

## PROTECTING VICTIMS OF DOMESTIC ABUSE FROM GUN VIOLENCE: *U.S. V. CASTLEMAN*

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### I. INTRODUCTION

The Gun Control Act of 1968, also known as the Federal Gun Ban, imposed a lifetime firearm possession ban on all convicted felons.<sup>1</sup> However, Congress recognized that “[f]irearms and domestic strife are a potentially deadly combination,”<sup>2</sup> so they enacted 18 U.S.C. § 922(g)(9) to prevent domestic homicide by firearms by those convicted under only misdemeanor statutes.<sup>3</sup> Section 922(g)(9) of the United States Code bars a person convicted of a misdemeanor crime of domestic violence from shipping, transporting, receiving, or possessing a

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<sup>1</sup> David B. Kopel & Joseph G.S. Greenlee, *The Federal Circuits' Second Amendment Doctrines*, 61 ST. LOUIS U. L.J. (2017).

<sup>2</sup> *United States v. Hayes*, 555 U.S. 415, 427 (2009).

<sup>3</sup> Before 18 U.S.C.A. § 922(g)(9) was enacted, only a felony conviction triggered the federal gun ban.

firearm.<sup>4</sup> The 2014 holding in *U.S. v. Castleman* will protect victims of domestic violence because it extends the federal gun ban to any domestic violence misdemeanor that requires a minimal level of force, satisfying a common law battery conviction.

This Article discusses the 2014 United States Supreme Court’s decision in *U.S. v. Castleman*, which confirmed that the presumptive common law meaning of “force” satisfied the definition of a misdemeanor crime of domestic violence, thus barring those persons convicted of a misdemeanor crime of domestic violence from possessing a firearm.<sup>5</sup> The facts and holding in *Castleman* are discussed in Section II. Section III analyzes the legislative history of the 1996 enactment of the Federal Gun Ban, and what is now known as 18 U.S.C. § 922, or the Lautenberg Amendment. This Section also discusses *Johnson v. United States*,

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<sup>4</sup>18 U.S.C.A. § 922. (“It shall be unlawful for any person (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”)

<sup>5</sup> *United States v. Castleman*, 572 U.S. 157, 159 (2014).

which explains the United States Supreme Court’s rationale in declining to read the common law meaning of “force” as “violent felony” provided and defined in the Armed Career Criminal Act.<sup>6</sup> Finally, Section IV presents a social background surrounding domestic violence, and statistics concerning domestic violence and its relationship to firearms and death.<sup>7</sup> This Section explains why the *Castleman* court appropriately confirmed the broad definition of “force” required in a conviction of a misdemeanor crime of domestic violence and explores the consequences this decision will have on protecting victims of domestic violence from their abuser’s ability to possess a firearm.<sup>8</sup>

## II. FACTS AND HOLDING

In 2001, James Alvin Castleman pleaded guilty to “intentionally or knowingly causing bodily injury

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<sup>6</sup> Johnson v. United States, 559 U.S. 133 (2010).

<sup>7</sup> Violence Policy Center, *When men murder women: An analysis of 2015 homicide data* (2017) available at <http://www.vpc.org/studies/wmmw2017.pdf> (last visited Dec 9, 2018).

<sup>8</sup> *Castleman*, 572 U.S. 157 (2014).

to” his biological child’s mother in violation of Tenn. Code Ann. § 39-13-111(b).<sup>9</sup> This plea resulted in a conviction of a misdemeanor crime of domestic violence.<sup>10</sup> In 2008, federal authorities discovered that Castleman was selling weapons on the black market.<sup>11</sup> Under his direction, Castleman's wife purchased firearms by lying on federal forms stating she was the actual buyer, then turned the firearms over to her husband.<sup>12</sup> Those firearms were then sold on the black market.<sup>13</sup> Because of his prior conviction of a misdemeanor crime of domestic violence, Castleman was prohibited from possessing a firearm under 18 U.S.C. § 922(g)(9).<sup>14</sup> Castleman was indicted on two counts of violating 18 U.S.C. § 922(g)(9), or the federal gun ban, in the Western District of Tennessee.<sup>15</sup>

Section 921(a)(33)(A)(ii) of the United States Code provides the definition of “misdemeanor crime

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<sup>9</sup> *Castleman*, 572 U.S. at 161.

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

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

<sup>12</sup> *United States v. Castleman*, 695 F.3d 582, 584 (6<sup>th</sup> Cir. 2012).

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

<sup>14</sup> *Castleman*, 572 U.S. at 161.

<sup>15</sup> *Id.*

of domestic violence.”<sup>16</sup> Section 922(g)(9) of the United States Code provides that anyone convicted of a misdemeanor crime of domestic violence, as defined in § 921(a)(33)(A)(ii), cannot ship, transport, receive, or possess a firearm.<sup>17</sup> Castleman moved to dismiss the charges filed under 18 U.S.C. § 922(g)(9).<sup>18</sup> He argued that the Tennessee conviction from 2001 did not qualify as a “‘misdemeanor crime of domestic violence’ because it did not ‘have, as an element, the use . . . of physical force’” required under Section 921(a)(33)(A)(ii).<sup>19</sup> Castleman argued

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<sup>16</sup>18 U.S.C. § 921(a)(33)(A) (2018).

“Except as provided in subparagraph (C), (2) the term “misdemeanor crime of domestic violence” means an offense that--

(i) is a misdemeanor under Federal, State, or Tribal law; and  
(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”

<sup>17</sup>18 U.S.C. § 922 (2018).

“It shall be unlawful for any person . . . (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

<sup>18</sup> *Castleman*, 572 U.S. at 161.

