

In the Supreme Court of the United States

LUIS GARZA-GOMEZ, *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*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Luis Garza-Gomez challenged the constitutionality of 18 U.S.C. § 922(g)(1), which makes it a crime for a person convicted of a felony to possess a firearm. He argued that § 922(g)(1)'s permanent disarmament violates the Second Amendment right to keep and bear arms. The court of appeals affirmed on plain-error review, citing *United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). In *Diaz*, the Fifth Circuit relied on a tradition of capital punishment and permanent estate forfeiture to hold that § 922(g)(1) is constitutional on its face. The question presented is does § 922(g)(1) violate the Second Amendment?

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Luis Garza-Gomez, No. DR:22-cr-01939-1
(Nov. 8, 2024) (judgment of conviction)

United States Court of Appeals for the Fifth Circuit:

United States v. Luis Garza-Gomez, No. 24-50914 (Sept. 12,
2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Luis Garza-Gomez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

This Court's decision in *NYSRPA v. Bruen*, 597 U.S. 1 (2022), brought about a sea change in Second Amendment jurisprudence. In *Bruen*'s wake, the courts of appeals considered renewed constitutional challenges to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1). They reached dramatically divergent results. The Court's decision in *United States v. Rahimi*, 602 U.S. 680

(2024), did little to quell the confusion. The courts of appeals continue to be deeply divided after *Rahimi*.

The Fifth Circuit’s decision below, holding that 18 U.S.C. § 922(g)(1) does not violate the Second Amendment is wrong. Section 922(g)(1) is a mid-20th century innovation drafted when Congress believed—incorrectly—that the Second Amendment does not protect an individual right to bear arms. So Congress made no effort to pass a law that was “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. Rather, it passed a sweeping ban that is irreconcilable with our history and tradition. Section 922(g)(1) is unconstitutional because its lifetime prohibition on gun possession imposes a historically unprecedented burden on the right to bear arms. No historical firearm law imposed *permanent* disarmament. And the justification behind § 922(g)(1)—disarming a broad group of potentially irresponsible individuals—also fails historical scrutiny. At most, our history shows a tradition of temporarily disarming individuals who threaten armed insurrection or had threatened (or would likely threaten) another with a firearm. So, § 922(g)(1) is unconstitutional to permanently disarm individuals like Garza-Gomez.

This Court's intervention is needed to resolve the scope of a fundamental constitutional right. The Court should grant certiorari.

OPINION BELOW

A copy of the unpublished opinion of the court of appeals, *United States v. Garza-Gomez*, No. 24-50914 (5th Cir. Sept. 12, 2025) (per curiam), is reproduced at App. 1a–3a.

JURISDICTION

The Fifth Circuit entered its judgment on September 12, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: “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.”

Section 922(g)(1) of Title 18 of the United States Code provides: “It shall be unlawful for any person ... who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce, any firearm or ammunition.”

STATEMENT

A. Legal background.

1. “Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.” *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Indeed, “[b]ans on ex-felons possessing firearms were first adopted in the 1920s and 1930s, almost a century and a half after the Founding.” Adam Winkler, *Heller’s Catch-22*, 56 UCLA L. REV. 1551, 1563 (2009). In 1938, Congress criminalized firearm possession by individuals convicted of certain crimes for the first time. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). But that statute was much narrower than the modern version. The Federal Firearms Act only applied to someone “convicted of a crime of violence,” *id.*, which included “murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking,” and certain kinds of aggravated assault, *id.* § 1(6). The Act prohibited an individual with such a conviction from “receiv[ing]” a firearm, and it considered possession to be “presumptive evidence” of receipt.¹ *Id.* § 2(f).

2. It was not until the 1960s that the federal felon-in-possession statute took on its modern form. At the time, Congress shared a

¹ This possession-based presumption was short-lived. A few years later, this Court invalidated the presumption on due process grounds. *Tot v. United States*, 319 U.S. 463, 467 (1943).

widely held—but incorrect—understanding of the Second Amendment. In committee testimony, the Attorney General assured Congress that “[w]ith respect to the second amendment, the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms” and opined that “the right to bear arms protected by the second amendment relates only to the maintenance of the militia.” *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary*, 89th Cong. 41 (1965). And Congress dismissed constitutional concerns about federal firearm regulations, explaining that the Second Amendment posed “no obstacle” because federal regulations did not “hamper the present-day militia.” S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169. Congress relied on court decisions—including this Court’s decision in *United States v. Miller*, 307 U.S. 174 (1939)—which held that the Second Amendment “was not adopted with the individual rights in mind.” *Id.*

