No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GEBER SOTO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

---

PETITION FOR WRIT OF CERTIORARI

PHILIP G. GALLAGHER
Federal Public Defender
Southern District of Texas

R. VICTORIA GARCÍA-CROSS
Assistant Federal Public Defender
Attorneys for Appellant
440 Louisiana Street, Suite 1350
Houston, Texas 77002-1056
Telephone: (713) 718-4600

QUESTIONS PRESENTED

1. Whether the government's prosecution of petitioner under 18 U.S.C. § 922(a)(1)(A) violates the Second Amendment on its face.
2. Whether the government's prosecution of petitioner under 18 U.S.C. § 922(a)(1)(A) violates the Second Amendment as applied to someone like Petitioner, who did not transfer firearms to buyers he knew to be prohibited, and who was not a member of a prohibited group.

PARTIES TO THE PROCEEDINGS

All parties to petitioner's Fifth Circuit proceedings are named in the caption of the case before this Court.

LIST OF DIRECTLY RELATED PROCEEDINGS

- *United States v. Soto*, No. 4:23-cr-191-1, U.S. District Court for the Southern District of Texas. Judgment entered August 29, 2024.
- *United States v. Soto*, No. 24-20378, U.S. Court of Appeals for the Fifth Circuit. Opinion entered May 2, 2025.

TABLE OF CONTENTS

TABLE OF CITATIONS

Page

CASES

TABLE OF CITATIONS – (cont'd)

Page

CASES – (cont'd)

STATUTES AND RULES

TABLE OF CITATIONS – (cont'd)

Page

STATUTES AND RULES – (cont'd)

CONSTITUTIONAL PROVISIONS

MISCELLANEOUS

TABLE OF CITATIONS – (cont'd)

Page

MISCELLANEOUS – (cont'd)

PETITION FOR WRIT OF CERTIORARI

Petitioner Geber Soto petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion (Pet. App. 1a-2a) is unreported but available at 2025 WL 1276242.

JURISDICTION

The Fifth Circuit issued its opinion and judgment on May 2, 2025. *See* Pet. App. This petition is filed within 90 days of that date. *See* Sup. Ct. R. 13.1 & 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution 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.

***

18 U.S.C. § 922 provides:

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; . . .

STATEMENT OF THE CASE

Petitioner Geber Soto was prosecuted in federal district court for violating 18 U.S.C. § 922(a)(1)(A), which prohibits anyone "except a licensed importer, licensed manufacture, or licensed dealer" from engaging in the business of "dealing in firearms." On April 26, 2024, Mr. Soto appeared at a guilty plea hearing before the district court. C.A. ROA.89-107. There, he agreed that from June 26, 2022, until about October 16, 2022, he had "willfully engaged in the business of dealing in firearms" by "purchasing and reselling firearms for a profit," and he "did not possess a federal firearms license" during that time. C.A. ROA.99-104.[1]

In August 2024, the district court sentenced Mr. Soto to 12 months and one day of imprisonment, to be followed by one year of supervised release, and a $100 special assessment. C.A. ROA.122.

Petitioner timely appealed, arguing, amongst other things, that Section 922(a)(1)(A) violated the Second Amendment as applied to him and on its face. Def. C.A. Br. 8-22 (ECF No. 21). The Fifth Circuit affirmed the district court's judgment, finding that Petitioner had not shown plain error as to those issues. Pet. App. 1a-2a. It relied on *United States v. Sanches*, 86 F.4th 680, 687 (5th Cir. 2023), which had rejected a plain-error challenge to 18 U.S.C. § 922(d)(1).

[1] The basis for federal jurisdiction in the district court was 18 U.S.C. § 3231.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition to settle important questions of constitutional law that have arisen in the wake of the Court's decisions in *Bruen* and *Rahimi*. Those decisions established a new framework for Second Amendment challenges by imposing a burden on the government to justify its modern firearms restrictions by pointing to sufficiently analogous historical restrictions on firearms. The Fifth Circuit has now issued a decision incorrectly applying this analysis in the context of Section 922(a)(1)(A) prosecutions. This Court's intervention is necessary to remedy the error and resolve this question of great national importance.

I. The Court should grant the petition to resolve this important question concerning whether 18 U.S.C. § 922(a)(1)(A) violates the Second Amendment.

