No. 25-_____

In the
Supreme Court of the United States

Raul Acosta,

Petitioner,

-v-

United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Matthew B. Larsen
Counsel of Record
Sarah Baumgartel
Federal Defenders of New York, Inc.
Appeals Bureau
52 Duane Street, 10th Floor
New York, New York 10007
(212) 417-8772
Sarah_Baumgartel@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) is unconstitutional on its face or as applied to Petitioner because, consistent with the Second Amendment, the federal government may not permanently disarm a citizen based exclusively on a prior felony conviction.

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OPINION AND ORDER BELOW

The Second Circuit's opinion is appended at A.1 and available at 2025 WL 1872833.[1]

JURISDICTION

The Second Circuit issued its decision and entered judgment on July 8, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). The Second Circuit had jurisdiction under 28 U.S.C. § 1291. The district court had jurisdiction under 18 U.S.C. § 3231.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

> 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.

> 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.

18 U.S.C. § 922(g)(1).

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[1] The appendix to this petition is cited "A."

STATEMENT OF THE CASE

A. Introduction

This case presents an important constitutional question subject to an entrenched circuit split: Whether, consistent with the Second Amendment, the federal government may permanently disarm a United States citizen based exclusively on a prior felony conviction.

This split developed in the wake of the Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Following *Bruen*, and this Court's subsequent decision in *United States v. Rahimi*, 602 U.S. 680 (2024), the Third Circuit holds that 18 U.S.C. § 922(g)(1) is unconstitutional as applied to individuals with certain prior felony convictions. *See Range v. Att'y Gen. United States*, 124 F.4th 218, 222 (3d Cir. 2024) (en banc).

But other federal circuits hold the opposite. Recently, the Second Circuit ruled that § 922(g)(1) is constitutional as applied to all individuals with any sort of prior felony conviction. *See Zherka v. Bondi*, 140 F.4th 68, 95 (2d Cir. 2025). The circuit refused to permit any "case-by-case, 'as applied' exceptions" to § 922(g)(1)'s prohibitions. *Id.* at 95-96.

Zherka aligns the Second Circuit with the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. *See United States v. Hunt*, 123 F.4th 697, 703-04 (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); *Vincent v. Bondi*,

127 F.4th 1263, 1266 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025).

Meanwhile, the Fifth and Sixth Circuits take a different approach. Per the Sixth Circuit, "most applications of § 922(g)(1) are constitutional," but the statute is susceptible to as-applied challenges by people whose "entire criminal record" shows that they are not "dangerous." *United States v. Williams*, 113 F.4th 637, 657-58 (2024). Similarly, the Fifth Circuit allows for as-applied constitutional challenges. *See United States v. Betancourt*, 139 F.4th 480, 484 (5th Cir. 2025); *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024).[2]

In other words, the circuits are hopelessly divided on § 922(g)(1)'s constitutionality following *Bruen*. The Court must resolve this split, and it should do so promptly: § 922(g)(1) is a commonly charged federal offense and the continued uncertainty as to that law's constitutionality is untenable.

Petitioner's case squarely presents the question of § 922(g)(1)'s constitutionality and provides a good opportunity to resolve the existing circuit split on this question.

If the Court for some reason declines to grant this petition, it should hold it pending disposition of several other petitions raising the same constitutional

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[2] The Seventh Circuit has assumed individuals may bring as-applied challenges to § 922(g)(1), without explicitly so holding. *See United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024).

question, including those submitted in *Vincent v. Bondi*, No. 24-1155; *Zherka v. Bondi*, No. 25-269; *Nelson v. United States*, No. 25-5550; and *Sternquist v. United States*, No. 25-5656, among others.

B. Petitioner's Conviction and Appeal

Petitioner Raul Acosta was charged under 18 U.S.C. § 922(g)(1), for possessing a gun following a felony conviction. A.2. Petitioner admitted that he had a prior felony conviction and pled guilty to this offense. A.2. But he challenged the constitutionality of § 922(g)(1) under the Second Amendment, based on this Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). A.3.

