No. 26-

IN THE

Supreme Court of the United States

DAVID PAUL MARTINEZ,

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 A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(9)'s permanent, lifetime ban on firearm possession by domestic violence misdemeanants is unconstitutional as applied to individuals whose misdemeanor conviction involved nonviolent conduct?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner David Paul Martinez was convicted of two counts of possessing firearms in violation of 18 U.S.C § 922(g)(9). He was the defendant-appellant in the proceedings below.

Respondent is the United States. There are no corporate parties involved in this case.

RULE 14.1(b)(iii) STATEMENT

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

Order Denying Motion to Dismiss, *United States* v. *Martinez*, No. 17-cr-00257-VC-1 (N.D. Cal. Feb. 2, 2023), ECF No. 121.

United States v. *Martinez,* 169 F.4th 1147 (9th Cir., 2026).

No other proceedings relate directly to this case.

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PETITION FOR A WRIT OF CERTIORARI

David Paul Martinez respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is reported at 169 F.4th 1147 and reproduced at Pet. App. 3a–21a. The unreported order denying panel rehearing and rehearing *en banc* is reproduced at Pet. App. 1a. The district court's order is reproduced at Pet. App. 43a.

STATEMENT OF JURISDICTION

The Ninth Circuit entered judgment on March 18, 2026, and denied a timely rehearing petition on July 23, 2026. On October 16, Justice Kagan extended the time to file this petition to November 20, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides that:

> 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)(9) provides that:

> It shall be unlawful for any person . . .
>
> (9) who has been convicted in any court of a misdemeanor crime of domestic violence, 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. § 921(a)(33) provides in relevant part:

(A) Except as provided in subparagraphs (B) and (C), the term "misdemeanor crime of domestic violence" means an offense that--

(i) is a misdemeanor under Federal, State, Tribal, or local law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim.

. . .

[(B)](ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person

may not ship, transport, possess, or receive firearms.

(C) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence against an individual in a dating relationship for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had firearm rights restored unless the expungement, pardon, or restoration of rights expressly provides that the person may not ship, transport, possess, or receive firearms: *Provided*, That, in the case of a person who has not more than 1 conviction of a misdemeanor crime of domestic violence against an individual in a dating relationship, and is not otherwise prohibited under this chapter, the person shall not be disqualified from shipping, transport, possession, receipt, or purchase of a firearm under this chapter if 5 years have elapsed from the later of the judgment of conviction or the completion of the person's custodial or supervisory sentence, if any, and the person has not subsequently been convicted of another such offense, a misdemeanor under Federal, State, Tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, or any other offense that would disqualify the person under section 922(g) . . . . Restoration under this subparagraph is not available for a current or former spouse, parent, or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or a person similarly situated to a spouse, parent, or guardian of the victim.

INTRODUCTION

The question presented is the subject of an acknowledged 4-1-2 circuit split. The split results from this Court's most recent Second Amendment decisions, which point strongly towards allowing as-applied challenges to prevent the Second Amendment right from becoming a "second-class right." *McDonald* v. *City of Chicago*, 561 U.S. 742, 780 (2010).

The question is critically important to Mr. Martinez, who was convicted of nonviolent conduct under a California statute that criminalizes offensive touching. Yet the Ninth Circuit below held that § 922(g)(9) is facially constitutional in all its applications and as-applied challenges are not available, leaving courts and litigants no room to question "Congress's determination that members of a class of convicted criminals are dangerous." See *United States* v. *Martinez*, 169 F.4th 1147, 1157 (9th Cir. 2026).

At least four circuits recognize as-applied challenges and have conducted some form of individualized analysis when ruling on such challenges. See, *e.g.*, *United States* v. *Jacobs*, 166 F.4th 395, 399 (4th Cir. 2026) (remanding an as-applied challenge to the lower court to develop a factual record of the defendant's criminal record and circumstances).

At least two circuits and three states have upheld the facial constitutionality of § 922(g)(9) and similar bans without foreclosing the possibility of future as-applied challenges. See, *e.g.*, *United States* v. *Minor*, 165 F.4th 616, 623 (1st Cir. 2026), *cert. denied,* 2026 WL 3384188 (2026) ("Because we conclude that the basis for Minor's as-applied challenge fails anyway, we reserve [the question whether § 922(g)(9) is constitutional in all applications] for another day.").

