No. _____

IN THE
Supreme Court of the United States

DENNIS MARTIN
Petitioner,

vs.

UNITED STATES,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court should grant certiorari because this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), rendered Mr. Martin's conviction under 18 U.S.C. §922(g)(1) (possession of a firearm by a convicted felon) unconstitutional, facially and as-applied to him.

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PETITION FOR CERTIORARI

Petitioner Dennis Martin respectfully prays for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

On August 1, 2025, the judgment of the United States Court of Appeals for the Second Circuit was filed in a Summary Order. *United States v. Martin,* No. 23-7507-CR, 2025 WL 2180611 (2d Cir. Aug. 1, 2025). The decision is attached as Exhibit A.

On September 15, 2025, Mr. Martin filed a petition for rehearing and suggestion for rehearing *en banc*. The Second Circuit denied his petition on October 6, 2025. That order is attached as Appendix B.

JURISDICTION

On August 1, 2025, a three-judge panel for the Second Circuit issued a decision in Petitioner's appeal. Subsequently, on October 6, 2025, the Second Circuit denied Mr. Martin's petition for rehearing and suggestion for rehearing *en banc*. [1] This Court has jurisdiction to review the Second Circuit's decision pursuant to 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS

1. U.S. Const. Amend. II 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.

2. 18 U.S.C. § 922(g)(1) [excerpted in relevant part] provides:

[1] The time to file a petition for a writ of *certiorari* runs from the date a timely petition for rehearing is denied. Sup. Ct. R. 13(3). A petition for a writ of *certiorari* is timely when filed within 90 days. Sup. Ct. R. 13(1). The petition for rehearing in this case was denied on October 6, 2025, making the petition for writ of certiorari due on January 4, 2026. If that date falls on a Sunday, as is the case here, then a petition for certiorari is due on the following business day—January 5, 2026. A petition is timely filed if mailed on the date for filing. Sup. Ct. R. 29.2.

(g) 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.

I.

STATEMENT OF THE CASE

By way of background, after a jury trial, Mr. Martin was found guilty of a single count in an indictment charging unlawful possession of a firearm by a convicted felon, a violation of 18 U.S.C. §922(g)(1). The predicate felony underlying the 922(g)(1) offense was a non-violent drug crime for which Mr. Martin received a sentence of probation over ten years ago.

Before the district court and on appeal before the Second Circuit, Mr. Martin argued that 18 U.S.C. § 922(g)(1) is unconstitutional, both facially and as applied to him, in light of this Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). The Second Circuit denied Martin's claims, relying on its recent decision in *Zherka v. Bondi*, 140 F.4th 68, 75, 96 (2d Cir. 2025), *cert. pending No.* 25-269. *Martin*, 2025 WL 2180611 at *2. Although distributed for this Court's conference on December 12, 2025, *Zherka* is still pending before this Court.

This petition should be granted for at least three reasons. First, this Court should resolve the split among the Circuits. After *Bruen*, the Second Amendment

issue has divided the lower courts on the constitutionality of the 18 U.S.C. § 922(g)(1) felon-disarmament rule's application to certain felons. With *Zherka*, the Second Circuit entered into the entrenched split about *Bruen*'s impact on facial and as-applied challenges to § 922(g)(1). The Second Circuit has joined the Fourth,[2] Eighth,[3] Ninth,[4] Tenth,[5] and Eleventh Circuits[6] in holding that its pre-*Bruen* precedent, upholding the categorical application of § 922(g)(1) to all felons, survives *Bruen*.

The Third,[7] Fifth,[8] and Sixth Circuits,[9] by contrast, held that their pre-*Bruen* circuit precedent no longer controls, and that the statute is susceptible to at least as-applied challenges.[10] This petition should be granted to align the Circuits because *Zherka*'s reasoning runs contrary to both *Bruen* and *United States v. Rahimi,* 602 U.S. 680 (2024), as well as the narrower, more historically faithful interpretations adopted in the Third, Fifth, and Sixth Circuits.

