No. _____

In the

Supreme Court of the United States

_____

Jessie Bullock,

Petitioner,

v.

United States of America,

Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

Section 18 U.S.C. § 922(g)(1) imposes a permanent, lifetime prohibition on possession of a firearm by a person previously convicted of *any* crime punishable by a term of imprisonment exceeding one year. Petitioner Jessie Bullock had a prior felony conviction from 1992 for which he served at least 15 years in prison. He was charged with violating § 922(g)(1) after he possessed a firearm in his home for protection. The question presented is whether the statute comports with the Second Amendment, either facially, or as applied to individuals with decades old prior convictions who have not been shown to be currently dangerous and seek to possess a firearm in the home for self-defense.

PARTIES TO THE PROCEEDING

Petitioner is Jessie Bullock, who was the Defendant-Appellee in the court below. Respondent, the United States of America, was the Plaintiff-Appellant in the court below.

RELATED PROCEEDINGS

- *United States v. Bullock*, No. 3:18-cr-165-1, U.S. District Court for the Southern District of Mississippi. Judgment entered on June 28, 2023.
- *United States v. Bullock*, No. 23-60408, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on November 25, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Jessie Bullock seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 123 F.4th 183 and is reproduced at App. 78a-80a. The Fifth Circuit's order denying rehearing en banc, App. 81a, is unpublished. The opinion and order of the district court granting the motion to dismiss (App., *infra*, 1a-77a), is reported at 679 F. Supp. 3d 501.

JURISDICTION

The Fifth Circuit entered its judgment on November 25, 2024, and it denied rehearing en banc on March 27, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

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." U.S. CONST. amend. II.

Section 922(g)(1) of Title 18 of the United States Code provides, in relevant part: "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 . . . possess in or affecting commerce, any firearm or ammunition."

STATEMENT

A. Legal background.

1. The Second Amendment guarantees "the right of the people to keep and bear arms." U.S. CONST. amend. II. Yet, the federal felon-in-possession ban, enacted in 1938, indiscriminately denies that right to anyone previously convicted of a crime punishable by a year or more. The constitutional and statutory texts undeniably conflict, but Second Amendment challenges to § 922(g)(1) prosecutions have historically and uniformly failed. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases). The Second Amendment was long treated as a "second-class" right. *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 780 (2010) (plurality opinion); Robert J. Cottrol, *Structure, Participation, Citizenship, and Right: Lessons from Akhil Amar's Second and Fourteenth Amendments*, 87 Geo. L.J. 2307, 2324 (1999).

2. That began to change with *District of Columbia v. Heller*, 554 U.S. 570 (2008), when the Court decided that the Second Amendment guarantees individuals the right to keep and bear arms in their home for self-defense. The scope of the right to bear arms was held fully applicable to the States in *McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010). The Court of Appeals, however, "coalesced around a 'two-step' framework for analyzing Second Amendment Challenges that combine[d] history with means-end scrutiny." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17 (2022).

3. This Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) marked a sea change, announcing a new framework for

considering Second Amendment challenges. *Bruen* rejected the appellate courts' existing "two-step" framework replacing it with a new analysis: "When the Second Amendment's plain text covers an individual's conduct," the government must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24.

4. *Bruen* explained that "whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" depends on "whether the two regulations are 'relevantly similar.'" *Id.* at 28–29 (internal citation omitted). The Court pointed to two metrics to determine relevant similarity: "*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29. These metrics ask whether the modern and historical regulations impose a "comparable burden" (the how) and "whether that burden is comparably justified" (the why). *Id.*

5. The Court provided additional explanation in *United States v. Rahimi*, 602 U.S. 680 (2024) when considering a Second Amendment challenge to 18 U.S.C. § 922(g)(8). Applying the principles of *Bruen*, the Court explained that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. *Rahimi*, 602 U.S. at 692. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id.* (quoting *Bruen*, 597 U.S. at 29). The law need not be a "historical twin," but analogical reasoning is also not a "regulatory blank check." *Bruen*, 597 U.S. at 30. "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 done at the founding." *Rahimi*, 602 U.S. at 692.

