No. 24-

In the Supreme Court of the United States

JACOB THOMAS MIRELES, *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

MAUREEN SCOTT FRANCO
Federal Public Defender
KRISTIN L. DAVIDSON
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS
300 Convent Street, Suite 2300
San Antonio, Texas 78205
Kristin_Davidson@fd.org
(210) 472-6700

Counsel for Petitioner

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1), the federal statute that prohibits anyone who has been convicted of "a crime punishable by imprisonment for a term exceeding one year" from possessing a firearm, violates the Second Amendment either facially or as applied to individuals who do not pose a present threat of violence.

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Jacob Thomas Mireles, No. 5:22-cr-00301-FB(1) (Aug. 2, 2023)

United States Court of Appeals for the Fifth Circuit:

United States v. Jacob Thomas Mireles, No. 23-50601 (Feb. 19, 2025)

TABLE OF CONTENTS

Question presented i

Related proceedings ii

Table of Contents iii

Table of authorities v

Introduction 1

Opinion below 5

Jurisdiction 5

Constitutional and statutory provisions involved 5

Statement 6

A. Legal background. 6

B. Proceedings below. 14

Reasons for granting the petition 15

I. The courts of appeals are deeply divided over the scope of a fundamental constitutional right. 15

II. The decision below is wrong and conflicts with this Court's precedent. 24

A. Section 922(g)(1) is facially unconstitutional because it imposes an unprecedented lifetime ban on firearm possession. 25

B. Section 922(g)(1) is unconstitutional as applied to individuals who do not pose a present threat of violence. 31

III. This is a critically important and recurring question. 33

IV. This case is an ideal vehicle for addressing this question. 35

Conclusion 36

Appendix

Court of appeals opinion (Feb. 19, 2025) 1a–2a

TABLE OF AUTHORITIES

Cases

Barrett v. United States,
423 U.S. 212 (1976) 9, 32

Binderup v. Attorney General,
836 F.3d 336 (3d Cir. 2016) (en banc) 12

Cases v. United States,
131 F.2d 916 (1st Cir. 1942) 7

Cody v. United States,
460 F.2d 34 (8th Cir. 1972) 10

Diaz v. United States,
No. 24-6625 (U.S. Feb. 24, 2025) 35

District of Columbia v. Heller,
554 U.S. 570 (2008) 10–11, 25

Hunt v. United States,
No. 24-6818 (U.S. Mar. 20, 2025) 35

Kanter v. Barr, 919 F.3d 437
(7th Cir. 2019) 6, 11, 30–31

Lewis v. United States,
445 U.S. 55 (1980) 9, 26

Moore v. United States,
No. 24-968 (U.S. Mar. 11, 2025) 35

NYSRPA v. Bruen,
597 U.S. 1 (2022) 1, 3, 12–13, 19, 25–27, 29–30

People v. Camperlingo,
231 P. 601 (Cal. Ct. App. 1924) 8

Range v. Attorney General,
124 F.4th 218 (3d Cir. 2024) (en banc) 16–17, 32–33

Rehaif v. United States,
588 U.S. 225 (2019) 33

Scarborough v. United States,
431 U.S. 563 (1977) 9

Stevens v. United States,
440 F.2d 144 (6th Cir. 1971) 10

Tot v. United States,
319 U.S. 463 (1943) 6

United States v. Cole,
2025 WL 339894 (11th Cir. Jan. 30, 2025)..... 22

United States v. Dial,
2024 WL 5103431 (11th Cir. Dec. 13, 2024)),
cert. granted, judgment vacated,
and remanded, No. 24-6569 (U.S. May 19, 2025) 22

United States v. Diaz,
116 F.4th 458 (5th Cir. 2024),
reh'g en banc denied,
No. 23-50452 (5th Cir. Oct. 25, 2024),
pet. for writ of cert. pending,
No. 24-6625 (U.S.) 15, 22–24, 26–30, 33

United States v. Duarte,
__ F.4th __, 2025 WL 1352411
(9th Cir. May 9, 2025) (en banc) 20–21

United States v. Duarte,
101 F.4th 657 (9th Cir. 2024),
reh'g en banc granted, opinion vacated,
108 F.4th 786 (9th Cir. 2024) 20

United States v. Dubois,
94 F.4th 1284 (11th Cir. 2024),
cert. granted, judgment vacated, and remanded,
No. 24-5744 (U.S. Jan. 13, 2025) 22

United States v. Focia,
869 F.3d 1269 (11th Cir. 2017) 12

United States v. Gay,
98 F.4th 843 (7th Cir. 2024) 19

United States v. Goins,
118 F.4th 794 (6th Cir. 2024) 19

United States v. Hunt,
123 F.4th 697 (4th Cir. 2024),
pet. for writ of cert. pending,
No. 24-6818 (U.S. Mar. 20, 2025) 17–18

United States v. Jackson,
110 F.4th 1120 (8th Cir. 2024),
reh'g en banc denied,
121 F.4th 656 (8th Cir. 2024),
pet. for writ of cert. denied,
No. 24-6517 (U.S. May 19, 2025)..... 19–20

United States v. Johnson,
497 F.2d 548 (4th Cir. 1974) 10

United States v. Miller,
307 U.S. 174 (1939) 7, 10

United States v. Moore,
111 F.4th 266 (3d Cir. 2024),
pet. for writ of cert. pending,
No. 24-968 (U.S. Mar. 11, 2025) 17, 19