This Court should make clear that laws like § 922(g)(1) are only "presumptively lawful." *Rahimi*, 602 U.S. at 699, (quoting *District of Columbia v. Heller,* 554 U.S. 570, 626–27 & n.26) (2008). While this Court could have adopted a "categorical rule" of validity, it clearly did not. Thus, the Circuits that have adopted categorical rules

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[2] *United States v. Hunt*, 123 F.4th 697, 703-04 (4th Cir. 2024).
[3] *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024).
[4] *United States v. Duarte*, 137 F.4th 743, 752 (9th Cir. 2025) (en banc).
[5] *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025).
[6] *United States v. Dubois*, 139 F.4th 887, 890 (11th Cir. 2025).
[7] *Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc).
[8] *United States v. Cockerham,* No. 24-60401, 2025 WL 3653336, at *2 (5th Cir. Dec.17, 2025); *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024).
[9] *United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024).
[10] The Seventh Circuit assumed that as-applied challenges to § 922(g)(1) are available in *United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024).

banning facial and as-applied challenges have been wrongly decided because they have bypassed the analytical rigor required by *Bruen*.

Second, applying *Bruen*'s principles, § 922(g)(1) is facially unconstitutional because the government cannot show that history supports a person's lifetime disarmament due to a prior felony conviction.

Finally, even if the statute is facially constitutional, it is unconstitutional as-applied here because there is no historical tradition of prohibiting someone like Mr. Martin from permanently possessing firearms under pain of imprisonment after a conviction for an old, non-violent drug crime resulting in a sentence of probation.

Granting this petition is necessary to provide much-needed clarification to practitioners and the courts nationwide regarding these issues.

II.

ARGUMENT

A. The Circuit Split is deep and irreconcilable.

The Third, Fifth, Sixth Circuits, and, initially, the Ninth Circuit, concluded that there was no analogous tradition of disarmament for at least some defendants. *Range v. Att'y Gen. United States*, 124 F.4th 218, 232 (3d Cir. 2024); *United States v. Cockerham*, No. 24-60401, 2025 WL 3653336, at *2 (5th Cir. Dec. 17, 2025); *United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024); *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024), *reh'g en banc granted, opinion vacated by United States v. Duarte,* No. 22-50048, 2024 WL 3443151, at *1 (9th Cir. July 17, 2024).

In *Cockerham*, the Fifth Circuit found that the application of 922(g)(1) to a

defendant with a previous felony for failing to pay child support violated the Second Amendment. The Fifth Circuit reasoned that, "As Justice O'Connor and others have noted, '*Heller* referred to felon disarmament bans only as 'presumptively lawful.'…And that, 'by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge.'" *Cockerham*, 2025 WL 3653336, at *2 (internal citation omitted).

The Eighth Circuit, reviewing the same "presumptively lawful" language in Heller, concluded the opposite—that there could never be a viable as-applied challenge. *United States v. Jackson*, 69 F.4th 495, 501-05 (8th Cir. 2023), *cert. granted, judgment vacated*, 2024 WL 3259675 (July 2, 2024). But the Eighth Circuit did not reach this conclusion without significant criticism from several of its judges. Judge Stras, joined by Erickson, Grasz, and Kobes, dissented from the denial of rehearing en banc in *Jackson*:

> I have no special affection for felons either, but the Second Amendment does not care. It says what it says, and so do the Supreme Court decisions interpreting it. *See generally United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 219 L.Ed.2d 351 (2024); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022). And what *Jackson* says about as-applied challenges conflicts with both.

United States v. Jackson, 121 F.4th 656, (Mem)–657 (8th Cir. 2024) (Stras, J. *dissenting*).

The Tenth and Eleventh Circuits upheld the continued constitutionality of Section 922(g)(1) under pre-*Bruen* precedent without reaching the historical question, *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *cert. granted, judgment vacated*, 2024 WL 3259668 (July 2, 2024); *United States v. Dubois*, 94 F.4th

1284, 1293 (11th Cir. 2024). As this case demonstrates, the Second Circuit likewise relies on its pre-*Bruen* precedent in *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013) to reject facial and all as-applied challenges.

Whether facial challenges or as-applied challenges to 922(g)(1) are viable after *Bruen* is a question that this Court has not resolved. Following this Court's decision in *Rahimi*, the government acquiesced in certiorari in cases pending before this Court that presented the same essential question presented in this case. *See e.g.*, *Garland v. Range*, No. 23-374, 2024 WL 3259661 (U.S. July 2, 2024); *Vincent v. Garland*, No. 23-683, 2024 WL 3259668 (U.S. July 2, 2024); *Jackson v. United States*, No. 23-6170, 2024 WL 3259675 (U.S. July 2, 2024); *Cunningham v. United States*, No. 23-6602, 2024 WL 3259687 (U.S. July 2, 2024); *Doss v. United States*, No. 23-6842, 2024 WL 3259684 (U.S. July 2, 2024). In each case, however, the petition for a writ of certiorari was granted, the judgment vacated, and the case was remanded to its respective Circuit Court for further consideration in light of *Rahimi*.

