

No. _____

In the Supreme Court of the United States

MARK RICHARD WALTERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 18 U.S.C. § 922(g)(1) comport with the Second Amendment as applied to a defendant whose most serious prior felony convictions involve fraud?

PARTIES TO THE PROCEEDING

Petitioner is Mark Richard Walters who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mark Richard Walters seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished but available at *United States v. Mark Richard Walters*, No. 24-50458, 2025 WL 1165197 (5th Cir. Apr. 22, 2025). It is reprinted at Appendix 1a–2a to this Petition. The district court’s judgment is attached at Appendix 8a–13a.

JURISDICTION

The panel opinion of the Fifth Circuit was entered on April 22, 2025. This petition is timely under S. Ct. R. 13.1 & 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Section 922(g)(1) of Title 18 reads in relevant part:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

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.

DIRECTLY RELATED PROCEEDINGS

1. *United States v. Mark Richard Walters*, 4:21-CR-327, United States District Court for the Western District of Texas. Amended judgment and sentence entered on May 30, 2024. (Appendix 8a–13a).
2. *United States v. Mark Richard Walters*, No. 24-50458 (5th Cir. Apr. 22, 2025). (Appendix 1a–2a).
3. *United States v. Mark Richard Walters*, No. 22-50774 (5th Cir. Feb. 9, 2024). (Appendix 3a–7a).

STATEMENT OF THE CASE

I. Facts

Petitioner, Mark Richard Walters, was in his vehicle in Big Bend National Park when he was approached by Park Rangers who had received a report of a verbal altercation. Petitioner cooperated with the Rangers and told them that he had a handgun in his vehicle, which officers seized. They later learned that Petitioner had prior felony convictions and outstanding warrants and arrested him. That day, the Austin Police Department contacted the Rangers and requested they seize any electronics from Petitioner. Austin Police had received a report from a woman, K.P., claiming that after she and Petitioner ended their dating relationship, Petitioner emailed intimate photos of K.P. to her work colleagues. As a result, Rangers seized cell phones, computers, and other electronic devices from Petitioner's vehicle. The case was eventually transferred to federal authorities for prosecution and FBI agents analyzed Petitioner's devices, finding evidence connecting him to the emails sent with K.P.'s photos.

II. District Court Proceedings

On April 28, 2022, Mark Richard Walters pleaded guilty to a two-count superseding indictment charging felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and internet stalking, in violation of 18 U.S.C. § 2261A(2)(B). Although the indictment did not list a particular felony predicate for Count 1, the government cited his 2009 Credit Card Abuse conviction as the factual basis during the rearraignment hearing.

Petitioner was initially sentenced to 71 months on Count 1 and 60 months on Count 2, to run concurrently with each other. He appealed, arguing that the district court applied an erroneous Guideline range because the PSR lacked sufficient evidence that he possessed a high-capacity magazine and that his prior conviction for Retaliation does not qualify as a crime of violence. The Fifth Circuit agreed and remanded the case for re-sentencing. App. at 3a–7a. Petitioner also argued that his conviction under 18 U.S.C. § 922(g)(1) violates the Second Amendment but the Fifth Circuit held that the error was not “plain” for purposes of plain-error review. *Id.* at 7a.

On remand, Petitioner filed a Motion to Reconsider Order Accepting Guilty Plea and to Dismiss Count One. He argued that 18 U.S.C. § 922(g)(1) is unconstitutional both on its face and as applied to him. Petitioner made clear that he was not denying the underlying conduct alleged in Count One. Rather, a constitutionally valid guilty plea must be “intelligent,” and a plea cannot be “intelligent” if the defendant misunderstands “the essential elements of the crime” to which he pleads guilty. *See Bousley v. United States*, 523 U.S. 614, 618 (1998). He argued that Rule 11 also required that he understand the nature of the offense. As for Rule 11’s requirement that a sufficient factual basis support the plea, Petitioner explained it served as a safeguard for defendants “who may plead with an understanding of the nature of the charge, but without realizing that his conduct does not actually fall within the definition of the crime charged.” *See United States v. Spruill*, 292 F.3d 207, 215 (5th Cir. 2002)).

He also argued that § 922(g)(1) is unconstitutional both facially and as applied to him because it violates his Second Amendment right to bear arms. Petitioner pointed out that he possessed the firearm for self-defense in a national park known for dangerous wildlife. He cited decisions from the Third and Ninth Circuits requiring the government to show a historical tradition of disarming individuals like the defendant, arguing the government could not do so for Petitioner. *See Range v. Att’y Gen.*, 69 F.4th 96 (3d Cir. 2023); *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024), *rev’d*, 137 F.4th 743 (9th Cir. 2025). Petitioner asked the district court to reconsider its acceptance of his guilty plea or, alternatively, permit him to withdraw it.