The Ninth Circuit's categorical rejection of as-applied challenges to the lifetime firearms ban for domestic violence misdemeanants, including those whose convictions did not involve violent conduct, cannot be squared with history, tradition, and this Court's Second Amendment precedent.

STATEMENT OF THE CASE

1. In 2012, Petitioner David Paul Martinez pushed his girlfriend into a door during a disagreement over his desire to take their baby to visit his family. Concerned for her safety, she called the police. When officers arrived, she did not claim she was hurt, nor did she report any history of domestic violence between them. Mr. Martinez was convicted of violating Cal. Pen. Code § 243(e)(1), California's misdemeanor domestic battery statute.

At the time, Mr. Martinez's conviction under Cal. Pen. Code § 243(e)(1), which criminalizes offensive touching, did not qualify as a misdemeanor crime of domestic violence. See Judicial Council of California Criminal Jury Instructions (CALCRIM) No. 841 (2026); *United States* v. *Belless*, 338 F.3d 1063 (9th Cir. 2003), *abrogated by United States* v. *Castleman*, 572 U.S. 157 (2014). It was not until two years after the incident that the Court interpreted "force" in § 922(g)(9) to encompass offensive touching. Because of this change in the law, Mr. Martinez never received notice that he had become a member of a class of persons who are prohibited from possessing firearms.

Five years after the incident, in 2017, a police officer pulled over Mr. Martinez for traffic violations. During a consensual search of Mr. Martinez's vehicle, the officer found a semiautomatic handgun located in the center console. Officers then searched Mr. Martinez's home and seized additional firearms and ammunition.

2. Mr. Martinez was indicted on two counts under 18 U.S.C. § 922(g)(9), convicted following a bench trial after the denial of his motion to suppress, and sentenced to 39 months' imprisonment and three years of supervised release. Pet. App. 44a–51a.

On his first appeal, the Ninth Circuit rejected, on plain error review, Mr. Martinez's claim under *Rehaif* v. *United States*, 588 U.S. 225 (2019), holding that knowledge of his conviction—rather than knowledge that his conviction qualified as a misdemeanor crime of domestic violence—sufficed to show that he had knowledge of his prohibited status when he possessed the firearms. Pet. App. 35a–37a; *United States* v. *Martinez*, 811 F. App'x 396 (9th Cir. 2020). The Ninth Circuit vacated the denial of his motion to suppress and remanded for further consideration. *Id.*

On remand, the district court again denied suppression. Pet. App. 38a–42a. The district court also denied Mr. Martinez's motion to dismiss the charges under the Second Amendment, rejecting both his facial and as-applied challenges to § 922(g)(9). Pet. App. 38a. Mr. Martinez, who had been on pretrial release for *six years*, surrendered soon thereafter.

Mr. Martinez appealed again, and the Ninth Circuit affirmed. Pet. App. 3a-21a. It held that § 922(g)(9) is analogous to founding era surety and going armed laws this Court had identified in *United States* v. *Rahimi*, 602 U.S. 680 (2024), to uphold the temporary firearm prohibition in 18 U.S.C. § 922(g)(8), and that Congress can categorically disarm a group it deems dangerous, without the need to engage in a "misdemeanor-by-misdemeanor inquiry." *Id.* A motion for panel or *en banc* rehearing was denied on July 23, 2026. Pet. App. 1a–2a.

REASONS FOR GRANTING THE PETITION

I. The circuits and states are openly split on whether a lifetime prohibition on possession of firearms by a person convicted of a misdemeanor crime of domestic violence is subject to as-applied challenges.

