

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2025

ANTONIO RODRIGUEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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QUESTION PRESENTED FOR REVIEW

The Second Amendment to the United States Constitution guarantees citizens the fundamental right to keep and bear arms. Although the Second Amendment right is not unlimited, courts must not treat the right as a “second-class right.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010)). Where a citizen has previously been convicted of a crime punishable by a term of more than one year of imprisonment, Title 18 U.S.C. § 922(g)(1) imposes a permanent ban on the citizen’s right to possess any firearm that previously traveled in interstate commerce even where the possession was in relation to self-defense, a “central component” of the Second Amendment right. *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008). This Court should resolve the unsettled and widely disputed question of whether § 922(g)(1) violates the people’s Second Amendment right to keep and bear arms. It should hold this Petition pending resolution of any merits cases involving the constitutionality of § 922(g)(1) or other similar regulations that restrict the people’s right to keep and bear arms.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Rodriguez*, No. 25-181 (2d Cir. Dec. 23, 2025)
- *United States v. Rodriguez*, No. 23-cr-06173-EAW-MJP (W.D.N.Y. Apr. 1, 2024)
- *United States v. Rodriguez*, No. 23-cr-06173-EAW-MJP (W.D.N.Y. Jan. 18, 2024)

PARTIES TO THE PROCEEDING

Antonio Rodriguez, petitioner on review, was the appellant before the United States Court of Appeals for the Second Circuit, and the defendant before the United States District Court for the Western District of New York.

The United States of America, respondent on review, was the appellee before the United States Court of Appeals for the Second Circuit, and the plaintiff before the United States District Court for the Western District of New York.

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Mr. Antonio Rodriguez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The order of the Second Circuit Court of Appeals addressing Mr. Rodriguez's Second Amendment claim is unreported.

JURISDICTION

The judgment and mandate of the Court of Appeals was entered on December 23, 2025 (*see infra* at A-1 – A-3). This Court has jurisdiction to consider Mr. Rodriguez's petition for a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution provides the following:

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.

Title 18 U.S.C. § 922(g)(1) states, in pertinent part, that:

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).

Title 18, section 924, also sets forth the following sentencing penalty:

[w]hoever knowingly violates subsection (d) or (g) of section 922 shall be fined under this title, imprisoned for not more than 15 years, or both including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

18 U.S.C. § 924(a)(8).

STATEMENT OF THE CASE

Mr. Rodriguez was charged in a one-count indictment with the knowing possession of a 20-gauge Harrington & Richardson Pardner Pump slide action shotgun and one shotgun shell in and affecting interstate commerce while knowing that he had previously

been convicted of crimes punishable by imprisonment for a term exceeding one year (New York State Burglary Third Degree) on or about November 8, 2012, and May 25, 2017.¹ A- 4.

Mr. Rodriguez moved to dismiss the indictment on the ground that § 922(g)(1) violates his Second Amendment right to possess a firearm both on its face and as applied to him. A-4. The district court denied the motion, concluding that Mr. Rodriguez’s facial challenge was foreclosed by *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013), a holding that relied on language from *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), that the constitutionality of “longstanding prohibitions on the possession of firearms by felons” should not be called into doubt. A-6 – A-9. The district court also denied Mr. Rodriguez’s as-applied challenge after finding that he had not disputed his prior felony convictions or offered a basis that supported his challenge. A-8.

¹ Although not alleged in the Indictment, the district court also observed that Mr. Rodriguez had been convicted of additional Burglary Third Degree charges in 2020 in 2022.

After the district court denied Mr. Rodriguez’s motion to dismiss this Court handed down its decision in *United States v. Rahimi*, 602 U.S. 680 (2024) in which it held that § 922(g)(8), prohibiting individuals subject to qualifying domestic violence restraining orders from possessing firearms, did not violate the Second Amendment.

