No. 25-5535

In the Supreme Court of the United States

JASON DANIEL CARBAJAL, *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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

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INTRODUCTION

The government concedes that the courts of appeals are divided over how to analyze constitutional challenges to 18 U.S.C. § 922(g)(1). After all, "perhaps no single Second Amendment issue has divided the lower courts more than the constitutionality of the 18 U.S.C. § 922(g)(1) felon-disarmament rule's application to certain nonviolent felons." *United States v. Duarte*, 108 F.4th 786, 787 (9th Cir. 2024) (VanDyke, J., dissenting from grant of rehearing en banc). And the government musters no defense of the Fifth Circuit's decision below, which conflicts with this Court's precedent and demotes the Second Amendment to a second-class right.

Still, the government asks this Court to kick the can down the road. But the government dramatically understates the severity of the circuit split, which has deepened and is firmly entrenched. The government also misplaces reliance on the recently revived administrative process for restoring firearm rights. That process was unavailable to Carbajal—as well as countless Americans prosecuted under § 922(g)(1)—and cannot cure the statute's constitutional defects. And the government's lackluster arguments that § 922(g)(1) is constitutional as applied to nonviolent offenders invite, rather than dissuade, granting certiorari.

Delaying review perpetuates the current state of disarray in the lower courts while a fundamental right hangs in the balance. And the need for certainty is especially urgent because § 922(g)(1) is one of the most commonly charged federal crimes and challenges to the statute are congesting the lower courts' dockets. This Court should answer this critically important question now.

ARGUMENT

I. The courts of appeals are deeply divided over the scope of a fundamental constitutional right.

The government concedes that the courts of appeals are split over how to analyze Second Amendment challenges to § 922(g)(1), but it deems the disagreement "shallow." BIO 2. Not so. The split is deepening and requires this Court's intervention.

1. The courts of appeals are hopelessly fractured over a fundamental issue: whether § 922(g)(1) is vulnerable to as-applied Second Amendment challenges. *See* Pet. 12–18. The Third, Fifth, and Sixth Circuits all recognize that the statute may be unconstitutional as applied to individuals convicted of certain offenses under the text-and-history test laid out in *NYSRPA v. Bruen*, 597 U.S. 1 (2022). *See Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 470 n.4 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 657, 661 (6th Cir. 2024). In other words, "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny." *Diaz*, 116 F.4th at 469. By contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have categorically upheld § 922(g)(1), no matter the underlying crime. *See Zherka v. Bondi*, 140 F.4th 68, 78–79 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc), *pet. for writ of cert. filed*, No. 25-425 (U.S. Oct. 6, 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025); *United States v. Cole*, No. 24-10877, 2025 WL 339894, at *4 (11th Cir. Jan. 30, 2025) (per curiam).

And the courts of appeals are divided over important underlying issues relevant to the Second Amendment analysis. *See* Pet. 12–18.

First, the courts disagree about how much weight to give this Court's statements in *District of Columbia v. Heller* that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" and that such laws are "presumptively lawful." 554 U.S. 570, 626, 627 n.26 (2008). The Tenth and Eleventh Circuits have foregone any historical analysis based on pre-*Bruen* circuit precedent that, in turn, relied on *Heller*. *Vincent*, 127 F.4th at 1265–66; *Cole*, 2025 WL 339894, at *4. The Fourth Circuit also held that it was bound by pre-*Bruen* precedent relying on *Heller*. *Hunt*, 123 F.4th at 700, 703–04. The Second, Eighth, and Ninth Circuits have conducted a historical analysis that are "consistent with," "support[ ]," or "confirm[ ]" *Heller*'s statements. *Zherka*, 140 F.4th at 93–94; *Jackson*, 110 F.4th at 1125; *Duarte*, 137 F.4th at 752. By contrast, the Third, Fifth, and Sixth Circuits have held that *Heller*'s statements are dicta because this Court did not provide any historical justifications for felon-in-possession laws, so these courts conducted an independent historical inquiry. *Range*, 124 F.4th at 228–29 & n.8; *Diaz*, 116 F.4th at 466; *Williams*, 113 F4th at 643–44, 648.

