OCTOBER TERM 2024
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAJAVAN SPEAKS,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Dajavan Speaks is a gainfully employed young man with a singular non-violent underlying conviction for gun possession. A victim of a prior drive-by shooting, he had a readily understandable self-defense interest at the time of his arrest for the underlying conviction and his current conviction. His best friend was killed at that time and he and his cousin were injured. He has no juvenile criminal record, no gang affiliation, no drug convictions, was not subject to supervision or a restraining order at the time of his arrest. He had never been charged with using a gun in any way, only with the possession of one. He challenges the constitutionality of § 922(g)(1) as applied to him, and the questions presented are as follows:

1) Is § 922(g)(1) unconstitutional as applied to an individual when he was a victim of a drive by shooting and has been convicted of a non-violent predicate offense, completed his sentence, and is not under supervision?

2) Whether a certificate of appealability should be issued to examine whether 18 U.S.C. § 922(g)(1), as applied in this instance, violates the Second Amendment when reasonable jurists could disagree with the District Court's decision?

RELATED PROCEEDINGS

United States District Court for the Eastern District of Pennsylvania:

United States v. Dajavan Speaks, No. 2:22-cr-00154-MAK (Mar. 28, 2024)

United States Court of Appeals for the Third Circuit:

United States v. Dajavan Speaks, No. 24-1968 (Feb. 20, 2025)

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The District Court's Memorandum and Opinion denying Mr. Speaks' Habeas Petition and declining to grant a Certificate of Appealability, *United States v. Speaks*, No. CR 22-154, 2024 WL 1333035 (E.D. Pa. Mar. 28, 2024). App. 1. Reconsideration pursuant to Rule 59(e) denied, *United States v. Speaks*, No. CR 22-154, 2024 WL 1998495 (E.D. Pa. May 6, 2024). App. 2. Certificate of appealability denied by the Third Circuit, *United States v. Speaks*, No. 24-1968, 2024 WL 4823879 (3d Cir. Nov. 4, 2024). App. 3. Order denying rehearing en banc, *United States v. Speaks*, No. 24-1968 (3d Cir. Feb. 20, 2025). App. 4. All opinions below are unpublished.

JURISDICTION

The Third Circuit entered its judgment denying a certificate of appealability on November 4, 2024, and denied panel rehearing on February 20, 2025. On May 19, 2025, Justice Alito extended the time to petition for a writ of certiorari to June 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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."

Section 922(g)(1) of Title 18 of the United States Code 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."

Title 28 U.S.C. § 2253(c)(1) provides, in part: "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ·(B) the final order in a proceeding under §2255." Section 2253(c)(2) provides: "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."

STATEMENT OF FACTS

A. Mr. Speaks is the victim of a drive-by shooting.

On December 3, 2018, eighteen-year-old Dajavan Speaks was shot in his buttocks outside a convenience store during a drive-by shooting. His best friend (a football prospect starting college the next month) was killed in the hail of bullets from three gunmen. Dist. Ct. ECF 21-1. His female cousin was also injured. Mr. Speaks was admitted to Temple University Hospital for care. Mr. Speaks retains bullet fragments in his body from the attack. Following the shooting, Mr. Speaks carried a gun for self-defense.

B. In the underlying offense, Mr. Speaks successfully completes a house arrest sentence after pleading guilty to carrying a firearm

On October 17, 2019, Mr. Speaks was arrested in Philadelphia for carrying a firearm in public. He was prosecuted locally and placed on house arrest along with

unsecured bail on November 4, 2019. Order, *Commonwealth v. Speaks*, MC-51-0027278-2019 (Nov. 4, 2019). He remained on house arrest for over two years until he pled guilty on January 26, 2022. Open Guilty Plea, *Commonwealth v. Speaks*, CP-51-CR-0009019-2019 (Jan. 26, 2022); Short Certificate, *Commonwealth v. Speaks*, CP-51-CR-0009019-2019 (Jan. 26, 2022). He pled to a violation of the Uniform Firearms Act, a misdemeanor under Pennsylvania law. 18 Pa. C.S. § 6108. Having successfully completed pre-trial house arrest for more than two years, while maintaining employment as a home health aide working for Angels on Call from June 9, 2020, until February 20, 2022, he received a sentence of no further penalty. Mr. Speaks, who has no juvenile record, was not placed on probation or parole.

C. Mr. Speaks is charged with, and pleads guilty to, violating 18 U.S.C. § 922(g)(1)

On February 24, 2022, Mr. Speaks was again arrested with a handgun by the Philadelphia Police Department. He was charged federally on May 18, 2022.

