No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHANNON LAMON ANDERSON,

Petitioner,

versus

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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QUESTION PRESENTED

Is the lifetime ban on possession of firearms by all felons, codified at 18 U.S.C. § 922(g)(1), plainly unconstitutional on its face under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), because it is permanent and applies to all persons convicted of felonies?

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The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Anderson*, No. 24-30287, 2024 WL 5075073 (5th Cir. Dec. 11, 2024) (unpublished), and is set forth at App. 001.

JURISDICTION

The judgment of the court of appeals was entered on December 11, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1) states in relevant part:

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

The Second Amendment to the U.S. Constitution provides in relevant part:

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

STATEMENT OF THE CASE

Shannon Lamon Anderson was charged in a single count indictment with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). ROA.10. Anderson filed a motion to dismiss the indictment alleging that § 922(g)(1) was unconstitutional under the Second Amendment and the Supreme Court's recent *Bruen*[1] decision. ROA.29-36. The government filed an opposition and the court denied Anderson's motion. ROA.28-44 (government opposition); ROA.46-56 (ruling).

On December 15, 2023, Anderson pled guilty, pursuant to a written plea agreement, to a single count of felon in possession of a firearm in violation of § 922(g)(1). ROA.61. As a part of the plea, Anderson agreed that he was a convicted felon and was seen driving a vehicle outside of a sports bar while brandishing a handgun outside of the window and firing a shot into the air. ROA.167.

Based on the final PSR, Anderson's advisory guideline range was 97 to 121 months. ROA.130. Anderson was sentenced to 97 months imprisonment and three years of supervised release. ROA.130-33. A written judgment was entered by the district court on April 29, 2024. ROA.94. Anderson filed a timely notice of appeal on April 30, 2024. ROA.100.

Anderson appealed the facial constitutionality of Section 922(g)(1), his only count of conviction, to the Fifth Circuit. Anderson asserted that Section 922(g)(1) was facially unconstitutional after *Bruen* because there was no historical evidence of categorically disarming all felons. On December 11, 2024, The Fifth Circuit affirmed

[1] *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)

Anderson's conviction and rejected his Second Amendment challenge to Section 922(g)(1) under *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), where the Fifth Circuit had upheld the facial constitutionality of Section 922(g)(1). *See United States v. Anderson*, No. 24-30287, 2024 WL 5075073 (5th Cir. Dec. 11, 2024) (unpublished).

REASONS FOR GRANTING THE WRIT

This Court should grant a writ of certiorari in Anderson's case, or, alternatively, grant certiorari in another case raising the same issues and then hold Anderson's petition pending a resolution of these important questions.

In *Bruen*, this Court established a new framework for determining whether a firearm regulation is constitutional under the Second Amendment, eliminating the two-step history and means-end scrutiny test that the Fifth Circuit and others previously employed. Specifically, *Bruen* got rid of the second step. This Court declared that "a constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 23 (2022) (quotations omitted). Now, under *Bruen*, for a law to survive a Second Amendment challenge, the government must "identify an American tradition" justifying the law's existence. If it cannot, courts may no longer apply "means-end scrutiny" to uphold the law under the second step. *Id.* at 2125, 2138. Instead, the inquiry ends, and the law is unconstitutional.

Thus, under *Bruen*, the government must prove that Section 922(g)(1) is consistent with this Nation's historical tradition of firearm regulation. But it plainly cannot do so because there is no relevantly similar historical analogue to a lifetime ban on possession of firearms. As one Justice has noted, no historical tradition of prohibiting felons from possessing firearms for life exists. *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. 1. Thus, Section 922(g)(1) is unconstitutional on its face. And that is clearly and

obviously dictated by simple application of *Bruen*. The Fifth Circuit was wrong to hold that *Bruen* does not compel this straightforward result. Anderson's conviction under Section 922(g)(1) should be reversed.

I. Simple application of *Bruen*'s historical-tradition test makes clear that a blanket, lifetime ban on possession of firearms for all felons cannot withstand constitutional scrutiny

A. *Bruen* represented a fundamental shift in Second Amendment analysis

The Second Amendment to the U.S. Constitution mandates that 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. In *Dist. of Columbia v. Heller*, this Court held that the Second Amendment codifies an individual right to possess and carry weapons, explaining that the inherent right of self-defense is central to its protections. 554 U.S. 570, 628 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding "that individual self-defense is the central component of the Second Amendment right").

