

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CRISTIAN NUÑO-LOPEZ — PETITIONER

VS.

UNITED STATES OF AMERICA — RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 18 U.S.C. § 922(g)(1) violate the Second Amendment on its face or as-applied to Mr. Nuño-Lopez?

PARTIES TO THE PROCEEDING

The Petitioner in this case is Cristian Nuño-Lopez, who was the Defendant-Appellant in the court below, and the respondent is the United States of America, who was the Plaintiff-Appellee in the court below. Petitioner is an individual and therefore no Rule 29.6 disclosure is required.

RELATED CASES

Final judgment entered in the United States District Court for the District of Colorado on October 16, 2025. *United States v. Nuño-Lopez*, no. 1:24-CR-00329-RMR-1 (D. Colo.) (Oct. 16, 2025).

The Tenth Circuit Court of Appeals affirmed judgment in an unpublished opinion on March 4, 2026. *United States v. Nuño-Lopez*, no. 25-1409 (10th Cir. Mar. 4, 2026).

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The unpublished decision of the United States Court of Appeals for the Tenth Circuit is found in the Petition Appendix (“Pet. App.”) 1a-3a. The Judgment of the United States District Court for the District of Colorado is found in Pet. App. 1b-8b.

JURISDICTION

The court of appeals entered judgment on March 4, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

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

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.

Section 922(g)(1) of Title 18, U.S. Code, states:

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

In *Bruen*, this Court crafted a historical tradition test to assess the constitutionality of firearms regulations that contravene the Second Amendment’s plain text. *See New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1, 17 (2022). In short, under that test, “[o]nly 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.* Two years later, this Court reaffirmed this analysis and upheld 18 U.S.C. § 922(g)(8), reasoning there is a historical tradition of firearm regulation that allows the government to temporarily disarm those who were found to threaten the safety of others. *See United States v. Rahimi*, 602 U.S. 680, 698-99 (2024).

Despite this Court’s clear mandate that the historical tradition test be applied whenever a firearm regulation burdens the Second Amendment, the Tenth Circuit has refused to apply that test to challenges to 18 U.S.C. § 922(g)(1), which permanently prohibits those convicted of a felony from possessing any firearm or ammunition. This Court has not decided whether laws *permanently* banning those convicted of felonies are constitutional, *see Rahimi*, 602 U.S. at 713 (Gorsuch, J. concurring) (“We do not resolve whether the government may disarm an individual permanently.”), but the Tenth Circuit reasons this Court’s dicta in *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008)—wherein it stated that its historical analysis showing that the Second Amendment protects an *individual* right to own and possess firearms did not “cast doubt on longstanding prohibitions

on the possession of firearms by felons . . .”—still binds all lower courts. *See Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *petition for cert. denied*, no. 24-1155 (Mar. 2, 2026).

Mr. Nuño-Lopez challenges the Tenth Circuit’s intractable analysis of the constitutionality of § 922(g)(1) and asks this Court settle this open question under the standards it set forth in *Bruen*.

1. Facts

Greeley police stopped a car driven by Mr. Nuño-Lopez in the middle of the night because the headlights were not on. However, Mr. Nuño-Lopez got out of the car and ran from officers who chased him on foot. He discarded a pistol (a .380 semi-automatic Glock) during the chase, and police found two .380 caliber loaded magazines in his possession after they tackled him and took him into custody. Officers learned that Mr. Nuño-Lopez had been convicted of a felony that barred him from possessing firearms and ammunition under 18 U.S.C. § 922(g)(1). In Colorado, he had been convicted, between the ages of 18 and 20, of engaging in a riot with simulated or real weapon and twice convicted of burglary. Officers also determined that the pistol in his possession and the car he had been driving were stolen.

The government indicted Mr. Nuño-Lopez on one count of 18 U.S.C. § 922(g)(1). He moved to dismiss the indictment, raising facial and as-applied challenges under the Second Amendment. Specifically, he argued that § 922(g)(1) is

facially unconstitutional under this Court’s framework in *Bruen* and *Rahimi* for two reasons: (1) § 922(g)(1) has no historical analogue, and so there is no historical tradition of permanently dispossessing felons of firearms; and (2) the statute places extraordinary burdens on the Second Amendment rights of felons. Also, Mr. Nuño-Lopez raised three arguments supporting his as-applied challenge: (1) there is no historical tradition of permanently dispossessing felons in his circumstance; (2) § 922(g)(1) lacks necessary procedural protections because it did not require the court to find he posed a threat; and (3) § 922(g)(1) did not require the government to prove that he possessed the firearm for an unlawful purpose.

