No. 25-_____

In the
Supreme Court of the United States

Steven Perez,

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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QUESTIONS PRESENTED

Petitioner was convicted of interstate transport and receipt of firearms, in violation of 18 U.S.C. § 922(a)(3), and conspiracy to commit this offense, in violation of 18 U.S.C. § 371. In affirming the judgment of conviction, the Second Circuit held that an individual's "acquisition" of firearms was merely an "ancillary" Second Amendment right. Because this was the case, it adopted and applied a "meaningful constraint" test also used by the Ninth Circuit: "[R]egulations on the means of acquiring, transporting, and storing firearms only implicate the text of the Second Amendment if they meaningfully constrain the right to possess and carry arms."

Accordingly, the questions presented are:

Does the Second Amendment presumptively protect an individual's right to acquire firearms?

Is the "meaningful constraint" standard applied by the Second and Ninth Circuits to determine the constitutionality of regulations concerning "ancillary" Second Amendment rights correct?

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OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 152 F.4th 89 and appears in Petitioner's Appendix at A.1-26.[1] The district court's opinion and order is reported at 681 F.Supp.3d 102, and appended at A.27-62.

JURISDICTION

The district court had jurisdiction pursuant to 18 U.S.C. § 3231 and entered judgment on January 12, 2024. The Second Circuit had jurisdiction under 18 U.S.C. § 1291 and issued its opinion and judgment on August 19, 2025. This Court has jurisdiction under 18 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the United States Constitution provides that:

> 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.

Title 18, United States Code § 922(a)(3) criminalizes the following conduct:

[1] Pages in Petitioner's Appendix are cited "A."

> It shall be unlawful . . . for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter.

18 U.S.C. § 922(a)(3).

INTRODUCTION

Petitioner was convicted of interstate transport and receipt of firearms, in violation of 18 U.S.C. § 922(a)(3), and conspiracy to commit this offense, in violation of 18 U.S.C. § 371. In the district court and on appeal, he argued that this criminal statute, which prohibits an individual's acquisition of out-of-state firearms, violates the Second Amendment right to keep and bear arms.

In affirming his conviction in a lengthy, published opinion, the Second Circuit held that an individual's "acquisition" of firearms was merely an "ancillary" Second Amendment right. And, because this was the case, it adopted and applied a "meaningful constraint" test: "[R]egulations on the means of acquiring, transporting, and storing firearms only implicate the text of the Second Amendment if they meaningfully constrain the right to possess and carry arms." Section 922(a)(3), the Second Circuit reasoned, did not "meaningfully constrain" petitioner's

right to acquire firearms. Accordingly, in the Circuit's view, the Second Amendment's plain text did not cover the conduct prohibited by § 922(a)(3), petitioner failed step one of the *Bruen* test, and the statute was constitutional.

The Court should grant the writ in order to resolve two important questions: whether firearm acquisition is conduct protected by the Second Amendment; and whether the Second and Ninth Circuit's "meaningful constraint" legal standard for "ancillary" Second Amendment rights is correct. Petitioner's case provides an ideal vehicle for resolving these questions, and, given the paucity of law on these issue, the Second and Ninth Circuit's adoption of this standard will likely prove influential.

At a minimum, this Court should hold the petition pending disposition of *United States v. Hemani*, 24-1234, since that case concerns another § 922 offense and will thus be relevant to petitioner's.

STATEMENT OF THE CASE

1. Steven Perez was indicted in the Southern District of New York for one count each of interstate transport of firearms, in violation of 18 U.S.C. § 922(a)(3), and conspiracy to commit the same, in violation of 18 U.S.C. § 371. He moved to dismiss the charges on the ground that 18 U.S.C. 922(a)(3) violated his Second Amendment right to keep and bear arms, as set forth in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). The government opposed.

2. In a lengthy opinion and order, the district court (Hon. Jed S. Rakoff) ruled that § 922(a)(3) is constitutional and denied the dismissal motion. A.27-63; *see United States v. Libertad*, 681 F. Supp. 3d 102 (S.D.N.Y. 2023).