<sup>19</sup> *Id.*

that the gun ban did not apply to him.<sup>20</sup> The District Court agreed with Castleman and concluded that “the use of physical force” must include “violent contact with the victim.”<sup>21</sup> Defining the required “physical force” as “violent force,” the trial court held that a conviction of “intentionally or knowingly causing bodily injury to” under Tennessee Code Ann. § 39-13-111(b) cannot qualify as a misdemeanor crime of domestic violence because bodily injury can be caused without “violent contact.”<sup>22</sup>

The United States Court of Appeals for the Sixth Circuit affirmed the District Court’s decision, but reached their decision from a different angle.<sup>23</sup> In a divided panel, the appellate court found the “degree of force required under § 921(a)(33)(A)(ii) is the same as required by § 924(e)(2)(B)(i), which defines ‘violent felony.’”<sup>24</sup> Using the latter section, the

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

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

<sup>23</sup> United States v. Castleman, 695 F.3d 582 (6<sup>th</sup> Cir. 2012).

<sup>24</sup> 18 U.S.C. § 924 (2018).

“(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or

Appeals Court, citing the Supreme Court's decision in *Johnson v. United States*, held that "violent felony" requires "violent force."<sup>25</sup> The court noted the statute did not require proof of a serious physical injury, but, instead, required proof of any physical injury.<sup>26</sup> The court found that Castleman "could have caused a slight, nonserious physical injury with conduct that cannot be described as violent," and held Castleman's Tennessee conviction did not fit within a "misdemeanor crime of domestic assault."<sup>27</sup> Judge David McKeague dissented, arguing that the majority improperly extended the definition of "violent felony" articulated in *Johnson v. United States* to require "violent force" in a conviction of misdemeanor crime of domestic violence.<sup>28</sup> The Supreme Court of the United States granted a writ of

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destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another."

<sup>25</sup> *Id.*

<sup>26</sup> *Castleman*, 695 F.3d at 590

<sup>27</sup> *Id.*

<sup>28</sup> *Castleman*, 695 F.3d at 593-597 (McKeague, J., dissenting).

certiorari to resolve the issue concerning the meaning of “the use . . . of physical force.”<sup>29</sup>

The majority opinion, written by Justice Sonia Sotomayor, noted that Congress intends to incorporate the common law meaning of its terms.<sup>30</sup> Finding no indication to the contrary, the Supreme Court found that the common law meaning of force is offensive touching. The Court ultimately found that offensive touching is the level of force required to satisfy a conviction of misdemeanor crime of domestic violence under Section 921(a)(33)(A).<sup>31</sup> The majority cited the holding in *Johnson v. United States*, where the Court held that a “violent felony” under the Armed Career Criminal Act (“ACCA”), or 18 U.S.C. § 924(e)(1),<sup>32</sup> is not satisfied by a common

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<sup>29</sup> *Castleman*, 572 U.S. at 161.

<sup>30</sup> *Id.* at 162.

<sup>31</sup> *Id.* 18 U.S.C. § 921(a)(33)(A) (2018).

“Except as provided in subparagraph (C), the term ‘misdemeanor crime of domestic violence’ means an offense that (ii) has, as an element, the use or attempted use of physical force . . . .”

<sup>32</sup> 18 U.S.C. § 924(e)(1) (2018). (“In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant



law battery conviction which requires only “the slightest offensive touching.”<sup>33</sup>

In *Johnson*, the Court reasoned that declining to read in the common law definition of force was not practical considering the ACCA’s definition of “violent felony.”<sup>34</sup> The Court held that the “physical force” required in a “violent felony” means “violent physical force.”<sup>35</sup> Given this definition of “violent felony,” the majority in *Castleman* held that because offenders of domestic violence are “routinely prosecuted under generally applicable assault or battery laws,”<sup>36</sup> the common law meaning of force satisfies the force required under a misdemeanor crime of domestic violence.<sup>37</sup> Similarly, the Court noted that where the words “violent” or “violence” “connotes [*sic*] a substantial degree of force, that is not true of domestic violence.”<sup>38</sup> The Court stated

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a probationary sentence to, such person with respect to the conviction under section 922(g).”)

<sup>33</sup> *Johnson v. United States*, 559 U.S. 133, 139 (2010).

<sup>34</sup> *Id.* at 145.

<sup>35</sup> *Id.* at 140.

<sup>36</sup> *Hayes*, 555 U.S. at 427.

<sup>37</sup> *Castleman*, 572 U.S. 157 at 164.

<sup>38</sup> *Id.* at 164-65.

that a victim of domestic violence may endure slapping, shoving, hitting, and pushing, which, in a nondomestic setting, might be seen as minor instances.<sup>39</sup> However, physical violence is not the only type of violence offenders use to abuse their victims. Offenders will use financial abuse, pet abuse, emotional abuse, threats, fear, and isolation to control their victims.<sup>40</sup> Despite common misconceptions, domestic violence is described as when the accumulation of the aforementioned acts over time subject one intimate partner to the other's control.<sup>41</sup> Domestic violence is not exclusively limited to physical injury, such as a strike or a bruise, and this is not a concept which is commonly understood by those unfamiliar with domestic violence.<sup>42</sup>

Applying the common law definition of “physical force” to the definition of “force” required

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<sup>39</sup> *Id.* at 165. See DOJ, Patricia Tjaden, & Nancy Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence*, 11 (2000).

<sup>40</sup> CARMEN M. CUSACK, ANIMALS, DEVIANCE, AND SEX (2015).

<sup>41</sup> *Castleman*, 572 U.S. 157 at 166 (quoting *Flores v. Ashcroft*, 350 F. 3d 666, 670 (7<sup>th</sup> Cir. 2003)).

<sup>42</sup> CARMEN M. CUSACK, ANIMALS, DEVIANCE, AND SEX (2015).

under 18 U.S.C. § 922(g)(9), the Court ultimately held Castleman’s conviction qualified as a “misdemeanor crime of domestic violence.”<sup>43</sup> The Supreme Court rejected Castleman’s argument that his prior conviction of “intentionally or knowingly causing bodily injury to” his child’s mother in violation of Tenn. Code Ann. § 39-13-111(b)<sup>44</sup> did not involve an element of physical force.<sup>45</sup> The Court held that bodily injury results from “physical force,” and it is “impossible to cause bodily injury without applying force in the common law sense.”<sup>46</sup> In an unanimous decision, the Supreme Court reversed the Sixth Circuit’s holding and held that Castleman’s conviction under Tennessee law satisfied the degree of physical force required for a misdemeanor crime of domestic violence under Section

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<sup>43</sup>*Castleman*, 572 U.S. 157 at 168. 18 U.S.C. § 922(2018). “It shall be unlawful for any person (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

<sup>44</sup>*Castleman*, 572 U.S. 157 at 161.

