No. __-_____

IN THE

Supreme Court of the United States

ANDREW CHAFIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

GEREMY C. KAMENS
Federal Public Defender

Salvatore M. Mancina
Counsel of Record
Patrick L. Bryant
Joseph S. Camden
Assistant Federal Public Defenders
Office of the Federal Public Defender
for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800
Sam_Mancina@fd.org

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QUESTION PRESENTED

Petition Andrew Chafin is prohibited from possessing a firearm for the rest of his life because he shoplifted several cases of energy drinks from two grocery stores. For those shoplifting incidents, he was convicted of two felonies in Virginia: felony petit larceny (3rd offense) and grand larceny. Neither offense would be classified as a felony today. Since his convictions in 2018, Virginia has increased the threshold for grand larceny from $200 to $1,000, and in 2021, Virginia abolished the crime of felony petit larceny. Nevertheless, Mr. Chafin is classified as a felon for federal purposes and is subject to lifetime disarmament.

In 2023, Mr. Chafin was found in possession of a handgun during a traffic stop in Petersburg, Virginia, and charged under 18 U.S.C. § 922(g)(1). If he had been charged in the Third, Fifth, or Sixth Circuits, he would have been able to raise an as-applied challenge to the constitutionality of the statute. But the Fourth Circuit and five other courts of appeals have held that the law is constitutional in all its applications, even as applied to individuals with old or minor or nonviolent prior convictions. Due to this happenstance of geography, Mr. Chafin's potential constitutional claim was entirely foreclosed.

The question presented in this case is whether 18 U.S.C. § 922(g)(1)'s lifetime ban on firearm possession for all individuals previously convicted of any felony offense violates the Second Amendment as applied to Mr. Chafin.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

(1) *United States v. Chafin*, No. 24-4659, U.S. Court of Appeals for the Fourth Circuit. Judgment entered June 12, 2025.

(2) *United States v. Chafin*, No. 3:24-cr-00057, U.S. District Court for the Eastern District of Virginia. Judgment entered November 27, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Andrew Chafin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The order of the court of appeals granting the government's motion for summary disposition appears at App. 1a and is unreported and unavailable on Westlaw. The district court's order appears at App. 4a and is also unreported.

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction over Petitioner's appeal pursuant to 28 U.S.C. § 1291. That court issued its judgment on June 12, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the Constitution 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.

18 U.S.C. § 922(g) provides, in relevant part:

> 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.

INTRODUCTION

This case presents an issue of vital importance that has deeply divided the courts of appeals: whether the government, consistent with the Second Amendment, can permanently disarm a U.S. citizen who has a minor, nonviolent felony conviction on his record.

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), this Court established a new test, rooted in the Second Amendment's text and history, for assessing firearm regulations. The courts of appeals have struggled to consistently apply that test to the federal law prohibiting felons from possessing firearms, 18 U.S.C. § 922(g)(1). The circuits are deeply split on whether § 922(g)(1) is constitutional as applied to defendants with nonviolent felonies.

After surveying the historical record, the Third, Fifth, and Sixth Circuits have held that § 922(g)(1) is constitutional only as applied to people with prior felonies who are dangerous. The Third Circuit, applying that holding, concluded that § 922(g)(1) was unconstitutional as applied to an individual with a food-stamp fraud conviction that was decades old.

In contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have held that § 922(g)(1) is constitutional as applied to all felons. Those courts have adopted a sweeping rule that even applies to individuals with felony convictions that are nonviolent or decades old. The Fourth Circuit relied on that rule to summarily reject Mr. Chafin's facial and as-applied challenges to his § 922(g)(1) conviction.

This Court should grant the petition and resolve the disagreement between the circuits. The circuit split is intractable and has created fundamentally unfair disparities in how similarly situated defendants are treated. Individuals with minor or nonviolent felonies in some circuits retain their Second Amendment rights, while individuals with similar criminal histories in other circuits are exposed to federal prosecution if they possess a firearm. Because this split exists, criminal defendants charged under § 922(g)(1) will continue to pursue these claims and file petitions for certiorari until this Court resolves the issue.

This Court should also grant the petition to correct the decision below. The circuits that have concluded that as-applied challenges are unavailable, including the Fourth Circuit, have misapplied the text-and-history analysis mandated by *Bruen* and *Rahimi*. Under the correct application of that analysis, the government cannot permanently disarm all individuals with a prior felony conviction—especially those with nonviolent priors, like Mr. Chafin.

STATEMENT OF THE CASE

Proceedings in the District Court

In April 2024, a grand jury indicted Petitioner Andrew Chafin in the Eastern District of Virginia on one count of possessing a firearm as a person with a prior felony conviction, in violation of 18 U.S.C. § 922(g)(1). C.A.J.A. 8.[1] At the time he possessed the firearm, Mr. Chafin had two prior felony convictions for shoplifting several cases of energy drinks from two different grocery stores. C.A.J.A. 10.

[1] Citations to the joint appendix filed in the Court of Appeals will be identified as "C.A.J.A." The joint appendix can be found at Docket Entry 18 on the Court of Appeals docket.

Mr. Chafin moved to dismiss the indictment, arguing that it violated his Second Amendment right to keep and bear arms. C.A.J.A. 10. Citing *Bruen*, he argued that criminalizing the mere possession of a firearm and ammunition, even by a person with a prior felony conviction, was inconsistent with this Nation's historical tradition of firearm regulation. C.A.J.A. 15–24.