Second, the courts that have undertaken a historical analysis diverge in how they interpret the government's proposed historical analogues. For example, the Fifth and Ninth Circuits have each relied on capital punishment and permanent estate forfeiture to support § 922(g)(1). *Diaz*, 116 F.4th at 467–71; *Duarte*, 137 F.4th at 756–62. But the Third Circuit has rejected those analogues. *Range*, 124 F.4th at 231. And although it acknowledged that the question was "unsettled," the Sixth Circuit identified a pitfall of relying on capital punishment: "Felons … 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." *Williams*, 113 F.4th at 658. The courts also disagree about the tradition to be gleaned from historical laws prohibiting religious minorities, Native Americans, Blacks, and loyalists from possessing guns. The Second, Fourth, Sixth, Eighth, and Ninth Circuits have interpreted these historical laws as supporting a broad tradition allowing a

legislature to disarm any group it deems dangerous.[1] *Zherka*, 140 F.4th at 87; *Hunt*, 123 F.4th at 707–08; *Williams*, 113 F.4th at 657; *Jackson*, 110 F.4th at 1127–28; *Duarte*, 137 F.4th at 761. By contrast, the Third and Fifth Circuits have interpreted these laws as supporting a far narrower tradition: disarming political traitors or potential insurrectionists who pose a threat of armed rebellion. *Range*, 124 F.4th at 229–30; *United States v. Connelly*, 117 F.4th 269, 277–78 (5th Cir. 2024).

Third, the courts that permit as-applied challenges disagree about how to conduct the analysis. The Fifth Circuit first held that an as-applied challenge turns on whether a defendant's underlying conviction was subject to "serious and permanent punishment" at the founding. *Diaz*, 116 F.4th at 470 & n.4. And when conducting that analysis, courts may consider only convictions punishable by more than a year in prison—other conduct is "not relevant." *Id.* at

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[1] And these circuits disagree about the scope of this tradition. The Sixth Circuit found that history requires an opportunity for "individuals [to] demonstrate that their particular possession of a weapon posed no danger to peace." *Williams*, 113 F.4th at 657. But the Fourth, Eighth, and Ninth Circuits determined that "[n]ot all persons disarmed under [these] historical precedents … were violent or dangerous persons," so "there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Jackson*, 110 F.4th at 1128; *see Hunt*, 123 F.4th at 707; *Duarte*, 137 F.4th at 760–61.

467. In the Sixth Circuit, however, an as-applied challenge turns on whether someone can show that they are "not dangerous." *Williams*, 113 F.4th at 657. And a court evaluating dangerousness "may consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction." *Id.* at 659–60.

The Third Circuit has adopted yet another standard, holding that § 922(g)(1) is unconstitutional as applied to someone "who did not "pose[ ] a physical danger to others." *Range*, 124 F.4th at 232. Although the court emphasized that its decision was "narrow," *id.*, the court's reasoning "rejects all historical support for disarming non-violent felons," *id.* at 294 (Shwartz, J., dissenting). Yet the Third Circuit, for now, allows courts to consider not only an individual's "entire criminal history," but also "post-conviction conduct." *Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025). The en banc Third Circuit recently requested briefing, however, on whether courts can "consider evidence beyond defendants' predicate convictions" when analyzing as-applied challenges to § 922(g)(1). Order Sua Sponte Rehearing En Banc, *United States v. Bost*, No. 24-1719 (3d Cir. Oct. 31, 2025).

In short, the fractures among the courts of appeals at every stage of the Second Amendment analysis are deep.

2. The government suggests that the Court's recent denial of plenary review in several § 922(g)(1) cases when faced with a similar split supports denying review again. BIO 2. Just the opposite. The deepening division since this Court denied review shows that this entrenched split will not go away without this Court's intervention.