United States v. Moore,
666 F.3d 313 (4th Cir. 2012) 12

United States v. Rahimi,
602 U.S. 680 (2024) 2, 13, 25, 27–29, 31–33

United States v. Salerno,
481 U.S. 739 (1987) 31

United States v. Tot,
131 F.2d 261 (3d Cir. 1942) 8

United States v. Williams,
113 F.4th 637 (6th Cir. 2024) 18, 29, 32

Vincent v. Bondi,
127 F.4th 1263 (10th Cir. 2025) 21

Constitutional Provisions

U.S. Const. amend. II 5, 8–10, 31

Statutes

18 U.S.C. § 922(g)(1) ..... i, 1– 5, 12, 14–28, 31–35

18 U.S.C. § 922(g)(8) 29

28 U.S.C. § 1254(1) 5

Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664–65 27

An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961) 9

Federal Firearms Act, 52 Stat. 1250 (1938) 6

Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197 9

Other Authorities

Adam Winkler, *Heller's Catch-22*,
56 UCLA L. REV. 1551 (2009) 6

Dep't of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022* (Jan. 2024) 34

Dep't of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables* (rev. Nov. 2010) 34

Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573 (2022) 34

Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary, 89th Cong. 41 (1965) 8

Kathryn Preyer, *Crime and Reform in Post-Revolutionary Virginia*, 1 LAW & HIST. REV. 53, 73 (1983) 27

S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169 8–9

U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (June 2024) 34

In the Supreme Court of the United States

JACOB THOMAS MIRELES, *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

Petitioner Jacob Thomas Mireles, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

This Court's decision in *NYSRPA v. Bruen*, 597 U.S. 1 (2022), brought about a sea change in Second Amendment jurisprudence. In *Bruen*'s wake, the courts of appeals considered renewed constitutional challenges to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1). They reached dramatically divergent results. A panel of the Third Circuit at first held that felons were excluded from "the people" protected by the Second Amendment, but the en

banc court applied *Bruen*'s text-and-history analysis and held that § 922(g)(1) was unconstitutional as applied to an individual with a non-violent predicate conviction. A panel of the Ninth Circuit similarly held that the statute violated the Second Amendment as applied to someone with non-violent offenses before vacating that decision to hear the case en banc. The Fourth and Seventh Circuits assumed that as-applied challenges to § 922(g)(1) were available in at least some circumstances. By contrast, the Eighth, Tenth, and Eleventh Circuits all upheld § 922(g)(1) with no need for felony-by-felony determinations, although those courts disagreed about whether a historical analysis was required.

Last term's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), did little to quell the confusion. The courts of appeals continue to be deeply divided after *Rahimi*. The Third, Fifth, and Sixth Circuits each acknowledge that § 922(g)(1) is vulnerable to as-applied challenges, but they diverge on what historical evidence supports the statute and the limits of its application. The Fifth Circuit analogizes § 922(g)(1) to founding-era capital punishment and forfeiture laws, leaving the door open to challenges by defendants whose underlying felonies were not severely punished at the founding. The Third Circuit, by contrast, rejected the government's analogy to severe punishment and held that

§ 922(g)(1) violates the Second Amendment as applied to an individual who posed no physical danger to others. And in the Sixth Circuit, an as-applied challenge turns on whether a person is dangerous. The Eighth Circuit, however, has reaffirmed its conclusion that history supports applying § 922(g)(1) across the board with no need for felony-by-felony analysis. The Tenth and Eleventh Circuits continue to uphold the statute in all applications based on dicta from this Court instead of the historical analysis that *Bruen* demands. The Fourth Circuit refuses to consider as-applied challenges on several grounds, including that felons are not among "the people" protected by the Second Amendment. And the en banc Ninth Circuit recently held that there is a history of disarming individuals who pose a special danger of misusing firearms that supports applying § 922(g)(1) to all felons.

In short, the Fifth Circuit's decision below continues to deepen an intractable conflict in the courts of appeals over the scope of a fundamental right. And the Fifth Circuit's decision is wrong. Section 922(g)(1) is a mid-20th century innovation drafted when Congress believed—incorrectly—that the Second Amendment does not protect an individual right to bear arms. So Congress made no effort to pass a law that was "consistent with the Nation's historical tradition of firearm regulation." *See Bruen*, 597 U.S. at 24. Rather,

it passed a sweeping ban that is irreconcilable with our history and tradition. Section 922(g)(1) is facially unconstitutional because its lifetime prohibition on gun possession imposes a historically unprecedented burden on the right to bear arms. No historical firearm law imposed *permanent* disarmament. And the justification behind § 922(g)(1)—disarming a broad group of potentially irresponsible individuals—also fails historical scrutiny. At most, our history shows a tradition of disarming *violent* individuals who threaten armed insurrection or pose a present physical threat to others. So, at the very least, § 922(g)(1) is unconstitutional as applied to non-violent individuals like Mireles.

This question is critically important. Section 922(g)(1) is one of the most commonly charged federal offenses. Uncertainty about whether the statute is constitutional affects thousands of criminal cases each year. Even more concerning, § 922(g)(1) categorically and permanently prohibits millions of Americans—the vast majority of whom have non-violent convictions—from exercising their right to keep and bear arms.

This Court's intervention is urgently needed to resolve the scope of a fundamental constitutional right. After *Rahimi*, the confusion among the courts of appeals has only deepened. This

question will not go away, and this is an ideal vehicle to resolve it. The Court should grant certiorari.

OPINION BELOW

A copy of the unpublished opinion of the court of appeals, *United States v. Mireles*, No. 23-50601 (5th Cir. Feb. 19, 2025) (per curiam), is reproduced at App. 1a–2a.