B. Factual background.

1. In 1992, 31-year-old Bullock got into a deadly "bar fight" and was convicted of aggravated assault and manslaughter. C.A. ROA.243, 370. He served at least 15 years in state prison for the crime. *Id.* at 243. In 2015, He was also convicted of fleeing law enforcement and attempted aggravated assault of a law enforcement officer. *Id.* n.2. He completed his sentence of five years' incarceration, suspended. *Id.*

2. The Government alleged that in 2018, Bullock knowingly possessed a firearm after having been convicted of a felony, and he was charged by indictment with one count of violating § 922(g)(1). *See* C.A. ROA.321, 324. Bullock was not arraigned until March 2020, about 18 months after he was indicted. *Id.* at 244; *see id.* at 4. Bullock was released on bond after a detention hearing wherein the magistrate judge found it "downright silly" to claim that Bullock posed a danger to anyone. *Id.* at 371-73. The district court summarized the prosecution: "In Mr. Bullock's case, the conduct the government seeks to punish is Mr. Bullock's (alleged) knowing possession of a firearm in his home. It hasn't charged him with brandishing a weapon, firing one, domestic violence, assault, or battery." *Id.* at 283-84.

3. After the Court's decision in *Bruen*, Bullock filed a motion to dismiss the indictment against him, arguing that under the Second Amendment, § 922(g)(1) was unconstitutional as applied to him. C.A. ROA.135-43. The district court granted

Bullock's motion to dismiss in a written order, App. 1a-77a, determining that the Government had not met its burden of proof to demonstrate a historical tradition supporting the lifetime criminalization of Bullock's possession of a firearm, App. 71a.

4. The United States Court of Appeals for the Fifth Circuit reversed and remanded in an unpublished opinion. App. 78a-80a. The court determined that because the Government summarily asserted that § 922(g)(1) "is part of the historical tradition of firearms possession," it did not forfeit its argument that § 922(g)(1) fits within the nation's historical tradition of firearm regulation, and it allowed the government to provide additional legal support for its arguments on appeal. App. 79a.

The Fifth Circuit found that because "[t]he historical record demonstrates that legislatures have the power to prohibit dangerous people from possessing guns," the permanent disarmament of Bullock, who "previously misused a firearm to harm others when he shot one individual" in 1992, "fits neatly within our Nation's historical tradition of firearm regulation." App. 79a (internal quotation marks and citations omitted). The court found that "manslaughter and aggravated assault in this context constitute dangerous and violent crimes." App. 80a (citing *Binderup v. Att'y Gen.*, 836 F.3d 336, 374-75 (3d Cir. 2016) (Hardiman, J., concurring in part and concurring in the judgments)). It then determined that Bullock's conduct in 1992 was relevantly similar to going armed laws, thus supporting a tradition of disarming people like Bullock under § 922(g)(1). App. 80a.

5. The Government moved the court to reissues the unpublished opinion as published, C.A. ECF 81, and the Fifth Circuit reissued its opinion as published on December 12, 2024, C.A. ECF 92; *United States v. Bullock*, 123 F.4th 183 (5th Cir. 2024).

REASONS FOR GRANTING THIS PETITION

I. This issue is ripe for review because lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions.

Millions of individuals have prior felony convictions. Yet, the circuit split on the proper analysis and methodological approach to apply when considering a Second Amendment challenge to § 922(g)(1) allows for inconsistent application of the right based solely on geographic location. As Justice Jackson recently observed, "lower courts applying *Bruen*'s approach have been unable to produce consistent, principled results, and, in fact, they have come to conflicting conclusions on virtually every consequential Second Amendment issue to come before them." *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up). The majority of the courts of appeals have now weighed in on the issue, but they have all taken different and conflicting approaches to resolving Second Amendment challenges to § 922(g)(1) after *Bruen* and *Rahimi*. Some circuits see no need to conduct *Bruen*'s text-and-history analysis in the § 922(g)(1) context, relying instead on dicta predating *Bruen*. Others apply *Bruen*'s text-and-history framework to reach dramatically different results. The circuits disagree about whether felons are part of "the people" protected by the Second Amendment in step one, they are split over which traditions justify § 922(g)(1), and they vary as to whether the statute is even vulnerable to as-applied challenges.

