

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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**Montique Oshay Hall,**

*Petitioner,*

v.

**United States of America,**

*Respondent.*

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

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PETITION FOR A WRIT OF CERTIORARI

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## **QUESTIONS PRESENTED**

- I. Whether 18 U.S.C. § 922(g)(1) comports with the Second Amendment?

## **PARTIES TO THE PROCEEDING**

Petitioner is Montique Oshay Hall, who was the Defendant-Petitioner in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Montique Oshay Hall seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

### **OPINIONS BELOW**

The opinion of the Court of Appeals was not published but is available at *United States v. Montique Oshay Hall*, No. 25-11261, 2026 WL 1906869 (5th Cir. July 2, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

### **JURISDICTION**

The panel opinion and judgment of the Fifth Circuit were entered on July 2, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL PROVISIONS INVOLVED**

Article I, Section 8 of the United States Constitution provides in relevant part, "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . . ." U.S. Const. Art. I, sec. 8.

The Second Amendment to the U.S. Constitution 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., amend. II.

The Fifth Amendment to the U.S. Constitution provides, in pertinent part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

The Sixth Amendment to the U.S. Constitution provides, in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” U.S. Const. amend. VI.

## **STATUTORY PROVISIONS INVOLVED**

Section 922(g)(1) of Title 18 reads in relevant part:

(g) 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

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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.

18 U.S.C. § 922(g)(1).

Title 18 U.S.C. § 924(a) provides, in pertinent part,

Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 924(a)(2) (2018) (amended 2022).

## LIST OF PROCEEDINGS BELOW

1. *United States v. Montique Oshay Hall*, 4:25-CR-145-O, United States District Court for the Northern District of Texas. Judgment and sentence entered on November 7, 2025. (Appendix B).
2. *United States v. Montique Oshay Hall*, No. 25-11261, 2026 WL 1906869 (5th Cir. July 2, 2026) (unpublished), Court of Appeals for the Fifth Circuit. Judgment affirmed on July 2, 2026. (Appendix A).

## STATEMENT OF THE CASE

### A. Facts and Proceedings in District Court

A grand jury in the Northern District of Texas charged Mr. Hall with unlawfully possessing a firearm. (ROA.9). Mr. Hall, the indictment alleged, possessed a firearm on February 10, 2025, despite a prior conviction for a crime punishable by more than one year in prison. (ROA.9). Mr. Hall, the indictment continued, knew about the prior conviction but possessed the charged firearm anyway. (ROA.9). The one-count indictment thus alleged a violation of—and its language closely tracked—the offense defined at 18 U.S.C. § 922(g)(1). *Compare* (ROA.17), *with* 18 U.S.C. § 922(g)(1).

Mr. Hall filed a motion to dismiss, attacking § 922(g)(1) as an unconstitutional infringement on the right to keep and bear arms. In the motion to dismiss, he specifically addressed the Fifth Circuit’s death-equals-disarmament analysis from *United States v. Diaz*. (ROA.37-41) (citing 116 F.4th 458, 469 (5th Cir. 2025)). Mr. Hall recognized that *Diaz* foreclosed a facial challenge to § 922(g)(1) within the Fifth Circuit but nevertheless pressed the issue to preserve the claim for appellate review. (ROA.40-41). The district court issued an electronic order denying the motion to dismiss. (ROA.4).

The district court went on to impose a term of imprisonment. The Guidelines Manual recommend a sentence somewhere between 33 and 41 months. (ROA.202). Through counsel, Mr. Hall requested a 33-month sentence. (ROA.202). Instead, the district court imposed a 41-month sentence and ordered Mr. Hall to serve a three-year term of supervision. (ROA.205).

On appeal Petitioner argued that 18 U.S.C. § 922(g)(1) is facially unconstitutional in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). The court of appeals disagreed, concluding that the argument was foreclosed by its precedent. [App. A, at \*1-2].

## **REASON FOR GRANTING THIS PETITION**

### **I. This Court should decide the constitutionality of 18 U.S.C. §922(g)(1) under the Second Amendment.**

The Second Amendment guarantees “the right of the people to keep and bear arms.” Yet 18 U.S.C. § 922(g)(1) denies that right, on pain of 15 years imprisonment, to anyone convicted of a crime punishable by a year or more. Despite this facial conflict between the statute and the text of the constitution, the courts of appeals uniformly rejected Second Amendment challenges to the statute for many years. *See United States v. Moore*, 666 F.3d 313, 316-317 (4th Cir. 2012) (collecting cases).

