No. _____

In the
Supreme Court of the United States

MATTHEW RYAN HUNT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Stephen J. van Stempvoort
Counsel of Record
MILLER JOHNSON
45 Ottawa Avenue SW, Suite 1100
Grand Rapids, MI 49503
vanstempvoorts@millerjohnson.com
(616) 831-1765
Counsel for Petitioner

Questions Presented

The questions presented are:

1. Whether defendants are precluded from asserting as-applied challenges to 18 U.S.C. § 922(g)(1) under the Second Amendment, as the Fourth, Eighth, and Tenth Circuits hold, or whether as-applied Second Amendment challenges to § 922(g)(1) remain available to defendants, as the Third, Fifth, and Sixth Circuits hold.

2. Whether 18 U.S.C. § 922(g)(1)'s lifetime ban of firearm possession for all individuals previously convicted of a crime punishable by more than one year in any jurisdiction violates the Second Amendment, either facially or as applied to the appellant, Matthew Hunt, who was previously convicted of a non-violent theft offense; namely, West Virginia breaking and entering a non-dwelling under W. Va. Code § 61-3-12.

Related Proceedings

The proceedings directly related to this petition are as follows:

1. Fourth Circuit:

United States v. Hunt, 123 F.4th 697 (4th Cir. 2024).

2. U.S. District Court for the Southern District of West Virginia:

United States v. Hunt, No. 2:21-cr-00267 (S.D. W.Va.).

Table of Contents

Table of Authorities

Page(s)

Cases

Table of Authorities
(continued)

Page

Statutes

Other Authorities

Opinions Below

The Fourth Circuit Court of Appeals' opinion affirming Hunt's conviction (Pet. App. 1a-19a) is published at *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024).

The district court's criminal judgment is unpublished but is attached at Pet. App. 20a-27a.

Jurisdiction

The Fourth Circuit Court of Appeals' decision and opinion was entered on December 18, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

The Second Amendment to the United States Constitution provides:

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

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

It shall be unlawful for any person—

> (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> * * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Introduction

The circuits disagree about whether a defendant may assert an as-applied challenge under the Second Amendment to 18 U.S.C. § 922(g)(1). The Fourth, Eighth, and Tenth Circuits hold that a defendant may not. The Third, Fifth, and Sixth Circuits hold that a defendant may. The First, Seventh, and Eleventh Circuits have not ruled conclusively on the issue, either way. The Court should grant the petition and resolve the disagreement between the circuits.

Doing so would be particularly appropriate in this case. There is no reason to suspect that the Second Amendment is the only enumerated right in the Constitution that may not be relied upon to challenge the validity of governmental action on an as-applied basis. Several circuits have persuasively reasoned that this Court's statement in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons," *id.* at 626, does not prevent defendants from asserting as-applied challenges. And the error makes a difference in this case. The Founders do not seem to have permanently disarmed all citizens who were convicted of felonies, much less those (like Hunt) who were convicted of non-violent theft offenses. The petition should be granted, and Hunt's conviction should be reversed.

Statement of the Case

1. In December 2021, Hunt was indicted in the Southern District of West Virginia of being a felon in possession of four firearms, in violation of 18 U.S.C. § 922(g)(1). Pet. App. 2a-3a. The indictment specified Hunt's predicate felony as a 2017 conviction for West Virginia breaking and entering of a non-dwelling under W.

Va. Code § 61-3-12. Pet. App. 3a. At the time of Hunt's indictment, Fourth Circuit precedent precluded him from asserting an as-applied challenge to § 922(g)(1) under the Second Amendment. Pet. App. 2a (citing *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017)).

This Court did not issue its decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), until June 2022, approximately six months after Hunt was indicted. And in May 2022—the month before *Bruen* was decided—Hunt pleaded guilty to the single-count indictment without a written plea agreement and without asserting a Second Amendment challenge. Pet. App. 3a. The district court ultimately imposed a sentence of 60 months' imprisonment, followed by three years of supervised release. Pet. App. 21a-22a.

2. Hunt timely appealed to the Fourth Circuit. Because *Bruen* had been decided in the interim, Hunt argued on appeal that his § 922(g)(1) conviction violated the Second Amendment. Pet. App. 3a. Although the government asserted that his Second Amendment argument should be reviewed for plain error only, the Fourth Circuit accepted for purposes of the appeal Hunt's argument to the contrary and applied de novo review to Hunt's Second Amendment argument. Pet. App. 3a-6a.

