No. _____

In the Supreme Court of the United States

JOSE GOMEZ QUIROZ, *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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 18 U.S.C. § 922(n), the federal statute that prohibits anyone who has been indicted of "a crime punishable by imprisonment for a term exceeding one year" from receiving a firearm, violate the Second Amendment either facially or as applied to individuals under indictment for non-violent offenses?

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Quiroz, No. 4:22-cr-00104 (Sept. 19, 2022)

United States Court of Appeals for the Fifth Circuit:

United States v. Quiroz, No. 22-50834 (Jan. 13, 2025)

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Petitioner Jose Gomez Quiroz, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

On the same day this Court decided *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022), a jury in West Texas found Jose Gomez Quiroz guilty of violating 18 U.S.C. § 922(n) by receiving a firearm while he was under indictment for a felony offense. Before trial, the district court had denied Quiroz's motion to dismiss the indictment, holding that § 922(n) did not violate the Second Amendment facially and as applied to him under the

means-end scrutiny framework the Fifth Circuit applied pre-*Bruen*. Recognizing that *Bruen* marked a sea change in Second Amendment jurisprudence, Quiroz asked the court to reconsider his motion to dismiss. Because there is no historical tradition of restricting a felon indictee's right to receive a firearm, the court held that § 922(n) is facially unconstitutional and dismissed Quiroz's indictment.

The government appealed, and the court of appeals waited more than two years to issue its decision. In the meantime, Quiroz's underlying Texas indictments for burglary and failure to appear were dismissed. And, in *Bruen*'s wake, the courts of appeals reached divergent results when applying *Bruen*'s Second Amendment framework to a host of firearm restrictions. Last term's decision in in *United States v. Rahimi*, 602 U.S. 680 (2024), did little to quell the confusion.

After *Rahimi*, the Fifth Circuit held that the felon-in-possession ban was constitutional facially because it fit within the historical tradition of capital punishment, but the court left the door open to as-applied challenges. *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *reh'g en banc denied*, No. 23-50452 (5th Cir. Oct. 25, 2024), *pet. for writ of cert. pending*, No. 24-6625 (U.S.). In addressing Quiroz's case, the court applied similar reasoning, holding that

§ 922(n) "'fits neatly' within our nation's historical tradition of protecting the public from criminal defendants indicted for serious offenses" by detaining them pretrial. App. 17a.

The decision below is wrong and conflicts with this Court's precedents. Section 922(n) is a mid-20th century innovation drafted when Congress believed—incorrectly—that the Second Amendment does not protect an individual right to bear arms. So Congress made no effort to pass a law that was "consistent with the Nation's historical tradition of firearm regulation." *See Bruen*, 597 U.S. at 24. Rather, it passed a sweeping ban that is irreconcilable with our history and tradition. Section 922(n) is facially unconstitutional because its prohibition on gun receipt by released defendants imposes a historically unprecedented burden on the right to bear arms. No historical firearm law imposed a similar restriction and certainly not on a person like Quiroz, who was indicted for non-violent offenses that did not involve firearms.

This question is critically important. Section 922(n) is a common federal firearm offense that operates to restrict a person's Second Amendment right upon a mere showing of probable cause for any felony—regardless of whether that felony involves misuse of a firearm, credible threats of violence, or a high maximum sentence. And this restriction is indefinite, lasting as long as the

underlying felony case remains unresolved—more than three years in Quiroz's case.

This question will not go away, and this is an ideal vehicle to resolve it. The Court should grant certiorari.

OPINION BELOW

The Fifth Circuit's opinion is reported at 125 F.4th 713 and is reproduced at App. 1a–20a. The Fifth Circuit's order denying panel rehearing, App. 21a, is unpublished.

JURISDICTION

The Fifth Circuit entered its judgment on January 13, 2025, and denied panel rehearing on February 28, 2025. This petition is filed within 90 days after the denial of rehearing. *See* Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Section 922(n) of Title 18 of the United States Code provides: "It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year

to … receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

STATEMENT

A. Legal background.

1. The crime of receiving a firearm while under felony indictment is a modern invention. *See United States v. Laurent*, 861 F. Supp. 2d 71, 82 (E.D.N.Y. 2011) (discussing legislative history of 18 U.S.C. § 922(n)). Congress first limited the right of individuals under indictment to access firearms in 1938. *See* Federal Firearms Act, 75 Cong. Ch. 850, § 2(e), (f), 52 Stat. 1250, 1251 (1938). The Federal Firearms Act made it unlawful for someone under indictment for, or convicted of, a "crime of violence" to ship or transport in interstate or foreign commerce any firearm or ammunition. *Id.* § 2(e). It also prohibited firearm possession by fugitives from justice and anyone convicted of a crime of violence. *Id.* § 2(f).

Soon after Congress passed the Federal Firearms Act, this Court decided a Second Amendment challenge to another federal firearm law. In *United States v. Miller*, two defendants challenged their indictment for transporting an unregistered short-barreled shotgun in interstate commerce. 307 U.S. 174, 175 (1939). This Court held that the Second Amendment did not protect the right

to possess a short-barreled shotgun because such a weapon had no "reasonable relationship to the preservation or efficiency of a well regulated militia." *Id.* at 178. The Court explained that the Second Amendment was adopted "[w]ith obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces" and "must be interpreted and applied with that end in view." *Id.*

Applying similar militia-focused reasoning, courts of appeals rejected constitutional challenges to the Federal Firearms Act's provision prohibiting individuals convicted of violent crimes from receiving firearms. The First Circuit held that the Second Amendment did not protect someone who was not "a member of any military organization" and who used a firearm "without any thought or intention of contributing to the efficiency of the well regulated militia." *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942). The Third Circuit concluded that the Second Amendment "was not adopted with individual rights in mind," so it did not protect possession of a gun without "some reasonable relationship to the preservation or efficiency of a well regulated militia." *United States v. Tot*, 131 F.2d 261, 266 (3d Cir. 1942). And a California court of appeals upheld that state's felon-in-possession law, explaining that "the right to keep and bear arms is not a right

guaranteed … by the federal constitution." *People v. Camperlingo*, 231 P. 601, 603 (Cal. Ct. App. 1924).

