

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MAURICE FARRIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Whether Mr. Farris's conviction under 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

## RELATED PROCEEDINGS

### U.S. District Court:

On November 21, 2022, judgment was entered against Petitioner Maurice Farris in *United States v. Farris*, No. 1:22-cr-00149-RM-1, Dkt. 47 (D. Colo. Nov. 21, 2022). App. A1-A7.

### U.S. Court of Appeals:

On January 16, 2024, the Tenth Circuit affirmed Mr. Farris's conviction in an unpublished decision, *United States v. Farris*, No. 22-1412, 2024 WL 159939 (10th Cir. 2024). App. A8-A11.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Maurice Farris, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on January 16, 2024.

### **OPINION BELOW**

The Tenth Circuit's unreported opinion in Mr. Farris's case is available at 2024 WL 159939 (10th Cir. 2024), and is in the Appendix at A8-A11.

### **JURISDICTION**

The United States District Court for the District of Colorado had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291, and entered judgment on January 16, 2024. App. A8. On April 9, 2024, this Court extended the time within which to file a petition for a writ of certiorari until May 15, 2024. App. 12. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, U.S. CONST. amend. II, 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:

It shall be unlawful for any person . . . 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.

18 U.S.C. § 921(a)(20):

The term “crime punishable by imprisonment for a term exceeding one year” does not include—

- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

## STATEMENT OF THE CASE

The petitioner, Mr. Maurice Farris, pleaded guilty in the District of Colorado to one count of possession of a firearm and ammunition as a felon under 18 U.S.C. § 922(g)(1) (hereinafter “Section 922(g)(1)”). The charge stemmed from Mr. Farris’s possession of a handgun and ammunition in April 2022. In both his district court and appellate proceedings, Mr. Farris challenged the constitutionality of Section 922(g)(1) under the Second Amendment. The Tenth Circuit affirmed his conviction pursuant to existing Tenth Circuit precedent.

The question presented in this petition is whether Mr. Farris’s conviction under Section 922(g)(1) is unconstitutional under the Second Amendment in light of this Court’s opinion in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

As Mr. Farris argued in his district and appellate proceedings, *Bruen* established a two-part test for evaluating Second Amendment challenges. The threshold inquiry is whether “the Second Amendment’s plain text covers an individual’s conduct.” *Bruen*, 142 S. Ct. at 2126. If so, “the Constitution presumptively protects that conduct,” *id.*, and it cannot be restricted unless the *government* demonstrates, as relevant here, a historical tradition of “distinctly similar” regulations, *id.* at 2131-2132.

In establishing this text-and-history test, *Bruen* emphasized that the Second Amendment is robust and not easily infringed upon. If conduct is protected by the

text of the Amendment, then it does not matter why the government wants to regulate it. *See id.* at 2127 (rejecting any form of “means-end scrutiny”). The government can only succeed if it “affirmatively prove[s] that its firearms regulation is part of the [nation’s] historical tradition.” *Id.* The evidence of any such tradition must be substantial, *see, e.g., id.* at 2153, 2156, and there must be a tight fit between the challenged regulation and any historical evidence, *see, e.g., id.* at 2141-2147. If there are “multiple plausible interpretations” of the government’s proffered evidence, the government has not met its burden. *Id.* at 2141 n.11; *see id.* at 2139.

Under *Bruen*, Section 922(g)(1) is unconstitutional, both facially and as applied, and the Second Amendment protects Mr. Farris’s conduct in this case.

First, the conduct regulated by Section 922(g)(1) is covered by the Second Amendment. The plain text of the Amendment clearly covers possession of a firearm and ammunition, including the firearm and ammunition in this case. And Mr. Farris is clearly part of “the people” protected by the Amendment: The plain text does not draw a felon/non-felon distinction, *see id.* at 2134, and this Court has already determined that the phrase “the people” contained within the Amendment “unambiguously refers to all members of the political community, *not an unspecified subset.*” *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (emphasis added).