First, the district court rejected the defense view that § 922(a)(3) criminalizes possession and receipt of firearms. It characterized the statute, instead, as one that merely regulates "access by requiring purchase through ATF-licensed dealers, and "place[s] certain threshold conditions" on firearm acquisition.

Second, the court ruled that § 922(a)(3) does not abridge the right to keep and bear arms, and thus was a licensing scheme that did not regulate conduct covered by the Second Amendment. For this, it relied on pre-*Bruen* means-end circuit precedent, *United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012), and *Bruen* dicta.

Third, the district court ruled that § 922(a)(3) is "consistent with this country's history and tradition of firearm regulation" based on colonial laws prohibiting sale of firearms outside of the jurisdiction, to prevent Native Americans from obtaining guns; several states' regulation of gunpowder sale, storage, and importation; a Third Congress law prohibiting international export of weapons; and the common-law tradition of disarming those deemed dangerous to the monarch.

3. Perez was convicted of both counts following a jury trial. He appealed to the Second Circuit, pressing the same Second Amendment argument. The court of appeals affirmed the judgment, holding that § 922(a)(3) is constitutional under *Bruen* and *United States v. Rahimi*, 602 U.S. 680 (2024) (decided while the appeal was pending).

In an opinion authored by Judge Alison J. Nathan, the Second Circuit's reasoning, in summary, was as follows:

> This Court previously upheld § 922(a)(3) in the face of a Second Amendment challenge. *United States v. Decastro,* 682 F.3d 160, 163–69 (2d Cir. 2012). We reaffirm that conclusion and hold that § 922(a)(3) does not violate the Second Amendment as applied to Lucha El. Applying the text-and-history framework set out in *New York State Rifle & Pistol Association, Inc. v. Bruen,* 597 U.S. 1 (2022), we conclude that § 922(a)(3) is valid for two independent reasons. First, § 922(a)(3) is a commercial sale regulation that is "presumptively lawful" as long as it does not meaningfully constrain Lucha El's Second Amendment right to "keep" and "bear" arms. *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008); *Gazzola v. Hochul*, 88 F.4th 186, 195–98 (2d Cir. 2023), *cert. denied,* 144 S. Ct. 2659 (2024). As we already held in *United States v. Decastro*, § 922(a)(3) "only minimally affects the ability to acquire a firearm" and places no restrictions on ownership and use. 682 F.3d at 164. The constraints that § 922(a)(3) does impose, including barring the use of anonymous out-of-state straw purchasers to conceal firearms transactions and circumvent lawful in-state regulations, do not implicate the right to "keep" and "bear" arms as it has been construed since *District of Columbia v. Heller*.
>
> Second, even if § 922(a)(3) could be understood to meaningfully constrain Lucha El's access to firearms, the government has identified numerous colonial and Founding-era laws that regulated the movement of arms across borders and disarmed individuals deemed dangerous by the government, demonstrating that § 922(a)(3) is consistent with this nation's historical tradition of firearm regulation. *Cf. United States v. Rahimi,* 602 U.S. 680, 698 (2024).

A.3-4.

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant Certiorari to Decide That Acquisition of

Firearms is Conduct Covered by the Second Amendment.

The Second Amendment to the United States Constitution guarantees that "the right of the people to keep and bear Arms[ ] shall not be infringed." U.S. Const. amend. II. Accordingly, history and text require that, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17. To show that a law burdening such protected conduct is constitutional, the government must demonstrate that the regulation "is consistent with this Nation's historical tradition of firearm regulation." *Id.*

The first, threshold question that triggers a *Bruen* analysis, then, is "whether the plain text of the Second Amendment protects [the] proposed course of conduct." *Id*. at 32. To date, this Court has only expressly addressed laws regulating general possession. *See Bruen*, 597 U.S. at 32 (considering state licensing scheme regulating the "carrying [of] handguns publicly for self-defense"); *Rahimi*, 602 U.S. at 684 (considering federal criminal law prohibiting all firearm "possession" by those subject to domestic violence restraining order). Possession, the sine qua non of the Second Amendment right to keep and bear arms, is encompassed within the amendment's "core protection," *i.e.,* "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

But it cannot be that the Second Amendment's plain text only covers possession. There would be no rationale for step one of the *Bruen* analysis, if so. *Cf.*

Bruen, 597 U.S. at 32 (explicitly "turn[ing] to whether the plain text of the Second Amendment protects [petitioners'] proposed course of conduct"). Moreover, "[c]onstitutional rights . . . implicitly protect those closely related acts necessary to their exercise." *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring).