2. The federal prohibition on receipt of a firearm by an indictee took on its modern form in the 1960s. At the time, Congress shared a widely held—but incorrect—understanding of the Second Amendment. In committee testimony, the Attorney General assured Congress that "[w]ith respect to the second amendment, the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms" and opined that "the right to bear arms protected by the second amendment relates only to the maintenance of the militia." *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary,* 89th Cong. 41 (1965). And Congress dismissed constitutional concerns about federal firearm regulations, explaining that the Second Amendment posed "no obstacle" because federal regulations did not "hamper the present-day militia." S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169. Congress relied on court decisions—including *Miller*—which held that the Second Amendment "was not adopted with the individual rights in mind." *Id.*

Unconstrained by the Second Amendment, "Congress sought to rule broadly," employing an "expansive legislative approach" to

pass a "sweeping prophylaxis … against misuse of firearms." *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (first quote); *Lewis v. United States*, 445 U.S. 55, 61, 63 (1980) (second and third quotes). In particular, Congress was concerned with keeping firearms out of the hands of broad categories of "potentially irresponsible persons." *Barrett v. United States*, 423 U.S. 212, 220 (1976). So it enacted three significant changes that brought about the modern firearm restriction in § 922(n).

First, Congress expanded the Federal Firearms Act to prohibit individuals under indictment for *any crime* "punishable by imprisonment for a term exceeding one year"—not just violent crimes—from shipping or transporting a firearm. *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961). *Second*, a few years later, Congress prohibited indictees from *receiving* a firearm. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 231 (codified at 18 U.S.C. § 922(f) (1968)).[1] Relatedly, Congress also criminalized *possession* of a firearm—not just receipt—by anyone with a felony conviction. *See id.* § 1202(a)(1), 82 Stat. 197, 236. *Third*, Congress clarified that "indictment"

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[1] The firearm restriction on indictees was later recodified at § 922(n). Firearms Owners' Protection Act, Pub. L. No. 99-308, § 102, 100 Stat. 449 (1986).

includes an indictment or information "in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted." Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1216 (codified at 18 U.S.C. § 921(a)(14) (1968)).

In the ensuing years, courts endorsed Congress's incorrect understanding of the Second Amendment and upheld the new, sweeping firearm restrictions. For example, the Sixth Circuit held that the Second Amendment did not limit Congress's "power to prohibit the possession of a firearm by a convicted felon." *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971). "Since the Second Amendment right 'to keep and bear Arms' applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm." *Id.* (citing *Miller*, 307 U.S. at 178). Other courts of appeals—relying on *Miller*—also rejected Second Amendment challenges to the felon-in-possession statute because it did not obstruct the militia. *See*, *e.g.*, *United States v. Johnson*, 497 F.2d 548, 550 (4th Cir. 1974); *Cody v. United States*, 460 F.2d 34, 36–37 (8th Cir. 1972). And courts of appeals held that § 922(n)'s ban on indictees receiving firearms did not violate the Second Amendment

under the now-outdated theory that the Second Amendment does not confer an individual right to bear arms. *See United States v. Lawton*, 366 F.3d 550, 553–54 (7th Cir. 2004); *United States v. Rivero*, 218 F. App'x 958 (11th Cir. 2007) (per curiam).

3. In 2008, this Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. *District of Columbia v. Heller*, 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a "textual analysis" of the Second Amendment's language and surveyed the Amendment's "historical background." *Id.* at 578, 592. The Court had "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 595. Relying on the historical understanding of the Amendment, however, the Court recognized that "the right secured by the Second Amendment is not unlimited." *Id.* at 626. The Court identified several "longstanding" and "presumptively lawful" firearm regulations, but firearm prohibitions on indictees was not on that list. *Id.* at 626–27 & n.27. Even for the presumptively lawful regulations like those on felons possessing firearms, the Court cautioned that it was not "undertak[ing] an exhaustive historical analysis … of the full scope of the Second Amendment." *Id.* at 626. And it did not cite any

historical examples of these "longstanding" laws, explaining that there would be "time enough to expound upon the historical justifications for the[se] exceptions … if and when those exceptions come before us." *Id.* at 635. The Court then turned to the District of Columbia handgun ban at issue, finding that it was historically unprecedented and thus violated the Second Amendment. *Id.* at 629, 631–35.

Following *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges that focused on the historical scope of the Second Amendment at step one and applied means-ends scrutiny at step two. *See*, *e.g.*, *Kanter v. Barr*, 919 F.3d 437, 441–42 (7th Cir. 2019); *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). And this Court's recognition that the Second Amendment protects an individual right to bear arms brought renewed constitutional challenges to the felon-in-possession statute, § 922(g)(1). But the courts of appeals almost uniformly rejected Second Amendment challenges to § 922(g)(1), either applying means-ends scrutiny or relying on *Heller*'s "presumptively lawful" language. *See*, *e.g.*, *United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases); *but see Binderup v. Attorney General*, 836 F.3d 336, 351–57 (3d Cir. 2016) (en banc) (holding § 922(g)(1) was unconstitutional as applied to two

individuals with underlying convictions "not serious enough to strip them of their Second Amendment rights"). The courts did not address the constitutionality of § 922(n) post-*Heller*—until *Bruen*.