Unconstrained by the Second Amendment, “Congress sought to rule broadly,” employing an “expansive legislative approach” to pass a “sweeping prophylaxis ... against misuse of firearms.” *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (first quote); *Lewis v. United States*, 445 U.S. 55, 61, 63 (1980) (second

and third quotes). In particular, Congress was concerned with keeping firearms out of the hands of broad categories of “potentially irresponsible persons, including convicted felons.” *Barrett v. United States*, 423 U.S. 212, 220 (1976). So, it enacted two significant changes that brought about the modern felon-in-possession ban. *First*, Congress expanded the Federal Firearms Act to prohibit individuals convicted of *any crime* “punishable by imprisonment for a term exceeding one year”—not just violent crimes—from receiving a firearm. *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961). *Second*, a few years later, Congress criminalized *possession* of a firearm—not just receipt—by anyone with a felony conviction. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

3. In its seminal decision in *District of Columbia v. Heller*, this Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a “textual analysis” of the Second Amendment’s language and surveyed the Amendment’s “historical background.” *Id.* at 578, 592. The Court identified several “longstanding” and “presumptively lawful” firearm

regulations, such as prohibitions on felons possessing firearms. *Id.* at 626–27 & n.27. But the Court cautioned that it was not “undertak[ing] an exhaustive historical analysis ... of the full scope of the Second Amendment.” *Id.* at 626. And it did not cite any historical examples of these “longstanding” laws, explaining that there would be “time enough to expound upon the historical justifications for the[se] exceptions ... if and when those exceptions come before us.” *Id.* at 635.

4. Following *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges that focused on the historical scope of the Second Amendment at step one and applied means-ends scrutiny at step two. *See, e.g., Kanter*, 919 F.3d at 441–42; *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). And this Court’s recognition that the Second Amendment protects an individual right to bear arms brought constitutional challenges to § 922(g)(1). But the courts of appeals almost uniformly rejected Second Amendment challenges to the statute, either applying means-ends scrutiny or relying on *Heller*’s “presumptively lawful” language. *See, e.g., United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases).

5. Then came *Bruen*. In *Bruen*, this Court held that the two-step framework adopted by the courts of appeals was “one step too

many.” 597 U.S. at 19. Instead, the Court explained that *Heller* demanded a test “centered on constitutional text and history.” *Id.* at 22. Under this test, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. “The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. “Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* (cleaned up).

Bruen—and the Court’s later decision in *Rahimi*—explain that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692. “A court must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, ‘apply[ing] faithfully the balance struck by the founding generation to modern circumstances.’” *Id.* (quoting *Bruen*, 597 U.S. at 29). The law need not be a “historical twin,” but analogical reasoning is also not a “regulatory blank check.” *Bruen*, 597 U.S. at 30. “How” and “why” the regulations burden the right to bear arms are central to this inquiry. *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. These

considerations ask whether the modern and historical regulations impose a “comparable burden” (the *how*) and “whether that burden is comparably justified” (the *why*). *Bruen*, 597 U.S. at 29. “Even when a law regulates arms-bearing for a permissible reason, ... it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Rahimi*, 602 U.S. at 692.

B. Proceedings below.

1. In August 2022, law enforcement officers encountered Luis Garza-Gomez and a woman near Eagle Pass, Texas, and found he was in possession of a firearm. C.A. ROA.167. Garza-Gomez, who had prior felony convictions, was indicted for possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). C.A. ROA.16. He pleaded guilty to the indictment. C.A. ROA.64–65. A probation officer prepared a presentence report. C.A. ROA.165–85. The district court sentenced Garza-Gomez to 120 months’ imprisonment and 3 years’ supervised release. C.A. ROA.71–76.

3. On appeal, Garza-Gomez argued, for the first time, that § 922(g)(1) facially violates the Second Amendment. He acknowledged that the Fifth Circuit’s precedent foreclosed his argument but raised it to preserve the issue for further review.

