IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	ID. No. 2208000314
	)	
ROBERT RUMPFF,	)	
	)	
Defendant.	)	

Date Submitted: September 1, 2023
Date Decided: December 28, 2023

OPINION

Upon Consideration of Defendant's Second and Third Motions to Dismiss the Indictment:
DENIED

Colleen E. Durkin, Esquire, and Cassandra M. Balascak, Esquire, Deputy Attorneys General, Department of Justice, Wilmington, Delaware 19801. Attorneys for the State of Delaware.

Eugene J. Maurer, Jr., Esquire, 1201-A King Street, Wilmington, Delaware 19801. Attorney for Defendant.

JURDEN, P.J.

TABLE OF CONTENTS

I. INTRODUCTION

This case presents an issue of first impression: whether an emergency *ex parte* Protection from Abuse Order ("PFA") under 10 *Del. C.* § 1043 requiring Defendant Robert Rumpff ("Rumpff") to temporarily surrender his firearms violates his Second Amendment and Due Process rights.

On March 27, 2023, a Grand Jury indicted Rumpff on charges of Possession of a Firearm by a Person Prohibited ("PFBPP") and Possession of Ammunition by a Person Prohibited ("PABPP") after he refused to comply with a Family Court PFA requiring him to surrender his firearms to the New Castle County Police Department within 24 hours.[1] Rumpff has filed three motions to dismiss the indictment.[2] His First Motion to Dismiss the Indictment was formerly addressed in a separate order.[3] This opinion addresses Rumpff's Second[4] and Third[5] Motions to Dismiss the

[1] D.I. 1; D.I. 9, Ex. A. ("PFA").
[2] D.I. 7 ("Def.'s First Mot. to Dismiss the Indictment"), D.I. 9 ("Def.'s Second Mot. to Dismiss the Indictment"), D.I. 11 ("Def.'s Third Mot. to Dismiss the Indictment"). In Rumpff's First Motion to Dismiss the Indictment, he argued prejudicial delay which the Court dismissed. D.I. 25. In Rumpff's Second Motion to Dismiss the Indictment, he argues the emergency *ex parte* PFA violates both his Second Amendment and Due Process rights. D.I. 9. His Third Motion to Dismiss the Indictment is duplicative of his Second Motion but adds a request to stay the decision until the Supreme Court case *United States v. Rahimi* has been decided. D.I. 11. On October 16, 2023, the Court denied all three Motions and stated the written opinions were to follow. D.I. 24. The Court addresses Rumpff's Second and Third Motions now.
[3] Def.'s Second Mot. to Dismiss the Indictment; D.I. 25.
[4] Def.'s Second Mot. to Dismiss the Indictment.
[5] Def.'s Third Mot. to Dismiss the Indictment.

Indictment (collectively "Motions"). For the reasons set forth below, the Motions are **DENIED.**

II. BACKGROUND AND PROCEDURAL HISTORY[6]

On July 21, 2022, the Family Court issued an emergency *ex parte* PFA pursuant to 10 *Del. C.* § 1043 based on allegations by Rumpff's ex-wife that he had engaged in an act of domestic violence against her.[7] The PFA was in effect from July 21, 2022 through August 3, 2022, when a full adversarial hearing on the matter occurred.[8] The PFA at issue reads:

> [u]pon EX PARTE consideration of the Petition for Protection from Abuse filed in this case pursuant to Section 1043 of Title[]10 of the Delaware Code, the COURT FINDS by a preponderance of the evidence that the Respondent has committed an act of domestic violence against the Petitioner, and further FINDS that there is an immediate and present danger of additional acts of domestic violence.
>
> Based upon the evidence presented, the Court [f]inds that the Respondent possesses or has access to firearms. The respondent is PROHIBITED for the DURATION of this ORDER from RECEIVING, TRANSPORTING, or POSSESSING FIREARMS. Firearms shall be relinquished immediately to a police officer if requested by the police officer upon personal service of the protective order. If immediate relinquishment is not requested by a police officer, the Respondent is HEREBY ORDERED to RELINQUISH ALL FIREARMS in the RESPONDENT'S possession to the New Castle

[6] In October, the Court advised the parties that it was denying Rumpff's motions and an opinion would be forthcoming. D.I. 24. Before the Court issued a written decision on Rumpff's Second and Third Motions, Rumpff went to trial and was convicted by a jury of PFBPP. D.I. 34. After the State's closing, he moved for a Judgment of Acquittal on his PABPP charge which the Court granted. *Id.* The facts and information presented at trial were not in the record before the Court when these Motions were submitted. Therefore, the Court bases its decision on the facts set forth in Rumpff's Motions and the State's Response.

[7] *Id.*

[8] *Id.*

> County Police Department . . . The respondent is HEREBY ORDERED to RELINQUISH ALL FIREARMS in the Respondent's POSSESSION within 24 hours of personal service.[9]

Following personal service of the PFA on July 21, 2022, Rumpff had 24 hours to comply.[10]

On August 1, 2022, Rumpff's ex-wife received a letter from Family Court notifying her that Rumpff had not surrendered his firearms.[11] The Family Court notified the New Castle County Police Department, and when officers responded to Rumpff's home to seize the firearms, Rumpff admitted he was aware of the active PFA and had firearms in his home.[12] Inside Rumpff's home, officers located and confiscated a revolver, holster, shotgun shells, and bullets.[13] Rumpff was placed into custody and charged with one count of Criminal Contempt of a PFA.[14]

Rumpff's Arraignment was scheduled for October 13, 2022.[15] At his Arraignment, the State requested a continuance to "review for felony PFBPP charge," which was denied by the Commissioner.[16] As a result, an information was not filed in Family Court.[17]

---

[9] Def.'s Second Mot. to Dismiss the Indictment, Ex. A.
[10] *Id*.; D.I. 19 ("State's Resp. to Def.'s Mots. to Dismiss the Indictment").
[11] Def.'s Second Mot. to Dismiss the Indictment.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] Def.'s Second Mot. to Dismiss the Indictment at 4.
[17] *Id*.; *See* Arraignment Status Report from Oct. 13, 2022.

On March 27, 2023, a Grand Jury indicted Rumpff on one count of PFBPP and one count of PABPP.[18] On April 3, 2023, the State entered a *nolle prosequi* in Family Court on the charge of Criminal Contempt of a PFA.[19] This left Rumpff with only his Superior Court charges.[20]

In the instant Motions, Rumpff argues that the PFA violates his Second Amendment right to own and possess a firearm[21] because, at the time the PFA was issued, he had not been convicted or charged with any criminal offense, making him a law-abiding citizen protected under the Second Amendment.[22] He also argues that because he did not have notice or a hearing prior to the issuance of the emergency *ex parte* PFA, his constitutional right to Due Process was violated.[23]

The State submitted its response on September 1, 2023.[24] The State argues (1) the Third Circuit's application of the two-part test drawn from *Heller* and *Bruen* applies; (2) Rumpff is not an individual protected under the Second Amendment; (3) firearm regulations are rooted in history and tradition; and (4) the emergency *ex parte* PFA is not a violation of Due Process.[25]

---

[18] *Id*.
[19] *Id*.
[20] D.I. 19.
[21] Def.'s Second Mot. to Dismiss the Indictment at 1-2.
[22] *Id*. at 2.
[23] *Id*.
[24] State's Resp. to Def.'s Mots. to Dismiss the Indictment.
[25] *Id*. *See infra* at 48-53.

For the reasons explained below, the Court **DENIES** Rumpff's Motions to Dismiss the Indictment and his request for a stay.

III. STANDARDS OF REVIEW[26]

A. The Second Amendment of the United States Constitution

The Second Amendment of the United States Constitution reads, "[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."[27] According to the United States Supreme Court ("Supreme Court"), this amendment "confer[s] an individual right to" purchase and possess firearms.[28] Through the Due Process Clause, the Second Amendment is incorporated into the Fourteenth Amendment and applies to the states, prohibiting states from infringing upon a person's Second Amendment rights.[29] While the Supreme Court consistently protects the rights of law-abiding citizens to bear arms, it just as often reiterates that the right is "not unlimited."[30]

[26] Rumpff does not bring his claims under the Delaware Constitution. He only asserts his claims under the Second Amendment of the United States Constitution.
[27] U.S. Const. amend. II; *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) ("This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed . . .").
[28] *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).
[29] *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010).
[30] *Heller*, 554 U.S. at 595 (holding "[o]f course the right was not unlimited, just as the First Amendment's right of free speech was not") (citing *United States v. Williams*, 553 U.S. 285 (2008)).

Thus, the Second Amendment is not read to protect the rights of citizens to carry arms "for *any sort* of confrontation."[31]

When the Second Amendment was enacted, it was not a new right, but rather one already in existence that required codification.[32] Over the dense history of Second Amendment caselaw, the Supreme Court maintains that the codified right to bear arms extends to firearms "possessed by law-abiding citizens for lawful purposes."[33]

Since the Supreme Court's pivotal decisions in *Heller*[34] and *McDonald*,[35] the lower courts have been left to grapple with the outstanding effects of the Supreme Court's failure to apply a set standard of review to Second Amendment cases. Although rational basis review was categorically rejected by the Supreme Court in *Heller*, whether lower courts should apply intermediate scrutiny or strict scrutiny remained murky.[36] After *Heller*, the lower courts struggled to "delineate the boundaries of the right recognized by the Supreme Court . . . ."[37] The resulting interpretation by the lower courts was that the *Heller* decision required a "two-step

---

[31] *Id.* (emphasis in original).
[32] In *Heller*, the Court further elaborates that prior to the enactment of the Constitution, four state constitutions had previously codified arms-bearing rights—Pennsylvania, Vermont, North Carolina, and Massachusetts. 554 U.S. at 601.
[33] *Heller*, 554 U.S. at 625.
[34] *Id*. at 570.
[35] 561 U.S. at 742.
[36] *Heller*, 554 U.S at 628 n.27.
[37] *Tyler v. Hillsdale Cnty. Sheriff's Dep't*, 837 F.3d 678, 681 (6th Cir. 2016).

approach in Second Amendment cases, utilizing a means-end scrutiny as the second step."[38]

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court rejected the two-step approach taken by the lower courts, claiming it was "one step too many," and effectively abrogated large portions of cases developing this area of law.[39] The Supreme Court clarified in *Bruen* that *Heller* and *McDonald* "do not support applying a means-end scrutiny in the Second Amendment context."[40] Rather, the takeaway from those cases is that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct."[41] The Supreme Court in *Bruen* noted, "[o]nly 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.'"[42] But, while the Supreme Court addressed how to determine whether *conduct* falls under the Second Amendment, the Supreme Court did not provide clarification as to how the lower courts were to go about determining *who* is entitled to Second Amendment protection.

