No. 24-6818

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Introduction

The government does not strenuously defend either the Fourth Circuit's Second Amendment analysis or its determination that 18 U.S.C. § 922(g)(1) is categorically not susceptible to an as-applied constitutional challenge. Instead, the government asserts that the circuits disagree only in their analyses, not in their outcomes. That is incorrect. The Third Circuit, for instance, has invalidated § 922(g)(1) on an as-applied basis. *See Range v. Att'y Gen. United States,* 124 F.4th 218, 224 (3d Cir. 2024) (en banc). That outcome is impossible in the Fourth Circuit.

The government's focus on outcomes also betrays the weakness in the Fourth, Eighth, and Tenth Circuits' approach. Litigants like Hunt are entitled to outcomes that are driven by legal theories, not—like the government suggests—the other way around. If 18 U.S.C. § 922(g)(8) is susceptible to as-applied challenges, *see United States v. Rahimi*, 602 U.S. 680, 701 (2024), there is no valid reason why § 922(g)(1) is not susceptible to them, too.

Argument

I. The circuits are split.

There is no real dispute that the circuits disagree with each other over whether a defendant may assert an as-applied challenge to a § 922(g)(1) conviction. The Third, Fifth, and Sixth Circuits hold that a defendant may; the Fourth, Eighth, and Tenth Circuits hold that a defendant may not. *Compare Range,* 124 F.4th at 224, *United States v. Diaz,* 116 F.4th 458, 472 (5th Cir. 2024), and *United States v. Williams,* 113 F.4th 637, 657 (6th Cir. 2024), with Pet. App. 6a-10a, *United States v.*

Jackson, 110 F.4th 1120, 1129 (8th Cir. 2024), and *Vincent v. Bondi,* 127 F.4th 1263, 1265 (10th Cir. 2025).

The government suggests that the circuits' disagreement is narrow. (Gov't Br. in Opp. at 2). According to the government, the lower courts have simply "used different analytical paths to reach the same legal outcome"—that is, decisions that have upheld § 922(g)(1) in the face of Second Amendment challenges. (Gov't Br. in Opp. in *Jackson v. United States*, No. 24-6517 (filed Apr. 11, 2025), at 15). But not every court has upheld § 922(g)(1). *See, e.g.*, *Range,* 124 F.4th at 224; *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). And the different analytical paths chosen by the circuits have stark consequences for litigants who are otherwise similarly situated. In the Fourth Circuit, for example, lower courts cannot even consider an argument that § 922(g)(1), when applied to litigants like the plaintiff in *Range*, violates their Second Amendment rights. That is a significant difference in approach, not a narrow one. Allowing individuals to assert as-applied challenges to § 922(g)(1) is far different than categorically barring them from doing so, even if many as-applied challenges have (thus far) failed.

On the merits, the government offers almost nothing in response to Hunt's petition. Notably, the government does not defend the Fourth Circuit's assertion that § 922(g)(1) is not susceptible to as-applied challenges. The government advances no reason why § 922(g)(1) should be given a privileged status as the only firearm control statute that is not susceptible to an as-applied challenge under the

Second Amendment. *Cf. Rahimi*, 602 U.S. at 701 (resolving as-applied challenge to § 922(g)(8)).

Nor does the government contend with the reality that the lower courts' reasoning varies widely at almost every other step of the Second Amendment analysis, too. (Pet. at 9-12). Instead, the government suggests that the circuits' disparate approaches can be ignored because individual defendants potentially may have a remedy on the back end, through the government's recent resuscitation of the administrative process for rehabilitating federal firearm rights under 18 U.S.C. § 925(c). But—unlike the Sixth Circuit's reasoning in *Williams,* 113 F.4th at 661, which speculated about the implications of such a process, if it were available—nothing in the Fourth Circuit's reasoning suggests that the availability of process under § 925(c) would have any effect on its analysis.

Nor does the government's suggested solution align with *Bruen*. It is not enough for the government to show that an administrative solution may salve Second Amendment violations after they have already occurred. Instead, the government must identify historical evidence indicating that the Founding generation chose to address the "general societal problem" of non-violent theft crimes with permanent disarmament. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022). In neither *Williams* nor Hunt's case did the lower courts require the government to do so. If that is the government's basis for asserting that the circuit split might resolve itself, it is misplaced. The government cannot elide a circuit split by arguing that all

of the circuits should be equally permitted to take stances contrary to this Court's precedent.

II. Hunt's appeal allows this Court to address several issues pertaining to the scope of the Second Amendment.

The government overplays its objections to this appeal as a vehicle for the questions presented. It is true that the parties disagreed below about whether Hunt's Second Amendment argument should be reviewed de novo or instead for plain error. But the Fourth Circuit resolved that question for purposes of this appeal in favor of Hunt. Pet. App. 5a. The government's focus on that issue is therefore beside the point. As postured before this Court, the Second Amendment issue is squarely presented.

Nor is the government correct that Hunt's criminal history makes his Second Amendment challenge a moot point. Hunt's prior breaking-and-entering conviction was the only predicate felony upon which his § 922(g)(1) conviction was premised. Pet. App. 3a. And as Hunt has observed, both the government and the Fourth Circuit failed to identify any Founding-era laws that punished with lifetime disarmament those who were convicted of breaking and entering a non-dwelling. (Pet. at 13-16, 17). The government cannot salvage Hunt's § 922(g)(1) conviction by pointing to sundry aspects of his prior record that did not factor into it.

In fact, as Hunt's petition pointed out, his case presents this Court with the opportunity not only to address whether § 922(g)(1) is susceptible to Second Amendment challenges but also to address whether the Second Amendment allows individuals to be permanently disarmed based solely on a prior conviction for a non-

violent theft crime. This appeal is an appropriate vehicle for this Court to address those issues.

Conclusion

The Court should grant the petition.

Respectfully submitted,

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