NO. 25-

IN THE

SUPREME COURT OF THE UNITED STATES

AQUDRE QUAILES,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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April 14, 2025

QUESTION PRESENTED

Following this Court's holding in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), courts must engage in a history-based analysis when deciding whether a firearm regulation is part of the historical tradition that delimits the outer boundaries of the right to keep and bear arms. To make this determination, a court must determine whether the challenger or conduct at issue is protected by the Second Amendment and, if so, whether the Government has presented sufficient historical analogues to justify the restriction.

Here, the Third Circuit circumvented the *Bruen* framework in addressing Petitioner's as-applied challenge to the lifetime firearm regulation/ban, 18 U.S.C. § 922(g)(1), by focusing on his unrelated and temporary parole supervision status. Can a court avoid addressing under *Bruen* an as-applied challenge to Section 922(g)(1)'s lifetime ban and corresponding punishment by looking, instead, at whether the individual is under some form of interim supervision?

PARTIES TO THE PROCEEDINGS

Petitioner, the defendant-appellant below, is Aqudre Quailes.

The Respondent, the appellee below, is the United States of America.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Aqudre Quailes, hereby petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is reported at *United States v. Quailes*, 126 F.4th 215 (3d Cir. 2025) and reproduced at Petition Appendix ("Pet. App.") 1a-18a. The opinion of the District Court for the Middle District of Pennsylvania is reported at *United States v. Quailes*, 688 F. Supp. 3d 184 (M.D. Pa. 2023) and reproduced at Pet. App. 21a-53a.

RELATED CASES

The only procedurally related cases are those denoted above. But counsel is aware of at least one case with a related issue, *Moore v. United States*, No. 24-968.

JURISDICTION

The court of appeals entered judgment on January 17, 2025, Pet. App. 20a. This Court has thus jurisdiction under 28 U.S.C. § 1254(1).

> 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.

U.S. CONST. amend. II.

> **Unlawful acts**
>
> * * *
>
> (g) It shall be unlawful for any person—
>
> (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year[.]
>
> * * *
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(1).

INTRODUCTION

Petitioner, Aqudre Quailes, had prior convictions for, as the district court found, non-violent drug offenses. Pet. App. 52a. While on parole for such offenses, he failed to report to his parole officer and moved to a different address. United States Marshals found Mr. Quailes and arrested him on the outstanding parole warrant. Pet. App. 25a. They then searched his residence, finding, among other things, two firearms and ammunition. After a grand jury indicted Mr. Quailes for possessing firearms after having a felony conviction, he challenged the constitutionality of the statute, 18 U.S.C. § 922(g)(1), as applied to him. The district court granted his motion, dismissing the indictment. Pet. App. 53a. But the Third Circuit reversed, reasoning that it need not address the constitutionality of Section 922(g)(1) as applied to Mr. Quailes because his parole conditions separately precluded him from possessing a firearm. Pet. App. 10a. Like the Third Circuit's opinion here, in the wake of *Bruen*, the courts of appeal have created a patchwork of ad hoc standards when assessing as-applied challenges to firearms regulations. As developed in the petition for a writ of certiorari in *Moore v. United States*, No. 24-968, this Court's intervention is thus warranted.

STATEMENT OF THE CASE

A. Factual Background

In March 2021, the United States Marshals followed Mr. Quailes to the residence of his girlfriend. *See* Pet. App. 55a. There, they arrested him based on an outstanding warrant. Pet. App. 55a-56a. During the arrest, the Marshals obtained consent from Mr. Quailes' girlfriend to search her home. *See* Pet. App. 63a-64a. Inside, state, and federal authorities found, among other things, two firearms, ammunition, and small amounts of cocaine (4.2 grams) and marijuana. Third Circuit Supplemental Appendix 24-25, 27-31 ("C.A. Supp. App"). The firearms were located on a couch in the living room. C.A. Supp. App. 24, 28. The cocaine was recovered from a windowsill. C.A. Supp. App. 30. State authorities charged Mr. Quailes with firearms and controlled substance offenses. *See Commonwealth v. Quailes*, No. CP-22-CR-2787-2021 (Dauph. Co.).

In June, however, a federal grand jury returned a one-count indictment, charging Mr. Quailes, with possessing a firearm after being convicted of a felony, in violation of 18 U.S.C. § 922(g)(1). *See* Pet. App. 2a-3a. The indictment identified two firearms and ten rounds of ammunition. And it alleged that the enhanced penalty under the Armed Career Criminal Act, 18 U.S.C § 924(e), applied to Mr. Quailes. The indictment did not identify Mr. Quailes' prior felony convictions.

