No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES VLHA,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Appointed Under the Criminal Justice Act of 1964

QUESTION PRESENTED FOR REVIEW

Whether the statute prohibiting manufacturing and dealing in firearms without a license, 18 U.S.C. § 922(a)(1)(A), is constitutional pursuant to the Second Amendment.

STATEMENT OF RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

- *United States v. James Vlha*, No. 19-CR-343, U.S. District Court for the Central District of California. Judgment entered November 17, 2022.
- *United States v. James Vlha*, No. 22-50281, U.S. Court of Appeals for the Ninth Circuit. Opinion published July 9, 2025. See 142 F.4th 1194 (9th Cir. 2025).

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

OPINIONS BELOW

The Ninth Circuit's opinion is reprinted in the Appendix to the Petition.

JURISDICTION

On July 9, 2025, the Court of Appeals entered its decision affirming the conviction and sentence of the petitioner for one count of conspiracy to manufacture firearms for sale without a federal license in violation of 18 U.S.C. § 922(a)(1)(A). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

Second Amendment to the United States Constitution:

> 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.

STATUTORY PROVISION

18 U.S.C.A. § 922

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

A. District Court Proceedings

Between May 21, 2015 and June 21, 2017, Mr. Vlha and others agreed to manufacture six custom firearms for profit. (PSR ¶¶ 15-17.) At the time, Mr. Vlha was a United States Marine Corps reservist in his early 20s with a full-time job. He considered himself a firearms hobbyist.

On June 11, 2019, the government filed an indictment against Mr. Vlha and two others, Travis Schlotterbeck and Jacob Deckoning. (3-ER-484) All three defendants were charged with conspiracy to manufacture and deal in firearms without a license in violation of 18 U.S.C. § 371 and 18 U.S.C. § 922(a)(1)(A) and a substantive count of manufacturing and dealing in firearms without a license in violation of 18 U.S.C. § 922(a)(1)(A). (3-ER-484-491.) Mr. Schlotterbeck was separately charged in count three with selling a firearm to an individual he reasonably believed to be a felon in violation of 18 U.S.C. § 922(d)(1). (3-ER-492.) In February 2020, the government dismissed its case against Mr. Deckoning.

On May 6, 2022, the government filed its trial memorandum, abandoning a theory of dealing and proceeding only on the manufacturing theory for both the conspiracy and the substantive count. (3-ER-451.) On June 2, 2022, Mr. Schlotterbeck and Mr. Vlha filed their first motion to dismiss the indictment based on the theory that the anti-manufacturing law was unconstitutionally vague. (3-ER-430.) The government filed its opposition on June 9, 2022. (3-ER-397.) On June 23, 2022, the district court denied the motion.

That same day, this Court issued its landmark opinion in *New York State Rifle and Pistol Assn v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022) . In light of this opinion, the defendants filed a second motion to dismiss arguing that both 18 U.S.C. § 922(a)(1)(A) and 922(d)(1) run afoul of the Second Amendment. (3-ER-382.) The government filed an opposition arguing that the motion was untimely and that the conduct at issue did not fall under the text of the Second Amendment. (2-ER-329.) The district court denied the motion, noting that "the problem is that it's difficult, if not impossible, for the Court to decide that a federal statute is unconstitutional, especially in this particular portion of the federal statute is unconstitutional based on what was said in *Heller*." (1-ER-17–18.) The district court also noted that "I don't see how we can say that *Bruen* has changed the landscape as to this particular case." (1-ER-16.)

In response to the court's denial of the motion, the parties agreed to enter into a conditional plea agreement. (2-ER-149.) Mr. Vlha pled guilty to one count of conspiracy to manufacture and deal in firearms without a license in violation of 18 U.S.C. § 371 and 18 U.S.C. § 922(a)(1)(A). (2-ER-185.) The government dismissed the substantive count of manufacturing without a license.

On November 17, 2022, Mr. Vlha was sentenced to a term of time served (one day), followed by three years of supervised release, and a fine of $25,000. (2-ER-102–03.) The district court stayed the fine, exonerated the pretrial bond, and did not require bond on appeal. (2-ER-105, 108, 134.)

Mr. Vlha filed a timely notice of appeal, and the Ninth Circuit Court of Appeals consolidated his case with that of his co-defendant, Mr. Schlotterbeck.

