

No. _____

In the
Supreme Court of the United States

Yasser Cruz,

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 A WRIT OF CERTIORARI

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QUESTION PRESENTED

18 U.S.C. § 922(g)(1) imposes a lifelong prohibition, punishable by up to 15 years' imprisonment, on the possession of any firearm or ammunition, for any purpose, by “any person ... who has been convicted in any court of ... a crime punishable by imprisonment for a term exceeding one year.”

In light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), does § 922(g)(1) violate the Second Amendment, either on its face or as applied to Petitioner, a United States citizen who has no violent prior felony convictions?

PARTIES TO THE PROCEEDING

Petitioner is Yasser Cruz, defendant-appellant below.

Respondent is the United States of America.

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OPINIONS AND ORDERS BELOW

The order of the United States Court of Appeals for the Second Circuit granting the Government's motion for summary affirmance based on *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), appears at Pet. App. 001a. *Zherka* appears at Pet. App. 002a-026a. The opinion and order of the United States District Court for the Southern District of New York denying Petitioner's motion to dismiss the indictment appears at Pet. App. 027a-031a.

JURISDICTION

The District Court had jurisdiction under 18 U.S.C. § 3231 and entered judgment on February 25, 2025. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291 and affirmed Petitioner's conviction on December 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

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.

18 U.S.C. § 922(g)(1) provides, in relevant part:

It shall be unlawful for any person ... who has been convicted in any court of ... a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce, any firearm or ammunition

STATEMENT OF THE CASE

This case presents an important and frequently recurring constitutional question subject to a well-established circuit split: Does § 922(g)(1) violate the Second Amendment, either on its face or as applied to a United States citizen with no prior violent felony convictions?

This split developed after the Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Following *Bruen*, and *United States v. Rahimi*, 602 U.S. 680 (2024), the Third and Fifth Circuits have held that § 922(g)(1) is unconstitutional as applied to people with certain nonviolent prior felony convictions. *Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. 2024) (*en banc*) (making false statement to obtain food stamps); *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) (failure to pay child support); *United States v. Mitchell*, 160 F.4th 169 (5th Cir. 2025) (possession of a firearm by an unlawful user of controlled substances); *United States v. Doucet*, 2025 WL 3515404, at *1-*2 (5th Cir. Dec. 8, 2025) (marijuana cultivation); *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026) (possession of methamphetamine). Likewise, the Sixth and D.C. Circuits have held that § 922(g)(1) is subject to as-applied challenges. *United States v.*

Williams, 113 F.4th 637 (6th Cir. 2024); *United States v. Johnson*, 158 F.4th 200, 209–10 (D.C. Cir. 2025).

In sharp contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits hold that § 922(g)(1) is constitutional on its face and as applied to all felons, regardless of the nature of their prior felony convictions. *Zherka v. Bondi*, 140 F.4th 68, 93 (2d Cir. 2025); *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 v. Duarte*, 137 F.4th 743, 750–52, 761–62 (9th Cir. 2025) (*en banc*); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1292 (11th Cir. 2024). This split is mature and well-recognized.

Only this Court can resolve this split. Petitioner’s case provides a sound vehicle for doing so. The question is preserved, it is outcome-determinative, and Petitioner is a United States citizen with only nonviolent prior felony convictions (drug and weapons possession offenses). Petitioner recognizes that this Court recently denied petitions for certiorari in a number of cases presenting the question of § 922(g)(1)’s constitutionality. *E.g.*, *Zherka v. Bondi*, No. 25–269 (cert.

denied Jan. 20, 2026); *Duarte v. United States*, No. 25–425 (cert. denied Jan. 20, 2026); *Vincent v. Bondi*, No. 24–1155 (cert. denied Mar. 2, 2026); and *Thompson v. United States*, No. 25–5434 (cert. denied Mar. 2, 2026). But the split remains and the issue warrants this Court’s intervention.

1. Petitioner was arrested in Manhattan with a firearm. He had several prior felony conviction for drugs and gun possession, but none for violence. A grand jury in the United States District Court for the Southern District of New York returned a one-count indictment charging Petitioner with possession of a firearm following a felony conviction, in violation of § 922(g)(1). Petitioner moved to dismiss the indictment, arguing that § 922(g)(1) was unconstitutional, both facially and as applied to him.

