

The Second Amendment at the Supreme Court: Challenges to Federal Gun Laws

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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; 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*, parties filed a number of legal actions contesting various firearm laws and regulations, including federal [categorical prohibitions](#) on who may possess a firearm. In 2024, the Supreme Court [held](#) in *United States v. Rahimi* that one such prohibition, [18 U.S.C. § 922\(g\)\(8\)](#), which applies to persons subject to certain domestic-violence restraining orders, is generally consistent with the Second Amendment. The Court [determined](#) that sufficient historical support existed for the principle that “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed” temporarily.

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Following *Rahimi*, in its last [order list](#) of the 2023 term, the Court granted several petitions raising Second Amendment challenges, vacated the judgments, and remanded the cases for further consideration in light of *Rahimi*.

This Sidebar is designed to serve as an ongoing, periodically updated guide to select Second Amendment cases at the Supreme Court involving federal statutes and regulations. The Sidebar sketches the latest activity on the Second Amendment cases, summarizing cases that the Court remanded after *Rahimi*. The Sidebar first summarizes petitions for review that were filed by the federal government and then petitions for review that were filed with the Court by non-federal-government parties. This Sidebar excludes from coverage any petitions that challenge state laws. The Sidebar concludes with considerations for Congress.

Post-*Rahimi* Remanded Cases: Petitions Filed by the Federal Government

***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* [affirmed](#) the district court's dismissal of an indictment charging Litsson Antonio Perez-Gallan with violating 18 U.S.C. § 922(g)(8). The United States sought Supreme Court review, [acknowledging](#) that the case presented the same question the Court has agreed to resolve in *Rahimi*. The Court [remanded](#) the case on July 2, 2024.

***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*. The defendants in *Jackson* and *Cunningham* had also filed petitions for review in their respective cases. The Court ordered a [remand](#) of the *Range* case on July 2, 2024.

***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 applied only 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 have heard the case because the Fifth Circuit’s decision created a [split](#) with pre-*Bruen* opinions from other circuits, among other things. The Court [remanded](#) the case on July 2, 2024.

Post-*Rahimi* Remanded Cases: Petitions Filed by Other Parties

- *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.”
- *Jackson v. United States*, No. 23-6170: “Whether 18 U.S.C. § 922(g)(1), the statute prohibiting possession of firearms by persons convicted of a crime punishable by imprisonment for a term exceeding one year, violates the Second Amendment as applied to Petitioner Edell Jackson [who had two *prior* felony convictions for distributing a controlled substance].”
- *Cunningham v. United States*, No. 23-6602: “Whether, as the Eighth Circuit held, 18 U.S.C. § 922(g)(1) (which prohibits any felon from possessing firearms) is invariably constitutional as applied to any defendant, no matter the case-specific circumstances?” Here, the defendant’s *prior* felony convictions were for driving under the influence of alcohol and being a felon-in-possession of a firearm in light of the driving-under-the-influence conviction.
- *Doss v. United States*, No. 23-6842: “Whether, as the Eighth Circuit held, 18 U.S.C. § 922(g)(1) (which prohibits any felon from possessing firearms) is invariably constitutional both facially and as applied to any defendant, no matter the case-specific circumstances?” The Eighth Circuit *observed* that the defendant had a “lengthy criminal record includ[ing] over 20 convictions, many of them violent.”

After *Rahimi* was decided, the federal government filed supplemental briefs in each of these cases concerning the constitutionality of Section 922(g)(1). The government asked the Court to “grant the petitions in *Doss*, *Jackson*, and either *Range* or *Vincent*,” consolidate any such granted cases, and hold any nongranted petitions pending the resolution of the granted cases. If the Court declined plenary review of the constitutionality of Section 922(g)(1), the government *requested* the Court to “grant, vacate, and remand (GVR) [the petition] in *Range* and deny certiorari in the remaining [felon-in-possession] cases.” On July 2, 2024, the Court took a third route *granting, vacating, and remanding* *Range* and the other cases listed above as well.

Considerations for Congress

On remand, a circuit court may determine that a challenged federal statute is inconsistent with the Second Amendment even upon consideration of the Supreme Court’s opinion in *Rahimi*. If so, the statute at issue may not be enforced at a minimum as to the challengers, would serve as circuit precedent applicable to subsequent challenges within the circuit to the same statute, and outside of the circuit may influence other federal appeals courts resolving similar Second Amendment questions.

A remanded case may produce an opinion that may be appealed to the Supreme Court. Any such Second Amendment case accepted for review could also inform and impact the statutory framework Congress has enacted to regulate firearms. If the Court does grant review in a Second Amendment case in a subsequent term, the Court may further clarify the status of existing federal firearms laws and the permissible bounds for any future firearms legislation. If the Supreme Court does not ultimately review any of these cases, developments in the courts of appeals may nonetheless offer further guidance for Congress on the constitutional standard established in *Bruen* and applied in *Rahimi*.

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