No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

JACOB ALLEN JUDD,
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

Whether 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to an individual whose prior convictions for "crime[s] punishable by imprisonment for a term exceeding one year" consisted of nonviolent offenses that did not involve firearms.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- United States District Court for the Southern District of Texas:
  United States v. Jacob Allen Judd, No. 2:23-cr-549

- United States Court of Appeals for the Fifth Circuit:
  United States v. Jacob Allen Judd, No. 24-40389

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jacob Allen Judd petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's decision (App. 1a-2a) is unreported but available at 2025 WL 893748.

JURISDICTION

The Fifth Circuit entered judgment on March 24, 2025. App. 1a. This petition is filed within 90 days of that date. *See* Sup. Ct. R. 13.1. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITTUIONAL AND STATUTORY PROVISIONS

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.

18 U.S.C. § 922(g)(1) provides:

> (g) It shall be unlawful for any person–
>
> > (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . .
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

1. In January 2023, sheriff's deputies in Texas arrested petitioner Jacob Allen Judd after he unsuccessfully tried to evade their efforts to serve him with a parole violator's warrant. C.A. ROA.34-35. During the botched flight attempt, Mr. Judd discarded a handgun after exiting his vehicle. C.A. ROA.35. The deputies found the firearm, and later investigation revealed that it was manufactured out of state. *Ibid.* At the time of the incident, Mr. Judd had several prior convictions for non-violent felony offenses; they consisted of:

- fraudulent use or possession of between five and nine items of identifying information, Tex. Penal Code § 32.51(b), (c)(2);
- credit card abuse, Tex. Panel Code § 32.31(b), (d);
- theft of more than $1500 but less than $20,000 in property, Tex. Penal Code § 31.03(a)–(b), (e)(4)(A) (eff. Sep. 1, 2007 to May 22, 2009);
- organized criminal activity (breaking into four cars, and stealing a "go kart," in one night), Tex. Penal Code § 71.02(a), (b);
- possession of less than one gram of methamphetamine, Tex. Health & Safety Code § 481.115(a), (b); and
- failure to appear in court while on bond, Tex. Penal Code § 38.10(a), (f).

C.A. ROA.35, 230-33, 236-37.

2. Mr. Judd subsequently pleaded guilty, without a plea agreement, to possessing the handgun despite knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation 18 U.S.C. § 922(g)(1). C.A. ROA.11-12, 137. Prior to pleading guilty, Mr. Judd moved to dismiss the indictment on the ground that Section 922(g)(1) violates the Second Amendment, both on its face and as-

applied to him, under the framework established in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). Specifically, he contended that the statute's categorical ban on arms possession solely on account of an individual's status as a prior felon—or, at a minimum, on account of felon status derived from only nonviolent offenses that did not involve firearms—is fatally inconsistent with the historical tradition of firearm regulation in this country. C.A. ROA.59-69.

The district court declined to reach the merits of Section 922(g)(1)'s facial or as-applied validity, agreeing with the government's contention that pre-*Bruen* Fifth Circuit precedent upholding the statute against Second-Amendment attack remained binding, and dispositive. C.A. ROA.97-101. The court accordingly denied the motion on that basis alone. App. 1a; C.A. ROA.101-02. It later sentenced Mr. Judd to 70 months' imprisonment and three years' supervised release. C.A. ROA.164-65.

3. Mr. Judd appealed. As an initial matter, he urged the court of appeals to vacate the judgment and remand with instructions for the district court to pass on the merits of the Second Amendment claims in the first instance. This made sense, he observed, because the trial court had ruled without the benefit of two intervening authoritative decisions that altered the governing legal framework: *United States v. Rahimi*, 602 U.S. 680 (2024); and *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *cert. denied*, — S. Ct.—, No. 24-6625 (June 23, 2025). *Rahimi*, Mr. Judd noted, had clarified the methodology for evaluating Second Amendment challenges under *Bruen* in the analogous context of a conviction under 18 U.S.C. § 922(g)(8). *See* 602 U.S at 690-702. And *Diaz* represented the Fifth Circuit's

seminal post-*Rahimi* decision, in which the court of appeals (1) confirmed that *Bruen* had abrogated the decisions the district court relied on as foreclosing any need to reach the merits of Mr. Judd's *Bruen*-based claims, *see Diaz*, 116 F.4th at 465-66, and (2) announced the standard it understood *Bruen* and *Rahimi* to require for evaluating as-applied challenges to convictions under Section 922(g)(1) going forward. *See id.* at 467-71.

