No. _____

In The

Supreme Court of the United States

Dedric Mayfield,

Petitioner,

v.

United States,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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July 14, 2025

QUESTIONS PRESENTED

1. Whether the Second Amendment lets the federal government prohibit people, including Mr. Mayfield, from possessing any firearms for life based only on any past felony conviction.
2. Whether Mr. Mayfield's Sixth Amendment fair trial and due process rights were violated when the district court required his attorney to cooperate with the government to the "maximum extent possible" or start trial on "very bad footing" with the court.

PARTIES TO THE PROCEEDING

The case caption contains the names of all parties to this petition: petitioner Dedric Mayfield and respondent United States.

RELATED PROCEEDINGS

United States Court of Appeals (10th Cir.): *United States v. Mayfield*, No. 23-1108, 134 F.4th 1101 (10th Cir. 2025) (decided April 22, 2025).

United States District Court (Colorado): *United States v. Mayfield*, No. 1:21-CR-00341 (March 24, 2023).

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The issues before the Court of Appeals were whether Mr. Mayfield's conviction under 18 U.S.C. § 922(g)(1) violates the constitution and if his rights to a fair trial and due process were denied based on the actions of the district court immediately before trial. *United States v. Mayfield*, 134 F.4th 1101, 1103 (10th Cir. 2025). The Tenth Circuit affirmed. *Id*. On the Second Amendment issue, the court stuck to its decisions that have insisted that *Bruen* did not require the court to revisit its reasoning upholding the constitutionality of § 922(g). *Id*. at 1108-09. The court also held that though the district court erred in its warning to defense counsel, the error was not structural, an objection would not have been futile, and there was no prejudice. *Id*. at 1104-08; *see also* App. A.

JURISDICTION

The court of appeals issued its decision on April 22, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

The Sixth Amendment provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

"To state the obvious, present-day … gun regulations look nothing like they did at the Founding[.] And if one must look to 'history and tradition' to figure out which modern gun regulations are constitutional, a faithful approach to that test" requires that laws such as 18 U.S.C. 922(g) "fall by the wayside." Daniel Harawa, *Between a Rock and a Gun*, 134 Yale L.J. Forum 100, 101-02 (2024). This case asks this Court to answer whether bans on people possessing firearms due to a past felony conviction, laws that did not exist in any form until mid-twentieth century, are sufficiently analogous to laws at the time of the founding to justify stripping people of their Second Amendment rights for life.

This case also presents an important issue for this Court given the shrinking number of trials in

criminal courts, both state and federal: what is the impact on a defendant's right to a fair trial and effective assistance when the trial judge scolds his attorney to cooperate with the government "to the maximum extent possible" or else be on "bad footing" throughout trial. The Tenth Circuit identified the error. But the proper remedy requires this Court's analysis. The scope of constitutional protections for all defendants is at issue.

A. The district court orders defense counsel to stipulate to the government's evidence to the "maximum extent" possible or start trial on "very bad footing."

Less than a week before trial, the parties met for the final pretrial conference. *See* App. B. The government had submitted a list of 89 exhibits it hoped to introduce at a trial for possession of ammunition. At that point, the defense had not stipulated any were admissible.

"[F]irst of all, let me tell you that is not acceptable," the district court said to counsel after learning he had not stipulated to the government's evidence. The court continued, "I'm going to direct you to … confer with government counsel by tomorrow, and I want you to stipulate to the maximum extent possible to the authenticity and admissibility of these government exhibits."

The court warned that counsel would be "starting on a very bad footing with me if you do not, at least, at a minimum, stipulate to the authenticity of these exhibits." The court said that "[n]othing is going to put this jury to sleep quicker and derail the momentum of both sides if we have to plow through the foundational questioning to establish the authenticity of an exhibit."

The court continued: "As to admissibility, you better have a really good reason why—and of course there are some reasons, and—but I need you to stipulate, to the maximum extent possible given your fiduciary duties to your client. Do we understand each other." Counsel said he understood.

By the time trial began, defense counsel had stipulated to the admissibility and authenticity of nearly all of the government's expected exhibits.

B. Trial goes by in a flash with defense counsel remaining silent in the face of repeated objectionable testimony.

Trial unfolded with the government able to introduce all of its evidence without objection and have its witnesses testify, also without objection. There were no objections even when multiple witnesses narrated videos and offered their opinions, despite their having no first-hand knowledge of what

the videos showed. Multiple witnesses, though not qualified as experts, explained ballistics and a forensic technology to the jury. And several witnesses told the jury what they learned from non-testifying sources about Mr. Mayfield's background.

