguing state laws), <https://perma.cc/MJ29-EFE7>.

<sup>37</sup> *Domestic Terrorism: Focus on Militia Extremism*, Federal Bureau of Investigation (Sept. 22, 2011), <https://perma.cc/F5N4-LNTD>.

<sup>38</sup> Nat’l Sec. Council, Exec. Off. of the President, *National Strategy for Countering Domestic Terrorism* 8 (2021), <https://perma.cc/E6SS-R89X>.

warned that these groups, “galvanized by recent political and societal events in the United States[,] pose an elevated threat to the Homeland in 2021.”<sup>39</sup> In particular, the Intelligence Community assessed that “militia violent extremists . . . present the most lethal [domestic violent extremist] threats,” with militias “typically targeting law enforcement and government personnel and facilities.”<sup>40</sup> This “threat increased last year and . . . will almost certainly continue to be elevated throughout 2021 because of contentious sociopolitical factors that motivate [militia groups] to commit violence.”<sup>41</sup> Similarly, in August, the Department of Homeland Security issued a National Terrorism Advisory System Bulletin “regarding the current heightened threat environment across the United States,” stemming in part from “anti-government/anti-authority violent extremists,” which “will remain a national threat priority for the United States.”<sup>42</sup>

The anti-government militia movement is not new. “It emerged in 1993-1994, quickly engaging in criminal activity—often centered around illegal weapons and explosives—and violence, including some murders and numerous terrorist plots,” as well as the

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<sup>39</sup> Off. of the Dir. of Nat’l Intel., *Domestic Violent Extremism Poses Heightened Threat in 2021* 2 (2021), <https://perma.cc/LEH6-7G93>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> U.S. Dep’t of Homeland Sec., *National Terrorism Advisory System Bulletin* 1 (Aug. 13, 2021), <https://perma.cc/28FN-JCNA>.

use of firearms against federal authorities.<sup>43</sup> The movement's roots are often traced to two standoffs between individuals and the federal government: the 1992 standoff at Ruby Ridge, Idaho, between fugitive Randy Weaver and federal law enforcement, and the 1993 FBI raid of the Branch Davidian compound in Waco, Texas.<sup>44</sup> Both incidents, which resulted in the deaths of federal agents and private citizens, became touchstones for self-proclaimed militia groups, fanning their "extreme hatred and distrust of the federal government" and fueling conspiracy theories about the rise of a global totalitarian state under the "New World Order."<sup>45</sup>

Although the militia movement waned in the early part of the 2000s, self-styled militias have seen a resurgence in recent years.<sup>46</sup> These groups train for armed, coordinated paramilitary activity, in furtherance of "what they see as the armed protection of constitutional rights against [a New World Order]-type

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<sup>43</sup> *The Militia Movement (2020)*, Anti-Defamation League, <https://perma.cc/5BMY-QMBL>.

<sup>44</sup> See, e.g., Jason Wilson, *Ruby Ridge, 1992: The Day the American Militia Movement Was Born*, *The Guardian* (Aug. 26, 2017), <https://perma.cc/WPA7-4B26>; Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Remembering Waco*, <https://perma.cc/8WBN-EPJJ>.

<sup>45</sup> Ann LoLordo, '93 Waco Siege Is Rallying Point for Militia Movement, *Balt. Sun* (Apr. 27, 1995), <https://perma.cc/T873-E3ZS>; see also *The Militia Movement (2020)*, *supra* note 43.

<sup>46</sup> *The Militia Movement (2020)*, *supra* note 43.

threat.”<sup>47</sup> In addition, they view an unrestricted right to bear arms as central to “preparing for ‘civil war’ to defend against perceived overreaching or ‘tyrannical’ government actions.”<sup>48</sup>

c. In recent years, militia groups have frequently shown up armed at demonstrations and other political events in U.S. cities, heightening tensions and the risk of violence. In one recent example, violence erupted last summer at a protest in response to a police shooting in Kenosha, Wisconsin, where private militia members and other extremists had responded to a call to “defend [the] city . . . from evil thugs.”<sup>49</sup> According to the Kenosha Sheriff, the heavily armed individuals patrolled the streets “like a vigilante group,” further inflaming tensions among the crowd that were already running high.<sup>50</sup> The demonstration ended in violence and destruction when a 17-year-old who had joined forces with the local militia shot three people, killing two.<sup>51</sup> At least two out-of-state militia members with felony convictions were charged with

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<sup>47</sup> Alejandro J. Beutel & Daryl Johnson, *The Three Percenters: A Look Inside an Anti-Government Militia* 6 (2021), <https://perma.cc/EGS3-RCSP>.

