No. 25-356

In the

Supreme Court of the United States

STEVEN P. MANCUSO,

Petitioner,

v.

NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FOURTH JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION

TODD C. CARVILLE
District Attorney
Oneida County, New York
MICHAEL A. LABELLA*
Assistant District Attorney
235 Elizabeth Street
Utica, New York 13501
(315) 798-5766
malabella@oneidacountyny.gov

**Counsel of Record for Respondent*

January 20, 2026

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether a statute prohibiting firearm possession by persons who have previously been convicted of "any crime" violates the Second Amendment on its face.

2. Whether a statute prohibiting firearm possession by persons who have previously been convicted of "any crime" violates the Second Amendment, as applied to a defendant previously convicted of federal felony offenses pertaining to illegal asbestos removal and who has a history of drug abuse, psychiatric commitments, and violent outbursts.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Pages**

Statutes **Pages**

Regulations **Pages**

Publications **Pages**

INTRODUCTION

This Court has repeatedly recognized that long-standing federal and state prohibitions on the possession of firearms by convicted felons are presumptively lawful and consistent with the Second Amendment. In this case, Petitioner Steven Mancuso claims that New York's felon-in-possession statutes—in particular, New York Penal Law §§ 265.03(3) and 265.02(1)—violate the Second Amendment on their face and as-applied to his circumstances. Neither challenge merits this Court's review.

First, Mancuso's facial constitutional challenge does not implicate a circuit split and is squarely foreclosed by this Court's precedents. This Court's repeated recognition that felon disarmament is presumptively lawful necessarily contemplates that at least some felons may be disarmed because of their predicate convictions.

Second, Mancuso's as-applied challenge also does not warrant this Court's review. This Court's precedents and the text, history, and tradition of firearms regulation support a categorical approach to felon disarmament that does not turn on the individual circumstances of an offender's prior convictions. Moreover, this Court has numerous pending petitions raising the threshold question of whether as-applied challenges are available to the federal felon disarmament statute, 18 U.S.C. § 922(g)(1). Unlike here, in at least some of those cases the threshold question of whether as-applied challenges are appropriate was briefed extensively below and is the subject of exhaustive analysis by the lower courts. If this Court wishes to resolve the threshold question of whether as-applied challenges to felon disarmament

are available at all, it should do so in one or more of the many federal cases where the question was thoroughly addressed below.

This case is also a poor vehicle to address the contours of an as-applied challenge to felon disarmament. Contrary to Mancuso's petition, this case does *not* raise the question of whether disarmament is permissible for a purely "non-violent" prior conviction. Mancuso's prior felony conviction arose from his participation in a criminal conspiracy in which asbestos was illegally removed from various sites in New York, including schools, and dumped into open fields, endangering public safety to pad profits. And Mancuso's current state court conviction for criminal possession of a weapon arose from a similar disregard for safety: Mancuso's romantic partner died from a gunshot wound to the head fired from a ghost gun that Mancuso assembled and kept loaded and readily accessible, after the couple spent a weekend drinking and taking cocaine and Xanax. In addition, Mancuso's criminal history is marked by habitual drug use, psychiatric issues, and violent outbursts. This history presents several independent grounds for disarming Mancuso, which would muddy any attempts to develop clear guidance for how to evaluate legal challenges to felon disarmament as a general matter.

STATEMENT

A. Mancuso's Criminal History

1. Mancuso's federal felony conviction for conspiring to illegally remove and dump asbestos.

Congress has recognized that no level of exposure to asbestos fibers is considered safe. 20 U.S.C. § 3601(a)(3). To prevent exposure to asbestos, federal law requires that material containing asbestos fibers be wetted, bagged, and sealed when removed. If removed dry, certain materials may crumble and release asbestos particles into the air. Federal law also requires that asbestos be disposed of in an approved landfill. *See* Trial Tr. at 97-102, 105-106, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Sept. 17, 2010), ECF No. 136[1]; *see generally* 40 C.F.R. §§ 61.140-61.157.

In 2005, federal authorities opened an investigation after receiving reports from the New York State Police that an individual was suspected of illegally disposing of asbestos on private property in Poland, New York. *See* Trial Tr. at 113; Indictment at 16-18, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Oct. 15, 2008), ECF No. 1. The investigation uncovered a criminal conspiracy to evade asbestos removal and waste storage requirements headed by petitioner Steven Mancuso's brother, Paul Mancuso.

