

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

CHRISTOPHER ALLEN ROCHON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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SUBMITTED: May 28, 2026

QUESTION PRESENTED

Does 18 U.S.C. § 922(g)(1), facially and as applied to Mr. Rochon, violate the Second Amendment?

PARTIES TO THE PROCEEDING

Petitioner Christopher Allen Rochon is represented by Assistant Federal Defender John Rhodes and the Federal Defenders of Montana.

Respondent United States of America is represented by Assistant United States Attorney Timothy Tatarka and Assistant United States Attorney Brian Lowney.

DIRECTLY RELATED CASES

United States of America v. Christopher Allen Rochon, CR 24-27-BU-DLC, United States District Court for the District of Montana. Judgment entered August 27, 2025.

United States of America v. Christopher Allen Rochon, CA 25-5735, United States Court of Appeals for the Ninth Circuit. Order denying motion to hold in abeyance and granting motion for summary affirmance entered February 27, 2026.

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Christopher Allen Rochon (“Mr. Rochon”) petitions for a Writ of Certiorari to grant certiorari and review his case.

Mr. Rochon asks this Court to grant certiorari to decide whether the 18 U.S.C. § 922(g)(1) bar to his possession of firearms violates the Second Amendment, both facially and as applied to Mr. Rochon, given his non-violent felony record.

At the very least, the Court should grant, vacate, and remand with instructions for the Ninth Circuit to conduct a proper Second Amendment analysis by asking whether historical tradition supports disarming Mr. Rochon based on the felony offenses underlying his §922(g)(1) charge. *Contrast United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc).

OPINION BELOW

The order for summary affirmance of the United States Court of Appeals for the Ninth Circuit is unreported and included with this filing. Appendix A.

JURISDICTION

The Court of Appeals issued its order for summary affirmance, denying Mr. Rochon's request for appellate relief on February 27, 2026. Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

LEGAL PROVISIONS INVOLVED

This case involves the Second Amendment to the United States Constitution, 18 U.S.C. § 922(g)(1), and *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc). Appendices B-D.

STATEMENT OF THE CASE AND PRIOR PROCEEDINGS

On August 28, 2024, Christopher Rochon was indicted for one count of knowing he was a felon in possession of a firearm, on or about April 20, 2024, in

violation of 18 U.S.C. §922(g)(1). An arrest warrant was issued and Mr. Rochon was arrested on September 11, 2024. He was arraigned on September 12, 2024, when he pled not guilty to the Indictment and released pending further court proceedings.

On October 3, 2024, Mr. Rochon's pretrial release was revoked, and he was detained pending trial.

On December 6, 2024, Mr. Rochon submitted a Fourth Amendment motion to suppress evidence seized from his vehicle and a Second Amendment motion to dismiss the charge against him under *New York Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 29 (2022), arguing that §922(g)(1) violates his Second Amendment right to possess firearms. On January 14, 2025, the district court convened a hearing to consider the motions to suppress and dismiss. The court ruled that argument of the motion to dismiss was unwarranted and took evidence and argument regarding the motion to suppress.

On January 12, 2025, the court issued its order denying the motion to dismiss and the motion to suppress.

On February 24, 2025, Mr. Rochon filed a plea agreement, under which he pled guilty to the sole count of the Indictment and reserved the right to appeal the court's adverse pre-trial ruling on his motion to dismiss. On April 1, 2025, Mr. Rochon appeared in court for a Change of Plea Hearing, at which he pled guilty.

On August 27, 2025, Mr. Rochon was sentenced to 21 months imprisonment, followed by 3 years of supervised release. The district court consented to this appeal.

Mr. Rochon filed his Notice of Appeal on September 10, 2025, regarding the denial of his motion to dismiss.

Following the submission of the opening brief, the government filed a motion for summary disposition, relying on *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc). Mr. Rochon opposed the motion. On February 27, 2026, the court of appeals granted the motion for summary disposition and affirmed the district court's order denying Mr. Rochon's motion to dismiss.

This petition follows.

FACTUAL BACKGROUND

On April 20, 2024, Mr. Rochon was stopped by Officers Chandler and Beasley of the Anaconda Deer Lodge Police Department. The basis for the stop was that the registered owner of the vehicle, Christopher Rochon, did not have a valid driver's license.

When the vehicle was stopped, Mr. Rochon was identified as the driver. A juvenile male was also in the vehicle. Multiple officers participated in the traffic stop. Law enforcement confirmed Mr. Rochon had no valid driver's license.

Law enforcement observed that Mr. Rochon was speaking and behaving “erratically” and had dilated pupils, which suggested that he may have been under the influence of a stimulant or other substance. While writing a ticket for driving without a license, one officer requested a criminal history for Mr. Rochon, which reflected Mr. Rochon’s prior felony drug convictions. Mr. Rochon had been convicted of felony criminal possession of dangerous drugs in violation of Mont. Code Ann. § 45-9-102 in 2018, PSR ¶ 35, and criminal possession of dangerous drugs with intent to distribute in violation of Mont. Code Ann. § 45-9-103 in 2022. PSR ¶ 38.

One of the law enforcement officers performed a sobriety field test¹ of Mr. Rochon’s eye movement to confirm Mr. Rochon was safe to drive the vehicle. The sobriety test did not indicate impairment.

Mr. Rochon informed the officers he’d left pre-release the previous June, and then admitted to the officers that he was still being supervised by the Montana State Office of Probation and Parole. He also admitted to past use of methamphetamine. Based on Mr. Rochon’s appearance and behavior, and his criminal history and

¹ After Mr. Rochon was arrested and taken to the police station, further sobriety tests were performed. Mr. Rochon passed all the sobriety tests law enforcement officers performed.

probation status, law enforcement asked Mr. Rochon for consent to search his vehicle.