The Court has given some shape to the scope of conduct covered by the Second Amendment. Aside from possession, an individual's right to train with firearms likely is protected. *See Heller*, 554 U.S. at 617-18 ("to bear arms implies something more than the mere keeping [of arms]; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use") (cleaned up); *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 590 U.S. 336, 364–65 (2020) (Alito, J., dissenting, joined by Thomas & Gorsuch, JJ.) (a "necessary concomitant" of the right to bear arms is the right "to take a gun to a range in order to gain and maintain the skill necessary to use it"); *id.* at 340 (Kavanaught, J., concurring) ("I . . . agree with Justice [Alito's] general analysis of *Heller* and *McDonald*").

Lower appellate courts also have recognized protected conduct other than possession. *See Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc) (the Second Amendment "protects ancillary rights necessary to the realization of the core right to possess a firearm for self-defense"). Like this Court, the Seventh Circuit has acknowledged that the right to bear arms implies "a corresponding right to . . . maintain proficiency in their use." *Ezell v. Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). Similarly, the right to obtain ammunition has been recognized, as

"without bullets, the right to bear arms would be meaningless." *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 968 (9th Cir. 2014), *abrogated on other grounds, Bruen*, 597 U.S. at 19.

Finally, as is most relevant to the instant petition, several lower court cases have held that the Second Amendment protects the right to acquire firearms. "[T]he core Second Amendment right to keep and bear arms for self-defense wouldn't mean much without the ability to acquire arms." *Teixeira*, 873 F.3d at 677 (cleaned up); *see also Gazzola v. Hochul*, 88 F.4th 186, 195–96 (2d Cir. 2023), *cert. denied,* 144 S. Ct. 2659 (2024) (acknowledging that "the right to keep arms[] necessarily involves the right to purchase them") (cleaned up); *Ezell*, 651 F.3d at 704 (acquisition of arms encompassed by Second Amendment); *see also Andrews v. State*, 50 Tenn. 165, 178 (1871) ("The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms.") (case discussed approvingly in *Heller*, 554 U.S. 570).

Petitioner's case squarely presents this question, *i.e.,* whether a person's ability to acquire firearms is conduct protected by the Second Amendment. Section 922(a)(3) prohibits an individual from "transport[ing] into or receiv[ing] in" his/her state of residence, "any firearm purchased or otherwise obtained . . . outside that State." The statute is textually rich, unusually so. It references not one, but four separate courses of conduct implicating acquisition: transportation, receipt, purchase, and obtaining. It thus provides the Court a unique opportunity to decide

whether the Second Amendment covers an individual's conduct in acquiring firearms, and if so, which of the statutory activities – if any – involve such acquisition.

II. The "Meaningful Constraint" Standard for Deciding Whether the Second Amendment Protects "Ancillary" Rights, Used In the Second and Ninth Circuits and Based on Precedent Overturned by *Bruen*, Should Be Reviewed: "It Is One Step Too Many."

Facially at least, the Second Circuit in petitioner's case recognized the ability to acquire firearms as conduct implicating the Second Amendment:

> Of course, to "keep" and "bear" arms, one must also be able to acquire them and maintain them in operable condition. The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair.

A.9 (cleaned up, citations and quotations omitted).

Nevertheless, it held that the conduct prohibited by § 922(a)(3) fails *Bruen* step one, and thus the statute categorically is not subject to Second Amendment scrutiny. To accomplish this, the Circuit adopted and applied a "meaningful constraint" legal standard, only applicable to "ancillary" Second Amendment rights such as firearm acquisition:

> [R]egulations on the means of acquiring, transporting, and storing firearms only implicate the text of the Second Amendment if they meaningfully constrain the right to possess and carry arms.

A.10.