A. This Court's decisions in *Bruen* and *Rahimi* established a new framework for Second Amendment litigation.

In *Bruen* and *Rahimi*, this Court established a new framework for Second Amendment litigation. The Second Amendment to the United States Constitution mandates that 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." U.S. Const. amend. II. In *Heller*, the Court held that the Second Amendment codified an individual right to possess and carry weapons, the core purpose of which is self-defense in the home. *See District of Columbia v. Heller*, 554 U.S. 570, 628 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding "that individual self-defense is the central component of the Second Amendment right").

After *Heller*, federal courts of appeals "adopted a two-step inquiry for analyzing laws that might impact the Second Amendment." *Hollis v. Lynch*, 827 F.3d 436, 446 (5th Cir. 2016). In the first step, courts would ask "whether the conduct at issue falls within the scope of the Second Amendment right." *United States v. McGinnis*, 956 F.3d 747, 754 (5th Cir. 2020) (quoting *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012)). This involved determining "whether the law harmonizes with the historical traditions associated with the Second Amendment guarantee." *Id.* at 754. If the regulated conduct was outside the scope of the Second Amendment, then the law was constitutional. *Id.* Otherwise, courts proceeded to the second step to determine whether to apply strict or intermediate scrutiny. *Id*. This Court has now repudiated that framework. *See Bruen*, 597 U.S. at 19.

In *Bruen*, this Court announced a new framework for analyzing Second Amendment claims, abrogating the two-step inquiry adopted by the lower courts. The Court rejected the second step of that framework because "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context." *See Bruen*, 597 U.S. at 19. The Court reasoned that "[s]tep one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history." *Bruen*, 597 U.S. at 19.

The Court elaborated that, under the new framework, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 24. The government "must then demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

Only then may a court conclude that the individual's conduct falls outside of the Second Amendment's "unqualified command." *Id.* (citation omitted).

In *Rahimi*, the Court confirmed that the *Bruen* framework applies to prosecutions under 18 U.S.C. § 922 and clarified the government's burden. As the Court had "explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. The government must demonstrate that "the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id.* (quoting *Bruen*, 597 U.S. at 29 & n.7). "Why and how the regulation burdens the right are central to this inquiry." *Id.* (citing *Bruen*, 597 U.S. at 29). The government "need not [present] a 'dead ringer' or a 'historical twin'" to be successful, but the law must be struck down under the Second Amendment if the government does not present a sufficiently analogous historical precursor. *Id.* (quoting *Bruen*, 597 U.S. at 30).

The particular statutory provision at issue in *Rahimi* was 18 U.S.C. § 922(g)(8)(C)(i), which prohibits individuals from possessing a firearm when they are subject to a domestic violence restraining order that "includes a finding that he 'represented a credible threat to the physical safety of [an] intimate partner,' or a child of the partner or individual." *Rahimi*, 602 U.S. at 685 (quoting Section 922(g)(8)). The Court carefully analyzed surety and going armed laws from the founding era, and it held that Section 922(g)(8)(C)(i) was sufficiently analogous to those laws. *Id.* at 693-98. Surety laws "authorized magistrates to require individuals suspected of future misbehavior to post a

bond"; "could be invoked to prevent all forms of violence, including spousal abuse"; and, "[i]mportantly for this case, . . . also targeted the misuse of firearms." *Id.* at 695-96. Going armed laws prohibited "riding or going armed, with dangerous or unusual weapons, to terrify the good people of the land," punishable with arm forfeiture and imprisonment. *Id.* at 697.

The Court found that, taken together, these "founding era regimes" were sufficiently analogous to Section 922(g)(8)(C)(i) "in both why and how it burdens the Second Amendment right." *Id.* at 698. Like the historical laws, Section 922(g)(8)(C)(i) "applies to individuals found to threaten the physical safety of another"; "restricts gun use to mitigate demonstrated threats of physical violence"; and imposes a temporary restriction. *Id.* at 698-99. Surety laws "were not a proper historical analogue" for the New York licensing regime at issue in *Bruen* because New York's law "effectively presumed that no citizen had . . . a right [to carry a firearm], absent a special need." *Id.* at 699. By contrast, surety laws were a sufficient historical precursor for Section 922(g)(8)(C)(i) because "it presumes, like the surety laws before it, that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others." *Id.* at 700.

