No. _____

In the Supreme Court of the United States

JOHN A. SAM, PETITIONER

V.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In February 2017, Petitioner John Sam was convicted of robbery in violation of Maine law, a felony offense. In May 2021, the police found Sam in possession of a firearm and five rounds of ammunition. In April 2023, Sam pleaded guilty to violating 18 U.S.C. § 922(g)(1), which codifies a lifetime ban on firearm possession by convicted felons.

The question presented is:

Does the application of Section 922(g)(1) to Sam plainly violate the Second Amendment?

RELATED PROCEEDINGS

United States v. Sam, Crim. No. 1:21-cr-194-JAW (D. Me.)

United States v. Sam, 24-1090 (1st Cir. April 22, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Sam respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINION BELOW

The judgment granting the government's motion for summary disposition (Pet. App. 1a) is unpublished.

JUDGMENT

The judgment of the Court of Appeals was entered on April 22, 2025. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Second Amendment to the Constitution states:

> 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.

INTRODUCTION

The right to bear arms for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010). To date, no federal appellate court has held Section 922(g)(1) to be plainly unconstitutional as applied to a particular defendant. *See United States v. Olano*, 507 U.S. 725, 732 (1993) (articulating the test for plain-error review). Worse, despite this Court's emphasis on the importance of Second Amendment protections, no federal appellate court has seriously engaged with the plain error analysis in such cases. This is so even though this Court has admonished repeatedly that the Second Amendment codifies a "preexisting right" of central importance to "self-preservation" and liberty. *District of Columbia v. Heller*, 554 U.S. 570, 594 (2008); *United States v. Rahimi*, 602 U.S. 680, 739 (2024).

For decades, the federal appellate courts all rejected constitutional challenges to laws prohibiting the possession of firearms by felons. *See Kanter v. Barr*, 919 F.3d 437, 442-45 (7th Cir. 2019). The viability of as-applied challenges to Section 922(g)(1) was not conclusively recognized until *Rahimi*, 602 U.S. at 713. For this reason and many others,

defendants can and should be forgiven for declining to make what would have been futile or tactically perilous objections. *See generally* Fed. R. App. P. 12(b)(3) (the Rule 12 good-cause standard displaces plain error review); *United States v. Duarte*, 101 F.4th 657, 663 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024) (finding good because a Section 922(g)(1) objection would not have been successful under then-existing circuit precedent).

But even if the plain-error test applies, respect for the Second Amendment and fidelity to this Court's Second Amendment jurisprudence, demands greater care from the lower courts. Reflexively and dismissively saying that the as-applied unconstitutionality of Section 922(g)(1) is not "obvious" because the prohibition on the possession of firearms by felons is "presumptively lawful," or because this Court has yet to decide the issue, does not fit that bill. *Heller*, 554 U.S. at 626-27. After *Rahimi* in particular, this Court cannot countenance such cursory reasoning. This Court should accept review and hold that solicitude to the right to bear arms requires a thorough legal analysis even in cases suffering from jurisprudential defects relating to preservation.

STATEMENT OF THE CASE

Sam pleaded guilty to possessing a firearm and ammunition after conviction for a felony offense, in violation of 18 U.S.C. § 922(g)(1). As part of his plea, Sam entered into a written plea agreement with the government that barred him from appealing his "guilty plea and any other aspect of [his] conviction."

On appeal to the First Circuit, Sam argued for the first time that application of Section 922(g)(1) to him was unconstitutional. The government moved for summary affirmance.

The First Circuit granted the government's motion, reasoning:

> [W]e conclude that it would not constitute a miscarriage of justice to enforce the waiver of appeal bar to the contemplated challenge because [Sam] cannot satisfy the requirements [for plain-error review]. In order to show plain error, the appellant would need to show that any error "was clear or obvious." *United States v. Sansone*, 90 F.4th 1, 7 (1st Cir. 2024). The appellant cannot make that showing here. *See e.g. United States v. Langston*, 110 F.4th 408, 419-20 (1st Cir. 2024), *cert. denied*, 145 S.Ct. 581 (2024) (rejecting plain error review [of] an as-applied constitutional challenge to a conviction under 18 U.S.C. § 922(g)(1); *see also United States v. Thompson*, 62 F.4th 37, 43 (1st Cir. 2023) (declining to rely on the miscarriage-of-justice exception to avoid an otherwise valid waiver-of-appeal provision because the contemplated constitutional challenge did not identify a sufficiently clear error).