<sup>45</sup> *Id.* at 168-70.

<sup>46</sup> *Id.* at 170.

921(a)(33)(A)(ii). Thus, this conviction barred him from possessing a firearm under Section 922(g)(9), and this decision allowed the weapons possession charge to proceed against Castleman.<sup>47</sup>

Justice Antonin Scalia wrote separately, concurring only in part and in the judgment, noting that he reached his conclusion on “narrower grounds.”<sup>48</sup> Justice Scalia accepted that Castleman’s guilty plea of “intentionally or knowingly cause bodily injury” to the mother of his child has “as an element, the use . . . of physical force.”<sup>49</sup> He also agreed that this force requirement satisfied a misdemeanor crime of domestic violence under the Tennessee statute.<sup>50</sup> However, Justice Scalia opined that the same meaning of “physical force” defined in *Johnson* should apply in *Castleman*. Justice Scalia noted that, if in *Johnson*, violent force means “force capable of causing physical pain or injury to another person,” then *Castleman* should be “an easy case”

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<sup>47</sup> *Id.* at 171-3.

<sup>48</sup> *Id.* at 173 (Scalia, J. concurring in part).

<sup>49</sup> *Id.* at 173-4.

<sup>50</sup> *Id.* at 174.

because it is impossible to cause bodily injury without using some type of force.<sup>51</sup> Thus, Justice Scalia determined that Castleman's conviction should qualify as a misdemeanor crime of domestic violence under the same definition of force as used in *Johnson*.<sup>52</sup>

Justice Scalia wrote a lengthy discussion about the meaning of domestic violence in his separate opinion. Responding to the majority opinion, which asserted that an act need not be violent to qualify as domestic violence, Justice Scalia called this “absurd[.]”<sup>53</sup> Additionally, he found that this description of domestic violence did not hold true when compared to dictionary definitions.<sup>54</sup> Justice Scalia quoted a definition which stated domestic violence is “violence between members of a household, [usually] spouses; an assault or other violent act committed by one member of a household

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<sup>51</sup> *Id.* Emily J. Sack, *United States v. Castleman: The Meaning of Domestic Violence*, 20 ROGER WILLIAMS U. L. REV. 128 (2015).

<sup>52</sup> *Castleman*, 572 U.S. at 175-80 (Scalia, J. concurring in part).

<sup>53</sup> *Id.* at 179.

<sup>54</sup> *Id.* at 179-80.

against another.”<sup>55</sup> Justice Scalia identified that other dictionaries gave “domestic violence” the same meaning, which he phrased as “ordinary violence that occurs in a domestic context.”<sup>56</sup> He argued that the majority opinion relied on publications from the United States Department of Justice's Office on Violence Against Women, and an amicus brief filed by the National Network to End Domestic Violence and others to state domestic violence in an extremely overly broad definition.<sup>57</sup> He rejected the amicus brief completely and argued that its sources were not relevant to defining a statute’s meaning of “physical force.”<sup>58</sup> He also concluded the Department of Justice’s definition was “equally capacious and (to put it mildly) unconventional.”<sup>59</sup> Overall, Justice Scalia felt the majority had broadly defined domestic

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<sup>55</sup> *Id.* at 178 (Scalia, J. concurring in part) (quoting BLACK'S LAW DICTIONARY 1564 (7th ed. 1999)).

<sup>56</sup> Emily J. Sack, *United States v. Castleman: The Meaning of Domestic Violence*, 20 ROGER WILLIAMS U. L. REV. 128, 146 (2015).

<sup>57</sup> *Castleman*, 572 U.S. at 180-81 (Scalia, J. concurring in part).

<sup>58</sup> *Id.* at 181-82.

<sup>59</sup> *Id.* at 181-82. See Emily J. Sack, *United States v. Castleman: The Meaning of Domestic Violence*, 20 ROGER WILLIAMS U. L. REV. 128, 146 (2015).

violence, and a more narrow reading of *Castleman* would have sufficed.<sup>60</sup>

### III. LEGAL BACKGROUND

Two important areas of the law inform the analysis of *Castleman*: the Lautenberg Amendment, otherwise known as the Domestic Violence Offender Gun Ban; and the United States Supreme Court's holding in *Johnson v. United States*.<sup>61</sup>

#### A. The Lautenberg Amendment

Before the enactment of the Lautenberg Amendment, only felony convictions operated to impose the federal firearms ban and misdemeanor offenses did not trigger the ban.<sup>62</sup> The Lautenberg Amendment, named for the late Senator Frank R. Lautenberg (D-NJ), bars any individual convicted of a misdemeanor crime of domestic violence from

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<sup>60</sup> *Castleman*, 572 U.S. at 175-80 (Scalia, J. concurring in part).

<sup>61</sup> *Johnson*, 559 U.S. 133 (2010).

<sup>62</sup> Bethany A. Corbin, *Goodbye Earl: Domestic Abusers and Guns in the Wake of United States v. Castleman—Can the Supreme Court Save Domestic Violence Victims?*, 94 NEB. L. REV. 101 (2015).

possessing or purchasing a gun.<sup>63</sup> Congress enacted the Domestic Violence Offender Gun Ban in 1996 in recognition of the dangers of domestic violence, and, more specifically, the risk of domestic homicide due to the presence of a firearm.<sup>64</sup> Despite the danger and prevalence of domestic violence, prosecutors typically charge offenders, who are infrequently charged at all, with misdemeanors.<sup>65</sup> Offenders are frequently able to plead down to a misdemeanor from a felony charge. To demonstrate the minimal punishments often handed down by courts in domestic violence cases, Senator Lautenberg used the example of “the hypothetical of a man who beat his wife brutally and was prosecuted, but like most wife beaters, he pleaded down to a misdemeanor and got away with a slap on the wrist.”<sup>66</sup> Senator Lautenberg hoped this law would “close[] this

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<sup>63</sup> 18 U.S.C. § 922(g)(9) (2018).

