NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

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ADAM GOMEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

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# PETITION FOR WRIT OF CERTIORARI

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JAMES P. EGAN
*Counsel of Record*
Federal Public Defender's Office
Northern District of New York
Assistant Federal Public Defender
4 Clinton Square, 3rd Floor
Syracuse, New York 13202
Telephone: (315) 701-0080

## QUESTION PRESENTED

Whether 18 U.S.C. § 922(k) violates the Second Amendment on its face.

## PARTIES TO THE PROCEEDING

All parties to petitioner's Second Circuit proceedings are named in the caption of the case before this Court.

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## PETITION FOR WRIT OF CERTIORARI

In *District of Columbia v. Heller,* 554 U.S. 570 (2008), this Court used "constitutional text and history" to determine the scope of the Second Amendment right. After reviewing courts grafted a means-ends test onto that analysis, this Court decided *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), clarifying that the Second Amendment requires the government to prove a challenged regulation of arms-bearing conduct "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Since *Bruen*, however, reviewing courts, including the Second Circuit below, have loosened the government's burden by requiring a challenger to demonstrate that the regulated firearm is in "common use." Because that limitation is not required by the Second Amendment's plain text, and because the government has, on several occasions, failed to demonstrate that criminalizing the possession of a deserialized firearm is consistent with our Nation's historical tradition of firearm regulation, this Court should grant certiorari and hold that 18 U.S.C. § 922(k) violates the Second Amendment.

## DECISION BELOW

The decision of the Court of Appeals is published at 159 F.4th 172 (2d Cir. 2025), and reproduced below. A 1.

## JURISDICTION

The judgment of the Court of Appeals, which had jurisdiction pursuant to 28 U.S.C. § 1291, was entered on November 17, 2025. A 1. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the United State Constitution 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.

U.S. CONST. amend. II.

The statutory provision criminalizing possession of a firearm with a removed, obliterated, or altered serial number provides:

> (k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(k).

## STATEMENT OF THE CASE

Adam Gomez was indicted by a federal grand jury for violating 18 U.S.C. § 922(k):

> On or about September 8, 2022, in Albany County in the Northern District of New York, the defendant, ADAM GOMEZ, knowingly possessed and received a firearm that had been shipped and transported in interstate and foreign commerce, that is, a Glock 17 handgun, which had the importer's and manufacturer's serial number removed, obliterated, and altered, in violation of Title 18, United States Code, Sections 922(k) and 924(a)(1)(B).

A 17.

Relying on recent Second Amendment jurisprudence, Gomez moved to dismiss the indictment, arguing that Section 922(k) is unconstitutional on its face. A 18.

The district court denied the motion for two reasons. First, the court held that "the conduct that § 922(k) regulates – possession of a gun without a serial number – is outside the scope of the Second Amendment," and that the "the restriction that § 922(k) places upon the possession of guns – that they must have a serial number – does not burden a citizen's right to possess a gun for self-defense." A 29. Second, the district court held that "the Government has presented sufficient

evidence to demonstrate that § 922(k) is consistent with this Nation's historical tradition of firearm regulation." A 29.

On July 10, 2024, the district court sentenced Gomez to 11 months' imprisonment and three years' supervised release.

On November 17, 2025, the Court of Appeals for the Second Circuit issued a published decision affirming the district court's denial of Gomez's motion to dismiss the indictment. A 1. According to the Second Circuit, the conduct proscribed by § 922(k) is not protected by the Second Amendment because it does not burden an individual's right to self-defense, and a "firearm with a removed, obliterated, or altered serial number is not a weapon in common use for lawful purposes." A 11-15.

## REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to hold that 18 U.S.C. § 922(k) violates the Second Amendment right to keep and bear arms for the following reasons.

### I. Although three Circuits have upheld the constitutionality of Section 922(k), they are divided as to the proper Second Amendment analysis.