Alternatively, Mr. Judd renewed his Second Amendment claims, contending that, even if the court of appeals was inclined to address them in the first instance, the claims should still prevail. Pertinent here, he argued that none of his nonviolent felony offenses could constitutionally support Section 922(g)(1)'s application to him under the standard the Fifth Circuit adopted in *Diaz*, which directs courts to ask whether a defendant's predicate felonies were "relevantly similar" to crimes for which the founding generation made punishable by death, estate forfeiture, or disarmament. *See* 116 F.4th at 467-70. Alternatively still, Mr. Judd contended that *Diaz*'s approach to as-applied scrutiny under the *Bruen-Rahimi* framework is wrong, and that he would prevail under an approach properly calibrated to the how and why of founding-era *firearm* regulations. He also preserved the argument that Section 922(g)(1) is unconstitutional in all its applications, and that *Diaz* likewise erred in reaching the contrary conclusion.

4. The court of appeals affirmed. App. 1a-2a. It concluded that *Diaz*—which upheld Section 922(g)(1)'s application to an individual convicted of felony theft, on the ground that horse theft remained punishable by death in some founding-era jurisdictions—foreclosed Mr. Judd's as-applied claim because he, too, had a prior theft conviction. App. 2a.

And it noted that *Diaz* likewise foreclosed his facial argument, given that it had deemed the statute's application unobjectionable as applied to the defendant in that case. App. 2a n.1.

REASONS FOR GRANTING THE PETITION

The circuits are not only split, but desperately confused, over the extent to which 18 U.S.C. § 922(g)(1) is subject to as-applied Second Amendment challenge, the appropriate analytical benchmark for evaluating such claims, and where the line between constitutional and unconstitutional applications of the statute should ultimately be drawn—particularly as to individuals, like Mr. Judd, whose past felonies had nothing to do with either violence or firearms. Clarification on these issues is a matter of immense importance to every stakeholder in the criminal justice system. And this case is a suitable vehicle for providing the answers. The Court should accordingly grant the petition. Alternatively, the Court should hold Mr. Judd's petition pending the disposition of any other case the Court deems a more desirable vehicle for review of this important constitutional question.

1. As this Court recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and reiterated in *Bruen*, 597 U.S. 1, the Second Amendment guarantees to "all members of the political community" the individual right to possess and carry firearms in common use for self protection. *Heller*, 554 U.S. at 581. *Bruen* adopted a "test rooted in the Second Amendment's text, as informed by history," for determining whether a modern-day regulation impermissibly infringes that right. *Bruen*, 597 U.S. at 19. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects

that conduct." *Id.* at 24. At that point, it is government's burden to justify the law "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Ibid*.

To do so, the government must show that the challenged law is "'relevantly similar' to laws that our tradition is understood to permit." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). "Why and how the regulation burdens" the Second Amendment right "are central to this inquiry." *Ibid.* A contemporary law will likely pass the "relevantly similar" test where there is substantial evidence of founding-era laws that "impos[ed] similar restrictions" on firearm use "for similar reasons." *Ibid*.

In *Rahimi*, for example, the government presented "ample" historical evidence that the founding generation approved of the temporary disarmament of individuals found to pose "a clear threat of physical violence to another" upon a "judicial determination[]" that they "likely would threaten or had threatened another with a weapon." *Id.* at 698-99; *see id.* at 693-97. The contemporary law at issue, 18 U.S.C. § 922(g)(8)(C)(i), imposes a similar burden on the Second Amendment right by disarming individuals only while subject to a domestic-violence restraining order backed by a judicial finding that the person "'represents a credible threat to the physical safety' of another"; and that temporary "restrict[ion] on gun use" is similarly designed "to mitigate demonstrated threats of physical violence." *Id.* at 698-99 (quoting 18 U.S.C. § 922(g)(8)(C)(i)). Because the modern provision aligned with both the "how" and the "why" of the historical tradition of "allow[ing] the Government to disarm individuals who present a credible threat to the physical safety of others,"

its application to the defendant posed no Second Amendment problem under *Bruen*. *Id.* at 700.