This changed, however, following *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and then *United States v. Rahimi*, 602 U.S. 680 (2024). But Circuit Courts of Appeals applying *Bruen* and *Rahimi* have adopted different approaches to testing 18 U.S.C. § 922(g)(1) against Second Amendment challenges. Some circuits see no need to conduct *Bruen*’s text-and-history analysis in the § 922(g)(1) context, relying instead on this Court’s dicta predating *Bruen*. Others apply *Bruen*’s text-and-history framework but disagree about whether felons are part of “the people” protected by the Second Amendment. The courts of appeals have also split on the traditions that justify § 922(g)(1), and they vary as to whether the statute

is vulnerable to as-applied challenges. The Court needs to clarify the Second Amendment’s relationship to § 922(g)(1).

**a. The Legal Framework of *Bruen* and *Rahimi***

In *Bruen*, the Court held that where the text of the Second Amendment covers regulated conduct, the government may defend that regulation only by showing it comports with the nation’s historical tradition of gun regulation. 597 U.S. at 17. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *Id.* The opinion began with a comparison between the Second Amendment’s text and the challenged law. The State of New York criminalized the unlicensed possession of a firearm in the home and on the street, and any New Yorker who wanted to obtain a license to carry a firearm outside the home needed to make a showing of “proper cause.” *Id.* at 1 (quoting N.Y. Penal Law Ann. § 400.00(2)(f)). This Court began by finding a conflict between this law and the Second Amendment’s plain text. The right to bear arms, this Court explained, “refers to the right to wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Id.* at 32 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008)). Since the “definition of ‘bear’ naturally encompasses public carry,” the Second Amendment “presumptively guarantee[d]” the petitioner’s “right to ‘bear’ arms in public for self-defense.” *Id.* at 32-33.

The Court then turned to history. The plain-text analysis established a conflict between New York’s licensing regime and the Second Amendment, so the burden

shifted to the State of New York to establish the challenged law’s consistency with historical firearm regulations. On this topic, the Court began with a word of caution: “[N]ot all history is created equal.” *Id.* at 34. “Constitutional rights are,” after all, “enshrined with the scope they were understood to have when the people adopted them.” *Id.* at 34 (quoting *Heller*, 554 U.S. at 634-35). Given that reality, “historical evidence that long predates” the Second Amendment’s enactment “may not illuminate the scope of the right[s]” at issue “if linguistic or legal conventions changed in the intervening years.” *Id.* This Court similarly cautioned “against giving postenactment history more weight than it can rightly bear.” *Id.* at 35. “[T]o the extent later history contradicts what the text says, the text controls.” *Id.* at 36.

With those rules in mind, this Court surveyed “the Anglo-American history of public carry” and ultimately declared New York’s proper-cause licensing regime unconstitutional. *Id.* at 70. Sure enough, various laws “limited the intent for which one could carry arms, the manner by which one carried arms, [and] the exceptional circumstances under which one could not carry arms,” but the historical evidence established no tradition of “prohibit[ing] the public carry of commonly used firearms for personal defense.” *Id.* New York’s argument from history failed, and this Court held the challenged licensing regime to be an unconstitutional infringement on the right to bear arms. *Id.* at 70-71.

In *Rahimi*, this Court held that 18 U.S.C. §922(g)(8)(C)(i), which prohibits possession of a firearm based on the existence of a restraining order issued after a state court has found one poses “a credible threat to the physical safety” of another

person, comports with the Second Amendment. 602 U.S. at 690. The Court resolved Mr. Rahimi’s claim by comparing “the tradition the surety and going armed laws represent” to § 922(g)(8)(C)(i). *Id.* at 699. All three, this Court explained, “restrict[] gun use to mitigate demonstrated threats of physical violence.” *Id.* All three “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* All three were also temporary. *Id.* at 698. The Court emphasized its limited holding, which was “only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Id.* at 702.

That reasoning raises serious questions about the constitutionality of 18 U.S.C. §922(g)(1). Section (g)(1) imposes a permanent, not a temporary, firearm disability. And that disability can arise from all manner of criminal convictions that do not involve a judicial finding of future physical dangerousness.

**b. The lower courts have split on the Second Amendment’s text, history, and application to § 922(g)(1) prosecutions today.**

To start, some circuits see no need to conduct *Bruen*’s text-and-history analysis in the § 922(g)(1) context, relying instead on Supreme Court dicta predating *Bruen*. Others apply *Bruen*’s text-and-history framework but disagree about whether felons are part of “the people” protected by the Second Amendment. The courts of appeals have also split on the traditions that justify § 922(g)(1), and they vary as to whether the statute is vulnerable to as-applied challenges.