---

[38] *Range v. Att'y Gen. United States*, 69 F.4th 96, 100 (3d Cir. 2023) ("*Range v. United States*").
[39] 142 S.Ct. 2111, 2127 (2022) *abrogating portions of United States v. McGinnis*, 956 F.3d 747 (5th Cir. 2020); *Tyler*, 837 F.3d at 678; *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019); and *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010).
[40] *Id*.
[41] *Id*. at 2126.
[42] *Id*. (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

Recently, the Third Circuit broached this difficult landscape of ambiguity in *Range v. United States* by articulating a test to narrow the scope of Second Amendment protection.[43] In *Range*, the Third Circuit held that prior to deciding whether the firearm regulation was consistent with the Nation's history and tradition, courts must first decide whether the movant is one of the "people" the Second Amendment protects.[44] Only if the movant is one of the "people" protected by the Second Amendment will the government then bear the burden of proving that "its firearm regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."[45]

B. The Fourteenth Amendment of the United States Constitution[46]

The Fourteenth Amendment of the United States Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law."[47] It is a fundamental requirement of Due Process to have "the opportunity to be heard at a meaningful time and in a meaningful manner."[48] Typically, procedural Due Process requires notice and a hearing prior to any deprivation.[49] The Court

[43] 69 F.4th at 96.
[44] *Id*. at 101.
[45] *Id*. (quoting *New York Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S.Ct. 2111, 2127 (2022)).
[46] Rumpff only argued that he was deprived of a fair hearing because he was charged under an *ex parte* PFA. Because he does not address any substantive Due Process concerns, this opinion is limited to the procedural Due Process concerns associated with *ex parte* PFAs.
[47] U.S. Const. amend. XIV, § 1.
[48] *Mathews v. Eldridge*, 242 U.S. 319, 333 (1976) (citation and quotation marks omitted).
[49] *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993).

"tolerate[s] some exceptions to the general rule requiring pre-deprivation notice and hearing, but only in extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event."[50]

To determine whether procedural Due Process has been violated, the Supreme Court applied a balancing test in *Mathews v. Eldrige*.[51] *Mathews* requires courts to examine the following factors:

> [f]irst, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[52]

The degree of the potential deprivation, including the length of a wrongful deprivation, are also factors to be considered along with the *Mathews* factors.[53] The courts are to consider these factors when evaluating the constitutional sufficiency of a burden of persuasion—such as a preponderance of the evidence standard.[54]

C. Protection From Abuse Orders

---

[50] *Id*.
[51] 424 U.S. at 335.
[52] *Id*.
[53] *Id*. at 341 (citation and quotation marks omitted).
[54] *See Addington v. Texas*, 441 U.S. 418, 432-33 (1979) (evaluating the burden in civil commitment proceedings); *Santosky v. Kramer*, 455 U.S. 745, 768-70 (1982) (evaluating the burden in parental termination proceedings); *Crespo v. Crespo*, 408 N.J.Super. 25 (N.J. Super. Ct. App. Div. June 18, 2009) (evaluating and applying the *Mathews* factors to an *ex parte* protective order) *affirmed by Crespo v. Crespo*, 201 N.J. 207 (N.J. 2010).

Under 10 *Del. C.* § 1043(b), the Family Court is authorized to issue emergency *ex parte* PFAs "where the petitioner certifies in writing the efforts, if any, which have been made to give the respondent, or the reasons supporting the claim that notice should not be requested."[55] Under 10 *Del. C.* § 1043(a), if the Family Court determines by a preponderance of the evidence that there is an immediate and present danger of domestic violence to the petitioner, the court may grant relief as specified under § 1045.[56] Pursuant to § 1045(a)(8), the Family Court may:

> [o]rder the respondent to temporarily relinquish to a police officer or a federally-licensed firearms dealer located in Delaware the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order. The Court shall inform the respondent that he or she is prohibited from receiving, transporting, or possessing firearms for so long as the protective order is in effect.[57]

In any case where a respondent is not present for the hearing and an *ex parte* PFA has been issued, the PFA shall be served immediately on the respondent.[58] If the Family Court issues an emergency *ex parte* PFA, a full hearing must be

---

[55] 10 *Del. C.* § 1043(a), (b):

> (a) A petitioner may request an emergency protective order by filing an affidavit or verified pleading alleging that there is an immediate and present danger of domestic violence to the petitioner . . .
> (b) An emergency protective order may be issued on an *ex parte* basis, that is, without notice to the respondent, where the petitioner certifies in writing the efforts, if any, which have been made to give notice to the respondent or the reasons supporting the claim that notice should not be required.

[56] 10 *Del. C.* § 1043(e).
[57] 10 *Del. C.* § 1045(a)(8).
[58] 10 *Del. C.* § 1043(f).

scheduled within fifteen days.[59] The emergency PFA remains active until either fifteen days has passed or a full hearing takes place.[60]

IV. ANALYSIS

The decision to strip someone, even temporarily, of their right to bear arms requires a determination that the danger of such person possessing a firearm outweighs their right to possess one.[61] This is a high bar,[62] and any question as to the constitutionality of a statute requires a thorough review of the current caselaw, history and tradition, and the administrative concerns the statute seeks to address.[63]

A. "The people" afforded Second Amendment protection

Before determining whether 10 *Del. C.* § 1045(a)(8) violates the Second Amendment, the Court must answer the threshold question of whether Rumpff is one of "the people" protected by the Second Amendment.[64] Because the relevant

---

[59] 10 *Del. C.* § 1043(d).
[60] *Id*.
[61] *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc), *cert. denied*, 562 U.S. 1303 (2011) (holding a person deemed dangerous can fall outside of Second Amendment protection).
[62] *Heller*, 554 U.S. at 581 ("We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans."); *Skoien*, 614 F.3d at 641 (holding a categorical limit on possession of a firearm requires a strong showing on the part of the United States that their statute is valid).
[63] *Bruen*, 142 S.Ct. at 2126 ("the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct . . . 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.'" (citing *Konigsberg*, 366 U.S. at 50 n10).
[64] *See Range*, 69 F.4th at 101; *United States v. Brown*, 2023 WL 4826846, at *5 (D. Utah July 27, 2023) ("to decide whether an individual subject to a protective order has a right to possess a firearm that is protected by the Second Amendment, the court must resolve whether such an individual is part of 'the people.'") (internal quotations omitted); *Binderup v. Att'y Gen. United States*, 836 F.3d

provision in § 1045(a)(8) prohibits a class of people—those subject to domestic violence orders—from possessing firearms for the duration of the order, the Court must determine whether *people*, rather than their conduct, fall outside of Second Amendment protection.[65] If Rumpff falls within Second Amendment protection, the State bears the burden of proving the firearm surrender provision in the PFA statute "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."[66]

i. The consistency of categorical bans and the legislature's power

The United States Supreme Court has previously upheld firearm restrictions as constitutional in light of the Second Amendment. For example, in *Bruen* the Court affirmed the constitutionality of background checks to determine whether someone is a law-abiding and responsible citizen,[67] reiterating that the Second Amendment only extends to "law-abiding member[s] of the community."[68]

336, 357 (3d Cir. 2016) (en banc) *abrogated by Range*, 69 F.4th at 96 (Hardiman, J., concurring in part and concurring in the judgments) ("[T]he Founders understood that not everyone possessed Second Amendment rights. These appeals require us to decide who count among 'the people' entitled to keep and bear arms.").

[65] *See Tyler*, 837 F.3d at 688; *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *Skoien*, 614 F.3d at 649 (Sykes, J., dissenting). Because this deals with emergency *ex parte* PFA orders, it would be improper for the Court to determine whether a person's "conduct" falls into the protection of the Second Amendment. Once a PFA is entered, the *person* is restrained from possessing or owning a firearm prior to a full hearing before his *conduct* is criminally evaluated.

[66] *Range*, 69 F.4th at 101. *See also Bruen*, 142 S.Ct. at 2127.

[67] *Bruen*, 142 S.Ct. at 2138 n.9.

[68] *Reaffirmed in Bruen*, 142 S.Ct. at 2122 (the Second Amendment is designed to "protect the right[s] of an ordinary, law-abiding citizen . . ."). *Bruen* emphasizes the term "law-abiding" at least fourteen times. *See Bruen*, 142 S.Ct. at 2122, 2125, 2131, 2133, 2134, 2138, 2150, 2156, 2157, 2158, 2159, 2161.

Other circuits have enacted laws requiring the mentally ill and violent felons to surrender their firearms.[69] These laws are upheld on the premise that the mentally ill and violent felons fall into a presumptively dangerous category and are therefore exempt from Second Amendment protections due to the danger they pose when in possession of firearms.[70]

The Supreme Court has consistently confirmed the constitutionality of these categorical limitations and further expounded that categorical limitations against the mentally ill and violent felons owning and possessing firearms were "preemptively lawful regulatory measures."[71] The Supreme Court emphasized that these categorical limitations fall into a list that "does not purport to be exhaustive."[72] This language in *Heller* left open the legislature's ability to further establish categorical disqualifications.[73] Not only did the *Heller* Court recognize the legislature's power to enact such categorical limitations, it also noted that the legislature's ability to do

---

[69] *United States v. Bena*, 664 F.3d 1180 (8th Cir. 2011); *United States v. Boyd*, 999 F.3d 171 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 511 (2021); *Doe v. Governor of Pa.*, 977 F.3d 270, 274 (3d Cir. 2020) (reasoning that once a person has been involuntarily committed, "that person has joined the class of those historically without Second Amendment rights"); *Kanter*, 919 F.3d at 45 (Barrett J., dissenting) ("violent felons . . . fall entirely outside the Second Amendment's scope").

[70] *Bena*, 664 F.3d at 1180. The court in *Skoien* further propounded that the legislature does not require a case-by-case finding of dangerousness before placing people into excluded categories because "some categorical limits are proper" as a part of the Second Amendment's "original meaning." 614 F.3d at 640.

[71] *Heller*, 554 U.S. at 627 n.26.

[72] *Id*.

