No. 25-5514

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

REPLY BRIEF FOR PETITIONER

PHILIP G. GALLAGHER
Federal Public Defender
Southern District of Texas

EVAN G. HOWZE
Assistant Federal Public Defender
Counsel of Record
440 Louisiana Street, Suite 1350
Houston, Texas 77002
(713) 718-4600
evan_howze@fd.org

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

REPLY BRIEF FOR PETITIONER

The government is well aware that the split over the question presented has enlarged, and cemented, since it urged the Court to take up that question in the immediate aftermath of *Rahimi*. *See* Supp. Br. for Federal Parties 2–10, *Garland v. Range*, No. 23-374 (June 26, 2024) (*Range* Supp. Br.). At that time, four circuits had definitively held that 18 U.S.C. § 922(g)(1) remains consistent with the Second Amendment in every conceivable application. *Id.* at 3–4. Two circuits, in contrast, had taken *Bruen*'s shift to a comparative-historical analysis to leave Section 922(g)(1) open to as-applied challenge and invalidated the statute (though under divergent rationales) as to defendants with certain non-violent predicate felonies. *See ibid.* (collecting cases). Now, as the government acknowledges, *see* Br. in Opp. 11–13, *Vincent v. Bondi*, No. 24-1155 (Aug. 11, 2025), the number of circuits that refuse to entertain as-applied claims has grown to six (the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh); three circuits (the Third, Fifth, and Sixth) now expressly hold that Section 922(g)(1) is amenable to as-applied attack; two of those circuits have either held the statute invalid, or made clear that it would be error not to so hold, when applied on the basis of various fraud and false-statement convictions, *see Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (invalid as to defendant convicted of food-stamp fraud); *United States v. Williams*, 113 F.4th 637, 659 (6th Cir. 2024) ("trust[ing] district courts [to] have no trouble concluding that" the statute is invalid as to crimes like "mail fraud" and "making false statements"); and both camps boast one en banc decision apiece. *See Range*, 124 F.4th at 232; *United States v. Duarte*, 137 F.4th 743, 755-62 (9th Cir. 2025), *pet'n for cert. pending* (No. 25-425).

The government nevertheless insists, by reference primarily to its brief opposing review in *Vincent*, *supra* (No. 24-1155), that this monumental and recurring question no longer warrants the Court's review. Mem in Opp. 1–2. The government now claims that the lower courts' "disagreement" is "shallow." Mem in Opp. 2. And it forecasts that the split "may evaporate" in any event in light of its recent decision to exhume, and promise to responsibly administer, a long-defunded statutory avenue for seeking discretionary restoration of arms-bearing rights on a prospective basis. *Ibid.* (citing 18 U.S.C. § 925(c)). Plus, the government registers its view that, even if this Court's appraisal of the relevant history were to reveal Section 922(g)(1)'s class-wide ban to be unduly restrictive as to at least some modern felons, petitioner would still lose under the government's preferred and sweeping "dangerous individuals" test. *Vincent* BIO 7; *accord* Mem in Opp. 2–3.

None of this overcomes the case for review. The conflict is deep and warrants review at this time, particularly in light of the Court's grant of plenary review in *Hemani v. United States*, No. 24-1234. Section 925(c)—even if here to stay—neither moots the circuit split nor lessens the importance of resolving it. And the fact that Section 922(g)(1)'s application to petitioner rests on conduct that this Court has repeatedly deemed insufficiently predictive of future firearm misuse—reckless driving—illustrates the extent to which the prevailing confusion in this area is in serious tension with this Court's precedents. The government's conspicuous silence on that point only underscores that this case is a strong vehicle.

1. The government does not contest that as a general matter the circuits remain hopelessly confused about whether, and how, to conduct as-applied Second Amendment analysis under *Bruen* and *Rahimi*. Nor could it: after all, the government just successfully persuaded this Court that the particular manifestation of that confusion in the related context

of 18 U.S.C. § 922(g)(3) warranted review. *See United States v. Hemani*, No. 24-1234, 2025 WL 2949569 (Oct. 20, 2025). As the government there emphasized, even after *Rahimi*, Section 922(g)(3)'s consistency with the Nation's tradition of firearm regulation has produced "a multi-sided and growing" "four-way circuit conflict." Reply Brief for the Petitioner at 7-8, *United States v. Hemani*, No. 24-1234 (Aug. 5, 2025) (*Hemani* Reply). Notably, by the government's own telling, that "deep" conflict principally pits courts of appeals that eschew as-applied *Bruen* analysis altogether against those that hold *Bruen* compels such analysis, and it is compounded by the wide range of variance in the form of the as-applied analysis among the courts on that side of the split. *Ibid.*

