No. _____

In the Supreme Court of the United States

MAKALE KAREEM LEWIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The country is in the midst of a circuit split as to the appropriate resolution of challenges to 18 U.S.C. § 922(g)(1). Three circuits have opened the door to individuals with prior felony convictions retaining their right to possess firearms despite their convictions. The Fifth Circuit would reject Congress's authority to take away the rights of someone like Mr. Lewis. If Mr. Lewis had possessed a firearm in Texas, Louisiana, or Mississippi, his conviction would not stand, and he would not be in prison today. Unlike those other circuits, the Tenth Circuit openly rejects application of the *Bruen* analysis when a defendant challenges the constitutionality of 18 U.S.C. § 922(g)(1).

As a juvenile, Mr. Lewis was adjudicated a delinquent and Oklahoma makes it a felony offense for someone with a prior juvenile delinquency adjudication to possess a firearm. He was later convicted on three counts of being in possession of a firearm following a juvenile delinquency adjudication. A year later, now with felony convictions, Mr. Lewis was convicted of being in possession of a firearm following a prior felony conviction. Mr. Lewis is a prohibited person by the terms of 18 U.S.C. § 922(g)(1) because of these prior convictions.

In light of the circuit split, the question presented is:

Whether 18 U.S.C. § 922(g)(1) is constitutional as applied to a person whose prior qualifying felony convictions are for the possession of firearms following a juvenile delinquency adjudication and a subsequent conviction for being a felon in possession of a firearm.

PARTIES TO THE PROCEEDINGS

Petitioner is Makale Kareem Lewis, and he was the defendant and appellant in the proceedings below.

Respondent is the United States of America, and it was the plaintiff and appellee in the proceedings below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

District Court (*United States v. Lewis*, Case No. 24-CR-00288-SEH):

On October 29, 2024, the United States District Court for the Northern District of Oklahoma entered its Opinion and Order denying Mr. Lewis's motion to dismiss the indictment. Dkt. No. 29 (*See* a004–a007) The District Court entered its Judgment and Commitment on March 27, 2025. Dkt No. 46 (*See* a008–a014).

United States Court of Appeals for the Tenth Circuit (Case No. 25-5045):

Mr. Lewis appealed the denial of his motion to dismiss the indictment. On February 13, 2026, the United States Court of Appeals for the Tenth Circuit affirmed the District Court's ruling. The Tenth Circuit's unpublished opinion may be accessed at 2026 WL 412534. (*See* a002–a003)

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDINGS ii
RELATED PROCEEDINGS ii
TABLE OF AUTHORITIES iv
PETITION FOR WRIT OF CERTIORARI 1
OPINION BELOW 1
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
INTRODUCTION 3
STATEMENT 5
A. Factual Background 5
B. Procedural History 6
REASONS FOR GRANTING THE PETITION 7
This Court should grant Mr. Lewis's petition for writ of certiorari so it may address a circuit split that causes the Second Amendment to provide greater protection in some parts of the country than in others 7
CONCLUSION 12
APPENDIX
A. 10th Cir. Opinion and Judgment a002
B. Dist. Ct. Opinion and Order a004
C. Dist. Ct. Judgment a008

TABLE OF AUTHORITIES

Page(s)

