No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AVONTAE GUIDEN,

Petitioner,

versus

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

1. Whether an individual's probation or supervised release status categorically strips them of Second Amendment protection under 18 U.S.C. § 922(g)(1), or whether courts must apply *Bruen's* historical analysis to determine if the specific predicate offense historically justified disarmament, as required by the Fifth Circuit's decision in *United States v. Diaz*?

2. Is the lifetime ban on possession of firearms by all felons, codified at 18 U.S.C. § 922(g)(1), plainly unconstitutional on its face under *Bruen* because it is permanent and applies to all persons convicted of felonies?

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The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Guiden*, No. 24-30675, 2025 WL 1369355 (5th Cir. May 12, 2025) (unpublished), and is set forth at App. 001.

JURISDICTION

The judgment of the court of appeals was entered on May 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1) states in relevant part:

> (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.

The Second Amendment to the U.S. Constitution provides in relevant part:

> 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.

STATEMENT OF THE CASE

Avontae Guiden was convicted of possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). His sole predicate felony conviction was for possession of a firearm by an unlawful user of marijuana in violation of 18 U.S.C. § 922(g)(3). ROA.164-65.

While Guiden was on federal supervised release for this predicate conviction, he was captured on surveillance footage removing a firearm from his waistband and placing it on a vehicle's hood. Following his arrest for violating supervised release, investigators discovered videos and text messages on Guiden's phone showing firearm possession. While in jail, Guiden made phone calls instructing family members to attempt to delete images from his phone. ROA.159-61.

Guiden challenged his § 922(g)(1) prosecution below as violating the Second Amendment on both facial and as-applied grounds under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). ROA.21 The district court denied his motion to dismiss, and Guiden preserved his constitutional challenge through his conditional guilty plea. ROA.50, 119.

On appeal, Guiden argued that § 922(g)(1) violates the Second Amendment both facially and as applied to him because the government failed to proffer founding-era analogues that are "distinctly similar" to his sole underlying felony conviction—possessing a firearm as a marijuana user. That predicate charge, he argued, did not exist until 1968, let alone carry severe punishment at the Founding.

The Fifth Circuit panel affirmed Guiden's conviction in an unpublished per curiam opinion. *United States v. Guiden*, No. 24-30675, 2025 WL 1369355 (5th Cir. May 12, 2025) (unpublished); App. 001. However, rather than addressing Guiden's actual constitutional challenge to § 922(g)(1)—a statute that prohibited him from possessing firearms solely because he had previously been convicted of felony—the court based its decision on the fact that Guiden was not permitted to possess a firearm while on supervised release under *United States v. Giglio*, 126 F.4th 1039 (5th Cir. 2025). App. 001-002.

Having found that Guiden's irrelevant supervised release status defeated his as-applied challenge to his § 922(g)(1) conviction, the panel also summarily rejected his facial challenge under *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024). App. 001-002.

REASONS FOR GRANTING THE WRIT

This case presents two fundamental constitutional questions that demand this Court's immediate attention. First, the Fifth Circuit committed a basic error in constitutional adjudication by refusing to analyze the challenged statute on its own terms. Instead of conducting the rigorous historical analysis that *Bruen* requires for Guiden's specific predicate offense—possessing a firearm as a marijuana user—the court created an unfounded categorical exception based solely on his supervised release status. This approach violates established principles dating back to *Williams v. Illinois*, which forbid courts from defending a statute by pointing to entirely different grounds for regulation that are not embodied in the challenged law itself. Section 922(g)(1) prohibits firearm possession based on prior felony conviction, not current supervision status, yet the Fifth Circuit allowed the government to avoid defending the actual statute by arguing Guiden could theoretically be disarmed for an unrelated reason.

Second, the decision below highlights the fundamental constitutional infirmity of Section 922(g)(1)'s categorical lifetime ban on all felons. The government cannot meet its burden under *Bruen* to demonstrate historical tradition supporting such a sweeping prohibition because no such tradition exists—neither the federal government nor any state categorically disarmed all felons until the 20th century, nearly two centuries after the Second Amendment's ratification. The circuit split on these issues has left millions of Americans with inconsistent constitutional protections depending solely on their geographic location. Guiden's case presents both

questions cleanly: his non-violent prior firearm possession offense exemplifies a conviction that historically would not have justified permanent disarmament, while the court's reliance on his supervised release status rather than the challenged statute itself illustrates the methodological error plaguing post-*Bruen* jurisprudence.

