NO. 24-6476

IN THE

Supreme Court of the United States

REGINALD CRESHAWN DOSS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Heather Quick
Appellate Chief
First Assistant Federal Defender
FEDERAL PUBLIC DEFENDER'S OFFICE
222 Third Avenue SE, Suite 290
Cedar Rapids, IA 52401
(319) 363-9540

ATTORNEY FOR PETITIONER

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PETITION FOR WRIT OF CERTIORARI

Petitioner Reginald Doss respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

INTRODUCTION

In opposing the Petition for Writ of Certiorari, the government disputes that the circuit split on Second Amendment challenges to 18 U.S.C. § 922(g)(1) warrants this Court's review. Further, the government argues that the present administration's stated intent to reinvigorate 18 U.S.C. § 925(c) makes review of the presented question unnecessary. Both assertions are without merit. The question of the constitutionality of § 922(g)(1) is heavily disputed and will not go away, even if § 925(c) does become a viable avenue of relief for some.

Mr. Doss's case is an excellent vehicle for review because all his felony convictions are nonviolent. This Court should reject the government's apparent assertion that courts can look beyond the basis for disarmament—the felony convictions—when determining whether the prosecution for being a felon in possession of a firearm violates the Second Amendment.

ARGUMENT

I. The circuit split on Second Amendment challenges is well established and necessary to address.

The confusion and disagreement on how to analyze Second Amendment challenges to 18 U.S.C. § 922(g)(1) is not "shallow." *See* Gov't Opp. 2. In fact, the Ninth Circuit in *United States v. Duarte*, --F.4th--, 2025 WL 1352411 (9th Cir. May

9, 2025) (en banc), both acknowledged and deepened this circuit split. *See id.* at *3 (discussing the circuit split). In a deeply fractured opinion, the Ninth Circuit held that § 922(g)(1) was constitutional in all its applications. Disagreeing with the Eighth Circuit, the majority determined that the defendant satisfied step one of *Bruen*. *Id.* at *6. The Ninth Circuit found that felons are covered by the Second Amendment, as they are part of "the people." *Id.* at *6. However, the Ninth Circuit found no felon could satisfy step two, as the lifetime disarmament of any felon was consistent with laws at the founding that imposed the death penalty for serious offenses and laws that disarmed "dangerous individuals." *Id.* at *8-14. On this basis, the Ninth Circuit, like the Eighth Circuit, preemptively rejected any and all as-applied Second Amendment challenges to § 922(g)(1).

Regardless, as addressed in the petition, some circuits will address as-applied Second Amendment challenges to § 922(g)(1), and others, like the Eighth, refuse to address them, finding any as-applied challenge automatically foreclosed. Pet. for Writ of Cert. pp. 17-21. For example, had Mr. Doss been prosecuted in the Sixth Circuit, courts at minimum would have entertained his as-applied challenge. But because he was in the Eighth Circuit, the courts dismissed his claim out of hand.

It is not just litigants like Mr. Doss pointing to the disagreement and confusion. Judges are begging this Court for further guidance on how to address these Second Amendment issues. The confusion has continued post-*Rahimi*. For example, as Chief Judge Diaz on the Fourth Circuit recently stated:

> *Bruen* has proven to be a labyrinth for lower courts, including our own, with only the one-dimensional history-and-tradition test as a compass. Questions abound at the framework's two steps, so that "courts, operating in good faith, are struggling at [each] stage of the *Bruen* inquiry." Others have well summarized many of these consequential gaps, so I won't belabor them here. But courts, tasked with sifting through the sands of time, are asking for help. And the Supreme Court's recent attempt to decipher the *Bruen* standard in *United States v. Rahimi*, —— U.S. ——, 144 S. Ct. 1889, (2024), offered little instruction or clarity about how to answer these persistent (and often, dispositive) questions.

Bianchi v. Brown, 111 F.4th 438, 473-74 (4th Cir. 2024) (en banc) (Diaz, C.J., concurring) (internal footnotes and citations omitted).

