NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JESSE TABER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) violates the Second Amendment, either on its face or as applied.

PARTIES TO THE PROCEEDING

Petitioner is Jesse Taber.

Respondent is United States of America.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jesse Taber respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

DECISION BELOW

The order of the Court of Appeals granting the government's motion for summary affirmance is reproduced below. A 1.

JURISDICTION

The order of the Court of Appeals, which had jurisdiction pursuant to 28 U.S.C. § 1291, was entered on December 30, 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 a felon's possession of a firearm provides:

> (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.

18 U.S.C. § 922(g)(1).

STATEMENT OF THE CASE

Jesse Taber was indicted by a federal grand jury for violating 18 U.S.C. § 922(g)(1) by possessing a 12 gauge Stoeger Coach Gun shotgun in and affecting interstate commerce after having been previously convicted of a felony. A 2.

Relying on recent Second Amendment jurisprudence, Taber moved to dismiss the indictment, arguing that Section 922(g)(1) is unconstitutional, both on its face and as applied to him. A 2-3.

The district court denied the motion, concluding (or adopting the government's arguments) that it was bound to follow a prior Second Circuit decision in *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013), and rejecting Taber's as applied challenge. A 7-9.

On April 2, 2025, the district court sentenced Taber to 27 months' imprisonment and three years' supervised release.

On December 30, 2025, the Court of Appeals for the Second Circuit issued an order granting the government's motion for summary affirmance, agreeing that its decision in *Zherka v. Bondi*, 140 F. 4th 68 (2d Cir. 2025), foreclosed Mr. Taber's Second Amendment challenge to 18 U.S.C §922(g)(1). A 1.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari because 18 U.S.C. § 922(g)(1) violates the Second Amendment right to keep and bear arms.

The Second Amendment guarantees a pre-existing right to keep and bear arms for self-defense:

> 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; *District of Columbia v. Heller*, 554 U.S. 570 (2008). "Like most rights," however, "the right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626. The scope of the right is defined by "constitutional text and history." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 22 (2022). 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(g)(1) does not comport with the principles underlying the Second Amendment. 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). Section 922(g)(1) prohibits any person with a prior felony to possess any firearm for any reason. Taber is alleged to have violated this regulation

by possessing a firearm for no other reason beyond self-defense. Therefore, as the Court of Appeals found, Section 922(g)(1) covers conduct protected by the plain text of the Second Amendment. *See Zherka*, 140 F.4th at 75-76. Because the text of the Second Amendment protects Taber's right to possess a firearm for self-defense, the government "must justify [Section 922(g)(1)] by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

The government attempted to satisfy its burden below by relying on (1) laws categorically disqualifying groups from possessing firearms based on a judgment that the group could not be trusted to adhere to the rule of law; and (2) laws authorizing capital punishment and estate forfeiture for felonies. Neither is "relevantly similar" to Section 922(g) because they do not both "(1) address a comparable problem (the 'why') and (2) place a comparable burden on the right holder (the 'how')." *United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. Aug. 28, 2024) (citing *Rahimi*, 602 U.S. at 692; *Bruen*, 597 U.S. at 27-30).

The government relied on examples from English law, Colonial America, and Revolutionary America, in which Catholics (or Papists)

were dispossessed. The Court of Appeals cited the same examples. *See Zherka*, 140 F.4th at 85-88. Historical context reveals, however, that these examples were "adapted to the fears and threats of that time and place." *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019) (Barrett, J., dissenting) (citations omitted). They were meant to "'deal with the potential threat coming from armed citizens who remained loyal to' another sovereign." *Id.* (citations omitted). *See also Rahimi*, 602 U.S. at 754; *United States v. Jackson*, 85 F.3d 468, 470 (8th Cir. 2023) ("Early laws were about lessening the danger posed by armed rebellion or insurrection.") (Stras, J., dissenting from denial of rehearing en banc). American examples of dispossessing slaves and Native Americans, both arguably outside "the people," were similarly aimed at responding to "more immediate threats to public safety and stability." *Id.* at 458 (citations omitted). "In sum, founding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety." *Id.* But these historical practices do not support "a legislative power to categorially disarm felons because of their status as felons." *Id.* "That Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does

nothing to prove that [Mr. Taber] is part of a similar group today. And any such analogy would be 'far too broad.'" *Range v. Attorney General United States*, 124 F.4th 218, 239 (3d Cir. 2024) (cleaned up). Moreover, "[b]y the time of the founding," both "state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic." *Rahimi*, 602 U.S. at 694.