4. In *Bruen*, this Court held that the two-step framework adopted by the courts of appeals was "one step too many." 597 U.S. at 19. Instead, the Court explained that *Heller* demanded a test "centered on constitutional text and history." *Id.* at 22. Under this test, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* (cleaned up).

Bruen—and the Court's later decision in *Rahimi*—explain that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* (quoting *Bruen*, 597 U.S. at 29). The law need

not be a "historical twin," but analogical reasoning is also not a "regulatory blank check." *Bruen*, 597 U.S. at 30. "Why and how the regulation burdens the right are central to this inquiry." *Rahimi*, 602 U.S. at 681. These considerations ask whether the burden on the right of armed self-defense is "comparably justified" (the *why*) and whether the modern and historical regulations impose a "comparable burden" (the *how*). *Bruen*, 597 U.S. at 29. "Even when a law regulates arms-bearing for a permissible reason, … it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692.

B. Proceedings below.

1. In March 2022, an indictment charged Quiroz with illegal receipt of a firearm by a person under indictment and with making a false statement during the purchase of a firearm. C.A. ROA 13–14; *see* 18 U.S.C. § 922(a)(6), (n). Both counts were based on Quiroz's December 2021 purchase of a firearm. C.A. ROA 13–14. The indictment alleged that, when Quiroz completed the firearms transaction record, he indicated that he was not under indictment for a felony even though he knew he was under felony indictments out of Pecos County, Texas. *Id.* Quiroz had been indicted in June 2020 for burglary of a habitation. *Id.* at 38–39. The burglary indictment alleged that he intentionally and knowingly entered a

habitation without consent "to commit … theft of property, namely a weed trimmer." *Id.* at 55; *see* Tex. Penal Code § 30.02(c)(2). He also had been indicted for failing to appear for an April 2021 hearing in the burglary proceeding. C.A. ROA 57; *see* Tex. Penal Code § 38.10(a), (f).

2. A month later, before this Court decided *Bruen*, Quiroz moved to dismiss the indictment. *Id.* at 38–52. Quiroz argued first that, under *Heller*, § 922(n) violated the Second Amendment both facially and as applied to him. And because § 922(n) is unconstitutional, he argued that any false statement was immaterial. *Id.* at 38–52. Applying the two-step inquiry the court of appeals adopted post-*Heller*, the district court held that § 922(n) survived intermediate scrutiny and denied the motion. *Id.* at 105–16.

3. Quiroz proceeded to a jury trial. *Id.* at 8. The defense theory was that Quiroz did not know he was under indictment when he tried to buy the firearm. *Id.* at 547–50. On June 23, 2022, the jury found him guilty of both offenses. *Id.* at 9, 192.

4. The same day as the verdict, this Court decided *Bruen*. Quiroz promptly asked the district court to reconsider his motion to dismiss or enter a judgment of acquittal in light of *Bruen*. *Id.* at 210–25. Following the *Bruen* framework, the district court granted

the motion and dismissed the indictment. *Id.* at 285–309. The court held that § 922(n) is facially unconstitutional and, thus, any false statement is immaterial for the § 922(a)(6) charge. *Id.* at 286, 309. The court explicitly did "not answer whether § 922(n) is unconstitutional as applied to" Quiroz. *Id.*

5. The government appealed, and the case remained pending in the Fifth Circuit while this Court considered *Rahimi*.[2] After *Rahimi*, the Fifth Circuit addressed a Second Amendment challenge to the statute prohibiting a felon from possessing a firearm, 18 U.S.C. § 922(g)(1), in *Diaz*. *Diaz* held that felons are "people" covered by the Second Amendment and that the plain text of the Second Amendment covers the conduct prohibited by § 922(g)(1). 116 F.4th at 466–67. Turning to the historical analysis, *Diaz* relied on the traditions of capital punishment and estate forfeiture, as well as the going armed laws discussed in *Rahimi*. *Id.* at 467–71. *Diaz* held that, "'[t]aken together,' laws authorizing severe punishments for thievery and permanent disarmament in other cases establish that our tradition of firearm regulation

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[2] Meanwhile, Quiroz's underlying Texas indictments for burglary and failure to appear were dismissed. C.A. Quiroz Supp. Br. 39, 41 (July 25, 2024). In September 2023, the State admitted that the failure-to-appear indictment was based on incorrect information and that Quiroz had, in fact, appeared. *Id.* at 39. In January 2024—more than three years after the burglary indictment was issued—the State declined to prosecute, citing insufficient evidence. *Id.* at 41.

supports the application of § 922(g)(1) to Diaz." *Id.* at 471 (quoting *Rahimi*, 602 U.S. at 698). Because the court held that the statute was constitutional as applied to Diaz, it also rejected his facial challenge. *Id.*

After *Diaz*, the Fifth Circuit turned to Quiroz's appeal. The court "assume[d] arguendo that the plain text of the Second Amendment covers Quiroz and Quiroz's conduct" before turning to the historical analysis. App. 4a–5a. Acknowledging that "the government here does not identify a historical law that specifically prevented acquisition of firearms by those under indictment," the court noted that the "lack of a historical twin is not dispositive." *Id.* at 6a.