B. Ninth Circuit Proceedings

On appeal, Mr. Vlha and Mr. Schlotterbeck argued that 18 U.S.C. § 922(a)(1)(A) violated the Second Amendment. Under the framework established in *Bruen*, the conduct at issue – manufacturing firearms for sale or distribution – was covered under the plain text of the amendment because the right to bear arms includes matters that are required for the actual exercise of that right. *See Richmond Newspapers v. Virginia*, 448 U.S. 555, 579 (1980) ("fundamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly guaranteed"; "the right to attend criminal trials is implicit in the guarantees of the First Amendment"); *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983) (tax on paper and ink products consumed in the production of publication violated the First Amendment because it impermissibly burdened freedom of the press); *Carey v. Population Servs., Int'l,* 431 U.S. 678 (1977) ("[l]imiting the distribution of nonprescription contraceptives to licensed pharmacists clearly imposes a significant burden on the right of the individuals to use contraceptives if they choose to do so.")

Furthermore, the government had not proven that its firearms regulation – requiring a license to manufacture firearms – was "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 17. The government had not, in fact, identified any historical regulations of firearm

manufacture.

A panel of the Ninth Circuit affirmed. The panel acknowledged that *Bruen* abrogated its means end balancing test, but found that its "ancillary-rights" doctrine remained. *United States v. Vlha*, 142 F.4th 1194, 1198 (9th Cir. 2025). Under this doctrine, "the Second Amendment protects some activities ancillary to the core possessory right, including the ability to acquire weapons." *Id.*, citing *Teixeira v. County of Alameda*, 873 F.3d 670, 676–78 (9th Cir. 2017). But only "meaningful constraints" on the right to possess firearms are prohibited. *Id*. Although the Ninth Circuit had "not defined the contours of the meaningful-constraint test" it was clear that "[p]rohibiting an entire group from purchasing firearms" violates the Second Amendment, while "a minor constraint on the precise locations within a geographic area where one can acquire firearms does not." *Id*.

Applying the ancillary-rights/meaningful constraints test, the panel found that the prohibition here – requiring a license to manufacture firearms "as a regular course of trade or business" – did "not meaningfully constrain would-be purchasers from obtaining firearms." *See id*. at 1200. Noting that there were 3,500 licensed firearms manufacturers in the United States and 10 million firearms manufactured by licensed manufacturers, the panel found that the "shall issue" scheme (licenses must be issued if the applicant pays a filing fee, is 21 years old or older, has premises on which to conduct his business, and is compliant with other laws) was not abusive. *Id*. As such, the text of the Second Amendment did not cover the conduct regulated by 18 U.S.C. § 922(a)(1)(A). *Id*.

REASONS FOR GRANTING THE PETITION

The Second Amendment to the United States Constitution confers an "individual right to keep and bear arms" for self-defense. *District of Columbia v. Heller,* 554 U.S. 570, 595 (2008). That enumerated right is "fundamental to our scheme of ordered liberty." *McDonald v. City of Chicago*, 561 U.S. 742, 767, 778 (2010) (emphasis omitted). Courts therefore may not treat it "as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Id.* at 780.

In 2022, this Court gave unequivocal guidance about how courts must interpret whether gun regulations are permissible under the Second Amendment. Rejecting lower courts' previous approach known as "means-end scrutiny" which balanced the strength of the government's interest in regulating gun ownership against the degree of infringement on an individual's Second Amendment rights, the Supreme Court instead directed courts to consider only the "constitutional text and history." *Bruen*, 597 U.S. at 22–23. Under *Bruen*'s framework, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. The government then "must 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* .

Since the issuance of *Bruen*, lower courts have struggled with analyzing the ban on unlicensed manufacturing and dealing in firearms as prohibited by 18 U.S.C.

§ 922(a)(1)(A). Although *Bruen* clearly abrogated the means-end test utilized by all the circuits, the Ninth Circuit still clings to its vestiges in using the "ancillary rights doctrine" in which only "meaningful constraints" on the right to possess firearms are prohibited.

The meaningful constraint doctrine comes from the Ninth Circuit's pre-*Bruen* decision in *Teixeira v. County of Alameda*, 873 F.3d 670 (2017), holding that the Second Amendment protects some activities ancillary to the core possessory right, including the ability to acquire weapons, but a regulation impacting these activities is unconstitutional only if it "meaningfully constrains" the individual right to keep and bear arms. *See id.* at 680. In *Teixeira*, the *en banc* Ninth Circuit upheld a county ordinance prohibiting a gun store from being located within 500 feet of any residential district, school, other gun store, or liquor store; the inability of a prospective gun store owner, whose store fell within a prohibited zone, to obtain a permit did not infringe the Second Amendment rights of potential customers since there were other gun stores in the county. *Id.* at 680–81.

