No. _____

IN THE
Supreme Court of the United States

MICHAEL BRILLON
Petitioner,

vs.

UNITED STATES,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

MICHELLE ANDERSON BARTH
CJA appointed counsel for Petitioner
Law Office of Michelle Anderson Barth
P.O Box 4240
Burlington, VT 05406
(619) 884-3883

QUESTIONS PRESENTED

This Court should grant certiorari because this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) rendered Mr. Brillon's sole offense of conviction unconstitutional, facially and as-applied to him.

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PETITION FOR CERTIORARI

Petitioner Michael Brillon respectfully prays for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

On February 2, 2024, the judgment of the United States Court of Appeals for the Second Circuit was filed in a Summary Order. *See United States v. Brillon*, No. 22-2956-CR, 2024 WL 392949, at *1 (2d Cir. Feb. 2, 2024). The decision is attached as Exhibit A.

On March 18, 2024, Mr. Brillon filed a petition for rehearing and suggestion for rehearing *en banc*. The Second Circuit denied his petition on April 22, 2024. That order is attached as Appendix B.

JURISDICTION

On February 2, 2024, a three-judge panel for the Second Circuit issued a decision in Petitioner's appeal. Subsequently, on April 22, 2024, the Second Circuit denied Mr. Brillon's petition for rehearing and suggestion for rehearing *en banc*. [1] This Court has jurisdiction to review the Second Circuit's decision pursuant to 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS

1. U.S. Const. Amend. II provides:

[1] The time to file a petition for a writ of *certiorari* runs from the date a timely petition for rehearing is denied. Sup. Ct. R. 13(3). A petition for a writ of *certiorari* is timely when filed within 90 days. Sup. Ct. R. 13(1). The petition for rehearing in this case was denied on April 22, 2024, making the petition for writ of *certiorari* due on July 21, 2024. A petition is timely filed if mailed on the date for filing. Sup. Ct. R. 29.2.

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.

2. 18 U.S.C. § 922(g)(1) [excerpted in relevant part] provides:

> (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.

I.

STATEMENT OF THE CASE

By way of background, Mr. Brillon pled guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The conduct underlying Mr. Brillon's predicate conviction is over twenty years old and did not involve a firearm. In 2001, Mr. Brillon was arrested for Domestic Assault in the Second Degree with a Habitual Offender sentencing enhancement, a felony. Mr. Brillon was arrested after striking his girlfriend with his hand and did so while on conditions of release. He was convicted by jury trial in 2004. The conviction, however, was vacated and then re-instated and ultimately, Mr. Brillon pled guilty to the offense in 2010 after an extended appellate review process.[2]

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2 In 2004, Mr. Brillon was found guilty after a jury trial and later, sentenced to twelve to twenty years. In 2006, however, his sentence was vacated on appeal and remanded for resentencing. In 2008, his charges were dismissed without prejudice upon his successful appeal to the Vermont Supreme Court. In 2009, however, his conviction

At the time Mr. Brillon possessed the firearm at issue in his case, he did not use it to commit a robbery or some other violent crime. It was recovered during a search of his residence in a rural area of Vermont. As part of the plea agreement, the government and Mr. Brillon stipulated that he possessed the firearm in connection with the cultivation and distribution of marijuana.

The district court sentenced Mr. Brillon to a twenty-one-month term of imprisonment, followed by two years of supervised release. On appeal, Mr. Brillon contended that the Second Circuit should vacate his conviction because this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (hereinafter "*Bruen*"), had effectively rendered Section 922(g)(1) unconstitutional on its face and as applied to him.

As is relevant to this petition, Brillon argued below that *Bruen* reasoning effectively rendered 18 U.S.C. § 922(g)(1) unconstitutional. Further, Mr. Brillon argued that the government could not show that history supports his permanent disarmament due to his prior felony conviction because in the United States, there is no historical tradition of prohibiting someone like Mr. Brillon from possessing firearms under pain of imprisonment. Thus, as applied, Mr. Brillon's conviction must be vacated as well.

On February 2, 2024, a three-judge panel of the Second Circuit Court of

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was reinstated after the state's successful appeal to U.S. Supreme Court and the previously imposed sentence was re-imposed. In April 5, 2010, the case was reopened after a remand on appeal; the conviction set aside and "no judgment" entered. And then, on June 11, 2010, Mr. Brillon entered a guilty plea and was sentenced to eight to fourteen years of incarceration. In 2012, Mr. Brillon was furloughed.