Federal Cases

District of Columbia v. Heller,
554 U.S. 570 (2008) 7

Kanter v. Barr,
919 F.3d 437 (7th Cir. 2019) 8

N.Y. State Rifle & Pistol Ass'n v. Bruen,
597 U.S. 1 (2022) 3, 7, 8, 11

Range v. Att'y Gen.,
124 F.4th 218 (3d Cir. 2024) (en banc) 3

Tennessee v. Garner,
471 U.S. 1 (1985) 8

United States v. Caves,
No. 23-6176, 2024 WL 5220649 (2d Cir. Dec. 26, 2024) 3

United States v. Diaz,
116 F.4th 458 (5th Cir. 2024) 3, 8, 9

United States v. Duarte,
137 F.4th 743 (9th Cir. 2025) (en banc) 3

United States v. Dubois,
139 F.4th 887 (11th Cir. 2025) 3

United States v. Gay,
98 F.4th 843 (7th Cir. 2024) 3

United States v. Hunt,
123 F.4th 697 (4th Cir. 2024) 3

United States v. Jackson,
110 F.4th 1120 (8th Cir. 2024) 3

United States v. Landrum,
168 F.4th 771 (5th Cir. 2026) 9

United States v. Langston,
110 F.4th 408 (1st Cir. 2024) 3

United States v. Mitchell,
160 F.4th 169 (5th Cir. 2025) 10

United States v. Williams,
113 F.4th 637 (6th Cir. 2024) 3

Vincent v. Bondi,
127 F.4th 1263 (10th Cir. 2025) 3, 8, 11

Federal Statutes

18 U.S.C. § 921(a)(20) 2

18 U.S.C. § 922(g)(1) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

18 U.S.C. § 922(g)(3) 10

28 U.S.C. § 1254(1) 2

State Statutes

Okla. Stat. Title 21 § 1283(D) 7

Constitutional Provisions

U.S. Const. amend. II 2, 7, 9, 10, 11

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PETITION FOR WRIT OF CERTIORARI

Makale Kareem Lewis respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINION BELOW

The Order and Judgment of the Tenth Circuit is an unpublished decision that may be accessed at 2026 WL 412534. (Pet. App., a002–a003). The District Court's Opinion and Order denying Mr. Lewis's Motion to Dismiss the Indictment and its Judgment and Commitment are reproduced in the appendix. (*Id.* at a004–a014).

JURISDICTION

The Tenth Circuit entered judgment on February 13, 2026. Petitioner did not seek rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution declares:

> 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.

The statute of prosecution, 18 U.S.C. § 922(g)(1), states:

> 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. . . .

18 U.S.C. § 921(a)(20) provides:

> The term "crime punishable by imprisonment for a term exceeding one year" does not include –
>
> (A) Any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) Any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

INTRODUCTION

Mr. Lewis asks this Court to grant his petition for writ of certiorari, vacate the decision of the Tenth Circuit, and remand for further proceedings. The Tenth Circuit's decision below was compelled by that Circuit's binding precedential decision in *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025).

Since this Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), multiple circuit splits have developed as courts wrestle with applying the *Bruen* analysis to challenges made to 18 U.S.C. § 922(g)(1).

The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have upheld the constitutionality of 18 U.S.C. § 922(g)(1) on a categorical basis as to all felons regardless of the nature of their prior convictions.[1] The Third, Fifth, and Sixth Circuits have opened the door to challengers who claim their prior felony convictions do not permanently disqualify them from possessing firearms.[2] *Range v. Att'y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 467–70 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024). The Third and Fifth Circuits place the burden upon the United States to

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[1] *See United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887,892–94 (11th Cir. 2025)

[2] The First, Second, and Seventh Circuits have at least left the door unlocked, if not open. *See United States v. Langston*, 110 F.4th 408, 419–20 (1st Cir. 2024) (rejecting challenge because error was not plain); *United States v. Caves*, No. 23-6176, 2024 WL 5220649, at *1 (2d Cir. Dec. 26, 2024) (same); *United States v. Gay*, 98 F.4th 843, 846–47 (7th Cir. 2024) (assuming as-applied challenges to Section 922(g)(1) possible but rejecting challenge due to defendant's prior criminal history).

demonstrate that the Nation's historical tradition of firearms regulation allows Congress to disarm someone with the prior felonies at issue in a given case.

The Fifth Circuit's analysis is especially pertinent to this petition. The Fifth Circuit has already cast doubt on the premise that history supports the permanent disarmament of individuals whose only prior convictions are for being a felon in possession of a firearm. Based on that Circuit's precedents, there is good reason to believe that Mr. Lewis would not be sitting in prison today if he had violated 18 U.S.C. § 922(g)(1) while in the Fifth Circuit.

This circuit split is unacceptable. The Constitution and the rights it protects cannot mean different things and apply differently depending on geographical location. When a right's existence depends upon which court has jurisdiction, it is no right at all. This Court should grant Mr. Lewis's petition for writ of certiorari to address the circuit split that has led to some felons remaining free to exercise their right to bear arms while others with the same criminal history are being incarcerated for exercising that right.

STATEMENT

A. Factual Background

On September 3, 2024, in Northern District of Oklahoma Case Number 24-CR-288-SEH, the United States charged Makale Kareem Lewis by Indictment with a single count of violating 18 U.S.C. § 922(g)(1): On June 24, 2022, Mr. Lewis allegedly knowingly possessed a firearm after being convicted of an offense punishable by imprisonment for a term exceeding one year. The firearm at issue was a .40 caliber handgun. Specifically, a Glock Model 22 with 21 rounds of associated ammunition. The Indictment listed four prior felony convictions:

1. Possession of a firearm after felony conviction on December 5, 2022.
2. Possession of a firearm after juvenile adjudication on June 1, 2021.
3. Possession of a firearm after juvenile adjudication on June 1, 2021.
4. Possession of a firearm after juvenile adjudication on June 1, 2021.

