

No. 23-683

IN THE
Supreme Court of the United States

MELYNDA VINCENT,
Petitioner,

v.

MERRICK GARLAND,
Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit**

PETITIONER'S REPLY BRIEF

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REPLY BRIEF

The government agrees that the question presented “would ordinarily warrant this Court’s review.” Resp. Br. 3–4. It also agrees that this case is a better vehicle than its own petition in *Range*. Cf. *id.* at 4. The government’s only real response is that the Court should hold this petition for *Rahimi*. See *id.* But there is no basis for a hold, so the petition should be granted.

I. There is no reason to hold this case for *Rahimi*.

The government asks the Court to hold this petition because doing so “would allow the Court to choose among granting plenary review, remanding for further consideration, and denying the petition after it issues its decision in *Rahimi*.” Resp. Br. 4. That request mistakenly assumes that *Rahimi* could resolve the split over the question presented here.

Again, *Rahimi* involves the *facial* validity of a statute that applies to people who have *not* been convicted of any crime but have been individually adjudicated to present a danger to others, while this case involves the *application* of a statute in the opposite scenario—Ms. Vincent has been convicted of an offense, but it involved no danger to others and she has never been found to pose a threat to anyone. See Pet. 14. Thus, as the petition explained—and the response brief nowhere disputes—the government *itself* views *Rahimi* and this case as governed by different principles:

With respect to [§ 922(g)(1)], history and tradition shows that that’s defined by those who have committed serious crimes defined by the felony-level punishment that can attach to those crimes. [*Rahimi*] focuses on the “not responsible citizens” principle, and in this context [of § 922(g)(8)], we

think that history and tradition show that it applies to those whose possession of firearms would pose an unusual danger

Oral Arg. Tr. 5–6, No. 22-915 (the Solicitor General); see *id.* at 8–9, 12, 50.

So however this Court decides *Rahimi*, plenary review will be warranted here because *Rahimi* cannot resolve the question presented or the split over it. The court below—like other circuits—held that *Bruen* did not “indisputably and pellucidly abrogate[]” its pre-*Bruen* circuit precedent upholding § 922(g)(1). See Pet. App. 5a; see also *United States v. Dubois*, --- F.4th ---, No. 22-10829, 2024 WL 927030, at *5 (11th Cir. Mar. 5, 2024) (“*Bruen* could not have clearly abrogated our precedent upholding section 922(g)(1).”). Since *Rahimi* will address a different kind of statute governed by different historical principles, none of these courts is likely to conclude that *Rahimi* “indisputably and pellucidly abrogate[s]” their precedent either. In turn, neither remanding for further consideration nor denying the petition would make sense.

The government also suggests that a hold “would allow the parties to litigate th[e] question [presented] with the benefit of the guidance the Court provides in *Rahimi*.” Resp. Br. 4. But again, *Rahimi* addresses different issues. In any event, if the Court grants this petition now, the parties can negotiate an orderly spring-and-summer briefing schedule that will allow them to consider and incorporate any guidance *Rahimi* offers.

II. The government agrees this is an ideal vehicle, while *Range* is not.

This case is an ideal vehicle because it raises none of the flaws or threshold jurisdictional problems that *Range* raises: There is no question about Ms. Vincent’s

standing, and her offense was a federal felony, not a state misdemeanor. Pet. 13–14. The government does not disagree. It points to no vehicle problems here and agrees that *Range* raises the problems identified.

Instead, the government merely suggests that holding this petition for *Rahimi* “would likely give the Court a broader choice of vehicles for resolving [§] 922(g)(1)’s constitutionality.” Resp. Br. 4. But because the government neither suggests that this case suffers from any vehicle problems nor identifies another case that supposedly provides a superior vehicle, the existence of other options is irrelevant.

III. Unnecessarily delaying this petition impedes the exercise of fundamental rights.

Until the Court resolves the question presented, peaceable Americans in every circuit except the Third will be barred from exercising the fundamental right to defend themselves and their families. Ms. Vincent is no exception. The government does not claim that she—a social worker, adjunct college professor, and single mother—has ever posed a danger to anyone. Thus, holding this petition amounts to denying Ms. Vincent’s fundamental right to self defense, protected by the Constitution, even as evidence mounts that laws like § 922(g)(1) do not reduce gun violence and disproportionately affect poor and minority communities. See, e.g., Don B. Kates & Alice Marie Beard, *Murder, Self-Defense, and the Right to Arms*, 45 Conn. L. Rev. 1685, 1691 (2013); Jacob D. Charles & Brandon L. Garrett, *The Trajectory of Federal Gun Crimes*, 170 U. Pa. L. Rev. 637, 696 (2022).

CONCLUSION

The petition should be granted.

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