

# The Second Amendment and the Federal Prohibition on Unlawful Drug Users from Possessing Firearms

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The Gun Control Act of 1968 bars [nine categories of individuals](#) from possessing firearms or ammunition. Following the Supreme Court’s 2022 decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, federal appeals courts considered Second Amendment challenges to some of these categories. In one such case, *United States v. Daniels*, the U.S. Court of Appeals for the Fifth Circuit held that [18 U.S.C. § 922\(g\)\(3\)](#), which prohibits any person “who is an unlawful user of or addicted to any controlled substance” from possessing a firearm, was unconstitutional as applied to the defendant.

In 2024, the Supreme Court in *United States v. Rahimi* [held](#) that [18 U.S.C. § 922\(g\)\(8\)](#), which prohibits individuals subject to certain domestic violence restraining orders from possessing firearms, is not facially unconstitutional under the Second Amendment. The Supreme Court subsequently granted the petition in *Daniels*, vacated the Fifth Circuit opinion, and [remanded](#) the case back to the circuit court for further consideration in light of *Rahimi*. On January 6, 2025, the Fifth Circuit on remand in *Daniels* again [concluded](#) that Section 922(g)(3) is unconstitutional as applied to the defendant.

This Sidebar offers an overview of *Daniels*. The case has [drawn attention](#) because it is one of the few appellate cases holding an existing federal firearm law to be unconstitutional at least as applied to a particular defendant. This Sidebar begins with a brief sketch of modern Supreme Court cases on the Second Amendment that form the backdrop for the decisions in *Rahimi* and *Daniels*. The Sidebar then summarizes the Court’s ruling in *Rahimi*. Next, it outlines the facts, procedural history, and legal conclusions reached by the Fifth Circuit in *Daniels*, both before and after *Rahimi*. The Sidebar closes with considerations for Congress.

## Survey of Modern Second Amendment Jurisprudence

The Second Amendment, ratified in 1791, [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 more than two hundred years, the Supreme Court remained largely silent on the substance and scope of the

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Second Amendment. Beginning in 2008, however, the Court issued several consequential decisions interpreting this constitutional provision.

That year, in *District of Columbia v. Heller*, the Supreme Court [held](#) that the Second Amendment protects an individual right to possess an operable firearm for certain purposes, including self-defense in the home. Whatever the full extent of the Second Amendment right, the Court [wrote](#), it “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” This right, the Court [determined](#), does not depend on an individual’s affiliation with a militia or the military.

Two years later, in *McDonald v. City of Chicago*, the Court [recognized](#) that, by operation of the Fourteenth Amendment, the Second Amendment constrains not only the federal government but state and local governments as well.

In a 2022 decision, *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Court [clarified](#) that the right to bear arms applies outside the home, extending to public spaces where confrontation may occur.

Post-*Heller* and prior to *Bruen*, courts generally used a [two-step framework](#) for assessing whether a law comported with the Second Amendment. First, courts would ask whether the law fell within the scope of the Second Amendment in light of its text and history (if not, the inquiry ended there, and the law would be upheld). Second, courts would employ what they viewed as the appropriate level of [judicial scrutiny](#)—rational basis, intermediate scrutiny, or strict scrutiny—to assess whether the law passed constitutional muster. How closely a court would scrutinize a given law would typically depend on whether the court viewed the law as substantially burdening the “core” of the Second Amendment right. In the pre-*Bruen* era, federal circuit courts uniformly [upheld](#) Section 922(g)(3) against Second Amendment challenges.

In *Bruen*, however, the Supreme Court [rejected](#) the two-step methodology used by the lower courts and replaced it with a history-centered framework. Under the [announced test](#), “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” Accordingly, to justify a regulation of that conduct, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” The Court [explained](#) that, under this historically focused test, the government need only put forward “a well-established and representative historical *analogue*, not a historical *twin*.” [Courts](#) and [legal commentators](#) have acknowledged that *Bruen* altered the Second Amendment landscape.

