No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH LEE BETANCOURT,
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

Whether 18 U.S.C. § 922(g)(1)—the federal statute that prohibits a person from possessing a firearm if he has been convicted of "a crime punishable by imprisonment for a term exceeding one year"—complies with the Second Amendment.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- United States District Court for the Southern District of Texas:
  United States v. Joseph Lee Betancourt, No. 4:21-cr-229-1

- United States Court of Appeals for the Fifth Circuit:
  United States v. Joseph Lee Betancourt, No. 24-20070

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joseph Lee Betancourt petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's published decision (App. 1a-8a) is reported at 139 F.4th 480.

JURISDICTION

The Fifth Circuit entered judgment on June 4, 2025. App. 1a. This petition is filed within 90 days of that date. *See* Sup. Ct. R. 13.1. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITTUIONAL AND STATUTORY PROVISIONS

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.

18 U.S.C. § 922(g)(1) provides:

> (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.

STATEMENT OF THE CASE

1. In December of 2019, local police officers in Houston, Texas, arrested petitioner Joseph Lee Betancourt after finding him in constructive possession of two firearms. App. 2a. A criminal history check revealed two 2014 convictions under the Texas aggravated assault statute, which, in pertinent part, makes it a crime punishable by up to 20 years for any person to "intentionally, knowingly, or recklessly" cause "serious bodily injury to another." Tex. Penal Code §§ 22.01(a)(1) and 22.02(a)(1), (b); *see id.* 12.33(a). Those convictions arose out of a single incident in 2013, in which a 19-year old petitioner drove his car in a manner that caused a wreck that, in turn, resulted in one of the two passengers in his car, as well as the other motorist, sustaining bodily injuries that had to be corrected by surgery. App. 3a. The state conviction records made clear that both convictions were predicted solely on the theory that petitioner had "recklessly" caused the collision, and the resulting injuries, by driving at "an excessive speed" (107 miles per hour) and "disregarding a traffic control device." Def. C.A. Reply Br. 1-2 (quoting Indictments, *State v. Joseph Lee Betancourt*, Nos. 1403257 & 1403258 (Harris County Dist. Ct. [248th] Jan. 27, 2014)); *see* App. 3a, 6a.

2. A federal grand jury in the Southern District of Texas indicted petitioner for possessing the firearms despite knowing he had previously been convicted of "a crime punishable by imprisonment for a term exceeding one year," in violation 18 U.S.C. § 922(g)(1). App. 2a-3a. Petitioner moved to dismiss the indictment, arguing, in pertinent part, that Section 922(g)(1) violates the Second Amendment both on its face, and as applied to him, under the framework established in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). App. 3a. Specifically, he contended that the statute's categorical ban on arms

possession solely on account of an individual's status as a prior felon—or, at a minimum, as a felon whose predicate conviction rested on reckless, non-inherently violent conduct—is inconsistent with the historical tradition of firearm regulations in this country. App. 3a; *see* C.A. ROA.59-69.

The district court denied the motion. App. 3a. Petitioner subsequently entered a conditional guilty plea to one of the two counts, reserving the right to appeal the denial of his motion to dismiss. App. 3a. The district court later sentenced petitioner to time served (approximately 14 months) and three years of supervised release. App. 3a.

3. The Fifth Circuit affirmed. App. 1a-8a. The court of appeals rejected petitioner's facial challenge as foreclosed by Circuit precedent. App. 5a (citing *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *cert. denied*, No. 24-6625, 2025 WL 1727419 (June 23, 2025)).

As to petitioner's as-applied challenge, the court of appeals reasoned that the fact that petitioner recklessly "disregarded a flashing red light while driving at his vehicle's maximum speed, . . . causing a major crash and serious injuries to two people," demonstrated that he "'poses a threat to public safety.'" App. 6a (citing *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025)). "Specifically," because petitioner "'put' his passenger's 'safety at risk,' along with the safety of the driver of the other vehicle," the court of appeals concluded that his conviction under Section 922(g)(1) fit within a "'longstanding tradition of disarming persons with a violent criminal history analogous to'" his. App. 6a-7a & n.6 (quoting *United States v. Williams*, 113 F.4th 637, 659 (6th Cir. 2024); *Schnur*, 132 F.4th at 869).

