IN THE SUPREME COURT OF THE UNITED STATES

RAMOINE WHITE,
PETITIONER,

VS.

UNITED STATES OF AMERICA,
RESPONDENT.

Petition for a Writ of Certiorari from the United States Court of Appeals for the Third Circuit at Appeal Number 23-3013

PETITION FOR WRIT OF CERTIORARI

José Luis Ongay, Esquire
600 West Germanton Pike
Suite 400
Plymouth Meeting, PA 19462
Tel. (484) 681-1117

QUESTION PRESENTED

1. Whether the evidence established articulable facts that the Petitioner was involved in criminal activity?

2. Whether this prosecution and conviction for the Possession of a Firearm by a Convicted Felon violated the Petitioner's Second Amendment rights as applied to him?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF AUTHORITIES CITED

CONSTITUTION

STATUTES

CASES

TABLE OF CONTENTS

INDEX TO APPENDICES

IN THE SUPREME COURT OF THE UNITED STATES

RAMOINE WHITE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Petitioner respectfully prays for a writ of certiorari to review the judgment of the Court of Appeals for the Third Circuit. The Third Circuit's Non-Precedential Opinion is attached hereto as Appendix A.

JURISDICTION

This litigation began as a criminal prosecution against Ramoine White, Petitioner, for violations of the laws of the United States. On February 15, 2023, Petitioner was convicted of violating 18 U.S.C. § 922(g)(1). On November 7, 2023, the Court sentenced Petitioner to 92 months of incarceration, three years of Supervised Release, and a $100.00 Special Assessment. The Petitioner appealed, and the Third Circuit Affirmed on February 4, 2025. This Petition for a Writ of Certiorari seeks a review of the Third Circuit's decision on February 4, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. II and amend. IV.

STATEMENT OF THE CASE

On September 7, 2021, the Grand Jury returned an Indictment charging the Petitioner with Possession of a Firearm by a Felon, violating 18 U.S.C. § 922(g)(1). On January 10, 2022, trial Counsel filed a Motion to Suppress Evidence. (A. p. 22)[1] On September 23, 2022, the District Court denied the Motion to Suppress. (A. p. 88) On February 15, 2023, a Jury convicted the Petitioner. On August 30, 2023, the Petitioner filed a Motion to Dismiss and a Motion for a New Trial, alleging a violation of the Second Amendment as applied to the Petitioner. (A. p. 96) On October 3, 2023, the Court denied the Motion to Dismiss and the Motion for a New Trial. (A. p. 159) On November 7, 2023, the Court sentenced the Petitioner to 92 months of incarceration, three years of Supervised Release, and a $100.00 Special Assessment. (A. p. 3) On November 12, 2023, the Petitioner filed the Notice of Appeal. (A. p. 1) On February 4, 2025, the Third Circuit Affirmed.

Relevant Facts

On February 11, 2021, the Philadelphia Police Department and the Pennsylvania Attorney General, as part of a narcotics investigation, surveilled a porch in the 5100 block of Arch Street in Philadelphia, Pennsylvania. (A. pp. 170,

[1] A. refers to the Third Circuit Appendix attached hereto as Appendix B.

171) From the Philadelphia Police, the 16th, 18th, and 19th Districts participated in the investigation. At the time, this was considered a high-crime area. (A. pp. 171,172) Officer Barry Stewart ("Officer Stewart") stated that there had been a recent shooting in the area. (A. p. 171)

Officer Stewart conducted the surveillance from inside an unmarked police car, which was parked on Arch Street, 50 to 75 feet away from where he observed marijuana sales that took place from the steps of a porch located on the 5100 block of Arch Street. (A. pp. 170, 175) Officer Stewart observed a person he did not know making three marijuana sales from the steps of the porch. (A. pp. 177, 178, 182, 186) This person was later identified as Mr. Watson. (A. pp. 170, 175) After each marijuana sale, Officer Stewart radioed backup units and described the buyers, who were stopped, drugs found in their possession, and they were arrested. *Id.* In addition to Mr. Watson, several other people were on the porch. Officer Stewart did not know any of the individuals on the porch. (A. p. 199) Officer Stewart stated that everyone on the porch was wearing dark clothing. *Id.* Officer Mischel Matos ("Officer Matos") said there were six men on the porch. (A. p. 199) Officer Stewart described Mr. Watson as heavier than the other individuals on the porch. (A. p. 179)

After the third marijuana sale, Officer Stewart observed Mr. Watson move from the steps of the porch into the middle of the porch, where he got together with the other individuals on the porch. Officer Steward stated that Mr. Watson handed

something to a person in the group, but he could not tell who the person was, and he could not tell what Mr. Watson gave to the person. (A. pp. 178, 179, 182, 184, 187) Officer Stewart did not observe the Petitioner or anyone other than Mr. Watson participate in the three marijuana sales. *Id.* at 17. (A. p. 182).

