No. 24-1155

IN THE

Supreme Court of the United States

MELYNDA VINCENT,

Petitioner,

v.

PAMELA J. BONDI,

Respondent.

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

PETITIONER'S REPLY BRIEF

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The government does not dispute that the circuits are split, with *en banc* rulings on both sides. Nor does it dispute that the split is outcome-determinative here, making this case an ideal vehicle. The government barely tries to defend either the Tenth Circuit's flat refusal to consider as-applied challenges to § 922(g)(1) or the constitutionality of a lifetime firearms ban as applied to Ms. Vincent. And while the government claims the question presented arises only in "unusual" cases (Opp. 8), it recently told this Court that a rule invalidating § 922(g)(1) as applied to non-violent felons "has far-reaching practical effects" that "warrant this Court's review." Pet. 24–25, *Garland* v. *Range*, No. 23-374, (*Range* Pet.). Exactly right.

The government's only real argument against review is that the Department of Justice "recently revitalized an administrative process under 18 U.S.C. [§] 925(c) through which convicted felons can regain their ability to possess firearms." Opp. 3. But even assuming the government can successfully revive an agency program that Congress has deliberately killed every year since 1992, it makes no effort to show a historical analogue for its new scheme, as *Bruen* requires. It also ignores that *Bruen* struck down a regime giving government officials broad discretion to decide whether individual applicants are suitable gun owners—exactly what § 925(c) contemplates. And more broadly, the possibility of discretionary relief from a government functionary does not save an otherwise unconstitutional law. In short, nothing about § 925(c) either changes the merits analysis or obviates the circuit split. Review is warranted.

I. The nascent § 925(c) program does not affect either the split or the merits.

The government says that, since it has now revived § 925(c)'s discretionary-relief program, the circuit split "may evaporate" and Ms. Vincent "cannot show … that Section 922(g)(1) subjects her to 'permanent' disarmament." Opp. 3. This argument lacks merit.

To start, it is far from clear that the new § 925(c) program will get off the ground. The government all but admits that this effort is a end-run around Congress's considered refusal to fund the statute's operation. Until recently, the power to administer § 925(c) was delegated exclusively to the Bureau of Alcohol, Tobacco, Firearms and Explosives. And since 1992, Congresses controlled by both parties have barred ATF from spending any money to act on § 925(c) applications. Opp. 8; *Logan* v. *United States*, 552 U.S. 23, 28 n.1 (2007). As the government itself explained in *Range*: "Congress found [the § 925(c)] program unworkable and abandoned it" because it was too expensive and "too many … felons whose gun ownership rights were restored went on to commit crimes with firearms." *Range* Pet. 21–22 (citation omitted).

The Attorney General now seeks to circumvent Congress's funding ban by withdrawing the delegation to ATF. Opp. 8. Congress, however, could easily pass another appropriations rider that reaches the entire Department of Justice. This momentarily reanimated program is too tenuous a ground to avoid an important constitutional question.

In any event, the government's argument fails on its own terms. It insists that, with the § 925(c) process revived, people like Ms. Vincent are no longer subject "to 'permanent' disarmament." Opp. 3, 10, 15. But the government does not try to show that the availability

of such discretionary relief changes the analysis under *Bruen* or the cases forming the split.

Under *Bruen*, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 19 (2022). Yet the government's historical argument merely defends the "disarmament of convicted felons" in general, not any permanent-disarmament-plus-discretionary-relief scheme. See Opp. 4–7. So if the government is wrong that this history insulates § 922(g)(1) from as-applied challenges—as the Third, Fifth, and Sixth Circuits have already held—then its arguments here do not move the needle.

In turn, to show that § 925(c) has any bearing on this petition, the government would have to show historical support—a "well-established and representative historical *analogue*," *Bruen*, 597 U.S. at 30—for the combination of § 922(g)(1) and § 925(c): A blanket, lifetime ban on gun possession for anyone convicted of any felony, limited only by the possibility of discretionary relief from a government official. Yet it makes no effort to do so. The government's silence on this score is especially striking given that *Bruen* itself invalidated a regime that "grant[ed] licensing officials discretion to deny [firearms] licenses based on a perceived lack of need *or suitability*." *Id.* at 13 (emphasis added).