2. Even prior to *Rahimi*, the question whether Section 922(g)(1)'s permanent, status-based ban on firearm possession comports with a sufficiently similar American regulatory tradition was the subject of an entrenched split among the circuits. *Rahimi* did not resolve that question. And the circuits' division, as well as their confusion, has only deepened. As an en banc panel of the Ninth Circuit recently recognized, *see United States v. Duarte*, 137 F.4th 743, 747-48 (9th Cir. 2025) (en banc), the courts of appeals remain intractably divided on how to analyze Second Amendment challenges to Section 922(g)(1) after *Bruen* and *Rahimi*. Indeed, two courts have already passed on the issue en banc. And they have come to opposite conclusions.

a. On remand after GVR in light of *Rahimi*, the full Third Circuit again held Section 922(g)(1) unconstitutional as applied to a person convicted of a nonviolent felony—food stamp fraud—who did not "pose[] a physical danger to others." *Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc).[1] The Third Circuit held that *Bruen* abrogated its prior Second Amendment precedent and that, despite Mr. Range's prior felony conviction, he was part of "the people" protected by the Second Amendment. *Id.* at 224-26. The court thus required the government to show "a longstanding history and tradition of depriving

[1] Despite seeking and receiving an extension of time to petition for this Court's review in *Range*, the government ultimately let the deadline pass without filing a timely petition. *See Bondi v. Range*, No. 24A881 (extension granted to April 22, 2025).

people like [Mr.] Range of their firearms," and held that the government did not meet its burden by pointing to founding era laws that "disarmed groups [the governments] distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks." *Id.* at 229-30, 232. The court further rejected the government's "dangerousness" principle, which would "cover all felonies and even misdemeanors that federal law equates with felonies." *Id.* at 230. The court found that principle to be "far too broad," operating "at such a high level of generality that it waters down the right." *Id.* (quoting *Rahimi*, 602 U.S. at 740) (Barrett, J., concurring)).

The Third Circuit also dismissed the notion that Section 922(g)(1)'s "de facto permanent disarmament" was justified by founding era laws that harshly punished criminal offenses like fraud with death or estate forfeiture. *Id.* at 230-31. The court reasoned that "the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation's history and tradition." *Id.* at 231. The court acknowledged, but expressly repudiated, the Fifth Circuit's contrary reasoning in *Diaz* as the product of a fatal misreading of *Rahimi*. *Ibid.* As for estate forfeiture, the Third Circuit noted that, unlike the lifetime ban imposed by Section 922(g)(1), a felon subject to estate forfeiture in the founding era "could acquire arms after completing his sentence and reintegrating into society." *Ibid*.

b. In stark contrast, the en banc Ninth Circuit recently held that (1) its pre-*Bruen* precedent upholding Section 922(g)(1) against Second Amendment challenge is still good

law, *see Duarte*, 137 F.4th at 750-52, and that (2), even analyzed under *Bruen*, the statute is constitutional as applied to all felons, including nonviolent ones. *See id.* at 755-61. As the court noted, in reaching these conclusions, it "align[ed] [its]sel[f] with the Fourth, Eighth, Tenth, and Eleventh Circuits." *Id.* at 748; *see Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025), *pet'n for cert. filed*, No. 24-1155 (May 8, 2025); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, — S. Ct .—, 2025 WL 1549804 (June 2, 2025); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024), *cert. denied*, — S. Ct. —, 2025 WL 1426707 (May 19, 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, *and remanded*, 145 S. Ct. 1041 (2025), *reinstated on remand*, — F.4th —, 2025 WL 1553843, at *1-*6 (11th Cir. June 2, 2025). Those circuits also continue to follow their pre-*Bruen* precedent, treating Second Amendment challenges as foreclosed. *See, e.g.*, *Hunt*, 123 F.4th at 700 (holding that "neither *Bruen* nor *Rahimi* meets this [c]ourt's stringent test for abrogating otherwise-controlling precedent and that [the court's] precedent on as-applied challenges thus remains binding"). They have upheld Section 922(g)(1) as constitutional in all its applications, perceiving "no need for felony-by-felony litigation regarding [the statute's] constitutionality." *Jackson*, 110 F.4th at 1125. In contrast to the Third Circuit, in these circuits, "the Second Amendment doesn't prevent application of [Section] 922(g)(1) to nonviolent offenders." *Vincent*, 127 F.4th at 1266; *see Duarte*, 137 F.4th at 748 (holding that "[Section] 922(g)(1) is not unconstitutional as applied to non-violent felons").