[73] *Skoien*, 614 F.3d at 640 (Moore, J., dissenting) (the courts believe *Heller*'s silence in defining the entire category included "presumptively lawful" passages such as the dispossession of domestic violence related misdemeanants). The Court here uses "categorical limitations" and "categorical disqualifications" interchangeably to discuss the same regulatory measures.

so was within the original meaning of the Second Amendment.[74] This resulted in a consensus that firearm restrictions are not automatically unconstitutional simply because they were not individually decided upon in *Heller*, *McDonald*, or *Bruen*.[75]

The use of a categorical limitation within a constitutional right is not a novel restriction.[76] Even more extensively litigated, the First Amendment contains categorical limitations the Supreme Court has repeatedly upheld.[77] The First Amendment, like the Second Amendment, is a codified right.[78] Under the First Amendment, "historical and traditional categories [are] long familiar to the bar," including prohibitions against obscenity, incitement, fraud, defamation, fighting words, and true threats.[79] These categorical limitations are "well accepted by our courts,"[80] demonstrating that placing categorical disqualifications on the Second Amendment is not unprecedented.[81] Rather, it is constitutional consistency that the

[74] *Tyler*, 837 F.3d at 691; *Heller*, 554 U.S. at 621.
[75] It should be noted that each of these cases dealt with laws that were widely considered to be "outlier" laws.
[76] *Tyler*, 837 F.3d at 686 (quoting and citing "[t]he Court's assurances confirm that the Second Amendment is not an absolute barrier to congressional regulation of firearms and that some categorical prohibitions are assumed to be constitutional.) *See United States v. Carter*, 669 F.3d 411, 420-21 (4th Cir. 2012).
[77] *United States v. Stevens*, 559 U.S. 460 (2010).
[78] *Heller*, 554 U.S. at 592.
[79] *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 127 (1991) (Kennedy, J., concurring in judgment); *Stevens*, 559 U.S. at 468-69.
[80] *Supra* at 13-14.
[81] *See Stevens*, 559 U.S. at 468-69.

Second Amendment would be understood to contain categorical limitations like the First Amendment.[82]

"[L]egislatures have the power to prohibit dangerous people from possessing guns," and can "disqualif[y] categories of people from the right to bear arms . . . when they judge that doing so [is] necessary to protect the public safety."[83] This is because the legislature's power did not evaporate upon the enactment of the Constitution.[84] Instead, legislatures retained the power to recognize potential threats to the safety of the community and create statutes to combat the danger contemplated in the Delaware PFA firearm prohibition. There must be some deference given to the legislature when analyzing the importance of these public policy laws because "the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks."[85]

The basis for a Second Amendment categorical limitation is the danger the person poses when in possession of a firearm. The Supreme Court has previously recognized that firearms pose a danger in domestic violence cases, so it would

---

[82] *See generally, Heller*, 554 U.S. 570 (examining the consistency of the phrase "the people" throughout the amendments).
[83] *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting); *Range*, 69 F.4th at 269 (holding the legislature has "longstanding authority and discretion to disarm citizens unwilling to obey the government and its laws, whether or not they had demonstrated a propensity for violence.").
[84] *Skoien*, 614 F.3d at 640 ("the legislative role did not end in 1791").
[85] *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012) (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665 (1994)) abrogated by *Bruen*, 142 S.Ct. at 2111.

rationally follow that those subject to domestic violence orders may be categorically banned from Second Amendment protections based on the danger they present.[86] More than a million acts of domestic violence happen every year.[87] The presence of a gun could exponentially increase the already high homicide rates associated with domestic violence retaliation. Generally, PFAs are issued when a court has deemed an individual to be violent, dangerous, or a threat to society.[88] If a person is subject to a PFA due to their dangerous tendencies and it includes a firearm relinquishment provision, it is because the court found they fall outside of Second Amendment protection by falling into the presumptively dangerous category.[89]

As the State notes in its briefing, "[s]tudies demonstrate that an abuser is five times more likely to murder his or her intimate partner if a firearm is in the home."[90] "Firearms are the leading cause of intimate partner homicides—more so than all other weapons combined."[91] In some states, "nearly half of inmates convicted of

---

[86] *See United States v. Hayes*, 555 U.S. 415, 427 (2009).
[87] *United States v. Castleman*, 572 U.S. 157, 159-160 (2014).
[88] *United States v. Chapman*, 666 F.3d 220, 228 (4th Cir. 2012) (holding that when issuing a protective order "a judicial officer has explicitly determined the defendant represents a credible threat to the physical safety of his intimate partner, his child, or the child of his intimate partner.").
[89] *Boyd*, 999 F.3d at 176.
[90] State's Resp. to Def.'s Mots. to Dismiss the Indictment at 27 (citing Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1090 (2003).
[91] State's Resp. to Def.'s Mots. to Dismiss the Indictment at 27. "Another study found that a woman is five times more likely to be killed by an abusive partner if that partner has access to a gun." *Bruen*, 142 S.Ct. at 2166 (Breyer, J., dissenting) (citing A. Zeoli, R. Malinski, & B. Turchan, *Risks and Targeted Interventions: Firearms in Intimate Partner Violence*, 38 Epidemiologic Revs. 125 (2016); J. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (2003)).

family violence and over two-thirds of those convicted of a violent crime against their spouse were subject to a restraining order at some time in their lives."[92] These safety concerns extend broader than the confines of the home since domestic violence encounters often endanger police officers due to their volatile and unstable nature.[93] PFAs are meant to provide safety, not only for the victims, but also for the officers entering these tumultuous encounters.[94]

Domestic violence abusers have high rates of recidivism.[95] In Delaware, "[t]he period following the issuance of domestic violence protective orders is one of the most dangerous times for victims, with one-third of domestic violence homicides occurring within one month of a protective order being issued, and one-eighth occurring within two days of the issuance of an order."[96]

---

[92] *Boyd*, 999 F.3d at 189 (citing Matthew R. Durose et al., *Family Violence Statistics*, U.S. Dep't of Just. Bureau of Just. Stat. 64 (2005); Oklahoma Domestic Violence Fatality Review Board, Domestic Violence Homicide in Oklahoma 8 (2012) (finding, in the state that issued Boyd's protective order, that there was a protective order used in nearly one-quarter of all intimate partner homicides in 2011).

[93] Nick Bruel & Mike Keith, *Deadly Calls and Fatal Encounters: Analysis of U.S. law enforcement line of duty deaths when officers responded to dispatched calls for service and conducted enforcement, 2010-2014*, at 15 (2016).

[94] *Thomas v. Dillard*, 818 F.3d 864, 892 (9th Cir. 2016) (Bea, J., concurring) ("[W]e have repeatedly (and correctly) recognized the unique dangers law enforcement officers face when responding to domestic violence calls—including the inherent volatility of a domestic violence scene, the unique dynamics of battered victims seeking to protect the perpetrators of abuse, the high rate of assaults on officers' person, and the likelihood that an abuser may be armed.").

[95] *United States v. Staten*, 666 F.3d 154, 166 (4th Cir. 2011) ("the rate of recidivism among domestic violence misdemeanants is substantial . . .").

[96] State's Resp. to Def.'s Mots. to Dismiss the Indictment at 28. In support, when discussing the enactment of § 922(g), Congress recognized that "anger management issues may arise in domestic settings, and it sought to temper the risk that the most volatile confrontations, including those inflamed by alcohol, would not escalate further with easy access to a gun." *United States v. Mahin*, 668 F.3d 119, 125 (4th Cir. 2012).

With these statistics in the background, the Delaware Legislature determined that those subject to PFAs should have their rights temporarily restricted on the basis they are presumptively dangerous individuals.[97] Quite often, these PFAs are issued to firearm owners who have, or who are likely to use, their firearms in an improper manner, such as brandishing their guns to threaten rather than to defend.[98] Thus, the Second Amendment allows legislatures to disarm them.[99]

The presumptive nature of a categorical limitation does not render it unconstitutional. *Heller* did "not suggest that disqualifications would be effective only if the statute's benefits are first established by admissible evidence."[100] Instead, *Heller* found a "precursor" to the Second Amendment was *The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania and Their Constituents*, asserting a citizen's right to bear arms ended "for crimes committed,

---

[97] *Boyd*, 999 F.3d at 186 (adopting the conclusion that those subject to domestic violence order fall outside of Second Amendment protection "based on scores of reports reinforcing the dangers of gun possession by domestic abusers."); *see Bena*, 664 F.3d at 1184.

[98] *United States v. Silvers*, 2023 WL 3232605, at *1 (W.D. Ken. P. Div. May 3, 2023) (citing *Binderup*, 836 F.3d at 357 (Hardiman, J., concurring) (abrogated by *Bruen* for employing the use of a means-end scrutiny) ("'The most cogent principle that can be drawn from the traditional limitations on the right to keep and bear arms, is that dangerous persons likely to use firearms for illicit purposes were not understood to be protected by the Second Amendment.'")); *Heller*, 554 U.S. at 612 (citing *United States v. Sheldon*, in 5 Transactions of the Supreme Court of the Territory of Michigan 337, 346 (W. Blume ed.1940) (an 1812 decision reiterating "[t]he constitution of the United States also grants to the citizen the right to keep and bear arms. But the grant of this privilege cannot be construed into the right in him who keeps a gun to destroy his neighbor. No rights are intended to be granted by the constitution for an unlawful or unjustifiable purpose.")).

[99] *Silvers*, 2023 WL 3232605, at *1.

[100] *Skoien*, 614 F.3d at 641.

or a real danger of public injury."[101] The Court interprets the "or" to mean that those two conditions are used in the alternative, meaning a person can be "a real danger of public injury" without having been convicted of any crimes.[102] This does not require that a person first commit a crime before they are presumptively disqualified from Second Amendment protection. The requirement is they fall into an excluded category, and § 1045(a)(8) is focused on the threat of those that fall into the excluded presumptively dangerous category.[103]

ii. The congressional and statewide consensus

1. Federal Protective Order Statute: 18 U.S.C. § 922(g)(8)[104]

On a federal level, § 922(g)(8) allows a court to divest an individual of their firearms for the period of time a protective order is in place.[105] Section 922(g)(8) was enacted as a part of the Violent Crime Control and Law Enforcement Act of 1994 to amend the Gun Control Act of 1968.[106] The goal of § 922(g)(8) was to

[101] *Heller*, 554 U.S. at 601 (quoting Pennsylvania's Declaration of Rights 1776, § XIII, in 5 Thorpe 3082, 3082) (emphasis added)); *see also Heller*, 554 U.S. at 636 (Stevens, J., dissenting).
[102] *Kanter*, 919 F.3d at 451-54 (Barrett, J., dissenting) ("legislatures have the power to prohibit dangerous people from possessing guns" which includes "dangerous people who have not been convicted of felonies . . .").
[103] *Bena*, 664 F.3d at 1184.
[104] Much of the caselaw used in this opinion derives from the circuit courts evaluating the more well-litigated, federal corollary § 922(g)(8).
[105] 18 U.S.C. § 922(g)(8).
[106] Pub.L. No. 103-322, § 110401(c).