Following *Heller* (but before *Bruen*), the Fifth Circuit and others "adopted a two-step inquiry for analyzing laws that might impact the Second Amendment." *Hollis v. Lynch*, 827 F.3d 436, 446 (5th Cir. 2016). First, courts asked "whether the challenged law impinge[d] upon a right protected by the Second Amendment—that is, whether the law regulate[d] conduct that falls within the scope of the Second Amendment's guarantee." *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives [NRA]*, 700 F.3d 185, 194 (5th Cir. 2012); *see also United States v. McGinnis*, 956 F.3d 747, 754 (5th Cir. 2020). To make that determination,

courts "look[ed] to whether the law harmonize[d] with the historical traditions associated with the Second Amendment guarantee." *NRA*, 700 F.3d at 194. If the regulated conduct was deemed to fall outside the scope of the Second Amendment's protection under that framework, then the law was deemed constitutional without further analysis. *McGinnis*, 956 F.3d at 754.

However, if the regulated conduct fell within the protective scope of the Second Amendment, courts proceeded to step two: determining and applying "the appropriate level of means-end scrutiny—either strict or intermediate." *Id.* (internal quotation marks and citation omitted). "[T]he appropriate level of scrutiny 'depend[ed] on the nature of the conduct being regulated and the degree to which the challenged law burden[ed] the right." *NRA*, 700 F.3d at 195 (quoting *United States v. Chester,* 628 F.3d 673, 682 (5th Cir. 2010)). Under that framework, "a 'regulation that threaten[ed] a right at the core of the Second Amendment'—i.e., the right to possess a firearm for self-defense in the home—'trigger[ed] strict scrutiny,' while 'a regulation that does not encroach on the core of the Second Amendment' [was] evaluated under intermediate scrutiny." *McGinnis*, 956 F.3d at 754 (quoting *NRA*, 700 F.3d at 194).

In *Bruen*, this Court expressly abrogated the two-step inquiry adopted by the Fifth Circuit and others and announced a new framework for analyzing Second Amendment claims. The Court reasoned that "[s]tep one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history." *Bruen*, 597 U.S. at 19. However,

Bruen rejected the practice of applying "means-end scrutiny" to conduct deemed protected (*i.e.*, step two of the old framework), explaining that "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context." *Id.* Under *Bruen*'s newly announced framework, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. And, upon such a finding, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. Only upon the government making such a showing may a court "conclude that the individual's conduct falls outside of the Second Amendment's 'unqualified command.'" *Id.* (citation omitted). In other words, for a firearm regulation to pass constitutional muster, "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." *Id.* at 19.

B. Under the new framework, Section 922(g)(1) violates the Second Amendment because firearm possession is protected by the Amendment's plain text, and the government cannot show a historical tradition of categorically disarming felons

Straightforward application of *Bruen*'s test makes clear that Section 922(g)(1) cannot survive constitutional scrutiny, and the Fifth Circuit was wrong to hold otherwise.

1. The text of the Second Amendment covers Anderson's conduct, and he is among "the people" the Amendment protects

The plain text of the Second Amendment protects the right to possess and carry weapons for self-defense. *See Heller*, 554 U.S. at 583-92. And *Bruen* clarified that this

right extends outside of the home. 297 U.S. at 8. Section 922(g)(1) is a permanent and complete ban on any firearm possession by felons in any context. Thus, the statute regulates (and in fact fully prohibits) conduct that is presumptively protected under the plain text of the Second Amendment. As a result, the statute is presumptively unconstitutional under *Bruen*. *Id.* at 24.

In an attempt to sidestep this straightforward conclusion, the government has adopted a novel argument that a person's status as a "felon" excludes that person from the Second Amendment's protections. But the plain text of the Second Amendment and this Court's precedent hold otherwise. In *Heller*, this Court rejected the theory that "the people" protected by the Second Amendment was limited to a specific subset—*i.e.*, those in a militia. 554 U.S. at 579-81, 592-600. The Court explained that when the Constitution refers to "'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset," and there is thus a "strong presumption that the Second Amendment right is exercised individually and belongs to *all Americans*." *Id.* at 580-81 (emphasis added).