Granting this petition would provide much-needed clarification to practitioners and the courts nationwide regarding this issue. In the absence of clear directives from this Court, some circuits, like the Second Circuit, merely rely on their pre-*Bruen* precedent and impose categorical bans on all as-applied challenges. For some litigants, this means that defendants remain in custody serving sentences who might otherwise be successful in their as-applied claims. Because the outcome of one's case depends upon the Circuit in which one resides, it is important to grant certiorari to establish uniformity. As noted by Judge Stras for the Eighth Circuit,

"[*Jackson*] deprives tens of millions of Americans of their right 'to keep and bear Arms' for the rest of their lives, at least while they are in this circuit. *Jackson*, 121 F.4th 656, Mem-657 (Stras, J. *dissenting*).

B. This Court should grant this petition because Second Circuit precedent is analytically irreconcilable with *Bruen* and 18 U.S.C. § 922(g)(1) is facially unconstitutional.

In *Rahimi*, this Court upheld the facial constitutionality of 18 U.S.C. § 922(g)(8). This provision of § 922(g) prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order meets certain statutory criteria. Mr. Rahami raised only a broad facial challenge to this provision.

This Court held that "Our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others. *Rahimi*, 602 U.S. at 692. In so holding, the Court relied on both *Heller* and *Bruen,* noting *Heller*'s "state[ment] that many ... prohibitions, like those on the possession of firearms by felons and the mentally ill, are presumptively lawful." *Rahimi*, 602 U.S. at 692. The keyword here is "presumptive." This Court did not say that the law is always constitutional in all of its applications.

This point is made clear by Justice Gorsuch in his concurrence, "… the case before us does not pose the question whether the challenged statute is always lawfully applied, or whether other statutes might be permissible, but only whether this one has *any* lawful scope. Nor should future litigants and courts read any more into our decision than that. As this Court has long recognized, what we say in our opinions must 'be taken in connection with the case in which those expressions are used,'…,

and may not be 'stretch[ed] ... beyond their context.'" *Rahimi,* 602 U.S. at 713-14 (internal citations omitted) (Gorsuch, J concurring).

Keeping these principles in mind, *Rahimi* is limited in its application here because Mr. Martin challenges 922(g)(1), a statute that calls for his permanent disarmament. Nonetheless, *Rahimi's* resolution "necessarily leaves open the question whether the statute might be unconstitutional as applied in particular circumstances." *Id.* at 713. (Gorsuch, J. concurring).

Importantly, what *Rahimi* underscores is that the Second Circuit's analysis in *Zherka* and *Bogle* is, at best, superficial and does not provide a clear answer to the question Mr. Martin presents here. The question here requires a more probing analysis of the principles that underpin the regulatory tradition of firearm laws. Here, there was no historical tradition of permanent disarmament for someone like Mr. Martin, whose previous felony conviction was for a non-violent drug offense.

In contrast to *Zherka*, what *Bruen*, *Rahimi*, and the Third Circuit, Fifth and Sixth Circuits make clear is that for a regulation to survive Second Amendment scrutiny, the government must provide sufficient evidence of analogous regulations from the Founding Era to show that the regulation at issue comports with our nation's history and tradition of the right to bear arms. The Fifth Circuit noted:

> We agree with Justice O'Connor's reading of *Heller*. In *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), we said 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. Instead, we must determine whether disarming a particular defendant for life is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 467 (quotations omitted).

Cockerham, 2025 WL 3653336, at *2.

Concerning Mr. Martin's specific constitutional challenges, *Zherka* does not identify a historical analogue that involves the criminalization of firearms possession for those convicted of low-level non-violent drug crimes punished by probation only. Instead, *Zherka* found historical analogues in a patchwork of 17th-19th-century laws that targeted groups deemed inherently untrustworthy or dangerous. *Zherka* reasoned:

> English, American colonial, and early American histories abound with examples of laws demonstrating that legislatures had broad authority to regulate firearms, including by disarming large classes of people based on their status alone. Religious minorities, political dissenters, Native Americans, and persons of color were among the disfavored groups that historical legislatures disarmed based on a perception that persons in those categories were inherently dangerous or non-law-abiding. Many of those laws are offensive to contemporary moral sensitivities, or might well be deemed unconstitutional today on First and Fourteenth Amendment grounds. They are, however, relevant to the Second Amendment historical analysis that *Bruen* requires we conduct.

