

No. 12-1371

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

JAMES ALVIN CASTLEMAN,
Respondent.

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

**BRIEF *AMICI CURIAE* OF MAJOR CITIES
CHIEFS, THE ASSOCIATION OF PROSECUTING
ATTORNEYS, THE INTERNATIONAL
BROTHERHOOD OF POLICE OFFICERS, THE
INTERNATIONAL ASSOCIATION OF CHIEFS OF
POLICE, AND THE LOS ANGELES CITY
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STATEMENTS OF INTEREST¹*Major Cities Chiefs*

The Major Cities Chiefs Association is composed of police executives heading the fifty-six largest police departments in the United States, including Atlanta, Chicago, Dallas, Detroit, Los Angeles, New York, Philadelphia, Washington, D.C., and many others, which protect roughly forty percent of America's population. The Major Cities Chiefs Association has filed amicus briefs in numerous cases, including *District of Columbia v. Heller* (No. 07-290), *Moore v. Madigan* (No. 12-1269, 7th Circuit), *Woollard v. Sheridan* (No. 12-1437, 4th Circuit), and *Drake v. Filko* (No. 12-1150, 3rd Circuit).

Association of Prosecuting Attorneys

The Association of Prosecuting Attorneys (APA) was founded as a national organization to represent all prosecutors and provide additional resources such as training and technical assistance in an effort to develop proactive and innovative prosecutorial practices that prevent crime, ensure equal justice, and make our communities safer. The APA acts as a global forum for the exchange of ideas, allowing

¹ Pursuant to Supreme Court Rule 37.3(a), the *amici curiae* state that the parties have consented to the filing of this brief and letters of consent have been filed in the office of the Clerk. Pursuant to Supreme Court Rule 37.6, the *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no party made a monetary contribution intended to fund the preparation or submission of this brief. *Amici curiae* further state that no one other than *amici curiae* and their counsel made a monetary contribution to the preparation or submission of this brief. The parties have consented.

prosecutors to collaborate with each other and other criminal justice partners. The APA also serves as an advocate for prosecutors on emerging issues related to the administration of justice, among other ways by submitting briefs as amicus curiae in appropriate cases. The APA's board of directors includes current prosecutors from states throughout the nation.

International Brotherhood of Police Officers

The International Brotherhood of Police Officers (IBPO) is one of the largest police unions in the country, representing more than 25,000 members. While the IBPO fully supports and defends the Second Amendment right to keep and bear arms, it strongly supports reasonable federal and state gun laws that protect the public and law enforcement officers.

International Association of Chiefs of Police

The International Association of Chiefs of Police is the world's oldest and largest organization of police executives, representing more than 20,000 members in over 100 countries.

Los Angeles City Attorney

The Los Angeles City Attorney's Office is one of the largest municipal law offices in the country. The City Attorney's Office works closely with law enforcement agencies on the local, state, and federal level to prosecute misdemeanor crimes in the City of Los Angeles, including firearm violations and domestic violence. The City Attorney has recently formed a Gun Violence Prevention Unit, dedicated to the prevention of gun violence through the prosecution of cases involving the unlawful use and

possession of firearms, coupled with a progressive focus on community outreach, engagement, and education. The City Attorney also has a Family Violence Unit which vertically prosecutes domestic violence, child abuse, and elder abuse crimes. The City Attorney's Office reviews approximately 11,000 domestic violence related cases and prosecutes over 2,600 of those cases each year. The Los Angeles City Attorney's Office is committed to combatting the critical and dangerous issue of possession of firearms by those convicted of domestic violence related misdemeanor crimes.

SUMMARY OF THE ARGUMENT

The ruling of the Sixth Circuit, if affirmed, would frustrate the enforcement of 18 U.S.C. § 922(g)(9), which was enacted by Congress in response to the nationwide problem of firearms and domestic violence. If, as held by the Sixth Circuit, an element of “violent” force is required for a conviction to qualify as a “misdemeanor crime of domestic violence” under Section 922(g)(9), the statute will be inapplicable to domestic abusers convicted under domestic violence laws or generic assault and battery laws that do not draw distinctions between different degrees of force. This restrictive view would permit thousands of domestic abusers to arm themselves, placing their victims and the law enforcement officers called upon to protect them at great risk.

