No. __-_____

IN THE

Supreme Court of the United States

BRANDON RASHAAD HILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1)'s lifetime ban on firearm possession for all individuals previously convicted of a felony violates the Second Amendment, either facially or as applied to the Petitioner.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

(1) *United States v. Hill*, No. 24-4194, U.S. Court of Appeals for the Fourth Circuit. Judgment entered January 28, 2025.

(2) *United States v. Hill*, No. 3:23-cr-00114, U.S. District Court for the Eastern District of Virginia. Judgment entered March 20, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Brandon Rashaad Hill respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at App. 1a–2a and is unreported, but it can be found at 2025 WL 314159 (4th Cir. 2025). The district court's opinion appears at App. 3a–26a and is reported at 703 F. Supp. 3d 729 (E.D. Va. 2023).

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231 and 18 U.S.C. § 3583. The court of appeals had jurisdiction over Petitioner's appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. That court issued its opinion and judgment on January 28, 2025. On April 22, 2025, the Chief Justice granted Petitioner's application (24A1000) to extend the deadline for filing a petition for certiorari to May 28, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the 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.

18 U.S.C. § 922(g) provides, in relevant part:

> 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 case presents an issue of vital importance that has deeply divided the courts of appeals: whether the government, consistent with the Second Amendment, can permanently disarm U.S. citizens who have previously been convicted of a felony, *see* 18 U.S.C. § 922(g)(1). The split on this issue developed after this Court's decisions in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). While all federal appellate courts to address the issue have wrongly found § 922(g)(1) to be facially constitutional, the Fourth, Eighth, Ninth, and Tenth Circuits have further held that defendants may not assert even an as-applied challenge under the Second Amendment to § 922(g)(1). In contrast, the Third, Fifth, and Sixth Circuits have held that a defendant may raise an as-applied challenge to § 922(g)(1). The First and Seventh Circuits have not ruled conclusively on the issue, but both have suggested that as-applied challenges are available. Aside from the ultimate outcome, the circuits also cannot agree on the methodology or on the specifics of how the *Bruen* analysis should apply.

This Court should grant the petition and resolve the disagreement between the circuits. Granting the petition would give this Court the opportunity to not only bring uniformity to this area of law, but to correct the decision below. The Fourth Circuit has misapplied the text-and-history analysis mandated by *Bruen* and *Rahimi*. Under a correct application of that analysis, the government cannot permanently disarm Mr. Hill for burglary and larceny convictions that are a decade old and did not involve violence.

STATEMENT OF THE CASE

Proceedings in the District Court

In September 2023, a grand jury indicted Petitioner Brandon Hill in the Eastern District of Virginia for being a felon in possession of a firearm and ammunition. App. 6a. Mr. Hill moved to dismiss the indictment, arguing that it violated his Second Amendment right to keep and bear arms. App. 6a. Citing *Bruen*, he argued that criminalizing the mere possession of a firearm, even by a person with a prior felony conviction, was inconsistent with this Nation's historical tradition of firearm regulation. He raised both a facial challenge and an as-applied challenge. App. 10a.

The district court denied the motion, concluding that the Fourth Circuit's pre-*Bruen* precedent upholding the constitutionality of § 922(g)(1) was still good law because *Bruen* did not reject or undermine the reasoning of that precedent. App. 11a-14a. In the alternative, the court concluded that even under the *Bruen* analysis, Mr. Hill's Second Amendment challenge would fail because felons are not part of "the people" that the Second Amendment protects. App. 14a–16a.

After his motion was denied, Mr. Hill entered a conditional guilty plea, preserving his right to appeal the district court's denial of his motion to dismiss the indictment under the Second Amendment. App. 1a. The district court sentenced Mr. Hill to 24 months of imprisonment. App. 1a.

Proceedings in the Court of Appeals

Mr. Hill timely appealed to the Fourth Circuit and renewed his Second Amendment arguments. App. 1a. The Fourth Circuit affirmed Mr. Hill's conviction

because it determined that his arguments were "foreclosed by binding circuit precedent." App. 1a. While Mr. Hill's case was pending, the Fourth Circuit issued a pair of decisions. First, in *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), the Fourth Circuit held that § 922(g)(1) is facially constitutional. Second, in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), *cert. pet. docketed*, No. 24-6818 (Mar. 17, 2025), the Fourth Circuit held that "neither *Bruen* nor *Rahimi* abrogates this Court's precedent foreclosing as-applied challenges to § 922(g)(1)" and that "§ 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent." *Id.* at 702. The Fourth Circuit applied those precedents to Mr. Hill's case and affirmed his conviction. App. 1a.