B. Section 922(a)(1)(A) violates the Second Amendment.

Section 922(a)(1)(A) cannot survive the new test set forth in *Bruen* and *Rahimi* because (1) the Second Amendment's plain text covers the conduct prohibited by Section 922(a)(1)(A), the receipt and transfer of firearms, and (2) the regulation is not consistent

with this Nation's historical tradition of firearm regulation. This Court's intervention is necessary to settle this important question of constitutional law.

1. The Second Amendment's plain text covers the conduct prohibited by Section 922(a)(1)(A), and the statute is presumptively unconstitutional.

Bruen first requires this Court to consider whether the challenged statute, Section 922(a)(1)(A), regulates "conduct" covered by the plain text of the Second Amendment. *Bruen*, 597 U.S. at 17. It does.

The conduct in this case involves the receipt and transfer of firearms. Section 922(a)(1)(A) prohibits any person except "a licensed importer, licensed manufacturer, or licensed dealer," from "engag[ing] in the business of importing, manufacturing, or dealing in firearms, or in the course of such business, [from] ship[ing], transport[ing], or receiv[ing] any firearm in interstate or foreign commerce." The term "engaged in the business," as applied to a dealer in firearms, means "a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms." 18 U.S.C. § 921(a)(21)(C).

The plain text of the Second Amendment covers this conduct. As noted above, 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." U.S. CONST. amend. II. When analyzing the text of the Second Amendment, this Court should interpret that text based on the "normal and ordinary" meaning of each word, as "known to ordinary citizens in the founding generation." *Heller*, 554 U.S. at 576–77.

Here, the normal and ordinary meaning of "keep" and "bear" extends to the receipt and transfer of firearms. The Supreme Court has previously said that the meaning of "keep" is to possess, and the meaning of "bear" is to carry. *Heller*, 553 U.S. at 581–92. But those terms necessarily include receipt and transfer. The Supreme Court recognized that the act of possession is connected to the act of receipt in *Ball* v. *United States*, 470 U.S. 856, 862 n.9 (1985). There, the Court considered whether a defendant could be convicted under both 18 U.S.C. § 922(h) for illegal receipt of a firearm and 18 U.S.C. § 1202(a)[2] for illegal possession of the same firearm. *See id.* at 857. It held a defendant could not be convicted of both crimes because the possession and receipt of a firearm involve "the same criminal act." *Id.* at 862. A person "who receives a firearm must also possess it," the Court explained, while a person who possesses a firearm must either receive or manufacture it. *Id.* at 862, 862 n.9; *see also Luis* v. *United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring) (noting that constitutional rights include all "closely related acts necessary to [the] exercise" of that right); *see generally McCulloch* v. *Maryland*, 17 U.S. 316, 407 (1819) ("[W]e must never forget that it is a *constitution* we are expounding" and "[i]ts nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.").[3]

[2] Effective November 15, 1986, Congress repealed section 1202(a) and amended section 922(g) to include the section 1202(a) possession offense. *United States* v. *Cassidy*, 899 F.2d 543, 545 (6th Cir. 1990).

[3] *See also Luis*, 578 U.S. at 26 (Thomas, J., concurring) (recognizing that the Second Amendment right to keep and bear arms includes the right to possess ammunition); *see also McConnell* v. *Federal Election Comm'n*, 540 U.S. 93 (2003) (Scalia, J., concurring in part and

The historical background of the Second Amendment confirms this textual interpretation. The American Revolution was driven, in part, due to concerns from the American colonists about British interference with the receipt and transfer of firearms within the colonies. In 1774, King George III of England banned imports of ammunition and firearms into the American colonies. *See* 5 Acts Privy Council 401, reprinted in Connecticut Courant, Dec. 19, 1774, at 3. Americans viewed these importation bans as restrictions on their liberties. For example, South Carolina's General Committee issued a proclamation in response to the importation bans, declaring: "[B]y the late prohibition of exporting arms and ammunition from England, it too clearly appears a design of disarming the people of America, in order the more speedily to dragoon and enslave them." John Drayton, Memoirs of the American Revolution 166 (1821).