"reduce domestic violence by temporarily banning firearm possession by those . . . who have been found to constitute a threat to their intimate partner."[107]

In sponsoring the enactment of § 922(g) legislation, Senator Chafee explained that abuse victims who have a secured protective order, "remain[] vulnerable" to harm.[108] He stated, "There have been far, far too many dreadful cases in which innocent people . . . [are] wounded or killed by a former boyfriend or girlfriend, partner, or other intimate using a gun—despite the fact that the attacker was subject to a restraining order."[109] When enacting § 922, Congress sought to "afford those attempting to escape from an abusive relationship a measure of security and peace of mind."[110] Section 922(g)(8) is not the only regulatory measure pertaining to domestic abusers.[111] Section 922(g)(9) forbids those convicted of domestic violence misdemeanors from owning or possessing firearms as well.[112] In describing why § 922(g)(9) was enacted, Congress recognized that felon-in-possession laws were not keeping firearms out of domestic abusers' hands because "many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies."[113] Similar here, subjecting those accused of domestic violence to

[107] *Mahin*, 668 F.3d at 122 (citing 18 U.S.C. § 922(g)(8)).
[108] 139 Cong. Rec. 30, 578-79 (1993) (statement of Sen. John Chafee).
[109] *Id*.
[110] *Mahin*, 668 F.3d at 125.
[111] *Id*.
[112] 18 U.S.C. § 922(g)(9).
[113] 142 Cong. Rec. 22985 (1996) (statement of Sen. Lautenberg).

misdemeanant laws or felon-in-possession laws would leave a gap of protection for victims who may not have pressed charges against their abusers in the past.

In discussing the enactment of § 922, the court in *United States v. Baker* held that the statute "reflects Congress's determination that persons subject to domestic violence protection orders pose an increased threat to the safety of their intimate partners and children."[114] The *Baker* court noted that § 922(g)(8), in particular, reflects Congress' "conclu[sion] that keeping firearms away from such individuals represents a reasonable step toward reducing" the threat.[115]

2. Statewide Protective Order Statutes

The application of a "presumptively dangerous" standard to those subject to domestic violence PFAs does not rest solely on federal law nor its perceived threat of domestic violence. There is a consensus among the states that firearms pose a deadly threat to domestic violence victims and must be restricted when a PFA is issued. In fact, at least forty-eight states and territories have adopted laws to disarm those subjected to domestic violence protective orders.[116] Thirty-two jurisdictions disarm those subjected to domestic violence protective orders if they satisfy the statute-specific criteria.[117] Sixteen states, including Delaware, may include firearm

[114] 197 F.3d 211, 216 (6th Cir. 1999).
[115] *Id*.
[116] This consensus indicates that 10 *Del. C.* § 1045(a)(8) is not an outlier law like those struck down in *Heller*, *McDonald*, and *Bruen*.
[117] *See* Ala. Code § 13A-11-72(a); Cal. Fam. Code § 6389(a); Colo. Rev. Stat. § 13-14-105.5(1)(a); Conn. Gen. Stat. § 53a-217(a)(4); D.C. Code § 16-1004(h)(2); Fla. Stat. § 790.233(1); Haw. Rev.

disqualifications into their protective orders, raising the total to forty-eight states with domestic violence firearm prohibitions.[118] This data reveals that the vast majority of states collectively find those subject to domestic violence protective orders are dangerous individuals and should be disarmed. This overwhelming consensus leads the Court to conclude that the Second Amendment does not protect those subject to domestic violence PFAs.

iii. Applying the presumptively dangerous individual category to Rumpff

With this legal backdrop, the Court now turns its attention to the facts in Rumpff's case. Rumpff's ex-wife entered into the Family Court and filed a petition for a PFA.[119] The Family Court found by a preponderance of the evidence that

---

Stat. § 134-7(f); 430 Ill. Comp. Stat. 65/8.2; Iowa Code 724.26(2)(a); Kan. Stat. Ann. § 21-6301(a)(17); La. Rev. Stat. Ann. § 46:2136.3(A); Me. Rev. Stat. Ann. tit. 15, § 393(1)(D); Md. Code Ann. Pub. Safety § 5-133(b)(12); Mass. Gen. Laws ch. 140, § 129B(1)(vii); Minn. Stat. § 624.713, subdiv. 1(13); N.H. Rev. Stat. Ann. § 173-B:5(II); N.J. Rev. Stat. § 2C:25-29(b); N.M. Stat. Ann. § 30-7-16.D; N.Y. Crim. Proc. Law § 530.14(2); Or. Rev. Stat. 166.255(1)(a); 23 Pa. Cons. Stat. Ann. § 6108(a.1)(1); P.R. Laws Ann. tit. 8, § 621; R.I. Gen. Laws § 11-47-5(b); S.C. Code Ann. § 16-25-30(A)(4); Tenn. Code Ann. § 39-13-113(h)(1); Tex. Fam. Code Ann. § 85.022(d); Utah Code Ann. § 76-10-503(b)(xi); Va. Code Ann. § 18.2-308.1:4(A); V.I. Code Ann. tit. 23, § 456a(a)(8); Wash. Rev. Code § 9.41.040(2)(a)(iv); W. Va. Code Ann. § 61-7-7(7); Wis. Stat. § 813.12(4m)(a).

[118] *See* Alaska Stat. § 18.66.100(c)(6)-(7); Am. Samoa Code Ann. § 47.0204(b)(5) and (c)(1); Ariz. Rev. Stat. Ann. § 13-3602(G)(4); Del. Code Ann. tit. 10, 1045(a)(8); Ind. Code § 34-26-5-9(d)(4); Mich. Comp. Laws Ann. § 600.2950(1)(e); Mont. Code Ann. § 40-15-201(f); Neb. Rev. Stat. § 42-924(1)(a)(vii); Nev. Rev. Stat. Ann. 33.0305(1); N.C. Gen. Stat. § 14-269.8(a); N.D. Cent. Code § 14.07.1-02.4.g; 8 N. Mar. I. Code § 1916(b)(5) and (c)(1); S.D. Codified Laws § 25-10-24;Vt. Stat. Ann. tit. 15, § 1104(a)(1)(E); *Chouk v. Chouk*, No. 2022-CA 1193-ME, 2023 WL 2193405, at *1 (Ky. Ct. App. Feb. 24, 2023) (citing Ky. Rev. Stat. Ann. § 403.740(1)(c)); *Clementz-McBeth v. Craft*, No. 2-11-16, 2012 WL 776851, at *5-*7 (Ohio Ct. App. Mar. 12, 2012) (citing Ohio Rev. Code Ann. § 3113.31).

[119] Def.'s Second Mot. to Dismiss the Indictment at 2.

domestic violence had occurred and issued an emergency PFA finding there was a danger of domestic violence reoccurrence.[120] The emergency PFA was only active for fifteen days—the time between the issuance of the PFA and when a full hearing could be held.[121] The PFA indicates Rumpff had several firearms in his home and required him to turn them over to the police within 24 hours.[122] He did not comply.[123] Rumpff admitted to deliberately disobeying a validly issued PFA against him when he told the responding police officer he possessed a firearm and he was aware of the active PFA.[124]

The First Circuit noted, "possession of firearms by persons laboring under the yoke of anti-harassment or anti-stalking restraining orders is a horse of a different hue."[125] Those subject to protective orders have been determined to have dangerous propensities that result in "the possibility of tragic encounters [that have] been too often realized."[126] Rumpff's knowledge of the PFA and subsequent refusal to relinquish his firearms is concerning, especially considering the Family Court deemed it necessary to issue an emergency PFA with a firearm prohibition to avoid the situation growing more violent than what was already alleged. Further, if the

[120] Def.'s Second Mot. to Dismiss the Indictment, Ex. A.
[121] *Id.* A full hearing has to be held within fifteen days after an *ex parte* order is entered. 10 *Del. C.* § 1045(a)(8).
[122] *Id.*
[123] State's Resp. to Def.'s Second and Third Mots. to Dismiss the Indictment at 3.
[124] *Id.*
[125] *United States v. Meade*, 175 F.3d 215, 226 (1st Cir. 1999).
[126] *Id.*

Family Court found there was only a risk of harassment and did not find Rumpff posed a danger to his ex-wife, it could have issued a no-contact order or chosen not to include a firearm prohibition. Instead, the Family Court deemed Rumpff a danger based on the evidence provided and entered the type of order issued when an individual poses a danger to their spouse.[127] Based on the facts and circumstances here, the Court finds Rumpff falls into the presumptively dangerous category of people subject to a domestic violence PFA—an excluded class under the Second Amendment. As such, Rumpff is not afforded Second Amendment protection for the duration of the PFA and has no standing to raise a Second Amendment rights violation.

B. Delaware Statute: 10 *Del. C.* § 1045(a)(8) is rooted in history and tradition

"History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns."[128] Assuming *arguendo* that Rumpff does fall under Second Amendment protection, the State has met its burden by showing that 10 *Del. C.* § 1045(a)(8) is rooted in history and tradition.

[127] *Boyd*, 999 F.3d 187 (holding the state court issued a protective order prohibiting firearms because it found the defendant was a credible danger to his family).
[128] *Kanter,* 919 F.3d at 451 (Barrett, J., dissenting) majority decision abrogated by *Bruen*, 142 S.Ct. 2111 (2022).

The Supreme Court in *Bruen* found that in reviewing whether a statute is rooted in history and tradition the government only needs to "identify a well-established and representative historical *analogue* not a historical *twin*."[129] When determining if a firearm regulation is consistent with history and tradition, the Court must ask "how and why the regulation[] burden[s] a law-abiding citizen's right to armed self-defense."[130] The State can carry its burden of demonstrating the restriction has a historical analogue by pointing to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation."[131]

In its briefing, the State provides several examples of historical analogues such as dangerousness statutes, "going armed" statutes, and surety statutes.[132] The Court takes each in turn.

i. Restrictions based on "dangerousness"

[129] *Bruen*, 142 S.Ct. at 2133 (emphasis in original).
[130] *Id*.
[131] *Bruen*, 142 S.Ct. at 2131-32 (citing *Heller*, 554 U.S. at 631).
[132] In its briefing, the State extensively discusses the *Rahimi* opinion and briefing. Rumpff also cites to *Rahimi* in his Third Motion. One historical analogue well-briefed in *Rahimi* was that surety statutes provided a historical analogue for § 922(g)(8). For that reason, the Court will address surety statutes in its discussion of historical analogues, and the Court notes that the State has met its burden even without a thorough discussion of how surety statutes impact § 1045's history and tradition.

