No. 24-

IN THE

Supreme Court of the United States

MELYNDA VINCENT,

Petitioner,

v.

PAMELA J. BONDI,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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May 8, 2025

QUESTION PRESENTED

Whether the Second Amendment allows the federal government to permanently disarm Petitioner Melynda Vincent, who has one seventeen-year-old nonviolent felony conviction for trying to pass a bad check.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Melynda Vincent, an individual resident of Utah.

Respondent is Pamela J. Bondi, Attorney General of the United States, in her official capacity.

Sean Reyes, Attorney General of the State of Utah, was a defendant-appellee below, but was dismissed as a party in the court of appeals.

No corporate parties are involved in this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the U.S. District Court for the District of Utah and the U.S. Court of Appeals for the Tenth Circuit:

Vincent v. *Garland*,
No. 2:20-cv-00883-DBB (D. Utah Oct. 5, 2021);

Vincent v. *Garland*,
80 F.4th 1197 (10th Cir. Sept. 15, 2023);

Vincent v. *Garland*,
144 S. Ct. 2708 (July 2, 2024) (mem.) (No. 23-683);

Vincent v. *Bondi*,
127 F.4th 1263 (10th Cir. Feb. 11, 2025).

No other proceedings relate directly to this case.

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PETITION FOR A WRIT OF CERTIORARI

Melynda Vincent respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit.

OPINIONS AND ORDERS BELOW

The Tenth Circuit's opinion is reported at 127 F.4th 1263 (*Vincent III*) and reproduced at App. 1a–6a. This Court's order granting Ms. Vincent's first petition for certiorari, vacating the judgment, and remanding to the court of appeals is reported at 144 S. Ct. 2708 (mem.) (*Vincent II*) and reproduced at App. 28a. The Tenth Circuit's initial, now-vacated opinion is reported at 80 F.4th 1197 (*Vincent I*) and reproduced at App. 7a–20a. The district court's unreported decision is available at 2021 WL 4553249 and reproduced at App. 21a–27a.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1346 because Ms. Vincent's claim arises under the Constitution and laws of the United States. The court of appeals had jurisdiction under 28 U.S.C. § 1291 because Ms. Vincent timely appealed the district court's final judgment. 28 U.S.C. § 1254(1) supplies this Court's jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides:

> A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

18 U.S.C. § 922(g)(1) provides:

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

INTRODUCTION

This case presents an important constitutional question subject to an increasingly entrenched circuit split: Whether the Second Amendment allows the government to permanently disarm a U.S. citizen who has a years-old nonviolent felony conviction.

This split developed in the wake of *New York State Rifle & Pistol Association* v. *Bruen*, 597 U.S. 1 (2022). The *en banc* Third Circuit held that 18 U.S.C. § 922(g)(1)—criminalizing the possession of a firearm by anyone with a felony conviction—could not constitutionally apply to a plaintiff convicted of making a false statement to obtain food stamps. See *Range* v. *Att'y Gen.*, 69 F.4th 96, 97 (2023) (en banc). Conversely, the Tenth Circuit rejected Ms. Vincent's constitutional challenge to § 922(g)(1), holding that the government could permanently disarm her based on one seventeen-year-old conviction for trying to pass a bad check. See App. 15a. The Eighth Circuit agreed with the Tenth, seeing "no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." See *United States* v. *Jackson*, 110 F.4th 1120, 1125 (2024).

By early 2024, a number of petitions raising this question were pending in this Court, including one

filed by Ms. Vincent in this case, No. 23-683, and one by the United States in *Range*, No. 23-374. In response to Ms. Vincent's petition, the United States did not dispute that her case presents an ideal vehicle and agreed that the question presented "would ordinarily warrant this Court's review." See Br. Resp. 3–4, No. 23-683. But the government urged the Court to hold all these petitions until it decided *United States* v. *Rahimi*, 602 U.S. 680 (2024). The Court did so, and then issued a GVR in each case "for further consideration in light of" *Rahimi*. E.g., App. 28a.

