NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSHUA WILLIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment, both facially and as applied to Mr. Willis, in light of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024).

RELATED PROCEEDINGS

U.S. District Court:

On February 27, 2023, judgment was entered against Petitioner Joshua Willis in *United States v. Willis*, No. 1:22-cr-00186-RMR-1, Dkt. 54 (D. Colo. Feb. 27, 2023). App. A1-A7.

U.S. Court of Appeals (First Proceeding):

On February 29, 2024, the Tenth Circuit affirmed Mr. Willis's conviction in an unpublished decision, *United States v. Willis*, No. 23-1058, 2024 WL 857058 (10th Cir. 2024). App. A8-A9.

U.S. Supreme Court:

On October 7, 2024, this Court granted Mr. Willis's petition for a writ of certiorari on the same question presented in this petition, vacated the Tenth Circuit's judgment from February 29, 2024, and remanded the case for further consideration under *United States v. Rahimi*, 602 U.S. 680 (2024). App. A10-A12.

U.S. Court of Appeals (Second Proceeding):

Mr. Willis petitioned for initial en banc review when the case was remanded to the Tenth Circuit. On November 12, 2024, the Tenth Circuit vacated its earlier judgment in Mr. Willis's case, App. A13-A14, and on December 27, 2024, it denied Mr. Willis's petition for en banc review, App. A15. On March 4, 2025, the Tenth Circuit again affirmed Mr. Willis's conviction, in an unpublished decision, *United States v. Willis*, No. 23-1058, 2025 WL 687029 (10th Cir. 2025). App. A16-A17.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Joshua Willis, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on March 4, 2025.

OPINION BELOW

The Tenth Circuit's most recent unreported opinion in Mr. Willis's case is available at 2025 WL 687029 (10th Cir. 2025), and is in the Appendix at A16-A17.

JURISDICTION

The United States District Court for the District of Colorado had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291, and first entered judgment on February 29, 2024. App. A8-A9. On October 7, 2024, this Court granted his petition for certiorari, vacated the judgment, and remanded for further proceedings. App. A10-A12. The Tenth Circuit entered an order vacating the judgment on November 12, 2024, App. A13-A14, and it denied Mr. Willis's petition for rehearing en banc on December 27, 2024, in a docket order, App. A15. The Tenth Circuit issued a new decision affirming Mr. Willis's conviction on March 4, 2025. App. A16-A17. On May 29, 2025, this Court extended the time within which to file a petition for a writ of certiorari until July 2, 2025. App. A18-A19. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, U.S. CONST. amend. II:

> 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):

> 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.

STATEMENT OF THE CASE

The petitioner, Mr. Joshua Willis, pleaded guilty in the District of Colorado to one count of possession of a firearm as a felon under 18 U.S.C. § 922(g)(1) (hereinafter "Section 922(g)(1)"). The charge stemmed from Mr. Willis's possession of a Remington rifle and ammunition on or about February 15, 2022. Mr. Willis's three qualifying convictions are nonviolent, and two of the three statutes under which he was convicted later became nonqualifying misdemeanors. *See* Tenth Cir. Opening Br., Case No. 23-1058, at 18-19.

In both his district court and appellate proceedings, Mr. Willis challenged the constitutionality of Section 922(g)(1) under the Second Amendment, both facially and as applied to him, in light of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). This Court's subsequent decision in *United States v. Rahimi*, 602 U.S. 680 (2024), further supports Mr. Willis's constitutional challenge.

In *Bruen* and *Rahimi*, this Court established and applied the test for evaluating laws, like Section 922(g)(1), that infringe on a person's fundamental Second Amendment rights. The cases instruct that (1) conduct covered by the Second Amendment's plain text is presumptively protected and cannot be restricted, 597 U.S. at 24, unless (2) the government can demonstrate a historical tradition of "relevantly similar" firearms regulations from the founding era, *id.* at 24, 29. To do so, the government must prove that the challenged law is sufficiently similar to historical laws

with respect to "both why and how it burdens the Second Amendment right." *Rahimi*, 602 U.S. at 698. That means the government must explain how the challenged law is sufficiently similar to founding-era tradition with respect to both its purpose and the degree to which it infringes on the Second Amendment right—taking into consideration metrics like procedural protections, duration of infringement, and severity of penalty. *Id.* at 698-99. "Even 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.* at 692.