States have an extensive history of disarming individuals who are viewed as a danger to society.[133] In *Range*, the Third Circuit found that the regulations against people subject to domestic violence orders echo the Founding-era's desire to prevent firearm possession by those who pose a threat to the safety of others.[134] The English right to bear arms "has long been understood to be the predecessor to our Second Amendment" rights.[135] However, even the English right was repeatedly restricted to prohibit those individuals deemed "dangerous" from possessing firearms. The right to bear arms was first recognized by Parliament in the Bill of Rights ("Bill").[136] Within the Bill, was a limitation that recognized the right to bear arms was not absolute.[137] The Bill was not interpreted to displace the Militia Act of 1662 which allowed the disarming of individuals who were "dangerous to the Peace of the Kingdome."[138] Rather, some historians believe this to be the beginning "of a well-

[133] *Kanter*, 919 F.3d at 464 (Barrett, J., dissenting) (History supports "the proposition that the state can take the right to bear arms away from a category of people that it deems dangerous.").
[134] 69 F.4th 96 (3d Cir. 2023).
[135] *Heller*, 554 U.S. at 593.
[136] 1 W. & M. Sess. II, c. 2 (1688) (Eng.).
[137] *Id*.
[138] *See*, Calendar of State Papers, Domestic Series, Of the Reign of William III, 1 April, 1700–8 March, 1702, at 234 (Feb. 26, 1701) (Edward Bateson ed., 1937) (instructions to disarm "dangerous" persons); Privy Council to the Earl of Carlisle (July 30, 1714), in Historical Manuscripts Commission, Tenth Report, Appendix, Part IV 343 (1885) (similar); Lord Lonsdale to Deputy Lieutenants of Cumberland (May 20, 1722), in Historical Manuscripts Commission, Fifteenth Report, Appendix, Part VI 39-40 (1897) (similar); Order of Council to Lord Lieutenants (Sept. 5, 1745), in Historical Manuscripts Commission, Report on the Manuscripts of the Marquess of Lothian, Preserved at Blickling Hall, Norfolk 148 (1905) (similar).

placed tradition of disarming dangerous persons—violent persons . . . ."[139] While the Supreme Court has held that the Militia Act was undermined by the Declarations of Rights, no members of the Convention adopting the Declaration of Rights sought to overturn or expel the provisions disarming "dangerous persons" included in the Militia Act.[140] Thus, the Militia Act of 1662 qualifies as a historical analogue to § 1045.

Additionally, at the time of our Founding there were many firearm laws in place disarming "dangerous" groups of people such as "enslaved people, free black individuals, Native Americans, Catholics, and those unwilling to take an oath of allegiance to the state."[141] While these laws are abhorrent, outdated, and the law has progressed to not determine dangerousness based on racism and bigotry; the laws establish that the government has an extensive history divesting people of their Second Amendment rights based on "dangerousness."[142]

Many state's gun rights were contingent upon people being "peaceable." In Massachusetts, Samuel Adams proposed a similar amendment to the Second

---

[139] Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Firearms*, 20 Wyo. L. Rev. 249, 261 (2020).
[140] Patrick J. Charles, *"Arms for Their Defence"?: An Historical, Legal, and Textual Analysis of the English Right to Have Arms and Whether the Second Amendment Should Be Incorporated in* McDonald v. City of Chicago, 57 Clev. St. L. Rev. 351, 372-73 (2009).
[141] *Brown*, 2023 WL 4826846, at *10 (internal citations omitted).
[142] While some courts refuse to consider these laws because they reserve no room in our legal system anymore, the Court will not refrain from spotlighting that deeming people "dangerous" and restricting their rights is something the government has a longstanding history with.

Amendment at a state convention, recommending, "that the said Constitution be never construed to authorize Congress . . . to prevent the people of the United States, who are peaceable citizens, from keeping their own arms."[143] Firearm regulations "were measures driven by the fear of those who . . . would threaten the orderly functioning of society if they were armed."[144] The goal of Founding-era firearm restrictions was a desire to prohibit the ownership and possession of firearms by those who could not be trusted to use them correctly.[145] By way of example, in New Hampshire, a majority in the convention recommended a bill stating, "Congress shall never disarm any citizen, unless shall have been in actual rebellion."[146] This once again reinforces that only peaceable citizens who were not a threat to those around them would be able to own and possess guns.

The Founders could not contemplate an exact firearm regulation correlation to domestic violence PFAs because the Founders did not recognize the crime of domestic violence in their time. However, the Court agrees with the State's argument that the Founders anticipated these firearm restrictions when they created the criminal justice system that allowed disarming.[147] A longstanding constitutional

[143] 2 Schwarz, The Bill of Rights 675, 681.
[144] *Range*, 69 F.4th at 111 (Ambro. J., concurring).
[145] *Id*. at 112.
[146] *Kanter*, 919 F.3d at 454-55 (Barrett, J., dissenting) (citing *See* 1 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (2d ed. 1891)).
[147] State's Resp. to Def.'s Mots. to Dismiss the Indictment at 20-21.

understanding is that the legislature is allowed to deny liberties to those accused of, and convicted of, crimes to ensure the safety of society.[148]

These "peaceable" recommendations soon transformed into adopted legislation when restrictions began regulating the act of "going armed."

ii. Restrictions based on "going armed"

Prior to the Revolutionary War, at least five colonies had prohibitions against "going armed offensively in a threatening manner."[149] During the colonial and the Founding-era of our country, common-law offenses of "'affray' or going armed 'to terror of the people' continued to impose some limits on firearm carry in the antebellum period."[150] State courts recognized that carrying deadly weapons "for the purpose of an affray, and in such manner as to strike terror to the people," was illegal.[151]

While the dangerousness laws preemptively disarmed individuals based on category, "going armed" laws targeted people's conduct when they utilized their

---

[148] *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting).

[149] *Brown*, 2023 WL 4826846, at *12 (citing 1 Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, 52-53 (1869) (1692 law); Acts and Laws of His Majesty's Province of New-Hampshire: In New-England; with Sundry Acts of Parliament 17 (1771) (1701 law); 1 Laws of the State of North-Carolina, including the Titles of Such Statutes and Parts of Statutes of Great Britain as Are in Force in Said State 131-32 (1821) (1741 law); Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force 33 (1794) (1786 law); A Compilation of the Statutes of Tennessee of a General and Permanent Nature, from the Commencement of the Government to the Present Time 99-100 (1836) (1801 law).

[150] *Bruen*, 142 S.Ct. at 2145.

[151] *O'Neil v. State*, 16 Ala. 65, 67 (1849).

firearms to threaten or terrorize.[152] The court in *United States v. Brown* decided not to consider "going armed" laws analogous to restrictions prohibiting those subject to domestic violence protective orders because "going armed" laws were backward looking restrictions and disarmed offenders following a criminal proceeding.[153] While "going armed" laws are not exact historical analogues, the Court finds them comparable—albeit somewhat weakly comparable—to the restriction at issue here.

Domestic abusers often utilize their weapons to strike fear or terror into their victims. In such cases, courts issuing PFAs will first have to make a factual finding of dangerousness and only restrict firearms where they believe there is a risk for the abuser to escalate the violence.[154] While § 1045 is designed to prevent future attacks, these orders may be issued based on the past actions of domestic abusers who have threatened their victims with firearms. Here, an emergency PFA was issued against Rumpff with a firearm restriction after the Family Court determined domestic violence *had already taken place*.[155] The PFA was both forward-looking and backward-looking based on the Family Court's finding of prior domestic violence. Therefore, the PFA—while preventative—was issued with the finding of a prior act, bringing "going armed" laws into the purview of this analysis. Because the issuance

[152] *Bruen*, 142 S. Ct. at 2145.
[153] *Brown*, 2023 WL 4826846, at *11; *Rahimi*, 61 F.4th at 443.
[154] *See* 10 *Del. C.* § 1045(a)(8) as one of the options to put into an *ex parte* protective order.
[155] Def.'s Second Mot. to Dismiss the Indictment, Ex. A.

of PFA orders may be based on past actions, these PFAs include both proactive and retroactive facets, and thus, the Court finds them analogous to § 1045.

iii. Surety Statutes[156]

Surety statutes allowed "any private man [who] hath just case to fear, that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him" to "demand surety of the peace against such person."[157] These surety statutes were preemptive and could be entered without an offense occurring so long as there was "probable suspicion, that some crime [wa]s intended or likely to happen."[158] Surety statutes required those subject to them to relinquish their firearms and post bond before they were authorized to carry again.[159] Many states, including Delaware, enacted these statutes near the time of the nation's Founding.[160]

---

[156] While not explicitly briefed by the parties, both Rumpff and the State discuss *United States v. Rahimi* which reviews the impact of surety statutes against these types of firearm regulations in depth. 61 F.4th at 443. Therefore, it will be discussed here.

[157] *Brown*, 2023 WL 4826846, at *12 (quoting 4 Blackstone, Commentaries *252).

[158] *Id*. (quoting 4 Blackstone, Commentaries *249).

[159] *Bruen*, 142 S.Ct. at 2148.

[160] *See e.g.*, 1 Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, 52-53 (1869) (1692 statute); Acts and Laws of His Majesty's Province of New-Hampshire: In New-England; with Sundry Acts of Parliament, 17 (1771) (1701 statute); 2 Statutes at Large of Pennsylvania from 1682 to 1801, 23 (1896) (1700 statute); 1 Laws of the State of Delaware from the Fourteenth Day of October, One Thousand Seven Hundred, to the Eighteenth Day of August, One Thousand Seven Hundred and Ninety-Seven, 52 (1797) (1700 statute); Acts and Laws of His Majesties Colony of Connecticut in New-England 91 (1901) (1702 statute); *see also Bruen*, 142 S. Ct. at 2148 (1838 Terr. of Wis. Stat. § 16, p. 381; Me. Rev. Stat., ch. 169, § 16 (1840); Mich. Rev. Stat., ch. 162, § 16 (1846); 1847 Va. Acts ch. 14, § 16; Terr. of Minn. Rev. Stat., ch. 112, § 18 (1851); 1854 Ore. Stat. ch. 16, § 17, p. 220; D. C. Rev. Code ch. 141, § 16 (1857); 1860 Pa. Laws p. 432, § 6; W. Va. Code, ch. 153, § 8 (1868)).

