No. 25-_____

In the
Supreme Court of the United States

Luis Espinal,

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

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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 bar a citizen from possessing a firearm and ammunition based exclusively on a prior felony conviction.

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OPINION AND ORDER BELOW

The Second Circuit's opinion is available at 2025 WL 2301894 and appended at A.1.[1]

JURISDICTION

The Second Circuit issued its decision and entered judgment on August 11, 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 and frequently recurring constitutional question subject to a well-established 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 after the Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Following *Bruen*, and *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).

The Fifth and Sixth Circuits also allow as-applied challenges under *Bruen*. According to the Sixth Circuit, while "most applications of § 922(g)(1) are constitutional," 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]

But other federal circuits disagree. 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); *see also United States v. Delgado*, 149 F.4th 244, 247 (2d Cir. 2025) (applying holding to individual charged with possession of ammunition only). As part of this holding, the circuit refuses to permit any "case-by-case, 'as applied' exceptions" to § 922(g)(1)'s prohibitions. *Zherka*, 140 F.4th 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).

In other words, the circuits are hopelessly divided on § 922(g)(1)'s constitutionality following *Bruen*. The Court should resolve this split.

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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).

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

If the Court declines to grant this petition, it should at least hold it pending disposition of several other petitions challenging the constitutionality of § 922(g)(1), 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 Luis Espinal was charged with violating 18 U.S.C. § 922(g)(1), for his possession of ammunition following a felony conviction. A.2. Before the district court, he moved to dismiss this charge as unconstitutional 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. When the district court denied this motion, Petitioner pled guilty to § 922(g)(1). He was sentenced to 80 months in prison and is currently serving this sentence. A.2-3.

Petitioner appealed his conviction and sentence to the Second Circuit, arguing, among other points, that § 922(g)(1) was unconstitutional, both on its face and as applied in his case. A.4-5. The Second Circuit rejected Petitioner's constitutional challenge, citing its recent post-*Bruen* decision in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). A.4. Per the Second Circuit, *Zherka* "affirmed that the felon-in-possession law is facially constitutional and held

that it is not subject to as-applied challenges." A.4. The circuit therefore upheld Petitioner's conviction.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition for three reasons. First, the petition presents an important and recurring question regarding the constitutionality of a federal criminal statute, which has generated an entrenched circuit split. Second, this case cleanly presents the issue, which was fully preserved below. And third, § 922(g)(1) is unconstitutional under the Second Amendment.

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

The circuits are divided over the constitutionality of § 922(g)(1). The circuits are also divided on the question of 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 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 or nonviolent prior felony convictions, or 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 to § 922(g)(1).

* * *

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 characteristics, while six circuits categorically reject such challenges. This split has proven intractable and should be resolved by this Court.

II. This case presents a good 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. Petitioner fully preserved this constitutional claim, raising it before both the district and circuit courts. And although the Second Circuit decided this case by summary order, it explicitly relied on its post-*Rahimi*, post-*Bruen* precedential decision in *Zherka*. A.4.

III. Section 922(g)(1) is unconstitutional.

Finally, the Court should grant this petition and reverse because the Second Circuit is wrong: § 922(g)(1) is unconstitutional. For the reasons persuasively explained by the en banc Third Circuit in *Range*, § 922(g)(1) violates Petitioner's Second Amendment rights under *Bruen*. 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-related 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 the possession of firearms or ammunition 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,

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