No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY STEVENS,
PETITIONER,

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

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

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QUESTIONS PRESENTED

Section 922(g)(1) of Title 18 of the United States Code makes it a crime for a person convicted of a felony to possess a firearm at any time thereafter. Petitioner challenged the statute's constitutionality on the ground that lifetime disarmament based on his legal status as a "felon" unlawfully abridges the Second Amendment right to keep and bear arms. The court of appeals rejected his challenge without resolving the constitutionality of the status offense. It relied instead on the view that the Second Amendment affords no protection to persons, like petitioner, who were on parole at the time of allegedly possessing a gun. The questions presented are:

1. Whether a court may bypass a Second Amendment challenge to the felon-status offense at 18 U.S.C. § 922(g)(1) when the defendant could have been charged with possessing a gun while on parole, were such a prohibition to be enacted.

2. Whether § 922(g)(1), on its face, unconstitutionally abridges the Second Amendment right to keep and bear arms.

3. Whether, if not facially unconstitutional, § 922(g)(1) violates the Second Amendment as applied to persons convicted of felonies not punishable by death.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

> *United States v. Gregory Stevens*, Third Circuit No. 24-1217, judgment entered Feb. 28, 2025.
>
> *United States v. Gregory Stevens*, E.D. Pa. No. 2:21-cr-00107-MSG, judgment entered Feb. 5, 2024.

There are no other proceedings directly related to this case under Rule 14.1(b)(iii).

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IN THE SUPREME COURT OF THE UNITED STATES

GREGORY STEVENS,
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v.

UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI

Petitioner Gregory Stevens respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on February 28, 2025.

OPINIONS BELOW

The opinion of the court of appeals, along with a dissenting opinion, is unpublished but available at 2025 WL 651456 and reproduced at Appendix ("Pet. App.") A, 1a–10a. The district court's order denying petitioner's motion to dismiss on Second Amendment grounds is at Pet. App. B, 11a–16a. The judgment is at Pet. App. C, 17a–23a.

JURISDICTION

The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a)(1). That court issued its opinion and entered judgment on February 28, 2025. This petition is timely filed pursuant to Rule 13.1 and the granting of petitioner's application for an extension of time, docketed at No. 24A1126. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution states:

> 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 of Title 18 of the United States Code provides:

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

STATEMENT

Petitioner Gregory Stevens was charged with possessing ammunition after conviction of a felony, in violation of 18 U.S.C. § 922(g)(1), and additional federal offenses. He moved to dismiss the § 922(g)(1) charge on the ground that its lifelong revocation of his right to keep and bear arms violates the Second Amendment. The district court denied the motion and thereafter sentenced petitioner to more than 30 years of imprisonment. The Third Circuit affirmed.

1. In February 2021, a man entered a neighborhood pharmacy in Philadelphia and demanded oxycodone at gunpoint. Staffing the counter was the pharmacy's owner, who began filling a bag with drugs and looking for oxycodone. Impatient, the robber threatened to shoot unless the man hurried up, but instead the robber soon grabbed the bag, put the gun in his pocket, and bent down to look in a safe for drugs. Moments later the owner gripped the robber in a bear hug and took him to the ground. As the robber was getting back up, he shot the owner in the chest and then fled the store. The owner survived. Pet. App. 2a.

Petitioner was subsequently arrested and charged in a two-count indictment with Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), and discharging a firearm in a crime of violence, in violation of § 924(c)(1)(A)(iii). More than 18 months later, a superseding indictment added a count charging him with possessing ammunition after conviction of a felony, in violation of § 922(g)(1), based on a loaded firearm magazine recovered at the scene of the robbery. By criminalizing simple possession of guns or ammunition, conduct which, of course, "can be entirely innocent," *Rehaif v. United States*, 588 U.S. 225, 232 (2019), the statute makes "the defendant's status … the crucial element separating innocent from wrongful conduct," *id.* at 233 (internal quotation marks omitted).

