

Additional Resources regarding *Bruen, Rahimi*, and Federal Firearm Prosecutions

J. Matthew Wright
Assistant Federal Public Defender
600 South Tyler Street, Suite 2300
Amarillo, Texas 79101
(806) 324-2370
Matthew.Wright@fd.org

1. Significant Supreme Court Decisions

United States v. Miller, 307 U.S. 174 (1939)

Tot v. United States, 319 U.S. 463 (1943)

United States v. Bass, 404 U.S. 336 (1971)

Scarborough v. United States, 431 U.S. 563 (1977)

Lewis v. United States, 445 U.S. 55 (1980)

United States v. Bean, 537 U.S. 71 (2002) (on Congress de-funding the 925(c) escape hatch)

District of Columbia v. Heller, 554 U.S. 570 (2008)

McDonald v. Chicago, 561 U.S. 742 (2010)

Caetano v. Massachusetts, 577 U.S. 411 (2016)

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022)

United States v. Rahimi, 602 U.S. 680 (2024)

2. State and Federal Statutes

18 U.S.C. § 922(g):

(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;

(2) who is a fugitive from justice;

[Type here]

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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. § 924(a)(8); § 924(e) (punishment for violation of § 922(g))

18 U.S.C. § 921(a)(20) (defining what counts as a disqualifying felony, including some misdemeanors)

Texas Penal Code § 46.04(a), (e)–(g):

Sec. 46.04. UNLAWFUL POSSESSION OF FIREARM. (a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (a-1), (b), or (c) is a Class A misdemeanor.

(f) For the purposes of this section, an offense under the laws of this state, another state, or the United States is, except as provided by Subsection (g), a felony if, at the time it is committed, the offense:

(1) is designated by a law of this state as a felony;

(2) contains all the elements of an offense designated by a law of this state as a felony; or

(3) is punishable by confinement for one year or more in a penitentiary.

(g) An offense is not considered a felony for purposes of Subsection (f) if, at the time the person possesses a firearm, the offense:

(1) is not designated by a law of this state as a felony; and

(2) does not contain all the elements of any offense designated by a law of this state as a felony.

Texas Penal Code § 46.02(a-1) (unlawful carrying of a firearm):

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

(1) the handgun is in plain view, unless the person is 21 years of age or older or is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a holster; or

(2) the person is:

(A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating; or

(B) prohibited by law from possessing a firearm.

For an opinion expressing doubts about the constitutionality of this statute as applied, focusing on the *Texas* Constitution’s right to keep and bear arms,¹ see *State v. Villanueva*, 686 S.W.3d 752, 754–63 (Tex. Crim. App. 2024) (Slaughter, J., dissenting); see also *id.* at 754 (Newell, J., concurring, joined by Hervey and McClure, JJ.) (“[T]he Court’s refusal to grant discretionary review in this case should not be mistaken for a rejection of the merits of Appellee’s claims or Judge Slaughter’s arguments.”).

3. Important Circuit Court Decisions

§ 922(g)(1) (convicted of crime punishable by > one year in prison):

Kanter v. Barr, 919 F.3d 437 (7th Cir. 2019) – then-Judge Barrett penned an influential dissent arguing that § 922(g)(1) would be unconstitutional as applied to person convicted of non-violent fraud

United States v. Diaz, 116 F.4th 458 (5th Cir. 2024) (recognizing the viability of “as-applied” Second Amendment challenges to 18 U.S.C. § 922(g)(1), but rejecting challenge where defendant was previously convicted of stealing an automobile)

United States v. Bullock, 123 F.4th 183 (5th Cir. 2024) (follows *Diaz* but focuses on dangerousness)

United States v. Duarte, 101 F.4th 657 (9th Cir. 2024) (pending petition for rehearing en banc – holds that (g)(1) is unconstitutional as applied to nonviolent felon)

United States v. Contreras, 125 F.4th 724 (5th Cir. 2024) (rejects 2d Amendment challenge to 922(g)(1) conviction, where “felony” was under 922(g)(3))

United States v. Williams, 113 F.4th 637 (6th Cir. 2024)

United States v. Goins, 118 F.4th 794 (6th Cir. 2024)

United States v. Jackson, 110 F.4th 1120 (8th Cir. 2024):

United States v. Moore, 111 F.4th 266 (3d Cir. 2024)

¹ Tex. Const. art. I, § 23.

Range v. Attorney General, 124 F.4th 218 (3d Cir. 2024) (en banc) (Third Circuit held 922(g)(1) unconstitutional as applied to defendant convicted long ago of nonviolent misdemeanor punishable by more than 2 years in prison)

§ 922(g)(3) (unlawful user of controlled substance):

United States v. Connelly, 117 F.4th 269 (5th Cir. 2024)

United States v. Daniels, 124 F.4th 967 (5th Cir. 2025)

§ 922(g)(5) (unlawfully present noncitizen in possession)

United States v. Medina-Cantu, 113 F.4th 537 (5th Cir. 2024)—rejects Second Amendment challenge to 18 U.S.C. § 922(g)(5)(A) (possession by an alien illegally in the United States), because non-citizens unlawfully present are not among “the people.”

4. Selected Legislation

Federal Firearms Act of 1938, 52 Stat. 1250

Act to Strengthen the FFA, Pub. L. 87-342, 75 Stat. 752 (1961)
(This is the law that expanded coverage from crimes of violence to all felons)

Omnibus Crime Control & Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197

Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213

5. Helpful Law Review Articles

Brandon E. Beck, *The Federal War on Drugs: A Story in Four-and-a-Half Acts*, 26 *Journal of Constitutional Law* 53 (2024), online at <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1856&context=jcl>

Jeff Campbell, *There Is No Bruen Step Zero: The Law-Abiding Citizen and the Second Amendment*, 26 *U.D.C.L. Rev.* 71 (2023)

Brian L. Frye, *The Peculiar Story of United States v. Miller*, 3 *NYU J.L. & Liberty* 48 (2008)

David B. Kopel, *The Supreme Court’s Thirty-Five Other Gun Cases: What the Supreme Court Has Said About the Second Amendment*, 18 *St. L. Univ. Pub. L. Rev.* 99 (1999), online at <https://scholarship.law.slu.edu/plr/vol18/iss1/8>

Alex Kreit, *Making Sense of Facial and As-Applied Challenges*, 8 Wm. & Mary Bill Rts. J. 657(2010), online at <https://scholarship.law.wm.edu/wmborj/vol18/iss3/4>

C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695 (2009)

Carlton F.W. Larson, *For Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L.J. 1371 (2009)

Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & History Rev. 139 (2007)

6. Supreme Court Petitions, Briefs, Dockets (with links to all the important filings)

Rahimi:

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-915.html>

DOJ's Supplemental Brief in *Garland v. Range*, No. 23-374:

https://www.supremecourt.gov/DocketPDF/23/23-683/315630/20240624210428546_23-374%20Supp%20Brief.pdf

(The Government argued, unsuccessfully, that SCOTUS should grant certiorari in multiple 922(g)(1) cases to address as-applied Second Amendment analysis. This brief is ESPECIALLY notable for the string cite of district court cases holding § 922(g)(1) unconstitutional as-applied, see footnotes 1–3).