Mr. Rodriguez entered a guilty plea to the indictment and was sentenced to sixty-three months imprisonment and a three-year term of supervised release. A-23. Mr. Rodriguez appealed his conviction to the Second Circuit Court of Appeals renewing the facial and as-applied challenges that he had made before the district court. A-2. After filing his opening brief, the Second Circuit Court of Appeals issued an order in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025) (cert. denied January 20, 2026), in which it broadly rejected facial and as-applied challenges to the constitutionality of 18 U.S.C. § 922(g)(1) “[b]ecause history reveals a tradition of categorical legislative bans on firearms possession by classes of people perceived as dangerous, a prohibition directed at persons

convicted of serious crimes is among the easiest classifications to justify.” *Zherka*, 140 F.4th at 93. In light of *Zherka*, Mr. Rodriguez acknowledged that both of his claims were foreclosed in the Second Circuit. A-2 – A-3. The court of appeals later affirmed. A-2.

REASONS FOR GRANTING THE PETITION

This Court should resolve the question of whether Title 18 U.S.C. § 922(g)(1) violates the people’s Second Amendment right to keep and bear arms. Although this Court has offered guidance to courts to resolve challenges to statutes like § 922(g)(1) that impact the right to keep and bear arms, there is significant disagreement among the circuit courts of appeals as to the constitutionality of § 922(g)(1) and the required analysis to be employed by reviewing courts. The Court should hold this Petition pending resolution of any merits cases involving the constitutionality of § 922(g)(1) specifically or, more generally, the analysis to be applied when a court conducts a review of a statute that impacts the Second Amendment right.

I. Despite this Court’s Guidance in *Bruen* and *Rahimi*, the Circuit Courts of Appeals Disagree Over §922(g)(1)’s Constitutionality.

It has been established that the right to keep and bear arms is a fundamental right that belongs to the individual. *District of Columbia v. Heller*, 554 U.S. 570, 592, 595 (2008). This “pre-existing” right is grounded in the idea that citizens should have the means to protect themselves. *Heller* at 599 (explaining that self-defense “was the *central component* of the right itself”) (emphasis in original).

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 22 (2022), the Court determined that New York State’s proper-cause firearms licensing regime was an unconstitutional infringement on the right to bear arms given the lack of “relevantly similar” founding era regulations. *Bruen* made clear that courts conducting Second Amendment analyses of the constitutionality of a regulation restricting the right to bear arms or attempting to define the right including its outer limits must rely on “constitutional text and history” and where the Government seeks

to regulate the right to bear arms, it must “justify its regulation.”
Id. at 24.

In *United States v. Rahimi*, 602 U.S. 680, 702 (2024), this Court further explained the required historical grounding of regulations restricting the right to bear arms. A regulation is “consistent with the Nation’s historical tradition of firearm regulation” if it is “relevantly similar” to founding-era regulations including those that were enacted for “similar reasons” and that restricted the right to the same extent. *Rahimi* at 692. While the regulation being considered does not need to be a “dead ringer” or “historical twin” of a founding era regulation it must still be grounded in the principles underlying the Second Amendment. *Id.*

In *Rahimi*, the Court upheld the constitutionality of 18 U.S.C. § 922(g)(8)(C)(i), a regulation that temporarily barred an individual from firearms possession where a court issued a restraining order finding that they posed “a credible threat to the physical safety” of another person. *Id.* at 702. The Court reached this conclusion after

analogizing founding-era regulations – surety and going armed laws – that provided for the temporary disarmament of those found to present a threat of danger to others to the challenged statute. *Id.* at 696-8. Although § 922(g)(8) was not identical to these historical regulations the Court pointed out that a challenged law need only be “relevantly similar” to founding era regulations “in both why and how it burdens the Second Amendment right. *Id.* at 692. In the case of the *Rahimi* regulation, “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed” and the temporary disarming of those whom a court has determined to represent a threat “fits neatly within the tradition” represented by the historical analogues the Court identified. *Id.* at 698.

Like the surety and going armed laws, § 922(g)(8)(C)(i) applies to individuals found to threaten the physical safety of another. This provision is “relevantly similar” to those founding era regulations in both “why and how” it burdens the Second Amendment right. *Id.*, at 692 (citing *Bruen*, 597 U.S. 1, 29), 698. The Court further

observed that, “[u]nlike the regulation struck down in *Bruen*, Section 922(g)(8) does not broadly restrict arms use by the public generally.” *Rahimi* at 698.

