

# The Second Amendment and the Federal Prohibition on Unlawful Drug Users from Possessing Firearms

January 12, 2024

Title 18, Section 922(g)(3), of the *U.S. Code* prohibits any person “who is an unlawful user of or addicted to any controlled substance” from possessing a firearm or ammunition. In the 2023 decision *United States v. Daniels*, the U.S. Court of Appeals for the Fifth Circuit determined that Section 922(g)(3) unconstitutionally deprived a defendant of his right to bear arms under the Second Amendment. In doing so, the Fifth Circuit split with several other federal appeals courts that had rejected Second Amendment challenges to Section 922(g)(3).

Section 922(g)(3) is part of the Gun Control Act of 1968, which bars [nine categories of individuals](#) from possessing firearms or ammunition. Recently, federal appeals courts have held that the firearm possession prohibitions for three of the nine categories violate the Second Amendment: (1) in *Daniels*, the Fifth Circuit held that Section 922(g)(3) was unconstitutional as applied to the defendant; (2) in *United States v. Rahimi*, the Fifth Circuit invalidated 18 U.S.C. § 922(g)(8), which prohibits individuals subject to certain domestic violence restraining orders from possessing firearms; and (3) in *Range v. Attorney General*, the Third Circuit concluded that 18 U.S.C. § 922(g)(1), which makes it unlawful for felons to possess firearms, was unconstitutional as applied to a defendant whose past felony was a nonviolent fraud offense.

Each of these three decisions—*Daniels*, *Rahimi*, and *Range*—is now before the Supreme Court in some form. The Supreme Court has [agreed to review](#) the Fifth Circuit’s ruling in *Rahimi*. The United States has asked the Supreme Court to review the decisions in *Daniels* and *Range* (as well as a subsequent Fifth Circuit [decision](#) that raises the same question presented in *Rahimi*). These petitions are pending.

Other CRS products preview the *Rahimi* case and [provide](#) background on *Range*. This Sidebar offers an overview of *Daniels*. The case has [drawn attention](#) because it is one of the few cases holding an existing federal firearm law to be unconstitutional at least as applied and because it could result in Supreme Court involvement. Section 922(g)(3) has also gained broader public attention because of a recent [indictment](#). This Sidebar begins with a brief overview of recent Supreme Court cases on the Second Amendment, which form the backdrop for the *Daniels*, *Rahimi*, and *Range* decisions. The Sidebar then summarizes the facts, procedural history, and legal conclusions reached by the Fifth Circuit in *Daniels*. Next, it outlines

**Congressional Research Service**

<https://crsreports.congress.gov>

LSB11104

the arguments advanced by the United States as to why the Supreme Court should grant review and reverse the Fifth Circuit decision and the arguments from the defendant as to why review is not appropriate. The Sidebar closes with considerations for Congress.

## Survey of Recent Second Amendment Jurisprudence

The Second Amendment, ratified in 1791, [provides](#), “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.” For more than two hundred years, the Supreme Court remained largely silent on the substance and scope of the Second Amendment. Beginning in 2008, however, the Court issued several consequential decisions interpreting this constitutional provision. That year, in *District of Columbia v. Heller*, the Supreme Court [held](#) that the Second Amendment protects an individual right to possess an operable firearm for certain purposes, including at least self-defense in the home. Whatever the full extent of the Second Amendment right, the Court [wrote](#), it “surely” includes the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.” This right, the Court [determined](#), does not depend on an individual’s affiliation with a militia or the military. Two years later, in *McDonald v. City of Chicago*, the Court [recognized](#) that the Second Amendment right is “fundamental,” meaning that it constrains not only the federal government but also state and local governments.

In a 2022 decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Court [clarified](#) that the right to bear arms applies outside the home, extending to public spaces where confrontation may occur. The Court also [announced](#) a test that courts are to use to assess whether challenged laws violate the Second Amendment. Under that test, when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects it. Accordingly, to justify a regulation of that conduct, the government must demonstrate that the regulation is consistent with the Nation’s historical tradition of firearm regulation. The Court [explained](#) that, under this historically focused test, the government need only put forward “a well-established and representative historical *analogue*, not a historical *twin*.”