Mr. Willis raised his Second Amendment challenges before the district court and the Tenth Circuit after this Court decided *Bruen*. The Tenth Circuit affirmed his conviction after it determined in a related case, *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023), that all Second Amendment challenges to Section 922(g)(1) were foreclosed under the Tenth Circuit's pre-*Bruen* decision in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009). The *Vincent* panel endorsed *McCane*'s summary approval of Section 922(g)(1)—because this Court "had appeared to recognize the constitutionality of longstanding prohibitions on possession of firearms by convicted felons" in unexplained dicta in *District of Columbia v. Heller*, 554 U.S. 570 (2008)—and declined to consider the statute under *Bruen*'s "new test." 80 F.4th at 1201.

Following the Tenth Circuit's decisions in *Vincent* and Mr. Willis's case, both Ms. Vincent and Mr. Willis petitioned this Court for a writ of certiorari on the Second

Amendment question. This Court issued grant, vacatur, and remand orders in both cases (as well as several other cases raising similar issues out of the Tenth Circuit and nationwide) with instructions to reconsider the issue "in light of" *Rahimi*. App. A10-A12. Subsequently, the Tenth Circuit determined, once again, that it remained bound by its pre-*Bruen* precedent. *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *United States v. Willis*, No. 23-1058, 2025 WL 687029 (10th Cir. 2025) (relying on *Vincent*). Mr. Willis now petitions for a writ of certiorari on the Second Amendment question for a second time.

Notably, whether there are certain unconstitutional applications of Section 922(g)(1) is a question that has already been presented to this Court in a pending petition for a writ of certiorari in *Vincent v. Bondi*, Sup. Ct. Case No. 24-1155 (petition filed May 8, 2025). The response in that case is due on August 11, 2025. If this Court grants Ms. Vincent's petition (or another petition raising the same or similar claims), it may recognize the unconstitutionality of Section 922(g)(1) in a substantial number of cases, and it may even find (or leave open the possibility) that the Second Amendment supports a facial challenge to Section 922(g)(1). Accordingly, Mr. Willis asks this Court to grant the *Vincent* petition and resolve the question presented in Ms. Vincent's favor. This Court should then grant Mr. Willis's petition and afford him the benefit of that ruling.

REASONS FOR GRANTING THE WRIT

This Court should grant the *Vincent* petition; resolve the question in Ms. Vincent's favor; and then grant this petition, vacate the underlying judgments, and remand to the Tenth Circuit Court of Appeals. This Court should do so for multiple reasons.

First, whether Section 922(g)(1) is unconstitutional on its face or as applied to certain defendants (such as Mr. Willis, who has only nonviolent qualifying prior convictions) is an important question of federal law. In fiscal year 2023 alone, there were over 7,100 convictions under the statute. *See* U.S. Sent. Comm'n, "QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses" (June 2024). And Section 922(g)(1) not only curtails the Second Amendment rights of those persons convicted of violating it, but also of nearly everyone else who has previously committed any other offense punishable by more than one year in prison (even if they never misused a firearm). *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*," Demography 54 (2017) at 1806, 1808 (estimating that, as of 2010, 19 million people in the United States had felony records).

For those millions of prohibited persons, the infringement on their Second Amendment rights is substantial: The ban on possession is effectively permanent and applies to possession of any firearm that previously crossed state lines at any point. It

prohibits possession for entirely lawful reasons, including self-defense within one's own home —the "central component" of the Second Amendment, *see Heller*, 554 U.S. at 599. And violating it could mean spending a decade and a half in prison. In other words, Section 922(g)(1) permanently, and nearly completely, deprives millions of individuals of their ability to exercise a fundamental individual right. No other individual right is subject to such all-encompassing, permanent infringement.

Second, this question is being widely litigated across the country, with varying results, and courts of appeals are starkly divided on this issue, even after *Rahimi*. *See Vincent v. Bondi*, Sup. Ct. case no. 24-1155, *7-13 (filed May 8, 2025) (discussing circuit split in detail).

Third, the Tenth Circuit's decision (in *Vincent* and *Willis*) does not apply the mandatory test established in *Bruen* and applied in *Rahimi*, and so its holding is incorrect. The Tenth Circuit declined to apply this Court's decisions in *Bruen* and *Rahimi*. As noted above, the Tenth Circuit relied on its pre-*Bruen* precedent that summarily rejected a Second Amendment challenge to Section 922(g)(1) based entirely on unexplained dictum in *Heller*. In other words, the Tenth Circuit has rejected all *Bruen* challenges to Section 922(g)(1) without analyzing the question under the mandatory legal test set forth by this Court. That provides a separate reason that this Court's review of the issue is warranted.