REASONS FOR GRANTING THE PETITION

I. The circuits disagree on whether a defendant may assert an as-applied challenge to a § 922(g)(1) conviction.

There is a deepening split between the circuits over whether § 922(g)(1) is susceptible to as-applied challenges under the Second Amendment. The Third, Fifth, and Sixth Circuits hold that defendants may assert as-applied Second Amendment challenges to § 922(g)(1). *See Range v. Att'y Gen. United States*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 470 n.4, 472 (5th Cir. 2024), *cert. pet. docketed*, No. 24-6625 (Feb. 24, 2025); *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). The First Circuit has also suggested that as-applied challenges to § 922(g)(1) are permissible. *United States v. Turner*, 124 F.4th 69, 77 n.5 (1st Cir. 2024); *United States v. Langston*, 110 F.4th 408, 419 (1st Cir. 2024). And the Seventh Circuit has assumed without deciding that as-applied challenges are available. *United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024).

In *Hunt*, the Fourth Circuit aligned itself with the Eighth and Tenth Circuits, which have held that defendants may not assert a claim that § 922(g)(1) violates the Second Amendment as applied to them. *See United States v. Jackson*, 110 F.4th 1120, 1125, 1129 (8th Cir. 2024), *cert. denied*, No. 24-6517 (May 19, 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. pet. docketed*, No. 24-1155 (May 8, 2025). The Ninth Circuit has since joined these three circuits and concluded that § 922(g)(1) is constitutional as applied "to all felons." *United States v. Duarte*, ___ F.4th ____, 2025 WL 1352411, at *14 (9th Cir. 2025) (en banc).

The numerous circuit decisions have also produced a patchwork of methodologies and analyses that diverge on key issues. For example, the courts that have foreclosed all as-applied challenges have relied heavily on language from this Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), identifying restrictions on felons possessing firearms as "presumptively lawful regulatory measures." *Duarte*, 2025 WL 1352411, at *4 (quoting *Heller*, 554 U.S. at 627 n.26); *Vincent*, 127 F.4th at 1265; *Jackson*, 110 F.4th at 1125; *Hunt*, 123 F.4th at 703–04. Citing this language from *Heller*, the Fourth and Tenth Circuits have upheld their own post-*Heller* but pre-*Bruen* case law that rejected "the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms." *Hunt*, 123 F.4th at 704; *see also Vincent*, 127 F.4th at 1265–66.

By contrast, the Third, Fifth, and Sixth Circuits rejected the notion that the "presumptively lawful" language in *Heller* allows courts simply to uphold the constitutionality of § 922(g)(1) without engaging in any historical analysis of whether

the statute could constitutionally apply to the particular defendant at hand. *Range*, 124 F.4th at 228–29; *Williams*, 113 F.4th at 646–48; *Diaz*, 116 F.4th at 466.

The circuits also diverge in their application of the *Bruen* analysis. In *Bruen*, this Court instructed courts to first analyze whether the "plain text of the Second Amendment protects" the conduct being regulated. 597 U.S. at 32. The Fourth Circuit held that § 922(g)(1) does not regulate conduct covered by the Second Amendment because the amendment only "protects firearms possession by the law-abiding, not by felons." *Hunt*, 123 F.4th at 705. Other circuits—including one that also forecloses as-applied challenges—disagree, concluding that felons are among "the people" protected by the Second Amendment. *Williams*, 113 F.4th at 646–47; *Diaz*, 116 F.4th at 466; *Range*, 124 F.4th at 226–28; *see also Duarte*, 2025 WL 1352411, at *8. As these circuits have persuasively pointed out, it would be illogical to exclude felons from the Second Amendment "while they retain their constitutional rights in other contexts." *Range*, 124 F.4th at 226.

