No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

JOHNELL LEE CLEVELAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Ryan Costello
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204
(503) 326-2123

Attorney for Petitioner

QUESTION PRESENTED

Whether the Second Amendment permits the government to disarm Petitioner Johnell Cleveland permanently and penalize him for exercising his Second Amendment constitutional rights because he has been convicted of nonviolent felony offenses.

PARTIES TO THE PROCEEDINGS

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 Johnell Cleveland 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.

RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the United States District Court of Oregon and the United States Court of Appeals for the Ninth Circuit:

- United States Court of Appeals: *United States v. Cleveland*, Nos. 24-3251, 24-3253, 24-3256 (Consolidated) (9th Cir.)
- United States District Court: *United States v. Cleveland*, No. 3:22-cr-00095-MO (D. Or.)

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The petitioner, Johnell Lee Cleveland, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on July 30, 2026. Petitioner exercised his Second Amendment right to possess a firearm, and the government prosecuted and penalized him under 18 U.S.C. § 922(g)(1) for exercising his constitutional rights. Petitioner's prosecution presents an important and recurring question on which there is a well-defined split among nine circuit courts: is the federal law categorically prohibiting firearm acquisition and possession by individuals

who have been convicted of an offense punishable by over a year of imprisonment susceptible to as-applied challenges under the Second Amendment?

The Ninth Circuit below, along with five of its sister courts, held that the answer is no by summarily affirming Petitioner's conviction and finding Petitioner's challenge foreclosed by *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc). However, three courts of appeals have held precisely the opposite, allowing as applied challenges to 18 U.S.C. § 922(g)(1). The Ninth Circuit's summary affirmance and its opinion in *Duarte*, though purported to apply *Bruen*, were fundamentally flawed and reached the wrong answer about whether people can make as applied challenges to their prosecutions under 18 U.S.C. §922(g)(1). This Court should grant certiorari to resolve the circuit split and to provide further guidance regarding the proper application of this Court's Second Amendment precedents to courts of appeals that require this Court's guidance. Until this Court resolves the split and provides more guidance, challenges to 18 U.S.C. § 922(g)(1) will continue because Americans will be subject to different standards of prosecution depending on where they live and not their individual conduct.

Opinions Below

On July 30, 2026, the Ninth Circuit filed its Order (Appendix A) affirming the district court's Judgment in a Criminal Case. The district court entered its Judgment on May 7, 2024 (Appendix B).

Jurisdictional Statement

The Ninth Circuit entered its final order granting the Motion for Summary Affirmance in this case on July 30, 2026. This petition is timely under Supreme Court Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Relevant Statutory And Constitutional Provisions

U.S. Const. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

18 U.S.C. § 922(g)(1)

* * *

(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;

…

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

Petitioner Johnell Cleveland pleaded guilty to being a prohibited person possessing a firearm because of his prior felony convictions in violation of 18 U.S.C. § 922(g)(1) and was sentenced on May 7, 2024. App. 3a. Petitioner's prior felony convictions are nonviolent: conspiracy to possess with intent to distribute and distribution of a controlled substance, possession of an unregistered firearm, and money laundering. App. 22a-23a. On May 21, 2024, Petitioner filed his appeal challenging his conviction for being a prohibited person in possession of a firearm. App. 23a. Petitioner challenged 18 U.S.C. § 922(g)(1) as unconstitutional as applied to Petitioner because Petitioner's prior felony convictions are nonviolent and lack comparable historical analogues to felony crimes during the founding generation. App. 20a.

Petitioner argued that the Ninth Circuit in *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc), incorrectly found that the United States has sufficiently equivalent regulations to 18 U.S.C. § 922(g)'s complete and permanent disarmament of Americans with felony convictions. App. 30a. Petitioner pointed to the Fifth Circuit's decision in *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) and the Third Circuit's decision in *Range v. Attorney General United States*, 124 F.4th 218, 231(3rd Cir. 2024) as properly implementing this Court's historical analysis in comparison to the Ninth Circuit's flawed approach in rejecting Second Amendment as applied challenges to prosecutions under 18 U.S.C. § 922(g)(1). App. 24a. The government moved for summary affirmance of Petitioner's conviction based on the holding in *United States v.*

Duarte, 137 F. 4th 743, 748 (9th Cir. 2025) (en banc), and *United States v. Martinez*, 169 F.4th 1147, 1157 (9th Cir. 2026). App. 11a. The Ninth Circuit rejected Petitioner's appeal, summarily affirming Petitioner's conviction. App. 2a.