B. Procedural Background

1. The district court's ruling

Following this Court's opinion in *Bruen*, Mr. Quailes moved to dismiss his indictment, arguing that the Section 922(g)(1) offense violated his rights under the Second Amendment. *See* Pet. App. 21a. The district court denied his motion based on the Third Circuit's holding in *Range v. Att'y Gen.*, 53 F.4th 262 (3d Cir. 2022) (per curiam). *See* Pet. App. 1.

But the Third Circuit then granted rehearing in *Range*. And relying on the Court's en banc opinion, *see Range v. Att'y Gen.*, 69 F.4th 96 (3d Cir. 2023) (en banc), Mr. Quailes sought reconsideration of his motion to dismiss. *See* Pet. App. 21a. In response, the government made no argument on the basis for reconsideration. *See* Pet. App. 25a. Instead, the government asserted that the Third Circuit had wrongly decided *Range* and, alternatively, that Mr. Quailes' case was distinguishable. Pet. App. 24a.

Citing the en banc decision in *Range* as an intervening change in controlling law, the district court granted Mr. Quailes' motion for reconsideration. *See* Pet. App. 25a. Turning to the merits, the district court began by outlining this Court's opinions on the Second Amendment and the application of those rulings in *Range*. *See* Pet. App. 29a-37a.

In response to the government's initial argument, the district court declined to find that *Range* was wrongly decided. *See* Pet. App. 37a. Turning to the merits, the district court began with the threshold question, that is, whether Mr. Quailes is one

of "the people" protected by the Second Amendment despite having felony drug convictions. *See* Pet. App. 38a-39a. On this issue, the court observed that the government conceded that Mr. Quailes is part of the people. Pet. App. 39a. And the court found that *Range* and the reasons cited there applied equally here. *Id.*

Next, the district court addressed whether Section 922(g)(1) regulates conduct protected by the Second Amendment. Pet. App. 39a. When the plain text of the Second Amendment covers an individual's conduct, the Constitution presumptively protects it. Pet. App. 40a (citing *Bruen*, 597 U.S. at 17). Mr. Quailes relied on the indictments and the elements of the offense, possessing a firearm after being convicted of a felony, to argue the Second Amendment covers their indicted conduct. In contrast, the government argued that because the purpose of the Second Amendment is self-defense, Mr. Quailes and Mr. Harper had to prove that they had a lawful purpose for their firearm possession. Pet. App. 40a. Relying on the text of Section 922(g)(1), the district court declined to read a "lawful purpose" requirement into the *Bruen* and *Range* analytical framework. Pet. App. 41a. As Section 922(g)(1) covers possession of a firearm in one's home or on one's person, the text of the Second Amendment covered the conduct at issue. *Id.*

The government also argued that the parole status of Mr. Quailes rendered his possession outside the protection of the Second Amendment. *Id.* But as with their status as felons, the district court found that the government's "argument puts the cart before the horse." Pet. App. 42a In other words, "[t]hat Quailes may be lawfully

stripped of a firearm does not prove that he did not have a Second Amendment right to possess the firearm to begin with." *Id*.

The district court thus turned to the remaining standard—can the government justify the criminalization of Mr. Quailes' firearm possession. *See* Pet. App. 42a-43a. The test is whether the government can prove that the firearm regulation adheres to the Nation's historical tradition of firearm regulation. Pet. App. 43a (citing *Bruen*, 597 U.S. at 24; *Range*, 69 F.4th at 103). When the regulation was unimaginable at the founding, the government must establish a historical analogue for the current regulation. *See* Pet. App. 44a. On this, the district court relied on *Range's* holding that the 1961 version of Section 922(g)(1) did not satisfy the government's burden. *See* Pet. App. 46a (citing *Range*, 69 F.4th at 104).

The district court also found that the government defaulted on its obligation to identify a historical analogue. *See* Pet. App. 47a, 49a, 50a. Instead, the government argued that colonial era firearm prohibitions on those seen as "disloyal" and therefore "dangerous," like Catholics, Quakers, slaves, and Native Americans reflected that any law aimed at dangerousness passed the historical analogue standard. *See* Pet. App. 47a-48a. The district court did not view this as a relevant historical analogue. Pet. App. 47a-48a.