<sup>48</sup> *Id.*

<sup>49</sup> Adam Mahoney, et al., *Armed White Men Patrolling Kenosha Protests Organized on Facebook*, *The Guardian* (Aug. 26, 2020), <https://perma.cc/RU5R-WBW8>.

<sup>50</sup> *Id.*

<sup>51</sup> Gina Barton, et al., *Kyle Rittenhouse, Charged in Kenosha Protest Homicides, Considered Himself Militia*, *Milwaukee Journal Sentinel* (Aug. 26, 2020), <https://perma.cc/M79D-HD78>.

illegal possession of firearms, including two handguns, after a witness informed law enforcement they had traveled to Kenosha to “pick people off.”<sup>52</sup>

Heavily armed private militias and anti-government extremists have also orchestrated violent episodes specifically directed against government officials. For instance, in March 2020, anti-government figure Ammon Bundy founded the People’s Rights militia, which has staged violent and disruptive protests at the Idaho State Capitol against pandemic-related health restrictions.<sup>53</sup> Bundy is best known for playing a central role in two armed confrontations with federal officials: a standoff against the FBI over grazing fees at his father’s ranch in Bunkerville, Nevada, in 2014; and a 41-day occupation of a federal wildlife refuge in Burns, Oregon, in 2016, supporting two ranchers who had committed arson on federal land.<sup>54</sup> Today, Bundy instructs members of his People’s Rights group “to train in small militia-style groups of two to

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<sup>52</sup> Deneen Smith, *Militia Members Face Gun Charges, Alleged to Have Come to Kenosha “to Pick People off,”* Kenosha News (Sept. 4, 2020), <https://perma.cc/L6Z6-24VV>.

<sup>53</sup> Ryan Suppe, *Amid Stay-Home Order, Ammon Bundy Hosts Meeting; Calls on Idahoans to Defend Rights*, Idaho Press (Mar. 27, 2020), <https://perma.cc/2XSP-Q2CD>.

<sup>54</sup> Richard Read, *Ammon Bundy Is Leading an On-Demand, Anti-Mask Militia. Some Members Have Ties to Far-Right Organizations*, Los Angeles Times (Feb. 9, 2021), <https://perma.cc/Z8UM-BLXF>.

10 people” to prepare to defend against the government “force that is evident to come upon us.”<sup>55</sup> He encourages his followers: “When someone’s rights are being violated for whatever reason . . . then thousands of people come and surround that person and bring a tremendous, a lot of attention and bring accountability to the bad actors. The First Amendment is secured by the Second Amendment.”<sup>56</sup> By some estimates, the People’s Rights militia now boasts 20,000 members in 16 states.<sup>57</sup>

To protest what they view as government overreach, members of Bundy’s group have shown up armed at hospitals, at local health board meetings, and at the homes of police officers, health board officials, and the Mayor of Boise.<sup>58</sup> In August 2020, Bundy led his followers to storm the Idaho State Capitol to protest coronavirus-related public health measures. According to media reports, armed members of Bundy’s group “forced their way into a House gallery with limited seating, shattering a glass door in the process. The next day, more than 100 protest-

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<sup>55</sup> Ryan Suppe & Tommy Simmons, *Bundy Group, People’s Rights, Training to Defend from Government Force*, Idaho Press (Dec. 15, 2020), <https://perma.cc/A5RF-HY54>.

<sup>56</sup> Suppe, *supra* note 53.

<sup>57</sup> Judy Thomas, *Dangerous Network of Militia Members Led by Ammon Bundy and Spurred by COVID Has Spread to 16 States, Report Says*, The Register-Guard (Oct. 18, 2020), <https://perma.cc/28Q5-653W>.

