

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jonathan Cisneros,

Petitioner,

v.

United States of America,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

VIRGINIA L. GRADY
Federal Public Defender

LEAH D. YAFFE
Assistant Federal Public Defender
Counsel of Record for Petitioner
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1), which prohibits felons from possessing firearms or ammunition, violates the Second Amendment—either on its face or as applied to the Petitioner.

PARTIES TO THE PROCEEDING

The Petitioner in this case is Jonathan Cisneros, and the Respondent is the United States of America. Petitioner is an individual and therefore a Rule 29.6 disclosure is not required.

RELATED PROCEEDINGS

U.S. District Court:

On July 23, 2025, the United States District Court for the District of Colorado entered a criminal judgment against Petitioner Jonathan Cisneros in *United States v. Cisneros*, No. 1:24-cr-00244-RMR-1. That judgment, which is challenged by this Petition, appears in the Appendix at A1.

U.S. Court of Appeals:

On September 26, 2026, the United States Court of Appeals for the Tenth Circuit affirmed the district court's judgment in *United States v. Cisneros*, No. 25-1309. That order and judgment, which is the subject of this Petition, appears in the Appendix at A5.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jonathan Cisneros, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on February 26, 2026.

OPINION BELOW

The Tenth Circuit's unreported opinion in Mr. Cisneros's case is available at 2026 WL 538184, and it appears in the Appendix at A5.

JURISDICTION

The United States District Court for the District of Colorado had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291, and entered judgment in the appeal that is the subject of this Petition on February 26, 2026. App. A5. On May 20, 2026, this Court extended the time within which to file a petition for a writ of certiorari until June 26, 2026. App. A7. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, U.S. Const. amend. II:

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):

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 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 Petitioner, Jonathan Cisneros, was charged in the District of Colorado with one count of possession of a firearm as a felon under 18 U.S.C. § 922(g)(1). The charge stemmed from Mr. Cisneros’s alleged possession of a pistol in August 2024. Mr. Cisneros filed a motion to dismiss the indictment because § 922(g)(1) is unconstitutional under the Second Amendment, both facially and as applied to him, in light of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024).

Mr. Cisneros recognized that, at the time of filing the motion, his Second Amendment argument was foreclosed by existing Tenth Circuit precedent. Specifically, in *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *cert. denied*, 224 L. Ed. 2d 160 (Mar. 2, 2026), the Tenth Circuit determined that it remains bound by a pre-*Bruen* decision, *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009). That case relied exclusively on this Court’s dicta in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that “nothing in [that] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *McCane*, 573 F.3d at 1047 (quoting *Heller*, 554 U.S. at 626–27). *Vincent* interprets *McCane* as foreclosing both facial and as-applied challenges to § 922(g)(1) under the Second Amendment.

After the district court denied his motion, Mr. Cisneros pleaded guilty but preserved his right to appeal the decision on his motion to dismiss. He was subsequently sentenced to 30 months' imprisonment. The Tenth Circuit affirmed the district court's denial of his motion on February 26, 2026, relying on *Vincent*. App. A5. This petition follows.

REASONS FOR GRANTING THE WRIT

For at least three overarching reasons, the question presented warrants this Court's review. First, the petition presents an important question of federal law. Second, that question is subject to a well-developed circuit split. And finally, the Tenth Circuit's approach to that question is not only erroneous, but also does not even attempt to apply the binding test established by this Court in *Bruen*.

I. The validity of § 922(g)(1) is an important question of federal law.

First, whether § 922(g)(1) is unconstitutional in all or some of its applications has enormous real-world implications. In fiscal year 2025 alone, there were approximately 6,400 convictions under the statute. *See* U.S. Sent. Comm'n, *QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses*, <https://www.ussc.gov/research/quick-facts/section-922g-firearms> (FY 2025). And § 922(g)(1) doesn't just curtail the Second Amendment rights of those persons convicted of violating it. It applies to nearly everyone who has previously committed any offense punishable by more than one year in prison, even those who have never misused a firearm. In other words,