I. The Fifth Circuit Erred in Resolving Guiden's As-Applied Challenge by Relying on His Supervision Status Rather Than Conducting the Required Historical Analysis of His Specific Predicate Offense

A. The Fifth Circuit Avoided the Required Historical Analysis by Creating an Unfounded "Supervision Exception" to the Second Amendment

The decision below represents a fundamental departure from established constitutional methodology. Rather than conducting the rigorous historical analysis that *Bruen* requires for the specific predicate offense that triggered Guiden's § 922(g)(1) prohibition— possession of oxycodone, distribution of cocaine, and attempted felon-in-possession—the panel created a categorical exception based solely on his supervision status. This approach contradicts both this Court's precedents and *Bruen*'s historical methodology.

1. The Fifth Circuit in *Giglio* improperly bypassed *Bruen's* requirements through interest-balancing disguised as categorical rules

The Fifth Circuit's reliance on *United States v. Giglio*, 126 F.4th 1039 (5th Cir. 2025), exemplifies the methodological error that has infected post-*Bruen* jurisprudence. *Giglio* purported to conduct historical analysis but actually engaged in the exact type of interest-balancing that *Bruen* forbids—reasoning that the government's interest in monitoring and controlling individuals under community supervision justifies restricting their Second Amendment rights 126 F.4th at 1045.

Giglio's analysis fails at every level. The court concluded that "Early American history reveals that individuals could be disarmed while carrying out such sentences" and that this tradition justified disarming individuals on supervised release. *Id.* at 1045. But this sweeping assertion lacks the specific historical analysis that *Bruen* demands. As this Court has emphasized, "[w]hy and how the regulation burdens the right are central to this inquiry." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). The government must demonstrate not just that some historical disarmament occurred, but that it occurred for reasons analogous to the specific modern prohibition at issue.

2. *Giglio*'s historical analysis relies on inapposite founding-era forfeiture laws

Giglio's historical foundation crumbles under scrutiny. The court relied primarily on founding-er a forfeiture laws, particularly Pennsylvania's 1790 statute that required individuals convicted of "robbery, burglary, sodomy or buggery" to "forfeit to the commonwealth all . . . goods and chattels" and "be sentenced to undergo a servitude of any term . . . not exceeding ten years." Act of Apr. 5, 1790, ch. 1516, § 1, 13 Statutes at Large of Pennsylvania, at 511–12 (James T. Mitchell & Henry Flanders eds., 1908).

These forfeiture laws are fundamentally different from § 922(g)(1) in both their "why" and "how"—the very factors *Rahimi* identified as central to the constitutional inquiry. 602 U.S. at 692.

First, the forfeiture laws are difference in the "why." The forfeiture laws targeted specific violent crimes that directly threatened public safety. The 1790

Pennsylvania law applied only to robbery, burglary, and sodomy—serious violent offenses. Similarly, the Massachusetts law cited in *Giglio* applied to "anti-riot laws" involving persons who "unlawfully, routously, riotously and tumultuously continue together" to prevent government officers from fulfilling their duties. Act of Oct. 28, 1786, 1 Laws of the Commonwealth of Massachusetts, at 346, 347 (J.T. Buckingham ed., 1807). These laws responded to immediate public safety threats, not the broad category of all felonies that § 922(g)(1) encompasses.

Second, the forfeiture laws are difference in the "how." The forfeiture laws imposed fundamentally different burdens than modern community supervision. Historical sentences typically involved physical custody or banishment from the community entirely. For example, the Pennsylvania law imposed "servitude" not probation or supervision. Act of Apr. 5, 1790, ch. 1516, § 1, 13 Statutes at Large of Pennsylvania, at 511, 511–12 (James T. Mitchell & Henry Flanders eds., 1908). The Massachusetts law imposed "imprisonment" not probation or supervision. Act of Oct. 28, 1786, 1 Laws of the Commonwealth of Massachusetts, at 346, 347 (J.T. Buckingham ed., 1807).