However, Mr. Nuño-Lopez conceded his claims were foreclosed by circuit precedent in *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *petition for cert. denied*, no. 24-1155 (Mar. 2, 2026), and that he was raising them for purposes of preservation. Accordingly, the district court denied his motion because *Vincent* forecloses his claims. Mr. Nuño-Lopez then pleaded guilty to violating § 922(g)(1) under a plea agreement that permits him to appeal the district court’s denial of his motion to dismiss the indictment under the Second Amendment.

2. The Tenth Circuit’s decision

Mr. Nuño-Lopez appealed, and the court of appeals summarily affirmed because it too was bound by *Vincent*. Pet. App. 2a-3a. In *Vincent*, the Tenth Circuit reaffirmed its 2009 decision in *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009), in which it upheld section 922(g)(1) against a Second Amendment challenge under *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *McCane*, as

in *Vincent*, the Tenth Circuit determined that this Court concluded that § 922(g)(1) was constitutional in *Heller*, where this Court stated that its historical analysis establishing that the Second Amendment confers an individual right to possess firearms did not “cast doubt on longstanding prohibitions on the possession of firearms by felons.” *See McCane*, 573 F.3d at 1047 (quoting *Heller*, 554 U.S. at 626-27).

In the 18 years since this Court decided *Heller*, nothing relevant has changed in the analysis of this issue, according to the Tenth Circuit. In *Vincent*, which now binds all federal courts in that circuit, the court declared that its holding in *McCane* required no re-assessment under the historical analogue test this Court developed—and mandated—in *Bruen* and applied again in *Rahimi* because this Court has only since “reaffirmed” the “presumption” that categorical and permanent bans on firearm possession for felons are constitutional. *See Vincent*, 127 F.4th at 1265 (citing *Rahimi*, 602 U.S. at 682). According to the Tenth Circuit, this Court did not reserve weighing in on § 922(g)(1)’s constitutionality in *Heller* but, instead, exempted that statute from constitutional scrutiny under a framework it later developed.

Unsurprisingly, not all circuits have followed this flawed reasoning, and there is a well-entrenched split on whether § 922(g)(1) is subject to as-applied Second Amendment challenges. Four circuits have either expressly held, or strongly suggested, that § 922(g)(1) is *not* per se constitutional. Six have categorically foreclosed facial and as-applied challenges to § 922(g)(1) under the Second

Amendment. This case presents an excellent vehicle for this Court to resolve that split and resolve an important issue of constitutional law.

REASONS FOR GRANTING THE WRIT

1. 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 large real-world implications. In fiscal year 2024 alone, there were over 6,700 convictions under the statute. *See* U.S. Sent. Comm’n, *QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses* (June 2024), <https://www.ussc.gov/research/quick-facts/section-922g-firearms>. And § 922(g)(1) does not just curtail the Second Amendment rights of those persons convicted of violating it. It applies to nearly everyone who has 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) disarms 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).

The burden on those millions of Americans is substantial: § 922(g)(1)’s ban on firearm possession is effectively permanent. And it applies to 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 individuals of their ability to exercise a fundamental individual right.

2. The circuits are split over whether § 922(g)(1) is categorically constitutional under the Second Amendment.

At least four circuits have rejected the reasoning embraced by the Tenth Circuit that this Court’s dicta in *Heller* resolves the issue and have held or suggested that § 922(g)(1) is unconstitutional in some circumstances. For example, the Third and Fifth circuits have found § 922(g)(1) unconstitutional as-applied to the defendants for lack of a historical basis to permanently disarm those who have been convicted of offenses like the defendants’ predicate offenses, which were relatively minor, non-violent offenses. *See United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) (concluding there was no historical basis to permanently disarm someone once convicted of failing to pay child support); *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc) (making a false statement to obtain food stamps). And the Sixth and D.C. circuits have recognized (or implied) that an as-applied challenge could succeed 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”); *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 defendant with convictions for only “minor or regulatory” offenses).

Conversely, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh circuits have concluded that § 922(g)(1) is categorically constitutional and so immune to *any* as-applied Second Amendment challenge. *See Zherka v. Bondi*, 140 F.4th 68, 90 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc); *Vincent*, 127 F.4th at 1265; *United States v. Dubois*, 139 F.4th 887, 893-94 (11th Cir. 2025). Some of these decisions rely on historical traditions of disarming entire groups deemed dangerous by legislative fiat (including racial and religious minorities). *See, e.g., Zherka*, 140 F.4th at 85-92; *Hunt*, 123 F.4th at 705-07. Others rely on the historical traditions of executing and forfeiting the estates of all felons, violent or not, as purportedly analogous traditions of disarmament. *See, e.g., Jackson*, 110 F.4th at 1127-28; *Duarte*, 137 F.4th at 758. These courts reason that execution or estate forfeiture logically encompass disarmament. Still, others read this Court’s *Heller* dicta as conclusive. *See, e.g., Vincent*, 127 F.4th at 1265; *Dubois*, 139 F.4th at 893.

