No. 25-

IN THE

# Supreme Court of the United States

THOMAS JARRELL SHOFFNER,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

---

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

## PETITION FOR A WRIT OF CERTIORARI

SETH A. NEYHART
*Counsel of Record*
LAW OFFICE OF
SETH A. NEYHART
5226 Revere Road
Durham, NC 27713
(202) 870-0026
setusn@hotmail.com

*Counsel for Petitioner*

120660

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## QUESTIONS PRESENTED

I. Whether the District Court Erred in Denying Appellant's Motion to Dismiss the Indictment on the Constitutionality of 18 U.S.C. § 922(g)(1).

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Page(s)

**Cases**

**Constitutional Provisions**



**Statutes, Rules and Regulations**

**Other Authorities**

## ORDER BELOW

The order appealed from is the Judgment located at the CM/ECF Docket of the Fourth Circuit in United States v. Thomas Shoffner, Case No. 24-4579, Docket Entry No. 32, entered June 16, 2025. A copy of the per curiam opinion of the Fourth Circuit issued that date is attached as Exhibit A. The judgment is attached as Exhibit B.

## JURISDICTIONAL STATEMENT

This petition for writ of certiorari is from a final judgment by the Fourth Circuit Court of Appeal entered on June 16, 2025 in a direct appeal of a conviction and sentence imposed against Petitioner Thomas Shoffner in the United States District Court for the Middle District of North Carolina in M.D.N.C. No. 1:24-cr-58-TDS. Accordingly, this Court has jurisdiction over this petition for writ of certiorari and the matter referenced herein pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

## CONSTITUTIONAL PROVISIONS INVOLVED

"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.

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

## STATEMENT OF THE CASE

### A. Procedural History.

On December 16, 2021, Mr. Shoffner was sentenced to 24 months of imprisonment and 36 months of supervised release in M.D.N.C. No. 1:21-cr-113 for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). [JA20-29.][1] Mr. Shoffner began his term of supervised release on January 6, 2023. [JA30.]

On January 16, 2024, the Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision. [JA30-31.] Accompanying this petition was a Supplemental Report filed under seal. [JA213-216.] The Petition contained two alleged violations. The first violation stated that Mr. Shoffner was arrested on January 2, 2024 in Randolph County, NC on North Carolina charges of felony possession of a firearm by felon, felony possession of heroin, felony possession of methamphetamine, and misdemeanor possession of drug paraphernalia. [JA30.] The second violation charged that Mr. Shoffner tested positive for methamphetamine on eight occasions, fentanyl on seven occasions, buprenorphine on three occasions, marijuana on three occasions, and cocaine, morphine, codeine, and oxycodone on one occasion each. [JA31.]

On February 26, 2024, a grand jury impaneled in the Middle District of North Carolina filed a one count Indictment in M.D.N.C. No. 1:24-cr-58-1. [JA32-34.] The Indictment charged Mr. Shoffner with possession of a firearm and ammunition by a felon on or about January 1, 2024. [JA32-34.]

On June 13, 2024, counsel for Mr. Shoffner filed a motion to dismiss the Indictment, arguing that Mr. Shoffner's prosecution violated his Second Amendment right to keep and bear arms. [JA35-56.] On June 20, 2024 the Government filed a response in opposition to the motion.

[1] Record citations in this case are to the Joint Appendix prepared and filed in the Fourth Circuit Court of Appeals, No. 24-4579.

[JA57-68.] On July 9, 2024, the trial judge conducted a hearing and issued an oral order denying the motion. [JA69-85.]

On July 17, 2024, a plea agreement was filed. [JA86-95.] Two days later, Mr. Shoffner's guilty plea was entered and accepted. [JA96-116.]

On August 11, 2024, an Amendment to the SRV Petition was filed [JA117-18.] This amendment served as an update explaining that Mr. Shoffner's state charges listed in the first Violation were dismissed in light of Mr. Shoffner's guilty plea entered in federal Court. [JA117.]

On October 16, 2024, the district court conducted a combined sentencing and revocation hearing. [JA119-144.] The district court announced a sentence of 46 months in M.D.N.C. No. 1:24-cr-58-1 to be run consecutive with 21 months on the supervised release violation in M.D.N.C. No. 1-21-cr-113-1. [JA137-138.]

On October 16, 2025, the district court entered a written Judgment and Commitment for Supervised Release Violation in M.D.N.C. File No. 1:21-cr-113-1. [JA146-157.] On October 18, 2024, the district court entered a written Judgment in a Criminal Case in M.D.N.C. File No. 1:24-cr-58. [JA158-168].

On October 25, 2024, Mr. Shoffner's trial counsel filed a timely Notice of Appeal of the Judgment in a Criminal Case in M.D.N.C. File No. 1:21-cr-113-TDS. [JA191-192.] On November 22, 2024 the undersigned filed a notice of appeal accompanied by a motion for extension of time to file it in M.D.N.C. No. 1:21-cr-113-TDS. [JA172-177.] On November 25, 2024, the district court granted the motion and deemed the notice of appeal timely filed. [JA178.]

