NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CLOVER MCGREGOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1), which prohibits felons from possessing firearms or ammunition, violates the Second Amendment.

RELATED PROCEEDINGS

U.S. District Court

On December 15, 2023, the United States District Court for the District of Colorado entered a criminal judgment against Petitioner Clover McGregor in *United States v. McGregor*, 23-cr-00220-PAB-1. That judgment, which is challenged by this Petition, appears in the Appendix at A1.

U.S. Court of Appeals

On October 28, 2025, the United States Court of Appeals for the Tenth Circuit affirmed the district court's judgment in *United States v. McGregor*, No 23-1399. That opinion, which is the subject of this Petition, appears in the Appendix at A8.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Clover McGregor respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on October 28, 2025.

OPINION BELOW

The Tenth Circuit's opinion in Mr. McGregor's appeal, No. 23-1399, is published. It is available at *United States v. McGregor*, 158 F.4th 1082 (10th Cir. 2025), and appears in the Appendix at A8.

JURISDICTION

The United States District Court for the District of Colorado had jurisdiction over the criminal case against Mr. McGregor pursuant to 18 U.S.C. § 3231. *See* App. A1. The Tenth Circuit had jurisdiction over Mr. McGregor's appeal pursuant to 28 U.S.C. § 1291, and entered judgment on October 28, 2025. App. A8. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution, U.S. Const. amend. II:

> 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.

18 U.S.C. § 922(g)(1):

> 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 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.

STATEMENT OF THE CASE

Mr. McGregor pled guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and was sentenced to 37 months' imprisonment. *See* App. A1–2. On appeal, he argued, in pertinent part, that Section 922(g)(1) was unconstitutional, both facially and as applied to him, under the Second Amendment, in light of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). As Mr. McGregor acknowledged in his appeal, his claims were subject to plain error review, and were foreclosed by Tenth Circuit precedent. The Tenth Circuit affirmed, relying on *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *petition for cert. filed*, No. 24-1155 (U.S. May 8, 2025). *See* App. A48–49.

This petition follows.

REASONS FOR GRANTING THE WRIT

Mr. McGregor respectfully submits that the Court should grant review in *Vincent*, No. 24-1155, or another petition challenging the constitutionality of § 922(g)(1), and hold Mr. McGregor's petition pending its resolution of that case. The Court should then rule that § 922(g)(1) is unconstitutional on its face or in some applications, grant Mr. McGregor's petition, and order the Tenth Circuit to afford Mr. McGregor the benefit of its new Second Amendment ruling. For several reasons, the question presented warrants this Court's review.

I. The validity of § 922(g)(1) is an important question of federal law.

First, whether § 922(g)(1) is unconstitutional in all or some of its applications has significant real-world implications. In fiscal year 2023 alone, there were over 7,100 convictions under the statute. *See* U.S. Sent. Comm'n, *QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses* (June 2024), https://www.ussc.gov/research/quick-facts/section-922g-firearms. And § 922(g)(1) doesn't just curtail the Second Amendment rights of those persons convicted of violating it. It applies to nearly everyone who has previously committed any offense punishable by more than a year in prison, even those who have never misused a firearm. In other words, § 922(g)(1) serves to disarm millions of Americans. *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 Demography 1795, 1806–08 (2017) (estimating that, as of 2010, nineteen-million people in the United States had felony records).

The burden on those millions of Americans is substantial. First, § 922(g)(1)'s ban on firearm possession is effectively permanent. Moreover, this prohibition applies to entirely lawful possession of guns, including for self-defense within the home—the "central component" of the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570, 599 (2008). Further, violating § 922(g)(1) could mean spending fifteen years in prison. *See* 18 U.S.C. § 924(a)(8). In short, § 922(g)(1), permanently and nearly

completely, deprives millions of individuals of their ability to exercise a fundamental individual right.

II. The circuits are split over the Second Amendment question.

As the certiorari petition in *Vincent* explains in detail, the question of whether § 922(g)(1) violates the Second Amendment is the subject of an open, well-developed, and intractable circuit split. *See* Petition for Writ of Certiorari at 2–4, 7–13, *Vincent v. Bondi*, No. 24-1155 (U.S. May 8, 2025).

III. The Tenth Circuit's Second Amendment ruling is wrong.

The Tenth Circuit's holding that § 922(g)(1) comports with the Second Amendment in any and all of its applications is erroneous. Mr. McGregor argues here, as he did below, that § 922(g)(1) is unconstitutional, both facially and as applied to him, under *New York State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). The Tenth Circuit has erroneously refused to apply the constitutional test established in *Bruen* and applied in *Rahimi*. And that test, applied correctly, establishes that § 922(g)(1) cannot stand.

In *Bruen* and *Rahimi*, this Court established and applied a test for evaluating laws, like § 922(g)(1), that infringe on a person's fundamental Second Amendment rights. The cases instruct that (1) conduct covered by the Second Amendment's plain text is presumptively protected and cannot be restricted, *Bruen*, 597 U.S. at 24, unless (2) the government can demonstrate a historical tradition of "relevantly similar" firearms

regulations from the founding era, *id.* at 24, 28–29. To do so, the government must prove that the challenged law is sufficiently similar to historical laws with respect to "both why and how it burdens the Second Amendment right." *Rahimi*, 602 U.S. at 698. That means the government must explain how the challenged law is sufficiently similar to founding-era tradition with respect to both its purpose and the degree to which it infringes on the Second Amendment right—taking into consideration metrics like procedural protections, duration of infringement, and severity of penalty. *Id.* at 698–99. "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." *Id.* at 692.