The Fifth Circuit affirmed Garza-Gomez’s conviction. App. 1a–3a.² The court held that its precedent foreclosed Garza-Gomez’s facial challenge to § 922(g)(1). App. 2a (citing *Diaz*, 116 F.4th at 472. *Diaz*, as the seminal Fifth Circuit case applying *Bruen* and *Rahimi*’s analyses to § 922(g)(1), established three points: (1) “felons” are part of “the people,” and thus § 922(g)(1) is presumptively unconstitutional, *id.* at 466–67; (2) § 922(g)(1) is facially constitutional, *id.* at 471–72; and (3) § 922(g)(1) was constitutional as-applied to Diaz because—when considering only his prior convictions—his prior felony for vehicle theft was relevantly similar to the Founding-era crime of horse theft, which was punishable by death or estate forfeiture, *id.* at 467, 469–70.

REASONS FOR GRANTING THE PETITION

I. Section 922(g)(1) is facially unconstitutional because it imposes an unprecedented lifetime ban on firearm possession.

1. Section 922(g)(1) facially violates the Second Amendment because it imposes a sweeping, historically unprecedented lifetime ban that prevents millions of Americans from possessing firearms

² On appeal, Garza-Gomez also raised a challenge to the Guidelines calculation. The government conceded Guideline error, and the Fifth Circuit vacated Garza-Gomez’s sentence and remanded the case to the district court for further proceedings.

for self-defense. Petitioner cannot find any historical gun law that imposed a *permanent* prohibition on the right to keep and bear arms—even for self-defense. In other words, no historical regulation “impose[s] a comparable burden on the right of armed self-defense.” *See Bruen*, 597 U.S. at 29.

That is hardly surprising. When Congress passed the modern felon-in-possession statute—four decades before *Heller* and more than a half-century before *Bruen*—it did not believe that the Second Amendment protected an individual right to keep and bear arms. *See supra* 5–6. So Congress did not try to pass a law that aligned with the “Nation’s historical tradition of firearm regulation.” *See Bruen*, 597 U.S. at 17. Instead—dismissing the Second Amendment as “no obstacle,” *see supra* 5–6—it employed an “expansive legislative approach” to pass a “sweeping prophylaxis ... against misuse of firearms.” *Lewis*, 445 U.S. at 61, 63. And that sweeping, *permanent* prohibition on gun possession imposes a burden far broader than any firearm regulation in our Nation’s history.

2. The Fifth Circuit has recognized that § 922(g)(1)’s permanent disarmament requires a historical analogue that also permanently prevented individuals from possessing guns. *See Diaz*, 116 F.4th at 469. But the court did not cite any historical

firearm regulation imposing permanent disarmament.³ Instead, the court relied on capital punishment and forfeiture laws as historical analogues justifying § 922(g)(1). *Id.* at 467–68. That reliance conflicts with this Court’s precedent in three ways.

a. This Court requires the government to show that a modern gun law aligns with our “historical tradition of *firearm* regulation.” *Bruen*, 597 U.S. at 24 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In other words, the government’s historical analogues must regulate *firearms*. In *Rahimi*, this Court relied only on historical laws that “specifically addressed firearms violence.” 602 U.S. at 694–95. So too in *Bruen*. 597 U.S. at 38–66. Capital punishment and estate forfeiture, however, are not *firearm* regulations. So, they cannot justify § 922(g)(1). The Fifth Circuit reached a contrary conclusion by misreading *Rahimi*.

First, the Fifth Circuit asserted that *Rahimi* “consider[ed] several laws that were not explicitly related to guns.” *Diaz*, 116 F.4th at 468. But *Rahimi* says otherwise. In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going

³ In its line of cases holding that § 922(g)(1) is constitutional as applied to someone convicted of a violent crime, the Fifth Circuit has cited the affray laws. *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024), *cert. denied*, No. 25-5208, 2025 WL 2824426 (2025). But there is no indication that those laws *permanently* deprived individuals of the right to keep and bear arms.

armed laws—that both “specifically addressed firearms violence.” 602 U.S. at 694–95. To be sure, surety laws were not “passed *solely* for the purpose of regulating firearm possession or use.” *Diaz*, 116 F.4th at 468. But this Court emphasized that, “[i]mportantly for *this case*, the surety laws also targeted the misuse of firearms.” *Rahimi*, 602 U.S. at 696 (emphasis added). In other words, historical laws that did *not* target the misuse of firearms—like capital punishment and estate forfeiture—are *not* proper analogues.