The district court held a hearing on Mr. Chafin's motion to dismiss. C.J.A. 77. The court denied the motion from the bench and issued a memorandum opinion. C.A.J.A. 99; App. 4a. The court agreed with Mr. Chafin that felons are protected by the plain text of the Second Amendment, App. 6a, but the court ultimately concluded that § 922(g)(1) was constitutional because it believed there was a longstanding history and tradition of severely punishing felons, and in particular those convicted of larceny, App. 6a–8a.

After his motion was denied, Mr. Chafin pleaded guilty to the indictment. C.A.J.A. 111–112. Before pleading guilty, he filed a notice indicating that he intended to appeal the district court's denial of his motion to dismiss the indictment. C.A.J.A. 107–109 (citing *Class v. United States*, 583 U.S. 174 (2018)). The district court sentenced Mr. Chafin to 18 months of imprisonment, to be followed by three years of supervised release. C.A.J.A. 148–149.

Proceedings in the Court of Appeals

Mr. Chafin timely appealed to the Fourth Circuit and renewed his Second Amendment arguments. C.A.J.A. 154. After the district court denied Mr. Chafin's motion to dismiss, the Fourth Circuit issued a pair of decisions on the constitutionality of § 922(g)(1). First, in *United States v. Canada*, the Fourth Circuit held

that § 922(g)(1) is facially constitutional. 123 F.4th 159, 161–162 (4th Cir. 2024). In a follow up case, the Fourth Circuit held that § 922(g)(1) is constitutional as applied to all people with felony convictions. *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, No. 24-6818 (June 2, 2025). The court reached that conclusion because, in its view, "neither *Bruen* nor *Rahimi* abrogates this Court's precedent foreclosing as-applied challenges to § 922(g)(1)" and "§ 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent." *Id*. at 702. After *Canada* and *Hunt* were issued, Mr. Chafin filed his opening brief. The government filed a motion for summary affirmance, arguing that Mr. Chafin's Second Amendment challenges were foreclosed by *Canada* and *Hunt*. App. 1a–2a. The Fourth Circuit granted the government's motion and affirmed the district court's decision. App. 2a.

REASONS FOR GRANTING THE PETITION

I. The circuits disagree on whether a defendant may assert an as-applied challenge to a § 922(g)(1) conviction.

In *District of Columbia v. Heller*, this Court held that the Second Amendment confers an individual right to possess and carry weapons in case of confrontation. 554 U.S. 570, 592–595 (2008). After *Heller*, most circuit courts developed a two-part test to assess firearm regulations. *Bruen*, 597 U.S. at 18–19. The first step would assess whether the conduct being regulated fit within the historical scope of the Second Amendment right, and the second step would apply an appropriate form of means-ends scrutiny. *Id*. Applying that test, most courts upheld the constitutionality of § 922(g)(1).

But the landscape changed when this Court issued its decision in *Bruen*. This Court rejected any form of means-ends scrutiny and established a new two-part test focused on Second Amendment's text and history. At step one, courts must assess whether the regulated conduct is covered by the plain text of the amendment. *Id*. at 24. If it is, then at step two, the government bears the burden of justifying the challenged regulation by showing that it is consistent with this Nation's history and tradition of firearm regulation. *Id*. After *Bruen*, there is a deepening split between the circuits over whether § 922(g)(1) is susceptible to as-applied challenges under the Second Amendment. This Court should grant certiorari and resolve this intractable split.

A. As-applied challenges are available in three circuits.

1. The Third, Fifth, and Sixth Circuits have all held that § 922(g)(1) is open to as-applied challenges. *See Range v. Att'y Gen. United States*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 470 n.4, 472 (5th Cir. 2024), *cert. denied*, No. 24-6625 (Feb. 24, 2025); *United States v. Williams*, 113 F.4th 637, 657, 662–663 (6th Cir. 2024).[2] Although each court offered its own analysis, they agreed on several key preliminary issues.

First, all three courts concluded that *Bruen* and *Rahimi* "abrogated" their pre-*Bruen* case law upholding the constitutionality of § 922(g)(1). *Range*, 124 F.4th at

[2] The First Circuit has also suggested that as-applied challenges to § 922(g)(1) are permissible. *United States v. Turner*, 124 F.4th 69, 77 n.5 (1st Cir. 2024); *United States v. Langston*, 110 F.4th 408, 419 (1st Cir. 2024). And the Seventh Circuit has assumed without deciding that as-applied challenges are available. *United States v. Gay*, 98 F.4th 843, 846–847 (7th Cir. 2024).

225; *see also Diaz*, 116 F.4th at 465 (concluding that *Bruen* "render[ed] our prior precedent obsolete" (citation omitted)); *Williams*, 113 F.4th at 647–648 ("[O]ur pre-*Bruen* precedent isn't binding here because intervening Supreme Court precedent demands a different mode of analysis."). Second, those courts also agreed that *Heller*'s statement that felon-in-possession laws are "presumptively lawful," 554 U.S. at 626–27 & n.26, was non-binding dicta. *Williams*, 113 F.4th at 645–648; *Diaz*, 116 F.4th at 465–466; *Range*, 124 F.4th at 226–228. All three courts reasoned that *Heller*'s brief mention of felon-in-possession laws, which were not at issue in that case, could not absolve them of their duty to analyze whether § 922(g)(1) was consistent with this Nation's history and tradition of firearm regulation. *Williams*, 113 F.4th at 645–648; *Diaz*, 116 F.4th at 465–466; *Range*, 124 F.4th at 226–228. Third and finally, at step one, these courts all agreed that the plain text of the Second Amendment covers people with felony convictions because they are part of "the people" the amendment protects. *Williams*, 113 F.4th at 648–650; *Diaz*, 116 F.4th at 466; *Range*, 124 F.4th at 228.