Over one million domestic violence crimes occur every year in the United States. Domestic violence constituted 17% of total violent crimes in 2010. This percentage has been increasing in recent years; despite declining overall violent crime in the past decade, the rate of domestic violence has remained steady. Additionally, the majority of intimate partner homicides in the United States are committed with firearms. The presence of a firearm dramatically increases the likelihood than an episode of domestic violence will result in death. Furthermore, domestic violence often consists of a long pattern of abuse, which begins with verbal aggression and threats that eventually escalate into physical assault. There is, therefore, an immediate need to disarm even those abusers whose criminal actions initially do not amount to the use of “violent”

physical force, and the Lautenberg Amendment was enacted to address that need.

Law enforcement officers face grave danger from domestic abusers' access to firearms. Domestic abuse calls constitute the largest category of calls received by police departments each year. Approximately 14% of all police officer deaths occur during a response to domestic violence calls in a single year. Almost all of these officers are killed by a firearm.

The deaths of family members and law enforcement officers at the hands of domestic abusers impose great societal costs, ranging from direct costs, such as the costs of medical and mental health care, to indirect costs from lost productivity and lost lifetime earnings.

If the Sixth Circuit's conclusion that "violent" force is required for purposes of the firearms disability provision stands, then a substantial number of domestic violence convictions will no longer qualify as "misdemeanor crime[s] of domestic violence" under Section 922(g)(9). This would undermine Congress' goal of combating domestic violence and would severely aggravate an already critical public safety crisis. For these reasons, the decision of the Sixth Circuit should be reversed.

ARGUMENT

I. Domestic Violence is a Widespread Crime Made More Lethal when Abusers Have Access to Firearms.

This Court has repeatedly recognized the insidious and pervasive effects of domestic violence in the United States. *See, e.g., Georgia v. Randolph,*

547 U.S. 103, 117 (2006) (“[W]e recognize that domestic abuse is a serious problem in the United States.”); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 892 (1992) (“Thirty percent of female homicide victims are killed by their male partners.”); *see also Giles v. California*, 554 U.S. 353, 405 (2008) (Breyer, J., dissenting) (“Each year, domestic violence results in more than 1,500 deaths and more than 2 million injuries; it accounts for a substantial portion of all homicides; it typically involves a history of repeated violence; and it is difficult to prove in court because the victim is generally reluctant or unable to testify.”).

This Court has also recognized the inherent risks to public safety when domestic abusers have access to firearms. *See United States v. Hayes*, 555 U.S. 415, 427 (2009) (“Firearms and domestic strife are a potentially deadly combination nationwide.”); *see also District of Columbia v. Heller*, 554 U.S. 570, 711 (2008) (Breyer, J., dissenting) (“If a resident has a handgun in the home that he can use for self-defense, then he has a handgun in the home that he can use to commit suicide or engage in acts of domestic violence.”). Crimes of domestic violence are prevalent and often create unique dangers for responding officers. *See Hiibel v. Sixth Jud. Dist. Ct. of Nev., Humboldt City*, 542 U.S. 177, 186 (2004) (“Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.”); *see also Randolph*, 547 U.S. at 126 (Breyer, J., concurring) (“[L]aw enforcement officers must be able to respond effectively when confronted with the possibility of

abuse.”) (internal citation omitted). And prosecutors face unique difficulties in domestic violence cases. *See Davis v. Washington*, 547 U.S. 813, 832-33 (2006) (“This particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial.”).

As illustrated in the following cases, the combination of domestic abuse and firearms can often have deadly consequences:

Poughkeepsie, New York. February 18, 2011. Officer John Falcone, 44, was shot and killed after responding to a shots fired call. When he arrived at the scene he encountered Lee Welch holding his 3-year-old daughter and waving a gun. Welch fled, still holding the child, with Officer Falcone in pursuit. Officer Falcone was able to rescue the child before engaging in a struggle with Welch as other officers arrived at the scene. During the struggle, Officer Falcone was fatally shot in the head before Welch committed suicide. The suspect’s wife, Jessica Welch, was found in a nearby car with a fatal gunshot wound to the head. Jessica had alleged years of domestic abuse and a judge had recently issued a restraining order preventing Lee Welch from having any contact with Jessica due to a prior domestic incident in which it was

alleged he slammed her head against a wall.²

Arlington, Texas. December 28, 2010. Police Officer Jillian Smith, 24, was shot and killed after responding to an apartment on a report of an earlier domestic dispute. The male had already left the apartment when she arrived. Officer Smith was taking the female's report when the male returned unexpectedly. As the man opened fire, Officer Smith positioned herself to shield the woman's 11-year-old daughter, saving the girl but receiving fatal gunshot wounds. The man then chased the woman to a bedroom where he murdered her before killing himself.³