However, the Ninth Circuit's decision did not resolve the current circuit split about the constitutionality of prosecutions under 18 U.S.C. § 922(g)(1). App. 2a. Different circuit courts have reached different results on the questions of the constitutionality of prosecutions under 18 U.S.C. § 922(g)(1). *See United States v. Perrote*, No. 25-cr-130-WMC, 2026 WL 3082836, *10 (W.D. Wis. Oct. 15, 2026).

Reasons For Granting The Petition

I. The courts of appeals are split over whether Section 922(g)(1) is susceptible to as-applied challenges by nonviolent offenders leading to disparate prosecutions of Americans living in different states.

Six courts of appeals have held that 18 U.S.C. § 922(g)(1) is constitutional under the Second Amendment and not amenable to any form of as-applied challenge. The Second Circuit, Fourth Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit, and Eleventh Circuit, have all rejected as-applied challenges under the Second Amendment. Specifically, *Zherka v. Bondi*, 140 F.4th 68, 96 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (Jan. 20, 2026); *United States v. Hunt*, 123 F.4th 697, 707-08 (4th Cir. 2024), *cert. denied*, No. 24-6818, 145 S. Ct. 2756 (2025); *United States v. Jackson*, 110 F.4th 1120, 1125-26 (8th Cir. 2024), *cert. denied*, No. 24-6517, 145 S. Ct. 2708 (May 19, 2025); *United States v. Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc), *cert. denied*, No. 25-425, 2026 WL 135692 (Jan. 20, 2026); *Vincent v. Bondi*, 127 F.4th 1263,

1265-66 (10th Cir. 2025), *cert. denied*, No. 24-1155, 146 S. Ct. 1768 (2026); and *United States v. Dubois*, 139 F.4th 887, 893-94 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (Jan. 20, 2026).

However, the Third and Fifth Circuits have held 18 U.S.C. § 922(g)(1) unconstitutional as applied to Americans with nonviolent felony convictions, while the Sixth Circuit also utilized the as applied analysis to uphold the lower court decision. In *Range v. Attorney General*, the Third Circuit held that "the Government has not shown that the principles underlying the Nation's historical tradition of firearms regulation support depriving Range of his Second Amendment right to possess a firearm." 124 F.4th 218, 232 (3d Cir. 2024) (en banc). Contrary to the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, the Third Circuit found there is no "longstanding history and tradition of depriving people like Range of their firearms," given his felony conviction was a fraud offense. *Id.*

In *United States v. Diaz*, the Fifth Circuit held Section 922(g)(1) was constitutional as applied to an American previously convicted of vehicular theft and evading arrest with a vehicle. 116 F.4th 458, 462 (5th Cir. 2024), *cert denied*, No. 24-6625, 145 S. Ct. 2822 (June 23, 2025). Then, in *United States v. Cockerham*, the Fifth Circuit found the 18 U.S.C. § 922(g)(1) prosecution unconstitutional as applied to Cockerham because the Firth Circuit was "unable to find a historical basis for disarming Cockerham for the rest of his life, just because he was once convicted of failure to pay child support." *United States v. Cockerham*, 162 F.4th 500, 510 (5th Cir. 2025).

Similarly, the Sixth Circuit, in *United States v. Williams*, found that "history shows that § 922(g)(1) might be susceptible to an as-applied challenge in certain cases," because history demonstrated only that governments could "disarm[] groups that they deemed to be dangerous" and that individuals in those groups "could demonstrate that their particular possession of a weapon posed no danger to peace." 113 F.4th 637, 657 (6th Cir. 2024). The court held "that § 922(g)(1) is constitutional on its face and as applied to dangerous people." *Id.* at 663-63. It rejected Williams's as applied challenge to his prosecution under 18 U.S.C. § 922(g)(1) because the court found him to be dangerous. *Id.* at 661-62.