Other Circuit judges have been more direct in stating that courts need more guidance on Second Amendment challenges to § 922(g)(1). As Judge VanDyke with the Ninth Circuit stated while discussing the current circuit split: "[P]erhaps no single Second Amendment issue has divided the lower courts more than the constitutionality of the 18 U.S.C. § 922(g)(1) felon-disarmament rule's application to certain nonviolent felons." *United States v. Duarte*, 108 F.4th 786, 787 (9th Cir. 2024) (VanDyke, J., dissenting from the grant of rehearing en banc). Judge VanDyke continued by noting that "[n]othing in the Supreme Court's recent *Rahimi* decision controls or even provides much new guidance for these cases . . . ." *Id.* As these judges acknowledge, the split is established and is appropriate for resolution by this Court.

The government's argument that its new rule change will "revitalize" 18 U.S.C. § 925(c) and restore the opportunity for felons to re-arm themselves is speculative. The "specific contours" of its implementation remain to be seen. Withdrawing the

Attorney General's Delegation of Authority, 90 Fed. Reg. 13,080, 13,082 (Mar. 20, 2025) ("the Department has begun that review process in earnest and will provide the President with a plan as required by Order 14206"); *Id.* at 13,083 ("the Department anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c)."). And this Court highly disfavors speculation as the basis for its decisions. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 454 (2008). What is *not* speculation is that § 925(c) provides only an administrative stop on the way to the judicial review that it also expressly authorizes.

And it is quite likely that this process will be burdensome on the individual seeking restoration of rights. Potentially, the ability to obtain restoration of rights will be limited to those with the financial resources to seek them, especially if the request requires judicial review.

Further, any "relief" under § 925(c) would be incomplete. Section 925(c), by its express terms, only permits "relief from the disabilities imposed by Federal laws." That is no relief at all for the majority of the population who live in states that also impose indefinite prohibitions on the possession of firearms by felons.[1]

[1] *See, e.g.,* Ariz. Rev. Stat. § 13-904(A)(5); Cal. Penal Code § 29800(a)(1); Colo. Rev. Stat. § 18-12-108(1); Conn. Gen. Stat. § 53a-217c(a); 11 DE Code §1448(a)(1); Fla. Stat. § 790.23(1); HI Rev. Stat. § 134-7(b); Iowa Code § 724.26(1); KS Stat § 21-6304(1); 15 ME Rev. Stat. § 393; Md. Code Ann., Pub. Safety §§ 5-133, 5-101(g)(2) (LexisNexis); Minn. Stat. Ann. § 624.713, subd. (1)(10)(i); Mo. Rev. Stat. § 571.070(1)(1); Neb. Rev. Stat. § 28-1206(1)(a)(i); Nev. Rev. Stat. § 202.360(1)(b); N.Y. Penal Law § 400.00(1)(c); N.C. Gen. Stat. § 14-415.1; 21 OK Stat. § 1283(A); S.C. Code

In contrast, a judicial finding that disarmament under § 922(g)(1) as applied to a particular individual violates his or her Second Amendment rights would apply fully and equally to his or her state, because the Second Amendment applies equally to the states through the Fourteenth Amendment. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010). The "incorporated Bill of Rights protections are all to be enforced against the States. . . according to the same standards that protect those personal rights against federal encroachment." *Id.* at 765 (cleaned up). Therefore, even if an authentic remedy for federal firearms dispossession really did arise from the dormant shell of Section 925(c), it would not replace as-applied Second Amendment challenges to firearms dispossession.

II. Mr. Doss's case presents an ideal vehicle for review. This court should only look at Mr. Doss's prior felony convictions for an as-applied challenge.

The government asserts Mr. Doss's case does not present an appropriate vehicle to address this question because of the nature of his prior convictions and prior conduct. But the government does not explain *why* these prior convictions or conduct establish that lifetime disarmament is appropriate. Further, the government does not explain why it is appropriate for courts to consider conduct outside of Mr. Doss's prior felony convictions.

