No.

IN THE
Supreme Court of the United States

DAWON HENNINGS,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 18 U.S.C. § 922(g)(1)'s lifetime ban on firearm possession for all individuals previously convicted of a crime punishable by more than one year violate the Second Amendment on its face?

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Petitioner submits that there are no parties to the proceeding other than those named in the case caption.

RELATED PROCEEDINGS

Hennings v. United States, No. 24A905 (U.S. March 25, 2025)

United States v. Hennings, No. 24-2428 (8th Cir. Dec. 30, 2024)

United States v. Hennings, No. 4:22-cr-00362-MTS (E.D. Mo. July 1, 2024)

The Eighth Circuit denied Petitioner relief below based on its binding decision in *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), *pet. for cert. filed*, No. 24-6517 (U.S. Feb. 3, 2025), *rh'g pet. denied*, 121 F.4th 656 (8th Cir. 2024). A petition for a writ of certiorari to review that case was distributed for the Court's May 15, 2025, conference. The disposition of that petition could be dispositive here.

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PETITION FOR A WRIT OF CERTIORARI

Dawon Hennings respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

DECISION BELOW

A copy of the Eighth Circuit's judgment appears at Pet. App. A-2. The Eighth Circuit did not issue an accompanying opinion.

JURISDICTIONAL STATEMENT

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States.

The Eighth Circuit had jurisdiction under 28 U.S.C. § 1291. It entered its judgment on December 30, 2024, and Petitioner did not seek rehearing or en banc review.

On March 25, 2025, Justice Kavanaugh granted Petitioner additional time, through May 29, 2025, to file this petition. Pet. App. A-1. This petition is therefore timely under Sup. Ct. R. 13.1 and 13.5.

RELEVANT PROVISIONS

The Second Amendment reads: "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." U.S. CONST. AMEND. II.

18 U.S.C. § 922(g)(1) 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."

INTRODUCTION

This Court broke new ground in *District of Columbia v. Heller*, 554 U.S. 570 (2008), when it held that the Second Amendment codified a pre-existing, individual right to keep and bear arms. Courts spent the next fourteen years trying to discern the scope of that right.

The Court stepped into the fray again in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), expounding upon *Heller* and adopting a two-part analysis. Under *Bruen*, courts adjudicating a Second Amendment challenge must first consider whether the plain text of that Amendment encompasses the conduct that the challenged law proscribes. If it does, then the government must prove a Founding-era legal tradition that is relevantly similar to that law.

This Court provided an example of the historical inquiry in *United States v. Rahimi*, 602 U.S. 680 (2024). *Rahimi* held that 18 U.S.C. § 922(g)(8), which bars firearm possession by those under certain restraining orders, was not facially unconstitutional. It relied on two common Founding-era legal regimes that it found to be relevantly similar to § 922(g)(8): "going armed" laws and surety bonds. Like § 922(g)(8), these laws typically applied based on individualized findings involving specific, serious misconduct with a gun. Moreover, also like § 922(g)(8), the disarmament they permitted was temporary and subject to exceptions.

Bruen and *Rahimi* triggered litigation over status-based prohibitions on possessing firearms. Section 922(g)(1), the federal ban on possession by those with a felony record, sits at the center of that litigation storm. To date, challenges have wrought disparate outcomes and significant confusion.

Petitioner's case is a suitable vehicle by which to quell that confusion.

STATEMENT OF THE CASE

A. Legal Background

1. The Second Amendment codifies a pre-existing right to keep and bear arms. *Heller*, 554 U.S. at 579-81. That right stems from the English Declaration of Rights, which refuted disarmament laws that preceded the Glorious Revolution and the ousting of King James II. *See generally* David E. Vandercoy, *The History of the Second Amendment*, 28 VAL. U. L. REV. 1007, 1015 (1994). The run-up to the Revolutionary War saw similar efforts on the other side of the Atlantic as King George III "began to disarm the inhabitants of the most rebellious areas[]" of the Colonies. *Heller*, 554 U.S. at 594.