The court then examined the historical disarmament of criminal defendants facing serious charges pending trial, primarily pretrial detention, and assessed whether "why" and "how" § 922(n) burdens the right is relevantly similar. App. 7a. For the "why," the court reasoned that "Congress enacted § 922(n) to protect the public from the danger of illegal firearm use by indictees." *Id.* at 7a. The court held pretrial detention at the founding was also "out of concern for public safety." *Id.* at 7a–8a. For the "how," the court highlighted that both § 922(n) and pretrial detention are temporary restrictions. *Id.* at 8a–9a. Additionally,

§ 922(n) bans only receipt of a firearm, not continued possession of a firearm received before indictment. *Id.*

The Fifth Circuit acknowledged that "not everyone facing criminal charges was subject to pretrial detention at the founding," as bail was commonly used to release people not charged with a capital offense before trial. *Id.* at 9a. Focusing its inquiry on the status of capital punishment and detention in 1791, however, the court concluded that many crimes were eligible for the death penalty then and "defendants were rarely released pretrial after indictment for a capital crime." *Id.* at 11a; *see id.* at 11a–14a.

The court ultimately held that the government had "met its burden of showing that § 922(n) is relevantly similar to pretrial detention at the founding." App. 17a. It concluded that § 922(n) "'fits neatly' within our nation's historical tradition of protecting the public from criminal defendants indicted for serious offenses." *Id.* (quoting *Rahimi*, 602 U.S. at 691–92).

The court commented that *Diaz* "reinforces our conclusions." *Id.* "Because 'capital punishment was permissible to respond to theft,' … 'the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.'" *Id.* (quoting *Diaz*, 116 F.4th at 649). The court claimed that five states denied bail to burglary defendants at the founding and seven states made

burglary a capital offense. *Id.* at 18a. Even though burglary was bailable in at least six states at the founding, the court reasoned that "our historical analysis does not require unanimity in every instance." *Id.* at 19a. "Following *Diaz*, if 'capital punishment was permissible to respond to' burglary at the founding, then so too is the temporary disarmament that § 922(n) may lead to—surely a lesser penalty than the 'permanent disarmament' required by § 922(g)(1) and *Diaz*." *Id.* (quoting *Diaz*, 116 F.4th at 469).

Because the court held that "§ 922(n) does not violate the Second Amendment," it reversed the dismissal of the § 922(a)(6) charge. *Id.* at 20a. The court remanded the case to the district court for further proceedings, where it remains pending.

6. The Fifth Circuit denied Quiroz's petition for panel rehearing. App. 21a.

REASONS FOR GRANTING THE PETITION

I. The decision below is wrong and conflicts with this Court's precedent.

The Fifth Circuit's decision below misapplied *Bruen*'s historical analysis. Section 922(n) does not align with our Nation's tradition of firearm regulation on either "why" or "how" it burdens the right to keep and bear arms. *See Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. Because § 922(n) is unconstitutional in all its applications,

it violates the Second Amendment on its face. Section 922(n) is also unconstitutional as applied to Quiroz, whose underlying indicted offenses would not have restricted his right to receive a firearm at the founding.

A. Section 922(n) is facially unconstitutional because it imposes an unprecedented ban on firearm possession for people released after an indictment.

1. Section 922(n) facially violates the Second Amendment because no historical regulation "impose[s] a comparable burden on the right of armed self-defense." *Bruen*, 597 U.S. at 29. The Fifth Circuit acknowledged that the government could not "identify any historical law that specifically prevented acquisition of firearms by those under indictment." App. 6a. But the court held that the history of pretrial detention for serious crimes was "relevantly similar" to § 922(n) because that tradition restricted the firearm rights of some indictees as a consequence of detention, promoted "public safety," and was a temporary restriction imposed based on an accusation. App. 7a–8a. The court was wrong, and its decision conflicts with *Bruen* and *Rahimi*.

2. *Quiroz* is out-of-step with this Court's Second Amendment framework in three critical ways: (1) *Quiroz* relies on a tradition—pretrial detention—that is not a firearm regulation, (2) historical

pretrial detention and § 922(n) are not relevantly similar in why and how they burden the right to bear arms, and (3) neither are the historical traditions—surety and going armed laws—relied upon in *Rahimi*.

a. First, pretrial detention is not a firearm regulation relevant to the Second Amendment analysis. This Court requires the government to show that a modern gun law aligns with our "historical tradition of *firearm* regulation." *Bruen*, 597 U.S. at 24 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going armed laws—that both "specifically addressed firearms violence." 602 U.S. at 694–95. So too in *Bruen*. 597 U.S. at 38–66. To be sure, surety laws were not "passed *solely* for the purpose of regulating firearm possession or use." *Diaz*, 116 F.4th at 468. But this Court emphasized that, "*[i]mportantly for this case*, the surety laws also *targeted* the misuse of firearms." *Rahimi*, 602 U.S. at 696 (emphasis added). In other words, historical laws that did *not* target the misuse of firearms—like capital punishment and pretrial detention—are *not* proper analogues because the government's historical analogues must regulate *firearms*. Pretrial detention is not a *firearm* regulation, so it cannot justify § 922(n). The Fifth Circuit's contrary conclusion misapplies *Bruen* and *Rahimi*.

The court's reliance on pretrial detention is not saved by a greater-includes-the-lesser argument. *Rahimi* held that, "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament … is also permissible." 602 U.S. at 699. *Rahimi* explained that the purpose of imprisonment under the going armed laws was "to respond to the use of guns to threaten the physical safety of others." *Id.* So both the greater historical punishment (imprisonment under the going armed laws) and the lesser modern restriction (disarmament under 18 U.S.C. § 922(g)(8)) had the same purpose—curbing gun violence.

Relying on *Diaz*, the court below misunderstood *Rahimi* to mean that "if 'capital punishment was permissible to respond to' *burglary* at the founding, then so too is the *temporary disarmament* that § 922(n) may lead to[.]" App. 17a (quoting *Diaz*, 116 F.4th at 462; emphasis added). But neither capital punishment for burglary nor pretrial detention for serious offenses were enacted to "respond to the use of guns to threaten the physical safety of others." *Rahimi*, 602 U.S. at 699. This Court's greater-includes-the-lesser reasoning in *Rahimi* does not mean greater punishments that curb crime *not* involving firearm violence also permit firearm restrictions.

b. Second, even if pretrial detention is considered a proper historical analogue, it differs materially from § 922(n) in why and how it burdens the right to bear arms.