The Fourth Circuit recognizes as-applied challenges to § 922(g)(9). See *Jacobs*, 166 F.4th at 399. The court instructed the district court to ascertain the date and circumstances of the defendant's predicate offense, the circumstances surrounding his § 922(g)(9) charge, and the defendant's conduct between his predicate misdemeanor conviction and the events underlying the instant charge, although it allowed that there may be other factors relevant to an as-applied challenge. *Id.*

The Fifth Circuit also recognized as-applied challenges to § 922(g)(9) in *United States* v. *Allred*, 182 F.4th 448, 450–55 (5th Cir. 2026), although the panel split regarding the methodology for assessing as-applied challenges. The majority adopted a misdemeanor-by-misdemeanor analysis and held that the statute is constitutional as applied to a conviction for intentionally, knowingly, or recklessly causing bodily injury to another person. *Id.* at 453. The concurrence endorsed the Fourth Circuit's individualized approach in *Jacobs* and warned that the failure to consider the defendant's history and conduct exacerbated an already "robust circuit split." See *id.* at 455–58 (Graves, J., concurring in the judgment) (citation omitted).

The Sixth Circuit has rejected as-applied challenges to § 922(g)(9) after conducting an individualized analysis of the conduct underlying the defendants' predicate misdemeanor convictions. See *United States* v. *Martin*, No. 24-3750, 2025 WL 1913185, at *3 (6th

Cir. July 11, 2025); *United States* v. *Odom*, No. 24-5363, 2024 WL 5002655, at *1 (6th Cir. Dec. 6, 2024).

The Tenth Circuit has considered an as-applied challenge to § 922(g)(9). See *United States* v. *Jackson*, 138 F.4th 1244 (10th Cir. 2025). The court examined the defendant's prior conduct and convictions and concluded that the § 922(g)(9) ban properly mitigated the threat of physical violence demonstrated by his circumstances. *Id.* at 1254.

The Supreme Court of Iowa upheld an as-applied challenge to the state analogue of § 922(g)(9) in *State* v. *Schadl*, 37 N.W.3d 337, 340 (Iowa 2026). There, the court held that the indefinite firearms prohibition imposed on the defendant was unconstitutional under Iowa's right-to-keep-and-bear-arms constitutional protection given that "there's no evidence. . . that [the defendant] brandished or used a weapon in the offense" and that he "had gone fourteen years without reoffending." *Id.* at 345.

The Supreme Court of Kansas rejected facial and as-applied challenges to the state's five-year firearms ban for misdemeanor crimes of domestic violence in *State* v. *McCray*, 321 Kan. 316, 331 (2025). In denying the as-applied challenge, the court relied *inter alia* on the short period of time that had elapsed since the defendant's domestic battery conviction and the fact that the police discovered his firearms while responding to a reported domestic disturbance. *Id.* at 331–32. The court also stressed that the state law restricted firearm possession only for five years, which is "substantially less onerous than the permanent federal restriction in . . . § 922(g)(9)." *Id.*

Other courts have signaled but have not held that as-applied challenges under the Second Amendment

are permissible in § 922(g)(9) cases. **The First Circuit** this year stated in *Minor*, 165 F.4th at 623 (1st Cir. 2026), that "[b]ecause we conclude that the basis for Minor's as-applied challenge fails anyway, we reserve [the question whether § 922(g)(9) is constitutional in all applications] for another day."

The Eighth Circuit has similarly left open the possibility of future as-applied challenges. See *United States* v. *Bernard*, 136 F.4th 762, 766 (8th Cir. 2025), *cert. denied*, 146 S.Ct. 254 (2025). There, because the defendant had only raised a facial challenge, the court declined to rule on whether § 922(g)(9) is constitutional in all its applications. See *id.*

The Second Circuit too appears to have left open the door to as-applied challenges to § 922(g)(9), although its sister circuits disagree over its holding.[1] See *United States* v. *Simmons*, 150 F.4th 126, 131 (2d Cir. 2025). There, the Second Circuit rejected on plain error review both a facial and an as-applied challenge "because Simmons offers no basis to distinguish himself from other domestic violence misdemeanants for purposes of assessing the constitutionality of the statute." See *id.*

Other state courts have also left the door open to as-applied challenges. See *State* v. *Vassallo*, 36 Wash.

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[1] The Ninth Circuit's decision below reads *Simmons* as holding that § 922(g)(9) is *per se* constitutional. *See Martinez*, 169 F.4th at 1157. By contrast, the Fourth and the Fifth Circuits read *Simmons* as allowing, or at least not foreclosing, as-applied challenges. *See Allred*, 182 F.4th at 455 (reading *Simmons* as "allowing the possibility for an individualized assessment in . . .future as-applied challenge[s]") (Graves, J., concurring); *Jacobs*, 166 F.4th at 400 (reading *Simmons* as "leaving open the door for as-applied challenges to § 922(g)(9) where the defendant offers [a] basis to distinguish himself from other domestic violence misdemeanants") (citation omitted).