The statistics are sobering. According to the Department of Justice, an estimated 1.2 million to 1.5 million domestic violence crimes were committed each year between 2003 and 2012. Jennifer Truman et al., Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization 2012*, NCJ 243389 at Table 1 (Oct. 2013).⁴ Many more domestic violence crimes are never reported. *See, e.g.*, Timothy C. Hart & Callie Rennison, Bureau of Justice Statistics

² *Officers Gunned Down: How Weak Laws Put Police at Risk, A Report by the Brady Center to Prevent Gun Violence*, at 20 (May 2011), available at <http://www.bradycenter.org/sites/default/files/Officers-Gunned-Down.pdf> (last visited Nov. 13, 2013).

³ *Id.* at 22.

⁴ Available at <http://www.bjs.gov/content/pub/pdf/cv12.pdf> (last visited Nov. 13, 2013).

Special Report, U.S. Dep't of Justice, *Reporting Crime to the Police 1992-2000*, NCJ 195710 at 5 (Mar. 2003).⁵ Although the overall violent crime rate has decreased, the number of intimate partner victimizations has remained stable since 2000. Shannan Catalano, Bureau of Justice Statistics, U.S. Dep't of Justice, *Intimate Partner Violence, 1993-2010*, NCJ 239203 at 1 (Nov. 2012).⁶ Intimate partner violence has actually increased as a proportion of total violent crimes from 12.5% in 2000 to 17% in 2010. *Id.* at Appendix Table 1.

Domestic assaults are rendered significantly more deadly when abusers have access to firearms. The majority of intimate partner homicides in the United States are committed with firearms. April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large U.S. Cities*, 16 *Injury Prevention* 90, 90 (2010) (over 60% of intimate partner homicides are committed with firearms). Having one or more guns in the home makes it five times more likely that an episode of domestic violence will result in death. *Id.* Furthermore, domestic violence assaults involving guns are twelve times more likely to result in death than those involving other weapons or bodily force. New Yorkers Against

⁵ Available at <http://www.bjs.gov/content/pub/pdf/rcp00.pdf> (last visited Nov. 13, 2013) (54% of violent and seriously violent crimes committed by intimate partners reported to police).

⁶ Available at <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf> (last visited Nov. 13, 2013).

Gun Violence, *Firearms and Domestic Violence*, at 1 (Mar. 2013).⁷

Many such deaths are preventable. Researchers have concluded that abusers who kill “with a firearm would be unable or unwilling to exert the greater physical or psychological effort required to kill with another, typically available weapon.” Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA 3043, 3045 (1992). An analysis of every identifiable mass shooting between 2009 and 2013 found that in 57% of those incidents, the shooter killed a current or former intimate partner or other family member. Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings* (September 2013), at 2.⁸ Over the past quarter century, more intimate partner homicides in the United States have been committed with guns than with all other weapons combined. Letter from Professor April M. Zeoli, School of Criminal Justice, Mich. State Univ., to Sens. Patrick J. Leahy & Charles Grassley, Chairman & Ranking Member of the U.S. Senate Comm. On the Judiciary (January 28, 2013).⁹

Guns are also used by batterers to threaten, scare, coerce and intimidate their victims. One study found

⁷ Available at <http://nyagv.org/wp-content/uploads/2013/03/Firearms-and-Domestic-Violence-NYAGV.pdf> (last visited Nov. 13, 2013).

⁸ Available at https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/Analysis_of_Mass_Shootings.pdf (last visited Nov. 18, 2013).

⁹ Available at <http://www.judiciary.senate.gov/resources/documents/113thCongressDocuments/upload/013013RecordSubmission-Leahy.pdf> (last visited Nov. 18, 2013).

that 16 out of every 1,000 women in the United States have been threatened with a gun, and 7 in 1,000 women have had a gun used against them by an intimate partner. Susan B. Sorenson, *Firearm Use in Intimate Partner Violence*, 30 *Evaluation Rev.* 229, 235 (2006).¹⁰ This form of domestic violence is associated with an increase in the risk of homicide. An abuser's previous threats with a weapon or to kill are associated with significantly higher risks for homicide. Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 *Am. J. of Pub. Health* 1089, at 1092 (2003).¹¹

Domestic violence disproportionately affects women. Women are almost four times more likely to be shot by a current or former spouse or boyfriend than by a stranger. Injury and Violence Prevention Program, Wash. St. Dep't of Health, *Firearm-Related Injury*, at 3 (Feb. 2013).¹² Although the number of homicides of women by strangers has decreased over time, the number of female homicides by intimates with firearms has increased. Sorenson, *supra*, at 232. In 2011, an average of 41 women were shot to death each month in the United States by current or former intimate partners. Violence Policy Center, *When Men Murder Women: An Analysis of 2011*

¹⁰ Available at http://www.sp2.upenn.edu/ortner/docs/sorenson_doc10.pdf (last visited Nov. 13, 2013).