Paul was barred from the asbestos industry in New York because of prior criminal convictions. *See* Trial Tr. at 108-110. Notwithstanding this bar, Paul secretly

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[1] The transcript of the trial leading to Mancuso's prior federal conviction is available at ECF Nos. 135 to 142 of the district court docket.

operated companies that conducted asbestos abatement activities and ran those operations from an office within Steven's law office. *See id.* at 120, 282, 486. The companies operated projects where asbestos was removed dry, which allowed them to complete a project in a day that would otherwise take two to three weeks to perform legally. *See id.* at 350-352. They also transported asbestos in unauthorized vehicles and dumped it in open fields. *See id.* at 529-531.

For example, during a project at the Hughes Elementary School, Paul directed the removal crew to strip dry material and to wet it later to disguise the fact that it was removed dry. *See id.* at 357-358, 434-437, 527. Air quality tests revealed that asbestos fiber counts in the school were "way off the charts" and that "the project should have been shut down." *Id.* at 252. When a federal agent arrived to inspect the project, a worker concealed the illegal activity by directing the agent away from an active worksite to an area where work had already been completed.[2] *See id.* at 439.

Petitioner Steven Mancuso enabled the conspiracy by using his legal training to create documents that concealed the illegality of the asbestos removal operations. For example, Steven drafted corporate documents that falsely listed other individuals as owners of asbestos removal companies to obscure the fact that Paul ran and operated them despite being

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[2] A witness testified that Paul paid him $100 to assault the individual Paul suspected of alerting federal authorities. The assault was so severe that the victim required a back operation. *See* Trial Tr. at 695-696, 776-778. Separately, federal prosecutors also expressed concern that Paul had been sitting outside the homes of potential witnesses and staring at people going in and out of their houses. *See id.* at 9.

barred from the asbestos industry in New York. *See, e.g.*, *id.* at 272-275, 488, 521, 765-766, 814. Steven also predated a notarized document to obfuscate an inquiry into whether workers were properly insured. *See id.* at 522-523, 557, 570.

Following a jury trial, Steven was convicted of conspiracy in violation of 18 U.S.C. § 371, 42 U.S.C. §§ 7412, 7413(c), and 42 U.S.C. § 9603. *See United States v. Mancuso*, 428 F. App'x 73, 76 (2d Cir. 2011). In affirming his conviction, the Second Circuit rejected Steven's contention that he played a minor recordkeeping role in the conspiracy. Instead, the court concluded that Steven was a knowing participant in the asbestos-dumping scheme. *See Mancuso*, 428 F. App'x at 82-83.

In connection with these convictions, Steven was sentenced to forty-four months' imprisonment. *See* Hearing Tr. at 12, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Aug. 4, 2010), ECF No. 128. At his sentencing hearing, Steven made an aggressive move towards prosecutors and abruptly fled the courtroom. Unlike other codefendants in the conspiracy, Steven was immediately remanded to custody following the hearing. *See* Government Opposition to Defendant Steven Mancuso's Motion for Stay of Sentence and Release Pending Appeal, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Dec. 15, 2010), ECF No. 162. The district court later noted several factors supporting Steven Mancuso's continued detention pending appeal; he was committed to a psychiatric facility after becoming violent at home, he demonstrated substance abuse problems, and he was arrested for driving while intoxicated. The court also concluded that while the underlying conspiracy was not technically a violent

crime, it "involves a serious risk to the community."[3] Memorandum Decision & Order at 4, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Dec. 22, 2010), ECF No. 165.

2. Mancuso's state conviction for criminal possession of a weapon

Shortly before 3 a.m. on October 12, 2021, police officers responded to reports of shots fired in Utica, New York. When officers arrived at the scene, petitioner Steven Mancuso was standing in the front doorway. Officers entered the residence and saw a woman lying on the ground with a gunshot wound to the head. (4AD R. at 949-951.[4]) Police retrieved a loaded gun with no serial number from the scene. (4AD R. at 954, 971, 1164-1165, 1168-1172.)

Mancuso repeatedly told officers that "we got into a fight" and "it's my fault." (4AD R. at 377-378, 1039, 1042.) After an officer directed Mancuso to the bathroom so that emergency responders could treat the injured woman, Mancuso repeatedly punched the vanity and stated that the unserialized gun was his and it was illegal. (4AD R. at 1041-1045.) Officers detained Mancuso because he possessed an illegal firearm. (4AD R. at 1047.) After Mancuso made several suicidal statements and requested that police shoot him, he was taken to a hospital for psychiatric evaluation. (4AD R. at 1048, 1067-1069, 1128.)

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[3] A New York state court also concluded that Mancuso's federal offense was a "serious crime" warranting disbarment. *See Matter of Mancuso*, 80 A.D.3d 204, 205 (N.Y. App. Div. 2010).