Comparison to other constitutional amendments confirms this view. As *Heller* explained, "the people" is a "term of art employed in select parts of the Constitution," including "the Fourth Amendment, . . . the First and Second Amendments, and . . . the Ninth and Tenth Amendments." *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). It is beyond challenge that felons are among "the people" whose "persons, houses, papers, and effects" enjoy Fourth Amendment protection. U.S. Const. Amend. IV; *see United States v. Lara*, 815 F.3d 605 (9th Cir. 2016). And

felons likewise enjoy "the right of the people" to "petition the government for redress of grievances." U.S. Const. Amend. I; *see Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th Cir. 2017). If a person with a felony conviction is one of "the people" protected by the First and Fourth Amendments, *Heller* teaches that he is one of "the people" protected by the Second Amendment, too.

This view was confirmed when this Court addressed a challenge to a different subsection of § 922(g) last term in *United States v. Rahimi*, 144 S. Ct. 1889 (2024). The Court analyzed historical laws dealing with dangerous persons to find that § 922(g)(8) was consistent with historical tradition and therefore constitutional. *Id.* at 1899-1900. But the Court never suggested for a moment that Mr. Rahimi was not one of "the people" protected by the Second Amendment. Accordingly, Anderson is among "the people" to whom the Second Amendment applies.

2. There is no relevantly similar historical regulation that bans firearm possession for life

Bruen provided guidance on conducting historical analysis in the hunt for relevantly similar regulations. The Court can consider "whether 'historical precedent' from before, during, and even after the founding evinces a comparable tradition of regulation." *Bruen*, 597 U.S. at 27. But *Bruen* reminded that "not all history is created equal." *Id.* at 34. That is because "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Id.* (quotations omitted). Because the Second Amendment was adopted in 1791, earlier historical evidence "may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years." *Id.* Similarly, post-ratification laws

that "are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Id.* at 36 (quotations and emphasis omitted).

Bruen—and, later, *Rahimi*—also offered analytical guidance for evaluating historical clues. As this Court explained in *Rahimi*: "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 144 S. Ct. at 1898 (quoting *Bruen*, 597 U.S. at 29). In doing so, "[w]hy and how the regulation burdens the right are central to this inquiry." *Id.* Thus, "if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* Importantly, though, "[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* And this Court made clear that the burden falls squarely on the government to "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. If the government cannot do so, the infringement on the right cannot survive.

In *Heller*, this Court confirmed an individual's right to keep and bear arms but cautioned that this right is "not unlimited." 554 U.S. at 626. As an example, the Court provided, in dicta, a non-exhaustive list of "*presumptively* lawful regulatory measures"—i.e., ones that had not yet undergone a full historical analysis. *Id.* at 627

n.26 (emphasis added). This list included laws restricting possession by felons and the mentally ill and the carrying of firearms in "sensitive places." *Id.* at 626. *Heller* emphasized that "we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment." *Id.* And since this was the Court's "first in-depth examination of the Second Amendment," *Heller* explained that it could not "clarify the entire field." *Id.* at 635. But *Heller* promised that there would be "time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us." *Id.* That time is now. The government cannot meet its burden to establish the requisite "relevantly similar" historical tradition. *Rahimi*, 144 S. Ct. at 1898 (quoting *Bruen*, 597 U.S. at 29).

The government cannot meet its burden to establish Section 922(g)(1)'s historical pedigree for a simple reason: neither the federal government nor a single state barred all people convicted of felonies until the 20th century. *See, e.g.*, Adam Winkler, *Heller's Catch-22*, 56 U.C.L.A. L. Rev. 1551, 1563 (2009). The modern version of Section 922(g)(1) was adopted 177 years after the Second Amendment. *Bruen*, 597 U.S. at 66 n.28 ("[L]ate-19th-century evidence" and any "20th-century evidence . . . does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.").

Section 922(g)(1) very much contradicts earlier evidence from the relevant historical periods: "(1) . . . early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; [and] (4) Reconstruction." *Id.* at 2135–36. Those periods lack evidence of any analogue to Section 922(g)(1).

The government may argue that, historically, *some* jurisdictions *sometimes* regulated firearm use by those considered *presently* violent. But not all people with a felony conviction are presently violent. Moreover, the historical regulations required an individualized assessment of a person's threat to society. And finally, the historical regulations almost always allowed people deemed violent to still possess weapons for self-defense. Thus, even those convicted of serious crimes—including rebellion—remained entitled to protect themselves in a dangerous world, with firearms if necessary. Those laws' targeted nature makes them a far cry from declaring that any person, convicted of any felony, can *never* possess "the most popular weapon chosen by Americans for self-defense in the home." *Heller*, 554 U.S. at 629.