The government's evidence showed that a shooting occurred that appeared to follow an argument between a person identified as Mr. Mayfield and another man. Video obtained by law enforcement appeared to show the two men engaging in conversation before the other man turned his back and ran down an alley. The person identified as Mr. Mayfield appeared to return to his car before going towards the alley and raising his arm in what a law enforcement officer described as a shooters stance with a gun in his hand.

The jury convicted Mr. Mayfield of possession of ammunition by a prohibited person in violation of 18 U.S.C. § 922(g)(1). He was prohibited based on a prior violent felony conviction. Defense counsel did not challenge § 922(g)'s constitutionality. At the time of Mr. Mayfield's trial and sentencing, *Bruen* had not been decided and binding precedent in the Tenth Circuit had upheld the constitutionality of § 922(g).

On appeal, Mr. Mayfield raised two issues relating to the district court's warning to defense counsel and the violation of his Second Amendment rights. On the Second Amendment issue, the court affirmed, holding that "Prior to *Bruen*, we squarely upheld § 922(g)(1)'s constitutionality," and continue to rely on those past decisions. *Mayfield*, 134 F.4th at 1108. The court wrote that "*Bruen* did not expressly overrule or clearly abrogate" the circuit's earlier

decisions on the issue, even though those cases did not engage—directly or indirectly—with the two-step analysis established in *Bruen*. *Id*. at 1109.

As to the district court's order to cooperate, the Tenth Circuit held the extent of harm could be measured based on what counsel stipulated to after the district court's command. *Id*. at 1106. The court held that the district court's warning to the defense to cooperate with the government or else did not affect the fairness of trial. And since there was no objection, and the court believed an objection would not have been futile, the court addressed the issue under plain error. *Id*. at 1107-08. The court determined the district court erred in making the statements to defense counsel, but the error did not justify reversal. *Id*.

REASONS FOR GRANTING THE PETITION

I. The issue of whether lifetime bans on Second Amendment rights due to any prior felony conviction are constitutional needs to be addressed by this Court.

Starting with *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), when a ban on possessing handguns was held unconstitutional, this Court stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]" The Court repeated the statement in *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010). And Justice Kavanaugh quoted the language in his concurring opinion in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*. 597 U.S. 1, 81 (2022) (Kavanaugh, J., concurring).

But when mentioning "longstanding prohibitions," none of those opinions identified a

specific eighteenth century principle that would justify modern-day felon-in-possession laws like 18 U.S.C. § 922(g). When the language first appeared in *Heller*, the idea of "longstanding" may have included the twentieth century. But *Bruen* "wipe[d] away a large body of [Second Amendment] precedent." Nelson Lund, *Bruen's Preliminary Preservation of the Second Amendment*, The Federalist Society (Nov. 8, 2022).[1] Whether that "wipe" includes the dicta from *Heller* remains an open question. This case allows this Court to address the meaning of that statement and apply *Bruen* to § 922(g).

This Court should resolve the question for three reasons.

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[1] Available at https://fedsoc.org/fedsoc-review/bruen-s-preliminary-preservation-of-the-second-amendment.

First, the statement has caused confusion. This Court stating in *Heller* that its decision should not cast doubt on prohibitions like 922(g) may seem decisive. And one may be forgiven for continuing with that belief when Justice Kavanaugh repeated it as part of his concurring opinion in *Bruen*.

Yet there is plenty of reason to question its validity. For one, neither in *Heller*, *McDonald*, nor *Bruen* did this Court identify an analogue similar to 922(g) from the eighteenth century. Whether there is one cannot be assumed. As Justice Barrett wrote for the Seventh Circuit, "Founding era legislation did not strip felons of the right to bear arms simply because of their status as felons." *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J. dissenting). Similarly, the First Circuit recognized that the first law prohibiting people from possessing firearms due to a

conviction did not surface until 1938 and only "covered those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary." *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011). And as the Fifth Circuit wrote last year, "Simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny." *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024).

This Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024) continued to leave the question about 922(g) type restrictions open. The holding stressed that the restriction at issue there remained constitutional because of its "limited" duration," lasting only while a restraining order was "in effect" that was imposed following an "individual[ized]" determination. 602 U.S. at 690,

699-700. None of those justifications apply to a modern law that prohibits any person with any felony conviction from possessing any firearm *forever*.