Modern community supervision operates entirely differently. Individuals on probation or supervised release live freely in their communities, work regular jobs, support families, and exercise most constitutional rights while subject to limited conditions. The founding-era concept of disarming someone physically confined or banished bears little resemblance to disarming someone who otherwise lives as a free member of the community.

This difference in "how" the burden operates is constitutionally significant. When the historical precedent involved complete state control over an individual's movements and circumstances, disarmament was merely one aspect of total deprivation of liberty. But when someone lives freely in the community—where the need for self-defense is greatest—the burden of disarmament is qualitatively different and more severe than anything the historical precedent contemplated.

3. The supervision-status approach abandons the specific predicate offense analysis that *Diaz* requires

Giglio's most fundamental error lies in abandoning the predicate offense analysis that *Diaz* established. In *United States v. Diaz*, the Fifth Circuit held that courts must examine whether the specific underlying felony conviction historically justified disarmament. 116 F.4th 458, 467 (5th Cir. 2024). *Diaz* expressly rejected attempts to avoid this analysis, noting that a § 922(g)(1) charge "must . . . rely on previous history," not concurrent conduct. *Id.*

Giglio effectively overruled *Diaz* sub silentio by holding that supervision status alone can justify disarmament regardless of the predicate offense. This creates an arbitrary system where defendants with identical predicate offenses face different constitutional protections based solely on whether they are under supervision. Such a result undermines the value-neutral historical analysis that *Bruen* requires.

B. The Approach Below Violates Basic Principles of Constitutional Adjudication

The Fifth Circuit's methodology violates fundamental principles governing constitutional challenges to criminal statutes. Courts cannot uphold a conviction

under one law by pointing to entirely different grounds for regulation that are not embodied in the challenged statute.

1. *Williams v. Illinois* prohibits defending statutes based on alternative regulatory approaches

This Court's decision in *Williams v. Illinois* directly condemns the approach taken below. 399 U.S. 235 (1970). In *Williams*, the state argued that its statute was "not constitutionally infirm simply because the legislature could have achieved the same result by some other means." *Id.* at 238-39. This Court rejected that argument, explaining that the state's authority to use alternative regulatory approaches "does not resolve the [constitutional] issue" actually presented by the challenged law. *Id.* at 239. The Court then reached the merit of the constitutional challenge to the statute.

Guiden's supervision status is precisely the kind of alternative means constitutional avoidance that *Williams* rejected. Section 922(g)(1) prohibits possession based on prior felony conviction, not current supervision status. The statute's text makes this clear: it applies to one "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). Current supervision status is irrelevant to this past-tense conviction-based prohibition.

2. The supervision approach reintroduces the interest-balancing that *Bruen* rejected

Bruen explicitly rejected "means-end scrutiny" in favor of text-and-history analysis specifically to avoid an "interest-balancing inquiry" that requires deciding on "a case-by-case basis whether the right is *really worth* insisting upon." 597 U.S. at

22-23 (emphasis in original). The supervision exception recreates exactly this prohibited analysis by requiring courts to assess whether governmental monitoring interests justify restricting Second Amendment rights.

As Justice Kavanaugh emphasized in *Rahimi*, this represents "a value-laden and political task that is usually reserved for the political branches." 602 U.S. at 732-33 (Kavanaugh, J., concurring). When courts abandon analysis of the challenged regulation's historical foundations and instead evaluate collateral circumstances, they engage in precisely the "value-laden" judgments about constitutional worthiness that *Bruen* sought to eliminate.

II. Section 922(g)(1) Is Facially Unconstitutional Under *Bruen* Because the Government Cannot Demonstrate a Historical Tradition Supporting a Categorical Lifetime Ban on Firearm Possession for All Felons

A. *Bruen* Represented a Fundamental Shift in Second Amendment Analysis

The Second Amendment to the U.S. Constitution mandates that 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. In *Dist. of Columbia v. Heller*, this Court held that the Second Amendment codifies an individual right to possess and carry weapons, explaining that the inherent right of self-defense is central to its protections. 554 U.S. 570, 628 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding "that individual self-defense is the central component of the Second Amendment right").

Following *Heller* (but before *Bruen*), the Fifth Circuit and others "adopted a two-step inquiry for analyzing laws that might impact the Second Amendment."