JURISDICTION

The Fifth Circuit entered its judgment on February 19, 2025. This petition is filed within 90 days after entry of the judgment. *See* Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment 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."

Section 922(g)(1) of Title 18 of the United States Code provides: "It shall be unlawful for any person … who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year … to … possess in or affecting commerce, any firearm or ammunition."

STATEMENT

A. Legal background.

1. "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). Indeed, "[b]ans on ex-felons possessing firearms were first adopted in the 1920s and 1930s, almost a century and a half after the Founding." Adam Winkler, *Heller's Catch-22*, 56 UCLA L. REV. 1551, 1563 (2009). In 1938, Congress criminalized firearm possession by individuals convicted of certain crimes for the first time. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). But that statute was much narrower than the modern version. The Federal Firearms Act only 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.* § 1(6). The Act prohibited an individual with such a conviction from "receiv[ing]" a firearm, and it considered possession to be "presumptive evidence" of receipt.[1] *Id.* § 2(f).

Soon after Congress passed the Federal Firearms Act, this Court decided a Second Amendment challenge to another federal

---

[1] This possession-based presumption was short-lived. A few years later, this Court invalidated the presumption on due process grounds. *Tot v. United States*, 319 U.S. 463, 467 (1943).

firearm law. In *United States v. Miller*, two defendants challenged their indictment for transporting an unregistered short-barreled shotgun in interstate commerce. 307 U.S. 174, 175 (1939). This Court held that the Second Amendment did not protect the right to possess a short-barreled shotgun because such a weapon had no "reasonable relationship to the preservation or efficiency of a well regulated militia." *Id.* at 178. The Court explained that the Second Amendment was adopted "[w]ith obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces" and "must be interpreted and applied with that end in view." *Id.*

Applying similar militia-focused reasoning, courts of appeals rejected constitutional challenges to the Federal Firearm Act's provision prohibiting individuals convicted of violent crimes from receiving firearms. The First Circuit held that the Second Amendment did not protect someone who was not "a member of any military organization" and who used a firearm "without any thought or intention of contributing to the efficiency of the well regulated militia." *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942). The Third Circuit concluded that the Second Amendment "was not adopted with individual rights in mind," so it did not protect possession of a gun without "some reasonable

relationship to the preservation or efficiency of a well regulated militia." *United States v. Tot*, 131 F.2d 261, 266 (3d Cir. 1942). And a California court of appeal upheld that state's felon-in-possession law, explaining that "the right to keep and bear arms is not a right guaranteed … by the federal constitution." *People v. Camperlingo*, 231 P. 601, 603 (Cal. Ct. App. 1924).

2. It was not until the 1960s that the federal felon-in-possession statute took on its modern form. At the time, Congress shared a widely held—but incorrect—understanding of the Second Amendment. In committee testimony, the Attorney General assured Congress that "[w]ith respect to the second amendment, the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms" and opined 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). And Congress dismissed constitutional concerns about federal firearm regulations, explaining that the Second Amendment posed "no obstacle" because federal 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. Congress relied on court decisions—

including *Miller*—which held that the Second Amendment "was not adopted with the individual rights in mind." *Id.*

Unconstrained by the Second Amendment, "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, Congress was concerned with keeping firearms out of the hands of broad categories of "potentially irresponsible persons, including convicted felons." *Barrett v. United States*, 423 U.S. 212, 220 (1976). So it enacted two significant changes that brought about the modern felon-in-possession ban. *First*, Congress expanded the Federal Firearms Act to prohibit individuals 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, Congress 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.

In the ensuing years, courts endorsed Congress's incorrect understanding of the Second Amendment and upheld the new, sweeping felon-in-possession prohibition. For example, the Sixth Circuit held that the Second Amendment did not limit Congress's "power to prohibit the possession of a firearm by a convicted felon." *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971). "Since the Second Amendment right 'to keep and bear Arms' applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm." *Id.* (citing *Miller*, 307 U.S. at 178). Other courts of appeals—relying on *Miller*—also rejected Second Amendment challenges to the statute because it did not obstruct the militia. *See*, *e.g.*, *United States v. Johnson*, 497 F.2d 548, 550 (4th Cir. 1974); *Cody v. United States*, 460 F.2d 34, 36–37 (8th Cir. 1972).

3. Fast forward a few decades. In *District of Columbia v. Heller*, this Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a "textual analysis" of the Second Amendment's language and surveyed the Amendment's "historical background." *Id.* at 578, 592. The Court

had "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 595. Relying on the historical understanding of the Amendment, however, the Court recognized that "the right secured by the Second Amendment is not unlimited." *Id.* at 626. The Court identified several "longstanding" and "presumptively lawful" firearm regulations, such as prohibitions on felons possessing firearms. *Id.* at 626–27 & n.27. But the Court cautioned that it was not "undertak[ing] an exhaustive historical analysis … of the full scope of the Second Amendment." *Id.* at 626. And it did not cite any historical examples of these "longstanding" laws, explaining that there would be "time enough to expound upon the historical justifications for the[se] exceptions … if and when those exceptions come before us." *Id.* at 635. The Court then turned to the District of Columbia handgun ban at issue, finding that it was historically unprecedented and thus violated the Second Amendment. *Id.* at 629, 631–35.

