No. ____________

In the Supreme Court of the United States

Braddic Deshaun Rollerson,
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

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QUESTIONS PRESENTED

I. Circuit courts of appeals applying *Heller*, *Bruen*, and *Rahimi* have adopted markedly different approaches to testing 18 U.S.C. § 922(g)(1)'s constitutionality, but each has overlooked three important points about the text and history of the Second Amendment. First, the right to keep and bear arms belongs to "the people," and on its plain meaning, that term of art includes ex-offenders. Second, at the Founding, there was no tradition of premising the right to keep or bear arms on the absence of a criminal record. Third, all of the contemporary textual and constitutional evidence points in the opposite direction. A criminal conviction might disqualify an ex-offender from holding office or voting, but not a single American jurisdiction exempted the same class from those protected by the Second Amendment or its state-level analogues.

The question presented is:

Whether there is an obvious and irreconcilable clash between § 922(g)(1) and the rights protected by the Second Amendment.

LIST OF PARTIES

Braddic Deshaun Rollerson, petitioner on review, was the Defendant-Appellant below. The United States of America, respondent on review, was Plaintiff-Appellee. No party is a corporation.

RELATED PROCEEDINGS

- *United States v. Braddic Deshaun Rollerson*, No. 4:23-CR-100-O, U.S. District Court for the Northern District of Texas. Judgment entered on October 13, 2023.

- *United States v. Braddic Deshaun Rollerson*, No. 23-11058, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on March 11, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Braddic Deshaun Rollerson respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's unreported opinion is reprinted at Pet.App.a1-a2.

JURISDICTION

The Court of Appeals issued its panel opinion on March 11, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This Petition involves the offense defined at 18 U.S.C. § 922(g)(1):

> 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 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.

This petition also involves the Second Amendment to the United States Constitution:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. CONST., amend. II.

STATEMENT OF THE CASE

A. Introduction

Mr. Rollerson's preserved challenge to the facial constitutionality of 18 U.S.C. § 922(g)(1) failed because the Fifth Circuit Court of Appeals had adopted a death-equals-disarmament approach to the federal felon-in-possession statute. In *United States v. Diaz*, the Fifth Circuit held § 922(g)(1) to be constitutional as applied to a defendant with a disqualifying conviction for felony theft. 116 F.4th 458, 470-71 & n.4 (5th Cir. 2024). The Fifth Circuit premised this holding on the historical existence of harsh penalties for theft, which included capital punishment and forfeiture of estate. *Id*. at 469. "[I]f capital punishment was permissible to respond to theft," the Fifth Circuit reasoned, "then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." *Id*. Since § 922(g)(1) could be constitutionally applied against Mr. Diaz, the Fifth Circuit's as-applied holding resolved his facial challenge in the government's favor. *Id*. at 471-72 (citing *United States v. Rahimi*, 602 U.S. 680, 693 (2024)). The Fifth Circuit relied on this holding to summarily reject the same challenge in Mr. Rollerson's case. Pet.App.a2 (citing *Diaz*, 116 F.4th at 471-72).

Without additional guidance from this Court, other circuit courts of appeals—and the Fifth Circuit—have issued published opinions assessing § 922(g)(1) on materially different grounds. Like the Fifth Circuit, the Third Circuit has blessed the possibility of as-applied challenges to § 922(g)(1), and sitting *en banc*, declared the statute unconstitutional in a case involving a defendant with a single disqualifying conviction for making a false statement in an application for food stamps. *See United States v. Range*, 124 F.4th 218, 232 (3d Cir. 2024); *see also United States v. Moore*, 111 F.4th 266, 271-72 (3d Cir. 2024). Relying on the same historical traditions rejected by the *en banc* Third Circuit, the Eighth, Sixth, and Ninth Circuits have all taken a different approach to judging § 922(g)(1). For its part, the Eighth Circuit declared as-applied challenges off limits and then held the statute to be facially constitutional based on historical laws disarming "persons who deviated from legal norms [and] persons who presented an unacceptable risk of dangerousness." *United States v. Jackson*, 110 F.4th 1120, 1125, 1129 (8th Cir. 2024). The Ninth Circuit recently adopted a similar holding but in an opinion allowing for as-applied relief. *United States v. Duarte*, 137 F.4th 743, 757-61 (9th Cir. 2025). The Sixth Circuit likewise allows for as-applied challenges but has rejected one brought by a defendant with a violent criminal record. *United States v. Williams*, 113 F.4th 637, 662-63 (6th Cir. 2024). Last, the Fifth Circuit recently adopted a second test aimed at defendants whose disqualifying convictions "indicate[] . . . a threat to public safety and the orderly functioning of society." *See United States v. Schnur*, 132 F.4th 863, 868 (5th Cir. 2025). This new test supplements, but does not replace, the death-equals-disarmament analysis from *Diaz*. *See id*. (citing *Diaz*, 116 F.4th at 471-72).

None of these approaches can be squared with the text-and-history standard announced by the Court in *Bruen* and recently applied in *Rahimi*. There is simply no Founding Era tradition of punishing convicted criminals for possessing firearms, and that evidentiary dearth makes Mr. Rollerson's challenge "straightforward." *N.Y. State Rifle & Pistol Ass'n, Inc., v. Bruen*, 597 U.S. 1, 26 (2022). Section 922(g)(1) "addresses a general societal problem that has persisted since the 18th century," and "the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* In the Founding Era, legislators knew that some offenders convicted for serious crimes would return to society after completing a sentence of imprisonment, but no contemporary laws addressed the threat those ex-offenders posed by punishing their mere possession of a firearm. Moreover, Founding Era disarmament provisions were typically aimed at either armed rebels or racial minorities excluded from "the people" in the first place. These laws are not analogous to § 922(g)(1), and the divergent approaches taken by the circuit courts of appeals have—contrary to the analysis from *Bruen* and *Heller*—overlooked the most helpful historical evidence. This Court should step in to clear up the confusion.

B. Legal Framework

1. *District of Columbia v. Heller*

Our Nation's modern Second Amendment jurisprudence begins with *District of Columbia v. Heller*. There, this Court interpreted the Amendment to "confer[] an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). This Court then declared two District of Columbia laws unconstitutional infringements on those rights. One completely banned the possession of handguns in the home. *Id.* at 628-29. The second required firearms lawfully possessed in the home to be rendered inoperable. *Id*. at 630. Without specifying the applicable standard of review, the Court struck down both laws as unconstitutional infringements on the rights protected by the Second Amendment. *Id*. at 628-30, 635.

The Court cautioned lower courts not to overread *Heller*. Given the specific laws at issue, Justice Scalia, the majority opinion's author, was careful to note that "nothing in" the opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons or the mentally ill." *Id*. at 626. Such laws, he explained, were "examples" of "presumptively lawful regulatory measures." *Id*. at 626 n.26.