Since the government has not tried to show that it could carry its burden under *Bruen* even with a revived § 925(c) program, that program's existence does not affect the merits of Ms. Vincent's case. Nor does it suggest that the Third, Fifth, and Sixth Circuits will all change their positions. Contrary to the government's suggestion (Opp. 14), the *en banc* majority in *Range* nowhere hinted that a functional § 925(c) would

affect the result there—despite separate opinions invoking it. See *Range* v. *Att'y Gen.*, 124 F.4th 218, 245 n.22 (3d Cir. 2024) (en banc) (Matey, J., concurring); *id.* at 250 (Krause, J., concurring in the judgment).

And more broadly, the government's position makes little sense. A statute that bars a person from exercising a core constitutional right does not become permissible simply because the government might, in its discretion, grant an exception. This Court has long emphasized that "[r]ights under our system of law and procedure do not rest in the discretionary authority of any officer." *Ex parte Parker*, 131 U.S. 221, 225 (1889). For example, in the First Amendment context, "broad licensing discretion [by] a government official" is a vice, not a virtue. *E.g.*, *Forsyth Cnty.* v. *Nationalist Movement*, 505 U.S. 123, 130 (1992) (prior restraints subject to such discretion are invalid). And the Second Amendment, no less than the First, "protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly." *United States* v. *Stevens*, 559 U.S. 460, 480 (2010).

That principle applies fully here. Under § 925(c), the Attorney General "*may*" lift a firearms ban "if it is established *to [her] satisfaction* that the circumstances regarding the disability, and the applicant's record *and reputation*, are such that the applicant will not be likely to act in a manner dangerous to public safety *and that the granting of the relief would not be contrary to the public interest*." 18 U.S.C. § 925(c) (emphasis added). This language confers "broad discretion" to grant or deny relief—"even when the statutory prerequisites are satisfied"—reviewable only under an arbitrary-and-capricious standard. *United States* v. *Bean*, 537 U.S. 71, 75–77 & n.2 (2002). And by incorporating

concepts as nebulous as a person's "reputation" and "the public interest" (as distinct from "dangerous[ness]"), the statute practically invites selective and inconsistent application.[1]

Nor does it matter that the government has proposed regulations "to establish criteria to guide determinations for granting relief." Opp. 9 (cleaned up). Those regulations largely list situations that presumptively *disqualify* people from relief. See *Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 90 Fed. Reg. 34,394, 34,402 (July 22, 2025). Even for people who are not disqualified, the effect on "the applicant's rights under the Second Amendment" is just one factor—and that factor depends on "the view of the Attorney General," which presumably will mirror the government's position here that even people with nonviolent felony convictions can be disarmed indefinitely without any Second Amendment problem. *Id.* at 34,404; see Opp. 4–7. What's more, government officials will apparently scrutinize applicants' "past … use of controlled substances" and "mental health treatment." 90 Fed. Reg. at 34,404. None of this alleviates the "constitutional concerns about the breadth and duration of the restriction imposed by Section 922(g)(1)." Contra Opp. 9, 14.

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[1] *See*, *e.g.*, Andrew Willinger, *DOJ's Proposed Gun Restoration Program Raises Automation Questions while Mirroring Felon-in-Possession Standard,* Duke Center for Firearms Law (Apr. 9, 2025) (reporting that the Pardon Attorney was fired for questioning whether actor Mel Gibson should have his firearm rights restored despite his conviction for domestic battery), https://tinyurl.com/cmv8xdef; *Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17,835 (Apr. 29, 2025) (granting relief to Gibson and others with only boilerplate explanation).

