NO. _____

In the

Supreme Court of the United States

SHAWN K. BEVER, ***Petitioner*****,**

v.

UNITED STATES OF AMERICA, ***Respondent.***

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

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Dated: June 3, 2025

I. QUESTION PRESENTED FOR REVIEW

In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court adopted a two-step approach for analyzing whether regulation of the possession of firearms violated the Second Amendment. The first step of that analysis involves whether the conduct at issue is protected the Second Amendment. In this case, and many others, the Fourth Circuit Court of Appeals and others have concluded that the first step of *Bruen* is satisfied only if the challenger is a "law-abiding" citizen. This issue presented in this Petition is whether the individual right to bear arms for self-defense guaranteed by the Second Amendment applies only to "law-abiding citizens" who have no prior convictions?

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- *United States v. Bever*, 2:22-cr-164, U.S. District Court for the Southern District of West Virginia. Memorandum denying motion to dismiss entered April 18, 2023, judgment entered August 3, 2023.
- *United States v. Bever*, No. 23-4571, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on March 5, 2025.

V. OPINIONS BELOW

The Fourth Circuit affirmed denial of Bever's motion to dismiss in an unpublished per curium decision, *United States v. Bever*, 2025 WL 702082 (4th Cir. 2025), that is attached to this Petition as Appendix A. The district court's written memorandum opinion denying petitioner's motion to dismiss was a published decision, *United States v. Bever*, 669 F. Supp. 3d 578 (S.D. W. Va. 2023), and is attached to this Petition as Appendix B. The judgment order is unpublished and is attached to this Petition as Exhibit C.

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on March 5, 2025. No petition for rehearing was filed. This Petition is filed within 90 days of the date the court's entry of its judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

This Petition requires interpretation and application of the Second Amendment to the United States Constitution, which provides, in pertinent part:

> 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.

As well as 18 U.S.C. § 922, which provides, in pertinent part:

> **(g)** It shall be unlawful for any person –
>
> **(1)** who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
>
> * * *
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction

On August 24, 2022, a federal grand jury sitting in the Southern District of West Virginia returned a single count indictment charging Shawn Bever with possessing a firearm after sustaining a felony conviction, under 18 U.S.C. §§ 922(g)(1) and 924(a)(2). JA7, 48.[1] Because that charge constitutes an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. The district court denied petitioner's *Bruen*-based motion to dismiss. JA118-130. This is

[1] "JA" refers to the Joint Appendix that was filed with the Fourth Circuit in this appeal.

an appeal from a final judgment and sentence imposed on August 1, 2023, after Bever pled guilty to the indictment without a plea agreement. JA131-134; *see also Class v. United States*, 138 S. Ct. 798 (2018). A judgment order was entered on August 3, 2023. JA135-141. Bever timely filed a notice of appeal on August 11, 2023. JA142. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3731.

B. Relevant Second Amendment Jurisprudence

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court rejected the collectivist, militia-based construction of the Second Amendment that had prevailed at the time with an individual right to self-defense unconnected with militia service. Foundational to that individual right, this Court defined the "people" in the Second Amendment's plain text as including all members of the political community, not an unspecified subset. *Id.* at 579-580. This Court went on to define "the substance of the right" (i.e. conduct) protected by the Second Amendment as possessing and/or carrying "arms" for purposes of individual self-defense. *Id.* at 581-595. Rejecting Justice Breyer's interest balancing approach for defining the scope of that individual right, this Court held that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

This Court emphasized that it was not reading the Second Amendment to protect the right of citizens to carry arms for *any* sort of confrontation, and that the right secured by the Second Amendment "is not unlimited." *Heller*, 554 U.S. at 595,

626. This Court further added, without identifying what specific longstanding prohibitions it was relying on: "[a]lthough 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 firearm by felons. *Id.* at 626; *see also id.* at 627 n.26 ("We identify these presumptively lawful regulatory measures only as examples"). This Court concluded by acknowledging that *Heller* was its first in-depth examination of the Second Amendment, that it was not intended to clarify the field, and that "[t]here will be time enough to expound upon the historical justifications for the exceptions . . . when those exceptions come before us." *Id.* at 635.