Mr. Rochon denied permission to search because he was aware that his co-workers had left their bags in his vehicle, and he was unsure what, if any, contraband may have been in the bags. The officers contacted State of Montana Probation & Parole to secure permission to perform a probation search. Probation & Parole authorized the search.

During the search, officers found an unloaded Hi-Point 9mm pistol inside a closed backpack. Officers also found a box of 9mm ammunition in the backpack. Officers also located drug paraphernalia and a container with apparent drug residue inside. The officers stopped their search and detained Mr. Rochon for a drug investigation. They applied for, and received, a search warrant for the vehicle. In addition to the Hi-Point 9mm pistol, ammunition, and drug paraphernalia, the warranted search of the vehicle yielded two baggies of methamphetamine and more drug paraphernalia.

Mr. Rochon's Change of Plea

The indictment charged:

On or about April 20, 2024, in Deer Lodge County, in the State and District of Montana, the defendant, CHRISTOPHER ALLEN ROCHON, knowing he had been convicted of a crime punishable by imprisonment

for a term exceeding one year, knowingly possessed, in and affecting interstate commerce, a firearm, in violation of 18 U.S.C. § 922(g)(1).

On February 24, 2025, Mr. Rochon entered into a Plea Agreement in which he pled guilty to the Indictment. In its offer of proof, the United States agreed it would have to prove the following elements beyond a reasonable doubt:

First, the defendant knowingly possessed a firearm;

Second the firearm had been shipped and transported from one state to another;

Third, at the time the defendant possessed the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year; and

Fourth, at the time the defendant possessed the firearm, he knew that he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

The United States asserted it would provide a factual basis for Mr. Rochon's plea, by way of physical evidence and the testimony of law enforcement officers and lay and expert witnesses.

Sentencing

On August 27, 2025, the district court sentenced Mr. Rochon to 21 months in prison, followed by 3 years of supervised release, with eight special conditions of supervised release.

The court authorized this appeal. Mr. Rochon has completed his 21-month sentence at FCI Sheridan.

Appeal

Mr. Rochon appealed. The Ninth Circuit Court of Appeals summarily affirmed the district court's decision, citing the Ninth Circuit's en banc opinion in *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc).

REASONS TO GRANT THE PETITION

Mr. Rochon appeals the district court's denial of his motion to dismiss and the Ninth Circuit's affirmance. Under the Second Amendment and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), to displace Mr. Rochon's right to possess firearms for self-defense, the government must establish a 1791-centered historical tradition of firearm dispossession for non-violent felons. Because the government cannot meet this burden, this Court should reverse.

The Ninth Circuit's en banc opinion in *Duarte* refused to faithfully apply *Bruen*, deciding instead that dicta in *District of Columbia v. Heller*, 554 U.S. 570 (2008) forecloses all Second Amendment challenges to 18 U.S.C. § 922(g)(1). If the Court does not grant certiorari to review Mr. Rochon's case, it should grant, vacate, and remand with instructions for the Ninth Circuit to conduct a proper Second Amendment analysis.

A. This Court’s recent opinions confirm the unconstitutionality of 18 U.S.C. § 922(g)(1), facially and as-applied to Mr. Rochon.

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

The Second Amendment provides:

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., Amd. II.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court held that the Second Amendment codified a pre-existing individual right to possess and carry weapons for lawful purposes. The Court therefore struck down District of Columbia statutes that prohibited the possession of handguns in the home and required that any guns in the home be kept inoperable. *Id.* at 628-34.

2. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022)

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court rejected the “means-end scrutiny” approach to Second Amendment claims and directed courts to apply a “text-and-history standard” instead. *Id.* at 23, 39. This standard begins by asking whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 17. If it does, then “the Constitution presumptively protects that conduct.” *Id.*

Answering this preliminary question in *Bruen* was straightforward. At issue there was a New York law providing that to obtain a permit to carry a concealed handgun in public, an applicant had to demonstrate “proper cause,” i.e., “a special need for self-protection distinguishable from that of the general community.” *Id.* at 12. The Court “ha[d] little difficulty concluding” that “the Second Amendment protect[ed] [the petitioners’] proposed course of conduct — carrying handguns publicly for self-defense.” *Id.* at 31. As the Court explained, “[n]othing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms.” *Id.* at 32. The Second Amendment therefore “presumptively guarantee[d]” a right to carry firearms in public, and New York’s “proper cause” requirement, which infringed that right, could pass constitutional muster only if the state overcame the presumption. *Id.* at 33-34.

To rebut the presumption of unconstitutionality, *Bruen* held that the government must demonstrate that a challenged regulation “is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* at 17. This test requires courts to “consider whether historical precedent . . .

evinces a comparable tradition of regulation.” *Id.* at 27. If “no such tradition” exists, then the statute being challenged is unconstitutional. *Id.*

To begin, the Court explained that the standard for reviewing historical evidence differs depending on what kind of problem a statute is intended to remedy — specifically, whether that problem is old or new. In “some cases,” where “a challenged regulation addresses a general societal problem that has persisted since the 18th century,” the inquiry “will be fairly straightforward.” *Id.* at 26. To show that such a statute is constitutional, the government must point to “distinctly similar historical regulation[s] addressing that problem.” *Id.* The Court described this approach as “straightforward” and “relatively simple.” *Id.* at 26-27.

But in “other cases,” the Court wrote, a “more nuanced approach” may be required. *Id.* at 27. This latter inquiry is appropriate when a challenged statute “implicat[es] unprecedented societal concerns or dramatic technological changes,” “appl[ies] to circumstances beyond those the Founders specifically anticipated,” or is geared toward “unprecedented” problems that “were unimaginable at the founding.” *Id.* at 28. Rather than asking whether the challenged law and historical precursors are “distinctly similar,” courts ask only whether they are “relevantly similar.” *Id.* at 26, 29.