The split has now reasserted itself—with even more force. On remand, the Tenth Circuit held below that "*Rahimi* doesn't undermine the panel's earlier reasoning or result." App. 2a. The panel thus remained bound by pre-*Rahimi*, pre-*Bruen* circuit precedent that "upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved." *Id.* at 5a. Likewise, "three other circuits have held that *Rahimi* doesn't abrogate their earlier precedents upholding the constitutionality of § 922(g)(1)" across the board. *Id.* at 3a (citing *United States* v. *Hunt*, 123 F.4th 697, 703–04 (4th Cir. 2024); *Jackson*, 110 F.4th at 1125; *United States* v. *Hester*, No. 23-11938, 2024 WL 4100901, at *1 (11th Cir. Sept. 6, 2024) (per curiam)).

The Sixth Circuit, by contrast, holds that older circuit precedent no longer controls, and that while "most applications of § 922(g)(1) are constitutional," the statute is susceptible to as-applied challenges by people whose "entire criminal record[s]" show that they are not "dangerous"—though that did not include the defendant before the court, who was convicted of aggravated robbery. *United States* v. *Williams*, 113 F.4th 637, 657, 663 (2024). So too in the Fifth Circuit. *United States* v. *Diaz*, 116 F.4th 458, 465 (2024), *cert. pet.*

docketed, No. 24-6625 (Feb. 24, 2025). And the *en banc* Third Circuit again held that § 922(g)(1) violates the Second Amendment as applied to the *Range* plaintiff. See *Range* v. *Att'y Gen.*, 124 F.4th 218, 232 (2024) (en banc).

In short: "Granting certiorari, vacating, and remanding *Range* et al. after deciding *Rahimi*" unfortunately "served to open the field" for some lower courts "to contort the Supreme Court's Second Amendment guidance," *United States* v. *Duarte*, 108 F.4th 786, 788 (9th Cir. 2024) (Vandyke, J., dissenting from grant of rehearing en banc), producing "varying results" in different circuits, *United States* v. *Meadows*, No. 22-3155-CR, 2025 WL 786380, at *2 (2d Cir. Mar. 12, 2025). This Court's review is necessary to resolve this stubborn split.

And the decision below is wrong. The Tenth Circuit refused to apply the analysis mandated by *Bruen* and *Rahimi*. Under that analysis, text, history, and tradition show that the government cannot permanently disarm Ms. Vincent—a single mother, social worker, adjunct college professor, and nonprofit founder with two graduate degrees—solely because of *one* seventeen-year-old conviction for passing a bad check for $498.12. And as the government has agreed, this case is an ideal vehicle to decide this question (unlike other pending petitions, which involve potentially dangerous felonies).

This Court should grant certiorari to resolve this important, recurring question.

STATEMENT OF THE CASE

Ms. Vincent is a licensed clinical social worker, business owner, mother, and public-health activist. Am. Compl. ¶ 7, *Vincent* v. *Garland*, 2:20-cv-883-DBB (D.

Utah Dec. 26, 2020), ECF No. 10. She has no history of violent behavior or other conduct that suggests she could not responsibly possess a firearm for self-defense. See *id.* ¶¶ 8, 37–38 & Ex. A. And for more than seventeen years, she has been a law-abiding citizen.

In 2008, Ms. Vincent was convicted of federal felony bank fraud and sentenced to probation for presenting a fraudulent check for $498.12 at a grocery store. *Id.* ¶¶ 9–10, 16–17; see 18 U.S.C. § 1344. The offense occurred in March 2007. Ms. Vincent completed her probationary sentence without incident, then earned a degree from Utah Valley University and two from the University of Utah. Am. Compl. ¶¶ 20–22 & Ex. A. In 2016, Ms. Vincent started her own therapy and counseling practice and founded the Utah Harm Reduction Coalition, a non-profit organization that works to develop, draft, and implement humane, science-driven drug policies and criminal-justice reform and provides treatment to those struggling with addiction. *Id.* ¶ 24.

Ms. Vincent is a single mother who wants to keep a firearm for protection. *Id.* ¶ 28. And because her children regularly enjoy lawful shooting activities like hunting, she hopes that being able to possess a firearm will allow her to spend more time with her family. *Id.* ¶ 29.

