

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL EDWARD BAPTIST,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether, after *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 144 S. Ct. 1889 (2024), a defendant may bring an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) requiring the government to justify permanent disarmament by historical tradition as applied to the defendant’s predicate felony convictions, or whether § 922(g)(1) is categorically constitutional as applied to all persons with felony convictions?

PARTIES TO THE PROCEEDING

Petitioner, Michael Edward Baptist, is the defendant in these proceedings and is serving a sentence of 60 months of imprisonment. The United States of America is the Respondent, was the plaintiff in the district court, and the appellee in the Ninth Circuit.

STATEMENT OF RELATED PROCEEDINGS

Counsel for Petitioner is not aware of any related proceedings in state or federal courts, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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

OPINION BELOW

Petitioner, Michael Edward Baptist, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit. *United States v. Michael Edward Baptist*, No. 24-7436, 2026 LX 177063 (9th Cir. Mar. 17, 2026) (unpublished).

JURISDICTION

The Ninth Circuit issued its decision on March 17, 2026. *See* Appendix A (Memorandum of the Ninth Circuit). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment and 18 U.S.C. § 922(g)(1) provides 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.”

STATEMENT OF THE CASE

The United States indicted Mr. Baptist on two firearms charges: being a felon in possession of a firearm under 18 U.S.C. Section 922(g)(1), and the unlawful possession of a firearm with an obliterated serial number in violation of 18 U.S.C. § 922(k). The district court had jurisdiction over this offense under 18 U.S.C. § 3231.

In the district court, Mr. Baptist moved to dismiss the indictment against him on an as-applied basis under the Second Amendment¹ based on the then-controlling panel decision in *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024). Before the district court could rule on Mr. Baptist’s motion, the Ninth Circuit took the case en banc and vacated the *Duarte* panel decision. *United States v. Duarte*, 108 F.4th 786 (9th Cir. 2024). The district court denied Mr. Baptist’s motion on the precedent that *Duarte* had purported to overturn, and later sentenced Mr. Baptist

¹ U.S. Const. amend. II.

to sixty months of custody followed by three years of supervised release. Mr. Baptist filed his notice of appeal the day after the sentencing hearing.

While Mr. Baptist's appeal was before the Ninth Circuit, the parties stayed the matter while the Ninth Circuit considered the *Duarte* panel decision en banc; the Ninth Circuit held that 18 U.S.C. § 922(g)(1) is constitutional for all persons with felony convictions, including nonviolent felony convictions. *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc). The Parties then stayed the briefing in the Ninth Circuit to await this Court's resolution of the petition for certiorari in *Duarte*. This Court denied review. *Duarte v. United States*, 223 L.Ed.2d 556 (U.S. 2026). Mr. Baptist then conceded that summary affirmance was appropriate given the status of Ninth Circuit law. *United States v. Baptist*, No. 24-7436, 2026 LX 177063 (9th Cir. Mar. 17, 2026) (unpublished).

REASONS FOR GRANTING THE WRIT

THE COURTS OF APPEALS ARE SPLIT REGARDING THE APPLICABILITY OF AS-APPLIED CHALLENGES UNDER THE SECOND AMENDMENT

1. There is a Direct Split in the Circuits

This Court is confronted with an intolerable split in authority over whether as-applied Second Amendment challenges to § 922(g)(1) are cognizable. What would receive individualized constitutional review in some circuits was categorically

unavailable to Mr. Baptist in the Ninth Circuit, where he received a five-year federal prison sentence.

Four circuits recognize the validity of an as-applied challenges to § 922(g)(1), in which a defendant may require the government to justify permanent disarmament by reference to this Nation's historical tradition of firearm regulation. *See Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc) (old food stamp fraud conviction does not match with historical tradition of disarmament). The Fifth Circuit has likewise applied *Bruen*² and *Rahimi*³ through an as-applied framework, first rejecting relief in *Diaz* because the government carried its historical burden, and later granting relief in *Mitchell* by reversing the denial of a motion to dismiss and vacating a § 922(g)(1) conviction and sentence. *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *United States v. Mitchell*, 160 F.4th 169 (5th Cir. 2025). The Sixth Circuit has taken the same threshold position, holding that a person subject to § 922(g)(1) must be given an opportunity to show that he is not actually dangerous, even though Williams himself failed on that record. *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024). And the Seventh Circuit has evaluated § 922(g)(1) as applied to the defendant's predicate conviction, upholding

² *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).

