

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2026

EMIL MARTIN LUNDSTROM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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SUBMITTED: October 9, 2026

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1)'s categorical ban on the possession of firearms by felons is unconstitutional as applied to a defendant with non-violent predicate offenses underlying his conviction.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the District of Montana and the United States Court of Appeals for the Ninth Circuit:

United States v. Emil Martin Lundstrom, No. 24-6004 (9th Cir. June 1, 2026)

United States v. Emil Martin Lundstrom, No. CR-22-108-GF-BMM (D. Mont.
2024)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

TABLE OF CONTENTS

	<u>Page(s)</u>
QUESTION PRESENTED.....	ii
RULE 14.1(b)(iii) STATEMENT.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	v
PARTIES TO THE PROCEEDINGS.....	1
JURISDICTION AND TIMELINESS OF THE PETITION.....	1
STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	2-4
REASONS FOR GRANTING THE PETITION	4-6
CONCLUSION.....	6
Appendix A – United States Court of Appeals for the Ninth Circuit <i>United States v. Emil Martin Lundstrom</i> , 2026 WL 2892337 (9 th Cir. June 1, 2026).....	1a

TABLE OF AUTHORITIES

<u>Supreme Court Opinions</u>	<u>Page(s)</u>
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 142 S. Ct. 2111 (2022)	4, 5
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1, 142 S. Ct. 2111 (2022)	3, 4
<i>United States v. Rahimi</i> , 144 S. Ct. 1889 (2024)	5
<i>United States v. Rahimi</i> , 602 U.S. 680, 144 S. Ct. 1889 (2024)	4
 <u>U.S. Constitution</u>	
U.S. Const. Amend. II	2
 <u>Ninth Circuit Opinions</u>	
<i>United States v. Duarte</i> , 101 F.4th 657 (9th Cir. 2024)	4
<i>United States v. Duarte</i> , 137 F.4th 743 (9th Cir. 2025)	3, 4, 5
 <u>Federal Court Opinions</u>	
<i>Range v. AG U.S.</i> , 124 F.4th 218 (3d Cir. 2024)	5
<i>United States v. Cockerham</i> , 162 F.4th 500 (5th Cir. 2025)	5
<i>United States v. Hembree</i> , 165 F.4th 909 (5th Cir. 2026)	5
<i>United States v. Jackson</i> , 110 F.4th 1120 (8th Cir. 2024)	5
 <u>United States Code</u>	
18 U.S.C. § 761	5
18 U.S.C. § 922(g)(1)	ii, 3, 4, 5
18 U.S.C. § 924(d)	3
28 U.S.C. § 1254(1)	2
 <u>Supreme Court Rules</u>	
RULE 14	iii, iv
Rule 14.1(b)(i)	1

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**PETITION FOR WRIT OF CERTIORARI TO THE
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The Petitioner, Emil Martin Lundstrom, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case

Parties to the Proceeding

Pursuant to this Court's Rule 14.1(b)(i), petitioner submits that there are no parties to the proceeding other than those named in the caption of the case. Petitioner Emil Martin Lundstrom was the defendant in the district court and the appellant below. Respondent United States of America was the plaintiff in the district court and the appellee below.

Jurisdiction and Timeliness of the Petition

The Ninth Circuit's unpublished order upholding the district court's order denying Lundstrom's motion to dismiss was filed on June 1, 2026. The Ninth Circuit's order is unpublished but is available electronically at 2026 WL 2892337 (9th Cir. June 1, 2026). It is also included in

the appendix. This petition is untimely. Lundstrom nevertheless invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) to consider and rule on his arguments.

Statutory and Constitutional Provisions Involved

The Second Amendment to the United States Constitution provides as follows:

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.

Title 18, Section 922(g)(1) provides that it is unlawful for any person:

. . . who has been convicted in any court of, a crime punishable by a term of imprisonment exceeding one year . . . to possess in or affecting commerce, any firearm or ammunition; or to receive any firearms or ammunition which has been shipped or transported in interstate or foreign commerce.

Statement of the Case

A. District Court Proceedings

1. Factual Background

The following facts are derived from the presentence report and the Government's Offer of Proof.

In October of 2017, Lundstrom was sentenced in state court to ten years with five years suspended following his conviction for eight counts of felony theft. Seven years later, on September 6, 2024, his state probation officer learned that he was suspected of stealing from his employer, Big Equipment Company. When his probation officer spoke with Lundstrom's employer, he was informed by his employer's sister that Lundstrom had some empty bullet casings in his work vehicle. Acting on this report, the vehicle was searched and officers found several 9mm rounds.

At that point, Lundstrom was escorted back to his home, where his probation officer, along with several police officers searched for evidence of theft and firearm possession. During the search, the officers found 98 firearms and hundreds of rounds of ammunition. After the search

was conducted, Lundstrom was interviewed. During the interview, he informed law enforcement that he acquired most of the guns before he was convicted of theft in 2017. He did, however, admit that some of the guns were purchased while he was on state probation.

2. Procedural Background

In December of 2024, the Government secured an Indictment charging Lundstrom with being a prohibited person in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). The Indictment also sought forfeiture of Lundstrom's guns and ammunition under 18 U.S.C. § 924(d). Following arraignment, Lundstrom filed a motion to dismiss the Indictment pursuant to *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111 (2022). (CR 16).

After entering into a conditional plea agreement in which he reserved the right to appeal an adverse ruling on his motion to dismiss, Lundstrom pled guilty to the gun possession charge and admitted the forfeiture allegation. After his plea agreement had been signed, but three days before he entered his guilty plea, the Ninth Circuit issued its en banc decision in *Duarte*, 137 F.4th 743 (*Duarte II*). In *Duarte*, the Ninth Circuit upheld § 922(g)(1) as a categorical disarmament, constitutionally applicable to nonviolent felons under the Second Amendment. Based on this decision, the district court denied Lundstrom's motion to dismiss.