Justice Gorsuch's concurrence specifically stated that the question of the constitutionality of gun restrictions absent an individualized finding and limited duration was not answered in *Rahimi*, nor presumably before. *Id.* at 713 (Gorsuch, J., concurring). Or as Justice Thomas wrote in dissent, the language in *Heller* about laws banning felons from possessing guns was "dicta," and not controlling after *Bruen*. *Id.* at 773 n7.

Second, this Court should answer the question posed in this petition because of the sheer number of people who lose their Second Amendment rights for life due to 18 U.S.C. § 922(g) and similar modern laws. About 19 million people in the United

States have a felony conviction. Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2025*, Prison Policy Initiative (Mar. 11, 2025).[2]

The scope of criminalizing possessing of a firearm due to a prior conviction is sweeping. What Mr. Mayfield's case shows is that statutes like § 922(g) can result in people with any felony conviction later being criminally punished if at any time in their life they come into possession of a single bullet. He was not prosecuted or convicted for a shooting, for an assault, or for any conduct traditionally identifiable as justifying criminal prosecution. Instead, he was prosecuted and convicted for having ammunition. All because a statute continues to exist that bans him, and all

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[2] Available at https://www.prisonpolicy.org/reports/pie2025.html.

people like him, from exercising their Second Amendment rights *for life*.

And third, the circuit courts have been all over the map when it comes to applying *Bruen* to criminal regulations. At one end of the spectrum is the Tenth Circuit that has held its pre-*Bruen* test to federal felon-in-possession laws remains unchanged by *Bruen*. *See Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025) (holding that *Bruen* did not abrogate the court's decisions upholding felon-in-possession laws). A cert petition in *Vincent* was filed in this Court on May 8, 2025. *See Vincent v. Bondi*, No. 24-1155.

At the other end is the Third Circuit. That court has twice held, when sitting en banc, that the government cannot meet its burden to show that the federal felon-in-possession statute is "consistent with the Nation's historical tradition of firearm

regulation." *Range v. Garland*, 124 F.4th 218, 228 (3d Cir. 2024) (en banc), *affirming Range v. Garland*, 69 F.4th 96 (3d Cir. 2023) (en banc).

II. Due to the importance of protecting all defendants right to a fair trial with effective assistance of counsel, this Court should address the proper result from a court's erroneous mandate to cooperate with the government or start trial on "very bad footing."

Over sixty years ago, this Court in *In re McConnell*, 370 U.S. 230 (1962) stated that while the Court "appreciate[d] the necessity for a judge" to control what happens in a courtroom, it is "essential to a fair administration of justice that lawyers" be able to effectively "present their clients' cases. An independent judiciary and a vigorous, independent bar are both indispensable parts of our system of justice." *Id*. at 236.

Improper comments from a judge to a defense attorney "may unnerve and demoralize counsel" and ultimately "impair his ability to function effectively[.]" Bennet L. Gershman, *Judicial Interference with Effective Assistance of Counsel*, 31 Pace L. Rev. 560, 570 (2011). Whatever discretion in case management a district court may have, it "does not authorize a judge to improperly impede defense counsel's representation in ways that destroy a defendant's right to a fair trial and the effective assistance of his attorney." *Id.* at 561-62.

These principals were discarded in Mr. Mayfield's case where the needed independence of defense counsel was thwarted based on a court's focus on efficiency.

Though the Tenth Circuit agreed there had been error, it did not reverse. Its decision took a much

too narrow view of the error. In doing so, the opinion will only give cover to future court actions that force defense attorneys to make decisions based on what is best for the judge and not best for the defendant.[3]

The ramifications of the court's error are broad and warrant attention from this Court. **First,** all judges are concerned with judicial economy and efficiency. But whether to go to trial or not, no matter one's view of the evidence, is a decision for a defendant to make. And once that decision is made, it is the responsibility of defense counsel to prioritize the defendant's best interest in all trial decisions.

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[3] Of course there may often be times when doing what is best for the defendant and the defense overlaps with, at minimum, not angering or annoying the trial judge. Even still, for any defense attorney to be effective, that attorney must believe that when there is not overlap, what is best for the defendant comes first.