The district court was thus left with discerning whether the government's effort to identify historically similar laws satisfied the relevant metrics of "how" and "why" a regulation burdened a citizen's right to armed self-defense. *See* Pet. App. 49a (citing *Bruen*, 597 U.S. at 29). Here again, the government defaulted in its burden.

Id. As the district court emphasized, the government merely "catalogued" historical regulations that disarmed people who legislatures viewed as posing a risk of dangerousness. *Id.* The government did not explain the "how" and "why," that is, how long such individuals were disarmed, whether a conviction was needed, or how the dangerousness determination was made. Pet. App. 50a. Nor did the government offer any information on the purpose of the historical regulations it cited. *Id.* As a result, the district court found that the government failed to carry its burden. *Id.*

Even so, the court addressed the government's arguments in Quailes that drug dealing equates to dangerousness and thus satisfies the historical tradition analysis. Pet. App. 51a. But once more, the court found the government failed to explain "how the earlier regulations compare in mechanics or purpose to Section 922(g)(1)." *Id.* And it observed that *Bruen* and *Range* reached similar conclusions on this sort of argument, holding that such comparisons are too broad. *See id.* (citing *Bruen*, 597 U.S. at 38-39; *Range*, 69 F.4th at 105).

In any event, the district court pointed out that using dangerousness as a historical analogue presents several line-drawing problems. For instance, the court noted that Mr. Quailes' prior drug convictions involved neither firearms nor crimes of violence. Pet. App. 52a. Does a court then have to consider whether disarming non-violent drug offenders tracks the Nation's historic tradition? *Id.* And what about those who launder money to conceal drug trafficking proceeds? *Id.* In sum, the district court held that the government failed to carry its burden. The court thus

issued orders dismissing the indictments and lifting the federal detainers. Pet. App. 54a. The government appealed.

2. The Third Circuit's ruling

On Appeal, the Third Circuit acknowledged this Court's framework for analyzing a Second Amendment challenge, that is: 1) whether "the Second Amendment's plain text covers and individual's conduct"; and, if so, 2) has the government demonstrated "that the regulation is consistent with this Nation's historical tradition of firearms regulation." Pet. App. 8a (quoting *Bruen*, 597 U.S. at 17). Although the Third Circuit agreed that the Second Amendment covered Mr. Quailes' conduct, it held that his as-applied challenge failed at step two. Pet. App. 10a-11a. In so doing, the Circuit followed its earlier ruling in *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), explaining that because Mr. Quailes was on parole at the time, he did not have a Second Amendment right to possess a firearm. *Id.* The Circuit proceeded to discuss the historical tradition associated with disarming those who were still serving a criminal sentence. Pet. App. 11a-14a. In conclusion, the Circuit found that modern firearm regulations, like Section 922(g)(1) are consistent with the historical tradition of disarming those under a sentence. Pet. App. 14a.

REASONS FOR GRANTING THE PETITION

A. The courts of appeal have departed on an ad hoc basis from this Court's framework for analyzing as-applied challenges to firearm regulations based on the Second Amendment.

The Third Circuit's approach here is emblematic of a problem the courts of appeal have had when applying *Bruen's* test to as-applied Second Amendment challenges. The applicable analysis asks three questions. First, whether the text of the Second Amendment applies to the person. *Bruen*, 597 U.S. at 31. Second, whether the plain text of the Second Amendment applies to the conduct. *See id*. at 32. And if the first two answers are yes, then third, whether the regulation at issue is "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id*. at 19. In Mr. Quailes' case, the Third Circuit identified the correct construct, but its analysis went agley when addressing the third question.

To illustrate, the Third Circuit posed to right question: whether the regulation is consistent with this Nation's historical tradition of firearm regulation. Pet. App. 8a. Here, the regulation at issue is Section 922(g)(1), which, among other things, imposes a lifetime ban on firearm possession for anyone convicted of a felony. But the Third Circuit did not analyze whether *this* regulation was historically consistent with the Second Amendment in the context of a prior non-violent drug felony. Instead, the Circuit looked at Mr. Quailes' status as a parolee and addressed whether those under parole supervision can, consistent with historical tradition, be deprived of their Second Amendment right to keep and bear arms. Pet. App. 11a-14a. And the Circuit concluded that "[c]onsistent with this principle, modern firearm regulations,

such as § 922(g)(1), may disarm convicts on parole, probation, or supervised release." Pet. App. 14a (internal quotations and citation omitted). This analysis and conclusion constitute category errors. Mr. Quailes is not being prosecuted under Section 922(g)(1) for possessing a firearm while on parole. He is being prosecuted for possessing a firearm after being convicted of a felony—that's the Section 922(g) offense. Pet. App. 21a. The Third Circuit simply substituted the history and tradition of temporarily disarming or forfeiting firearms for those under a criminal sentence as evidence that the very different and permanent prohibition under Section 922(g)(1) is constitutional.