Lundstrom was sentenced to a term of 48 months imprisonment followed by three years of supervised release. The court did not impose a fine or require payment of restitution, but Lundstrom was required to pay the standard \$100 special assessment.

B. Ninth Circuit Proceedings

On appeal, Lundstrom raised a single issue -- Whether the firearm prohibition set forth in 18 U.S.C. § 922(g)(1) is both facially unconstitutional and unconstitutional as applied to a non-

violent felon such as himself. In response to his arguments, the Government filed a motion for summary affirmance based on the Ninth Circuit's decision in *Duarte II*. The Ninth Circuit agreed with the Government, found that Lundstrom's arguments were foreclosed, and granted its motion for summary affirmance.

Reasons for Granting the Petition

Following this Court's decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680, 144 S.Ct. 1889 (2024), defendants nationwide raised claims challenging the constitutionality of the felon-in-possession prohibition set forth in 18 U.S.C. § 922(g)(1). Last year, the Ninth Circuit considered one of these challenges and upheld the felon-in-possession ban. In doing so, it held that categorical disarmament of all felons, including those convicted of only non-violent crimes, is constitutional under the Second Amendment. *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc) (*Duarte II*).

Under *Bruen*, modern day gun regulations must be "consistent with the Second Amendment's text and historical understanding." *Bruen*, 142 S.Ct. at 2131. In interpreting *Bruen*, lower courts generally analyzed Second Amendment challenges by asking whether the Amendment's plain text covers (1) the individual, (2) the type of arm, and (3) the individual's proposed conduct. *United States v. Duarte*, 101 F.4th 657, 670-71 (9th Cir. 2024) (*Duarte I*). If these questions are analyzed in the affirmative, the government bears the burden of identifying a "well-established and representative historical analogue" that justifies a modern regulation. *Bruen*, 142 S.Ct. at 2133.

Following *Bruen*, Duarte challenged his firearms conviction, arguing that "§ 922(g)(1) is unconstitutional as applied to" nonviolent felons. Initially, a three-judge panel agreed with his

argument and vacated his conviction. But the government moved for rehearing en banc. The government's motion was granted but, before argument, this Court decided *Rahimi* which held that the proper historical inquiry was principles-based and it did not require identifying historical twins for modern regulation, but merely "consistent . . . principles . . . underpin[ning both] our regulatory tradition " and the law at issue. *Rahimi*, 144 S.Ct. at 1898.

Relying on *Bruen* and *Rahimi*, the en banc court affirmed Duarte's conviction. In doing so, the majority relied upon a "greater-includes-the-lesser principle." Because felons could historically be sentenced to "capital punishment and estate forfeiture," the majority concluded the "lesser restriction of permanent disarmament [was] also permissible." *Duarte II*, 137 F.4th at 758. The majority went on to note that historical tradition established that laws disarming groups considered dangerous were permissible at the time of the Second Amendment's adoption. Because §922(g)(1) seeks to prevent the "special category of misuse" of firearms that felons present as a class, categorical disarmament is constitutional. *Id.* at 761.

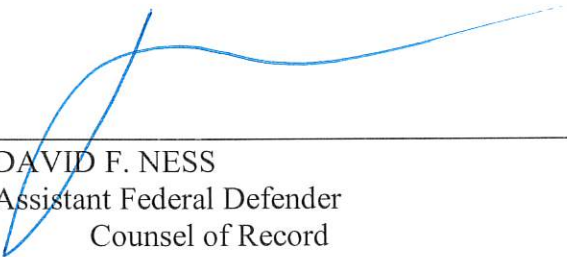
Duarte II has created a circuit split over whether § 922(g)(1) is constitutional as applied to non-violent offenders. On one side of the ledger, the Eighth Circuit has agreed with the Ninth Circuit and has broadly held that historical traditions of disarming dangerous individuals supports categorical or facial enforcement. *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024). On the other side of the ledger, the Fifth Circuit has held that §922(g)(1) is unconstitutional as applied to non-violent felons. *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026). (defendant's underlying felony was simple possession of methamphetamine); *Cockerham*, 162 F.4th 500. And the Third Circuit has held the ban unconstitutional as applied to an individual with a past nonviolent conviction for welfare fraud. *Range v. Attorney General*, 124 F.4th 218 (3rd Cir. 2024).

This Court should grant certiorari in this case and resolve this circuit split. A permanent ban from firearm possession should not be applied to nonviolent offenders such as Lundstrom.

Conclusion

Petitioner, Emil Martin Lundstrom, respectfully requests that the Court grant this petition for certiorari and reverse the court of appeals.

Respectfully submitted,



DAVID F. NESS
Assistant Federal Defender
Counsel of Record

October 9, 2026

APPENDIX A

**United States Court of Appeals
for the Ninth Circuit**

Court Order

United States v. Emil Martin Lundstrom, 2026 WL 2892337 (9th Cir. June 1, 2026)

Filed June 1, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 1 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMIL MARTIN LUNDSTROM, AKA
Marty,

Defendant - Appellant.

No. 25-6004

D.C. No.

4:24-cr-00102-BMM-1

District of Montana,

Great Falls

ORDER

Before: S.R. THOMAS, MILLER, and H.A. THOMAS, Circuit Judges.

The motion (Docket Entry No. 12) for summary affirmance is granted. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). As appellant concedes, his Second Amendment challenge to his conviction is foreclosed. *See United States v. Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc), *cert. denied*, __ S. Ct. __, 2026 WL 135692 (U.S. Jan. 20, 2026).

AFFIRMED.