Following the appointment of trial counsel, Mr. Speaks pled guilty to one count under 18 U.S.C. § 922(g)(1). During Mr. Speaks' sentencing, plea counsel argued that Mr. Speaks possessed a gun to protect himself and sought a downward departure. The sentencing court responded: "Well I understand that he's scared for what happened to him. That's not in controversy. There's no – we don't need any testimony. I accept that. Look, if somebody shot at me, I'd be pretty scared. The question is what do you do in response to that." Tr. 11/29/22, 25-26. Mr. Speaks was

sentenced to a term of forty months incarceration and three years supervised release. He is currently on supervised release.

Seven months after his plea, Mr. Speaks filed a pro se Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody Under 28 U.S.C. § 2255. He asserted that his conviction violated his Second Amendment rights and that his plea counsel was constitutionally ineffective for not pursuing a defense based on the Second Amendment. Following appointment of habeas counsel, the parties submitted additional briefing, wherein Mr. Speaks raised the questions: (1) whether he was entitled to collateral relief because plea counsel ineffectively failed to advise him that he had a Second Amendment defense to his one count of a violation of 18 U.S.C. § 922(g)(1); and (2) whether he had a Second Amendment defense to the violation above under *Bruen v. New York State Rife & Pistol Assoc.*, 597 U.S. 1 (2022), *United States v. Rahimi*, 61 F.4th 443 (5th Cir.), *cert. granted*, 143 S. Ct. 2688 (2023), *rev'd and remanded*, 602 U.S. 680 (2024), and *Range v. Att'y Gen. United States of Am.*, 69 F.4th 96 (3d Cir. 2023) (*Range I*). The Government stipulated that Mr. Speaks' Second Amendment defense claims could be determined on the merits. It waived any contention that Mr. Speaks had waived his Second and Fifth Amendment defenses to the § 922(g)(1) charge. Dist. Ct. ECF No. 51. After holding argument, the District Court denied Mr. Speaks' Petition, declined to issue a Certificate of Appealability (COA), Dist. Ct. ECF Nos. 64 & 65, and denied Mr. Speaks' Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e). Dist. Ct. ECF Nos. 73 & 74.

The district court reasoned that: "[w]e recognize Mr. Speaks may fear gunshots stemming in part from his experience as a victim of gun violence years ago but we decline to extend the Second Amendment right to generally authorize the arming of persons earlier convicted of gun crimes living in Philadelphia. Our Nation's historical traditions confirmed in Pennsylvania laws amply support the constitutionality of the federal law on its face and as applied to Mr. Speaks's sentence." *United States v. Speaks*, No. CR 22-154, 2024 WL 1333035, at *1 (E.D. Pa. Mar. 28, 2024). The district court analyzed "the distinct fact patterns in *United States v. Rahimi* [61 F.4th 443] and *Garland v. Range* [*Range I*]" to conclude that Mr. Speaks conduct was not constitutionally protected when "Mr. Speaks illegally obtained a gun to protect himself." *Id.* It considered that Mr. Speaks possessed a stolen gun and ran when the police attempted to apprehend him.

Notably, in Mr. Speaks' case, the District Court did not find that Mr. Speaks was actually dangerous. Instead, it explained: "[w]e rely instead on Mr. Speaks's underlying conviction which shows he cannot be trusted to follow firearms regulations." *Id.* at *10. The district court stated a "generalized fear of gun violence" in Philadelphia was not enough of a reason to carry a gun. [cite] Mr. Speaks did not have a generalized fear, he had a specific fear of gun violence after losing his best friend to a drive by shooting where he and his cousin were injured. He carries the bullet from the shooting to this day. Mr. Speaks' sentencing judge credited Mr. Speaks' fear of being shot. Mr. Speaks' self-defense interest coupled with the lack of violence in his underlying offense, his successful completion of the state court

sentence, and lack of criminal history outside of the one underlying offense all speak to his lack of dangerousness.

Mr. Speaks timely appealed the district court's decision to the United States Court of Appeals for the Third Circuit where he sought a COA. The court of appeals denied Mr. Speaks' request for a COA on November 4, 2024, summarily denying Mr. Speaks' request for a COA without analysis specific to the case. App. 3.[1]

Mr. Speaks filed a Petition for Panel Rehearing on February 5, 2025, which the court denied on February 20, 2025. App. 4.

Mr. Speaks was granted a 30-day extension to submit his Petition for Writ of Certiorari, now due June 20, 2025.