To begin, six circuits have upheld the categorical application of § 922(g)(1) to all individuals with felony convictions. *See Zherka v. Bondi*, 140 F.4th 35, 96 (2d Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 890 (11th Cir. 2025); *United States v. Duarte*, 137 F.4th 743, 752 (9th Cir. 2025) (en banc); *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025). Each placed significant weight on this Court's statement in *Heller* that "prohibitions on the possession of firearms by felons" are "presumptively lawful." 554 U.S. at 626–27 & n.26; *see Zherka*, 140 F.4th at 73, 93-94; *Dubois*, 94 F.4th at 891; *Duarte*, 137 F.4th at 752; *Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29; *Vincent*, 127 F.4th at 1265.

The Tenth and Eleventh Circuits have held that pre-*Bruen* precedent relying on *Heller* remains binding. *Vincent*, 127 F.4th at 1266; *Dubois,* 94 F.4th at 893. The Fourth, Eighth, Ninth, and Second Circuits have gone even further. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *Hunt*, 123 F.4th at 704–08. And it refuses to entertain as-applied challenges to § 922(g)(1). *Id.* at 700. The Eighth Circuit upheld § 922(g)(1) as constitutional without the "need for felony-by-felony litigation," *Jackson*, 110 F.4th at 1125, finding legislatures have long exercised authority to disarm broad categories of people "not law-abiding" or who "presented an unacceptable risk of danger if armed," *id.* at 1126-28. The Ninth Circuit "agree[d] with the Fourth and Eighth Circuits that . . . historical tradition is sufficient to uphold the application of §

922(g)(1) to all felons." *Duarte*, 137 F.4th at 761. The Second Circuit has agreed, finding that a felon-by-felon approach would face the "practical difficulties and potential unfairness" which the categorical approach was developed to avoid. *Zherka*, 140 F.4th at 95 (internal quotation marks and citations omitted).

The Fifth and the Sixth Circuits have determined that § 922(g)(1) might be unconstitutional as applied to at least *some* felons. *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024); *id.* at 657, 663 (allowing as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous"). And the Third Circuit has held that § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps. *Range v. Attorney General*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc))

The Fifth Circuit split with the other circuits by discarding the notion that *Heller*'s "presumptively lawful" dicta could "supplant the most recent analysis set forth by the Supreme Court in *Rahimi*." *Diaz*, 116 F.4th at 466. But when considering a historical tradition, the Fifth Circuit endorsed severe and permanent punishment at the founding as a dispositive historical analogue, *see id.*, 116 F.4th at 467–70, whereas the Third Circuit found the historical availability of the death penalty irrelevant, *see Range*, 124 F.4th at 231. The Third Circuit instead relied on the lack of evidence that the claimant "poses a physical danger to others" to find the statute unconstitutional as applied. *Range*, 124 F.4th at 232.

The Sixth Circuit allows as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous." *Williams*, 113 F.4th at 657, 663. The Seventh Circuit has assumed that as-applied challenges to § 922(g)(1) are available, but it concluded that an individual who had convictions for violent felonies and was on parole at the time he possessed a firearm was "not a 'law-abiding, responsible' person who has a constitutional right to possess firearms." *United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024) (quote at 847).

The courts of appeals are deeply divided at each stage of the Second Amendment analysis. This Court's intervention is required to resolve the scope and governing analysis of the right to keep and bear arms.

II. The decision below is incorrect and in conflict with this Court's precedent.

The Fifth Circuit's decision below correctly applied its precedent determining that under the plain text of the Second Amendment, those with felony convictions are members of "the people." *See* App. 79a (moving to historical tradition test); *Diaz*, 116 F.4th 466-67 (explaining that an individual's status as a felon is relevant only to the historical tradition analysis). Yet, the court misapplied *Bruen*'s historical analysis, and it improperly extended this Court's decision in *Rahimi*. The decision below employs an overly simplistic analysis that misconstrues this Court's precedent and results in the denial of Bullock's Second Amendment rights.