Following entry of a guilty plea pursuant to a plea agreement that allowed him to retain his right to appeal the denial of his motion to dismiss, the District Court sentenced Mr. Lewis to thirty months in custody of the Bureau of Prisons. (Pet. App'x at a007–a014).

B. Procedural History

Mr. Lewis filed a motion to dismiss the indictment for failure to state an offense under Federal Rule of Criminal Procedure 12(b)(3)(B)(v) on the basis that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to him and his prior alleged convictions.

Following briefing by both parties, the District Court denied Mr. Lewis's motion to dismiss. (Pet. App'x at a004–a007). Mr. Lewis appealed that denial, challenging the constitutionality of his statute of conviction. The Tenth Circuit issued an unpublished Order and Judgment affirming the District Court's ruling on February 13, 2026. (*See* Pet. App'x at a002–a003). Mr. Lewis did not seek rehearing.

REASONS FOR GRANTING THE PETITION

This Court should grant Mr. Lewis's petition for writ of certiorari so it may address a circuit split that causes the Second Amendment to provide greater protection in some parts of the country than in others.

As a juvenile, Mr. Lewis was adjudicated a juvenile delinquent. The State of Oklahoma makes it a felony for an adult, previously adjudicated a juvenile delinquent, to possess a firearm. Okla. Stat. tit. 21 § 1283(D). On June 1, 2020, Mr. Lewis was convicted on three counts of violating that provision. Thus, Mr. Lewis became a convicted felon. In December 2022, Mr. Lewis possessed a firearm again, this time as a previously convicted felon because of the earlier convictions. He was again convicted by the State of Oklahoma for that conduct.

Today, Mr. Lewis is in prison for violating 18 U.S.C. § 922(g)(1). He pleaded guilty, pursuant to a plea agreement, to possessing a firearm on June 24, 2024, after having been convicted of the above felony offenses. That is the extent of his criminal history as alleged in the indictment.

The Second Amendment's right to bear arms is, at its core, the right to defend oneself against attack from those who aim to do harm. *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008) (concluding that self-defense "was the central component" of the Second Amendment's right to bear arms (emphasis omitted)); *see also id.*, at 628 ("[T]he inherent right of self-defense has been central to the Second Amendment right."). The right of self-defense belongs to all individuals. As does the right of armed self-defense. This Court's test, as set forth in *Bruen*, "[U]ses history and tradition . . . to identify the scope of the legislature's power to take [the right to bear arms]

away." *Diaz*, 116 F.4th at 466 (quoting *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting)).

If Makale Lewis had possessed a firearm while in Texas, Louisiana, or Mississippi, his right to possess a firearm would have been protected by the decisions of the Fifth Circuit, and Mr. Lewis would not be in prison right now. Instead, Mr. Lewis possessed a firearm in Oklahoma, and the Tenth Circuit says that felons, regardless of the nature of their prior offenses, are categorically prohibited from possessing firearms. *Vincent*, 127 F.4th at 1265–66. A circuit split of this nature is anathema to our Constitution and the rights it protects. This Court should grant Mr. Lewis's petition for writ of certiorari.

In *United States v. Diaz*, 116 F.4th at 467–70, the Fifth Circuit established the basic premise of its *Bruen* analysis. It began by recognizing that not all felonies are created equally, and the term "felony" at the founding "was a term of loose signification."[3] *Id.* at 468 (quoting THE FEDERALIST No. 42 (James Madison)). The importance of this being that many modern "crimes classified as misdemeanors, or nonexistent, at common law are now felonies." *Id.* (quoting *Tennessee v. Garner*, 471 U.S. 1, 14 (1985). The *Diaz* panel held the mere fact of a conviction for a "felony" cannot not be the benchmark by which courts decide the constitutionality of Section 922(g)(1): "[N]ot all felons today would have been considered felons at the Founding.

