No. _____

IN THE

Supreme Court of the United States

THOMAS CAVES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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March 19, 2025

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Second Circuit erred by applying its plain error standard to affirm the judgment of conviction and sentence pronounced by the United States District Court for the Northern District of New York on his plea of guilty to one count of Possession of a Firearm by a Prohibited Person in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), the felon in possession statute, notwithstanding precedent from this Court which rendered

obsolete the Second Circuit's prior decisions upholding the constitutionality of the felon in possession statute.

TABLE OF CONTENTS

THE WRIT OF CERTIORARI TO REVIEW THE OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AFFIRMING THE SENTENCE

TABLE OF APPENDICES

TABLE OF AUTHORITIES

CASES **Page**

UNITED STATES CONSTITUTION

FEDERAL STATUTES

SUPREME COURT RULES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Thomas Caves respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The Summary Order and Judgment of the United States Court of Appeals for the Second Circuit in *United States v. Thomas Caves*, Docket No. 23-6176cr, dated December 26, 2024, which is unpublished, appears as Appendix A to the Petition (A01-07).

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked under Title 28, United States Code §1254(1).

Ninety days from that the date of the Second Circuit's summary order is March 26, 2025. Thus, this Petition is filed timely under U.S. Sup. Ct. Rule 13 (1) and (3).

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." Const. Amend. 2.

18 U.S.C. § 922(g) provides "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.

18 U.S.C. § 924(a)(2), as it existed at the time of this case, provided: "Whoever knowingly violates subsection … (g) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

STATEMENT OF THE CASE

Thomas Caves was sentenced on February 8, 2023, by United States District Judge David Hurd for the United States District Court for the Northern District of New York on his plea of guilty to one count of Possession of a Firearm by a Prohibited Person in violation of 18

U.S.C. §§ 922(g)(1) and 924(a)(2), the felon in possession statute (A02). The district judge imposed a sentence of principally 30 months imprisonment followed by a supervised release term of three years (A02). Mr. Caves has completed serving the term of incarceration and is serving the supervised release term.

The underlying facts were not disputed. In March 2021, in Plattsburgh, New York, Mr. Caves possessed a firearm. Prior to obtaining the weapon, he knew that he was prohibited from possessing a firearm under the felon in possession statute. In 2020, he had been convicted of a felony, namely Burglary, in the Superior Court, County of New Haven, State of Connecticut and sentenced to 36 months in prison.

Mr. Caves purchased the weapon as protection after he learned that someone might be trying to kill him because they falsely believed he had cooperated with law enforcement. While Mr. Caves did not dispute the allegation in the PreSentence Report dated June 7, 2022 ("PSR") that Mr. Caves had purchased guns for resale (PSR ¶13), the government did not present any evidence of gun dealing to the district

judge and the district judge did not refer to the allegation at sentencing Mr. Caves.

In rejecting Mr. Caves constitutional challenge to 18 U.S.C. § 922(g)(1) which he raised for the first time on appeal, the Second Circuit relied, in part, on its decisions in *United States v. Napout*, 963 F.3d 163, 183 (2d Cir. 2000) and *United States v. Bogle*, 717 F.3d, 281, 281-82 (2d Cir. 2013), which upheld the constitutionality of 18 U.S.C. § 922(g)(1) in *Bogle*. In the instant case, the Second Circuit ruled that neither *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), nor any other binding precedent held to the contrary (A03).

In *Napout,* the Second Circuit held that it typically would not find plain error where the operative legal question is unsettled and there is no binding precedent from this Court. The Second Circuit has rejected other challenges to 18 U.S.C. § 922(g)(1) on the same basis in other cases. *See United States v. Simmons*, No. 23-6771, 2025 U.S. App. LEXIS 4461, at *13 (2d Cir. Feb. 26, 2025)(summary order)(collecting cases).

REASON FOR GRANTING THE PETITION

CERTIORARI SHOULD BE GRANTED TO RESOLVE A SPLIT AMONG THE CIRCUIT COURTS OF APPEALS ON AN IMPORTANT CONSTITUTIONAL ISSUE, NAMELY, WHETHER A CIRCUIT COURT CAN REJECT A CLAIM THAT 18 U.S.C. §922(g)(1) VIOLATES THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION ON PLAIN ERROR GROUNDS

The Court should review the decision of the Second Circuit in this case to resolve split among the Circuit Courts of Appeals on an important issue of federal constitutional law, namely whether a circuit court may apply plain error to reject a claim that 18 U.S.C. §922(g)(1), the felon in possession law, violates the Second Amendment to the United States Constitution.

In its decision, the Second Circuit indicated that there has been no binding precedent from the Court on the constitutionality of the felon in possession law since the Second Circuit rejected a challenge to it in *Bogle* (A 003). In fact, as other circuit courts of appeals have recognized, this Court's *Bruen* decision rendered earlier precedents, such as *Bogle*, obsolete and no longer viable.