The Ninth Circuit recognized that the Third Circuit held Section 922(g)(1) "unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps." *Duarte*, 137 F.th at 748 (citing *Range*, 124 F.4th at 222-23). But the Ninth Circuit agreed with the government that "two regulatory principles"—that "(1) legislatures may disarm those who have committed the most serious crimes; and (2) legislatures may categorically disarm those they deem dangerous, without an individualized determination of dangerousness"—"suppl[y] a [historical] basis for the categorical application of [Section] 922(g)(1) to felons." *Id.* at 755. As to the first principle, the Ninth Circuit agreed with the Fifth Circuit's conclusion, in *Diaz*, that "if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible." *Id.* at 756 (footnote omitted). But the Ninth Circuit went even further and rejected the argument that application of Section 922(g)(1) should be limited to "felonies that at the time of the founding were punished with death, a life sentence, or estate forfeiture." *Id.* at 758. Rather, the Ninth Circuit held that legislatures have broad discretion to define what constitutes a felony, and that any conduct a current legislature labels a felony could serve as the basis for a Section 922(g)(1) prosecution, regardless of its similarity to founding era laws. *See id.* at 758-59.

Regarding the second argument, the Ninth Circuit relied on the very historical laws disarming disfavored groups, such as Catholics, Native Americans, Blacks, and Loyalists, that the Third Circuit rejected in *Range*. *See Duarte*, 137 F.4th at 759-61. Despite recognizing that "these laws reflect overgeneralized and abhorrent prejudices that would not

survive legal challenges today," the Ninth Circuit determined that those laws would only be suspect "today under *other* parts of the Constitution" and so could be relied upon as an independent historical justification for Section 922(g)(1)'s categorical divestment of the Second Amendment right. *Id.* at 760.

Judge VanDyke, joined by Judges Ikuta and Nelson, concurred in part and dissented in part. *See id.* at 773-805. On the merits, Judge VanDyke dissented from the majority's view at nearly every turn and criticized the majority for "deepen[ing] a circuit split" and "intentionally taking the broadest possible path" by upholding Section 922(g)(1) in every conceivable application. *Id.* at 779 & n.3.[2]

Notably, Judge VanDyke noted at least three flaws in the "greater includes the lesser" rationale adopted by the majority. First, Judge VanDyke pointed out that the historical sources the majority deemed telling were "even sparser than that which *Bruen* found inadequate." *Id.* at 786. Second, Judge VanDyke agreed with then-Judge Barrett's determination that the historical argument that death was the standard penalty for serious crimes in the founding era was "shaky" and that "[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." *Id.* at 787-90 (quoting *Kanter v. Barr*, 919 F.3d 437, 458, 462 (7th Cir. 2019) (Barrett, J., dissenting)). Third, Judge VanDyke criticized the majority for "bulldoz[ing] right over" the "glaring

[2] Judge VanDyke only agreed with the majority that Mr. Duarte's felon status did not remove him from "the people" covered by the Second Amendment's text. *Id.* at 780 n.4.

problem" that many modern felonies were classified as misdemeanors, or not even criminal offenses, at common law and up to the founding. *Id.* at 790-91. Although Judge VanDyke disagreed with the Fifth Circuit's reliance in *Diaz* on founding era death penalty laws, he agreed with *Diaz*'s reasoning that a "shifting benchmark" of whatever Congress decides to label a felony "should not define the limits of the Second Amendment, without further consideration of how that right was understood when it was first recognized." *Id.* at 791 (quoting *Diaz*, 116 F.4th at 469).

c. Meanwhile, the Fifth and Sixth Circuits have each forged unique, and conflicting, paths for as-applied Second Amendment challenges under the *Bruen-Rahimi* framework.