[4] "4AD R." refers to the record on appeal in New York State Supreme Court, Appellate Division, Fourth Department Docket No. KA 23-00479.

The attending psychiatrist observed that Mancuso looked "pretty wiped out from a long night of cocaine" and that Mancuso had a ten-year history of cocaine addiction. (4AD R. at 143-144, 147, 172, 1462.) The hospital records further demonstrated that Mancuso tried to grab a gun from police officers, threw his clothes away, and banged on walls. A police officer agreed to stay at the hospital due to fears for the safety of emergency room staff.[5] (4AD R. at 158-159.)

After his release from the hospital, Mancuso was transported to the police station and interviewed. He described the gun as a ghost gun that he had assembled, and he confessed that he had also assembled a second ghost gun, but he did not disclose its location. (4AD R. at 378-382, 627, 1298-1301.) Mancuso also acknowledged that he had spent the preceding three-day holiday weekend partying, drinking, and taking cocaine and Xanax. (4AD R. at 625, 652, 681-682, 1325, 1456-1457.)

While investigating the scene of the shooting, police officers recovered a briefcase. It contained counterfeit one-hundred-dollar bills, small glass vials containing what appeared to be steroids, a hypodermic instrument, weighted gloves, brass knuckles, an illegal magazine, and a collapsible baton. (4AD R. at 1318, 1361-1365.) Mancuso's appellate counsel, in unsuccessfully arguing that trial counsel was constitutionally ineffective in allowing that evidence to be presented to the jury, noted that those items suggested "a lifestyle of crime and violence" and "a propensity for lawbreaking and

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[5] Mancuso was admitted to the psychiatric unit again weeks later on October 28, 2021. He was sitting in a car blaring music and told police he would drink himself to death. He was yelling, hostile, and belligerent. (4AD R. at 251, 330.)

violence." Br. of Appellant at 47-48, *People v. Mancuso*, No. KA 23-00479 (4th Dep't Aug. 11, 2023), NYSCEF Doc. No. 8.

The jury also heard evidence about the violent nature of Mancuso's workplace at his family's waste management business, where the deceased also worked. There were frequent fist fights. (*See* 4AD R. at 522-523, 1579.) Indeed, Mancuso's mother testified that "we have a lot of problems down there" and that she has "bear spray on my desk" and "tear gas in my purse, but the bear spray is probably better." (4AD R. at 1612.)

Following a jury trial, Mancuso was convicted of Criminal Possession of a Weapon in the Second Degree, in violation of New York Penal Law § 265.03(3), and Criminal Possession of a Weapon in the Third Degree, in violation of New York Penal Law § 265.02(1). (4AD R. at 1780; *see* 4AD R. at 7 (indictment).)[6]

As relevant here, New York Penal Law § 265.02(1) provides that unlicensed possession of a firearm by a person who has been previously convicted of any crime is punishable as Criminal Possession of a Weapon in the Third Degree. *See* New York Penal Law § 265.20(3) (exemption for person with license). And New York Penal Law § 265.03(3) provides that unlicensed possession of a loaded firearm, either outside the home or place of business, or by a person who has been previously convicted of any crime, is punishable as Criminal Possession of a Weapon in the Second Degree. *See* New York Penal Law § 265.20(3) (exemption for

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[6] Mancuso was also indicted for Criminal Possession of a Firearm in violation of New York Penal Law § 265.01-b(1) (simple felony possession) (R. at 7), but that count was not presented to the jury.

person with license). Thus, a prior conviction can elevate unlicensed possession of a firearm to Third Degree Weapons Possession, and a prior conviction can also elevate unlicensed possession of a *loaded* firearm to Second Degree Weapons Possession.

After the verdict, the court revoked bail and denied a motion for Mancuso's release pending sentence, noting Mancuso's history of drug abuse and suicide risk. (4AD R. at 1803-1809.) At the sentencing hearing, the People requested that the court impose the statutory maximum sentence of fifteen years' imprisonment, and Mancuso requested the statutory minimum sentence of three-and-a-half years' imprisonment. (4AD R. at 1820, 1828.) The court imposed a sentence of eleven years' imprisonment, which was within the authorized statutory range. The court explained that the sentence was appropriate because it was a logical inference that Mancuso's unlawful possession of a gun was related to the amount of drugs in the house and that the deceased, who had been drinking and doing drugs with Mancuso all weekend, "was in a state where things could happen and things could turn wrong" at the time that she died from a fatal gunshot from a loaded ghost gun that Mancuso kept in the home. (4AD R. at 1827.)