For example, Massachusetts prohibited "riding or going 'armed offensively, to the fear or terror of the good citizens of this Commonwealth.'"[161] Later, in 1836, Massachusetts enacted a new law providing:

> if any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.[162]

Surety statutes operated to protect an individual against the violent use of firearms while protecting a person's right to self-defense.[163] Like surety statutes, PFAs are not meant to be a permanent ban on owning and possessing weapons but, rather, were "intended merely for prevention" and not "meant as any degree of punishment."[164] Any argument that PFAs permanently deprive an individual of their right to bear arms is incorrect as the Delaware emergency *ex parte* PFA challenged here only lasts for a maximum of fifteen days.[165]

---

[161] *Bruen*, 142 S.Ct. at 2148 (citing 1795 Mass. Acts and Laws ch. 2, at 436, in Laws of the Commonwealth of Massachusetts).
[162] *Id*. (citing Mass. Rev. Stat., ch. 134, § 16).
[163] *Brown*, 2023 WL 4826846, at 12-13.
[164] *Bruen*, 142 S.Ct. at 2149 (quoting 4 Blackstone, Commentaries, at 249); *Lopez v. Occhiogrosso*, 2019 WL 347336, at *7 (Tex. App. Jan. 29, 2019) (stating that "protective order is not punishment" and that primary purpose is to prevent domestic violence and protect domestic violence victims).
[165] While the Court will not dive into whether the injunction form of this order is constitutional, it finds it is worth noting that under 10 *Del C.* § 1045(b) the maximum amount of time for a firearm injunction to be put into place may not exceed 1 year. This is vastly different from other states who subject those with a domestic violence injunction to a lifetime ban.

Underlying Rumpff's claim, and briefed extensively in *United States v. Rahimi*, is the argument that PFAs regulating firearms should be found unconstitutional because they are civil orders performing a criminal function.[166] Judge Ho in his concurrence in *Rahimi* stated, "there is no analogous historical tradition to support" civil orders performing criminal functions.[167] However, surety statutes were activated by a plaintiff in a complaint—an inherently civil process—

---

[166] 61 F.4th at 443. The United States Supreme Court decision in *Rahimi* will likely not impact states' PFA statutes pertaining to domestic violence abusers. During oral argument, the Respondent made it clear he was not arguing about state statutes but rather just the federal corollary:

> Justice Thomas: Briefly. You—just to be clear, what you're arguing, you say that the proceedings in state court—let's assume that—that there was no 922 consequence. What would be the effect of that order? You—would you—you would not be challenging that order?
>
> Mr. Wright: Well, I wouldn't be challenging the order, but—
>
> Justice Thomas: Yeah.
>
> Mr. Wright: —but—but—but Mr. Rahimi might.
>
> Justice Thomas: My—my question—the reason I'm asking you that, you made a point that that was a—a small matter and it has huge consequences. I think you said that even if Respondent moved to another state or across the country, the consequences would be the same, even though he would present no danger in Texas.
>
> And just to be clear, are you—you're not challenging the state court aspect of this?
>
> Mr. Wright: That's—that's correct, Your Honor.
>
> Justice Thomas: But solely—and your language was it was a per se violation or automatic violation of 922, and that is your problem.

Tr. of Oral Arg. at 91:1-25, 92:1-3, *Rahimi*, 61 F.4th at 443.

[167] *Id*. at 465 (Ho concurring), *cert. granted*, 143 S.Ct. 2688 (2023).

and prohibited the temporary carry of firearms until bond could be posted.[168] Like PFAs, these surety statutes were not enforceable upon conviction.[169] They operated identically to civil protective orders, establishing another historical analogue.

iv. Persons of unsound mind, felons, and the mentally ill

As noted earlier, the country as a whole has a history of restricting felons, drug users, and the mentally ill from owning and possessing firearms.[170] In the 19th century, states began to ban the sale of guns to "persons of unsound mind,"[171] armed vagrants,[172] intoxicated individuals,[173] or those who were "not known to be peaceable and quiet persons."[174] The Ohio Supreme Court further explained that their law disarming armed vagrants was consistent with the Second Amendment

[168] *Bruen*, 142 S.Ct. at 2149.
[169] *Brown*, 2023 WL 4826846, at *13.
[170] *See Bena*, 664 F.3d at 1184; *Boyd*, 999 F.3d at 186.
[171] *See* Act of Feb. 4, 1881, ch. 3285, No. 67, § 1, 1881 Fla. Laws 87; Act of Mar. 5, 1883, ch. 105, § 1, 1883 Kan. Sess. Laws 159; Act of Feb. 17, 1899, ch. 1, § 52, 1899 N.C. Pub. Laws 20-21.
[172] *See* Act of Mar. 27, 1879, ch. 59, § 4, 1879 Conn. Pub. Acts 394; Act of Mar. 27, 1879, ch. 155, § 8, 16 Del. Laws 225 (1879); Act of May 3, 1890, ch. 43, § 4, 1890 Iowa Acts 69; Act of Apr. 24, 1880, ch. 257, § 4, 1880 Mass. Acts 232; Miss. Rev. Code ch. 77, § 2964 (1880); Act of Aug. 1, 1878, ch. 38, § 2, 1878 N.H. Laws 170; Act of May 5, 1880, ch. 176, § 4, 1880 N.Y. Laws, Vol. 2, at 297; Act of Mar. 12, 1879, ch. 198, § 2, 1879 N.C. Sess. Laws 355; Act of June 12, 1879, § 2, 1879 Ohio Laws 192; Act of Apr. 30, 1879, § 2, 1879 Pa. Laws 34; Act of Apr. 9, 1880, ch. 806, § 3, 1880 R.I. Acts & Resolves 110; Act of Nov. 26, 1878, No. 14, § 3, 1878 Vt. Acts & Resolves 30; Act of Mar. 4, 1879, ch. 188, § 4, 1879 Wis. Sess. Laws 274.
[173] *See* Act of Feb. 23, 1867, ch. 12, § 1, 1867 Kan. Sess. Laws 25; Act of Feb. 28, 1878, ch. 46, § 2, 1878 Miss. Laws 175; 1 Mo. Rev. Stat. ch. 24, Art. II, § 1274, at 224 (1879); Act of Apr. 3, 1883, ch. 329, § 3, 1883 Wis. Sess. Laws, Vol. 1, at 290.
[174] *See* Act of Apr. 30, 1855, §§ 1-2, in 2 The General Laws of the State of California, from 1850 to 1864, inclusive 1076-1077 (Theodore H. Hitchell ed., 1865).

because it was "never intended as a warrant for vicious persons to carry weapons with which to terrorize others."[175]

Stymying violent people from owning and buying firearms continued into the 20th century when Congress first prohibited felons from owning and possessing firearms.[176] Gun restrictions continued in a series to disarm individuals that Congress determined "posed a heightened danger of misusing a firearm" including felons, drug addicts, the mentally ill, and domestic violence misdemeanants.[177] In the 1990s, Congress further disarmed those subject to domestic violence protective orders.[178] And finally, in 1994, Delaware enacted the Delaware Protection from Abuse Act which prohibited those subject to domestic violence PFAs from owning and possessing firearms at the state level.[179] The disarming practice has been upheld, ratified, and used ever since the country's inception.

v. Constitutional consistency and modern applications

Not every regulation in a progressive society will have an exact match at the time of our Founding. Rather, the law, like technology, will continue to advance *ad*

---

[175] *State v. Hogan*, 63 Ohio St. 202, 219 (1900).
[176] *See* Federal Firearms Act, ch. 850, § 2(d)-(f), 52 Stat. 1251.
[177] *Mahin*, 668 F.3d at 122; *See* Act of Oct. 3, 1961, Pub. L. No. 87-342, §§ 1-2, 75 Stat. 757; Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1220.
[178] *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110401(c), 108 Stat. 2014; *See also* Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, Div. A, Tit. I, Sec. 101(f) [tit. VI, § 658(b)(2)], 110 Stat. 3009-372.
[179] 10 *Del. C.* § 945-952 (this later was redesignated as 10 *Del. C.* § 1041). Unfortunately, Delaware was one of the last two states that had not enacted domestic violence protection orders or domestic abuse laws until 1994.

infinitum.[180] The Constitution was not designed to be so stringent that it is unable to keep up with the times. To the contrary, "the Constitution can, and must, apply to circumstances beyond those the Founder's anticipated."[181] Just as the First Amendment and Fourth Amendment have been extended to comport with the modernization of technology, so too must the Second Amendment. Domestic violence regulations cannot be insulated from constitutional protection simply because domestic violence was not recognized as an epidemic at the time of our Founding.[182] Likewise, there could be no prohibitions against the mentally ill and felons from possessing firearms since there were no felon-in-possession laws or mentally ill designation prohibitions until modern times.[183] Understanding this, the Supreme Court has explicitly expressed what is important is an *analogous* law, not an identical one.[184]

---

[180] *State v. Holden*, 54 A.3d 1123, 1133 (Del. Super. 2010) ("the advancement of technology will continue *ad infinitum*.").
[181] *Bruen*, 142 S.Ct. at 2133 (holding "[e]ven if a modern-day regulation is not a dead ringer for historical precursors, it may still be analogous enough to pass constitutional muster.").
[182] *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 373 (1995) (Scalia, J., dissenting) ("Quite obviously, not every restriction upon expression that did not exist in 1791 or 1868 is ipso facto unconstitutional.").
[183] The 1968 Gun Control Act regulating the usage of firearms by the mentally ill, felons, and domestic abusers was not put into place until 1968. Gun Control Act of 1968, Pub. L. No. 90–618, 82 Stat. 1213, 1220. The "legal limits on the possession of firearms by the mentally ill . . . are of 20th Century vintage." *Skoien*, 614 F.3d at 641; *Tyler*, 837 F.3d at 706 (Batchelder, J., concurring in part) ("§ 922(g)(4) has no direct ancestors in the eighteenth century.").
[184] *Bruen*, 142 S.Ct. at 2133.