That is precisely the situation with respect to Section 922(g)(1). The government concedes, as it must, that *Rahimi* likewise failed to cure the "disagreement among the courts of appeals" as to whether that statute "is susceptible to as-applied challenges." Mem in Opp. 2. And its attempt to write off this entrenched circuit conflict as "shallow" is impossible to square with its insistence that the conflict in *Hemani* is "multi-sided" and "deep[.]" *Hemani* Reply 7. At least six circuits have eschewed the possibility of as-applied Second Amendment challenge to a Section 922(g)(1) conviction; three circuits, in contrast, have definitively held that courts must entertain such challenges; and each of the three latter circuits has adopted an as-applied framework that differs widely from the rest. *See* Pet. 6–7, 11–13. The government had it right before: the courts of appeals "have reached conflicting results when confronted with as-applied Second Amendment challenges to Section 922(g)(1)," and this Court "should grant plenary review to resolve" the conflict. *Range* Supp. Br. 2–3.

2. Intervening now is particularly warranted in light of the Court's decision to take up *Hemani*.

As noted, the courts of appeals are just as flummoxed as to how to apply the *Bruen* framework to Section 922(g)(1)'s ban on firearm possession by felons as they are with respect to Section 922(g)(3)'s ban on firearm possession by "unlawful drug users." Moreover, in defending both statutes as categorically consistent with the Second Amendment, the government relies on the same purported historical tradition of "permit[ting] legislatures to restrict the possession of firearms by dangerous individuals." *Vincent* BIO 7; *accord* Petition for Writ of Certiorari at 8-9, *United States v. Hemani*, No. 24-1234 (June 2, 2025) (*Hemani* Pet.). According to the government, *Rahimi* "involved one aspect of that ['broader'] principle: restrictions based on a judicial finding that 'an individual poses a clear threat of physical violence to another,'" *Vincent* BIO 7 (quoting *United States v. Rahimi*, 602 U.S. 680, 698 (2024)); *see Hemani* Pet. 8 (same, with nearly identical phrasing), while both Section 922(g)(1) and Section 922(g)(3) involve "a different aspect [or, in *Hemani*, 'element'] of that principle: restrictions based on a legislative judgment that a 'categor[y] of persons' poses a 'special danger of misuse.'" *Vincent* BIO 7 (quoting *Rahimi*, 602 U.S. at 698); *see Hemani* Pet. 8 (same, referring to "'laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse,'" (quoting *Rahimi*, 602 U.S. at 698)).

That is, the same specific "aspect/element" of the same overarching regulatory tradition the government perceives as justifying the arms-bearing restrictions imposed by both contemporary statutes will be front and center in *Hemani*. Setting aside petitioner's strong objection to the merits of that perception, as the government admits, *Bruen* provides no

warrant to "simply defer to a legislature's judgment that a given category of persons is dangerous or that particular individuals may be disarmed forever"—courts must "instead review" a class-based "restriction using the usual tools of Second Amendment interpretation: 'pre-ratification history, post-ratification history, and precedent.'" *Hemani* Pet. 9 (quoting *Rahimi*, 602 U.S. at 719 (Kavanaugh, J., concurring)). The Court's assessment of the existence, nature, and scope of the special-danger-of-misuse tradition that purportedly justifies disarming both felons and habitual drug users would naturally benefit from contemporaneous review of the full historical record of regulatory measures pertaining to both categories of individuals. And granting review in petitioner's case now would allow the Court to consider the constitutionality of both statutes together during the current Term.

3. The need for this Court's intervention is no less pressing in light of the government's tenuous revival of Section 925(c).

The primary thrust of the government's case for opposing the review it previously recommended comes down to its claim that the circuit split on the question presented "may evaporate given the Department of Justice's recent reestablishment of the administrative process under [Section] 925(c) for granting relief from federal firearms disabilities." Mem in Opp. 2. This is so, the government maintains, because "[b]y providing a mechanism through which convicted felons can regain their ability to possess firearms, Section 925(c) addresses any constitutional concerns about the breadth and duration of the restriction imposed by Section 922(g)(1)." *Vincent* BIO 9. For the reasons set out in the petitioner's reply brief in *Vincent v. Bondi*, No. 24-1155 (Aug. 19, 2025), this argument is meritless even in the context in which the government initially raised it: a civil action brought by a plaintiff who, though neither charged with nor previously convicted of violating Section 922(g)(1),

sought a declaratory judgment that the statute violates the Second Amendment as applied to her and an injunction barring its enforcement against her. *See Vincent* Reply 2–5.