In addition, some courts have concluded that § 922(g)(1) is consistent with this Nation's historical tradition of firearm regulation because most serious felonies were punished by death at the time of the Founding. The Fourth Circuit, for example, reasoned that because the law imposed the "far greater" punishment of death on "felons and other non-violent offenders" at the Founding, modern legislatures can necessarily impose lesser punishments such as permanent disarmament. *Hunt*, 123 F.4th at 706. But other circuits have rejected that reasoning. These circuits contested the historical claim that most felonies were punished by death at the Founding, and they reasoned that even if a crime was punishable by death 250 years

ago, modern-day felons cannot be stripped of all constitutional protections merely because they could have been executed at the time of the Founding. *See, e.g.*, *Williams*, 113 F.4th at 658; *Range*, 124 F.4th at 231.

Several circuits agree that legislatures may disarm individuals who are "dangerous," but they differ widely on how to determine which individuals (or which categories of individuals) are "dangerous" and which are not. The Fourth Circuit, for example, held that "dangerous" is whatever the legislature says it is: "[T]oday's legislatures may disarm people who have been convicted of conduct the legislature considers serious enough to render it a felony." *Hunt*, 123 F.4th at 707. That is because "felons, by definition, have 'demonstrated disrespect for legal norms of society,'" such that they may be deemed dangerous, as a category. *Id.* at 708 (quoting *Jackson*, 110 F.4th at 1127–28). But the Third Circuit rejected that approach, because it "devolves authority to legislators to decide whom to exclude from 'the people'" who are protected by the Second Amendment. *Range*, 124 F.4th at 228.

The Sixth Circuit, meanwhile, takes yet another approach. It held that legislatures may presumptively disarm entire categories of people whom the legislature deems to be "dangerous," relying on historical laws that allowed groups who were suspected of political disloyalty to be disarmed. *Williams*, 113 F.4th at 651–57. But it also held that specific individuals within each group must have the opportunity to prove that they are not actually dangerous. *Id.* at 657. This avenue appears to be available to people who can show that they did not commit a violent crime or a crime that poses a threat of physical confrontation with someone else, or can show that they are otherwise not dangerous, based on a "fact-specific" analysis of

the circumstances. *Id*. at 658–60. It is not clear under *Williams*, however, precisely which facts a defendant who is presumptively dangerous would need to prove in order to demonstrate that he or she is not "dangerous," nor does the court describe any objective tests for assessing individuals' propensity for future violence.

The Fifth Circuit, for its part, has not held that legislatures can permanently disarm anyone who the legislature determines is "dangerous." Instead, the Fifth Circuit assesses whether there was a Founding-era crime that covered relevantly similar conduct and permitted a punishment that was similar or more severe than permanent disarmament. *Diaz*, 116 F.4th at 468. In *Diaz*, for example, the court ruled that a defendant who had previously been convicted of felony vehicle theft could be permanently disarmed under the Second Amendment because, in the Founding era, "those convicted of horse theft—likely the closest colonial-era analogue to vehicle theft—were often subject to the death penalty." *Id.* That analysis, though, conflicts with the Third and Sixth Circuits, which rejected the greater-implies-the-lesser theory about the punishments that a legislature is permitted to impose without violating the Second Amendment. *See Williams*, 113 F.4th at 658; *Range*, 124 F.4th at 231.

In short, the circuits' reasoning is all over the map. The court 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 clarify both the *Bruen* analysis and the scope of the Second Amendment right to keep and bear and arms.

II. The decision below is wrong.

This Court should also grant the petition because, under *Bruen*'s text-and-history approach, the decision below cannot stand. Despite clear guidance from this Court in *Bruen* and *Rahimi*, the Fourth Circuit adopted an unduly narrow reading of the Second Amendment's text, and it twisted the history to grant the government a "regulatory blank check." *Bruen*, 597 U.S. at 30.