Following *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges that focused on the historical scope of the Second Amendment at step one and applied means-ends scrutiny at step two. *See*, *e.g.*, *Kanter*, 919 F.3d at 441–42; *United States v. Focia*, 869 F.3d 1269, 1285

(11th Cir. 2017). And this Court's recognition that the Second Amendment protects an individual right to bear arms brought renewed constitutional challenges to § 922(g)(1). But the courts of appeals almost uniformly rejected Second Amendment challenges to the statute, either applying means-ends scrutiny or relying on *Heller*'s "presumptively lawful" language. *See*, *e.g.*, *United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases). The lone exception was the Third Circuit, which held that § 922(g)(1) was unconstitutional as applied to two individuals with underlying convictions—one for corrupting a minor and the other for carrying a handgun without a license—that "were not serious enough to strip them of their Second Amendment rights." *Binderup v. Attorney General*, 836 F.3d 336, 351–57 (3d Cir. 2016) (en banc).

4. Then came *Bruen*. In *Bruen*, this Court held that the two-step framework adopted by the courts of appeals was "one step too many." 597 U.S. at 19. Instead, the Court explained that *Heller* demanded a test "centered on constitutional text and history." *Id.* at 22. Under this test, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

"Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* (cleaned up).

Bruen—and the Court's later decision in *Rahimi*—explain that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. "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.* (quoting *Bruen*, 597 U.S. at 29). The law need not be a "historical twin," but analogical reasoning is also not a "regulatory blank check." *Bruen*, 597 U.S. at 30. "How" and "why" the regulations burden the right to bear arms are central to this inquiry. *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. These considerations ask whether the modern and historical regulations impose a "comparable burden" (the *how*) and "whether that burden is comparably justified" (the *why*). *Bruen*, 597 U.S. at 29. "Even when a law regulates arms-bearing for a permissible reason, … it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692.

B. Proceedings below.

1. In March 2022, Mireles was arrested on an active state felony warrant for a parole violation. C.A. ROA.224. After his arrest, police officers searched his car and found a 9mm pistol in his glove box. *Id*. Mireles had earlier convictions in Texas state court—each punishable by more than a year in prison—for burglary, vehicle theft, aggravated assault with a deadly weapon, and possessing a firearm as a felon. *Id*. at 238–41.

2. An indictment charged Mireles with being a felon in possession of a firearm in violation of § 922(g)(1). C.A. ROA.10–11. Mireles moved to dismiss the indictment. *Id.* at 63–79. He argued that § 922(g)(1) facially violates the Second Amendment under *Bruen*'s text-and-history test. *Id.* at 68–75. In the alternative, he argued that § 922(g)(1) is unconstitutional as applied to him because there is not a historical tradition of permanently disarming a person with an analogous criminal history. *Id.* at 75–76.

The district court denied Mireles's motion to dismiss without explanation. C.A. ROA.98. Mireles pleaded guilty to the indictment pursuant to a conditional plea agreement with an appeal waiver, but he expressly reserved his right to appeal the district court's order denying his motion to dismiss the indictment. *Id*. at 208, 222. The district court sentenced him to 46 months' imprisonment and three years' supervised release. *Id*. at 131–32.

3. Mireles appealed, and the Fifth Circuit affirmed. App. 1a–2a. The court held that its recent decision in *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024), *reh'g en banc denied*, No. 23-50452 (5th Cir. Oct. 25, 2024), *pet. for writ of cert. pending*, No. 24-6625 (U.S.), foreclosed Mireles's facial challenge to § 922(g)(1). App. 2a. As to his as-applied challenge, the court held that "*Diaz* also resolves Mireles's argument that § 922(g)(1) is unconstitutional as applied to a felon like him with a vehicle theft conviction." *Id.* (citing *Diaz*, 116 F.4th at 471).

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are deeply divided over the scope of a fundamental constitutional right.

The courts of appeals are deeply divided over how to analyze Second Amendment challenges to § 922(g)(1). Some circuits see no need to conduct the text-and-history analysis required by *Bruen*, relying instead on this Court's dicta that felon-in-possession prohibitions are presumptively lawful. Others apply *Bruen*'s text-and-history framework but reach dramatically different results. Examining the text, the circuits disagree about whether felons are part of "the people" protected by the Second Amendment. And in analyzing the historical evidence, the circuits are split over which

traditions justify § 922(g)(1), whether the statute is vulnerable to as-applied challenges, and (if so) what standard to apply.

1. The Third Circuit, sitting en banc, struck down § 922(g)(1) as applied to an individual convicted of food stamp fraud who did not "pose[ ] a physical danger to others." *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024). The court held that the plaintiff was part of "the people" protected by the Second Amendment despite his prior conviction. *Id.* at 226–28. And the court held that the government failed to show "a longstanding history and tradition of depriving people like [the plaintiff] of their firearms." *Id.* at 232. In doing so, the court rejected the government's reliance on status-based restrictions, emphasizing that founding-era laws disarmed distrusted groups—like loyalists, Native Americans, religious minorities, and Black Americans—based on fear of rebellion. *Id.* at 229–30. The court also dismissed the government's "dangerousness" principle, which would encompass even non-violent offenders, as "far too broad." *Id.* at 230 (cleaned up). Finally, the court rejected the government's reliance on capital punishment and forfeiture, explaining that "the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—

is rooted in our Nation's history and tradition." *Id.* at 230–31. However, the court subsequently held that a new prosecution under § 922(g)(1) is justified when applied to "a convict on supervised release." *United States v. Moore*, 111 F.4th 266, 269–73 (3d Cir. 2024), *pet. for writ of cert. pending*, No. 24-968 (U.S. Mar. 11, 2025).