After the three marijuana sales, Officer Stewart ordered the backup teams to bring the "males" down from the porch so he could identify the seller. (A. pp. 180, 181). [2] Officer Matos also stated that Officer Stewart directed him to detain every person on the porch for investigation. (A. p. 197) Officer Stewart explained that " . . . they had to stop everybody until [he] was able to [identify the] seller." (A. p. 189) Officer Stewart went on to explain that it is the practice of his unit within the Philadelphia Police Department to stop all individuals in a group, even if only one is suspected of criminal activity. (A. p. 191, 192) According to Officer Stewart, he did not come to the porch to identify the seller because he did not want to disclose

---

[2] There were other statements by Officer Stewart about detaining everyone on the porch. For example:
"And then I told, I kind of pretty much had to tell them to bring the males down, so that I could kind of clear out, so I could see which one distinctly, my seller." (A. p. 180, 181)
"I was telling my backup officers to come in, and get them on the porch area . . ." (A. p. 188)
" . . . I am telling them yeah, come get them." (A. p. 189); " . . . they had to stop everybody until I was able to ID my seller." *Id.*
" . . . to approach the location of 5100 Arch Street, and stop – detain every person that was on the porch for investigation." (A. pp. 197, 208)

his identity or his surveillance location. (A. p. 190, 191, 192) However, as discussed above, he was inside an unmarked police car parked 50 to 75 feet away on the same public street. Thus, there could not have been much secrecy or confidentiality about his location. Further, his identity would have been disclosed when he arrived and selected Mr. Watson from the other people detained on the porch. Thus, Officer Stewart could have detained Mr. Watson without stopping, detaining, and searching the other people on the porch who were not involved in criminal activity or suspected of being armed. (A. p. 181)

While many officers ran to the porch to detain the males on the porch, the exact number of officers is unknown. Officer Stewart believed more than ten officers had descended on the porch, but he also explained that there could have been 15 - 17 officers running to the porch. (A. p. 180) Specifically, he stated that there were seven officers from his squad, four to five officers from the 18th District, and four to five officers from the 19th District may have descended on the porch. *Id.* Officer Matos stated that seven or eight officers descended on the porch. (A. p. 199) Officer Matos noted that some officers were in uniform, others in plain clothes, and *all displayed firearms*. (A. pp. 199, 213). The officers ran towards the porch, announced their presence as police officers, and *stopped everyone*. (A. pp. 200, 214, 215, 220).

Officer Matos only approached the Petitioner because he was the only person

who did not have an officer holding him. (A. pp. 200, 216, 217) Officer Matos explained that within seconds of walking up the porch, he approached the Petitioner and grabbed the Petitioner's left hand. (A. pp. 216, 217, 219) Officer Matos also stated that he did not see the Petitioner do anything before he grabbed him. (A. p. 207) Officer Matos explained that after he grabbed his left hand, he conducted a pat down because he concluded that the Petitioner was trying to hide "something," but he did not state that he thought it was a firearm. (A. p. 201) Officer Matos also said that even after he grabbed the Petitioner, "he [the Petitioner] didn't try to push over me and run, he didn't do none of it." (A. p. 218) Officer Matos stated that because of the pat down, he found a Smith & Wesson semiautomatic handgun and three bags of marijuana on the Petitioner. (A. p. 203)

Thus, neither Officer Stewart nor Officer Matos saw the Petitioner engaged in any criminal activity or suspicious behavior.

Regarding the description of Mr. Watson, Officer Matos stated that he did not recall receiving a description of the seller's appearance from Officer Stewart. Specifically, the questions and answers were as follows:

> Q. All right, there was no description that you received from Officer Stewart about a heavyset person?
> A. I do not recall the description of the seller at that
> - -
> Q. That's not what I'm asking you. I'm asking you in the order to stop everyone on the porch, was anything said about a heavier-set individual?
> A. I do not remember.

(A. p. 208)

Last, the Petitioner has several criminal convictions. However, the conviction used for the § 922(g)(1) charge did not involve violence. That conviction stemmed from *Commonwealth of Pennsylvania v. Ramoine White*, CP # 51-CR-1301302-2006, where he was convicted in 2009 of Conspiracy to Possess with Intent to Distribute a Controlled Substance and Possession with Intent to Distribute a Controlled Substance. The case involved 149 grams of Marijuana for which the Petitioner was sentenced to five to 10 years in prison. While the Petitioner does not deny his prior criminal history, he respectfully submits that this is the only relevant conviction because it was the basis for the § 922(g)(1) charge.

