

Stephen Gutowski (00:03.41)

All right. Welcome, ladies and gentlemen, to another episode of the Weekly Reload podcast. I'm your host, Stephen Gutowski. I'm also a CNN contributor and the founder of the reload .com where you can head over and sign up for our free weekly newsletter today. If you want to keep up to date with what's going on with guns in America. This week, we are going to talk about a story that I think has gotten a lot of attention on the site and we've had some really good analysis pieces on it, but it's over whether or not illegal immigrants have second amendment rights.

whether the second amendment protects their right to keep and bear arms. To do that, we have one of those authors of one of those analysis pieces, Matt Larosiere is on the show with us today, Gun Rights lawyer based out of Florida. Welcome to the show, Matt. How are you doing?

Matt Larosiere (00:50.954)

Hey Stephen, good to see you. Good enough.

Stephen Gutowski (00:53.97)

Yes, yes. Tell people a little bit more about yourself before we get started here for anyone who might not know who you are.

Matt Larosiere (00:59.914)

So I'm a career gun industry person. I've been a gun lawyer for I don't know. A minute now. I've worked for some of the major groups and now I'm kind of on my own doing still working with some state based groups and otherwise and bringing my own lawsuits. I successfully brought a challenge to the pistol race rule here in the southeast in Florida.

I run a YouTube channel called Fuddbusters where I focus on breaking gun myths and myths, misconceptions. And I also work with the 3D printed gun community. I designed some printable firearms and stuff like that. And I do firearms industry consulting. So I kind of do the gun industry.

Stephen Gutowski (01:44.882)

Yes, you're all over the place. But you wrote an analysis piece for us based on federal court ruling as a district court ruling that found that a nonviolent person who was in the country illegally who had been arrested for having a gun that they are protected by the Second Amendment and that their rights have been infringed on by this federal law. There's a part of the gun control act, the prohibited person section that.

applies to anyone who's in the country unlawfully. Can you just give us a little bit of the background on that case in particular? What did the judge, where did they come down?

Matt Larosiere (02:24.138)

So the interesting thing about this case is it involves an individual who lives in Chicago, right? Who's just like, he's been here for quite some time for years. He's got a job, and he just wanted to have a handgun to protect himself because shocker, he lives in Chicago and

Stephen Gutowski (02:44.882)

Yeah, and it was 2020 as well, right? It was when he obtained the gun, right?

Matt Larosiere (02:48.394)

Yeah. And so like that was a time where if you didn't have a handgun, you were probably pretty stupid. So he acquired a handgun and that is the only thing he was doing that was even remotely illegal, right? That we know of is be here, which is something that is not a felony. And in fact, wasn't even a misdemeanor until fairly recent memory. So the question is basically consistent with

Bruins standard of if something violates or runs afoul of the plain text of the Second Amendment.

it has to, you know, it can only carry the day constitutionally if that type of restriction is consistent with the historical

tradition of firearms regulation, meaning there has to be a substantial historical analog to that prohibition. So the question is, is there a analog to categorically denying

the right to possess a firearms to a nonviolent class here. Like, you know, the particular class we're saying is people who are here either unlawfully or under a non-immigrant visa, right? That's what the law section says. And I think the court correctly pointed out that there's no historical tradition of this. And the historical laws that the government pointed to in trying to defend itself were not

really analogous because the government relied predominantly on laws covering disarmament of British loyalists. And then when you actually scratch the surface a little bit, yeah, they would disarm British loyalists, but it was repairable very easily. Like their local court could, they could go to their local court and be like, I promise I am done being a loyalist. And that was that.

Matt Larosiere (04:54.954)

Whereas here it's, oh, well, how can you get your rights restored if you're an illegal immigrant? Oh, well, we'll come here legally. Okay. And so how do you do that? Well, if you're a member, if for many people, it's, you know, wait for about 110 years. So that's the short answer is there's no way to fix it. So there, there really isn't a connection.

Stephen Gutowski (05:18.642)

Now we also had another gun rights lawyer, Costas Morris, who's been on the show before write a sort of counter analysis piece to yours where he argued that perhaps there's this similar to what the government argued in this case, but that there's a political community that you have to be a part of in order to benefit from the protections of the second man that, you know, the people are the ones who have.

the right to keep him bare arms. And if you're not a member of the people as a sort of philosophical, I guess conception, then you're out, you fall outside of those protections. What would you say to that, that basic concept?

Matt Larosiere (06:04.746)

So the most glaring issue there is that the people is not referred to only in the Second Amendment context. It's referred to several times in the Bill of Rights. So in order for that to hold water, you have to answer the obvious question of, okay, well then, who, so number one, who is the people identified in the Second Amendment? Number two, who is the people identified in the Fourth Amendment? And then the other time this reference, I believe, is that,

the ninth amendment, et cetera. And so when these are all referenced, okay.

which ones are different and why. So it would have to be that it's either that the other three times it's used.

Matt Larosiere (06:54.858)

It means something else, right? And it's consistent for those other three times. And the case law would show that it's consistent, right? But it's different in the second amendment context. So the then question is, well, why? Why is it different in the fourth amendment context than the second amendment context? And that's never been explained. So that's an issue.

Stephen Gutowski (07:24.498)

In your mind on that point real quick, I mean, I've heard that argument before, right? But more in response to like the collective right conception of the Second Amendment that it's not really guaranteed to individuals, the right to keep and bear arms, it's sort of a, it's guaranteed to militias or state militias or something of that nature. And I've heard this argument about the people come up in that context where, you know, we don't say that about other sections of the Bill of Rights where,

Matt Larosiere (07:24.906)

Let's.

Matt Larosiere (07:34.73)

Right.

Stephen Gutowski (07:53.522)

where rights are guaranteed to the people or protected for the people. And so, yeah, well, what is your conception, I guess, of the people then in that sense?