In any event, to the extent the availability of Section 925(c) relief might conceivably impact the constitutional claim of a civil plaintiff seeking to enjoin the future enforcement of Section 922(g)(1), that transparently is not true here. The government overlooks that, unlike *Vincent*, the interest at stake in the context in which the question presented arises here (and most frequently arises across the country)—a criminal case—is not "disarmament"; it is the direct, concrete injury of indictment, conviction, and imprisonment on the basis of conduct that would otherwise fall within the core of the individual right to armed self-defense. Section 925(c) can neither remove petitioner's Section 922(g)(1) conviction from his record, nor give him back the time he spent in prison and under post-release supervision. The prospect of administrative relief that would prevent future prosecution cannot negate the present interest that petitioner and any defendant like him has in seeking to dismiss a pending indictment, or vacate a nonfinal conviction, on the ground that, *ab initio*, Section 922(g)(1)'s application to them violates the Second Amendment.

4. Finally, the government's belief (Mem in Opp. 2–3) that petitioner would lose under its preferred as-applied test does not counsel against review.

On top of the notable absence of any serious claim that petitioner's case is a "poor vehicle," *cf. Vincent* BIO 15; *French* BIO 5 (No. 24-6623), the government entirely ignores the variable that most obviously undermines its breezy take on the as-applied merits. As noted, the government locates Section 922(g)(1)'s ban on arms-keeping by all modern "felons" within the purported tradition of imposing firearm restrictions "based on a legislative judgment that a 'categor[y] of persons' pose 'a special danger of misuse." *Vincent* BIO 7

(quoting *Rahimi*, 602 U.S. at 698). Yet, as petitioner emphasized (Pet. 5), the statute's application to him rests on his felony assault conviction as a teenager premised on a single instance of reckless driving that caused non-trivial injury: conduct that this Court has repeatedly recognized as "'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)). Reckless conduct—particularly reckless driving—the Court has stressed, *does not* evince "'the special danger created when a particular type of offender—a violent criminal[]—possesses a gun,'" and thus *does not* serve to identify the culprit as one who "poses an uncommon danger of 'us[ing a] gun deliberatively to harm a victim." *Id.* at 438 (quoting *Begay*, 553 U.S. at 145, 146).

Petitioner's case thus aptly demonstrates why the modern concept of being a "felon" is not on its own a sufficient proxy for bringing someone within even the government's preferred conception of the pertinent historical tradition. It similarly illustrates the extent to which the circuits' confusion as to how to properly implement *Bruen*'s historical methodology produces results that are in serious tension with this Court's precedents. The government's conspicuous failure to muster a response on this point is the kind of silence that speaks volumes.

* * *

It is not a matter of if, but when the Court will have to step into this breach. Petitioner's case is emblematic of the depth of the courts of appeals' confusion, cleanly presents the major substantive point of disagreement, and is an excellent vehicle for addressing and clarifying several of the methodological uncertainties that have contributed to the conflict. The petition should be granted.

CONCLUSION

The petition for writ of certiorari should be granted. Alternatively, if the Court grants review in another case presenting the same question, *e.g.*, *Vincent v. Bondi*, No. 24-1155; *Duarte v. United States*, No. 25-425; *Zherka v. Bondi*, No. 25-269; *Kimble v. United States*, No. 25-5747, it should either grant the petition and consolidate petitioner's case with any granted case or hold petitioner's case pending the disposition of the granted cases. At a minimum, the Court should hold this case pending its merits determination in *United States v. Hemani*, No. 24-1234, and then dispose of this petition as appropriate.

Respectfully submitted,

PHILIP G. GALLAGHER
Federal Public Defender
Southern District of Texas

s/ Evan G. Howze
EVAN G. HOWZE
Assistant Federal Public Defender
Counsel of Record
440 Louisiana Street, Suite 1350
Houston, Texas 77002
(713) 718-4600
evan_howze@fd.org

November 19, 2025