REASONS FOR GRANTING THE PETITION

THE COURT ERRED WHEN IT AFFIRMED THE DENIAL OF THE PETITIONER'S MOTION TO SUPPRESS BECAUSE THE EVIDENCE DID NOT ESTABLISH ARTICULABLE FACTS THAT THE PETITIONER WAS INVOLVED IN CRIMINAL ACTIVITY

The Fourth Amendment states, "[t]he right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause. . ." U.S. Const. amend. IV. In *Terry v. Ohio*, 392 U.S. 1, 30 (1968), the Supreme Court created an exception to the Fourth Amendment warrant requirement that permits an investigative detention of a person where the officer has reasonable articulable

suspicion that criminal activity is at foot. *See also United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). While reasonable suspicion requires less evidence than probable cause, the officer must articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity to establish reasonable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). Reasonable suspicion is evaluated when the seizure occurs, so the first step in the analysis is to determine when the seizure occurred. *United States v. Smith*, 575 F.3d 308, 312 (3d Cir. 2009). A seizure occurs in two ways: 1) when the person is physically detained, restrained, or stopped, and 2) when the person submits to a show of authority. *United States v. Brown*, 448 F.3d 239, 245 (3rd Cir. 2006). When considering whether a seizure occurred, the Court must consider all the circumstances surrounding the seizure. *Florida v. Bostick*, 501 U.S. 429, 439 (1991). Here, the Petitioner submits that the officers' approach constituted a show of authority and that the seizure occurred when the police ran onto the porch. The Petitioner also submits that there was a second seizure when Officer Matos restrained him, i.e., grabbed him by the left hand and restricted his movement.

In determining whether there has been a show of authority, the Court must determine whether a reasonable person would have believed he was free to leave based on the officers' actions. *California v. Hodari D.*, 499 U.S. 621, 626 (1991). In making this decision, the Court should consider the threatening presence of

several officers, the display of a weapon by an officer, some physical touching of the person, and the use of language or tone of voice indicating that compliance with the officer's requests might be compelled and indicate that a show of authority occurred. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Each of these factors is present in this case.

Here, a seizure occurred after Officer Stewart ordered his backup to detain everyone so that he could then identify the seller.[3] Specifically, when as many as 17 officers ran to the porch, displaying their weapons and announcing themselves as police officers, a seizure occurred. (A. p. 213) The Petitioner understood and obeyed the show of authority because he did not move. Under these circumstances, no reasonable person would believe he was free to leave. As such, at this point, the Petitioner had been detained and seized for Fourth Amendment purposes without articulable facts that criminal activity involving him was in progress.

In addition, another seizure occurred within seconds of the show of authority when Officer Matos grabbed the Petitioner's left hand. (A. pp. 215, 216, 219) A seizure occurs when an officer restrains a person, i.e., grabs his left hand, to restrain his movement. *United States v. Brown*, 448 F.3d 239, 245 (3d Cir. 2006). The police

---

[3] While the trial court found that Officer Stewart told the team to detain all individuals on the porch (A. p. 90), if this Court concludes that Officer Stewart did not direct the backup team to detain everyone on the porch, the Petitioner's detention was still illegal because there was no evidence that the Petitioner was involved in criminal activity.

may seize a person consistent with the Fourth Amendment if they have reasonable, articulable, and individualized suspicion that a suspect is engaged in criminal activity. *United States v. Lowe*, 792 F.3d 424, 435 (3d Cir. 2015). Officers Stewart and Matos stated that the Petitioner was not engaged in criminal activity. Only Mr. Watson was seen by Officer Stewart participating in the three marijuana deliveries. Thus, there was no *individualized*, reasonable, articulable suspicion that *the Petitioner* was involved in criminal activity. Being present in a high-crime area does not constitute criminal activity. Other actions that show that the person was engaged in criminal activity must be articulated. *See Brown v. Texas*, 443 U.S. 47, 52 (1979) (no reasonable suspicion to stop a person based solely on presence in a neighborhood known for drug activity). In addition, to conduct a pat down, the officer must have reasonable suspicion that the suspect is armed and dangerous. *Terry v. Ohio*, 392 U.S. 1, 27, 30 (1968). Here, the evidence only showed that the Petitioner was near a location where three marijuana deliveries had taken place – no evidence that he was armed.

The Government will argue that there was criminal activity at foot because Officer Stewart observed Mr. Watson making three deliveries of marijuana, followed by the arrest of the buyers who were found to possess marijuana. However, the evidence presented did not establish that the Petitioner was the person involved in the three marijuana deliveries. The evidence did not establish that he

knew about, participated in, or was a co-conspirator in the three transactions. Because Officer Stewart admitted that the Petitioner did not participate in the three marijuana deliveries, there were no articulable facts that the Petitioner was engaged in criminal activity or that he was connected to the criminal activity that was taking place. His presence alone did not establish reasonable suspicion.