App. 2d 1076, n.13 (2025), *review denied*, 6 Wash. 3d 1021 (2026) (rejecting the appellant's as-applied challenge for failure to cite to legal authority without foreclosing future as-applied challenges); *State* v. *Compton*, No. M2025-00217-CCA-R3-CD, 2026 WL 1256384, at *11 (Tenn. Crim. App. May 7, 2026) (stating that the defendant's arguments "are better suited to as-applied challenges"); *Commonwealth* v. *Frazier*, 722 S.W.3d 541, 548 (Ky. Ct. App. 2025) (rejecting the defendant's as-applied challenge for a lack of factual record without ruling on its merits).

* * *

The result of this split is a patchwork of jurisdictions in which as-applied challenges are allowed, others where they are foreclosed, and a sizable number of jurisdictions where they may be possible. Given the number of gun prosecutions in the federal and state courts, the problem is plainly a recurring one, and, as Mr. Martinez's 39-month sentence reflects, a very important one. The existence of this patchwork also means that defense attorneys and defendants in uncertain jurisdictions *must* mount as-applied constitutional challenges in order to preserve their claims while their jurisdictions, and ultimately this Court, determine which side of the existing split to take. In those jurisdictions where as-applied challenges are foreclosed, law-abiding citizens who are demonstrably not dangerous (and never were adjudicated to be so), suffer under the stigma of a permanent ban on exercising a constitutional right. This level of division and confusion over the scope of a fundamental constitutional right warrants the Court's intervention.

II. The decision below is wrong.

A. Under this Court's precedent, the permanent disarmament of domestic violence misdemeanants is unconstitutional in at least some circumstances, and as-applied challenges must be allowed.

The Ninth Circuit's decision rested on two pillars: analogy to 18 U.S.C. § 922(g)(8)(C)(i), which prohibits firearm possession by an individual subject to a domestic violence restraining order, and which this Court upheld in *Rahimi*, 602 U.S. 680; and deference to Congress's "determination that members of a class of convicted criminals are dangerous," therefore obviating the need for "a misdemeanor-by-misdemeanor inquiry under § 922(g)(9)." *Martinez*, 169 F.4th at 1154–57. Neither pillar finds support in this Court's precedent.

1. In *Rahimi*, this Court identified founding era surety and going armed laws as historical analogues for § 922(g)(8)(C)(i). But the Court was emphatic that those analogues only served to permit temporary disarmament: "We conclude 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." *Rahimi*, 602 U.S. at 702 (emphasis added).

Contrary to the Ninth Circuit's view, the *temporary* disarmament of persons under the surety and going armed laws—or § 922(g)(8)(C)(i)—is not "roughly comparable" to § 922(g)(9)'s *permanent, lifetime* firearm ban. *Martinez*, 169 F.4th at 1155. Even if § 922(g)(9)'s

prohibition is temporary "in at least some cases," *id.*,[2] at most it shows that § 922(g)(9) is not facially unconstitutional. It does not establish that § 922(g)(9)'s lifetime ban is constitutional in all its applications.

Unlike the surety and going armed laws, and § 922(g)(8)(C)(i) too, § 922(g)(9) does not require "that an individual [be] *found by a court* to pose a credible threat to the physical safety of another" before imposing the lifetime ban. *Rahimi*, 602 U.S. at 702 (emphasis added); see also *id.* at 699 ("Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another. § 922(g)(8)(C)(i). That matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.").

True, § 922(g)(9) "offers procedural protections" associated with securing misdemeanor convictions. *Martinez*, 169 F.4th at 1154. But those protections do not include a finding, by either the judge or the jury, that the defendant poses a lifetime risk of danger to others. Rather, § 922(g)(9) so *assumes* based on the fact and nature of a misdemeanor conviction.

In short, § 922(g)(9) differs dramatically in effect and operation from § 922(g)(8) and its historical analogues.