In contrast, the Fifth Circuit has held that *Bruen* "fundamentally change[d]" the analysis of laws that implicate the Second Amendment,

rendering the prior precedent "obsolete". *See United States v. Rahimi*, 61 F.4th 443, 450-51 (5th Cir. 2023); *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024).

The Sixth Circuit also concluded that because *Bruen* required a different mode of analysis its precedent on § 922(g)(1) is no longer viable. *United States v. Williams*, 113 F.4th 637, 648 (6th Cir. 2024).

The Court's decision in *United States v. Rahimi,* 602 U.S. 680 (2024), cannot be applied to resolve the constitutionality of the felon in possession statute. In *Rahimi,* the Court rejected a facial challenge to another subsection of 18 U.S.C. §922, namely §922(g)(8), which prohibits persons subject to domestic violence restraining order from possessing firearms. Two findings are critical to the Court's decision in *Rahimi*: first, that the subject of the order, namely Mr. Rahimi, posed a credible threat to the physical safety of another person and, second, the prohibition was temporary.

The Court made it clear that its decision in *Rahimi* is limited: "we conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed

consistent with the Second Amendment." 602 U.S. at 702.

In contrast, the §922(g)(1) creates a lifetime ban on the subject, based solely on their status as a "felon" and not any finding that they pose a threat to any other person. The Court in *Rahimi* focused on the temporal limitation of the §922(g)(8) ban as applied to Mr. Rahimi, which lasted only as long as the restraining order, *i.e.*, six months. *United States v. Rahimi*, 602 U.S. at 699.

The Second Circuit rejected the constitutional challenge in this case without addressing this Court's *Rahimi* decision. In several recent cases, the Second Circuit acknowledged the *Rahimi* decision but nevertheless continued to apply its plain error standard to reject the constitutional challenges. *See, e.g., United States v. Leiser*, No. 23-6665-cr, 2024 U.S. App. LEXIS 32682, at *6 (2d Cir. Dec. 26, 2024)(summary order), *United States v. Garcia*, No. 22-749, 2024 U.S. App. LEXIS 26210, at *3 (2d Cir. Oct. 17, 2024) (summary order).

Several other Courts of Appeals have entered similar decision. *See United States v. Langston*, 110 F.4th 408, 420 (1st Cir. 2024); *United States v. Brinson*, No. 23-2075, 2024 U.S. App. LEXIS 23185, at *2 (3d

Cir. Sept. 12, 2024); *United States v. Hewlett*, No. 23-2040, 2024 U.S. App. LEXIS 27037, at *4 (6th Cir. Oct. 24, 2024), *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025).

Other courts of appeals have found §922(g)(1) unconstitutional. The Third Circuit, sitting *en banc*, found §922(g)(1) unconstitutional as applied in the case before it. *Range v. Att'y Gen. United States,* 124 F.4th 281, 230 (3d Cir. 2024). In *Range*, the Third Circuit found that §922(g)(1) was unconstitutional as applied, absent any evidence that the subject posed any danger to others. *Range,* 124 F.4th at 232.

The Third Circuit's holding is diametrically opposed to that of the Fourth and Sixth Circuits. The Fourth Circuit recently held that "Congress acted within the historical tradition when it enacted §922(g)(1)" *United States v Hunt,* 123 F.4th 697, 705 (4th Cir. 2024). The Fourth Circuit concluded that Section 922(g)(1) "regulates activity" namely, the possession of firearms by felons "that 'fall[s] outside the scope of the [Second Amendment] right as originally understood'." 123 F.4th at 705 citing *Bruen*, 597 U.S. at 18.

The Eighth Circuit similarly upheld the constitutionality of

§922(g)(1) as applied to "particular felony convictions." *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024).

The Fifth Circuit has upheld §922(g)(1) as applied to certain offenders convicted of offenses would have been considered felonies at the time of the adoption of the Second Amendment. *United States v. Diaz*, 116 F.4th at 469.