¹¹ Available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.93.7.1089> (last visited Nov. 13, 2013).

¹² Available at <http://www.doh.wa.gov/Portals/1/Documents/Pubs/970006Firearms.pdf> (last visited Nov. 15, 2013).

Homicide Data (Sept. 2013), at 6.¹³ Alarmingly, women in the United States are eleven times more likely to be murdered with guns than women in other high-income countries. David Hemenway & Erin G. Richardson, *Homicide, Suicide, and Unintentional Firearm Fatality: Comparing the United States with Other High-Income Countries, 2003*, 70 *J. Trauma* 238, 242 (2011). In the United States, intimate partners account for one third of perpetrators of female homicides, yet just 4% of perpetrators of homicides of men. *See* Zeoli & Webster, *supra*, at 90.

Notwithstanding these grim statistics, laws and policies that prohibit batterers from obtaining access to firearms have reduced the rate of gun violence in domestic settings. According to an analysis of FBI data, 38% fewer women are shot to death by intimate partners in states that require a background check for every handgun sale. Mayors Against Illegal Guns, *Gun Laws and Violence Against Women* (Apr. 2, 2013) (citing U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2010).¹⁴ Other studies indicate that prohibiting violent misdemeanants from possessing guns is associated with a decrease in the risk of arrest for new firearm crimes and violent crimes. Garen J. Wintemute et al., *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek to Purchase Handguns*, 285 *JAMA* 1019, 1026 (2002).

¹³ Available at <http://www.vpc.org/studies/wmmw2013.pdf> (last visited Nov. 18, 2013).

¹⁴ Available at http://libcloud.s3.amazonaws.com/9/e9/e/1726/Gun_Laws_and_Violence_Against_Women.pdf (last visited Nov. 18, 2013).

The social costs associated with domestic violence are significant. The total lifetime medical costs for all United States gunshot injuries sustained in 2010 alone has been estimated at \$2.9 billion, of which \$1.4 billion were paid by taxpayers. *The Cost of Firearm Violence*, Children's Safety Network.¹⁵ One 2003 study concluded that the costs of domestic violence exceed \$5.8 billion annually, with a figure that includes nearly \$4.1 billion in direct medical and mental health costs, and nearly \$1.8 billion in indirect costs from lost productivity and lost lifetime earnings. Nat'l Ctr. for Injury Prevention and Control, Ctrs. for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States*, at 2 (2003).¹⁶ These staggering figures do not take into account other costs such as criminal justice costs, wage losses, and the value of pain, suffering and lost quality of life.

II. Most Domestic Violence Victims Suffer An Escalating Pattern of Abuse that Often Leads to Death.

Domestic violence tends to follow a familiar escalating pattern, which begins with threatening physical behavior and verbal abuse that eventually lead to physical violence and, in some cases, murder. One study estimated that the probability of future injury for a domestic violence victim who experienced no injury in a prior domestic violence incident (i.e.,

¹⁵ Available at http://www.childrenssafetynetwork.org/sites/childrenssafetynetwork.org/files/CostofFirearmViolence_Print.pdf (last visited Nov. 13, 2013).

¹⁶ Available at http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf (last visited Nov. 13, 2013).

the probability of escalation of domestic abuse) was 83.7%. Alex R. Piquero et al., *Assessing the Offending Activity of Criminal Domestic Violence Suspects: Offense Specialization, Escalation, and De-Escalation Evidence from the Spouse Assault Replication Program*, 121 Pub. Health Rep. 409, 414 (Jul.-Aug. 2006). The Sixth Circuit's analysis would improperly permit perpetrators of these forms of domestic violence—namely abusive battery that does not entail “violent” physical force—to possess firearms contrary to the purpose of 18 U.S.C. § 922(g)(9).