With these bitter episodes in mind, the people sought to protect their arms after the Revolution. They ratified the Constitution and the Bill of Rights, which included the Second Amendment. "[B]y the time of the founding," the right to bear arms was "understood to be an individual right protecting against both public and private violence." *Id.*

With the Second Amendment as a backdrop, legislatures traditionally shied away from broad, class-based restrictions on arms. That was true even for those who had a prior record. "Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons." *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting).

2. Congress abruptly switched course during the New Deal era. For the first time, it criminalized firearm possession by individuals convicted of certain crimes. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). That statute, novel as it was for its time, was narrower than the modern version. Its felon-in-possession provision applied to someone "convicted of a crime of violence," *id.*, which included "murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking," and certain kinds of aggravated assault,

id. at § 1(6). Those with such a conviction could not "receive" a firearm, and the law treated possession as "presumptive evidence" of receipt. *Id*. at § 2(f).

In the 1960s, this prohibition took its modern form. The Johnson Administration and the Great Society-era Congresses shared a widely held view that "the right to bear arms protected by the second amendment relates only to the maintenance of the militia." Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary, 89th Cong. 41 (1965). The powers that be dismissed constitutional concerns about federal firearm laws, explaining that the Second Amendment posed "no obstacle" because such regulations did not "hamper the present-day militia." S. Rep. No. 90-1097 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2169.

Deeming itself unconstrained, "Congress sought to rule broadly," employing an "expansive legislative approach" to pass a "sweeping prophylaxis … against misuse of firearms." *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (first quote); *Lewis v. United States*, 445 U.S. 55, 61, 63 (1980) (second and third quotes). In particular, it acted to keep arms from "potentially irresponsible persons, including convicted felons." *Barrett v. United States*, 423 U.S. 212, 220 (1976). To that end, it enacted two changes to the then-current ban.

First, it expanded the Federal Firearms Act to prohibit those convicted of *any* crime "punishable by imprisonment for a term exceeding one year"—not just violent crimes—from receiving a firearm. *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961).

Second, a few years later, it criminalized possession of a firearm—not just receipt—by anyone with a felony conviction. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

3. In 2008, *Heller* debunked the myth that the Second Amendment could have nothing to say about such laws. It held that "the Second Amendment conferred an individual right to keep and bear arms." 554 U.S. at 595.

That holding was significant, but in some corners, *Heller* became just as well known for its dicta. An oft-quoted passage reads:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on ***longstanding prohibitions*** on the possession of firearms ***by felons*** and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626-27 (emphasis added). *Heller* called these prohibitions "presumptively lawful," *id*. at 627 n.26, and assured readers that "there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us," *id*. at 635.

4. Following *Heller*, most courts of appeal crafted a balancing test whereby varying levels of scrutiny applied depending on "'how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right.' " *Bruen*, 597 U.S. at 18 (quoting *Kanter*, 919 F.3d at 441).

Bruen rejected that judicially-crafted balancing test. In its place, it swapped in a two-part text-and-history standard. It held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id*. at 17. And if a law restricts protected conduct, the government "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id*.

Bruen did not adjudicate the rights of those not before the Court. So several Justices wrote separately to note their belief that the majority opinion did not upset *Heller's* dictum about the presumptive lawfulness of prohibitions like felon-in-possession bans. *See id*. at 72 (Alito, J., concurring); *id*. at 80-81 (Kavanaugh, J., concurring, joined by Roberts, C.J.); *id*. at 129-30 (Breyer, J., dissenting, joined by Sotomayor and Kagan, JJ.).

5. The Court provided further Second Amendment guidance in *Rahimi*. *Rahimi* considered 18 U.S.C. 922(g)(8), which disarms persons subject to restraining orders issued based on an individualized finding that the restrainee represents a credible threat of violence to their intimate partner or child. The Court found the restriction was constitutional based on a historical tradition of temporarily disarming persons based on an individualized finding that they present a credible threat of violence. 602 U.S. 680 at 695-98.