Despite this cautious note, Justice Scalia recognized that other Second Amendment claims, including those against § 922(g)(1), would have to be judged at some later date and on their own terms. The *Heller* opinion was this Court's "first in-depth examination" of the rights at issue and therefore could not "clarify the entire field" of Second Amendment jurisprudence. *Id*. at 635. "[T]here will be time enough," Justice Scalia noted, "to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us." *Id*.

2. *N.Y. State Rifle & Pistol Ass'n, Inc., v. Bruen*

This Court's subsequent *Bruen* opinion differed from *Heller* in two significant respects. First, *Bruen*, unlike *Heller*, adopted a comprehensive methodology to apply in all Second Amendment cases. In *Heller*, this Court declined to adopt a specific standard of review and instead found that the laws challenged in that case would fail no matter what standard applied. 554 U.S. at 628. *Bruen*, by contrast, adopted a plain-meaning approach: "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." 597 U.S. at 17. *Bruen* then expanded upon *Heller* by incorporating a burden-shifting scheme into the analysis, which put the onus on the government to justify any regulation prohibiting conduct protected by the Amendment's text. To shoulder this burden, the Court held, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id*.

A second difference between *Bruen* and *Heller* concerns the intended effect of both opinions. In *Heller*, the majority opinion cabined its own effect by cautioning lower courts not to overread the analysis, and in doing so, even described certain "longstanding prohibitions" as "presumptively lawful." 554 U.S. at 626 & n.26. *Bruen* was not so reserved. There, the majority opinion described any conduct covered by the Second Amendment's plain text as "presumptively protect[ed]." *See* 597 U.S. at 17. In similar fashion, the majority opinion from *Bruen* did not reiterate *Heller*'s commentary on "presumptively lawful regulatory measures" like those prohibiting "the possession of firearms by felons," but the quotation does appear in a concurring opinion authored by Justice Kavanaugh. *Id*. at 81 (quoting *Heller*, 554 U.S. at 626). The majority opinion from *Bruen* thus exceeded the majority opinion from *Heller* by (1) setting out a comprehensive methodology for judging Second Amendment claims and (2) failing to comment, even in passing, on the constitutionality of laws like § 922(g)(1).

That this Court meant what it said in *Bruen* is clear from *Bruen*'s actual analysis. The opinion began with a comparison between the Second Amendment's text and the challenged law. The State of New York criminalized the unlicensed possession of a firearm in the home and on the street, and any New Yorker who wanted to obtain a license to carry a firearm outside the home was required to make a showing of "proper cause." *Id*. at 1 (quoting N.Y. PENAL LAW ANN. § 400.00(2)(f)). This Court began by finding a conflict between this law and the Second Amendment's plain text. The right to bear arms, this Court explained, "refers to the right to wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id*. at 32 (quoting *Heller*, 554 U.S. at 584). Since the "definition of 'bear' naturally encompasses public carry," the Second Amendment "presumptively guarantee[d]" the petitioner's "right to 'bear' arms in public for self-defense." *Id*. at 32-33.

The Court then turned to history. The plain-text analysis established a conflict between New York's licensing regime and the Second Amendment, so the burden shifted to the State of New York to establish the challenged law's consistency with historical firearm regulations. On this topic, the Court began with a word of caution: "[N]ot all history is created equal." *Id*. at 34. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Id.* at 34 *(quoting Heller,* 554 U.S. at 634-35*).* Given that reality, "historical evidence that long predates" the Second Amendment's enactment "may not illuminate the scope of the right[s]" at issue "if linguistic or legal conventions changed in the intervening years." *See id*. This Court similarly cautioned "against giving postenactment history more weight than it can rightly bear." *Id*. at 35. "[T]o the extent later history contradicts what the text says, the text controls." *Id*. at 36.

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

3. *United States v. Rahimi*

This Court has since reiterated *Bruen*'s historical focus in *United States v. Rahimi*. There, the Court considered a Second Amendment challenge to 18 U.S.C. § 922(g)(8)(C)(i), which prohibited the defendant from possessing a firearm based on the existence of a restraining order issued after a state court found that he posed "a credible threat to the physical safety" of another person. *Rahimi*, 602 U.S. at 693 (quoting 18 U.S.C. § 922(g)(8)(C)(i)). This Court held the law to be constitutional after noting the existence of two forms of historic firearm regulations aimed at temporarily disarming those who posed a threat of violence to others. *Id*. at 695-97. "Taken together," the Supreme Court concluded, the existence of both traditions "confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 698.

The widespread adoption of both regulatory schemes and their shared roots in the common law helped this Court flesh out the Second Amendment's meaning, and the analysis began with the surety system. At common law, this system allowed "magistrates to require individuals suspected of future misbehavior to post a bond." *Id.* at 695 (citing 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 145–146, 149–150 (10th ed. 1787)). "If an individual failed to post a bond, he would be jailed." *Id.* (citing MASS. REV. STAT., ch. 134, § 6 (1836)). Massachusetts codified the common law by passing a surety statute in 1795. *Id.* (citing 1795 Mass. Acts ch. 2, in ACTS AND RESOLVES OF MASSACHUSETTS, 1794–1795, ch. 26, 66-67 (1896)). Between 1838 and 1871, nine other American jurisdictions adopted similar laws. *See id.* (citing *Bruen*, 597 U.S. at 56 & n.23). These laws, in turn, "could be invoked to prevent all forms of violence, including spousal abuse," and "also targeted the misuse of firearms." *Id.*

Laws prohibiting affray were similarly entrenched in both the common law and American legal history. *Id.* at 697-98. The common law prohibited anyone from "riding or going armed, with dangerous or unusual weapons," to the terror of others. *Id.* at 697-98 (quoting 4 BLACKSTONE 149). After the Founding, courts in Alabama, Maryland, and North Carolina incorporated the common-law crime into their jurisprudence. *Id.* (citing *Hickman v. State*, 996 A.2d 974, 983 (2010); *O'Neill* *v. State*, 16 Ala. 65, 67 (1849); *State v. Huntly*, 25 N.C. 418, 421-22 (1843)). Four other states codified the crime in statutes enacted between 1741 and 1786. *Id.* (citing 1786 Va. Acts ch. 21; 2 LAWS OF THE COMMONWEALTH OF MASSACHUSETTS FROM NOV. 28, 1780 TO FEB. 28, 1807, 652–53 (1807); ACTS AND LAWS OF HIS MAJESTY'S PROVINCE OF NEW-HAMPSHIRE IN NEW-ENGLAND 2 (1761); COLLECTION OF ALL OF THE PUBLIC ACTS OF ASSEMBLY, OF THE PROVINCE OF NORTH-CAROLINA: NOW IN FORCE AND USE 131 (1751) (1741 statute)). The conduct prohibited by these laws "disrupted the 'public order' and 'led almost necessarily to actual violence.'" *Id.* at 697 (quoting *Huntly*, 25 N.C. at 421-22). Given the stakes, offenders could be "punished . . . with 'forfeiture of the arms . . . and imprisonment.'" *Id.* (quoting 4 BLACKSTONE 149).