Facial challenge. Section 922(g)(1) is facially unconstitutional because it permanently deprives millions of Americans from possessing firearms for self-defense. The Fourth Circuit has failed to cite a single historical gun law that justifies permanently prohibiting people with felony convictions from carrying arms for self-defense. Rather, the court summarily concluded that § 922(g)(1) must be constitutional as applied to at least some felons—such as those "who have been convicted of a drive-by-shooting, carjacking, armed bank robbery, or even assassinating the President of the United States." *Canada*, 123 F.4th at 161–62. The Fourth Circuit did not provide a single rationale for its holding; instead, it reasoned that individuals convicted of those felonies could be disarmed either because they are not part of "the people" the Second Amendment protects, there is a history and tradition of "disarming those who threaten public safety," or the Supreme Court has repeatedly stated that felon disarmament laws are "presumptively lawful." *Id*. at 162. But none of those rationales stands up to scrutiny.

First, *Heller* explicitly held that "the people" protected by the Second Amendment includes "all Americans," not an "unspecified subset." *Heller*, 554 U.S. at 580–81. In other words, the Second Amendment applies to every person who is a

member of our "national community." *Id.* at 580 (citation omitted). And that community surely includes people with felony convictions, like Mr. Hill. *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting) (concluding that felons are not "categorically excluded from our national community"). To be sure, *Heller* does say that the Second Amendment protects the rights of "law-abiding, responsible citizens," 554 U.S. at 635, but as *Rahimi* clarified, this Court used that term simply "to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right." 602 U.S. at 701–02. In short, that descriptor was meant to define the core of the right, not its outer limits.

Second, the Fourth Circuit has failed to identify any sufficiently analogous historical laws to justify permanently disarming people who are dangerous or who have "deviated from legal norms." *Hunt*, 124 F.4th at 706 (citation omitted).[1] In *Hunt*, for example, the Fourth Circuit concluded that permanent disarmament is allowed because Founding-era felons were punished with estate forfeiture or death. *Id.* As an initial matter, that gets the history wrong. By ratification "many states were moving away from making felonies … punishable by death in America." *Range*, 124 F.4th at 227. And under most estate forfeiture laws "a felon could acquire arms after completing his sentence and reintegrating into society." *Id.* at 231.

Even if the Fourth Circuit is right about the history, the mere fact that some felonies were capital crimes at the Founding does not mean that felons today lose all their rights. "Felons, after all, don't lose other rights guaranteed in the Bill of Rights

[1] Although *Hunt* addressed whether as-applied challenges to § 922(g)(1) are available, its analysis is also relevant to the facial challenge.

even though an offender who committed the same act in 1790 would have faced capital punishment." *Williams*, 113 F.4th at 658. Nor does the existence of the death penalty at the Founding tell us how the Founding generation would have treated individuals who were not sentenced to death, served their sentences, and re-entered society. *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

Next, the Fourth Circuit points to historical regulations that disarmed certain groups—such as, disfavored religious groups or political dissidents—based on their status. *Hunt*, 123 F.4th at 706–07. But none of those laws matches "how" or "why" § 922(g)(1) regulates firearm possession. *See Rahimi*, 602 U.S. at 692. Those historical laws were aimed at politically disruptive groups who the Founders feared might engage in rebellion or counter-revolution. "The Founders did not disarm English Loyalists because they were believed to lack self-control; it was because they were viewed as political threats to our nascent nation's integrity." *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024). And, unlike § 922(g)(1), many of those status-based prohibitions had mechanisms in place for individuals "to demonstrate that they weren't dangerous" and retain their arms. *Williams*, 113 F.4th at 660; *see also Range*, 124 F.4th at 275 (Krause, J., concurring in judgment) (detailing how disarmed individuals could rebut the presumption that they posed a risk or danger).

The larger issue is that the Fourth Circuit read those historical laws at "such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). *Hunt* concludes that the historical status-based firearm prohibitions authorize modern-day legislatures "to designate any group as dangerous and thereby disqualify its members from having a gun." *Kanter*, 919 F.3d at 465

(Barrett, J., dissenting); *see also Williams*, 113 F.4th at 660 ("[C]omplete deference to legislative line-drawing would allow legislatures to define away a fundamental right."); *Range*, 124 F.4th at 230. That is not how constitutional rights are supposed to work. They are intended to set outer boundaries on legislative power, not to expand or constrict at the legislature's pleasure.