(Pet. App. 2a; full citation to *Langston* added).

I. The factual basis for Sam's plea and his sentence

1. On February 27, 2017, in *State of Maine v. John Andrew Sam*, Criminal Docket No. AROCD-CR-15-40468, Sam was convicted following his plea of guilty to the offense of robbery in violation of 17-A M.R.S. § 651(1)(E), a Class A crime under Maine state law punishable by a maximum term of imprisonment of 30 years.[1] Sam was sentenced to a term of imprisonment of 15 years, with all but 4 years suspended. As a result of this conviction, Sam knew that he was a felon who was prohibited from possessing firearms.

On May 3, 2021, Caribou Police Department personnel executed a lawful traffic stop in Caribou, Maine, on a vehicle in which Sam was a passenger. Sam at that time possessed a Jimenez Arms, model JA-380, .380 ACP pistol, and it was manufactured in California. Sam was searched and found to have on his person an empty holster clipped to the inside front waistband of his pants. Local law enforcement then searched the vehicle, in which Caribou Police Department personnel located the

[1] The facts are taken from the Prosecution Version, which appears in the district court docket at ECF No. 63. These facts were adopted by the district court as the factual basis for Sam's plea at the change-of-plea hearing. *See* Pet. App. 10a-12a.

firearm and five rounds of .380 caliber ammunition under the rear passenger seat. The firearm retrieved from the vehicle fit into the holster recovered from Sam.

2. Sam was principally sentenced to 70 months' prison, followed by three years of supervised release. District Court Docket No. 91, p. 2-3.

II. The appeal-waiver provision of Sam's plea agreement

The appeal waiver provision of Sam's plea agreement provides:

> 4. Appeal Waivers. Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Knowing that, Defendant waives the right to appeal the following:
>
> A. Defendant's guilty plea and any other aspect of Defendant's conviction in the above-captioned case; and
>
> B. A sentence of imprisonment that does not exceed 77 months.
>
> Defendant's waiver of Defendant's right to appeal shall not apply to appeals based on a right that has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.
>
> The number of months mentioned in this paragraph does not necessarily constitute an estimate of the sentence that the parties expect will be imposed.

(Pet. App. 23a).

1. A valid and enforceable appeal waiver only precludes challenges that fall within its scope. *Garza v. Idaho*, 586 U.S. 232, 238 (2019). In *Class v. United States*, 583 U.S. 174, 177 (2018), this Court examined an appeal-waiver provision that "said nothing about the right to raise on direct appeal a claim that the statute of conviction was unconstitutional," and it permitted such a challenge to proceed. *Id.* at 177.

The language of Sam's appeal waiver likewise says nothing about his ability to argue that the statutory basis for his conviction is unconstitutional. And the pertinent terms relating to Sam's ability to appeal his "conviction" are either unenforceable as written[2] or unclear, and any ambiguity redounds to Sam's benefit. For example, Sam is not

[2] For example, the express terms of the appeal waiver state that defendant waives his ability to appeal "any…aspect of [his] conviction," even though Sam retains a right to assert his Sixth Amendment entitlement to competent counsel. *See Garza*, 586 U.S. at 239 (explaining that "no appeal waiver serves as an absolute bar to all appellate claims" and observing with approval that "all jurisdictions appear to treat at least some claims as unwaiveable.").

foreclosed from raising *any* challenge to his conviction,[3] and without precise limitations on which challenges are barred, Sam's challenge to the constitutionality of his conviction is not expressly waived. Plus, even if the waiver were to include such a challenge, nothing on the record evinces that Sam knew and understood that fact because at the change-of-plea hearing, the district court canvassed the contours of the appeal waiver with Sam, but only as it related to his sentence. (Pet. App. 14a-15a).