2. The Fourth Circuit takes a much different approach, refusing to entertain as-applied challenges and upholding § 922(g)(1) "without regard to the specific conviction that established [a person's] inability to lawfully possess firearms." *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *pet. for writ of cert. pending*, No. 24-6818 (U.S. Mar. 20, 2025). The court provided two alternative grounds for this conclusion. *First*, it held that it remained bound by its pre-*Bruen* precedent foreclosing as-applied challenges to § 922(g)(1). *Id.* at 702–04. Those earlier cases, in turn, relied on *Heller*'s statement that felon-in-possession bans are "presumptively lawful" and its reference to "law-abiding" citizens. *Id.* at 703. *Second*, the court held that as-applied challenges to § 922(g)(1) fail both steps of *Bruen*'s text-and-history test. *Id.* at 704. At the first step, the court held that "the Second Amendment protects firearms possession by the law-abiding, not by felons." *Id.* at 705. And at the second step, the court concluded that legislatures could categorically disarm groups from possessing firearms in a

historical analysis mirroring the Eighth Circuit's discussed below. *Id.* at 705–08; *see infra* 20.

3. The Sixth Circuit allows as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous." *United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). The court first confirmed that felons are part of "the people" protected by the Second Amendment. *Id.* at 648–50. Next, the court found historical support for disarming "presumptively dangerous" groups who posed a threat to public order—like religious minorities, Native Americans, loyalists, and freedmen—but explained that these laws all allowed individuals to show that they posed no danger. *Id.* at 657. So the court held that an individual must be given an opportunity to show that he is "not dangerous" and "falls outside of § 922(g)(1)'s constitutionally permissible scope." *Id.* In conducting this dangerousness inquiry, the court explained that courts can "consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction." *Id.* at 659–60. The Sixth Circuit extended this reasoning to hold that, like the Third Circuit, the nation's historical tradition of "disarming the dangerous" and "forfeiture laws," "also supports disarming those on parole, probation, or supervised release." *United States v. Goins*,

118 F.4th 794, 801–02 (6th Cir. 2024) (citing *Moore*, 111 F.4th at 269–72).

4. The Seventh Circuit has assumed that as-applied challenges to § 922(g)(1) are available. *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024). But the court concluded that the defendant in *Gay*—who had convictions for violent felonies and was on parole when he possessed a gun—was "not a 'law-abiding, responsible' person who has a constitutional right to possess firearms." *Id.* at 847 (quoting *Bruen*, 597 U.S. at 26, 70).

5. The Eighth Circuit has upheld § 922(g)(1) as constitutional across the board with "no need for felony-by-felony litigation." *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *reh'g en banc denied*, 121 F.4th 656 (8th Cir. 2024), *pet. for writ of cert. denied*, No. 24-6517 (U.S. May 19, 2025). Based on historical laws prohibiting certain groups of people—religious minorities, Native Americans, and those who refused to declare an oath of loyalty—from possessing guns, the court reasoned that legislatures have long exercised authority to disarm broad categories of people who are "not law-abiding" or "presented an unacceptable risk of danger if armed." *Id.* at 1126–28. Although the Third and Sixth Circuits surveyed similar laws and found that they did not support disarming individuals who pose no risk of danger, the Eighth

Circuit disagreed. The court explained that "not all persons disarmed under historical precedents … were violent or dangerous," so "there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* at 1128.

6. A Ninth Circuit panel held that § 922(g)(1) is unconstitutional as applied to a defendant with only non-violent convictions. *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir. 2024), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024). Sitting en banc, the court aligned itself with the Fourth, Eighth, Tenth, and Eleventh circuits and held that "§ 922(g)(1) is not unconstitutional as applied to non-violent felons." *United States v. Duarte*, __ F.4th __, 2025 WL 1352411, at *3 (9th Cir. May 9, 2025). The court relied on this Court's repeated assurances that prohibitions on the possession of a firearm by felons are presumptively lawful and do not disrupt the court's pre-*Bruen* precedent that foreclosed Second Amendment challenges to § 922(g)(1). *Id.* at *4–6. It then applied Bruen's test to confirm its reading that no felony-by-felony evaluation of § 922(g)(1) is required. *Id.* at *6. While the court found that the conduct proscribed by § 922(g)(1) is covered by the plain text of the Second Amendment, *id.* at *6, the court held that the government met its

burden under *Bruen*'s second step based on historical evidence consistent with "two regulatory principles that: (1) legislatures may disarm those who have committed the most serious crimes; and (2) legislatures may categorically disarm those they deem dangerous, without an individualized determination of dangerousness," *id*. at *9.

7. The Tenth Circuit has held that § 922(g)(1) is constitutional as applied to "all individuals convicted of felonies" with no need to "draw[ ] constitutional distinctions based on the type of felony involved." *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025). But the court did not engage in *Bruen*'s text-and-history analysis. Instead, the court held that it remained bound by pre-*Bruen* precedent. *Id.* at 1264–65. That precedent, in turn, foreclosed as-applied challenges to § 922(g)(1) based on *Heller*'s statement that prohibitions on the possession of firearms by felons were "longstanding" and "presumptively lawful." *Id.* at 1265. So the court held that "the Second Amendment doesn't prevent application of § 922(g)(1) to nonviolent offenders." *Id.* at 1266.