REASONS FOR GRANTING THE PETITION

I. Section 922(g)(1) is unconstitutional as applied to a non-violent individual with a self-defense interest like Mr. Speaks.

This Court and a number of circuit courts have analyzed dangerousness when adjudicating as-applied challenges to section 922(g)(1) referencing historical tradition and recent developments in case law. *Bruen* and *United States v. Rahimi*,

[1] In its order, the Third Circuit stated:

"Dajavan Speaks, through counsel, seeks review of a decision by the District Court denying his motion for postconviction relief under 28 U.S.C. § 2255. Speaks needs a certificate of appealability (COA) to proceed. A COA will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). That standard is satisfied by a showing that "jurists of reason could disagree with the district court's resolution of [the § 2255 movant's] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Buck v. Davis*, 580 U.S. 100, 115 (2017) (citation omitted). Because Speaks fails to satisfy that standard, his COA request is denied." *United States v. Speaks*, No. 24-1968, 2024 WL 4823879 (3d Cir. Nov. 4, 2024). Exh. 3.

602 U.S. 680 (2024), both follow this approach to as-applied analysis, and changed the formula for § 922(g)(1) challenges set out in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, this Court held that a total ban on handgun possession in the home and the prohibition against keeping an operable, lawful firearm for the purpose of immediate self-defense violated the Second Amendment. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010) a plurality of this Court concluded that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and that handgun ownership was protected as the primary means of protecting oneself and one's property. *Bruen v. New York State Rifle & Pistol Assoc.*, 597 U.S. 1 (2022), led to a sea-change in § 922(g)(1) jurisprudence. In *Bruen*, the Court held that "New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." *Id.* at 71. Consistent with these cases, it follows that the Second Amendment protects an individual's right to carry a handgun for self-defense outside the home. *Heller* and *Bruen* state that possessing a gun is not an inherently dangerous activity. Mr. Speaks' underlying offense is Violation of Uniformed Firearm Act for possessing a firearm without a license. The Second Amendment provides individuals the right to possess a firearm within limits, and Mr. Speaks was merely possessing a gun—not using it at all, much less using it in furtherance of a dangerous, criminal, or prohibited activity.

Dangerousness, violence, and the permanence of the punishment were historical considerations for gun regulation, not just banning certain groups of

people from access to weapons as some circuit courts suggest. The time periods regularly examined to understand the historical underpinnings of modern firearm regulation jurisprudence are: the English Common law predating the nation's founding, the nation's founding through the acceptance of the Bill of Rights in 1791, and the period around the Fourteenth Amendment's adoption in 1868, when the rights of citizenship were extended to include a broader swath of Americans. Importantly, "[t]he Founding generation *had no laws* limiting gun possession by . . . people convicted of crimes," Adam Winkler, *Heller's Catch-22*, 56 UCLA Law Rev. 1551, 1563 (2009). And, at the time of the nation's founding, our jurisprudence was moving away from the English Common Law practice of using the death penalty as punishment for felonies. *Range v. AG United States*, 124 F.4th 218 (3d Cir. 2024) (*Range II*). *See also United States v. Moore*, 111 F.4th 266, 270–72 (3d Cir. 2024) (citing various Founding-era felony laws and penalties). In a historical analysis of our early jurisprudence, death is analogized to a lifetime ban, being a permanent punishment. "Bans on convicts possessing firearms were unknown [in the United States] before World War I," *United States v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013) (quoting C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*?, 32 Harv. J.L. & Pub. Pol'y 695, 698, 708 (2009)). *United States v. Duarte*, 101 F.4th 657, 677 (9th Cir. 2024). Crimes like "forgery and counterfeiting were punishable with imprisonment, hard labor, fines, or corporal punishment, but *not* death," in Massachusetts, New Jersey, Kentucky, Virginia, Connecticut, and New York but

not with permanent punishments like lifetime bans or death. *(Range II, 124 F.4th at 227 emphasis in original),* (collecting laws).[2]

The historical tradition of disarming individuals while on supervised release through forfeiture laws provides additional context for the historical approach to an analysis of dangerousness. These laws applied while the accused person was serving their sentence and was presumed to present a danger to the community. Forfeiture laws temporarily disarmed people only while they completed their sentences.

> "For example, a 1790 Pennsylvania statute provided that 'every person convicted of robbery, burglary, sodomy or buggery . . . shall forfeit to the commonwealth all . . . goods and chattels whereof he or she was . . . possessed at the time the crime was committed . . . and be sentenced to undergo a servitude of any term . . . not exceeding ten years.' Act of Apr. 5, 1790, 13 *Statutes at Large of Pennsylvania*, at 511, 511-12 (James T. Mitchell & Henry Flanders eds., 1896)."