By "uncritically defer[ing] to Congress's class-wide dangerousness determinations," the Fourth Circuit essentially subjected § 922(g)(1) to rational basis review. *Williams*, 113 F.4th at 660. Not only does that contradict this Court's precedent, *Heller*, 554 U.S. at 628 n.27 (rejecting rational basis review in Second Amendment context), but it allows the government to disarm individuals who have been convicted of felonies that have little or no bearing on their propensity to commit physical violence.

Third, this Court's dicta in *Heller* and *Bruen* that identifies felon-in-possession laws as "presumptively lawful" does not resolve § 922(g)(1)'s constitutionality. The legality of § 922(g)(1) was simply not at issue in any of those cases, so this Court's language is non-binding. *See Rahimi*, 602 U.S. at 701-02 (declining to apply dicta in *Heller* or *Bruen* on an issue that "was simply not presented" in either case). And, as the Sixth Circuit noted, "applying *Heller*'s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to 'expound upon the historical justifications' for firearm-possession restrictions when the need arose." *Williams*, 113 F.4th at 648 (quoting *Heller*, 554 U.S. at 635).

As-Applied Challenge. Should this Court adopt a test for as-applied challenges, it should adopt the test spelled out by the Third and Fifth Circuits. For

§ 922(g)(1) to comply with the Second Amendment as applied to Mr. Hill, the government must identify a Founding-era practice of permanently disarming defendants who engaged in sufficiently similar conduct—here, burglary and larceny. This Court should reject the approach adopted by the Sixth Circuit in *Williams*, which forces defendants to demonstrate that they are not "dangerous" on a case-by-case basis. That system would invite the same sort of propensity-based conjecture that evidentiary rules like Federal Rule of Evidence 404 guard against. And it fails to give defendants like Mr. Hill any guidelines about how they would be able to prove the negative—that is, that they are not "dangerous," under whatever amorphous concept that standard might imply. "[C]ourts possess neither the resources to conduct the requisite investigations nor the expertise to predict accurately which felons may carry guns without threatening the public's safety." *Pontarelli v. U.S. Dep't of the Treasury*, 285 F.3d 216, 231 (3d Cir. 2002) (en banc).

Applying the Third and Fifth Circuits' approach, § 922(g)(1) is also unconstitutional as applied to Mr. Hill, who has prior convictions for burglary and larceny. The government has failed to show that there is a history and tradition of permanently disarming defendants with such convictions. The historical laws identified in *Hunt* are insufficient to satisfy the government's burden. Although burglary was historically a capital offense, by the time of the Founding it was "on the whole, not capital." *Kanter*, 919 F.3d at 459 (citation omitted) (Barrett, J., dissenting). And the government has failed to point to any historical law that permanently prohibited those convicted of burglary or larceny from possessing firearms after they discharged their sentences. The government also cannot rely on the status-based laws that

disarmed political and religious dissidents. Mr. Hill is not a political dissident nor a threat to revolt against the government.

Because the government has failed to make the showing required under *Bruen*, the Second Amendment does not permit Mr. Hill to be subject to a lifetime weapons ban based solely on his prior conviction.

III. The issues presented are important and recurring.

Section 922(g)(1) is routinely prosecuted in federal courts. And in the wake of *Bruen* and *Rahimi*, Second Amendment challenges to § 922(g)(1) have multiplied. Given the conflicting analyses provided by the various circuits, this area of the law would benefit greatly if this Court stepped in to provide uniform guidance.

IV. This case is a good vehicle to decide these important questions.

This case is the right vehicle to decide that § 922(g)(1) is unconstitutional. Mr. Hill has properly preserved his Second Amendment claim throughout the lifespan of this case, so there are no lurking standard of review or preservation issues to complicate matters.

Petitions raising this issue will only become more frequent. In fact, multiple petitions raising the issue have already been filed with this Court. *See, e.g.*, *United States v. Diaz*, No. 24-6625 (petition filed Feb. 18, 2025); *United States v. Hunt*, No. 24-6818 (petition filed March 17, 2025); *United States v. Vincent*, No. 24-1155 (petition filed May 8, 2025). And there are many more to come. The Court should grant certiorari in this case in order to settle the issue quickly.

CONCLUSION

For the reasons given above, the petition for a writ of certiorari should be granted. In the alternative, the case should be held until the Court rules on similar cases presenting the issues raised here and considered at that time.

Respectfully submitted,

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