Matt Larosiere (08:05.034)

So I think, so you're asking what do I think the people means?

Stephen Gutowski (08:09.33)

Yeah, so you're saying that the people includes illegal immigrants, people who are in the country over state of visa or they cross the border illegally or what have you there. They don't have a legal status in the United States. You're saying that that does include that they are included in the people. What are the boundaries of the people in your understanding?

Matt Larosiere (08:32.042)

So you have to, in order to read the Constitution consistent with all of the frameworks that we have for analyzing First Amendment cases, Second Amendment cases, Fourth Amendment cases, you have to read it in the context of the time it was written. And so let's think about that broader context. The word citizen is used, like I think 11 times in the original Constitution. They used different terms very intentionally. And so,

at the time of the founding, when these rights would have been most acutely understood, a citizen only mattered, right? Like, look, there was a lot of horrible race stuff, but I don't think we really need to drive into it. I think that you can answer the race issue with some people were not considered people and that was wrong. And we fixed that and we can apply those fixes going backwards, right? Because it was a dehumanizing thing. It wasn't a legal categorization thing.

Stephen Gutowski (09:29.81)

Right, you're talking about like slaves being banned from owning guns, Native Americans, groups like that.

Matt Larosiere (09:33.546)

Yeah, well, and also the Constitution explicitly, you know, define it, right? The three fifths compromise, etc. Yeah. So, that's dealt with when we now understand that those are people, right? And so I think it's easy to understand that people outside of the people context is human beings. Okay. There's some people might wish that that included dogs or cows or whatever, but I think we can all agree that it's all human beings are people.

Stephen Gutowski (09:39.442)

Yeah, three first count runs. Okay, I got you.

Stephen Gutowski (09:54.066)

Mm -hmm.

Stephen Gutowski (10:02.866)

Right.

Matt Larosiere (10:03.082)

So then the question of the people. Well, when the constitution refers to citizens, it's almost always in the context of specifically holding office. And so then when you look at, well, what was citizenship at the time? Well, and there was no federal citizenship for two years. So you didn't have United States citizenship at the time of the founding, it didn't exist. And then when it was enshrined, statutorily,

guess who could make you a citizen? Any court, any common law court. So you could go to what is equivalent now like your local magistrate and all you had to do was say, hey, I'm a white freeholder and I've been here for two years. And then they'd go, cool, you're a citizen. And that's only relevant for political office. So at the time of the founding, I'm sorry, what are you saying?

Stephen Gutowski (10:55.986)

And that's, mm -hmm. No, yeah, and so that's very, very different from how we bestow citizenship today. That's what you're saying.

Matt Larosiere (11:03.082)

Yes.

Right, because remember, birthright citizenship didn't happen until after the Civil War. So at the time of the founding, up until the Civil War, it would be the case that most people were not citizens because they would have never bothered. Right? They would have never bothered to go and get registered. Like, why would they bother? Why would the... And also many of them weren't eligible.

to apply for citizenship in their states because they wouldn't have held land. And there's never been any question that white commoners couldn't have guns. It was never even remotely touched on. And they were certainly in many instances, not citizens. Of course, very quickly. So I will say like we did recognize citizenship at birth before the civil war, but birthright citizenship happened later on. I just wanted to.

didn't want to leave that issue dangling. The point is citizenship wasn't magic and it wasn't a precondition for any human right. It was a political right for seeking office, voting and things like that. So we've got at the time of the founding, a very clear lineation of a political class.

Right. And the political class is governed solely with respect to political issues. Right. And that's where citizenship comes in. I don't think it makes sense to now go back and say, well, we need to take a new concept, our modern conception of a political class and force it into the people. Whereas at the time of the founding citizens would have accurately described.

Matt Larosiere (13:04.266)

the political class, right? So the people who could run and vote. And then there was everyone else. So you needed to have another word that covered, like, you know, this isn't just for members of this political class, right? This isn't just for landowners and people who have had enough time and money to go and bother the local courts. It's for something else. And so, well, what's a pretty unambiguous way to refer to people? The people.

And I think the people, the only way the people is principally distinguished from human beings in the constitutional context is in the context that some people have brought up where like, yeah, if you have people coming in here under a foreign flag, right, and I'm not talking about like this bizarre conception people have now that all illegal aliens are somehow operatives of the government that they're trying to escape. I'm talking about

the very real threat that you had at that time of actual invasions, right? Those would be people, but I think it would be pretty easy to say that, you know, a Legion coming in, literally flying a foreign flag would not be the people of the United States, right? So they probably wouldn't get all of the same due process, right? You know, it would probably not be shocking if a band of mercenaries came in and they were detained without,

you know, full legal process. So that's an important distinction.

Stephen Gutowski (14:36.786)

Okay. So, so, uh, from what I'm, what I'm understanding here about your conception of this, um, the citizenship, first of all, the founders had a new, made a distinction between the people and citizens in the founding documents, right. Um, and in the early founding era laws, and because they use the people in the second amendment,

they weren't specifically referring to those citizens or people with a specific level of political power at the time. And in addition to that, your understanding of the people as a term, as they used it at the founding, is basically everyone except for people who are literally directly working for other governments in either some sort of invasion scenario like you've described there with mercenaries or whatever.

or I guess diplomats or people like that as well.

Matt Larosiere (15:36.714)

And it would include like, so you have to remember the other reason this would be important is because Native Americans were actively considered to be foreign, like, yeah, and like, and when they were in, because there was a lot of issues with, you know, their conception of how land works versus, you know, early American conception of how land works. There was a lot of issues where they would be considered right, a roving, you know, mercenary thing.

Stephen Gutowski (15:47.25)

separate separate country.