The district court denied the motion, concluding that Petitioner had asked for reconsideration of the acceptance of his guilty plea too late, and that he failed to show a “fair and just reason” to withdraw his plea under the *United States v. Carr*, 740 F.2d 339 (5th Cir. 1984) factors. The court noted that much of Petitioner’s argument hinged on this Court’s then-forthcoming decision in *United States v. Rahimi*, 602 U.S. 680 (2024), and it refused to speculate on what this Court might do. The court declined to rule on Petitioner’s request to dismiss Count One.

The district court ultimately sentenced Petitioner to 41 months of imprisonment and three years of supervised release on Count One and Count Two to run concurrently.

III. Appeal

On Appeal, Petitioner renewed his Second Amendment challenge to his conviction. Petitioner had the following felony convictions at the time he was

convicted under § 922(g)(1): Attempted Criminal Possession of a Forged Instrument to wit a commercial instrument under New York Penal Law § 170.25; Fraud and related activity in connection with access devices under 18 U.S.C. § 1029; Credit Card Abuse under Texas Penal Code § 32.21; Retaliation under Texas Penal Code § 36.06; and Tampering with Evidence under Texas Penal Code § 37.09. He argued that the government could not establish a historical tradition of disarming individuals like him—individuals without a violent history.

This Fifth Circuit again rejected Petitioner’s Second Amendment challenge, holding the court’s ruling in his first appeal still applied under the law-of-the-case doctrine. App. at 1a–2a.

REASONS TO GRANT THIS PETITION

- I. This Court should grant certiorari in this case to resolve the profound uncertainty, including an acknowledged circuit split, regarding the constitutionality of 18 U.S.C. § 922(g)(1) under the Second Amendment.**

A. The courts of appeal are divided.

In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court held that when a firearm restriction contravenes the text of the Second Amendment, it is valid only as much as it is consistent with the nation’s history and tradition of valid firearm regulation. *Bruen*, 597 U.S. at 19. It rejected the notion that firearm regulations may be affirmed based on a sufficiently compelling governmental interest. *Id.*

Section 922(g)(1) of Title 18 forbids the possession of firearms by most persons convicted of an offense punishable by more than a year’s imprisonment. Since *Bruen*, “Section 922(g)(1)’s constitutionality has divided courts of appeals and district courts.” Supplemental Brief for the Federal Parties in Nos. 23- 374, *Garland v. Range* 23-683, at 2 (June 24, 2024)(“Supplemental Brief in Range”), available at https://www.supremecourt.gov/DocketPDF/23/23-374/315629/20240624205559866_23-374%20Supp%20Brief.pdf, last visited June 24, 2025. As the Ninth Circuit recently observed en banc, “[f]our circuits have upheld the categorical application of § 922(g)(1) to all felons.” *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. May 9, 2025) (en banc) (citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), and *United*

States v. Dubois, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025)). The en banc Ninth Circuit joined this group in a decision that produced four separate opinions, including a partial dissent. *Duarte*, 137 F.4th at 762. In so doing, it overruled a panel opinion that had found the statute unconstitutional as applied to a person with prior convictions for vandalism, drug possession, and evading arrest. *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir. 2024), *reh’g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *different results on rehearing* 137 F.4th at 747 (9th Cir. May 9, 2025) (en banc). This brings the total number of courts rejecting all constitutional challenges to the statute to five.

But as the en banc Ninth Circuit court also recognized, two more Circuits, including the court below, “have left open the possibility that § 922(g)(1) might be unconstitutional as applied to at least some felons,” *Id.* (citing *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024), and *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024))(emphasis in original), while the en banc Third Circuit has actually held the statute unconstitutional as applied to a man with a prior felony conviction for making a false statement to obtain food stamps, *Range v. Att’y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024)(en banc). Many District Courts, though not the majority, have also found the statute unconstitutional in individual cases. *See* Supplemental Brief in *Range*, at *4-5, nn.1-3 (collecting cases); *see also United States v. Gomez*, __F.Supp.3d__, 2025 WL 971337 (N.D. TX March 25, 2025) (marijuana possession), appeal pending. As the government observed last year, moreover, “[s]ome of those

decisions have involved felons with convictions for violent crimes, such as murder, manslaughter, armed robbery, and carjacking.” *Id.* at **4-5, & n.1.