The Court declined to “provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment,” but it did identify “at least two metrics,” which it called the “how and why.” *Id.* at 29. According to the Court, “whether modern and historical regulations impose a comparable burden on the right of armed self-defense [i.e., the ‘how’] and whether that burden is comparably justified [i.e., the ‘why’] are *central* considerations” under the “relevantly similar” test. *Id.* at 29 (emphasis in original).

This latter approach to *Bruen*’s historical inquiry — the “relevantly similar” standard — is less difficult for the government to satisfy. However, courts may employ that approach only when the challenged statute is geared toward a societal problem that was “unimaginable at the founding.” *Id.* at 28. It is not available when the challenged statute “addresses a general societal problem that has persisted since the 18th century.” *Id.* at 26.

Bruen provided examples of when each framework would apply. First, *Heller* and *Bruen* “exemplifie[d]” the “straightforward historical inquiry” for statutes aimed at longstanding problems. *Bruen*, 597 U.S. at 27. The laws in those cases “concern[ed] the same alleged societal problem,” namely “handgun violence,” “primarily in” “densely populated” “urban areas.” *Id.* Because that problem existed around the time of the Second Amendment’s ratification, “the Founders themselves

could have adopted” laws like the District of Columbia’s or New York’s in an effort to “confront that problem.” *Id.* The fact that they didn’t established the laws’ unconstitutionality. *Id.* Second, the Court wrote that a law prohibiting the carrying of firearms in “new” locations — i.e., those that did not exist in 1791 — should be analyzed under the “more nuanced” rubric for statutes addressing “unprecedented” societal problems. *Id.* at 27-28. The danger that guns might pose in those novel locations necessarily did not “preoccup[y] the Founders in 1791.” *Id.* at 27. As a result, courts could use the “relevantly similar” test to analogize a modern law to historical regulations banning firearms in “sensitive places” that did not exist at the founding. *See id.* at 30.

At this threshold, courts faced with a *Bruen* challenge must identify the problem at which a statute is aimed, and then determine whether that problem existed in 1791 or instead grows out of “unprecedented,” “unimaginable” societal changes. *Id.* at 27. The answer to this question dictates whether courts apply the “distinctly similar” test or the “relevantly similar” test.

The Court explained that “[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them.*” *Id.* at 34 (italics in original). For that reason, the relevant “historical tradition” for purposes of a federal gun regulation is that which existed in 1791, when the Second Amendment was

ratified. *Id.* Although courts may consult evidence predating 1791, they should do so cautiously. “English common-law practices and understandings at any given time in history cannot be indiscriminately attributed to the Framers of our own Constitution,” and courts should disregard those practices “unless evidence shows that medieval law survived to become our Founders’ law.” *Id.* at 35. Because “linguistic or legal conventions” may have “changed in the intervening years,” courts should not “rely on an ancient practice that had become obsolete in England at the time of the adoption of the Constitution and never was acted upon or accepted in the colonies.” *Id.*

Similarly, courts “must . . . guard against giving postenactment history more weight than it can rightly bear.” *Id.* Post-enactment practice can “guide [courts’] interpretation of an ambiguous constitutional provision,” but only if that practice “has been open, widespread, and unchallenged since the early days of the Republic.” *Id.* at 36. The farther forward in time one goes from 1791, the less probative historical evidence becomes.

Because “post-Civil War” evidence dates to “75 years after the ratification of the Second Amendment, [it does] not provide as much insight into its original meaning as earlier sources.” *Id.* The Court in *Bruen* therefore refused even to consider “any of the 20th-century historical evidence brought to bear by respondents

or their amici,” since it was too temporally remote. *Id.* at 66, n.28. Courts should credit such post-Revolutionary War evidence only if it provides “confirmation” of earlier practice. *Id.* at 37. After all, “to the extent later history contradicts what the text says, the text controls.” *Id.*

Bruen held that because New York could not point to a robust tradition of regulations similar to the proper-cause requirement, the state’s statute violated the Second Amendment. *Id.* at 37-70.

3. *United States v. Rahimi*, 602 U.S. 680 (2024)

Every Justice agreed in *United States v. Rahimi*, 602 U.S. 680 (2024), that *Bruen* established a new methodology for Second Amendment analysis. *Id.* at 692 (Roberts, CJ., writing for the majority) (“As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, apply[ing] faithfully the balance struck by the founding generation to modern circumstances.”) (internal citations to *Bruen* omitted); *id.* at 702 (Sotomayor, J. joined by Kagan, J., concurring); *id.* at 708-709 (Gorsuch, J., concurring); *id.* at 736 (Kavanaugh, J., concurring); *id.* at 741 (Jackson, J., concurring); *id.* at 750-751 (Thomas, J., dissenting).

In *Rahimi*, this Court upheld 18 U.S.C. § 922(g)(8)(C)(i). That statute temporarily prohibits an individual subject to a domestic violence restraining order from possessing a firearm if the order included a judicial finding that the person currently represents a credible threat to the physical safety of others. *Rahimi* embraced *Bruen*’s sharp focus on text, history, and tradition.

In reaffirming *Bruen*’s methodology for analyzing Second Amendment challenges, *Rahimi* clarified that courts conducting that analysis must draw narrow historical principles from well-established historical regulations. Applying that methodology, the Court determined that the identified historical laws, discussed *infra*, together represent a tradition of temporarily disarming those “found by a court to pose a credible threat to the physical safety of another.” *Rahimi*, 602 U.S. at 700. (2024).

Section 922(g)(1), facially and as-applied to Mr. Rochon, does not fit within that tradition.