## *United States v. Rahimi*

In *Rahimi*, the Supreme Court [held](#) that Section 922(g)(8) is consistent with the Second Amendment, rejecting the facial challenge mounted by Rahimi and accepted by the Fifth Circuit. The Supreme Court [emphasized](#) that the scope of the Second Amendment is not limited to those laws that “precisely match its historical precursors” or that are “identical” to laws from 1791, as if the Second Amendment were “trapped in amber.” Instead, the Court [explained](#), under *Bruen*, a court is required to assess whether a challenged law is “relevantly similar” to laws from the country’s regulatory tradition, and the Court noted that “why and how” the challenged law burdens the Second Amendment right are “central” considerations in this inquiry.

In the context of Section 922(g)(8), the Supreme 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. In support, the Court pointed to [surety laws](#), which were designed to prevent firearm violence by requiring an individual who posed a credible threat of violence to another to post a surety, and “[going armed](#)” laws, which punished individuals who had menaced others or disturbed the public order with firearms through imprisonment or disarmament. Section 922(g)(8), which disarms individuals found to threaten the physical safety of another, “fits neatly”

within the tradition of these two legal regimes, particularly as all three [involve](#) judicial determinations that the individuals threatened or would threaten others, the Court [added](#).

As Rahimi himself received such a judicial determination and was temporarily disarmed as a consequence, the Supreme Court also [held](#) that Section 922(g)(8) was constitutional as applied to Rahimi. In its analysis, the Court [took note](#) that Section 922(g)(8) is of “limited duration,” prohibiting firearm possession only for “so long as the defendant ‘is’ subject to the restraining order.” Finally, the Court [addressed](#) the government’s argument that Rahimi may be disarmed because he is not “responsible,” clarifying that the Court’s precedents describe “responsible” individuals as those who enjoy the Second Amendment right, and that these precedents say “nothing” about who is not responsible.

## *United States v. Daniels Before Rahimi*

Decided prior to the Supreme Court’s ruling in *Rahimi*, the Fifth Circuit’s initial decision in *United States v. Daniels* stemmed from an April 2022 traffic stop in which two law enforcement officers [pulled over](#) Patrick Daniels for driving without a license plate. The officers detected the smell of marijuana and conducted a [search](#) of the vehicle. They [found](#) several marijuana cigarette butts and two loaded firearms.

The officers [did not](#) administer a drug test, ask whether Daniels was impaired, or otherwise observe that he was impaired. Daniels [admitted](#) that he had used marijuana since high school and continued to do so regularly. Daniels was [charged](#) with being an “unlawful user” of marijuana, a controlled substance under [federal law](#), while possessing a firearm in violation of [Section 922\(g\)\(3\)](#). Under circuit precedent, the Fifth Circuit has [held](#) that an “unlawful user” is “someone who uses illegal drugs regularly and in some temporal proximity to the gun possession.”

Daniels [moved](#) to dismiss the indictment, asserting that Section 922(g)(3) is inconsistent with the Second Amendment. In an order dated July 8, 2022, the district court disagreed, preserving the indictment and allowing the prosecution to proceed. Applying *Bruen*’s framework, the district court [expressed](#) some “doubt” as to whether Section 922(g)(3) falls within the protection of the Second Amendment based on language from the Supreme Court indicating that the Second Amendment right is possessed only by “law-abiding, responsible citizens.” Nonetheless, the court [held](#) that Section 922(g)(3) regulates conduct, specifically the possession of firearms, that is covered by the plain text of the Second Amendment.

Moving to the historical inquiry, the court [pointed to](#) cases from the Fifth Circuit and other circuits that reflect “a long and established history in English and American common law” of prohibiting individuals who “pose a risk to society . . . from exercising the right to bear arms.” The court cited approvingly to a Seventh Circuit case [concluding](#) that “Congress enacted the exclusions in Section 922(g) to keep guns out of the hands of presumptively risky people,” including “unlawful drug users and addicts.” The court viewed Section 922(g)(3) as consistent with an American legal tradition of disarming persons considered to be a risk to society. Daniels was convicted by a jury and [sentenced](#) to forty-six months of imprisonment and three years of supervised release.