The Second Circuit rejected Petitioner's constitutional challenge, citing its pre-*Bruen* decision in *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013), and its post-*Bruen* decision in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). A.3-4. According to the Second Circuit, there is a historical tradition of prohibiting gun possession by "categories of persons perceived to be dangerous," and § 922(g)(1) sufficiently fits within this tradition—even as applied to individuals with only remote or nonviolent prior convictions. *See* A.3-4. Indeed, the circuit rejected any suggestion that courts could "craft a line that would separate some felons from others." *Id.* The circuit therefore affirmed Petitioner's conviction.

For violating § 922(g)(1), Petitioner was sentenced to 46 months in prison. He remains incarcerated on this sentence.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition for three reasons. First, the petition presents an important and recurring question concerning the constitutionality of a federal criminal statute, over which the circuits are hopelessly divided. Second, this case presents a clean opportunity to address this critical question. And third, the Second Circuit's holding is wrong: § 922(g)(1) is unconstitutional under the Second Amendment. At the very least, individual defendants should be permitted to bring as-applied constitutional challenges to this law.

I. The circuits are hopelessly divided over the important and recurring question of § 922(g)(1)'s constitutionality.

The circuits are intractably divided over the constitutionality of § 922(g)(1). The circuits are also divided as to whether individuals may bring as-applied constitutional challenges to § 922(g)(1).

Sitting en banc, the Third Circuit applied this Court's decisions in *Bruen* and *Rahimi* to hold that § 922(g)(1) cannot constitutionally bar gun possession by certain individuals with nonviolent criminal records. *See Range v. Att'y Gen. United States*, 124 F.4th 218 (3d Cir. 2024) (en banc). According to the Third Circuit, "*Bruen* abrogated our Second Amendment jurisprudence," such that courts "no longer conduct means-end scrutiny"; individuals convicted of

felonies "remain[] among 'the people'" protected by the Second Amendment; and "the Government has not shown that the principles underlying the Nation's historical tradition of firearms regulation support depriving" certain nonviolent felons of the "Second Amendment right to possess a firearm." *Id.* at 222, 232. In *Range*, the Third Circuit specifically held that an individual with a prior conviction for felony food stamp fraud could not be constitutionally prevented from obtaining a firearm. *See id.* at 223.

Like the Third Circuit, the Fifth and Sixth Circuits have recognized that defendants can mount as-applied challenges to § 922(g)(1). In *United States v. Diaz*, the Fifth Circuit held that *Bruen* and *Rahimi* abrogated the circuit's prior precedent deeming § 922(g)(1) constitutional. 116 F.4th 458, 465 (5th Cir. 2024). *Diaz* rejected the defendant's challenge to § 922(g)(1), but did not foreclose "future as-applied challenges by defendants with different predicate convictions," emphasizing that "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny." *Id.* at 469-70 & n.4.

The Sixth Circuit similarly holds that "*Bruen* requires a history-and-tradition analysis" different from that previously employed by courts and that, under this analysis, there may be as-applied Second Amendment challenges to § 922(g)(1). *United States v. Williams*, 113 F.4th 637, 657-58 (2024). The circuit opined that "most applications of § 922(g)(1)" will be constitutional, but that

"individuals could demonstrate that their particular possession of a weapon posed no danger to peace." *Id.* at 657. Indeed, without the opportunity for such as-applied challenges, the Sixth Circuit found that § 922(g)(1) "would abridge non-dangerous felons' Second Amendment rights." *Id.* at 661.

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have all reached the opposite conclusion. According to these circuits, § 922(g)(1) is constitutional in all its applications—even as applied to someone who has only remote, nonviolent prior felony convictions, and who can establish that he is not dangerous. *See Zherka v. Bondi*, 140 F.4th 68, 95 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 703-04 (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); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025). These circuits do not allow any as-applied challenges based on the nature of an individual's prior felony, or any other circumstance.

* * *

In sum, following *Bruen* and *Rahimi*, at least nine circuits have addressed § 922(g)(1)'s constitutionality in precedential or en banc decisions, and the circuits remain divided. Three circuits allow as-applied challenges based on the defendant's specific record and characteristics, while six circuits

categorically reject such challenges. This split has proven intractable and should be resolved by this Court.

