

No. 25A\_\_\_\_\_

IN THE

# Supreme Court of the United States

ALVARO ALEJANDRO MANCILLA,

*Applicant,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND  
CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to Supreme Court Rule 13.5, applicant Alvaro Alejandro Mancilla respectfully requests a 60-day extension of time, to and including February 27, 2026, to file a petition for a writ of certiorari in this case. Mr. Mancilla has not previously requested an extension. Mr. Mancilla seeks review of the judgment of the United States Court of Appeals for the Fifth Circuit issued on September 10, 2025 (No. 23-10952). *See App. A.* The Fifth Circuit denied Mr. Mancilla's timely rehearing petition on September 29, 2025. *See App. B.* Absent an extension, the petition for a writ of certiorari would be due on or before December 28, 2025. This application complies with Rules 13.5 and 30.2 because it is being filed more than ten days before the petition is due. This Court has jurisdiction over the case pursuant to 28 U.S.C. §1254(1).

1. In 2010, Mr. Mancilla, who was 19-years old at the time, pled guilty to possession with intent to distribute about a kilogram of cocaine. His conviction did not involve a weapon or

violence. Mr. Mancilla had been transporting cocaine from Mexico to the United States on a bus. Agents discovered the cocaine on his seat at a border checkpoint. He was sentenced to 27 months in prison.

2. More than 12 years later, on October 29, 2022, Mr. Mancilla and his cousin were arrested at a gun show in Fort Worth, Texas while purchasing firearms. Mr. Mancilla was eventually indicted on one count of violating 18 U.S.C. § 922(g)(1) for knowingly possessing a firearm despite having previously been convicted of a “crime punishable by imprisonment for a term exceeding one year.” The government used Mr. Mancilla’s decade-old drug conviction as the predicate offense for the § 922(g)(1) charge. Mr. Mancilla has no other felony convictions.

3. At the district court, Mr. Mancilla moved to dismiss the indictment, arguing that § 922(g)(1) is unconstitutional under the Second Amendment both facially and as applied to him. On April 12, 2023, in a one-page order, the district court denied the motion to dismiss the indictment. The next day, Mr. Mancilla entered a conditional guilty plea, reserving the right to appeal the district court’s denial of the motion to dismiss the indictment. On September 7, 2023, the district court entered a judgment of conviction and sentenced Mr. Mancilla to 42 months’ imprisonment.

4. On appeal to the Fifth Circuit, Mr. Mancilla argued that § 922(g)(1) is unconstitutional as applied to him because he was convicted of a non-violent felony and posed no physical harm to others. A divided panel affirmed the district court and held that application of § 922(g)(1) to Mr. Mancilla was constitutional. App. A. The majority concluded that it was bound by *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025), which held that § 922(g)(1)’s prohibition on gun possession by an individual convicted of drug-trafficking felonies is consistent

with *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). Relying on *Kimble*, the majority held that Mr. Mancilla’s “predicate conviction[] for drug trafficking convey[s] that he belongs to a class of dangerous felons that our regulatory tradition permits legislatures to disarm.” App. A. As such, it held that Mr. Mancilla “may be constitutionally disarmed without an individualized assessment that [he] is dangerous.” App. A. Chief Judge Elrod, concurring, wrote that while “the majority opinion is a correct statement of law” in the Fifth Circuit, “[w]ere [she] writing on a blank slate” she would require “a more individualized assessment of dangerousness ... when adjudicating as-applied challenges to § 922(g)(1).” App. A. She reasoned that many historical analogues imposing categorical, class-based disarmament allowed a person “an opportunity to make individualized showing that he himself [was] not actually dangerous.” App. A. Chief Judge Elrod also observed that Mr. Mancilla’s predicate conviction “is one of the ‘occasional[]’ cases of possession with intent to distribute that ‘did not involve a weapon or any violence.’” App. A. Judge Graves dissented. He disagreed that Fifth Circuit precedent “forecloses an individualized assessment” and instead believed that “an individualized assessment of dangerousness is appropriate here.” App. A.

5. As Chief Judge Elrod in concurrence acknowledged, the Fifth Circuit’s decision entrenches “a robust circuit split” on the proper framework for analyzing as-applied challenges to § 922(g)(1). App. A. The circuits are split on whether as-applied challenges to § 922(g)(1) are permitted or whether, instead, the government can categorically bar all felons from possessing firearms. In addition, among the circuits that permit as-applied challenges, they are additionally split on whether the Second Amendment requires an individualized assessment of dangerousness before the government can permanently disarm any convicted felon, including

one convicted of a drug trafficking crime, under § 922(g)(1), or instead whether felons who commit certain types of crimes can be categorically disarmed. Six circuits—the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh—have adopted a categorical rule barring as-applied challenges to § 922(g)(1), thereby permitting the government to permanently and categorically disarm all felons. Three circuits—the Third, Fifth, and Sixth—permit as-applied challenges but diverge on the proper framework for analyzing as-applied challenges. The Third and Sixth Circuits require an individualized assessment of dangerousness before the government can permanently disarm a convicted felon under § 922(g)(1). The Fifth Circuit, while permitting as-applied challenges, has nevertheless concluded that felons who have committed certain types of felonies, like drug trafficking felonies, can be categorically disarmed for life without an individualized assessment of dangerousness. The Court’s intervention is needed to resolve the division among the circuits and clarify the proper framework for analyzing as-applied challenges to § 922(g)(1).

6. In addition to entrenching a circuit split, the Fifth Circuit’s decision is also wrong. Applying § 922(g)(1) to Mr. Mancilla, a non-dangerous individual convicted of a drug-trafficking felony, is not consistent with the nation’s historical tradition of firearm regulation. *Bruen*, 597 U.S. at 8. Historical evidence demonstrates that the Second Amendment right was “pegged to dangerousness.” *Folajtar v. Att’y Gen. of the United States*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting), *abrogated by Bruen*, 597 U.S. at 1; *see, e.g., Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing

guns.”), *abrogated by Bruen*, 597 U.S. at 1. Consistent with this history, Mr. Mancilla should be given opportunity to prove he is not dangerous and should not be disarmed for life.

7. Granting the petition for certiorari is important in this case because selecting between the three divergent approaches adopted by the circuits would—indeed, seemingly did—affect the outcome of the case. Following the Third and Sixth Circuits’ approach in this case, as both the concurrence and dissent in this case believed appropriate, the panel would have likely concluded that § 922(g)(1) is unconstitutional as applied to Mr. Mancilla because he is not dangerous. As noted by Chief Judge Elrod, in concurrence, Mr. Mancilla’s decade-old conviction “did not involve a weapon or any violence,” and he had “no other felony convictions.” App. A. Granting the petition for certiorari is also exceptionally important because it concerns whether convicted felons can be categorically stripped of a core constitutional right. The circuit split, if left standing, means that geography alone determines whether convicted felons who are not dangerous can exercise their Second Amendment rights.

8. Mr. Mancilla requests a 60-day extension of time to file a petition for certiorari, to and including February 27, 2026. There is good cause for this extension because Mr. Mancilla’s counsel have other significant obligations in the time leading up to and following the current deadline.

For the foregoing reasons, Mr. Mancilla respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended by 60 days, to and including February 27, 2026.

Respectfully submitted,

/s/Franklyn Mickelsen

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