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[2] The Ninth Circuit alluded to the availability of expungement, pardons, and restoration of civil rights, as well as the five-year limitation for some misdemeanants whose offenses involved a current or recent former dating partner, a 2022 addition to the statute. *See* 18 U.S.C. § 921(a)(33)(B)(ii), (C). As explained *infra*, discretionary restoration mechanisms are irrelevant to whether a fundamental right can be abrogated in the first place. *See* Section III. Moreover, many jurisdictions, including California, do not allow for restoration of firearm rights even upon expungement. *See* Cal. Penal Code §§ 1203.4(a)(2), 1203.4a(c)(2).

The Ninth Circuit's holding to the contrary flouts *Rahimi*.

2. The Ninth Circuit's alternative holding fares no better. The court upheld § 922(g)(9) and disallowed as-applied challenges by deferring to Congress's designation of domestic-violence misdemeanants (except those described in § 921(a)(33)(C)) as forever dangerous. This Court, however, has rejected judicial deference to legislative judgment as incompatible with the Second Amendment. *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 26 (2022).

Instead, the government must meet its "considerable" burden under the Second Amendment by showing that § 922(g)(9) is consistent with the Nation's historical tradition of firearm regulation. *United States* v. *Hemani*, 608 U.S. 772, 781 (2026). Here, as in *Hemani*, the problem "is simply that the historical evidence the government present[ed] does not support the categorical restriction it urge[d]." *Id.* at 791 n.6 (sustaining as-applied challenge to 18 U.S.C. § 922(g)(3) by casual user of marijuana).

Furthermore, "affording the government that kind of 'broad power to designate any group as dangerous and thereby disqualify its members from having a gun' would risk allowing it to 'quickly swallow' the Second Amendment. *Id*. at 793–94 (quoting *Kanter* v. *Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)). This statute is a perfect example. Contrary to the Ninth Circuit's view, § 922(g)(9) does not reach only (or even mainly), serious, violent conduct, which might justify a lifelong presumption of dangerousness. Instead, the statute extends even to offensive touching and other non-violent conduct, and to assaults committed recklessly. See *Voisine* v. *United States*, 579 U.S. 686, 692 (2016); *Castleman*, 572 U.S. at 162–63, 168.

At a minimum, § 922(g)(9) extends into "constitutionally problematic territory." *Voisine*, 579 U.S. at 714 (Thomas and Sotomayor, JJ., dissenting). Mr. Martinez and other defendants must therefore be given the opportunity to demonstrate that the statute is not constitutional as applied to them.

B. The regulatory landscape confirms that § 922(g)(9) is unconstitutional at least in some circumstances.

The states, which bear the responsibility of policing domestic violence, have overwhelmingly rejected the premise that domestic violence misdemeanants are forever dangerous. The majority of jurisdictions—thirty-two states and the District of Columbia—do not impose lifetime disarmament for domestic violence misdemeanants.

Fifteen jurisdictions impose no firearms disability for domestic violence misdemeanants at all.[3] And eighteen impose firearms bans that are temporary.

Of the eighteen jurisdictions, two (Arizona and Colorado) impose bans that are functionally similar to § 922(g)(8).[4] Thirteen states constrain the firearms prohibition to periods ranging from one to ten years that

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[3] These jurisdictions are Alaska, Arkansas, Florida, Georgia, Idaho, Kentucky, Mississippi, Missouri, Montana, New Hampshire, North Carolina, Ohio, Oklahoma, Wisconsin, and Wyoming.

[4] Arizona disarms a domestic violence misdemeanant only while he is "serving a term of probation pursuant to a conviction for a domestic violence offense." Ariz. Rev. Stat. Ann. § 13-3101(A)(7)(d). Colorado's ban lasts "until the defendant's sentence is satisfied." Colo. Rev. Stat. § 18-6-801(8)(a)(I)(A).

run from conviction, release from confinement, or completion of a sentence.[5] Finally, three states set fixed terms for most domestic violence misdemeanants and reserve permanent disarmament for a narrow class.[6]

The states' legislation in this area demonstrates that § 922(g)(9)'s lifetime firearms ban is not the consensus, or even the majority, approach to address the risk of harm posed by domestic violence misdemeanants.