Hollis v. Lynch, 827 F.3d 436, 446 (5th Cir. 2016). First, courts asked "whether the challenged law impinge[d] upon a right protected by the Second Amendment—that is, whether the law regulate[d] conduct that falls within the scope of the Second Amendment's guarantee." *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives [NRA]*, 700 F.3d 185, 194 (5th Cir. 2012); *see also United States v. McGinnis*, 956 F.3d 747, 754 (5th Cir. 2020). To make that determination, courts "look[ed] to whether the law harmonize[d] with the historical traditions associated with the Second Amendment guarantee." *NRA*, 700 F.3d at 194. If the regulated conduct was deemed to fall outside the scope of the Second Amendment's protection under that framework, then the law was deemed constitutional without further analysis. *McGinnis*, 956 F.3d at 754.

However, if the regulated conduct fell within the protective scope of the Second Amendment, courts proceeded to step two: determining and applying "the appropriate level of means-end scrutiny—either strict or intermediate." *Id.* (internal quotation marks and citation omitted). "[T]he appropriate level of scrutiny 'depend[ed] on the nature of the conduct being regulated and the degree to which the challenged law burden[ed] the right." *NRA*, 700 F.3d at 195 (quoting *United States v. Chester,* 628 F.3d 673, 682 (5th Cir. 2010)). Under that framework, "a 'regulation that threaten[ed] a right at the core of the Second Amendment'—i.e., the right to possess a firearm for self-defense in the home—'trigger[ed] strict scrutiny,' while 'a regulation that does not encroach on the core of the Second Amendment' [was] evaluated under intermediate scrutiny." *McGinnis*, 956 F.3d at 754 (quoting *NRA*,

700 F.3d at 194).

In *Bruen*, this Court expressly abrogated the two-step inquiry adopted by the Fifth Circuit and others and announced a new framework for analyzing Second Amendment claims. The Court reasoned that "[s]tep one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history." *Bruen*, 597 U.S. at 19. However, *Bruen* rejected the practice of applying "means-end scrutiny" to conduct deemed protected (*i.e.*, step two of the old framework), explaining that "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context." *Id.* Under *Bruen*'s newly announced framework, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. And, upon such a finding, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. Only upon the government making such a showing may a court "conclude that the individual's conduct falls outside of the Second Amendment's 'unqualified command.'" *Id.* (citation omitted). In other words, for a firearm regulation to pass constitutional muster, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19.

B. Under the New Framework, Section 922(g)(1) Violates the Second Amendment Because Firearm Possession Is Protected by the Amendment's Plain Text, and the Government Cannot Show a Historical Tradition of Categorically Disarming Felons

Straightforward application of *Bruen*'s test makes clear that Section 922(g)(1)

cannot survive constitutional scrutiny, and the Fifth Circuit was wrong to hold otherwise.

1. The text of the Second Amendment covers Guiden's conduct, and he is among "the people" the Amendment protects

The plain text of the Second Amendment protects the right to possess and carry weapons for self-defense. *See Heller*, 554 U.S. at 583-92. And *Bruen* clarified that this right extends outside of the home. 297 U.S. at 8. Section 922(g)(1) is a permanent and complete ban on any firearm possession by felons in any context. Thus, the statute regulates (and in fact fully prohibits) conduct that is presumptively protected under the plain text of the Second Amendment. As a result, the statute is presumptively unconstitutional under *Bruen*. *Id.* at 24.

In an attempt to sidestep this straightforward conclusion, the government has adopted a novel argument that a person's status as a "felon" excludes that person from the Second Amendment's protections. But the plain text of the Second Amendment and this Court's precedent hold otherwise. In *Heller*, this Court rejected the theory that "the people" protected by the Second Amendment was limited to a specific subset—*i.e.*, those in a militia. 554 U.S. at 579-81, 592-600. The Court explained that when the Constitution refers to "'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset," and there is thus a "strong presumption that the Second Amendment right is exercised individually and belongs to *all Americans*." *Id.* at 580-81 (emphasis added).