England, before the founding, did not ban felons from ever again possessing a firearm. *See Kanter*, 919 F.3d at 457 (Barrett, J., dissenting); C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Policy 695, 717 (2009); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 260 (2020). To the extent that England sought to disarm individuals, those regulations usually required a more culpable mental state and made exceptions for self-defense, both features absent from Section 922(g)(1). *Rahimi* discusses at length the surety laws and laws against affray or going armed against the king's subjects. 144 S. Ct. at 1899-1902.

To the extent that England tried to disarm whole classes of subjects, it did so on discriminatory grounds that would be unconstitutional today—and yet still

permitted those targeted to keep arms for self-defense. For example, in the age of William and Mary (both Protestants), Catholics were presumed loyal to James II (a Catholic trying to retake the throne) and treasonous. Thus, Catholics could keep "Arms, Weapons, Gunpowder, [and] Ammunition," only if they declared allegiance to the crown and renounced key parts of their faith. *See Bruen*, 597 U.S. at 45 n.12 (quoting 1 Wm. & Mary c. 15, § 4, in 3 Eng. Stat. at Large 399 (1688)). In short, the English never tried to disarm all felons. Rather, they tried to limit the use of firearms by those individuals found to be violent and rebellious. And even those individuals could keep arms for self-defense. A "relevantly similar" historical regulation that is not. *Bruen*, 597 U.S. at 29.

"[T]here is little evidence of an early American practice of," forever barring all people convicted of a felony from ever again possessing a firearm. *Bruen*, 597 U.S. 1 at 46. The early United States accepted that those who committed crimes—even serious ones—retained a right to defend themselves. That can be seen in the colonies' and states' statutes, early American practice, and rejected proposals from state constitutional conventions. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting); *Folajtar v. Att'y Gen. of the United States*, 980 F.3d 897, 915 (3d Cir. 2020) (Bibas, J., dissenting); *Chester*, 628 F.3d at 679; *Binderup v. Att'y Gen. of the U.S.*, 836 F.3d 336, 368 (3d Cir. 2016) (en banc) (Hardiman, J., concurring).

To the extent that the new nation sought to disarm people, the regulatory approach was much more limited than Section 922(g)(1). For example, the Virginia colony disarmed Catholics, still viewed as traitors to the crown. Robert H. Churchill,

Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment, 25 Law & Hist. Rev. 139, 157 (2007) (citation omitted). But there was an exception for weapons allowed by a justice of the peace "for the defense of his house and person." *Id.* And following the Declaration of Independence, Pennsylvania ordered that those who did not pledge allegiance to the Commonwealth and renounce British authority be disarmed. *Id.* at 159. Thus, to the extent that either regulation would comply with the Second Amendment, as understood today, they required a specific finding that a specific person posed a risk of violence to the state.

Colonial and Founding-era practice also suggests that committing a serious crime did not result in a permanent disarmament. For example, leaders of the seminal Massachusetts Bay colony once disarmed supporters of a banished seditionist. Greenlee, *supra*, at 263 (citations omitted). Nevertheless, "[s]ome supporters who confessed their sins were welcomed back into the community and able to retain their arms." *Id.* And in 1787, after the participants in Shay's Rebellion attacked courthouses, a federal arsenal, and the Massachusetts militia, they were barred from bearing arms, for three years, not life. *Id.* at 268-67. In fact, Massachusetts law required the Commonwealth to hold *and then return* the rebels' arms after that period. Sec'y of the Commonwealth, *Acts and Resolves of Massachusetts 1786–87*, at 178 (1893).

American practice and laws during the Nineteenth Century—before and after the Civil War—also confirm that Section 922(g)(1) does not comport with the

"Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 34. The United States continued to regulate—but not ban—firearm possession by those feared to be violent. *See id.* at 55 (holding that 19th century surety laws allowed people likely to breach the peace to still keep guns for self-defense or if they posted a bond). But, as discussed above, that is not similar to Section 922(g)(1). There is no evidence of a precursor to Section 922(g)(1)'s broad, categorical ban. In fact, there are at least two documented instances where attempts to disarm a class of offenders was rejected as inconsistent with the right to bear arms.