"The legal history of domestic abuse in the United States is dark and troubled."[185] At the time of our Founding, "many states not only turned a blind eye to violence against women, but explicitly sanctioned it."[186] Through the nineteenth century, common law recognized "the right of chastisement" which permitted husbands to beat their wives.[187] In fact, prior to recent history, courts refused to so much as hear interspousal battery charges because it preferred the "lesser evil of trifling violence" to the "greater evil of raising the curtain upon domestic privacy."[188] Some courts even found domestic violence to be "beyond law and in a 'sphere separate from civil society.'"[189]

This reasoning is consistent with *Heller*'s application of the protection of modern firearms.[190] The Supreme Court found it was "bordering on the frivolous" to argue that "only those arms in existence in the 18th century are protected under the Second Amendment."[191] As the Supreme Court further explained, "[w]e do not interpret constitutional rights that way. Just as the First Amendment protects modern

---

[185] *Brown*, 2023 WL 4826846, at *5.
[186] *Id.* at *8.
[187] Joseph Blocher, *Domestic Violence and the Home-Centric Second Amendment*, 27 Duke J. of Gender L. & Pol'y 45, 56 (2020) (citation omitted); Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2121-41 (1996).
[188] *State v. Rhodes*, 61 N.C. 453, 459 (1868); *See also Abbott v. Abbott*, 67 Me. 304, 307 (1877) (the court refusing to hear allegations of a man battering his wife because it would be "better to draw the curtain, shut out the public gaze, and leave the parties to forgive and forget.").
[189] Stoever, Jane, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VNLR 1015, 1018 (May 2014) (citing Reva B. Seigal, *"The Rule of Love:" Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2167-68 (1996)).
[190] 554 U.S. at 582.
[191] *Id.*

forms of communications . . . and the Fourth Amendment applies to modern forms of search . . . the 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."[192] The purpose of extending the Second Amendment to arms that could not be imagined at the time of the Founding was to apply the Constitution to modern-day problems.

It follows that the Second Amendment should apply to modern-day problems including what constitutes "dangerousness."[193] This is not to say the regulation does not have to be grounded in history and tradition. The importance here is that the principles of those historical regulations are modernized to apply to the advancement of firearm dangers. This is not the Court veering off the trodden path, but rather effectuating the Supreme Court's distinction between a historical "analogue" and a "twin."[194]

The Court in *Heller* found that the Georgia Supreme Court "perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause" and included women within the protections of

---

[192] *Id*. (citing e.g., *Reno v. American Civil Liberties Union*, 521 U.S. 844, 849 (1997), *Kyllo v. United States*, 533 U.S. 27, 35–36 (2001)).
[193] Patricia Thompson, *The Equal Rights Amendment: The Merging of Jurisprudence and Social Acceptance*, 30 WSULR 205 (2003) ("The reality is that the United States Constitution was written by white males for the protection of white males.").
[194] *Bruen*, 142 S.Ct. at 2133.

the "people" under the Second Amendment.[195] This reading—without an extension to a modern application—would never have been consistent with the "people" included in the Constitution if the right only applied to the "people" as understood at the time of our Founding.

In Rumpff's case, his ex-wife applied for an *ex-parte* PFA against him and it was granted. Because this domestic violence case is between a husband and his at-the-time wife, the Court looks at the way in which domestic violence was viewed between a man and a woman in the Founding-era, and the evolution of women's integration into the law.

The argument that "dangerousness" should be viewed in the eyes of those in the Founding-era, who recognized women as mere property, not citizens, creates inconsistency with how the Constitution is interpreted today. In *United States v. Virginia*, the Supreme Court extended equal protection to women, applying a heightened level of scrutiny to sex-based discrimination claims.[196] The Nineteenth Amendment afforded women the right to vote as citizens of the United States.[197] The advancement of women in society has rendered them far from the label of "property." Women are protected under the Equal Protection Clause and as citizens under the Nineteenth Amendment. Therefore, it cannot be true that women are seen

[195] *Heller*, 554 U.S. at 612 (citing *Nunn v. State*, 1 Ga. 243, 251 (1846)).
[196] 518 U.S. 515, 516 (1996).
[197] U.S. Const. amend. XIX.

as "property" when determining the meaning of "dangerousness" but seen as citizens with rights when evaluating other constitutional provisions. A ruling authorizing this distinction would render prior caselaw and constitutional theory inconsistent since the reason husbands were not viewed as "dangerous" was because women were viewed as their property. It would render an absurd result to hold that domestic abusers cannot be determined to be dangerous because they were not viewed as dangerous when the constitution was enacted.

Taking it a step further, if women are unable to seek remedy or aid in the courts because domestic violence abusers are not deemed as "dangerous," the Court would only be able to provide a remedy *after* their abusers inflict serious injury. This would render preemptive firearm removal measures inapplicable, forcing victims to choose between requesting aid from the courts or risking violent retaliation. The Second Amendment must be interpreted in accord with its sister amendments, including the Equal Protection Clause and the Nineteenth Amendment, otherwise the Second Amendment would be regressive.[198]

Bruen does not impose a "regulatory straightjacket"[199] on regulations applying to those who "threaten the ordinary functioning of society."[200] Section

[198] The prior cited caselaw in which courts would not involve themselves in domestic disputes occurred before Equal Protection was extended to women.
[199] *Bruen*, 142 S.Ct. at 2133.
[200] *Range*, 69 F.4th at 111 (Porter, J., concurring).

1045(a)(8) was put into place to protect domestic violence victims from their abusers.[201] An *ex parte* PFA allows the Family Court to issue a temporary restraint on those undergoing an active PFA.[202] As shown, there exists an extensive history protecting the safety of society by preventing presumptively violent individuals from possessing or obtaining firearms.

The Family Court found by a preponderance of the evidence that in the time between when the PFA was issued and when a hearing could occur, Rumpff was a presumptively dangerous individual whose gun rights should be temporarily restricted.[203] This determination and subsequent order is consistent with the bases for many gun regulations which have survived constitutional scrutiny.

Given "that exclusions need not mirror limits that were on the books in 1791,"[204] the Court finds that the history and tradition of firearm regulation is extensive and analogous to uphold 10 *Del. C.* § 1045(a)(8).

C. Practical Considerations[205]

[201] One of the many reasons why this law is important is because of how pervasive domestic violence is, touching as many as one fourth of all families nationwide. *Bena*, 664 F.3d at 1184 (citing Antonia C. Novello et al., *From the Surgeon General, U.S. Public Health Service: A Medical Response to Domestic Violence*, 267 JAMA 3132 (1992); *Hayes*, 555 U.S. at 427 ("Firearms and domestic strife are a potentially deadly combination nationwide.").
[202] 10 *Del. C.* § 1043.
[203] Def.'s Second Mot. to Dismiss the Indictment, Ex. A.
[204] *Skoien*, 614 F.3d at 641.
[205] Because neither party fully briefed whether this restriction would pass intermediate or strict scrutiny, the Court cannot properly evaluate the argument here. However, the Court notes that the State has put forth an important government interest based on the briefing provided.

The Court finds it imperative to note—although not explicitly within the two-step process adopted from the Third Circuit—there are practical considerations to take into account. Ideally, courts would be able to hold every PFA hearing immediately, but the courts are often inundated with cases, requiring a few days before a hearing can be scheduled. The request for protection by a domestic violence victim in the courts tends to be a measure of last resort.[206] Without emergency *ex parte* PFAs, victims would be forced to fend for themselves against the accused in possession of a firearm for the interim period between when the PFA is requested and when the hearing can be scheduled—often, the most dangerous period of time due to high retaliation rates.[207]

D. The Constitutionality of *Ex Parte* Orders[208]

Rumpff's final argument is that the emergency *ex parte* PFA was issued in violation of his Due Process rights because he did not have a hearing prior to its issuance.[209] This emergency PFA was active for only fifteen days—between the time when Rumpff's ex-wife had an *ex parte* hearing and when the full hearing

[206] *Mahin*, 668 F.3d at 124 ("For a victim of domestic abuse, seeking refuge in the court system may be a measure of last—or even desperate—resort. Indeed, it may require some summoning of courage for a victim to request a protective order against an intimate partner.").
[207] *Poole*, 228 N.C.App. at 264.
[208] Rumpff argues that he was not given notice that his ex-wife filed for an *ex parte* PFA. Def.'s Third Mot. to Dismiss the Indictment at 2. However, notice is only required under the statute *after* the issuance of an *ex parte* PFA and prior to the hearing. Further, there is no issue of notice prior to the full hearing because Rumpff admitted to receiving service of the PFA. *Id*. at 1-2. Therefore, the notice argument will not be addressed here.
[209] Def.'s Third Mot. to Dismiss the Indictment at 2.

occurred.[210] "There is no principle of law better settled, than that every act of a court of competent jurisdiction shall be presumed to have been rightly done, till the contrary appears."[211] Rumpff's argument is that his procedural Due Prcoess rights were violated by the mere issuance of the emergency *ex parte* PFA.[212]

As noted, this is an issue of first impression. As such we turn to other jurisdictions for guidance.

i. Preponderance of the evidence standard[213]

The Court in *Morrissey v. Brewer* recognized that Due Process "is flexible and calls for procedural protections as the particular situation demands."[214] The *Mathews* factors apply to the reviewable standard in a procedural Due Process challenge.[215] A preponderance of the evidence standard is the correct standard to use in PFA hearings because it "better serves the purpose of the [PFA] in protecting

---

[210] Def.'s Second Mot. to Dismiss the Indictment, Ex. A.
[211] *Voorhees v. Jackson*, 10 Pet. 449, 472 (1836).
[212] *Boyd*, 999 F.3d at 187 (the court "hesitate[s] to place such a formalistic requirement on the many state courts across the country that operate under myriad procedures, and [they] will not be so obtuse as to assume a court lacked credible concerns about a defendant's dangerousness merely because it does not say so expressly."); *See also Sunuwar v. Att'y Gen.*, 989 F.3d 239, 248 (3d Cir. 2021) (concluding in the context of an immigration case that "the no-contact provisions of a protection order inherently involve protection against credible threats of violence, repeated harassment, or bodily injury" because "the primary purpose of a no-contact order is to protect the victims of domestic abuse by the offender" (internal citations and quotation marks omitted)). Further, because Rumpff did not make a merits-based argument, the Court considers the matter waived for these Motions.
[213] While Rumpff does not explicitly argue that the preponderance of the evidence standard is appropriate for the proceeding, the Court finds it appropriate to briefly discuss the correct use of the preponderance of the evidence standard in *ex parte* disarmament proceedings.
[214] 408 U.S. 471, 481 (1972)
[215] *Crespo*, 408 N.J. Super. at 25.

victims of domestic violence" due to the difficult and private nature to prove these allegations.[216] This is due to the rarity of eyewitnesses to domestic violence.[217]