Domestic violence can take many forms, including conduct that falls short of severe physical violence, which are strongly correlated with the risk of future injury. Various studies have shown that violence against women is often predicated upon emotionally controlling and verbally abusive behavior. In fact, having a verbally abusive partner is associated with the largest increased odds that a woman will be victimized. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice & Ctrs. for Disease Control and Prevention, *Extent, Nature, and Consequences of Intimate Partner Violence*, NCJ 181867, at 34-35 (Jul. 2000).¹⁷ Other studies similarly have shown that psychological aggression is a common precursor to physical aggression. In one study, the best predictor of violent physical abuse was the severity of preceding psychological abuse. Kris Henning & Lisa M. Klesges, *Prevalence and Characteristics of*

¹⁷ Available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf> (last visited Nov. 13, 2013).

Psychological Abuse Reported by Court Involved Battered Women, 18 J. Interpersonal Violence 857, 858 (Aug. 2003). Men who have been psychologically abusive in the past are more likely to use a weapon and to injure their spouse or partner. *Id.* at 864.

Because precursor non-violent domestic abuse is a strong indicator of future physical abuse, including murder, there is a strong policy interest in keeping firearms out of the hands of all convicted domestic abusers, regardless of whether their crimes contained “violent” physical force as an element of the offense. Strong evidence of a link between domestic abuse and gun-related violence spurred the enactment of Section 922(g)(9). Congress intended that the new gun ban be applied broadly. 142 Cong. Rec. S11,877 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (“In my view, anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms”). The Sixth Circuit’s approach would defeat this objective by allowing thousands of domestic abusers to arm themselves, placing their families, the public and law enforcement in great danger.

III. Law Enforcement Officers Face Ongoing, Intractable Risks When Domestic Abusers Have Access to Firearms

The cocktail of firearms and domestic violence presents grave dangers both to the victims of domestic violence and to the law enforcement officers who are called upon to protect them. The Sixth

Circuit's interpretation of 18 U.S.C. § 922(g)(9) will only exacerbate the already-significant dangers that police officers face every time they respond to a domestic violence call.

There are myriad reasons why domestic violence incidents tend to be particularly volatile, all of which counsel against the Sixth Circuit's construction of 18 U.S.C. § 922(g)(9). As explained by the Chairman and CEO of the National Law Enforcement Officers Memorial Fund:

No assignment poses more uncertainty and danger to a law enforcement professional than a domestic disturbance call. The circumstances are emotionally charged, and weapons, alcohol and drugs are often involved. An officer who responds as a peacekeeper often becomes a target of the violence.¹⁸

These risks are far from trivial. “Family disturbance calls . . . constitute the largest single category of calls received by police departments each year.” *Randolph*, 547 U.S. at 126 (Breyer, J., concurring) (quoting Helen J. Mederer & Richard J. Gelles, *Compassion or Control: Intervention in Cases of Wife Abuse*, 4 J. Interpersonal Violence 25 (Mar. 1989)). Between 1996 and 2009, 14% of law

¹⁸ *Domestic Violence Takes a Heavy Toll on Law Enforcement Community*, Campus Safety Magazine, available at <http://www.campussafetymagazine.com/Channel/Mass-Notification/News/2007/10/09/Domestic-Violence-Takes-a-Heavy-Toll-on-Law-Enforcement-Community.aspx> (last visited Nov. 13, 2013).

enforcement officers murdered in the line of duty were killed while responding to domestic violence calls. Shannon Meyer & Randall J. Carroll, *When Officers Die: Understanding Deadly Domestic Violence Calls for Service*, *The Police Chief*, May 2011, at 24-27.¹⁹ Almost all of these officers (97%) were killed by a firearm. *Id.* In the last three years alone, 149 police officers were killed by gunfire in the United States.²⁰ Moreover, according to FBI data, in 2009, domestic disturbance calls accounted for 32.6% of assaults on law enforcement officers. Cary Arberg, National Law Enforcement Officers Memorial Fund, *Domestic Disturbances: Deadly, Dangerous Calls*.²¹ In that year alone, there were 18,669 assaults on law enforcement officers related to domestic disturbances. *Id.*

The prevalence of domestic violence, exacerbated by abusers' ready access to firearms, requires that police departments and other law enforcement agencies expend large amounts of resources to

¹⁹ Available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2378&issue_id=5 2011 (last visited Nov. 13, 2013)

²⁰ Law Enforcement Line of Duty Deaths in 2011, Officer Down Memorial Page, available at <http://www.odmp.org/search/year?year=2011> (last visited Nov. 13, 2013); Law Enforcement Line of Duty Deaths in 2012, Officer Down Memorial Page, available at <http://www.odmp.org/search/year?year=2012> (last visited Nov. 13, 2013); Law Enforcement Line of Duty Deaths in 2013, Officer Down Memorial Page, available at <http://www.odmp.org/search/year?year=2013> (last visited Nov. 13, 2013).