Other cases coming up from the district courts to the Seventh Circuit present more diverse interpretations of §922(g)(1) as applied to the facts before them. The Seventh Circuit declined to resolve the issue. in *Atkinson v. Garland*, 70 F.4th 1018, 1023 (7th Cir. 2023) and remanded that case to the district court for further proceedings. Following *Atkinson*, a district court in the Seventh Circuit found §922(g)(1) to be unconstitutional as applied to a defendant whose only prior criminal history was possession of a controlled substance and delivery of a controlled substance. *United States v. Daniel*, 701 F.Supp. 3d 730, 737 (N.D. Ill. 2023), appeal filed, November 13, 2023 (7th Circuit, Dkt. No. 23-3173). The *Daniel* court held that the government failed to show that there was an historical analogue to §922(g)(1)'s

permanent prohibition of firearm possession by felons. 701 F. Supp. 3d 740-41. Absent such a showing, the district court reasoned that it was "unable to uphold § 922(g)(1) as constitutional due to *Bruen*'s instruction that the government must provide evidence of a historical analogue that is both comparably justified and comparably burdensome of the right to keep and bear arms." 701 F. Supp. 3d at 744. Other district courts in the Seventh Circuit have reached similar conclusions. *See, e.g., United States v. Eatman*, No. 23 CR 518, 2024 U.S. Dist. LEXIS 24877, at *9 (N.D. Ill. Feb. 13, 2024) (collecting cases), appeal filed, February 21, 2024 (7th Circuit, Dkt. No.24-1262). Other district courts in the Seventh Circuit have upheld §922(g)(1). *See, e.g., United States v. Calhoun*, 710 F. Supp. 3d 575, 585-586 (N.D. Ill. 2024) (collecting cases); *United States v. Stringer*, 742 F. Supp. 3d 840, 855 n.5 (C.D. Ill. 2024).

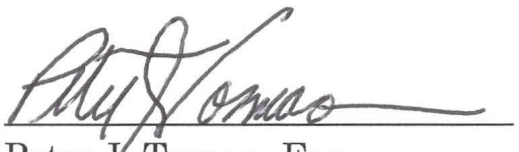
Under the circumstances, the Second Circuit's application of its pre-*Bruen* precedent conflicts with other circuits and denied Mr. Caves the benefit of this Court's inevitable ruling on this critical issue.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THIS COURT IS RESPECTFULLY URGED TO GRANT THE WRIT OF CERTIORARI TO REVIEW THE OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AFFIRMING THE SENTENCE

Dated: Garden City, New York
March 17, 2025

Respectfully Submitted,



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Appendix A

23-6176-cr
United States v. Caves

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of December, two thousand twenty-four.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
DENNIS JACOBS,
STEVEN J. MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 23-6176-cr

THOMAS CAVES,

Defendant-Appellant.

For Appellee: JOSHUA ROTHENBERG, Assistant United States Attorney, *on behalf of* Carla B. Freedman, United States Attorney for the Northern District of New York, Syracuse, NY.

For Defendant-Appellant: PETER J. TOMAO, Attorney, Garden City, NY.

Appeal from a judgment of the United States District Court for the Northern District of New York (David N. Hurd, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment, entered on February 8, 2023, is **AFFIRMED**.

Defendant-Appellant Thomas Caves appeals from a judgment of the United States District Court for the Northern District of New York (Hurd, *J.*), following his guilty plea pursuant to a plea agreement, to possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court sentenced Caves principally to a term of thirty months' imprisonment, to be followed by three years of supervised release. On appeal, Caves raises challenges to both his conviction and a special condition of supervised release. With respect to the former, Caves argues that his conviction for unlawfully possessing a firearm under § 922(g)(1) violates the Second Amendment of the U.S. Constitution. With respect to the latter, Caves contends that the district court did not adequately explain its decision to impose Special Condition 4, which prohibits him from "possess[ing], us[ing], or sell[ing] marijuana or any marijuana derivative (including any product containing cannabidiol (CBD) or [tetrahydrocannabinol (]THC)[)] in any form (including but not limited to edibles) or for any purpose (including medical purposes)." App'x at 127. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal to which we refer only as necessary to explain our decision to **AFFIRM**.

I. Constitutionality of Caves's Conviction

Caves argues that the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), rendered § 922(g)(1) unconstitutional. The government contends that, pursuant to his plea agreement, Caves waived his right to challenge on appeal the constitutionality of his statute of conviction. Even accepting *arguendo* Caves's argument that the appellate waiver does not bar his appeal, he cannot succeed.

Caves raises his constitutional challenge for the first time on appeal, so we review for plain error. *United States v. Donziger*, 38 F.4th 290, 302-03 (2d Cir. 2022). "For an error to be plain, it must, at a minimum, be clear under current law, which means that we typically will not find such error where the operative legal question is unsettled, including where there is no binding precedent from the Supreme Court or this Court." *United States v. Napout*, 963 F.3d 163, 183 (2d Cir. 2020) (internal quotation marks, citation, and alterations omitted). In *United States v. Bogle*, 717 F.3d 281, 281-82 (2d Cir. 2013) (per curiam), we upheld the constitutionality of § 922(g)(1). Neither *Bruen* nor any other binding precedent has held to the contrary.