The following month, petitioner pleaded guilty to the superseding indictment, but some months after that he moved to withdraw his plea to the § 922(g)(1) count and for the count's dismissal based on an intervening Third Circuit decision holding the statute to violate the Second Amendment as applied to the plaintiff in that case.[1] Mr. Stevens challenged § 922(g)(1)'s constitutionality not only as to himself but also on its face, arguing that the statute, as "a modern innovation with no pre-twentieth-century analogue," runs "afoul of the Second Amendment when applied to anyone, regardless of their criminal history." C.A. App. 52 (citing *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022)).

The district court found the statute constitutional as applied to Mr. Stevens based on a state robbery conviction he sustained in 2014 at the age of 20. In support, the court observed that in "colonial times," robbery "was considered such a threat to an ordered society" that it was "punishable by death in at least one state." C.A. App. 12 (citing 1812 New Hampshire enactment). The court in turn rejected petitioner's facial challenge based on its conclusion that

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[1] *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (en banc), *cert. granted, vacated and remanded sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024), *on remand at* 124 F.4th 218 (3d Cir. 2024) (en banc).

the statute may be constitutionally applied in at least some instances. *Id*. at 14. Finding no "legal basis" for permitting withdrawal of the guilty plea, the district court denied petitioner's motions.

At sentencing, the principal dispute between the parties concerned the effect of the § 922(g)(1) count on the sentencing guidelines range. Had Stevens not been charged with the status offense, the guidelines would have advised a period of imprisonment within the range of 204 to 225 months for the conduct underlying his conviction on the first two counts. But based on his additional conviction under § 922(g)(1), the government contended for a guidelines range of 355 to 413 months. This impact owed to a so-called "cross-reference" in the sentencing guideline for firearm offenses. *See* U.S.S.G. § 2K2.1(c)(1). The provision directs that should the district court find the defendant to have used the charged ammunition or gun to attempt to commit first degree murder, the applicable sentencing range is the one for that offense if it is greater than the range for the offenses actually charged. *See* U.S.S.G. § 2A2.1(a)(1) *and id*. § 2X1.1(c)(1).

The government called the pharmacy's owner to testify at sentencing in connection with the disputed cross-reference. He recounted the events described above, recalling the gun having fired "in the blink of [an] eye" as both men scrambled back to their feet following the tackle. C.A. App. 153; *see id*. at 172-173, 176. Notwithstanding first degree murder's essential element of premeditation, the district court found an attempt to commit that crime and proceeded to fix sentence at the very top of its elevated sentencing range, imposing a total of 413 months (34½ years) of imprisonment.

2. On appeal, petitioner renewed his Second Amendment challenges. The Third Circuit affirmed the district court's denial of his motion to dismiss, albeit on a different ground. Relying on its decision the preceding month in *United States v. Quailes*, 126 F.4th 215 (3d Cir. 2025), the court held the statute constitutional as applied to Mr. Stevens based on his service of a term of parole at the time of possessing ammunition. Pet. App. 6a. *Quailes* extended the circuit's earlier decision in *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), which denied a Second Amendment challenge raised by a defendant on federal supervised release. On the analysis set

out in *Moore* and *Quailes*, § 922(g)(1)'s lifetime bar, as applied to persons subject to criminal justice supervision, is consistent with the combined effect of, first, founding-era laws providing for forfeiture of a person's entire estate (including any arms) upon conviction of a felony, and second, a tradition of disarming "convicts" serving custodial sentences in prison or elsewhere. *Quailes*, 126 F.4th at 221 & n.7; *Moore*, 111 F.4th at 269-271. The court of appeals also denied a separate challenge Mr. Stevens raised to application of the sentencing range for attempted first degree murder.[2] This timely petition follows.

REASONS FOR GRANTING THE PETITION

Petitioner Gregory Stevens moved to dismiss a 'felon in possession' gun charge under 18 U.S.C. § 922(g)(1) on the ground that the statute unlawfully abridges Second Amendment rights. The court of appeals denied the motion, but not because it found disarmament based on felon status to pass constitutional muster. Rather, the Third Circuit held that Mr. Stevens could constitutionally be disarmed based on a fact—his unexpired term of parole—other than the legal status which actually makes him a prohibited person under § 922(g)(1). In doing so the court followed its recent decisions in *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), and *United States v. Quailes*, 126 F.4th 215 (3d Cir. 2025).