Further, the Courts of Appeals have acknowledged extensive disagreement and uncertainty regarding certain methodological issues relevant to the resolution of *Bruen* challenges. These include the relevance of laws at Founding that did not directly regulate firearms, such as capital punishment and estate forfeiture, *compare Range*, 124 F.4th at 231 (capital punishment and estate forfeiture for non-violent crime not relevant), *with Diaz*, 116 F.4th at 469-470 (giving dispositive weight to the availability of capital punishment for crimes analogous to the defendant’s prior conviction); the status of pre-*Bruen* circuit precedent, *compare Vincent*, 127 F.4th at 1265–66 (circuit precedent unaffected, and collecting cases), *with Williams*, 113 F.4th at 648 (*Bruen* displaces earlier circuit precedent), and the significance of *dicta* in *Heller*, *Bruen*, and *Rahimi* regarding “presumptively valid” restrictions on firearm ownership, *compare Duarte*, 137 F.4th at 750 (relying heavily on such passages to affirm §922(g)(1)) *with Diaz*, 116 F.4th at 465-466 (declining to give them controlling weight). And Circuit opinions resolving challenges to §922(g)(1) frequently generate dissenting and concurring opinions, attesting to the pervasive uncertainty and disagreement in the area. *See Range*, 124 F.4th at 221 (six opinions, one dissent); *Duarte*, 137 F.4th at 745 (four opinions, one partial dissent) (reversing panel); *Williams*, 113 F.4th at 642 (concurring opinion from Judge concurring only in judgment in panel decision); *Atkinson v. Garland*, 70 F.4th 1018, 1019 (7th Cir. 2023) (dissent from panel decision).

B. This Court should resolve the uncertainty regarding the constitutional status of 18 U.S.C. § 922(g)(1).

The issue merits intervention by this Court. There is a clear and acknowledged circuit split on the constitutionality of a federal statute. At least seven Circuits have weighed in, and there is relative balance as between those maintaining that the statute is always constitutional, on the one hand, and those acknowledging its constitutional vulnerabilities, on the other. The split will therefore not resolve spontaneously. And as can be seen above, a substantial volume of lower court opinions provide an ample resource to assist this Court in the resolution of the matter.

The matter is profoundly weighty. Two Circuits (the Third and Ninth) have dealt with the issue en banc, demonstrating that it meets the standards for discretionary review. And these two en banc treatments of the issue drew nine amici, further attesting to its importance. *See Range*, 124 F.4th at 221; *Duarte*, 137 F.4th at 745. More than 6,000 people suffered conviction for violating this statute in Fiscal Year 2024 alone, almost all of whom went to prison. United States Sentencing Commission, *Quick Facts, 18 U.S.C. §922(g) Firearms Offenses*, at 1, last visited May 22, 2025, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quickfacts/Felon_In_Possession_FY24.pdf. And of course most states have comparable statutes, which means that the true number of persons incarcerated each year for possessing a firearm after a felony conviction may be many times this number. *See, e.g., Alaska Stat. § 11.61.200(a)(1), (b)(1)-(3); Ariz. Rev. Stat. Ann. §§ 13-904(A), (B); 13-905; 13-906; Cal. Penal §§ 12021, 4852.17; Col. Rev. Stat. § 18-12-108.*

The lack of clear answers about the constitutionality of this statute (and its state analogues) is intolerable for many reasons. First, there is a strong possibility that substantial numbers of Americans are in prison, and that more will go to prison, for the exercise of a fundamental constitutional right. That should be anathema in a free constitutional republic. Second, and conversely, the lack of clarity as to the scope of the Second Amendment right to own a firearm after a felony conviction may deter lawful prosecutions of criminal activity, jeopardizing public safety. Third, this lack of clarity may deter constitutionally protected conduct, or encourage reliance on mistaken beliefs about the scope of a constitutional right, resulting in illegal conduct and imprisonment. *See United States v. Schnur*, 132 F.4th 863, 871 (5th Cir. 2025) (Higginson, J., concurring) (expressing concern about the notice problems that flow from uncertainty regarding the constitutional status of §922(g)(1)).

II. This case well presents the issue.

This case is an apt vehicle to resolve the uncertainty. The issue is fully preserved, as Petitioner filed a detailed motion to dismiss the indictment based on the Second Amendment. He twice pressed the issue at the Fifth Circuit.

Further, Petitioner's challenge could well be resolved in his favor; at a minimum, it does not present factors that could cause the case to be resolved on narrow, unilluminating grounds. Petitioner possessed a firearm that was lawful in itself, not a machinegun, sawed-off shotgun, or other kind of weapon that might be outside the scope of the Second Amendment. *See Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016). He possessed the gun in a place where self-protection is necessary—a

national park with wild animals. And although Petitioner pleaded guilty, he did not sign a plea agreement or waive appeal.

Petitioner has been convicted of multiple felonies, but this will be true of anyone presenting a challenge to §922(g)(1). None of Petitioner's priors are violent: Attempted Criminal Possession of a Forged Instrument to wit a commercial instrument under New York Penal Law § 170.25; Fraud and related activity in connection with access devices under 18 U.S.C. § 1029; Credit Card Abuse under Texas Penal Code § 32.21; Retaliation under Texas Penal Code § 36.06; and Tampering with Evidence under Texas Penal Code § 37.09. If this Court requires that the defendant's prior felonies show him to be a danger to the community, Petitioner could prevail. Indeed, his collection of prior felonies – serious but not including violence – may be ideal to identify the relevant Second Amendment line.

CONCLUSION

Petitioner asks this Court to grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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