In short, if the Second Amendment bars lifetime firearms bans for people with non-violent felony convictions—as the petition showed and the Third, Fifth, and Sixth Circuits hold—then nothing about the fledgling § 925(c) process cures the constitutional problem. And the government does not even try to show that its proposed scheme has any historical analogue that might avoid the constitutional defect in the first place. Section 925(c) is thus a red herring.

II. The entrenched split warrants this Court's intervention now.

Section 925(c) aside, the government reverses course, now understating the circuit split and its practical importance. It acknowledges the open "disagreement in the courts of appeals" about § 922(g)(1)'s validity as applied to people like Ms. Vincent, but says the split is "shallow" and arises only in "unusual applications." Opp. 3–4, 8. Both points are wrong.

To start, the circuits are not split on "how to evaluate as-applied challenges to Section 922(g)(1)," *id.* at 3, but on whether such challenges exist at all. As the government agrees, six circuits now hold that § 922(g)(1) is valid in every case, so no as-applied challenge is possible. Pet. 10–13; Opp. 11. That includes *en banc* proceedings in the Eighth and now the Ninth Circuits. See Pet. 12; *United States* v. *Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc).

Conversely, three circuits hold that the Second Amendment bars the government from disarming people based on felony convictions that would not have supported the same punishment at the Founding, so § 922(g)(1) is susceptible to as-applied challenges. Pet. 8–10. That includes the *en banc* Third Circuit in *Range*. *Id.* at 8. It does not matter that the Third Circuit has since "upheld other applications of Section

922(g)(1)." Opp. 13. Those cases all involved parole/probation violations (which have a different historical pedigree),[2] dangerous predicate offenses,[3] or both.[4]

It is true that neither the Fifth nor Sixth Circuits "has yet actually held Section 922(g)(1) invalid in any application." Opp. 12. But both courts held that *Bruen* and *Rahimi* had abrogated circuit precedent upholding § 922(g)(1) against as-applied challenges. See Pet. 8–9; *United States* v. *Diaz*, 116 F.4th 458, 465 (5th Cir. 2024) ("our pre-*Bruen* precedent" is no longer "the law of the land"), *cert denied*, 2025 WL 1727419 (June 23, 2025); *United States* v. *Williams*, 113 F.4th 637, 646 (6th Cir. 2024) ("*Bruen* and *Rahimi* supersede our circuit's past decisions on § 922(g)."). Precedent in both circuits has thus changed to conflict squarely with the decision below, which held the opposite.

In any event, the government previously told this Court that the Third Circuit's *Range* decision *by itself* would warrant review of the question presented here, because that ruling "held an Act of Congress unconsti-

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[2] *See United States* v. *Quailes*, 126 F.4th 215, 221 (3d Cir. 2025), *pet. docketed,* 24-7083 (Apr. 18, 2025); *United States* v. *Moore*, 111 F.4th 266, 271 (3d Cir. 2024).

[3] *United States* v. *White*, No. 23-3013, 2025 WL 384112, at *2 (3d Cir. Feb. 4, 2025), *cert. denied*, 24-7158 (June 16, 2025) ("prior felony convictions for drug distribution, aggravated assault, and carrying a firearm without a license").

[4] *See United States* v. *Law*, No. 23-2540, 2025 WL 984604, at *2 (3d Cir. Apr. 2, 2025) (conspiracy to deal cocaine, possession of a firearm in furtherance of a drug trafficking crime, probation violation); *United States* v. *Stevens*, No. 24-1217, 2025 WL 651456, at *1 (3d Cir. Feb. 28, 2025), *pet. docketed,* 25-5027 (July 3, 2025) ("While on state parole for robbery, Stevens entered a Philadelphia pharmacy, brandished a handgun, and threatened to shoot the employees ….").

tutional, conflicts with decisions of other courts of appeals, and has important practical consequences." *Range* Pet. 25. That is correct.