After surveying these laws, this Court resolved Mr. Rahimi's Second Amendment claim by comparing "the tradition the surety and going armed laws represent" to § 922(g)(8)(C)(i). All three, this Court explained, "restrict[] gun use to mitigate demonstrated threats of physical violence." *Id.* All three, this Court continued, "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* All three were also temporary, and if those convicted of affray could be imprisoned, "then the lesser restriction of temporary disarmament that § 922(g)(8) imposes is also permissible." *Id.* at 699. "An individual found by a court to pose a credible threat to the physical safety of another," this Court concluded, "may be temporarily disarmed consistent with the Second Amendment." *Id.* at 702.

C. Factual and Procedural History

Mr. Rollerson recently pleaded guilty to violating § 922(g)(1). Pet.App.a3. He challenged the facial constitutionality of the statute of conviction before the district court, and after the district court rejected the motion, ultimately received a 180-month term of imprisonment. *See* Pet.App.a4. Mr. Rollerson then advanced a preserved facial challenge to § 922(g)(1) on appeal, but the Fifth Circuit summarily affirmed his conviction based on its earlier opinion in *Diaz*. Pet.App.a2 (citing 116 F.4th at 471-72). There, the Fifth Circuit declared § 922(g)(1) constitutional as applied to a defendant with a disqualifying conviction for felony theft. *Diaz*, 116 F.4th at 469-70. Since the Fifth Circuit found "the statute [to be] constitutional as applied to the facts of his own case," Mr. Diaz's facial challenge to § 922(g)(1) necessarily failed. *See id*. at 471-72 (citing *Rahimi*, 602 U.S. at 693). The same holding foreclosed Mr. Rollerson's preserved facial challenge. Pet.App.a2.

REASONS FOR GRANTING THIS PETITION

I. The Court should clear up the confusion and resolve § 922(g)(1)'s constitutionality.

a. The circuit courts of appeals have adopted different tests for judging § 922(g)(1)'s constitutionality.

Despite this Court's guidance in *Heller*, *Bruen*, and *Rahimi*, there is no circuit-court consensus on how to judge § 922(g)(1)'s constitutionality, and even within circuits, there are disputes about what historical evidence proves what enduring principle. Begin with the Third. It resolved an as-applied challenge from a defendant serving a term of supervised release in the government's favor based on the existence of Founding Era laws authorizing temporary forfeiture as a punishment for convicted criminals. *United States v. Moore*, 111 F.4th 266, 271-72 (3d Cir. 2024). Sitting *en banc*, the Third Circuit has also declared § 922(g)(1) unconstitutional as applied against a defendant with a single disqualifying conviction for making a false statement in an application for food stamps. *United States v. Range*, 124 F.4th 218, 232 (3d Cir. 2024). There, the government initially relied upon laws aimed at disarming rebels, suspected traitors, and disfavored minorities on a class-wide basis to support § 922(g)(1)'s as-applied constitutionality, but the Third Circuit rejected these analogues as irrelevant given the obvious differences between the defendant—a modern-day felon with a nonviolent record—and the groups targeted by the laws at issue:

> That Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that Range is part of a similar group today.

Id. at 229. The Third Circuit then rejected the government's attempt to support the as-applied constitutionality of § 922(g)(1) based on laws "disarming (at least temporarily) physically dangerous people." *See id*. at 230. That argument, the Third Court found, overlooked § 922(g)(1)'s lifetime application and the terms of its disqualification, which does not require a violent criminal conviction. *Id*. On top of that, the government's argument, if accepted, would "water[] down" the rights protected by the Second Amendment by allowing courts to abstract the underlying principles at too high a "level of generality." *Id*. at 230 (quoting *United States v. Rahimi*, 602 U.S. 680, 740 (2024) (Barrett, J., concurring)). Last, the Third Circuit rejected the death-equals-disarmament argument accepted by the Fifth Circuit in *Diaz* by noting a mismatch between the punishments at issue. "[T]he Founding-era practice of punishing some nonviolent crimes with death," it explained, "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 231.

Relying on the same laws rejected by the Third Circuit, the Eighth and Sixth Circuits have upheld the facial and as-applied constitutionality of § 922(g)(1). After interpreting a broad array of historical laws from both England and America purportedly aimed at disarming those deemed "dangerous," the Sixth Circuit upheld § 922(g)(1)'s as-applied constitutionality against a defendant with a series of violent criminal convictions. *United States v. Williams*, 113 F.4th 637, 662-63 (6th Cir. 2024). The Eighth Circuit staked out a different approach based on the same laws. It initially determined that felons as a class may not advance as-applied challenges to § 922(g)(1). *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). It then relied upon the same laws cited by the Sixth to declare § 922(g)(1) facially constitutional. *Id*. at 1126-29. Those analogues, the Eighth Circuit concluded, would authorize modern-day laws disarming "persons who deviated from legal norms [and] persons who presented an unacceptable risk of dangerousness." *Id*. at 1129.

The Fifth Circuit has announced two tests for resolving as-applied challenges. The first—announced in *Diaz*—recognized the possibility of as-applied relief and asked whether the defendant's disqualifying conviction (or a conviction for a crime like it) would have been subject to capital punishment or forfeiture of estate at some point in or around the Founding Era. 116 F.4th at 468-69. The Fifth Circuit later supplemented this test with one aimed at assessing a defendant's dangerousness, and the underlying analysis relied on a comparison between § 922(g)(1)'s permanent disarmament and Founding Era laws aimed at temporarily disarming those who misused weapons. In *United States v. Schnur*, the Fifth Circuit likened the defendant's aggravated-battery conviction to the behavior prohibited by historical going-armed laws, which temporarily disarmed and imprisoned "those who had menaced others with firearms." *See United States v. Schnur*, 132 F.4th 863, 868 (5th Cir. 2025) (citing *Rahimi*, 602 U.S. at 697). Mr.

Schnur's aggravated-battery conviction, the Fifth Circuit continued, "indicates that he poses a threat to public safety and the orderly functioning of society." *Id.* at 869. Since the going-armed laws established a tradition of temporarily disarming a similar group, "a ban on Schnur's ability to possess a firearm pursuant to § 922(g)(1)," the Fifth Circuit concluded, "passes constitutional muster." *Id.* at 870.