This "ancillary" right and "meaningful constraint" standard originated in *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, a Ninth Circuit case involving a civil

challenge to commercial licensing laws by firearms dealers. Post-*Bruen*, the Ninth Circuit has reaffirmed that what it deems "ancillary" Second Amendment rights (*i.e.,* rights other than possession) are subject to this "meaningful constraint" test, including in the criminal context. *See United States v. Stennerson*, 150 F.4th 1276, 1288 (9th Cir. 2025) (applying "meaningful constraint" test to "receipt" of firearms by those under felony indictment, prohibited by § 922(n)); *see also generally B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 118 (9th Cir. 2024), *cert. denied sub nom. B&L Prods. v. Newsom,* 145 S. Ct. 1958 (2025) (reaffirming validity of *Teixeira* test).

This Ninth Circuit standard first was cited in passing by the Second Circuit in a civil firearms dealer lawsuit similar to *Teixeira*, involving post-*Bruen* commercial commercial licensing laws. *See Gazzola v. Hochul,* 88 F.4th 186, 197 (2d Cir. 2023). But, like the Ninth Circuit, the Second Circuit in petitioner's case seemingly has held it is the correct step-one Second Amendment legal standard for criminal statutes punishing any conduct other than "pure" possession, reasoning that "'ancillary rights' are only protected to the extent that they are necessary to the realization of the textually specified right to keep and bear arms." A.9 (cleaned up). Thus, the standard in the Second Circuit is as follows:

> in this step of the analysis we ask merely the threshold question whether the constraint on an ancillary right is sufficient to constitute an infringement of the textually enumerated right to "keep" and "bear" arms"

A.10-11.

Applying this test, the Second Circuit held that § 922(a)(3)'s "constraint" does not "constitute [such] an infringement." A.12. However, it did so by reaffirming the

validity of its pre-*Bruen,* means-end Circuit precedent upholding the statute: "This Court has already answered that question in [*Decastro*], which held that § 922(a)(3) only minimally affects the ability to acquire a firearm. . . Because that holding is both accurate and not implicated by the *Bruen* line of cases, the Court sees no reason to reconsider it." A.12 (cleaned up); *See United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012).

The correctness of the Second and Ninth Circuits' "meaningful constraint" standard for purported "ancillary" Second Amendment rights and conduct should be reviewed by this Court. Both jurisdictions rely on prior means-end precedent overruled by *Bruen* in reaffirming, adopting, and applying this legal standard. The standard itself originates in a civil challenge to commercial firearm dealer licensing, yet has been applied to criminal statutes that punish – with lengthy sentences – conduct at least arguably protected by the Second Amendment. And, on its face, the "meaningful constraints" analysis appears to run afoul of *Bruen's* most profound criticism of the means-end tests it overruled: at the most basic level, the meaningful constraint standard asks "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right." *Bruen*, 597 U.S. at 19. "[I]t is one step too many." *Id.*

III. Petitioner's Case Presents an Ideal Vehicle for Resolving the Questions Presented, and the "Meaningful Constraint" Standard Espoused by the Second and Ninth Circuits Is Likely to Prove Influential.

This case provides an ideal certiorari vehicle. The issue is amply preserved: petitioner moved to dismiss the indictment on Second Amendment grounds and

pressed the same arguments on appeal, and both the district court and court of appeals reached the issues in lengthy, detailed, published opinions. The facts are undisputed, and the questions presented are purely legal, as they concern the statutory construction of 18 U.S.C. § 922(a)(3), and this Court's textual and historical interpretation of the Second Amendment. Moreover, the "meaningful constraint" standard adopted in petitioner's case for non-possessory criminal statutes is likely to prove influential, given both Circuits' published opinions adopting this standard and the paucity of § 922(a)(3) caselaw.

IV. Alternatively, the Court Should Hold This Application Pending Disposition of *United States v. Hemani*, 24-1234.

If the Court declines to grant this petition, it should at least hold this application pending disposition of *United States v. Hemani*, 24-1234. Since that case concerns the constitutionality of another § 922 criminal offense, the outcome of that case bears relevance to petitioner's.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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