The Second, Fourth, and Seventh Circuits have held that Section 922(k) is constitutional. However, the bottom line of these decisions

masks a deeper division as to the proper application of *Bruen*'s analysis, especially with respect to whether the so-called "common use" inquiry has any role in the Second Amendment analysis and, if so, which party bears the burden. For example, while a nine-member majority of the *en banc* Fourth Circuit held that a challenger must show at *Bruen*'s first step that a firearm is in common use, four judges would place that inquiry into the Second Amendment analysis at *Bruen*'s second step, if at all. *See United States v. Price*, 111 F.4th 392, 404 (2024) (Niemeyer, J., concurring) (second step); at 414 (Quattlebaum and Rushing, JJ., concurring) (second step); at 426 (Richardson, J., dissenting) (rejecting "common use" inquiry). Three members of the Second Circuit panel below rejected a challenge to Section 922(k) at *Bruen*'s first step based on a conclusion that deserialized firearms are not in "common use." Noting these prior decisions of the Second and Fourth Circuits, the Seventh Circuit just recently declined to conduct a "common use" inquiry at all, instead holding that Section 922(k) is constitutional under *Bruen*'s second step. *United States v. Reyna*, __F.4th __, 2026 WL 221850 (7th Cir. Jan. 28, 2026)).

The misapplication of the "common use" inquiry has not just infected the review of Section 922(k) challenges. As this case demonstrates, the Second Amendment drew the "common use" inquiry from its earlier decisions addressing the constitutionality of New York State's post-*Bruen* regulations. *See Antonyuk v. James*, 120 F.4th 941, 961 (2d Cir. 2024), *cert. denied*, 145 S.Ct. 1900 (2025) *cited in* A 8-9. The confusion is perhaps best illustrated in the Ninth Circuit, which has applied the "common use" inquiry in *Bruen*'s first step on some occasions, *see United States v. Alaniz*, 69 F.4th 1124, 1128 (9th Cir. 2024) (examining constitutionality of United States Sentencing Guidelines ("U.S.S.G.") § 2D1.1(b)(1)), and in the second step in others, *see Teter v. Lopez*, 76 F.4th 938, 949-950 (9th Cir. 2023) (rejected application of "dangerous and unusual" inquiry in the first step when examining constitutionality of Hawaii's butterfly knife prohibition), *reh'g en banc granted, vacated*, 93 F.4th 1150 (9th Cir. 2024). This confusion has not gone unnoticed. *See Bevis v. City of Naperville*, 85 F.4th 1175, 1198 (7th Cir. 2023) ("There is no consensus on whether the common-use issue belongs at *Bruen* step one or *Bruen* step two.").

Only this Court can resolve this doctrinal division and clarify whether the Second Amendment analysis contains a "common use" inquiry and, if so, which party bears the burden. Gomez's case provides a sound vehicle for doing so. The question is preserved, it is outcome-determinative, and he is a United States citizen with no other criminal history who acquired the firearm for self-defense.

## II. 18 U.S.C. § 922(k) is unconstitutional.

The Second Amendment guarantees a pre-existing right to keep and bear arms for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). "Like most rights," however, "the right secured by the Second Amendment is not unlimited." *Id*. at 626. The scope of the right is defined by "constitutional text and history." *Bruen*, 597 U.S. at 22. Accordingly, Congress is only free to act when a given regulation fits within the "historical tradition of firearm regulation." *Id*. at 17. However, when "the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation.'" *United States v. Rahimi*, 602 U.S. 680, 691 (2024) (quoting *Bruen*, 597 U.S. at 24). The result is a two-step analysis:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively

> protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

*Bruen*, 597 U.S. at 17.

A regulation is "consistent with the Nation's historical tradition of firearm regulation" only when the new law is "relevantly similar" to laws that the nation's regulatory tradition is understood to permit. *Rahimi*, 602 U.S. at 692. This inquiry focuses on the "why and how" of a given regulation:

> For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, "it still may be analogous enough to pass constitutional muster."

*Id*. at 692. (citations omitted). Ultimately, the law must comport with the principles underlying the Second Amendment, but it need not be a "dead ringer" or a "historical twin." *Id*. Section 922(k) fails both steps.

### A. The Second Amendment's text covers the possession of all firearms – serial number or no number.

#### 1. 18 U.S.C. § 922(k) regulates arms-bearing conduct.

The text of the Second Amendment's operative clause contains three elements, guaranteeing the right (1) "of the people," (2) "to keep and bear," (3) "arms." *Heller*, 554 U.S. at 579-95 (2008). Accordingly, *Bruen*'s first step contains three discrete questions: "(1) does § 922(k) apply to 'the people'?; (2) is a firearm with an obliterated serial number an 'Arm'?; and (3) is possession of such a firearm an act of 'keep[ing]' or 'bear[ing]' arms?" *Price*, 111 F.4th at 427 (Richardson, J., dissenting). "The answer to each inquiry is yes, so § 922(k) is presumptively invalid under the Second Amendment." *Id.*

Notwithstanding this straightforward textual analysis, the Court of Appeals (and the district court before it) concluded that Gomez's challenge failed at *Bruen*'s first step because the conduct regulated by § 922(k) is not protected by the Second Amendment.

