No. 24-6625

In the Supreme Court of the United States

RONNIE DIAZ, JR., *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

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

REPLY BRIEF FOR PETITIONER

MAUREEN SCOTT FRANCO
Federal Public Defender
CARL R. HENNIES
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS
300 Convent Street, Suite 2300
San Antonio, Texas 78205
Carl_Hennies@fd.org
(210) 472-6700

Counsel for Petitioner

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INTRODUCTION

The government cannot dispute that the question presented—whether the federal felon-in-possession statute violates the Second Amendment—is "exceptionally important." *See United States v. Jackson*, 121 F.4th 656, 660 (8th Cir. 2024) (Stras, J., dissenting from denial of rehearing en banc). The government also concedes that the courts of appeals are divided over how to analyze constitutional challenges to the statute. After all, "perhaps 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 grant of rehearing en banc). And the government musters no defense of the Fifth Circuit's decision below, which conflicts with this Court's precedent and demotes the Second Amendment to a second-class right. *See* Pet. 29–33.

Still, the government asks this Court to deny review and instead kick the can down the road. But the government dramatically understates the severity of the circuit split, which has deepened and is firmly entrenched. The government also misplaces reliance on the recently revived administrative process for restoring firearm rights. That process was unavailable to Diaz—as well as countless Americans prosecuted under § 922(g)(1)—and cannot cure the statute's constitutional defects in any event. And the government's vehicle objections are unfounded. This is an ideal case to decide whether § 922(g)(1) is constitutional as applied to non-violent offenders like Diaz.

Delaying review will only perpetuate the current state of disarray in the lower courts while a fundamental right hangs in the balance. And the need for certainty is especially urgent because § 922(g)(1) is one of the most commonly charged federal crimes and challenges to the statute are congesting the lower courts' dockets. This Court should answer this critically important question now.

ARGUMENT

I. The courts of appeals are deeply divided over the scope of a fundamental constitutional right.

The government concedes that the courts of appeals are split but deems the disagreement "shallow." Opp. 2. Not so. The courts of appeals are deeply divided over how to analyze Second Amendment challenges to § 922(g)(1), the disagreements are entrenched, and the division has only deepened since Diaz filed his petition. The split will not go away and requires this Court's intervention.

1. The courts of appeals are hopelessly fractured over a fundamental issue: whether § 922(g)(1) is vulnerable to as-applied Second Amendment challenges. *See* Pet. 19–27. The Third, Fifth, and Sixth Circuits all recognize that the statute may be unconstitutional as applied to individuals convicted of certain offenses under the text-and-history test laid out in *NYSRPA v. Bruen*, 597 U.S. 1 (2022). *See* Pet. App. 16a n.4; *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Williams*, 113 F.4th 637, 657, 661 (6th Cir. 2024). In other words, "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny." Pet. App. 15a. By contrast, the Fourth, Eighth, Tenth, and Eleventh Circuits have categorically upheld § 922(g)(1), no matter the underlying crime. *See United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024); *United*

States v. Jackson, 110 F.4th 1120, 1125 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025); *United States v. Cole*, No. 24-10877, 2025 WL 339894, at *4 (11th Cir. Jan. 30, 2025) (per curiam). Since Diaz filed his petition, the en banc Ninth Circuit has joined this side of the split and held that § 922(g)(1) is constitutional as applied to "all felons." *United States v. Duarte*, — F.4th —, No. 22-50048, 2025 WL 1352411, at *14 (9th Cir. May 9, 2025).

But that's not all. Even aside from this principal split, the courts of appeals are divided over several important underlying issues relevant to the Second Amendment analysis. *See* Pet. 25–27.

First, the courts disagree about how much weight to give this Court's statements in *District of Columbia v. Heller* that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" and that such laws are "presumptively lawful." 554 U.S. 570, 626, 627 n.26 (2008). The Tenth and Eleventh Circuits have foregone any historical analysis based on pre-*Bruen* circuit precedent that, in turn, relied on *Heller*. *Vincent*, 127 F.4th at 1265–66; *Cole*, 2025 WL 339894, at *4. The Fourth Circuit also held that it was bound by pre-*Bruen* precedent relying on *Heller*. *Hunt*, 123 F.4th at 700, 703–04. The Eighth and Ninth Circuits have conducted a historical analysis to either "support[ ]" or "confirm[ ]" *Heller*'s statements. *Jackson*, 110

F.4th at 1125; *Duarte*, 2025 WL 1352411, at *6. By contrast, the Third, Fifth, and Sixth Circuits held that *Heller*'s statements are dicta because this Court did not provide any historical justifications for felon-in-possession laws, so these courts conducted an independent historical inquiry. Pet. App. 8a–9a; *Range*, 124 F.4th at 228–29 & n.8; *Williams*, 113 F4th at 643–44, 648.