The Fourth Circuit held Hunt's appeal in abeyance pending this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024). Ultimately, applying de novo review, the Fourth Circuit ruled that, despite *Bruen* and *Rahimi*, no defendant may assert an as-applied challenge to under the Second Amendment to a § 922(g)(1) conviction. Pet. App. 6a-10a. The Fourth Circuit reached this conclusion for two

reasons. First, it relied on this Court's statement in *Heller* that restrictions on firearms possession by those who have been convicted of felonies were "longstanding" and "presumptively lawful." Pet. App. 8a (quoting *Heller*, 554 U.S. at 626 & 627 n.26). Second, the Fourth Circuit reasoned that felons are "as a group, excluded from the category of 'law-abiding, responsible citizens' whose conduct is protected by the Second Amendment." Pet. App. 8a. (p. 703).

The court also held that, even if an as-applied challenge was permissible, Hunt could not succeed on an as-applied challenge because the Second Amendment permits legislatures to categorically disarm anyone who is (1) not "law-abiding" or has "deviated from legal norms," or (2) might be "dangerous." Pet. App. 11a, 13a. As to the first point, the Fourth Circuit ruled that all modern felons may be permanently disarmed because many felons in the Founding era could be subjected to capital punishment. Pet. App. 13a-14a. The court reasoned that the Second Amendment allows permanent disarmament of anyone who has been convicted of "conduct the legislature considers serious enough to render it a felony." Pet. App. 15a. Although Hunt pointed out that, under this approach, the legislature is able to define the scope and reach of the Second Amendment, the Fourth Circuit reasoned that legislatures may also use the criminal law to deprive individuals of other rights protected by the Constitution. Pet. App. 15a-16a.

The Fourth Circuit also reasoned that legislatures are entitled to permanently disarm groups of individuals that are "potentially violent or dangerous" according to "the judgment" of the legislature. Pet. App. 16a. The Fourth Circuit held

that "there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." Pet. App. 16a.

The Fourth Circuit did not identify any other enumerated constitutional right that may not be asserted in an as-applied challenge to government regulation. Neither the government nor the Fourth Circuit identified any Founding-era practice of permanently disarming all individuals who were convicted of non-violent theft offenses. Pet. App. 6a-17a.

This petition timely follows.

Reasons for Granting the Petition

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

In ruling that no defendant may assert an as-applied challenge to a § 922(g)(1) conviction, the Fourth Circuit's reasoning contradicts that of several other circuits. The Third, Fifth, and Sixth Circuits hold that defendants may assert as-applied Second Amendment challenges to § 922(g)(1). *See Range v. Att'y Gen. United States*, 124 F.4th 218, 224 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). The Ninth Circuit held the same thing in a case that is now pending en banc rehearing. *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024). The First Circuit has also suggested that as-applied challenges to § 922(g)(1) are permissible. *See United States v. Turner*, 124 F.4th 69, 77 n.5 (1st Cir. 2024); *United States v. Langston*, 110 F.4th 408, 419 (1st Cir. 2024).

The Eighth and Tenth Circuits, by contrast, join the Fourth Circuit in holding that defendants may not assert a claim that § 922(g)(1) violates the Second Amendment as applied to them. *See United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025). The Eleventh Circuit initially took the same position but subsequently vacated its decision after this Court vacated the Eleventh Circuit's previously controlling precedent on the issue. *United States v. Pierre*, No. 23-11604, 2024 WL 5055533, at *4 (11th Cir. Dec. 10, 2024), *vacated on denial of reh'g en banc*, No. 23-11604, 2025 WL 415200 (11th Cir. Feb. 3, 2025).

The Seventh Circuit left open the door for "*some* room for as-applied challenges" to § 922(g)(1) but has not definitively resolved the question. *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024); *Atkinson v. Garland*, 70 F.4th 1018, 1024 (7th Cir. 2023).

The central difference on this point is the lower courts' interpretation of this Court's statement in *Heller*. The Third, Fifth, and Sixth Circuits reject the notion that the relevant language in *Heller* allows courts simply to uphold the constitutionality of § 922(g)(1) without needing to engage in any historical analysis of whether the statute could constitutionally apply to the particular defendant at hand. *See, e.g.*, *Range*, 124 F.4th at 226; *Williams*, 113 F.4th at 646–48; *Diaz*, 116 F.4th at 466. The Fourth, Eighth, and Tenth Circuits, on the other hand, generally rely on *Heller* and on that basis uphold the constitutionality of § 922(g)(1) "without

drawing constitutional distinctions based on the type of felony involved." *Vincent*, 127 F.4th at 1266.