Comparison to other constitutional amendments confirms this view. As *Heller* explained, "the people" is a "term of art employed in select parts of the Constitution,"

including "the Fourth Amendment, . . . the First and Second Amendments, and . . . the Ninth and Tenth Amendments." *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). It is beyond challenge that felons are among "the people" whose "persons, houses, papers, and effects" enjoy Fourth Amendment protection. U.S. Const. Amend. IV; *see United States v. Lara*, 815 F.3d 605 (9th Cir. 2016). And felons likewise enjoy "the right of the people" to "petition the government for redress of grievances." U.S. Const. Amend. I; *see Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th Cir. 2017). If a person with a felony conviction is one of "the people" protected by the First and Fourth Amendments, *Heller* teaches that he is one of "the people" protected by the Second Amendment, too.

This view was confirmed when this Court addressed a challenge to a different subsection of § 922(g) last term in *United States v. Rahimi*, 602 U.S. 680 (2024). The Court analyzed historical laws dealing with dangerous persons to find that § 922(g)(8) was consistent with historical tradition and therefore constitutional. *Id.* at 693-700. But the Court never suggested for a moment that Mr. Rahimi was not one of "the people" protected by the Second Amendment. Accordingly, Guiden is among "the people" to whom the Second Amendment applies.

2. There is no relevantly similar historical regulation that bans firearm possession for life

Bruen provided guidance on conducting historical analysis in the hunt for relevantly similar regulations. The Court can consider "whether 'historical precedent' from before, during, and even after the founding evinces a comparable tradition of regulation." *Bruen*, 597 U.S. at 27. But *Bruen* reminded that "not all history is

created equal." *Id.* at 34. That is because "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Id.* (quotations omitted). Because the Second Amendment was adopted in 1791, earlier historical evidence "may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years." *Id.* Similarly, post-ratification laws that "are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Id.* at 36 (quotations and emphasis omitted).

Bruen—and, later, *Rahimi*—also offered analytical guidance for evaluating historical clues. As this Court explained in *Rahimi*: "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.'" *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29). In doing so, "[w]hy and how the regulation burdens the right are central to this inquiry." *Id.* Thus, "if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* Importantly, though, "[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* And this Court made clear that the burden falls squarely on the government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19. If the government cannot do so, the infringement

on the right cannot survive.

In *Heller*, this Court confirmed an individual's right to keep and bear arms but cautioned that this right is "not unlimited." 554 U.S. at 626. As an example, the Court provided, in dicta, a non-exhaustive list of "*presumptively* lawful regulatory measures"—i.e., ones that had not yet undergone a full historical analysis. *Id.* at 627 n.26 (emphasis added). This list included laws restricting possession by felons and the mentally ill and the carrying of firearms in "sensitive places." *Id.* at 626. *Heller* emphasized that "we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment." *Id.* And since this was the Court's "first in-depth examination of the Second Amendment," *Heller* explained that it could not "clarify the entire field." *Id.* at 635. But *Heller* promised that there would be "time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us." *Id.* That time is now. The government cannot meet its burden to establish the requisite "relevantly similar" historical tradition. *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29).

The government cannot meet its burden to establish Section 922(g)(1)'s historical pedigree for a simple reason: neither the federal government nor a single state barred all people convicted of felonies until the 20th century. *See, e.g.*, Adam Winkler, *Heller's Catch-22*, 56 U.C.L.A. L. Rev. 1551, 1563 (2009). The modern version of Section 922(g)(1) was adopted 177 years after the Second Amendment. *Bruen*, 597 U.S. at 66 n.28 ("[L]ate-19th-century evidence" and any "20th-century evidence . . . does not provide insight into the meaning of the Second Amendment

when it contradicts earlier evidence.").

Section 922(g)(1) very much contradicts earlier evidence from the relevant historical periods: "(1) . . . early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; [and] (4) Reconstruction." *Id.* at 2135–36. Those periods lack evidence of any analogue to Section 922(g)(1).

The government may argue that, historically, *some* jurisdictions *sometimes* regulated firearm use by those considered *presently* violent. But not all people with a felony conviction are presently violent. Moreover, the historical regulations required an individualized assessment of a person's threat to society. And finally, the historical regulations almost always allowed people deemed violent to still possess weapons for self-defense. Thus, even those convicted of serious crimes—including rebellion—remained entitled to protect themselves in a dangerous world, with firearms if necessary. Those laws' targeted nature makes them a far cry from declaring that any person, convicted of any felony, can *never* possess "the most popular weapon chosen by Americans for self-defense in the home." *Heller*, 554 U.S. at 629.