Ann. § 16-23-500(A);UT Code § 76-10-503(2); Va. Code Ann. § 18.2-308.2(A); W. Va. Code § 61-7-7(a)(1); Wyo. Stat. Ann. § 6-8-102(a).

Past conduct outside of Mr. Doss's felony convictions cannot be considered. In constitutional challenges, courts only consider "applications of the [challenged] statute in which it actually authorizes or prohibits conduct," not circumstances for which the statute is irrelevant. *City of L.A. v. Patel*, 576 U.S. 409, 415–19 (2015). *Patel* involved a facial Fourth Amendment challenge to a municipal code provision that authorized warrantless searches of certain motel records. 576 U.S. at 412–13. The city responded that a facial challenge "must fail because such searches will never be unconstitutional in all applications." *Id*. at 417. It argued that searches covered by the statute would be constitutional in certain circumstances, such as emergency situations, where consent was given, or where the police had a warrant. *Id*. at 417–18.

The Supreme Court explained that the city misunderstood "how courts analyze facial challenges." *Id*. at 418. The purportedly constitutional applications the city identified were "irrelevant to [the Court's] analysis because they do not involve actual applications of the statute." *Id*. at 419. For those examples, the searches could occur *without* the challenged statute. *Id.* "Statutes authorizing warrantless searches . . . do no work where the subject of a search has consented." *Id.*

The Supreme Court explained that "[l]egislation is measured for consistency with the Constitution by its impact on those whose conduct it affects. The proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Id*. at 418 (cleaned up).

The conduct § 922(g)(1) prohibits is possession of a firearm after a felony conviction. Therefore, as other courts have found, only the prior convictions that triggered the firearm possession ban are relevant to the analysis. *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *United States v. Allen*, No. 22-CR-456, 2023 WL 8701295 (E.D. Pa. Dec. 15, 2023). To allow a wide-reaching review, as proposed by the government, would require courts to stand in the stead of a legislature "to make a new law, not to enforce an old one." *United States v. Reese*, 92 U.S. 214, 221 (1875). For example, the government talks at length about Mr. Doss's parole status. *See* Gov't Opp. 2-3. This would be relevant if the federal statute prohibited the possession of a firearm while on parole, but it does not.

Further, the government's attempt to look at conduct outside of the prior felonies also runs headlong into the exact problem *Bruen* sought to solve—avoiding an "interest-balancing inquiry" that requires a "case-by-case basis whether the right is really worth insisting upon." 597 U.S. 1, 22-23 (2022). *Bruen* adopted its historical-tradition approach to prevent judges from engaging in a subjective assessment of a defendant's worthiness of Second Amendment rights— "a value-laden and political task that is usually reserved for the political branches." *United States v. Rahimi*, 602 U.S. 680, 732-33 (2024) (Kavanaugh, J., concurring). Yet under the government's approach, courts or juries can address extra-offense characteristics and assess a wide range of potentially disqualifying factors unmoored from the justification the government has asserted for taking away Second Amendment rights. *See, e.g.,*

P*itsilides v. Barr,* 128 F.4th 203, 210-13 (3d Cir. 2025). Once a court steps away from the firearm regulation at hand and abandons the value-neutral analysis of how its particular features measure up against the features of historical regulations, it is left with only "value-laden" questions about who is deserving enough to exercise Second Amendment rights. That does not comport with what this Court has instructed lower courts to do when adjudicating Second Amendment challenges—namely, "apply faithfully the balance struck by the founding generation to modern circumstances." *Bruen*, 597 U.S. at 29 n.7.

Looking only to Mr. Doss's prior felony convictions, lifetime disarmament is unwarranted. His felonies, prior to the instant offense, includes an identity theft, theft, and forgery. These are nonviolent. Therefore, Mr. Doss's case is a proper vehicle for review of this important question.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

/s/ Heather Quick

Heather Quick
Appellate Chief
First Assistant Federal Public Defender
222 Third Avenue SE, Suite 290
Cedar Rapids, IA 52401
TELEPHONE: 319-363-9540
FAX: 319-363-9542

ATTORNEY FOR PETITIONER