Before *Heller*'s ink was dry, the United States seized upon the "longstanding prohibitions," "presumptively lawful," and "law-abiding and responsible citizen" language as if it was the controlling substance of this Court's holding. Based upon *Heller*'s *dicta*, the United States has consistently maintained since 2008 that (a) Second Amendment protections only apply to law-abiding and responsible citizens, and (b) by virtue of *Heller*'s presumptively lawful comment, a presumption of constitutionality applies to regulations like 18 U.S.C. § 922(g)(1) which permanently disarms convicted felons. The Fourth Circuit (as well as other lower courts), ultimately accepted the Government's assertions, adopting an intermediate scrutiny standard to adjudicate diminished Second Amendment protections for persons who were not "law-abiding and responsible" citizens (however those terms were supposed to be defined). *See, e.g., United States v. Chester*, 628 F.3d 673, 678

(4th Cir. 2010). Because the Second Amendment codified a pre-existing right, and because *Heller* said the scope of Second Amendment protections is subject to historical limitation, *Chester* adopted a two-step test for analyzing Second Amendment challenges. *Chester*'s first step combined a textual and historical inquiry regarding the Second Amendment's scope at the time of its ratification with whether the challenged regulation burdened otherwise protected conduct. *Id.* at 680. If the regulation did, then *Chester*'s second step was to apply the appropriate level of means end scrutiny. *Ibid.* *Chester* placed the burden for the historical step one inquiry on the defendant, and for the step two means-end scrutiny inquiry on the United States.

Thereafter, as *Heller*-based Second Amendment litigation on the constitutionality of different Gun Control Act sections ensued, the Fourth Circuit held that *Heller*'s "presumptively lawful" *dicta* foreclosed facial Second Amendment challenges to § 922(g)(1) outright, full stop. *United States v. Moore*, 666 F.3d 313, 316-319 (4th Cir. 2012). This was despite having previously found, in the context of analyzing a Second Amendment challenge to 18 U.S.C. § 922(g)(9), that federal felon disarmament laws did not exist until the Twentieth Century, and that the historical evidence on whether felons enjoyed Second Amendment protections was inconclusive.[2] *Chester*, 628 F.3d at 679. While still allowing for ***possible*** as-applied

[2] It did so following similar findings by the Seventh Circuit in both *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010), and Judge Sykes' dissent in *United States v. Skoien*, 614 F.3d 638, 649 (7th Cir. 2010). *Moore*'s approach, particularly after *Bruen*, however, raises questions as to what the *Heller* was referring to and actually meant by "longstanding." At least with respect to Congress, it could not go back beyond 1961 and the Federal Firearms Act.

challenges to § 922(g)(1), due to *Heller*'s presumptively lawful language, *Moore* limited the availability of such challenges to individuals who could show that they were outside the mine-run convicted felon case. Ultimately, *Moore* held that this placed the burden on the challenger in *Chester*'s step one to show their factual circumstances were those of a law-abiding, responsible citizen. *Moore*, 666 F.3d at 319-320.

The Fourth Circuit took *Moore* further in *United States v. Smoot*, 690 F.3d 215, 220-221 (4th Cir. 2012), holding that a felon convicted of a prior violent offense was incapable of possessing a firearm in his home like a law-abiding responsible citizen. *United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012), in turn, denied an as-applied Second Amendment challenge based a non-violent felony conviction for the same reason. Then *Hamilton v. Pallozzi*, 848 F.3d 614, 625 (4th Cir. 2017), a civil challenge to Maryland firearm regulations, finally cut the cord - holding that as-applied challenges to felon disarmament laws were foreclosed unless that citizen had received a pardon or the law forming the basis of the predicate conviction had been declared unconstitutional or otherwise unlawful. Crucial for this Petition's purposes, particularly given the Fourth Circuit's future reliance on *Hamilton*, is that any historical inquiry regarding the Second Amendment's scope was supplanted by "the more direct question of whether the challenger's conduct is within the protected Second Amendment right of 'law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Hamilton*, 848 F.3d at 624. For *Hamilton*, any disrespect for the law was sufficient to deny Second Amendment protection, no matter how old the