8. The Eleventh Circuit has also held—without conducting a historical analysis—that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." *United States v. Dubois*, 94 F.4th 1284,

1292 (11th Cir. 2024) (cleaned up), *cert. granted, judgment vacated, and remanded*, No. 24-5744 (U.S. Jan. 13, 2025). Like the Tenth Circuit, the court held that its pre-*Bruen* precedent—which relied on *Heller*—remained binding.[2] *Id.* at 1291–93. Thus, the court reaffirmed its conclusion that "felons are categorically disqualified from exercising their Second Amendment right under *Heller*." *Id.* at 1293 (cleaned up).

9. The Fifth Circuit's decision below, which summarily adopts *Diaz*'s historical and legal analyses, App. 2a, underscores the deep divisions between the courts of appeals.

a. The Fifth Circuit splits with other circuits on two preliminary questions. Unlike the Fourth, Ninth, Tenth, and Eleventh Circuits—which have held that they remain bound by their pre-*Bruen* precedent—the Fifth Circuit agreed with the Third and Sixth Circuits that *Bruen* rendered its prior precedent obsolete. *Diaz*, 116 F.4th at 466. And while the Tenth and Eleventh Circuits have declined to conduct any historical analysis based on

---

[2] This Court vacated *Dubois* for further consideration in light of *Rahimi*. But the Eleventh Circuit has confirmed that "*Rahimi* does not displace our holding in *Dubois* that *Bruen* did not abrogate [prior circuit precedent]." *United States v. Dial*, 2024 WL 5103431, at *3 (11th Cir. Dec. 13, 2024), *cert. granted, judgment vacated, and remanded,* No. 24-6569 (U.S. May 19, 2025); *see also United States v. Cole*, 2025 WL 339894, at *4 (11th Cir. Jan. 30, 2025) (applying pre-*Bruen* precedent to reject a Second Amendment challenge after this Court vacated and remanded *Dubois*).

Heller's "presumptively lawful" language, the Fifth Circuit joined the Third and Sixth Circuits in refusing to treat that language as controlling.[3] *Id.* Instead, these courts acknowledge that *Bruen* requires a full text-and-history analysis. *Id.*

b. At *Bruen*'s first step, the Fifth Circuit adopted the majority view shared by the Third and Sixth Circuits—but split with the Fourth Circuit—by holding that felons are part of "the people" protected by the Second Amendment. *Id.* at 466–67.

c. At the second step, the Fifth Circuit's historical analysis diverges from other circuits in several respects. The Fourth, Eighth, and Ninth Circuits have held that history supports upholding § 922(g)(1) regardless of a defendant's underlying conviction. But the Fifth Circuit left the door open for "as-applied challenges by defendants with different predicate convictions." *Id.* at 469 & 470 n.4. Although the Third and Sixth Circuits also allow as-applied challenges, their analysis differs from the Fifth Circuit's in important respects. The Sixth Circuit noted that courts deciding an as-applied challenge can consider a defendant's entire criminal record, not just the underlying felony. But the Fifth Circuit reached

---

[3] The Fifth Circuit expressly rejected the Eleventh Circuit's reliance "solely upon *Rahimi*'s mention of *Heller*'s 'felons and the mentally ill' language in upholding the constitutionality of § 922(g)(1)." *Diaz*, 116 F.4th at 466 n.2

the opposite conclusion, explaining that it was limited to the felony predicates that triggered § 922(g)(1). *Id.* at 467. And the Fifth Circuit relied on capital punishment and estate forfeiture to justify applying § 922(g)(1) to Mireles, *id.* at 467–70; *see* App. 2a, which conflicts with the Third Circuit's rejection of those analogues. Finally, the standard the Fifth Circuit adopted for future as-applied challenges—whether the defendant's underlying convictions were subject to "serious and permanent punishment" at the founding, *Diaz*, 116 F.4th at 470 & n.4—is different than the line drawn by the Third Circuit (whether a person poses a physical danger to others) and the Sixth Circuit (whether a person is dangerous).

* * *

The courts of appeals are split at every stage of the Second Amendment analysis, and the splits are entrenched and deepening. This Court's intervention is needed to resolve the scope of the right to keep and bear arms.

II. The decision below is wrong and conflicts with this Court's precedent.

The Fifth Circuit's decision in *Diaz*, followed by the panel below, correctly held that, under the plain text of the Second Amendment, felons are part of "the people" protected by the Amendment. 116 F.4th at 467; *see* App. 2a. After all, this Court has explained that "the people" "unambiguously refers to all members

of the political community," so the right to keep and bear arms belongs to "all Americans." *Heller*, 554 U.S. at 580. But the Fifth Circuit misapplied *Bruen*'s historical analysis. Section 922(g)(1) does not align with our Nation's tradition of firearm regulation on either of the two central considerations: how and why it burdens the right to keep and bear arms. *See Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. The difference in *how* § 922(g)(1) burdens the right to bear arms is fatal to the statute facially, and *why* it burdens the right to bear arms dooms the statute as applied to non-violent offenders like Mireles.

A. Section 922(g)(1) is facially unconstitutional because it imposes an unprecedented lifetime ban on firearm possession.

1. Section 922(g)(1) facially violates the Second Amendment because it imposes a sweeping, historically unprecedented lifetime ban that prevents millions of Americans from possessing firearms for self-defense. The government has not cited a single historical gun law that imposed a *permanent* prohibition on the right to keep and bear arms—even for self-defense. In other words, no historical regulation "impose[s] a comparable burden on the right of armed self-defense." *See Bruen*, 597 U.S. at 29.