As this Court has emphasized, "[w]hy and how the regulation burdens the right are central" to the historical analysis. *Rahimi*, 602 U.S. at 692. The Government must demonstrate not only that some historical disarmament occurred, but also that

it occurred for reasons analogous to the specific modern prohibition at issue. The Government was not held to that burden. In essence, the case below relied on impermissible dot connecting to justify Bullock's permanent disarmament. The Fifth Circuit recognized a historical record "that legislatures have the power to prohibit dangerous people from possessing guns," App. 80a. It then held that "[t]here can be no doubt that manslaughter and aggravated assault in this context constitute dangerous and violent crimes." App. 80a. Finally, it determined without justification that Bullock's prior violent conduct was "relevantly similar" to the "'prototypical affray [which] involved fighting in public,' the precursor to the 'going armed' laws punishable by arms forfeiture." App. 80a (quoting *Rahimi*, 602 U.S. at 697). Relying on *Rahimi*, the panel held that the justification behind going armed laws supported "a tradition of disarming individuals like Bullock pursuant to § 922(g)(1), whose underlying convictions stemmed from the threat and commission of violence with a firearm." App. 80a. *Bullock*'s analysis fails at every step.

A. An individual's prior alleged "dangerousness" cannot support a lawful lifetime ban on his possession of firearms.

The Court has not endorsed a general standard of "dangerousness" justifying lawful lifetime disarmament. Under this Court's precedent, disarmament based on "dangerousness" must be temporary, and it requires a judicial finding. In *Rahimi*, the Court considered a Second Amendment challenge to § 922(g)(8)(C)(i), which allows for the temporary disarmament of individuals judicially determined to pose "a credible threat to the physical safety" of a protected person. It was agreed that the law Rahimi challenged implicated the Second Amendment, so the question was

whether the Government could demonstrate a sufficient historical tradition. *See Rahimi,* 602 U.S. at 708 (Gorsuch, J., concurring).

Rahimi "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). In reaching that conclusion, the Court considered "going armed" and surety laws, finding a history supporting the claim that "[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 698. While the Court noted that such historical laws were not "identical" to § 922(g)(8), it determined that "[i]ts prohibition on the possession of firearms *by those found by a court to present a threat to others* fits neatly within the tradition the surety and going armed laws represent." *Id.* (emphasis added).

The Court specifically distinguished the limitations of its holding, contrasting its decision to its prior holdings in *Bruen* and *Heller*. *See Rahimi*, 602 U.S. at 698-99. It noted that unlike the regulation struck down in *Bruen*, § 922(g)(8) did not restrict arms possession by the public generally. *Id.* at 698. It further noted that "Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another." *Id.* at 699 (citing § 922(g)(8)(C)(i)). This judicial determination was crucial: "That matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.*

Beyond the judicial determination, the ban in § 922(g)(8) was also saved by its temporal element: "Section 922(g)(8)'s restriction was temporary as applied to Rahimi," only prohibiting his firearm possession for the duration that he was subject to the restraining order. *Id.* at 699. The fact that § 922(g)(8) "permits a court to disarm a person only if, after notice and hearing, it finds that he represents a credible threat to the physical safety of others," and only for as long as its order is in effect, allowed the Court to conclude that "in at least some applications, [§ 922(g)(8)] does not diminish any aspect of the right the Second Amendment was originally understood to protect." *Id.* at 711 (Gorsuch, J., concurring).

Although the Government advanced a "dangerousness" argument in *Rahimi*, it was rejected by the Court in favor of the adoption of narrower principles. The Court explicitly "reject[ed] the Government's contention" that an individual "may be disarmed simply because he is not 'responsible.'" *Rahimi*, 602 U.S. at 701. It explained that "responsible" was "a vague term," and that "[i]t is unclear what such a rule would entail." *Id.* The Government admitted that "irresponsible" was essentially another way to say "dangerous." Tr. Of Oral Arg. 10-12, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023). And as previously explained, "dangerousness" was only relevant to *temporary* disarmament when considering a judicial determination of current dangerousness in the context of § 922(g)(8). *See Rahimi*, 602 U.S. at 754 (Thomas, J., dissenting) (explaining that historical context compels the conclusion that the Second Amendment was not historically understood to allow an official to disarm anyone he deemed "dangerous")*; id.* at 756-57

(explaining why "dangerous" person laws do not offer support to the Government's arguments).

B. There is no historical tradition justifying a categorical possession ban for those who have completed their sentence and have not been shown to be presently dangerous.