The *why*. Section 922(n) burdens the right to armed self-defense in order "to protect the public from the danger of illegal firearm use by indictees." App. 7a. Even the decision below recognizes that pretrial detention at the founding did not have that same purpose. App. 8a. Mandatory pretrial detention, in the jurisdictions that had it, applied to people charged with "serious crimes" or capital offenses regardless of whether a firearm was involved and without any finding of dangerousness. App. 9a–11a; *see* Kellen R. Funk & Sandra G. Mayson, *Bail at the Founding*, 137 HARV. L. REV. 1816, 1823, 1835, 1843 (2024).

To make the purposes of § 922(n) and pretrial detention seem similar, the court further abstracted and relied simply on the goal of promoting "public safety" by "'protecting the public from future criminal acts of the accused defendant.'" App. 7a–8a (quoting *United States v. Perez-Garcia*, 96 F.4th 1166, 1184 (9th Cir. 2024)). Reading "a principle at such a high level of generality," however, "waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

And the court's abstraction is flawed. The purpose of pretrial detention at the founding was not to protect public safety by preventing defendants from committing more crimes before trial. *See* App. 7a–8a. Rather, "[t]he underlying motive for denying bail in the prescribed type of capital offenses is to assure the accused's presence at trial." *United States v. Melendez-Carrion*, 790 F.2d 984, 997 (2d Cir. 1986) (quoting *State v. Konigsberg*, 33 N.J. 367, 164 A.2d 740, 743 (1960)). Many scholars agree that pretrial detention prior to the 20th century primarily served to protect the community by assuring that the person accused of such serious crimes was present for trial. *See, e.g.*, Sandra G. Mayson, *Dangerous Defendants*, 127 YALE L.J. 490, 502 (2018) ("Until the 1960s, the stated function of the pretrial system was to ensure the appearance of the accused at trial."); Laura I. Appleman, *Justice in the Shadowlands: Pretrial Detention, Punishment, & the Sixth Amendment*, 69 WASH. & LEE L. REV. 1297, 1335 (2012) ("all the available evidence points to the fact that pretrial detention, both under English common law and at the time the Constitution was written, was limited to flight risk").

Bail was rarely granted in capital cases where the evidence was strong "because no pecuniary consideration would induce a party, charged with a capital crime, who felt that there was a

strong probability of conviction, to appear for trial." Thomas F. Davidson, *The Power of Courts to Let to Bail*, 24 AM. L. REG. 1, 2–3 (1876); *see also United States v. Edwards*, 430 A.2d 1321, 1326 (D.C. 1981) ("the right to bail was denied for capital crimes on the theory that a person faced with a possible death penalty would be likely not to appear at trial, so bail was denied to prevent flight, not to protect the community"); Laurence H. Tribe, *An Ounce of Detention: Preventive Justice in the World of John Mitchell*, 56 VA. L. REV. 371, 377–79, 397, 400–03 (1970). Even the House Committee on the Judiciary recognized that "under American criminal jurisprudence pretrial bail may not be used as a device to protect society from the possible commission of additional crimes by the accused." H.R. Rep. 89-1541, 89th Cong., 1st Sess., *reprinted in* 1966 U.S.C.C.A.N. 2293, 2296 (commenting on the Bail Reform Act of 1966, S. 1357).

The few sources that the court cited below do not say otherwise. *See* App. 7a–8a. The court credited a treatise by Anthony Highmore for the claim that bail was denied in the early republic "to preserve 'the safety of the people' from offenders awaiting trial." App. 8a & n.26 (citing Anthony Highmore, A DIGEST OF THE DOCTRINE OF BAIL IN CIVIL AND CRIMINAL CASES vii (1783)). High-

more explained that "[b]ail is the means of giving liberty to a prisoner, and at the *same time securing the extent of the law to punish an offender; or, to compel satisfaction from a debtor to the party injured*: therefore, for that the safety of the people should be preserved against the lawless depredations of atrocious offenders…." Highmore, *supra* at vii (citing 4 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 295–97 (1765); emphasis added). Thus, *bail* keeps communities safe by ensuring a *released* defendant's appearance at trial, which allows the state to convict and punish him. *Id.* The cite to Blackstone reinforces this understanding, as Blackstone explained that "no bail can be a security equivalent to the actual custody of the person" because "a man may … be induced to forfeit" the bail "to save his own life." 4 Blackstone, *supra* at 296–97. In other words, the purpose of pretrial detention was to prevent flight and make sure the accused answered for his alleged crimes. Neither Highmore's treatise nor Blackstone support the court's assumption that the historical purpose of pretrial detention was to protect the public from the defendant committing new crimes before trial.[3]

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[3] The Ninth Circuit also mistakenly relied on Highmore's treatise for this incorrect proposition. *See Perez-Garcia*, 96 F.4th at 1184 (citing Highmore, *supra* at vii).

Nor does the Funk and Mayson law review article cited by the court. App. 8a. Funk and Mayson explain that "*bail* clearly served a public safety function" to ensure a defendant's "'good behavior' as well as their appearance." Funk & Mayson, *supra* at 1853 (emphasis added). They do not claim that *detention* was used to protect the public. Rather, founding-era magistrates sometimes issued "peace bonds" that required defendants to maintain "good behavior" while *on release*. *Id.* at 1847–48, 1851. If the defendant violated that pledge, he would forfeit the money guaranteeing the bond, but the defendant would not be detained as a result. *Id.* at 1847–52.