Zherka,140 F.4th at 85. Significantly, such classes of people were targeted for political or religious reasons, not criminal conduct. Thus, it is unclear how a historical tradition, not based on criminal conduct, bears any meaningful similarity to the criminal statute challenged here. *Zherka* is wrongly decided because it relied selectively on early English and American colonial-era disarmament laws that are not meaningfully similar analogues, broadening *Bruen*'s intended scope.

Moreover, the *Zherka*'s reliance on historical statutes disarming Catholics, Black Americans, Native Americans, and political dissenters is deeply problematic. *Id*. These measures, rooted in discriminatory animus, cannot provide a legitimate

analogue for modern restrictions on a fundamental right. The Third Circuit in *Range* rejected reliance on such repugnant historical laws, noting:

> Apart from the fact that those restrictions based on race and religion now would be unconstitutional under the First and Fourteenth Amendments, the Government does not successfully analogize those groups to Range. That Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that Range is part of a similar group today. And any such analogy would be "far too broad[ ]." *See Bruen*, 597 U.S. at 31, 142 S.Ct. 2111 (noting that historical restrictions on firearms in "sensitive places" do not empower legislatures to designate any place "sensitive" and then ban firearms there). For instance, as the Government notes, colonial laws disarmed Loyalists for helping the British army or "bearing arms against" the Continental Congress. Gov't Range II En Banc Br. 13 (quoting Resolution of Mar. 13, 1776, *in Journal of the Provincial Congress of South Carolina*, 1776, at 77 (1776)). The colonies reasonably feared that Loyalists might take up arms again. But there is no such basis to fear that Range is disloyal to his country.

Range, 124 F.4th at 229–30.

Contrary to the sound reasoning of *Range*, *Zherka* accepted, wholesale, *any* disarmament law, regardless of the obvious differences in purpose and scope. This does not comport with *Bruen*'s requirement that modern regulations be "relevantly similar" to historical analogues. *Bruen*, 597 U.S. at 29-30. To find the challenged law and historical analogs "relevantly similar," they must both (1) address a comparable problem (the "why") and (2) place a comparable burden on the right holder (the "how"). *Id.* The government need not present a "dead ringer" or "historical twin." *Rahimi*, 602 U.S. at 692. But legislative racism targeting disfavored groups for religious or political reasons is not sufficiently similar because the "why" of such prohibitions is entirely divorced from criminal conduct. Notably, such laws were not

even discussed by the majority in *Rahimi.* Further, the Solicitor General disclaimed reliance on them, stating that "they were applications of a separate principle under the Second Amendment, which is that those who are not considered among the people can be disarmed." Transcript of Oral Argument at 53:22–25, *Rahimi*, 602 U.S. 680 (22-915) (Nov. 7, 2023).

The Second Circuit should have exercised sound judgment in rejecting such discriminatory practices in "[d]eciding whether a conceptual fit exists between the old law and the new…" *United States v. Connelly,* 117 F.4th 269, 274 (5th Cir. 2024). The Second Amendment "is not a second-class right." *Bruen*, 597 U.S. at 71 (internal quotation omitted). As such, sound judgment should include recognizing that Second Amendment protections, like other Constitutional rights, should evolve to meet current standards of decency. Using historical analogues premised on historical racism does not meet that standard. In dissent, Justice Thomas discussed such laws, calling them "cautionary tales," "warn[ing] that when majoritarian interests alone dictate who is 'dangerous,' and thus can be disarmed, disfavored groups become easy prey." *Rahimi*, 602 U.S. at 776 (Thomas, J., dissenting). At bottom, *Zherka* failed to recognize that these discriminatory laws were not deemed unconstitutional at the time simply because they disarmed people who were not understood to have rights in the first place.

Further, depriving today's non-violent felons of a core constitutional entitlement, for life, also disproportionately impacts communities of color and economically disadvantaged groups. These concerns were noted but not addressed by

Zherka. *Zherka*, 140 F.4th at 93. Such concerns, however, counsel against the use of such historical analogues in favor of the exercise of sound judgment.