Second, the courts that have undertaken a historical analysis diverge in how they interpret the government's proposed historical analogues. For example, the Fifth and Ninth Circuits each relied on capital punishment and permanent estate forfeiture to support § 922(g)(1). Pet. App. 12a–15a; *Duarte*, 2025 WL 1352411, at *9–12. But the Third Circuit rejected those analogues. *Range*, 124 F.4th at 231. And although it acknowledged that the question was "unsettled," the Sixth Circuit identified a pitfall of relying on capital punishment: "Felons … don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment." *Williams*, 113 F.4th at 658. The courts also disagree about the tradition to be gleaned from historical laws prohibiting religious minorities, Native Americans, Blacks, and loyalists from possessing guns. The Fourth, Sixth, Eighth, and Ninth Circuits have interpreted these historical laws as supporting a broad tradition allowing a legislature to

disarm any group it deems dangerous.[1] *Hunt*, 123 F.4th at 707–08; *Williams*, 113 F.4th at 657; *Jackson*, 110 F.4th at 1127–28; *Duarte*, 2025 WL 1352411, at *12–14. By contrast, the Third and Fifth Circuits have interpreted these laws as supporting a far narrower tradition: disarming political traitors or potential insurrectionists who pose a threat of armed rebellion. *Range*, 124 F.4th at 229–30; *United States v. Connelly*, 117 F.4th 269, 277–78 (5th Cir. 2024).

Third, the courts that permit as-applied challenges disagree about how to conduct the analysis. In the Fifth Circuit, an as-applied challenge turns on whether a defendant's underlying conviction was subject to "serious and permanent punishment" at the founding. Pet. App. 16a & n.4. And when conducting that analysis, courts may consider only convictions punishable by more than a year in prison—other conduct is "not relevant." *Id.* at 11a. In the Sixth Circuit, however, an as-applied challenge turns on whether someone can show that they are "not dangerous." *Williams*,

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[1] Even these circuits, however, disagree about the scope of this tradition. The Sixth Circuit found that history requires an opportunity for "individuals [to] demonstrate that their particular possession of a weapon posed no danger to peace." *Williams*, 113 F.4th at 657. By contrast, the Fourth, Eighth, and Ninth Circuits determined that "[n]ot all persons disarmed under [these] historical precedents … were violent or dangerous persons," so "there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Jackson*, 110 F.4th at 1128; *see Hunt*, 123 F.4th at 707; *Duarte*, 2025 WL 1352411, at *6.

113 F.4th at 657. And a court evaluating dangerousness "may consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction." *Id.* at 659–60. The Third Circuit has adopted yet another standard, holding that § 922(g)(1) is unconstitutional as applied to someone "who did not "pose[ ] a physical danger to others." *Range*, 124 F.4th at 232. Although the court emphasized that its decision was "narrow," *id.*, the court's reasoning "rejects all historical support for disarming non-violent felons," *id.* at 294 (Shwartz, J., dissenting). And the Third Circuit allows courts to consider not only an individual's "entire criminal history," but also "post-conviction conduct." *Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025).

In short, the many disagreements among the courts of appeals are far from shallow. The courts of appeals are deeply divided at every stage of the Second Amendment analysis.

2. The government suggests that the Court's denial of plenary review in several § 922(g)(1) cases last term when faced with a similar split—although involving fewer circuits—supports denying review again. Opp. 2. Just the opposite. The deepening division since this Court denied review shows that this entrenched split will not go away without this Court's intervention.