Thus, the public safety purpose of pretrial detention at most was to ensure that the accused would be tried for the alleged crime. Section 922(n)'s prohibition on the receipt of firearms does not share that purpose.

The *how*. The burden on the right to armed self-defense is also different. Both § 922(n) and pretrial detention impose a temporary restriction based on an accusation, but the similarities end there. Someone who is detained has a diminished need for and right to a firearm for self-defense because he is in the government's care. *Cf. Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 596 (5th Cir. 2025) ("Actions taken *in loco parentis* [by

universities over student conduct] say little about the general scope of Constitutional rights and protections."). By contrast, someone who is at liberty relies on himself, not the government, for protection. As now-Justice Barrett recognized, "[t]he obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society," *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting). Nor does the fact that a person could have been detained pretrial at the founding tell us what the founding-era generation would have understood about the right of someone released pretrial to receive a firearm. Section 922(n) imposes a significantly greater burden on the *right to armed self-defense* than pretrial detention.

The scope of the burden is also different. Section 922(n) applies to all people indicted for a crime punishable by more than one year. The indicted felon category includes people accused of reading another person's email, operating a recording device in a movie theater, and releasing heart-shaped balloons in a romantic gesture. Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 DREXEL L. REV. 1, 82 n.472 (2024).

By contrast, not every felon indictee was detained at the founding. Funk & Mayson, *supra* at 1842–43. Far from it. Only half the Nation required detention, and even then only for "serious crimes." *Id.* The other half provided a right to bail for all offenses except capital crimes, for which detention was *discretionary*, not mandatory. *Id.* And, while more crimes were capital at the founding than now, most crimes were not capital. "By the time the Constitution was ratified, "the term 'felony' [which] was once very strongly connected with capital punishment," no longer was. *Kanter*, 919 F.3d at 459 (Barrett, J., dissenting) (internal quotation marks and citations omitted). "The felony category then was a good deal narrower than now" as well. *Lange v. California*, 594 U.S. 295, 311 (2021).

Moreover, the standard for obtaining an indictment was higher in most jurisdictions at the founding than it is now, meaning that an indictment in 1791 carried with it a greater likelihood of guilt—even though the defendant was still presumed innocent. Dr. Robert Schehr, *Standard of Proof, Presumption of Innocence, and Plea Bargaining: How Wrongful Conviction Data Exposes Inadequate Pre-Trial Criminal Procedure*, 54 CAL. W. L. REV. 51, 72–75 (2017) (noting American grand juries at the founding and up to the early 20th century generally applied a stricter historical standard of proof closer to the trial burden, rather than the modern probable

cause standard); William Ortman, *Probable Cause Revisited*, 68 STAN. L. REV. 511, 519–21, 530–33 (2016) (explaining the judicial view that an indictment required more than probable cause "dominated" around the founding). By contrast, Quiroz was indicted based on prosecutorial mistake and evidence the State later deemed insufficient for prosecution. C.A. Quiroz Supp. Br. 39, 41 (July 25, 2024).

Because pretrial detention is not relevantly similar to "why" or "how" § 922(n) burdens the Second Amendment right, § 922(n) is not "consistent with the principles that underpin our regulatory tradition." *See Rahimi*, 602 U.S. at 692.

c. Third, as *Quiroz* implicitly recognized by declining to rely on them, the historical surety and going armed laws relied upon in *Rahimi* do not support § 922(n) because they do not have a relatively similar purpose and burden. The "why" of surety and going armed laws was to restrict gun use when an individual "poses a clear threat of physical violence to another." *Rahimi*, 602 U.S. at 698. Section 922(n), by contrast, affects the inverse population: people who have been *released* pretrial and thus have *not* been determined to pose a significant threat to public safety. The "how" also is different. Surety and going armed laws restricted firearms access based on a judicial determination of past misuse of a firearm

or future threat to physical safety. *Id.* at 699. By contrast, § 922(n) prohibits receipt of a firearm without any individualized determination of danger or risk of firearm misuse.

d. Overall, *Quiroz* adopts a level of generality that is too high. As this Court explained, "everything is similar in infinite ways to everything else," so the analysis must focus on "how and why the regulations burden a law-abiding citizen's *right to armed self-defense*." *Bruen*, 597 U.S. at 29 (emphasis added). The broad purpose of "public safety" operates at too high a level of generality to be a useful comparator. A "legislature's ability to deem a category of people dangerous based only on belief would subjugate the right to bear arms 'in public for self-defense' to 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Worth v. Jacobson*, 108 F.4th 677, 694 (8th Cir. 2024) (quoting *Bruen*, 597 U.S. at 70); *see also Rahimi*, 602 U.S. at 701 (rejecting the government's argument that a person could be "disarmed simply because he is not 'responsible'"). Yet the court below accepted as a proper purpose for § 922(n) that a broad category of felon indictees—people who are presumed innocent—cannot be entrusted with a firearm even without any specific judicial finding that they pose any particular threat. Such analysis impermissibly

leads to the Second Amendment being a "regulatory blank check." *Bruen*, 597 U.S. at 30.