2. At *Bruen* step two, each court adopted a slightly different approach, but they all agree that as-applied challenges to § 922(g)(1) are available. *Williams*, 113 F.4th at 657; *Diaz*, 116 F.4th at 469–470 & n.4; *Range*, 124 F.4th at 232.

In *Range*, the Third Circuit concluded that the government "ha[d] not shown that the principles underlying the Nation's historical tradition of firearms regulation support depriving" someone convicted of food-stamp fraud from exercising his Second Amendment right. 124 F.4th at 232. In a subsequent case, the Third Circuit clarified that § 922(g)(1) is constitutional as applied to felons who "present a special danger of

misusing firearms." *Pitsilides v. Barr*, 128 F.4th 203, 210 (3d Cir. 2025) (alterations adopted) (quoting *Rahimi*, 602 U.S. at 698). To determine whether a particular defendant is "dangerous" and subject to disarmament, the Third Circuit requires courts to "consider 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[.]" *Id.* at 212.

The Sixth Circuit has adopted a similar test for as-applied challenges. In *Williams*, the Sixth Circuit concluded that "our nation's history and tradition demonstrate that Congress may disarm individuals they believe are dangerous," and it acknowledged that "§ 922(g)(1) might be susceptible to an as-applied challenge in certain cases." 113 F.4th at 657. Like the Third Circuit, the Sixth Circuit requires courts assessing an as applied challenge to "focus on each individual's specific characteristics," including their "entire criminal record, not just the predicate offense …." *Id.*

The Fifth Circuit has taken a slightly different approach. In *Diaz*, the court explained that key question in as-applied cases is whether "the government [can] demonstrate that the Nation has a longstanding tradition of disarming someone with a criminal history analogous to" the challenger. 116 F.4th at 467. The court held that § 922(g)(1) was constitutional as applied to Diaz, who had prior convictions for vehicle theft and evading arrest. After canvassing the history, the court concluded that there was a history and tradition of severely punishing people with similar criminal records at the Founding. *Id.* at 469–470.

In a more recent case, the Fifth Circuit expanded on its as-applied test. *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025). The defendant in *Kimble* had a prior drug trafficking conviction. *Id.* at 309. The Fifth Circuit examined the historical record and concluded that "[t]he Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous[.]" *Id.* at 314–315. But that was not the end of the analysis: the court emphasized that courts "must determine whether the government has identified a 'class of persons at the Founding who were "dangerous" for reasons comparable to' those Congress seeks to disarm today." *Id.* at 315 (citation omitted). In doing so, the court explained, courts should *not* "look beyond a defendant's predicate conviction" and conduct "an individualized assessment that [the defendant] is dangerous." *Id.* at 318 (citation and internal quotation marks omitted). Applying that standard, the court concluded that § 922(g)(1) is constitutional as applied to Kimble because "[l]ike legislatures in the past that sought to keep guns out of the hands of potentially violent individuals, Congress today regards felon drug traffickers as too dangerous to trust with weapons." *Id.* at 316.

B. Six circuits hold that § 922(g)(1) is constitutional in every application.

1. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have all held that § 922(g)(1) is constitutional as applied to all people with at least one felony conviction—even minor or nonviolent convictions. *See United States v. Jackson*, 110 F.4th 1120, 1125, 1129 (8th Cir. 2024), *cert. denied*, No. 24-6517 (May 19, 2025); *Hunt*, 123 F.4th at 700; *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. pet. docketed*, No. 24-1155 (May 8, 2025); *United States v. Duarte*, 137

F.4th 743, 761–762 (9th Cir. 2025) (en banc); *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025); *Zherka v. Bondi*, 140 F.4th 68, 96 (2d Cir. 2025).

The Eighth Circuit reached that decision first in *Jackson*, 110 F.4th 1120. The court started by citing the language in *Heller* and other cases from this Court suggesting that felon-in-possession laws are presumptively valid. *Id.* at 1125. Turning to the *Bruen* analysis, the court concluded that "legislatures traditionally employed status-based restrictions to disqualify" people who "deviated from legal norms" or "presented an unacceptable risk of dangerousness" from possessing firearms. *Id.* at 1129. The court relied on two types of historical analogues to support its conclusion. First, it cited laws that prohibited certain disfavored groups—e.g., religious minorities, Native Americans, Loyalists—from possessing firearms. *Id.* at 1126–1127. Second, the court noted that at the time of the Founding most states "authorized punishments that subsumed disarmament—death or forfeiture of a perpetrator's entire estate—for non-violent offenses …." *Id.* at 1127. Considering the dicta in *Heller* and those historical laws, the Eighth Circuit concluded that "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." *Id.* at 1125.

The Eighth Circuit voted to deny rehearing en banc, but four judges, in an opinion authored by Judge Stras, dissented from that decision. *United States v. Jackson*, 121 F.4th 656 (8th Cir. 2024). In the dissenters' view, the panel decision "deprives tens of millions of Americans of their right 'to keep and bear Arms' for the rest of their lives" without "a finding of 'a credible threat to the physical safety' of others" or giving those Americans a chance to prove they "no longer pose[] a danger."