The Petitioner submits that the constructive possession and mere presence doctrines support the conclusion that there is no evidence connecting the Petitioner to the criminal activity observed by Officer Stewart. Being present at a crime scene does not make a person responsible for the criminal activity. There must be evidence of participation, knowledge, intent, ability, or desire to participate in the criminal activity. In possessory offenses, constructive possession only exists when the defendant "knowingly has both the power and the intention at a given time to exercise dominion or control over" the contraband. *United States v. Winn*, No. 20-1477, 2022 U.S. App. LEXIS 5759 at 7, *citing United States v. Brown*, 3 F.3d 673, 680 (3d Cir. 1993). *Brown* also explains that " . . . there must be more than "*mere proximity*" to the contraband or "*mere presence on the property* where [the contraband] is located" to establish dominion and control. *Id.* Again, here, the Petitioner was only present on the porch. As such, the evidence about the criminal activity that was taking place did not establish that the Petitioner engaged in criminal activity. Thus, the marijuana sales do not establish reasonable suspicion or

articulable facts that the Petitioner was involved in criminal activity or that he was armed and dangerous.

Last, the Government will argue that because the 5100 Block of Arch Street was in a high-crime area, the officers had a right to pat down the Petitioner and seize any detected weapons. This means that anyone in a high-crime area can be stopped and patted down if he is near the location of a crime, even if there is no evidence that the person was involved in the criminal activity. Again, the Petitioner was simply present when the sales took place. Nothing else was established.

In conclusion, while there was evidence that Mr. Watson delivered marijuana to three individuals from the steps of the porch, there is no evidence that the Petitioner participated in the deliveries or that he was a co-conspirator. As such, there was no evidence that he, individually, was involved in any criminal activity. Thus, there was no reasonable articulable suspicion that criminal activity involving the Petitioner was at foot. Yet, the Petitioner was first seized by the officers' show of authority when at least seven to eight officers, or as many as 17 officers, displaying weapons, ran to the porch. The Petitioner was also seized a second time when Officer Matos grabbed the Petitioner's left hand and restricted his ability to move. In addition, after the arrival of the officers on the porch, there is no reasonable suspicion that the Petitioner was armed and dangerous. Officer Matos explicitly stated that he patted down the Petitioner because he thought he was hiding

something. That is not reasonable suspicion that he was armed and dangerous. Officer Matos was required to articulate facts that establish a reasonable suspicion that the Petitioner was armed and dangerous; suspicion that the Petitioner may have been hiding something is insufficient.

Therefore, it is respectfully submitted that this Court should reverse the District Court's decision, suppress the evidence, and dismiss the charge.

THE COURT ERRED IN AFFIRMING THE DENIAL OF THE PETITIONER'S MOTION TO DISMISS THE 922(g)(1) CHARGE BECAUSE IT VIOLATED THE PETITIONER'S SECOND AMENDMENT RIGHTS AS APPLIED TO HIM

The Petitioner was convicted of violating §922(g)(1), which states: ". . . it shall be unlawful for any person . . . who has been convicted . . . of [ ] a crime punishable by imprisonment for a term exceeding one year . . . to possess in or affecting commerce, any firearm . . . which has been shipped or transported in interstate commerce." 18 U.S.C. § 922(g)(1). [4] In essence, § 922(g)(1) imposes a lifetime ban on an individual's right to possess a firearm when he has been convicted of a crime punishable by imprisonment of more than one year.

The Second Amendment states, "[a] well regulated Militia, being necessary

---

[4] The initial version of §922(g)(1), which was enacted in 1938, prohibited those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary but extended to both felons and misdemeanants convicted of the qualifying offenses from possessing a firearm. *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011).

to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. Amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court concluded that the Second Amendment " . . . guarantees the individual the right to possess and carry weapons in case of confrontation." *Id.* at 592. *Heller* also stated that the Second Amendment right is exercised individually and belongs to all Americans. *Heller* at 580-581. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Court stated that in *Heller* and *McDonald v. Chicago, 561 U.S. 742 (2010)*, the Court concluded that the Second and Fourteenth Amendments protect an individual's right to keep and bear arms for self-defense. *Bruen* at 17. Thus, all Americans have a Second Amendment right to possess and carry a firearm at home and in public for self-defense.

Bruen, in a significant change in Second Amendment law, created the following two-prong test to analyze Second Amendment claims:

> We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The Government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

Bruen at 2129-2130.[5]

---

[5] *Bruen* involved two New York individuals who had applied for unrestricted licenses to carry handguns in public. New York did not approve the unrestricted licenses to carry handguns in public and instead approved restricted licenses for

The Third Circuit applied *Bruen* in *Range v. A.G. of the United States*, 69 F. 4th 96 (3rd Cir. 2023).[6] In *Range,* the Court first determined " . . . whether the text of the Second Amendment applied to a person and his proposed conduct." *Id.* at 101. *Range* continued the analysis and, citing *Heller,* stated, ". . . the people as used throughout the Constitution unambiguously refers to all members of the political community, not an unspecified subset. [citation omitted] So, the Second Amendment right . . . presumptively "*belongs to all Americans*." *Range* at 101, *citing Heller* at 580-581. (*emphasis added*).