Ms. Vincent thus brought this action to vindicate her constitutional right to possess a firearm. *Id.* ¶ 39. She sought a declaration that § 922(g)(1) is unconstitutional as applied to her and an injunction barring the Attorney General from enforcing the statute against her. See *id.* ¶ 31. The district court dismissed the case based on circuit precedent. App. 18a–20a.

On appeal, the Tenth Circuit stayed proceedings until this Court decided *Bruen*. Yet the court ultimately affirmed the dismissal of Ms. Vincent's suit without

applying *Bruen*'s historical analysis. App. 8a–9a. Instead, the court explained that pre-*Bruen* circuit precedent had categorically upheld § 922(g)(1) based on this Court's statement in *District of Columbia* v. *Heller*, 554 U.S. 570, 626 (2008), that its decision did not "cast doubt on longstanding prohibitions on the possession of firearms by felons." App. 9a (citing *United States* v. *McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009)). The Tenth Circuit then reasoned that, because *Bruen* did not "appear to question the constitutionality" of felon-disarmament laws, the court did not need to apply *Bruen*'s "new test" before holding § 922(g)(1) constitutional, regardless of "the type of felony involved." *Id.* at 13a. Judge Bacharach concurred, explaining that, because § 922(g)(1)'s validity "would remain debatable even under the Supreme Court's new test," *Bruen* did not "implicitly abrogate our precedent." *Id.* at 13a.

Ms. Vincent petitioned this Court to review the Tenth Circuit's decision. See App. 28a. In response, the government agreed that "the courts of appeals are divided over Section 922(g)(1)'s constitutionality, and that the question would ordinarily warrant this Court's review." Resp. Br. 3–4, No. 23-683. And it did not dispute that Ms. Vincent's case is an ideal vehicle. In fact, the government conceded in *Range* that its own petition in that case "may not be the optimal vehicle for resolving Section 922(g)(1)'s constitutionality." Reply 10, No. 23-374.

At the government's urging, this Court held Ms. Vincent's petition until it decided *Rahimi*. The government then asked the Court to grant the petitions in either *Range* or *Vincent* and in two other cases. Granting *Range* or *Vincent* "would enable this Court to consider Section 922(g)(1)'s application to non-drug, non-violent

crimes," while the other two cases respectively involved "a lengthy criminal record," including violent offenses, and "non-violent drug crimes." Suppl. Br. for Fed. Parties 2, 7, Nos. 23-374, 23-683, 23-6170, 23-6602, and 23-6842. Ms. Vincent likewise urged plenary review, pointing out that her case is an ideal vehicle. Pet. Suppl. Br., No. 23-683. The Court then issued a GVR in *Vincent*, *Range*, and the other pending cases. See App. 28a.

On remand, the Tenth Circuit again rejected Ms. Vincent's claim for the same reasons. Acknowledging that other circuits have "taken a different approach," the Tenth Circuit nevertheless held that "*Heller*'s instruction that felon dispossession laws are presumptively valid . . . was reaffirmed in *Rahimi*," so "*Rahimi* doesn't clearly abrogate the presumptive validity of § 922(g)(1)." App. 4a. The court thus held that its pre-*Bruen*, pre-*Rahimi* circuit precedent categorically upholding § 922(g)(1) "remains binding." App. 5a. And that precedent "applies to nonviolent as well as to violent offenders," as it "upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved." App. 5a. The panel thus "readopt[ed] our prior opinion and affirm[ed] the dismissal." App. 6a.

REASONS FOR GRANTING THE PETITION

I. The split over § 922(g)(1)'s validity will not resolve without this Court's intervention.

The circuits are openly split—with *en banc* rulings on both sides—over the constitutionality of § 922(g)(1) as applied to people with nonviolent felony convictions. The Third Circuit has applied *Bruen* and *Rahimi*'s analysis to hold that § 922(g)(1) cannot constitutionally apply to some people with non-violent criminal records. The Fifth and Sixth Circuits have agreed that

Bruen and *Rahimi* abrogated earlier precedent upholding § 922(g)(1) and strongly suggested that the statute is susceptible to as-applied challenges, though they have rejected such challenges by people with significant criminal records. On the other hand, the Fourth, Fifth, Eighth, Tenth, and Eleventh Circuits have upheld § 922(g)(1) as applied to all felons. All these decisions were issued after *Rahimi*. This split will persist until the Court steps in.