Id. at 657 (citations omitted). The dissenters also noted that the *Jackson* panel opinion "makes no attempt to explain how the burden imposed by the felon-in-possession statute, which lasts for a lifetime, is comparable to any of the Founding-era laws it discusses." *Id*. at 660.

After *Jackson*, a number of other courts followed suit for one reason or another. The Tenth and Eleventh Circuits concluded that neither *Bruen* nor *Rahimi* had undermined its pre-*Bruen* precedent upholding the constitutionality of § 922(g)(1) in all its applications. *Vincent v. Bondi*, 127 F.4th 1263, 1265–1266 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893–894 (11th Cir. 2025). The Tenth Circuit, for example, noted that its pre-*Bruen* precedent "relied on *Heller*'s instruction that felon dispossession laws are presumptively valid," and the court believed *Rahimi* "reaffirmed" that presumption. *Vincent*, 127 F.4th at 1265.

The Second and Ninth Circuits also cited *Heller*'s "presumptively lawful" language, but they conducted their own *Bruen* analysis, instead of merely relying on prior precedent. Both courts concluded that felons are covered by the plain text of the Second Amendment. *Duarte*, 137 F.4th at 754–755 (finding that Duarte "is one of 'the people' who enjoys Second Amendment rights"); *Zherka*, 140 F.4th at 77 (same). But both courts also held that § 922(g)(1), in all its applications, is consistent with this Nation's historical tradition of firearm regulation. Like the Eighth Circuit in *Jackson*, the Second and Ninth Circuits supported their holdings by citing to (1) Founding-era criminal laws that punished many felonies with death and estate forfeiture and (2) colonial and Founding-era laws that categorically disarmed groups viewed as dangerous. *Duarte*, 137 F.4th at 755–761; *Zherka*, 140 F.4th at 80–91.

2. The Fourth Circuit took an all-of-the-above approach in *Hunt*. First, the Fourth Circuit held that its pre-*Bruen* precedent upholding § 922(g)(1)'s constitutionality, which rested primarily on the "presumptively lawful" dicta in *Heller*, was still good law. 123 F.4th at 702–704. In the *Hunt* panel's view, "nothing in *Bruen* or *Rahimi* undermines … this Court's previous reliance on *Heller*'s express statements about" felon-in-possession laws. *Id*. at 704. The Fourth Circuit acknowledged that *Bruen* had "disavowed the second step of this Court's former two-part test for considering Second Amendment challenges as 'one step too many.'" *Id*. at 704 (*Bruen*, 597 U.S. at 19). The old two-part test required courts to engage in means-ends scrutiny at step two. But the *Hunt* panel concluded that the pre-*Bruen* decisions on § 922(g)(1) were still good law because they "did not rely on any sort of 'means-end scrutiny.'" *Id*. (citation omitted). Instead, those cases determined, at step one of the old test, that felons fell "outside the scope of the Second Amendment." *Id*. (citation omitted).

Second, after reaffirming its earlier precedent, the Fourth Circuit concluded that even if it applied the *Bruen* test, § 922(g)(1) would be constitutional in all its applications. The Fourth Circuit has put its own gloss on the first step of the analysis. Instead of examining the plain text, the Fourth Circuit "'look[s] to the historical scope of the Second Amendment,' and use[s] that history to interpret what is and is not protected by the constitutional text." *Id*. at 705 (quoting *United States v. Price*, 111 F.4th 392, 401 (4th Cir. 2024) (en banc)). And instead of doing its own analysis of the history, the court relied entirely on *Heller*'s "presumptively lawful" language to conclude that felons fall outside the scope of the Second Amendment entirely. *Id*. at

705. The Fourth Circuit is the only circuit court to conclude, at step one, that the plain text of the Second Amendment does not extend to people with felony convictions.

Even if the Second Amendment did afford felons some protection, the Fourth Circuit held, at step two, that § 922(g)(1) is consistent with this Nation's history and tradition of firearm regulation. Relying heavily on the Eighth Circuit's reasoning in *Jackson*, the court held that § 922(g)(1) is justified by this nation's history of disarming (1) people "who deviated from legal norms" and (2) categories of people who posed "a risk of dangerousness." *Id.* at 706 (quoting *Jackson*, 110 F.4th at 1127). The court concluded that the first principle derived from early laws that "regularly punished felons and other non-violent offenders with estate forfeiture or death—far greater punishments that 'subsumed disarmament.'" *Id.* (quoting *Jackson*, 110 F.4th at 1127). And the court concluded that the colonial and Founding-era laws that prohibited certain groups of people—*e.g.*, religious minorities, Native Americans, Loyalists—from possessing firearms established a tradition of categorically disarming groups deemed dangerous. *Id.* at 706–707.

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In sum, the courts of appeals are intractably split as to whether defendants can raise as-applied challenges to § 922(g)(1) under the Second Amendment. This deepening split has created an untenable situation, where an individual's Second Amendment rights depend on where he happens to live. An individual with a minor, non-violent felony conviction who lives in Pennsylvania can possess a firearm without fear of being prosecuted under § 922(g)(1)—unless he crosses the border into West

Virginia, where § 922(g)(1) would still apply to him. To resolve such discrepancies, this Court should grant review and bring uniformity to this area of law.

II. The decision below is wrong.

This Court should also grant the petition because the view adopted by the circuits barring as-applied challenges—including the Fourth Circuit—is erroneous. The Fourth Circuit's decision in *Hunt* provides a good overview of the various arguments defending the constitutionality of § 922(g)(1) and even goes further than most other circuits. As showcased in *Hunt*, the reasoning adopted by circuits upholding § 922(g)(1) in all its applications is inconsistent with *Bruen*'s text-and-history approach.

