

Current Second Amendment Cases Before the Supreme Court

January 18, 2024

Ratified in 1791, the [Second Amendment](#) 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 over 200 years, the Supreme Court remained largely silent on the Second Amendment. In a series of relatively recent decisions, however, the Court has provided guidance on the substance and scope of the constitutional provision.

In 2008, in *District of Columbia v. Heller*, the Supreme Court [held](#) that the Second Amendment protects an individual right to possess firearms for certain purposes, including at least self-defense in the home. Two years later, in *McDonald v. City of Chicago*, the Court [determined](#) that the right to bear arms is a “fundamental” right. Accordingly, the Second Amendment applies not only to laws imposed by the federal government, but to laws enacted at the state and local level as well. In 2016, in *Caetano v. Massachusetts*, the Court in a brief opinion [clarified](#) that “arms” within the meaning of the Second Amendment encompass modern arms, including stun guns, that did not exist at the time of the founding.

In 2022, the Supreme Court in *New York State Rifle & Pistol Association v. Bruen* resolved two of the questions left open following *Heller* and *McDonald*: does the right to bear arms extend beyond the home, and how are courts to assess purported infringements of the right? In *Bruen*, the Court [held](#) that the protections of the Second Amendment extend beyond the home and announced the [standard](#) to be used in assessing Second Amendment challenges to firearm laws: when the plain text of the Second Amendment covers the regulated conduct, the Constitution presumptively protects it. Accordingly, to justify a regulation of that conduct, the government must demonstrate that a challenged law is consistent with the Nation’s historical tradition of firearm regulation.

Following *Bruen*, plaintiffs filed a number of legal actions contesting various federal and state firearm laws. One of these cases has since been accepted for review by the Supreme Court, and petitions for review in several other cases are pending before the Court. This Sidebar surveys these Second Amendment cases, focusing on cases involving federal statutes. The Sidebar addresses these cases in three sections: (1) the petition for review that the Supreme Court has granted; (2) pending petitions for review that the federal government has filed with the Court (which [may](#) be more likely to be granted relative to petitions filed by other parties); and (3) pending petitions for review involving federal statutes that have been filed with the Court by non-federal-government parties.

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Cases in the first two categories are addressed in detail, and cases in the third category are listed in summary form with identifying information. The Sidebar concludes with considerations for Congress.

Cases Accepted for Review (1)

United States v. Rahimi: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

In *Rahimi*, the defendant, Zackey Rahimi, was [subject](#) to a civil protective order after his alleged assault of his ex-girlfriend. The protective order [prohibited](#) Rahimi from possessing a firearm. Subsequently, Rahimi was suspected of [using](#) a firearm in multiple shootings, and firearms were found at his home during a search by law enforcement. He was [indicted](#) for possessing a firearm while under a domestic violence restraining order in violation of 18 U.S.C. § 922(g)(8). He [challenged](#) the indictment, asserting that Section 922(g)(8) was unconstitutional under the Second Amendment.

The district court issued a decision prior to *Bruen* [upholding](#) the statute pursuant to pre-*Bruen* precedent. Following *Bruen*, the Fifth Circuit [reversed](#), siding with Rahimi. Under the *Bruen* analytical framework, the court [observed](#) that Rahimi himself is covered by the Second Amendment because *Heller* explained that the Second Amendment right belongs to “the people.” The federal government, defending the constitutionality of Section 922(g)(8), [argued](#) that Rahimi was excluded from the Second Amendment’s protections because *Heller* referred to the right as applying only to “law-abiding, responsible citizens.” The court rejected the government’s argument, [reasoning](#) that the language regarding “law-abiding, responsible citizens” speaks to the scope of permissible restrictions under *Bruen*’s historical analysis, not who is categorically excluded from coverage.

Turning to the historical analysis, the court [held](#) that the government failed to meet its burden of proving that Section 922(g)(8) was consistent with a historical tradition of firearm regulation. The government’s [primary argument](#) was that historical English and American laws disarmed individuals considered to be “dangerous.” The court [deemed](#) these historical analogues to be inapposite, as any such laws that disarmed individuals ultimately did so for broader political or social reasons, not to protect anyone specific from domestic gun violence. The court also [rejected](#) the relevance of two proposals during state deliberations regarding the ratification of the Constitution—one to exempt from Second Amendment protections citizens who posed a “real danger of public injury,” and the other to limit the right to bear arms to “peaceable citizens”—as these proposals were not adopted and did not form a part of the Second Amendment that was eventually enacted. Without a sufficiently comparable analogue put forward by the government, the court [struck down](#) Section 922(g)(8) as unconstitutional.

On June 30, 2023, the Supreme Court [agreed](#) to review the Fifth Circuit’s decision in *Rahimi*. The Court heard [oral argument](#) in the case on November 7, 2023. A decision is [expected](#) by the end of the 2023 Term.

Pending Petitions Filed by the Federal Government (3)

United States v. Perez-Gallan: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of a firearm by a person subject to a domestic-violence protective order, violates the Second Amendment on its face.

In a summary, unpublished opinion, the Fifth Circuit in *United States v. Perez-Gallan* [held](#) that it was bound by its prior decision in *Rahimi* and therefore affirmed the district court’s dismissal of an indictment charging Litsson Antonio Perez-Gallan with violating 18 U.S.C. § 922(g)(8). In a brief petition for Supreme Court review, the United States [acknowledged](#) that this case presents the same question the

Court has agreed to resolve in *Rahimi*. The government [asked](#) the Court to “hold this petition . . . pending its decision in *Rahimi* and then dispose of the petition as appropriate in light of that decision.” The petition is [pending](#).