2. More importantly, it would work a grave miscarriage of justice to enforce an appeal waiver in a case where the statute of conviction is constitutionally infirm. There can be no greater injustice than convicting and imprisoning a man for conduct that is protected by the constitution and cannot be deemed criminal.

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[3] By its terms, the appeal-waiver does not apply "to appeals based on a right that has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." (Pet. App. 23a). This, of course, is lawyer-speak for the principles contemplated by *Teague v. Lane*, 489 U.S. 288 (1989). But after *Edwards v. Vannoy*, 593 U.S. 255 (2021), it is unclear what this language means. *Vannoy* holds that henceforth, there will be no such "new rights." *Id*. at 272 ("The watershed exception is moribund. It must be regarded as retaining no vitality.").

The First Circuit equated the miscarriage-of-justice and plain-error analyses and held that because any error was not "clear or obvious," enforcement of the appeal-waiver provision was not unjust. (Pet App. 2a). This deductive reasoning tees-up the substance of Sam's petition.

REASONS FOR GRANTING THE WRIT

I. The Courts of Appeals are erroneously giving short shrift to unpreserved Second Amendment claims.

The First Circuit has held that unpreserved challenges to Section 922(g)(1)'s constitutionality fail under the plainness prong of the plain error standard. *Langston*, 110 F.4th at 419-20. All Courts of Appeals to have considered this question on review for plain error agree.[4] But these decisions are inconsonant with this Court's emerging Second Amendment jurisprudence.

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[4] *See e.g. United States v. Meadows*, No. 22-3155-CR, 2025 WL 786380, at *2, n. 2 (2d Cir. Mar 12, 2025); *United States v. Dorsey*, 105 F.4th 526, 532-33 (3d Cir. 2024), *cert. denied*, 145 S.Ct. 457 (2024); *United States v. Hildreth*, 108 F.4th 912, 919 (5th Cir. 2024), *cert. denied*, 145 S.Ct. 398 (2024); *United States v. Burrell*, 114 F.4th 537, 549-50 (6th Cir. 2024); *United States v. Miles*, 86 F.4th 734, 740-41 (7th Cir. 2023); *United States v. Cameron*, 99 F.4th 432, 435-36 (8th Cir. 2024), *cert. denied*, 145 S.Ct. 314 (2024); *United States v. Vickers*, 2025 U.S. App. LEXIS 11232, *1 (10th Cir. 2025); *United States v. Johnson*, 2024 U.S. App. LEXIS 16932, *6-7 (11th Cir. 2025).

1. In addition to reaffirming the importance of Second Amendment protections, this Court has articulated a two-part analysis for evaluating Second Amendment claims. *Bruen*'s first step consists of three subsidiary questions: (1) whether defendant is part of "the people" whom the Second Amendment protects, (2) whether the items at issue constitute an "arm" that is in common use for self-defense, and (3) whether the alleged conduct falls within the Second Amendment. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 31-32 (2022). Sam unquestionably passes *Bruen*'s first step.

A. Sam's alleged conduct – possessing a handgun and ammunition outside his home – unambiguously falls within the ambit of Second Amendment protection. *See Bruen*, 597 U.S. at 9, 32 ("[H]andguns are weapons in common use today for self-defense" and the Second and Fourteenth Amendments protect the right "to carry a handgun for self-defense outside the home[.]"); *Hanson v. Smith*, 120 F.4th 223, 232 (D.C. Cir. 2024) ("A magazine is necessary to make meaningful an individual's right to carry a handgun for self-defense. To hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level....").

B. Sam is also unambiguously a part of "the people" whom the Second Amendment protects. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (defining "people" as "a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."); *see also Heller*, 554 U.S. at 580 (applying *Verdugo-Urquidez*'s definition of "people" to the Second Amendment).

Sam is a citizen, and *Bruen* and *Rahimi* say repeatedly that citizens enjoy Second Amendment rights.[5] *See also United States v. Cruikshank*, 92 U.S. 542, 549 (1975) ("Citizens are members of the political community to which they belong."); *Minor v. Happersett*, 88 U.S. 162, 165-66 (1874) (a "political community" is "an association of persons for the promotion of their general welfare"); *see also Kanter*, 919 F.3d at 453 (7th Cir. 2019) (Barrett, J., dissenting) ("Neither felons nor the mentally ill are categorically excluded from our national community.").