England, before the founding, did not ban felons from ever again possessing a firearm. *See Kanter v. Barr*, 919 F.3d 437, 457 (7th Cir. 2019) (Barrett, J., dissenting); C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Policy 695, 717 (2009); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 260 (2020). To the extent that England sought to disarm individuals, those regulations

usually required a more culpable mental state and made exceptions for self-defense, both features absent from Section 922(g)(1). *Rahimi* discusses at length the surety laws and laws against affray or going armed against the king's subjects. 602 U.S. at 693-98.

To the extent that England tried to disarm whole classes of subjects, it did so on discriminatory grounds that would be unconstitutional today—and yet still permitted those targeted to keep arms for self-defense. For example, in the age of William and Mary (both Protestants), Catholics were presumed loyal to James II (a Catholic trying to retake the throne) and treasonous. Thus, Catholics could keep "Arms, Weapons, Gunpowder, [and] Ammunition," only if they declared allegiance to the crown and renounced key parts of their faith. *See Bruen*, 597 U.S. at 45 n.12 (quoting 1 Wm. & Mary c. 15, § 4, in 3 Eng. Stat. at Large 399 (1688)). In short, the English never tried to disarm all felons. Rather, they tried to limit the use of firearms by those individuals found to be violent and rebellious. And even those individuals could keep arms for self-defense. A "relevantly similar" historical regulation that is not. *Bruen*, 597 U.S. at 29.

"[T]here is little evidence of an early American practice of," forever barring all people convicted of a felony from ever again possessing a firearm. *Bruen*, 597 U.S. 1 at 46. The early United States accepted that those who committed crimes—even serious ones—retained a right to defend themselves. That can be seen in the colonies' and states' statutes, early American practice, and rejected proposals from state constitutional conventions. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting);

Folajtar v. Att'y Gen. of the United States, 980 F.3d 897, 915 (3d Cir. 2020) (Bibas, J., dissenting); *Chester*, 628 F.3d at 679; *Binderup v. Att'y Gen. of the U.S.*, 836 F.3d 336, 368 (3d Cir. 2016) (en banc) (Hardiman, J., concurring).

To the extent that the new nation sought to disarm people, the regulatory approach was much more limited than Section 922(g)(1). For example, the Virginia colony disarmed Catholics, still viewed as traitors to the crown. Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 157 (2007) (citation omitted). But there was an exception for weapons allowed by a justice of the peace "for the defense of his house and person." *Id.* And following the Declaration of Independence, Pennsylvania ordered that those who did not pledge allegiance to the Commonwealth and renounce British authority be disarmed. *Id.* at 159. Thus, to the extent that either regulation would comply with the Second Amendment, as understood today, they required a specific finding that a specific person posed a risk of violence to the state.

Colonial and Founding-era practice also suggests that committing a serious crime did not result in a permanent disarmament. For example, leaders of the seminal Massachusetts Bay colony once disarmed supporters of a banished seditionist. Greenlee, *supra*, at 263 (citations omitted). Nevertheless, "[s]ome supporters who confessed their sins were welcomed back into the community and able to retain their arms." *Id.* And in 1787, after the participants in Shay's Rebellion attacked courthouses, a federal arsenal, and the Massachusetts militia, they were

barred from bearing arms, for three years, not life. *Id.* at 268-67. In fact, Massachusetts law required the Commonwealth to hold *and then return* the rebels' arms after that period. Sec'y of the Commonwealth, *Acts and Resolves of Massachusetts 1786–87*, at 178 (1893).

American practice and laws during the Nineteenth Century—before and after the Civil War—also confirm that Section 922(g)(1) does not comport with the "Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 34. The United States continued to regulate—but not ban—firearm possession by those feared to be violent. *See id.* at 55 (holding that 19th century surety laws allowed people likely to breach the peace to still keep guns for self-defense or if they posted a bond). But, as discussed above, that is not similar to Section 922(g)(1). There is no evidence of a precursor to Section 922(g)(1)'s broad, categorical ban. In fact, there are at least two documented instances where attempts to disarm a class of offenders was rejected as inconsistent with the right to bear arms.