The Fourth Circuit Court of Appeals consolidated the cases and on June 16, 2025, it issued a per curiam unpublished opinion upholding the two judgments. This petition follows.

**B. Statement of the Facts:**

The Pre-Sentence Report in this case relates Mr. Shoffner's failure to meet the conditions of his supervised release and relapse into criminal activity as follows:

> On January 6, 2023, Mr. Shoffner was released from the residential re-entry center in Greensboro, NC, to begin his term of supervised release. Upon his release, Mr. Shoffner was approved to reside with his friend, V. Loftis, in Asheboro, NC, and has remained there throughout his supervision. Upon the commencement of his supervision, Mr. Shoffner presented as an individual with a substantial criminal history, history of substance abuse and mental health issues, anti-social peer associations, and poor decision-making skills. However, he was able to successfully complete his previous term of federal supervision (1:10CR27-1) in 2015. In discussions with Mr. Shoffner, the aforementioned anti-social behavioral patterns were highlighted as being barriers to his success in life and supervision. Mr. Shoffner was optimistic that he was not going to let the mistakes from his past resurface and he worked with the probation officer to develop a supervision plan for his success. Mr. Shoffner was able to achieve some success in that he was able to maintain part-time employment, he reported to the probation officer as directed, he attended outpatient dual-diagnosis treatment regularly, successfully completed an inpatient substance abuse treatment program, and he was very respectful with the probation officer during meetings. However, after being on supervision for just over one month. Mr. Shoffner began to revert into his previous anti-social ways of thinking and behaving when he started associating with poor influences and began abusing illegal drugs. Mr. Shoffner's decisions to engage in aberrant criminal behaviors not only continued throughout his supervision but escalated and worsened over time. After being on supervision for just shy of one year, his involvement in criminal activities caught up with him when he was arrested and charged with felony possession of a firearm, possession of methamphetamine, and possession of heroin. Ultimately, Mr. Shoffner failed to disengage from actively living in a criminally negligent manner, which results in the aforementioned violations noted within the Petition.

[JA213.]

> 4. On January 1, 2024, a deputy (Deputy 1) with the Randolph County Sheriff's Office (RCSO), Asheboro, NC, was conducting routine patrol in the area of interstate highway 73 (I-73) in Randolph County, NC. While conducting patrol, Deputy 1 observed a silver Honda Accord traveling northbound on I-73, with only one operating headlight. Upon this observation, Deputy 1 activated the patrol vehicle's blue lights and conducted a traffic stop on the vehicle near Vison Drive. A second RCSO deputy (Deputy 2) responded to the location to assist with the traffic stop. During the traffic stop, the deputies noticed the vehicle was occupied by two individuals. The driver was identified as Thomas Jarrell Shoffner and a female,

M.B., was identified as the front seat passenger. It was determined the vehicle belonged to M.B.

5. Deputy 1 approached the passenger's side of the vehicle and spoke with the occupants of the vehicle. During the encounter, Deputy 1 explained the reason for the traffic stop. Meanwhile, Deputy 2 approached the driver's side of the vehicle from the rear and observed a loaded1 **Smith & Wesson .40 caliber handgun** (serial number: HOU1659) in a holster under the driver's seat of the vehicle. *(Note: There is no indication the firearm was reported stolen.)* Deputy 2 alerted Deputy 1 of the presence of the firearm. Subsequently both deputies drew their duty-issued weapons and ordered the occupants to exit the vehicle. The deputies conducted a pat down of the defendant and M.B., at which time a loaded magazine containing .40 caliber ammunition was located in the right pocket of the defendant's jacket. The defendant told the deputies the magazine belonged to his girlfriend's firearm, and he was "holding on to it." When the defendant was asked about the firearm that was located under the driver's seat of the vehicle, he stated his girlfriend must have left it there. *(Note: A total of 31 rounds of ammunition were located between the magazine located in the firearm and the magazine located in the defendant's jacket pocket. The ammunition included **20 Sig .40 caliber rounds**, **9 Speer .40 caliber rounds**, and **2 Blazer .40 caliber rounds** of ammunition.)*

6. After the deputies conducted a criminal record inquiry of the defendant, it was determined he was a convicted felon. Subsequently, the defendant was detained and placed inside the patrol vehicle. Deputy 1 spoke with M.B., who stated the defendant placed the firearm between the seat in an attempt to hide it when the officers initiated the traffic stop. M.B. also stated, the defendant's girlfriend had not been inside her vehicle, and she had just got the vehicle back. The defendant was transported to the Randolph County Detention Center, Asheboro, NC. During the transport, the defendant advised he had "ice" (methamphetamine) and "boy" (heroin) in a cigarette pouch on his person. The defendant also stated he had a glass smoking device in the pocket of his jacket. Once they arrived at the detention center, Deputy 1 conducted a search of the defendant's person and located a Newport cigarette pouch containing two clear baggies. One of the baggies contained 0.80 grams (gross weight) of suspected heroin, and the other baggie contained 1.51 grams (gross weight) of suspected methamphetamine.

