

No. 25-269

In the Supreme Court of the United States

SELIM ZHERKA, PETITIONER

v.

PAMELA BONDI, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of “a crime punishable by imprisonment for a term exceeding one year,” complies with the Second Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-61a) is reported at 140 F.4th 68. The memorandum opinion and order of the district court (Pet. App. 62a-78a) is reported at 593 F. Supp. 3d 73.

JURISDICTION

The judgment of the court of appeals was issued on June 9, 2025. The petition for a writ of certiorari was filed on September 5, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 2015, petitioner Selim Zherka pleaded guilty to conspiring to make a false statement to a bank and to sign and file a false federal income tax return, in violation of 18 U.S.C. 371. Pet. App. 3a. Petitioner’s crime “was serious”; “he defrauded federally insured banks of

tens of millions of dollars and flouted the tax laws of this country to the tune of over one million dollars in tax loss.” *Ibid.* The district court conducting petitioner’s trial granted the government’s motion for detention pending trial, concluding, among other things, that petitioner posed “a danger to the community by reason of prior instances of violence (and more recent boasts about that violence), as well as a history of obstruction of justice.” *United States v. Zherka*, 592 Fed. Appx. 35, 36 (2d Cir. 2015).

Petitioner was sentenced to 37 months of imprisonment, to be followed by three years of supervised release. Pet. App. 3a. His prison term ended in 2017, and his supervised-release term ended in 2020. *Ibid.* The conviction triggered 18 U.S.C. 922(g)(1), the federal statute that prohibits convicted felons from possessing firearms. *Ibid.*

In 2020, petitioner sued the Attorney General in the United States District Court for the Southern District of New York, claiming that Section 922(g)(1) violates the Second Amendment as applied to him. Pet. App. 1a-2a. The district court granted the government’s motion to dismiss. *Id.* at 62a-78a. The court reasoned that, as a convicted felon, petitioner is not “among ‘the people’ to whom the Second Amendment right applies.” *Id.* at 69a (citation omitted).

The Second Circuit affirmed. Pet. App. 1a-61a. Unlike the district court, the court of appeals concluded that petitioner, “notwithstanding his felony conviction, is among ‘the people’ protected by the Second Amendment.” *Id.* at 17a. The court determined, however, that “there is a tradition of regulating firearms in a manner that is analogous to Section 922(g)(1).” *Id.* at 20a. The court explained that legislatures have historically dis-

armed “categories of persons presumed to be dangerous” and that “a felony conviction demonstrates a character or temperament inconsistent with the safe and prudent possession of deadly weapons.” *Id.* at 48a. The court then rejected petitioner’s as-applied challenge to Section 922(g)(1), observing that the statute provides avenues through which convicted felons “may regain their right to possess firearms.” *Id.* at 50a.

ARGUMENT

Petitioner contends (Pet. 7-33) that Section 922(g)(1) violates the Second Amendment as applied to felons convicted of “nonviolent” crimes. Pet. 7. That contention lacks merit. Although there is some disagreement in the courts of appeals about how to evaluate challenges to Section 922(g)(1), this case does not implicate that disagreement because no court has accepted petitioner’s contention that Section 922(g)(1) may never be applied to non-violent offenders and because petitioner, in any event, has a history of violence. Further, the disagreement among courts of appeals is shallow and may evaporate in light of the Department of Justice’s recent revitalization of an administrative process under 18 U.S.C. 925(c) through which convicted felons can regain their ability to possess firearms. The petition for a writ of certiorari should be denied.

A. This Court Has Recognized The Presumptive Validity Of Felon-In-Possession Laws

This Court has repeatedly indicated that longstanding prohibitions on the possession of firearms by felons comport with the Second Amendment. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court stated that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the posses-

sion of firearms by felons,” and it described such prohibitions as “presumptively lawful regulatory measures.” *Id.* at 626, 627 n.26. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), a plurality repeated *Heller*’s “assurances” concerning “such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons.’” *Id.* at 786 (citation omitted). In *NYSRPA v. Bruen*, 597 U.S. 1 (2022), five Justices reiterated *Heller*’s approval of “longstanding prohibitions on the possession of firearms by felons.” *Id.* at 81 (Kavanaugh, J., joined by Roberts, C.J., concurring) (citation omitted); see *id.* at 129 (Breyer, J., joined by Sotomayor and Kagan, J.J., dissenting). And in *United States v. Rahimi*, 602 U.S. 680 (2024), the Court repeated *Heller*’s statement that laws disarming “felons” are “presumptively lawful.” *Id.* at 699 (citation omitted).