B. Mancuso's Second Amendment Challenge

As part of his defense in the state-court proceeding described above, Mancuso argued that his indictment and conviction were inconsistent with the Second Amendment.

In June 2022, the state trial court denied Mancuso's initial motion to dismiss the indictment. (Pet. App. 13a-25a.) As relevant here, the court rejected Mancuso's argument that New York Penal Law §§ 265.03(3),

265.02(1), and 265.01-b(1) violated his Second Amendment rights. The court explained that the state legislature's conclusion that "an illegal weapon is more dangerous in the hands of a convicted criminal than in the possession of a novice in the criminal justice system" was consistent with the limitations on Second Amendment rights recognized by this Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008). (Pet. App. 23a (quotation marks omitted); *see* Pet. App. 22a-24a.)

In September 2022, the trial court denied Mancuso's renewed motion to dismiss the indictment based on this Court's intervening decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). (Pet. App. 8a-12a.) The court explained that *Bruen* concerned a restriction on law-abiding citizens exercising their Second Amendment right to keep and bear arms in public for self-defense. (Pet. App. 10a.) *Bruen* did not entirely prohibit licensing regimes and said nothing about who may lawfully possess a firearm. (Pet. App. 10a-11a.)

In March 2024, New York's intermediate appellate court (the Supreme Court, Appellate Division) unanimously affirmed the conviction and sentence. *See People v. Mancuso*, 207 N.Y.S.3d 290 (App. Div. 2024). (Pet. App. 2a-7a.) The decision focused largely on the many issues raised by Mancuso that are not relevant to his Second Amendment challenge. As to the Second Amendment, the Supreme Court, Appellate Division concluded that *Bruen* did not render New York's Criminal Possession of a Weapon statutes unconstitutional. *Mancuso*, 207 N.Y.S.3d at 293-294. (Pet. App. 6a-7a.)

Mancuso then sought discretionary leave to appeal to New York's court of last resort (the Court of Appeals).

(Pet. App. 26a-36a.) In April 2025, the Court of Appeals denied Mancuso's application for leave to appeal. *People v. Mancuso*, 43 N.Y.3d 964 (2025). (Pet. App. 1a.)

REASONS FOR DENYING THE PETITION

I. MANCUSO'S FACIAL CHALLENGE DOES NOT WARRANT THIS COURT'S REVIEW.

Mancuso's first question presented asks whether New York Penal Law § 265.03(3) and § 265.02(1) are facially unconstitutional insofar as they prohibit the possession of a firearm by a person "convicted of any crime."[7] (Pet. at i, 10.) This question does not warrant the Court's review for three independent reasons.

1. Mancuso's facial constitutional challenge is squarely foreclosed by this Court's Second Amendment jurisprudence. A facial constitutional claim is "'the most difficult challenge to mount successfully,' because it requires a [challenger] to 'establish that no set of circumstances exists under which the Act would be valid.'" *United States v. Rahimi*, 602 U.S. 680, 693 (2024) (*quoting United States v. Salerno*, 481 U.S. 739, 745 (1987)). Mancuso's contention that a statute disarming a person based on a prior criminal conviction violates the Second Amendment on its face cannot be squared with this Court's precedents.

In *Heller*, for example, this Court described the "longstanding prohibition[] on the possession of

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[7] Although Mancuso was indicted on a count of Criminal Possession of a Firearm in violation of New York Penal Law § 265.01-b(1) (4AD R. at 7), that count was not presented to the jury (4AD R. at 1780), and accordingly a challenge to that statute is not properly before this Court.

firearms by felons" as presumptively lawful. *Heller*, 554 U.S. at 626-27, 627 n.26; *see also Rahimi*, 554 U.S. at 699. In *Bruen*, this Court confirmed that governments may require gun owners to pass background checks—which include flags for prior convictions—because such screening mechanisms ensure that those who carry guns "are, in fact, 'law-abiding, responsible citizens.'" *Bruen*, 597 U.S. at 38 n.9. And *Rahimi*'s core holding that the government can "disarm individuals who present a credible threat to the physical safety of others," 602 U.S. at 700, strongly implies that the government can disarm persons based on prior convictions for, among other things, murder, rape, or armed robbery.[8]

2. Relatedly, there is no split of appellate authority as to whether the Second Amendment allows the government to disarm persons convicted of at least some crimes. Every court to reach the question has agreed that at least some persons convicted of felonies may be disarmed without offending the Second Amendment. *See Zherka v. Bondi*, 140 F.4th 68, 73-96 (2d Cir. 2025), *cert. denied*, No. 25-269 (filed Sept. 9, 2025); *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc); *United States v. Hunt*, 123 F.4th 697, 704-08 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (June 2, 2025); *United States* v. *Diaz*, 116 F.4th 458, 469 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (June 23, 2025); *United States* v. *Williams*, 113 F.4th 637, 657 (6th Cir. 2024); *United States v. Gay*, 98 F.4th 843, 846–

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[8] Mancuso asserts that, at a minimum, the Second Amendment prohibits state laws that bar the possession of firearms inside the home, even by convicted criminals. (*See* Pet. at 10.) This Court has already rejected that argument in *Rahimi*. *See* 602 U.S. at 699.

