No. 25-_____

IN THE
SUPREME COURT OF THE UNITED STATES

LENNY REYES,

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

Siobhan C. Atkins
Counsel of Record
Federal Defenders of New York, Inc.
Appeals Bureau
52 Duane Street, 10th Floor
New York, New York 10007
(212) 417-8793
Siobhan_Atkins@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 citizens whose prior felony convictions were for nonviolent offenses only.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii
OPINIONS AND ORDERS BELOW 1
JURISDICTION 1
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS 1
STATEMENT OF THE CASE 2
A. Introduction 2
B. Petitioner's Conviction and Appeal 4
REASONS FOR GRANTING THE PETITION 5
I. The circuits are hopelessly divided over the important and recurring question of § 922(g)(1)'s constitutionality. 6
II. This case presents a good vehicle to address the issue. 9
III. The Second Circuit's decision is wrong 9
IV. At the very least, this Court should hold this petition pending its decision in *United States v. Hemani*, No. 24-1234, and its resolution of petitions raising the same constitutional issue 12
CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

Cases

Cunningham v. United States,
144 S. Ct. 2713 (2024) 13
District of Columbia v. Heller,
554 U.S. 570 (2008) 10
Jackson v. United States,
144 S. Ct. 2710 (2024) 12
Kanter v. Barr,
919 F.3d 437 (7th Cir. 2019) 11
New York State Rifle & Pistol Association, Inc. v. Bruen,
597 U.S. 1 (2022) 2, 10, 11
Range v. Att'y Gen. United States,
124 F.4th 218 (3d Cir. 2024) 2, 6, 9, 11
United States v. Betancourt,
139 F.4th 480 (5th Cir. 2025) 3
United States v. Diaz,
116 F.4th 458 (5th Cir. 2024) 4, 7
United States v. Duarte,
137 F.4th 743 (9th Cir. 2025) 3, 8
United States v. Dubois,
139 F.4th 887 (11th Cir. 2025) 8
United States v. Hunt,
123 F.4th 697 (4th Cir. 2024) 3, 8
United States v. Jackson,
85 F.4th 468 (8th Cir. 2023) 10
United States v. Jackson,
110 F.4th 1120 (8th Cir. 2024) 3, 8
United States v. Rahimi,
602 U.S. 680 (2024) 2
United States v. Seiwert,
152 F.4th 854 (7th Cir. 2025) 3, 8
United States v. Williams,
113 F.4th 637 (6th Cir. 2024) 3, 7
Vincent v. Bondi,
127 F.4th 1263 (10th Cir. 2025) 3, 8
Vincent v. Garland,
144 S. Ct. 2708 (2024) 12

Zherka v. Bondi,
140 F.4th 68 (2d Cir. 2025) 2, 3, 5, 8

Statutes

18 U.S.C. § 922(g)(1) 2, 3, 7
18 U.S.C. § 922(g)(3) 4, 12

Other Authorities

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695 (2009) 11
G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249 (2020) 10

OPINIONS AND ORDERS BELOW

The Second Circuit's decision (Pet. App. 1a–6a) is not published in the Federal Reporter but is available at 2025 WL 2741743. The district court's judgment (Pet. App. 7a–13a) and its order denying Petitioner's motion to dismiss the indictment (Pet. App. 14a) are unreported.

JURISDICTION

The Second Circuit issued its decision and entered judgment on September 26, 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).

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 nonviolent prior felony convictions.

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)—which criminalizes firearm possession by anyone with any sort of prior felony conviction—cannot be constitutionally applied to an individual with only an old, nonviolent prior conviction. *See Range v. Att'y Gen. United States*, 124 F.4th 218, 222 (3d Cir. 2024) (en banc). In so holding, the Third Circuit also held that individuals can mount as-applied challenges to § 922(g)(1)'s constitutionality.

But other 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), *petition for cert. filed* (U.S. Sept. 5, 2025) (No. 25-269). The circuit refused to

permit any "case-by-case, 'as applied' exceptions" to § 922(g)(1)'s prohibitions. *Id.* at 95-96.

The Second Circuit's position aligns with that of the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. *See United States v. Hunt*, 123 F.4th 697, 703-04 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2005); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2005); *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025), *petition for cert. filed* (U.S. Oct. 8, 2025) (No. 25-425); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025), *petition for cert. filed* (U.S. May 12, 2025) (No. 24-1155); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025), *petition for cert. filed* (U.S. Dec. 1, 2025) (No. 25-6281).

Meanwhile, the Fifth, Sixth, and Seventh Circuits take a different tack. 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 (6th Cir. 2024). The Fifth and Seventh Circuits similarly hold open the possibility of as-applied constitutional challenges. *See United States v. Seiwert*, 152 F.4th 854, 860-73 (7th Cir. 2025); *United States v. Betancourt*, 139 F.4th 480, 484 (5th Cir. 2025), *petition for cert. filed* (U.S. Sept. 2, 2025) (No. 25-5514);

United States v. Diaz, 116 F.4th 458, 471 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025).

Thus, the circuits are hopelessly divided on § 922(g)(1)'s constitutionality following *Bruen*, and cannot agree on whether the statute is even amenable to as-applied challenges. The Court should 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 presents a good vehicle to decide this question. Petitioner's prior felony convictions were for nonviolent offenses—drug possession, drug sale, and driving under the influence—and he has fully preserved his challenge to § 922(g)(1)'s constitutionality.

If the Court declines to grant this petition, it should at least hold this petition pending disposition of petitions raising the same issue, including those submitted in *Zherka* and *Vincent*. It should also hold this petition pending this Court's decision in *United States v. Hemani*, No. 24-1234, which addresses the constitutionality of an analogous statute—18 U.S.C. § 922(g)(3)—and may alter the analysis applied by the Second Circuit below.