When decisions about trial tactics do not line up with a judge's expected schedule, the result is not to order one party—and just the party with constitutional rights on the line—to speed up the process or else be on "very bad footing." The takeaway from the district court telling defense counsel to stipulate to the government's evidence to the "maximum extent possible" or else enter trial on "bad footing" was that defense counsel should help the government streamline its case to appease the court. Whether that made sense from a defense point of view was irrelevant.

Second, the issue is important to protect whatever remains of the right to a fair trial. Even assuming a judge properly has concerns about efficiency in the courtroom, the concern here was overblown in a world of so few trials. In the federal

system, fewer than three percent of cases ever reach trial. *See* John Gramlich, *Fewer than 1% of defendants in federal criminal cases were acquitted in 2022*, Pew Research Center (June 13, 2023).[4] If courts are allowed to pressure, coerce, and threaten defense counsel into making the government's job easier, that percentage will only decrease.

And lastly, the error here is the type that should be identified as structural. Though structural errors are limited, as they should be, this conduct by the district court is the rare error that should be deemed structural.[5] If all the court had done was

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[4] Available at https://www.pewresearch.org/short-reads/2023/06/14/fewer-than-1-of-defendants-in-federal-criminal-cases-were-acquitted-in-2022.

[5] Even structural errors require preservation. The error here should have been held preserved. The court's warning to defense that ended with "do we understand each other," showed the issue was raised and decided, and the court was "done." *See United*

encourage the defense to talk with the government, maybe that could be excused. But the court did not encourage. It "direct[ed]" counsel to not only confer but to stipulate, and do so to the "maximum extent possible." The court also made sure counsel knew there would be repercussions for failing to stipulate to the court's liking. The court warned counsel that the defense would be "starting on a very bad footing with me if you do not." And the court's reasoning for the warning was unmistakable: the court did not want trial to take one second longer than required for the government to present its case as it desired.

A district court's warning of repercussions if the defense causes trial to take too long sends a

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States v. Middagh, 594 F.3d 1291, 1295 (10th Cir. 2010) (holding that counsel need not object when a district court's actions indicate the "matter [was] done" for discussion).

chilling message. But the effect of the court's warning will not always be apparent on any record. While a level of harm could be identified in objections missed, the prejudice goes well beyond that. Every decision for the rest of trial and sentencing was affected by the district court's error, all to the detriment of Mr. Mayfield's rights.

By the court threatening defense counsel with harsh treatment if counsel did not stipulate to the maximum extent possible, the "entire conduct of the trial from beginning to end [was] obviously affected." *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991). It is impossible to know how trial may have unfolded had the court not ordered counsel to cooperate with the government.

The court's dictate had to ring through counsel's ears throughout trial. If the court found it

unacceptable not to stipulate without what it considered a "really good reason," any defense attorney would be worried about the court treating objections the same way—don't dare object without a good reason or else find you and your client on very bad footing with the court. Again, one can only speculate how counsel would have represented Mr. Mayfield as trial moved forward without the court's interference. *See Sullivan v. Louisiana*, 508 U.S. 275, 280-81 (1993) (erroneous reasonable doubt instruction was structural error because one could only speculate what a properly charged jury might have done).

Judges must think about how long trials may take. Still, that the defense never has any obligation to ease the prosecution's ability to prove its case cannot be brushed aside. It was here. When this type

of error had a lasting impact beyond merely if the defense stipulated to the evidence, it became structural. This Court should grant Mr. Mayfield's petition to ensure the right to a fair trial with an attorney with undivided loyalty remains protected.

III. At minimum, this petition should be held pending resolution of the cert petition filed in *Vincent v. Bondi*.

The Tenth Circuit insisted it was bound by its pre-*Bruen* precedent when it denied Mr. Mayfield's Second Amendment challenge. Whether the Court was right to do so is part of the question raised by the petitioner in *Vincent v. Bondi*, No. 24-1155. As of the filing of this petition, the government response in *Vincent* to the petition for writ of certiorari is due with this Court on or before August 11, 2025. And so this petition at minimum should be held pending the result of *Vincent*.

CONCLUSION

For the foregoing reasons, petitioner Dedric Mayfield asks that this Court to grant his petition for writ of certiorari on both or either issue, and reverse the judgment of the United States Court of Appeals for the Tenth Circuit affirming his conviction.

Respectfully submitted

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Filed: July 14, 2025

APPENDIX

Appendix A: Opinion of the United States Court of Appeals for the Tenth Circuit, 134 F.4th 1101 (April 22, 2025)

Appendix B: District court's order to defense to stipulate to the government's expected evidence