The Second Circuit's conclusion should be rejected for the following reasons. First, for purposes of the Second Amendment analysis, the conduct regulated by Section 922(k) is the keeping of arms. It is not, as the Second Circuit would have it, the keeping of an arm with a specific

characteristic. Were the analysis so particularized, nearly every regulation would fall outside the Second Amendment. After all, *Bruen* was about licenses. If the constitutional question were cast as narrowly as the Second Circuit would have it, the conduct in that case – carrying a firearm without a license – would be unprotected.

Second, the Second Circuit's conclusion rests on the assumption that a firearm with a removed serial number is not an "Arm" for purposes of the Second Amendment. This Court has already held otherwise, stating that the term "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582. Firearms with removed, obliterated, or altered serial numbers have not been transformed into something else; they are still "Arms." *See id*. at 581 (defining an "Arm" as a "weapon[] of offense" that can be worn for "defence . . . or use[d] in wrath to cast at or strike another") (first quoting 1 Samuel Johnson, Dictionary of the English Language 106 (4th ed 1773); and then quoting 1 Timothy Cunningham, A New and Complete Law Dictionary (1771)).

### 2. The Second Amendment contains no "common-use" requirement.

The Second Circuit also rejected Gomez's Second Amendment challenge because he could not demonstrate that deserialized firearms are in common use for lawful purposes. According to the Second Circuit, *Heller* instructs that 'the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." A 14-15. Citing a publication from 1996, the Second Circuit concluded that "[a]ll available evidence reflects 'that such weapons would be preferable only to those seeking to use them for illicit activities.'" A 15 (citing David M. Kennedy, Anne M. Piehl & Anthony A. Braga, *Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy,* 59 L. & Contemp. Probs. 147, 174-75 (1996)). A majority of the Fourth Circuit reached the same conclusion. *Price*, 111 F.4th at 397.

Whether a weapon is in "common use" is an "atextual notion," apparently grafted onto the Second Amendment's use of the term "Arms." *Price*, 111 F.4th at 428 (Richardson, J., dissenting). As noted above, however, the Supreme Court explained in *Heller* "that the term 'Arms' 'extends, prima facia, to all instruments that constitute bearable arms,

even those that were not in existence at the time of the founding." *Id*. at 427 (Richardson, J., dissenting). "And whatever effect the lack of a serial number has on the statute's constitutionality, it does not transform a firearm into something else. Number or no number, a firearm is still a 'weapon[ ] of offense' that can be worn for 'defence . . . or use[d] in wrath to cast at or strike another." *Id*. (citing *Heller*, 554 U.S. at 581). To be sure, Congress is free to regulate firearms that are both "dangerous and unusual," which may extend to weapons that are not in common use. But this authority does not derive from the Second Amendment's text – *Bruen*'s first step, but rather from the "historical tradition *that delimits the outer bounds of the right to keep and bear arms*" – *Bruen*'s second step. *Id*. (emphasis in original) (quoting *Bruen*, 597 U.S. at 19).

The Seventh Circuit just recently confirmed this interpretation. As that Court of Appeals explained in *Reyna*, the concept of "common use" arose from this Court's discussion of stare decisis in *Heller*, during which it explained that its prior decision in *United States v. Miller*, 307 U.S. 174 (1939), did not "authoritatively determine[] that the Second Amendment protects only a collective right to possess arms in connection with militia service," and, indeed, "did not address the nature of the right *at all*."

*Reyna*, __F.4th __, 2026 WL 221850, at *3 (citing *Heller*, 554 U.S. at 621-625). Nevertheless, as the Seventh Circuit noted, *Heller* did acknowledge one limitation from *Miller*:

> We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons."

*Id*. at *5 (quoting *Heller*, 554 U.S. at 635. As *Heller* notes, that suggested limitation on "common use" arises from the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons,'" which, again, is a step-two inquiry under *Bruen*.

In any case, Section 922(k) regulates firearms in common use. Section 922(k) applies to "*all* firearms." *Id*. at 424 (Gregory, J., dissenting). Therefore, it "necessarily bans at least some handguns, rifles, and shotguns—types of firearms that we know are in common use for lawful purposes." *Id*. So, even if Gomez were required to demonstrate that Section 922(k) regulates firearms in common usage, "[t]hat fact alone is sufficient for the Second Amendment's protections to presumptively apply at step one." *Id*. at 424 (Gregory, J., dissenting).