The circuits also diverge at several other steps of the analysis. For example, the Fourth Circuit holds that the Second Amendment "protects firearms possession by the law-abiding, not by felons." Pet. App. 11a. Other circuits disagree, reasoning that felons are not categorically exempt from the sweep of the Second Amendment, such that some felons may retain or be able to regain their Second Amendment rights. *See, e.g.*, *Williams*, 113 F.4th at 646–47; *Diaz*, 116 F.4th at 469; *Range*, 124 F.4th at 226–27.

Another point of difference is whether modern felon-dispossession statutes may be categorically upheld on the basis that many Founding-era felonies were capital offenses. According to the Fourth Circuit, for example, the greater power (to impose death as punishment) implies the lesser power (to impose a lifetime firearms ban). Pet. App. 13a-14a. Other circuits disagree on this point, too, observing that felons are not deprived of all other constitutional rights merely by virtue of having committed a felony, even though they could have received capital punishment at the time of the Founding. *See, e.g.*, *Williams*, 113 F.4th at 658; *Range*, 124 F.4th at 231.

Even when courts agree that legislatures may disarm individuals who are "dangerous," they differ widely on how to determine which individuals (or which categories of individuals) are "dangerous" and which are not. The Fourth Circuit, for example, holds that "dangerous" is whatever the legislature says it is: "[T]oday's

legislatures may disarm people who have been convicted of conduct the legislature considers serious enough to render it a felony." Pet. App. 15a. That is because "felons, by definition, have 'demonstrated disrespect for legal norms of society,'" such that they may be deemed dangerous, as a category. Pet. App. 17a; *see also Jackson*, 110 F.4th at 1127-28.

The Third Circuit, on the other hand, rejects that approach, because it "devolves authority to legislators to decide whom to exclude from 'the people'" who are protected by the Second Amendment. *Range*, 124 F.4th at 228. After all, the legislature could exclude people from the scope of the Second Amendment simply by declaring that their conduct was "dangerous," such that the scope of the Second Amendment would rise and fall with whatever the legislature determined should be a felony. *Range*, 124 F.4th at 228. The Third Circuit also cautioned in *Range* against upholding § 922(g)(1) merely on the basis that Founding-era laws disarmed some groups that the colonists feared would be disloyal to the state, pointing out that the Founders' treatment of groups suspected of treason is "far too broad[ ]" of an analogy to support lifetime disarmament of ordinary criminals. *Id.* at 229. And as for the notion that a prior conviction necessarily makes a felon permanently too dangerous to trust with a firearm, the Third Circuit observed that, even when Founding-era statutes dispossessed criminals of firearms, they usually only confiscated the particular weapons that were used to commit those offenses. *Id.* at 231. Ordinarily, then, "in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society." *Id.* at 231.

The Sixth Circuit, meanwhile, takes yet another approach. It holds that legislatures may presumptively disarm entire categories of people whom the legislature deems to be "dangerous," relying on historical laws that allowed groups who were suspected of political disloyalty to be disarmed. *Williams*, 113 F.4th at 651–52. Although the Sixth Circuit does not articulate any limits to the legislature's ability to declare particular categories of people "dangerous," the Sixth Circuit also holds that specific individuals within each group must have the opportunity to prove that they are not actually dangerous. *Id*. at 657. This avenue appears to be available to people who can show that they did not commit a violent crime or a crime that poses a threat of physical confrontation with someone else, or can show that they are otherwise not dangerous, based on a "fact-specific" analysis of the circumstances. *Id*. at 658–60. It is not clear under *Williams*, however, precisely which facts a defendant who is presumptively dangerous would need to prove in order to demonstrate that he or she is not "dangerous," nor does the court describe any objective tests for assessing individuals' risk of recidivism or potential for future violence.

The Fifth Circuit, for its part, has not held that legislatures can permanently disarm anyone who the legislature determines is "dangerous." Instead, the Fifth Circuit assesses whether there was a Founding-era crime that covered relevantly similar conduct and permitted a punishment that was similar or more severe than permanent disarmament. *Diaz*, 116 F.4th at 468. In *Diaz*, for example, the court ruled that a defendant who had previously been convicted of felony vehicle theft could be permanently disarmed under the Second Amendment because, in the

Founding era, "those convicted of horse theft—likely the closest colonial-era analogue to vehicle theft—were often subject to the death penalty." *Id.* That analysis, though, conflicts with the Third and Sixth Circuits, which reject the greater-implies-the-lesser theory about the punishments that a legislature is permitted to impose without violating the Second Amendment. *See Williams*, 113 F.4th at 658; *Range*, 124 F.4th at 231.

In short, the circuits' reasoning is all over the map. The issue cries out for this Court's clarification.