Along the way, *Rahimi* quoted *Heller's* dicta about presumptive lawfulness. *Id*. at 699. However, as in its other recent forays into the Second Amendment, it did not address the propriety of laws other than the one before. *See id*. at 702 ("In *Heller*, *McDonald*, and *Bruen*, this Court did not 'undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment.' " *Bruen*, 597 U.S., at 31, 142 S.Ct. 2111. Nor do we do so today.").

6. The Eighth Circuit, which includes the District where Petitioner committed his offenses, applied *Bruen* to § 922(g)(1) in *United States v. Jackson*, 69 F.4th 495 (8th Cir 2023), *vacated by* 2024 WL 3768055 (8th Cir. Aug. 8, 2024). That decision did not survive *Rahimi*. *See Jackson v. United States*, 144 S. Ct. 2710 (U.S. July 2, 2024) (granting certiorari, vacating the judgment, and remanding case for further consideration in light of *Rahimi*).

Three days after receiving this Court's remand of *Jackson I*, the Eighth Circuit issued substantially the same opinion as before, with minimal changes (*Jackson II*). *United States v.*

Jackson, 110 F.4th 1120 (8th Cir. 2024), *pet. for cert. filed*, No. 24-6517 (U.S. Feb. 3, 2025), *rh'g pet. denied*, 121 F.4th 656 (8th Cir. 2024). *Jackson II* concluded "that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." *Id*. at 1125.

The *Jackson II* panel wrote that "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id*. at 1129. It further said that "[w]hether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons." *Id*.

Jackson II relied heavily on *Heller's* dicta about the presumptive lawfulness of felon-in-possession laws. *See id*. at 1125, 1128-29. The Eighth Circuit has subsequently cited that dicta as its basis for distinguishing § 922(g)(1) from other statutes that it has found to be amenable to as-applied Second Amendment challenges. *See United States v. Veasley*, 98 F.4th 906, 909 n.2. (8th Cir. 2024), *pet. for cert. denied*, 145 S. Ct. 304 (U.S. Oct. 7, 2024); *but see United States v. Jackson*, 121 F.4th 656, 658 (8th Cir. 2024) (Stras, J., dissenting from the denial of rehearing en banc) ("Making the leap from *presumptively* constitutional to *always* constitutional, like *Jackson II* does, is too much for that overused line to bear, no matter how you read it.") (emphasis in original).

A petition to review *Jackson II* remains pending before this Court, and was distributed for the May 15, 2025, conference.

B. Procedural History and the Decision Below

Petitioner pleaded guilty to two § 922(g)(1) offenses. Dist. Ct. Dkt. 65 (Minute Entry), 66 (Plea Agreement). He did not argue that this law violated the Second Amendment.

The District Court ultimately imposed two concurrent one-hundred-month prison terms. Pet. App. A-3 – A-10.

Petitioner appealed, maintaining that § 922(g)(1) violates the Second Amendment on its face. COA Appellant's Br., 11-21 (8th Cir. Nov. 15, 2024). He contended that the Second Amendment's text covered his conduct. *Id*. at 13-18. He then averred that the government could not prove up the law's historical bona fides because "Section 922(g)(1) has unique features—particularly, a lifetime ban triggered not by evidence of a future threat but rather the mere existence of a conviction—that make it unconstitutional on its face." *Id*. at 18.

Rather than filing a merits brief, the government moved to dismiss the appeal or, in the alternative, for summary disposition. COA Motion (8th Cir. Dec. 6, 2024). It argued that Petitioner waived his challenge under his plea agreement. *Id*. at 7-11. It also suggested that if he did not waive his claim, the claim nevertheless failed under *Jackson II*. *Id*. at 11-13.