Courts and [legal commentators](#) have acknowledged that *Bruen* altered the Second Amendment landscape. Prior to *Bruen*, courts generally used a [two-step framework](#) for assessing whether a law comported with the Second Amendment: first, courts would ask whether the law fell within the scope of the Second Amendment in light of its text and history (if not, the inquiry ended there, and the law would be upheld); second, courts would employ what they viewed as the appropriate level of judicial scrutiny—rational basis, intermediate scrutiny, or strict scrutiny—to assess whether the law passed constitutional muster. How closely a court would scrutinize a given law would typically depend on whether the court viewed the law as substantially burdening the “core” of the Second Amendment right. In the pre-*Bruen* era, federal circuit courts uniformly [upheld](#) Section 922(g)(3) against Second Amendment challenges.

In *Bruen*, however, the Supreme Court [rejected](#) the two-step methodology used by the lower courts and replaced it with a history-centered framework. The Fifth Circuit in *Rahimi* [observed](#), for example, that “*Bruen* clearly fundamentally changed our analysis of laws that implicate the Second Amendment, rendering our prior precedent obsolete.”

### *United States v. Daniels*: Overview

The Fifth Circuit’s decision in *United States v. Daniels* stemmed from an April 2022 traffic stop in which two law enforcement officers [pulled over](#) Patrick Daniels for driving without a license plate. The officers detected the smell of marijuana and conducted a [search](#) of the vehicle. They [found](#) several marijuana cigarette butts and two loaded firearms. The officers [did not](#) administer a drug test, ask whether Daniels was impaired, or otherwise observe that he was impaired. Daniels [admitted](#) that he had used marijuana since high school and continued to do so regularly. Daniels was [charged](#) with being an “unlawful user” of

marijuana, a controlled substance under [federal law](#), while possessing a firearm in violation of Section 922(g)(3). Under [circuit precedent](#), an “unlawful user” is “someone who uses illegal drugs regularly and in some temporal proximity to the gun possession.”

Daniels [moved](#) to dismiss the indictment, asserting that Section 922(g)(3) is inconsistent with the Second Amendment. In an order dated July 8, 2022, the district court disagreed, preserving the indictment and allowing the prosecution to proceed. Applying *Bruen*’s framework, the district court [expressed](#) some “doubt” as to whether Section 922(g)(3) falls within the protection of the Second Amendment based on language from the Supreme Court indicating that the Second Amendment right is possessed only by “law-abiding, responsible citizens.” Nonetheless, the court [held](#) that Section 922(g)(3) regulates conduct, specifically the possession of firearms, that is covered by the plain text of the Second Amendment. Moving to the historical inquiry, the court [pointed to](#) cases from the Fifth Circuit and other circuits that reflect “a long and established history in English and American common law” of prohibiting individuals who “pose a risk to society ... from exercising the right to bear arms.” The court cited approvingly to a Seventh Circuit case [concluding](#) that “Congress enacted the exclusions in Section 922(g) to keep guns out of the hands of presumptively risky people,” including “unlawful drug users and addicts.” The court viewed Section 922(g)(3) as consistent with an American legal tradition of disarming persons considered to be a risk to society. Daniels was convicted by a jury and [sentenced](#) to forty-six months of imprisonment and three years of supervised release.

On August 9, 2023, a panel of the Fifth Circuit reversed the judgement of conviction. The Fifth Circuit first [determined](#) that Daniels belongs to the “law-abiding” class of individuals protected by the Second Amendment, reasoning that the universe of “law-abiding” individuals historically excluded only “felons and the mentally ill.” The court then concluded that the historical regulations presented by the government were insufficiently comparable to Section 922(g)(3) to establish a historical tradition of firearm regulation justifying the provision’s application to Daniels. First, the court [explained](#) that the government had not identified any “Founding-era law or practice of disarming ordinary citizens for drunkenness, even if that intoxication was routine.” “[A]t no point in the 18<sup>th</sup> or 19<sup>th</sup> century did the government disarm individuals who used drugs or alcohol at one time from possessing guns at another,” the court [wrote](#). The court acknowledged that “[a] few states banned carrying a weapon while actively under the influence,” but the court [found](#) these laws to be inapt as they “did not emerge until well after the Civil War.” Second, to the extent that intoxication was historically viewed as a “short-term illness” or “temporary insanity,” the court [reasoned](#) that such an understanding would justify disarming individuals only during actual periods of intoxication. Third, historical regulations that disarmed “dangerous” individuals were motivated by different political and social purposes, and regulated different categories of individuals that did not include “ordinary drunkards,” the court [concluded](#). Based on this analysis, the court [held](#) that the government failed to carry its burden of justifying Section 922(g)(3)’s application to Daniels under the Second Amendment.