Moore, 111 F.4th at 269 (internal citations included). The Pennsylvania forfeiture laws paralleled historical analogues from Massachusetts to Virginia. *Id.* Dangerousness was not a fixed state, and the historical consideration of dangerousness and violence support the principle of as-applied challenges.

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[2] Laws and sources of laws discussed in *Range II*, 124 F.4th at 227, include: "James T. Mitchell *et al.*, Compiled Statutes at Large of Pennsylvania from 1682 to 1801 (1700-1809); An Act to Prevent Forgery, And For the Punishment of Those Who Are Guilty of the Same. 1784 Mass. Acts Ch. 67; Virginia, Collection of All Such Acts of the General Assembly of Virginia, of a Public or Permanent Nature, as are Now in Force (1803); Harry Toulmin, Collection of All the Public and Permanent Acts of the General Assembly of Kentucky Which Are Now in Force (1802); Acts and Laws of the State of Connecticut (1784); William Paterson, Laws of the State of New Jersey (1800); Thomas Greenleaf, Laws of the State of New York, Comprising the Constitution, and the Acts of the Legislature, since the Revolution, from the First to the Fifteenth Session (1797)."

The Third, Fifth, Sixth, and Seventh Circuits have analyzed dangerousness in as-applied challenges, and the First Circuit has alluded to future litigation on this question. The Third Circuit explained in *Range II* that the original version of § 922(g)(1) was more narrowly tailored to include a dangerousness analysis and a list of qualifying offenses:

> since 1961 "federal law has generally prohibited individuals convicted of crimes punishable by more than one year of imprisonment from possessing firearms." Gov't En Banc Br. at 1; *see* An Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961). But the earliest version of that statute, the Federal Firearms Act of 1938, applied only to *violent* criminals. Pub. L. No. 75-785, §§ 1(6), 2(f), 52 Stat. 1250, 1250-51 (1938). As the First Circuit explained: "the current federal felony firearm ban differs considerably from the [original] version .... [T]he law initially covered those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary, but extended to both felons and misdemeanants convicted of qualifying offenses." *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011).

Range II, 124 F.4th at 229 (citations and emphasis in original). The Fifth, Sixth, and Seventh Circuits all consider dangerousness when considering as-applied challenges to the statute. *See United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The First Circuit, in *United States v. Torres-Rosario*, 658 F.3d 110 (1st Cir. 2011), suggested that "the Supreme Court may be open to claims that some felonies do not indicate potential violence and cannot be the basis for applying a categorical ban." *Id.* at 113. It briefly considered the further possibility that this Court "might even be open to highly fact-specific objections." *Id.* Possession of a gun, with no indication of its use for a dangerous

purpose, aligns more closely to the crimes for which there were time-limited punishments. Mere possession does not fall under the scope of the clearly articulated violent and dangerous uses in historical gun regulation discussed above.

The United States government's permanent and categorical approach to disarming of a non-violent felon who has an interest in self-defense is not consistent with the historical principle that legislatures may disarm a person who poses a danger to the physical safety of others. *See Rahimi*, 602 U.S. at 693 ("From the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others."); *Range II*, 124 F.4th at 232 (concluding § 922(g)(1) was unconstitutional as applied when "the record contains no evidence that Range poses a physical danger to others"); *see also United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) (recognizing legislatures may prevent "dangerous people from possessing guns") (quoting *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting)). Our Constitution does not support a generalized notion of dangerousness being used to permanently disarm the nation's citizens. As stated in *Range II*, "Even if [a] categorical argument could suffice to uphold the original 1938 felon-in-possession ban, it does not support the current one. Again, it is 'far too broad[ ].' *Bruen*, 597 U.S. at 31. It operates 'at such a high level of generality that it waters down the right.' *Rahimi*, 144 S. Ct. at 1926 (Barrett, J., concurring)." *Range II*, 124 F.4th at 230. Mr. Speaks does not fit into the historical tradition of disarming dangerous people as he is not demonstrably dangerous and he was carrying a gun when he had a legitimate

interest in his own self-defense. A generalized notion of dangerousness should not prevent his challenge to § 922(g)(1).

II. The Circuits are split between those that apply a categorical ban on Second Amendment challenges and those that allow fact specific challenges.