Although this Court did not grant plenary review in a § 922(g)(1) case last term, the Court issued GVRs in several cases "for further consideration in light of" *United States v. Rahimi*, 602 U.S. 680 (2024). *See Garland v. Range*, 144 S. Ct. 2706 (2024); *Jackson v. United States*, 144 S. Ct. 2710 (2024); *Vincent v. Garland*, 144 S. Ct. 2708 (2024). But *Rahimi* did not resolve the split. None of those courts altered their pre-*Rahimi* decisions—which reached drastically divergent results—based on *Rahimi*. *See Vincent*, 127 F.4th at 1264 ("*Rahimi* doesn't undermine the panel's earlier reasoning or result" that § 922(g)(1) is constitutional in all applications based on pre-*Rahimi*, pre-*Bruen* precedent); *Jackson*, 110 F.4th at 1122 ("*Rahimi* does not change our conclusion" that history supports § 922(g)(1) in every application); *Range*, 124 F.4th at 232 (again holding that § 922(g)(1) is unconstitutional as applied to a non-violent individual after considering *Rahimi*).

Indeed, it is now clear that "[n]othing in the Supreme Court's recent *Rahimi* decision controls or even provides much new guidance" for analyzing Second Amendment challenges to § 922(g)(1). *Duarte*, 108 F.4th at 787 (VanDyke, J., dissenting from grant of rehearing en banc). And the pre-*Rahimi* split has only deepened since *Rahimi*, with the Fifth and Sixth Circuits joining the Third Circuit in holding that § 922(g)(1) is susceptible to as-

applied challenges, while the Fourth and Ninth Circuits joined the Eighth, Tenth, and Eleventh Circuits in holding that § 922(g)(1) is constitutional in every application. *See supra* 3–4. "While *Rahimi* likely issued to clarify the confusion left by *Bruen*, lower courts have remained confused." *United States v. Patino*, 758 F. Supp. 3d 664, 669 (W.D. Tex. 2024). So although this Court's measured approach may have been warranted to allow further percolation following *Rahimi*, the Court should grant review now to resolve this intractable split.

II. The Court should decide this critically important question now—even though the Attorney General recently revived a procedure for restoring gun rights.

The government suggests that this circuit split may "evaporate" because of a recently reestablished administrative process for restoring firearm rights. Opp. 2. Under 18 U.S.C. § 925(c), an individual who is prohibited from possessing firearms may have his or her firearm rights restored "if it is established to [the Attorney General's] satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." But this relief provision is irrelevant to thousands of individuals—including Diaz—who could

not take advantage of it to restore their right to keep and bear arms. And, in any event, the relief provision cannot cure the constitutional concerns with § 922(g)(1).

1. Section 925(c) is irrelevant here for a simple reason: it was unavailable to Diaz. Beginning in 1992—decades before any of Diaz's underlying convictions—§ 925(c) was "rendered inoperative" because Congress prohibited using appropriated funds to investigate or act on relief applications. *Logan v. United States*, 552 U.S. 23, 28 n.1 (2007). Only in the last few months has the Attorney General reestablished the process and begun granting relief from federal firearm disabilities. *See Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025) (explaining that the Department of Justice "anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c)"); *Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17,835 (Apr. 29, 2025) (granting 10 individuals relief under § 925(c)).

In other words, Diaz could not have used § 925(c) to restore his firearm rights. Neither could other individuals—perhaps numbering in the thousands—whose Second Amendment challenges to § 922(g)(1) are winding their way through the lower courts. So even if the relief provision may have some impact on the

Second Amendment analysis moving forward (*but see infra* 11–13), the current circuit split affects countless § 922(g)(1) convictions and warrants this Court's review.

2. Even moving forward, § 925(c) will not, as the government suggests, "address[ ] any constitutional concerns about the breadth and duration of the restriction imposed by Section 922(g)(1)."[2] Br. in Opp. 11, *Jackson v. United States*, No. 24-6517 (Apr. 11, 2025). In fact, the relief provision has features that this Court has held are inconsistent with the Second Amendment.