§ 922(g)(1) serves to disarm millions of Americans. *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 *Demography* 1795, 1806–08 (2017) (estimating that, as of 2010, 19 million people in the United States had felony records).¹

The burden on those millions of Americans is substantial: § 922(g)(1)’s ban on firearm possession is effectively permanent. And it applies to entirely lawful possession of guns, including for self-defense within the home—the “central component” of the Second Amendment, *see Heller*, 554 U.S. at 599. Further, violating § 922(g)(1) could mean spending 15 years in prison. In short, § 922(g)(1) permanently, nearly completely, and in a draconian manner deprives millions of people of their ability to exercise a fundamental individual right.

II. The circuits are split over the Second Amendment question.

The question of whether § 922(g)(1) violates the Second Amendment is the subject of an open, well-developed, and intractable circuit split.

At least four circuits have held or suggested that § 922(g)(1) is unconstitutional in at least some circumstances. For example, the Third and Fifth circuits have found

¹ As the Fifth Circuit has recognized, the statute’s impact is compounded by “overcriminalization.” *United States v. Cockerham*, 162 F.4th 500, 503 (5th Cir. 2025) (“Criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something.”) (alterations and quotation omitted).

§ 922(g)(1) unconstitutional as applied to defendants for whom the government could not prove a historical tradition of permanent disarmament of persons with similar felony histories. *See Range v. Att’y Gen.*, 124 F.4th 218 (3d Cir. 2024) (en banc); *United States v. Cockerham*, 162 F.4th 500, 504 (5th Cir. 2025) (“Simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny.”) (alteration and quotation omitted). And the Sixth and D.C. circuits have suggested that an as-applied challenge could succeed, at least for those previously convicted of nonviolent or otherwise “minor” felonies. *See United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024) (As to felons who will pose no danger to the safety of others or the community, “history shows that § 922(g)(1) might be susceptible to an as-applied challenge in certain cases.”); *United States v. Johnson*, 158 F.4th 200, 209-10 (D.C. Cir. 2025) (noting that § 922(g)(1) might be unconstitutional as applied to a defendant with convictions for only “minor or regulatory” offenses).

In contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh circuits have concluded that § 922(g)(1) is categorically constitutional and immune to both facial and as-applied Second Amendment challenges. *See Zherka v. Bondi*, 140 F.4th 68, 74-75, 93-96 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 748, 762 (9th Cir. 2025) (en banc); *Vincent*, 127 F.4th at 1265; *United States*

v. Dubois, 139 F.4th 887, 891, 893-94 (11th Cir. 2025). But even these circuits vary in their analyses.

In addition, the Seventh Circuit rejected a facial challenge to § 922(g)(1), but it has not yet decided whether § 922(g)(1) is susceptible to as-applied challenges. *United States v. Prince*, 171 F.4th 1009, 1010, 1012 (7th Cir. 2026). It has, however, noted that “it is chancy for an inferior court to take dicta (such as the statements in *Heller*) as the equivalent of holdings,” especially as “*Bruen* changed *Heller*’s approach to be more historical, and *Rahimi* recast *Bruen* to be more risk-centric[.]” *Id.* at 1010. This directly conflicts with the Tenth Circuit’s approach in *Vincent*.

III. The Tenth Circuit’s Second Amendment ruling is wrong.

The Tenth Circuit’s holding that § 922(g)(1) comports with the Second Amendment in any and all of its applications is erroneous. Mr. Cisneros contends here and contended below that § 922(g)(1) is unconstitutional, both facially and as applied to him, under *Bruen*, 597 U.S. 1, and *Rahimi*, 602 U.S. 680. The Tenth Circuit has erroneously refused to apply the test established in *Bruen* and applied in *Rahimi*, and *United States v. Hemani*, 608 U.S. ---, 2026 WL 1751710 (June 18, 2026). And that test, applied correctly, establishes that § 922(g)(1) cannot stand.