As has been reviewed before this Court by the petitioners in *Moore* and *Quailes*,[3] this approach was improper. To determine whether a statute is facially constitutional, courts must consider the "actual applications of the statute." *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015). Here, in upholding the § 922(g)(1) ban based on a fact inessential to the offense, the court of appeals failed to resolve whether petitioner can constitutionally be convicted of the

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[2] Mr. Stevens argued that the district court had not found and the evidence did not show the "necessary time element" of first degree murder, *Fisher v. United States*, 328 U.S. 463, 470 (1946), *i.e.*, premeditation. The panel majority construed the record to indicate an implicit finding that survived review for clear error. Pet. App. 5a. Judge Ambro dissented, discerning no such implicit finding, and would have remanded for resentencing. *See* Pet. App. 7a–10a.

[3] Case Nos. 24-968 and 24-7033 respectively.

crime with which he was actually charged. Because this question remains unanswered, the matter must, at a minimum, be remanded for the Third Circuit to entertain the constitutional challenge properly before it.

That said, nothing should stop this Court from taking up § 922(g)(1)'s facial constitutionality itself. Doing so would advance the project of pruning the statute books of laws far afield from the Nation's historical tradition of firearm regulation. It would also offer opportunity to affirm that once a person has repaid his debt to society for a criminal offense, the right to keep and bear arms is among those "fundamental rights" to which he is restored. *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). Alternatively, the Court may wish to grant certiorari in this case, or hold this case pending decision in another, to settle confusion and disagreement among the circuits concerning what aspects of a defendant's criminal record or broader history properly inform assessment of § 922(g)(1)'s constitutionality as applied.

A. Section 922(g)(1) is unconstitutional on its face because lifetime disarmament based on felon status is without historical antecedent.

As has also been reviewed in other petitions before the Court this Term,[4] § 922(g)(1) is facially unconstitutional because the lifetime bar it places upon all persons convicted of a felony is not "consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022).

Like all Americans, petitioner is among "the people" whose "right to keep and bear Arms" is vouchsafed by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). Since § 922(g)(1) prohibits any possession of a gun or ammunition, the statute regulates conduct within the scope of the constitutional text. It is therefore incumbent on the government to demonstrate the requisite fit with historical tradition by identifying analogous founding-era regulations showing that lifetime disarmament based on felon status is consistent

[4] *See*, *e.g.*, *Toney v. United States*, No. 24-7253 (cert. denied June 23, 2025); *Diaz v. United States*, No. 24-6625 (cert. denied June 23, 2025); *French v. United States*, No. 24-6623 (cert. denied May 19, 2025).

with the principles underlying the Second Amendment. In judging contemporary statutes, courts must consider both "why and how the regulation burdens the right," as even a law that "regulates arms-bearing for a permissible reason … may not be compatible with the right if it does so to an extent beyond what was done at the founding." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). The ultimate question is whether § 922(g)(1) imposes "a comparable burden on the right of armed self-defense" that is "comparably justified." *Bruen*, 597 U.S. at 29.

It does not. While it may be that people "considered dangerous lost their arms" in the decades surrounding ratification of the Second Amendment, "being a criminal had little to do with it." *United States v. Jackson*, 85 F.4th 468, 472 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing en banc). Rather, in the founding era "most punishments were temporary," and "once wrongdoers had paid their debts to society, the colonists forgave them and welcomed them back into the fold." *Folajtar v. Attorney General*, 980 F.3d 897, 912, 923 (3d Cir. 2020) (Bibas, J., dissenting). So-called "felons" were then restored to full enjoyment of at least their natural rights, if not every privilege and immunity of citizenship. *See id*. at 924 ("Though [the plaintiff's] tax-fraud conviction affects some of her privileges, it does not change her right to keep and bear arms."). So "a felon could acquire arms after completing his sentence and reintegrating into society." *Range v. Attorney General*, 124 F.4th 218, 231 (3d Cir. 2024) (en banc).