The Ninth Circuit recently assessed § 922(g)(1) with reference to both tests currently applied in the Fifth. In *United States v. Duarte*, the court sitting *en banc* affirmed § 922(g)(1) against a challenge brought by a defendant with non-violent disqualifying convictions. *Duarte*, 137 F.4th at 757-61. It initially found that "the exposure to capital punishment and estate forfeiture" for some felons in the Founding Era was "sufficient to demonstrate that the founding generation would view § 922(g)(1)'s permanent disarmament as consistent with the Second Amendment." *Id.* at 758. The Ninth Circuit then held that a separate tradition aimed at disarming disfavored minorities—"Catholics," "slaves," "free Black people," and loyalists during the Revolutionary War—was sufficient to support § 922(g)(1)'s application to a non-violent felon today. *Id.* at 759.

b. None of the tests currently applied by the circuit courts of appeals work on their own terms.

The Second Amendment analysis currently applied in the circuit courts of appeals suffers from a number of serious problems. The most popular approach—a freewheeling disarm-the-dangerous analysis—is far too general and ultimately provides the government with a malleable windfall. The death-equals-disarmament approach, in turn, depends on a category error. The other tests floating around either ignore § 922(g)(1)'s text entirely or overlook obvious differences between § 922(g)(1)'s permanent disarmament and the temporary nature of the punishments associated with historical going-armed laws. At any rate, none of these analyses can be squared with the straightforward text-and-history approach announced by this Court in *Bruen* and applied in *Rahimi*.

As the Third Circuit has recognized, the disarm-the-dangerousness test applied in the Sixth, Eighth, and Ninth Circuits is simply too general. Adjectives like "dangerous" and "law-abiding" are "vague" and do not lend themselves to a workable constitutional standard. *See Rahimi*, 680 U.S. at 701. The Second Amendment analysis prescribed by *Bruen* requires something more specific. In *Rahimi*, for example, this Court compared the challenged law to a pair of widely adopted legal regimes from the Founding Era and rejected the government's broader attempt to resolve the question presented based on an apparent tradition of disarming those deemed irresponsible in the abstract. *See id*. In a concurrence, Justice Barrett warned against "water[ing] down" the Second Amendment's protections by reviewing historical firearm regulations at too "high [a] level of generality." *See id*. at 740 (Barrett, J., concurring). The Sixth, Eighth, and Ninth Circuits have contravened Justice Barrett's advice. By lumping together laws disarming active rebels, suspected traitors, and disfavored minorities into a single tradition aimed at the concept of "dangerousness," these courts have handed the government a windfall but one without adequate support in the Second

Amendment's text or the history. *See Duarte*, 137 F.4th at 759-61; *Williams*, 113 F.4th at 650-57; *Jackson*, 110 F.4th at 1126-28.

For its part, the death-equals-disarmament analysis from the Fifth and Ninth Circuits depends upon a category error. According to Blackstone, the common-law term "felony" denoted any "crime to be punished by forfeiture, and to which death may, or may not be, though it generally is, superadded." 4 BLACKSTONE 98. Upon judgment of death, a convicted felon "shall be said to be attainted," and "[t]he consequences of attainder are forfeiture and corruption of blood." *Id.* at 381. The Fifth and Ninth Circuits have relied on the existence of these penalties to save § 922(g)(1), but the statute is aimed at a different class of offenders. It does not use the term "felony" and does not apply to only those convicted for death-eligible offenses. Section 922(g)(1) instead applies to anyone convicted for a "crime punishable by imprisonment for a term exceeding one year." *See* 18 U.S.C. § 922(g)(1). That these offenses are typically described as "felonies" today is irrelevant, and under *Bruen*, the analysis should turn on a comparison between the Second Amendment's text and the conduct prohibited by the text of the challenged law. *See* 597 U.S. at 17. Section § 922(g)(1) applies to any offender with a conviction punishable by more than one year, not any offender subject to the death penalty. The existence of harsh penalties for some felony offenders at common law therefore says nothing about whether Congress can constitutionally disarm a different group of offenders today.

The Fifth Circuit's more recent comparison between § 922(g)(1) and historical going-armed laws fares no better. The going-armed laws resulted in only a temporary term of imprisonment. *Rahimi*, 602 U.S. at 699 (citing 4 BLACKSTONE 149). The existence of temporary incarceration as a punishment for one class of offenders in the Founding Era might support the application of "the lesser restriction of temporary disarmament" to an analogous class of modern-day defendants, *see id.*, but § 922(g)(1)'s prohibition is permanent. The Fifth Circuit ignored this distinction, but the obvious mismatch should have been "central to" the analogical "inquiry" required in the Second Amendment context. *Id.* at 692 (citing *Bruen*, 597 U.S. at 29).

The Third Circuit's approach to the defendant serving a term of supervised release ignored § 922(g)(1)'s text entirely. Rather than address the government's power to disarm convicted criminals (or some analogous subset of the same), the Third Circuit instead ruled on the government's power to disarm those currently serving some type of sentence following a criminal conviction. *See Moore*, 111 F.4th at 272-73. That approach allowed the Third Circuit to resolve the defendant's as-applied challenge but did so without addressing whether any tradition of historical firearm regulation justified permanently disarming those convicted for a crime with a maximum term of imprisonment exceeding one year. That is the class to which § 922(g)(1) applies, and the statute's text makes no distinction between individuals within this broader class and the smaller subset of defendants currently serving out a term of imprisonment, probation, parole, or supervision.

c. A faithful application of *Heller*, *Bruen*, and *Rahimi* reveals § 922(g)(1) to be facially unconstitutional.

By ignoring the most helpful evidence, the circuit courts of appeals have overlooked an obvious and irreconcilable clash between § 922(g)(1) and the rights protected by the Second Amendment. The Second Amendment's plain text and the historical scope of the right the text codified reveal this to be true. For one thing, the Second Amendment protects a right belonging to "the people," not some unspecified subset. For another, Founding Era constitutions frequently premised both qualifications for voters and eligibility to hold office on the absence of certain criminal convictions, but not a single one incorporated a similar disqualification into the right to keep and bear arms. This Nation, in turn, has no tradition of criminalizing the mere possession of a firearm by an ex-offender like Mr. Rollerson. Even in the Founding Era, legislators knew that some offenders convicted for serious crimes would return to society after completing a sentence of imprisonment longer than one year. The historical record nevertheless establishes only narrow and limited disarmament laws aimed at either active rebels, suspected traitors, or disfavored minorities excluded from the right to keep arms in the first place. Mr. Rollerson, despite his prior conviction, is similarly situated to none of these groups. Since no group of criminals were historically disarmed, there is "no set of circumstances under which" § 922(g)(1) "would be valid." *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