The Third Circuit employed the same analytical substitution in an earlier case when addressing an as-applied challenge to Section 922(g) for an individual on supervised release. *See Moore*, 111 F.4th at 271-72.[1] Other courts of appeal have since followed suit. For example, the Sixth Circuit reached the same conclusion in *United States v. Goins*, 118 F.4th 794 (6th Cir. 2024). In 2021, Goins convinced "an associate … to purchase [an] AR pistol[] for him" because "he had multiple convictions for crimes punishable by imprisonment for more than one year," and so was prohibited from possessing a firearm under Section922(g)(1). *Id*. at 796. After he was charged with violating §922(g)(1), Goins challenged the constitutionality of the statute as applied to him.

Rather than address the felonies underlying his Section 922(g)(1) conviction, the Sixth Circuit relied on the Third Circuit's decision in *Moore*, holding that

[1] *Moore* is currently before this Court pending certiorari.

"Congress could … disarm Goins" simply because he was on probation "at the time." *Id*. at 797; *see also id*. at 801-02 ("[O]ur nation's historical tradition of forfeiture laws, which temporarily disarmed convicts while they completed their sentences, also supports disarming those on parole, probation, or supervised release."). Outside the supervised-release context, notably, the Sixth Circuit does not analyze Section 922(g)(1) challenges by focusing on whether the government has proven that historical tradition supports depriving people of their Second Amendment rights based on the predicate offenses underlying the defendant's conviction. The court has instead concluded that, because some historical regulations allowed "individuals [to] demonstrate that their particular possession of a weapon posed no danger to peace," a defendant challenging §922(g)(1) as applied must make an individualized showing "that he is not dangerous." *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). According to the court, because "officials of old" made individualized assessments of dangerousness, courts today must "focus on each individual's specific characteristics," including not only his "entire criminal record" but any "information beyond [his] criminal convictions" as well. *Id*. at 657-58, 658 n.12.

The Fifth Circuit, for its part, has employed differing approaches. In *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), for instance, the court addressed a defendant who had been convicted of car theft, evading arrest, and possessing a firearm as a felon. *Id*. at 467. Although the parties' briefing had discussed the defendant's "various drug offenses," none of which was punishable by imprisonment for more than one year, the court limited its focus to only his "predicate offenses under

§922(g)(1)." *Id.* Indeed, the court expressly declined to address a contemporaneous drug charge filed in the same indictment because Section 922(g)(1) "rel[ies] on previous history." *Id.* As the court explained, the relevant question is whether there is "a longstanding tradition of disarming someone with a [felony] history analogous to [the defendant's]." *Id.*; *accord United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024).

Yet the Fifth Circuit has departed from that approach when it comes to defendants who were on supervised release when they possessed a firearm in violation of Section 922(g)(1). *E.g.*, *United States v. Giglio*, 126 F.4th 1039 (5th Cir. 2025). In *Giglio*, following the Third Circuit's lead, the Fifth Circuit affirmed a Section 922(g)(1) conviction based solely on the fact that the defendant was on supervised release when he was charged. In the *Giglio* court's view, so long as "the government may disarm those who continue to serve sentences for felony convictions," it does not matter if that is what the government actually did. *Id.* at 1044 (emphasis added); *see also id.* at 1045-46.

While the Seventh Circuit has not yet addressed an as-applied challenge to §922(g)(1) after *United States v. Rahimi*, 602 U.S. 680 (2024), its analysis in *United States v. Gay,* 98 F.4th 843 (7th Cir. 2024), suggests that it too would adopt the approach of having district courts review the record to identify any characteristics that would permit the government to disarm the defendant. *See id.* at 847 (highlighting that the defendant was on parole and fled from the police before being arrested and charged under §922(g)(1)).