The Fourth Circuit primarily relies on its pre-*Bruen* precedent, which rests entirely on stray dicta in *Heller* and not any analysis of the text and history of the Second Amendment. In the alternative, the Fourth Circuit purported to apply the test articulated in *Bruen*, but the court ignored the plain text of the Second Amendment and adopted an overly broad view of historical firearm regulations to uphold § 922(g)(1) and grant the government a "regulatory blank check." *Bruen*, 597 U.S. at 30. This Court should grant certiorari, reverse the decision below, and resolve the split by establishing a uniform and workable test for assessing as-applied challenges to § 922(g)(1).

A. The Fourth Circuit's opinion relies on dicta and misapplies the *Bruen* test.

1. The Fourth Circuit's pre-*Bruen* case law, which relies almost exclusively on dicta in *Heller*, is no longer good law. After *Heller*, the Fourth Circuit held that § 922(g)(1) was facially constitutional because *Heller* had identified felon-in-

possession laws "as 'presumptively lawful regulatory measures.'" *United States v. Moore*, 666 F.3d 313, 318 (4th Cir. 2012) (quoting *Heller*, 554 U.S. at 626–627, n.26). *Moore* left open the possibility of as-applied challenges for individuals who could prove they were a "law-abiding responsible citizen[]." *Id.* at 319 (quoting *Heller*, 554 U.S. at 635). But the Fourth Circuit ultimately concluded that a person with a prior felony (even a non-violent one) "cannot be returned to the category of 'law-abiding, responsible citizens' for the purposes of the Second Amendment …, unless the felony conviction is pardoned or the law defining the crime of conviction is found unconstitutional or otherwise unlawful." *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017); *see also United States v. Pruess*, 703 F.3d 242, 247 (4th Cir. 2012) (holding that § 922(g)(1) is constitutional as applied "to allegedly non-violent felons").

Those decisions are not consistent with *Bruen*. This Court's dicta in *Heller* that identifies felon-in-possession laws as "presumptively lawful" does not resolve § 922(g)(1)'s constitutionality. The legality of § 922(g)(1) was simply not at issue in *Heller*, so this Court's language is non-binding. *See Rahimi*, 602 U.S. at 701–702 (declining to apply dicta in *Heller* or *Bruen* on an issue that "was simply not presented" in either case); *see also Williams*, 113 F.4th at 648.

Moreover, "applying *Heller*'s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to 'expound upon the historical justifications' for firearm-possession restrictions when the need arose." *Williams*, 113 F.4th at 648 (quoting *Heller*, 554 U.S. at 635). In *Bruen*, this Court reaffirmed that courts must analyze the historical record before adjudicating the constitutionality of a challenged regulation. The type of regulation at issue in *Bruen*—a law restricting the concealed

carry of firearms in public—was also identified as a "presumptively lawful" regulation in *Heller*. *Heller*, 554 U.S. at 626 (noting that "the majority of 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues"). If *Heller*'s description of concealed-carry bans were dispositive, this Court would simply have deferred to *Heller* and upheld New York's statute on that basis. But this Court instead undertook an exhaustive historical survey of the law governing concealed carriage, from medieval England up to late-19th-century America. *Bruen*, 597 U.S. at 33–70. And after reviewing that history, this Court reached a conclusion different from its off-hand remark in *Heller*, holding that laws burdening concealed carriage are *un*constitutional, at least where the state also forbids open carry. *See id.* at 52–55, 59.

Bruen is clear: Rather than treating *Heller*'s "presumptively lawful" passage as dispositive, courts must actually investigate the historical record to determine whether a firearm regulation is in fact consistent the Second Amendment. Every type of firearm regulation—even those on *Heller*'s "presumptively lawful" list—must be rigorously scrutinized to determine whether they are "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

But, before *Bruen*, the Fourth Circuit explicitly declined to engage in such a historical analysis; instead, the court simply assumed that felons fall outside the Second Amendment's ambit because of the "presumptively lawful" language in *Heller*. *Moore*, 666 F.3d at 318 (explaining that the "analysis is more streamlined when a presumptively lawful regulatory measure is under review"); *Pruess*, 703 F.3d at 246 n.3 ("Because the presumption of constitutionality from *Heller* and *Moore* governs,

we need not pursue an analysis of the historical scope of the Second Amendment right"). Indeed, in one case, the Fourth Circuit said that courts faced with as-applied challenges to § 922(g)(1) "need not undertake an extensive historical inquiry to determine whether the conduct at issue was understood to be within the scope of the Second Amendment at the time of ratification." *Hamilton*, 848 F.3d at 624.

Because this Court's pre-*Bruen* case law failed to "undertake an extensive historical inquiry" to determine the constitutionality of § 922(g)(1), it is no longer binding.

2. The Fourth Circuit has also misapplied the first part of the *Bruen* analysis. This Court has instructed that, at step one, the challenger must show that "the Second Amendment's plain text covers" the conduct being regulated. *Bruen*, 597 U.S. at 24. This is generally an easy burden to meet because the plain text covers any "arms-bearing conduct." *Rahimi*, 602 U.S. at 691. If that burden is met, then at step two, the government must show that the challenged regulation "is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24; *Rahimi*, 602 U.S. at 691 ("[W]hen the Government regulates arms-bearing conduct … it bears the burden to 'justify its regulation.'" (citation omitted)). In short, the burden is on the government to prove that the regulation is historically justified.