A. Three circuits hold that as-applied challenges to § 922(g)(1) require a case-specific historical analysis, which the statute can fail.

The Third Circuit's *en banc* decision in *Range* provides the clearest sign that the split will not resolve without this Court's intervention. The *en banc* court held—and then reaffirmed on remand from this Court—that "*Bruen* abrogated our Second Amendment jurisprudence," such that courts "no longer conduct means-end scrutiny"; that a felon "remains among 'the people'" protected by the Second Amendment; and that "the Government has not shown that the principles underlying the Nation's historical tradition of firearms regulation support depriving Range of his Second Amendment right to possess a firearm," given his single, two-decade-old conviction for "food-stamp fraud." *Range,* 124 F.4th at 225, 228, 232. Four judges wrote concurring opinions and one judge dissented; all of the opinions thoroughly considered the issues and the historical evidence.

The Fifth Circuit has likewise held that *Bruen* and *Rahimi* abrogated circuit precedent that "upheld the constitutionality of § 922(g)(1)." *Diaz*, 116 F.4th at 465. The court also rejected the government's reliance on *Heller*'s, *Bruen*'s, and *Rahimi*'s references to "regula-

tions that prohibit convicted felons from carrying firearms," explaining that "none of those cases actually concerned § 922(g)(1)," so the "mentions of felons in those cases are mere dicta." *Id.* at 465–66.

Applying *Bruen*'s analysis, the Fifth Circuit rejected facial and as-applied challenges by a defendant with felony convictions for "vehicle theft, evading arrest, and possessing a firearm as a felon," given how theft was historically punished. *Id.* at 467. But the court emphasized that "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny," because "not all felons today would have been considered felons at the Founding." *Id.* at 469. A Second Amendment challenge to § 922(g)(1) requires a case-specific analysis of whether "at least one of the predicate crimes that [the defendant's] § 922(g)(1) conviction relies on . . . was a felony" that "fits within [the] tradition of serious and permanent punishment." *Id* at 469–70. *Diaz* thus allows for "future as-applied challenges by defendants with different predicate convictions." *Id.* at 470 n.4.

The Sixth Circuit has similarly held that "*Bruen* requires a history-and-tradition analysis that our circuit hasn't yet applied to" § 922(g)(1), meaning "we must revisit our prior precedent." *Williams*, 113 F.4th at 645. As Judge Thapar explained for the court, "other circuits have read too much into the Supreme Court's repeated invocation of 'law-abiding, responsible citizens,'" especially since *Bruen* and *Rahimi* "demand[] a different mode of analysis" than the courts had applied before. *Id.* at 646–48.

Applying that new historical analysis, the Sixth Circuit rejected the defendant's facial challenge because "history and tradition demonstrate that Congress may disarm individuals they believe are dangerous," and "most applications of § 922(g)(1) are constitutional" in

light of that rule. *Id.* at 657. "But history shows that § 922(g)(1) might be susceptible to an as-applied challenge in certain cases." *Id.* Throughout history, "individuals could demonstrate that their particular possession of a weapon posed no danger to peace," so "without resort to the courts through as-applied challenges," § 922(g)(1) "would abridge non-dangerous felons' Second Amendment rights." *Id.* at 657, 661. The defendant in *Williams*, however, had multiple violent felony convictions, so he "may be constitutionally disarmed." *Id.* at 662.

