No. __-___

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Respondent,

v.

DANZEL MACKINS,

Petitioner.

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

PETITION FOR A WRIT OF CERTIORARI

Peter J. Tomao, Esq.
Counsel of Record
Attorneys for Petitioner
600 Old Country Road, Suite 328
Garden City, New York 11530
516-877-7015
ptomao@tomaolaw.com

March 12, 2026

PHP (212) 719-0990 appeals@phpny.com

QUESTION PRESENTED

Whether the United States Court of Appeals for the Second Circuit erred by applying its plain error standard to affirm the judgment of conviction and sentence pronounced by the United States District Court for the Southern District of New York on his plea of guilty to one count of possession of a firearm and ammunition by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2)[1], based on that court's decision in *Zherka v. Bondi*, 140 F.4th 68, 74–75, 93 (2d Cir. 2025), *cert. denied*, No. 25-269, ___ U.S. ___, 2026 U.S. LEXIS 608 (Jan. 20, 2026), in which the Second Circuit held that § 922(g)(1) was constitutional both on its face and as applied to convicted felons with nonviolent predicate crimes of conviction, notwithstanding precedent from this Court which rendered obsolete the Second Circuit's prior decisions upholding the constitutionality of the felon in possession statute. This petition asks the Court to resolve the split among the lower courts regarding the facial constitutionality of § 922(g)(1).

[1] Mr. Mackins' sentence was also based on his plea of guilty to one count of conspiracy to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Danzel Mackins respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The Summary Order and Judgment of the United States Court of Appeals for the Second Circuit in *United States v. Danzel Mackins*, Docket No. 24-1851cr, dated December 19, 2025, which is unpublished, appears as Appendix A to the Petition (A01-03).

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked under Title 28, United States Code §1254(1).

Ninety days from that the date of the Second Circuit's summary order is March 19, 2026. Thus, this Petition is filed timely under U.S. Sup. Ct. Rule 13 (1) and (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Const. Amend. 2.

18 U.S.C. § 922(g) provides "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. § 924(a)(2), as it existed at the time of this case, provided: "Whoever knowingly violates subsection … (g) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

STATEMENT OF THE CASE

Danzel Mackins was sentenced on June 21, 2024, by United States District Judge Lewis A. Kaplan, United States District Judge for the Southern District of New York, based on his plea of guilty to one count of Possession of a Firearm by a Felon in violation of 18 U.S.C. §§

922(g)(1) and 924(a)(2), and one count of conspiracy to distribute and possess with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C). The district judge sentenced Mr. Mackins principally to a term of imprisonment of 240 months on the narcotics count and a consecutive term of 120 months on the felon in possession count, five-year term of supervised release. Mr. Mackins is currently incarcerated serving those terms of imprisonment in this case.

The underlying facts were not disputed. During the course of an investigation beginning in December 2019, in the Bedford-Stuyvesant neighborhood of Brooklyn, NY, Mr. Mackins, acting alone or in concert with others, sold cocaine base to undercover police officers. In January 2020, Mr. Mackins organized a group of armed men to hunt down a rival drug dealer and that during that search the group encountered another member of the rival drug dealer's crew, who drew his own weapon and fired it at Mr. Mackins. In response, one of the other males in Mr Mackins' group shot and killed him. Mr. Mackins admitted in his plea allocution, that on January 23, 2020, in Brooklyn, NY, he possessed a loaded .22-caliber firearm knowing that he had previously

been convicted of a crime punishable by a term of imprisonment of more than one year.

In rejecting Mr. Mackins constitutional challenge to 18 U.S.C. § 922(g)(1), which he raised for the first time on appeal, the Second Circuit relied on its decision in *Zherka v. Bondi*, 140 F.4th 68, 74–75, 93 (2d Cir. 2025), *cert. denied*, No. 25-269, ___ U.S. ___, 2026 U.S. LEXIS 608 (Jan. 20, 2026), which upheld the constitutionality of 18 U.S.C. § 922(g)(1) based on its decision in *United States v. Bogle*, 717 F.3d, 281, 281-82 (2d Cir. 2013), notwithstanding the Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

REASON FOR GRANTING THE PETITION

CERTIORARI SHOULD BE GRANTED TO RESOLVE A SPLIT AMONG THE CIRCUIT COURTS OF APPEALS ON AN IMPORTANT CONSTITUTIONAL ISSUE, NAMELY, WHETHER A CIRCUIT COURT CAN REJECT A CLAIM THAT 18 U.S.C. §922(g)(1) VIOLATES THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION

The Court should review the decision of the Second Circuit in this case to resolve a split among the Circuit Courts of Appeals on an important issue of federal constitutional law, namely whether a circuit court may apply plain error to reject a claim that 18 U.S.C. § 922(g)(1), the felon in possession law, violates the Second Amendment to the United States Constitution.