Matt Larosiere (16:06.922)

So that I think it fits. So I think that the easiest way to say it is that when these terms were used in the Constitution, there was the specific term citizen and the general term the people. Right. And so if.

they knew what citizen was, why would they not use that term if they meant for it to be limited? Because necessarily, I think necessarily citizen has to be more specific than people. Otherwise that's a massive failure of English, right? I'm not saying it's impossible, but I'm saying if that's what was intended, they failed dramatically. And then the other piece of evidence is when you later on look,

at the Reconstruction Amendments, they separately refer to citizens, people, and all persons in an effort to kind of nip this in the bud. And so, and they do it in that order, right? They do it in the order from most specific to most general. So there was citizens, the people, and persons. And that came quite a while after...

we just had the distinction of citizens and people. And so if you believe that the people is limited to some political community or something like that, my challenge to you would be...

Do you think that the pre -Civil War America, the restrictions that whatever you're imagining to be applied against this out group could be applied to a white commoner? Because they would have to be applicable to a white commoner if you're making this political community distinction.

Stephen Gutowski (18:04.626)

Interesting. Cause yeah, I mean, when you read Kostas' piece, he starts from the point of, and I imagine you guys started at the similar point here where the right to keep and bear arms is a natural right that's, you know, bestowed to all people as a first principle, right? It's sort of an outgrowth of the right to self -defense, right? If you deny the means to self -defense, you deny the right to self -defense, and that's where you get basically your gun rights from. There's also sort of a...

Obviously, I.

right to self -determination as a group. That's the other half of gun rights as well, your sort of self -governance aspect too. But he argues that the Second Amendment is a political attempt to codify that right and it's imperfect in its nature and in the history that surrounds it that we have to rely on from Bruin and essentially,

There were certain groups of people who were not part of the political community, but you're saying that they may not have been considered Indians or Native Americans or loyalists, I guess would be another one. But I guess in your calculation here, you agree that obviously those restrictions existed, but they were more about, or slaves even, more about this concept that

these folks aren't part of the people who are in America because Native Americans were, you know, the tribes are separate countries and I mean we still essentially have that understanding today but that was certainly the understanding at the time and even loyalists were sort of, they were loyal to the British flag and so that

Stephen Gutowski (20:07.922)

also puts them outside of this conception that you're talking about. Is that the real distinction that these weren't necessarily people outside of the political, these are people outside of the country in a certain sense?

Matt Larosiere (20:18.122)

Yeah, I think that's a more consistent way of looking at it. I think even more consistent than the dangerousness angle that, you know, is kind of, this is kind of being ring fenced around, especially considering how quickly you could have those rights restored, right? So yeah, it's two things. One, you're either not part of the, you're literally part of another nation.

and acting for it, right? Which loyalists is that's a term of art, right? Or, yeah, or you're not a person, right? So that's why I was thinking to, that's why I thought it was important to bifurcate the analysis. Because the question is, one, are illegal aliens part of the people? Because if they're not, we don't need to look at the historical analogs because they're outside of the plain text of the Second Amendment.

Stephen Gutowski (20:50.546)

Right. But that's what it's describing. Yeah.

Stephen Gutowski (20:58.77)

Right, like they would consider slaves to not be people.

Matt Larosiere (21:16.234)

But I think they have to be. I think they absolutely have to be, especially when you look at what were the preconditions for citizenship at the time of the founding. You had to be here for two years. So you were not a citizen, but you were here, right? And that wasn't illegal then. And it wasn't illegal until we got all of these, frankly, the nightmare we have now with the entitlement systems. That's when unlawful entry became a thing.

And then unlawful presence wasn't a thing for decades later. And people lose sight of that. People also lose sight of the fact that we were a open borders country until the end of World War II. But I'll leave that hand grenade where it lies. The other important point when we're talking about...

Matt Larosiere (22:10.154)

historical constitutional distinctions.

Matt Larosiere (22:17.418)

Sorry.

Stephen Gutowski (22:19.602)

No, it's okay, gather your thoughts here. Well, actually I have one quick question on the, there's sort of a practical aspect that hasn't been discussed much in this yet. Cause I wanna, I do wanna move on to some of the, well, the practical.

legal arguments and how you think things will turn out in the court, because that was a big part of Kostas' analysis. But first I want to talk about one of the practical issues that I think a lot of people have with this, the idea of people in the country unlawfully being able to own guns, is that it's much more difficult to tell. From what we understand, the person at the center of this case doesn't have any violent criminal history. But obviously, if they're not here legally,

it can be hard to tell what their history is, where they've come from, right? I mean, that's part of the, I think one of the objections that people hold to the, one of the more reasonable ones at least, to this conception that people who are in the country unlawfully should be able to own guns, right? How do you respond to something like that?

Matt Larosiere (23:28.618)

Oh, good. And that perfectly dovetails into what I was wanting to get into, which is the natural right versus codification distinction. So if your answer is, well, sure, right, they they have a right, they're, they're humans, they have the right to defend themselves, but we have to check.

Well, if that is a successful way around simple disarmament and simple categorical disarmament.

Matt Larosiere (24:08.33)

That's a pretty damn slippery slope. Because then it just suddenly becomes, but we have to check. And then where has gone your argument against universal background checks? Where has gone your argument against private party transaction bans? It's gone. If we accept the rationale of we have to check, we lose the right in a vacuum, right? The thing that makes it a right,

is that it's a restraint against the government. You can't touch this. You're not allowed to touch this. If it's, okay, we can't touch it after we've checked, right? And then what does checking mean? Does checking mean a next check? How often? Is it a next check every day? Right? Like the Illinois thing? Is it a void card? What does it look like? That stops looking like a right. The further you get down,

towards what we're talking about here, which is the only way we can know what crimes you've committed in other countries is to go through the whole rigmarole, right? And, you know, like people always say, get you in here legally. Well, like I was saying, for many people, that is a many, many, many, many, many year, if even possible, precondition. And do we want to accept that?

as being a categorically acceptable precondition to being able to own guns. And I would think that most people who are, you know, hardcore pro -gun people or gun rights absolutists would be scared about that, right?