REASONS FOR GRANTING THE PETITION

The circuits are not only split, but desperately confused, over (1) the extent to which 18 U.S.C. § 922(g)(1) is subject to as-applied Second Amendment challenge, (2) the appropriate analytical benchmark for evaluating such claims, and (3) where to draw the line between constitutional and unconstitutional applications of the statute. Petitioner's case is a stark example. Under the decision below, a single instance of reckless driving resulting in non-trivial injury is, if prosecuted criminally, rather than civilly, sufficient cause for permanent divestment of the core Second Amendment right—a result plainly at odds with this Court's longstanding recognition that, "[h]owever blameworthy," reckless, injury-causing conduct "is 'far removed from the 'deliberate kind of behavior associated with violent criminal use of firearms.'" *Borden v. United States*, 593 U.S. 420, 439 (2021) (quoting *Begay v. United States*, 553 U.S. 137, 147 (2008)). Clarification as to whether, and if so, when, a prior instance of modern-day felonious conduct may form the basis for disarmament on pain imprisonment is a matter of immense importance to every stakeholder in the criminal justice system. And this case is a suitable vehicle for providing that clarity. The Court should accordingly grant the petition. Alternatively, the Court should hold petitioner's case pending the disposition of any other case, *e.g.*, *Vincent v. Bondi*, No. 24-1155; *Duarte v. United States*, No. 25A123, the Court deems a more desirable vehicle for review of this important constitutional question.

1. As this Court recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and reiterated in *Bruen*, 597 U.S. 1, the Second Amendment guarantees to "all members of the political community" the individual right to possess and carry firearms in common use for self protection. *Heller*, 554 U.S. at 581. *Bruen* adopted a "test rooted in the Second

Amendment's text, as informed by history," for determining whether a modern-day regulation impermissibly infringes that right. *Bruen*, 597 U.S. at 19. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 24. At that point, it is government's burden to justify the law "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Ibid*.

To do so, the government must show that the challenged law is "'relevantly similar' to laws that our tradition is understood to permit." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). "Why and how the regulation burdens" the Second Amendment right "are central to this inquiry." *Ibid.* A contemporary law will likely pass the "relevantly similar" test where there is substantial evidence of founding-era laws that "impos[ed] similar restrictions" on firearm use "for similar reasons." *Ibid*.

In *Rahimi*, for example, the government presented "ample" historical evidence that the founding generation approved of the temporary disarmament of individuals found to pose "a clear threat of physical violence to another" upon a "judicial determination[]" that they "likely would threaten or had threatened another with a weapon." *Id.* at 698-99; *see id.* at 693-97. The contemporary law at issue, 18 U.S.C. § 922(g)(8)(C)(i), imposes a similar burden on the Second Amendment right by disarming individuals only while subject to a domestic-violence restraining order backed by a judicial finding that the person "'represents a credible threat to the physical safety' of another"; and that temporary "restrict[ion] on gun use" is similarly designed "to mitigate demonstrated threats of physical violence." *Id.* at 698-99 (quoting 18 U.S.C. § 922(g)(8)(C)(i)). Because the modern provision aligned

with both the "how" and the "why" of the historical tradition of "allow[ing] the Government to disarm individuals who present a credible threat to the physical safety of others," its application to the defendant posed no Second Amendment problem under *Bruen*. *Id.* at 700.