The government failed to show otherwise. According to the Second Circuit, "[a]ll available evidence reflects 'that such weapons would be preferable only to those seeking to use them for illicit activities.'" A 15 (citation omitted). The 1996 law review article cited by the Court of Appeals was of limited utility. It "examined usage patterns for Boston youth over five years in the 1990s. It is thus (1) almost three decades old and (2) based on a small subset of young lawbreakers (3) within a single city." *Price*, 111 F.4th at 432-33 (Richardson, J., dissenting) (discussing David M. Kennedy, Anne M. Piehl & Anthony A. Braga, *Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy*, 59 L. & Contemp. Probs. 147, 174–75 (1996)), *cited at A 15*. Given the article's geographic and temporal limitations, it would be "hard to discern how relevant this article is to present circumstances," a consideration the government acknowledged elsewhere. *Id.* And even if the government could show "that arms with removed, obliterated, or altered serial numbers are not commonly used by criminals," it does not mean that "such weapons are not in common use for *lawful* purposes." *Id.* at 433. "One might naturally assume that law-abiding and law-

breaking citizens have different needs and own guns for different reasons." *Id*.

### B. Section 922(k) is inconsistent with the Nation's historical tradition of firearm regulation.

The government below pointed to (and the district court credited) a handful of commercial gunpowder and gun barrel statutes as being "relevantly similar" historical analogues to Section 922(k). Although not fully cited by the government below, the regulatory record, generally categorized, reveals:

> Five states required gunpowder to be inspected and marked for quality and prohibited the sale of unmarked powder.[1] One state went a step further and prohibited anyone from 'fraudulently alter[ing] or defac[ing] any mark' placed by an inspector.[2] Similarly, two states in the early nineteenth century required inspectors to proof and mark firearm barrels

[1] Act of Oct. 4, 1776, ch. VI, §§ 1, 3, 1776–1777 N.J. Acts 6, 6–7; An Act for the Inspection of Gunpowder, Manufactured Within this State, in 8 Records of the State of Rhode Island and Providence Plantations in New England 18, 18–19 (1863); Act of Apr. 18, 1795, ch. MDCCCXLVI, § 107, in 3 Laws of the Commonwealth of Pennsylvania, From the Fourteenth Day of October, One Thousand Seven Hundred 240, 243 (1810); Act of Mar. 1, 1809, ch. 52, §§ 3, 6, in 2 The General Laws of Massachusetts, From the Adoption of the Constitution to February, 1822, at 198, 199 (1823); Act of June 21, 1820, ch. II, §§ 3–6, in The Laws of the State of New Hampshire; with the Constitutions of the United States and of the State Prefixed 276, 277–78 (1830).

[2] Act of Mar. 1, 1809, supra n.5, § 6, at 199–200.

> and prohibited the sale of unmarked weapons.[3] Both also prohibited anyone from altering the marks once in place.[4]

*Price*, 111 F.4th at 435-436 (Richardson, J., dissenting) (citations footnoted below). This scant historical evidence is insufficient.

Rather than requiring marking and serialization procedures to aid in solving crimes or keeping gunpowder away from "dangerous people" – the stated purpose of Section 922(k)[5] – the cited gunpowder laws regulated commerce as a matter of consumer and product safety. *See* *Price*, 111 F.4th at 436 (Richardson, J., dissenting) ("[T]he historic gunpowder-and firearm-marking laws were enacted for product-quality purposes: They ensured that weapons were effective and did not jeopardize public safety when deployed."). Moreover, the penalties for violating any of these statutes did not result in firearm disarmament or imprisonment, and instead typically resulted in a nominal forfeiture of

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[3] Act of Mar. 8, 1805, §§ 1, 3, in 3 The Laws of the Commonwealth of Massachusetts, From November 28, 1770 to February 18, 1807, at 259, 259–60 (1807); Act of Mar. 10, 1821, ch. CLXII, §§ 1, 3, in 2 Laws of the State of Maine; to Which Are Prefixed the Constitution of the U. States and of Said State 685, 685 (1821).

[4] Act of Mar. 8, 1805, supra, § 4, at 261; Act of Mar. 10, 1821, supra, § 4, at 686.