II. The Fourth Circuit's decision is wrong.

Hunt's case is a particularly good candidate for addressing several of the threshold issues pertaining to a Second Amendment challenge, not least because the Fourth Circuit's analysis is incorrect at almost every step in its analysis.

First, Hunt is not aware of any individual constitutional right that cannot be asserted on an as-applied basis. As-applied challenges to government action can be asserted under the First, Third, Fourth, Fifth, Sixth, Seventh and Eighth Amendments, and it is not clear why the Second Amendment should be any different.

The Third, Fifth, and Sixth Circuits persuasively reason that defendants may assert as-applied Second Amendment challenges to § 922(g)(1) notwithstanding this Court's comments in *Heller*. *See Range*, 124 F.4th at 224; *Diaz*, 116 F.4th at 472; *Williams*, 113 F.4th at 657. And in *Rahimi*, this Court entertained and resolved an as-applied challenge to § 922(g)(8). *Rahimi*, 602 U.S. at 701. There is no reason to suspect that this Court's statement in *Heller* foreclosed an avenue of

constitutional analysis that pertains to every other statute and every other enumerated constitutional right.

Second, the Fourth Circuit is wrong to conclude that anyone whom the legislature labels as a "felon" may be categorically deemed "dangerous" and permanently disarmed, regardless of whether the defendant's underlying conduct is similar to conduct that was punishable with permanent disarmament when the Second Amendment was ratified. It cannot be true both that the Second Amendment allows a legislature to permanently disarm anyone it deems to be "dangerous" and that the legislature simultaneously has free rein over whom it may define as "dangerous." Otherwise, the Second Amendment could be defined away by the legislature. The legislature could simply make certain conduct punishable by more than a year and thereby take those individuals who engage in that conduct out of the ambit of the Second Amendment. *See, e.g.*, *Williams*, 113 F.4th at 660 ("[C]omplete deference to legislative line-drawing would allow legislatures to define away a fundamental right."). That is not how constitutional rights are supposed to work. They are intended to set outer boundaries on legislative power, not expand and constrict at the legislature's pleasure.

Third, the Fourth Circuit failed to identify any Founding-era laws that punished with lifetime disarmament those who broke and entered a non-dwelling—a crime which is neither violent nor identical to common-law burglary. This Court demonstrated in *Rahimi* the proper mode of analysis. There, the Court explained that, "through surety laws and restrictions on 'going armed,' the people in this

country have understood from the start that the government may disarm an individual temporarily after a 'judicial determinatio[n]' that he 'likely would threaten or ha[s] threatened another with a weapon.'" *Rahimi*, 144 S. Ct. at 1908. Reasoning that the statute at issue in *Rahimi*—18 U.S.C. § 922(g)(8)—was similar to those historical analogues (it applies only temporarily, and only to individuals whom a court has previously found will likely threaten someone else with a weapon), this Court upheld its constitutionality. *Id.* at 1902.

Despite having the benefit of both *Bruen* and *Rahimi*, the Fourth Circuit failed to engage in any similar analysis here. There is no historical evidence that the Founders (or any generation prior to the 1960s) chose to address the "general societal problem" of non-violent theft crimes with permanent disarmament. *Bruen*, 597 U.S. at 26. And unlike historical surety laws, 18 U.S.C. § 922(g)(1) permanently disarms Hunt without any judicial adjudication of his propensity to commit future physical injury. Instead, § 922(g)(1) presumes that he possesses this propensity merely because he was previously convicted of a non-violent, non-common-law burglary. Neither the "why" nor the "how" of § 922(g)(1) match the historical understanding of the contours of the Second Amendment.

Fourth, the Fourth Circuit's assertion that legislatures may disarm categories of people that they deem to be "dangerous" fails to recognize that historical measures disarmed entire categories for very different reasons (different "whys," as it were) than § 922(g)(1) does. Pet. App. 14a, 16a. The historical evidence that the Fourth Circuit cited in support of its conclusion that the Second Amendment permits

categorical disarmament of "dangerous" groups consists only of (1) regulations that disarmed disfavored ethnic or racial groups, such as Native Americans and slaves, and (2) regulations that disarmed political and religious dissidents, who governments believed were political threats. Pet. App. 16a. Neither of those categories supports the constitutionality of a statute permanently disarming citizens who commit ordinary crimes, much less non-violent ones.

The first of these two categories of disarmament regulations was aimed at groups who "fell outside 'the people' entitled to Second Amendment protection." *Duarte*, 101 F.4th at 686; *see also id*. at 685. The Founders' treatment of persons who were outside "the people" whose rights are protected by the Second Amendment reveals nothing about historical views of the rights of persons—like ordinary criminals—who are inside "the people" who are protected by the Amendment.