Furthermore, *Rahimi* explicitly rejected the government’s principal argument that the Second Amendment allows Congress to disarm those who are not “responsible.” That undermines its corollary argument that Congress may disarm those who potentially pose a threat to the physical safety of others.

Rahimi confirms *Bruen*’s “historical tradition” test: “[W]hen a firearm regulation is challenged under the Second Amendment, the Government must show that the restriction ‘is consistent with the Nation’s historical tradition of firearm regulation.’” *Id.* at 689 (quoting *Bruen*, 597 U.S. at 24). The modern law must be “consistent with the principles that underpin our regulatory tradition.” *Id.* at 692. Applying that methodology, courts must ascertain whether the challenged law is “relevantly similar” to historical laws, “applying faithfully the balance struck by the founding generation to modern circumstances.” *Id.* (quoting *Bruen*, 544 U.S. at 29). *Rahimi* repeated that a challenged regulation need not have a “historical twin.” *Id.* (quoting *Bruen*, 544 U.S. at 30).

The Court reiterated that in conducting analogical reasoning, “[w]hy and how the regulation burdens the [Second Amendment] right are central” considerations. *Id.* For example, “if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Id.* At the same time, “[e]ven when a law regulates arms-bearing for a permissible reason,” it violates the Second Amendment “if it does so to an extent beyond what was done at the founding.” *Id.*

Importantly, the Court refused to extrapolate the principles underlying the regulatory tradition at a high level of generality. Indeed, the *Rahimi* majority summarily and unanimously rejected the government’s contention that the surety and affray laws demonstrated a tradition of restricting Constitutional Second Amendment rights only to “responsible” citizens. *Id.* at 701-702. Instead, the Court, as it did in *Bruen*, required a close fit between the identified, well-established historical regulations and the principle those regulations established. *See also Bruen*, 597 U.S. at 50-55 & n.19 (well defined founding-era laws limiting “the intent for which one could carry arms” (to terrorize), “the manner of carry” (concealed versus open), and “the exceptional circumstances under which one could not carry arms” (if a surety statute applied) did not represent a tradition banning “public carry altogether”).

In a concurring *Rahimi* opinion, Justice Barrett explained that the majority had settled on “just the right level of generality,” cautioning, “a court must be careful not to read a principle at such a high level of generality that it waters down the right.” *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). Justice Gorsuch likewise warned courts should not “try[] to glean from historic exceptions overarching ‘policies,’ ‘purposes,’ or ‘values’ to guide them in future cases.” *Id.* at 710 (Gorsuch, J., concurring). Nor should courts “extrapolate their own broad new principles from

[historical] sources.” *Id.* (Gorsuch, J., concurring). Rather, courts “must proceed with care in making comparisons to historic firearms regulations, or else they risk gaming away an individual right....” *Id.* at 711 (Gorsuch, J., concurring).

Rahimi’s historical analysis of § 922(g)(8)(C)(i) evinces the clear inadequacy of the government’s purported analogues, discussed *infra*, for § 922(g)(1). Section 922(g)(8)(C)(i) imposes a temporary restriction on gun possession only after a court finds — following a hearing of which the affected individual receives notice and during which he had an opportunity to be heard — that the person poses a credible threat to the physical safety of another.

Congress can enable courts to disarm citizens for a limited duration of time based on an individualized and specific finding of a threat of violence, much like the surety and “going armed” laws of the 1700s and early 1800s. *Rahimi*, 602 U.S. at 697-698. The Court concluded surety laws and “going armed” laws sufficiently established a tradition of temporarily disarming someone found by a court to pose a credible threat to the physical safety of others, just like § 922(g)(8)(C)(i) does today. *Id.* at 694. Notably, surety laws – like § 922(g)(8)(C)(i) – mitigated “demonstrated threats of physical violence” and were temporary. *Id.* at 698.

In stark contrast, § 922(g)(1) contains no requirement of a judicial finding that someone poses a threat.

Additionally, like domestic violence restraining orders today, the surety regime was “individualized,” *id.* at 695, while § 922(g)(1) is categorical, broadly applying to all felons. “Going armed” laws – again, like § 922(g)(8)(C)(i) – were similarly limited in scope, disarming people based on individualized determinations that they threatened public safety rather than overly broad categorical bans. *Id.* at 697-698.

Section 922(g)(1) does not require an individualized determination regarding dangerousness.

Moreover, a person subject to a surety bond received “significant procedural protections” and “could obtain an exception if he needed his arms for self-defense.” *Id.* at 696-697. “Many postfounding going armed laws” incorporated similar exceptions. *See id.* at 769 (Thomas, J., dissenting). Thus the government successfully came forward with highly specific founding-era regulations that justified the narrowly tailored and temporary firearm restriction found in § 922(g)(8)(C)(i).

The Court highlighted specific features of § 922(g)(8)(C)(i) strictly limiting its scope and duration, making it constitutional. Section 922(g)(8)(C)(i) restricts gun possession only if a restraining order “includes a finding that [a] person represents a credible threat to the physical safety of [an] intimate partner or child.” *Id.* at 685.

The statute “restricts gun use to mitigate demonstrated threats of physical violence” and applies only once a court has made an individualized finding that such a threat exists. *Id.* at 689.

In contrast, § 922(g)(1) is a categorical ban that prohibits all felons from possessing a gun, without an individualized finding of whether or not they threaten others. Section 922(g)(8)’s restriction is “temporary.” *Id.* at 699. Felony status is eternal.

B. The Ninth Circuit adjudicated § 922(g)(1)’s constitutionality in *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc).

In *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc), the Ninth Circuit ruled 18 U.S.C. “§ 922(g)(1) is not unconstitutional as applied to non-violent felons[.]” Central to its holding, the Ninth Circuit emphasized *Heller*’s recognition that ““an individual right to keep and bear arms,’ ‘[l]ike most rights, the right secured by the Second Amendment is not unlimited,’” *Id.* at 750 (internal citations omitted) (quoting *Heller*, 544 U.S. at 595, 626).