Second, it is not possible for the government to meet its historical burden to support the constitutionality of the statute because there is no tradition of felon

dispossession statutes predating the 20th century. *See, e.g., United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc); Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 142-143 & n.11 (2007) (concluding that “at no time between 1607 and 1815 did the colonial or state governments of what would become the first fourteen states exercise a police power to restrict the ownership of guns by members of the body politic”). In other words, there was no “historical tradition,” circa 1791, of gun regulations “distinctly similar” to Section 922(g)(1). *See Bruen*, 142 S. Ct. at 2130-31.

Nevertheless, the Tenth Circuit rejected Mr. Farris’s challenge under *Bruen* pursuant to existing Tenth Circuit precedent. *See Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) (relying on *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)).

Whether there are certain unconstitutional applications of Section 922(g)(1) is a question that has already been presented to this Court in several pending petitions for certiorari, including *Garland v. Range*, No. 23-374 (U.S. Oct. 5, 2023), and *Vincent v. Garland*, No. 23-683 (U.S. Dec. 21, 2023). The petitions, responses, and replies in those cases have already been distributed for conference (on November 17, 2023, and March 28, 2024, respectively). Both of the petitioners and the government seek review of the question presented (albeit on different timelines). If this Court grants certiorari in either of those cases, it may recognize the unconstitutionality of Section 922(g)(1)

in a substantial number of cases, including cases like Mr. Farris’s, and it may even find (or leave open the possibility) that the Second Amendment supports a facial challenge to Section 922(g)(1). Accordingly, Mr. Farris asks this Court to grant the petition in *Range* or *Vincent* and resolve the question presented in Mr. Range’s or Ms. Vincent’s favor. This Court should then grant Mr. Farris’s petition and afford him the benefit of that ruling.

### **REASONS FOR GRANTING THE WRIT**

This Court should grant the *Range* or *Vincent* petitions; resolve the question in Mr. Range’s or Ms. Vincent’s favor; and then grant this petition, vacate the underlying judgments, and remand to the Tenth Circuit Court of Appeals. It should do so for multiple reasons.

**First**, whether Section 922(g)(1) is unconstitutional is an important question of federal law. Section 922(g)(1) is heavily enforced. *See* U.S. Sent. Comm’n, “QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses” (July 2023). And it affects not only those persons convicted of violating it, but also nearly everyone else who has previously committed any other felony or felony-equivalent offense (even if they never misused—or even used—a firearm). In other words, the constitutionality of the statute is a question that impacts millions of persons in this country. *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, *Demography* 54 (2017) at 1806, 1808 (estimating that, as of

2010, there were 19 million people with felony records in the United States). For those millions of prohibited persons, the infringement on their Second Amendment rights is substantial: The ban on possession is effectively permanent, and it prohibits possession for any reason, even self-defense within one’s home.

This already-important issue is even more significant because *Bruen* clearly set forth, for the first time, the test courts must use to evaluate the constitutionality of firearm laws under the Second Amendment. The heavy burden *Bruen* imposes on the government to defend any regulations that infringe on Second Amendment rights raises a serious question regarding the constitutionality of Section 922(g)(1)—one that has spurred a tremendous amount of litigation across the country.

**Second,** courts of appeals are divided on this issue. On one hand, the Eighth, Tenth, and Eleventh Circuits have rejected challenges to the constitutionality of Section 922(g)(1). See *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023); *Vincent*, 80 F.4th 1197; *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024). While the Eighth Circuit endeavored to analyze the issue under *Bruen*’s legal test, the Tenth and the Eleventh Circuits refused to reevaluate their pre-*Bruen* precedent. In the Tenth Circuit, that precedent summarily rejected a Second Amendment challenge to the statute based on the felon-in-possession dictum in *Heller*—*i.e.*, that nothing in that case “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *McCane*, 573 F.3d at 1047 (quoting *Heller*, 554 U.S. at 626). The

Eleventh Circuit’s precedent also relied heavily on *Heller* and did not put the burden on the government to demonstrate an adequate historical tradition of distinctly similar statutes. See *United States v. Rozier*, 598 F.3d 768, 770-71 (11th Cir. 2010).