B. Petitioner's Conviction and Appeal

Petitioner was charged with being a felon in possession of ammunition in violation of § 922(g)(1). Petitioner moved to dismiss the charge in the

district court, arguing that § 922(g)(1) is unconstitutional under the Second Amendment both on its face and as applied to him. The district court rejected this argument. Pet. App. 14a. Petitioner then pleaded guilty, pursuant to a plea agreement, to violating § 922(g)(1). He was sentenced to 121 months' imprisonment, plus three years' supervised release. Pet. App. 7a–13a. Petitioner is currently incarcerated pursuant to the judgment.

Petitioner appealed his conviction to the Second Circuit, again arguing that § 922(g)(1) is unconstitutional on its face and as applied to him. While his appeal was pending, the Second Circuit issued a precedential opinion in *Zherka*, 140 F.4th 68, holding that § 922(g)(1) is constitutional even as applied to people with prior convictions for nonviolent felonies. *Id.* at 93. Based on *Zherka*, the Second Circuit rejected petitioner's claims and affirmed his § 922(g)(1) conviction. Pet. App. 3a.

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 is a good vehicle to address the question because the issue is cleanly presented and fully preserved.

Third, the Second Circuit's holding is wrong: § 922(g)(1) is unconstitutional under the Second Amendment. At the least, individual defendants with only nonviolent prior convictions should be permitted to challenge the constitutionality of § 922(g)(1) as applied to them.

Finally, if the Court declines to grant this petition, it should at least hold this petition pending disposition of petitions raising the same issue—and pending this Court's decision in *United States v. Hemani*, No. 24-1234.

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), particularly as applied to people with nonviolent prior felony convictions. 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*, 124 F.4th 218. 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, Sixth, and Seventh Circuits have recognized the possibility of as-applied challenges to § 922(g)(1) for individuals with nonviolent prior felony convictions. In *Diaz*, the Fifth Circuit held that *Bruen* and *Rahimi* abrogated the circuit's prior precedent deeming § 922(g)(1) constitutional. 116 F.4th at 465. *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). *Williams*, 113 F.4th at 657-58. 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 ruled that § 922(g)(1) "would abridge non-dangerous felons' Second Amendment rights." *Id.* at 661.

The Seventh Circuit has also likewise recognized (or at least assumed) that defendants may mount as-applied constitutional challenges to § 922(g). *See Seiwert*, 152 F.4th at 860-73.

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 an individual who has only nonviolent prior felony convictions and can establish that he is not dangerous. *See Zherka,* 140 F.4th at 95; *Hunt*, 123 F.4th at 703-04; *Jackson*, 110 F.4th at 1125; *Duarte*, 137 F.4th at 748; *Vincent,* 127 F.4th at 1266; *Dubois*, 139 F.4th at 893. 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 ten circuits have addressed § 922(g)(1)'s constitutionality in precedential or en banc decisions, and the circuits remain divided. Four 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 a good vehicle to address the issue.

This case provides a clean opportunity to resolve this circuit conflict. Petitioner preserved his constitutional challenge to § 922(g)(1) before the district court and the Second Circuit. He has only nonviolent prior convictions, meaning that his case would have been resolved differently in the Third, Fifth, Sixth, and Seventh Circuits. And although his case was decided by summary order, the Second Circuit explicitly relied on its recent (post-*Rahimi* and *Bruen*) precedential decision in *Zherka*. Pet. App. 3a.

III. The Second Circuit's decision is wrong.

Finally, the Court should grant this petition 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 nonviolent 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 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 committed only nonviolent offenses, completed their sentences, and posed no ongoing danger to others. *See* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 283 (2020). 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 the 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 an invention of the twentieth century. *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).

Founding-era surety and forfeiture laws are not sufficiently analogous to § 922(g)(1) to survive Second Amendment scrutiny. 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 ban on a class-wide basis, without any specific finding of dangerousness.

"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 as applied to individuals like Petitioner.

IV. At the very least, this Court should hold this petition pending its decision in *United States v. Hemani*, No. 24-1234, and its resolution of petitions raising the same constitutional issue.

Numerous other petitions pending before this Court have raised the same constitutional issue regarding § 922(g)(1). *See supra* at 2–3 (collecting cases). If this Court declines to grant this petition, it should at least hold this petition pending disposition of petitions raising the same issue, including those submitted in *Zherka* and *Vincent*.

This Court should also hold this petition pending its decision in *United States v. Hemani*, No. 24-1234. In *Hemani*, this Court will decide whether 18 U.S.C. § 922(g)(3), the federal statute that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violates the Second Amendment as applied to the respondent. Although *Hemani* addresses a different subsection of § 922(g), this Court's analysis of the Second Amendment—and whether as-applied challenges to the statute can succeed—in *Hemani* may well alter the Second Circuit's analysis of § 922(g)(1). *See, e.g.*, *Jackson v. United States*, 144 S. Ct. 2710 (2024) (granting, vacating, and remanding § 922(g)(1) case for further consideration in light of *Rahimi*, which addressed § 922(g)(8)); *Vincent v.*

Garland, 144 S. Ct. 2708 (2024) (same); *Cunningham v. United States*, 144 S. Ct. 2713 (2024) (same).

CONCLUSION

The Court should grant this petition. Alternatively, the Court should hold this petition pending resolution of *United States v. Hemani*, No. 24-1234, and petitions raising the same constitutional issue.

Respectfully submitted,

By:_____

Siobhan C. Atkins
Counsel of Record
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, New York 10007
Siobhan_Atkins@fd.org
Tel.: (212) 417-8793

Counsel for Petitioner