

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Bay Travon Wilson, Petitioner

V.

United States of America

ON PETITION TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether 18 U.S.C. § 922(g)(1), the statute prohibiting possession of firearms by persons convicted of a crime punishable by imprisonment for a term exceeding one year, violates the Second Amendment as applied to Petitioner Bay Travon Wilson.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, styled, *United States of America v. Bay Travon Wilson*, Case No. 23-50509, was filed August 1, 2024. A copy is attached to this petition as Appendix “A”.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and the judgment of the United States Court of Appeals for the Fifth Circuit were entered on August 1, 2024. This Petition is filed within ninety (90) days after the decision. *See*, Supreme Court Rules 13.1. This Court has jurisdiction to grant certiorari under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1):

It shall be unlawful for any person 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.

U.S. Const. Amend. II:

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.

STATEMENT

Wilson was charged by indictment with Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(8) and Possession of an Unregistered Firearm, in violation of 26 U.S.C. § 5861(d) and 26 U.S.C. § 5871. ROA. 57. Wilson had been previously convicted of possession of a controlled substance and tampering with physical evidence . ROA. 121.

On April 5, 2023, Wilson pled guilty without a plea agreement. ROA. 57.

Wilson filed a timely Notice of Appeal on July 11, 2023, duly perfecting his appeal to the court of appeals. ROA. 43. Among other issues raised in the court of appeals, Wilson alleged that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to him, in violation of the Second Amendment.

Wilson did not raise the constitutional error at the district court level . The Court of Appeals held that Wilson could not show plain error in the absence

of binding precedent holding that § 922(g)(1) was unconstitutional. Appendix, at A-3.

REASON FOR GRANTING THE WRIT

Petitioner contends that 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, violates the Second Amendment.

Bruen provided Courts with a new two-step analysis for firearm regulations. The first step is straightforward: “[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2116 (2022). If the Second Amendment’s text covers the conduct, then courts should move on to step two, where the “government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2129-30. The government must provide a “representative historical analogue, not a historical twin.” *Id.* at 2132. The Court further set forth what it called the two “*central*” considerations when engaging in an analogical inquiry: “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* 2133.

The Third Circuit, in *Range v. Att’y Gen.*, 69 F.4th 96 (3d Cir. 2023), apparently the first circuit to do so, found § 922(g)(1) to be unconstitutional as applied to Range. It concluded that the Government had failed to carry the burden required by *Bruen* “that the Nation's historical tradition of firearms regulation supports depriving Range of his Second Amendment right to possess a firearm.” *Id.*, at 106.

In *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024) the Fifth Circuit recently addressed as applied and facial challenges to the felon in possession § 922(g)(1) prohibition under the Second Amendment. The Fifth Circuit rejected both challenges, holding that § 922(g)(1) was constitutional facially and as applied to a defendant whose predicate crime was a felony conviction for theft. See *id.* at 467-70. Specifically, the Fifth Circuit found § 922(g)(1) constitutional as applied because the punishments—estate forfeiture or death—for a felony conviction for theft at the time of the Founding were so severe that they included the lesser punishment of permanent disarmament. *Id.* at 468-69. The court rejected as dicta and without historical analysis the *Heller* suggestion that the general prohibition against felons and the mentally are presumptively lawful. *Id.* 465-466.

In *United States v. Rahimi*, 144 S.Ct. 1889 (2024), this court clarified the methodology for determining whether a firearms regulation complies with

the Second Amendment. After issuing that decision, the Court granted certiorari in multiple cases presenting the question whether Section 922(g)(1) violates the Second Amendment, vacated the decisions below, and remanded for further consideration in light of *Rahimi*. See *Garland v. Range*, No. 23-374, 2024 WL 3259661 (July 2, 2024); *Vincent v. Garland*, No. 23-683, 2024 WL 3259668 (July 2, 2024); *Jackson v. United States*, No. 23-6170, 2024 WL 3259675 (July 2, 2024); *Cunningham v. United States*, No. 23-6602, 2024 WL 3259687 (July 2, 2024); *Doss v. United States*, No. 23-6842, 2024 WL 3259684 (July 2, 2024). Consistent with that practice, the Court should grant the petition for a writ of certiorari in this case, vacate the court of appeals' judgment, and remand for further consideration in light of *Rahimi*.

Wilson's predicate convictions were for possession of a controlled substance and tampering with physical evidence. The Court should grant the petition for a writ of certiorari in this case, vacate the court of appeals' judgment, and remand for further consideration of the constitutionality of Section 922(g)(1) as to him in light of *Rahimi*.

CONCLUSION

FOR THE REASON STATED, Bay Travon Wilson prays this Honorable Court will issue a writ of certiorari and reverse the opinion rendered by the United States Court of Appeals for Fifth Circuit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen R. Stroder", written over a horizontal line.

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DATED: October 30, 2024.