That is hardly surprising. When Congress passed the modern felon-in-possession statute—four decades before *Heller* and more

than a half-century before *Bruen*—it did not believe that the Second Amendment protected an individual right to keep and bear arms. *See supra* 8–9. So Congress did not try to pass a law that aligned with the "Nation's historical tradition of firearm regulation." *See Bruen*, 597 U.S. at 17. Instead—dismissing the Second Amendment as "no obstacle," *see supra* 8—it employed an "expansive legislative approach" to pass a "sweeping prophylaxis … against misuse of firearms." *Lewis*, 445 U.S. at 61, 63. And that sweeping, *permanent* prohibition on gun possession imposes a burden far broader than any firearm regulation in our Nation's history.

2. The Fifth Circuit recognized that § 922(g)(1)'s permanent disarmament requires a historical analogue that also permanently prevented individuals from possessing guns. *See Diaz*, 116 F.4th at 469. But the court did not cite any historical firearm regulation imposing permanent disarmament. Instead, the court relied on capital punishment and forfeiture laws as historical analogues

justifying § 922(g)(1). *Id.* at 467–68. That reliance conflicts with this Court's precedent in three ways.[4]

a. This Court requires the government to show that a modern gun law aligns with our "historical tradition of *firearm* regulation." *Bruen*, 597 U.S. at 24 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In other words, the government's historical analogues must regulate *firearms*. In *Rahimi*, this Court relied only on historical laws that "specifically addressed firearms violence." 602 U.S. at 694–95. So too in *Bruen*. 597 U.S. at 38–66. Capital punishment and estate forfeiture, however, are not *firearm* regulations. So they cannot justify § 922(g)(1). The Fifth Circuit reached a contrary conclusion by misreading *Rahimi*.

First, the Fifth Circuit asserted that *Rahimi* "consider[ed] several laws that were not explicitly related to guns." *Diaz*, 116

---

[4] The Fifth Circuit's decision also misstates the historical evidence in three ways. *First*, the court cited a founding-era New York law as "authorizing the death penalty for theft of chattels worth over five pounds." *Diaz*, 116 F.4th at 468. But theft is not among the crimes subject to the death penalty under that law. *See* Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664–65. *Second*, despite the court's characterization of forfeiture laws as a type of "permanent" disarmament (*Diaz*, 116 F.4th at 469, 471), "[f]orfeiture still allows a person to keep their other firearms or obtain additional ones." *Rahimi*, 602 U.S. at 760 (Thomas, J., dissenting). *Third*, although the court stated (*Diaz*, 116 F.4th at 468–69) that individuals convicted of horse theft "were often subject to the death penalty," the only source it cited explains that "hardly any horse thieves were executed." Kathryn Preyer, *Crime and Reform in Post-Revolutionary Virginia*, 1 LAW & HIST. REV. 53, 73 (1983).

F.4th at 468. But *Rahimi* says otherwise. In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going armed laws—that both "specifically addressed firearms violence." 602 U.S. at 694–95. To be sure, surety laws were not "passed *solely* for the purpose of regulating firearm possession or use." *Diaz*, 116 F.4th at 468. But this Court emphasized that, "*[i]mportantly for this case*, the surety laws also targeted the misuse of firearms." *Rahimi*, 602 U.S. at 696 (emphasis added). In other words, historical laws that did *not* target the misuse of firearms—like capital punishment and estate forfeiture—are *not* proper analogues.

Second, the Fifth Circuit noted that this Court accepted a greater-includes-the-lesser argument in *Rahimi*. *Diaz*, 116 F.4th at 469. That is true as far as it goes. *Rahimi* held that "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament … is also permissible." 602 U.S. at 699. But it does not follow, as the Fifth Circuit concluded, that "if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." *Diaz*, 116 F.4th at 469; *see* App. 2a. This Court explained that the purpose of imprisonment under the going

armed laws was "to respond to the use of guns to threaten the physical safety of others." *Rahimi*, 602 U.S. at 699. So both the greater historical punishment (imprisonment under the going armed laws) and the lesser modern restriction (disarmament under 18 U.S.C. § 922(g)(8)) had the same purpose—curbing gun violence. Not so here. Again, capital punishment and forfeiture simply did not target gun violence.

b. This Court has also emphasized that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Bruen*, 597 U.S. at 70 (cleaned up). But the Fifth Circuit's reasoning—that because capital punishment is an "obviously permanent" deprivation of an individual's right to bear arms, the lesser restriction of permanent disarmament is permissible for individuals who are not executed, *Diaz*, 116 F.4th at 469—conflicts with how the Constitution treats other fundamental rights.

"Felons, after all, don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment." *Williams*, 113 F.4th at 658. "No one suggests that such an individual has no right to a jury trial or be free from unreasonable searches and seizures." *Id.* And "we wouldn't say that the state can deprive felons of the right to free

speech because felons lost that right via execution at the time of the founding." *Kanter*, 919 F.3d at 461–62 (Barrett, J., dissenting). "The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Id.* at 462. Rather, "history confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one's status as a convicted felon or to the uniform severity of punishment that befell the class." *Id.* at 461.

c. Finally, this Court has expressed "doubt that *three* colonial regulations could suffice to show a tradition." *Bruen*, 597 U.S. at 46. But the Fifth Circuit relied on only three laws to establish a tradition of permanently punishing individuals who have been convicted of theft: a colonial Massachusetts law, a founding-era New York law, and a post-revolutionary Virginia law. *Diaz*, 116 F.4th at 468–69; *see* App. 2a. Putting to one side whether the court's reading of these laws is correct (*see supra* 27 n.4), this limited historical evidence is too slender a reed to establish a tradition justifying the deprivation of a fundamental constitutional right.