First, as with Shay's Rebellion, Congress declined to disarm southerners who fought against the Union in the Civil War. Steven G. Bradbury, et al., *Whether the Second Amendment Secures an Individual Right*, 28 OP. O.L.C. 126, 226 (2004). The reason: some northern and Republican senators feared that doing so "would violate the Second Amendment." *Id.* Second, when a Texas law ordered that people convicted of unlawfully using a pistol be disarmed, it was struck down as unconstitutional under the Texas constitution. *Jennings v. State*, 5 Tex. Ct. App. 298, 298 (1878).

In sum, the 19th century history provides clear evidence that mass disarmament for people convicted of an offense is unconstitutional. Not only was there a consistent practice of allowing people who broke the law to keep weapons for self-defense—at least one state appellate court and Congress agreed that disarming lawbreakers was unconstitutional. As *Bruen* teaches: "[I]f some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some

probative evidence of unconstitutionality." 597 U.S. at 27.

Rahimi did not affect this analysis—and, in fact, made all the clearer Section 922(g)(1)'s lack of constitutional backing. The prohibition there passed constitutional muster because there were historical analogues *temporarily* disarming those proven to be presently violent. 144 S. Ct. 1898-99. The restraining order subsection of § 922(g) passed constitutional muster because there is an individualized finding of dangerousness, after notice and an opportunity to be heard, and the restriction lasts only as long as the restraining order does. *Id.* at 1895-96.

Again, "[w]hy and how the regulation burdens the right are central to the inquiry." *Id.* at 1898. Section 922(g)(1) contains a lifetime prohibition on possession of firearms by all convicted felons, without an individualized determination of ongoing dangerousness. It therefore violates the Second Amendment on its face, and Anderson's conviction under Section 922(g)(1) must be vacated.

II. The question whether Section 922(g)(1) violates the Second Amendment has divided the courts of appeals and its resolution is of great importance

Since *Bruen*, the courts of appeals have reached different opinions about whether Section 922(g)(1) is constitutional under the Second Amendment. The Eighth Circuit has concluded that the statute does not violate the Second Amendment and have foreclosed future as-applied challenges. The Fifth Circuit has also rejected facial Second Amendment challenges, like in this case, but has adopted a case by case approach to as-applied challenges looking only at the disqualifying felony conviction. The Sixth Circuit in contrast has adopted a dangerousness test for as-applied challenges. Meanwhile, the Third and Ninth Circuits have found Section 922(g)(1)

unconstitutional as applied to specific defendants. These differing opinions have generated opposite outcomes, with Second Amendment claims entirely foreclosed in certain jurisdictions and not in others.

The Sixth Circuit in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024) held that Section 922(g)(1) is constitutional both on its face and as applied to dangerous individuals. After conducting an extensive historical analysis, the court concluded that governments have traditionally had authority to disarm groups deemed dangerous, provided that individuals within those groups have an opportunity to demonstrate they do not pose a danger. Applying this framework, the court found that Section 922(g)(1) is constitutional as applied to the defendant Williams, who had prior convictions for aggravated robbery, attempted murder, and unlawfully possessing a firearm as a felon. Notably, the court held that when evaluating as-applied challenges to Section 922(g)(1), courts should consider a defendant's entire criminal record, not just the specific predicate felony, and assess whether their offenses fall into historically recognized categories of dangerous crimes like violent felonies or offenses that inherently pose a significant threat of danger. While the court left open whether non-violent felonies like fraud could justify disarmament, it concluded that Williams' violent criminal history clearly demonstrated he was dangerous and therefore could be constitutionally prohibited from possessing firearms under Section 922(g)(1). *Id.* at 645-63.

The Eighth Circuit analyzed the constitutionality of Section 922(g)(1) in *United States v. Jackson*, 110 F.4th 1120, 1121 (8th Cir. 2024). There, it held that

Section 922(g)(1) is constitutional as applied to the defendant Jackson, who had prior drug trafficking convictions. The court reasoned that historically, legislatures had broad authority to disqualify categories of persons from possessing firearms, either because they deviated from legal norms or presented an unacceptable risk of dangerousness. The court found that Congress acted within this historical tradition in enacting the felon-in-possession ban, and rejected Jackson's argument that the law was unconstitutional as applied to his "non-violent" felony convictions, concluding that individual determinations of dangerousness were not historically required to justify such categorical prohibitions. *Id.* at 1125-29.

