

The Supreme Court Update - June 21, 2024

by Ian Blodger, Jessica M. Leano, and Brock Huebner

The Supreme Court of the United States issued five decisions today:

United States v. Rahimi, No. 22-915: This Second Amendment case addresses the constitutionality of 18 U.S.C. § 922(g)(8), which makes it a crime for an individual to possess a firearm if that individual is subject to a pre-conviction domestic violence restraining order that contains a finding that the defendant “represents a credible threat to the physical safety” of the defendant’s intimate partner or the partner’s child. Respondent Zackey Rahimi was indicted for violating Section 922(g)(8), and moved to dismiss the indictment on Second Amendment grounds, which the district court denied. On appeal, the Fifth Circuit reversed, relying on the Supreme Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), concluding that Section 922(g)(8) did not fit within our nation’s historical tradition of firearm regulation. In an 8-1 opinion authored by Chief Justice Roberts, the Supreme Court reversed, holding that when an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment. The Court clarified that *Bruen* does not require a “historical twin” but rather only requires a “historical analogue” for a regulation to be constitutional. Justices Sotomayor (joined by Justice Kagan), Gorsuch, Kavanaugh, Barrett, and Jackson each authored concurrences, discussing their views on the role of historical analysis in constitutional interpretation. Justice Thomas dissented, arguing that Section 922(g)(8) violates the Second Amendment because the historical tradition of firearm regulation addressed the same societal problem as Section 922(g)(8) through the use of surety laws, not disarmament.

View the [Court's decision](#).

Department of State v. Muñoz, No. 23-334: This case addresses whether an American citizen has a fundamental liberty interest in their noncitizen spouse’s admission to the United States. Sandra Muñoz sued the U.S. Department of State and related entities (“State Department”), claiming her rights under the Due Process Clause were violated

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when a consular officer denied her noncitizen husband's visa application without providing a facially legitimate reason for doing so. The Ninth Circuit held that Muñoz had a constitutionally protected liberty interest in her spouse's visa application. In a 6-3 decision authored by Justice Barrett, the Court reversed and remanded, holding that Muñoz failed to clear the two-step inquiry in *Washington v. Glucksberg*, 521 U.S. 702 (1997), for identifying a fundamental liberty interest. Under *Glucksberg*, the Due Process Clause protects only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." The United States' history and tradition recognizes the government's sovereign authority to set the terms governing the admission and exclusion of noncitizens. Justice Gorsuch concurred in the judgment. Justice Sotomayor (joined by Justices Kagan and Jackson) dissented, arguing that Muñoz, as an American citizen, had a constitutionally protected interest in her husband's visa application because its denial burdened her right to marriage.

View the [Court's decision](#).

Erlinger v. United States, No. 23-370: This case concerns the procedures required to apply the federal Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). The ACCA imposes mandatory minimum 15-year sentences on certain firearms offenses where the defendant was previously convicted of at least three "violent felon[ies]" or "serious drug offense[s]" ("ACCA Predicates") that were "committed on occasions different from one another." This case featured a complex procedural history that resulted in the defendant being sentenced under the ACCA after the judge at sentencing determined the defendant committed three ACCA Predicates on separate occasions. However, both the defendant, and subsequently the Government, argued that the fact-specific analysis of whether the ACCA Predicates were committed in separate occasions requires a jury, not a sentencing judge, to decide the issue unanimously and beyond a reasonable doubt. In a 6-3 decision authored by Justice Gorsuch, the Court agreed, holding that the Fifth and Sixth Amendments require a jury to unanimously rule on facts that, as with the ACCA, have the effect of increasing both the maximum and minimum sentences applicable to a defendant. Chief Justice Roberts and Justice Thomas each filed brief concurring opinions. Justice Kavanaugh, joined in full by Justice Alito and in part by Justice Jackson, dissented. Justice Jackson also authored an additional dissent.

View the [Court's decision](#).

Smith v. Arizona, No. 22-899: This case addresses the application of the Sixth Amendment's Confrontation Clause, which guarantees criminal defendants the right to confront the witnesses against them, to a case in which an expert witness restates an absent lab analyst's factual assertions to support his own opinion testimony. Jason Smith was found with a large quantity of what appeared to be drugs and related items and charged with various drug offenses. The State sent the seized items to a crime lab, where an analyst ran forensic tests and concluded that they contained usable quantities of methamphetamine, marijuana, and cannabis. The State planned for the analyst to testify about those matters, but the analyst stopped working at the lab prior to Smith's trial. So the State substituted another analyst to testify and provide an independent

opinion on the original analyst's drug testing. Smith was convicted, and on appeal, argued that the State's use of a substitute analyst to convey the substance of the original analyst's materials violated his Confrontation Clause rights. In a unanimous decision authored by Justice Kagan, the Court held that when an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth. In that situation, a defendant has the right to cross-examine the person who made them. The Court vacated and remanded for further proceedings, including on the additional issue of whether the original analyst's records were testimonial and the Confrontation Clause bars their admission. Justices Thomas and Gorsuch joined in three parts of the opinion and filed opinions concurring in part, and Justice Alito, joined by Chief Justice Roberts, concurred in the judgment.

View the [Court's decision](#).

Texas v. New Mexico, No. 141, Orig.: This dispute between States was filed directly with the Court under its original jurisdiction and involved a conflict over water rights to the Rio Grande River. Texas sued Colorado and New Mexico, claiming that excessive groundwater pumping was depriving Texas of water rights provided to it under the States' 1938 River Grande Compact ("Compact"). The United States intervened in the lawsuit based on its role in managing the Compact and related contracts. The individual States agreed to a consent decree to resolve the lawsuit, and sought Supreme Court approval of the decree over the objections of the United States. In a 5-4 decision authored by Justice Jackson, the Court refused to approve the consent decree because the United States as intervener had valid, independent claims under the Compact that cannot be resolved by settlement without the United States' consent. Justice Gorsuch dissented and was joined by Justices Thomas, Alito, and Barrett.

View the [Court's decision](#).