Stephen Gutowski (25:52.434)

Well, you never know. I mean, obviously this one of the interesting things about this case is that it's drawn a lot of division in the gun rights community from what I've seen. And, you know, there's obviously a lot of overlap between the gun rights movement and many people who support gun rights and the opposition to illegal immigration generally. And so this is an area where there's some tension clearly from that.

Matt Larosiere (26:18.954)

Yeah, as part of a broad political intersectionality. Yeah.

Stephen Gutowski (26:23.122)

Yeah, the coalition of the right includes gun rights and opposition to, at the very least, the legal immigration. And so, yeah, there's been, I think that's one of the main reasons this has become such a, we've gotten so much attention to this is one of our most highly trafficked stories are these three pieces related to this, which is why I thought, yeah, it was why, it was why, you know, for the last month or so, that's why I wanted to do a little bit deeper dive with you because,

Matt Larosiere (26:44.138)

Makes me feel proud.

Stephen Gutowski (26:52.338)

Um, uh, you know, I wanted to hear your, your side, uh, fleshed out a little bit more. I thought people would, would benefit from that. And, um, and yeah, so, uh, in addition to that.

Matt Larosiere (27:01.642)

I can't wait to get more hate mail about what a what a vicious and terrible unamerican person I am.

Stephen Gutowski (27:09.426)

Um, uh, you know, uh, I, I certainly appreciate you coming on and doing this and like putting, putting your, uh, your best effort into ex to detailing your, why you think this is the case and what the concerns are and what the risks are of, of, uh, you know, accepting the restriction as it exists today. Cause I mean, and this restriction only goes back to the sixties, right? And this is part of the gun control act.

Matt Larosiere (27:33.802)

Well, the 60s is when it would have started, but then it wouldn't have had teeth until like 20 years ago. So it's really

strange. But let me tackle one of the things, right? This has been a highly trafficked story because I think it's one of the few times where people that are right of center have to deal with ideological consistency. This is hard. If you are a mainstream right -wing person, this is a hard problem because...

you know, part of this position, the platform is opposition to illegal immigration, you know, right, but you should also like, hate the NFA and hate the entirety of Section 922 and want it all taken off. So this is one of those rare times where your beliefs are faced right across from each other. And I think the reason that this is so difficult and hard for people to deal with is because

And people hate it when I say this, but I think it's true. I think that logically arguments for arguments against immigration are the same logical arguments as arguments for gun control. They follow a idea that certain entities, right? Certain of these things are dangerous. And because some of them are dangerous, we need to apply more controls to protect us from the bad ones, right? And what is the end like?

How far can we go? Well, we don't know, but let's just try a little more, right? And see if that fixes it. And I think that's why it's uncomfortable, but it doesn't have to be uncomfortable because you can believe, you can at the same time believe that this case was decided correctly, that illegal aliens do have the right to possess equipment that is useful for self -defense.

and at the same time believe that they should be deported immediately. Right? Those are not logically inconsistent. That might not be what I believe, but you can agree with me that the case was correctly decided and that the government doesn't get to precondition a basic human right on, you know, like the most difficult bureaucratic process known to man and also say,

Matt Larosiere (29:56.266)

I do not like illegal immigrants and they should be punished. Those are two positions that you can hold at the same time and no one can accuse you of being inconsistent. It's totally fine. And I think if people accept that, it becomes a lot easier. It also, I would like it a lot because it would mean more people agree with me and I'd get a little less hate mail.

Stephen Gutowski (30:16.466)

And I think, you know, the as far as bending the coalitions, you probably have the exact same stress point on the left where, you know, illegal immigration or being in the country unlawfully is, as you've mentioned, is a misdemeanor. And it wasn't even a misdemeanor for a long time. Right. Yet we strip people of their one of their rights guaranteed in the Bill of Rights and.

Matt Larosiere (30:35.85)

No, it was a civil infraction. It was like a parking.

Stephen Gutowski (30:45.138)

That seems like a bit of an odd thing to support for if you're on the left as well. Yeah. So, you know, everyone's twisted around, I think, on the traditional American political coalitions on this particular issue for sure. It reminds me of sort of Permanentless Carry because you would think that would be more of a something that the criminal justice reform people would be into on the left and the opposite on the right.

Matt Larosiere (30:49.354)

Yeah, it's certainly awkward, isn't it?

Matt Larosiere (31:11.21)

You know, but all of a sudden you see them joining, joining briefs with sheriff's departments to say, please keep our permits.

Stephen Gutowski (31:18.29)

Yeah, right. So, you know, sometimes guns can can scramble things in that way. You know,



Matt Larosiere (31:23.53)

Yeah. Which there is a bit of catharsis for me in because I started my career working in an ideological think tank. And so it is always kind of exciting when these sparks begin to fly because it generally means it hurts because it's working. It's generally what it means.

Stephen Gutowski (31:42.194)

Hmm. Uh, but so let's get into some of the, uh, the other critiques that, that coast has brought up in his piece. Cause you know, again, his piece focused a lot more on the sort of practical. Yeah. The practical aspect of the Supreme court. And, you know, we've talked about brewing. I think you've gone through and given a pretty, um, at least compelling case, whether I, whether everyone's going to agree or not is a different question, obviously, but, uh, you've got, uh, a solid basis for why, why you think.

Matt Larosiere (31:52.33)

on what the court might do. Yeah.

Stephen Gutowski (32:11.89)

this was the right decision under the Bruin test as it's been articulated by the court. But there's the question of how you think the court would actually handle this case. Because one thing to make clear too is like this particular ruling is a bit of an outlier. There have been a number of other federal courts that have gone the other way even since Bruin. So there's not consistent.

position from the lower courts on this point yet, which is a very common thing you've seen in the wake of brewing a lot of disagreement at the lower courts.