Although this Court has not granted plenary review in a § 922(g)(1) case, the Court issued GVRs in several cases "for further consideration in light of" *United States v. Rahimi*, 602 U.S. 680 (2024). *See Garland v. Range*, 144 S. Ct. 2706 (2024); *Jackson v. United States*, 144 S. Ct. 2710 (2024); *Vincent v. Garland*, 144 S. Ct. 2708 (2024). But *Rahimi* did not resolve the split. None of those courts altered their pre-*Rahimi* decisions—which reached drastically divergent results—based on *Rahimi*. *See Vincent*, 127 F.4th at 1264 ("*Rahimi* doesn't undermine the panel's earlier reasoning or result" that § 922(g)(1) is constitutional in all applications based on pre-*Rahimi*, pre-*Bruen* precedent); *Jackson*, 110 F.4th at 1122 ("*Rahimi* does not change our conclusion" that history supports § 922(g)(1) in every application); *Range*, 124 F.4th at 232 (again holding that § 922(g)(1) is unconstitutional as applied to a nonviolent individual after considering *Rahimi*).

Indeed, "[n]othing in the Supreme Court's recent *Rahimi* decision controls or even provides much new guidance" for analyzing Second Amendment challenges to § 922(g)(1). *Duarte*, 108 F.4th at 787 (VanDyke, J., dissenting from grant of rehearing en banc). "While *Rahimi* likely issued to clarify the confusion left by *Bruen*, lower courts have remained confused." *United States v. Patino*, 758 F. Supp. 3d 664, 669 (W.D. Tex. 2024).

Now the Court has granted review in *United States v. Hemani*, No. 24-1234 (U.S.), to answer the question of whether 18 U.S.C. § 922(g)(3) violates the Second Amendment as applied to a marijuana user. But *Hemani* will not resolve the ultimate questions Carbajal asks. Although this Court's measured approach may have been warranted to allow further percolation following *Rahimi*, the Court should grant review now to resolve the intractable split over the constitutionality of a statute used to prosecute thousands more individuals than § 922(g)(3).[2]

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[2] Of the 7,419 convictions under 18 U.S.C. § 922(g) in fiscal year 2024, 90.4% were under 18 U.S.C. § 922(g)(1). *See* U.S. SENT. COMM'N, Quick Facts 18 U.S.C. § 922(g) Firearms Offenses (2024), available at https://www.ussc.gov/research/quick-facts/section-922g-firearms#:~:text=Population%20Snapshot,handout%20or%20learn%20more%20below.

II. The Court should address whether § 922(g)(1) violates the Second Amendment despite the Attorney General's recent revival of a discretionary avenue for restoring gun rights.

The government suggests that this circuit split may "evaporate" because of a recently reestablished administrative process for restoring firearm rights. BIO 2. Under 18 U.S.C. § 925(c), an individual who is prohibited from possessing firearms may have his or her firearm rights restored "if it is established to [the Attorney General's] satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." But this relief provision is irrelevant to thousands of individuals—including Carbajal—who could not take advantage of it to restore their right to keep and bear arms before this change in policy. And § 925(c) cannot cure the constitutional concerns with § 922(g)(1).

1. Section 925(c) is irrelevant here because it was unavailable to Carbajal. Beginning in 1992—when Carbajal was an infant—§ 925(c) was "rendered inoperative" because Congress prohibited using appropriated funds to investigate or act on relief applications. *Logan v. United States*, 552 U.S. 23, 28 n.1 (2007). Only recently has the Attorney General reestablished the process and begun

granting relief from federal firearm disabilities. *See Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025) (explaining that the Department of Justice "anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c)"); *Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17, 835 (Apr. 29, 2025) (granting 10 individuals relief under § 925(c)).

In other words, Carbajal could not have used § 925(c) to restore his firearm rights. Neither could other individuals—perhaps numbering in the thousands—whose Second Amendment challenges to § 922(g)(1) are winding their way through the lower courts. Even if the relief provision has some impact on the Second Amendment analysis moving forward, the current circuit split affects countless § 922(g)(1) convictions and warrants this Court's review.

