

IN THE SUPREME COURT OF THE UNITED STATES

REGINALD CRESHAWN DOSS, 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.

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-6842

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 14-17) is not published in the Federal Reporter but is available at 2023 WL 8299064. The order of the district court (Pet. App. 1-6) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 18) was entered on December 1, 2023. The petition for a writ of certiorari was filed on February 23, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Iowa, petitioner was convicted of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. 7. He was sentenced to 120 months of imprisonment, to be followed by three years of supervised release. Id. at 8-9. The court of appeals affirmed. Id. at 14-17.

1. In March 2021, a Des Moines Police Department detective attempted to stop petitioner, whose driver's license was suspended, from driving away from a bar. D. Ct. Doc. 152, at 197-199 (Sept. 28, 2022). Petitioner fled on foot, and the detective saw him throw a pistol into a dumpster. Id. at 200-202, 206-208. At the time, petitioner's criminal history included state-court convictions for theft, forgery, identity theft, possession of marijuana with intent to deliver, aggravated unlawful use of a weapon, assault, aggravated assault, intimidation with a dangerous weapon, and possession of a firearm as a felon. Presentence Investigation Report ¶¶ 32, 33, 36, 40, 45-47, 50-55.

2. A federal grand jury indicted petitioner for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. 1. After an initial mistrial, the district court denied petitioner's motion to dismiss the indictment, rejecting his argument that Section 922(g)(1) violates the Second Amendment on its face and as applied to him. Id. at 1-6. The court relied on this Court's statement in District of Columbia v. Heller, 554 U.S.

570 (2008), that “longstanding prohibitions on the possession of firearms by felons” are “presumptively lawful.” Pet. App. 2, 4 (quoting Heller, 554 U.S. at 626, 627 n.26).

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. 14-17. As relevant here, the court rejected petitioner’s contention that Section 922(g)(1) violated the Second Amendment on its face and as applied to him. See id. at 15. The court explained that petitioner’s contention was foreclosed by its decisions in United States v. Cunningham, 70 F.4th 502 (8th Cir. 2023), petition for cert. pending, No. 23-6602 (filed Jan. 25, 2024), and United States v. Jackson, 69 F.4th 495 (8th Cir. 2023), petition for cert. pending, No. 23-6170 (filed Nov. 28, 2023), which “conclud[ed] that 18 U.S.C. § 922(g)(1) is facially constitutional” and “cut[] off as-applied challenges to the statute.” Pet. App. 15. The court added that, even if petitioner “could bring an as-applied challenge, he would not succeed” because his “lengthy criminal record includes over 20 convictions, many of them violent.” Id. at 15 n.2.

DISCUSSION

Petitioner contends (Pet. 5-11) that 18 U.S.C. 922(g)(1) violates the Second Amendment on its face and 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 among granting plenary review, remanding for further consideration, and denying the petition after it issues its decision in Rahimi. And even if the Court ultimately opts for plenary review, 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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