First, as with Shay's Rebellion, Congress declined to disarm southerners who fought against the Union in the Civil War. Steven G. Bradbury, et al., *Whether the Second Amendment Secures an Individual Right*, 28 OP. O.L.C. 126, 226 (2004). The reason: some northern and Republican senators feared that doing so "would violate the Second Amendment." *Id.* Second, when a Texas law ordered that people convicted of unlawfully using a pistol be disarmed, it was struck down as unconstitutional under the Texas constitution. *Jennings v. State*, 5 Tex. Ct. App. 298, 298 (1878).

In sum, the 19th century history provides clear evidence that mass

disarmament for people convicted of an offense is unconstitutional. Not only was there a consistent practice of allowing people who broke the law to keep weapons for self-defense—at least one state appellate court and Congress agreed that disarming lawbreakers was unconstitutional. As *Bruen* teaches: "[I]f some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." 597 U.S. at 27.

Rahimi did not affect this analysis—and, in fact, made all the clearer Section 922(g)(1)'s lack of constitutional backing. The prohibition there passed constitutional muster because there were historical analogues *temporarily* disarming those proven to be presently violent. 602 U.S. at 693. The restraining order subsection of § 922(g) passed constitutional muster because there is an individualized finding of dangerousness, after notice and an opportunity to be heard, and the restriction lasts only as long as the restraining order does. *Id.* at 686-89.

Again, "[w]hy and how the regulation burdens the right are central to the inquiry." *Id.* at 692. Section 922(g)(1) contains a lifetime prohibition on possession of firearms by all convicted felons, without an individualized determination of ongoing dangerousness. It therefore violates the Second Amendment on its face, and Guiden's conviction under Section 922(g)(1) must be vacated.

III. The Question Presented Is Exceptionally Important, and This Case Is an Effective Vehicle for This Court to Address It

A. The Courts of Appeals Are Divided Over How to Address Second Amendment Challenges to § 922(g)(1)

Since *Bruen*, the courts of appeals have reached different opinions about whether Section 922(g)(1) is constitutional under the Second Amendment. The Eighth and Ninth Circuits have concluded that the statute does not violate the Second Amendment and have foreclosed future as-applied challenges. The Fifth Circuit has also rejected facial Second Amendment challenges, like in this case, but has adopted a case by case approach to as-applied challenges looking only at the disqualifying felony conviction. The Sixth Circuit in contrast has adopted a dangerousness test for as-applied challenges. Meanwhile, the Third Circuit has found Section 922(g)(1) unconstitutional as applied to specific defendants. These differing opinions have generated opposite outcomes, with Second Amendment claims entirely foreclosed in certain jurisdictions and not in others.

The Sixth Circuit in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024) held that Section 922(g)(1) is constitutional both on its face and as applied to dangerous individuals. After conducting an extensive historical analysis, the court concluded that governments have traditionally had authority to disarm groups deemed dangerous, provided that individuals within those groups have an opportunity to demonstrate they do not pose a danger. Applying this framework, the court found that Section 922(g)(1) is constitutional as applied to the defendant Williams, who had prior convictions for aggravated robbery, attempted murder, and

unlawfully possessing a firearm as a felon. Notably, the court held that when evaluating as-applied challenges to Section 922(g)(1), courts should consider a defendant's entire criminal record, not just the specific predicate felony, and assess whether their offenses fall into historically recognized categories of dangerous crimes like violent felonies or offenses that inherently pose a significant threat of danger. While the court left open whether non-violent felonies like fraud could justify disarmament, it concluded that Williams' violent criminal history clearly demonstrated he was dangerous and therefore could be constitutionally prohibited from possessing firearms under Section 922(g)(1). *Id.* at 645-63.

The Eighth Circuit analyzed the constitutionality of Section 922(g)(1) in *United States v. Jackson*, 110 F.4th 1120, 1121 (8th Cir. 2024). There, it held that Section 922(g)(1) is constitutional as applied to the defendant Jackson, who had prior drug trafficking convictions. The court reasoned that historically, legislatures had broad authority to disqualify categories of persons from possessing firearms, either because they deviated from legal norms or presented an unacceptable risk of dangerousness. The court found that Congress acted within this historical tradition in enacting the felon-in-possession ban, and rejected Jackson's argument that the law was unconstitutional as applied to his "non-violent" felony convictions, concluding that individual determinations of dangerousness were not historically required to justify such categorical prohibitions. *Id.* at 1125-29. Similarly, the *en banc* Ninth Circuit recently held that Section 922(g)(1) is constitutional, even as applied to a non-violent felons. *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc).