We recognize that other cases pending before prior panels in this Circuit raise the question of § 922(g)(1)'s constitutionality following *Bruen*. But because the constitutional infirmity alleged by Caves is not clear under current law, we see no basis to disturb his conviction under plain error review. *See United States v. Brillon*, No. 22-

2956-cr, 2024 WL 392949, at *1 (2d Cir. Feb. 2, 2024) (summary order) (rejecting a constitutional challenge to § 922(g)(1) under plain-error review); *United States v. Ogidi*, No. 23-6325-cr, 2024 WL 2764138, at *1 (2d Cir. May 30, 2024) (summary order) (same); *United States v. Barnes*, No. 23-6424-cr, 2024 WL 5103316, at *1 (2d Cir. Dec. 13, 2024) (summary order) (same).

II. Special Condition 4

Caves argues that the district court erred by failing to justify Special Condition 4, which states: "You shall not possess, use, or sell marijuana or any marijuana derivative (including any product containing cannabidiol (CBD) or [tetrahydrocannabinol (]THC)[)] in any form (including but not limited to edibles) or for any purpose (including medical purposes)."[1] App'x at 127.

"District courts possess broad discretion in imposing conditions of supervised release." *United States v. Betts*, 886 F.3d 198, 202 (2d Cir. 2018). "A sentencing court may impose special conditions of supervised release that are reasonably related to certain statutory factors governing sentencing, involve [ ] no greater deprivation of liberty than is reasonably necessary to implement the statutory purposes of sentencing, and are consistent with pertinent Sentencing Commission policy statements." *United States v.*

[1] The district court failed to justify Special Condition 4 at Caves's initial sentencing and so we granted Caves's unopposed motion for a limited remand to allow the district court to supplement the record. We now consider the sufficiency of the explanation the district court provided at the remand hearing.

Gill, 523 F.3d 107, 109 (2d Cir. 2008) (per curiam) (internal quotation marks omitted). When determining whether to impose a special condition, "[a] district court is required to make an individualized assessment . . . and to state on the record the reason for imposing it." *Betts*, 886 F.3d at 202.

We ordinarily review the imposition of a special condition of supervised release for abuse of discretion. *United States v. Eaglin*, 913 F.3d 88, 94 (2d Cir. 2019). But Caves did not object to the district court's lack of explanation at sentencing or, on remand, to the district court's provided reason for imposing the condition. "[W]hen a defendant fails to object to an alleged sentencing error before the district court, we will ordinarily consider any later objections forfeited on appeal unless the defendant can meet the plain-error standard." *United States v. Davis*, 82 F.4th 190, 196 (2d Cir. 2023). To prevail under the plain error standard of review, Caves bears the burden of showing: (1) there was an error; (2) the error was "clear or obvious, rather than subject to reasonable dispute"; (3) "the error affected [his] substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings"; and (4) the error "seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Marcus*, 560 U.S. 258, 262 (2010) (alteration omitted) (internal quotation marks omitted). We discern no "clear or obvious" error in the district court's imposition of Special Condition 4.

We recently affirmed nearly identical conditions of supervision in *United States v.*

King, No. 22-1024-cr, 2023 WL 6842445 (2d Cir. Oct. 17, 2023) (summary order) and *United States v. Thompson*, No. 22-2297-cr, 2024 WL 371128 (2d Cir. Feb. 1, 2024) (summary order) based on the defendants' respective histories of substance abuse. In *King* we held that because the district court had considered the defendant's "life-long substance abuse issues" and drug-related conviction, imposing the marijuana-related condition was not "clear or obvious" error. 2023 WL 6842445, at *2. And in *Thompson*, we held that the reasons for imposing the marijuana-related condition were "self-evident in the record" because the defendant had used marijuana since he was 12 or 13 years old, participated in drug treatment programs several times, and engaged in "recurring criminal conduct" related to his marijuana use. 2024 WL 371128, at *2.

Here, the district court noted that Caves began using marijuana at age 14, continued to do so until incarcerated, and admitted to using marijuana following his release to parole supervision. The district court also considered that Caves had previously been convicted of drug/marijuana possession after he was found to have "14 clear plastic bags containing a green leafy substance which field tested positive for marijuana." App'x 144-45. The district court referenced Caves's self-reported substance abuse history in the presentence report in which Caves admits to regularly abusing ecstasy, molly, and non-prescription Percocet and participating in multiple drug treatment programs. In light of these facts, it was not plain error for the district court to conclude that Special Condition 4 would achieve sentencing goals and further Caves's

rehabilitation.[2]

* * *

We have considered Caves's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

[2] We note that Special Condition 4 also prohibits Caves from using CBD. CBD is "not subject to the Controlled Substances Act if it derives from hemp and is found in many consumer products such as oils and lotions." *King*, 2023 WL 6842445, at *2. Nevertheless, on plain error review and this record, we cannot say that the district court's condition prohibiting the use of CBD amounts to clear or obvious error.