<sup>64</sup> *Id.*

<sup>65</sup> Mary M. Beck, *Prenatal Abandonment: 'Horton Hatches the Egg' In the Supreme Court and Thirty-Four States*, 24 MICH. J. GENDER & L. 53 (2017).

<sup>66</sup> Abigail Browning, *Domestic Violence and Gun Control: Determining the Proper Interpretation of "Physical Force" in the Implementation of the Lautenberg Amendment*, 33 WASH. U. J. L. & POL'Y 273 (2010).



dangerous loophole and keep[] guns away from violent individuals who threaten their own families.”<sup>67</sup>

Most importantly, this law determined the definition of force required to satisfy a misdemeanor crime of domestic violence.<sup>68</sup> Prior to the enactment of 18 U.S.C. § 922(g)(9) was the enactment of 18 U.S.C. § 921(a)(33)(A), which states the definition of a crime of domestic violence. However, this Section does not define “physical force.”<sup>69</sup> The United States Supreme Court has written that “[i]t is a settled principle of interpretation that, absent other indication, ‘Congress intends to incorporate the well-settled meaning of the common law terms it uses.’”<sup>70</sup> Under this application, Congress intended the requirement of “physical force” under Sections 921(a)(33)(A) and 922(g)(9) to be satisfied by the degree of force required to support a common law

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

<sup>68</sup> 18 U.S.C. § 922(g)(9) (2018).

<sup>69</sup> 18 U.S.C. § 921(a)(33)(A) (2018).

<sup>70</sup> *Sekhar v. United States*, 570 U. S. 729, 732 (2013). *See also* *Neder v. United States*, 527 U.S. 1, 23 (1999).

battery conviction.<sup>71</sup> Offensive touching is the “force” necessary to constitute a battery conviction.<sup>72</sup> Whereas offenders of domestic violence are routinely prosecuted under misdemeanor assault or battery laws,<sup>73</sup> Congress intended that the type of conduct required to obtain a common law battery conviction will also satisfy a “misdemeanor crime of domestic violence.”<sup>74</sup>

The Lautenberg Amendment has received continuous scrutiny from criminal and civil defendants who claim the firearm ban violates their Second Amendment right.<sup>75</sup> However, circuit courts have held that the gun ban for misdemeanant crimes of domestic violence under Section 922(g)(9) does not violate the Second Amendment.<sup>76</sup> The court in

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<sup>71</sup> *Hayes*, 555 U.S. at 427.

<sup>72</sup> *Lynch v. Commonwealth*, 131 Va. 762, 765, 109 S. E. 427, 428 (1921); *see also* *Johnson v. United States*, 559 U.S. 133, 139.

<sup>73</sup> *Hayes*, 555 U.S. at 427. *See also* *United States v. Castleman*, 572 U.S. at 164.

<sup>74</sup> *Hayes*, 555 U.S. at 427.

<sup>75</sup> “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

<sup>76</sup> *United States v. Chovan*, 735 F.3d 1127, 1139–41 (9th Cir. 2013). *See* *United States v. Booker*, 644 F.3d 12, 26 (1st Cir. 2011). *See also* *United States v. Staten*, 666 F.3d 154 (4th Cir. 2011). *See also* *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010).

*United States v. Chovan* resolved the constitutionality question by explaining that, because Section 922(g)(9) is supported by an important government interest, “the statute passes constitutional muster under intermediate scrutiny.”<sup>77</sup> First, the court said the legislative history indicates that Congress enacted Section 922(g)(9) because “it sought to reach the people who had demonstrated violence, but were not kept from possessing firearms by § 922(g)(1) because domestic abusers are not often convicted of felonies.”<sup>78</sup> Second, the court recognized the existence of the high rate of domestic violence recidivism.<sup>79</sup> Third, the court acknowledged that domestic abusers use firearms, and this creates a large concern for the victims’ safety.<sup>80</sup> Finally, the court noted that the use of firearms by abusers is more likely to result in the victim’s death.<sup>81</sup> The *Chovan* court was able to

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<sup>77</sup> *Chovan*, 735 F.3d at 1139.

<sup>78</sup> *Id.* at 1140. See *Hayes*, 555 U.S. at 427 (2009).

<sup>79</sup> *Chovan*, 735 F.3d at 1140.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* See also *Voisine v. United States*, 579 U.S. 2274 (stating that “to be constitutional, therefore, a law that broadly frustrates an individual’s right to keep and bear arms must target individuals who

defeat the constitutionality argument by exposing the realities of domestic violence and guns. It is not a good combination, and it is in the public's interest for courts to continually apply the firearm ban.

After the *Castleman* holding in 2014, the Court of Appeals for the First Circuit in 2017 decided *United States v. Carter*, which resolved some open issues from *Castleman*, although its holding is not binding on other circuits.<sup>82</sup> The First Circuit was asked to decide whether Carter's reckless assault conviction in Maine involved enough *mens rea* to satisfy the force required in a misdemeanor crime of domestic assault under Section 921(a)(33)(A)(ii).<sup>83</sup> In the statute, a *mens rea* clause is not present.<sup>84</sup> Courts attempting to apply the federal gun ban under Section 922(g)(9) for those convicted of misdemeanor crimes of domestic violence had difficulty distinguishing whether "the use . . . of force" required intentional, purposeful, reckless, or

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are beyond the scope of the 'People' protected by the Second Amendment.").

<sup>82</sup> *United States v. Carter*, 860 F.3d 39 (1st Cir. 2017).

<sup>83</sup> *Id.* at 40.