<sup>58</sup> Read, *supra* note 54.

ers shouted down and forced from the room lawmakers on a committee considering a bill to shield businesses and government agencies from coronavirus-related liability.”<sup>59</sup> Bundy was subsequently banned from the Capitol building and arrested twice after returning in violation of that ban.<sup>60</sup>

Similarly, in April 2020, armed members of a self-styled militia called the Wolverine Watchmen stormed the Michigan Capitol along with hundreds of other people to protest the Governor’s imposition of pandemic-related restrictions.<sup>61</sup> In addition, in early 2020, the group allegedly began planning “a violent overthrow of government and law enforcement entities,” which included a plot to kidnap the Governor of Michigan.<sup>62</sup> Its members “periodically met for ‘field training exercises’ . . . where they engaged in firearms

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<sup>59</sup> Rebecca Boone, *Anti-Government Activist Bundy Arrested at Idaho Statehouse*, Associated Press (Apr. 8, 2021), <https://perma.cc/R78E-SBV6>; see also Keith Ridler, *Crowd Shatters Glass to Get to Idaho House Session on Virus*, Associated Press (Aug. 24, 2020), <https://perma.cc/D6L8-TT9K>.

<sup>60</sup> Boone, *supra* note 59.

<sup>61</sup> Nathan Layne & Gabriella Borter, *Militia Members, Others Charged in Plot to Kidnap Michigan Governor*, Reuters (Oct. 8, 2020), <https://perma.cc/Y6WP-3EG7>.

<sup>62</sup> Affidavit of Detective/Sergeant Brian Russell in Support of Complaint, *People of the State of Michigan v. Paul Edward Bellar*, 12th Judicial Dist., ¶ 3 (Oct. 2020) [hereinafter Russell Affidavit], <https://perma.cc/7V9Z-5N87>; see also *AG Nessel Charges 7 under Michigan’s Anti-Terrorism Act as Part of Massive Joint Law Enforcement Investigation*, Mich. Dept. of Att’y Gen. (Oct. 8, 2020), <https://perma.cc/8LU8-LMUD>.

training and tactical drills to prepare for . . . a violent uprising against the government or impending politically-motivated civil war.”<sup>63</sup> After conducting surveillance on the Governor’s home and taking steps to acquire weapons and explosives to be used in the kidnaping scheme, members of the group were arrested in October 2020.<sup>64</sup> Federal investigators seized from the militia members hundreds of firearms; “1916 rounds of ammunition for pistols, rifles and shotguns along with an unspecified amount of ammo in boxes, bags and cans”; and “multiple magazines, speed-loaders and bomb-making equipment.”<sup>65</sup>

d. This unrest fomenting at the state level was a prelude to January 6, 2021, when self-styled militias and anti-government extremists led a violent assault at the U.S. Capitol. The attack, which was designed to thwart Congress’s performance of its constitutional duty to count the electoral votes from the 2020 presidential election, marked the first time the Capitol had been breached by hostile forces since the War of 1812.<sup>66</sup> Although some participants undoubtedly

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<sup>63</sup> Russell Affidavit, *supra* note 62, at ¶ 4.

<sup>64</sup> Criminal Complaint, *United States v. Fox, et al.*, No. 1:20-mj-416, at 4 (W.D. Mich. Oct. 6, 2020), <https://perma.cc/94MC-5JEB>.

<sup>65</sup> Chuck Goudie, et al., *Feds Say Huge Arsenal Ready in Plot to Kidnap, Kill Michigan Governor Gretchen Whitmer*, ABC7 News (Mar. 31, 2021), <https://perma.cc/SR2J-SHWH>.

<sup>66</sup> Rebecca Tan, et al., *Trump Supporters Storm U.S. Capitol, with One Woman Killed and Tear Gas Fired*, Wash. Post (Jan. 7, 2021), <https://perma.cc/8SGH-8X2A>.



came to the Capitol grounds to protest peacefully, the situation quickly escalated, when angry crowds, fueled by a dangerous mob mentality, forced their way past law enforcement and into the Capitol building itself.<sup>67</sup> Carrying weapons and zip-tie restraints, vigilantes in fatigues and tactical gear roamed the halls of Congress, calling out threats to the Vice President and Speaker of the House.<sup>68</sup> A mob stormed the Senate chamber just moments after the Vice President and U.S. Senators had been evacuated.<sup>69</sup> And rioters infiltrated lawmakers' offices, rummaging through official files and stealing or destroying federal property.<sup>70</sup> Ultimately, five people, including a U.S. Capitol Police Officer, were killed, and more than 100 were injured.<sup>71</sup> Members of Congress from both parties denounced the violence perpetrated on January

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<sup>67</sup> *Id.*

<sup>68</sup> Bart Jansen, et al., 'Bring out Pence.' *Managers at Trump Trial Reveal New Video of Capitol Riot that Shows Threat to VP, Lawmakers*, USA Today (Feb. 10, 2021), <https://perma.cc/NY86-JR57>; Alexander Mallin & Ivan Pereira, *Capitol Riot Suspects Who Allegedly Brought Zip Ties, Wore Tactical Gear Arrested*, ABC News (Jan. 11, 2021), <https://perma.cc/WR5Q-P4L9>.