Likewise, the government is wrong to declare, without explanation, that the split implicates § 922(g)(1)'s validity only "in some unusual applications." Opp. 4, 8. Again, the government previously said that *Range* alone "opened the courthouse doors to an *untold number* of future challenges by other felons based on their own particular offenses, histories, and personal circumstances." *Range* Pet. 6 (emphasis added). Again, the government was right the first time.

As the Third, Fifth, and Sixth Circuits have explained, the key question for an as-applied Second Amendment challenge is whether a person's prior convictions establish that she "poses a physical danger to others"—that is, does she present a "threat of physical violence." *Range*, 124 F.4th at 230, 232; see *Williams*, 113 F.4th at 659; cf. *Diaz*, 116 F.4th at 470 (noting the government's assertion of a "tradition of disarming those who are violent or pose a threat to public safety"). And as the petition explained—and the government nowhere disputes—violent offenses make up just one in five state felony convictions and one in twenty federal felony convictions. See Pet. 18. *Everyone else* committed offenses that presumptively "don't make a person dangerous." *Williams*, 113 F.4th at 659. In at least three circuits, all those people can currently seek to restore their rights in court. In six others, they cannot. These "far-reaching practical effects" amply justify this Court's review. See *Range* Pet. 24–25.

III. This case is the perfect vehicle.

The government now claims this is "a poor vehicle," but that argument just relies on § 925(c) again. Opp.

15. For the reasons above, that reliance is misplaced. The government does not and cannot dispute that Ms. Vincent is the poster child for people who have paid their debts, built productive lives, and never posed a danger to anyone. As the government told the Court before: "Granting review [in *Vincent*] would enable this Court to consider Section 922(g)(1)'s application to non-drug, non-violent crimes." Suppl. Br. for Fed. Parties 7, Nos. 23-374, 23-683, 23-6170, 23-6602, and 23-6842. Just so.

The government also rattles off a list of recently denied petitions "raising as-applied challenges to Section 922(g)(1)." Opp. 4 n.1, 14. But those cases were terrible vehicles. Every single petitioner had multiple prior felony convictions—and not for writing bad checks. Their predicate offenses included assaults with a dangerous or deadly weapon,[5] aggravated sexual assault of a child,[6] drug trafficking or dealing,[7] battery of a correctional officer or assaulting a police officer,[8] intimidation with a dangerous weapon,[9] previous felon-in-possession charges,[10] possessing a firearm during and in relation to a drug-trafficking crime,[11] domestic battery,[12] and fleeing from police.[13] Many also vio-

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[5] *Mireles* v. *United States*, No. 24-7275; *Faust* v. *United States*, No. 24-6897.

[6] *Thompson* v. *United States*, No. 24-6693.

[7] *Anderson* v. *United States*, No. 24-6666; *White* v. *United States*, No. 24-7158.

[8] *Collette* v. *United States*, No. 24-6497; *Nordvold* v. *United* States, No. 24-6452.

[9] *Doss* v. *United States*, No. 24-6476.

[10] *Moore* v. *United States*, No. 24-968; *Charles* v. *United States*, No. 24-7168; *Hill* v. *United States*, No. 24-7334.

[11] *Diaz* v. *United States*, No. 24-6625.

[12] *Hunt* v. *United States*, No. 24-6818.

[13] *Lindsey* v. *United States*, No. 24-6782.

lated parole or supervised-release conditions, including by illegally possessing weapons more than once. In one case, the district court specifically found that the petitioner had "proven himself to be both dangerous and unable to abide by the law."[14] In another case, the petitioner's vehicle argument consisted entirely of pointing to *this* petition, explaining that "Ms. Vincent's case is a good vehicle."[15] And unlike Ms. Vincent, these other petitioners challenged § 922(g)(1) *after being charged with violating it*, not by raising a proactive civil claim. All these differences surely explain why the government waived its response in many of these cases. There is no comparison to this case.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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[14] Pet. App. 33a, *Jackson* v. *United States*, No. 24-6517.
[15] Pet. 5, *Talbot* v. *United States*, No. 24-7232.