On August 9, 2023, a panel of the Fifth Circuit reversed. The Fifth Circuit first [determined](#) that Daniels belongs 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 presented by the government were insufficiently comparable to Section 922(g)(3) to establish a historical tradition of firearm regulation justifying the provision’s application to Daniels.

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.”

Second, to the extent that intoxication was historically viewed as a “short-term illness” or “temporary insanity,” the court **reasoned** that such an understanding would justify disarming individuals only during actual periods of intoxication. Third, historical regulations that disarmed “dangerous” individuals were motivated by different political and social purposes, 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 of justifying Section 922(g)(3)’s application to Daniels under the Second Amendment.

One judge on the panel wrote a separate **conurrence** “highlight[ing]” that courts “are struggling at every stage of the *Bruen* inquiry.” The judge **asserted** that courts are straining to determine, for example, “who, and what conduct, is covered by the Second Amendment,” how the government is to identify a “regulatory tradition,” “what is the operative time period for such regulations—1791 or 1868,” and what counts as a “historical analogue[]” as compared to a “historical twin[].”

## ***United States v. Daniels on Remand Post-Rahimi***

The government sought Supreme Court review of the Fifth Circuit’s decision, and the Court **sent** the *Daniels* case back to the circuit court to reconsider its ruling in light of *Rahimi*. On remand, the Fifth Circuit **reached** the same conclusion as it had previously.

It first **determined** that its analysis of § 922(g)(3) was largely controlled by its post-*Rahimi* circuit precedent, *United States v. Connelly*. The defendant in *Connelly* **admitted** that she “would at times smoke marijuana as a sleep aid and for anxiety.” The circuit court agreed that support existed for laws restricting the possession of firearms by those who are actively intoxicated, but **the court asserted** that “there is a substantial difference between an actively intoxicated person and an ‘unlawful user’ under § 922(g)(3).”

The court also expressed concern that the government’s **reasoning** would potentially enable Congress to restrict the firearms access of “anyone who has multiple alcoholic drinks a week.” The *Connelly* court therefore **held** that Section 922(g)(3) cannot be applied to a defendant based solely on the defendant’s “habitual or occasional” use of drugs. The *Connelly* court also **pointed** to the lack of evidence that suggests the defendant was actively using a controlled substance: “we do not know how much she used at those times or when she last used, and there is no evidence that she was intoxicated at the time she was arrested.”

The Fifth Circuit similarly **ruled** that Section 922(g)(3) was unconstitutional as applied to Daniels. While Daniels used marijuana “roughly half the days of each month,” the jury was **asked** to find whether Daniels had used marijuana “recently enough to indicate that the individual [was] actively engaged in such conduct.” The court **deemed** “recently enough” to be too “nebulous,” such that the “the jury could have found Daniels guilty even while believing that he had not used marihuana for several weeks.” Given the absence of sufficient temporal proximity, the court **concluded** that “Daniels was convicted for exactly the type of ‘habitual or occasional drug use’ that we said, in *Connelly*, could not support an indictment (let alone a conviction).”

The Department of Justice has not sought Supreme Court review of the Fifth Circuit’s opinion in *Daniels* following remand.

## Considerations for Congress

*Bruen* has changed the Second Amendment landscape by, among other things, replacing the two-step inquiry that had been typically used by the lower federal courts when considering Second Amendment challenges with a history-focused methodology. The majority in *Bruen* indicated that the approach it endorsed is “neither a regulatory straightjacket nor a regulatory blank check.” Within these guideposts, courts are grappling with the renewed constitutional attacks to firearms laws and regulations, including the categorical restrictions in 18 U.S.C. § 922(g). In *Rahimi*, the Supreme Court upheld Section 922(g)(8) against a facial challenge, but *Daniels* demonstrates that lower courts post-*Rahimi* are finding constitutional problems in the application of at least some parts of Section 922(g).

Congress may review Section 922(g) and other federal firearms provisions to assess whether amendments may strengthen these laws or add clarity as to their application, or whether any such laws should be rescinded. Congress may also consider the framework set forth in *Bruen* as it crafts and considers new firearms legislation.

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