After this Court's decision in *Heller*, every circuit that addressed § 922(g)(1)'s facial constitutionality categorically upheld it. *Medina v. Whitaker*, 913 F.3d 152, 155 (D.C. Cir. 2019) (collecting cases). But after *Bruen* and *Rahimi*, the legal landscape has changed.

Dajavan Speaks' § 922(g)(1) as-applied challenge represents a narrowly tailored opportunity to clarify the question of whether a non-violent offender who has completed serving his sentence can avail himself of Second Amendment protections. The question of whether to consider as-applied challenges to § 922(g)(1), emerges across the Circuits and with multiple approaches.

The Third, Fifth, Sixth and Seventh Circuits have recognized that as-applied challenges to § 922(g)(1) are available in some instances. *Range II*, *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); and *United States v. Gay*, 98 F.4th 843 (7th Cir. 2024). These decisions are consistent with *Bruen*, arising from the Second Circuit, which allows law-abiding citizens to carry handguns outside the home. The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have upheld § 922(g)(1) as constitutional without permitting as-applied challenges or "felony by felony" litigation. *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125

(8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 762 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); and *United States v. Dubois*, No. 22-10829, 2025 WL 1553843, at *1 (11th Cir. June 2, 2025). The First and Second Circuit have not yet decided the issue post-*Bruen* and *Rahimi*, and instead denied challenges to § 922(g)(1) using plain error review. They are not a part of the current circuit split. *United States v. Langston*, 110 F.4th 408, 419 (1st Cir.), *cert. denied*, 145 S. Ct. 581 (2024); and *United States v. Meadows*, No. 22-3155-CR, 2025 WL 786380, at *2 (2d Cir. Mar. 12, 2025).[3]

The uncertainty in the lower courts can be clarified here with a determination that historical precedent supports allowing as-applied challenges to § 922(g)(1) rather than permanent disarmament for non-violent offenders.

A. The Third, Fifth, Sixth, and Seventh Circuits allow as-applied challenges to § 922(g)(1).

Four courts of appeals have permitted as-applied challenges to § 922(g)(1). Decisions of those courts are set forth below. Of additional interest, the facts those

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[3] The First Circuit recently examined the constitutionality of §922(g)(1) in *United States v. Langston*, 110 F.4th 408, 419 (1st Cir.), *cert. denied*, 145 S. Ct. 581 (2024), where it declined to examine facial or as-applied challenges to the statute. Instead, it stopped at plain error review of § 922(g)(1) and said competing jurisprudence meant no plain error existed. *Id.* at 419.

Similarly, the Second Circuit held that § 922(g)(1) does not violate the Second Amendment as applied to the defendant under the plain error standard. It did not reach the constitutionality of as-applied challenges to the statute. *United States v. Meadows*, No. 22-3155-CR, 2025 WL 786380, at *2 (2d Cir. Mar. 12, 2025). Importantly, the court noted that neither it nor this Court has reached this issue, and that there is disagreement between the Circuits: "other circuits have reached varying results, though most have upheld § 922(g)(1) against constitutional challenges." *Id.*

cases actually support relief – or at a minimum, grant of COA – for Mr. Speaks. One defendant – like Mr. Speaks – had a non-violent prior conviction and obtained relief. In the other cases the defendants' conduct is much more violent than that of Mr. Speaks who is more deserving of relief.

The Third Circuit, sitting en banc, struck down § 922(g)(1) as applied to an individual convicted of food stamp fraud who did not "pose[ ] a physical danger to others." *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024). The court held that the plaintiff was part of "the people" protected by the Second Amendment despite his prior conviction. *Id.* at 226–28. And the court held that the government failed to show "a longstanding history and tradition of depriving people like [the plaintiff] of their firearms." *Id.* at 232. In doing so, the court rejected the government's reliance on status-based restrictions, emphasizing that founding-era laws disarmed distrusted groups—like loyalists, Native Americans, religious minorities, and Black Americans—based on fear of rebellion. *Id.* at 229–30. The court also dismissed the government's dangerousness argument, "cover[ing] all felonies and even misdemeanors that federal law equates with felonies" (which would encompass even non-violent offenders), *Id.* at 230, as "far too broad." *Id.* (citing *Bruen*, 597 U.S. at 31). When analyzing Mr. Speaks' § 922(g)(1) challenge through the lens of *Range*, the Third Circuit's as-applied approach should have also been used in Mr. Speaks' case. He is one of the non-violent offenders who had completed his sentence, was not demonstrably dangerous, and had a self-defense interest that should be protected by the Second Amendment.