Matt Larosiere (32:47.658)

there is a consistent position on denying the right. They always follow the same logic. And I think and you know, the question is, when you look at the split, right, because the split is on one side, it's, well, they're not part of the political community. And then we already touched on that. I think it's important to distress that though. And a lot of what, you know, my dear friend cost us wrote is,

Stephen Gutowski (32:51.634)

Yeah, yeah, I guess that's fair. This is one of the first.

Matt Larosiere (33:17.034)

it hangs back to this political community. And then they cite Heller. And well, because Heller refers to the political community.

Stephen Gutowski (33:23.762)

Yeah, that's, that's one thing I was going to bring up is the court itself has talked about this sort of conception of, uh, well, you know, the, these like Heller, for instance, you're talking about a defendant who was, um, you know, law abiding citizen, um, with no, you know, serious criminal record. And they're, they're saying that that.

They mention this offhand in describing the kind of people who are affected by the laws they're dealing with in Helleran and Bruin. What do you make of that? I mean, they do talk about it, at least in dicta, you know, in this non-binding sense.

Matt Larosiere (33:51.754)

Right.

Matt Larosiere (34:00.17)

Right. So the political community angle was the Heller Court grappling with the opposing justices contention that the Second Amendment was not an individual right. And so basically, we had several pages of the court saying, you're being stupid. Like, look at all of the other amendments that we've dealt with that use the same language and that obviously apply to people.

And then they said, like, for example, the fourth amendment unambiguously covers all members of the political community. And then the case they cite is one of the interesting cases where something was found not to be fourth amendment protected. And that was a search by us authorities of the residents of a Mexican natural national in Mexico. So the Mexican residents, right.

he was alleged to have committed crimes, sending drugs to America, right?

They said that's not covered by the fourth amendment because you have no voluntary connection to this country. So you're not like, why would you be covered by the fourth amendment out there? That is not the same thing as what we have here. In fact, it's the opposite. So I think the political community thing was a piece of dicta when the court was saying.

you guys are so stupid, obviously it's broad. Look, it covers everything except this guy, right? And then they point to that guy. And this is somehow tortured into political community that like, I don't understand how it got to, you need to be able to vote. I legitimately don't understand that. But lower courts have taken that and just run with it because they said, well, Scalia muttered political community in Heller. And so that means.

Matt Larosiere (35:58.346)

the scope of the people in the second amendment is different from what it is everywhere else. And I just think that's like, so that's the argument on the political community side, right? Is that, that, right? And then you look at the argument on the other side, which is, hey, we looked at the historical analogs, we think the how and why is a little bit different, I don't think they carry the day.

So you don't have to say one's perfect, but which is the better like, which is the better exercise and reasoning? I think on the side of allowing or not violating these people's rights, I think it stands up better. I think there's less leaps, right? Like logical equations can be reduced to math problems, right? So in which one is there more question marks? And I think there's more question marks on the...

it's okay to regulate.

Stephen Gutowski (36:54.579)

Yeah, you know, when I when you look at those those mentions in Heller and Bruin of the when they're describing the people involved as as defendants or plaintiffs, you know, it always seemed to me like they're talking about this sort of, well, if it applies to anyone, it must apply to these people, right? Because they're.

There's no question that the heller was law abiding or that he was, you know, a member of the political community that he lived here and you know, you don't have any of these questions. Right. Like it was sort of like a we're deciding this very specific thing on this very core to the basic question kind of defendant. And not that they were saying, oh, you have to be law abiding, whatever that might mean.

Matt Larosiere (37:23.114)

Kind of a cop, sort of.

Matt Larosiere (37:27.626)

Yeah. Yeah.

Matt Larosiere (37:42.762)

Yeah. So it's like, if you're.

Stephen Gutowski (37:43.698)

you know, or they weren't trying to define what law abiding means. They're just saying this guy clearly is by any standard.

Matt Larosiere (37:47.37)

If you're getting, if you're getting fourth amendment protection, right.

Matt Larosiere (37:55.146)

I don't think the Fourth Amendment was written for people who are like, habitually law abiding, right? It was a restraint against the government, right? So that becomes hyper problematic. And you get all of these bizarre incongruencies if you just insist that for some reason, the two words, the people in the Second Amendment was just, it was just a completely different thing.

Stephen Gutowski (38:03.794)

But yeah, look at Miranda, right?

Matt Larosiere (38:23.978)

from everywhere else. If you insist on that, you break our entire constitutional system. You literally break it. Is it worth it? I don't think it is.

Stephen Gutowski (38:35.218)

Now, at the same time, right, you know, looking at the court, it's it's not just a philosophical, you know, institution that creates, you know, law, law review papers, right? It is a political institution to at least some extent here. And one thing that I think is pretty clear about the Roberts court in particular,

Matt Larosiere (38:54.154)

All right.

Matt Larosiere (38:58.378)

Right.

Stephen Gutowski (39:04.21)

is that it doesn't, it prefers not to make rulings that have very sweeping change. Now it will do this sometimes. Even Bruin is an example of it. But they seem fairly hesitant to do that. They like to try and wait for outliers. I mean even Bruin is kind of an example of this because Heller and Bruin struck down laws that were not very popular. There weren't that many of them left. They did it well after the sort of,

political zeitgeist had already changed on the issue, like handgun. If they had said handgun bans are unconstitutional in the 1950s or 60s, it might have been a pretty radical, a pretty different thing, because the polling back then was much more split on the issue with most people approving of it. If you look at Gallup, I think it was like 60 something, whatever. And then by the time they actually did Heller in 2008,

Matt Larosiere (39:43.178)

50s. Yeah.