prior conduct, whether it was non-violent, and no matter what steps the individual citizen had taken after the fact to rehabilitate themselves and avoid further recidivism. Instead, *Hamilton* not only limited as-applied Second Amendment challenges to felon disarmament laws to law-abiding and responsible citizens, it expressly held that the relative seriousness of the predicate conviction, or evidence of rehabilitation, the likelihood of recidivism, and the passage of time, "may not be considered at the first step of the *Chester* inquiry." *Id.* at 626-629.

Five years after *Hamilton*, and fourteen years after *Heller*, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court dispensed with means end scrutiny for Second Amendment challenges altogether. *Bruen* effectively eliminated *Chester*'s step two, instead establishing a "text and history" framework for analyzing whether a firearm regulation violates the Second Amendment. Specifically, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the Government must then demonstrate that the challenged regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* at 17. Structurally, *Bruen*'s text and history standard now involves two distinct inquiries or steps, much the way *Chester*'s post-*Heller* standard did. The Fourth Circuit's post-*Heller* steps, however, were substantially different from this Court's post-*Bruen* steps. Where *Chester*'s step one ***combined*** a textual and historical inquiry regarding the scope of Second Amendment protections, *Bruen*'s split the analysis into two separate inquiries. The first is textual, simple, and arguably intended to provide meaningful deference to Second

Amendment protections. The second consults history, and requires an affirmative showing of a well-established and representative tradition of firearm regulation consistent with the statute being challenged. *Bruen*'s second step places the burden squarely on the Government to establish the historical tradition supporting the challenged modern firearm regulation.

Yet, in the Fourth Circuit, little has changed in the wake of this Court's decision in *Bruen*. In *United States v. Price*, 111 F.4th 392 (4th Cir. 2024)(*en banc*), the court addressed whether 18 U.S.C. § 922(k), which makes it a crime to possess a firearm with an altered serial number, violates the Second Amendment. In overturning the district court's grant of a motion to dismiss on that basis, the court concluded that "the conduct regulated by § 922(k) does not fall within the scope of the right enshrined in the Second Amendment because a firearm with a removed, obliterated, or altered serial number is not a weapon in common use for lawful purposes." *Id*. at 397. Recognizing that "*Bruen* set forth a new framework" from the one that developed in the wake of *Heller*, the court stated that "[f]irst, we must ask whether the Second Amendment's plain text covers the conduct at issue. If not, that ends the inquiry." *Id*. at 398. Only if that conduct is covered must the court "ask whether the Government has justified the regulation as consistent with the 'principles that underpin' our nation's historical tradition of firearm regulation." *Ibid*. citing *United States v. Rahimi*, 602 U.S. 680, 692 (2024). The court rejected Price's argument that "our inquiry at step one is extremely narrow" and "the only relevant question is whether the regulation criminalizes 'keep[ing] and bear[ing]' any 'Arms,'"

id. at 398, concluding that "we can *only* properly apply the step one of the *Bruen* framework by looking to the historical scope of the Second Amendment right." *Id*. at 401.