In the years since *Heller* and *Bruen*, the government has yet to put forward a single founding-era law barring citizens from keeping and bearing arms based on felony status. It was only in 1938 that Congress prohibited even persons convicted of certain exceptionally serious crimes, such as murder and rape, from receiving a firearm in interstate commerce. *See* Pub. L. No. 75-785, § 1(6), 52 Stat. 1250, 1250-51 (June 30, 1938); Adam Winkler, *Heller's Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009). And not until the latter half of the 20th century did Congress disarm Americans based on felon status alone. *See Range*, 124 F.4th at 229.

To be sure, the nation's tradition of firearm regulation does permit temporary disarmament based on a judicial finding that a person poses a clear and present danger of

violence to another. *See Rahimi*, 602 U.S. at 702. But conviction of a felony entails no finding of an active threat—only of the elements of an offense. And while the Second Amendment may or may not contemplate disarmament of "categories of persons thought by a legislature to present a special danger of misuse," *id.* at 698, felon status is too broad and variable a proxy—being contingent on the legislative prerogative to define crimes—to pass constitutional muster. *See Bruen*, 597 U.S. at 26 (courts may not "defer to the determinations of legislatures" with respect to Second Amendment's guarantee). Even as to violent crimes, § 922(g)(1) codifies an inference of incorrigible 'propensity' that our legal tradition elsewhere abhors. *E.g.*, Fed. R. Evid. 404(a); *see Michelson v. United States*, 335 U.S. 469, 475 (1948) ("Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt.").

Turning to the "how" dimension of analysis, § 922(g)(1)'s lifetime bar burdens the right to an extent beyond any regulation of the founding era. To date, the government's own search for laws permanently disarming a citizen has yielded only draft penal codes from the 1820s that "ultimately were not adopted." Brief in Opposition at 8, *Jackson v. United States*, No. 24-6517. Consistent with this lack of authority, *Rahimi* stressed that the disarmament provision there at issue was "temporary," lasting only "so long as the defendant 'is' subject to a restraining order," and thus burdening the right in a manner analogous to historical "surety bonds of limited duration." 602 U.S. at 699. The Court also cautioned that it "conclude[d] only this: An individual found by a court to pose a credible threat to the physical safety of another may be *temporarily* disarmed consistent with the Second Amendment." *Id*. at 702 (emphasis added).[5]

For these reasons, a proper application of *Bruen*'s analytic framework leads straightforwardly to the conclusion that § 922(g)(1) unlawfully abridges the Second Amendment

[5] In a recent filing, the government too has implicitly recognized the salience of § 922(g)(1)'s lifetime duration, stressing with respect to a different provision of § 922(g) that the distinct bar it imposes is temporary and indeed terminable at will by ceasing drug use. *See* Petition for Writ of Cert. at 2, *United States v. Hemani*, No. 24-1234; *id*. at 9, 20.

right to keep and bear arms. Certiorari should be granted to vindicate this fundamental guarantee "essential to the preservation of liberty." *McDonald*, 561 U.S. at 858 (Thomas, J., concurring in part and concurring in judgment).

B. The Third Circuit's methodology sidestepped petitioner's facial challenge.

The court of appeals summarily rejected Mr. Stevens's facial and as-applied challenges under circuit precedent holding that "the Second Amendment affords parolees no protection," Pet. App. 6a, because "parolees and probationers—like convicts on federal supervised release—are still serving their sentences." *United States v. Quailes*, 126 F.4th 215, 223 (3d Cir. 2025), *pet'n for cert filed*, No. 24-7033 (distributed for conference of September 29); *see United States v. Moore*, 111 F.4th 266, 273 (3d Cir. 2024), *pet'n for cert filed*, No. 24-968 (distributed for conference of June 26).

On the Third Circuit's view, disarmament of persons subject to criminal justice supervision passes muster under the combined effect of founding-era laws providing for (i) the forfeiture of a person's estate (including any arms) upon conviction of a felony, and (ii) disarmament of persons serving custodial sentences in prison or elsewhere. *Quailes*, 126 F.4th at 221 & n.7; *see Moore*, 111 F.4th at 269-271. Two other circuits have now followed in these conclusions. *See United States v. Giglio*, 126 F.4th 1039, 1044 (5th Cir. 2025); *United States v. Goins*, 118 F.4th 794, 802 (6th Cir. 2024); *see also United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024) (similarly holding § 922(g)(1) constitutional as applied to parolee).