One judge on the panel wrote a separate [concurrence](#) “highlight[ing]” that courts “are struggling at every stage of the *Bruen* inquiry.” The judge [asserted](#) that courts are straining to determine, for example, “who, and what conduct, is covered by the Second Amendment,” how the government is to identify a “regulatory tradition,” “what is the operative time period for such regulations—1791 or 1868,” and what counts as a “historical analogue” as compared to a “historical twin?”

## ***United States v. Daniels*: Arguments Before the Supreme Court**

### **The Government’s Petition**

On October 5, 2023, the United States filed a [petition](#) asking the Supreme Court to review the Fifth Circuit’s ruling in *Daniels*. In its petition, the government argued that review is warranted for three

reasons. First, according to the government, the Fifth Circuit’s decision holding Section 922(g)(3) unconstitutional as applied to Daniels created a [split](#) with pre-*Bruen* opinions from the First, Third, Sixth, Seventh, and Ninth Circuits upholding the constitutionality of Section 922(g)(3).

Second, the government [argued](#) that, historically, the Second Amendment right has been enjoyed only by “law-abiding, responsible citizens,” which generally excludes all individuals, such as unlawful drug users, “whose possession of firearms would endanger themselves or others.” For example, the government [indicated](#) that drug users may mishandle firearms or use firearms to commit crimes to facilitate their drug use; may use firearms as part of their involvement in the drug trade; may pose a danger to law enforcement during police encounters; and pose a danger to themselves as they are more likely to commit suicide. These risks, the government [maintained](#), exist even “in between” active drug use because such users are unlikely to possess firearms only when sober or may pick up their firearms when intoxicated. The government also [pointed out](#) that Section 922(g)(3) does not contemplate permanent disarmament, adding that Daniels could regain his right to bear arms by “ending his drug abuse.”

Third, the government expressed concern about the practical consequences of the Fifth Circuit’s ruling. The government [argued](#) that Section 922(g) helps combat gun violence, that Section 922(g)(3) results in more denials of firearm transactions than any other provision of the Gun Control Act except for the felon-in-possession ban of Section 922(g)(1), and that future enforcement of Section 922(g)(3) may be jeopardized by *Daniels*.

Procedurally, the United States has [asked](#) the Court to hold the petition pending the Court’s ruling in *Rahimi*, after which the Court could vacate and remand the case or proceed with full review in *Daniels* or another case raising the constitutionality of Section 922(g)(3).

## The Respondent’s Brief in Opposition

Daniels [opposed](#) the government’s petition. In his brief, Daniels [asserted](#) that the Fifth Circuit correctly ruled that the Second Amendment right to bear arms belongs to all Americans (not just “law abiding, responsible citizens,” whether that term is meant to exclude criminals, the dangerous, or any other subset of “the people”). Daniels further argued that the government’s claim that historical laws disarmed dangerous individuals [fails](#) to prove that the government historically disarmed individuals on the specific basis of intoxication, or regular drug or alcohol use. Daniels also posited that historical intoxication laws did not sweep as broadly as Section 922(g)(3), prohibiting firearm possession only [during intoxication](#), and that laws disarming “[habitual drunkards](#)” contradict earlier statutes and are too recent to be relevant for purposes of *Bruen*’s historical test.

## Considerations for Congress

*Bruen* has changed the Second Amendment landscape by, among other things, replacing the two-step inquiry typically used by the lower federal courts with a history-focused methodology. Following *Bruen*, courts have held that several of the categorical restrictions in 18 U.S.C. § 922(g) are inconsistent with the Second Amendment, either in the defendant’s particular case or in all cases. Congress may review Section 922(g) and other federal firearms provisions to assess whether amendments may strengthen these laws in light of the history-focused test announced in *Bruen*. Congress may also consider that test, and consistency with history, in drafting and debating any new firearms legislation. *Rahimi*—in which the Court has granted certiorari—represents the Court’s latest opportunity to interpret the Second Amendment. The Court also could agree to hear *Daniels* and *Range*. Any resulting decisions may further clarify the Second Amendment bounds within which Congress can legislate.

## Author Information

Dave S. Sidhu  
Legislative Attorney

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.