3. A law is not compatible with the Second Amendment if it regulates the right to bear arms "to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692. Section 922(n) does just that. It prohibits someone who is not detained from receiving a firearm solely based on the fact that the person is under felony indictment. That would have been unimaginable to the founders. Section 922(n) facially violates the Second Amendment because there are "no set of circumstances" under which it is valid. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

B. Section 922(n) is unconstitutional as applied to individuals under indictment for non-violent offenses.

1. Section 922(n) also violates the Second Amendment as applied to Quiroz, who was indicted for non-violent offenses that would not have prevented him from receiving firearms at the founding. The government's historical evidence shows—at most—a tradition of detaining people charged with capital offenses. *See* App. 9a–11a. The Fifth Circuit held that Quiroz's burglary offense would have subjected him to pretrial detention at the founding. App. 17a–19a. That is insufficient to make § 922(n) constitutional

as applied to Quiroz for the reasons expressed above. *Supra* 20–30. It is also incorrect.

a. As *Bruen* reiterated, "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." 597 U.S. at 34 (quoting *Heller*, 553 U.S. at 634–35 (emphasis in *Bruen*)). The proper inquiry, then, is whether someone accused of committing illegal acts like Quiroz would have been prohibited from receiving firearms at the founding. The Fifth Circuit suggests he would have because "burglary" was a capital offense and subject to mandatory detention in some jurisdictions at the founding. App. 18a–19a. But the burglary offenses that were subject to capital punishment at the founding are materially different, and have a higher chance of involving violence, than the Texas burglary Quiroz was accused of committing.

At the founding, many jurisdictions adopted the common-law definition of burglary. *See* Helen A. Anderson, *From the Thief in the Night to the Guest Who Stayed Too Long: The Evolution of Burglary in the Shadow of the Common Law*, 45 IND. L. REV. 629, 634 (2012). At common law, burglary was "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony." *Taylor v. United States*, 495 U.S. 575, 580 n.3 (1990) (quoting W. LaFave & A. Scott, SUBSTANTIVE

CRIMINAL LAW § 8.13, p. 464 (1986)); *see also* 4 Blackstone, *supra* 223–28. The "common law offense—a forcible night time intrusion into the home"—is a "far cry" from modern-day burglary. Anderson, *supra* at 630; *see Taylor*, 495 U.S. at 593 ("the contemporary understanding of 'burglary' has diverged a long way from its common law roots").

Quiroz's burglary charge is a prime example. Quiroz was indicted for Texas burglary of a habitation under Texas Penal Code § 30.02(c). C.A. ROA 55. He was accused of "intentionally and knowingly enter[ing] a habitation, without the effective consent of … the owner …, and attempt[ing] to commit or commit[ing] theft of property, namely a weed trimmer." *Id.* His charge did not require nighttime intrusion or force, and the intended felony (theft of a weed trimmer) did not rise to the level of seriousness demanded by a founding-era felony.

The court stated that "burglary defendants were denied bail (and thus disarmed pretrial) in at least five states" at the founding. App. 18a. But only one of those jurisdictions came close to requiring mandatory detention for a burglary offense like the one for

which Quiroz was indicted.[4] *See* App. 18a. Delaware prohibited bail for capital offenses such as burglary,[5] and Delaware burglary broadly required only the entry into a dwelling with an intent to commit a felony.[6] Theft was a felony in Delaware if the stolen item was valued at five shillings or more.[7] Even if the founding era equivalent of a weed trimmer was worth at least five shillings, that an indictee like Quiroz might have been subject to pretrial detention in *one* state at the time of the founding is hardly enough to establish a historical tradition of firearm regulation that supports prohibiting his receipt of a firearm now. *See Bruen*, 597 U.S. at 46

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[4] Three of the cited states—New Jersey, North Carolina, and Maryland—incorporated the common law definition of burglary. N.J. CONST. Art. XXII (1776) (adopting common law); Acts of 1715, Chap. 5 & Acts of 1778, Chap. 133, *reprinted in* I LAWS OF THE STATE OF NORTH CAROLINA 102, 356–57 (1821) (same); MD. CONST., Declaration of Rights, Art. III (1776) (same). The fourth, South Carolina, allowed bail for felonies, including burglary, if granted by two justices and defined burglary as robbing a person when people are in the dwelling and placing them "in fear or dread by the same." S.C. No. 331 (Dec. 12, 1712), *reprinted in* THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA 57–59 (1790).

[5] Del. Chap. LVIII, *reprinted in* I LAWS OF THE STATE OF DELAWARE ["DEL. LAWS"] 134–35 (1817); *see* Jeff Forrett, *A Chronological Guide to Records of the Delaware State Legislature at the Delaware Public Archives* (updated Jan. 30, 2023), https://archivesfiles.delaware.gov/public-services/DE_State_Legislature_Records.pdf (explaining that I DEL. LAWS "contains the bills, in chronological order, passed by the Delaware General Assembly between 1700 and 1775").

[6] Del. Chap. XC, Sec. 3, *reprinted in* I DEL. LAWS 236–37.

[7] Del. Chap. CXX, Sec. 1, *reprinted in* I DEL. LAWS 296–97.

("doubt[ing] that three colonial regulations could suffice to show a tradition of public-carry regulation").

Focusing on a crime's classification or name, as the Fifth Circuit did, rather than its substance in order to justify the application of § 922(n) is contrary to *Bruen*'s instruction that "analogical reasoning under the Second Amendment is neither a regulatory straightjacket *nor a regulatory blank check*." 597 U.S. at 30 (emphasis added). By relying simply on what a crime was called—regardless of what elements were required—the Court risks sanctioning a firearm restriction that the founders would not have deemed permissible. "[C]ourts should not uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would have never accepted." *Id.* (cleaned up).