2. Even prior to *Rahimi*, the question whether Section 922(g)(1)'s permanent, status-based ban on firearm possession comports with a sufficiently similar American regulatory tradition was the subject of an entrenched split among the circuits. *Rahimi* did not resolve that question. And the circuits' division, as well as their confusion, has only deepened. As an en banc panel of the Ninth Circuit recently recognized, *see United States v. Duarte*, 137 F.4th 743, 747-48 (9th Cir. 2025) (en banc), the courts of appeals remain intractably divided over how to analyze Second Amendment challenges to Section 922(g)(1) after *Bruen* and *Rahimi*. Indeed, two courts have already passed on the issue en banc. And they have come to opposite conclusions.

a. On remand for reconsideration in light of *Rahimi*, the full Third Circuit again held Section 922(g)(1) unconstitutional as applied to a person convicted of a nonviolent felony—food stamp fraud—who did not "pose[] a physical danger to others." *Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc).[1] The Third Circuit held that *Bruen* abrogated its prior Second Amendment precedent and that, despite Mr. Range's prior felony conviction, he was part of "the people" protected by the Second Amendment. *Id.* at 224-26. The court thus required the government to show "a longstanding history and tradition

[1] Despite seeking and receiving an extension of time to petition for this Court's review in *Range*, the government ultimately let the deadline pass without filing a timely petition. *See Bondi v. Range*, No. 24A881 (extension granted to April 22, 2025).

of depriving people like [Mr.] Range of their firearms," and held that the government did not meet its burden by pointing to founding era laws that "disarmed groups [the governments] distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks." *Id.* at 229-30, 232. The court further rejected the government's "dangerousness" principle, which would "cover all felonies and even misdemeanors that federal law equates with felonies." *Id.* at 230. The court found that principle to be "far too broad," operating "at such a high level of generality that it waters down the right." *Ibid.* (quoting *Rahimi*, 602 U.S. at 740) (Barrett, J., concurring)).

The Third Circuit also dismissed the notion that Section 922(g)(1)'s "de facto permanent disarmament" was justified by founding era laws that harshly punished criminal offenses like fraud with death or estate forfeiture. *Id.* at 230-31. The court reasoned that "the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation's history and tradition." *Id.* at 231. The court acknowledged, but expressly repudiated, the Fifth Circuit's contrary reasoning in *Diaz*, *supra*, as the product of a fatal misreading of *Rahimi*. *Ibid.* As for estate forfeiture, the Third Circuit noted that, unlike the lifetime ban imposed by Section 922(g)(1), a felon subject to estate forfeiture in the founding era "could acquire arms after completing his sentence and reintegrating into society." *Ibid*.

b. In stark contrast, the en banc Ninth Circuit recently held that (1) its pre-*Bruen* precedent upholding Section 922(g)(1) against Second Amendment challenge is still good law, *see Duarte*, 137 F.4th at 750-52, and that (2), even analyzed under *Bruen*, the statute is constitutional as applied to all felons, including nonviolent ones. *See id.* at 755-61. As

the court noted, in reaching these conclusions, it "align[ed] [its]sel[f] with the Fourth, Eighth, Tenth, and Eleventh Circuits." *Id.* at 748; *see Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025), *pet'n for cert. filed*, No. 24-1155 (May 8, 2025); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, No. 24-6818, 2025 WL 1549804 (June 2, 2025); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024), *cert. denied*, No. 24-6517, 2025 WL 1426707 (May 19, 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated, and remanded*, 145 S. Ct. 1041 (2025), *reinstated on remand*, 139 F.4th 887, 890-94 (11th Cir. June 2, 2025). Those circuits also continue to follow their pre-*Bruen* precedent, treating Second Amendment challenges as foreclosed. *See, e.g.*, *Hunt*, 123 F.4th at 700 (holding that "neither *Bruen* nor *Rahimi* meets this [c]ourt's stringent test for abrogating otherwise-controlling precedent and that [the court's] precedent on as-applied challenges thus remains binding"). They have upheld Section 922(g)(1) as constitutional in all its applications, perceiving "no need for felony-by-felony litigation regarding [the statute's] constitutionality." *Jackson*, 110 F.4th at 1125. In contrast to the Third Circuit, in these circuits, "the Second Amendment doesn't prevent application of [Section] 922(g)(1) to nonviolent offenders." *Vincent*, 127 F.4th at 1266; *see Duarte*, 137 F.4th at 748 (holding that "[Section] 922(g)(1) is not unconstitutional as applied to non-violent felons").