²¹ Available at <http://www.nleomf.org/officers/stories/domestic-disturbances.html> (last visited Nov. 13, 2013).

combat the problem. Nationally, 15% to 40% of all calls for police assistance related to domestic violence incidents. Michael G. Brei, *Police Response to Domestic Violence in Crisis Intervention*, in *Criminal Justice/Social Service* 102, 102 (4th Ed. 2006). Other costs associated with the risk of assault of police officers include “hazardous duty pay, early retirement programs, use of bulletproof vests, and specialized training in backup assistance and weapon retention.” J. David Hirschel et al., *The Relative Contribution of Domestic Violence to Assault and Injury of Police Officers*, 11 *Justice Quarterly* 99, 115 (Mar. 1994).

The Sixth Circuit’s construction of 18 U.S.C. § 922(g)(9) heightens the risks that police officers face every day by permitting convicted domestic violence offenders to have access to firearms, in contradiction of Congress’s “manifest purpose” of closing a dangerous loophole in federal firearms legislation. *See Hayes*, 555 U.S. at 427. Accordingly, the Sixth Circuit’s decision should be reversed.

IV. The Sixth Circuit’s Interpretation of Section 922(g)(9) Frustrates Congressional Intent by Narrowly Defining “Domestic Violence.”

The Sixth Circuit’s opinion improperly restricts the scope of Section 922(g)(9) predicate offenses. The Sixth Circuit reached its conclusions by grafting this Court’s analysis of the statutory definition of the term “violent felony” onto the unrelated statutory category of “misdemeanor crime[s] of domestic violence.” The Sixth Circuit’s analysis is incorrect under principles of statutory construction and runs

contrary to the recognized objectives of Section 922(g)(9).

The Sixth Circuit’s decision ignores the fact that, in both common usage and in a technical legal sense, the term “domestic violence” refers to a range of behavior that includes violent as well as non-violent forms of abuse. Nothing in Section 922(g)(9) or its legislative history indicates that Congress intended to create a carve-out that would allow domestic abusers to possess firearms, so long as the their method of abuse does not include “violent” physical force. As this Court has recognized, Section 922(g)(9) was intended to close a loophole under the Gun Control Act of 1968, 18 U.S.C. § 921, et seq. *Hayes*, 555 U.S. at 426. But rather than closing that loophole, the Sixth Circuit’s opinion merely opens a new one. Because there is no basis in the text or legislative history of Section 922(g)(9) to construe the statute as requiring the commission of a crime involving “violent” physical force, and because such an interpretation would be contrary to Congress’ manifest intent in passing Section 922(g)(9), the ruling of the Sixth Circuit should be reversed.

A. The Sixth Circuit Improperly Relies on the Statutory Definition of the Term “Violent Felony” as Used in the Armed Career Criminal Act.

This Court has recognized that statutory definitions must be construed in light of the context to which they apply. *Johnson v. United States*, 559 U.S. 133, 139-140 (2010) (“Ultimately context determines meaning . . . and we do not force term-of-

art definitions into contexts where they plainly do not fit and produce nonsense”) (internal citations and quotations omitted). In *Johnson*, the Court construed the term “physical force,” as used in 18 U.S.C. § 924(e)(2)(B)(i), in the context of its application to the “statutory category of violent felon[ies]” that constitute predicate offenses under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). 559 U.S. at 140 (internal quotations omitted). The Court concluded that, “in the context of a statutory definition of ‘violent felony,’ the phrase ‘physical force’ means violent force—that is, force capable of causing pain or injury to another person.” *Id.* The Sixth Circuit improperly applies this interpretation of the term “physical force” to an entirely different “statutory category”—the category of crimes constituting “misdemeanor crimes of domestic violence” under Section 922(g)(9). The Sixth Circuit’s approach is incorrect for several reasons.