In *Bruen*, this Court established and applied a test for evaluating laws, like § 922(g)(1), that infringe on a person’s fundamental Second Amendment rights. The cases instruct that (1) conduct covered by the Second Amendment’s plain text is

presumptively protected and cannot be restricted, *Bruen*, 597 U.S. at 24, unless (2) the government can demonstrate a historical tradition of “relevantly similar” firearms regulations from the founding era, *id.* at 24, 29. To do so, the government must prove that the challenged law is sufficiently similar to historical laws with respect to “both why and how it burdens the Second Amendment right.” *Rahimi*, 602 U.S. at 698; *see Hemani*, 2026 WL 1751710, at *5. That means the government must explain how the challenged law is sufficiently similar to founding-era tradition with respect to both its purpose and the degree to which it infringes on the Second Amendment right—taking into consideration metrics like procedural protections, duration of infringement, and severity of penalty. *Rahimi*, 602 U.S. at 698–99. “Even when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Id.* at 692.

The Tenth Circuit has failed to apply this controlling test in upholding § 922(g)(1). In *McCane*—a pre-*Bruen* decision—the Tenth Circuit summarily deemed § 922(g)(1) consistent with the Second Amendment based on unexplained dicta in *Heller*, 554 U.S. 570, that “nothing in [that] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *McCane*, 573 F.3d at 1047 (quoting *Heller*, 554 U.S. at 626–27). After *Bruen*, the Tenth Circuit declared itself bound by its pre-*Bruen* decision in *McCane* and refused to revisit § 922(g)(1)’s constitutionality under *Bruen*’s “new test.” *Vincent v. Garland*, 80 F.4th 1197 (10th Cir.

2023). Following this Court’s decision in *Rahimi*, this Court vacated the Tenth Circuit’s decision in *Vincent v. Garland* and directed it to reconsider its decision in light of *Rahimi*. Rather than doing so, the Tenth Circuit issued a three-page decision that again deemed its hands tied by *McCane* and again failed to conduct any history-and-tradition analysis. See *Vincent*, 127 F.4th 1263. And in Mr. Cisneros’s case, the Tenth Circuit relied upon *Vincent* to reject his claim.

This Court has not yet ruled on the § 922(g)(1) question. See *Hemani*, 2026 WL 1751710, at *11 (“We do not address 18 U.S.C. § 922(g)(1)’s provision disarming individuals convicted of felonies (often including drug-related ones)). But it has made crystal clear that the test for determining its constitutionality under the Second Amendment requires a detailed historical analysis. It is thus erroneous for the Tenth Circuit to continue to afford controlling weight to *Heller*’s dicta without undertaking that historical test.

Indeed, this Court has been clear that the legal tests it imposes are binding and trump its dicta. In *Seminole Tribe of Fla. v. Florida*, it stated that both the “result” of its opinion and “those portions of the opinion necessary to that result” are binding, even on itself. 517 U.S. 44, 67 (1996). In contrast, this Court has repeatedly stressed that its dicta, even when repeated, does not resolve issues it has not yet addressed. In *Oklahoma v. Castro-Huerta*, for example, this Court found entirely unpersuasive prior “tangential dicta” that addressed an issue that, until that case, “did not previously

matter all that much and did not warrant [the] Court’s review.” 597 U.S. 629, 646 (2022); *see id.* at 645 (“[T]he Court’s dicta, even if repeated, does not constitute precedent.”). And in *Heller* itself, this Court stated that “[i]t is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued.” 554 U.S. at 625 n.25. Thus, while this Court’s dicta holds significant weight in lower courts, *see, e.g., Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996), if faced with a choice between relying exclusively on this Court’s dicta or applying a binding legal test, lower courts must employ the latter. *Bruen* unquestionably established a new binding test, and the Tenth Circuit must apply it.