Range went on to discuss the phrase "law abiding, responsible citizens" and stated that the phrase "is as expansive as it is vague" and, as such, did not remove certain individuals, *Range* included, from "the people" as stated in the Second Amendment." *Range* then summarized its conclusion that Range was one of the people covered by the Second Amendment, stating, "[i]n sum, we reject the Government's contention that only "law-abiding, responsible citizens" are counted among "the people" protected by the Second Amendment. *Heller* and its progeny

---

hunting and target shooting. Under New York law, the applicants had to show proper cause. In *Bruen*, New York, concluded that the applicants had not shown good cause. Litigation ensued, and the matter reached the Supreme Court.

[6] *Range* involved a person who pleaded guilty in Pennsylvania to making a false statement to obtain food stamps and was sentenced to three years' probation. *Range* at 98.

lead us to conclude that Bryan Range remains among "the people" despite his 1995 false statement conviction." *Range* at 102 -103. Recently, in *United States v. Rahimi*, 219 L.Ed. 2d 351 (2024), the Court similarly stated that the phrase responsible citizen was not part of the Second Amendment analysis and stated:

> Finally, in holding that Section 922(g)(8) is constitutional as applied to Rahimi, we reject the Government's contention that Rahimi may be disarmed simply because he is not "responsible." Brief for United States 6; see Tr. of Oral Arg. 8-11. "Responsible" is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law. In *Heller* and *Bruen*, we used the term "responsible" to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right. See, *e.g.*, *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637; *Bruen*, 597 U. S., at 70, 142 S. Ct. 2111, 213 L. Ed. 2d 387. But those decisions did not define the term and said nothing about the status of citizens who were not "responsible." The question was simply not presented.

Rahimi, at 369-370. Thus, there is no requirement for the person to be responsible.

Range then went on to determine whether §922(g)(1) regulates Second Amendment conduct, and it quickly concluded that it did and stated:

> Range's request – to possess a rifle to hunt and a shotgun to defend himself at home – tracks the constitutional right as defined by *Heller*, 554 U.S. at 582 . . . So "the Second Amendment's plain text covers [Range's] conduct," and the Constitution presumptively protects that conduct."

Range at 103, *citing Bruen*, 142 S. Ct. at 2126.

As such, the Petitioner submits that under *Bruen* and *Range,* the Petitioner meets the first part of the *Bruen* test because he is a person within the meaning of

the Second Amendment and that possessing a firearm on February 11, 2021, in public for protection is conduct covered by the text of the Second Amendment.

Range then continued the analysis to "determine if the Government had demonstrated that [§922(g)(1)] is consistent with the Nation's historical tradition of firearm regulation." *Range* at 103, *citing Bruen* at 2130. *Range*, like *Bruen,* reviewed the Government's arguments and evidence, and, like *Bruen*, *Range* concluded that the Government did not establish a historical tradition of firearm regulation analogous to the regulation in *Range.* This case, like *Range,* involves §922(g)(1).

Here, the Petitioner also submits that the Government did not establish § 922(g)(1) was part of the Nation's historical tradition of firearm regulation. The following will discuss this part of the *Bruen* test.

The Government in its response to the Petitioner's Motion to Dismiss argued that there was a long-standing prohibition on the possession of firearms by felons and cites the following language in *Heller:* ". . . nothing in our opinion should be taken to cast doubt on [the] long-standing prohibition on the possession of firearms by felons. . ." *Heller* at 626 - 627 & n. 26. The Government also quotes the concurring Opinions of Justice Alito and Justice Kavanaugh in *Bruen* for similar propositions. Alito's Concurrent Opinion states, "[n]or have we disturbed anything that we said in *Heller* or about restrictions that may be imposed on the possession

or carrying of guns." *Bruen* at 2157. Kavanaugh's Concurrent Opinion states that "the Second Amendment allows a variety of gun regulations, and *Bruen* did not cast doubt on long-standing prohibitions on the possession of firearms by felons." *Id.* at 2162. (A. p. 128)

However, *Range* addressed these statements and concluded that these statements were incorrect and that § 922(g)(1) does not qualify as a long-standing regulation because it was enacted in 1961, i.e., and not enacted during the enactment of the Second or the 14th Amendments. Specifically, *Range* stated:

> In attempting to carry its burden, the Government relies on the Supreme Court's statement in *Heller* that "nothing in our opinion should be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons." 554 U.S. at 626. A plurality of the Court reiterated that point in *McDonald v. City of Chicago*, 561 U.S. 742, 786, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). And in his concurring opinion in *Bruen*, Justice Kavanaugh, joined by the Chief Justice, wrote that felon-possession prohibitions are "presumptively lawful" under *Heller* and *McDonald*. 142 S. Ct. at 2162 (quoting *Heller*, 554 U.S. at 626-27 & n.26).[foot note omitted] Section 922(g)(1) is a straightforward "prohibition[] on the possession of firearms by felons." *Heller*, 554 U.S. at 626. And since 1961 "federal law has generally prohibited individuals convicted of crimes punishable by more than one year of imprisonment from possessing firearms." Gov't En Banc Br. at 1; *see* An Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961). But the earliest version of that statute, the Federal Firearms Act of 1938, applied only to *violent* criminals. Pub. L. No. 75-785, §§ 1(6), 2(f), 52 Stat. 1250, 1250-51 (1938). As the First Circuit explained: "the current federal felony firearm ban differs considerably from the [original] version . . . . [T]he law initially covered those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary, but extended to both felons and misdemeanants convicted of qualifying offenses." *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011); *see*

also United States v. Skoien, 614 F.3d 638, 640 (7th Cir. 2010) (en banc).

> Even if the 1938 Act were "long-standing" enough to warrant *Heller*'s assurance—a dubious proposition given the *Bruen* Court's emphasis on Founding- and Reconstruction-era sources, 142 S. Ct. at 2136, 2150—Range would not have been a prohibited person under that law. Whatever timeframe the Supreme Court might establish in a future case, we are confident that a law passed in 1961—some 170 years after the Second Amendment's ratification and nearly a century after the Fourteenth Amendment's ratification—falls well short of "long-standing" for purposes of demarcating the scope of a constitutional right. So the 1961 iteration of § 922(g)(1) does not satisfy the Government's burden. [foot note omitted]

Range at 103-104. Last, the statements in *Heller, McDonald,* and the concurrent opinions in *Bruen* about the long-standing prohibition on possession of firearms by felons have been argued to be dicta. *See United States v. Bullock*, 2023 U.S. Dist. LEXIS 112397at 42 to 45. Therefore, these statements do not establish that § 922(g)(1) is part of the Nation's historical tradition of firearm regulation.

The Government also, in its response to the Petitioner's Motion to Dismiss listed laws it claimed were part of the Nation's historical tradition of firearm regulations that establish that the Government could regulate the possession of firearms. *Range*, *citing* from *Bruen* stated that historical tradition can be established by analogical reasoning, which requires only that the Government identify a well-established and representative historical analogue, not a historical twin. *Range* at 103, citing *Bruen* at 2133. *Range* then explains that *Bruen* offers two metrics to determine if the regulation is similar to the historical regulation. It states that the

"how" and "why" of the regulations, i.e., modern, and historical regulations, should be compared to determine if they are relevantly similar. *Range* at 103, citing *Bruen* at 21233. The following is a discussion of the Government's submissions of historical analogues.

-a-

> The Militia Act of 1662 was a British law that allowed the Government to "seize all arms in the custody or possession of any person" who was judge[d] *dangerous to the Peace of the Kingdom*." (*emphasis added*)

Government's Response at 16. (A. p. 129) Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted and the potential sentence exceeds one year of incarceration, whether violent or not. This law prohibits the possession of all arms by a person who was judged dangerous to the peace of the kingdom. This language covers political conduct, which differs from §922(g)(1) that applies to criminal convictions where the potential sentence exceeds one year. Further, the conduct covered by this law does not include drug trafficking. This law does not state that being judged dangerous to the Peace of the Kingdom is a crime or that it has a potential sentence that exceeds a year. Finally, the law does not state whether the seizure of the arms was permanent or temporary. As such, this law is not relevantly similar to §922(g)(1).

-b-

> Colonial and early state legislatures disarmed individuals *who*

> *"posed a potential danger" to others." (emphasis added)* The Government cited *NRA v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 70 F.3d 185, 200 (5th Cir. 2012) as the source.

Government's Response at 16. (A. p. 129) A review of the source shows that this quote refers to laws disarming loyalists and states, "[a]lthough these Loyalists were neither criminals nor traitors, American legislators had determined that permitting these persons to keep and bear arms posed a potential danger." *NRA* at 200. *Range* rejected laws involving status offenses, loyalists, and similar laws as part of the Nation's historical tradition of firearm regulation. *Range* states, "[t]hat Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that Range is part of a similar group today. And any such analogy would be "far too broad[]." *Range* at 105. Thus, *Range* found that these laws were not part of the Nation's historical tradition of firearm regulation in a case involving §922(g)(1).

Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted, and the potential sentence exceeds one year of incarceration, whether violent or not. This law covers conduct that poses a potential danger to others. Section 922(g)(1) does not require that the possession of a firearm poses a potential danger to others. It only requires a prior conviction where the potential sentence exceeds one year. Also, the conduct regulated by this law is not comparable to the Petitioner's drug trafficking conviction. It is also not clear if this law is a criminal

law, if it requires a conviction, or if the potential sentence could exceed one year. In fact, posing a potential danger to others does not necessarily require a conviction because it is addressing a potential and not a consummated act. Last, the Government did not state whether the disarmament was permanent or temporary. As such, this law is not relevantly similar to §922(g)(1).

-c-

> The Act of May 1, 1776, a Massachusetts law; the Act of June 13, 1777, a Pennsylvania law; and the Act of May 28, 1777, a Virginia law, were laws that "*disarmed groups or individuals that were deemed dangerous or untrustworthy, such as those who refused to swear allegiance.*" (*emphasis added*)

Government's Response at 16. (A. p. 129) Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted, and the potential sentence exceeds one year of incarceration, whether violent or not. This law covers individuals that were deemed dangerous or untrustworthy, such as those who refused to swear allegiance. This language covers political conduct, which is not comparable to the Petitioner's drug trafficking conviction. In fact, the example given, i.e., those who refused to swear allegiance, clearly shows that it does not involve traditional criminal behavior. Additionally, §922(g)(1) is different because it only requires a conviction with a potential sentence that exceeds one year. Also, the Government did not state whether the individual was going to be disarmed permanently or temporarily. As such, this law is not relevantly similar to §922(g)(1).

-d-

> The Act for Constituting a Council of Safety was a 1777 New Jersey law empowering officials to take from such *Persons as they shall judge disaffected and dangerous to the present Government*, all arms, Accoutrements, and ammunition which they own or possess. (*emphasis added*)

Government's Response at 17. (A. p.130) Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted, and the potential sentence exceeds one year of incarceration, whether violent or not. This law takes away arms from people that are judged disaffected and dangerous to the present Government. This conduct is not comparable to the Petitioner's drug trafficking conviction. Also, this language also covers political conduct. The Government did not state if this law were a criminal law, if it required a conviction, or if the potential sentence could exceed one year. The Government did not state whether the individual was going to be disarmed permanently or temporarily. As such, this law is not relevantly similar to §922(g)(1).

-e-

> The Act for Punishing of Criminal Offenders a 1692 Massachusetts law, and the Act for Punishing Criminal Offenders a 1696 New Hampshire law that disarmed individuals who had *demonstrated their dangerousness by engaging in particular types of conduct, such as carrying arms in a manner that spreads fear or terror among the people.* (*emphasis added*)

Government's Response at 17. (A. p. 130) While from the titles, these laws appear to regulate criminal conduct, these laws are not comparable to the Petitioner's facts,

i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted, and the potential sentence exceeds one year of incarceration, whether violent or not. This law disarms individuals who carry arms in a manner that spreads fear or terror among the people. The law does not state that said conduct results in a crime; if it does, the law does not state that the crime will have a sentence of more than one year. The Petitioner's conduct did not involve the dangerous use of an arm; it did not spread fear or terror; it involved drug dealing. Section 922(g)(1) does not require that the Petitioner engage in dangerous behavior when carrying a firearm. The Government did not state whether the individual would be permanently or temporarily disarmed. As such, this law is not relevantly similar to §922(g)(1).

-f-

> The Government also states that even *Range* recognized that "Founding-era governments disarmed groups they distrusted, such as *Loyalists and religious dissenters.*" (*emphasis added*)

Government's Response at 17. (A. p.130) This incorrectly creates the impression that *Range* found these laws to be an example of the Nation's historical tradition of firearm regulation. *Range* stated that these laws did not constitute part of the Nation's historical tradition of firearm regulation. Specifically, *Range* states:

> The Government's attempt to identify older historical analogues also fails. [footnote omitted] The Government argues that "legislatures

> traditionally used status-based restrictions" to disarm certain groups of people. Gov't En Banc Br. at 4 (quoting *Range*). Apart from the fact that those restrictions based on race and religion now would be unconstitutional under the First and Fourteenth Amendments, the Government does not successfully analogize those groups to *Range* and his individual circumstances. That Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that *Range* is part of a similar group today. And any such analogy would be "far too broad[ ]." *See Bruen,* 142 S. Ct. at 2134 (noting that historical restrictions on firearms in "sensitive places" do not empower legislatures to designate any place "sensitive" and then ban firearms there).

Range at 105. Laws disarming loyalists are not similar §922(g)(1). These laws are not comparable to the Petitioner's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. These laws do not require that the person be a convicted felon. These laws only address the status of distrusted persons. As such, this law is not relevantly similar to §922(g)(1).