The Eighth Circuit summarily affirmed Petitioner's convictions. Pet. App. A-2. Its judgment did not elaborate on the panel's reasoning, but both parties had agreed that the analysis began and ended with *Jackson II*. And the panel denied the government's request to dismiss the appeal based on waiver, *see id*., leaving *Jackson II* as the only likely basis for denying relief.

REASONS FOR GRANTING THE WRIT

A. Confusion and division persist about the scope of this fundamental right.

Courts are struggling to find a coherent way to adjudicate § 922(g)(1) challenges following *Bruen* and *Rahimi*. Petitioner acknowledges that no Circuit has yet held that § 922(g)(1) is facially unconstitutional, as he urges this Court to do. However, there is still a clear split of authority on closely-related matters.

1. The Fourth, Eighth, Ninth, and Tenth Circuits have foreclosed all challenges to the statute—both as-applied and facial—relying largely on *Heller's* dicta. *See United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), *pet. for cert. filed*, No. (U.S. Mar. 17, 2025); *Jackson*, 110 F.4th; *United States v. Duarte*, ___ F.4th ____, 2025 WL 1352411 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025). The Eleventh Circuit once held likewise, but this Court has vacated that judgment. *See United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (U.S. Jan. 13, 2025).

The law is markedly different in the Fifth and Sixth Circuits. Those Circuits have found § 922(g)(1) to be facially constitutional, but unlike the Fourth, Eighth, Ninth, or Tenth Circuits, they allow as-applied challenges. *See United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *pet. for cert. filed*, No. 24-6625 (U.S Feb. 18, 2025); *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024).

The Third Circuit has gone further. It not only allows people to challenge § 922(g)(1) as-applied, but it has actually found the statute to be unconstitutional as-applied, albeit just once. *See Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024) (en banc).

To recap, four Circuits (five, if one counts the Eleventh Circuit and its since-vacated decision) have rendered § 922(g)(1) immune to Second Amendment challenges of any kind, even after *Bruen* and *Rahimi*. Two Circuits permit as-applied challenges but have yet to meet a successful one. And one more has found the law unconstitutional as-applied in one instance.

2. Differing interpretations of § 922(g)(1) is not a problem that is limited to the Circuit courts. Section 922(g)(1) "has also deeply divided district courts." Supplemental Brief for the Federal Parties, *Jackson v. United States*, No. 23-6170, 4 (U.S. June 24, 2024). Several district courts, generally acting prior to *Rahimi*, have invalidated the statute, including some

in cases that "have involved felons with convictions for violent crimes, such as murder, manslaughter, armed robbery, and carjacking." *Id.*; *see also id.* n.1 (collecting cases).

3. Notably, a few district courts have done what Petitioner urged the Eighth Circuit to do below: invalidate § 922(g)(1) on its face. *See United States v. Neal*, 715 F. Supp. 3d 1084, 1093 (N.D. Ill. 2024), *appeal docketed*, No. 24-1220 (7th Cir. Feb 13, 2024); *United States v. Taylor*, No. 4:23-CR-40001, 2024 WL 245557, at *5 (S.D. Ill. Jan. 22, 2024), *appeal docketed*, 24-1244 (7th Cir. Feb. 16, 2024); *United States v. Prince*, 700 F. Supp. 3d 663, 675-76 (N.D. Ill. 2023), *appeal docketed*, No. 23-3155 (7th Cir. Nov. 9, 2023). Those rulings are weaving their way toward review, so we will soon receive more Circuit-level views on § 922(g)(1)'s facial validity.

Some of these district court decisions may not survive appellate review. However, their existence highlights the untenable current state. In Petitioner's hometown of St. Louis, the government is free to bring § 922(g)(1) prosecutions against everyone with a record, no matter how remote or non-violent that record might be. Yet just across the Mississippi River in Illinois, several judges have concluded that the government cannot constitutionally prosecute a § 922(g)(1) case against anyone, regardless of the length or severity of their record. So although the Second Amendment protects a "fundamental" right, *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010), its scope now depends on the vagaries of geography.