But, as one member of this Court has already noted, the Fourth Circuit's post-*Bruen* case law places "the burden of producing historical evidence on the wrong party." *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J, dissenting from denial of certiorari). Indeed, the Fourth Circuit requires challengers—not the government—to show that the conduct being regulated fits within "the historical

scope of the Second Amendment right." *Hunt*, 123 F.4th at 705 (quoting *Price*, 111 F.4th at 401). And, by collapsing the step-two historical analysis into step one, the Fourth Circuit ignores the plain text altogether. In *Hunt*, for example, the court does not quote the text of the Second Amendment or even use the words "plain text" at all.

If the Fourth Circuit had properly conducted the step-one inquiry, it would have concluded that § 922(g)(1) regulates conduct covered by the plain text of the Second Amendment. Indeed, every circuit to have addressed this question, aside from the Fourth Circuit, has reached that conclusion. *See, e.g.*, *Williams*, 113 F.4th at 649 ("On balance, the Second Amendment's plain text presumptively protects Williams's conduct."); *Duarte*, 137 F.4th at 752–753 (same).

The Second Amendment protects "the right of the people to keep and bear Arms." U.S. Const. amend. II. Section 922(g)(1) clearly regulates conduct protected by text of the amendment: the ability to "keep and bear Arms" for self-defense. *Zherka*, 140 F.4th at 76 (concluding that "Section 922(g)(1) clearly covers conduct that the Second Amendment presumptively protects"). The only issue is whether felons are part of "the people" entitled to Second Amendment rights. The answer to that question is also unequivocally, "yes." *Heller* explicitly held that "the people" protected by the Second Amendment includes "all Americans," not an "unspecified subset." *Heller*, 554 U.S. at 580–81. In other words, the Second Amendment applies to every person who is a member of our "national community." *Id.* at 580 (citation omitted). And that community surely includes people with felony convictions, like Mr. Chafin. *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting) (concluding that felons are not "categorically excluded from our national community").

To be sure, *Heller* does say that the Second Amendment protects the rights of "law-abiding, responsible citizens," 554 U.S. at 635, but as *Rahimi* clarified, this Court used that term simply "to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right." 602 U.S. at 701–02. In other words, that descriptor was meant to define the core of the right, not its outer limits. Moreover, other amendments, like the First and Fourth Amendments, also refer to "the people," but "[f]elons are not categorically barred from First or Fourth Amendment protection because of their status." *Range*, 124 F.4th at 226. It would make scant sense to exclude felons from "the people" for Second Amendment purposes, when felons are still entitled to "constitutional rights in other contexts." *Id.*; *see also Zherka*, 140 F.4th at 77 (reaching similar conclusion); *Duarte*, 137 F.4th at 753–754 (same); *Williams*, 113 F.4th at 649 (same).

3. Finally, the Fourth Circuit incorrectly concluded that the government had met its burden to show that § 922(g)(1) is consistent with this Nation's history and tradition of firearm regulation. The historical laws the government identified are simply not sufficiently analogous to § 922(g)(1) because they do not justify permanently disarming people who are dangerous or who have "deviated from legal norms." *Hunt*, 124 F.4th at 706 (citation omitted). For example, the Fourth Circuit concluded that permanent disarmament is allowed because Founding-era felons were punished with estate forfeiture or death. *Id.* But that gets the history wrong. By ratification "many states were moving away from making felonies … punishable by death in America." *Range*, 124 F.4th at 227. And under most estate forfeiture laws "a felon

could acquire arms after completing his sentence and reintegrating into society." *Id.* at 231.

Even if the Fourth Circuit is right about the history, the mere fact that some felonies were capital crimes at the Founding does not mean that felons today lose all their rights. "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." *Williams*, 113 F.4th at 658; *see also Zherka*, 140 F.4th at 82 ("That felons could be executed when the Bill of Rights was enacted does not mean that anyone convicted of a felony today forfeits all civil rights."). Nor does the existence of the death penalty at the Founding tell us how the Founding generation would have treated individuals who were not sentenced to death, served their sentences, and re-entered society. *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

Next, the Fourth Circuit points to historical regulations that disarmed certain groups—such as, disfavored religious groups or political dissidents—based on their status. *Hunt*, 123 F.4th at 706–07. But none of those laws matches "how" or "why" § 922(g)(1) regulates firearm possession. *See Rahimi*, 602 U.S. at 692. Those historical laws were aimed at politically disruptive groups who the Founders feared might engage in rebellion or counter-revolution. "The Founders did not disarm English Loyalists because they were believed to lack self-control; it was because they were viewed as political threats to our nascent nation's integrity." *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024). The Fourth Circuit also failed to grapple with the ways that those historical laws preserved the right to bear arms. Unlike § 922(g)(1), most of the historical status-based prohibitions had mechanisms in place

for individuals "to demonstrate that they weren't dangerous" and retain their arms. *Williams*, 113 F.4th at 660; *see also Range*, 124 F.4th at 275 (Krause, J., concurring in judgment) (detailing how disarmed individuals could rebut the presumption that they posed a risk or danger).

The larger issue is that the Fourth Circuit reads those historical laws at "such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). *Hunt* concludes that the historical status-based firearm prohibitions authorize modern-day legislatures "to designate any group as dangerous and thereby disqualify its members from having a gun." *Kanter*, 919 F.3d at 465 (Barrett, J., dissenting); *see also Williams*, 113 F.4th at 660 ("[C]omplete deference to legislative line-drawing would allow legislatures to define away a fundamental right."); *Range*, 124 F.4th at 230. That is not how constitutional rights are supposed to work. They are intended to set outer boundaries on legislative power, not to expand or constrict at the legislature's pleasure.