The circuit courts will remain split on whether 18 U.S.C. § 922(g)(1) prosecutions are categorically constitutional or whether the prosecutions are subject to as applied constitutional challenges. This means the state that an American lives in will determine whether the federal government can prosecute that American for exercising his, her, or their constitutional right to bear arms. The longer this circuit split exists, and possibly grows as other circuit courts decide the issue, the more Americans will be subject to a two-tiered system of justice where Americans' prosecutions under 18 U.S.C. § 922(g)(1) will not hinge on his, her, or their conduct, but rather what state he, she, or they live in. While some Americans will be able to exercise their constitutional rights, others will be prosecuted and imprisoned. The Supreme Court needs to resolve this circuit split.

II. The Ninth Circuit incorrectly summarily affirmed the district court's judgment and incorrectly decided *Duarte*.

This Court delineated the legal standard for governmental laws regulating firearms in *New York State Rifle & Pistol Association, Inc. v. Bruen*. 597 U.S. 1, 12, 142 S. Ct. 2111, (2022). Specifically, "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. Petitioner's conduct was clearly covered by the plain text of the Second Amendment because he possessed the firearm in his car in public spaces. *See* App. 27a. Because the government cannot provide comparable historical analogues from the founding generation to Petitioner's nonviolent felony convictions, his prosecution and conviction under 18 U.S.C. § 922(g) is unconstitutional as applied to him.

The Ninth Circuit incorrectly found that the United States' "historical tradition of categorically disarming those whom the legislature determines to represent a 'special danger of misuse' also supports the application of § 922(g)(1) to felons, like Duarte, who assert that their felonies were non-violent." *Duarte*, 137 F. 4th at 761. While the Ninth Circuit rejected the as applied challenge to *Duarte*, it also categorically rejected as applied challenges to all people with nonviolent felony convictions. *Id.* at 748-49, 762. The court also incorrectly summarily affirmed Petitioner's conviction based on *Duarte*.

App. 2a. The Petitioner's nonviolent felony convictions lack any comparable analogue to felony convictions for the Founding Generation.

The Ninth Circuit's reliance on the United States' historical regulations of the death penalty and estate forfeiture as comparable analogues was misplaced. *See Duarte*, 137 F. 4th at 756. The death penalty and estate forfeiture are not relevantly similar historical analogues to the lifetime disarmament under 18 U.S.C. § 922(g). *United States v. Williams*, 807 F.Supp.3d 853, 860-61 (S.D. Ill. 2025). As the district court in *Williams* noted, "the consequences imposed by these laws, though severe, 'do[ ] not suggest that the particular (and distinct) punishment at issue – lifetime disarmament – is rooted in our Nation's history and tradition." *Id.* (citing *Range*, 124 F.4th at 231; *Range v. Att'y Gen. United States of Am.*, 69 F.4th 96, 105 (3d Cir. 2023) (en banc) (vacated by *Garland v. Range*, 144 S. Ct. 2706, 2707 (2024)).

And the Ninth Circuit incorrectly relied on class or status-based restrictions on firearm possession for Non-Anglican Protestants, Catholics, Black Americans, Native Americans, and to colonists refusing to swear an oath of loyalty to the United States. *Duarte*, 137 F.4th at 759. These restrictions were conditional and temporary because a person's religion could change or they could swear an oath of loyalty, and these regulations were blatantly racist and prejudiced. These are not comparable analogues to 18 U.S.C. § 922(g)(1).

The additional regulations cited by the Ninth Circuit that emerged in the nineteenth century also are not comparable analogues. Specifically, (1) the sale of

firearms to, or the possession of firearms by, individuals below specified ages; (2) the sale of firearms to those of unsound mind; (3) the possession of firearms by those who were intoxicated; and (4) the possession of weapons by certain vagrants—known as "tramps." *Duarte*, 137 F.4th at 759-60. These restrictions were conditional or temporary, which is categorically different than 18 U.S.C. § 922(g)(1)'s lifetime prohibition on possessing a firearm.

In sum, there are no comparable historical analogues justifying a categorical prohibition on a person's right to exercise their Second Amendment constitutional rights. Rather, historical regulations justify an as applied analysis of whether a person is prohibited from possessing a firearm for having violent felony convictions. Petitioner only has nonviolent felony convictions that lack comparable analogues to the Founding Generation's list of felony convictions and shall prevail on an as applied challenge to his conviction under 18 U.S.C. § 922(g)(1).

Conclusion

For the foregoing reasons, the Court should issue a writ of certiorari.

Respectfully submitted this 30th day of October, 2026.

s/Ryan Costello
Ryan Costello
Attorney for Petitioner