The Ninth Circuit then quoted *Heller*:

Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, *nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.*

Id. (quoting *Heller*, 554 U.S. at 626-27) (italics added in *Duarte*).

Based on that language, and this Court’s repeated “assurances” that *Heller* “did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill’”, *id.* (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (citation omitted)), the Ninth Circuit reasoned *Bruen* and *Rahimi* support its earlier ruling in *United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010), that § 922(g)(1)’s felon-in-possession of firearm prohibition is constitutional. *Duarte*, 137 F.4th at 750.

The court of appeals further read *Bruen* to limit its scope to “law-abiding citizens.” *Id.* at 751. The court noted that “six justices, including three in the majority, emphasized that *Bruen* did not disturb the limiting principles in *Heller* and *McDonald*.” *Id.* (citations omitted). Finally, the Ninth Circuit explained *Bruen* did not address the constitutionality of the “shall-issue” concealed-carry licensing laws in 43 states, because they already “require background checks for the very purpose of ensuring that licenses are not issued to felons[.]” *Id.* (quotation omitted).

Collectively, the Ninth Circuit ruled “these repeated and consistent ‘assurances’ make clear that felon-in-possession laws, like § 922(g)(1), are presumptively constitutional, demonstrating that our holding in *Vongxay* remains

consistent with the Supreme Court’s articulation of Second Amendment rights.” *Id.* at 752.

After that dispositive holding, the Ninth Circuit then applied *Bruen*’s two-part test, first “consider[ing] whether the Second Amendment’s plain text covers an individual’s proposed course of conduct.” *Id.* at 752. (quoting *United States v. Perez-Garcia*, 96 F.4th 1166, 1178 (9th Cir. 2024)). The Ninth Circuit ruled Duarte part of the people, whom the Second Amendment presumptively protects. *Id.*

In doing so, it rejected the government’s argument that Duarte’s felon status extinguished his Second Amendment rights. The Ninth Circuit distinguished individual First, Second, and Fourth Amendment protections from collective rights, which can be limited because of felon status. *Id.* at 754 (citing *Kanter v. Barr*, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting) (“[T]he right to vote is held by individuals, but they do not exercise it solely for their own sake; rather, they cast votes as part of the collective enterprise of self-governance.”)). The Ninth Circuit thus ruled Duarte “one of ‘the people’ who enjoys Second Amendment rights.” *Id.*

The Ninth Circuit then decided the government met its burden to prove § 922(g)(1) consistent with the Nation’s tradition of firearm regulation. The Ninth Circuit reviewed historic disarmament of those who committed “the most serious crimes” and legislative categorical disarmament for those “deem[ed] dangerous,

without an individualized determination of dangerousness.” *Id.* at 755. The Ninth Circuit agreed with the government that either of those historic regulatory principles “supplies a basis for the categorical application of § 922(g)(1) to felons.” *Id.*

The Ninth Circuit next reviewed all of the bases offered by the government, first noting “death was ‘the standard penalty for all serious crimes at the time of the founding.’” *Id.* at 756 (quoting *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019) (citation in *Bucklew* omitted)). Forfeiture was also a routine punishment. *Id.* The Court thus reasoned that those greater punishments at the birth of the nation would permit the lesser punishment of disarmament. *Id.*; *see also id.* at 758 (“the exposure to capital punishment and estate forfeiture is sufficient to demonstrate that the founding generation would view § 922(g)(1)’s permanent disarmament as consistent with the Second Amendment”).

The Ninth Circuit opined how the 1689 English Bill of Rights, an Anti-Federalist proposal in Pennsylvania, and an 1820 proposed code of criminal law evidenced “an unbroken understanding that the legislature could permanently disarm those who committed the most serious crimes consistent with the Second Amendment.” *Id.* at 757 (citing *Range v. Attorney General of the United States*, 124 F.4th 218, 272 (Krause, J., concurring) (3d Cir. 2024) (en banc) (footnote omitted)).

The Ninth Circuit next agreed with the government that “[t]he historical record reveals a host of regulations that disarmed those whom the legislature deemed dangerous on a categorical basis.” *Id.* at 759 (citations omitted). The court started with the English disarmament of Catholics and non-Anglican Protestants, except for self-defense, who refused to renounce their faith. *Id.* Colonies “enacted similar restrictions on Catholics, prohibited the transfer of weapons to Native Americans, and banned slaves and free Black people from possessing firearms.” *Id.* (citing *Range*, 124 F.4th at 259, 264 (Krause, J., concurring)). During the Revolutionary War, some states disarmed Loyalists, who refused oaths of allegiance to America. *Id.* (citations omitted). Beginning in the second half of the 19th Century, through various bans, states legislated to disarm minors, mentally ill people, the intoxicated, and “tramps”. *Id.* at 759-760 (footnoting state acts from 1857 to 1883).

Recognizing that “many of these laws would likely be unconstitutional today under *other* parts of the Constitution[,]” the Ninth Circuit considered them “reflective of American history and tradition”, justifying categorically disarming those the legislatures deemed dangerous, without the individualized determination at issue in *Rahimi*. *Id.* at 760 (italics in *Duarte*).

The Ninth Circuit ruled felon disarmament fits within this tradition. *Id.* “In sum, these laws demonstrate that § 922(g)(1)’s permanent and categorical

disarmament of felons is consistent with this Nation’s historical tradition of firearm regulations.” *Id.* at 761.