Under the Third, Fifth, and Sixth Circuits' approaches, Ms. Vincent's case would have come out the other way. As in *Range*, Ms. Vincent's single conviction does not imply—and no other evidence suggests—that she "poses a physical danger to others." 124 F.4th at 232.[1]

B. Four circuits hold that § 922(g)(1) is constitutional in every application.

The Fourth Circuit has held that its "previous decisions rejecting as-applied challenges to Section 922(g)(1) remain binding because they can be read 'harmoniously' with *Bruen* and *Rahimi* and have not been rendered 'untenable' by them." *Hunt*, 123 F.4th at 703. In so holding, the court relied the same statements in *Heller*, *Bruen*, and *Rahimi* about "restrictions

[1] A Ninth Circuit panel similarly held § 922(g)(1) unconstitutional as applied to a defendant with felony convictions for vandalism, felon in possession of a firearm, drug possession, and evading a peace officer, based on the government's specific historical showing (or lack thereof). *See United States* v. *Duarte*, 101 F.4th 657, 691 (9th Cir. 2024). But the Ninth Circuit granted rehearing *en banc*, vacating the panel decision. *See* 108 F.4th 786 (9th Cir. 2024).

on felons possessing firearms," *id.*, that the Fifth Circuit dismissed as "mere dicta," *Diaz*, 116 F.4th at 465–66.

In the alternative, the Fourth Circuit held that § 922(g)(1) "would survive Second Amendment scrutiny" in any event, "without regard to the specific conviction that established [the defendant's] inability to lawfully possess firearms." 123 F.4th at 700. That is so, in the court's view, because "the historical record contains ample support for the categorical disarmament of people 'who have demonstrated disrespect for legal norms of society,'" like felons. *Id.* at 706. Further, the court "conclude[d] that Section 922(g)(1) is also justified as 'an effort to address a risk of dangerousness.'" *Id.* at 707. Thus, the court saw "no need for felony-by-felony litigation regarding the constitutionality of Section 922(g)(1)." *Id.* at 700 (cleaned up).

In so holding, the Fourth Circuit relied heavily on the Eighth Circuit's similar decision in *United States* v. *Jackson*, one of the cases that this Court remanded after *Rahimi*. See 110 F.4th 1120, 1121 (2024). There, too, the Eighth Circuit relied on "assurances by the Supreme Court" that "longstanding prohibitions on the possession of firearms by felons" remain valid. *Id.* at 1125. And, after reviewing the historical record, the court concluded that "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id.* at 1129. "Whether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons." *Id.* The statute is thus constitutional in every application. *Id.* at 1125.

The Eighth Circuit denied rehearing en banc, over a four-judge dissent by Judge Stras. See *United States* v. *Jackson*, 121 F.4th 656 (2024). In the dissenters' view, "what Jackson says about as-applied challenges conflicts with" both the Second Amendment's text and this Court's precedents. *Id.* at 656–57 (Stras, J., dissenting from denial of rehearing en banc). The panel decision "deprives tens of millions of Americans of their right 'to keep and bear Arms' for the rest of their lives . . . without a finding of a credible threat to the physical safety of others or a way to prove that a dispossessed felon no longer poses a danger." *Id.* at 657 (citations omitted). "Other courts," the dissent noted, "have not made the same mistake." *Id.* at 658.

The Tenth Circuit reached the same result below, though without any historical analysis. It concluded merely that *Bruen* and *Rahimi* did not abrogate earlier circuit precedent upholding § 922(g)(1). And that precedent "upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved," so it "applies to nonviolent as well as to violent offenders." App. 5a.

The Eleventh Circuit agrees, albeit in an unpublished decision. The court summarily rejected the defendant's facial and as-applied challenges to § 922(g)(1), explaining: "Our binding precedents . . . foreclose Hester's argument that section 922(g)(1) violates the Second Amendment," and neither *Bruen* nor *Rahimi* "undermine our interpretation." *United States* v. *Hester*, No. 23-11938, 2024 WL 4100901, at *1–2 (Sept. 6, 2024) (per curiam). "To the contrary, *Rahimi* reiterated that prohibitions on the possession of firearms by felons and the mentally ill are presumptively lawful." *Id.* (cleaned up). Thus, "the government is 'clearly correct as a matter of law' that section

922(g)(1) is constitutional under the Second Amendment." *Id.*; see also *United States* v. *Langston*, 110 F.4th 408, 420 (1st Cir. 2024) (on plain-error review, the defendant "fail[ed] to show that § 922(g)(1) clearly and obviously violates the Second Amendment as applied to him, given his previous convictions under Maine law for theft and drug trafficking"), *cert. denied,* 145 S. Ct. 581 (2024).