³ *United States v. Rahimi*, 602 U.S. 680, 688, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024).

the statute only after treating drug trafficking as historically dangerous and expressly reserving the question of whether Congress may permanently disarm nonviolent felons. *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026).

Six circuits disallow as-applied challenges. The Second Circuit has joined the categorical side by upholding § 922(g)(1) as applied to nonviolent felons. *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025). The Fourth Circuit holds that neither *Bruen* nor *Rahimi* abrogated circuit precedent barring as-applied challenges. *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). The Eighth Circuit rejects “felony-by-felony” litigation altogether. *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024). The Ninth Circuit also embraced categorical disarmament for all felons. *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc). The Tenth and Eleventh Circuits have likewise adhered to pre-*Bruen* precedent treating felon-dispossession laws as presumptively constitutional. *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025).

No clearer split is possible. In some circuits, the government must answer an as-applied Second Amendment challenge; in others, the court never reaches the historical inquiry at all.

2. This is a Consequential Split of Authority

Rule 10 identifies as a compelling reason for review a conflict among the courts of appeals on “the same important matter,” as well as an important federal

question that “has not been, but should be, settled by this Court.” Sup. Ct. R. 10(a), (c). And this Court has explained that “[a] principal purpose” of certiorari jurisdiction is “to resolve conflicts among the Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law.” *Braxton v. United States*, 500 U.S. 344, 347 (1991).

The need for review is at its apex here. This is not a disagreement over a procedural preference, a pleading standard, or a case-management rule. Section 922(g)(1) prosecutions are frequent and severe. In fiscal year 2024, the Sentencing Commission reported 7,419 cases involving convictions under § 922(g), and 90.4% involved defendants prohibited because of a prior felony conviction. Nearly all were imprisoned: 97.7% received prison sentences, with an average sentence of 71 months. *U.S. Sent’g Comm’n*, Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses 1–2 (FY 2024).⁴ At that average sentence, § 922(g) cases accounted for more than 526,000 months—over 43,000 years—of federal imprisonment in a single fiscal year. The threshold question presented here therefore governs thousands of prosecutions and tens of thousands of years of liberty annually. A constitutional rule with consequences of that magnitude should not depend on the circuit in which the prosecution is brought.

⁴ https://www.ussc.gov/research/quick-facts/section-922g-firearms?utm_source (last visited May 24, 2026).

The same constitutional guarantee cannot require individualized review in one circuit and forbid it in another. *See Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347–48 (1816) (recognizing the “necessity” of uniform constitutional decisions and warning that, without such uniformity, “the Constitution of the United States would be different” from one jurisdiction to another). That is why resolving conflicts over the meaning of federal law is one of the central purposes of certiorari. *Braxton v. United States*, 500 U.S. 344, 347 (1991).

3. Mr. Baptist Presents a Clean Vehicle

Mr. Baptist's case is a clean vehicle because it presents only the threshold cognizability question, and that question was preserved by his conditional plea. There is no need for this Court to decide whether Mr. Baptist ultimately prevails on his as-applied Second Amendment claim, and no requirement to debate the merits of Mr. Baptist's specific case for his Second Amendment rights. He is not asking this Court to conduct the historical analysis in the first instance or to decide whether § 922(g)(1) is unconstitutional as applied to every person with every type of predicate conviction. He asks only whether the Ninth Circuit was permitted to foreclose his as-applied challenge at the threshold. If as-applied challenges are cognizable, the historical inquiry can proceed on remand. That makes this case a clean vehicle to resolve the split without requiring the Court to settle every application of § 922(g)(1) in a single case.

CONCLUSION

On the basis of the foregoing, the Court should grant the petition for a writ of certiorari.

DATED: 5/26/2026

Respectfully submitted,

/s/ David Zugman

Counsel for Michael Edward Baptist