2. Section 925(c) will not, as the government suggests, "address[ ] any constitutional concerns about the breadth and

duration of the restriction imposed by Section 922(g)(1).”[3] BIO 9, *Vincent v. Bondi*, No. 24-1155 (Aug. 11, 2025). In fact, the relief provision has features that this Court has held are inconsistent with the Second Amendment.

Section 925(c) grants the Attorney General “broad discretion” to grant or deny relief—“even when the statutory prerequisites are satisfied”—that is reviewable only under an arbitrary and capricious standard. *United States v. Bean*, 537 U.S. 71, 75–77 & n.2 (2002). In that way, the statute mirrors New York’s “may issue” licensing law, which gave authorities “discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria,” subject only to arbitrary-and-capricious review. *See Bruen*, 597 U.S. at 14. This Court held that the New York law was inconsistent with the Second Amendment. *Id.* at 71. So too is a regime that would allow Congress to pass a sweeping law disarming millions of Americans and then gives the Attorney

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[3] The government claims that “Congress has addressed [constitutional] concerns through 18 U.S.C. § 925(c).” BIO 8, *Vincent*, No. 24-1155. But Congress could not have intended the statute to address constitutional concerns with federal firearm prohibitions because Congress had no concerns about the Second Amendment when it enacted the first version of § 925(c) alongside the modern felon-in-possession statute in 1968. *See* Pet. 6–8.

General broad and essentially unreviewable discretion to determine who among them may recover their fundamental right to keep and bear arms.

And § 925(c) incorporates a "dangerousness" standard that this Court rejected in *Rahimi*. There, the government argued that Congress may disarm individuals who are not "responsible." Gov't Br. 27, *United States v. Rahimi*, No. 22-915 (U.S. Aug. 14, 2023). And according to the government, "a person is not 'responsible' if his possession of a firearm would pose a danger of harm to himself or others." *Id*. In other words, the government used "'responsible' as a placeholder for dangerous." Tr. of Oral Arg. 10–12, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023). But this Court unanimously rejected that theory. *Rahimi*, 602 U.S. at 701–02; *id*. at 772–73 (Thomas, J., dissenting). The Court explained that "responsible" is a "vague term" and that it is "unclear what such a rule would entail." *Id.* at 701 (maj. op.). And by deeming the term "responsible" vague, the Court necessarily rejected the government's proposed definition: dangerous. Congress expressed a similar concern when it defunded § 925(c), explaining that determining whether someone is dangerous is a "subjective task." S. Rep. 102-353 (1992). After *Rahimi*, dangerousness is not the touchstone for deciding who can and cannot possess a firearm.

This Court needs to determine, first, whether there is a historical tradition of disarming nonviolent felons—notwithstanding § 925(c). If there is no such tradition, then an administrative process that gives the executive branch nearly unbridled discretion to restore firearm rights based on a vague and subjective standard cannot salvage the statute's constitutional defects.

III. The government offers no meaningful argument against addressing whether § 922(g)(1) is unconstitutional as applied to Carbajal.

The government does not defend the Fifth Circuit's reliance on Carbajal's aggravated assault or aggravated robbery convictions to affirm his conviction. BIO 3. Nor does it explain how this Court's recent Second Amendment jurisprudence support the conclusion that § 922(g)(1) is constitutional as applied to Carbajal. Instead, the government merely notes that Carbajal cannot show that his as-applied challenge would succeed in any circuit. BIO 3.

The government also relies on the fact that Carbajal was on parole when he possessed the firearm, BIO 3—a fact the Fifth Circuit did not address and that § 922(g)(1) does not criminalize. Indeed, this Court has rejected upholding the constitutionality of a statute based on conduct outside of what the challenged statute regulates. *See, e.g., TikTok v. Garland*, 604 U.S. 56, 71–72 (2025);

United States v. Eichman, 496 U.S. 310, 313 n.1, 316 n.5 (1990); *United States v. Grace*, 461 U.S. 171, 183–84 (1983); *Williams v. Illinois*, 399 U.S. 235, 238–40 (1970).

The government's arguments therefore raise no obstacle to reaching the questions presented in this case, and no reason not to do so.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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