2. The district court (Caproni, J.) denied the motion. Pet. App. 027a-031a. Petitioner pleaded guilty to the indictment, preserving his right to raise his Second Amendment claim on appeal. *See Class v. United States*, 583 U.S. 174, 178 (2018) (holding that “a guilty plea by itself” does not “bar[] a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal”); *United*

States v. Alarcon Sanchez, 972 F.3d 156, 166 n.3 (2d Cir. 2020) (noting *Class*'s holding "that a criminal defendant who enters an unconditional guilty plea may still appeal his conviction on the ground that the statute of conviction is unconstitutional," and there entertaining defendants' "as-applied and facial constitutional challenges").

3. Petitioner renewed his facial and as-applied challenges on appeal. The Government moved for summary affirmance of his conviction in light of the Second Circuit's intervening decision in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). The Second Circuit (Bianco, Park, Merriam, JJ.) granted that motion, affirmed Petitioner's conviction, and dismissed his appeal, citing *Zherka*. Pet. App. 001a.

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant Certiorari To Hold That § 922(g)(1) Violates The Second Amendment, Either On Its Face Or As Applied To People, Like Petitioner, With Nonviolent Prior Felony Convictions.

The Court should grant certiorari to hold that § 922(g)(1) violates the Second Amendment right to keep and bear arms, either on its face or as applied to people, like Petitioner, who are United States citizens with only nonviolent prior convictions. The petition presents an

important and recurring question concerning the constitutionality of a federal criminal statute, over which the circuits are hopelessly divided, in particular, on the question whether § 922(g)(1) is subject to as-applied challenges. This case is a good vehicle to address the question because the question presented is preserved and outcome-determinative as to the sole count of conviction. Finally, *Zherka* is wrong: § 922(g)(1) is unconstitutional under the Second Amendment. At the least, people with only nonviolent prior convictions should be permitted to challenge the constitutionality of § 922(g)(1) as applied to them.

A. The Circuits are divided over the important and recurring question of § 922(g)(1)'s constitutionality, and in particular, whether § 922(g)(1) is subject to as-applied challenges.

The Circuits are divided on the question presented. As described above, the Third and Fifth Circuits have held that § 922(g)(1) is unconstitutional as applied to people with certain nonviolent prior convictions, while the Sixth and D.C. Circuits have held that § 922(g)(1) is subject to as-applied challenges. In sharp contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have held that § 922(g)(1) is constitutional in all applications. This mature split warrants review.

Sitting *en banc*, the Third Circuit applied this Court’s decisions in *Bruen* and *Rahimi* to hold that § 922(g)(1) cannot constitutionally bar gun possession by certain individuals with nonviolent criminal records. See *Range*, 124 F.4th 218. According to the Third Circuit, “*Bruen* abrogated our Second Amendment jurisprudence,” such that courts “no longer conduct means-end scrutiny”; individuals convicted of felonies “remain[] among ‘the people’” protected by the Second Amendment; and “the Government has not shown that the principles underlying the Nation’s historical tradition of firearms regulation support depriving” certain felons of the “Second Amendment right to possess a firearm.” *Id.* at 222, 232. In *Range*, the Third Circuit specifically held that an individual with a prior conviction for felony food stamp fraud could not be constitutionally prevented from obtaining a firearm. See *id.* at 223.

In accord with *Range*, the Fifth Circuit has concluded that § 922(g)(1) cannot constitutionally be applied to a person whose only prior felony conviction was for failure to pay child support. *Cockerham*, 162 F.4th 400. In light of *Bruen*, the Fifth Circuit determined that there was no “historical justification” to support the permanent disarmament of someone whose only offense was, in essence, being in debt, noting that

the defendant had discharged his debt by the time of his firearm possession, and that at the Founding, imprisonment for debt ceased once the debt was paid. *See* 162 F.4th at 506–07. In so holding, *Cockerham* expressly noted that it was splitting with the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, which had “affirmed § 922(g)(1) as a categorical matter.” *Id.* at 510. The Fifth Circuit explained that the approach of these Circuits was not “how we have read Supreme Court precedent.” *Ibid.* “Historical analysis determines whether a particular individual can be disarmed for life under § 922(g)(1). And we are unable to find a historical basis for disarming Cockerham for the rest of his life, just because he was once convicted of failure to pay child support.” *Ibid.* *See also, e.g., Mitchell*, 160 F.4th at 195 (sustaining as-applied challenge where prior felony was possession of a firearm by an unlawful user of controlled substances); *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024) (entertaining, but rejecting, as-applied challenge); *United States v. Betancourt*, 139 F.4th 480, 483 (5th Cir. 2025) (same).