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[5] *See Rahimi*, 602 U.S. at 691, 701 ("ordinary citizens"); *id* at 700, 702 ("citizens"); *see also Bruen*, 597 U.S. at 9 ("ordinary, law-abiding citizen); *id.* at 15, 29 ("law-abiding, adult citizens"); *id.* at 26, 70 ("law-abiding, responsible citizens"); *id.* at 29, 30, 38, 60, 71 ("law-abiding citizen"); *id.* at 31 ("ordinary, law-abiding, adult citizens"); *id.* at 50 ("good citizens").

2. The second step of *Bruen*'s analysis consists of two alternative historical inquiries. The first requires the government to identify a "general societal problem that has persisted since the 18th century," which was addressed by disarmament or something akin to it. *Bruen*, 597 U.S. at 26. The second type of historical analysis that *Bruen* describes applies in "cases implicating unprecedented societal concerns" and requires "reasoning by analogy." *Bruen*, 597 U.S. at 27-28. The government must identify a "relevantly similar" historical analogue. *Id.* at 27. The challenged law must "comport with the principles underlying the Second Amendment," but the government is not required to identify an analogue that is a "dead ringer" or "historical twin." *Rahimi*, 602 U.S. at 692. This flexibility ensures that the law is not "trapped in amber." *Id.* at 691. Again, Sam comfortably prevails under either inquiry.

A. *Rahimi* teaches that gun violence was a problem in the eighteenth century. *Rahimi*, 602 U.S. at 693 ("From the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others."). It also teaches that, after a judge determined that a person misused or threatened to misuse firearms, a surety could be posted or the person

could be *temporarily* disarmed. *Id.* at 694-99. There is no evidence – certainly, the government has offered none in this case, nor has the First Circuit identified any – that in addition to surety and going armed laws, and other "ordinary criminal laws and civil actions," *Id.* at 694, the Founders also addressed the problem of gun violence by categorically and *permanently* disarming anyone who labeled as "felon" or even anyone considered "dangerous" around firearms. *Rahimi* strongly suggests the problem of gun violence was addressed through materially different means than the categorical and *permanent* disarmament of all persons based solely on their status.

B. The lower courts' dismissive approach to unpreserved Second Amendment challenges in felon-disarmament cases is especially egregious given Justice Barrett's dissenting opinion in *Kanter*, which these courts, largely, and inexplicably, ignore. *See Kanter*, 919 F.3d at 452 (Barrett, J., dissenting). In that opinion, then-Judge Barrett analyzed a wide array of legal artifacts and concluded that "[h]istory does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons." *Id.* at 464 (Barrett, J., dissenting).

Rather, she found, and as *Rahimi* seemingly reiterates, disarmament historically befell persons deemed "dangerous" and even for dangerous persons, temporary disarmament was the solution. *See Kanter*, 919 F.3d at 464 ("History…does support the proposition that the state can take the right to bear arms away from a category of people that it deems dangerous."); *Rahimi*, 602 U.S. at 699 (like surety bonds of limited duration, Rahimi's firearm-possession restriction was temporary). But Section 922(g)(1), "which applies to *all* felons, is wildly overinclusive" *id.* at 466 (emphasis in original; quotations omitted), and it codifies a lifetime ban on firearm possession.

3. The lower courts' reliance on dicta in this Court's Second Amendment cases is badly misplaced. The fact that this Court has said that laws disarming felons are "presumptively" constitutional is no justification for a truncated plain-error analysis. In *Heller*, 554 U.S. at 626, the Court said that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]" But then the Court immediately clarified that such laws were only "presumptively lawful." *Id.* at 627 n. 26.