On the other hand, both the Third Circuit and the Ninth Circuit have ruled that there are at least some unconstitutional applications of the statute. The Third Circuit decided en banc that the statute is unconstitutional as applied to persons like the petitioner (whose qualifying criminal history consisted solely of a nonviolent offense). *Range v. Att’y Gen.*, 69 F.4th 96 (3d Cir. 2023) (en banc). That holding was limited to the as-applied issue presented to it, but its reasoning was expansive and applies more broadly. Likewise, the Ninth Circuit recently ruled the statute unconstitutional as applied to a criminal defendant, in part because the government had not met its burden to prove that the defendant’s previous convictions were of “a nature serious enough” by “Founding era standards” to “justify permanently depriving him of his fundamental Second Amendment rights.” *United States v. Duarte*, - - F.4th ---, 2024 WL 2068016, \*24 (9th Cir. May 9, 2024).

In addition, the Seventh Circuit has remanded a Section 922(g)(1) case with instructions regarding the thorough examination of the historical evidence now required under *Bruen*. *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). In remanding, the Seventh Circuit rejected the government’s attempt to “avoid a *Bruen* analysis altogether” using *Heller*’s felon-in-possession dictum, finding that “[n]othing

allow[ed] [the Court] to sidestep *Bruen* in the way the government invites” and that the Court “must undertake the text-and-history inquiry the [Supreme Court] so plainly announced and expounded upon at great length.” *Id.* at 1022. Then, in another case, the Seventh Circuit rejected a specific defendant’s *Bruen* claim while leaving open the possibility that there is “room for as-applied challenges” to Section 922(g)(1) in other cases. *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024).

**Third**, the Tenth Circuit’s decision in Mr. Farris’s case (and, in the first instance, in Ms. Vincent’s case) declined to apply this Court’s decision in *Bruen* even though it recognized that *Bruen* established the legal test for Second Amendment challenges. As noted, the Tenth Circuit relied on its pre-*Bruen* precedent that summarily rejected a Second Amendment challenge to Section 922(g)(1) based entirely on unexplained dictum in *Heller*. The Eleventh Circuit, too, did not apply *Bruen*’s test, including *Bruen*’s instruction that the burden to demonstrate a historical tradition of distinctly similar statutes falls on the government. In other words, at least two of the circuits that have rejected *Bruen* challenges to Section 922(g)(1) have done so without correctly applying the mandatory legal test set forth by this Court. That provides a separate reason that this Court’s review of the issue is warranted.

Indeed, this Court has made clear that the legal tests it imposes are binding and trump its dicta. In *Seminole Tribe of Fla. v. Florida*, it stated that both the “result” of its opinions and “those portions of the opinion necessary to that result” are binding,

even on itself. 517 U.S. 44, 67 (1996). In contrast, this Court has repeatedly stressed that its dicta, even when repeated, does not resolve issues it has not yet addressed. In *Oklahoma v. Castro-Huerta*, for example, it found entirely unpersuasive prior “tangential dicta” that addressed an issue that, until that case, “did not previously matter all that much and did not warrant [the] Court’s review.” 142 S. Ct. 2486, 2499 (2022); *see id.* at 2498 (“[T]he Court’s dicta, even if repeated, does not constitute precedent.”). And in *Heller* itself, the Court stated that “[i]t is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued.” 554 U.S. at 625 n.25. Thus, while this Court’s dicta has significant weight on lower courts, *see, e.g., Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996), the upshot of this Court’s cases is evident: If faced with a choice between relying exclusively on this Court’s dicta or applying a binding legal test, lower courts must employ the latter.

Here, *Bruen* unquestionably established a binding test for courts to use when analyzing Second Amendment challenges. *See Vincent*, 80 F.4th at 1200 (noting that *Bruen* “created a test”). The second step requires a careful and robust historical analysis, and it expressly places the burden on the government to present any historical evidence. *See id.* Accordingly, courts must hold the government to its task and undergo the requisite historical analysis before rejecting or accepting any Second Amendment challenges to Section 922(g)(1). That some circuits have not done so—

instead preferring to rely on pre-*Bruen* precedent that does not correctly apply the legal test—is another reason this Court should address the merits of the issue by granting certiorari in either *Range* or *Vincent*.

## CONCLUSION

The Court should grant the petition in *Range* or *Vincent* and grant Mr. Range or Ms. Vincent relief. Thereafter, it should grant this petition for a writ of certiorari, vacate the underlying judgment, and remand for reconsideration in light of the resolution of that petition.

Respectfully submitted,

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