Second, the Fifth Circuit noted that this Court accepted a greater-includes-the-lesser argument in *Rahimi*. *Diaz*, 116 F.4th at 469. That is true as far as it goes. *Rahimi* held that “if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament ... is also permissible.” 602 U.S. at 699. But it does not follow, as the Fifth Circuit concluded, that “if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.” *Diaz*, 116 F.4th at 469; *see* App. 2a. This Court explained that the purpose of imprisonment under the going armed laws was “to respond to the use of guns to threaten the physical safety of others.” *Rahimi*, 602 U.S. at 699. So both the

greater historical punishment (imprisonment under the going armed laws) and the lesser modern restriction (disarmament under 18 U.S.C. § 922(g)(8)) had the same purpose—curbing gun violence. Not so here. Again, capital punishment and forfeiture simply did not target gun violence.

b. This Court has also emphasized that the right to bear arms “is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 597 U.S. at 70 (cleaned up). But the Fifth Circuit’s reasoning—that because capital punishment is an “obviously permanent” deprivation of an individual’s right to bear arms, the lesser restriction of permanent disarmament is permissible for individuals who are not executed, *Diaz*, 116 F.4th at 469—conflicts with how the Constitution treats other fundamental rights.

“Felons, after all, 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.” *United States v. Williams*, 113 F.4th 637, 658 (6th Cir. 2024). “No one suggests that such an individual has no right to a jury trial or be free from unreasonable searches and seizures.” *Id.* And “we wouldn’t say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding.” *Kanter*,

919 F.3d at 461–62 (Barrett, J., dissenting). “The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Id.* at 462. Rather, “history confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one’s status as a convicted felon or to the uniform severity of punishment that befell the class.” *Id.* at 461.

c. Finally, this Court has expressed “doubt that *three* colonial regulations could suffice to show a tradition.” *Bruen*, 597 U.S. at 46. But the Fifth Circuit relied on only three laws to establish a tradition of permanently punishing individuals who have been convicted of theft: a colonial Massachusetts law, a founding-era New York law, and a post-revolutionary Virginia law. *Diaz*, 116 F.4th at 468–69; *see* App. 2a. Putting to one side whether the court’s reading of these laws is correct, this limited historical evidence is too slender a reed to establish a tradition justifying the deprivation of a fundamental constitutional right.

3. A law is not compatible with the Second Amendment if it regulates the right to bear arms “to an extent beyond what was done at the founding.” *Rahimi*, 602 U.S. at 692. Section 922(g)(1) does just that. It imposes a lifetime ban on firearm possession that

would have been unimaginable to the Founders. Thus, § 922(g)(1) facially violates the Second Amendment because there are “no set of circumstances” under which it is valid. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

II. The question presented is important and recurring.

1. The Court should grant the petition because the question is critically important and recurring. After all, “§ 922(g) is no minor provision.” *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Out of about 64,000 cases reported to the Sentencing Commission in Fiscal Year 2023, more than 7,100 involved convictions under § 922(g)(1). *See* U.S. Sent’g Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses*, at 1 (June 2024). Those convictions accounted for over 10% of all federal criminal cases. *See id.*

Even beyond new prosecutions, § 922(g)(1)’s reach is staggering. The statute prohibits millions of Americans from exercising their right to keep and bear arms for the rest of their lives. Recent estimates of the number of individuals with felony convictions range from 19 million to 24 million. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1591 (2022) (citations omitted). And § 922(g)(1) is particularly troubling because most of the individuals it prohibits from

possessing firearms are peaceful, with convictions for only non-violent offenses. Less than 20% of state felony convictions and less than 5% of federal felony convictions are for violent offenses. *See* Dep’t of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, at 3 (Table 1.1) (rev. Nov. 2010); Dep’t of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022*, at 12 (Table 7) (Jan. 2024).

Given § 922(g)(1)’s widespread impact both on new prosecutions and on the millions of non-violent Americans it prohibits from exercising a fundamental constitutional right, this Court should answer this important and recurring question as soon as possible.

2. Counsel is aware of many pending petitions for writ of certiorari that, if granted, would bear on the question presented in this case. *See, e.g., United States v. Medrano*, No. 23-10713 (U.S.); *Vincent v. Bondi*, No. 24-1155 (U.S.); *United States v. Mayfield*, No. 24-5020; *United States v. Hernandez*, No. 25-5421 (U.S.). Should the Court grant certiorari in one of these cases or any another pending case presenting a challenge to § 922(g)(1), it should at least hold Garza-Gomez’s petition pending that decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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