After the Third Circuit held in *Range II* that a categorical ban on possessing weapons per § 922(g)(1) was unconstitutional, it examined as-applied challenges to § 922(g)(1) in *Pitsilides v. Barr*, 128 F.4th 203, 205 (3d Cir. 2025). There, it concluded, under the principles articulated in *Bruen*, *Rahimi*, and *Range II*, that the existing record was insufficient to determine whether § 922(g)(1) was unconstitutional as applied to Mr. Pitsilides. The court explained that an individualized factual finding was necessary to assess whether Mr. Pitsilides posed a special danger of misusing firearms in a way that would endanger others. Such a determination would require considering his entire criminal history, his post-conviction conduct and his predicate offenses.

The Fifth Circuit's decision in *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024) permitted an as-applied challenge to § 922(g)(1) and found that applying the felon-in-possession ban to Mr. Diaz was consistent with this nation's historical tradition of firearm regulation. Specifically, it felt Mr. Diaz's history of car theft supported its decision to affirm his conviction, just as horse theft resulted in the death penalty at the time of the nation's founding. *Id.* at 468. Ronnie Diaz Jr. had a history of drug dealing, vehicle theft, and various misdemeanors distinguishing him from Mr. Speaks, and Diaz's misconduct fit within the historical tradition of permanent punishment for a crime of the nature he had committed. Mr. Speaks' conduct does not fit within that context.

The Sixth Circuit has determined that defendants can make an "individualized showing" about their dangerousness, allowing as-applied challenges

to § 922(g)(1) by individuals who show that they are "not dangerous." *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). In its analysis, the Sixth Circuit confirmed that felons are included in "the people" protected by the Second Amendment. *Id.* at 648–50. The court examined the historical support for disarming "presumptively dangerous" groups who posed a "threat" to public order. It explained that those laws all allowed individuals to show that they posed no danger. *Id.* at 657. Ultimately, the court held that individuals must be allowed to demonstrate that they "fall outside of § 922(g)(1)'s constitutionally permissible scope", *Id.*, and that courts can "consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction." *Id.* at 659–60. In the Sixth Circuit case, Mr. Williams had underlying offenses or aggravated robberies. *Id.* at 662. Mr. Speaks' record is readily distinguishable from that of Mr. Williams him and Mr. Speaks could raise a successful as-applied challenge to § 922(g)(1).

The Seventh Circuit has assumed that as-applied challenges to § 922(g)(1) are available. *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024). But the court concluded that the defendant in *Gay*—who had convictions for violent felonies and was on parole when he possessed a gun—was "not a 'law-abiding, responsible' person who has a constitutional right to possess firearms." *Id.* at 847 (quoting *Bruen*, 597 U.S. at 26, 70). This case is distinguished from Mr. Speaks who had fully served his sentence at the time of his arrest for his case and has no violent felony convictions. An as-applied challenge would be available to him in the Seventh Circuit.

In each circuit that allows an as-applied challenge, Mr. Speaks' case specific facts either parallel a successful 922(g)(1) challenge or are distinguished from an unsuccessful one. In the Third, Fifth, Sixth, and Seventh Circuits Mr. Speaks' case fits within the parameters of reasonable 922(g)(1) challenges.

B. The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have categorically upheld § 922(g)(1), rejecting all as-applied challenges.

A number of circuit courts of appeals have ruled that § 922(g)(1) charges may not be challenged on an as-applied basis. The Fourth Circuit is in that group. It has upheld § 922(g)(1) "without regard to the specific conviction that established [a person's] inability to lawfully possess firearms." *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024). In *Hunt*, the court held that 922(g)(1) survives Second Amendment scrutiny because it regulates conduct outside the scope of the historical right, and falls within the historical tradition of disarming "potentially violent or dangerous" categories of people. *Id.* at 707.

Similar to the Fourth Circuit, the Eighth Circuit determined there is "no need for felony-by-felony litigation," to determine the constitutionality of § 922(g)(1). *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), Given the historical laws disarming groups, including Native Americans, religious minorities, and unloyal/potentially treasonous individuals, the court reasoned that legislatures have long exercised authority to disarm broad categories of people who are "not law-abiding" or "presented an unacceptable risk of danger if armed." *Id.* at 1126–28. The court explained that "not all persons disarmed under historical precedents … were

violent or dangerous," so "there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* at 1128. Mr. Jackson had convictions for drug selling and was on parole at the time of his arrest, but the 8th Circuit determined that fact specific analysis was unnecessary. The Circuit rejected the defense argument that§ 922(g)(1) should not apply to Mr. Jackson because his prior drug offenses were non-violent and he was no more dangerous than the typical law-abiding citizen. The court held that § 922(g)(1) applied to him as his prosecution would not conflict with the "Nation's historical tradition of firearm regulation." *Id.* at 1126.