The presumptive legality of felon dispossession accords with history and tradition. Death was “the standard penalty for all serious crimes” at the founding. *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019) (citation omitted). American colonies imposed that penalty even for non-violent crimes such as counterfeiting, squatting on Indian land, burning timber intended for house frames, horse theft, and smuggling tobacco. See Stuart Banner, *The Death Penalty: An American History* 8 (2002). Under this Court’s precedents, founding-era laws imposing capital punishment for serious crimes support the lesser restriction of disarmament in analogous circumstances. Cf. *Rahimi*, 602 U.S. at 699 (“[I]f imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.”).

In addition, the founding generation recognized that disarmament could properly result from conviction even for certain non-capital crimes. During the Revolutionary War, legislatures disarmed persons convicted of various offenses.¹ And at Pennsylvania’s convention to ratify the U.S. Constitution, Anti-Federalists proposed a bill of rights that, among other things, would have prohibited “disarming the people or any of them, *unless for crimes committed*, or real danger of public injury from individuals.” 2 *The Documentary History of the Ratification of the Constitution* 598 (Merrill Jensen ed., 1976) (emphasis added). “Given the Anti-Federalists’ vehement opposition” to federal power, *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 664 (2013) (Thomas, J., concurring), it is telling that even they accepted the disarmament of convicted criminals as consistent with the traditional right to bear arms.

This Court also reasoned in *Rahimi* that restrictions based on a judicial finding that “an individual poses a clear threat of physical violence to another” are constitutional. 602 U.S. at 698. Similarly, this Court has repeatedly recognized that persons who have been “convicted of serious crimes” can “be expected to misuse” firearms. *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 119 (1983). And legislatures have long used felony convictions as a proxy for an individual’s fitness

¹ See, e.g., Resolutions of Sept. 1, 1775, *reprinted in 1 Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York* 132 (1842) (furnishing provisions to the British army); Resolution of Mar. 13, 1776, *reprinted in Journal of the Provincial Congress of South Carolina, 1776*, at 77 (1776) (bearing arms against the Continental Congress); Act of Dec. 14, 1775, *reprinted in The Public Records of the Colony of Connecticut From May, 1775, to June, 1776, inclusive* 193 (Charles J. Hoadly ed., 1890) (seditious libel).

to exercise a variety of legal rights. See, *e.g.*, *Hawker v. New York*, 170 U.S. 189, 197 (1898).

B. Section 925(c) Addresses Any Constitutional Concerns Raised By Specific Applications Of Section 922(g)(1)

Some lower courts have suggested that Section 922(g)(1) could raise constitutional concerns in some unusual applications. See pp. 8-10, *infra*. But Congress has addressed those concerns through 18 U.S.C. 925(c), and in all events, this case would not implicate such concerns. Under that provision, a person who is disqualified from possessing firearms, including a person disqualified under Section 922(g)(1), “may make application to the Attorney General for relief from the disabilities.” *Ibid.* “[T]he Attorney General may grant such relief” if the applicant shows 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.” *Ibid.* A person whose application is denied may seek judicial review in federal district court. See *ibid.*

Before 2025, that statutory authority had been delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). See *United States v. Bean*, 537 U.S. 71, 74 (2002). Since 1992, however, appropriations statutes have included provisos prohibiting ATF from using appropriated funds to act on Section 925(c) applications. See *ibid.* In combination, the delegation and the appropriations bar effectively suspended the Section 925(c) relief-from-disabilities program.

Recognizing that the appropriations bar applies only to ATF, the Attorney General recently issued an interim final rule withdrawing the delegation of authority

to ATF to administer Section 925(c). See *Withdrawing the Attorney General’s Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025). Soon after doing so, the Attorney General granted relief under Section 925(c) to ten individuals. See *Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17,835 (Apr. 29, 2025). Other individuals have applied to the Attorney General for relief, and the Department is processing their applications. See, e.g., C.A. Doc. 30, *Fontana v. Attorney General*, No. 24-2526 (3d Cir. May 5, 2025) (granting motion to hold civil suit challenging Section 922(g)(1) in abeyance pending the Department’s consideration of a Section 925(c) application). The Department also has issued a notice of proposed rulemaking to establish “criteria to guide determinations for granting relief.” *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, 34,394 (July 22, 2025).

By providing a mechanism through which convicted felons can regain their ability to possess firearms and can challenge any ensuing denials of relief on an as-applied basis in court, upon a record that covers the individual applicant’s circumstances, Section 925(c) addresses any constitutional concerns about the breadth and duration of the restriction imposed by Section 922(g)(1). Section 925(c) also provides a more workable process for restoring firearms rights than would a court-administered regime of as-applied challenges. “Whether an applicant is ‘likely to act in a manner dangerous to public safety’ presupposes an inquiry into that applicant’s background—a function best performed by the Executive, which, unlike courts, is institutionally

equipped for conducting a neutral, wide-ranging investigation.” *Bean*, 537 U.S. at 77.