<sup>69</sup> Grace Segers, *Inside the Senate Chamber as Lawmakers Evacuated and Rioters Stormed the Capitol*, CBS News (Jan. 7, 2021), <https://perma.cc/TET8-GJ8S>.

<sup>70</sup> Adam Goldman, et al., *Man Who Broke Into Pelosi's Office and Others Are Charged in Capitol Riot*, N.Y. Times (Jan. 10, 2021), <https://perma.cc/5LV7-U5TV>.

<sup>71</sup> "This Is Our House!" *A Preliminary Assessment of the Capitol Hill Siege Participants*, George Washington University Program on Extremism, at 8 (Mar. 2021), <https://perma.cc/FS9M-6MY2>.

6. As one member of Congress remarked, this type of unrest “is what we see in failing countries. This is what leads to a death of democracy.”<sup>72</sup> Another member characterized the riot as “a cancer on our Constitutional Republic, undermining the peaceful transfer of power at the heart of our democratic system.”<sup>73</sup>

Several private militia groups played a key role in organizing and instigating the attack, which FBI Director Wray labeled an act of “domestic terrorism.”<sup>74</sup> In the days leading up to the riot, these groups and other anti-government extremists openly used online message boards to post “plans to surround the Capitol on all sides, alongside maps of the U.S. Capitol complex marked with locations of tunnels and entry points,” as well as encouragement to “overwhelm[] police with large crowds.”<sup>75</sup> Multiple members of the Oath Keepers militia, “one of the largest . . . antigovernment groups in the U.S. today,”<sup>76</sup> have since been indicted for their role in conducting “an operation to

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<sup>72</sup> Tan, *supra* note 66 (quoting Rep. Abigail Spanberger).

<sup>73</sup> Chelsey Cox, *Liz Cheney Calls for Answers, Accountability on Jan. 6: ‘We Must Know What Happened,’* USA Today (July 27, 2021) (quoting Rep. Liz Cheney), <https://perma.cc/C9V7-T4DQ>.

<sup>74</sup> Eric Tucker & Mary Clare Jalonick, *FBI Chief Warns Violent ‘Domestic Terrorism’ Growing in US*, Associated Press (Mar. 2, 2021), <https://perma.cc/CN8V-GHBM>.

<sup>75</sup> Laurel Wamsley, *On Far-Right Websites, Plans To Storm Capitol Were Made In Plain Sight*, NPR (Jan. 7, 2021), <https://perma.cc/DU3Z-CK4V>.

<sup>76</sup> *Oath Keepers*, Southern Poverty Law Center, <https://perma.cc/LLF5-PMRG>.

interfere with the certification of the electoral college vote by coordinating in advance with others, using websites and social media to recruit participants, and traveling to Washington, D.C., with paramilitary gear and supplies including firearms, tactical vests with plates, helmets and radio equipment.”<sup>77</sup> In addition, several members of the Three Percenter militia, whose purported mission is to protect the United States from a “tyrannical” government,<sup>78</sup> have been indicted on similar charges.<sup>79</sup> A number of individuals affiliated with the Proud Boys, a group that “bear[s] many of the hallmarks of a gang” and has “taken part in multiple acts of brutal violence and intimidation” throughout the country,<sup>80</sup> have also been indicted for conduct that included “dismantl[ing] metal barriers used to protect the Capitol, before storming past them and breaking into the Capitol by damaging its windows.”<sup>81</sup> According to the George

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<sup>77</sup> *Four Arrested in Sixteen-Defendant Oath Keeper Conspiracy Case for Activities Leading to U.S. Capitol Breach*, U.S. Dep’t of Justice (June 3, 2021), <https://perma.cc/93FH-TWPU>.

<sup>78</sup> *Three Percenters*, Anti-Defamation League, <https://perma.cc/645X-M8PX>.