Indeed, this Court has made clear that the legal tests it imposes are binding and trump its dicta. In *Seminole Tribe of Fla. v. Florida*, it stated that both the "result" of its opinion and "those portions of the opinion necessary to that result" are binding, even on itself. 517 U.S. 44, 67 (1996). In contrast, this Court has repeatedly stressed that its dicta, even when repeated, does not resolve issues it has not yet addressed. In *Oklahoma v. Castro-Huerta*, for example, it found entirely unpersuasive prior "tangential dicta" that addressed an issue that, until that case, "did not previously matter all that much and did not warrant [the] Court's review." 597 U.S. 629, 646 (2022); *see id.* at 645 ("[T]he Court's dicta, even if repeated, does not constitute precedent."). And in *Heller* itself, the Court stated that "[i]t is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued." 554 U.S. at 625 n.25. Thus, while this Court's dicta has significant weight on lower courts, *see, e.g.*, *Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996), the upshot of this Court's cases is evident: If faced with a choice between relying exclusively on this Court's dicta or applying a binding legal test, lower courts must employ the latter.

Here, *Bruen* unquestionably established a new binding test for courts to use when analyzing Second Amendment challenges. And under that test, Mr. Willis's conviction is unconstitutional.

That's because, first, the conduct regulated by Section 922(g)(1) is covered by the Second Amendment. The plain text of the Amendment clearly covers possession of a firearm, including the firearms in this case. And Mr. Willis is clearly part of "the people" protected by the Amendment: The plain text does not draw a felon/non-felon distinction, *Bruen*, 597 U.S. at 32, and this Court has already determined that the phrase "the people" contained within the Amendment "unambiguously refers to all members of the political community, *not an unspecified subset*," *Heller*, 554 U.S. at 580 (emphasis added).

Second, it is not possible for the government to meet its historical burden to support the constitutionality of the statute. There is no historical analogue for Section 922(g)(1), let alone a sufficiently robust tradition of such analogues. Although the government need not point to a "historical twin," *Rahimi*, 602 U.S. at 701, this Court nonetheless requires an especially close fit between modern and historical regulations, *compare Bruen*, 597 U.S. at 55-59 (surety statutes insufficiently similar to broad prohibition on public carry), *with Rahimi*, 602 U.S. at 698-99 (surety statutes sufficiently similar to temporary restriction on firearm possession by individuals subject to certain restraining orders). Accordingly, the government needs to show that the founding generation tried to prevent persons convicted of felonies or felony-equivalent crimes from simple possession of firearms for *any* purpose, and that it did so in a manner sufficiently comparable to Section 922(g)(1).

The government has not and cannot do so, because there is no tradition of felon dispossession statutes—at either the federal or state level—predating the 20th century. Section 922(g)(1) itself only traces its origins back to 1938, when Congress passed the Federal Firearms Act that prohibited only certain felons with "a few violent offenses" from receiving firearms. *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The statute was not amended to prohibit the "possession by all felons" until the 1960s. *Id.* And scholars have not identified founding-era colonial or state felon dispossession statutes either. *See, e.g.*, 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, 142-43 & n.11 (2007). The "Founders themselves could have adopted" laws like Section 922(g)(1) to "confront" the "perceived societal problem" posed by felons. *Bruen*, 597 U.S. at 27. But they did not, and that inaction means Section 922(g)(1) is unconstitutional in all applications.

Moreover, the statute is independently unconstitutional because of the extraordinary burden it puts on the Second Amendment right of every person that it impacts. Section 922(g)(1) indefinitely—and for all practical purposes, permanently—bans all firearm possession, so long as the firearm traveled in interstate commerce at some point. The government has been unable to identify any historical tradition of relevantly similar firearm regulations that so completely infringed upon an individual's ability to exercise such a fundamental right. *See Rahimi*, 602 U.S. at 699-702.

In any event, even if there were *some* constitutional applications of Section 922(g)(1), under the correct test established in *Bruen* and applied in *Rahimi*, the statute is still unconstitutional as applied to Mr. Willis. Indeed, the problems with Section 922(g)(1) are particularly apparent with respect to Mr. Willis, who is a prohibited person because of nonviolent prior offenses only. To the extent there could be constitutional applications of Section 922(g)(1), it is the government's burden to demonstrate where to draw that line. But at minimum, and based on the factors the Supreme Court found critical in *Rahimi*—duration of infringement; individualized procedural protections; and the danger posed by the defendant to another person's physical safety—the government cannot do so for persons like Mr. Willis.

CONCLUSION

For all of these reasons, this Court should grant the petition in *Vincent* and grant Ms. Vincent relief. Thereafter, it should grant this petition for a writ of certiorari, vacate the underlying judgment, and remand for reconsideration in light of the resolution of that petition.

Respectfully submitted,

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