Next, in *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), the court addressed facial challenges to § 922(g)(1). Noting that the "law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions" in the wake of *Bruen* and *Rahimi*, the court concluded that "the facial constitutionality of Section 922(g)(1) is not one of them." *Id*. at 161. The court concluded that it "need not – and thus do not – resolve whether Section 922(g)(1)'s constitutionality turns on the definition of the 'people' at step one of *Bruen*," or "a history and tradition of disarming dangerous people considered at step two of *Bruen*," or even this Court's "repeated references to longstanding and presumptively lawful prohibitions on the possession of firearms by felons." *Ibid.* (cleaned up). Nor did the court decide "whether *Bruen* or *Rahimi* sufficiently unsettled the law in this area to free use from our otherwise-absolute obligation to follow this Court's post-*Heller* but pre-*Bruen* and pre-*Rahimi* holdings rejecting" challenges to § 922(g)(1). *Ibid*. Instead, the court concluded that § 922(g)(1) "is facially constitutional because it has a plainly legitimate sweep and may be constitutional in at least some set of circumstances," *ibid*. (cleaned up), noting examples such as those convicted "of a drive-by shooting, armed bank robbery, or even assassinating the President of the United States." *Id*. at 161-162. *Canada* is thus noteworthy as much for what it did not decide as for what it did.

Finally, in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), the court addressed as-applied challenges to § 922(g)(1). Deciding one of the issues left unsettled after *Canada*, the Court concluded that "neither *Bruen* nor *Rahimi* abrogates this Court's precedent foreclosing as-applied challenges to Section 922(g)(1)," as well as that "in the alternative . . . that Section 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent." *Id.* at 702. Noting that the court had concluded in a related Second Amendment area that neither *Bruen* nor *Rahimi* changed existing law,[3] it reached the same conclusion with regard to § 922(g)(1), concluding that *Moore* remained good law, as it relied on *Heller*'s *dicta* regarding longstanding prohibitions on the possession of firearms by felons. *Id.* at 702-703. While recognizing that *Moore* "left open the possibility that some hypothetical challenger" could prevail in an as-applied challenge, "this Court's later decisions repeatedly rejected such challenges, including those brought by allegedly non-violent felons." *Id.* at 703 (cleaned up). Relying on *Hamilton*, the court reiterated its post-*Heller* holding that felons are excluded from the "category of law abiding, responsible citizens" protected by the Second Amendment. *Ibid.* (cleaned up). Such decisions are "neither impossible to reconcile with *Bruen* and *Rahimi* nor rest on a mode of analysis that has been rendered untenable by them." *Ibid.*

Increased Second Amendment deference was an intended consequence of *Bruen*, which does not make the step one inquiry complicated or difficult. This

[3] *See Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024)(*en banc*)(rejecting Second Amendment challenge to Maryland assault weapons regulations).

approach did not just materialize out of thin air in 2022. Prior to *Bruen*, for fourteen years Justice Thomas had consistently observed both the states and lower federal courts were resisting this Court's decisions in *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), by failing to protect Second Amendment rights to the same extent they protected other constitutional rights.[4] *Bruen* was the predictable reaction to this. The Fourth Circuit, including the panel in this case, has now similarly misapplied *Bruen*'s step one, in a manner that imitates intermediate means-end scrutiny by continuing to avoid meaningful historical justification of regulations burdening Second Amendment protections. *Hunt* relies on *Price* for the proposition that historical limits on the scope of Second Amendment protections are properly assessed at *Bruen*'s step one. *Hunt*, 123 F.4th at 705. Yet *Hunt*'s reliance on *Hamilton* validates abrogating *Bruen's* intended historical inquiry with merely confirming that the underlying predicate conviction is a felony – thereby ensuring the challenging citizen "flunks" the law-abiding citizen test.

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[4] S*ee, e.g.*, *Rogers v. Grewal*, 140 S. Ct. 1865, 1866 (2020)(appeal of New Jersey may issue carry permit requirement and near-total prohibition on public carry: "many courts have resisted our decisions in *Heller* and *McDonald*."); *New York State Rifle & Pistol Ass'n v. City of New York, NY*, 590 U.S. 336, 340-341 (2020)(appeal of New York firearm license ordinance, dismissed as moot when city amended ordinances during appeal; Justice Alito dissent joined by Justice Gorsuch and Justice Thomas); *Silvester v. Becerra*, 138 S. Ct. 945, 950-951 (2018)(appeal of California's 10-day waiting/ cooling off period for firearm purchases); *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017)(appeal of California's prohibition of public carry and carrying concealed firearms in public); *Voisine v. United States*, 136 S. Ct. 2272, 2291-92 (2016)(appeal of denying Second Amendment protections based on reckless misdemeanor conduct); *Friedman v. Highland Park*, 136 S. Ct. 447, 449 (2015)(appeal of Illinois' AR-style rifle and large capacity magazine bans); *Jackson v. City and County of San Francisco, California*, 135 S. Ct. 2799, 2800-02 (2015)(appeal of California ordinance requiring trigger locks for handguns stored in residences).