The second category of disarmament regulations was aimed at politically disruptive groups who could potentially engage in counter-revolution. "The Founders did not disarm English Loyalists because they were believed to lack self-control; it was because they were viewed as political threats to our nascent nation's integrity." *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024). To conclude that laws disarming political rivals allow Governments to disarm any group that they deem "dangerous" is "far too generalized an abstraction to draw and ignores the historical context in which these laws were passed." *Duarte*, 101 F.4th at 681. The disarmament of potential political insurrectionists reveals nothing about the

Founders' views about disarming commonplace thieves in furtherance of the ordinary police power.

The lack of historical disarmament regulations targeted at ordinary criminals is significant. *Connelly*, for example, struck down § 922(g)(3) as applied to a marijuana user because, in the Founding era, "neither Congress nor the states disarmed alcoholics, the group most closely analogous to marijuana users in the 18th and 19th centuries." *Connelly*, 117 F.4th at 279. That appropriate degree of specificity shapes the resulting analysis: "Which are marijuana users more like: British Loyalists during the Revolution? Or repeat alcohol users? The answer is clearly the latter, so the government's attempt to analogize non-violent marijuana users to 'dangerous' persons fails to present a 'relevantly similar' 'why.'" *Id*. The same is true here: someone who has been convicted of a non-violent theft offense is not relevantly similar to a Founding-era political or religious dissident.

Abstracting the relevant principle to mere "dangerousness" is also incorrect. One difficulty is that "dangerousness" often is undefined. If someone is "dangerous" merely because they violated a statute that can be punished by more than a year in prison, then the term loses any correlation to that person's propensity for physical violence. After all, someone's federal conviction for mislabeling onion rings made of diced onions is not highly suggestive of whether that person is likely to misuse a firearm in the future. *See* 21 U.S.C. §§ 331(a), 333(a); 21 C.F.R. § 102.39.

Merely allowing a felon the opportunity to demonstrate that he is not "dangerous," as the Sixth Circuit held in *Williams*, does not help matters. It invites

the same sort of propensity-based conjecture that evidentiary rules like Federal Rule of Evidence 404 guard against. And it fails to give defendants like Hunt any guidelines about how they would be able to prove the negative—that is, that they are not "dangerous," under whatever amorphous concept that standard might imply. "[C]ourts possess neither the resources to conduct the requisite investigations nor the expertise to predict accurately which felons may carry guns without threatening the public's safety." *Pontarelli v. U.S. Dep't of the Treasury*, 285 F.3d 216, 231 (3d Cir. 2002) (en banc).

The correct approach is similar to the one marked out by the Third and Fifth Circuits. For § 922(g)(1) to comply with the Second Amendment as applied to Hunt, the government must identify a Founding-era practice of permanently disarming defendants who engaged in sufficiently similar conduct—that is, a non-violent theft offense. Because the government has failed to make such a showing, the Second Amendment does not permit Hunt to be subject to a lifetime weapons ban based solely on his prior conviction.

III. The issues presented are important and recurring.

Section 922(g)(1) is routinely prosecuted in the federal courts. The Fourth Circuit held numerous appeals in abeyance pending its decision in Hunt's case, and its opinion in *Hunt* has already been cited by several other decisions. Second Amendment challenges to convictions under § 922(g)(1) continue to proliferate. The current melee of competing analyses and decisions would substantially benefit if this Court stepped in as referee.

IV. This case is an excellent vehicle for resolving the issues presented.

Although there was initially a question over whether plain error review applied to Hunt's Second Amendment challenge, the Fourth Circuit applied de novo review to his claim on appeal. Pet. App. 3a-6a; *see also Duarte*, 101 F.4th at 663. Hunt's Second Amendment claim is thus squarely presented to this Court.

The Fourth Circuit's decision here is an excellent vehicle inasmuch as it presents this Court with the opportunity not only to clarify whether its statement in *Heller* precludes as-applied challenges to § 922(g)(1) but also to address each of the other steps in the analysis, including whether the government has identified sufficiently narrow historical analogues to support the application of § 922(g)(1) to defendants like Hunt, who are convicted of non-violent theft offenses.

Conclusion

The Court should grant the petition.

Respectfully submitted,

Dated: March 17, 2025

/s/ Stephen J. van Stempvoort
Stephen J. van Stempvoort
Counsel of Record
MILLER JOHNSON
45 Ottawa Ave. SW, Suite 1100
Grand Rapids, MI 49503
vanstempvoorts@millerjohnson.com
(616) 831-1765
Counsel for Petitioner