Section 925(c) grants the Attorney General "broad discretion" to grant or deny relief—"even when the statutory prerequisites are satisfied"—that is reviewable only under an arbitrary and capricious standard. *United States v. Bean*, 537 U.S. 71, 75–77 & n.2 (2002). In that way, the statute mirrors New York's "may issue" licensing law, which gave authorities "discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria," subject only to arbitrary-and-capricious review. *See Bruen*, 597 U.S. at 14. This Court held that the New York law was

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[2] The government claims that "Congress has addressed [constitutional] concerns through 18 U.S.C. § 925(c)." Br. in Opp. 10, *Jackson*, *supra* (No. 24-6517). But Congress could not have intended the statute to address constitutional concerns with federal firearm prohibitions because Congress had no concerns about the Second Amendment when it enacted the first version of § 925(c) alongside the modern felon-in-possession statute in 1968. *See* Pet. 8–9.

inconsistent with the Second Amendment. *Id.* at 71. So too is a regime that would allow Congress to pass a sweeping law disarming millions of Americans, *see* Pet. 36–37, and then gives the Attorney General broad and essentially unreviewable discretion to determine who among them may recover their fundamental right to keep and bear arms.

And § 925(c) incorporates a "dangerousness" standard that this Court rejected in *Rahimi*. In *Rahimi*, the government argued that Congress may disarm individuals who are not "responsible." Gov't Br. 27, *United States v. Rahimi*, No. 22-915 (U.S. Aug. 14, 2023). And, according to the government, "a person is not 'responsible' if his possession of a firearm would pose a danger of harm to himself or others." *Id.* In other words, the government used "'responsible' as a placeholder for dangerous." Tr. of Oral Arg. 10–12, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023). But this Court unanimously rejected that theory. *Rahimi*, 602 U.S. at 701–02; *id.* at 772–73 (Thomas, J., dissenting). The Court explained that "responsible" is a "vague term" and that it is "unclear what such a rule would entail." *Id.* at 701 (maj. op.). And by deeming the term "responsible" vague, the Court necessarily rejected the government's proposed definition: dangerous. Congress expressed a similar concern when it defunded § 925(c), explaining that

determining whether someone is dangerous is a "subjective task." S. Rep. 102-353 (1992). After *Rahimi*, dangerousness is not the touchstone for deciding who can and cannot possess a firearm.

The bottom line is that this Court will need to determine whether there is a historical tradition of disarming non-violent felons—notwithstanding § 925(c). And if there is no such tradition, then an administrative process that gives the executive branch nearly unbridled discretion to restore firearm rights based on a vague and subjective standard cannot salvage the statute's constitutional defects. So the reestablishment of § 925(c)'s relief provision is no reason for this Court to delay review.

III. The government's vehicle objections are baseless.

The government does not dispute that the Fifth Circuit squarely addressed the question presented in a precedential opinion, which lower courts have now cited more than 200 times. Still, the government argues that this case is a poor vehicle. But the government's vehicle objections are baseless and in no way inhibit the Court's ability to resolve the question presented.

1. The government argues that Diaz "cannot show that his underlying conduct falls within the scope of the Second Amendment." Opp. 3. But the Fifth Circuit held just the opposite: "The plain text of the Second Amendment covers the conduct

prohibited by § 922(g)(1)." Pet. App. 11a. After all, the Second Amendment "protect[s] an individual's right to carry a handgun for self-defense outside the home," *Bruen*, 597 U.S. at 10, and "Section 922(g)(1) burdens that right," *Williams*, 113 F.4th at 650.

The government notes that Diaz was also convicted of carrying a firearm during and in relation to a drug-trafficking offense in violation of 18 U.S.C. § 924(c). Opp. 3. But that is a red herring. Diaz is not challenging his conviction under § 924(c), which prohibits far different conduct than § 922(g)(1). Indeed, the government has never claimed that the § 924(c) conviction has any bearing on Diaz's constitutional challenge to § 922(g)(1) until now. That conviction is irrelevant to the question presented and no reason to deny review.

2. The government also argues that § 922(g)(1) "does not raise any constitutional concerns as applied to [Diaz]." Opp. 3. But this is not a vehicle problem. It is a merits argument. The government cannot dispute that if this Court grants review, it will reach the question presented and resolve the conflict that is rampant in the courts of appeals. And this case presents a clean vehicle for deciding the question presented because the Fifth Circuit acknowledged that Diaz's prior convictions do not "involve a threat of violence." Pet. App. 18a n.5.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender
CARL R. HENNIES
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL
PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS

Counsel for Petitioner

May 30, 2025