

No. 23-6170

IN THE SUPREME COURT OF THE UNITED STATES

EDELL JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of "a crime punishable by imprisonment for a term exceeding one year," ibid., complies with the Second Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A23) is reported at 69 F.4th 495. The order of the court of appeals denying the petition for rehearing (Pet. App. A39-A69) is reported at 85 F.4th 468. The memorandum opinion and order of the district court (Pet. App. A31-A38) is not published in the Federal Supplement but is available at 2022 WL 4226229.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 2023. A petition for rehearing was denied on August 30, 2023. The petition for a writ of certiorari was filed on November 28,

2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Minnesota, petitioner was convicted of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 108 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A23.

1. In January 2021, police officers responded to a report of domestic assault at an apartment complex in Brooklyn Center, Minnesota. See Presentence Investigation Report (PSR) ¶ 6. Petitioner's girlfriend A.W. reported that petitioner had punched and kicked her in the head, face, and torso before firing a gun at her and leaving the scene. See ibid.

The police officers found petitioner in a car in a nearby parking lot. See PSR ¶ 8. Petitioner tried to drive away, but the police barricaded the car. See ibid. Petitioner fled on foot, but the police caught and arrested him. See ibid. The police found a handgun in a jacket that petitioner had dropped while fleeing. See id. ¶¶ 8-9.

Petitioner had eleven previous felony convictions at the time of his arrest. See Pet. App. A31. He had eight previous felony convictions in Illinois: five for possessing a controlled substance, one for possessing a controlled substance with intent

to deliver, one for manufacturing or delivering a controlled substance, and one for possessing a weapon as a felon. See PSR ¶¶ 33, 38-43. He also had three previous felony convictions in Minnesota: two for selling a controlled substance and one for possessing a controlled substance. See id. ¶¶ 44, 46.

2. A federal grand jury indicted petitioner on one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). See Indictment 1-2. At trial, the government proved two of petitioner's previous felony convictions -- his two Minnesota convictions for selling controlled substances -- as predicates for that charge. See Gov't C.A. Br. 4. A jury found petitioner guilty. See Judgment 1.

The district court denied petitioner's post-trial motion to dismiss the indictment. Pet. App. A31-A38. As relevant here, the court rejected petitioner's contention that Section 922(g)(1) violates the Second Amendment as applied to him. See id. at A34-A37. The court determined that, although petitioner's previous convictions involved nonviolent felonies, petitioner had "proven himself to be both dangerous and unable to abide by the law." Id. at A36. The court later sentenced petitioner to 108 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The Eighth Circuit affirmed. Pet. App. A1-A23. As relevant here, the court rejected petitioner's contention that Section 922(g)(1) violates the Second Amendment as applied to him.

See id. at A11-A22. It cited this Court's statement in District of Columbia v. Heller, 554 U.S. 570 (2008), that nothing in that opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." Pet. App. A11 (quoting Heller, 554 U.S. at 626). And the court of appeals noted that this Court's subsequent decision in NYSRPA v. Bruen, 597 U.S. 1 (2022), "did not disturb those statements or cast doubt on the prohibitions" on the possession of firearms by felons. Pet. App. A11. Given this Court's "assurances" of the constitutionality of felon disarmament, the court of appeals concluded that "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." Id. at A12.

The court of appeals also determined that history supported that conclusion. See Pet. App. A12-A22. It cited historical evidence -- including 17th-century English laws, 17th- and 18th-century colonial laws, and a Founding Era precursor to the Second Amendment -- showing that legislatures could disarm persons who are not law-abiding. See id. at A13-A16. The court also stated that, even "[i]f the historical regulation of firearms possession is viewed instead as an effort to address a risk of dangerousness," Section 922(g)(1) "still passes muster." Id. at A17. It explained that "[l]egislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed." Id. at A18. The court determined that the Second Amendment allows

Congress to conclude that felons, as a category, pose such a risk. See id. at A18-A22.

Chief Judge Smith concurred in part and concurred in the judgment. Pet. App. A23. He “agree[d] that § 922(g)(1) is not unconstitutional as applied to [petitioner] and that Heller remains the relevant precedent [courts of appeals] are bound to apply.” Ibid.

4. The court of appeals denied a petition for rehearing en banc. Pet. App. A39-A69.

Judge Colloton, the author of the panel opinion, concurred in the denial of rehearing. Pet. App. A39-A40. He explained that “the panel opinion faithfully applied the Bruen framework” and concluded that “the historical evidence” shows that Section 922(g)(1) “is consistent with the Nation’s historical tradition of firearm regulation.” Id. at A40 (citation omitted).

Judge Stras, joined by three other judges, dissented from the denial of rehearing en banc. Pet. App. A40-A69. Judge Stras read the historical record to mean that Congress may disarm only dangerous persons, see id. at A44-A60, and he concluded that convicted felons can prevail on as-applied challenges to Section 922(g)(1) if they can “prove they pose no danger,” id. at A63. He suggested that a court could consider “a felon’s criminal history, behavior on probation, and history of violence in evaluating whether gun possession [by the felon] pose[s] a danger to the community.” Id. at A68.

DISCUSSION

Petitioner contends (Pet. 6-21) that 18 U.S.C. 922(g)(1) violates the Second Amendment as applied to him. The government has filed a petition for a writ of certiorari in Garland v. Range, No. 23-374 (filed Oct. 5, 2023), presenting the question whether Section 922(g)(1) complies with the Second Amendment. The government has argued in Range that Section 922(g)(1) is constitutional, that the courts of appeals are divided over Section 922(g)(1)'s constitutionality, and that the question would ordinarily warrant this Court's review. See Pet. at 7-25, Range, supra (No. 23-374). But the government has argued that this Court should hold the petition in Range until it resolves United States v. Rahimi, No. 22-915 (argued Nov. 7, 2023), the pending case concerning the constitutionality of 18 U.S.C. 922(g)(8), the statute disarming individuals subject to domestic-violence protective orders. See Pet. at 25-28, Range, supra (No. 23-374).

For the reasons given in Range, this Court should likewise hold the petition for a writ of certiorari in this case until it resolves Rahimi and then dispose of the petition as appropriate. Holding the petition would allow the Court to choose between granting plenary review and remanding for further consideration after it issues its decision in Rahimi. And even if the Court ultimately opts for plenary review rather than remand, deferring review until after a decision in Rahimi would likely give the Court a broader choice of vehicles for resolving Section 922(g)(1)'s

constitutionality and would allow the parties to litigate that question with the benefit of the guidance the Court provides in Rahimi. See Cert. Reply Br. at 10, Range, supra (No. 23-374).

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the disposition of United States v. Rahimi, No. 22-915 (argued Nov. 7, 2023), and then dispose of the petition as appropriate.

Respectfully submitted.

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