C. The Question Presented Does Not Warrant This Court’s Review At This Time

The question how courts should evaluate as-applied challenges to Section 922(g)(1) does not warrant this Court’s review at this time. Although that question has generated some disagreement in the courts of appeals, that disagreement is shallow; the recent revitalization of the Section 925(c) process may resolve it; and this case would in all events be a poor vehicle for addressing the question presented.

1. Since *Rahimi*, six courts of appeals—the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits—have held that Section 922(g)(1) is not susceptible to case-by-case as-applied challenges. See Pet. App. 1a-2a; *United States v. Hunt*, 123 F.4th 697, 704-708 (4th Cir. 2024), cert. denied, 145 S. Ct. 2756 (2025); *United States v. Jackson*, 110 F.4th 1120, 1125-1129 (8th Cir. 2024), cert. denied, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 755-762 (9th Cir. 2025) (en banc), petition for cert. pending, No. 25-425 (filed Oct. 6, 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025), petition for cert. pending, No. 24-1155 (filed May 8, 2025); *United States v. Dubois*, 139 F.4th 887, 890-894 (11th Cir. 2025).

Two courts of appeals, the Fifth and Sixth Circuits, have left open the possibility of as-applied challenges. See *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024) (“Simply classifying a crime as a felony does not [suffice for disarmament.]”), cert. denied, 145 S. Ct. 2822 (2025); *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024) (Section 922(g)(1) “might be susceptible to an as-applied challenge in certain cases.”). But

neither court has yet actually held Section 922(g)(1) invalid in any application. To the contrary, the Fifth² and Sixth³ Circuits have both rejected many such claims.

Only the Third Circuit has, since *Rahimi*, found Section 922(g)(1) unconstitutional in any application. Specifically, in *Range v. Attorney General*, 124 F.4th 218 (2024), the en banc Third Circuit held that Section 922(g)(1) violates the Second Amendment as applied to a civil plaintiff with a nearly 30-year-old state misdemeanor conviction for understating his income on a food-stamp application. See 18 U.S.C. 921(a)(20)(B) (providing that Section 922(g)(1) extends to state offenses that are classified as misdemeanors if the offenses are punishable by more than two years of imprisonment). The Third Circuit described its decision as “narrow,” emphasizing that the plaintiff had been “convicted of food-stamp fraud,” that he had “completed his sentence,” that his conviction was “[m]ore than two decades” old, that the “record contain[ed] no evidence that [he] pose[d] a physical danger to others,” and that he

² See, e.g., *United States v. Betancourt*, 139 F.4th 480, 482-484 (2025), petition for cert. pending, No. 25-5514 (filed Aug. 28, 2025); *United States v. Schnur*, 132 F.4th 863, 867-871 (2025); *United States v. Giglio*, 126 F.4th 1039, 1042-1046 (2025); *United States v. Contreras*, 125 F.4th 725, 729-733 (2025); *United States v. Bullock*, 123 F.4th 183, 185 (2024), cert. denied, No. 25-5208 (Oct. 6, 2025); *United States v. Collette*, No. 22-51062, 2024 WL 4457462, at *2 (Oct. 10, 2024), cert. denied, 145 S. Ct. 2853 (2025).

³ See, e.g., *United States v. Poe*, No. 24-6014, 2025 WL 1342340, at *2-*4 (May 8, 2025); *United States v. Fordham*, No. 24-1491, 2025 WL 318229, at *4-*5 (Jan. 28, 2025); *United States v. Morton*, 123 F.4th 492, 495-500 (2024); *United States v. Garrison*, No. 24-5455, 2024 WL 5040626, at *2 (Dec. 9, 2024); *United States v. Vaughn*, No. 23-5790, 2024 WL 4615853, at *2-*3 (Oct. 30, 2024); *United States v. Parham*, 119 F.4th 488, 495-496 (2024); *United States v. Goins*, 118 F.4th 794, 797-805 (2024).

had filed a civil suit seeking “protection from prosecution under § 922(g)(1) for any future possession of a firearm.” *Range*, 124 F.4th at 232. The government declined to seek certiorari in *Range*, explaining that it had recently revitalized the Section 925(c) program and that “Range himself would likely qualify for relief under the revitalized process.” Letter from D. John Sauer, Solicitor General, to Richard J. Durbin, Ranking Member, Senate Committee on the Judiciary (Apr. 11, 2025).⁴ The Third Circuit has upheld other applications of Section 922(g)(1).⁵