Zherka also fails to recognize how the expansive reach of § 922(g)(1) has led to overcriminalization. As noted by the Fifth Circuit;

> "[C]riminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves v. Bartlett*, 587 U.S. 391, 412, 139 S.Ct. 1715, 204 L.Ed.2d 1 (2019) (Gorsuch, J., concurring in part and dissenting in part). *See also* Brief for American Civil Liberties Union, et al. as Amici Curiae Supporting Defendant-Appellant, *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025), 2024 WL 6465955, *9. Section 922(g)(1) "would even apply to someone who possessed a firearm solely to *prevent* danger or violence." *Id.* at *12. Imagine, for example, "a schoolboy came home with a loaded gun and his ex-felon father took it from him, put it in drawer, and called the police." *Id.* (quoting *United States v. Teemer*, 394 F.3d 59, 64 (1st Cir. 2005)).

Cockerham, 2025 WL 3653336, at *1.

Validating these discriminatory practices as analogues, without accounting for later constitutional developments that rejected discriminatory laws, *Zherka* fails to recognize how this history does not provide a sufficiently similar historical analogue. *Zherka*, 140 F.4th at 85-88.

Zherka's reasoning also fails the "how" side of the analysis. *Rahimi* warns that "[e]ven when a law regulates arms-bearing for a permissible reason…it may not be compatible with the right if it [is regulated] to an extent beyond what was done at the founding," *Id.* at 692. In *Rahimi*, the Supreme Court relied on the temporary nature of firearms dispossession set forth in § 922(g)(8) in finding the statute facially constitutional. *Rahimi*, 602 U.S. at 699. Section 922(g)(1)'s firearms dispossession, on the other hand, is permanent. Permanent dispossession requires sufficient

historical support yet *Zherka*'s historical analysis fails to provide such support.

Finally, *Zherka*'s reliance on the existence of the possibility of relief through the statutory restoration process under 18 U.S.C. § 925(c) is irrelevant. *Zherka*, 140 F.4th at 93. In placing the burden on the applicant and providing for the granting of relief only upon a special showing that Mr. Martin is not dangerous, § 925(c) presumes that it was valid to disarm the applicant initially. Statutory restoration only asks whether the disarmament should continue. The thrust of Martin's challenge here is that there are people who fall within the scope of § 922(g)(1) whose initial disarmament was wrongful. It does not matter that such individuals can make an application that the Attorney General "may grant" in her discretion if she is sufficiently convinced that the applicant deserves to possess arms, because those like Mr. Martin should never have lost their rights in the first place.[11]

Those subject to § 922(g)(1) restrictions have no realistic path to rights restoration or meaningful review under 925(c). Judge Montenegro for the Southern District of California observed the following about the 925(c) rights restoration process:

> Plaintiff correctly notes that "there is no formal process or paperwork available with the Attorney General." (Doc. 3 at 2.) Indeed, "[s]ince 1992, Congress has prohibited the use of funds 'to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. § 925(c).'" *Mai v. United States*, 952 F.3d 1106, 1111 (9th Cir. 2020) (quoting *Bean*, 537 U.S. at 74–75); *see Zherka v. Bondi*, 140 F.4th 68, 71 n.4 (2d Cir. 2025) ("Section 925(c)... is currently without practical effect because ... Congress has repeatedly defunded

[11] Section 925(c) permits a person who is disqualified under Section 922(g)(1) to "make application to the Attorney General for relief," which the Attorney General "may grant" if she is satisfied that "the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c).

> the administrative apparatus necessary to implement the statute since 1992."). This effectively prevents the ATF from processing such applications and forecloses access to judicial review. *Bean*, 537 U.S. at 76; *see United States v. McGill*, 74 F.3d 64, 67 (5th Cir.1996) ("By withdrawing funds to the ATF to process these applications under these circumstances and with this explanation by the appropriations committee, it is clear ... that Congress intended to suspend the relief provided by § 925(c)."). Accordingly, "[§] 925(c) privileges for individuals cannot be reinstated by the district court based upon ATF's failure to process the individuals' applications." *Burtch*, 120 F.3d at 1090

Weston v. U.S. Att'y Gen., No. 3:25-CV-01613-RBM-MMP, 2025 WL 3526650, at *4 (S.D. Cal. Dec. 9, 2025). In short, there is no meaningful process to restore one's rights.