C. The Ninth Circuit is wrong.

The Ninth Circuit held that all felons, regardless of conduct or circumstances, may be permanently disarmed if the legislature so chooses. The court did not identify a Founding-era analogue for that rights-denying view. Instead, it concluded that *Heller* already decided that laws like § 922(g)(1) are valid as to all felons. As a fallback, the court upheld § 922(g)(1) as applied to *Duarte* under a kind of rational-basis review cloaked in history—(mis)understanding this Nation’s historical tradition of firearms regulation to give legislators carte blanche to categorically ban from possessing arms any group they deem “dangerous.”

All of that is wrong. “The constitutionality of felon dispossession was not before the Court in *Heller*,” so the case cannot be said to have decided the issue. *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting). And *Bruen* made crystal clear that “judicial deference to legislative interest balancing” is fundamentally inconsistent with the very notion that the Second Amendment protects a fundamental right. 597 U.S. at 26. *Duarte* defies this Court’s precedents. The Ninth Circuit agreed that *Duarte* is part of “the people” and that the conduct § 922(g)(1) prevents him from engaging in (keeping and bearing a firearm for self-defense) is covered by the

Second Amendment’s plain text. At that point, the government should have had to identify a historical tradition of disarming people like Duarte, or here Mr. Rochon, whose felony convictions were all for non-violent crimes. Instead, the Ninth Circuit leaned on disanalogous felony punishments that were abandoned even before the Founding and abhorrent colonial-era laws that disarmed disfavored groups like slaves, Catholics, and Native Americans.

According to the Ninth Circuit, this Court already blessed § 922(g)(1) in *Heller* by caveating that it did not mean “to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Duarte*, 137 F.4th at 750 (quoting *Heller*, 554 U.S. at 626-27). Because *Heller* also suggested in a footnote that such “regulatory measures” are “presumptively lawful,” *Heller*, 554 U.S. at 627 n.26, the Ninth Circuit held that there is no need to evaluate “historical tradition” to determine § 922(g)(1)’s constitutionality. *Duarte*, 137 F.4th at 752. This Court’s dictum in *Heller* and later “assurances” regarding the “presumptively lawful regulatory measures” in *Rahimi* were all the Ninth Circuit needed “to recognize a historical tradition of firearm regulation that supports the categorical application of § 922(g)(1) to felons like Duarte.” *Id.*

The problems with that shortcut approach are legion. For one thing, *Heller* described such measures as “presumptively lawful,” *Heller*, 554 U.S. at 627 n.26

(emphasis added), which makes sense only if they could still be subject to challenge on (at the very least) an as-applied basis. For another, *Heller* cited no “longstanding prohibitions on the possession of firearms by felons,” *see id.* at 626-27, so it betrays reason to suggest that it supplied the “historical tradition” necessary to justify all such laws. Indeed, *Heller* expressly disclaimed any such inquiry, noting that it did “not undertake an exhaustive historical analysis today of the full scope of the Second Amendment.” 554 U.S. at 624, 635. And *Heller* acknowledged that the Court would need to “expound upon the historical justifications for” those 22 “regulatory measures” should they present themselves in future cases. *Id.* at 635; *see also Kanter*, 919 F.3d at 453 (Barrett, J., dissenting) (*Heller* “explicitly deferred analysis of this issue”).

Turning to *Bruen*, unable to find any actual historical tradition to support its application of § 922(g)(1) to disarm Duarte based on his non-violent offenses, the Ninth Circuit purported to divine, from two disparate categories of laws, two broad “principle[s]” that it (mis)characterized at such a “high level of generality” as to completely “water[] down the [Second Amendment] right,” *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

First, the court surmised that “legislatures may disarm those who have committed the most serious crimes”—by which it meant anything punishable as a

felony—because “the greater punishment of death and estate forfeiture was permissible to punish felons” in colonial times and the early Republic. *Duarte*, 137 F.4th at 756. That reasoning suffers from a basic logic problem: That “the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting). After all, “we wouldn’t say that the state can deprive felons of the right to free speech,” the “right to a jury trial, or [the right to] be free from unreasonable searches and seizures” “because felons lost that right via execution at the time of the founding.” *Duarte*, 137 F.4th at 790 (VanDyke, J., dissenting) (quoting *United States v. Williams*, 113 F.4th 637, 658 (6th Cir. 2024), and *Kanter*, 919 F.3d at 461-62 (Barrett, J., dissenting)). The Ninth Circuit’s contrary approach turns the Second Amendment into “a second-class right.” *Bruen*, 597 U.S. at 70.

The historical support for the Ninth Circuit’s “premise” is also “shaky” at best. *Kanter*, 919 F.3d at 459 (Barrett, J., dissenting). For one thing, what constitutes a felony today has ballooned, and is thus nothing like it was at the Founding. See *id.* at 458-60; *Duarte*, 137 F.4th at 791 n.7 (Van Dyke, J., dissenting). So the “most serious crimes” principle elides the critical question of what kinds of crimes today can be considered the “most serious” consistent with historical tradition. Moreover,

as Judge VanDyke’s dissenting opinion thoroughly lays out — with assistance from then-Judge Barrett’s dissent in *Kanter* and Judge Bibas’s dissent in *Folajtar v. Attorney General*, 980 F.3d 897 (3d Cir. 2020) — the severe punishments of “death and estate forfeiture” for felony convictions at English common law were “frayed” “[e]ven before the Founding,” and ultimately severed by the time of the Constitution’s ratification. *Duarte*, 137 F.4th at 787. That is not a “longstanding” tradition in any sense of the word.

To boot, the court’s “evidence of the ‘unbroken understanding that the legislature could permanently disarm those who committed the most serious crimes’ is just one Colonial-era English enactment and two draft proposals from the Founding-era and succeeding decades.” *Duarte*, 137 F.4th at 785 (VanDyke, J., dissenting). If “three colonial regulations” (that at least were enacted) did not “suffice to show a tradition of public-carry regulation” in *Bruen*, 597 U.S. at 46, it is a mystery how the Ninth Circuit could credit the government’s far lesser showing here.