<sup>84</sup> *Id.*

negligent conduct.<sup>85</sup> Ultimately, the First Circuit held that recklessness satisfies the force necessary to convict an offender under a misdemeanor crime of domestic violence.<sup>86</sup> Thus, charges for possessing firearms under Section 922(g)(9) were able to proceed.<sup>87</sup>

### B. Case Law: *Johnson v. United States*

The United States Supreme Court used the holding in *Johnson v. United States* to distinguish between the definition of force required under a “violent felony” and the definition of force required in a “misdemeanor crime of domestic violence” in *United States v. Castleman*.<sup>88</sup> In *Johnson*, Curtis Darnell Johnson pleaded guilty to “knowingly possessing ammunition after having been convicted

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 42. *See also* *United States v. Booker*, 644 F.3d 12, 20 (1<sup>st</sup> Cir. 2017) (holding that “the statutory definition of ‘misdemeanor crime of domestic violence’ does not prescribe an intentional mens rea;” therefore, recklessness satisfies the force required). *See also* *Voisine*, 579 U.S. at 2280 (stating that Congress's definition of a “misdemeanor crime of violence” contains no exclusion for convictions based on reckless behavior.).

<sup>87</sup> *Carter*, 860 F.3d at 42.

<sup>88</sup> *Johnson v. United States*, 559 U.S. 133 (2010).

of a felony,” in violation of 18 U.S.C. § 922(g)(1).<sup>89</sup> The prosecution sought a harsher punishment under 18 U.S.C. § 924(e), which states that a person who both violates Section 922(g) and has “three previous convictions for a violent felony committed on occasions different from one another” shall be sentenced to a minimum of 15 years and a maximum of life in prison.<sup>90</sup> Johnson and the prosecution did not dispute that Johnson’s two convictions in 1986 satisfied the definition of a “violent felony,” but Johnson argued that his 2003 conviction of simple battery did not fit within this definition and thus should exempt him from the harsher punishment for repeat offenders.<sup>91</sup> Johnson’s simple battery conviction in 2003, under Florida Statute § 784.03(b)(1), is typically charged as a first-degree misdemeanor, but can be increased if a criminal defendant has been previously charged and

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<sup>89</sup> *Id* at 135-36.

<sup>90</sup> *Id* at 136.

<sup>91</sup> *Id*.

convicted under this statute.<sup>92</sup> Section 784.03(a)(1-2) defines a battery as when a person “actually and intentionally touches or strikes another person against the will of the other, or intentionally causes bodily harm to another person.”<sup>93</sup> Prosecution sought to convict Johnson under the Armed Career Criminal Act, or 18 U.S.C. § 924(e), by interpreting the force necessary in a “violent felony” under Section 924(e)(2)(B)(i)<sup>94</sup> to mean “actually and intentionally touching another person.”<sup>95</sup> The District Court held that “actually and intentionally touching another person” satisfied the definition of “violent felony” under Section 924(e)(2)(B)(i), and sentenced Johnson to 15 years and 5 months in prison.<sup>96</sup> The Court of Appeals for the 11th Circuit affirmed, and

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<sup>92</sup> *Id.* Fla. Stat. § 784.03(b)(1). “(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

<sup>93</sup> Fla. Stat. § 784.03(a)(1-2).

<sup>94</sup> 18 U.S.C. § 924(e)(2)(B)(i) (2018). “The term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that (i) has as an element the use, attempted use, or threatened use of physical force against the person of another”

<sup>95</sup> *Johnson*, 559 U.S. at 137.

<sup>96</sup> *Id.*

the Supreme Court of the United States granted certiorari.<sup>97</sup>

The main issue in this case was “whether a felony conviction for battery under Fla. Stat. § 784.03(b)(1) meets the definition of “violent felony” in 18 U.S.C. § 924(e)(2)(B)(i). More specifically, the Supreme Court of the United States was tasked with deciding whether the term “force” in 18 U.S.C. § 924(e)(2)(B)(i) has “the specialized meaning that it bore in the common law definition of battery.”<sup>98</sup> Generally, common law terms-of-art are defined by their plain common law meaning; however, the Supreme Court held that, in this context, the common law definition of “physical force” required in a “violent felony” does not fit.<sup>99</sup> The Court held that, in the context of “violent felony,” “the phrase ‘physical force’ means ‘violent force.’”<sup>100</sup> Stated plainly by the Court, “[w]hen the adjective ‘violent’ is attached to the noun ‘felony,’ its connotation of

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 140.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*



strong physical force is even clearer.”<sup>101</sup> The prosecution argued that interpreting 18 U.S.C. § 924(e)(2)(B)(i) to require “violent force” would weaken its ability to apply the federal gun ban under 18 U.S.C. § 922(g)(9) for “persons convicted of a ‘misdemeanor crime of domestic violence.’”<sup>102</sup> However, the Supreme Court disagreed and established that their decision to define “physical force” “in the context of a statutory definition of ‘violent felony’” does not have the same meaning as a misdemeanor crime of domestic violence because this was not an issue in the present case.<sup>103</sup>

The Supreme Court reversed the District Court’s decision, set aside Johnson’s sentence, and remanded the case for further proceedings.<sup>104</sup> Justice Samuel Alito filed a dissent, stating that the standard definition of the crime of battery is the “intentional application of unlawful force against the person of another.”<sup>105</sup> Justice Alito noted that, under this

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 143-44.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 146 (Alito, J., dissenting).

definition, battery falls within the plain language of the Armed Career Criminal Act, which requires only the use, attempted use, or threatened use of physical force.<sup>106</sup> He argued that the Court incorrectly refused to use the common law meaning of physical force in this case, and instead interpreted the statute to mean “violent force.”<sup>107</sup>

*Johnson* is easily distinguished from *Castleman* because, in *Johnson*, the Court was interpreting a felony statute, and, in *Castleman*, the Court was interpreting a misdemeanor statute. Misdemeanors often require a lesser degree of force than a felony. The Supreme Court correctly decided that the degree of force required for “violent felony” is “violent force” and the degree of force required for misdemeanor crime of domestic violence is satisfied by even a minimal level of force adequate for a conviction of a common law battery.