C. Facts Pertinent to the Issue Presented

On November 17, 2021, officers with the West Virginia Department of Natural Resources were investigating a bear poaching incident near Craigsville, Nicholas County, West Virginia. Officers received information that the bear had been shot. Officers trying to locate the shooter went to his residence, were advised he was not home, and that he may have been at Bever's residence. JA145. The DNR officers went to Bever's residence and found Bever and the alleged shooter standing outside. DNR officers observed a side-by-side off-road vehicle with a pistol clipped to the driver's side seat. DNR Officers knew Bever had a prior felony conviction. A record check revealed that the side-by-side vehicle belonged to Bever. Without observing Beaver ever possessing the pistol, or operating or otherwise sitting in the side-by-side, the DNR officers arrested Bever for unlawfully possessing that firearm. Searching Bever's person, officers located three unfired .22 caliber cartridges. In the side-by-side, officers located 169 .22 caliber rounds, an ATI .22 caliber pistol, four 12-gauge shotgun shells, and several spent .22 caliber shell casings. JA146.

1. The district court denies Bever's motion to dismiss, finding *Moore*'s reliance on *Heller*'s presumptively lawful *dicta* was unaffected by *Bruen*'s rejection of means end scrutiny.

Bever filed a motion to dismiss the indictment, arguing § 922(g)(1) violated the Second Amendment. Bever argued that he was one of "the people" protected by the Second Amendment as defined by *Heller*, and that his possession of any .22 caliber pistol and ammunition at his home was conduct protected by the Second Amendment. Under the text and history standard set forth in *Bruen*, Bever argued § 922(g)(1)

triggered application of a presumption of unconstitutionality by burdening firearm possession at his home – conduct within the plain text of the Second Amendment. Because the Government could not rebut *Bruen*'s step one presumption of unconstitutionality for § 922(g)(1), Bever maintained that his indictment should be dismissed. JA30-JA61, JA76-JA117.

The district court denied Bever's motion, without applying *Bruen*'s new Second Amendment standard at all. *United States v. Bever*, 669 F. Supp. 3d 578 (S.D. W. Va. 2023). After discussing varying approaches being applied by different courts around the country, it defaulted to *Moore*'s streamlined analysis tied to *Heller*'s *dicta.* The district court ultimately held that Bever's not being a law-abiding and responsible citizen alone was enough to dismiss both his facial and as-applied challenges, noting the "overwhelming consensus" of other courts sustaining the constitutionality of § 922(g)(1)." *Bever*, 669 F. Supp. 3d at 583.

2. The Fourth Circuit summarily affirms the denial of Bever's motion to dismiss in a per curium opinion without oral argument based on intervening circuit law.

The Fourth Circuit affirmed the denial of Bever's motion to dismiss in an unpublished *per curiam* opinion. *United States v. Bever*, 2025 WL 702082 (4th Cir. 2025). The court concluded that Bever's facial Second Amendment challenge to § 922(g)(1) was foreclosed by *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), while any as-applied challenge was foreclosed by *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), both of which had been decided after the district court's ruling in

Bever's case. On these grounds, the Fourth Circuit affirmed denial of Bever's motion to dismiss. *Bever*, 2025 WL 702092 at *1.