***Garland v. Range*: Whether 18 U.S.C. § 922(g)(1), which prohibits the possession of a firearm by a person convicted of “a crime punishable by imprisonment for a term exceeding one year,” violates the Second Amendment (at least as applied to certain nonviolent offenders).**

Under 18 U.S.C. § 922(g)(1), individuals who have been convicted of a crime punishable by imprisonment for a term exceeding one year are prohibited from possessing firearms. Bryan Range was [convicted](#) of making false statements to obtain food stamps in violation of Pennsylvania law, an offense that [qualified](#) for the federal prohibition.

Range [challenged](#) the prohibition as applied to him, asserting that if it were not for the ban, he would purchase a deer-hunting rifle and perhaps a shotgun for self-defense in the home. The district court [granted](#) summary judgment for the federal government. After *Bruen*, a three-judge panel of the Third Circuit [affirmed](#).

The en banc Third Circuit then [reversed](#), ruling in favor of Range. In line with *Bruen*, the en banc court first [determined](#) that Range was one of “the people” protected by the Second Amendment. While the government argued that the Amendment covers only “law-abiding, responsible citizens,” the court [ruled](#), among other things, that the government’s conception of this phrase was too restrictive and logically could mean that “every American who gets a traffic ticket is no longer among ‘the people’ protected by the Second Amendment.” The court [decided](#) that the plain text of the Second Amendment implicates the felon-in-possession ban, which would preclude Range from possessing a rifle to hunt or a handgun to defend himself in the home.

Turning to a historical analysis, the court [held](#) that the government did not carry its burden of establishing a historical tradition consistent with the application of Section 922(g)(1) to Range. The court [concluded](#) that the historical analogues offered by the government fell short, as the government did not show that Range belonged to a specific class of individuals that was historically disarmed, that historical punishments for nonviolent felonies included lifetime disarmament, or that historical laws disarming individuals who used firearms in the commission of their offenses would have applied to Range (who did not use a firearm to commit his fraud offense). The court thus ruled that Section 922(g)(1) could not constitutionally be applied to Range, [stressing](#) that its decision was a “narrow” one applicable only to the defendant based on his violation of a particular Pennsylvania law.

The government [filed](#) a petition for review with the Supreme Court, pointing out that the Third Circuit’s opinion conflicted with decisions reached by the Eighth Circuit in *United States v. Jackson* and *United States v. Cunningham*, and another by the Tenth Circuit in *United States v. McCane*. Given that the Court granted review in *Rahimi*, the government in *Range* [asked](#) the Court to hold the petition pending a ruling in *Rahimi* and, following such ruling, either vacate the Third Circuit’s decision and remand or fully review this or another case raising the constitutionality of Section 922(g)(1). The petition is [pending](#).

***United States v. Daniels*: Whether 18 U.S.C. § 922(g)(3), which prohibits the possession of firearms by a person who is an unlawful user of, or is addicted to, a controlled substance, violates the Second Amendment as applied to certain users.**

On the same day the government sought review in *Range*, it also [filed](#) a petition seeking review of a case involving 18 U.S.C. § 922(g)(3), which prohibits an individual who is an unlawful user of, or who is addicted to, a controlled substance from possessing a firearm. As with the petition in *Range*, the government [asked](#) the Court to hold the petition pending its ruling in *Rahimi* and thereafter either vacate and remand the case or proceed with full review of this or another case raising the constitutionality of Section 922(g)(3).

Daniels stemmed from an April 2022 traffic stop in which two law enforcement officers [pulled over](#) Patrick Daniels for driving without a license plate. During the stop, the officers found several marijuana cigarette butts and two loaded firearms in the vehicle. Daniels [admitted](#) that he had used marijuana since high school and continued to do so regularly. Prosecutors alleged that Daniels was an “unlawful user” of marijuana, a controlled substance under [federal law](#), and [charged](#) him with violating Section 922(g)(3).

Daniels [moved](#) to dismiss the indictment, asserting that Section 922(g)(3) is inconsistent with the Second Amendment. The district court [disagreed](#), preserving the indictment and allowing the prosecution to proceed. A panel of the Fifth Circuit [reversed](#). The Fifth Circuit first [determined](#) that Daniels belonged 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 advanced by the government were insufficiently comparable to Section 922(g)(3). 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 18th or 19th 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.” Additionally, historical regulations offered by the government that disarmed “dangerous” individuals were motivated by different political and social reasons, 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 justifying the application of Section 922(g)(3) to Daniels. Although the majority [emphasized](#) the “narrowness” of its holding, which only applied to Daniels and did not invalidate the statute on its face, a concurring opinion [stated](#) that it was “hard” to “avoid the conclusion that most, if not all, applications of § 922(g)(3) will likewise be deficient.”

The government filed a [petition](#) for Supreme Court review, arguing that the Court should hear the case because the Fifth Circuit’s decision created a [split](#) with pre-*Bruen* opinions from other circuits, among other things. As with the petition in *Range*, the government asked the Court to hold the petition until after *Rahimi* is decided, and then either vacate and remand the case, or accept the case or another one raising the question of whether Section 922(g)(3) complies with the Second Amendment. The petition is [pending](#).

Pending Petitions Filed by Other Parties Involving Federal Statutes (1)

- [Vincent v. Garland](#), No. 23-683: “Whether the Second Amendment allows the federal government to permanently disarm Petitioner Melynda Vincent, who has one 15-year-old nonviolent felony conviction for trying to pass a bad check.”

Considerations for Congress

Given that *Rahimi* and several other cases in which petitions for Supreme Court review have been filed involve constitutional challenges to federal firearms laws, the outcomes of the cases could profoundly impact the statutory framework Congress has enacted to regulate firearms. Furthermore, a decision in *Rahimi* (or any other Second Amendment cases in which the Supreme Court grants review) may further clarify the Second Amendment and thus the permissible bounds for any future federal legislation.

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