The Fourth, Eighth, Tenth, and Eleventh Circuits have charted a different course. In those circuits, courts do not analyze whether historical tradition supports disarming a defendant based on predicate felony conviction(s) or ask whether the defendant was on supervised release or probation. These circuits avoid as-applied challenges, having deemed Section 922(g)(1) to be constitutional in all its applications. Take *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). After reviewing historical examples of disarmament, the Fourth Circuit purported to derive from them a tradition of "disarm[ing] categories of people based on a legislative determination that such people 'deviated from legal norms.'" *Id.* at 707. Applying this guiding principle, the court saw no constitutional problem with any application of Section 922(g)(1), deeming it a permissible exercise of the legislature's discretion over which individuals are disarmed for violating the law. *Id.*

The Eighth Circuit likewise adopted a categorical rule barring as-applied challenges after observing, at a high level of generality, that "legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms." *United States v. Jackson*, 110 F.4th 1120, 1127 (8th Cir. 2024). The court never directly addressed whether the "how" and "why" of the historical examples of firearm regulations it purported to analyze matched the "how" and "why" of Section 922(g)(1) or the defendant's predicate conviction.

The Tenth and Eleventh Circuits have similarly foreclosed as-applied challenges to Section 922(g)(1)—without even addressing the historical record. In

Vincent v. Bondi, 127 F.4th 1263 (10th Cir. 2025), the court continued to rely on pre-*Rahimi* precedent that had resolved the matter by invoking dicta from *District of Columbia v. Heller,* 554 U.S. 570 (2008), observing that the prohibition on felon firearm possession is "presumptively lawful." *See id.* at 1265. The Eleventh Circuit has followed the same path in a series of nonprecedential decisions, repeatedly observing that "*Rahimi* d[id] not displace" prior circuit precedent upholding Section 922(g)(1) based on the same "presumptively lawful" dicta. *E.g.*, *United States v. Morrissette*, 2024 WL 4709935, at *2 (11th Cir. Nov. 7, 2024).

By contrast, the Ninth Circuit's now-vacated opinion in *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024), employed the correct analysis. The court first held that the defendant constituted one of "the people" protected by the Second Amendment and then turned to whether his Section 922(g)(1) conviction had a proper historical analogue. *Id.* at 676-77. After reviewing the historical record and comparing those historical regulations to the defendant's prior felony convictions, the panel majority determined that none of those "predicate offenses were, by Founding era standards, of a nature serious enough to justify permanently depriving him of his fundamental Second Amendment rights," and so concluded that his §922(g)(1) conviction was unconstitutional. *Id.* at 691. Although *Duarte* has since been vacated, *see* 108 F.4th 786 (9th Cir. 2024), it reflects the right approach—and is not the only Ninth Circuit decision to use the correct methodology (albeit outside the context of a §922(g)(1) conviction). *See United States v. Perez-Garcia*, 96 F.4th 1166, 1182-84 (9th Cir. 2024).

The difficulty with the approach of the Third Circuit and circuits that have followed it is that it resurrects the problem *Bruen* sought to resolve—avoiding an "interest-balancing inquiry" that requires a "case-by-case basis whether the right is really worth insisting upon." *Bruen*, 597 U.S. at 22-23. *Bruen* adopted its historical-tradition approach to prevent judges from engaging in a subjective assessment of a defendant's worthiness of Second Amendment rights—"a value laden and political task that is usually reserved for the political branches." *Rahimi,* 602 U.S. at 732-33 (Kavanaugh, J., concurring).

This Court's approach in *Rahimi* both illustrates the proper analysis and reveals the problem with the approach of the Third, Fifth, and Sixth Circuits. In *Rahimi* this Court focused exclusively on whether historical going-armed and surety laws were comparable to Section 922(g)(8), even though the defendant there had not only threatened his domestic partner (prompting the domestic restraining order) but also threatened a woman with a firearm (prompting an aggravated assault charge) and was connected to five other shootings. *See Rahimi*, 602 U.S. at 687. Because the government charged Rahimi only with violating Section 922(g)(8), the Court asked only whether Section 922(g)(8) was constitutional, not whether the government could have constitutionally disarmed him on another basis. *See id*. at 690, 700-02; *see also id*. at 777 (Thomas, J., dissenting) ("This case is not about whether States can disarm people who threaten others[.] Instead, the question is whether the Government can strip the Second Amendment right of anyone subject to a protective order[.]").

In sum, this Court's intervention is necessary to ensure that one's Second Amendment rights are evaluated consistent with the *Bruen* and *Rahimi* framework.

CONCLUSION

For all these reasons, this Honorable Court should hold Petitioner, Aqudre Quailes' case pending the disposition in *Moore v. United States*, No. 24-968, or, in the alternative, grant the petition for a writ of certiorari.

Respectfully submitted,

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