47 (7th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125-29 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (May 19, 2025); *United States* v. *Duarte*, 137 F.4th 743, 755-62 (9th Cir. 2025) (en banc), *cert. denied*, No. 25-425 (filed Oct. 6, 2025); *Vincent v. Bondi*, 127 F. 4th 1263 (10th Cir. 2025), *petition for cert. pending*, No. 24-1155 (filed May 8, 2025); *United States* v. *Dubois*, 139 F.4th 887, 890-94 (11th Cir. 2025), *cert. denied*, No. 25-6281 (filed Dec. 1, 2025). As explained below (at 20), these courts disagree only about whether as-applied challenges to felon-in-possession statutes are available, and if so, how such challenges should be evaluated. No appellate court in the country disagrees with the core proposition that at least some prior criminal convictions can support prospective disarmament.

3. The mere possibility of hypothetical as-applied challenges to New York's laws by persons convicted of misdemeanors or some specified felonies does not warrant review of this facial challenge. Facial challenges are disfavored precisely because they force courts to "anticipate a question of constitutional law in advance of the necessity of deciding it." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (quotation marks omitted); *see also Bondi v. VanDerStok*, 604 U.S. 458, 473 (2024). Whatever questions may be implicated by the application of New York's laws to persons with particular prior convictions, they cannot justify the facial challenge to New York's statutes that Mancuso presents here.

II. MANCUSO'S AS-APPLIED CHALLENGE ALSO DOES NOT WARRANT THIS COURT'S REVIEW.

Mancuso's second question presented asks whether New York Penal Law § 265.03(3) and § 265.02(1) are unconstitutional as applied to him because his prior convictions are for purportedly "non-violent" felonies. (*See* Pet. at i, 10-15.) This Court should decline to review this question as well for two independent reasons.

First, history and tradition supports a categorical rule that bars felons from possessing firearms, rather than an approach that evaluates the nature of each prior felony. And second, this case is a particularly unsuitable vehicle for considering whether, and to what extent, the Second Amendment may require a more particularized bar, that takes into account the legal or factual details of the prior felony.

A. The Second Amendment Permits Governments to Disarm Felons on a Categorical Basis.

Mancuso's second question does not merit this Court's review because the decisions below correctly applied this Court's precedents and held that the Second Amendment permits governments to categorically disarm felons without reference to their individual circumstances.

1. Since *Heller*, this Court has consistently characterized the "longstanding prohibitions on the possession of firearms by felons" as "presumptively lawful regulatory measures" without reference to the individual circumstances underlying a felony conviction. *Heller*, 554 U.S. at 627 n.26; *see also*

McDonald v. *City of Chicago*, 561 U.S. 742, 786 (2010) (plurality op.); *Bruen*, 597 U.S. at 81(Kavanaugh, J., joined by Roberts, C.J., concurring); *Rahimi*, 602 U.S. at 699.

In *Bruen*, for example, this Court repeatedly used the term "law-abiding" to describe the class of persons protected by the Second Amendment, *see* 597 U.S. at 8, 26, 29, 71, and endorsed the use of background checks (which screen for, among other things, prior convictions) to ensure that persons possessing firearms are in fact "law-abiding," *id.* at 38 n.9. And the Court in *Rahimi* confirmed that there is no reason to "suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse," 602 U.S. at 698, a criterion that applies to persons who were previously convicted of crimes. And even the dissent in *Rahimi* favorably referenced those provisions of federal law that disarm persons based on "a criminal conviction or a person's criminal history." *Id.* at 748 (Thomas, J., dissenting).

2. The categorical approach to felon disarmament 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 purportedly non-violent crimes such as counterfeiting, forgery, squatting on Indian land, certain forms of perjury, concealing property to defraud creditors, and smuggling tobacco. *See* Stuart Banner, *The Death Penalty: An American History* 7-8 (2003).