The Fifth Circuit has rejected specific as applied challenges to Section 922(g)(1) but has not foreclosed future such challenges. In *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024), the Fifth Circuit parted ways with other Circuits, holding that that *Bruen* abrogated its prior decisions upholding Section 922(g)(1) against Second Amendment challenge. It held that *Heller*'s reference to "longstanding prohibitions on the possession of firearms by felons" did not reflect "binding precedent on the issue now before us," ultimately concluding that felons were amongst "the people" protected by the Second Amendment. *Id.* at 466 & n.2. However, it found that Section 922(g)(1) was constitutional on its face and as applied to that particular defendant. *Id.* at 472. It explained that Section 922(g)(1)'s application was consistent with this Nation's historical tradition of firearm regulation because "[a]t the time of the Second Amendment's ratification, those—like Diaz—guilty of certain crimes—like theft—were punished permanently and severely," that is, by death or estate

forfeiture, and "permanent disarmament was [also] a part of our country's arsenal of available punishments at that time." *Id.* Nonetheless, the court expressly held that "[o]ur opinion today does not foreclose future as-applied challenges by defendants with different predicate convictions." *Id.* at 470 n.4.

The Third and Ninth Circuits, in contrast, issued decisions striking down Section 922(g)(1)'s application as unconstitutional under *Bruen*. *See Range v. Att'y Gen. United States*, 124 F.4th 218 (3d Cir. 2024) (en banc); *United States v. Duarte*, 101 F.4th 657, 664-91 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. July 17, 2024). In *Range*, the en banc Third Circuit applied *Bruen*'s text-and-history test and found Section 922(g)(1) unconstitutional as applied to a person whose prior conviction for making false statements in relation to food stamps had exposed him to more than a year in prison. First, the court rejected the government's contention that a person's past conviction for an offense punishable by over one year operates to remove him from "the people" to whom the right to keep and bear arms is vested. *Range*, 124 F.4th 226-28. Then, upon examination of the relevant historical evidence, the court held that the government had failed in its attempt to demonstrate a broad tradition of American laws imposing anything near a permanent ban on firearm possession on account of past misdeeds. *Id.* at 228-32.

Finally, the Ninth Circuit, in *United States v. Duarte*, 101 F.4th 657 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), also concluded there was no historical tradition of permanently disarming people convicted of certain felony offenses—those that did not exist or were punished as misdemeanors during

the founding era. The Ninth Circuit accordingly invalidated Section 922(g)(1)'s application to a defendant with prior convictions for modern-day felonies that included possessing drugs for sale, vandalism, and evading arrest. *Id.* at 688-91.

Thus, the circuit split regarding the constitutionality of Section 922(g)(1) remains. Resolving the question presented is also important. Despite serious concerns as to Section 922(g)(1)'s constitutionality, the statute continues to result in the imprisonment of thousands of American citizens each year. See Petition for Writ of Certiorari at 22–24, *Garland v. Range*, No. 23-374 (Oct. 5, 2023) (marshaling statistics demonstrating that Section 922(g)(1) is the most frequently applied provision of Section 922(g)). And, for fear of the same fate, countless more individuals are deterred from engaging in conduct that would otherwise come within the Second Amendment's core. Only this Court can settle this monumental question upon its inevitable return to the Court's docket.

III. Alternatively, this Court should hold Anderson's petition pending consideration of one of the many other petitions that will place these same issues before this Court

Finally, Anderson notes that numerous petitions raising the same issues are now or will shortly be filed in this Court. That includes the anticipated petition arising out of the lead case on this issue in the Fifth Circuit—*United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), as well as anticipated petitions arising out of the lead cases in other Circuits: *See e.g. Range v. Att'y Gen. United States*, 124 F.4th 218 (3d

Cir. 2024) (en banc); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024).[2] [3] Accordingly, Anderson requests that his petition be held pending those and/or other petitions if this Court anticipates that it may grant a writ of certiorari on the issues raised herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this March 11, 2025,

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[2] This issue is also being considered by the en banc Ninth Circuit in *United States v. Duarte*, 108 F.4th 786 (9th Cir. 2024).

[3] This Court is also considering petitions in other Second Amendment cases that bear on the instant petition. *See e.g. Snope v. Brown*, No. 24-203 (Issue presented: "Whether the Constitution permits the state of Maryland to ban semiautomatic rifles that are in common use for lawful purposes, including the most popular rifle in America"); *Ocean State Tactical, LLC v. Rhode Island*, No. 24-131 (Issue presented: "Whether a retrospective and confiscatory ban on the possession of ammunition-feeding devices that are in common use violates the Second Amendment").