Likewise, the Sixth Circuit similarly holds that “*Bruen* requires a history-and-tradition analysis” different from that previously employed

by courts and that, under this analysis, there may be as-applied Second Amendment challenges to § 922(g)(1). *Williams*, 113 F.4th at 657–58. *Williams* predicted that “most applications of § 922(g)(1)” will be constitutional, but that “individuals could demonstrate that their particular possession of a weapon posed no danger to peace.” *Id.* at 657. Indeed, without the opportunity for such as-applied challenges, the Sixth Circuit found that § 922(g)(1) “would abridge non-dangerous felons’ Second Amendment rights.” *Id.* at 661. The D.C. Circuit is in accord. *Johnson*, 158 F.4th at 209–10 (noting that “[I]n *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.’”)

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have all reached the opposite conclusion. According to these circuits, § 922(g)(1) is constitutional in all its applications—even as applied to someone who has only remote or nonviolent prior felony convictions, or who can establish that he is not dangerous. *Zherka*, 140 F.4th at 93 (2d Cir.); *Hunt*, 123 F.4th at 702–04 (4th Cir.); *Jackson*, 110 F.4th at 1125

(8th Cir.); *Duarte*, 137 F.4th at 750–52, 761–62 (9th Cir.); *Vincent*, 127 F.4th at 1265–66 (10th Cir.); *Dubois*, 94 F.4th at 1292 (11th Cir.).

These circuits do not allow any as-applied challenges to § 922(g)(1).

This entrenched split, on an important and recurring constitutional question, merits this Court’s review.

B. This case is a suitable vehicle to resolve the question presented.

This case offers a clean opportunity to resolve this Circuit conflict. Petitioner preserved his facial and as-applied challenges, raising them in both the district court and on appeal. *See* Pet. App. 001a & 027a-031a. The Second Circuit rejected Petitioner’s claim in reliance on its published decision in *Zherka*, which established § 922(g)(1)’s constitutionality as applied to all felons. Pet. App. 002a-026a. Petitioner’s only conviction in the instant case is a violation of § 922(g)(1). He is a United States citizen. And all of Petitioner’s prior felony convictions were nonviolent.

C. The majority rule is wrong: Section 922(g)(1) is unconstitutional, both on its face and as applied to people, like Petitioner, with nonviolent prior felony convictions.

Finally, the rule adopted by the majority of Circuits is wrong: § 922(g)(1) is unconstitutional. For the reasons persuasively explained

by the *en banc* Third Circuit in *Range*, as well as the petitions in *Vincent* and *Thompson*, § 922(g)(1) violates Petitioner’s Second Amendment rights under *Bruen*.

As *Bruen* explains, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” 597 U.S. at 17. Here, Petitioner easily satisfies *Bruen*’s first step. As a United States citizen, he is among “the people” to whom the Second Amendment’s text guarantees “the right to keep and bear Arms.” And § 922(g)(1) imposes a lifetime prohibition, backed by up to 15 years’ imprisonment, on the exercise of that right, and therefore covers the charged conduct of gun possession. *See* 18 U.S.C. § 924(a)(8). On that point, even the Second Circuit agrees. *See Zherka*, 140 F.4th at 77 (“[W]e conclude that Zherka, notwithstanding his felony conviction, is among ‘the people’ protected by the Second Amendment.”). *Accord Duarte*, 137 F.4th at 755.