The "central considerations" when comparing modern and historical regulations must be whether the regulations "impose a comparable burden" that is "comparably justified." *Bruen*, 597 U.S. at 29. The narrow ruling in *Rahimi* allowing for *temporary* dispossession after a judicial determination that an individual is *presently* dangerous was justified by a historical tradition of surety laws and affray laws. But those laws imposed a materially different burden. After providing sureties, a person retained possession of all his firearms. He could purchase additional firearms, and he could carry firearms in public and in private. *Rahimi*, 602 U.S. at 764 (Thomas, J., dissenting) (citing 4 Blackstone 250). While surety laws preserved the Second Amendment right, § 922(g)(1) entirely and permanently strips an individual of that right. *See Bruen*, 597 U.S. at 59 (recognizing that surety laws impose a lesser relative burden on the Second Amendment right). "At base, it is difficult to imagine how surety laws can be considered relevantly similar to a complete ban on firearm ownership, possession, and use." *Rahimi*, 602 U.S. at 766 (Thomas, J, dissenting).

The affray laws also fail to justify Bullock's lifetime disarmament based on decades old convictions. The affray laws prohibited the carry of certain weapons in a particular manner and in particular places. This Court has explained that going armed laws did not prohibit carrying firearms at home or even public carry generally.

See Bruen, 597 U.S. at 47-50. Instead, they "prohibit[ed] bearing arms in a way that spreads 'fear' or 'terror' among the people." *Id.* at 50. Section 922(g)(1) bans all Second Amendment-protected activity. As this Court has already concluded in *Bruen* that affray laws do not impose a burden "analogous to the burden created by" an effective ban on public carry, a total and complete ban cannot have an analogous burden either. *See* 597 U.S. at 50. *Rahimi* cannot support the permanent dispossession in status offenses like § 922(g)(1) that say nothing statutorily about being a present or current threat.

The Fifth Circuit's final justification for Bullock's permanent disarmament was its finding that his crimes were punished by death at the Founding. As members of the Third Circuit have noted, capital punishment is "an imperfect analogue, as § 922(g)(1) is not a punishment but rather a disability imposed because of a prior conviction." *Range*, 123 F.4th at 287 n.9 (Roth, J., concurring). Treating § 922(g)(1) as a punishment, rather than a disability, would raise serious constitutional questions when an individual was convicted only in state court. *Id.* And *Rahimi* did not authorize punishment by death as a lesser punishment to disarmament generally. Instead, it authorized temporary disarmament as a sufficient analogue to historical temporary imprisonment only to "respond to the use of guns to threaten the physical safety of others." *See Rahimi*, 602 U.S. at 699-700.

The court's own evidence below demonstrated that there is no relevant historical tradition of capital punishment based on Bullock's criminal history that can justify his permanent disarmament under § 922(g)(1). The court claimed that

"founding era law confirms that our country has a historical tradition of severely punishing individuals convicted of *homicide*, a prototypical common law felony considered a very dangerous offense." App. 80a (internal quotation marks and citations omitted) (emphasis added). To arrive at this conclusion, it cited to the 1790 Crimes Act "establishing that individuals convicted of *murder on federal land* shall suffer death," App. 80a (citing An Act for the Punishment of Certain Crimes Against the United States, 1 Stat. 112, 113 (1790)) (internal quotation marks and citations omitted) (emphasis added), and it erroneously conflated Bullock's 1992 manslaughter conviction stemming from a bar fight with the crime of murder on federal land. Moreover, its cited 1790 Crimes Act specifically provided for a maximum three-year sentence of imprisonment for manslaughter—the actual crime of Bullock's prior conviction. 1790 Crimes Act, at 113 (1790) (First Congress establishing that individual convicted of *manslaughter* on federal land "shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars").

The ban Bullock faces under § 922(g)(1) is both permanent and premised upon allegations of his dangerousness decades ago. There was no judicial determination that Bullock was presently dangerous. In fact, the record indicates the opposite. Bullock "finished serving his sentence long ago, and the available evidence indicates that the firearm the government complains of was kept in the sanctity of his home." C.A. ROA.240. The magistrate judge thought it "downright silly" that Bullock posed a danger to his wife, or anyone else, and he indicated that Bullock had remained on bond for years without incident. C.A. ROA.244. A permanent ban on Bullock's

possession of a firearm based on years ago conduct for which he completed his sentence of imprisonment does not "fit neatly" within the historical tradition demonstrated by the Government.