IX. REASONS FOR GRANTING THE WRIT

The writ should be granted to determine whether, when analyzing a challenge to a firearm regulation like 18 U.S.C. § 922(g)(1), Second Amendment protections are limited to "law-abiding citizens" who have never been convicted of a crime.

Bever seeks this Court's review of the decision of the Fourth Circuit Court of Appeals summarily following *United States v. Hunt***,** 123 F.4th 697 (4th Cir. 2024), because both have decided an important question of federal constitutional law that has not been, but certainly should be, settled by this Court. *See* Rules of the Supreme Court 10(c). That is, whether, when analyzing a challenge to a firearm regulation under the Second Amendment, Second Amendment protections only apply to "law-abiding citizens" who have never been convicted of any crime. The Fourth Circuit has also decided that important federal constitutional question in a way which conflicts with the plain text of the Second Amendment as well as relevant decisions of this Court. In addition, the Court should separately accept review because *Bever*, following *Hunt*, directly conflicts with cases from the Third, Sixth, and Fifth Circuits on the same and related important constitutional questions and where the split of authorities is both likely to grow and spill over into litigation involving other federal firearm regulations. *See* Rules of the Supreme Court 10(a).

A. *Bever/Hunt* conflicts with the plain text of the Second Amendment, as well as with this Court's precedents by failing to apply the historical analysis and allocation of burdens required by the *Bruen/Rahimi* framework.

Just as the Second Amendment's plain text makes no distinction between keeping and bearing arms in the home as opposed to in public outside the home, it likewise makes no textual distinction as to what citizens can or cannot keep and bear arms. The Fourth Circuit's conclusion that only law-abiding citizens are entitled to Second Amendment protections, therefore, contradicts the plain text of the amendment itself.

Heller broadly defined "the people" in the Second Amendment's plain text, which is contradicted by the Fourth Circuit's § 922(g)(1) jurisprudence, which effectively defines "the people" as including only law-abiding citizens.[5] Neither *Heller* nor *Rahimi* limit the Second Amendment's scope to that discrete subsection of the American population. Yet the Fourth Circuit, in the place of any historical analysis *Bruen* now requires, has done so since at least 2010.

The Fourth Circuit has now repeatedly held that the analysis under *Bruen*'s step one ***must*** include an evaluation of the historical scope of the Second Amendment right. *United States v. Price*, 111 F.4th 392, 401 (4th Cir. 2024)(*en banc*). If true, then *Bruen*'s step two historical analysis becomes meaningless. Historical analysis in *Bruen*'s step one, which places the burden on the regulation's challenger, will

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[5] Before *Rahimi*, the Fourth Circuit only extended Second Amendment protections to "law-abiding, responsible citizens." *See Hunt*, 123 F.4th at 703 (emphasis removed); *See also United States v. Rahimi*, 602 U.S. 680, 701, 772 (2024)(Thomas, J., dissenting).

effectively ensure no historical analysis is ever conducted at *Bruen*'s step two, particularly with the Fourth Circuit's abbreviated law-abiding citizen standard. This effectively returns to the means-end scrutiny analysis this Court has repeatedly rejected.

The Fourth Circuit's post-*Heller* efforts to effectively enshrine the Gun Control Act of 1968 is not what the Second Amendment or this Court's precedents countenance. Since *Heller* was decided, the Government (with the help of many courts) has tried to rewrite the Second Amendment to only protect "law-abiding" citizens. *See Rahimi*, 602 U.S. at 772-773 (Thomas, J., dissenting). Prior to *Hunt*, the Government's claim plainly lacked any basis in this Court's precedents or the Second Amendment's text, such that it was "specious at best." *Rahimi*, at 772 (Thomas, J., dissenting). The Fourth Circuit in *Hunt* nevertheless adopted and advanced the Government's ill-conceived positions such that they are now the controlling law in at least five states. *Bever* and *Hunt* must be reviewed and addressed by this Court.

B. Circuit decisions on the availability of and requirements for Second Amendment challenges to § 922(g)(1) have created a split of authority that cannot be reconciled without this Court's intervention.