Though the Ninth Circuit originally held that § 922(g)(1) is unconstitutional categorically applied to a defendant with only non-violent convictions,[4] upon re-argument it held that "§ 922(g)(1) is constitutional as applied to Duarte and other non-violent felons." *United States v. Duarte*, 137 F.4th 743, 762 (9th Cir. 2025). The Circuit decided it "agree[ed] with the Fourth and Eighth Circuits that either historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons." *Id.* at 761 (citing to *Jackson* and *Hunt* discussed *supra*). The Circuit looked to historical traditions around the times of adoption of the Second and Fourteenth Amendments (1791 and 1868). Two guiding historical principles the Circuit explored were: "(1) legislatures may disarm those who have committed the most serious crimes; and (2) legislatures may categorically disarm those they deem

[4] *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir. 2024), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024).

dangerous, without an individualized determination of dangerousness." *Duarte*, 137 F.4th at 755.

The Tenth Circuit held that § 922(g)(1) is universally applicable to convicted felons with no need to "draw[ ] constitutional distinctions based on the type of felony involved." *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025). Like the Fourth and Eighth Circuits, the court held that it remained bound by pre-*Bruen* precedent. *Id.* at 3–6. It held that the pre-*Bruen* precedent prevented as-applied challenges to § 922(g)(1) based on *Heller*'s conclusion that there are "longstanding" and "presumptively lawful" prohibitions on the possession of firearms by felons. *Id.* at 3–4.

On remand to consider whether *Rahimi* impacted its determination that that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment," *United States v. Dubois*, 94 F.4th 1284, 1292 (11th Cir. 2024), the Eleventh Circuit reinstated its previous opinion and affirmed its judgment. *United States v. Dubois*, No. 22-10829, 2025 WL 1553843, at *1 (11th Cir. June 2, 2025). Mr. Dubois was attempting to smuggle guns out of the country via a local shipping service. He had multiple prior drug and fraud convictions and was on supervision at the time of the offense. After *Heller*, the Eleventh Circuit decided *United States v. Rozier*, 598 F.3d 768, 770–71 (11th Cir. 2010), upholding bans against anyone with a felony conviction possessing a firearm. The question in *Dubois II* was whether *Rahimi* abrogated *Rozier*. Rather than conducting an historical analysis, the opinion focused on *Heller* and *McDonald*'s

presumption that the felon-in-possession ban is presumptively lawful. The circuit court held:

> *Bruen* did not abrogate *Rozier*. Because the Supreme Court "made it clear in *Heller* that [its] holding did not cast doubt" on felon-in-possession prohibitions, *McDonald*, 561 U.S. at 786, 130 S.Ct. 3020 (plurality opinion), and because the Court made it clear in *Bruen* that its holding was "[i]n keeping with *Heller*," 142 S. Ct. at 2126, *Bruen* could not have clearly abrogated our precedent upholding section 922(g)(1).

United States v. Dubois, No. 22-10829, 2025 WL 1553843, at *5 (11th Cir. June 2, 2025).

III. The Court should grant certiorari because this Petition raises an important and recurring issue.

Not only has § 922(g)(1) litigation split the Circuits, but, perhaps because of the split, Second Amendment litigation has grown exponentially. As of June 9, 2025, 4,119 decisions have cited *Bruen* and 1,037 decisions have cited *Rahimi*. Add to that, a large volume of people are impacted by the Second Amendment's interaction with § 922(g)(1) since § 922(g)(1) applies to both felonies and misdemeanors with longer sentences. 19 million people in the United States have felony convictions and at least 79 million have a criminal record. Shannon, S.K.S., Uggen, C., Schnittker, J. *et al. The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*, *Demography* Vol. 54, 1795–1818 (Sept. 11, 2017), https://doi.org/10.1007/s13524-017-0611-1; FWD.us, *Every Second: The Impact of the Incarceration Crisis on America's Families*, (December 2018) (report),

https://everysecond.fwd.us/downloads/everysecond.fwd.us.pdf. Over 10% of all federal criminal cases have involve § 922(g)(1) convictions. *See* U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses*, at 1 (June 2024). The issue of applying Second Amendment rights arises often and the impact on citizens' rights is far reaching. With the explosion of cases exploring this issue, guidance from this Court will answer critical questions.