Matt Larosiere (39:52.298)

Oh, it wasn't split with a vast majority of people wanted handguns out. Yeah.

Stephen Gutowski (40:04.402)

there was, there really only like two actual bands in the country, DC and Chicago. And the polling had flip -fopped completely on the question. And it's very similar story when you look at concealed carry, where if they'd done this in the nineties or the eighties, sure, it would have been a pretty aggressive move to defend, you know, the second amendments.

Matt Larosiere (40:26.538)

Right.

Stephen Gutowski (40:30.898)

protections that are offered, but they did it in 2022 after almost every state had adopted some sort of concealed carry law

and the biggest remaining obstacle. There was no outright ban anymore anywhere in the country. And now a couple of those were from court rulings, DC and Illinois. But you get the idea. This is at the end of the trend in the direction towards the country generally approving of concealed carry.

Whereas, you know, is illegal, are illegal immigrants owning guns at the same point? You know, I think it's harder to argue that, right? And so would, you know, where would you expect the court to actually end up on this? And, you know, especially with where they, you listen to these last couple of oral arguments and they seem a bit more, they certainly don't sound like a court that's.

raring to like strike down the NFA or or go and take apart the gun control act by any, you know, completely at least like they might be a little more sympathetic towards nonviolent felons or nonviolent criminals and maybe illegal immigrants fall into that that category. I don't know. I'm interested in where you think practically the court is going to go now that we've talked about sort of the legal basis for for your thoughts on on this and.

Matt Larosiere (41:29.706)

Right.

Stephen Gutowski (41:54.194)

what you think the right analysis is, what do you think the actual outcome of a Supreme Court case is gonna be? And do you even think one's gonna get up there? I mean, this case could easily be overturned at the next stage and never even make it.

Matt Larosiere (42:03.242)

No.

Matt Larosiere (42:07.69)

I don't think we'll see it anytime soon because this is just too spicy. It's just, it's a very hot potato. And I think I really agree with you on how the court has followed the ball in the gun rights context. After Heller, everything, it almost didn't change anything, right? And we had...

over a decade of just the same crap happening as if nothing had changed. And the court wanted nothing to do with it. And even right now, the court wants nothing to do with handgun, with hardware bands. And hardware bands are probably the most important thing for right now, next to prohibited categorizations. To me, I think prohibited categorizations are the most important thing.

But look at the zeitgeist. We have pro -gun people eating each other over it. So I just don't think this is gonna be... I think if we get action on one of these illegal alien cases, it'll be a GVR look at Rahimi or something like that. And I think the ball will be kicked like that for some time because just...

from a practical standpoint, the court is aware of one, its political leanings and its image. And it would also know that I think that if the court were to deny, were to come down in favor of the government in these cases, it would have to dilute the Bruin standard aggressively.

Stephen Gutowski (43:59.218)

Yeah. Yeah.

Matt Larosiere (44:00.97)

And so they're going to make a tactical decision, which is.

We don't, it's gonna be, we don't want to do this, right? Likely because we are scared of immigrants.

Matt Larosiere (44:14.762)

So let's just not. Right.

Stephen Gutowski (44:18.066)

I think they're at least maybe scared of the politics involved, especially at this moment when it's become such a like a top issue in our politics.

Matt Larosiere (44:27.306)

Oh my god. Yeah. Can you imagine? Can you imagine it like what the headlines would say about whatever justice, right? It would be scathing in the press. Because this is one of those interesting ones where I think that if the left -wing justices are kind of like in for a penny in for a pound, they might as well join on a case like this, right? And then if you're, you know, Barrett or Kavanaugh or whatever,

Do you want to be lambasted for arming these military -aged invaders alongside Jackson and others? And it's so stupid that that's the type of analysis we have to do, because what does that have to do with the principles of the matter and what is and is not legal? Nothing.

Stephen Gutowski (45:19.25)

I do think that the court is on a path right now, and this is just speculation based on oral arguments, which is, as we've talked about before, and you well know, not the strongest ground to base anything on. But I feel it does feel as though they're on a path towards a dangerousness standard of some sort, which itself, I think, risks diluting. I mean, Bruin is kind of at the platonic ideal right now because...

no follow -up cases have touched on it yet. And the.

Matt Larosiere (45:50.762)

Right. You know, it's a fantastically principled standard that lower courts have refused to apply.

Stephen Gutowski (45:57.266)

And and you're probably going to get some watering down of it at some point even a dangerousness standard which probably sounds pretty good for I think the average gun rights activists because I mean if you compared to what how things work today I mean you can have your gun rights removed for like in the range case for lying to get food stamps you know a couple thousand dollars of benefits in the in the 90s.

Matt Larosiere (46:22.09)

Irrevocable forever. Yeah.

Stephen Gutowski (46:23.602)

Yeah, you never served any jail time. You didn't even technically weren't even convicted of a felony, but because the potential jail time was two years, you fall under the gun control acts prohibited person section. And, you know, at least oral arguments and Rahimi seemed like they didn't think Rahimi should have a gun because he's legitimately dangerous. And they were sort of less concerned about the...

the ins and outs of the actual law, it felt like, I don't know, that was the impression I was left with. But they were maybe more like they brought up range specifically in Rahimi. And so they're set up to take to decide those two cases hand in hand on a sort of dangerousness standard of some kind. But of course, a dangerousness standard would actually, you would think would probably benefit somebody like the defendant in this case because.

Again, there's no evidence that they've committed any sort of violent crime. We did talk about that issue of, you know, it's harder to know when someone's not here legally, what their background was before they came here. But, you know, you would think that the misdemeanor staying in the country unlawfully crime or crossing the border unlawfully would be not on the dangerous side of that equation, but I don't know.