The Tenth Circuit has wrongly failed to apply this controlling test in upholding § 922(g)(1). In *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009)—a pre-*Bruen* decision—the Tenth Circuit summarily deemed § 922(g)(1) consistent with the Second Amendment based on unexplained dicta in *District of Columbia v. Heller*, that "nothing in [that] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons," 554 U.S. at 626. After *Bruen*, the Tenth Circuit declared itself bound by its pre-*Bruen* decision in *McCane* and refused to revisit § 922(g)(1)'s constitutionality under *Bruen*'s "new test." *Vincent v. Garland*, 80 F.4th 1197, 1199 (10th Cir. 2023). Following this Court's decision in *Rahimi*, this Court vacated the Tenth Circuit's decision in *Vincent v. Garland* and directed it to reconsider in light of

Rahimi. *See Vincent v. Garland*, 144 S. Ct. 2708, 2708–09 (2024). Rather than doing so, the Tenth Circuit issued a three-page decision that again deemed its hands tied by *McCane* and again failed to conduct any history-and-tradition analysis. *See Vincent v. Bondi*, 127 F.4th at 1264–65. And in Mr. McGregor's case, the Tenth Circuit relied upon *Vincent v. Bondi* to reject his claim. App. A48–49.

It is erroneous for the Tenth Circuit to continue to afford controlling weight to *Heller*'s dicta in the wake of *Bruen* and *Rahimi*. This Court has made clear that the legal tests it imposes are binding and trump its dicta. In *Seminole Tribe of Florida v. Florida*, it stated that both the "result" of its opinion and "those portions of the opinion necessary to that result" are binding, even on itself. 517 U.S. 44, 67 (1996). In contrast, this Court has repeatedly stressed that its "dicta, even if repeated, does not constitute precedent." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 645 (2022). In *Oklahoma v. Castro-Huerta*, for example, it found entirely unpersuasive prior "tangential dicta" that addressed an issue that, until that case, "did not previously matter all that much and did not warrant t[he] Court's review." *Id.* at 646 (2022). And in *Heller* itself, the Court stated that "[i]t is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued." 554 U.S. at 625 n.25. Thus, while this Court's dicta holds significant weight in lower courts, *see, e.g.*, *Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996), if faced with a choice between relying exclusively on such dicta or

applying a binding legal test, lower courts must employ the latter. Here, *Bruen* unquestionably established a new, binding test for analyzing Second Amendment challenges—which the Tenth Circuit must apply, notwithstanding *Heller*'s dicta.

Further, under the test established in *Bruen* and applied in *Rahimi*, § 922(g)(1) is unconstitutional. First, the conduct regulated by § 922(g)(1) is covered by the Second Amendment. The plain text of the Amendment clearly covers possession of a firearm, including the firearms in this case. And Mr. McGregor is clearly part of "the people" protected by the Amendment: The plain text does not draw a distinction between felons and non-felons, and this Court has already determined that the phrase "the people" contained within the Amendment "unambiguously refers to all members of the political community, *not an unspecified subset*." *Heller*, 554 U.S. at 580 (emphasis added).

Second, the government cannot meet its historical burden to support the constitutionality of the statute. There is no historical analogue for § 922(g)(1), let alone a sufficiently robust tradition of such analogues. Although the government need not point to a "historical twin," *Rahimi*, 602 U.S. at 701, this Court nonetheless requires a close fit between modern and historical regulations, *compare Bruen*, 597 U.S. at 55–59 (surety statutes requiring "certain individuals to post bond before carrying weapons in public" insufficiently similar to broad prohibition on public carry), *with Rahimi*, 602 U.S. at 698–99 (surety statutes sufficiently similar to temporary restriction on firearm possession by individuals subject to certain restraining orders). Accordingly, the

government needs to show that the founding generation tried to prevent persons convicted of felonies or felony-equivalent crimes from simple possession of firearms for *any* purpose—and that it did so in a manner sufficiently comparable to § 922(g)(1).

But there is no tradition of felon dispossession statutes—at either the federal or state level—predating the 20th century. Section 922(g)(1) itself traces its origins back only to 1938, when Congress passed the Federal Firearms Act, P. L. No. 75-785, c. 850, § 2(f), 52 Stat. 1250, 1250–52 (1938), that prohibited certain felons with "a few violent offenses" from receiving firearms, *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc) (discussing Act). The statute was not amended to prohibit the "possession by *all* felons" until the 1960s. *Id.* And scholars have not identified founding-era colonial or state felon dispossession statutes either. *See, e.g.*, Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 142–43 & n.11 (2007). The "Founders themselves could have adopted" laws like Section 922(g)(1) to "confront" the "perceived societal problem" posed by felons. *Bruen*, 597 U.S. at 27. Yet they did not, and that inaction means § 922(g)(1) is unconstitutional in all applications.

Moreover, the statute is independently unconstitutional because of the extraordinary burden it puts on the Second Amendment right of every person that it impacts. Section 922(g)(1) indefinitely—and for all practical purposes, permanently—bans all firearm possession, so long as the firearm traveled in interstate commerce at

some point. The government has been unable to identify any historical tradition of relevantly similar firearm regulations that so completely infringed upon an individual's ability to exercise such a fundamental right.

Finally, even if there were *some* constitutional applications of § 922(g)(1), under the correct test established in *Bruen* and applied in *Rahimi*, the statute is still unconstitutional as applied to Mr. McGregor. To the extent there could be constitutional applications of § 922(g)(1), it is the government's burden to demonstrate where to draw that line. But at minimum, and based on the factors this Court found critical in *Rahimi*—duration of infringement, individualized procedural protections, and the danger posed by the defendant to another person's physical safety—the government cannot do so for persons like Mr. McGregor.

CONCLUSION

This Court should hold Mr. McGregor's petition pending a favorable ruling in *Vincent* or another case challenging § 922(g)(1).

Respectfully submitted,

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