The Ninth Circuit recognized that the Third Circuit held Section 922(g)(1) "unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps." *Duarte*, 137 F.th at 748 (citing *Range*, 124 F.4th at 222-23). But the Ninth Circuit agreed with the government that "two regulatory principles"—that "(1) legislatures may disarm those who have committed the most serious crimes; and (2) legislatures may

categorically disarm those they deem dangerous, without an individualized determination of dangerousness"—"suppl[y] a [historical] basis for the categorical application of [Section] 922(g)(1) to felons." *Id.* at 755. As to the first principle, the Ninth Circuit agreed with the Fifth Circuit's conclusion, in *Diaz*, that "if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible." *Id.* at 756 (footnote omitted). But the Ninth Circuit went even further and rejected the argument that application of Section 922(g)(1) should be limited to "felonies that at the time of the founding were punished with death, a life sentence, or estate forfeiture." *Id.* at 758. Rather, the Ninth Circuit held that legislatures have broad discretion to define what constitutes a felony, and that any conduct a current legislature labels a felony could serve as the basis for a Section 922(g)(1) prosecution, regardless of its similarity to founding era laws. *See id.* at 758-59.

Regarding the second argument, the Ninth Circuit relied on the very historical laws disarming disfavored groups, such as Catholics, Native Americans, Blacks, and Loyalists, that the Third Circuit rejected in *Range*. *See Duarte*, 137 F.4th at 759-61. Despite recognizing that "these laws reflect overgeneralized and abhorrent prejudices that would not survive legal challenges today," the Ninth Circuit determined that those laws would only be suspect "today under *other* parts of the Constitution" and so could be relied upon as an independent historical justification for Section 922(g)(1)'s categorical divestment of the Second Amendment right. *Id.* at 760.

Judge VanDyke, joined by Judges Ikuta and Nelson, concurred in part and dissented in part. *See id.* at 773-805. On the merits, Judge VanDyke dissented from the majority's view at nearly every turn and criticized the majority for "deepen[ing] a circuit split" and

"intentionally taking the broadest possible path" by upholding Section 922(g)(1) in every conceivable application. *Id.* at 779 & n.3.[2]

Notably, Judge VanDyke flagged at least three flaws in the "greater includes the lesser" rationale adopted by the majority. First, Judge VanDyke pointed out that the historical sources the majority deemed telling were "even sparser than that which *Bruen* found inadequate." *Id.* at 786. Second, Judge VanDyke agreed with then-Judge Barrett's determination that the historical argument that death was the standard penalty for serious crimes in the founding era was "shaky" and that "[t]he obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Id.* at 787-90 (quoting *Kanter v. Barr*, 919 F.3d 437, 458, 462 (7th Cir. 2019) (Barrett, J., dissenting)). Third, Judge VanDyke criticized the majority for "bulldoz[ing] right over" the "glaring problem" that many modern felonies were classified as misdemeanors, or not even criminal offenses, at common law and up to the founding. *Id.* at 790-91. Although Judge VanDyke disagreed with the Fifth Circuit's reliance in *Diaz* on founding era death penalty laws, he agreed with *Diaz*'s reasoning that a "shifting benchmark" of whatever Congress decides to label a felony "should not define the limits of the Second Amendment, without further consideration of how that right was understood when it was first recognized." *Id.* at 791 (quoting *Diaz*, 116 F.4th at 469).

c. Meanwhile, the Fifth and Sixth Circuits have each forged unique paths for as-applied Section 922(g)(1) challenges under the *Bruen-Rahimi* framework.

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[2] Judge VanDyke only agreed with the majority that Mr. Duarte's felon status did not remove him from "the people" covered by the Second Amendment's text. *Id.* at 780 n.4.

i. Like the Third Circuit (and the Sixth), the Fifth Circuit holds that *Bruen*, as clarified in *Rahimi*, unequivocally abrogated its old precedent dismissing Second Amendment challenges to Section 922(g)(1) under the means-end scrutiny that *Bruen* repudiated. *Diaz*, 116 F.4th at 465. And like those two circuits, the Fifth Circuit holds that the statute is susceptible to as-applied challenge, rejecting the contention that forever prohibiting an individual's exercise of core Second-Amendment conduct on the basis of felon status alone "does not meet the level of historical rigor required by *Bruen* and its progeny," given that "not all felons today would have been considered felons at the Founding." *Id.* at 469. But that is where the cohesion ends.