This Court's decision in *Zherka* fails to explain how Section 922(g)(1) is relevantly similar to these historical examples. Indeed, the *Zherka* Court did not even try. After acknowledging "some disagreement over why legislatures passed those laws," the Court "decline[d] to engage in conjecture about the finer motivations of legislative bodies that sat centuries ago. . . . leav[ing] that task to trained historians." *Zherka*, 140 F.4th at 90. But the analogical reasoning adopted in *Bruen* requires an assessment of the "how" and the "why" of the both the instant and historical regulations. *See Rahimi*, 602 U.S. at 698 ("This provision is 'relevantly similar' to those founding era regimes in both why and how it burdens the Second Amendment right."); *Connelly*, 117 F.4th at 276 ("So we must ask: why was severe mental illness a reason the Founders disarmed people, and is that 'why' 'relevantly similar' to § 922(g)(3)?")

The government's attempt to draw support from the ratification debates, which is echoed in *Zherka*, fares no better. *Zherka*, 140 F.4th at 183-84. Although the conventions of New Hampshire, Massachusetts, and Pennsylvania touch on felon dispossession, then-Judge Barrett explains why each should be treated with caution:

> First, none of the relevant limiting language made its way into the Second Amendment. Second, only New Hampshire's proposal—the least restrictive of the three—even carried a majority of its convention. Third, proposals from other states that advocated a constitutional right to arms did not contain similar language of limitation or exclusion. And finally, similar limitations or exclusions do not appear in any of the four parallel state constitutional provisions enacted before ratification of the Second Amendment.

Kanter, 919 F.3d at 455 (citations omitted). *See also Rahimi*, 602 U.S. at 758 (Thomas, J., dissenting) ("These proposals carry little interpretative weight. To begin with, it is 'dubious to rely on [drafting] history to interpret a text that was widely understood to codify a pre-existing right.' Moreover, the States rejected the proposals. . . . The Government never explains why or how language excluded from the Constitution could operate to limit the language actually ratified."). Even taken together, the "concern common to all three is not about felons in particular or even

criminals in general; it is about threatened violence and the risk of public injury." *Id.* at 456.[1]

In an additional attempt to uphold Section 922(g)(1), the government and the *Zherka* Court cited felony punishment laws. To be sure, some founding era felonies were punished with death.[2] "Yet the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation's history and tradition." *Range*, 124 F.4th at 231. Moreover, the government provided no evidence that Taber's underlying crimes were punishable by death during the founding or that it rendered him eligible for dispossession.

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[1] *Bruen* also cautioned against finding a historical tradition based on three instances alone. *See* 142 S. Ct. at 2142 ("For starters, we doubt that *three* colonial regulations could suffice to show a tradition[.]").

[2] As then-Judge Barrett noted, "[d]uring the period leading up to the founding, the connection between felonies and capital punishment started to fray. . . . Of course, many crimes remained eligible for the death penalty, and the extent to which that was true varied by state. Death, however, no longer inevitably followed a felony conviction." *Kanter*, 919 F.3d at 459. *See also Jackson*, 85 F.4th at 473 ("Not all felonies were punishable by death, particularly the non-dangerous ones. . . . [So the] greater-includes-the-lesser argument cannot be right if the greater—the widespread use of death as the punishment for a felony—was itself a fiction.") (Stras, J., dissenting from denial from rehearing en banc).

It is also true, as the government and the *Zherka* Court note, that some founding era laws punished felons with forfeiture. As then-Judge Barret noted, the conclusions to be reached by those penalties do not extend as far as the government would like:

> Outside the capital context, civil death applied exclusively to life sentences and only if authorized by statute—and even then, it was more modest than the ancient version because the convict retained some rights. Felons serving a term of years did not suffer civil death; their rights were suspended but not destroyed. In sum, a felony conviction and the loss of all rights did not necessarily go hand-in-hand.

Kanter, 919 F.3d at 461. Even if Taber's prior alleged crimes permitted government confiscation of the instruments of crime (or a convicted criminal's entire estate), those consequences "differ[ ] from a status-based lifetime ban on firearm possession." *Range*,124 F.4th at 231. After all, "[n]othing prevented individual offenders, even those who had forfeited a gun, from buying another." *Jackson*, 85 F.4th at 474 (Stas, J., dissenting from the denial of rehearing en banc).

Not only must the government marshal historical analogues that address a comparable problem (the "why"), the analogue must also place a comparable burden on the Second Amendment holder (the "how"). Accordingly, "if earlier generations addressed [a] societal problem, but

did so through materially different means, that also could be evidence that a modern regulation is unconstitutional." *Bruen*, 597 U.S. at 26-27. No analogue offered or relied upon by *Zherka* permitted the government to permanently and irrevocably strip the firearm rights of a member of "the people." For example, Catholics and English Loyalists could be disarmed, but only for as long as they refused to swear a loyalty oath or otherwise fail to demonstrate they were not a threat. *Williams*, 113 F.4th 637, 651-654 (6th Cir. 2024). In each case of group disarmament, "individuals could demonstrate that their particular possession of a weapon posed no danger to peace." *Id*. at 657. Section 922(g)(1) has no such mechanism. Similarly, capital punishment for some felony offenses and forfeiture of a specific gun for others constitute "materially different means" than stripping a person of the right to keep and bear arms for a lifetime. *Jackson*, 85 F.3d at 474 (Stras, J., dissenting from denial of rehearing en banc) (citing *Bruen*, 597 U.S. at 26).