The Second Circuit based its decision in this case on its ruling in *Zherka* that there has been no binding precedent from the Court on the constitutionality of the felon in possession law since the Second Circuit rejected a challenge to it in *Bogle*. The Second Circuit started its analysis with its observation that "the Supreme Court has never repudiated *Heller*'s [*District of Columbia v. Heller*, 554 U.S. 570 (2008)] assurance that 'longstanding prohibitions on the possession of firearms by felons' are 'presumptively lawful.' 554 U.S. at 626-27, 627 n.26"

Zherka, 140 F.4th at 73. The Second Circuit continued that "the Court has struck down only firearms laws that overly restrict the rights of 'law-abiding, responsible citizens' to own and possess guns. [*Heller*] 554 U.S.at 635; see also *McDonald v. City of Chicago*, 561 U.S. 742, 749-50, … (2010); *Bruen*, 597 U.S. at 8-11, 15, 26, 29." *Zherka*, 140 F.4th at 73. The Second Circuit held that its decision in *Bogle* that Section 922(g)(1) is a "constitutional restriction on the Second Amendment rights of convicted felons," 717 F.3d at 281-82, survives *Bruen*. *Zherka*, 140 F.4th at 74-75.

The Court's decision in *United States v. Rahimi,* 602 U.S. 680 (2024), cannot be applied to resolve the constitutionality of the felon in possession statute. In *Rahimi,* the Court rejected a facial challenge to another subsection of 18 U.S.C. § 922, namely § 922(g)(8), which prohibits persons subject to domestic violence restraining order from possessing firearms. Two findings are critical to the Court's decision in *Rahimi*: first, that the subject of the order, namely Mr. Rahimi, posed a credible threat to the physical safety of another person and, second, the prohibition was temporary.

The Court made it clear that its decision in *Rahimi* is limited: "we conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." 602 U.S. at 702.

In contrast, the § 922(g)(1) creates a lifetime ban on the subject, based solely on their status as a "felon" and not any finding that they pose a threat to any other person. The Court in *Rahimi* focused on the temporal limitation of the § 922(g)(8) ban as applied to Mr. Rahimi, which lasted only as long as the restraining order, *i.e.*, six months. *United States v. Rahimi*, 602 U.S. at 699.

With its decision in *Zherka*, the Second Circuit entered into the entrenched split among the Circuit Courts of Appeals regarding *Bruen*'s impact on facial and as-applied challenges to § 922(g)(1) by upholding Mr. Mackins' conviction as a categorical matter applying to all felons, notwithstanding *Bruen*. The reasoning in *Zherka* runs contrary to both *Bruen* and *Rahimi*, as well as the narrower, more historically faithful interpretations adopted in the Third, Fifth, and Sixth Circuits.

The Second Circuit rejected the constitutional challenge as a

categorical matter in *Zherka*, without acknowledging that this Court in *Rahimi* did not adopt a "categorical rule" of validity. See 602 U.S. at 699 (quoting *Heller*, 554 U.S. at 626-27 & n.26).

In its decision in *Zherka*, the Second Circuit joined the Fourth, Eighth, Ninth, Tenth and Eleventh Circuits in applying a categorical rule to uphold § 922(g)(1). In each case, this Court has denied certiorari leaving the split among the circuits ongoing. *See United States v. Hunt*, 123 F.4th 697, 703-04 (4th Cir. 2024), *cert. denied*, *Hunt v. United States*, ___U.S.___, 145 S. Ct. 2756 (2025); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024), *cert. denied*, *Jackson v. United States*, __U.S.__, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 752 (9th Cir. 2025) (en banc), *cert. denied*, *Duarte v. United States*, No. 25-425, ___U.S.___, 2026 U.S. LEXIS 520 (Jan. 20, 2026); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. denied*, No.24-1155, __U.S.__ (March 2, 2026); and *United States v. Dubois*, 139 F.4th 887, 890 (11th Cir. 2025), *cert. denied*, *Dubois v. United States*, No. 25-6281, ___U.S.___, 2026 U.S. LEXIS 490 (Jan. 20, 2026).