By holding that the doctrine remains valid, the Ninth Circuit effectively continues to apply means-end analysis under the guise of the first step of the *Bruen* framework – whether the conduct at issue is covered by the plain language of the statute. Here, the Ninth Circuit recognized that "[b]roadly speaking, we agree with Defendants that the ability to manufacture firearms facilitates individuals' ability to buy firearms, which facilitates the core right to 'keep and bear Arms.'" *Vlha*, 142 F.4th at 1199. But the Court found that manufacturing firearms without a license was not

covered under the plain language because the restraint did not meaningfully constrain the right to keep and bear arms; there were enough licensed firearms manufacturers in the United States such that would-be purchasers were not constrained from obtaining firearms. *Id.* at 1200.

This is not the procedure established in *Bruen* where this Court noted that the old means-end test was "one step too many." 597 U.S. at 19 (disavowing means-end scrutiny in Second Amendment analysis). Under *Bruen*, courts are to begin with the plain language of the amendment to determine if the conduct regulated is covered. The Ninth Circuit acknowledged that it was – the manufacturing of firearms is essential to the keeping and bearing of firearms. *See* 142 F.4th at 1199. A regulation limiting such conduct is by definition an "infringement." Because the conduct at issue is covered under the plain language of the statute, the next step is to require the government to prove that "the regulation is part of the historical tradition that delimits the outer bounds of the Second Amendment right." *Bruen*, 597 U.S. at 19.

Instead, the Ninth Circuit has again inserted a balancing test, addressing the regulation's *degree* of infringement, a means-end test that the Ninth Circuit acknowledges has unclear contours. 142 F.4th at 1198. This approach is entirely contrary to the *Bruen* test, a holdover from the previous era of intermediate scrutiny. The Ninth Circuit's analysis ended by concluding that the infringement was not enough of an infringement; ignoring the *Bruen* test, it never even reached whether the government had met its burden to prove whether § 922(a)(1)(A)'s regulation was consistent with a historical tradition of regulation. 597 U.S. at 17.

Although the Ninth Circuit is the first to speak on the constitutionality of § 922(a)(1)(A) since *Bruen*, the issue is being raised in districts across the nation. *See*, *e.g.*, *United States v. Libertad*, 681 F. Supp. 3d 102 (S.D.N.Y. July 7, 2023); *United States v. King*, 2023 WL 4873648 (E.D. Pennsylvania 2023); *United States v. Neal*, 715 F. Supp. 3d 1084 (N.D. Ill. February 7, 2024); *United States v. Cruz-Jimenez*, 772 F. Supp. 3d 242 (D. Puerto Rico, March 25, 2025). And, outside the context of § 922(a)(1)(A), multiple circuits have adopted the Ninth Circuit's "meaningful constraint" test, finding that it survives *Bruen*. *See Vlha,* 142 F.4th at 1198, citing *Gazzola v. Hochul*, 88 F.4th 186, 196–97 (2d Cir. 2023) (recognizing and applying Ninth Circuit's "meaningful constraint" test to New York law, concluding that it did not impose such burdens as to violate the Second Amendment); *McRorey v. Garland*, 99 F.4th 831, 839 (5th Cir. 2024) (affirming denial of challenge to background checks for 18-20-year-old prospective firearms purchasers by applying similar test); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 120 (10th Cir. 2024) (agreeing with Ninth Circuit that "commercial restrictions presumptively do not implicate the plain text of the Second Amendment at the first step of the *Bruen* test").

The lower courts require guidance on *Bruen*'s first step of determining whether conduct is covered under the plain language of the Amendment. In other Constitutional contexts, "fundamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly guaranteed." *See Richmond Newspapers*, 448 U.S. at 579; *see also Minneapolis Star & Tribune Co.,* 460 U.S. at 585 (freedom of the press). As this Court

warned, "*Heller* and *McDonald* expressly rejected the application of any judge-empowering interest-balancing inquiry that asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests" *Bruen,* 597 U.S. at 22–23 (cleaned up), citing *Heller*, 554 U.S. at 634; *McDonald*, 561 U.S. at 790–91. The Ninth Circuit's "meaningful constraint" test is simply a play on this same balancing inquiry in which the courts decide "whether the right is *really worth* insisting upon." *Id*. at 23, citing *Heller*, 554 U.S. at 634 (emphasis in original). This Court should grant certiorari to resolve this important federal question of whether the "meaningful constraint" test has any role in Second Amendment analysis through resolution of the constitutionality of § 922(a)(1)(A).

CONCLUSION

On the basis of the foregoing, the Court should grant the petition for writ of certiorari to resolve this important federal question that has not yet been settled by this Court.

Date: October 6, 2025

Respectfully Submitted,

s/Katherine Kimball Windsor

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