Matt Larosiere (47:41.258)

So yeah, it's difficult because you give all this room. So here's the problem. If we have a straight dangerousness standard, let me say it this way. Dangerousness is a very, yeah, it's a double -edged sword because what did you mean by this, right? Is it objective dangerousness? In Rahimi, it's easy because he agreed that he was dangerous. He like...

Stephen Gutowski (47:56.69)

There's also like, what is, what the heck is dangerous? What does that mean?

Stephen Gutowski (48:08.658)

Yeah, and he'd done a lot of things that the court had, that the judge had actually had a hearing on to determine that he was dangerous. That was.

Matt Larosiere (48:16.65)

Well, and he himself was like, yep, I am a problem, right? So.

Stephen Gutowski (48:19.154)

Yeah, his lawyer. Yeah. Well, there was, I think a great quote from Roberts who was like, if anyone's dangerous, it's, it's this guy.

Matt Larosiere (48:26.09)

Yeah, so there's that but then so there's that's like, obvious objective. It's well, let's not say obvious. Okay. established dangerousness, right? There's been a finding right, the subject to evidentiary standards, etc. I think that would be almost harmless to the ultimate right, but not completely harmless.

Stephen Gutowski (48:52.018)

because you have to justify it.

Matt Larosiere (48:53.418)

because you always wind up having to do some justification and what does that wind up becoming? Well, what is danger? What is danger? It is a threat against something else, some other interest. It's interest balancing. It's necessarily.

Stephen Gutowski (49:11.666)

Right. You know, and I just think like the practical aspect of coming up with a dangerousness standard, which is what they seem to gravitate towards in the Hemi, um, in the oral arguments, at least we'll, we'll, we still haven't gotten the opinion. And I have no idea when that's actually going to come. Cause everyone thought it was going to come early. And so this is the thing about trying to read the Supreme court. You're better off just waiting until they do something, but.

Matt Larosiere (49:33.034)

Yeah, I just, I'll tell you guys a cheat. So yeah, I also, I have a podcast on FUDBusters that I've repeatedly invited Stephen on, and he should come on. But I just refuse to engage in any of the of the Tealief reading, because every time I have I get embarrassed.

Stephen Gutowski (49:48.818)

Yeah.

Stephen Gutowski (49:53.298)

It's fair. That's very fair, honestly, but I'm going to do it anyway right now. No, no, yeah, I'm just like, if you do go to a dangerousness standard and maybe they won't, maybe they'll just say, well, the text of this law, there's problems with it. Congress needs to fix the law. They might do that in the bump stock case seems like it's heading that direction. Maybe we'll see. But if they do go to dangerousness, there's just a practical issue of having to justify it under the Bruin standard means you've got to point to some historical law.

Matt Larosiere (49:59.242)

Yeah, I know because people love it.

Matt Larosiere (50:15.082)

Yeah.

Stephen Gutowski (50:23.218)

And there, there isn't a historical like obvious twin, you know, there's certainly no twin. Now that's not what's required under Bruin, but, uh, that means they're going to have, they'll have to give you something. And the lower, you know, however, how, how tenuous that connection is will determine what lower courts do with it. Right. And it's, if there were a domestic violence restraining order at the founding that kept people from owning guns, then it'd be easy, but there isn't.

Matt Larosiere (50:28.65)

Right.

Yeah, but is there a cousin, right? This is the... Yeah.

Stephen Gutowski (50:53.298)

There wasn't something like that. Certainly not a direct example like that. And so it's going to be a little bit harder. And whatever they come up with, if they go that direction, yeah, I mean, it's going to water down the Bruin test a little bit. I mean, more and more you do that test.

Matt Larosiere (51:08.842)

But yeah, because it's if you go dangerousness, right, and let's say it's it's an objective proven dangerousness. And you've exhibited wantonness to society, right?

What about wetland fillers? Right? Like, what about cereal polluters? Is that like, how is that not dangerous? Like, how is that? Does that not exhibit wantonness to society? It's hugely problematic, no matter how you slice it.

Stephen Gutowski (51:35.346)

Yeah. So, um, I don't know. We'll see. I do. I think you're right in terms of like, I don't see the court taking a case like this anytime soon at the very least.

Matt Larosiere (51:47.53)

They'll do it kicking and screaming if the SG forces them to.

Stephen Gutowski (51:51.538)

And I don't think that the lower court, like this has been kind of an outlier decision at this point. And I think most likely it's just gonna be reversed on appeal and it might not go anywhere after that, honestly. We will see, yes.

Matt Larosiere (52:05.45)

We'll see. I will say this case has made me feel pretty good and I'm looking at doing my own little one in my circuit.

Stephen Gutowski (52:16.274)

Well, that's fair. You know, there's probably going to be more opportunities for cases like that's one of the things that Bruin does allow is a lot more of these kinds of cases because the onus is technically supposed to be on the government. Not that I don't know that every court has treated it that way, but, but it does make it pretty easy for especially public defenders. Excuse me. I mean, that's what Rahimi was public defender, because you don't have to spend a bunch of money on defense. He's just bring up this defense.

Matt Larosiere (52:30.218)

Depends on what judge you draw.

Matt Larosiere (52:35.914)

Right. Yeah.

Yep. Who, by the way, with all the, with all the, um, you know, criticism that guy got, I mean, he did pretty damn good considering, considering everything. I, I'd say that's we're in a state of, of flux in the civil rights context that has not

existed for a long time. And I think that is something to be cautiously optimistic.

Stephen Gutowski (52:45.586)  
government has to do it.

Stephen Gutowski (53:06.578)

And I think that's also something to keep in mind. You talked about being disappointed in the court, not moving faster on hardware bans or maybe broom response laws you could put in there too. But there's been a lot of disruption on the prohibited persons front, which is really the crux of gun control in America. That's where 90 % of your charges are coming from in federal court. So they kind of have to, it makes sense for them to try and deal with that first.