2. Any tension between the Third Circuit’s decision in *Range* and the decisions of other circuits does not warrant this Court’s review at this time. The Court has previously declined to grant review when faced with similar conflicts of authority. In 2017, the Court declined to review a decision in which the en banc Third Circuit had held Section 922(g)(1) unconstitutional as applied in narrow circumstances involving state misdemeanors. See *Binderup v. Attorney General*, 836 F.3d 336 (2016), cert. denied, 582 U.S. 943 (2017). Two Terms ago, the Court denied the government’s request for plenary review in *Garland v. Range*, 144 S. Ct. 2706 (2024), despite a similar, narrow disagreement among the circuits regarding the availability of as-applied challenges

⁴ <https://www.justice.gov/oip/media/1398041/dl?inline>

⁵ See, e.g., *United States v. Law*, No. 23-2540, 2025 WL 984604, at *2 (Apr. 2, 2025), petition for cert. pending, No. 25-184 (filed July 31, 2025); *United States v. Stevens*, No. 24-1217, 2025 WL 651456, at *2 (Feb. 28, 2025), cert. denied, No. 25-5027 (Oct. 6, 2025); *United States v. White*, No. 23-3013, 2025 WL 384112, at *2 (Feb. 4, 2025), cert. denied, 145 S. Ct. 2805 (2025); *United States v. Quailles*, 126 F.4th 215, 217, cert. denied, No. 7037 (Oct. 3, 2025); *United States v. Moore*, 111 F.4th 266, 268-273 (2024), cert. denied, 145 S. Ct. 2849 (2025).

to Section 922(g)(1). See Pet. at 22-23, *Range*, *supra* (No. 23-374). More recently, the Court has denied multiple petitions for writs of certiorari raising as-applied challenges to Section 922(g)(1). See, *e.g.*, Br. in Opp. at 4 n.1, *Vincent v. Bondi*, No. 24-1155 (Aug. 11, 2025) (collecting cases). The Court should likewise deny the petition here.

In addition, any disagreement among the circuits likely lacks prospective importance—and may even evaporate entirely—because of the recent revitalization of the Section 925(c) relief-from-disability-program. Courts that have raised constitutional concerns about some of Section 922(g)(1)’s applications have suggested that making Section 925(c) operational would alleviate those concerns. See, *e.g.*, *Range*, 124 F.4th at 230, 232 (objecting to “permanent” disarmament and concluding that the civil plaintiff was entitled to an opportunity to seek “protection” for “future possession of a firearm”); *Williams*, 113 F.4th at 661 (“Were the ATF program operational and funded, it might provide disarmed felons the chance required by the Second Amendment to make an individualized showing of qualification to keep and bear arms.”).

3. This case, at any rate, would be a poor vehicle for resolving the disagreement among the courts of appeals. Petitioner argues (Pet. 32) that “the existence of Section 925(c) does not matter” in this case because “[t]he thrust of [his] challenge here is that there are some people who fall within the scope of Section 922(g)(1) whose *initial* disarmament should never have happened.” Specifically, he argues (Pet. 7, 32-33) that, while Section 925(c) “may be relevant to individuals convicted of offenses that are sufficiently connected to violence to justify presumptive disarmament,” the dis-

armament of “nonviolent offenders” is “never valid to begin with.”

Petitioner, however, does not identify any court of appeals that has held that the disarmament of a non-violent felon under Section 922(g)(1) is “never valid to begin with.” Pet. 33. At most, the Third Circuit held in *Range* that the Second Amendment entitled an individual to regain the right to bear arms “decades after he was convicted of food-stamp fraud and completed his sentence.” 124 F.4th at 232. Because petitioner argues (Pet. 32-33) only that his disarmament was invalid from the beginning, not that the Second Amendment entitles him to an opportunity to regain his ability to possess a firearm, this case is a poor vehicle for resolving the disagreement among the circuits.

This case also is an unsuitable vehicle for resolving the question presented because petitioner has a history of “violence,” “boasts about that violence,” and “obstruction of justice.” *United States v. Zherka*, 592 Fed. Appx. 35, 36 (2d Cir. 2015); but see Pet. 6 (claiming to be “nonviolent”). Given that record, petitioner cannot show that his as-applied challenge to Section 922(g)(1) would prevail even in the Third Circuit, which considers “a convict’s entire criminal history and post-conviction conduct indicative of dangerousness” in adjudicating as-applied challenges to Section 922(g)(1). *Pitsilides v. Barr*, 128 F.4th 203, 212 (2025).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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