The ratification debates reflected this understanding too. Following the creation of the Constitution, the states held conventions to debate the question of ratification. *See* Paul Finkelman, *"A Well-Regulated Militia": The Second Amendment in Historical Perspective*, 76 CHI.-KENT L. REV. 195, 197–200 (2000). James Madison, the principal author of the Second Amendment, participated in the Virginia Convention and led the pro-ratification faction. *See* Jay R. Wagner, *Gun Control Legislation and the Intent of the Second Amendment*, 37 VILL. L. REV. 1407, 1423 (1992). He faced opposition from the

---

dissenting in part) (noting that the First Amendment right to speak implies the right to engage in "financial transactions that are the incidents of its exercise"); *Minneapolis Star & Tribune Co.* v. *Minn. Comm'r of Revenue*, 460 U.S. 575 (1983) (same); *Carey* v. *Population Servs., Int'l*, 431 U.S. 678, 689 (1977) (recognizing that "[l]imiting the distribution of nonprescription contraceptives to licensed pharmacists clearly imposes a significant burden on the right of the individuals to use contraceptives.").

anti-federalists, led by Patrick Henry, who expressed concerns about how the proposed constitution placed too much power in the hands of the federal government. *See* Finkelman at 197. Henry was especially adamant that additional protections were needed to prevent Congress from depriving states of the power to purchase arms. When speaking to the delegates on June 9, 1788, he warned that the proposed constitution, without a Bill of Rights, would allow "[t]he power of arming the militia, *and the means of purchasing arms*, [to be] taken from the States by the paramount powers of Congress."[4] The Virginia ratification included a recommendation for a Bill of Rights, and Madison drafted the Second Amendment largely in response to these recommendations made by Virginia and other ratifying states.[5] The Second Amendment was thus understood, "in the founding generation," to encompass the right to purchase or acquire firearms. *Heller*, 554 U.S. at 576–77.

Post-ratification records reflect that same understanding. During his time as Secretary of State, Thomas Jefferson corresponded with foreign diplomats concerning United States arms sales. These conversations emerged after the 1793 Neutrality

[4] *See* Patrick Henry, Virginia Convention, June 9, 1788, https://www.consource.org/document/journal-notes-of-the-virginia-ratification-convention-proceedings-1788-6-9/ (emphasis added).

[5] *See* Wagner at 1423 (noting that eight states recommended constitutional amendments and five of those sought guarantees for the right to keep and bear arms); *see, e.g.*, Ratification of the Constitution by the State of North Carolina, Nov. 21, 1790, https://avalon.law.yale.edu/18th_century/ratnc.asp (proposing that "the people have a right to keep and bear arms"); Ratification of the Constitution by the State of Rhode Island, May 29, 1790, https://avalon.law.yale.edu/18th_century/ratri.asp (proposing similar language); Ratification of the Constitution by the State of New York, July 26, 1788, https://avalon.law.yale.edu/18th_century/ratny.asp (proposing similar language); Ratification of the Constitution by the State of New Hampshire, June 21, 1788, https://avalon.law.yale.edu/18th_century/ratnh.asp (proposing that "Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion.").

Proclamation, in which the United States declared itself neutral in a then-ongoing war between France and Great Britain.[6] On May 15, 1793, Jefferson wrote a letter to British diplomat George Hammond, responding to reports of American citizens selling firearms to "an agent of the French government."[7] Jefferson emphasized that "[o]ur citizens have always been free to make, vend, and export arms," and he noted that such activities were "the constant occupation and livelihood of some of them." He wrote a similar letter to French diplomat Jean Baptiste Ternant on that same day, repeating that "our citizens have been always free to make, vend, and export arms," and emphasizing that "the liberty to make [purchases] will be enjoyed equally."[8]

The relevant case law confirms that Second Amendment protections extend to the receipt and transfer of firearms. While this Court has not explicitly addressed that question, the Fifth Circuit has previously suggested that the Second Amendment covers such conduct. In *Mance* v. *Sessions*, this Court addressed a Second Amendment challenge to Section 922(a)(3), a statute that "restrict[s] the sale of handguns by a [licensed firearms dealer] to residents of the state in which the FFL is located." *Mance* v. *Sessions*, 896 F.3d 699, 704–05 (5th Cir. 2018). There, the Court treated the right to sell firearms as conduct protected by the Second Amendment. *See id.* It ultimately found the statute constitutional

[6] *See* Proclamation of Neutrality (Apr. 22, 1793), https://avalon.law.yale.edu/18th_century/neutra93.asp.

[7] *See* Memorial from George Hammond, with Jefferson's Notes, 8 May 1793, Founders Online, National Archives, https://founders.archives.gov/documents/Jefferson/01-25-02-0624; *see also* Letter from Thomas Jefferson to George Hammond, 15 May 1793, Founders Online, National Archives, https://founders.archives.gov/documents/Jefferson/01-26-02-0031.

