

IN THE  
**Supreme Court of the United States**

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STEVEN P. MANCUSO,

*Petitioner,*

*v.*

NEW YORK,

*Respondent.*

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

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**REPLY BRIEF FOR PETITIONER**

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The Court should grant a writ of certiorari in this instance to hold invalid statutes that run afoul of the Second Amendment to the United States Constitution. Steven Mancuso's initial certiorari petition contains a complete recitation of the Statement of the Case as well as the Facts and Procedural history. Mr. Mancuso respectfully incorporates his petition herein. Mr. Mancuso utilizes this filing to reply to the points raised in the State of New York's Opposition to his certiorari petition.

**A. The Court Should Consider Mancuso's Facial Challenge Barring A Person Convicted of Any Crime From Possessing A Firearm Even Within His or Her Home**

New York Penal Law § 265.03(3) (criminal possession of a weapon in the second degree) in conjunction with New York Penal Law § 265.02 (1) (criminal possession of a weapon in the third degree) prohibits a person from possessing a firearm even in the home if that person has a prior conviction for any crime. The term "any crime" encompasses both felonies and misdemeanors. *People v. Hughes*, 921 N.Y.S.2d 300, 301 (2d Dept. 2011).

The "any crime" prohibition is unconstitutionally overbroad. This Court has previously held that succeeding in a "typical facial attack" requires a petitioner to demonstrate "that no set of circumstances exists under which [the statute] would be valid or that the statute lacks any plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472 (2010)(internal quotations and citations omitted). This Court, however, has recognized another type of facial challenge in the context of the First Amendment "whereby a law may be invalidated as

overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Id.* at 473 (emphasis added)(internal quotations omitted).

In its analysis in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 30-31 (2022), this Court recognized the First Amendment facial challenge in the context of the Second Amendment when it held that New York's statute requiring people seeking to carry a firearm outside the home for self-defense purposes to demonstrate "proper cause" was unconstitutionally overbroad. Here, like *Bruen*, the "any crime" law is impermissibly overbroad because a substantial number of its applications are unconstitutional. The law encompasses a conviction for any crime from the most petty form of misdemeanor to a non-violent misdemeanor to a non-violent felony to a serious violent felony. The latter category, which is presumably constitutional, is merely a subset of the statute. A substantial number of "any crimes" contained within the reach of the statute would be unconstitutional in this context. The statute prohibiting a person convicted of "any crime" from possessing a firearm even in the home is unconstitutionally overbroad, and this Court should find it invalid.

**B. The Court Should Consider Mancuso's As Applied Challenge to New York's Laws Prohibiting Non-Violent Felons From Possessing a Firearm Within the Home**

A circuit split exists over the question of the constitutionality of statutes prohibiting non-violent felonies from possessing firearms. *See United States v.*

*Duarte*, 137 F.4th 743 (9<sup>th</sup> Cir. 2025) (*en banc*); *Range v. Attorney General of the United States*, 124 F.4th 218 (3<sup>rd</sup> Cir. 2024); *United States v. Williams*, - F.Supp.3d-, 2025 WL 2969670, at \*5 (S.D. Ill. Oct. 21, 2025)(finding the statute prohibiting firearm possession unconstitutional both as applied and facially). The State of New York, in its opposition to Mr. Mancuso's certiorari petition, recognizes the circuit split but still argues that in 1791 all felonies were punishable by death and, according to the State, forfeiture is permissible because it is a lesser form of punishment than death. The State's assertion is palpably false.

In *Range*, the Third Circuit recognized that the Framers of the United States Constitution did not confiscate guns unless the person or the crime of conviction represented a potential danger to the community, and its historical analysis elucidates the fact that society in the Framers' time restored the right to possess a firearm upon a person's reintegration into society. *Range*, 124 F.4<sup>th</sup> at 231. Moreover, the Third Circuit recognized that felonies like fraud were punishable by lesser sentences such as jail, fines, or whipping not death. *Id.* n. 10. The Third Circuit noted that the felony at issue in *Range* – making false statements to obtain food stamps – was a fraud offense analogous to the types of felonies subject to lesser punishments. *Id.* at 230-231.

Apart from the Third Circuit, one former judge in the Seventh Circuit, now a Justice of this Court, has noted that in 1791, the Framers barred individuals from possessing firearms only when those individuals posed a danger to society. *Kanter v. Barr*, 919 F.3d 437, 451 (7<sup>th</sup> Cir. 2019)(Barett, Circuit J., Dissenting), (*majority*

*opinion abrogated by Bruen).* In *Kanter*, then Judge Barrett noted that “[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are dangerous. Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons. Nor have the parties introduced any evidence that founding-era legislatures imposed virtue-based restrictions on the right; such restrictions applied to civic rights like voting and jury service, not to individual rights like the right to possess a gun. In 1791—and for well more than a century afterward—legislatures disqualified categories of people from the right to bear arms only when they judged that doing so was necessary to protect the public safety.” *Kanter*, 919 F.3d at 451 (dissent).