The Executive too rejects Congress's "say-so" that domestic violence misdemeanants are forever dangerous. *Hemani*, 608 U.S. at 793. Under the Federal Firearm Rights Restoration Act (FFRR), codified at 18 U.S.C. § 925(c), the Department of Justice now allows domestic violence misdemeanants to seek restoration of their federal firearm rights after ten years, "recogniz[ing] that not all individuals who commit such offenses demonstrate a long-term propensity to continue engaging in the conduct." Application for Relief from Disabilities Imposed by Federal Laws, 91 Fed. Reg. 54054, 54073 (Aug. 20, 2026).

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[5] *See* S.D. Codified Laws § 22-14-15.2 (one year); Va. Code Ann. § 18.2-308.1:8(C) (three years); S.C. Code Ann. § 16-25-30(A), (E)(3) (same); Del. Code Ann. tit. 11 § 1448(d) (five years); D.C. Code § 22-4503(a)(6) (same); Kan. Stat. Ann. § 21-6301(a)(18) (same); Me. Rev. Stat. Ann. tit. 15, § 393(1-B) (same); Tex. Penal Code Ann. § 46.04(b) (same); R.I. Gen. Laws § 11-47-5.5(b) (same); N.D. Cent. Code § 62.1-02-01(1)(b) (same); Neb. Rev. Stat. § 28-1206(1)(b) (seven years); Mich. Comp. Laws § 750.224f(5) (eight years); La. Rev. Stat. Ann. § 14:95.10(E) (ten years).

[6] California imposes a ten-year ban for enumerated misdemeanors, and a lifetime ban for misdemeanors involving corporal injury to a spouse or cohabitant. Cal. Penal Code § 29805(a)(1), (b). Connecticut imposes a twenty-year ban for enumerated misdemeanors, and lifetime bans for family-violence crimes. Conn. Gen. Stat. § 53a-217(a)(1)(C)-(D). Minnesota imposes a three-year ban for domestic assault but separately adopts the federal disqualification under § 922(g)(9). Minn. Stat. § 624.713

This regulatory landscape belies the Ninth Circuit's conclusion that § 922(g)(9) is categorically constitutional and reinforces the necessity of as-applied challenges. See *Hemani*, 608 U.S. at 792–93 (noting that recent regulatory actions undermined the government's claim that marijuana users are "categorically violent and dangerous without any further showing.").

III. This case is an ideal vehicle to resolve the split.

This petition presents an excellent opportunity to resolve the split. The relevant facts are simple and undisputed, the issue was pressed and passed upon at each level below, and the Ninth Circuit's decision squarely implicates the circuit split. Furthermore, the Ninth Circuit denied Mr. Martinez's rehearing petition, making clear that it will not budge from its position that § 922(g)(9) is not susceptible to as-applied Second Amendment challenges.

The Department of Justice's recent regulations implementing the FFRR do not resolve the circuit split or resolve this important and recurring constitutional issue. See 28 C.F.R. Ch. I, Pt. 107. Restoration under the FFRR and constitutional challenges ask distinct questions. Under § 925(c), the Attorney General *may* grant relief if satisfied that the circumstances regarding an applicant's disability, and his record, health, good character, and reputation in the community, establish that he is unlikely to endanger public safety and restoration would comport with the public interest. See 18 U.S.C. § 925(c); 28 C.F.R. § 107.10. An as-applied challenge asks whether Congress may impose the firearms prohibition in the first place.

Executive grace does not suffice to justify the vindication of fundamental rights. See *United States* v. *Stevens*, 559 U.S. 460, 480 (2010) ("We would not uphold

an unconstitutional statute merely because the Government promised to use it responsibly."). This Court has long emphasized that "[r]ights under our system of law and procedure do not rest in the discretionary authority of any officer." *Ex parte Parker*, 131 U.S. 221, 225 (1889). The Second Amendment, like all other guarantors of fundamental rights, "protects against the Government; it does not leave us at the mercy of *noblesse oblige*." *Stevens*, 559 U.S. at 480.

Until this Court resolves this issue, the lower courts will continue to apply different rules for the same constitutional right, resulting in a patchwork of Second Amendment protections dependent not on uniform principle, but geographic location. This Court should grant review and resolve this important, recurring, and ripe issue of constitutional law, and ensure that the viability of as-applied challenges to § 922(g)(9) is consistent across all circuits.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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