Begin with the Second Amendment's plain text. The rights protected therein belong to "the people," and in the Founding Era, the noun "people" denoted all members "of a national community." *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1994). Samuel Johnson's dictionary defined the term in 1785 to mean both "[a] Nation" or "those who compose a community." *People*, A DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1785). James Barclay followed suit in 1792 and defined the noun as "a nation or community." *People*, A COMPLETE AND UNIVERSAL ENGLISH DICTIONARY (2d ed. 1792). Writing from America, Noah Webster initially defined "people" in 1806 to denote both "persons in general" and "a nation." *People*, A COMPENDIOUS DICTIONARY OF THE ENGLISH LANGUAGE (1806). He expanded upon this definition in 1828 and then defined "people" to mean "[t]he body of persons who compose, a community, town, city, or nation." *People*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828). A reference to "the English people," Webster explained, would therefore refer not to specific persons "in the plural" but would instead "comprehend[] all classes of inhabitants, considered as a collective body." *Id*. Missing from each of these dictionaries are any status-based reservations on the noun's plain meaning, and no Founding Era dictionary exempted criminals or any subset of criminals from their definitions of the term. Section 922(g)(1) nevertheless permanently prohibits individuals like Mr. Rollerson—those with a felony conviction at any point in the past—from possessing any firearm or ammunition. 18 U.S.C. §§ 922(g)(1), 924(a)(2).

The historical evidence points in the same direction. None of the Second Amendment's state-level precursors or descendants premised the right to keep and bear arms on the absence of criminal convictions. In 1776, Pennsylvania and North

Carolina became the first American jurisdictions to recognize a right to "bear arms," and in both cases, codified the right as belonging to "the people." N.C. CONST. of 1776, Declaration of Rights art. XVII; PA. CONST. of 1776, Declaration of Rights art. XIII. Between 1777 and 1820, four more jurisdictions—Vermont, Ohio, Indiana, and Missouri—likewise codified a right to "bear arms" as one belonging to "the people." MO. CONST. of 1820, art. XIII, § 3; IND. CONST. of 1816, art. I, § 20; OHIO CONST. of 1802, art. VIII, § 20; VT. CONST. of 1777, Declaration of Rights art. XV. Vermont initially recognized the right in 1777 and later recodified the right using the same language in replacement constitutions adopted in 1786 and 1793. VT. CONST. of 1793, ch. 1, art. XVI; VT. CONST. of 1786, ch. 1, art. XVIII. In 1780, Massachusetts adopted a constitution recognizing "a right to keep and bear arms," which belonged to "[t]he people," not some unspecified subset. MASS. CONST. of 1780, pt. I, art. 17. Like the Second Amendment, these state-level analogues were broadly worded and included no textual reservations exempting some members of "the people" from possessing the rights at issue.

A few constitutions recognized the same right in the Founding Era as belonging to "citizens" or "every citizen." Pennsylvania first adopted this language in 1790, and at that point, recognized "[t]hat the right of the citizens to bear arms, in defence of themselves and the state, shall not be questioned." PA. CONST. of 1790, art. IX, § 21. The same constitution then recognized the right to assembly ("citizens") and free speech ("every citizen") as belonging to the same broad group. PA. CONST. of 1790, art. IX, §§ 7, 20. Kentucky codified a right to "bear arms" in its

1792 and 1799 constitutions, and like Pennsylvania, also recognized the right as belonging to "citizens." KY. CONST. of 1799, art. X, § 23; KY. CONST. of 1792, art. XII, § 23. Between 1817 and 1819, four more constitutions—those adopted by Alabama, Connecticut, Maine, and Mississippi—codified the right of "every citizen" to "bear arms." ME. CONST. of 1819, art. I, § 16; ALA. CONST. of 1819, art. I, § 23; CONN. CONST. of 1818, art. I, § 17; MISS. CONST. of 1817, art. I, § 23. Maine's 1819 constitution similarly recognized the right of "every citizen" to "keep . . . arms." ME. CONST. of 1819, art. I, § 16.

In the Founding Era, the noun "citizen," unlike "people," could refer a specific subset of a community's population. Johnson's 1785 dictionary defined the term to mean "[a] freeman of a city; not a foreigner; not a slave." *Citizen*, A DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1785). Barclay similarly defined the term in 1792 to mean "a person who is free of a city." *Citizen*, A COMPLETE AND UNIVERSAL ENGLISH DICTIONARY (2d ed. 1792). Webster used the term "freeman" to define "citizen" in 1806. *Citizen*, A COMPENDIOUS DICTIONARY OF THE ENGLISH LANGUAGE (1806). One accepted meaning of the noun "citizen" thus incorporated freedom as a prerequisite to citizenship.

Some Founding Era dictionaries recognized a broader definition. Johnson's 1785 dictionary includes the following alternative: "An inhabitant; a dweller in any place." *Citizen*, A DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1785). In 1806, Webster also defined the term to mean "one inhabiting a city." *Citizen*, A COMPENDIOUS DICTIONARY OF THE ENGLISH LANGUAGE (1806). He expanded this definition in 1828. "Citizen," he wrote, could refer to "[a] native of a city, or an inhabitant who enjoys the freedom and privileges of the city in which he resides." *Citizen*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828). The term could also refer broadly to "[a]n inhabitant" or "a dweller in any city, town or place." *Id*. "In a general sense," Webster continued, "citizen" could denote "a native or permanent resident in a city or country." *Id*. Last, Webster recognized a specialized legal definition: "In the United States, a person, native or naturalized, who has the privilege of exercising the elective franchise, or the qualifications which enable him to vote for rulers, and to purchase and hold real estate." *Id*.

The United States Constitution uses the term "citizen" in some places and "the people" in others. "No person," Article I states, "shall be a Representative who shall not have . . . been seven Years a Citizen of the United States." U.S. CONST. art. I, § 2. Only those "nine Years a Citizen of the United States" were eligible serve in the Senate. U.S. CONST. art. I, § 3. To serve as President, an individual must either be "a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of the Constitution." U.S. CONST. art. II, § 1. Article III likewise refers to various types of "Citizens" to define the subject-matter jurisdiction of federal courts, U.S. CONST. art. III, § 2, and according to Article IV, "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States," U.S. CONST. art. IV, § 2. The Bill of Rights uses different language. The First, Second, and Fourth Amendments codify rights belonging to "the people," not just to "citizens." Context is a primary determinant of meaning, and here, that context supports a plain-meaning interpretation of the Second Amendment. Had the Founders wished to reserve the right to keep and bear arms only to "citizens," a potential subset of "the people," they could have done so. They did something else, and this fact affects the interpretation of both terms as they appear throughout the Constitution.