This is important because "…our regulatory tradition—as well as *Rahimi*'s attention to the individualized findings required by and the durational limit of the restriction in that case—reflects that where disarmament is based on a categorical presumption of special danger to society, there must be a meaningful opportunity for individualized review to survive constitutional scrutiny." *Range*, 124 F.4th at 276 (Krause, J. *concurring*). "In the absence of other channels for individualized review, the doors to the federal courthouse must be open. Neither our historical tradition nor our modern understanding of the Second Amendment as an 'individual right' permits us to blindly defer to a categorical presumption that a given individual permanently presents a special risk of danger without the opportunity for him to rebut it." *Id.*

C. **Even if the statute is facially constitutional, it is unconstitutional as-applied here because there is no historical tradition of prohibiting someone like Mr. Martin from permanently possessing firearms under pain of imprisonment**.

Mr. Martin's predicate felony offense is over ten years old. It is for a violation of Pennsylvania state law—35 Pa. Cons. Stat. §780-113(a)(30)—a statute which

generally prohibits the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance. When Mr. Martin was convicted of this offense in 2015, he was sentenced to five years of probation. There is no historical tradition supporting lifetime disarmament for a non-violent drug offense like Mr. Martin's, in which the defendant received a sentence of probation.

In *Cockerham*, the defendant pleaded guilty to failing to pay child support, in violation of Mississippi law. He was sentenced to five years of probation. *Cockerham*, 2025 WL 3653336, at *2. The Fifth Circuit concluded there was no historical tradition supporting Mr. Cockerham's lifetime disarmament. In *Range*, the defendant pled guilty to welfare fraud in violation of Pennsylvania law and was sentenced to three years' probation. The Third Circuit concluded there was no historical tradition supporting Mr. Range's lifetime disarmament.

Zherka reasoned that its categorical bar to all as-applied challenges in 922(g)(1) cases is justified because many Founding-era felonies were punishable by death, which provides sufficient justification for the lesser penalty of a lifetime disarmament for all felons. The death penalty, however, is an imperfect analogue. Even for offenses historically punishable by death or lifetime imprisonment, "that punishment followed individualized determinations made by a judge and jury, and a convicted felon could also seek clemency or a pardon based on his individual circumstances." *Range,* 124 F.4th at 275 (Krause, J, concurring).

Moreover, the restoration of Martin's right to possess a firearm after completing his previous sentence is supported by the general understanding that

individuals possess limited civil rights while serving a sentence, but that those rights may be restored after they have completed it. *See Williams*, 113 F.4th at 658 ("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."); *Kanter v. Barr*, 919 F.3d 437, 461 (7th Cir. 2019) (Barrett, J., dissenting) (describing the general problems with analogies to capital punishment, and noting that felons serving a term of years had their rights "suspended but not destroyed").

Zherka refused to impose any temporal or offense-based limits. By equating all felonies—regardless of age, nature, or context—with a permanent loss of Second Amendment rights, and by legitimizing historical examples rooted in discrimination, *Zherka* adopts the broadest possible reading of *Bruen*. This approach diverges from the narrower, more historically faithful interpretations in the Third, Fifth, and Sixth Circuits. As recognized by the Fifth Circuit:

> So § 922(g)(1) is not limited to violent felonies. It's not even limited to felonies. *See* 18 U.S.C. § 921(a)(20). Moreover, it disarms individuals who have never been incarcerated. What's more, it disarms them for the rest of their lives. So it imposes a lifetime ban on possession of a firearm—and it does so even if the person has never spent a single day in prison.

Cockerham, 2025 WL 3653336, at *1.

Zherka also found that a felony-by-felony approach to §922(g)(1) as-applied challenges would create practical difficulties, and this weighed in favor of a categorical ban. *Zherka*, 140 F.4th at 95. This Court, however, has not suggested that practical difficulties should concern the courts when the exercise of a first-class right such as the Second Amendment is at stake. Indeed, this Court has made clear that

any restrictions on fundamental rights, like the Second Amendment, require careful analysis from the time of the Nation's founding. Thus, whether or not as-applied claims are impractical or time-consuming is inconsequential when an individual's Second Amendment right is at stake.

III.

CONCLUSION

For the foregoing reasons, the petitioner prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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