-g-

> The Government also cited two proposed amendments to the Constitution during ratifying convention: Pennsylvania, "no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals," and Massachusetts, stating that Congress may not "prevent the people of the United States, who are peaceable citizens, from keeping their own arms.

Government's Response at 18. (A. p. 131) These proposed amendments were not enacted and, as such, are not part of the Nation's historical tradition of firearm regulation.

-h-

> The Government also cited mid-19th century laws from Massachusetts, Maine, and Michigan that required "*those threatening to do harm" to "post bond before carrying weapons in public.*" (*emphasis added*) Then, the Government cites *Bruen* at 2148 as the source of this information.

Government's Response at 18. (A. p. 131) This also creates an impression that *Bruen* states that these laws are part of the Nation's historical tradition of firearm regulation. However, *Bruen* distinguishes these laws and states, "[t]hese laws were not *bans* on public carry, and they typically targeted only those threatening to do harm." *Bruen* at 2148.

Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted, and the potential sentence exceeds one year of incarceration, whether violent or not. This law does not disarm the individual. This law requires that those threatening to do harm post a bond before carrying weapons in public. Also, this law clearly does not cover the Petitioner conduct, i.e., a drug trafficking. In fact, the law did not disarm but only required the posting of a bond. The Government did not state whether the individual would post bonds permanently or temporarily. This law does not require that the person be a convicted felon. Thus, this law is not relevantly similar to §922(g)(1).

-i-

> The Government also cited a post-civil war 1866 Decree, applicable to South Carolina, that stated that the "rights of all loyal and well-

> disposed inhabitants to bear arms will not be infringed, but that *no disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms*. (*emphasis added*)

Government's Response at 19. (A. p. 132) While this law also may involve criminal conduct, this law is a post-civil war decree that only applied to North Carolina. As such, it is not an example of the Nation's historical tradition of firearm regulation analogous to §922(g)(1). The Government did not state whether the individual was going to be disarmed permanently or temporarily. The covered conduct, i.e., disorderly person, vagrant, or disturber of the peace is not serious enough to trigger felony convictions. Section 922(g)(1) does not prohibit specific conduct; it prohibits an individual from possessing a firearm if he has been convicted and the potential sentence exceeds a year. As such, the law is not comparable to the Petitioner's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. Thus, this law is not relevantly similar to §922(g)(1).

-j-

> Last, the Government also cites a "circular" from the Freedman's Bureau from around 1866 that states that a person may be disarmed if convicted of making an improper or dangerous use of a weapon. Then, the Government cites *Bruen* at 2152 as the source of this information.

Government's Response at 19. (A. p. 132) This also creates an impression that *Bruen* is stating that these laws are part of the Nation's historical tradition of firearm regulation. However, *Bruen* states: "[a]t the end of this long journey through the

Anglo-American history of public carry, we conclude that respondents have not met their burden to identify an American tradition justifying the State's proper-cause requirement. *Bruen* at 2156. This statement was not only in reference to the circular, but to all the laws cited by the Government in its attempt to establish the Nation's historical tradition of firearm regulation. *Bruen* found that the Government had not established a historical tradition of firearm regulation. This law involves criminal conduct and involves criminal convictions.

Section 922(g)(1) prohibits an individual's possession of a firearm for life if convicted and the potential sentence exceeds one year of incarceration, whether violent or not. This law covers different conduct, i.e., a conviction for making an improper or dangerous use of a weapon. The Petitioner is not disarmed because he engaged in improper or dangerous use of a weapon; he is disarmed because he has a felony conviction regardless of the underlying facts. This law does not state if the disarmament will be permanent or temporary. The law is not relevantly similar.

In sum, as shown above, the laws alleged by the Government do not establish that §922(g)(1) is based on the Nation's historical tradition of firearm regulation.

CONCLUSION

For the foregoing reasons, Petitioner prays that a writ of certiorari be granted, and the United States Supreme Court reviews the judgment of the United States

Court of Appeals for the Third Circuit.

Respectfully,

/s/ José Luis Ongay

José Luis Ongay, Esquire
600 West Germantown Pike
Suite 400
Plymouth Meeting, PA 19462

Date: May 3, 2025

PROOF OF SERVICE

I, José Luis Ongay, Esquire, do swear or declare that on this date, May 3, 2025, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and the PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's Counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid: The names and addresses of those served are as follows:

MaryTeresa B. Soltis, AUSA, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106

D. John Sauer, Solicitor General, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001

Ramoine White, 63750-509, FCI ALLENWOOD Medium, Federal Correctional Institution, P.O. Box 2000, White Deer, PA 17887

I declare under the penalty of perjury that the foregoing is true and correct.

/s/Jose Luis Ongay

José Luis Ongay, Esquire
600 Germantown Pike, Suite 400
Plymouth Meeting, PA 19462
484 681-1117

Executed on May 3, 2023