By "uncritically defer[ing] to Congress's class-wide dangerousness determinations," the Fourth Circuit essentially subjected § 922(g)(1) to rational basis review. *Williams*, 113 F.4th at 660. Not only does that contradict this Court's precedent, *Heller*, 554 U.S. at 628 n.27 (rejecting rational basis review in Second Amendment context), but it allows the government to disarm individuals who have been convicted of felonies that have little or no bearing on their propensity to commit physical violence.

That is especially true in this case, where Mr. Chafin's only prior felony convictions were for shoplifting several cases of energy drinks. His offenses would

not even qualify as felonies under Virginia law today. There is no historical basis for permanently disarming an individual for petty shoplifting offenses. And Mr. Chafin's prior convictions, which did not involve the use or threatened use of force, do not suggest that he would pose a danger to the public. This Court should grant review and correct the Fourth Circuit's decision to affirm his conviction.

B. This Court should adopt a uniform and consistent test for as applied challenges.

The historical record shows that at the very least § 922(g)(1) should be susceptible to as-applied challenges. Even the status-based disarmament laws from the colonial and Founding-era, often had mechanisms that allowed individuals to "demonstrate they were not dangerous" and regain possession of their arms. *Williams*, 113 F.4th at 654; *Jackson*, 121 F.4th at 660 (Stras, J, dissenting from denial of rehearing) (explaining that most Founding-era laws "left room for 'individuals to show they were not as dangerous as the government thought'" (citation omitted)). Section 922(g)(1), by contrast, imposes an inflexible lifetime ban on firearm possession.

The question perplexing lower courts, however, is how to assess as-applied challenges. Courts seem to agree that the question is whether the defendant is too dangerous to possess a firearm, but courts disagree about how to make that "dangerousness" finding. The Third and Sixth Circuits have suggested that courts should consider a person's history and characteristics, including their entire criminal history, not just the predicate offense for the § 922(g)(1) charge. But that approach suffers from serious flaws. What standard would courts use to assess "dangerousness"? Does a judge or a jury have to decide the facts related to "dangerousness"? If

that approach requires examination of the underlying facts of prior convictions, what if those facts are disputed or simply unavailable? What crimes make someone permanently "dangerous"?

One test that is workable and avoids the vagueness problems inherent in Third and Sixth Circuits' approach is the categorical approach. Courts could look at the elements of the defendant's predicate felony conviction to determine if that conviction necessarily involved the use, attempted use, or threatened use of force. The categorical approach "economizes on judicial resources" and avoids "mini-trials" long after the fact which would be "costly, but unreliable." *United States v. Wilson*, 951 F.2d 586, 589 (4th Cir. 1991). In addition, "the categorical approach furthers the important values of comity and federalism" by avoiding the possibility of conflicting factual determinations between state juries and federal courts. *Id.* at 590. And as the Supreme Court has repeatedly held, looking to the elements of the offense is the only reliable way to determine what facts a jury must have found in order to support a conviction. *See Descamps v. United States*, 570 U.S. 254, 267 (2013); *Mathis v. United States*, 579 U.S. 500, 515 (2016) (in determining what a prior jury or judge found in convicting a defendant, "elements alone fit that bill"). Most importantly, it avoids the thorny constitutional and vagueness issues presented by Third and Sixth Circuits' approach.

Whatever test the Court adopts, it will bring much needed clarity to the current situation. While the Third and Sixth Circuit use a fact-bound approach, the Fifth Circuit focuses on each defendant's predicate felony offense and asks whether there is a history and tradition of disarming individuals with similar predicates.

Because the courts that allow as-applied challenges are divided on how those challenges should be litigated, this Court should grant certiorari and provide uniform guidance for lower courts.

III. The issues presented are important and recurring.

The constitutionality of § 922(g)(1) is an exceptionally important issue given that millions of Americans have felony convictions on their records. *See* Sarah K.S. Shannon, et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 Demography 1795, 1806 (2018), available at https://tinyurl.com/mt7frvhn (finding that 19 million people had felony convictions on their records in 2010). Section 922(g)(1) permanently bars these Americans from exercising their Second Amendment rights, and because of decisions like the one below, many are not even allowed to assert as applied challenges to restore their rights.

This issue is also recurring and unlikely to resolve itself soon. Section 922(g)(1) is routinely prosecuted in federal courts. In fiscal year 2024, for example, 7,419 cases involved convictions under § 922(g) and 90.4% of those convictions were under § 922(g)(1). U.S. Sent. Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (May 2025), available at https://tinyurl.com/3yte33nu. Second Amendment challenges in § 922(g)(1) cases have multiplied in the wake of *Bruen* and *Rahimi*. Given the conflicting analyses provided by the various circuits, criminal defendants will continue to pursue these claims and file petitions with the Court until the issue is settled.

There is no need for this Court to wait for further percolation in the lower courts because most courts have spoken. Moreover, there is no indication that the lower courts will be able to resolve their numerous disagreements about the constitutionality of § 922(g)(1) or various aspects of the Second Amendment analysis. In fact, some jurists have already asked this Court to step in and provide clarity on the topic. *See United States v. Morton*, 123 F.4th 492, 498 n.2 (6th Cir. 2024) (noting that "there is significant disagreement" about the Second Amendment analysis in the § 922(g)(1) context "that the Supreme Court should resolve").