<sup>79</sup> *Six California Men, Four of Whom Self-Identify as Members of “Three-Percenter” Militias, Indicted on Conspiracy Charges Related to Jan. 6 Capitol Breach*, U.S. Dep’t of Justice (June 10, 2021), <https://perma.cc/4C5R-8QYB>.

<sup>80</sup> *Proud Boys*, Anti-Defamation League, <https://perma.cc/FMF2-9QMD>.

<sup>81</sup> *Third Member of Conspiracy Involving Proud Boys Members Arrested in Connection to Jan. 6 Capitol Breach*, U.S. Dep’t of Justice (Apr. 23, 2021), <https://perma.cc/4TP7-ENE2>.

Washington University Program on Extremism, the presence of these groups at the attack on the Capitol “is a potential harbinger of future violence conducted by their networks and affiliates. Several networked participants charged thus far—or the groups to which they claim allegiance—were alleged to have also planned subsequent breaches of state and local seats of government in the period after January 6th.”<sup>82</sup>

Adding to the dangers that played out on January 6, multiple people charged in connection with the Capitol riot are alleged to have brought firearms, including assault-style rifles and concealable handguns. One man, for example, was caught in the Capitol Visitors’ Center with “a loaded handgun and a spare magazine,” while another who threatened “to shoot House Speaker Nancy Pelosi in the head” was arrested with “an assault-style rifle equipped with a telescopic sight, a Glock firearm with several high capacity magazines and over 2,500 rounds of ammunition—including at least 320 ‘armor-piercing’ rounds.”<sup>83</sup> In total, “police seized at least 3,071 rounds of ammunition during the course of . . . arrests” related to events in or around the Capitol—“enough ammunition to shoot every member of the House and Senate five

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<sup>82</sup> “*This Is Our House!*”, *supra* note 71, at 20.

<sup>83</sup> Cassidy McDonald, *Handguns, Crowbars, Tasers and Tomahawk Axes: Dozens of Capitol Rioters Wielded “Deadly or Dangerous” Weapons, Prosecutors Say*, CBS News (May 27, 2021), <https://perma.cc/DR8U-LD85>.

times.”<sup>84</sup> Many other rioters, however, did not bring firearms; Washington, D.C.’s protective gun laws and restrictions against carrying firearms on federal property likely saved lives.<sup>85</sup> As one apparently unarmed participant told a reporter, “[t]hese f----- are lucky we’re not here with our AR-15s.”<sup>86</sup>

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As the discussion above demonstrates, this is a precarious time in American history. The Nation’s security faces serious threats on multiple fronts. These threats include foreign terrorists who seek to exploit the ready availability of firearms to carry out attacks on American soil, as well as armed domestic extremists and militia groups who attempt to capitalize on political polarization to foment anti-government sentiment and undermine our democratic institutions. National security and public safety officials must have effective tools to combat these dangers, including the authority to keep firearms out of the hands of those who would use them for destruction.

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<sup>84</sup> *The Role of Guns & Armed Extremism in the Attack on the U.S. Capitol*, Everytown Research & Policy (Jan. 28, 2021), <https://perma.cc/N985-SSQQ>.

<sup>85</sup> McDonald, *supra* note 83 (noting that some January 6 “defendants said they refrained from bringing firearms to the city that day, citing D.C.’s strict gun laws” and that “[t]wo days before the siege, city officials warned protesters not to bring guns”).

<sup>86</sup> Frederick Kunkle, et al., *Police Clear Remaining Trump Supporters from Capitol Grounds*, Wash. Post (Jan. 6, 2021), <https://perma.cc/D49W-Y2RS>.

**B. Law Enforcement Officials Need Flexibility to Regulate Concealable Firearms Because of the Special Dangers Such Weapons Pose**

Unrestricted access to concealable firearms—especially in target-rich environments like cities—would only exacerbate the threats to national security described above. But Petitioners’ approach ignores these dangers and instead leaves virtually no room to regulate the concealed carrying of such weapons, despite this Court’s longstanding recognition that the Second Amendment permits such regulations. *See Heller*, 554 U.S. at 626. Given the ease with which concealable firearms can be hidden and the firepower they can pack, states and localities have a paramount interest in maintaining the flexibility to impose reasonable restrictions on who can carry concealed firearms and under what circumstances.

