

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RECARDO CARTRELL PIERCE,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) violates the Second Amendment under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022)?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Pierce*, No. 23-30915, 2024 WL 4148927 (5th Cir. Sept. 11, 2024) (unpublished), and is set forth at App. 001.

JURISDICTION

The judgment of the court of appeals was entered on September 11, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution:

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.

Section 922(g)(1) of Title 18 provides 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...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

On May 21, 2022, Recardo Cartrell Pierce was a passenger in a vehicle that was stopped for a traffic violation. ROA.132. After consent was given by the driver, the vehicle was searched and a firearm was found in a backpack. Pierce was arrested and later indicted in a one-count indictment charging him with possession of a

firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). ROA.10. On January 18, 2023, after a one-day jury trial, Pierce was found guilty. ROA.110.

Prior to sentencing, U.S. Probation prepared a presentence investigation report (PSR), which calculated Harrison’s advisory guideline range as 77-96. ROA.348. The court imposed a guideline sentence of 93 months incarceration and three years of supervised release. ROA.98. The judgment was entered into the record by the district court on December 13, 2023, ROA.98, and Pierce filed a timely notice of appeal on December 22, 2023. ROA.104.

Pierce appealed and challenged, among other issues, the constitutionality of 18 U.S.C. § 922(g)(1) under this Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). On September 11, 2024, the United States Court of Appeals for the Fifth Circuit affirmed the conviction and sentence and declined to reach the constitutionality of § 922(g)(1) because Pierce had not raised the claim below, this issue was foreclosed, and thus Pierce could not establish plain error. App. 1-2.

REASONS FOR GRANTING THE WRIT

I. Lower courts require guidance on how to apply *Bruen*

A. A circuit split has emerged over the constitutionality of 18 U.S.C. § 922(g)(1)

The Second Amendment guarantees “the right of the people to keep and bear arms.” U.S. Const. amend. II. Yet 18 U.S.C. § 922(g)(1) denies that right, on pain of 15 years imprisonment, to anyone previously convicted of a crime punishable by a year or more. Despite the conflict between the statutory and constitutional text, the

courts of appeals historically and uniformly rejected Second Amendment challenges. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting authorities).

In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022)), the Court that, “When the Second Amendment’s plain text covers an individual’s conduct,” the government must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. No longer may the government defend a regulation by showing that it is narrowly tailored to achieve an important or even compelling state interest. *Id.* at 17-24. With the lower courts still conflicted post-*Bruen*, the Court again addressed the Second Amendment challenge to 18 U.S.C. 922. *United States v. Rahimi*, 602 U.S. ___, 144 S. Ct.1889 (2024). In *Rahimi*, the Court stated:

As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. 597 U.S. at 26–31, 142 S.Ct. 2111. A court must ascertain whether the new law is “relevantly similar” to laws that our tradition is understood to permit, “apply[ing] faithfully the balance struck by the founding generation to modern circumstances.” *Id.*, at 29, 142 S.Ct. 2111. Discerning and developing the law in this way is “a commonplace task for any lawyer or judge.” *Id.*, at 28, 142 S.Ct. 2111.

Rahimi, 144 S.Ct. at 1898.

Even after *Bruen* and *Rahimi*, courts of appeals remain split as to the methodology used to analyze a Second Amendment challenge to 18 U.S.C. §922(g)(1). In *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024) the Fifth Circuit, in rejecting the proposition that “status-based gun restrictions” such as 922(g)(1) “foreclose Second Amendment challenges,” explained that “history and tradition”

must be analyzed to “identify the scope of the legislature's power to take [the right] away.” The Fifth Circuit undertook an individualized assessment of Diaz's criminal history, which included theft, and found that historical laws severely punished theft and therefore § 922(g)(1) was constitutional facially and as-applied to Diaz. In *United States v. Williams* 2024 WL 3912894, 13 (6th Cir. 2024), the court noted the nation’s history of disarming “individuals they believe are dangerous” and concluded then analyzed whether Williams was dangerous. Concluding that he was, the Sixth Circuit denied Williams’s as-applied challenge to § 922(g)(1). In *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024), the Eighth Circuit concluded that he Supreme Court’s recent decisions “cast no doubt on the constitutionality of laws prohibiting the possession of firearms by felons” and concluded that § 922(g)(1) was constitutional.

B. This issue is of exceptional importance

Bruen and *Rahimi*’s application to § 922(g)(1) will continue to plague lower courts until this Court provides guidance on the methodology to be used. The issue before the Court implicates the prosecution and incarceration of thousands. As of December 7, 2023, the Bureau of Prisons reported that it imprisons 157,740 people.¹ And as of December 2, 2023, 21.9% of inmates (32,163) were incarcerated for “Weapons, Explosives, [and] Arson” offenses, the second largest category of offenses

¹ *Statistics*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/population_statistics.jsp (last visited Dec. 11, 2023).

within the federal prison population.² “For more than 25 years” in fact, firearm crimes have been one of the “four crime types” that “have comprised the majority of federal felonies and Class A misdemeanors[.]”³ In fiscal year 2021, “[c]rimes involving firearms were the third most common federal crimes[.]”⁴ Of the 57,287 individuals sentenced, 8,151 were firearm cases—a 14.2% share.⁵ This represents an 8.1% increase from the year before, despite the number of cases reported to the U.S. Sentencing Commission declining by 11.3% and hitting an all-time low since fiscal year 1999.⁶

These figures only capture the tail end of the criminal process at the district court. The scope of prosecutions looms larger. “The Department of Justice filed firearms-related charges in upwards of 13,000 criminal cases during the 2021 fiscal year.” *United States v. Kelly*, No. 3:22-CR-00037, 2022 WL 17336578, at *3 (M.D. Tenn. Nov. 16, 2022) (citing Executive Office for United States Attorneys, U.S. Dept. of Justice, Annual Statistical Report Fiscal Year 2021 at 15 (Table 3C), available at <https://www.justice.gov/usao/page/file/1476856/download>). The scale of the question presented warrants this Court’s attention.

² *Statistics* – Inmate Offenses, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (last visited Dec. 11, 2023).

³ *Fiscal Year 2021 Overview of Federal Criminal Cases* at 4, U.S. SENTENCING COMM’N (April 2022), available at https://www.ussc.gov/sites/default/files/pdf/research-andpublications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf.

⁴ *Id.* at 19.

⁵ *Id.* at 1, 5.

⁶ *Id.* at 2.

II. **Should this Court grant certiorari to address the constitutionality of 18 U.S.C. § 922(g)(1) in another case, the Court should hold the instant petition pending the outcome**

Recardo Cartrell Pierce did not challenge the constitutionality of the statute at the district court. This likely presents an insurmountable vehicle problem for a plenary grant in the present case. Nonetheless, the questions presented are worthy of certiorari, and the Court has other opportunities to review them. Because the Court may grant certiorari to address the question presented in another case, Pierce requests that it hold the instant petition pending the outcome. Should this Court disapprove of § 922(g)'s constitutionality or limit the statute's application, Pierce requests that the Court grant certiorari in the instant case, vacate the judgment below, and remand for reconsideration. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 166-67 (1996).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this December 2, 2024,

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