Whatever the exact meaning of "citizen" in the various Founding Era constitutions, none of the state-level analogues using the term to define the holders of the right to keep and bear arms included carve-outs. Pennsylvania and Kentucky codified a right belonging to "the citizens" in their entirety, not a subset of the citizenry. KY. CONST. of 1799, art. X, § 23; KY. CONST. of 1792, art. XII, § 23; PA. CONST. of 1790, art. IX, § 21. Connecticut, Maine, Mississippi, and Missouri likewise recognized the right as belonging to "every citizen," not just some. ME. CONST. of 1819, art. I, § 16; ALA. CONST. of 1819, art. I, § 23; CONN. CONST. of 1818, art. I, § 17; MISS. CONST. of 1817, art. I, § 23. In America, the Second Amendment and its state-level analogues were typically phrased in expansive, not exclusive, language.

Only two state constitutions adopted in the Founding Era used limiting language to define the scope of the right to keep and bear arms. Tennessee's 1796 constitution restricted the "right to Keep and to bear Arms" to "freeman" only. TENN. CONST. of 1796, art. XI, § 26. In 1812, Louisiana adopted the following constitutional provision with similarly exclusive language:

> The free white men of this State, shall be armed and disciplined for its defence; but those who belong to religious societies, whose tenets forbid them to carry arms, shall not be compelled so to do, but shall pay an equivalent for personal service

LA. CONST. of 1812, art. III, § 22. With its reference to "freeman," Tennessee excluded enslaved men—and all women—from those holding the rights at issue. *See, e.g.*, *Freeman*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) ("One who enjoys liberty, or who is not subject to the will of another; one not a slave or vassal"); *Freeman*, A DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1785) ("One not a slave; not a vassal."). Louisiana's constitution, in turn, limited the responsibility to arm oneself in defense of the State with three qualifications: (1) freedom; (2) sex; and (3) skin color. LA. CONST. of 1812, art. III, § 22. Tennessee and Louisiana thereby constitutionalized certain limits on the right or responsibility to arm oneself, but relevant here, neither incorporated the existence of a prior criminal conviction as a textual disqualification.

Other constitutional provisions from the Founding Era provide a useful contrast. No Founding Era constitution in America circumscribed the right to bear arms based on the existence of a criminal conviction. Many nevertheless constitutionalized crime-based disqualifications on voters and office holders. Had the Founders wished to exclude criminals from "the people" protected by the Second Amendment, they knew how to do so and could have imported similar disqualifications from contemporary state constitutions. Their failure to adopt crime-based qualifications on the right to bear arms—and the failure of any state-level constitution to do the same—provides useful context and further supports a plain-meaning interpretation of the term "people" as it appears in the Second Amendment.

Crime-based disqualifications in other Founding Era constitutional provisions are legion, and there are examples from the very beginning. The right to bear arms recognized in Pennsylvania's 1776 constitution belonged broadly and without qualification to "the people." PA. CONST. of 1776, Declaration of Rights art. XIII. A suffrage provision elsewhere in the same constitution excluded from voting "any elector, who shall receive any gift or reward for his vote." PA. CONST. of 1776, § 32. This forfeiture was in addition to "such other penalties as future laws shall direct," and the same provision disqualified anyone offering a bribe to voters from serving as an office-holder "for the ensuing year." PA. CONST. of 1776, § 32. Vermont's 1786 constitution similarly recognized "a right to bear arms" belonging to "the people," VT. CONST. of 1786, ch. 1, art. XVIII, but affirmatively disqualified those involved in bribery from voting or holding office, VT. CONST. of 1786, ch. 2, art. XXXI.

After the Constitution's ratification, other states with similarly broad Second Amendment analogues continued to adopt crime-based disqualifications in other contexts. In 1792, Kentucky codified an unqualified "right[] of the citizens to bear arms in defense of themselves and the State." KY. CONST. of 1792, art. XII, § 23. The same constitution explicitly disqualified from the legislature anyone "who shall be convicted of having given or offered any bribe or treat or canvassed for the said office." KY. CONST. of 1792, art. I, § 27. Kentucky's 1799 constitution recodified the "the right of the citizens to bear arms," KY. CONST. of 1799, art. X, § 23, but this time, set a bribery conviction as a disqualification for both legislators and executive officials, KY. CONST. of 1799, art. VI, § 3. Ohio's 1802 constitution broadly recognized "[t]hat the people have a right to bear arms for the defense of themselves and the State." OHIO CONST. of 1802, art. VIII, § 20. There were no textual carve-outs for this right, but the same constitution nevertheless recognized the legislature's "full power to exclude from the privilege of electing, or being elected, any person convicted of bribery, perjury, or any other infamous crime." OHIO CONST. of 1802, art. IV, § 4.

This pattern continued well into the Founding Era. Indiana's 1816 constitution recognized "[t]hat the people have a right to bear arms for the defence of themselves, and the state," and again, the plain text accounted for no disqualifications or legislative power of abridgement. *See* IND. CONST. of 1816, art. I, § 20. The same constitution then disqualified from office any sitting "Governor, Lieutenant Governor, Senator, or Representative . . . who shall have been convicted of having given, or offered, any bribe, treat, or reward to procure his election" but only "for the term for which he shall have been elected." IND. CONST. of 1816, art. XI, § 5. Indiana's constitution, like Ohio's before it, also granted the legislature "full power to exclude from electing, or being elected, any person convicted of any infamous crime." IND. CONST. of 1816, art. VI, § 4.

So too in Mississippi. That State's 1817 constitution granted the legislature the "power to pass such penal laws to suppress the evil practice of dueling, extending to disqualification from office or the tenure thereof," MISS. CONST. of 1817, art. VI, § 2, and automatically "disqualified from holding an office or place of honour or profit, under the authority of this State" anyone "who shall be convicted of having given, or offered, any bribe to procure his election," MISS. CONST. of 1817, art. VI, § 4. By contrast, Mississippi recognized the unqualified right of "[e]very citizen . . . to bear arms in defence of himself and the State." MISS. CONST. of 1817, art. I, § 23.

Connecticut's 1818 constitution went even further. "Every citizen," the declaration of rights recognized, "has a right to bear arms in defence of himself and the state." CONN. CONST. of 1818, art. I, § 17. This unqualified language provided a stark contrast to an automatic disenfranchisement provision effective upon certain criminal convictions: "The privileges of an elector shall be forfeited by a conviction of bribery, forgery, perjury, duelling, fraudulent bankruptcy, theft, or other offence for which an infamous punishment is inflicted." CONN. CONST. of 1818, art. VI, § 3.

