

No. 23-60408

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

JESSIE BULLOCK,
Defendant-Appellee.

**JESSIE BULLOCK’S RESPONSE IN OPPOSITION TO THE
GOVERNMENT’S MOTION TO REISSUE UNPUBLISHED OPINION AS
PUBLISHED**

Defendant-Appellee Jessie Bullock hereby files this response in opposition to the Government’s motion to reissue this Court’s November 25, 2024, unpublished opinion as published [ECF 81], and in support offers the following:

The Government asks this Court to reissue its unpublished opinion in this matter, ECF 78-1, as a precedential, published opinion, ECF 81. Yet, while it claims that the panel’s analysis—favorable to its position—is important to development of caselaw in this Circuit, this Court’s local rules advise against publication.

Fifth Circuit Rule 47.5.1. advises that “opinions that merely decide particular cases on the basis of well-settled principles of law impose[] needless expense on the

public and burdens on the legal profession,” and therefore are not suitable for publication. According to the analysis in the panel opinion, existing precedent established by the United States Supreme Court in *United States v. Rahimi*, 144 S. Ct. 1889 (2024) settled the historical tradition analysis governing Bullock’s as-applied challenge. ECF 78-1, 2-3.

Thus, by its own terms, the opinion does not meet the criteria for publication. In reaching its ultimate determination, the opinion relied on established Supreme Court precedent from *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022) and *Rahimi*. See ECF 78-1, 2-3. The opinion did not establish a “new” or “overlooked” rule of law, and it applied, and did not criticize, “existing decisional law.” 5TH CIR. 47.5.1(a), (c). Moreover, its explanation and review of the relevant decisional law was brief. *Id.* at (c); see ECF 78-1, 1-3. To the extent that the Government claims that the opinion “clarifies that the Government can disarm those who have previously misused a gun to harm or menace others,” ECF 81, 2, the opinion relies on *Rahimi*, a binding Supreme Court decision, to do so. Thus, publishing this opinion would not add any value to established Supreme Court precedent.

The Government urges that this case is significant because the district court opinion had been widely cited. ECF 81, 1. While that is not disputed, the significance of the district court opinion has been greatly diminished in the wake of

the Supreme Court’s decision in *Rahimi* and this Court’s decision in *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024). The order on appeal in this matter was entered on June 28, 2023. ROA.239-315. While the analysis within was cited by other courts in the absence of clarification from the Supreme Court, this area of law has developed rapidly. The district court opinion here did not apply the framework clarified by *Rahimi* nor that announced by this Court in *Diaz*. Thus, in the absence of such analysis, any citation to the district court opinion would likely be lacking in any precedential and persuasive value, undermining its importance.

Another basis for the Government’s request for publication is that this case could resolve other pending cases and could be significant “in other cases for which these previous offenses serve as Section 922(g)(1) predicates.” ECF 81, 2. It claims that this Court’s unpublished decision in another recent case—*United States v. Isaac*, No. 24-50112 (5th Cir. Nov. 20, 2024)—supports its claim. ECF 81, 2. Yet, the Government did not move to publish the unpublished decision in *Isaac*. And neither Bullock nor the defendant in *Isaac* engaged in extensive briefing of the relevant historical tradition test that would add value to publishing this opinion. Moreover, while the opinion here states that the Government proved a historical tradition supporting Bullock’s disarmament, it does not go through a detailed or lengthy analysis like the Court did in its published opinions in *Diaz* or *United States v.*

Connelly, 117 F.4th 269 (5th Cir. 2024) that would aid other courts in applying this Circuit’s § 922(g) analysis.

Additionally, *Diaz* made clear that when considering an as-applied challenge to § 922(g)(1) under the Second Amendment, the analysis is individualized. 116 F.4th at 467 (“To survive *Diaz*’s as-applied challenge, the government must demonstrate that the Nation has a longstanding tradition of disarming someone with a criminal history analogous to [his].”). Thus any “public” who may be interested in this decision is limited to the class of individual disarmed federal defendants who have the same prior criminal history as *Bullock*. It is doubtful that Rule 47.5.1(e) envisions this kind of “public interest.”¹ See ECF 81-3.

The context in which this decision was considered also weighs against publication. The motion to dismiss forming the basis of this appeal was decided on the pleadings only. See ROA.239-315. This Court addressed the merits of the district court decision without requesting supplemental briefing after the decisions in *Rahimi* or *Diaz*. No oral argument was held. If published, the panel’s decision would preclude other panels from considering the issue with the benefit of more robust briefing and argument.

¹ Indeed, the ordinary meaning of “public interest” has a much broader scope, referring to the “general welfare of a populace” and “[s]omething in which the public as a whole has a stake.” Black’s Law Dictionary 1425 (10th ed. 2014).

In deciding not to publish the opinion, “each member of the panel . . . determine[d] that its publication is neither required nor justified under the criteria for publication,” as discussed within. 5TH CIR. R. 47.5.2. For the reasons stated, the decision not to publish was correct.

WHEREFORE, Jessie Bullock respectfully requests that this Court DENY the Government’s motion seeking publication [ECF 81].

Respectfully submitted,

Omodare B. Jupiter
Federal Public Defender

/s/ Michael L. Scott
Michael L. Scott
Senior Litigator

Attorneys for Defendant-Appellee
Jessie Bullock

CERTIFICATE OF SERVICE

I, Michael L. Scott, certify that on this 27th day of November, 2024, this Response in Opposition was filed with the Court’s CM/ECF system, which forwarded electronic copies of the same to all counsel of record in this case.

s/ Michael L. Scott
Michael L. Scott
Senior Litigator

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

I, Michael L. Scott, hereby certify that:

1. This document complies with the type-volume limit of FED. R. APP. P. 27(d)(2)(A) because it contains 899 words.

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s/ Michael L. Scott

Michael L. Scott

Senior Litigator

Dated: November 27, 2024