The three historical analogues the court referenced also fail on their own terms. “The 1689 English Bill of Rights”—which made clear that “Parliament” had unquestioned “regulatory power over firearms,” *Duarte*, 137 F.4th at 757 (majority)—was criticized by our Founders because it was “secured to protestant

subjects only” and protected merely “bearing arms for their defence, ‘suitable to their conditions, and as allowed by law,’” William Rawle, *A View of The Constitution of The United States of America* 126 (Philip H. Nicklin ed. 1829). The Second Amendment, by contrast, was an “enlargement from the English Bill of Rights,” not a privilege subject to the whims of the legislature. See Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 270 (1880). The Ninth Circuit’s “indiscriminate[] attribut[ion]” of English law “to the Framers of our own Constitution” is exactly the sort of shoddy historical analysis that *Bruen* explicitly rejected. 597 U.S. at 35.

The two other “historical analogues” the Ninth Circuit cited barely merit mention. Both were draft proposals—one from anti-federalist delegates in Pennsylvania and the other from a Louisiana statesman. *Duarte*, 137 F.4th at 757. The former “failed to even obtain a majority of its own convention,” and the latter was “never adopted” either. *Id.* at 787 (VanDyke, J., dissenting). They thus provide no evidence of any historical tradition, let alone one that could justify § 922(g)(1). And at best, the draft proposal lodged by the Pennsylvania anti-federalists—which would have provided “a right to bear arms ‘unless for crimes committed, or real danger of public injury from individuals,’” *id.* at 757 —evinced a concern “about threatened violence and the risk of public injury.” *Kanter*, 919 F.3d at 456 (Barrett,

J., dissenting). It was not “about felons in particular or even criminals in general.” *Id.*

Oddly, *Duarte* appears to acknowledge that reality, as it describes the motivations (i.e., the “why”) for these measures is to “bar possession of a firearm from persons” with “violent tendencies.” *Duarte*, 137 F.4th at 757. But Mr. Duarte, and Mr. Rochon, like many and perhaps most people subject to § 922(g)(1), were convicted of non violent felonies. Just as it failed to explain how the government’s “modern and historical regulations impose a comparable burden on the right of armed self-defense,” the Ninth Circuit completely failed to explain how § 922(g)(1)’s application to Duarte “is comparably justified” to historical draft proposals purposed to disarm violent individuals. Accordingly, its conclusion “that the severity of punishment at the founding implicitly sanctions the blanket stripping of rights from all felons,” violent or not, “is misguided.” *Kanter*, 919 F.3d at 461 (Barrett, J., dissenting).

The second tradition the court purported to identify fares even worse. According to the Ninth Circuit, a legislature may disarm without scrutiny any “categories of persons” that it believes “present a special danger” to society, without regard to whether that category bears any resemblance to a category disarmed at the founding. *Duarte*, 137 F.4th at 759. For support, the Ninth Circuit cited laws

disarming Catholics, Native Americans, slaves, and free Blacks, in addition to laws disarming minors, those of “unsound mind,” drunkards, and “tramps” (i.e., the homeless). *Id.* at 759-760. Not only do those laws “reflect overgeneralized and abhorrent prejudices that would not survive legal challenges today,” *id.* at 760, but they are also poor historical analogues for § 922(g)(1).

As to the latter set of laws, none date back to the Founding, and in any event none are “relevantly similar” in the “how” to § 922(g)(1), which permanently strips the right to keep and bear arms; all of the historical laws were temporary restrictions. *Id.* at 763 (VanDyke, J., dissenting). And while the former restrictions dated further back, many of them too were temporary. *Id.* at 792 (VanDyke, J., 29 dissenting). What is more, they applied largely to groups that were not considered “persons” at the time, and regardless, were based on the fear that such groups were likely to “take up arms against the government.” *Id.* (VanDyke, J., dissenting); *see also Kanter*, 919 F.3d at 464 (Barrett, J., dissenting). But § 922(g)(1) does not serve a remotely similar purpose. The various “abhorrent” and unconstitutional laws the court cited thus fail *Bruen*’s “why” test as well.

The consequences of the Ninth Circuit’s decision to invoke those laws to bless any and all applications of § 922(g)(1)’s defy *Bruen*. As the court of appeals admitted, its decision means that legislatures are “permitted to categorically disarm”

any disfavored group “they deem[] dangerous” with impunity. *Duarte*, 137 F.4th at 760. That contravenes *Bruen*’s clear teaching that “judicial deference to legislative interest balancing ... is not deference that the [Second Amendment] demands.” 597 U.S. at 26. Of course, the government can regulate the right to keep and bear arms on a non-individualized basis, but it “does not get a free pass simply because [it] has established a ‘categorical ban.’” *Kanter*, 919 F.3d at 465 (Barrett, J., dissenting) (quoting *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010)).

The Ninth Circuit’s decision affirming § 922(g)(1)’s application to *Duarte* and all felons, regardless of their underlying offenses, joins the long side of an acknowledged circuit split. Six other circuits have embraced a similar approach, demanding judicial deference to legislative interest-balancing and elevating this Court’s dicta in *Heller* over its holding and reasoning in *Bruen* and *Rahimi*. On the flip side, three circuits have taken the opposite approach, requiring the government to justify its applications of § 922(g)(1) by reference to longstanding historical tradition that justifies disarming citizens based on their particular predicate convictions. That division underscores the need for this Court’s intervention. Indeed, lower courts themselves have recognized that “there is significant disagreement about” how to analyze § 922(g) challenges “that the Supreme Court should resolve.” *United States v. Morton*, 123 F.4th 492, 498 n.2 (6th Cir. 2024).