Because death was the standard penalty for all serious crimes at the founding, early legislatures had little occasion to consider whether to disarm convicted

criminals who were not executed. Even so, the available historical evidence shows that the "exclusion of criminals from the individual right to keep and bear arms … was understood" to be within the legislative power. *See* Stephen P. Halbrook, *The Founders' Second Amendment: Origins of the Right to Bear Arms* 273 (2008).

For example, several colonies enacted such disarmament laws during the Revolution. A New York law provided that a person would "be disarmed" upon conviction for furnishing provisions to the British army or for opposing the authority of the Continental Congress. Resolutions of Sept. 1, 1775, *in* 1 *Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York* 132 (1842). A South Carolina law provided that a person would "be disarmed" upon "due conviction" for bearing arms against, or opposing the measures of, the Continental Congress. Resolution of Mar. 13, 1776, *in Journal of the Provincial Congress of South Carolina*, at 77 (1776). Hampshire County, Massachusetts, ordered that "all persons that shall be convicted of being notoriously inimical to the cause of American Liberty, be disarmed." Resolution of July 25-26, 1776, *in* 1 *American Archives: Fifth Series* 588 (Peter Force ed., 1848) (emphasis omitted). And a Connecticut law provided that anyone "duly convicted" of seditious libel "shall be disarmed and not allowed to have or keep any arms." Act of Dec. 1775, *in* 15 *The Public Records of the Colony of Connecticut From May, 1775 to June 1776, inclusive* 193 (Charles J. Hoadly ed., 1890)

Felon disarmament was likewise consistent with the common law principle that "property was a right derived from society which one lost by violating society's laws," *Austin v. United States*, 509 U.S. 602, 612 (1993).

A felon who was sentenced to death was deemed "already dead in law" even before his execution. 4 William Blackstone, Commentaries 374 (1769). That status, known as civil death, involved "an extinction of civil rights, more or less complete." *Avery v. Everett*, 18 N.E. 148, 150 (N.Y. 1888). A convicted felon thus had no "right to vote, to sit as a juror, *to bear arms*, to marry, and [to] hold office." *Id.* at 156 (Earl, J., dissenting) (emphasis added).

In the early 1820s, influential penal codes authorized the suspension and permanent forfeiture of certain rights, including the right to bear arms, as punishments for certain crimes. *See* Edward Livingston, *System of Penal Law—Prepared for the State of Louisiana* 26-29, 49, 73, 138 (1824); Edward Livingston, *A System of Penal Law for the United States of America* 19, 20, 40, 79, 126 (1828). Although those codes ultimately were not adopted, they received wide approval. *See* Elon H. Moore, *The Livingston Code*, 19 J. Am. Inst. Crim. L. & Criminology 344, 354-355 (May 1928-Feb. 1929). John Marshall, for instance, specifically endorsed Livingston's proposal to punish criminals with the "deprivation of civil and political rights." Letter from John Marshall to Edward Livingston (Oct. 24, 1825), http://findingaids.princeton.edu/catalog/C0280_c3493. Modern statutes specifically prohibiting the possession of firearms by felons date back at least a century.[9]

3. Felon disarmament also fits within the broader principle that the Second Amendment permits

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[9] *See* Act of Mar. 5, 1925, ch. 47, § 2, 1925 Nev. Laws 54; Act of Apr. 29, 1925, ch. 284, § 4, 1925 Mass. Acts 323; Act of June 2, 1927, No. 373, § 2, 1927 Mich. Acts 887-88; Act of June 19, 1931, ch. 1098, § 2, 1931 Cal. Stat. 2316.

legislatures to restrict the possession of firearms by dangerous individuals. *Rahimi* involved one aspect of that principle: restrictions based on a judicial finding that "an individual poses a clear threat of physical violence to another." *Rahimi*, 602 U.S. at 698. This case involves a different aspect of that principle: restrictions based on a legislative judgment that a "categor[y] of persons" poses "a special danger of misuse." *Id.* This Court has repeatedly recognized that persons who have been "convicted of serious crimes," as a class, can "be expected to misuse" firearms. *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 119 (1983); see, *e.g.*, *Lewis* v. *United States*, 445 U.S. 55, 67 (1980) (noting that federal felon-in-possession statute "keep[s] firearms away from potentially dangerous persons.").