Several features of concealable firearms make them particularly dangerous. As an initial matter, concealed carry can allow for coordinated and deadly attack planning. Unlike long guns, concealable firearms like pistols and revolvers can be easily hidden. This feature can provide for an element of surprise in a preplanned, coordinated attack. For instance, as described above, several terrorist attacks have been carried out on U.S. soil using concealable handguns.<sup>87</sup> Such weapons have also been used to commit political violence: In 2011, a gunman took a crowd by surprise in a Tucson, Arizona, grocery store parking lot, using

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<sup>87</sup> *See supra* pp. 8-10.

a semiautomatic handgun to shoot U.S. Rep. Gabrielle Giffords and 18 other people.<sup>88</sup> Six people, including a federal judge, were killed in the attack,<sup>89</sup> which occurred less than a year after Arizona eliminated its concealed-carry permit requirement.<sup>90</sup>

Moreover, today's handguns are powerful weapons that can be used to inflict significant injury in a short period of time. For instance, a Glock 19, the weapon used in the Arizona mass shooting, is a semiautomatic pistol that can be outfitted with an extended magazine, allowing the shooter to fire off 33 shots in 15 seconds without having to reload.<sup>91</sup> Such high-capacity magazines "make shootings more lethal" because "[t]he more rounds a shooter can fire consecutively, the more gunshot wounds they can inflict during an attack."<sup>92</sup> Those weapons pose particular dangers in

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<sup>88</sup> Adam Nagourney, *A Single, Terrifying Moment: Shots Fired, a Scuffle and Some Luck*, N.Y. Times (Jan. 9, 2011), <https://perma.cc/2QH9-HSNP>; Liz Halloran, *'Vitriol' Cited As Possible Factor In Arizona Tragedy*, NPR (Jan 8, 2011), <https://perma.cc/TZA4-9H53>.

<sup>89</sup> Halloran, *supra* note 88.

<sup>90</sup> *Arizona Allows Concealed Weapons Without Permit*, CBS News (Apr. 16, 2010), <https://perma.cc/SJ3G-VRY4>.

<sup>91</sup> Lane DeGregory, *Little Surprise that Popular Glock 19 Was Used in Arizona Shooting*, Tampa Bay Times (Jan. 14, 2011), <https://perma.cc/MFU8-AFPA>.

<sup>92</sup> *Assault Weapons and High-Capacity Magazines*, Everytown Research & Policy (Mar. 22, 2019), <https://perma.cc/3YNE-QRCJ>.

densely populated areas like New York City or Washington, D.C., which provide target-rich environments for would-be killers.

It is no wonder, then, that concealable firearms are commonly used in mass shootings. From 2009 to 2020, the vast majority of “mass shootings—81 percent—involved the use of at least one handgun, and 60 percent involved only handguns.”<sup>93</sup> And “[a]t least 17 shooters used only a handgun with a high-capacity magazine.”<sup>94</sup>

For all of these reasons, the ability to regulate concealed carry of firearms is an especially critical national security and public safety tool. Indeed, data show that such measures work: “States that have weakened their [concealed carry] firearm permitting system”—either by lessening permit requirements or eliminating law enforcement discretion to issue permits—“have experienced an 11 percent increase in handgun homicide rates and a 13-15 percent increase in violent crime rates,” whereas “states that provided law enforcement discretion to issue carry permits saw 11 percent lower homicide rates compared to states that did not have that discretion.”<sup>95</sup>

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<sup>93</sup> *Twelve Years of Mass Shootings in the United States*, Everytown Research & Policy (June 4, 2021) (defining “mass shooting” as “any incident in which four or more people are shot and killed, excluding the shooter”), <https://perma.cc/TH3Y-M2AL>.

<sup>94</sup> *Id.*

<sup>95</sup> *Permitless Carry*, Everytown Research & Policy (Feb. 20, 2020), <https://perma.cc/V4NL-APMA>.



The dangers of Petitioners' position, however, are not limited to undermining the regulation of concealed firearms. It is difficult to conceive of *any* restriction on the asserted right to carry arms outside the home that would survive under Petitioners' hard-line approach, and Petitioners offer none. Adopting Petitioners' capacious view of such a right would thus call into question restrictions on open carry and countless other measures that legislatures have long found necessary to protect public safety. Endorsing an essentially unfettered right to bear arms in public—especially in light of the firearms-related threats to national security and public safety discussed above—would introduce greater peril to already fraught circumstances that make our Nation less safe.

**CONCLUSION**

For the foregoing reasons, this Court should affirm the judgment of the court of appeals.

Respectfully submitted.

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