[8] Letter from Thomas Jefferson to Jean Baptiste Ternant, 15 May 1793, *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/01-26-02-0034.

after applying means-ends scrutiny, but it never expressed doubt about whether the conduct at issue fell within the scope of the Second Amendment.[9]

Similarly, the Ninth and Seventh Circuits have held that the Second Amendment right to keep and bear arms necessarily includes a right to acquire arms. *See Teixeira* v. *County of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) ("the core Second Amendment right to keep and bear arms for self-defense wouldn't mean much without the ability to acquire arms") (cleaned up);[10] *Ezell* v. *City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) ("The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use."); *see also United States v. Hosford*, 843 F.3d 161, 167 (4th Cir. 2016) ("assum[ing], without holding, that the federal prohibition against unlicensed firearm dealing burdens conduct protected by the Second Amendment"). The Third Circuit has gone further, holding the Second Amendment extends its protections to "the sale of firearms." *United States* v. *Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010), *abrogated on other grounds by Range* v. *Attorney Gen.*, 69 F.4th 96 (3d Cir. 2023); *see also Fraser* v. *Bureau of Alcohol, Tobacco, Firearms & Explosives*, 672 F. Supp. 3d 118, 128 (E.D. Va. 2023) (Payne, J.)("[G]iven its ordinary, commonsense, and logical meaning the right to 'keep arms' . . . of necessity includes the right, inter alia, to purchase arms.").

---

[9] *Cf. McRorey* v. *Garland*, 99 F.4th 831, 839 & n.19 (5th Cir. 2024) (finding that the Second Amendment does not cover the right to "purchase" firearms, but not addressing the right to acquire and transfer firearms; relying entirely on dicta from *Heller*; and explicitly noting that "[a]ll we now decide is that plaintiffs have not met the burden for a preliminary injunction"); *see also United States* v. *Medina-Cantu*, 113 F.4th 537, 539 (5th Cir. 2024) (noting that, under the rule of orderliness, the earlier decision controls in the event of inconsistency).

[10] *Cf. United States v. Vlha*, __ F.4th __, 2025 WL 1890595, at *2 (9th Cir. July 9, 2025) (finding that "a vendor challenging a firearms regulation must be able to demonstrate that the would-be purchasers' core right of possession is being meaningfully contrained.").

2. The government cannot prove Section 922(a)(1)(A) is consistent with this Nation's historical tradition of firearms regulation.

Because Section 922(a)(1)(A) regulates conduct protected under the Second Amendment, it is presumptively unconstitutional. *See Bruen*, 597 U.S. at 17. To overcome that burden, the government must demonstrate that the challenged regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* Specifically, it must identify founding-era laws that are "relevantly similar" to the challenged regulation. *See Rahimi*, 602 U.S. at 692 (noting that "[w]hy and how the regulation burdens the right are central to this inquiry"). *Id.* The government cannot meet that burden as to Section 922(a)(1)(A).

Before the founding era, there was a tradition of disarming perceived religious or political dissidents, but not of restricting the receipt and transfer of firearms. Starting in the fifteenth century, English law targeted potentially disloyal communities—like the Catholics and the Welsh—for disarmament. *See* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 257–65 (2020). Following the English Civil War of the mid-seventeenth century, the Stuart monarchs more aggressively disarmed perceived dissidents. *See Heller*, 554 U.S. at 592–93. For example, the Militia Act of 1662 permitted disarming those adjudged to be "dangerous to the Peace of the Kingdom"; the 1671 Game Act involved disarmament of those who did not own property; and forfeiture of "armour" could be ordered for those who went "armed to terrify the King's subjects." *Id.*; *see Kanter* v. *Barr*, 919 F.3d 437, 457 (7th Cir. 2019) (Barrett, J., dissenting). Through the eighteenth century, English law targeted

"papists and other disaffected persons, who disown his Majesty's government," for disarmament, to quell concerns over potential rebellions and insurrections. *See* Greenlee at 260–61. Thus, before the founding era, England had a long tradition of disarming perceived religious and political dissidents; it did *not* have a tradition of broadly restricting the acquisition or transfer of firearms.