IV. A Certificate Of Appealability should be issued.

A certificate of appealability should be issued regarding the denial of Mr. Speaks Second Amendment rights on account of his § 922(g)(1) conviction. Jurists of reason could disagree with the District Court's resolution of his constitutional claims.

To obtain a COA, a petitioner must "demonstrat[e] that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Banks v. Dretk*e, 540 U.S. 668 (2004) (holding reasonable jurists could disagree with the Fifth Circuit's handling of a Rule 15(b) issue regarding the state's exhaustion and procedural default defenses). Importantly, a COA requires only "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). That showing is satisfied when "jurists of reason could disagree with the district court's resolution of [any] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Slack v. McDaniel*, 529 U.S.

473, 484 (2000). The standard is not burdensome: "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El,* 537 U.S. at 338.

By granting the writ in Mr. Speaks' case, this Court can determine the scope of as-applied challenges to §922(g)(1) when a non-violent defendant has a valid self-defense interest, successfully served his sentence, had no orders of protection nor was subject to supervision, had a bona fide self-defense interest, had no juvenile record or drug convictions, and had a demonstrable lack of dangerousness. The District Court and Third Circuit erred in determining that reasonable jurists could not debate the resolution of Mr. Speaks' constitutional claims. Neither court provided an explanation as to why Mr. Speaks failed to meet the standard for a COA. Currently, in the Sixth, Seventh, and Ninth Circuits – and even in the Third Circuit – Mr. Speaks' self-defense interest and lack of dangerousness would have provided grounds for the issuance of a COA.

Mr. Speaks—a young father who had no juvenile record, had a unique self-defense interest, and had completed his sentence for his one office, a non-violent offense, while maintaining gainful employment. He was not subject to supervision at the time of arrest. Reasonable jurists would disagree on whether a COA should have been issued, and the public perception of fairness and integrity in the justice system will be w strengthened by the issuance of a COA.

The conclusion that reasonable minds would differ as to the merits of Mr. Speaks' Second Amendment argument is supported by the various district courts that have issued decisions holding that § 922(g)(1) is unconstitutional. The following district court opinions have held that § 922(g)(1) is unconstitutional, employing as-applied analyses. Appeals are pending in these cases or the time to appeal has yet to run. *United States v. Savell*, No. 24-CR-201, 2025 WL 1173434 (W.D. Tex April 11, 2025) (predicate was unlawful use of a communication facility); *United States v. Gomez*, No. 24-CR-073, 2025 WL 971337 (N.D. Tex. March 25, 2025) (felony marijuana conviction); *United States v. Luna*, No. 23-CR-518 (S.D. Tex. Feb. 10, 2025) (predicate: possession of controlled substances); *United States v. Ragans*, 24-cr-40014, 2025 WL 88963 (S.D. Ill. Jan. 14, 2025) (defendant's record included felony convictions for aggravated battery and unlawful restraint); *United States v. Brown*, No. 24-cr-30017, 2024 WL 4665527 (S.D. Ill. Nov. 4, 2024) (predicate convictions were burglary, domestic battery); *United States v. Neal*, No. CR 335, 2024 WL 833607 (N.D. Ill. Feb. 7, 2024); United States v. Taylor, 23-cr-40001, 2024 WL 235557 (S.D. Ill. Jan. 1, 2024) (defendant's record included conspiracy to manufacture methamphetamine); *United States v. Griffin*, No. 21-cr-00693, 2023 WL 8281564 (N.D. Ill. Nov. 30, 2023) (prior convictions include robbery and possession of a controlled substance); *United States v. Salme-Negrete*, No. 22 CR 637, 2023 WL 7325888 (N.D. Ill. Nov. 7, 2023) (defendant's record includes robbery and aggravated battery). Mr. Speaks' underlying charge and conduct does not approach the violence inherent in the convictions of most of the foregoing

defendants. At a minimum, reasonable jurists would differ as to whether the § 922(g)(1) charge against Mr. Speaks violated his Second Amendment rights.

Reasonable jurists would be able to find that § 922(g)(1) is unconstitutional as applied to Mr. Speaks. Not only are the circuits split as to the constitutionality of as-applied challenges to § 922(g)(1), but Mr. Speaks' case is distinguishable from the cases where circuit courts have held that § 922(g)(1) is constitutional as applied to a defendant. A certificate of appealability should be issued here. Jurists could reasonably conclude that § 922(g)(1) unconstitutionally denies Mr. Speaks his Second Amendment rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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