Because "not all [burglars] today would have been considered [burglars] at the founding"—and thus subject to mandatory pretrial detention in certain jurisdictions—"[s]imply classifying a crime as a [burglary] does not meet the level of historical rigor required by *Bruen* and its progeny." *Diaz*, 116 F.4th at 469; *see Tennessee v. Garner*, 471 U.S. 1, 14 (1985) ("Many crimes classified as misdemeanors, or nonexistent, at common law are now felonies."). And even in those jurisdictions, detention required a heightened

showing of guilt than mere probable cause. *Supra* 28 (citing Schehr, *supra* at 72–75; Ortman, *supra* at 519–21, 530–33). Reading historical burglary statutes at such a "high level of generality … waters down the [Second Amendment] right" by eliminating material distinctions between crimes that were nonbailable in certain jurisdictions and those that were. *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

b. Given its misplaced focus on pretrial detention, the Fifth Circuit had no need to determine whether there is a historical tradition of disarming individuals facing a non-violent felony indictment. In addressing § 922(g)(1), the Third Circuit has persuasively held that there is no historical tradition of disarming non-violent felons. *See Range v. Attorney General*, 124 F.4th 218, 228–32 (3d Cir. 2024) (en banc). That court explained that status-based restrictions like § 922(g)(1) historically targeted "distrusted" groups that posed a threat of armed rebellion. *Id.* at 229–30. So those groups are not analogous to a modern-day felon who is not "disloyal to his country." *Id.* at 230. And, as the Sixth Circuit noted, these status-based laws allowed members of the groups to "demonstrate that their particular possession of a weapon posed no danger to peace." *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). The Third Circuit

also rejected the government's theory that these categorical laws established a tradition of disarming classes of individuals who posed a danger of misusing firearms. *Range,* 124 F.4th at 230. The court explained that such a theory was "far too broad" and "operates at such a high level of generality that it waters down the right." *Id.* (cleaned up). So the court held that § 922(g)(1) is unconstitutional as applied to someone who does not "pose[ ] a physical danger to others." *Id.* at 232.

In short, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700. Quiroz's indictment does not involve a threat of violence. Thus, at the very least, § 922(n) violates the Second Amendment as applied to Quiroz.

II. This is a critically important and recurring question.

The Court should grant the petition because whether § 922(n) violates the Second Amendment is critically important and recurring. In addition to the Fifth Circuit, the Sixth Circuit has already weighed in and—like the Fifth Circuit—erroneously found § 922(n) to be facially constitutional. *United States v. Gore*, 118 F.4th 808, 815–16 (6th Cir. 2024). Both the Fifth and Sixth Circuits have relied on their precedents to reject other § 922(n) challenges.

See United States v. Sanchez-Tena, No. 22-51078, 2025 WL 1157554, at *1 (5th Cir. Apr. 21, 2025) (per curiam) (facial challenge foreclosed by *Quiroz*); *United States v. Rogers*, No. 24-3711, 2025 WL 304610, at *1 (6th Cir. Jan. 27, 2025) (per curiam) (facial challenge foreclosed by *Gore*). At least five cases are pending in the Fifth Circuit raising Second Amendment challenges to § 922(n).[8] The Fourth and Tenth Circuits are currently considering the question as well.[9] Even state courts have considered similar statutes and come to different results. *See, e.g.*, *Ohio v. Brown*, 2025-Ohio-8, 2025 WL 25285, at *12 (Ohio Ct. App. 1st Dist. Jan. 3, 2025) (holding Ohio statue that disarms people under felony indictment violates the Second Amendment as applied to robbery indictee).

Addressing § 922(n) can also help resolve questions that affect the analysis of other common statutes, such as § 922(g)(1). For instance, can historical traditions that do not target the regulation of firearms be relevantly similar to a modern-day regulation of

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[8] *See, e.g.*, *United States v. Hicks*, No. 23-50030 (5th Cir. Apr. 25, 2025); *United States v. Pena*, No. 23-50717 (5th Cir. Apr. 7, 2025); *United States v. Simien*, No. 23-50870 (5th Cir. Apr. 21, 2025); *United States v. Belmonte*, No. 24-50762 (5th Cir. Mar. 28, 2025); *United States v. Haynes*, No. 22-50805 (5th Cir. Nov. 30, 2022).

[9] *See United States v. Jackson*, No. 24-4114 (4th Cir. July 31, 2024); *United States v. Reilly*, No. 24-7047 (10th Cir. Nov. 13, 2024); *United States v. Ogilvie*, No. 24-4089 (10th Cir. Jan. 17, 2025).

firearms? Are broad purposes such as "public safety" relevantly similar for a greater restriction such as death or detention to include the lesser restriction involving firearms? Answers to these questions will help guide the lower courts in their application of *Bruen* and *Rahimi* to other statutes. That guidance is desperately needed. *See Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) ("after *Bruen*, confusion plagues the lower courts" (cleaned up)).

III. This case is an ideal vehicle.

1. This case presents an ideal vehicle for addressing whether § 922(n) violates the Second Amendment. The case cleanly presents a purely legal issue. There are no jurisdictional problems, factual disputes, or preservation issues. Quiroz thoroughly briefed his facial Second Amendment challenge in both the district court and the court of appeals. The district court squarely addressed the facial challenge, C.A. ROA 285–309, as did the Fifth Circuit in a precedential opinion, App. 1a–20a. The Fifth Circuit also addressed Quiroz's as applied challenge. *Id.* at 17a–19a.

2. This case also depends on the Court's analysis of other firearm restrictions. Petitions that raise facial and as applied Second Amendment challenges to § 922(g)(1) are pending in *Vincent v. Bondi*, No. 24-1155 (U.S. May 8, 2025); *Hunt v. United States*, No. 24-6818 (U.S. Mar. 20, 2025); *Moore v. United States*, No. 24-968

(U.S. Mar. 11, 2025); and *Diaz v. United States*, No. 24-6625 (U.S. Feb. 24, 2025). The latter is a precedential opinion that lower courts have relied upon, including the Fifth Circuit panel in this case, and have cited more than 200 times. Should the Court grant certiorari in any of these cited cases, or another pending case presenting a Second Amendment facial or as-applied challenge, it should at least hold Quiroz's petition pending that decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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