In determining whether a prior state conviction qualifies as a violent felony under the ACCA, the

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

Courts of Appeals must look to only the crime's statutory definition, not to the defendant's specific conduct.<sup>108</sup> In doing so, the court can determine whether “the minimum conduct criminalized by the statute's elements matches ACCA's violent-felony definition.”<sup>109</sup> And where no match exists, “then the state conviction is not an ACCA predicate.”<sup>110</sup> For example, in the First Circuit in 2018, Kirk Lassend argued that his conviction of displaying a weapon in the course of a robbery under New York Penal Law Section 160.15<sup>111</sup> did not constitute a “violent felony” because displaying a weapon does not

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<sup>108</sup> *United States v. Edwards*, 857 F.3d 420 (1st Cir. 2017).

*See United States v. Starks*, 861 F.3d 306, 315-16 (1st Cir. 2017). *See also Lassend v. United States*, 898 F.3d 115, 124 (1st Cir. 2018).

<sup>109</sup> *Edwards*, 857 F.3d at 423. This concept has been most recently coined by the court in *Mathis v. United States*, 136 U.S. 2243 (2016).

<sup>110</sup> *Id.*

<sup>111</sup> N.Y. Penal Law § 160.15 (2018). “A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime: 4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree, robbery in the third degree or any other crime.”

require “violent force.”<sup>112</sup> However, the Court rejected this argument, and stated that it is not the offender’s specific act that determines whether a violent felony has been committed.<sup>113</sup> It is, however, whether Lassend “threatened the use of violent force,” as required by the ACCA statute.<sup>114</sup> The Court recognized that, although Lassend may not have intended to employ violent force in brandishing the weapon, the display of a gun in the course of a robbery is likely to put the victims of the robbery in imminent fear; thus, the sight of the weapon created a threat of violent force.<sup>115</sup>

Similarly, in 2017, James Edwards argued that his conviction under the Massachusetts “armed-assault-with-intent-to-murder” statute was not a violent felony.<sup>116</sup> Edwards argued that, since the

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<sup>112</sup> *Lassend*, 898 F.3d at 128.

<sup>113</sup> *Id.* at 130.

<sup>114</sup> *Id.* at 132. The Court noted that “what matters for § 160.15(4) is not whether the defendant’s displayed item is actually capable of inflicting physical injury, but rather whether the defendant’s actions cause the victim to be in reasonable fear of bodily harm.”

<sup>115</sup> *Id.* at 130. *See Dean v. United States*, 556 U.S. 568 (2009) (stating the concern is “whether something happened—not how or why it happened.”).

<sup>116</sup> Mass. Gen. Laws Chapter 265, § 18B (2018). “Whoever, being armed with a dangerous weapon, assaults another with intent to rob

statute has assault as an element, as required by *Johnson*, and since assault can be committed without “violent force,” a conviction under that statute cannot be an ACCA predicate.<sup>117</sup> However, in rejecting this argument, the Court held that assault was not the only element in the offense.<sup>118</sup> The court ultimately found that “the intent-to-murder element makes it implausible that a defendant could be convicted under this statute based on an offensive-touching approach,” thus, making this offense an ACCA predicate.<sup>119</sup>

#### IV. ANALYSIS

Murder costs society an estimated \$17.25 million per offense.<sup>120</sup> This monetary approximation

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or murder shall be punished by imprisonment in the state prison for not more than twenty years. Whoever, being armed with a firearm, shotgun, rifle, machine gun or assault weapon assaults another with intent to rob or murder shall be punished by imprisonment in state prison for not less than five years and not more than 20 years.” *United States v. Edwards*, 857 F.3d 420, 424–25 (1st Cir. 2017).

<sup>117</sup> *Edwards*, 857 F.3d at 424-25.

<sup>118</sup> *Id.* at 421.

<sup>119</sup> *Id.*

<sup>120</sup> Center for Homicide Research, *One Murder Costs \$17.25 Million* (2010), available at <http://homicidecenter.org/one-murder-costs-17-25-million/> (last visited Dec 9, 2018).

includes “victim costs, criminal justice system costs, lost productivity estimates for both victim and criminal, and estimates on the public’s willingness to pay to prevent future violence.”<sup>121</sup> In 2015, 928 women were killed by male intimate partners.”<sup>122</sup> These 928 murders cost society approximately \$16 billion. *United States v. Castleman* was rightly decided because it extends the federal gun ban to any domestic violence misdemeanor that requires a minimal level of force satisfying a common law battery conviction. By extending the federal gun ban to misdemeanors, fewer offenders are able to legally purchase and possess guns. With fewer guns available to abusers, domestic homicide will likely decrease. If domestic homicide decreases, then the total annual costs associated with homicide investigation, prosecution, and incarceration are also likely to decrease.

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<sup>121</sup> *Id.*

<sup>122</sup> Violence Policy Center, *When men murder women: An analysis of 2015 homicide data* (2017) available at <http://www.vpc.org/studies/wmmw2017.pdf> (last visited Dec 9, 2018).

Research suggests nearly one in four adult women and one in seven adult men report having experienced severe physical violence from a domestic partner.<sup>123</sup> Society loses approximately eight million days of paid work for victims due to injury, fear, depression, and other consequences of domestic abuse.<sup>124</sup> Mental health, medical care, and loss of productivity for victims of domestic violence costs society more than \$8.3 billion annually, and this figure does not include costs associated the criminal justice system.<sup>125</sup>

Despite having less than five percent of the world's population, the United States ranks first in guns per capita.<sup>126</sup> More than “393 million guns are in circulation in the United States—roughly 120.5

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<sup>123</sup> National Center for Injury Prevention and Control, *Preventing Intimate Partner Violence* (2017), available at <https://www.cdc.gov/violenceprevention/pdf/ipv-factsheet.pdf> (last visited Dec 9, 2018).