II. This case presents the opportunity to address this issue.

This case is a clean opportunity to resolve this circuit conflict. Petitioner's only conviction in the instant case is a violation of § 922(g)(1), and he remains incarcerated for that offense. He raised this constitutional claim to the Second Circuit. And although the circuit decided his case by summary order, it explicitly relied on its recent (post-*Rahimi* and *Bruen*) precedential decision in *Zherka*. A.3-4.

III. The Second Circuit's decision is wrong.

Finally, the Court should grant this petition and reverse because the Second Circuit is wrong. For the reasons persuasively explained by the en banc Third Circuit in *Range*, § 922(g)(1) violates Petitioner's Second Amendment rights: Petitioner is among "the people" protected by the Second Amendment and the government cannot establish the necessary historical tradition of permanently disarming citizens like him, based solely on prior convictions.

To start, American citizens with prior felony convictions, like Petitioner, are among "the people" protected by the Constitution—including the Second Amendment. The phrase "the people" appears several times in the Constitution, including in the First, Fourth, Ninth, and Tenth Amendments. It "unambiguously refers to all members of the political community, not an

unspecified subset." *District of Columbia v. Heller*, 554 U.S. 570, 579 (2008). The phrase thus includes those previously convicted of a crime. *See, e.g.*, *Range*, 124 F.4th at 226.

Therefore, for § 922(g)(1)'s restrictions on these citizens' Second Amendment rights to be lawful, the government must provide evidence of analogous regulations from the Founding Era to show that § 922(g)(1) comports with our nation's history and tradition of firearms regulation. *See Bruen*, 597 U.S. at 29. Here, however, the government cannot show a relevant Founding Era analogue as to either the "why" or the "how" of § 922(g)(1).

As to the "why," there is no evidence of any significant Founding-era firearms restrictions on citizens who satisfied an imposed criminal penalty, but were nonetheless disarmed based exclusively on the fact that they had some prior conviction. *See* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 283 (2020). And while the historical record suggests that dangerousness sometimes supported disarmament, conviction status alone did not connote dangerousness to the Founding generation. *See id.* At the Founding, "[p]eople considered dangerous lost their arms. But being a criminal had little to do with it." *United States v. Jackson*, 85 F.4th 468, 472 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing en banc) (surveying historical disarmament laws).

As to the "how," the government cannot marshal Founding-era evidence of class-wide, lifetime bans on firearms possession merely because of conviction status. Bans based on felony convictions were a twentieth-century invention. *See* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009). As then-Judge Barrett explained: "The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban. But at least thus far, scholars have not been able to identify any such laws." *Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting).

Nor are Founding-era surety and forfeiture laws sufficiently analogous to § 922(g)(1). Unlike § 922(g)(1), Founding era surety laws at most temporarily deprived an owner of his arms if he was found to pose a unique danger to others. *See Bruen*, 597 U.S. at 55-59. By contrast, § 922(g)(1) imposes a permanent class-wide ban, regardless of any dangerousness finding.

"Founding-era laws that forfeited felons' weapons or estates are not sufficient analogues either. Such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally." *Range*, 124 F.4th at 231. Thus, the government cannot identify a sufficient historical analogue to render § 922(g)(1) constitutional on its face, or as applied to people like Petitioner.

CONCLUSION

The Court should grant this petition and reverse the decision of the Second Circuit. Alternatively, the Court should hold this petition pending resolution of petitions raising the same constitutional issue, including those in *Vincent v. Bondi*, No. 24-1155; *Zherka v. Bondi*, No. 25-269; *Nelson v. United States*, No. 25-5550; and *Sternquist v. United States*, No. 25-5656.

Respectfully submitted,

By: __/s/ Sarah Baumgartel_____
Matthew B. Larsen
Sarah Baumgartel
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, New York 10007
Sarah_Baumgartel@fd.org
Tel.: (212) 417-8772