Alabama's 1819 constitution provides yet another example. It recognized the textually unqualified right of "[e]very citizen . . . to bear arms in defence of himself and the State," ALA. CONST. of 1819, art. I, § 23, but two other provisions granted the legislature broad powers to disqualify voters, jurors, and office holders based on criminal convictions. The first recognized the legislature's "power to pass such penal laws, to suppress the evil practice of Duelling, extending to disqualification from office or the tenure thereof." ALA. CONST. of 1819, art. VI, § 3. The second provision included a mandate to legislators: "Laws shall be made to exclude from office, from suffrage, and from serving as Jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes and misdemeanors." ALA. CONST. of 1819, art. VI, § 5. A third provision "disqualified from holding any office or place of honor or profit, under the authority of the State," anyone "who shall be convicted of having given or offered any bribe to procure his election or appointment." ALA. CONST. of 1819, art. VI, § 4.

Missouri's 1820 constitution reflects the same distinction between an unqualified right to bear arms and a series of crime-based qualifications on various political rights. As was so often the case, those convicted of bribery were disqualified from holding office: "Every person who shall be convicted of having, directly or indirectly, given or offered any bribe to procure his election or appointment, shall be disqualified for any office of honor, trust, or profit." MO. CONST. of 1820, art. III, § 15. A companion provision addressed disenfranchisement for the same category of people: "[A]ny person who shall give or offer any bribe to procure the election or appointment of any other person shall, on conviction thereof, be disqualified for an elector, or for any office of honor, trust, or profit, under this state, for ten years after such conviction." MO. CONST. of 1820, art. III, § 15. Missouri likewise granted the legislature the "power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime." MO. CONST. of 1820, art. III,

§ 14. No such disqualifications or legislative powers of abridgement appeared in Missouri's Second Amendment analogue. There, the constitutional text recognized in a single provision the rights of "the people" to assemble, to petition "for redress of grievances," and "to bear arms, in defense of themselves and the state." MO. CONST. of 1820, art. XIII, § 3. The first of these three rights was textually qualified by the adverb "peaceably." MO. CONST. of 1820, art. XIII, § 3. The other two included no reservation at all.

Tennessee and Louisiana, the only two states with explicit qualifications in their Second Amendment analogues, likewise used criminal convictions to affect political rights only, not the right to keep and bear arms. Tennessee's 1796 constitution recognized the legislature's power to punish voters who accepted bribes from candidates: "Any elector who shall receive any gift or reward for his vote in meat, drink money or otherwise shall suffer such punishment as the Laws shall direct." TENN. CONST. of 1796, art. IX, § 3. The same provision disqualified from holding office "any person who shall directly or indirectly give[,] promise[], or bestow any such reward to be elected." TENN. CONST. of 1796, art. IX, § 3. The disqualification lasted two years, and offenders were "subject to such further punishment as the Legislature shall direct." TENN. CONST. of 1796, art. IX, § 3. Louisiana's 1812 constitution disqualified "[e]very person . . . from serving as governor, Senator or Representative for the term for which be shall have been elected, who shall have been convicted of having given or offered any bribe to procure his election." LA. CONST. of 1812, art. VI, § 3. Louisiana, in turn, recognized the legislature's power to disenfranchise certain criminals and bar them from holding office: "Laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors." LA. CONST. of 1812, art. VI, § 4. By contrast, Tennessee and Louisiana saw fit to limit the right to bear arms based on race, sex, and skin color, not the absence of criminal convictions. LA. CONST. of 1812, art. III, § 22; TENN. CONST. of 1796, art. XI, § 26.

The circuit courts applying *Heller*, *Bruen*, and *Rahimi* to § 922(g)(1) have so far ignored this evidence entirely and instead interpreted the Second Amendment's protections with reference to other, less helpful historical traditions. This approach overlooks the obvious—there was no Founding Era tradition of premising the right to bear arms on the absence of a criminal record, and all of the contemporary constitutional evidence points in the other direction. On top of that, there were no Founding Era laws punishing ex-offenders like Mr. Rollerson based on their mere possession of a firearm. The combination of that positive historical evidence and the corresponding evidentiary dearth should make Mr. Rollerson's facial challenge to § 922(g)(1) "straightforward." *See Bruen*, 597 U.S. at 26. After all, § 922(g)(1) "addresses a general societal problem that has persisted since the 18th [C]entury," and "the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.*

By overlooking this point, the circuit courts of appeals have avoided the facial clash between § 922(g)(1) and the Second Amendment. These attempts, however, are unconvincing on their own terms. The death-equals-disarmament approach from the Fifth and Ninth Circuits relies upon an apples-to-oranges comparison between living ex-offenders subject to § 922(g)(1) and a distinct class of criminals subjected to capital punishment or forfeiture of estate in the Founding Era. The dangerousness opinions from the Sixth, Eighth, and Ninth Circuits, in turn, draw the wrong lesson from history. Founding Era disarmament provisions were typically aimed at either armed rebels or suspected traitors. Those laws therefore are not analogous to § 922(g)(1), and any attempt to draw from them a constitutional principle broad enough to include § 922(g)(1) will necessarily ""water down" the Second Amendment's protections by applying this Court's jurisprudence at too "high [a] level of generality." *See Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

A few examples prove the point. The analysis from the Sixth, Eighth, and Ninth Circuits depends in part on laws disarming loyalists during the Revolutionary War. *Williams*, 113 F.4th at 653-54; *Jackson*, 110 F.4th at 1126-27. These laws, however, were narrowly tailored to address wartime needs, not the control of violent crime. That much is clear from the laws themselves. Connecticut passed the first disarmament law aimed at loyalists in 1775, which made it a crime to "libel or defame any of the resolves of the Honorable Congress of the United Colonies, or the acts and proceedings of the General Assembly of this Colony, made or which hereafter shall be made for the defence or security of the rights and privileges of the same." Act of Dec. 1775, THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT FROM MAY 1775, TO JUNE 1776 INCLUSIVE 193 (Charles J. Hoadly ed., 1890). Upon conviction, a defendant would be disarmed and disqualified from holding elected office or a position in the military. *Id.* A separate provision in the same law allowed local authorities to disarm anyone found to be "inimical to the liberties of this Colony and the other United Colonies in America." *Id.* The affected individual was, in turn, "not allowed to have or keep any arms until" he established himself to be "friendly to this and the other United Colonies." *Id.*

The Continental Congress later recommended that all American jurisdictions pass similar laws, but the recommendation's text confirms its limited wartime focus. On March 14, 1776, the Continental Congress made a disarmament recommendation "to the several assemblies, conventions and councils, [and] committees of safety, of the United Colonies." 4 JOURNALS OF THE CONTINENTAL CONGRESS 1774-1789, at 205 (Worthington Chauncey Ford ed., 1906). The recommendation asked those local jurisdictions "immediately to cause all persons to be disarmed within their respective colonies who are notoriously disaffected to the cause of America, or who have not associated, and refuse to associate, to defend by arms these United Colonies against the hostile attempts of the British fleets and armies." *Id.* Those arms, the recommendation continued, would be impressed for use by Patriot forces. *Id.*