It is therefore unsurprising that since *Rahimi*, the majority of courts of appeals to have decided the issue —the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits—have held that the Second Amendment permits disarmament of all felons as a class, without regard to the elements of the predicate offense or the individual circumstances of the defendant. *See Zherka*, 140 F.4th at 73-96; *Hunt*, 123 F.4th at 704-708; *Jackson*, 110 F.4th at 1125-1129; *Duarte*, 137 F.4th at 755-762; *Vincent*, 127 F. 4th at 1066; *Dubois*, 139 F.4th at 890-894. The decisions below in this case accord with those rulings and the Second Amendment.[10]

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[10] This Court has routinely declined to grant review in cases raising similar challenges to 18 U.S.C. § 922(g)(1), the federal felon-in-possession statute. *See, e.g.*, *Hill* v. *United States*, 145 S. Ct. 2864 (June 30, 2025); *Mireles* v. *United States*, 145 S. Ct. 2862 (June 30 2025); *Thompson* v. *United States*, 145 S. Ct. 2854 (June 30, 2025); *Anderson* v. *United States*, 145 S. Ct. 2854 (June 30, 2025); *Collette*

(*continues on next page*)

B. This Case Is a Poor Vehicle for Addressing As-Applied Challenges to Felon Disarmament.

1. Three courts of appeals—the Third, Fifth, and Sixth Circuits—have held that felon disarmament statutes are facially constitutional but can be subject to as-applied challenges.[11] *See Range*, 124 F.4th at 224; *Diaz*, 116 F.4th at 469; *Williams*, 113 F.4th at 657. If this Court wishes to address the threshold question of whether the Second Amendment requires as-applied challenges to be available for persons previously convicted of felonies, another pending case involving the conflict in the federal courts would provide a far better vehicle for doing so than this case.[12] The record and decision below in that case is far more developed with respect to the threshold Second Amendment question, which is addressed only in a cursory manner in the state court decisions presented here. (*See* Pet. App. at 6a-7a, 11a-12a, 22a-24a.) And there is no shortage of future challenges to the federal felon-in-possession statute, as

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v. *United States*, 145 S. Ct. 2853 (June 30, 2025); *Doss* v. *United States*, 145 S. Ct. 2856 (June 30, 2025); *Nordvold* v. *United States*, 145 S. Ct. 2853 (June 30, 2025); *Moore* v. *United States*, 145 S. Ct. 2849 (June 30, 2025); *Talbot* v. *United States*, 145 S. Ct. 2827 (June 23, 2025); *Charles* v. *United States*, 145 S. Ct. 2805 (June 16, 2025); *White* v. *United States*, 145 S. Ct. 2805 (June 16, 2025); *Faust* v. *United States*, 145 S. Ct. 2781 (June 6, 2025); *Lindsey* v. *United States*, 145 S. Ct. 2756 (June 2, 2025).

[11] The Seventh Circuit has assumed, without deciding, that an as-applied challenge to the federal felon-in-possession statute might be available. *See Gay*, 98 F.4th at 846–47.

[12] *See, e.g.*, *Vincent v. Bondi*, No. 24-1155.

thousands of defendants are convicted under § 922(g)(1) annually.[13]

There is also some disagreement among the three courts that have permitted as-applied challenges to felon disarmament statutes about how those as-applied challenges should be evaluated. The Third and Sixth Circuits, for example, have instructed that courts evaluating as-applied challenges should consider an individual offender's "entire criminal history and post-conviction conduct indicative of dangerousness" to decide whether disarmament is consistent with the Second Amendment, including, but not limited to, the "predicate offense and the conduct giving rise to that conviction." *See Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025); *Williams*, 113 F.4th at 657-58 (same); *see also Kanter v. Barr*, 919 F.3d 437, 468 (7th Cir. 2019) (Barrett, J., dissenting) (instructing courts to look beyond the "conviction" and assess whether the offender's "history or characteristics make him likely to misuse firearms"). By contrast, the Fifth Circuit has instructed that courts should look only at the qualifying predicate offenses, *United States v. Mitchell*, 160 F.4th 169, 186 (5th Cir. 2025), though courts may consider both the elements of the predicate offenses and the facts underlying the offenses to determine whether disarmament in a particular case comports with the Second Amendment, *id.* at 191-193.

2. Mancuso's petition offers no opportunity for this Court to weigh in on this methodological dispute because the lower courts had no opportunity to develop a record on Mancuso's individual circumstances or to evaluate the relevance of those circumstances to a

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[13] U.S. Sentencing Commission, *FY 2024 Quick Facts 18 U.S.C. § 922(g) Firearms Offenses* (2025).

potential as-applied Second Amendment challenge. No court has ever suggested that an as-applied challenge to felon disarmament can be evaluated in the absence of such individualized information because no court has held that the government is categorically precluded from disarming a felon based solely on the elements of the statute under which he was previously convicted.