Appeals issued a summary order ("the decision") affirming Mr. Brillon's judgment. *See United States v. Brillon*, No. 22-2956-CR, 2024 WL 392949, at *1 (2d Cir. Feb. 2, 2024). The Second Circuit panel denied Brillon's claims on plain error review. It found that *Bruen* had not clearly overruled controlling precedent. *Brillon*, 2024 WL 392949, at *1 (relying on *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013) (affirming constitutionality of 18 U.S.C. §922(g)(1)). As such, the decision held that it "need not address the merits of that argument here because we conclude, at a minimum, that the constitutional infirmity alleged by Brillon as to his Section 922(g)(1) conviction is not clear under current law." *Id*.

This petition should be granted for at least three reasons. First, it presents a straightforward conflict between the Second Circuit's Second Amendment analytical framework in *Bogle* and this Court's requirements as set forth in *Bruen*. Second, applying *Bruen*'s principles, § 922(g)(1) is facially unconstitutional because the government cannot show that history supports a person's permanent disarmament due to a prior felony conviction. Finally, even if the statute is facially constitutional, it is unconstitutional as-applied here because there is no historical tradition of prohibiting someone like Mr. Brillon from permanently possessing firearms under pain of imprisonment. What as-applied challenges are viable after *Bruen* is a question that has not been resolved yet by this Court. Following this Court's recent decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), the government acquiesced in certiorari in cases pending before this Court that presented the same essential question presented in this case. *See e.g.*, *Garland v. Range*, No. 23-374, 2024

WL 3259661 (U.S. July 2, 2024); *Vincent v. Garland*, No. 23-683, 2024 WL 3259668 (U.S. July 2, 2024); *Jackson v. United States*, No. 23-6170, 2024 WL 3259675 (U.S. July 2, 2024); *Cunningham v. United States*, No. 23-6602, 2024 WL 3259687 (U.S. July 2, 2024); *Doss v. United States*, No. 23-6842, 2024 WL 3259684 (U.S. July 2, 2024). In each case, however, the petition for a writ of certiorari was granted, the judgment vacated, and the case was remanded to its respective Circuit Court for further consideration in light of *Rahimi*.

After *Bruen*, the Second Amendment issue has divided the lower courts on the constitutionality of the 18 U.S.C. § 922(g)(1) felon-disarmament rule's application to certain felons. The Third and Ninth Circuits concluded that there was no analogous tradition of disarmament for at least some defendants. *Range v. Att'y Gen.*, 69 F.4th 96, 106 (3d Cir. 2023) (en banc), *cert. granted, judgment vacated*, 2024 WL 3259661 (July 2, 2024); *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024), *reh'g en banc granted, opinion vacated by United States v. Duarte,* No. 22-50048, 2024 WL 3443151, at *1 (9th Cir. July 17, 2024).

The Eighth Circuit concluded that there were no viable as-applied challenges in *United States v. Jackson*, 69 F.4th 495, 501-05 (8th Cir. 2023), *cert. granted, judgment vacated*, 2024 WL 3259675 (July 2, 2024). The Tenth and Eleventh Circuits upheld the continued constitutionality of Section 922(g)(1) under pre-*Bruen* precedent without reaching the historical question, *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *cert. granted, judgment vacated*, 2024 WL 3259668 (July 2, 2024); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024). As this case

demonstrates, the Second Circuit likewise relies on its pre-*Bruen* precedent in *Bogle* and thus far, the Second Circuit has not reached the historical questions in a facial or as-applied challenges to the constitutionality of § 922(g)(1).

Thus, for all of these reasons, granting this petition would provide much needed clarification to practitioners and the courts nationwide regarding these issues.

II.

ARGUMENT

A. This Court should grant this petition because Second Circuit precedent is analytically irreconcilable with *Bruen* and 18 U.S.C. § 922(g)(1) is facially unconstitutional.

This Court recently upheld the facial constitutionality of 18 U.S.C. § 922(g)(8), in *United States v. Rahimi*, 144 S.Ct 1889 (2024). This provision of § 922(g) prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order meets certain statutory criteria. Mr. Rahami raised only a broad facial challenge to this provision.