Through *United States v. Canada*, 123 F.4th 159 (4th Cir. 2024), and *United States v. Hunt***,** 123 F.4th 697 (4th Cir. 2024), the Fourth Circuit has completely foreclosed Second Amendment challenges to § 922(g)(1). holding that neither *Bruen* nor *Rahimi* affected *Hamilton*. Thus, even after *Bruen,* any citizen with a criminal conviction in West Virginia, Maryland, Virginia, North Carolina, or South Carolina may be permanently disarmed for a prior criminal conviction without that restriction

being subjected to the historical analysis *Bruen* requires. It does not matter if the predicate conviction was for a non-violent offense, a "minor" felony, how old it was, or what steps the convicted citizen has taken to lead a law-abiding life. This means the West Virginia citizen convicted for non-payment of child support, W. Va. Code § 61-5-29 (over 12 months or for an arrearage of at least $8,000 – punishable by up to 3 years imprisonment), now has no recourse to pursue an as-applied Second Amendment challenge to § 922(g)(1). According to the Fourth Circuit, any felony conviction is for a "serious" enough crime to warrant permanent status-based disarmament. This is a common circumstance with many individuals in West Virginia faced with residential, employment, and food instability/insecurity. Once convicted of non-payment of child support, or similar non-violent offenses (such as simple possession of a controlled substance), *Hunt* mandates such citizens are now legal nonconformists who may be forever disarmed and subject to subsequent criminal prosecution when they possess a firearm for purposes of self-defense in their home. The reach of § 922(g)(1) impacts thousands of defendants every year.[6]

The existing circuit split on the availability of as-applied challenges to § 922(g)(1) is well summarized in *United States v. Duarte*, ___ F.4th ___, 2025 WL 1352411 (9th Cir. 2025)(*en banc*). *Hunt* has placed the Fourth Circuit in line with at least four other circuits effectively foreclosing as-applied Second Amendment

[6] 61,678 cases were reported to the Sentencing Commission for FY 2024, of which 7419 involved felony convictions under § 922(g), of which 90.4%, or 6707 defendants, were convicted under § 922(g)(1). *See* U.S. Sent'g Comm'n, *QuickFacts: Section 922(g) Firearms* (May 2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY24.pdf (last viewed May 26, 2025).

challenges to felon disarmament laws. These circuits are in direct conflict with the Third, Fifth, and Sixth Circuits, with the former actually sustaining an as-applied challenge to § 922(g)(1), and the remaining two denying challenges but leaving open the door for other defendants to raise them. *See Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. 2024)(*en banc*); *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024).

X. CONCLUSION

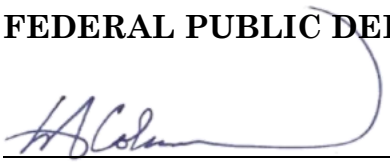
In 2008 this Court stated "[t]here will be time enough to expound upon the historical justifications for the exceptions . . . when those exceptions come before us." *Heller*, 554 U.S. at 635. This Petition squarely presents the controlling federal constitutional question of whether Second Amendment protections only apply to a yet to be defined subset of "law-abiding citizens." Given how lower courts, like the Fourth Circuit in *Bever* and *Hunt*, are using the "law-abiding citizen" metric to broadly exclude individual citizens from fundamental Second Amendment protections, it is past time for this Court to expound upon *Heller*'s "presumptively lawful" *dicta* and correct how that language is being used to enshrine virtually every modern firearm regulation at the expense of Second Amendment protections intended by our Constitution. For the reasons stated, therefore, this Court should grant this Petition.

Respectfully submitted,

SHAWN BEVER

By Counsel

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER



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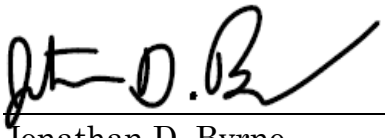

Jonathan D. Byrne
Appellate Counsel

Dated: June 3, 2025