Several other Courts of Appeals have entered similar decisions. *See United States v. Langston*, 110 F.4th 408, 420 (1st Cir. 2024); *United States v. Brinson*, No. 23-2075, 2024 U.S. App. LEXIS 23185, at *2 (3d Cir. Sept. 12, 2024); *United States v. Hewlett*, No. 23-2040, 2024 U.S. App. LEXIS 27037, at *4 (6th Cir. Oct. 24, 2024).

Before applying the categorical rule to uphold the judgment in *Duarte*, 137 F.4th at 752, the Ninth Circuit had initially concluded that there was no analogous tradition of disarmament for at least some defendants. *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024), reh'g en banc granted, opinion vacated by *United States v. Duarte*, 108 F.4th 786 (9th Cir., 2024).

Other circuit courts of appeals have recognized that the *Bruen* decision rendered earlier precedents, such as *Bogle*, obsolete and no longer viable.

Several courts of appeals have found § 922(g)(1) unconstitutional. The Third Circuit, sitting *en banc*, found § 922(g)(1) unconstitutional as applied absent any evidence that the subject posed danger to others. *Range v. Att'y Gen. United States,* 124 F.4th 230, 232 (3d Cir. 2024).

The Third Circuit's holding is diametrically opposed to that of the Fourth and Sixth Circuits. The Fourth Circuit held that "Congress acted within the historical tradition when it enacted § 922(g)(1)." *United States v. Hunt,* 123 F.4th at 705. The Fourth Circuit concluded that Section 922(g)(1) "regulates activity" namely, the possession of firearms by felons "that 'fall[s] outside the scope of the [Second Amendment] right as originally understood'." 123 F.4th at 705 citing *Bruen*, 597 U.S. at 18.

The Eighth Circuit similarly upheld the constitutionality of §922(g)(1) as applied to "particular felony convictions." *United States v. Jackson*, 110 F.4th at 1125.

The Fifth Circuit has upheld § 922(g)(1) as applied to certain offenders convicted of offenses would have been considered felonies at the time of the adoption of the Second Amendment. *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024). The Sixth Circuit also concluded that because *Bruen* required a different mode of analysis, so its precedent on § 922(g)(1) is no longer viable. *United States v. Williams*, 113 F.4th 637, 648 (6th Cir. 2024).

The Fifth Circuit has held that *Bruen* "fundamentally change[d]" the analysis of laws that implicate the Second Amendment, rendering the prior precedent "obsolete". *See United States v. Rahimi*, 61 F.4th 443, 450-51 (5th Cir. 2023); *United States v. Diaz*, 116 F.4th at 465.

The Fifth Circuit reversed a conviction under § 922(g)(1) and remanded for further proceedings consistent with its opinion, holding that the statute violates the Second Amendment as applied to the defendant in that case. *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025), *petition for cert. filed,* No. 25-1029 (Feb. 27, 2026). In that case, the Fifth Circuit rejected the government's argument that a lifetime ban was warranted based on a conviction for failing to pay child support, even after he repaid his child support debt. 162 F.4th at 504.

The Seventh Circuit has not resolved the split among its district courts. Several district courts have rejected arguments that § 922(g)(1) is constitutional due to the Court's holding in *Bruen. See, e.g., United States v. Prince*, 700 F. Supp. 3d 663, 676 (N.D. Ill., 2023), appeal filed (7th Circuit, Dkt. No.23-3155) (Nov. 9, 2023).

While the Seventh Circuit recently assumed in *United States v.*

Gay, 98 F.4th 843, 846-47 (7th Cir. 2024) that as-applied challenges to § 922(g)(1) are available, the Seventh Circuit declined to resolve the issue in *Atkinson v. Garland*, 70 F.4th 1018, 1023 (7th Cir. 2023) and remanded that case to the district court for further proceedings.

Several other district courts in the Seventh Circuit found § 922(g)(1) to be unconstitutional as applied to the defendant before it. For example, in one case, the defendant's only prior criminal history was possession of a controlled substance and delivery of a controlled substance. *United States v. Daniel*, 701 F.Supp. 3d 730, 737 (N.D. Ill. 2023), appeal filed, November 13, 2023 (7th Circuit, Dkt. No. 23-3173). The *Daniel* court held that the government failed to show that there was an historical analogue to § 922(g)(1)'s permanent prohibition of firearm possession by felons. 701 F. Supp. 3d 740-41. Absent such a showing, the district court reasoned that it was "unable to uphold § 922(g)(1) as constitutional due to *Bruen*'s instruction that the government must provide evidence of a historical analogue that is both comparably justified and comparably burdensome of the right to keep and bear arms." 701 F. Supp. 3d at 744.