Where the Second and other Circuits on the long side of the split go astray is at *Bruen*'s second step. These Courts of Appeals loosely analogize felony convictions to all manner of Founding-Era regulations. For example, *Zherka* relied on laws disarming “[r]eligious minorities, political dissenters, Native Americans, and persons of color” “based on a perception that persons in those categories were inherently dangerous or non-law-abiding.” 140 F.4th at 85. In the Second Circuit’s view, such laws demonstrate that “legislatures could disarm classes of people that they perceived as dangerous, without any judicial scrutiny of the empirical basis for that perception.” *Ibid.* The Ninth Circuit did likewise, and also included among the class of “dangerous individuals” minors, those of “unsound mind,” “those who were intoxicated,” and “tramps.” *Duarte*, 137 F.4th at 759–60. *Duarte* also adopted the greater-includes-the-lesser rationale that, if felonies could be punished by death at the Founding, they could also be punished by disarmament. *See id.* at 756. *Accord Jackson*, 110 F.4th at 1127; *Hunt*, 123 F.4th at 705–06.

These laws fall far short of *Bruen*'s strict requirement of a “relevantly similar” historical analogue, on either the “why” or the “how” dimension of § 922(g)(1). *See Bruen*, 597 U.S. at 29 (noting that

this Court’s Second Amendment precedents “point toward at least two metrics” for evaluating “relevant similarity” of historical analogues to current firearms regulations—“how and why the regulations burden a law-abiding citizen’s right to armed self-defense”).

As to the “why,” there is no evidence of any significant Founding-era firearms-related restrictions on citizens who satisfied an imposed criminal penalty, but were nonetheless disarmed based exclusively on the fact that they had some prior conviction. *See* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 283 (2020). And while the historical record suggests that dangerousness sometimes supported disarmament, conviction status alone did not connote dangerousness to the Founding generation. *See id.* At the Founding, “[p]eople considered dangerous lost their arms. But being a criminal had little to do with it.” *United States v. Jackson*, 85 F.4th 468, 472 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing en banc) (surveying historical disarmament laws). Moreover, those historical laws were aimed at politically disruptive groups who the Founders feared might engage in rebellion or counter-revolution. “The Founders did not disarm English

Loyalists because they were believed to lack self-control; it was because they were viewed as political threats to our nascent nation’s integrity.” *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024). Those historical laws also preserved the right to bear arms. Unlike § 922(g)(1), most of the historical status-based prohibitions had mechanisms in place for individuals “to demonstrate that they weren’t dangerous” and retain their arms. *Williams*, 113 F.4th at 660; *see also Range*, 124 F.4th at 275 (Krause, J., concurring in judgment) (detailing how disarmed individuals could rebut the presumption that they posed a risk of danger).

The larger issue is that the majority Circuits read those historical laws at “such a high level of generality that it waters down the right.” *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). *Zherka*, for example, expressly concludes that categorical legislative judgments such as § 922(g)(1)’s are not subject to “judicial scrutiny of the empirical basis for that perception.” 140 F.4th at 85. That blank check permits modern-day legislatures “to designate any group as dangerous and thereby disqualify its members from having a gun.” *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting); *see also Williams*, 113

F.4th at 660 (“[C]omplete deference to legislative line-drawing would allow legislatures to define away a fundamental right.”). That approach clashes with the Second Amendment’s fundamental guarantee.

Especially when it comes to as-applied challenges: Refusing to allow individual defendants even the chance to show that they have been mischaracterized as dangerous abdicates judicial responsibility.

As to the “how,” the government cannot marshal Founding-era evidence of class-wide, lifetime bans on the possession of firearms or ammunition merely because of conviction status. Bans based on felony convictions were a twentieth-century invention. *See* C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol’y 695, 708 (2009). As then-Judge Barrett explained: “The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban. But at least thus far, scholars have not been able to identify any such laws.” *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). Capital punishment or forfeiture for felonies doesn’t meet the standard. By ratification “many states were moving away from making felonies ... punishable by death in America.”

Range, 124 F.4th at 227. And under most estate forfeiture laws “a felon could acquire arms after completing his sentence and reintegrating into society.” *Id.* In any case, the greater does not include the lesser. “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.” *Williams*, 113 F.4th at 658. Nor does the existence of the death penalty at the Founding tell us how the Founding generation would have treated individuals who were not sentenced to death, served their sentences, and re-entered society. *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

In short, people like Petitioner belong to “the people” and the government has not shown a historical tradition of disarming them on the basis of their prior felony convictions alone.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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