B. There is a pressing need to resolve this issue.

1. The government has previously acknowledged that confusion about § 922(g)(1) "is unlikely to resolve itself without further intervention by this Court." Supplemental Brief for the Federal Parties, *Jackson v. United States*, No. 23-6170, 5 (U.S. June 24, 2024). Even *Rahimi* failed to bring consensus. *See United States v. Duarte*, 108 F.4th 786, 787 (9th Cir. 2024)

(Vandyke, J., dissenting from the grant of rehearing en banc) (describing confusion in the Circuits post-*Rahimi* and lamenting that this Court had not granted review on this issue).

Confusion over § 922(g) is no minor thing, because that law is "no minor provision." *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). The government prosecuted over 8,000 § 922(g) cases in fiscal 2023. U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (July 2024). Nearly 90% of the convictions from those prosecutions fell under subsection (1), the subsection at issue here. *Id*. Chaos over § 922(g)(1)'s status thus affects thousands of people.

2. The government may nevertheless suggest that this Court need not get involved because of efforts to revive 18 U.S.C. § 925(c), a long-dormant "mechanism through which convicted felons can regain their ability to possess firearms[.]" Brief for the United States, *Jackson v. United States*, No. 24-6517, 11 (U.S. Apr. 11, 2025).

Section 925(c) allows the Attorney General to grant someone "relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms," so long as "it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). Yet since at least 1992, the provision has held only illusory potential, as it has been "effectively suspended" thanks to an "appropriations bar." Brief for the United States, *Jackson v, United States*, No. 24-6517, 10 (U.S. Apr. 11, 2025).

The government is considering a way around that bar. The "specific contours" of its plan are not finalized, and the government anticipates that "future actions" will be necessary

before it can "give full effect to 18 U.S.C. 925(c)[.]" *Id*. at 11 (citations omitted). In other words, the government is unsure exactly what will happen with § 925(c) or when it will happen. For now, a § 925(c) revival is far too speculative to caution against the Court getting involved in a matter of national importance and constitutional weight.

Further, an operative § 925(c) would not take courts out of the equation. The statute calls for "judicial review" if the Attorney General denies someone rearmament. 18 U.S.C. § 925(c). This means that a working § 925(c) will still require courts to wade into the government's balancing of "public safety" and "public interest" against an individual right to keep and bear arms. *Id*. To undertake that task, courts must understand the limits on that right. And they will continue to lack a workable, consistent understanding of those limits absent this Court's intervention.

C. The decision below is wrong.

The Eighth Circuit decided Petitioner's appeal based on *Jackson II*, an opinion that is inconsistent with the Court's Second Amendment jurisprudence.

Under *Bruen*, the central considerations for historical analysis are "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." 597 U.S. at 29. Those metrics remain key after *Rahimi*. *See* 602 U.S. at 692 ("Why and how the regulation burdens the right are central to this inquiry.").

Jackson II's analysis fails under both metrics. It omitted any discussion of the first. *See Jackson*, 121 F.4th at 660 (Stras, J., dissenting from the denial of rehearing en banc) ("*Jackson II* . . . makes no attempt to explain how the burden imposed by the felon-in-possession statute, which lasts for a lifetime, is comparable to any of the Founding-era laws it discusses.").

It therefore failed to reckon with § 922(g)(1)'s defining feature: a *lifetime* ban on possessing *any* firearm or ammunition, *without exception*. That extreme burden has no parallel in our tradition. *Cf. Rahimi*, 602 U.S. at 699 (discussing the tradition of temporary disarmament).