"Domestic violence actions, by their very nature, naturally pit the first and third *Mathews* factors, that is the victim's interest in being protected from domestic violence against the defendant's liberty interests in being free to say what they wish and go where they please."[218] The State's interest in affording immediate protections to victims that come forward outweigh an individual's private interest in possessing a gun.[219] A higher standard would be ineffective.[220] In *Crespo*, the court determined a clear and convincing standard would be inapplicable and a hinderance since these violent events occur behind closed doors and during private communications leaving the judge's credibility determination to two witnesses—the victim and the abuser.[221] Such a high standard would "saddle victims of domestic violence with a burden that would often foreclose relief in many deserving cases."[222] "When the testimony of the plaintiff is pitted against the testimony of the defendant, with no other corroborating testimony or evidence, a plaintiff would likely have difficulty

[216] *Crespo*, 408 N.J. Super. at 25, *affirmed by Crespo*, 201 N.J. at 207.
[217] *Roe v. Roe*, 253 N.J. Super. 418, 428 (N.J. Super. Ct. App. Div. Jan. 31, 1992).
[218] *Crespo*, 408 N.J. Super. at 37.
[219] *Id*. at 38-39.
[220] *Id.* at 39.
[221] *Id*.
[222] *Id*.

sustaining [a] sterner standard . . .”[223] Therefore, the Court finds the preponderance of the evidence standard is appropriate in PFA hearings.[224]

ii. Due Process and ex parte *proceedings*

The court in *State v. Poole* recognized that *ex parte* hearings are constitutional so long as an adversarial hearing is scheduled within a short period of time.[225] The fundamental Due Process concern is that the defendant has the opportunity to be heard “at a meaningful time and in a meaningful manner.”[226] The Supreme Court has recognized there are appropriate situations where “the necessity of quick action by the State” can justify the seizure without an adversarial hearing first.[227] Procedural Due Process requirements are flexible and call “for such procedural protections as the particular situation demands.”[228] However, emergency *ex parte* restraining orders are only available after the petitioner satisfies the petition’s requirements.[229] The petition must include an affidavit or verified pleading alleging

[223] *Id*.
[224] Domestic violence cases are unique in the threat abusers pose to their victims, recidivism rates, and the pervasiveness of the problem. It is for the legislature to decide how to effectively curtail this issue as they are better suited for it.
[225] 228 N.C.App. 248, 261-62 (July 2, 2013).
[226] *Mathews*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).
[227] *See Parratt v. Taylor*, 451 U.S. 527, 539 (1981), *overruled on other grounds* by *Daniels v. Williams*, 474 U.S. 327, 330 (1986) (citing *Fahey v. Malonee*, 332 U.S. 245 (1947); *N. Am. Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908)); *See also Blazel*, 698 F.Supp. at 763 (domestic violence).
[228] *Morrissey*, 408 U.S. at 481.
[229] *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974).

there is an immediate and present danger of domestic violence.[230] To obtain an emergency *ex parte* order, the petitioner must certify in writing the reasons why notice should not be given.[231] The court then holds an emergency *ex parte* hearing and determines by the preponderance of the evidence if a domestic violence has occurred and, if it has, the court will issue the emergency *ex parte* order.[232]

The Supreme Court directs courts, when analyzing an alleged Due Process violation, to determine whether appropriate safeguards are provided by considering three factors:

> [1] the private interest that will be affected; [2] the risk of an erroneous deprivation under existing procedures and the probable value of additional procedures; and [3] the government's interests, including the burdens imposed by additional procedural requirements.[233]

The process of weighing the private interest affected by a governmental action against the governmental interest, "contemplates a judicious balancing . . . through an analysis of the risk of an erroneous deprivation of the private interest . . ."[234] The concern is whether there are procedural safeguards against an erroneous deprivation.[235]

---

[230] 10 *Del. C.* § 1043(a).
[231] 10 *Del. C.* § 1043(b).
[232] 10 *Del. C.* § 1043(b), (c).
[233] *Mathews*, 424 U.S. at 335.
[234] *Poole*, 228 N.C. App. at 260 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (citations and quotation marks omitted)).
[235] *Id*.

In determining whether such safeguards were in place in *Blazel v. Bradly*, the court held:

> [w]eighing the *Mathews* factors, it is apparent that substantial procedural protections are mandated by the strength of the respondent's interest in his home and family and the evident risk of erroneous deprivation when mere allegations in a verified petition may be the basis for an *ex parte* temporary restraining order. However, the strength of the petitioner's countervailing interest in her home and family, the government's interest in preventing abuse, and the possibility that prior notice may incite domestic violence, suggest that those protections should not extend to prior notice.[236]

Blazel is instructive here.[237] Prior to the issuance of the emergency PFA, Rumpff fell under the protection of the Second Amendment and had an interest in his right to bear arms.[238] While there was a risk of erroneous deprivation of his right to bear arms, the countervailing interest of protecting Rumpff's ex-wife from potential retaliation and the State's interest in preventing abuse outweighed his right to protect, assuming *arguendo* that the Second Amendment applies.[239]

---

[236] 698 F. Supp. 756, 763 (W.D. Wis. 1988).

[237] *Id*. In discussing the Fifth Amendment, the Supreme Court has found that there are circumstances where the Fifth Amendment yields to "the government's regulatory interest in community safety" and that "[e]ven competent adults may fact substantial liberty restrictions as a result of the operation of our criminal justice system." *United States v. Salerno*, 481 U.S. 739, 748-49 (1987). The Court further held that there is "well-established authority of the government in special circumstances, to restrain individuals' liberty prior to or even without criminal trial and conviction." *Id*. at 749.

[238] It was only *after* the issuance of the PFA and Family Court's determination of Rumpff's dangerousness that Rumpff fell outside the Second Amendment's protection.

[239] Should the Second Amendment not apply to Rumpff, he would have no interest to protect when weighing the parties' interests and, if he did have some interest basis, it would be weaker than his Second Amendment argument and would not outweigh his ex-wife's interest.

The right to bear arms is a fundamental right protected by the Second Amendment which is applicable to the states through the Fourteenth Amendment.[240] Rumpff has a Second Amendment right interest, but beyond that, his interests are limited. The Supreme Court created requirements for the protection of procedural Due Process. In creditor repossession cases, the Supreme Court established a requirement of at least four minimum procedural safeguards for procedural Due Process: "(1) participation by a judicial officer; (2) a prompt post-deprivation hearing; (3) verified petitions or affidavits containing detailed allegations based on personal knowledge; and (4) risk of immediate irreparable harm."[241]

All four of those requirements are present here, and the interests of both Rumpff and his ex-wife have been weighed. A Family Court judge presided over the *ex parte* hearing in which a verified petition based on personal knowledge was submitted, a prompt post-deprivation hearing was schedule within fifteen days of the issuance of the PFA, and the Family Court judge determined there was a risk of immediate and irreparable harm.[242] Rumpff's interest in preserving his right to bear arms does not outweigh the temporary requirement to relinquish possession of

[240] *McDonald*, 561 U.S. 742 (2010).
[241] *See North Georgia, Inc., v. Di-Chem*, 419 U.S. 601, 607 (1975); *Mitchell v. W.T. Grant Comp.*, 416 U.S. 600, 605-09 (1974); *Fuentes v. Shevin*, 407 U.S. 67, 93 (1972); *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 339 (1969).
[242] State's Resp. to Def.'s Mots. to Dismiss the Indictment; Def.'s Second Mot. to Dismiss the Indictment, Ex. A.

firearms to curb the imminent danger to his ex-wife when the court determined domestic violence had occurred.

There is no violation of Due Process when a court implements a temporary short term PFA if "[t]he degree of deprivation . . . prior to the full hearing is extremely short,"[243] Here, Rumpff would lose, at most, his Second Amendment rights for a maximum of fifteen days.

Further, the issuance of an emergency *ex parte* PFA did not deprive Rumpff of his ability to have a full hearing. Rather, he had an opportunity to defend himself in Family Court in a full hearing on August 3, 2023. There, he had the opportunity to be heard, present evidence, and confront the evidence against him.[244] When there is a prompt post-deprivation review available to correct an administrative error, the Supreme Court has stated:

> we have generally required no more than that the pre[-]deprivation procedures used be designed to provide a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible governmental official warrants them to be.[245]

Because the Family Court requires a hearing occur within fifteen days and provides a reliable basis for temporarily depriving a defendant of his firearms—namely that

---

[243] *Poole*, 228 N.C. App. at 261-62; *see Hammond v. Douglas*, 994 A.2d 744 (TABLE), *Fuentes*, 407 U.S. at 80. *See Parratt*, 451 U.S. at 539, *overruled on other grounds* by *Daniels*, 474 U.S. at 330 (citing *Fahey*, 332 U.S. at 245; *N. Am. Cold Storage Co.*, 211 U.S. at 306); *See also Blazel*, 698 F.Supp. at 763.
[244] Def.'s Second Mot. to Dismiss the Indictment, Ex. A.
[245] *Mackey v. Montrym*, 443 U.S. 1, 13 (1979).

the Court found by a preponderance of the evidence that the issuance of the firearm provision in the PFA was necessary—the risk of any erroneous deprivation of Rumpff's Second Amendment right was minimal.[246]

The State's interest is clear—to protect domestic violence victims from dangerous encounters and prevent those dangerous encounters from escalating to homicides.[247] The Delaware Senate determined in 2015 that the length of time for an *ex parte* order should be extended from ten days to fifteen days.[248] The reason the Senate extended the time period was because of "concerns that the victim would be at more risk for harm from the respondent . . ." in the interim between when a PFA was issued and when a hearing could be scheduled.[249] Rumpff's restriction on firearm possession was confined to fifteen days—within the statute's time limitation—until a full hearing could take place. In sum, the Court finds this situation is one of those "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after" the deprivation.[250]

---

[246] *Poole*, 228 N.C. App. at 263.
[247] *Id*.
[248] 2015 Delaware Senate Bill No. 55, Delaware One Hundred Forty-Eight General Assembly - Second Regular Session.
[249] *Id*.
[250] *James Daniel Good Real Property*, 510 U.S. at 53 (citation and quotation marks omitted); *Poole*, 228 N.C. App. at 264 ("For these same reasons, furtherance of the legitimate state interest in immediately and effectively protecting victims of domestic violence requires 'the state to engage in prompt remedial action adverse to an individual interest protected by law and the action proposed by the state is reasonably related to furthering the state interest.'") (quoting *Henry v. Edmisten*, 315 N.C. 474, 494 (1986)).

V. CONCLUSION

Under the facts and circumstances here, the Court finds Rumpff is not entitled to Second Amendment protection, history and tradition support 10 *Del. C.* § 1048(a)(8), and the issuance of the emergency *ex parte* PFA did not violate Rumpff's Due Process rights; therefore, Rumpff's Second and Third Motions to Dismiss the Indictment are **DENIED**.

IT IS SO ORDERED.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge