No. _____

In the

Supreme Court of the United States

_____

John Gabriel Trevino,

Petitioner,

v.

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

_____

Christy Martin
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
christy_martin@fd.org

QUESTION PRESENTED

Whether 18 U.S.C. §922(g)(1), and post-conviction supervised release restrictions prohibiting possession of a firearm on any supervisee regardless of the disqualifying conviction, comports with the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioner is John Gabriel Trevino, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Federal Statutes

Constitutional Provisions

PETITION FOR A WRIT OF CERTIORARI

Petitioner John Gabriel Trevino seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the court of appeals is reported at *United States v. Trevino*, 125 F.4th 198 (5th Cir. Dec. 31, 2024). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence was entered November 16, 2023. *United States v. Trevino*, Dist. Court 5:19-CR-03, and is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on December 31, 2024. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY AND CONSTITUIONAL PROVISIONS

Section 922(g) of Title 18 reads:

> 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.

The Second Amendment to the United States Constitution provides:

> 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.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

Petitioner John Gabriel Trevino entered a guilty plea in the Northern District of Texas to production of child pornography in violation of 18 U.S.C. § 2251(a). The district court entered a judgment sentencing him to 235 months of imprisonment and 25 years of supervised release. In an amended judgment, the standard conditions imposed with the term of supervised release included one which prohibits him from owning or having access to firearms and ammunition during his term of supervised release.[1]

II. Appellate Proceedings

On appeal to the Fifth Circuit, Mr. Trevino argued that this condition violates the Second Amendment by depriving him of his right to bear arms until he is 75 years old, quite possibly, the rest of his life. The court of appeals affirmed. See Pet.App.A.

[1] In a first appeal to the Fifth Circuit, Mr. Trevino argued that the district court erred by including 13 standard conditions of supervised release in his judgment that were not pronounced at sentencing. The Fifth Circuit vacated the judgment in part and remanded to allow the unpronounced standard conditions to be removed from the written judgment. *United States v. Trevino*, No. 19-11202, 2022 WL 17691623, at *1 (5th Cir. Dec. 14, 2022). The district court subsequently modified the conditions of supervised release to include the standard conditions.

REASONS FOR GRANTING THE PETITION

This Court should decide the constitutionality of 18 U.S.C. §922(g)(1) under the Second Amendment, and the resultant issue of whether post-conviction supervised release restrictions prohibiting possession of a firearm on any supervisee regardless of disqualifying conviction remains constitutional.

Alternatively, it should hold the instant Petition pending resolution of any merits cases presenting that issue.

The disarming of anyone convicted of a felony

The Second Amendment guarantees "the right of the people to keep and bear arms." Yet 18 U.S.C. § 922(g)(1) denies that right, on pain of 15 years imprisonment, to anyone convicted of a crime punishable by a year or more. Despite this facial conflict between the statute and the text of the constitution, the courts of appeals uniformly rejected Second Amendment challenges to the statute for many years.

This changed, however, following *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and then *United States v. Rahimi*, 602 U.S. 680 (2024). But Circuit Courts of Appeals applying *Bruen* and *Rahimi* have adopted different approaches to testing 18 U.S.C. § 922(g)(1) against Second Amendment challenges. Among the Circuits, some have interpreted the Second Amendment to allow Congress to disarm those found simply "dangerous" or "unwilling to obey the law." For its part, the Fifth Circuit has interpreted the Second Amendment as constitutional when applied to a defendant whose disqualifying conviction would have faced capital punishment or forfeiture of estate in or around the Founding Era. The Court needs to clarify the Second Amendment's relationship to § 922(g)(1).

a. The legal framework of *Bruen* and *Rahimi*

In *Bruen,* the Court held that where the text of the Second Amendment covers regulated conduct, the government may defend that regulation only by showing that it comports with the nation's historical tradition of gun regulation. 597 U.S. at 17. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *Id.* The opinion began with a comparison between the Second Amendment's text and the challenged law. The State of New York criminalized the unlicensed possession of a firearm in the home and on the street, and any New Yorker who wanted to obtain a license to carry a firearm outside the home needed to show "proper cause." *Id.* at 1 (quoting N.Y. Penal Law Ann. § 400.00(2)(f)). This Court began by finding a conflict between this law and the Second Amendment's plain text. The right to bear arms, this Court explained, "refers to the right to wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id.* at 32 (*quoting District of Columbia v. Heller*, 554 U.S. 570, 584 (2008)). Since the "definition of 'bear' naturally encompasses public carry," the Second Amendment "presumptively guarantee[d]" the petitioner's "right to 'bear' arms in public for self-defense." *Id.* at 32-33.

The Court then turned to history. The plain-text analysis established a conflict between New York's licensing regime and the Second Amendment, so the burden shifted to the State of New York to establish the challenged law's consistency with historical firearm regulations. On this topic, the Court began with a word of caution: "[N]ot all history is created equal." *Id.* at 34. "Constitutional rights are," after all,

"enshrined with the scope they were understood to have when the people adopted them." *Id.* at 34 (*quoting Heller*, 554 U.S. at 634-35). Given that reality, "historical evidence that long predates" the Second Amendment's enactment "may not illuminate the scope of the right[s]" at issue "if linguistic or legal conventions changed in the intervening years." *Id.* This Court similarly cautioned "against giving postenactment history more weight than it can rightly bear." *Id.* at 35. "[T]o the extent later history contradicts what the text says, the text controls." *Id.* at 36.

With those rules in mind, this Court surveyed "the Anglo-American history of public carry" and ultimately declared New York's proper-cause licensing regime unconstitutional. *Id.* at 70. Sure enough, various laws "limited the intent for which one could carry arms, the manner by which one carried arms, [and] the exceptional circumstances under which one could not carry arms," but the historical evidence established no tradition of "prohibit[ing] the public carry of commonly used firearms for personal defense." *Id.* New York's argument from history failed, and this Court held the challenged licensing regime to be an unconstitutional infringement on the right to bear arms. *Id.* at 70-71.

In *Rahimi*, this Court held that 18 U.S.C. §922(g)(8)(C)(i), which prohibits possession of a firearm based on the existence of a restraining order issued after a state court has found one poses "a credible threat to the physical safety" of another person, satisfies the Second Amendment. 602 U.S. at 690. The Court resolved Mr. Rahimi's claim by comparing "the tradition the surety and going armed laws represent" to § 922(g)(8)(C)(i). *Id.* at 699. All three, this Court explained, "restrict[]

gun use to mitigate demonstrated threats of physical violence." *Id.* All three "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* All three were also temporary. *Id*. at 698. The Court emphasized its limited holding, which was "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." *Id*. at 702.

That rationale raises serious questions about the constitutionality of 18 U.S.C. §922(g)(1). Section (g)(1) imposes a permanent, not a temporary, firearm disability. And that disability can arise from all manner of criminal convictions that do not involve a judicial finding of future physical dangerousness.

b. The circuit courts' inconsistent application to § 922(g)(1)

There is no circuit-court consensus on how to judge § 922(g)(1)'s constitutionality. In *United States v. Diaz*, the Fifth Circuit recognized the possibility of as-applied relief and asked whether the defendant's disqualifying conviction (or a conviction for a crime like it) would have faced capital punishment or forfeiture of estate at some point in or around the Founding Era. 116 F.4th 458, 468-69 (5th Cir. 2024). This test turns on the nature of the disqualifying convictions and places the burden of persuasion on the government. *Id.* at 467. The court held § 922(g)(1) to be constitutional as applied to a defendant with a disqualifying conviction for felony theft. *Id.* at 470-71 & n.4. The Fifth Circuit premised this holding on the historical existence of harsh penalties for theft, which included capital punishment and forfeiture of estate. *Id*. at 469. "[I]f capital punishment was permissible to respond to

theft," the Fifth Circuit reasoned, "then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." *Id.* The Fifth Circuit's as-applied holding resolved the defendant's facial challenge in the government's favor. *Id*. at 471-72.

The Sixth Circuit upheld § 922(g)(1)'s as-applied constitutionality against a defendant with a series of violent criminal convictions after analogizing § 922(g)(1)'s application to that defendant with a broad array of historical laws from both England and America disarming those considered simply "dangerous." *United States v. Williams*, 113 F.4th 637, 662-63 (6th Cir. 2024). The Sixth Circuit's as-applied test turns on a defendant's entire criminal record rather than the disqualifying offense and asks whether that record reveals the defendant to be "dangerous." *Williams*, 113 F.4th at 657. The Seventh Circuit has also embraced a similar approach of inquiring of *any reason* an individual could constitutionally be disarmed. *United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024), *reh'g denied*, 2024 WL 3816648 (7th Cir. Aug. 14, 2024) (rejecting challenge from defendant previously convicted of 22 felonies and presently on supervision).

The Eighth Circuit rejected the availability of as-applied challenges and declared the statute facially constitutional based on historical laws disarming either those "unwilling to obey the law" or "those deemed more dangerous than a typical law-abiding citizen." *United States v. Jackson*, 110 F.4th 1120, 1125, 1126-29 (8th Cir. 2024). Those analogues, the Eighth Circuit concluded, would authorize modern-

day laws disarming "persons who deviated from legal norms [and] persons who presented an unacceptable risk of dangerousness." *Id*. at 1129.

The Tenth Circuit has similarly foreclosed as-applied challenges to §922(g)(1) without addressing the historical record. In *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025), the court continued to rely on pre-*Rahimi* precedent that had resolved the matter by invoking dicta from *Heller* observing that the prohibition on felon firearm possession is "presumptively lawful."

The Fourth Circuit differs from each in having held that *Bruen* "did not disturb" prior Fourth Circuit "holdings about whether a given situation is outside the ambit of the individual right to keep and bear arms," thus the law does not regulate protected Second Amendment activity because "people who have been convicted of felonies are outside the group of law-abiding responsible citizens" that the Second Amendment protects. *United States v. Hunt*, 123 F.4th 697, 704 (4th Cir. 2024) (internal quotations omitted). Alternatively, the court adopted the position of the Eighth Circuit in *Jackson*, that the historical record supports the disarmament of those who have deviated from legal norms. *Id*. at 706 (*citing Jackson*, 110 F. 4th at 1129).

The Third Circuit resolved an appeal from a defendant on supervised release without considering the defendant's record at all. *United States v. Moore*, 111 F.4th 266, 272-73 (3d Cir. 2024). The court instead declared the existence of Founding Era laws authorizing temporary forfeiture for those convicted of some crimes as analogous to a modern-day defendant's disarmament while serving a term of supervised release.

Id. at 271-72. Thereafter, the Third Circuit upheld an as applied challenge by a petitioner with a decades-old food stamp fraud conviction, holding that the government could not show a historical tradition of depriving people such as petitioner of his Second Amendment right to possess a firearm. *Range v. Att'y Gen. U.S.*, 124 F.4th 218, 232 (3d Cir. 2024).

So, as it stands, the circuit courts of appeals have staked out different approaches to this important question, but each approach is unconvincing. The Fifth Circuit's as-applied test relies on a category error and will create difficult line-drawing exercises for each defendant based on the nature of their disqualifying convictions. The analysis from the Sixth and Eighth Circuits, in turn, is too general and depends on a "vague" principle implicitly rejected by this Court in *Rahimi. See* 602 U.S. at 701. That principle - that any group considered "dangerous" may be permanently disarmed - is neither codified in the Second Amendment's plain text nor present in the historical record. The Fourth Circuit disagrees as to whether felons are among those protected by Second Amendment at all.

Supervised release conditions barring possession of firearms

For the same reasons that 18 U.S.C. § 922(g)(1) violates Mr. Trevino's Second Amendment rights, so too does a condition that deprives Petitioner of his right to bear arms until he is 75 years old—quite possibly, the rest of his life.

Despite recognizing that as-applied challenges to Section 922(g)(1) are judged with respect to the disqualifying conviction, *see Diaz*, 116 F.4th 168-69, the Fifth Circuit has taken the opposite approach with defendants on supervised release,

holding that as-applied challenges to §922(g)(1) necessarily fail if the defendant was on supervised release, parole, or probation when he unlawfully possessed a firearm, even though that fact played no role in securing the §922(g)(1) conviction. *United States v. Giglio*, 126 F.4th 1039, 1044-46 (5th Cir. 2025) (as-applied challenge to § 922(g)(1) with predicate felony was being an unlawful user in possession of a firearm rejected for defendant still on supervision for the predicate felony); *United States v. Contreras*, 125 F.4th 725 (5th Cir. 2025) (same).

In this regard the Fifth Circuit has joined the Third and Sixth Circuits. *See United States v. Quailes*, 126 F.4th 215 (3d Cir. 2025) (Defendants on state supervision do not have Second Amendment right to possess firearms, and therefore § 922(g)(1) prosecutions do not violate the Second Amendment); *United States v. Moore*, 111 F.4th 266, 271 (3d Cir. 2024) (relying on supervised release status to avoid challenge to § 922(g)(1) impingement on Second Amendment rights; reasoning that the "historical practice of disarming a convict during his sentence ... is like temporarily disarming a convict on supervised release"); *United States v. Goins*, 118 F.4th 794 (6th Cir. 2024) (same). *See also United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024), *reh'g denied*, No. 23-2097, 2024 WL 3816648 (7th Cir. Aug. 14, 2024) (indicating same in dicta).

But there is no historical tradition of disarming individuals for past and punished felonious conduct. And just as with a conviction under § 922(g)(1), blanket supervised release conditions barring any previously convicted felon from possession of a firearm violates the Second Amendment. Like the petitioner in *Range*, Mr.

Trevino committed a nonviolent offense, without the use of a firearm. Should the government fail to provide a relevantly similar historical analogue to what they seek to do to Mr. Trevino, the condition violates Mr. Trevino's Second Amendment right.

This Court should accordingly grant certiorari to decide this momentous issue, and, if it does so in another case, should hold the instant Petition pending the outcome. *See Stutson v. United States*, 516 U.S. 163, 181 (1996)(Scalia, J., dissenting)("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided."). This is so despite the failure of preservation in the district court, which may ultimately occasion review for plain error. *See United States v. Olano*, 507 U.S. 725, 732 (1993). For one, an error may become "plain" any time while the case remains on direct appeal. *See Henderson v. United States*, 568 U.S. 266 (2013). Further, procedural obstacles to reversal – such as the consequences of non-preservation – should be decided in the first instance by the court of appeals. *See Henry v. Rock Hill*, 376 U.S. 776, 777 (1964)(per curiam)(GVR "has been our practice in analogous situations where, not certain that the case was free from all obstacles to reversal on an intervening precedent").

CONCLUSION

Petitioner asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, or if it does so in another case to decide the above issues, should hold the instant Petition pending the outcome.

Respectfully submitted this 31st day of March 2025.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Christy Martin
Christy Martin
Assistant Federal Public Defender
Federal Public Defender's Office
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: (214) 767-2746
E-mail: christy_martin@fd.org

Attorney for Petitioner