* * *

In short, at least seven circuits have addressed § 922(g)(1)'s constitutionality since *Rahimi*. Three allow as-applied challenges based on the defendant's specific criminal record and the relevant historical record. Four categorically reject such claims. The former camp includes the Third Circuit's *en banc* decision, while the latter includes the Eighth Circuit's refusal to rehear *Jackson en banc*. However the *en banc* Ninth Circuit rules in *Duarte*, it will simply deepen the already-entrenched split.

II. The decision below is wrong.

Under *Bruen*'s historical test, the decision below cannot stand. Section 922(g)(1) violates the Second Amendment as applied to Ms. Vincent because our historical tradition of firearms regulation does not permit the federal government to permanently disarm someone based solely on the fact of a prior nonviolent criminal conviction. That is true especially where no evidence suggests that the person poses, or has ever posed, a threat to anyone else.

A. The Tenth Circuit failed to apply *Bruen* and *Rahimi*'s history-and-tradition test.

This Court has made clear that, for a firearms regulation to survive a Second Amendment challenge, "the

government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19; see also *United States* v. *Jackson*, 85 F.4th 468, 469 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing en banc) (collecting cases noting the government's burden). Even so, the Tenth Circuit conducted no such analysis.

The Tenth Circuit's failure is exactly the sort of "narrowing from below" that marked the post-*Heller* judicial landscape, and which was explicitly rejected by *Bruen*. Cf. Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 Geo. L. R. 921, 960–63 (2016) (celebrating the circuit courts' then-"defiance" of *Heller*, which rendered the decision "mostly symbolic"). Without this Court's intervention, the opportunity will remain for some lower courts "to contort the Supreme Court's Second Amendment guidance," *Duarte*, 108 F.4th at 788 (Vandyke, J., dissenting from grant of rehearing en banc), and "deprive[] tens of millions of Americans of their right 'to keep and bear Arms' for the rest of their lives," *Jackson*, 121 F.4th at 657 (Stras, J., dissenting from denial of rehearing en banc). "With what other constitutional right would this Court allow such blatant defiance of its precedent?" *Rogers* v. *Grewal*, 140 S. Ct. 1865, 1867 (2020) (mem.) (Thomas, J., dissenting from denial of certiorari).

B. The government cannot permanently disarm people merely because of nonviolent criminal convictions.

Under the proper analysis, § 922(g)(1) cannot constitutionally apply to Ms. Vincent. First, she is indisputably among "the people" protected by the Second Amendment. Second, there was no history or tradition of permanently disarming nonviolent offenders when

the Second Amendment was ratified. Thus, § 922(g)(1)'s permanent prohibition on firearm possession by nonviolent offenders—even those who have been indisputably reformed and pose no threat to others—is overbroad.

1. Ms. Vincent is among "the people" protected by the Second Amendment.

Under *Bruen*, the first question is whether the Second Amendment's text protects Ms. Vincent. 597 U.S. at 24. The Government below and elsewhere has argued that, "the Second Amendment's protections are limited to those who are 'members of the political community' and 'law-abiding, responsible citizens.'" Br. for Fed. Appellees 23, *Vincent* v. *Garland*, No. 21-4121 (10th Cir., Jan. 17, 2023) ("Gov't C.A. Br.") (quoting *Heller*, 554 U.S. at 580). But Ms. Vincent's felony conviction did not remove her from "the people" protected by the Second Amendment.

As the Third Circuit correctly understood in *Range*, American citizens with prior felony convictions are among "the people" protected by the Bill of Rights— including the Second Amendment. See 69 F.4th at 101–02. "[O]ther Constitutional provisions reference 'the people,'" including the First and Fourth Amendments. *Id.* "Unless the meaning of the phrase 'the people' varies from provision to provision—and the Supreme Court in *Heller* suggested it does not—to conclude" that felons are "not among 'the people' for Second Amendment purposes would exclude" them from those other rights as well. *Id.* There is "no reason to adopt an inconsistent reading of 'the people.'" *Id.*