The Fifth Circuit has rejected specific as applied challenges to Section 922(g)(1) but has not foreclosed future such challenges. In *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024), the Fifth Circuit parted ways with other Circuits, holding that that *Bruen* abrogated its prior decisions upholding Section 922(g)(1) against Second Amendment challenge. It held that *Heller*'s reference to "longstanding prohibitions on the possession of firearms by felons" did not reflect "binding precedent on the issue now before us," ultimately concluding that felons were amongst "the people" protected by the Second Amendment. *Id.* at 466 & n.2. However, it found that Section 922(g)(1) was constitutional on its face and as applied to that particular defendant. *Id.* at 472. It explained that Section 922(g)(1)'s application was consistent with this Nation's historical tradition of firearm regulation because "[a]t the time of the Second Amendment's ratification, those—like Diaz—guilty of certain crimes—like theft—were punished permanently and severely," that is, by death or estate forfeiture, and "permanent disarmament was [also] a part of our country's arsenal of available punishments at that time." *Id.* Nonetheless, the court expressly held that "[o]ur opinion today does not foreclose future as-applied challenges by defendants with different predicate convictions." *Id.* at 470 n.4.

The *en banc* Third Circuit, in contrast, applied *Bruen*'s text-and-history test and found Section 922(g)(1) unconstitutional as applied to a person whose prior conviction for making false statements in relation to food stamps had exposed him to more than a year in prison. *Range v. Att'y Gen. United States*, 124 F.4th 218 (3d Cir. 2024) (en banc). First, the court rejected the government's contention that a person's

past conviction for an offense punishable by over one year operates to remove him from "the people" to whom the right to keep and bear arms is vested. *Id.* at 226-28. Then, upon examination of the relevant historical evidence, the court held that the government had failed in its attempt to demonstrate a broad tradition of American laws imposing anything near a permanent ban on firearm possession on account of past misdeeds. *Id.* at 228-32.

Thus, the circuit split regarding the constitutionality of Section 922(g)(1) remains. Resolving the question presented is also important. Despite serious concerns as to Section 922(g)(1)'s constitutionality, the statute continues to result in the imprisonment of thousands of American citizens each year. *See* Petition for Writ of Certiorari at 22–24, *Garland v. Range*, No. 23-374 (Oct. 5, 2023) (marshaling statistics demonstrating that Section 922(g)(1) is the most frequently applied provision of Section 922(g)). And, for fear of the same fate, countless more individuals are deterred from engaging in conduct that would otherwise come within the Second Amendment's core. Only this Court can settle this monumental question upon its inevitable return to the Court's docket.

B. The Questions Affect Millions of Americans

Both the methodological approach for as-applied challenges and the facial constitutionality of § 922(g)(1) affect millions of Americans with felony convictions. The circuit split on these fundamental constitutional questions has continued to develop since *Bruen*, with different circuits applying inconsistent approaches to identical constitutional challenges.

Guiden's case perfectly illustrates both problems. His predicate conviction was for a single possession of firearm by a marijuana user. Yet the Fifth Circuit stripped away his Second Amendment rights not because of any historical tradition of disarming individuals with similar offenses, but because of his collateral supervised release status. This demonstrates both the methodological error in avoiding the historical analysis of the challenged statute and the broader constitutional infirmity of a lifetime ban on all felons regardless of their specific offenses.

C. The Issues Warrant Immediate Review

The circuit splits on both the methodological question and the facial constitutionality question have continued to develop since *Bruen*. Different circuits apply inconsistent approaches to identical constitutional challenges, creating varied protection that raises concerns about equal justice under law.

These questions go to the heart of how courts should analyze constitutional challenges to criminal statutes. If the government can defend any conviction by pointing to unrelated characteristics that might theoretically justify similar restrictions, and if a statute can categorically strip constitutional rights from millions of Americans without historical justification, then constitutional protections become meaningless.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this August 8, 2025,

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