<sup>124</sup>Centers for Disease Control and Prevention, *Intimate Partner Violence: Consequences* (2018), available at <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (last visited Dec 9, 2018).

<sup>125</sup> *Id.*

<sup>126</sup> Daniel Burley, *The Ban Down Under: United States Should Adopt Australian-Style Gun Regulations to Curb Rising Rate of Elderly Suicides*, 26 *ELDER L.J.* 149, 153 (2018).

guns for every 100 people.”<sup>127</sup> Approximately 4.5 million American women alive today have been threatened by domestic partners with a firearm, and one million have been shot, or shot at, by their abusers.<sup>128</sup> Staggering statistics show that the presence of a gun in a domestic violence situation increases the risk of homicide by 500%.<sup>129</sup> Between 1980 and 2008, at least out of five murder victims was killed by a domestic partner, and two out of five female homicide victims were killed by a domestic partner.<sup>130</sup> In addition, 44% of mass shootings between the years of 2008 and 2013 involved domestic partners.<sup>131</sup>

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<sup>127</sup> Center for Injury Research and Prevention, *Gun Violence: Facts and Statistics* (2018), available at <https://injury.research.chop.edu/violence-prevention-initiative/types-violence-involving-youth/gun-violence/gun-violence-facts-and#.W95rWqeZMgo> (last visited Dec 9, 2018).

<sup>128</sup> *Id.* Sorenson, S. B., & Schut, R. A., *Nonfatal gun use in intimate partner violence: A systematic review of the literature*. TRAUMA, VIOLENCE & ABUSE (2016).

<sup>129</sup> National Coalition Against Domestic Violence, *National Statistics*, available at <https://ncadv.org/statistics> (last visited Dec 9, 2018).

<sup>130</sup> Cooper, A., & Smith, E. L., *Homicide trends in the United States, 1980–2008*. WASHINGTON, D.C.: BUREAU OF JUSTICE STATISTICS. NCJ 236018. (2011).

<sup>131</sup> Everytown for Gun Safety, *Guns and violence against women: America's uniquely lethal domestic violence problem* (2014),



In 2015, the Violence Policy Center reported that 35% of women killed by men “are killed by intimate partners with guns,”<sup>132</sup> and “domestic violence incidents involving firearms are twelve times more likely to result in death than incidents involving other weapons or bodily force.”<sup>133</sup> Further, in the United States, women are 11 times more likely to be murdered with a firearm than in other high-income nation[.].”<sup>134</sup> Without the enactment of the Lautenberg Amendment, it is likely that the aforementioned statistics would be dramatically increased because domestic violence offenders would have easier access to firearms. The United States Supreme Court’s holding that common law battery is the force required to satisfy a misdemeanor crime of domestic violence in *Castleman* means that courts can no longer allow offenders to possess

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available at <http://everytown.org/documents/2014/10/gun-laws-and-violence-against-women.pdf> (last visited Dec 9, 2018).

<sup>132</sup> Violence Policy Center, *When men murder women: An analysis of 2015 homicide data* (2017), available at <http://www.vpc.org/studies/wmmw2017.pdf>. (last visited Dec 9, 2018).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

firearms and continue the cycle of domestic violence. Instead, however, courts can impose this gun ban, and protect victims both from their abusers and from imminent death, even when offenders are only charged, or plead down to, misdemeanor crimes.

#### A. The Danger Assessment and Lethality Screen

To further protect victims of domestic violence, the Danger Assessment has been added to front-line police investigations involving domestic violence to aid victims in recalling incidents of abuse using 20 “yes or no” questions about risk factors present within the past 12 months.<sup>135</sup> These questions help victims assess the frequency and severity of violent incidents using a weighted scoring system that identifies the level of danger victims face based on their answers.<sup>136</sup> The Danger Assessment is intended to gauge the predicative validity of the victim’s level

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<sup>135</sup> Jill Theresa Messing & Jacquelyn Campbell, *Informing Collaborative Interventions: Intimate Partner Violence Risk Assessment for Front Line Police Officers*. POLICING: A J. OF POL’Y & PRACTICE, , Vol. 10:4, pp. 328–340 (2016).

<sup>136</sup> *Id.* at 329.

of danger and assist the victim in developing a safety plan according to the level of danger identified.<sup>137</sup>

The Lethality Screen, a similar investigative tool, involves a related set of questions to assess the victim's level of danger.<sup>138</sup>

Similar to both the Danger Assessment and Lethality Screens, additional questions determine the risk factors of the victim and characteristics of the abuser. These questions may include the following: (1) how the abuser handles separation; (2) whether the abuser is known for controlling the daily activities of the victim; (3) whether the abuser has threatened to kill the victim or her children; (4) whether the abuser has used or threatened to use a weapon; (5) whether the abuser has attempted to strangle the victim; and (6) whether the survivor believes that her abuser is capable of killing her.<sup>139</sup>

The Lethality Screen incorporates additional questions intended to discover the abusers' employment status, whether the abuser has stalked

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 331.

the victim, and whether the victim has a child who is not the biological child of the abuser.<sup>140</sup> An offender is automatically classified as “high danger” if a victim reports that “he has threatened to kill her or her children, threatened her with a weapon” or if the victim believes the offender poses a lethal threat to her, her children, or others.<sup>141</sup> Both the Danger Assessment and the Lethality Screen have questions involving the use, threatened use and/or the possession of a firearm.<sup>142</sup> The presence of these questions link the presence of a firearm to a heightened risk of domestic homicide. Without the enactment of Section 922(g)(9), most of these offenders would likely own a firearm, thus, putting more victims in danger of domestic homicide.

#### B. Frustration of the legislative purpose

Failure to require the lower level of force would have robbed the federal gun ban of meaning and

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 334.