Further, under the test established in *Bruen*, § 922(g)(1) is unconstitutional. That’s because, first, the conduct regulated by § 922(g)(1) is covered by the Second Amendment. The plain text of the Second Amendment clearly covers possession of a firearm, including the firearm in this case. And Mr. Cisneros is clearly part of “the people” protected by the Second Amendment: The plain text does not draw a felon/non-felon distinction, *Bruen*, 597 U.S. at 32, and this Court has already determined that the phrase “the people” contained within the Second Amendment “unambiguously refers to all members of the political community, *not an unspecified subset*,” *Heller*, 554 U.S. at 580 (emphasis added); *see Hemani*, 2026 WL 1751710, *4

(“The Second Amendment protects the right of ‘all Americans’ to keep and bear firearms for self-defense.”).

Second, the government cannot meet its historical burden to support the constitutionality of the statute. There is no historical analogue for § 922(g)(1), let alone a sufficiently robust tradition of such analogues. Although the government need not point to a “historical twin,” *Rahimi*, 602 U.S. at 701, this Court nonetheless requires an especially close fit between modern and historical regulations, *compare Bruen*, 597 U.S. at 55–59 (surety statutes insufficiently similar to broad prohibition on public carry), *with Rahimi*, 602 U.S. at 698–99 (surety statutes sufficiently similar to temporary restriction on firearm possession by individuals subject to certain restraining orders). Accordingly, the government needs to show that the founding generation tried to prevent persons convicted of felonies or felony-equivalent crimes from simple possession of firearms for *any* purpose—and that it did so in a manner sufficiently comparable to § 922(g)(1).

But there is no tradition of felon dispossession statutes—at either the federal or state level—predating the 20th century. Section 922(g)(1) itself only traces its origins back to 1938, when Congress passed the Federal Firearms Act that prohibited only certain felons with “a few violent offenses” from receiving firearms. *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The statute was not amended to prohibit the “possession by all felons” until the 1960s. *Id.* And scholars have not

identified founding-era colonial or state felon dispossession statutes either. *See, e.g.,* Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 142-43 & n.11 (2007). The “Founders themselves could have adopted” laws like § 922(g)(1) to “confront” the “perceived societal problem” posed by felons. *Bruen*, 597 U.S. at 27. Yet they did not, and that inaction means § 922(g)(1) is unconstitutional in all applications.

That is especially true because of the extraordinary burden it puts on the Second Amendment right of every person that it impacts. Section 922(g)(1) indefinitely—and for all practical purposes, permanently—bans all firearm possession, so long as the firearm traveled in interstate commerce at some point. The government has been unable to identify any historical tradition of relevantly similar firearm regulations that so completely infringed upon an individual’s ability to exercise such a fundamental right. *See Rahimi*, 602 U.S. at 699–702.

Finally, even if there were *some* constitutional applications of § 922(g)(1), the statute is subject to as-applied challenges. Indeed, this Court appears to have recognized that persons who engage in at least some felonious conduct, without being charged and prosecuted for it, cannot be disarmed under the Second Amendment for that reason alone. *Hemani*, 2026 WL 1751710 (rejecting disarmament of an individual who periodically uses marijuana under 18 U.S.C. § 922(g)(3)). It stands to reason,

then, that at least some felonious conduct that *was* prosecuted does not provide a constitutional basis for disarming someone for life. If not, then the scope of the Second Amendment would be shaped by prosecutorial charging decisions instead of historical tradition.

The government has not, and cannot, prove a historical tradition of disarming persons like Mr. Cisneros. It is the government's burden, based on history, to determine which applications of the statute, if any, are lawful. *See, e.g., Range*, 124 F.4th at 228-232 (holding that the government failed to carry its burden to show that applying Section 922(g)(1) to the appellant would be “consistent with the Nation’s historical tradition of firearm regulation”); *cf. Cockerham*, 162 F.4th at 502-03. But at minimum, and based on the factors this Court found critical in *Rahimi*—duration of infringement, individualized procedural protections, and the danger posed by the defendant to another person’s physical safety—the government cannot do so for persons like Mr. Cisneros.

CONCLUSION

This Court should grant Mr. Cisneros's petition and then reverse the Tenth Circuit's decision affirming his conviction.

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

/s/ Leah D. Yaffe
LEAH D. YAFFE
Assistant Federal Public Defender
Counsel of Record
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

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