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits all “have upheld the categorical application of § 922(g)(1) to all felons.” *United States v. Duarte*,

137 F.4th 743, 747–48 (9th Cir. 2025) (citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025)); *Zherka v. Bondi*, 140 F.4th 68, 75, 78–79 (2d Cir. 2025). Each placed significant weight on this Court’s statement in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008), that “prohibitions on the possession of firearms by felons” are “presumptively lawful.” *See Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29; *Vincent*, 127 F.4th at 1265; *Dubois*, 94 F.4th at 1293; *Duarte*, 137 F.4th at 750–52; *Zherka*, 140 F.4th at 75 (relying on pre-*Bruen* precedent that cited *Heller*’s presumptively lawful language to conclude that the statute is facially constitutional).

The Second, Fourth, Eighth and Ninth Circuits went even farther. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *See Hunt*, 123 F.4th at 704–08. The Eighth Circuit reached the same end point based on the history alone. *See Jackson*, 110 F.4th at 1126–29. The en banc Ninth Circuit “agree[d] with the Fourth and Eighth Circuits that...historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons.” *Duarte*, 137 F.4th at 761 (citing *Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706).<sup>1</sup> The Second Circuit later joined the ranks on this side of the split. *Zherka*, 140 F.4th at 78–79.

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<sup>1</sup> In *Duarte*, the en banc Ninth Circuit overruled a panel opinion holding the statute unconstitutional as applied to a person with prior convictions for vandalism, drug possession, and evading arrest. *See United States v. Duarte*, 101 F.4th 657, 661–63 (9th Cir.), *reh’g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *on reh’g en banc*, 137 F.4th 743 (9th Cir. 2025).

On the other end, the Sixth Circuit has endorsed that “§ 922(g)(1) might be unconstitutional as applied to at least *some* felons.” *Duarte*, 137 F.4th at 748 (citing *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024)). “[T]he Third Circuit has held that § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps.” *Duarte*, 137 F.4th at 748 (citing *Range v. Att’y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)). And the Fifth Circuit has reversed § 922(g)(1) convictions on multiple as-applied grounds. *See United States v. Hembree*, 165 F.4th 909, 910 (5th Cir. 2026); *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025); *United States v. Mitchell*, 160 F.4th 169, 173 (5th Cir. 2025); *United States v. Doucet*, No. 24-30656, 2025 WL 3515404 (5th Cir. Dec. 8, 2025). *See also United States v. Diaz*, 116 F.4th 458, 469–70 & n.4 (5th Cir. 2024) (first opening the door to as-applied constitutional challenges post-*Bruen*).

The Third, Fifth, and Sixth Circuits agree *Heller*’s “presumptively lawful” dicta could not “supplant the most recent analysis set forth by the Supreme Court in *Rahimi*....” *Diaz*, 116 F.4th at 466. *See also Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit alone endorsed capital punishment at the founding as the dispositive historical analogue, *see Diaz*, 116 F.4th at 467–70; the Third Circuit, for its part, found the historical availability of the death penalty irrelevant, *see Range*, 124 F.4th at 231; *accord Kanter v. Barr*, 919 F.3d 437, 461–62 (7th Cir. 2019), *abrogated by Bruen* (Barrett, J., dissenting). Instead, the linchpin for the Third Circuit’s constitutional holding relied on the lack of evidence that the claimant “poses a physical danger to others.” *Range*, 124 F.4th at 232.

The Sixth Circuit adopted a mixed approach: It blessed “governments label[ing] whole classes as presumptively dangerous,” *Williams*, 113 F.4th at 657, but it “refuse[d] to defer blindly to § 922(g)(1) in its present form,” *Range*, 124 F.4th at 230 (citing *Williams*, 113 F.4th at 658–61). According to the Sixth Circuit, “history shows that § 922(g)(1) might be susceptible to an as-applied challenge” by individuals who show they are “not dangerous....” *Williams*, 113 F.4th at 657. The Fifth Circuit later agreed in part with this analysis. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the circuits departed on the scope of the inquiry. Compare *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025), with *Williams*, 113 F.4th at 659–60. The Third Circuit aligns with the Sixth Circuit on this point. *Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025). Thus, the Court needs to clarify the Second Amendment’s relationship to § 922(g)(1).

## CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 30th day of September, 2026.

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