First, the statutory category of “violent felonies” is not coterminous with the statutory category of “misdemeanor crimes of domestic violence.” Indeed, the sources consulted by the Court in *Johnson* that confirmed that the term “violent felony” connotes the use of “strong physical force,” 559 U.S. at 140-41, also confirm that the term “domestic violence” contains broader connotations that include non-violent forms of battery. For instance, Black’s Law Dictionary defines “domestic violence” as conduct including “[t]he infliction of physical injury, *or the creation of a reasonable fear that physical injury or harm will be inflicted*, by a parent or a member or former member of a child’s household, against a child or against

another member of the household.” Black’s Law Dictionary 1601 (9th ed. 2009) (emphasis added).

Other authorities also confirm that the phrase “domestic violence” connotes conduct beyond the types of strong “violent force” necessary to establish a violent felony. *See, e.g., Domestic Violence* in Oxford English Dictionary Online (Oxford University Press, Sept. 2013)²² (defining “domestic violence” as “violent *or aggressive behaviour* within the home, esp. violent abuse of a partner”) (emphasis added). *See also Domestic Violence* in Dictionary of Policing (Willan Publishing, 2008)²³ (“Domestic violence may include physical violence, rape, sexual abuse, stalking, emotional belittling and bullying, and financial hardship.”); *Domestic Violence* in Early Childhood Education: An International Encyclopedia (Praeger, 2007)²⁴ (“Domestic violence can be defined as abuse or threats of abuse between adults in families.”); *Domestic Violence* in World of Criminal Justice, Gale (Gale Group, 2001)²⁵ (“Domestic violence is about control. It is a pattern of coercive behavior that may include physical, sexual, economic, emotional and psychological abuse If a family or household member repeatedly uses physical force (hitting, slapping, etc.), if they threaten harm to a victim or a

²² Available at <http://www.oed.com/view/Entry/56663?redirectedfrom=%22domestic+violence%22> (last visited Nov. 19, 2013).

²³ Available at http://search.credoreference.com/content/entry/willanpolicing/domestic_violence/0 (last visited Nov. 18, 2013).

²⁴ Available at http://search.credoreference.com/content/entry/abcededuc/domestic_violence/0 (last visited Nov. 18, 2013).

²⁵ Available at http://search.credoreference.com/content/entry/worldcrims/domestic_violence/0 (last visited Nov. 18, 2013).

victim’s children, if they threaten suicide, if they withhold money or food, if they demean the victim, if they force the victim to have sex, if they keep the victim from seeing friends or family then they have perpetrated the crime of domestic violence.”).

When viewed in this proper statutory context, “misdemeanor crimes of domestic violence” includes not just acts of strong physical violence, but other forms of offensive touching that create a reasonable fear that physical injury will follow. Such conduct could encompass offenses ranging from battery to robbery to kidnaping to unwanted sexual contact—all of which may be manifestations of domestic violence. *See Hayes*, 555 U.S. at 431 (2009) (Roberts, C.J., dissenting) (“‘Use’ of force [in the context of 18 U.S.C. §§ 921(a)(33)(A) and 922(g)(9)] is a term that encompasses a variety of conduct, which if listed separately would not pose the objection the majority raises (e.g., commits a battery, robbery or kidnaping).”); *Johnson*, 559 U.S. at 146 (Alito, J., dissenting) (“The term ‘force’ . . . had a well-established meaning at common law that included even the ‘slightest offensive touching.’ . . . This approach recognized that an offensive but nonviolent touching (for example, unwanted sexual contact) may be even more injurious than the use of force that is sufficient to inflict physical pain or injury (for example, a sharp slap in the face).”).

Additionally, the Court’s analysis in *Johnson* relied in significant part upon its prior construction of the statutory definition of the phrase “crime of violence” in 18 U.S.C. § 16. *Johnson*, 559 U.S. at 140 (“The ordinary meaning of this term, combined with §

16’s emphasis on the use of physical force against another person . . . suggests a category of violent, active crimes . . .”) (quoting *Leocal v. Ashcroft*, 543 U.S. 1 (2004)). It is inappropriate to apply this same construction to Section 922(g)(9), as the Sixth Circuit did, because the drafters of Section 922(g)(9) considered and ultimately rejected the use of the term “crime of violence” to describe the category of predicate offenses that would trigger the application of the law. *See Hayes*, 555 U.S. at 428 (“The proposed legislation initially described the predicate domestic-violence offense as a ‘crime of violence . . . committed by’ a person who had a domestic relationship with the victim. 142 Cong. Rec. 5840. The final version replaced the unelaborated phrase ‘crime of violence’ with the phrase ‘has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon.’”). The fact that Congress considered and then rejected the “crime of violence” language indicates its intent for Section 922(g)(9) to cover all categories of domestic violence, not just “violent” battery.