Moreover, the restoration of Bullock's right to possess a firearm after completing his sentence is supported by our general understanding that individuals possess limited civil rights while serving a sentence, but that those rights may be restored after they have completed it.[1] *See Williams*, 113 F.4th at 658 ("Felons, after all, don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment."); *Kanter v. Barr*, 919 F.3d 437, 461 (7th Cir. 2019) (Barrett, J., dissenting) (describing the general pitfalls of analogies to capital punishment, and noting that felons serving a term of years had their rights "suspended but not destroyed").

C. The permanent possession ban infringes upon the inherent right of self-defense central to the Second Amendment right to keep and bear arms.

Self-defense is a basic right, deeply rooted in this Nation's history and tradition. *McDonald*, 561 U.S. at 767. The inherent right to individual self-defense is central to the Second Amendment. *Id.* And "the need for defense of self, family, and property is most acute [in the home]." *Id.* In *McDonald*, the Court highlighted the extensive history of black people's inability to access guns during the Reconstruction, and Jim Crow, especially in the State of Mississippi—"an incapacity

[1] The only permanent loss of a fundamental constitutional right that may continue as a collateral consequence of criminal conviction (the loss of the right to vote) required an express sanction in the Constitution. *See Richardson v. Ramirez*, 418 U.S. 24 (1974).

that left black people vulnerable to violence from private actors." App. 21a (citing Khiara M. Bridges, *Foreword: Race in the Roberts* Court, 136 Harv. L. Rev. 23, 77 (2022)); *see McDonald*, 561 U.S. at 771-76. As Justice Thomas explained in his concurring opinion, "[t]he use of firearms for self-defense was often the only way black citizens could protect themselves from mob violence." *McDonald*, 561 U.S. at 857 (Thomas, J., concurring).

Section 922(g)(1) prohibits Bullock, a black man in Mississippi, from possessing a firearm in his home for self-defense, "the *central component* of the [Second Amendment] right itself." *Heller*, 554 U.S. at 599. It prevents him from defending himself and leaves him perhaps even more susceptible to home invasions and assaults. *See* App. 50a n.26. The Government has not demonstrated a historical tradition of firearm regulations that can permanently ban Bullock's handgun possession in the home and support the total prohibition of § 922(g)(1) denying him the right to self-defense.

D. The Government was not held to its heavy burden to justify the restriction upon Bullock's Second Amendment right.

"[W]hen the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation.'" *Rahimi*, 602 U.S. at 691 (quoting *Bruen*, 597 U.S. at 24). Under the principle of party presentation, courts are "entitled to decide a case based on the historical record compiled by the parties." *Bruen*, 597 U.S. at 25 n.6; *see Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008) (explaining that the Court "rel[ies] on the

parties to frame the issues for decision and assign[s] to courts the role of neutral arbiter of matters the parties present").[2]

In the district court, the Government took the position throughout that it did not have to provide any historical analogues to justify its prosecution of Bullock under § 922(g)(1). *See* C.A. ROA.146-48, 189-97. The district court found that the Government failed to provide "any example of how American history supports § 922(g)(1), much less the number of examples *Bruen* requires to constitute a well-established tradition. C.A. ROA.306. Instead, the Government summarily asserted "that § 922(g)(1) 'is part of the historical tradition of regulating firearms possession.'" C.A. ROA.246-47 (quoting C.A. ROA.148).

In the absence of any evidence of a historical tradition, the Government failed to meet its burden of proof in the district court. And its untimely and frequently repeated and rejected "dangerous" arguments were denied both on the merits and the basis of the party presentation principle endorsed by this Court. C.A. ROA.307-09; *see Bruen*, 529 U.S. at 25 n.6 ("Courts are thus entitled to decide a case based on the historical record compiled by the parties."). Notably, the district court expressly ordered the parties to indicate their position on the appointment of a historian to serve as a consulting expert in the matter to "help the Court identify and sift through

[2] "To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant's rights." *Greenlaw*, 554 U.S.. at 244 (internal citation omitted). "But as a general rule, our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Id.* (cleaned up). This must be "particularly" true for Government counsel, "the richest, most powerful, and best represented litigant to appear before [the court]." *Id.* (internal quotation mark and citation omitted). .

authoritative sources on founding-era firearms restrictions." C.A. ROA.168. The Government, who bore the burden of demonstrating a historical tradition justifying Bullock's disarmament, indicated that an expert was unnecessary. *See* C.A. ROA.197. It responded by claiming that "[w]hile determining the historical basis for gun regulations is no doubt important generally, the prohibition against felons possessing firearms is so thoroughly established as to not require detailed exploration of the historical record for the purpose of this case." C.A. ROA.189. The Government took the strategic position that it did not need to meet the burden imposed by *Bruen*.