Six states responded to the recommendation by passing disarmament-and-impressment laws. A New Jersey law passed in 1777 allowed the State's Council of Safety to disarm "such persons as they shall judge disaffected and dangerous to the present government" and required seized arms and ammunition to "be delivered, for the Use of the State, to the Commanding Officer of the Battalion in whose District such disaffected person resides." Act of Sept. 20, 1777, ch. 40, § 20, ACTS OF THE GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY 90 (1777). Rhode Island, Massachusetts, North Carolina, and Virginia passed similar laws disarming those who refused to take a loyalty oath and requiring the seized arms to be impressed for use in the ongoing war.[1] Pennsylvania also passed a law authorizing local officials to disarm "well-affected non-associators," and pursuant to the statute, the seized arms would then be "deposit[ed]" for use by local Patriots. Resolves of Apr. 6, 1776, 8 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682-1801, at 559-561 (1902).

These laws were short lived and eventually replaced by others disenfranchising, but not disarming, former loyalists. Virginia, Connecticut, and North Carolina passed such laws in 1783. Virginia's statute barred those who took up arms against the Patriots from "migrating to, or becoming citizens," of Virginia. Act of May 1777, ch. 3, 11 THE STATUTES AT LARGE BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619,

[1] Act of May 1783, ch. 27, 9 THE STATUTES AT LARGE BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619, at 282 (William Waller Henning ed., 1821); Act of 1777, ch. 6, § 9, 24 THE STATE RECORDS OF NORTH CAROLINA 89 (Walter Clark ed., 1905); Act of May 1, 1776, ch. 21, § 2, 5 ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF MASSACHUSETTS BAY 480 (1886); Act of 1776, 7 RECORDS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE PLANTATIONS IN NEW ENGLAND 567 (John Russell Bartlett ed., 1862).

at 324-25 (William Waller Henning ed., 1823). Less culpable loyalists, the law continued, were "permitted to migrate into" Virginia "and enjoy all the rights of citizenship, except that they shall not be capable of voting for members to either house of assembly, or of holding or exercising any office of trust or profit, civil or military." *Id*. at 325. Connecticut likewise repealed its wartime anti-loyalism laws in 1783. *See* Oscar Zeichner, *The Rehabilitation of Loyalists in Connecticut*, 11 THE NEW ENGLAND QUARTERLY 319-20 (1938). North Carolina did the same. Its replacement law repealed the various disabilities and criminal provisions aimed at loyalist while prospectively disenfranchising and disqualifying them from holding office. Act of 1783, ch. 7, § 24 THE STATE RECORDS OF NORTH CAROLINA 489-90 (Walter Clark ed., 1905). New Jersey passed a similar law in 1784. JOURNAL OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL OF THE STATE OF NEW JERSEY 27 (1785). That same year, Massachusetts and Rhode Island repealed their wartime loyalism acts, and moving forward, would allow former loyalists to reapply for readmission and naturalization as full citizens. 1782-83 MASS. ACTS 661-64 (Mar. 24, 1784); Act of 1784, 10 RECORDS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE PLANTATIONS IN NEW ENGLAND 10, 16, 46-48 (John Russell Bartlett ed., 1862).

Pennsylvania passed the final repeal in 1789. This law recognized the need for "sundry oaths or affirmations of allegiance" during the Revolutionary War, but since the war effort had ended years before, repealed all such laws that "impose[d] or inflict[ed] any penalty or disability on any person or persons by means of his or their having refused or neglected to take and subscribe any such oath or affirmation." Resolves of Mar. 13, 1789, 13 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682-1801, at 222 (1908). The law also specified that those who previously refused to take loyalty oaths were "hereby restored to and placed upon the same footing as to such privileges and burdens in all other respects with other citizens of the state." *Id.* at 223.

Putting aside the laws aimed at disfavored minorities, the tests applied by the circuit courts of appeals overlook historical evidence directly undercutting § 922(g)(1)'s constitutionality. In short, the Founders knew that some offenders convicted for serious crimes would return to society after completing a sentence of imprisonment, but like the state-level analogues, did not see fit to disarm any ex-offenders. The First Congress passed a crimes act, and although the act punished anyone convicted for treason with death, a misprision-of-treason conviction could result in no more than a seven-year term of imprisonment. Act of Apr. 30, 1790, ch. IX, §§ 1-2, 1 Stat. 112. In similar fashion, the act punished any murder committed within "the sole and exclusive jurisdiction of the United States" with the death penalty, but a defendant convicted for misprision of the same could receive no more than a three-year sentence. *Id.* §§ 3, 5, 1 Stat. 113. Congress likewise saw fit to punish any manslaughter committed within the jurisdiction of the United States with at most a three-year term of imprisonment. *Id.* § 7. Some convictions even carried collateral consequences, but those consequences did not include prospective disarmament. Anyone convicted for bribing a federal judge, for example, could be "imprisoned at the discretion of the court" and was "forever . . . disqualified to hold any office of honour, trust, or profit under the United States." *Id.* § 21, 1 Stat. 117. Despite this provision, Congress specified that "no conviction or judgment for any of the offences" addressed in the 1790 crimes act "shall work corruption of blood, or any forfeiture of estate." *Id.* § 24, 1 Stat. 117.

The Court should grant this petition to clarify the Second Amendment's relationship to § 922(g)(1). As it stands, the circuit courts of appeals have staked out different approaches to this important question, but each approach is unconvincing. The as-applied test relied upon by the Fifth Circuit to reject Mr. Rollerson's claim turns on a category error and will create difficult line-drawing exercises for each defendant based on the nature of their disqualifying convictions. The "dangerousness" analysis from the Sixth, Eighth, and Ninth Circuits, in turn, is too general and depends on a "vague" principle implicitly rejected by this Court in *Rahimi*. See 602 U.S. at 701. That principle—that any group deemed "dangerous" may be permanently disarmed—is neither codified in the Second Amendment's plain text nor present in the historical record. Last, the Fifth Circuit's more recent comparison between historical going-armed laws, which authorized only temporary disarmament, and § 922(g)(1), which is permanent, ignores this Court's guidance from *Rahimi* and gives the government a "regulatory blank check" the *Bruen* analysis is meant to forbid. *See Bruen*, 597 U.S. at 30. This Court should grant certiorari in this case, recognize § 922(g)(1)'s facial unconstitutionality, and reverse Mr. Rollerson's conviction.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit

Respectfully submitted June 9, 2025.

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