[5] *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 197 ("To assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.").

non-conforming gunpowder and in the imposition of various fines. A 39-41. Therefore, these laws were not "comparably justified" relative to Section 922(k), which is meant to reduce the use of firearms for unlawful purposes and aid in solving crimes. *Price*, 111 F.4th at 436 (Richardson, J., dissenting) (citing *Bruen*, at 597 U.S. at 29).

The government maintained that two "barrel proofing statutes" enacted by Maine and Massachusetts over fourteen years after the Founding – between March 8, 1805, and March 10, 1821 – demonstrate a historical tradition of firearm regulation which would support the constitutionality of Section 922(k). A 32-33. Barrel proofing and barrel proofing marks were also consumer product safety measures, expressly adopted to protect firearm end-users and to improve firearm safety. The manufacturer name stamp on a modern firearm is the modern analog of the proofing stamps on firearms in the Founding era. Barrel proofing statutes, therefore, are not "relevantly similar" to Section 922(k)'s prohibition against possessing an improperly serialized firearm.

Finally, the government made general reference to largely seventeenth-century colonial commercial statutes regulating "the firearms trade" by location and jurisdiction, and six colonies' prohibition

on the sale of firearms to Native Americans. *See* A 30. The government contended that these regulations "show that colonial legislatures were concerned about the movement of firearms between private parties and the dangers of firearms falling into the wrong hands." A 30. The cited text and statutes do not necessarily support the government's general assertion, and it defines the stated purpose much too broadly. Moreover, the government "offers no evidence that these laws burdened the ability of any member of the political community to keep or bear arms. So even if § 922(k) only imposes a minimal burden, these laws still are not analogous because they imposed no burden at all." *Price*, 111 F.4th at 437-438 (Richardson, J., dissenting).

More recently, the Seventh Circuit held that Section 922(k) was consistent with a 1631 Virginia measure requiring "plantation commanders to take a yearly account of 'arm[]s and munition'" and a 1667 Rhode Island governor's order requiring "a lieutenant to go from house to house 'tak[ing] a precise and exact account of all the arm[]s, am[m]unition[,] and weapons . . . each person is furnished with." *Reyna*, __F.4th __, 2026 WL 221850, at *6 (citing Virginia Act of Mar. 2, 1631, Act. LVI, *reprinted in* 1 The Statutes at Large, Being a Collection of All

the Laws of Virginia, from the First Session of the Legislature, in the Year 1619, at 174–75 (William Waller Hening ed., N.Y., R. & W. & G. Bartow 1823); Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 L. & Contemp. Probs. 55, 76 (2017); 2 Records of the Colony of Rhode Island and Providence Plantations, in New England 196 (John Russell Bartlett ed., Providence, R.I., A. Crawford Greene & Brother 1857)).

Even if these two early measures, one involving a governor's order, are competent evidence capable of demonstrating a limited founding-era understanding of the scope of the Second Amendment right, they are insufficient to demonstrate a tradition. *See Bruen*, 59 U.S. at 46 ("For starters, we doubt that *three* colonial regulations could suffice to show a tradition of public-carry regulation."). Moreover, the Rhode Island measure, like the states' "common practice" of conducting "musters to keep track of firearms for militia purposes," *Reyna*, __F.4th __, 2026 WL 221850, at *6, appears to have been aimed at wartime readiness. *See* 2 Records of the Colony of Rhode Island and Providence Plantations, in New England 196 (John Russell Bartlett ed., Providence, R.I., A. Crawford Greene & Brother 1857 (announcing purpose of measure "to

take care that the place with respect to the serving of the King's interest and oure owne might bee putt in a suitable posture of deffence against a common adversary"). And perhaps more importantly, none of these measures prohibited firearm possession, carried a criminal penalty, or resulted in disarmament. Accordingly, these measures and Section 922(k) do not impose "comparable burden[s]" that are "comparably justified." *Bruen*, 597 U.S. at 29.

## III. This Case is a suitable vehicle to resolve the question presented.

Adam Gomez preserved his instant challenge, raising it in the district court and on appeal. The Second Circuit rejected Gomez's claims in a published decision. Gomez is a United States citizen, he was arrested, charged, and convicted of violating Section 922(k) alone. He has no other criminal conviction. The resolution of Section 922(k)'s constitutionality is outcome determinative.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JAMES P. EGAN
*Counsel of Record*
Federal Public Defender's Office
Northern District of New York
Assistant Federal Public Defender
4 Clinton Square, 3rd Floor
Syracuse, New York 13202
Telephone: (315) 701-0080

FEBRUARY 17, 2026