Even on its own terms, the analysis falls short. *Quailes* itself observes that "parole has been around for centuries," 126 F.4th at 223 n.10, yet the opinion offers no comment on the fact that, so far as its discussion shows, no founding-era law disarmed parolees. Nor does *Moore* address the absence of any such historical analogue. To be sure, *Bruen*'s analytic framework does not require a "historical twin," *Rahimi*, 602 U.S. at 692, but when a present-day regulation newly disarms a category of persons perfectly familiar at the founding, "the *lack* of a historical twin" is difficult to ignore. *United States v. Morton*, 123 F.4th 492, 499 n.2 (6th Cir. 2024). In

such instances, the government's inability to point to "a distinctly similar historical regulation" will tend to show that a contemporary enactment is inconsistent with the Second Amendment. *Bruen*, 597 U.S. at 26.

More fundamentally, the Third Circuit's inspection of founding-era estate forfeiture laws to decide the constitutionality of § 922(g)(1) sidestepped the question before it: whether permanently disarming all persons convicted of a felony comports with the nation's tradition of gun regulation. As the petitioners in *Moore* and *Quailes* have explained, the court of appeals in effect asked whether any characteristic of the defendant could supply a valid historical basis for disarmament were a legislature to attach this consequence to it. *See* Petition at 12-13, Reply at 6, *Moore v. United States*, No. 24-968; Petition at 10, *Quailes v. United States*; No. 24-7033.[6]

This was error. "An unconstitutional statute does not 'become constitutional' simply because it is applied to a particular category of persons who could have been regulated, had the legislature seen fit to do so." *People v. Burns*, 79 N.E.3d 159, 165-66 (Ill. 2015). In *Burns*, the Supreme Court of Illinois postulated—prior to this Court's decision in *Bruen*—that a law barring felons from carrying firearms in public might pass constitutional muster. *See id*. at 165. But in the case at bar, it explained, the defendant's felon status had no bearing on his facial challenge to a statute prohibiting public carry on the part of all citizens. It was "precisely because the prohibition is not limited to a particular subset of persons" that "the statute, *as written*, is unconstitutional on its face." *Id.* (citing *City of Los Angeles v. Patel*, 576 U.S. 409 (2015)); *see also Williams v. Illinois*, 399 U.S. 235, 238-39 (1970) (explaining that possibility of legislature enacting a higher statutory maximum for petitioner's offense did not cure sentence subjecting him to imprisonment beyond existing maximum based on inability to pay a fine).

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[6] Indeed, shortly after its decision in *Quailes*, the Third Circuit instructed in another case that resolution of as-applied challenges requires consideration of "a convict's entire criminal history and post-conviction conduct indicative of dangerousness, along with his predicate offense and the conduct giving rise to that conviction." *Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025).

So too here. Even stipulating that persons subject to criminal justice supervision may be deprived of the right to keep and bear arms, that does not disqualify a parolee from mounting a facial attack on § 922(g)(1)'s much broader prohibition of gun possession by anyone with a felony conviction. When confronted with such a Second Amendment challenge, a court's task is not to identify facts about a defendant which a legislature might in theory lawfully mark off as ground for disarmament. Rather, it is to determine whether the facts actually marked off by the challenged regulation—either generally or in the defendant's particular case—bring the regulation within the compass of the nation's historical tradition of firearm regulation. *See United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024), *cert. denied*, No. 24-6625 (June 23, 2025). Here, the Third Circuit's conclusion that Congress might constitutionally disarm parolees, should it elect to do so, bypassed the constitutional inquiry pertinent to § 922(g)(1): whether Congress may constitutionally disarm anyone convicted of a felony.