In the district court below, the government did not identify any historical tradition or analogues that would justify permanently

disarming someone with the kind of felony convictions on Taber's record.[3] Indeed, the government did not even claim Taber posed a danger *if armed* today. More to the point, the government offered no explanation – beyond Taber's membership within a broad and everchanging class – for why Section 922(g)(1) could be constitutionally applied to Taber.

The Second Circuit held that Section 922(g)(1) is constitutional even though it provides no exception for non-dangerous felons. In support, the *Zherka* Court cited three relevant historical regulations applying class-wide prohibitions without exception. However, those few outliers do not contradict the *principle* that "when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don't fit the class-wide generalization." *Williams*, 113 F.4th at 661. For example, *Zherka* cites two regulations involving "Black people" and "persons of color." *Zherka*, 140 F.4th at 91-93. However, these examples cover individuals who were not likely deemed to be part of the political community, and so had no Second Amendment rights in the first place. That leaves a single example, "the

[3] The district court cited three prior New York State convictions: (1) a 1996 conviction for Grand Larceny in the Fourth Degree; (2) a 1997 conviction for Attempted Burglary in the Third Degree; and (3) a 2013 conviction for Criminal Sale of a Controlled Substance in the Third Degree. A 9.

1759 Pennsylvania law disarming Catholics," which is not analogous in both the "how" and the "why" because it applied only during "this time of actual war with the French King and his subjects and his savage Indian Allies" and required a "warrant under the hands and seals of any two justices of the peace." *See* An Act for Forming and Regulating the Milita of the Province of Pennsylvania, § VI, pt. 2 (1759), *in* THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 to 1801, 609, 627 (James T. Mitchell & Henry Flanders eds., WM Stanley Ray 1898).

II. The Circuits are divided over § 922(g)(1)'s constitutionality.

The Third and Fifth Circuits have held that § 922(g)(1) is unconstitutional as applied to certain prior convictions. The Sixth and D.C. Circuits have held that § 922(g)(1) is subject to as-applied challenges. By contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have held that §922(g)(1) is constitutional in every application. This split warrants this Court's review.

The Third Circuit, sitting *en banc*, was the first Court of Appeals to hold that § 922(g)(1) violates the Second Amendment. Applying *Bruen* and *Rahimi*, the Third Circuit held in *Range* that Congress cannot permanently disarm certain individuals with nonviolent criminal

convictions. *Range*, 124 F.4th 218. More specifically, the Court held that § 922(g)(1) cannot be constitutionally applied to a person with a prior conviction for a felony food stamp fraud offense. *Id*. at 223. Following *Range*, the Fifth Circuit held that § 922(g)(1) cannot be applied to a person with a prior conviction for failure to pay child support. *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025). The Fifth Circuit noted that it was splitting with the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. *Id*. at 510. Likewise, the Sixth Circuit similarly permits as-applied challenges to § 922(g)(1). *United States v. Williams*, 113 F. 657. Although noting that "most applications of § 922(g)(1)" will be constitutional, "individuals could demonstrate that their particular possession of a weapon posed no danger to peace." *Id*. at 657. The D.C. Circuit agreed, noting "in [*Medina v. Whitaker*, 913 F.3d 152, 160 (D.C. Cir. 2019)], we held open the possibility that a 'felon could show that his crime is so minor or regulatory that he did not forfeit his right to bear arms by committing it.'").

By contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have all reached the opposite conclusion. Each of these courts have held that § 922(g)(1) is constitutional in all its applications,

even as applied to individuals with nonviolent, regulatory felonies. *Zherka*, 140 F.4th at 93 (2d Cir.); *United States v. Hunt*, 123 F.4th 697, 702–04 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States Duarte*, 137 F.4th 743, 750–52, 761–62 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1292 (11th Cir. 2024).

III. This case presents a suitable vehicle to resolve § 922(g)(1)'s constitutionality.

Taber preserved his facial and as-applied challenges, raising them in both the district court and on appeal. The Second Circuit rejected Taber's claims in an earlier published decision, and relied on that decision in granting the government's motion for summary affirmance. Taber is a United States citizen, and he was only convicted of violating § 922(g)(1). The resolution of § 922(g)(1)'s constitutionality is outcome determinative. Finally, his prior convictions were remote in time, all predating 2014.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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