Matt Larosiere (53:27.178)  
Yeah. Yeah.

Matt Larosiere (53:34.922)  
It would, but.

Stephen Gutowski (53:35.922)

Now they can, maybe they could take more than one or two Second Amendment cases a year that might move things a little faster. But that Bruin, that period between Heller and Bruin that you're talking about, they took what, two Second Amendment cases, included one being McDonald and the other one being Seitano in 14 years or whatever it was. You know, they've already taken one.

Matt Larosiere (53:50.058)

Yeah. Yeah. Okay, Tom. Yeah. Yeah. And they were all very, very. And they were again, like you talked about they were, this is good. It's not just like, you have a one way train ticket, it's you have one train ticket. It's for this platform, you will sit on this car and in the seat.

Stephen Gutowski (54:11.634)

Yeah, right. So, uh, you know, I, people need to understand, I think to some degree, how the speed of the court is not going, it's not the speed of politics, uh, what people would want it to be. And so I, I, yes. Uh, so that's one thing to keep in mind. I don't know that we're on the, in the Heller territory of just, okay, we did this one case for you. We're not going to go back to this.

Matt Larosiere (54:22.922)  
Right.

Matt Larosiere (54:26.538)  
it's somehow even slower.

Matt Larosiere (54:36.97)  
Yeah.

Stephen Gutowski (54:38.162)

And they need to do a lot of this is just the bottom line. They need to do a lot more cases. Like look at how many First Amendment cases there are compared to Second Amendment cases or Fourth Amendment cases or Fifth Amendment cases. Really pretty much almost every other amendment.

Matt Larosiere (54:50.186)

Which is so funny, especially when like it really blows you away to find out most people sitting in federal prison are there because they had a gun while they did something else prior. And that if you're a gun rights absolutist, that should make you feel weird. I don't care how you feel about weed. If the only issue that somebody has is that they had a gun after being a jazz cigarette smoker, you should think that's odd. And that's exactly what we're dealing with here.



Stephen Gutowski (55:20.114)

And that's one of the cases that the court might take up next. Daniels is related to that. Or maybe we'll get, what, US v. Biden in 2024? If we want the spectacle side of it.

Matt Larosiere (55:25.706)

That'd be good.

Matt Larosiere (55:29.77)

Yes, no, we need to protect the we need to correct protect the current rights of the American crack user

Stephen Gutowski (55:40.21)

I mean, it's an open question. We'll see. We'll see. I mean, if we're looking for the most spectacular Supreme Court case, if they want to make a splash, that'd be the one.

Matt Larosiere (55:49.802)

The government developed crack. I don't know how they couldn't take that case. They have to protect their customers.

Stephen Gutowski (55:53.874)

Ugh.

Stephen Gutowski (55:57.458)

Okay, well, if you want a preview of what FUDBusters is like in this last couple minutes, I think is a good one. But you guys should head over and check it out for yourselves. And yeah, I appreciate you coming on the show and giving us your view on these things. Maybe we'll be able to have Kostas on again in the future and do the same thing with him on this particular issue, if that's what people would like to see.

I certainly always like to have... I thought it was great that we were able to get both of you guys to write a piece. I thought they both had compelling arguments, and so people should read them. And we made them free for everyone, just to try and get as much conversation out there as possible. But of course, not everything at the Reloader is free. The membership helps you access all kinds of stuff that you would not be able to get otherwise. But yeah.

Matt Larosiere (56:31.85)

for sure.

Stephen Gutowski (56:55.218)

Thanks for coming on the show. I've already skipped ahead to pitching my membership instead of giving you a second to tell people where they can find more of you. So let's do that first. People want to read more of your stuff or read about the cases that you're involved with or hear more of your analysis. Where can they do that?

Matt Larosiere (57:13.322)

You should check out Funbusters on YouTube, same thing on Twitter. I will warn you, Twitter is a much more hostile place. But if you want to be up to date on the cases that I'm filing, I've kind of positioned myself as a one man gun right org. I encourage you to join my Patreon. I post a lot of updates and there's a lot of inside information there, as well as seeing updates on gun design and support from people there really helped me to bring

the type of advocacy that I think a lot of us agree should be brought. And also, while you're doing that, while your credit card's out, you guys should give the reload a subscribe. It's one of the only good gun news outlets that where you can, you'll read the headline and then the body it actually is related to the headline, which has been useful because on my weekly show, I do a incredible amount of plagiarism from the reload.

Stephen Gutowski (58:12.562)

There you go. At least he gave us a picture at the end. That's that makes up for it. No, that yeah, we do try to not fool people. And I try my best as well to make sure that people aren't surprised when something is only for members. I still get complaints regardless about there being a payable. Now, this podcast goes out to everyone, but the members get it

early and they can appear on the show in a member segment, which you can do, by the way, for members listening by just replying to your your Sunday newsletter, which is a member exclusive.

Matt Larosiere (58:25.45)

Right.

Is this podcast members only or.

Okay.

Stephen Gutowski (58:42.45)

newsletter that you get if you buy a Reload membership. So you support the reporting that we do, but also we give you real value. That's what I try to do. You're like, yes, the membership, by buying it, that's how we operate, right? That's where our income comes from. That's how we get revenue to do any of this. Yes, but it also is not just a charity thing. You're getting value for paying for the Reload. So if you want to do that, head over to the Reload .com and check out our membership options today.

Matt Larosiere (58:54.538)

Right. The money comes from the money.

Stephen Gutowski (59:11.954)

Hopefully you like this new format. It gives us a little more space to stretch out some of these interviews because we don't have to put the news update at the end and it's more manageable for everybody, I think. Plus we get the news updates out a little faster, which is another good bonus, I think, for the audience. So give us your feedback. Tell us what you think on it. But yeah, that's all we've got for this week. We will see you guys again next week.