Other district courts in the Seventh Circuit have reached similar conclusions. *See, e.g., United States v. Eatman*, 2024 U.S. Dist. LEXIS 24877, at *9 (N.D. Ill. Feb. 13, 2024) (collecting cases), appeal filed, (7th Circuit, Dkt. No.24-1262) (February 21, 2024). *United States v. Howard*, 2025 U.S. Dist. LEXIS 79042, *8 (N.D. Ill. 2024), appeal filed (7th Circuit, Dkt. No.25-1902) (May. 28, 2025) (holding that § 922(g)(1)'s permanent categorical firearm possession by all felons violated the Second Amendment).

Other district courts in the Seventh Circuit have upheld § 922(g)(1). *See, e.g., United States v. Calhoun*, 710 F. Supp. 3d 575, 585-586 (N.D. Ill. 2024) (collecting cases).

Under the circumstances, the Second Circuit's application of its pre-*Bruen* precedent conflicts with other circuits and denied Mr. Mackins the benefit of this Court's inevitable ruling on this critical issue. 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, while

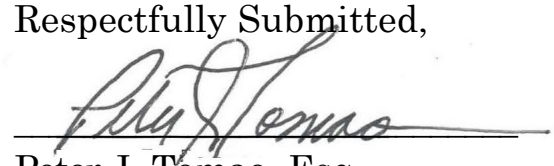
similarly situated litigants in other circuits have their rights under the Second Amendment determined on their merits.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THIS COURT IS RESPECTFULLY URGED TO GRANT THE WRIT OF CERTIORARI TO REVIEW THE OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AFFIRMING THE SENTENCE

Dated: Garden City, New York
March 9, 2026

Respectfully Submitted,



Peter J. Tomao, Esq.
CJA Counsel to the Petitioner
Danzel Mackins
600 Old Country Road Suite 323
Garden City, New York 11530
(516) 877-7015

Appendix

Appendix

24-1851-cr
United States v. Samuels (Mackins)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of December, two thousand twenty-five.

PRESENT: AMALYA L. KEARSE,
RAYMOND J. LOHIER, JR.,
STEVEN J. MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 24-1851-cr

DANZEL MACKINS,

Defendant-Appellant.*

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* This appeal was consolidated with the appeal of Defendant-Appellant Darrin Samuels, No. 24-1801. In a separate order, we address the *Anders* motion filed by counsel for Samuels and the Government's motion for dismissal or summary affirmance. Therefore, this appeal is hereby severed from the consolidated appeal of Samuels. Accordingly, the Clerk of Court is directed to amend the caption of No. 24-1851 as set forth above.

FOR DEFENDANT-APPELLANT:	Peter J. Tomao, Anthony J. Galioto, Law Office of Peter J. Tomao, Garden City, NY
FOR APPELLEE:	Thomas John Wright, Olga I. Zverovich, Assistant United States Attorneys, *for* Jay Clayton, United States Attorney for the Southern District of New York, New York, NY

Appeal from a judgment of the United States District Court for the Southern District of New York (Lewis A. Kaplan, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Danzel Mackins appeals from a judgment entered in the United States District Court for the Southern District of New York (Kaplan, *J.*) convicting him, following his plea of guilty, of possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and conspiracy to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C). The sole issue before us on appeal is the constitutionality of § 922(g)(1).[1] We assume the parties' familiarity with the underlying facts and the

[1] Mackins asserts, in a single conclusory sentence, that "this Court should . . . reverse the judgment as to the special conditions of supervised release." Appellant's Br. 39. Because Mackins insufficiently developed that argument, we decline to consider it. *See United States v. Botti*, 711 F.3d 299, 313 (2d Cir. 2013).

record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

Mackins argues that § 922(g)(1) is unconstitutional on its face and as applied to him in light of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). We review the argument for plain error because Mackins failed to raise it in the District Court. *See United States v. Santiago*, 238 F.3d 213, 215, 217 (2d Cir. 2001). We find no error. Mackins's argument is clearly foreclosed by *Zherka v. Bondi*, in which this Court held that § 922(g)(1) is constitutional both on its face and as applied to convicted felons with nonviolent predicate crimes of conviction. *See* 140 F.4th 68, 74–75, 93 (2d Cir. 2025).

We have considered Mackins's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court