The Government's failure to overcome the presumption of unconstitutionality should have controlled this matter. Yet, in the decision below, the Fifth Circuit allowed the Government to provide additional legal support for its arguments on appeal not raised in the district court. *See* App. 79a. The decision below has endorsed "a more lenient standard" now applied in as-applied challenges to § 922(g)(1) in the Fifth Circuit, once more functionally rendering the Second Amendment a lesser, second-class right. *United States v. Barrow*, No. 24-10155, 2025 WL 1984267, *2 n.1 (5th Cir. July 16, 2025) (citing *Bullock*, 123 F.4th at 184-85) (explaining that newly raised arguments "ordinarily [] would result in forfeiture," "[b]ut in the context of as-applied challenges to § 922(g)(1), we have adopted a more lenient standard"); *see Bruen*, 597 U.S. at 70 (cleaned up) (emphasizing that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees"). The decision below renders the principle of party presentation

toothless and impermissibly allows the Government a second bite at the apple. *See* App. 70a.

III. Section 922(g)(1) is facially unconstitutional.

This Court has explained that "for reasons relating both to the proper functioning of courts and to their efficiency, the lawfulness of the particular application of the law should ordinarily be decided first." *Bd. Of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 485 (1989). "Once a case is brought," however, "no general categorical line bars a court from making broader pronouncements of invalidity in properly 'as-applied' cases." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010) (quoting Richard H. Fallon, Jr., As-Applied and Facial Challenges and Third-Party Standing, 113 HARV. L. REV. 1321, 1339 (2000)). Although Bullock did not raise a facial challenge below, this Court has the ability to consider a facial challenge to § 922(g)(1) with his properly brought as-applied case. *See id.*

Section 922(g)(1) facially violates the Second Amendment because it imposes a broadly sweeping and historically unprecedented permanent lifetime ban on the possession of firearms for self-defense. The Government has failed to and cannot cite any historical firearm regulations that "impose[s] a comparable burden on the right of armed self-defense." *Bruen*, 597 U.S. at 29.

A law is not compatible with the Second Amendment if it regulates the right to bear arms "to an extent beyond what was done at the founding." *Rahimi*, 502 U.S. at 692. Section 922(g)(1) goes far beyond what was permissible at the Founding. It therefore facially violates the Second Amendment because there are "no set of

circumstances" under which it is valid. *Id.* at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

IV. This case is an ideal vehicle for review.

This case presents an ideal vehicle for addressing whether § 922(g)(1) violates the Second Amendment. The case cleanly presents a purely legal issue concerning the scope of the right to an individual who completed his sentence decades ago, who was not judicially determined to be dangerous, and who sought to keep a firearm in his home for self-defense. It also addresses an issue of great importance in cases implicating the right to keep and bear arms: at what stage and with what level of rigor the Government must overcome the presumption that a regulation plainly infringing upon the right is unconstitutional.

The Government has suggested that the Court should "grant review in cases involving different types of predicate felonies" to "enable the Court to consider Section 922(g)(1)'s constitutionality across a range of circumstances." Gov't Supp. Br. at 6, *Garland v. Range*, No. 23-374 (U.S. June 24, 2024). If the Court is inclined to do so, this case is an ideal vehicle for determining whether § 922(g)(1) is constitutional as applied to individuals who have long ago served and completed their criminal sentence yet remain barred from possessing a firearm to defend themselves.

If the Court grants certiorari in another case raising the same issues, Bullock accordingly requests that the Court hold the instant petition and grant, vacate, and remand if the Court thereafter disapproves of § 922(g)'s constitutionality or limits the statute's application. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 166 (1996); *Stutson v. United States*, 516 U.S. 163, 181 (1996) ("We regularly hold

cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be 'GVR'd' when the case is decided.") (Scalia, J., dissenting) (emphasis in original).

CONCLUSION

Petitioner Jessie Bullock respectfully submits that this Court should grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 24th day of July, 2025.

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