To be sure, some of these decisions rely on more than one of the bases above to support the conclusion that § 922(g)(1) is constitutional in all applications, *see, e.g., Jackson*, 110 F.4th at 1125-29, but the circuits are not uniform on the basis for concluding that § 922(g)(1) is constitutional in all applications. Some, for example, do not accept this Court’s dicta that laws banning felons from possessing firearms are truly “longstanding” enough to amount to a relevant historical tradition. *See Zherka*, 140 F.4th at 79. And some circuits similarly reason that the historical

tradition of executing felons is not sufficiently analogous to disarmament of felons. *See id.* at 82 (“That felons could be executed when the Bill of Rights was enacted does not mean that anyone convicted of a felony today forfeits all civil rights.”).

This well-developed, intractable circuit split—not only on *whether* § 922(g)(1) is constitutional, but on *the theory by which* it survives constitutional challenge—warrants this Court’s review.

3. The Tenth Circuit’s Second Amendment ruling is wrong on the merits and because it does not apply *Bruen*’s mandatory test.

The Tenth Circuit’s holding that § 922(g)(1) comports with the Second Amendment in any and all of its applications is erroneous. Mr. Nuño-Lopez contends here and contended below that § 922(g)(1) is unconstitutional, both facially and as applied to him, under *Bruen* and *Rahimi*. The Tenth Circuit has erroneously refused to apply the constitutional test established in *Bruen* and applied in *Rahimi*. And that test, applied correctly, establishes that § 922(g)(1) cannot stand.

In *Bruen* and *Rahimi*, 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. 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. *Id.* 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 wrongly 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* 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 (10th Cir. 2009) (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.” See *Vincent*, 80 F.4th 1197. 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 conducted no history-and-tradition analysis. See *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025). And, in Mr. Nuño-Lopez’s case, the Tenth Circuit followed suit, holding that it was bound by circuit precedent. Pet. App. 2a-3a.

It is erroneous for the Tenth Circuit to continue to afford controlling weight to *Heller*'s dicta in the wake of *Bruen* and *Rahimi*. This Court has made clear that the legal tests it imposes are binding and so supersede 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). Indeed, 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. Here, *Bruen* unquestionably established a new, binding test for courts to use when analyzing Second Amendment challenges. It is erroneous for the Tenth Circuit not to apply that test.

Further, under the test established in *Bruen* and applied in *Rahimi*, § 922(g)(1) is unconstitutional. That is because, first, the conduct regulated by § 922(g)(1) is covered by the Second Amendment. The plain text of the Amendment clearly covers possession of a firearm, including the firearm in this case. And Mr. Nuño-Lopez is clearly part of “the people” protected by the 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 Amendment “unambiguously refers to all members of the political community, *not an unspecified subset.*” *Heller*, 554 U.S. at 580 (emphasis added).

Second, the government cannot meet its burden to show a relevantly similar tradition of firearms regulation that would insulate § 922(g)(1) from a Second Amendment attack. 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.

Moreover, the statute is independently unconstitutional because of the extraordinary burden it puts on the Second Amendment right of every person 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 cannot 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.

Even if there were *some* constitutional applications of § 922(g)(1), under the correct test established in *Bruen* and applied in *Rahimi*, the statute is still unconstitutional as applied to Mr. Nuño-Lopez. To the extent there could be constitutional applications of § 922(g)(1), it is the government’s burden to demonstrate where to draw that line. But, at minimum, and based on the factors this Court found critical in *Rahimi*, the government cannot do so for persons like Mr. Nuño-Lopez, who was prosecuted for possession of a handgun—a “quintessential self-defense weapon.” *Heller*, 554 U.S. at 629.

Finally, § 922(g)(1) lacks adequate procedural protections. *See Rahimi*, 602 U.S. at 696–99 (existence of procedural protections before deprivation of Second Amendment right is a relevant consideration when evaluating potential historical analogues). Unlike certain historical firearms regulations (and even § 922(g)(8) in at least some of its applications), § 922(g)(1) does *not* require a court to make any specific finding that a defendant presently poses a “demonstrated threat[] of physical violence.” *See id.* at 698. Nor does the statute require the government to prove that Mr. Nuño-Lopez possessed the firearm for an unlawful purpose. There is an important tradition in this country of protecting an individual’s right to use firearms “for the core lawful purpose of self-defense.” *McDonald v. Chicago*, 561 U.S. 742, 768 (2010). Here, the government never had to prove that Mr. Nuño-Lopez’s possession of the firearm was for a purpose other than self-defense or for an unlawful purpose.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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