ii. In *Diaz*, the Fifth Circuit deemed the proper point of comparison to be the type and severity of punishment the founding generation doled out for particular criminal conduct. *Id.* at 467-70. If the defendant's viable Section 922(g)(1) predicates include a crime that is akin to one that would have led to "permanent disarmament"—like affray and going-armed laws, *id.* at 470-71—or otherwise would have been punishable by death or estate forfeiture, *id.* at 467-69, then the statute's application is relevantly similar to our Nation's tradition of firearm restrictions. As noted, the Third Circuit expressly repudiated this reasoning in *Range*. *See* 124 F.4th at 231.

As petitioner's case illustrates, however, the Fifth Circuit's standard has shifted toward embracing the sort of nebulous "dangerousness" inquiry that the Third Circuit also rejected as "far too broad" in *Range*, 124 F.4th at 230. The panel below rightly perceived that *Diaz*'s "how was it punished at the Founding" test was a nonstarter in petitioner's case: battery "was a misdemeanor at th[at] time," not "a felony punishable by death or disarmament." App. 6a; *see Curtis Johnson v. United States*, 559 U.S. 133, 141 (2010) (observing

that, "[a]t common law, battery—*all* battery, and not merely battery by the merest touching—was a misdemeanor, not a felony") (original emphasis). So, instead, the panel concluded that Section 922(g)(1)'s application to petitioner comported with a "longstanding tradition of disarming persons with a violent criminal history" because his reckless, injury-causing operation of a vehicle "put" others' "safety at risk," and thus demonstrated, in the panel's view, that he "poses a threat to public safety." App. 6a-7a & n.6 (citations omitted).

iii. The Sixth Circuit has likewise blessed as-applied challenges. *See United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). The Sixth Circuit interprets the historical record as supporting the disarmament of "presumptively dangerous" groups who posed a threat to public order—like religious minorities, Native Americans, loyalists, and freedmen—but reasoned that, because these laws all allowed individuals to show that they posed no danger, an individual alleged to have violated Section 922(g)(1) may "demonstrate that [his] particular possession of a weapon posed no danger to peace," and thus "falls outside of [the statute]'s constitutionally permissible scope." *See id.* at 650-59. While the contours of this freewheeling "dangerousness" inquiry are opaque at best, the court did make clear that its test does not embrace the Fifth Circuit's initial severity-of-the-punishment rationale: "Felons, after all, don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment." *Id.* at 658.

In short, the courts of appeals are at sea over the availability of, and standard for evaluating, Second Amendment challenges to Section 922(g)(1) under the *Bruen-Rahimi* methodology.

3. In addition to confounding the circuits, the question presented is of immense importance. And it warrants review in petitioner's case.

a. Despite serious concerns as to Section 922(g)(1)'s constitutionality in a wide array (if not all) of its applications under *Bruen*, the statute continues to result in the imprisonment of thousands of American citizens each year. And, for fear of the same fate, countless more individuals are deterred from engaging in conduct that would otherwise come within the Second Amendment's core. Especially now that en banc panels of different courts of appeals have reached diametrically opposed conclusions as to the scope and availability of as-applied review of Second Amendment challenges to Section 922(g)(1), the need for the definitive guidance only this Court can provide is more urgent than ever.

b. Petitioner's case is an excellent vehicle for providing that guidance. He challenged the statute's constitutionality both on its face, and as applied to him, at every stage of the proceedings. And the court of appeals reached, and resolved, both challenges on their merits. App. 5a-8a.

CONCLUSION

The Court should grant the petition. Alternatively, the Court should grant review in one or more of the many cases presenting the same question, *e.g.*, *Vincent v. Bondi*, No. 24-1155; *Duarte v. United States*, No. 25A123, and hold petitioner's case pending disposition of that case.

Respectfully submitted,

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