In contrast to the regulation upheld in *Rahimi*, 18 U.S.C. § 922(g)(1) permanently disarms a person previously convicted of a crime punishable by a term of imprisonment in excess of one year. A person found in violation of this regulation faces a term of imprisonment of up to 15 years. *See* 18 U.S.C. § 924(a)(8).

Despite the guidance provided by *Bruen* and *Rahimi*, there is a lack of consensus among the circuit courts of appeals as to either the constitutionality of § 922(g)(1) or the analysis to be applied by a reviewing court when it is assessing whether an arms regulation runs afoul of the Second Amendment. For example, as observed in the recently-denied petition for a writ of certiorari in *United States v. Brundige*, Sup. Ct. Case No. 25-6789 (cert. denied March 23, 2026), the Second, Fourth, Eighth, Ninth, Tenth and Eleventh Circuit Courts of Appeals have concluded that § 922(g)(1) is not

subject to an as-applied challenge to its constitutionality. See *Zherka v. Bondi*, 140 F.4th 68, 93 (2d Cir. 2025), cert. denied No. 25-269 (January 20, 2026), 140 F.4th 86, 96, *United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024), cert. denied, No. 24-6818 (June 2, 2025), *United States v. Jackson*, 110 F.4th 1120, 1128–29 (8th Cir. 2024), cert. denied, No. 24-6517 (May 19, 2025), *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025), cert. denied, No. 24-1155 (March 2, 2026), *United States v. Duarte*, 137 F.4th 743, 750-51 (9th Cir. 2025) (en banc), cert. denied, No. 25-425 (January 20, 2026), *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025), cert. denied. No. 25-6281 (January 20, 2026).

On the other hand, the Third, Fifth, Sixth and District of Columbia Circuit Courts of Appeals have determined that such as-applied challenges are possible. See *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc), *United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024), cert. denied, No. 24-6625 (June 23, 2025), *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), *Medina v. Whitaker*, 913 F.3d 152, 160 (D.C. Cir. 2019).

II. In its Analysis in *Zherka*, the Second Circuit Court of Appeals Failed to Follow this Court’s Guidance in *Bruen* and *Rahimi*.

In *Zherka*, the Second Circuit Court of Appeals was called upon to review the constitutionality of § 922(g)(1) following the guidance provided by *Bruen* and *Rahimi* by identifying “relevantly similar” founding era regulations that imposed a broad arms restriction in an analogous way to § 922(g)(1). *Rahimi*, 602 U.S. 680, 692, 698. As described in the pending petition for a writ of certiorari in *Brundige*, Sup. Ct. Case No. 25-6789 (petition filed February 9, 2026), the *Zherka* court failed to identify historical analogues that were relevantly similar to § 922(g)(1). Neither did the court explain how § 922(g)(1) was relevantly similar to the historical examples it identified nor did it engage in a comparison of the “why and how” § 922(g)(1) and any historical analogues burdened the Second Amendment right. *Rahimi*, 602 U.S. at 692.

Similarly, in the case at bar, the district court did not engage in an analysis of “relevantly similar” historical regulations or, following this, compare the “how and why” of § 922(g)(1) and

analogous historical regulations. Instead, that court relied on *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013) for the proposition that “recent developments in Second Amendment jurisprudence should not ‘be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.’” (quoting *Heller*, 554 U.S. 599, 626). On appeal, the Second Circuit concluded that *Bogle* was still binding precedent as to the facial constitutionality of § 922(g)(1). A-2 – A-3.

The Court should resolve the question of whether Title 18 U.S.C. § 922(g)(1) violates the people’s Second Amendment right to keep and bear arms.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari on the question of the constitutionality of § 922(g)(1). It should hold this Petition pending resolution of any merits cases involving the constitutionality of § 922(g)(1) or other similar regulations that restrict the people's right to keep and bear arms.

Dated: Rochester, New York
March 23, 2026

Respectfully submitted,

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