Like the Third Circuit (and the Sixth), the Fifth Circuit holds that *Bruen*, as clarified in *Rahimi*, unequivocally abrogated its old precedent dismissing Second Amendment challenges to Section 922(g)(1) under the means-end scrutiny that *Bruen* repudiated. *Diaz*, 116 F.4th at 465. And like those two circuits, the Fifth Circuit holds that the statute is susceptible to as-applied challenge, rejecting the contention that forever prohibiting an individual's exercise of core Second-Amendment conduct on the basis of felon status alone "does not meet the level of historical rigor required by *Bruen* and its progeny," given that "not all felons today would have been considered felons at the Founding." *Id.* at 469. But that is where the similarities end. In *Diaz*, as noted, the Fifth Circuit deemed the proper point of comparison to be the type and severity of punishment the founding generation doled out for particular criminal conduct. *Id.* at 467-70. If the defendant's viable Section 922(g)(1)

predicates include a crime that is akin to one that would have led to "permanent disarmament"—like affray and going-armed laws, *id.* at 470-71—or otherwise would have been punishable by death or estate forfeiture, *id.* at 467-69, then the statute's application is relevantly similar to our Nation's tradition of firearm restrictions.

The Sixth Circuit has likewise blessed as-applied challenges. *See United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). Unlike the Fifth Circuit, however, the Sixth Circuit interprets the historical record as supporting the disarmament of "presumptively dangerous" groups who posed a threat to public order—like religious minorities, Native Americans, loyalists, and freedmen—but reasoned that, because these laws all allowed individuals to show that they posed no danger, an individual alleged to have violated Section 922(g)(1) may "demonstrate that [his] particular possession of a weapon posed no danger to peace," and thus "falls outside of [the statute]'s constitutionally permissible scope." *See id.* at 650-59. While the contours of this freewheeling "dangerousness" inquiry are opaque at best, the court did make clear that its test does not embrace the Fifth Circuit's severity-of-the-punishment rationale: "Felons, after all, 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." *Id.* at 658.

In short, the courts of appeals are at sea over the availability of, and standard for evaluating, Second Amendment challenges to Section 922(g)(1) under the *Bruen-Rahimi* methodology, particularly as applied to individuals whose only prior felony record is limited to convictions for nonviolent offenses that did not involve the misuse of firearms.

3. In addition to confounding the circuits, the question presented is of immense importance. And it warrants review in Mr. Judd's case.

a. Despite serious concerns as to Section 922(g)(1)'s constitutionality in a wide array (if not all) of its applications under *Bruen*, the statute continues to result in the imprisonment of thousands of American citizens each year. And, for fear of the same fate, countless more individuals are deterred from engaging in conduct that would otherwise come within the Second Amendment's core. Especially now that en banc panels of different courts of appeals have reached diametrically opposed conclusions as to the scope and availability of as-applied review of Second Amendment challenges to Section 922(g)(1), the need for the definitive guidance only this Court can provide is more urgent than ever.

b. Mr. Judd's case is an excellent vehicle for providing that guidance. He challenged the statute's constitutionality both on its face, and as applied to him, at every stage of the proceedings. And the court of appeals resolved that challenge solely on the ground that its conclusion in *Diaz*—that Section 922(g)(1) is constitutional as applied to a person with a prior felony conviction for theft, because that crime was still subject to capital punishment in some colonies around the time of the founding—foreclosed relief. App. 2a.

CONCLUSION

The Court should grant the petition. Alternatively, the Court should grant review in one or more of the many cases presenting the same question, and hold Mr. Judd's petition pending disposition of that case.

Respectfully submitted,

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