Against this, the government places great weight on this Court's past invocations of the "law-abiding, re-

sponsible" citizen, claiming that this language forecloses nonviolent, reformed offenders from exercising their Second Amendment rights. Gov't C.A. Br. 23. But because it was assumed the individuals in those cases were ordinary, law-abiding citizens, those descriptors were dicta. *Range*, 69 F.4th at 101. While ultimately the terms "law-abiding" and "responsible" could prove to be useful shorthands in some Second Amendment contexts, those "expansive," "vague" terms, *id.* at 102, are not talismans that allow the government to avoid its burden to "affirmatively prove" a historical tradition of regulations similar to § 922(g)(1). *Bruen*, 597 U.S. at 19. Instead, any argument that felons, solely because of conviction status, have forfeited their Second Amendment rights would have to independently surmount the *Bruen* text, history, and tradition test.

2. The Government cannot show a historical tradition of permanently disarming nonviolent offenders.

Section 922(g)(1) offends the Second Amendment to the extent it prohibits firearms possession based solely on felony conviction status. For a regulation to survive Second Amendment scrutiny, the Government must provide evidence of analogous regulations from the Founding Era to show the regulation at issue comports with our nation's history and tradition of the right to bear arms. Only a historical "analogue" is required, and not a "twin," but courts must consider the "why" and "how" of the challenged regulation and their purported historical counterparts to determine if an analogous relationship exists. *Bruen*, 597 U.S. at 29.

The government cannot show a relevant Founding Era analogue to either the "why" or the "how" of § 922(g)(1). As to the "why," no evidence has emerged of any significant Founding-era firearms restrictions

on citizens like Ms. Vincent who committed only non-violent offenses and posed no physical threat to others. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 283 (2020). While the historical record suggests that dangerousness sometimes supported disarmament, conviction status alone did not connote dangerousness to the Founding generation. *Id.* At the Founding, "[p]eople considered dangerous lost their arms. But being a criminal had little to do with it." *Jackson*, 85 F.4th at 470–72 (Stras, J., dissenting from denial of rehearing en banc).

As to the "how," no Founding-era evidence has emerged of class-wide, lifetime bans on firearms possession merely because of conviction status. In fact, total bans on felon possession existed nowhere until at least the turn of the twentieth century. C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009). As then-Judge Barrett explained: "The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban. But at least thus far, scholars have not been able to identify any such laws." *Kanter* v. *Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. at 18–19 & n.4.

Founding-era surety and forfeiture laws are not sufficiently analogous to § 922(g)(1) to survive Second Amendment scrutiny. Unlike § 922(g)(1), Founding era surety laws at most temporarily deprived an owner of his arms if he was found to pose a unique danger to others. *Bruen*, 597 U.S. at 55–59. By contrast, § 922(g)(1) imposes a permanent ban on a class-wide basis, regardless of a class member's actual peaceableness. Nor were forfeiture laws like § 922(g)(1), because

they involved forfeiture only of specific firearms. They did not prevent the subject from acquiring replacement arms or keeping other arms they already possessed. See, e.g., Act of Dec. 21, 1771, ch. 540, N.J. Laws 343–44 (providing for forfeiture of hunting rifles used in illegal gamehunting); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69–70 (same); see also *Range*, 69 F.4th at 104–05.

III. The question presented is important and recurring.

The Court should grant the petition because this question is vitally important. A circuit split on the validity of a federal statute alone typically warrants review. See, e.g., *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019). And that is even more true when the question presented concerns the scope of a core constitutional right. Cf. *McDonald* v. *City of Chicago*, 561 U.S. 742, 795–96 (2010) (Scalia, J., concurring). The Court should decide whether peaceful American citizens who have paid their debt to society may be permanently deprived of the right to self-defense, despite the Second Amendment's guarantee.

Without the Court's intervention, § 922(g)(1) will continue to deter countless peaceful Americans from possessing firearms for self-defense, with no real benefit to public safety. Data suggests that only 18.2% of state felony convictions and 4.4% of federal felony convictions were for violent offenses. *Jackson*, 110 F.4th at 1125 n.2; Mark Motivans, *Federal Justice Statistics, 2023*, at 13 tbl.7 (Mar. 2025), https://bjs.ojp.gov/document/fjs23.pdf. That means over eighty percent of state offenders and over ninety-five percent of federal offenders have improperly lost their right to self-defense under § 922(g)(1).