Justice Thomas specifically singled-out "the passing reference in *Heller* to laws banning felons and others from possessing firearms" and cautioned, "[t]hat discussion is dicta." *Rahimi*, 602 U.S. at 773 n. 7. In her dissenting opinion in *Kanter*, 919 F.3d at 453 (7th Cir. 2019), then-Judge Barrett likewise admonished, that "[t]he constitutionality of felon dispossession was not before the Court in *Heller*, and because it explicitly deferred analysis of this issue, the scope of its assertion is unclear."

Even the First Circuit has recognized that the notion that a law is *presumptively* constitutional is simply the beginning – not the end – of the analysis. *See e.g. United States v. Torres-Rosario*, 658 F.3d 110, 113 (1st Cir. 2011) ("[G]iven the 'presumptively lawful' reference in *Heller*, the Supreme Court may be open to claims that some felonies…cannot be the basis for applying a categorical ban.") (cleaned up). Courts gravely err when they fail to undertake a complete analysis and instead conclude that because such laws are presumptively unconstitutional they cannot be "plainly" inviolate of the constitution. *See e.g. Johnson*, 2024 U.S. App. LEXIS 16932, at *7-8.

4. Also wrong is the notion that plain error cannot exist unless there exists binding caselaw from this Court on the precise issue

presented. This Court has never endorsed such a narrow definition of "plain" error. As this case demonstrates, existing jurisprudence from this Court clearly resolves the constitutional question in Sam's favor.

II. The procedural imperfections in this case are precisely what make it an appropriate vehicle for this Court's consideration.

This case has procedural warts that are common in other cases. In fact, these common imperfections are precisely why this Court should accept review. Guilty pleas with appeal-waiver provisions are a common feature of federal criminal cases. And criminal defendants omit timely objections to the as-applied constitutionality of Section 922(g)(1) either because they are caught in the crosshairs of binding circuit precedent seemingly unresponsive to this Court's Second Amendment caselaw, or for other strategic reasons. For example, in Sam's case, the government threatened to argue that Sam should be denied a sentencing reduction for pleading guilty if he asserted his Second Amendment rights, *Class* notwithstanding.[6]

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[6] *See* District Court Dkt. No. 81, p. 2 n. 1 (The government responded to Sam's sentencing memorandum as follows: "There is some suggestion in [Sam's] sentencing memorandum…that the facial and applied constitutionality of 18 U.S.C. § 922(g)(1) is in play as it pertains to his case. The Government would object to that argument, reserving all right

Regardless of why the issue is unpreserved, however, the lower courts' refusal to fully engage with this Court's caselaw in unpreserved cases, and to give full-throated consideration to whether Section 922(g)(1) is unconstitutional as-applied, undermines the significance of the right at stake. This Court should accept review to make clear that reasoned analysis is expected for *every* Second Amendment challenge.

III. The error in Sam's case was plain.

Sam was convicted of robbery in 2017. Since then, however, there has been no separate finding (by a judge or jury; by a preponderance-of-the-evidence or by a more exacting standard) that Sam *continues* to pose a threat to the physical safety of others *now*. Nor has there been the requisite finding that Sam would continue to pose a threat to the physical safety of others over four years *after* 2017.

Rahimi instructs that "[e]ven when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, 219 L. Ed. at 364. *Rahimi* also emphasizes repeatedly that historically,

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to argue a lack of acceptance of responsibility to the extent [Sam] mounts a constitutional attack at sentencing.").

the disarmament of dangerous people was of limited duration. *Id.* at 368 (surety bonds of limited duration); *id.* at 370 (temporary disarmament in response to the use of guns to threaten the physical safety of others is permissible).

At the time of Sam's 2021 arrest for violating Section 922(g)(1), his 2017 felony conviction had disqualified him from gun ownership for over four years – far surpassing notions of a "temporary" disarmament or one of only "limited duration." Because 922(g)(1) effectively prohibited Sam from possessing a weapon for over four years, it goes beyond what was done at the founding and is incompatible with any historical analogue. As applied to him, four-plus years of disarmament without any intervening assessment as to whether Sam poses a threat to the physical safety of others fails to pass constitutional muster. Because there are no historical analogues that are "relevantly similar" in effect, Section 922(g)(1) is unconstitutional as applied to Sam.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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