Jackson II also watered down the second metric. *See Jackson*, 121 F.4th at 660 (Stras, J., dissenting from the denial of rehearing en banc) ("The justification gets short shrift too."). The panel listed a few disparate laws that had targeted the rights of disfavored persons, saying that "[h]istory shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people." *Jackson*, 110 F.4th at 1126. This historical survey led it to conclude that "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id*. at 1129.

In operating at such a high level of generality, *Jackson II* collapsed this metric into impermissible "deference to Congress's blanket determination that a group numbering in the tens of millions and ranging from murderers to ketchup-bottle tamperers categorically 'present[s] an unacceptable risk of danger if armed.' " *Jackson*, 121 F.4th at 660 (Stras, J., dissenting from denial of rehearing en banc) (quoting *Jackson*, 110 F.4th at 1128).

Rahimi requires greater precision. That decision featured several separate opinions expressing diverging views, but this Court's members *unanimously* rejected the premise that a government can disarm someone merely by affixing a label to them. *See* 602 U.S. at 772-73 (Thomas, J., dissenting) (noting that "[n]ot a single Member of the Court adopts the Government's theory" that it can "disarm anyone who is not 'responsible' and 'law-abiding' "). In place of "vague" and "unclear" labels, *id*. at 701, *Rahimi* defined the second metric narrowly, saying that "[s]ection 922(g)(8) restricts gun use to mitigate *demonstrated threats* of physical violence." *Id*. at 698 (emphasis added); *see also id.* at 702 ("[W]e 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.") (emphases added).

Jackson II's analysis thus fails along both *Bruen* and *Rahimi* metrics. The first is absent from the opinion. The second appears in that opinion, but in unrecognizable form. The summary disposition below added nothing to *Jackson II* and did not purport to shore up any of its faults. The Court should grant this petition and set the historical record straight.

D. This case presents an adequate vehicle for resolving the ongoing confusion.

This petition presents a clean, outcome-determinative question. The case has no non-§ 922(g)(1) charges or other loose ends, and a ruling favorable to Petitioner would make the Eighth Circuit's error plain in his case. *Cf. Henderson v. United States*, 568 U.S. 266, 279 (2013). While Petitioner forfeited this issue below, he did not waive it; the Eighth Circuit implicitly found as much in denying the government's motion to dismiss. *See* Pet. App. A-2; *United States v. Olano*, 507 U.S. 725, 733 (1993) (explaining why "[w]aiver is different from forfeiture").

Further, the Eighth Circuit currently resolves all Second Amendment challenges to § 922(g)(1) based on *Jackson II*, regardless of the standard of review or whether the challenge is facial or as-applied. *See, e.g.*, *United States v. Sharkey*, 131 F.4th 621, 622 (8th Cir. 2025) (holding that *Jackson II* foreclosed preserved facial and as-applied Second Amendment challenges); *see also United States v. Mull*, 113 F.4th 864, 869-70 (8th Cir. 2024) (holding that *Jackson II* foreclosed unpreserved Second Amendment challenge). If the Court resolves Petitioner's unpreserved facial challenge, its holding would translate to preserved challenges, both facial and as-applied.

E. If this case is not a suitable vehicle, the Court should hold the petition pending its decision in *Jackson II* or another case presenting a similar challenge.

If the Court finds this case unsuitable, it should hold this petition pending disposition of the *Jackson II* petition. The government has endorsed such an approach under similar circumstances. *See, e.g.*, Memorandum for the United States, *Tate v. United States*, No. 23-5114, 3 (U.S. Aug. 16, 2023) (urging the Court to deny the petition but proposing as an alternative that the Court could hold the petition pending the disposition of cases presenting a closely-related issue). In addition, should the Court summarily grant, vacate, and remand *Jackson II* following its consideration at the May 15, 2025, conference, it should do the same with this petition given that *Jackson II* drove the result below.

CONCLUSION

Based upon the foregoing, the petition should be granted or, alternatively, held pending a decision in case no. 24-6517 or another case posing a substantially similar question.

Respectfully submitted this 16th day of May, 2025,

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