The government has argued in other cases that the circuit split will be resolved by the Department of Justice's recent efforts to reinvigorate the administrative process under 18 U.S.C. § 925(c) for granting relief from federal firearm prohibitions. *See* Memorandum for the United States in Opposition, *Diaz v. United States*, No. 24-6625, at 2 (May 22, 2025). Under § 925(c), a person who is prohibited from possessing a firearm under federal law can apply for relief with the Attorney General, and the Attorney General can grant such relief if it is satisfied that "the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). For a long time, Congress refused to provide funding for this program, which had been delegated to the Bureau of Alcohol, Tobacco, and Firearms. *Williams* 113 F.4th at 661.

But this year the Attorney General revoked the delegation to the ATF and has indicated that it will begin accepting applications. *See Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (March 20, 2025) (to be codified at 28 C.F.R. pt. 478). The Department of Justice recently proposed a rule setting

forth the criteria it will use to evaluate § 925(c) applications. *See Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 90 Fed. Reg. 34,394 (July 22, 2025) (to be codified at 28 C.F.R. pt. 107). The proposed rule sets out a scheme of tiered presumptions against relief. Applicants are presumptively ineligible for relief if they have: (1) ever committed certain enumerated "violent" crimes (e.g., robbery, carjacking, sexual assault); (2) committed certain other enumerated offenses (mostly drug offenses) within the last ten years; and (3) committed any other felony within the last five years. *Id*. at 34,402. An applicant can only rebut the presumption of ineligibility if they make a showing of "extraordinary circumstances." *Id*. Once the presumption no longer applies to an applicant, he still must show that he will not be a danger to the community going forward. *Id*. at 34,403–34,404.

The Attorney General's attempt to revive § 925(c) does not resolve the issues presented in this case. As an initial matter, relief under § 925(c) matters little to Mr. Chafin and similarly situated defendants who have already been prosecuted and imprisoned for exercising their Second Amendment rights. These defendants are seeking to reverse their convictions and sentences, so § 925(c)'s restoration process is irrelevant to them.

In any case, it is not clear if relief under § 925(c) will be as broad as the Second Amendment requires. Under the proposed rule, the Attorney General's review will "not be bound by the artificial limits of the categorical approach." *Id*. at 34,398. In assessing whether the defendant is eligible for relief, the Attorney general will

consider "all the relevant circumstances, rather than a blindered approach that looks only at the facts that led to the applicant's federal firearm disability." *Id.* If this Court determines that as-applied challenges to § 922(g)(1) under the Second Amendment require the categorical approach, as argued above, *see supra* section II.B, then there will likely be some individuals who are eligible for relief under the Second Amendment who would be ineligible for § 925(c) relief.

Moreover, the government still must prove that § 925(c)'s application process is consistent with this Nation's history of firearm regulation. As noted, the colonial and Founding-era laws that disarmed large categories of people based on their status often gave individuals covered by such laws the opportunity to restore their firearm rights. *Range*, 124 F.4th at 275 (Krause, J., concurring in judgment). But most individuals could restore their rights by simply swearing a loyalty oath. *Id.*; *Williams*, 113 F.4th at 651, 657. Section 925(c)'s screening process, as set forth in the proposed rule, is far more burdensome than a mere loyalty oath. At a minimum, all felons are presumptively ineligible for relief for at least five years, and once an applicant gets out from under that presumption, he still must demonstrate "to the satisfaction of the Attorney General" that he is not dangerous. *Application for Relief From Disabilities*, 90 Fed. Reg. at 34,403.

Applicants under § 925(c) are also completely at the mercy of the Executive, who has the ultimate discretion to decide whether to grant relief. By contrast, during colonial times, it was usually "the local justice of the peace" who made dangerousness determinations, and those decisions were often "guided by some benchmarks, either a loyalty oath, the attestations of others, or some other statutory criteria." *Williams*,

113 F.4th at 657. The criteria for § 925(c) is largely set by the Attorney General through the rulemaking process, so it could change depending on who is residing in the White House. An administration that is particularly hostile to gun rights could establish criteria that are almost impossible to meet.

For those reasons, the government cannot evade defending the constitutionality of § 922(g)(1) by simply restarting the § 925(c) application process. The government still has an obligation to prove that § 922(g)(1)—even with a functioning § 925(c) relief mechanism—is consistent with this Nation's history of firearm regulation. This Court should grant review to determine if the government has met its burden.

IV. This case is a good vehicle to decide these important questions.

This case is the right vehicle to decide that § 922(g)(1) is unconstitutional. Mr. Chafin has properly preserved his Second Amendment claim throughout the lifespan of this case, so there are no lurking standard of review or preservation issues to complicate matters. There is no reason to think that as-applied challenges to § 922(g)(1) will subside any time soon, so this Court should grant certiorari in this case in order to settle the issue quickly.

CONCLUSION

For the reasons given above, the petition for a writ of certiorari should be granted. In the alternative, the case should be held until the Court rules on similar cases presenting the issues raised here and considered at that time.

Respectfully submitted,

GEREMY C. KAMENS
Federal Public Defender
for the Eastern District of Virginia

Salvatore M. Mancina
Counsel of Record
Patrick L. Bryant
Joseph S. Camden
Assistant Federal Public Defenders
Office of the Federal Public Defender
for the Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800
Sam_Mancina@fd.org

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