Mr. Stevens's case is a compelling vehicle for cutting off the analytic detour made by the Third Circuit and now followed by two additional circuits. Equally, the case is a vehicle for deciding whether § 922(g)(1)'s lifelong gun ban is unconstitutional on its face. The issue was squarely preserved, and there is no doubt of the question's magnitude: recent estimates of the number of individuals with felony convictions range from 19 million to 24 million. *See* Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 Cardozo L. Rev. 1573, 1591 (2022); Sarah K.S. Shannon, *et al*., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States*, 54 Demography 1795, 1807 (2018). Certiorari should accordingly be granted and, at a minimum, the judgment below vacated and the matter remanded with instructions to decide whether Mr. Stevens may constitutionally be convicted of the crime with which he was actually charged.

C. The Third Circuit's methodology sidestepped petitioner's as-applied challenge.

The Third Circuit's misdirected inquiry likewise failed to confront petitioner's argument that § 922(g)(1) is unconstitutional as applied to him because the government has not shown any

prior conviction for a capital crime. *See United States v. Diaz,* 116 F.4th 458, 469-70 (5th Cir. 2024*), cert. denied,* No. 24-6625; *United States v. Duarte*, 101 F.4th 657, 689-691 (9th Cir. 2024), *reh'g en banc granted*, *opinion vacated*, 108 F.4th 786; *contra, id*., *on reh'g en banc*, 137 F.4th 743 (9th Cir. 2025). As he contended before the Third Circuit, *see* C.A. App. Br. 14, 27-28, only conviction of a crime punishable by death might, by virtue of that penalty's unique finality, supply a historical analogue for the lifelong disarmament provided by § 922(g)(1).

While most felonies may have been capital crimes in 18th-century England, by the time of the founding "many states were moving away from making felonies … punishable by death in America." *Range v. Attorney General*, 124 F.4th 218, 227 (3d Cir. 2024) (en banc). One antebellum practitioner observed that while "there were 'many felonies' on the books in the late 18th- and early 19th-century, 'not one [was] punished with forfeiture of estate, and but a very few with death.'" *Duarte*, 101 F.4th at 689 (quoting 6 Dane, *Digest of American Law* 715 (1823)). In Pennsylvania, for example, the only felony punishable by death under a 1794 enactment was murder of the first degree. *See* 4 Journal of the Senate 80, 242 (Pa. 1794), *quoted in* Edwin R. Keedy, *History of the Pennsylvania Statute Creating Degrees of Murder*, 97 U. Pa. L. Rev. 759, 772 (1949); *see also* Erin E. Braatz, *The Eighth Amendment's Milieu: Penal Reform in the Late Eighteenth Century*, 106 J. Crim. L. & Criminology 405, 434-35, 452 (2016). Thus, even a record of crimes whose labels may call to mind violent acts does not inevitably foreclose a defendant's challenge to the constitutionality of § 922(g)(1) as applied. *See* Supplemental Brief of Federal Parties at 4 n.1, *Garland v. Range*, No. 23-374 (filed June 24, 2024) (listing 12 cases where § 922(g)(1) held unconstitutional as applied to defendants with convictions for "violent crimes").

Mr. Stevens has several prior Pennsylvania convictions, including one for robbery, one for burglary, and one for receiving stolen property. *See* C.A. App. 53-54. The government has not pointed in these proceedings to founding-era laws making any of these offenses a capital crime. Instead it has proffered only that at the time of the Second Amendment's ratification, "many felonies were punishable by death, including not only murder but forgery, counterfeiting,

and horse theft." C.A. App. 87. The district court, for its part, cited a New Hampshire enactment, two decades after ratification, making robbery punishable by death. C.A. App. 12. A lone data point, however, cannot establish a national historical tradition satisfying *Bruen*'s test.

Should this Court believe § 922(g)(1)'s application to require case-by-case analysis but reject the view that its constitutionality turns on prior conviction of a capital crime, this petition still affords a vehicle for articulating the correct test and, as discussed above, clearing up the methodological confusion illustrated by decisions like *Moore* and *Quailes*. By the same token, if certiorari is not granted herein, this petition should be held pending resolution of these important questions in another case.

CONCLUSION

The petition for a writ of certiorari should be granted, or else held pending the grant of certiorari in another case raising one or more of the questions presented. Alternatively, the petition should be granted, the judgment below vacated, and the matter remanded with instructions to address the Second Amendment challenge which petitioner raised in the district court and court of appeals.

Respectfully submitted,

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June 30, 2025