D. 18 U.S.C. § 922(g)(1) violates the Second Amendment both facially and as-applied to Mr. Rochon.

Section 922(g)(1) prohibits possession of a firearm by anyone “convicted in any court of, a crime punishable by imprisonment for a term exceeding one year[.]” 18 U.S.C. § 922(g)(1). The government will be unable to bear its burden of establishing a robust tradition of historical regulations “distinctly similar” to § 922(g)(1).

Although *Bruen* did not define “distinctly similar,” it indicated the standard is a stringent one. *See Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (“Courts in our sister circuits have consistently recognized that the *Bruen* standard for identifying a closely analogous historical regulation is a demanding one.”). Applying the “distinctly similar” test, *Bruen* identified only a single historical precursor that “support[ed] New York’s proper-cause requirement”: an 1871 Texas law “forb[idding] anyone from ‘carrying on or about his person . . . any pistol . . . unless he has reasonable grounds for fearing an unlawful attack on his person.’” 597 U.S. at 64 (quoting 1871 Tex. Gen. Laws § 1). This “reasonable grounds” requirement was nearly identical to New York courts’ interpretation of that state’s proper-cause standard. *See id.* at 13 & n.2.

In the context of § 922(g)(1), therefore, a “distinctly similar” regulation would be one that imposed a categorical ban on firearm possession based on prior conviction of a serious crime.

“[B]ans on convicts possessing firearms were unknown before World War I.” *United States v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013). The first federal statute imposing any kind of a ban, the Federal Firearms Act of 1938, was limited to “crimes of violence”. Federal Firearms Act, ch. 850, § 1(6), 52 Stat. 1250, 1250 (1938). It was not expanded to all felons until 1961.

But even if the 1938 Act were sufficiently similar to § 922(g)(1), it would not discharge the government’s burden. *Bruen* refused even to “address any of the 20th-century historical evidence brought to bear by respondents or their amici,” since it was too far removed from the Second Amendment’s ratification in 1791. 597 U.S. at 66, n.28. Evidence of such recent vintage “does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence,” i.e., when no similar statutes appear in the founding-era record. *Id.* Thus the 1930s statute come too late in time to establish § 922(g)(1)’s constitutionality. *See United States v. Alston*, 2023 WL 4758734, *17-18 (E.D.N.C. 2023) (declining to consider 1930s statutes because they are too recent).

For the same reason, Congress cannot self-ordain § 922(g)(1)’s own constitutionality, especially because § 922(g)(1) dates only to 1961. The 1960s are much too far removed from 1791 to be relevant. *See United States v. Lewis*, 682 F.Supp.3d 1038, 1051 (S.D. Ala. 2023) (“[20th-century evidence] can be used to ‘confirm’ what earlier evidence suggests, but it cannot ‘provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.’ An implicit corollary to this rule is that 20th-century legislation cannot on its own establish the reach of an 18th-century constitutional provision.” (quoting *Bruen*, 597 U.S. at 37, 66 n.28)).

Because the historical record reveals no “distinctly similar” regulations from the founding era, § 922(g)(1) violates the Second Amendment on its face. And as a result, it necessarily violates the Second Amendment as applied to Mr. Rochon as well. This is especially true because Mr. Rochon is a non-violent felon, who possessed a handgun, which “the American people have considered . . . to be the quintessential self-defense weapon.” *Heller*, 554 U.S. at 629.

E. The Circuit Courts have split on the issue of as-applied challenges to § 922(g)(1).

As the Ninth Circuit observed in *Duarte*, there is a split among the circuits as to whether § 922(g)(1) is categorically constitutional or whether its constitutionality can and should be adjudicated on a case-by-case, as-applied basis. 137 F.4th at 747-748. Six circuits – the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits – have held post-*Bruen* “that §922(g)(1) is constitutional as applied to all felons.” *United States v. Mancilla*, 155 F.4th 449, 454 n.5 (5th Cir. 2025) (Elrod, J., concurring); *see also United States v. Fort*, — F.4th —, 2026 WL 1295557, *5 (1st Cir. 2026) (affirming district court’s rejection of as-applied challenge due to “lack of specificity”); *United States v. Langston*, 110 F.4th 408, 419-420 (1st Cir. 2024) (no plain error on Second Amendment challenge to § 922(g)(1)).

The Third, Fifth, and Seventh Circuits have (correctly) held that *Bruen* abrogated their past §922(g)(1) precedent, such that courts now must evaluate as applied challenges to §922(g)(1) by reference to the Second Amendment’s text at the threshold and then to whether historical tradition supports disarming an individual for her predicate felony conviction(s). *Range*, 124 F.4th 218 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). *See also United States v. Watson*, 171 F.4th 1012, 1025 (7th Cir. 2026) (denying claim and reserving “ruling on an as-applied challenge to

§922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not ‘dangerous.’”); *Williams*, 113 F.4th at 661 (constitutional “as applied to dangerous people”); *United States v. Johnson*, 158 F.4th 200, 203 (D.C. Cir. 2025) (as-applied challenges are available where the defendant can “show that his predicate felonies were minor or regulatory”) (quoting *Medina v. Whittaker*, 913 F.3d 152 (D.C. Cir. 2019)).

Notably, in contrast to the Ninth Circuit’s *Heller*’s-dicta-controls reasoning, the Fifth Circuit noted “dicta cannot supplant the most recent analysis set forth by [this] Court in *Rahimi* [and] *Bruen*.” *Diaz*, 116 F.4th at 466.

CONCLUSION

Mr. Rochon respectfully requests this Court grant his petition for certiorari to review his case, or alternatively, grant, vacate, and remand his case to the Ninth Circuit for it to conduct a proper Second Amendment analysis.

RESPECTFULLY SUBMITTED this 28th day of May, 2026.

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