Consequently, the Sixth Circuit improperly limited the scope of Section 922(g)(9) when it relied upon *Johnson’s* definition of “physical force.” Indeed, this Court expressly declined to expand the definition of “physical force” under the ACCA to misdemeanor crimes of domestic violence. *Johnson*, 559 U.S. at 143-44 (“We do not decide that the phrase has the same meaning in the context of defining a misdemeanor crime of domestic violence. The issue is not before us, so we do not decide it.”).

B. Practical Considerations Require Reversal of the Sixth Circuit's Opinion.

Adopting the Sixth Circuit's construction of Section 922(g)(9) would "frustrate Congress's manifest purpose" of prohibiting domestic abusers from possessing firearms. *See Hayes*, 555 U.S. at 427. Congress recognized, prior to the enactment of Section 922(g)(9), that existing federal laws "were not keeping firearms out of the hands of domestic abusers, because 'many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies.'" *Id.* at 426. Moreover, this Court has recognized that Section 922(g)(9) was enacted to close a "dangerous loophole" in federal felon-in-possession laws. *Id.*; *Johnson*, 559 U.S. at 152-53 (Alito, J., dissenting) ("Congress therefore enacted this provision to keep firearms out of the hands of such abusers.").

The Sixth Circuit's ruling reopens this loophole by permitting individuals convicted of nonviolent but "serious spousal or child abuse" to evade the restrictions of Section 922(g)(9). As discussed above, there is simply "no suggestion" in Section 922(g)(9) or its legislative history that Congress intended to limit the application of the statute to predicate offenses involving violent physical force. *See Hayes*, 555 U.S. at 429 ("[The legislative record of the Lautenberg Amendment] contains no suggestion that Congress intended to confine § 922(g)(9) to abusers who had violated statutes rendering the domestic relationship between aggressor and victim an element of the offense.").

The Sixth Circuit’s approach nonetheless exempts a substantial number of domestic abusers from the restrictions of Section 922(g)(9), contrary to Congress’s intent. Under the Sixth Circuit’s approach, domestic abusers convicted of misdemeanor predicate offenses in states in which the generic assault and battery laws do not draw distinctions between different degrees of force could not be convicted under Section 922(g)(9) using the “categorical approach” adopted by this Court. Brief for Petitioner 40, *United States v. Castleman*, No. 12-1371 (U.S. Oct. 1, 2013) (“[T]he Sixth Circuit’s interpretation would render Section 922(g)(9) a virtual ‘dead letter’ in all but (at most) a handful of States ‘from the very moment of its enactment.’”) (quoting *Hayes*, 555 U.S. at 426-27). The Sixth Circuit’s approach would effectively prevent enforcement of Section 922(g)(9) in those states, even under the “modified categorical approach,” because “charging documents frequently simply track the language of the statute, and jury instructions often do not require juries to draw distinctions based on the type of force that the defendant employed.” *Johnson*, 559 U.S. at 152 (Alito, J., dissenting).

This Court has declined to make a “dead letter” of Section 922(g)(9) once already. *See Hayes*, 555 U.S. at 427. Indeed, in *Hayes*, the Court effectively sustained a conviction under Section 922(g)(9) based on a predicate offense that did not contain, as an element, the use of violent physical force. *Id.* at 419 n.1 (“West Virginia’s battery statute provides: ‘[A]ny person [who] unlawfully and intentionally makes physical contact of an insulting or provoking nature

with the person of another or unlawfully and intentionally causes harm to another person, . . . shall be guilty of a misdemeanor.”) (quoting W. Va. Code Ann. § 61-2-9(c)). Nor did the indictment in *Hayes* make reference to any instance of actual use of violent physical force in the commission of the underlying battery. *Id.* at 419 n.2 (“The indictment stated, in relevant part: ‘Defendant[’s] . . . Battery conviction . . . constituted a misdemeanor crime of domestic violence because . . . [b]attery has, as an element, the use *and attempted use* of physical force . . . Defendant . . . committed the offense of Battery against the victim. . . .”) (emphasis added).

Based on the same “practical considerations” that motivated the outcome of *Hayes*—*i.e.*, interpreting the statute in a manner consistent with Congress’s “manifest purpose” of prohibiting domestic abusers from accessing firearms—the Sixth Circuit’s ruling should be reversed.

CONCLUSION

This Court should reverse the judgment below.

NOVEMBER 22, 2013

Respectfully submitted.

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