In any event, the trial record and other publicly available material related to Mancuso's prior conviction strongly suggests that Mancuso's as-applied challenge would fail under either methodological approach. Mancuso's criminal history reflects a long pattern of self-serving behavior and a disregard for the safety and well-being of others. Mancuso's prior felony conviction arose from his use of his legal training to facilitate a criminal conspiracy to remove asbestos from schools and other places in a manner that endangered public safety. *See, e.g.*, Trial Tr. at 252. As the district court presiding over those proceedings observed, Mancuso's criminal conduct presented "a serious risk to the community." Memorandum Decision & Order at 4, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Dec. 22, 2010), ECF No. 165. And the Second Circuit likewise concluded that Mancuso was a knowing participant in the scheme, rejecting his contention that he merely committed recordkeeping errors and played a minor role in the conspiracy. *See Mancuso*, 428 F. App'x at 82-83. Mancuso's conduct at his sentencing hearing further underscored his dangerousness: he made an aggressive move towards prosecutors and abruptly fled the courtroom, leading the court to immediately remand him to custody, unlike his other codefendants. *See* Government Opposition to Defendant Steven Mancuso's Motion for Stay of Sentence and Release Pending Appeal, *United States v. Mancuso*, No. 08-cr-

611 (N.D.N.Y. Dec. 15, 2010), ECF No. 162. Accordingly, this case does not present a suitable occasion to consider whether certain felonies may be insufficient to support disarmament because they do not implicate public safety. *See Kanter*, 919 F.3d at 451 (Barrett, J., dissenting).

3. Nor does this case present a suitable vehicle for considering whether the nature of the prior crime in combination with other factors might support an as-applied challenge to disarmament. While the record in this case was not developed with this question in mind, the public record strongly suggests that Mancuso posed a danger to the community sufficient to disarm him for multiple reasons that are inextricably intertwined with his criminal history.

First, Mancuso's criminal history reflects a pattern of habitual drug use, an independent ground for restricting the possession of firearms by dangerous persons. *See* 18 U.S.C. § 922(g)(3); *United States v. Hemani*, No. 24-1234, 2025 WL 354982 (U.S. Oct. 20, 2025) (granting certiorari to review constitutionality of § 922(g)(3)). In Mancuso's federal felony proceedings, the district court noted his history of substance abuse problems in ordering his detention pending appeal. Memorandum Decision & Order at 4, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Dec. 22, 2010), ECF No. 165. And in the underlying state proceedings, Mancuso acknowledged that he had spent the holiday weekend preceding the fatal shooting drinking and taking cocaine and Xanax. (4AD R. at 625, 652, 681-682, 1325, 1456-1457.) At the time, medical professionals noted Mancuso's ten-year history of cocaine addiction and observed that he looked "pretty wiped out from a long night of cocaine." (4AD R. at 143-144, 147, 172, 1462.)

Second, Mancuso's criminal history reflects a pattern of psychiatric admissions that would independently disqualify him from possessing a firearm. *See* 18 U.S.C. § 922(g)(4). The district court in the federal proceedings noted that Mancuso was committed to a psychiatric facility after becoming violent at home. Memorandum Decision & Order at 4, *United States v. Mancuso*, No. 08-cr-611 (N.D.N.Y. Dec. 22, 2010), ECF No. 165. And the state court records reflect that Mancuso was hospitalized twice in October 2021 after making suicidal statements. (4AD R. at 158, 251, 330.)

Third, Mancuso unlawfully assembled and possessed a ghost gun that contained no serial number. As his counsel observed, "[t]his whole case the People have brought has been about a ghost gun from start to finish." (4AD R. at 1684.) Regardless of whether Mancuso retained Second Amendment rights at the time, he did not have a right to possess the firearm at issue in this case. *See* 18 U.S.C. § 922(k); 27 C.F.R. § 478.92; *United States v. Gomez*, 159 F.4th 172, 174 (2d Cir. 2025) (rejecting facial constitutional challenge to § 922(k)). Nor did Mancuso avail himself of legal procedures to obtain a permit for a firearm before assembling his own illegal weapon. To the extent the court would like to consider the appropriate scope of felon disarmament, it should do so in a case where a party has not forfeited their Second Amendment rights on other grounds, seeks to possess an otherwise lawful firearm, and has exhausted state procedures for obtaining a permit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

TODD C. CARVILLE
District Attorney
Oneida County, New York
MICHAEL A. LABELLA*
Assistant District Attorney
235 Elizabeth Street
Utica, New York 13501
(315) 798-5766
malabella@oneidacountyny.gov

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* *Counsel of Record*