Similar laws emerged in colonial America. During the seventeenth and eighteenth centuries, the American colonies enacted laws disarming enslaved people and Native Americans, or perceived political dissidents. *See* Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America*, 25 LAW & HIST. REV. 139, 156–61 (2007) (hereinafter "Churchill"). The colonies also enacted laws prohibiting the sale of firearms to certain populations. For example, "[i]n response to the threat posed by [Native American] tribes, the colonies of Massachusetts, Connecticut, Maryland, and Virginia all passed laws in the first half of the seventeenth century making it a crime to sell, give, or otherwise deliver firearms or ammunition to [Native Americans.]" *Teixeira*, 873 F.3d at 685 (citing state laws). But these laws did not have a common "why." They were passed during wartime or periods of unprecedented social upheaval, and aimed to tamp down on political threats to our nascent nation's integrity. They also had a different "how," because they imposed restrictions on the person to whom a firearm could be transferred—not on the person who could transfer it.

It was not until the twentieth century that legislatures began to impose general licensing requirements for the receipt and transfer of firearms. Congress enacted the first federal gun control statute in 1938, the Federal Firearms Act. *See* Federal Firearms Act of

1938, 75 Cong. Ch. 850, § 2(e), 52 Stat. 1250, 1251 (repealed). That statute, for the first time, required licenses for manufacturers, importers, and sellers engaged in interstate or foreign firearm commerce. *See id.* Congress expanded this law in 1968, requiring licenses for all individuals involved in the sale of firearms. Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213 (codified at 18 U.S.C. §§ 921-928). These statutes are well beyond the historical sources cited in *Bruen*. *See Bruen*, 597 U.S. at 34–70 (cautioning that "not all history is created equal," and that historical evidence long post-dating ratification of the Second Amendment in 1791 or of the Fourteenth Amendment in 1868 provides limited insight into its meaning). These modern statutes are therefore not sufficient to show a historical tradition of regulating the receipt and transfer of firearms.

Ultimately, there are no founding-era laws that broadly prohibited individuals from receiving or transferring firearms without a license—only laws restricting the transfer of firearms to prohibited persons. Section 922(a)(1)(A) is therefore unconstitutional on its face. It is also unconstitutional as applied to Mr. Soto, because there is no evidence in the record that he transferred firearms to buyers he knew to be prohibited, or that he himself was a member of a group temporarily prohibited from possessing firearms. *See* C.A. ROA.101 (noting Mr. Soto violated Section 922(a)(1)(A) because he "acquired" firearms "from a gun show located in Pasadena, Texas," and then "transferred [those firearms] to another person."); *cf. Rahimi*, 602 U.S. at 698.

C. This case presents a suitable vehicle for resolving the question presented.

While Mr. Soto did not raise this Second Amendment issue in the district court—thus leading the Fifth Circuit to resolve the issue under plain-error review—that fact should not dissuade the Court from granting certiorari in this case.

For one, this issue is plain within the meaning of Federal Rule of Criminal Procedure 52(b) based on this Court's prior decisions in *Bruen* and *Rahimi*, as discussed above.

Additionally, this Court may grant certiorari in a case where the central legal question is not raised in the district court. It has done so previously. For example, in *Tapia*, the Court granted certiorari and addressed the merits of a legal question that had not been presented to the district court—namely, whether sentences could permissibly be imposed or lengthened to further rehabilitative or treatment purposes. *Tapia* v. *United States*, 265 U.S. 319, 334-335 (2011). It decided that question in petitioner's favor and then remanded the case to the Ninth Circuit for that court to apply the remaining prongs of plain-error review in the first instance. On remand to the Ninth Circuit, the government conceded that the error was "plain," and the Ninth Circuit ultimately granted relief even on plain-error review. *United States v. Tapia*, 665 F.3d 1059, 1061–63 (9th Cir. 2011). Similarly, the Court has granted certiorari and decided important merits questions and then remanded the case for the court of appeals to decide in the first instance the question of harmless error. *See, e.g.*, *Skilling* v. *United States*, 561 U.S. 358, 414 (2010).

For all these reasons, the Court should grant certiorari in this case to decide the important question of whether Section 922(a)(1)(A) violates the Second Amendment on its face or as applied to Mr. Soto.

CONCLUSION

The petition should be granted.

Date: July 25, 2025

Respectfully submitted,

PHILIP G. GALLAGHER
Federal Public Defender
Southern District of Texas

By *s/ R. Victoria García-Cross*
R. VICTORIA GARCÍA-CROSS
Assistant Federal Public Defender
Attorneys for Petitioner
440 Louisiana Street, Suite 1350
Houston, Texas 77002-1056
Telephone: (713) 718-4600