This Court held that "Our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others. *Rahimi*, 144 S.Ct at 1902. In so holding, the Court relied on both *District of Columbia v. Heller,* 554 U.S. 570 (2008) ("*Heller*") and *Bruen,* and noted *Heller*'s "state[ment] that many ... prohibitions, like those on the possession of firearms by felons and the mentally ill, are presumptively lawful." *Rahimi*, 144 S.Ct at 1902.

However, as noted by Justice Gorsuch in his concurrence, "… the case before us does not pose the question whether the challenged statute is always lawfully applied, or whether other statutes might be permissible, but only whether this one has *any* lawful scope. Nor should future litigants and courts read any more into our decision than that. As this Court has long recognized, what we say in our opinions must 'be taken in connection with the case in which those expressions are used,'…, and may not be 'stretch[ed] ... beyond their context.'" *Rahimi,* 144 S.Ct. at 1910 (internal citations omitted) (Gorsuch, J concurring).

Keeping these principles in mind, *Rahimi* is limited in its application here since Mr. Brillon challenges a different statute that calls for his permanent disarmament. Further, *Rahimi's* resolution "necessarily leaves open the question whether the statute might be unconstitutional as applied in particular circumstances." *Id*. at 1909. (Gorsuch, J. concurring).

But what *Rahimi* does underscore is that the Second Circuit's analysis in *Bogle* is, at best, superficial and does not provide a clear answer to the question Mr. Brillon presents here. The question here requires a more probing analysis of the principles that underpin the regulatory tradition of firearm laws. Here, there was no historical tradition of permanent disarmament for someone like Mr. Brillon.

1. Second Circuit law conflicts with *Bruen*'s Second Amendment analytical framework.

Bruen expressly requires courts to assess whether any regulation infringing on Second Amendment rights is consistent with this nation's historical tradition of firearm regulation. The Second Circuit, however, simply defers to *Bogle*'s reliance on

Heller and as such ignores *Bruen*'s mandate. *Heller* itself did not address the history of felon firearm bans because it was not an issue that *Heller* purported to resolve.

In any event, *Bruen* is irreconcilable in at least four respects with the Second Circuit's Second Amendment analytical framework. First, *Bruen* added steps to *Bogle*'s truncated inquiry that upheld § 922(g) based on *Heller*'s "presumptively lawful" language without further analysis. That dicta from *Heller*—on which *Bogle* relied—was displaced when *Bruen* fundamentally changed the analytical structure of Second Circuit analysis. The Second Circuit in *Bogle* does not place the burden on the government nor did it conduct any historical analysis, as *Bruen* now requires. *Bruen* requires a more nuanced approach: first focusing on the Second Amendment's "plain text" to ask whether it covers the conduct at issue, and, if so, then examining history to determine whether a historical tradition of such a regulation exists.

Second, *Bruen* modified and redirected the presumptions involved in evaluating Second Amendment challenges to firearm regulations. Whereas *Bogle* relied on *Heller* to automatically presume the validity of dispossession laws, *Bruen* requires an initial determination about whether the proscribed conduct falls within the Second Amendment's scope and if it does, then directs Courts to presume the regulation is invalid. The government may overcome the presumption only if it proves such regulation has a historical tradition.

Third, *Bruen* explicitly used a fundamentally different analytical framework than the Second Circuit uses. In the wake of *Heller*, which involved gun possession in the home, the Courts of Appeals nationwide "coalesced around" a two-part test to

assess Second Amendment claims "that combines history with means-end scrutiny." *Bruen*, 597 U.S. at 17. These cases embraced a means-end, interest-balancing analysis that empowered judges to map the government's policy reasons for the challenged regulation onto the methods by which the challenged regulation addressed those concerns. As the Second Circuit formulated it, the court first "must determine whether the challenged legislation impinges upon conduct protected by the Second Amendment," using historical analysis. *New York State Rifle & Pistol Association, Inc. v. Cuomo*, 804 F.3d 242, 254 (2d Cir. 2015). Second, if the court finds that a law implicates the Second Amendment as *Heller* instructed courts to interpret it, the court determines the appropriate level of scrutiny to apply and evaluates the constitutionality of the law using that level of scrutiny. *Id.* at 257-58, 261.

But *Bruen* explicitly repudiated that approach, stating that "*Heller* and [the subsequent decision in] *McDonald* [*v. City of Chicago*] do not support applying means-end scrutiny in the Second Amendment context." *Bruen,* 597 U.S. at 19. *Bruen* instead recognized an impermeable Second Amendment right "to keep and bear arms" that, instead of being susceptible to subordination by countervailing interests, requires the government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of th[at] right." *Id.*

Fourth, *Bruen* implicitly invalidated *Bogle's* reliance on *Heller*'s "presumptively lawful regulatory measures" to determine what conduct is protected by the Second Amendment. *Bruen* itself addressed one of the types of regulations on *Heller*'s list—a restriction on "carrying concealed weapons." *Heller*, 554 U.S. at 626.

Yet, rather than declaring that regulation constitutional without further analysis (as *Bogle* would have required), *Bruen* instead subjected it to the same two-step text-and-history analysis it prescribed for all other regulations alleged to impinge on Second Amendment-protected conduct. *Bruen*, 597 U.S. 31-70.

In short, *Bruen* resoundingly rejected *Bogle*'s reasoning and the decision in *Brillon* stands in contrast to *Bruen's* mandate. 597 U.S. at 17, 18, 22. Courts can no longer rely on *Heller*'s presumptively lawful language to bypass the historical analysis now required.

2. There is no long-standing history of permanent disarmament for felons.

In *Bruen* and *Rahimi*, this Court seemingly recognizes that the Second Amendment provides protection against laws that infringe on firearms possession based upon a person's general classification. After all, if a gun regulation that permits possession within the home, and permits possession outside of the home upon a license, infringes on an individual's right to bear arms, then wholesale criminalization of possession by a certain class of individuals—in the home; in public; for every type of gun and ammunition; for self-defense or otherwise; forever, without possibility of rights restoration—must, too. Accordingly, "the burden falls on respondents," *Bruen*, 597 U.S. at 33-34, to justify the total prohibition on the right to bear arms by persons who have suffered a felony conviction.

While *Rahimi* does not control in a case like Mr. Brillon's, it does offer clarification about the Second Amendment that supports Mr. Brillon's position. Mr. Rahimi brought a broad facial challenge to § 922(g)(8) which presents a narrow and

only temporary bar on firearms possession. In *Rahimi*, this Court relied on the temporary nature of firearms dispossession set forth in § 922(g)(8) in finding the statute facially constitutional. Section 922(g)(1)'s firearms dispossession, on the other hand, is permanent. Thus, in this way, *Rahimi* supports Brillon's argument. Permanent dispossession requires sufficient historical support and the government has failed to provide such support.

Furthermore, *Rahimi's* historical examination directly supports Mr. Brillon's conclusion that Second Circuit precedent is no longer sound. As noted above, *Bogle* requires no historical analysis and relies on *Heller*'s presumptively lawful language. In analyzing Mr. Rahimi's facial challenge, this Court reviewed the history of at least two types of laws: "surety" and "affray" laws. *Id.* at 1899–1901. It did not simply rely on *Heller's* presumptively lawful language. In other words, *Rahimi* did not skirt the historical analysis required by *Bruen* that is not currently required by controlling Second Circuit precedent.

Rahimi's historical analysis ultimately supports Brillon's assertions that 922(g)(1) is facially unconstitutional. The surety laws *Rahimi* examined are composed of "obliging those persons whom there is a probable ground to suspect of future misbehavior, to stipulate with and to give full assurance ... that such offense ... shall not happen, by finding pledges or securities for ... their good behavior." 4 William Blackstone, Commentaries *251. As applied to firearms, surety laws required a bond to be posted by anyone who posed a clear threat of violence to another. *See, e.g.*, Act of May 18, 1846, in The Revised Statutes of the State of Michigan,

Passed and Approved May 18, 1846 692 (1846) (requiring surety for "any person [who] shall go armed with a ... pistol ... on complaint of any person having reasonable cause to fear an injury or breach of the peace").

Similarly, the affray laws singled out individuals who misused arms, but instead of aiming to prevent future violence, they "provided a mechanism for punishing those who had menaced others with firearms." *Rahimi*, 144 S. Ct. at 1900. For instance, Massachusetts punished those "as shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth." Act of January 29, 1795, in 1 The General Laws of Massachusetts, From the Adoption of the Constitution, to February, 1822 454 (Theron Metcalf ed. 1823).

Rahimi concluded that "[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, 144 S. Ct. at 1901. Because "Section 922(g)(8) restricts gun use to mitigate demonstrated threats of physical violence, just as the surety and going armed laws do," this Court found historical support for the restriction. *Id.*

Significantly, § 922(g)(1)'s restriction on Second Amendment rights is not supported by historical surety or affray laws. Section 922(g)(1) applies universally to anyone who has ever suffered a felony conviction, regardless of how dated the conviction might be or whether the crime or conduct represents a current credible threat of physical violence. In other words, it does not matter if the person has a "demonstrated threat[ ] of physical violence." *Rahimi,* 144 S.Ct at 1901. It applies regardless of whether the person's crime or conduct show they pose a "clear threat of

physical violence to another." *Rahimi*, 144 S. Ct. at 1901. In *Rahimi*, this Court relied heavily on the distinction between those "who have been found to pose a credible threat to the physical safety of others [and] those who have not," *id.* at 1902, to "conclude only [that] [a]n 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 1903.

Relatedly, under §922(g)(1), there is no judicial determination that the prior conviction indicates some sort of current threat of physical violence to another. When reviewing the surety and affray laws, *Rahimi* noted that such decisions under § 922(g)(8) "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 1902. Further, *Rahimi* pointed out that §922(g)(8) is a temporary firearms dispossession which are "like surety bonds of limited duration." *Id*. "In Rahimi's case that [burden ends] one to two years after his release from prison ...." *Id.* Section 922(g)(1) contains no such time limitation—Mr. Brillon is permanently disarmed.

Thus, applying this reasoning here leads to the conclusion that Section 922(g)(1) is not a historically supported firearms regulation. As Justice Gorsuch explained, *Rahimi* did not "decide ... whether the government may disarm a person without a judicial finding that he poses a 'credible threat' to another's physical safety," "resolve whether the government may disarm an individual permanently," or "approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem ... 'not responsible.' " *Id.* at 1909–10

(Gorsuch, J., concurring). These issues left unaddressed by *Rahimi* are directly implicated in this case, and the factors that the Court relied on to assure itself of Section 922(g)(8)'s constitutionality are not present in this context. Section 922(g)(1) does not require a judicial determination that a felon like Mr. Brillon would "pose[ ] a clear threat of physical violence to another." *Id.* at 1901. Nor is its disarmament temporary.

In Mr. Brillon's appeal, the government never tried to show that Mr. Brillon, now 61 years old, poses such a threat as Mr. Rahimi. At Mr. Brillon's sentencing, he explained why he had a gun and generally, his reasons for his involvement in the offense:

> DEFENDANT: I needed help with my property as I started getting older. I allowed my brother and Scott and a couple of other people to take logs off. Some of them had guns on them. We live out in the country. Everybody's got a gun. I'm going to be 60 years old next month. I'm in danger of losing everything. My girlfriend's got cancer. My son-in-law killed himself Wednesday. I'd like to go home, like to take care of my girlfriend, take care of my mortgage lender. I let him down. I missed some payments, and he's put them on the tail end of the mortgage agreement, but he needs to start getting paid. He was in Vietnam in the late 50s all the way up to 1970, I think, and he needs his money, and I've let him down. He hasn't been getting it, because I can't pay him.
>
> You know, I got in a bad wreck, and I've been on disability, and that's how I was paying. I grew a little weed. Nobody wanted weed last year. It ended up in my living room. The government made out like it was something. If you look at the grass, you can't even smoke it. It's useless. Even the weed I thought I sold was sent back to me. That's in an evidence locker. I didn't pay. I had to fix my well. I didn't have water. The month of December, I hired Scott to come in and dig a trench and put new pipes and wires, and I got that done, and shortly after I ended up in prison.
>
> So my grandchildren need this home and a stable home.

> I've done everything in my power to impress upon this court that I'm very sincere when I tell you I'm sorry. I won't allow firearms on the property again. I've taken every class and program available, six certificates in the St. Joe's program. I haven't had a simple minor DR. If you allow me to go home, I won't disappoint you. Even if it's a few months and you don't think there's enough time given an ankle bracelet, I can at least keep the house and bury my son-in-law and be a grandfather and help my girlfriend with her day-to-day doctors' appointments.

Pet. C.A. Reply Br. 25-26.

In short, the government cannot meet its burden to justify the total prohibition on the right to bear arms by persons who have suffered a felony conviction.

B. Even if § 922(g)(1) remains facially constitutional, it is unconstitutional as applied to Mr. Brillon because the government cannot prove that the Nation has a history and tradition of depriving people like Mr. Brillon of their firearms.

What as-applied challenges are viable after *Bruen* is a question that has not been resolved yet by this Court. Granting this petition would provide much needed clarification to practitioners and the courts nationwide regarding this issue. As the Honorable Judge Nina R. Morrison for the Eastern District of New York noted:

> On the other hand, if the Second Circuit chooses—in this case, or one of the many other post-*Bruen* appeals likely to come before it challenging the constitutionality of § 922(g)(1)—to adopt the *Range* Court's approach to as-applied challenges by persons convicted solely of non-violent offenses, it is worth noting that [the defendant]'s prior convictions may well make him similarly situated to Range. His first felony conviction was for obstruction of justice, a non-violent offense, and his subsequent felony was for the same charge he faces in this case—being a felon in possession of a firearm.
>
> [The defendant] has preserved his right to challenge the constitutionality of § 922(g)(1)'s application to him post-*Bruen*. But whether such as-applied challenges are newly viable after *Bruen* is a question that must await resolution by the Second

Circuit or the Supreme Court.

United States v. Pickett, 2024 WL 779209, at *4 (E.D.N.Y. Feb. 26, 2024). In *Pickett*, the defendant argued that § 922(g)(1) is unconstitutional as applied to him. The district court reasoned, "But this argument jumps the proverbial gun. As a threshold matter, it is unclear whether courts can even make an "individualized inquiry by felony" when considering the constitutionality of § 922(g)(1) or similar statutes." *Pickett*, 2024 WL 779209, at *3.

In the absence of clear directives from this Court, the Second Circuit has not decided this issue, and instead relies on *Bogle*, its pre-*Bruen* precedent. As such, many district courts do not address as-applied challenges on the merits. For some litigants, that means that defendants remain in custody serving sentences who might otherwise be successful in their as-applied claims. At this point, Mr. Brillon has fully served the custodial portion of his sentence.

As set forth above, Mr. Brillon came to the attention of law enforcement during a period of financial desperation. While his felony predicate is different than Mr. Range's for fraud in *Range*, 69 F.4th at 106 (en banc), *cert. granted, judgment vacated*, 2024 WL 3259661 (July 2, 2024); or Mr. Duarte's for five prior state criminal convictions, including drug possession and evading an officer in *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024), his motivation is similar (financial desperation) and his conviction is decades old.

At least one federal court has found that the government failed to demonstrate that the defendant's prior convictions for aggravated assault and manslaughter were

supported by longstanding history and tradition in *United States v. Bullock*, 679 F. Supp. 3d 501, 504 (S.D. Miss. 2023). In 1992, Mr. Bullock was convicted of two predicate felonies: aggravated assault and manslaughter. He served approximately 15 to 16 years in prison. Nonetheless, the court held that § 922(g)(1) was unconstitutional as applied to him because the government failed to prove a historical analogue supporting the categorical disarmament of felons like Mr. Bullock. *Id.* at 537.

Mr. Brillon's predicate offense is old like Mr. Bullock's but far less serious. Per the persuasive reasoning in *Bullock*, *Range*, and *Duarte*, the government cannot establish a historical tradition supporting lifetime criminalization of Mr. Brillon's possession of a firearm as required by *Bruen*.

At bottom, because the district courts and litigants do not have clear instructions on how to proceed, litigant claims within the Second Circuit are often denied based on *Bogle,* which was decided before *Bruen* and clearly uses an analytical structure at odds with *Bruen*. It is important to grant certiorari in this case so that litigants like Mr. Brillon can have their as-applied claims fully reviewed on the merits.

III.

CONCLUSION

For the foregoing reasons, the petitioner prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

Michelle Barth

MICHELLE ANDERSON BARTH
CJA appointed counsel for Petitioner
Law Office of Michelle Anderson Barth
P.O. Box 4240
Burlington, VT 05406
(619) 884-3883