Here, no connection exists between the felony at issue committed by Mr. Mancuso and a need to protect public safety. The crime is a violation of the Clean Air Act. While the courts have noted that the Clean Air Act crime involves conduct harmful to the public, no analysis converts the actions taken by Mr. Mancuso to a crime of violence. Moreover, Mr. Mancuso’s role in the offense involved fraudulent paperwork and falsifying documents. In essence, a jury found Mr. Mancuso guilty of a crime of fraud similar to the crime of fraud at issue in *Range*. Fraud crimes were not punishable by death in 1791 and Mr. Mancuso’s conduct is not the type of offense requiring the protection of public safety by confiscating his right to a firearm in his home.

In this case, the State of New York impliedly concedes that the non-violent felony issue may warrant a writ of

certiorari; it just urges the Court not to grant certiorari in this case. Instead, the State maintains that if this Court grants a petition for writ of certiorari, it should grant the petition in *Vincent v. Bondi*, No. 24-1156. While Mr. Mancuso certainly does not oppose the certiorari request in *Vincent*, his case and *Vincent* are not mutually exclusive. No reason exists why the Court should not grant certiorari in both matters. *Vincent* addresses the constitutional application of federal law while Mr. Mancuso's matter addresses the application of state law and involves the additional question of the constitutionality of an overly broad state law. Both have similar issues, and a decision in one matter may have reciprocal results in the other matter. Even if one case serves as the lead matter before this Court, the Court should resolve the circuit split and grant the application for certiorari in both *Vincent* and this matter.

### **C. The Court Should Reject the State's Attempt to Malign Mr. Mancuso's Character**

In a less than transparent effort to steer this Court away from the merits of Mr. Mancuso's certiorari petition, the State resorts to character assassination in effort to persuade this Court to deny his petition. The Court should reject the State's tactics. The State attempts to tie Mr. Mancuso to cocaine use and mental health hospitalizations as a means to paint his as a person who should not have a gun. Both assertions are misleading and contravene prior decisions of this Court.

In *United States v. Rahimi*, 602 U.S. 680, 690, 698 (2024), this Court held that when a court finds a person poses a credible threat of violence to another person,

the court may confiscate that person's firearms without violating the Second Amendment to the United States Constitution. *See also, Range*, 124 F.4<sup>th</sup> at 230 ("Rahimi did bless disarming (at least temporarily) physically dangerous people. The law that it upheld required a finding that the defendant represents a credible threat to someone else's physical safety") (internal quotations and brackets omitted).

Here, no court has found that Mr. Mancuso poses a credible threat to someone else's safety. No court has found that he is a drug abuser or addict consistent with the federal prohibition on firearm possession under 28 U.S.C. § 922(g)(3). No court has ever deemed Mr. Mancuso a mental health risk that would prevent him from possessing a firearm. In fact, Mr. Mancuso's overnight hospitalizations occurred immediately *after* his girlfriend's suicide that prompted the gun charge in this case and after a DUI charge where Mr. Mancuso still suffered from the aftermath of his girlfriend's suicide. No court has ever deemed Mr. Mancuso to possess a firearm unfit because of mental health issues.

Finally, the State raises the issue that Mr. Mancuso possessed and manufactured a ghost gun even if he had a constitutional right to possess a firearm. The State's ghost gun argument is a red herring. The State did not charge Mr. Mancuso with possession of a ghost gun. The State did not charge Mr. Mancuso with manufacturing a ghost gun. The State's assertion that it proved beyond a reasonable doubt at trial that Mr. Mancuso manufactured a ghost gun is patently false. Although the State presented testimony regarding the manufacture of a ghost gun, the jury considered only whether Mr. Mancuso was prohibited person under New York law who could not

possess a firearm in his home. The question in this case simply concerns the constitutionality of whether a person convicted of a non-violent felony can possess a firearm in his home. Contrary to the State's contention, Mr. Mancuso argued the constitutionality of the New York "any crime" statutes and its application to a person convicted of a non-violent felony extensively at the trial level and raised the question again on appeal before the Fourth Department and in a review petition before the New York Court of Appeals. This Court should address the constitutionality of statutes that prohibit a person previously convicted of any crime and a person previously convicted of a non-violent felony from possessing a firearm outside or within their home. The Court should correct the existence and application of these unconstitutional statutes.

## CONCLUSION

For the foregoing reasons, this Court should grant Mr. Mancuso's petition for a writ of certiorari to the New York Court of Appeals.

Respectfully submitted,

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