And this is happening even though no evidence suggests that disarming nonviolent offenders makes society safer. After all, many state felonies bear no reasonable relation to a risk of violence or irresponsibility with firearms. In Michigan, adultery is a felony punishable by five years' imprisonment. Mich. Comp. Laws § 750.532. In Tennessee, repeatedly sharing streaming websites' passwords is a felony. Tenn. Code Ann. §§ 39-11-106, 39-14-104. In Maryland, using a telephone to make a single anonymous call to annoy or embarrass, Md. Crim. Law § 3-804(a)(l), or temporarily using someone else's car without their consent, *id.* § 7203(a)(1), are punishable by more than a year's imprisonment. In Arizona, "recklessly . . . [d]efacing" a school building—something countless teenaged pranksters have done—is a felony. Ariz. Rev. Stat. § 131604(A)(2), (B)(1)(a). In some states, "driving under a suspended license" can be a felony. E.g., *State* v. *Hittle*, 598 N.W.2d 20, 28 (Neb. 1999); *Adams* v. *Commonwealth*, 46 S.W.3d 572, 574 (Ky. Ct. App. 2000). Federal law, too, includes many felonies that involve no danger. For examples, knowingly and unlawfully "export[ing] any fish or wildlife" is punishable by up to five years' imprisonment, 16 U.S.C. § 3373(d)(1)(A), and 18 U.S.C. § 2319B makes it a felony to make an unauthorized recording of a movie in a theater.

Whether engaging in any of these acts forfeits the right to self-defense is an important question this Court should answer.

IV. This case is the best vehicle.

This case is an ideal vehicle to decide this question. As the government admitted before: "Granting review [here] would enable this Court to consider Section 922(g)(1)'s application to non-drug, non-violent

crimes" because "[t]he petitioner in *Vincent* has a conviction for bank fraud." Suppl. Br. for Fed. Parties 7, Nos. 23-374, 23-683, 23-6170, 23-6602, and 23-6842.

This case is also a better vehicle than any other pending petitions. In *Jackson*, the petitioner "has 11 previous felony convictions, including for drug crimes and for possessing a weapon as a felon. The district court also found that [he] had 'proven himself to be both dangerous and unable to abide by the law.'" Br. Opp. 12, No. 24-6517. Indeed, drug crimes are a "prime example" of an offense that "pose[s] a significant threat of danger" because drug activity "often leads to violence." *Williams*, 113 F.4th at 659.

Likewise, the *Hunt* defendant was convicted of a theft offense—breaking and entering into a non-dwelling. As the Fifth Circuit emphasized in *Diaz*, "theft . . . was considered a felony at the time of the Founding"; indeed, "our country has a historical tradition of severely punishing" theft offenses. 116 F.4th at 468–69. Hunt's offense is also much more recent than Ms. Vincent's (2017 versus 2008). And looking to Hunt's "entire criminal record—not just the predicate offense for purposes of § 922(g)(1)," *Williams*, 113 F.4th at 657–58—confirms that he is dangerous. Hunt has "shown [that] he's a danger," through his "well-documented" history that included "physically abus[ing] at least five different female partners" and "three domestic battery convictions." Sent. Tr. 23, *United States* v. *Hunt*, No. 2:21-cr-267 (S.D. W.Va. Aug. 18, 2022), ECF No. 63; U.S. Sent. Mem. 1, 3, *United States* v. *Hunt*, No. 2:21-cr-267 (S.D. W.Va. Aug. 18, 2022), ECF No. 45.

Ms. Vincent has waited long enough to vindicate her fundamental right to self-defense. As a single mother living in Utah, she merely desires to be able to protect her family. And Utah itself has recently enacted legis-

lation that would allow nonviolent, rehabilitated felons like Ms. Vincent to possess firearms. See H.B. 507, 2023 Gen. Sess. (Utah 2023). But she is still precluded from doing so by § 922(g)(1), and risks a fifteen-year prison sentence should she try. The Court should grant this petition and hold that she has that right.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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