[3] Madison goes on to explain that the meaning of the term "felony" "is not precisely the same in any two of the States; and varies in each with every revision of its criminal laws." THE FEDERALIST No. 42 (James Madison). In this respect, he was critical of relying upon definitions of the term as it was understood either in England or even among the colonies and states. *Id.*

Further, Congress may decide to change that definition in the future. Such a shifting benchmark should not define the limits of the Second Amendment, without further consideration of how that right was understood when it was first recognized." *Id.* at 469. The Fifth Circuit hinged Section 922(g)(1)'s validity, as applied to Ronnie Diaz, Jr., on its conclusion that one of Diaz's other felony convictions (motor vehicle theft) was analogous to the historical offense of horse theft, which was punished severely (up to capital punishment and estate forfeiture). *Id.* at 468.

Since *Diaz*, the Fifth Circuit's main method of determining the constitutional validity of the application of Section 922(g)(1) to punish a given defendant compares the modern predicate felony conviction with potential historical analogues that would have supported severe punishments at the time of the Second Amendment's adoption. *See id*, at 468–70; *accord United States v. Landrum*, 168 F.4th 771, 774 (5th Cir. 2026).

The Fifth Circuit has issued two key decisions that demonstrate it would overturn Mr. Lewis's conviction had his possession of a firearm occurred in Texas, Louisiana, or Mississippi. The first is *Diaz*, discussed above. When the Fifth Circuit expressed criticism of the shifting nature of felonies in that case, it put forward an example: One of Mr. Diaz's prior felony convictions was possession of a firearm after a prior felony conviction. *Id.* The Fifth Circuit explained that this "was not considered a crime until 1938 at the earliest." *Id.* (citing Federal Firearms Act, ch. 850, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938); An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87–342, § 2, 75 Stat. 757, 757 (1961)). In doing so, and in establishing

a requirement that the modern felony offense have a historical analogue that supported disarmament, the Fifth Circuit implicitly declared that prior offenses of this nature would not support disarmament.

In *United States v. Mitchell*, 160 F.4th 169, 173 & 193–94 (5th Cir. 2025), the Fifth Circuit bolstered this conclusion when it held that the Second Amendment did not allow disarmament based upon a prior felony conviction for being in possession of a firearm while being an unlawful user of controlled substances in violation of 18 U.S.C. § 922(g)(3). In essence, a previous conviction for illegally possessing a firearm does not suffice to permanently disqualify someone from ever possessing a firearm in the future. Yet that is precisely the basis for Mr. Lewis's conviction here.

Mr. Lewis previously possessed firearms in violation of Oklahoma law. He was first prohibited on the grounds that he had been adjudicated a juvenile delinquent. When he was convicted of possessing a firearm after that adjudication, he became a felon. He was subsequently convicted of illegally possessing a firearm following a felony conviction. Based on the Fifth Circuit's own decisions, it seems quite clear that Mr. Lewis would not be subject to disarmament under that Circuit's law with these prior convictions.[4]

[4] Another factor worth considering is that Mr. Lewis's prior convictions would not withstand scrutiny had those charges been brought in federal court in the Fifth Circuit. If federal law prohibited individuals from possessing firearms after a juvenile delinquency adjudication, the Fifth Circuit would strike down that prohibition just as it has evinced an intent to strike down Section 922(g)(1) convictions based solely on prior felon-in-possession convictions. This raises the further question of whether prior convictions that would be unconstitutional under the *Bruen* analysis may serve as predicates that support permanent disarmament under 18 U.S.C. § 922(g)(1) and the *Bruen* analysis.

Mr. Lewis's right to possess a firearm, without being subject to criminal punishment, should not change based on where he lives. Where the Fifth Circuit would protect his right to bear arms, the Tenth Circuit denies it. Not only does the Tenth Circuit deny it, but it does so on a categorical basis and refuses to even consider the possibility that the *Bruen* analysis applies to felons. *Vincent*, 127 F.4th at 1265–66. At a minimum, this Court should grant Mr. Lewis's petition for writ of certiorari and summarily reverse the Tenth Circuit's decision on the grounds that it has improperly refused to apply *Bruen* to Section 922(g)(1) challenges. However, Mr. Lewis believes a full merits decision is appropriate because the nature of his prior convictions should not preclude him from possessing a firearm in the future, nor should they result in his imprisonment for possessing a firearm.

Therefore, Mr. Lewis respectfully requests this Court grant his petition for writ of certiorari so that it may resolve the circuit split dividing Second Amendment rights across the nation.

CONCLUSION

For the reasons stated herein, this Court should grant the Petition for Writ of Certiorari and set a schedule for merits briefing in this matter.

Respectfully submitted,

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