<sup>142</sup> *Id.* at 331.

frustrated its legislative purpose. The majority in *Castleman* noted that, had the Court held the definition of force in 18 U.S.C. § 922(g)(9) to mean anything other than what satisfies a common law battery conviction, the statute would be “inoperative in many States at the time of its enactment.”<sup>143</sup> In these states, the assault and battery laws prosecuting domestic abusers fell into two categories: “those that prohibit both offensive touching and the causation of bodily injury, and those that prohibit only the latter.”<sup>144</sup> The majority stated that offensive touching does not always result in bodily injury.<sup>145</sup> Therefore, by holding that offensive touching “did not constitute ‘force’ under Section 921(a)(33)(A), then Section 922(g)(9) would have been ineffectual in at least 10 States—home to nearly 30 percent of the Nation’s population—” at the time of Section 922(g)(9)’s enactment.<sup>146</sup> Requiring a higher degree of force in Section 922(g)(9) would mean that prosecutors

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<sup>143</sup> *Castleman*, 572 U.S. at 167.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 331.

would not be able to prove all required elements in most misdemeanor domestic violence charges, resulting in more frequent dropped charges. Consequently, more dropped charges of misdemeanor crimes of domestic violence mean the gun ban would dispossess fewer abusers of firearms and put more victims at risk of death by firearms at the hands of their abusers.

### C. Justice Scalia's Concurrence

Justice Scalia's separate opinion in *Castleman* reveals that he was uninformed of the tactics used by abusers in domestic violence situations. Most aspects of domestic violence experiences are "foreign, and therefore incomprehensible, to most non-survivors."<sup>147</sup> Victims are not always killed and are not always physically harmed, although both of these consequences are common. A punch to the face or an attempt at strangulation are conduct that qualifies as

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<sup>147</sup> Deborah Epstein & Lisa A. Goodman, *Discounting Credibility: Doubting the Testimony and Dismissing the Experiences of Domestic Violence Survivors and Other Women*, 167 U. Penn. L. Rev. (2018).

domestic violence; however, an abuser does not limit their violence to physical harm. Domestic violence is “when the accumulation of such acts over time can subject one intimate partner to the other’s control.”<sup>148</sup> Victims of domestic violence are controlled by their abusers through financial manipulation, psychological control, emotional dominance, fear, physical violence, threats of physical violence, violence towards pets, and isolation. Physical force is not required in a pattern of abusive conduct, and despite traditional misconceptions, “less visible abuse, such as putting a gun to a woman’s head or withholding child support that finances rent and food, can control a woman as effectively as bruising blows.”<sup>149</sup> Common types of abuses that are not physical include: (a) inability to use the joint banking account, destruction of tangible property, (b) refusing to pay rent or child support, preventing the victim from

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<sup>148</sup> *Castleman*, 572 U.S. 157 at 166 (quoting *Flores v. Ashcroft*, 350 F. 3d 666, 670 (7<sup>th</sup> Cir. 2003)).

<sup>149</sup> Mary M. Beck, *Prenatal Abandonment: 'Horton Hatches the Egg' In the Supreme Court and Thirty-Four States*, 24 MICH. J. GENDER & L. 53 (2017).

transportation, and (c) preventing the victim from obtaining and maintaining a job.<sup>150</sup>

If Justice Scalia was highly misinformed, the public is likely misinformed as well. The stereotypic assumption that domestic violence means only physical violence that only happens at the home of a married couple is likely related to the United States' high domestic abuse and domestic homicide rates. A lack of education about the actions of abusers, effects of domestic violence on victims, and the definition of domestic violence is harmful to victims, especially if they come to court to testify about the abuse they have suffered. Judges dismissing victims of domestic violence and finding their testimony not credible<sup>151</sup> relates to society's domestic abuse/homicide statistics. Human beings tend to hold onto a set of beliefs as true, even when ample discrediting evidence exists, under a concept known as belief

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<sup>150</sup> James Ptacek, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES*, 76, Northeastern University Press, 1996.

<sup>151</sup> Deborah Epstein & Lisa A. Goodman, *Discounting Credibility: Doubting the Testimony and Dismissing the Experiences of Domestic Violence Survivors and Other Women*, 167 U. PENN. L. REV. (2018).



perseverance.<sup>152</sup> Non-victims are unable to put themselves in a victim's shoes, and this creates a huge obstacle for victims when testifying.<sup>153</sup> This profound gap in perceiving how the world works make a victim's credibility suffer "not based on a fair assessment of her case, but rather on a fundamental failure of understanding" by the judiciary.<sup>154</sup> Justice Scalia's failure to digest credibly sourced information<sup>155</sup> about domestic violence was, and continues to be, harmful. A future court deciding whether to dispossess an offender of a firearm may put a woman at risk of homicide if they apply Justice Scalia's narrow definition of "domestic violence."

## V. CONCLUSION

Domestic violence cases are typically only charged as misdemeanors, and most include such levels of force that would satisfy only a charge of

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Such as the publications from the U.S. Department of Justice's Office on Violence Against Women, and the amicus brief filed by the National Network to End Domestic Violence filed in *Castleman*.

common law battery. Around the world, women are subjected to torment, physical, verbal, financial, and emotional violence, and are the victims of brutal attacks by their domestic partners, and the presence of a firearm in the home amplifies the risk of violence, and the risk of death of the victim. The holding in *Castleman* protects domestic violence victims because it extends the federal gun ban to any domestic violence misdemeanor that requires even a minimal level of force satisfying a common law battery conviction.<sup>156</sup> By extending this ban, the Supreme Court of the United States has made it more difficult for misdemeanants to continue the cycle of domestic abuse against their partners and has provided a safety net for victims whose abusers fare either charged with misdemeanors, or who plead down from felonies to misdemeanors. Extending this gun ban means courts can no longer give abusers a slap on the wrist; a misdemeanor conviction automatically triggers the federal gun ban. An automatic trigger of the gun ban means safety for

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<sup>156</sup> *Castleman*, 572 U.S. 157.

victims and their children, decreased expenses for courts and local communities, less offenders to go through the court system, and overall positive effects for children and families.