3. A law is not compatible with the Second Amendment if it regulates the right to bear arms "to an extent beyond what was

done at the founding." *Rahimi*, 602 U.S. at 692. Section 922(g)(1) does just that. It imposes a lifetime ban on firearm possession that would have been unimaginable to the Founders. Thus, § 922(g)(1) facially violates the Second Amendment because there are "no set of circumstances" under which it is valid. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

B. Section 922(g)(1) is unconstitutional as applied to individuals who do not pose a present threat of violence.

1. Even if § 922(g)(1) is facially constitutional, the statute violates the Second Amendment as applied to individuals who do not pose a present threat of violence. The government has not cited any tradition of disarming such non-violent individuals. The government's historical evidence shows—at most—a tradition of disarming violent individuals who threaten armed insurrection or presently threaten the physical safety of others. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (explaining that historical evidence shows "that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety").

Again, Congress was simply not concerned with the Second Amendment—much less the country's history of firearm regulation—when it expanded federal law to prohibit even non-

violent felons from possessing firearms in the 1960s. *See supra* 8–9. Instead, Congress was concerned with "keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons." *Barrett*, 423 U.S. at 220. Of course, this Court recently rejected the government's argument that someone "may be disarmed simply because he is not 'responsible.'" *Rahimi*, 602 U.S. at 701. But it is no surprise that Congress's sweeping law prohibiting anyone even potentially irresponsible from possessing a firearm exceeds the limits of the Second Amendment—limits that this Court only clarified decades later.

2. Given its misplaced focus on punishment-focused laws, the Fifth Circuit had no need to determine whether there is a historical tradition of disarming non-violent individuals. But the Third Circuit has persuasively held that there is not. *See Range*, 124 F.4th at 228–32. That court explained that status-based restrictions like § 922(g)(1) historically targeted "distrusted" groups that posed a threat of armed rebellion. *Id.* at 229–30. So those groups are not analogous to a modern-day felon who is not "disloyal to his country." *Id.* at 230. And, as the Sixth Circuit noted, these status-based laws allowed members of the groups to "demonstrate that their particular possession of a weapon posed no danger to peace." *Williams*, 113 F.4th at 657. The Third Circuit also rejected the

government's theory that these categorical laws established a tradition of disarming classes of individuals who posed a danger of misusing firearms. *Range,* 124 F.4th at 230. The court explained that such a theory was "far too broad" and "operates at such a high level of generality that it waters down the right." *Id.* (cleaned up). So the court held that § 922(g)(1) is unconstitutional as applied to someone who does not "pose[ ] a physical danger to others." *Id.* at 232.

3. In short, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700. Just as in *Diaz*, Mireles's prior theft conviction does not "involve a threat of violence." *Diaz*, 116 F.4th at 471 n.5; *see* App. 2a. Thus, at the very least, § 922(g)(1) violates the Second Amendment as applied to Mireles.

III. This is a critically important and recurring question.

The Court should grant the petition because the question is critically important and recurring. After all, "§ 922(g) is no minor provision." *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Out of about 64,000 cases reported to the Sentencing Commission in Fiscal Year 2023, more than 7,100 involved convictions under § 922(g)(1). *See* U.S. Sent'g Comm'n,

Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses, at 1 (June 2024). Those convictions accounted for over 10% of all federal criminal cases. *See id.*

Even beyond new prosecutions, § 922(g)(1)'s reach is staggering. The statute prohibits millions of Americans from exercising their right to keep and bear arms for the rest of their lives. Recent estimates of the number of individuals with felony convictions range from 19 million to 24 million. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1591 (2022) (citations omitted). And § 922(g)(1) is particularly troubling because most of the individuals it prohibits from possessing firearms are peaceful, with convictions for only non-violent offenses. Less than 20% of state felony convictions and less than 5% of federal felony convictions are for violent offenses. *See* Dep't of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, at 3 (Table 1.1) (rev. Nov. 2010); Dep't of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022*, at 12 (Table 7) (Jan. 2024).

Given § 922(g)(1)'s widespread impact both on new prosecutions and on the millions of non-violent Americans it prohibits from

exercising a fundamental constitutional right, this Court should answer this important and recurring question as soon as possible.

IV. This case is an ideal vehicle for addressing this question.

1. This case presents an ideal vehicle for addressing whether § 922(g)(1) violates the Second Amendment. The case cleanly presents a purely legal issue. There are no jurisdictional problems, factual disputes, or preservation issues. Mireles thoroughly briefed his facial and as-applied Second Amendment challenges in both the district court and the court of appeals. The district court and Fifth Circuit squarely rejected both challenges.

2. Petitions that raise facial and as-applied challenges are pending in *Hunt v. United States*, No. 24-6818 (U.S. Mar. 20, 2025) (facial and as applied), *Moore v. United States*, No. 24-968 (U.S. Mar. 11, 2025) (as applied), and *Diaz v. United States*, No. 24-6625 (U.S. Feb. 24, 2025) (facial and as applied). The latter is a precedential opinion that lower courts have relied upon, including the Fifth Circuit panel in this case, and have cited more than 100 times. Should the Court grant certiorari in any of these cited cases, or another pending case presenting a facial or as-applied challenge to § 922(g)(1), it should at least hold Mireles's petition pending that decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender
KRISTIN L. DAVIDSON
Assistant Federal Public Defender
Counsel of Record
OFFICE OF THE FEDERAL
PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS

Counsel for Petitioner

May 20, 2025