7. On January 2, 2024, the defendant was arrested and charged in Randolph County, NC, with Felony Possession of Heroin, Felony Possession of Methamphetamine, Felony Possession of a Firearm by Felon (24CRS200752), and Misd. Possess Drug Paraphernalia (24CR200752). The charge in 24CR 200752 was dismissed on January 14, 2024, in Randolph County District Court, Asheboro, NC. The remaining charges were dismissed on April 23, 2024, in Randolph County Superior Court, Asheboro, NC.

[JA223-224.]

In its description of Mr. Shoffner's criminal history, there are no crimes of violence or theft of property. His criminal activity consisted of drug crimes and possession of firearms by a felon. [JA184-192.]

As stated above, Mr. Shoffner's trial counsel submitted a motion to dismiss the Indictment in M.D.N.C. No. 1:24-cr-00113 based upon the United States Supreme Court's ruling in New York State Rifle & Pistol Association, Inc. et al. v. Bruen, ___ U.S. ___, 142 S. Ct. 2111 (2022). [JA35-56.][2] After the Government responded in opposition, [JA57-68], the trial judge conducted a hearing on the motion on July 9, 2024. [JA69-85.]

In that hearing, the trial judge noted that he was bound by the decisions of the appellate courts, and his reading of the Fourth Circuit case law "seems to bind me in this area, unless the Supreme Court makes clear that that's no longer good law." [JA78.] Specifically, the trial judge cited United States v. Moore, 666 F.3d 313 (2012), which upheld the constitutionality of 18 U.S.C. § 922(g)(1) on a facial basis. [JA74-75] The trial judge noted he was "having trouble finding anything from a court above me to tell me that the law has changed from the way I need to apply it or should apply it in this case." [JA78.] Mr. Shoffner's trial counsel then conceded that "there's no Fourth Circuit case that I have found that would stand for the proposition that Bruen overrules Fourth Circuit law as it relates to this particular issue." [JA78.] However, he did state that there is "fertile ground there for the Fourth Circuit to do something different based on a particular panel's reading of Bruen." [JA78.]

In response, the trial judge noted that

> An argument you haven't made but -- I mean, I can take almost judicial notice of the fact, I think, there's more than 5,000 federal criminal laws, and I don't know how many of those 5,000 laws provide for felony punishment, but the number of

[2] Although the motion was not filed in M.D.N.C. No. 1:21-cr-00113 that case was also a conviction of being a felon in possession in violation of 18 U.S.C. § 922(g)(1) and thus is similarly situated with respect to the Bruen argument raised in M.D.N.C. No. 1:24-cr-00058.

> laws that provide for felony punishment must be orders of magnitude higher than they were at the founding of the nation. I would have no doubt about that.
>
> And so the ability to -- for the Government to charge somebody with a federal crime and seek a felony punishment might be tremendous in this day and age, given the sheer number of laws that are out there, many of which may not go to the initial concern, if it was that, of safety of an individual and whether they should not have a firearm -- possess a firearm because it's unsafe, given their history.

[JA78-79.]

Finally, the trial judge stated that he did not see anything in Bruen that abrogated the Fourth Circuit's precedent. He then stated, "whether facially or as-applied as to the defendant in this case, I'm going to deny the motion. You can preserve the issue, and you have preserved it. And you can raise it at the appropriate time. [JA81.]

After the trial judge denied his motion to dismiss, Mr. Shoffner pled guilty to the One Count Indictment and was sentenced in due course.

Further facts will be adduced as necessary below.

## REASON WHY CERTIORARI SHOULD BE GRANTED

### I. The District Court Erred by Denying Mr. Shoffner's Motion to Dismiss the Indictment.

The Court should grant certiorari in this case in order to clarify whether its recent opinions in New York State Rifle & Pistol Association, Inc., et al. v. Bruen, ___ U.S. ___, 142 S. Ct. 2111 (2022) and United States v. Rahimi, ___ U.S. ___, 144 S.Ct. 1889 (2024) allow Second Amendment challenges to the constitutionality of 18 U.S.C. § 922(g)(1) on its face and as applied. Petitioner respectfully requests that the Court reverse the courts below, vacate Mr. Shoffner's conviction, and instruct the trial court to dismiss the Indictment against him.

A. Background and Legal Standard for Second Amendment Challenges.

On June 23, 2022, the Court issued its opinion in New York State Rifle & Pistol Association, Inc., et al. v. Bruen, ___ U.S. ___, 142 S. Ct. 2111 (2022). That decision upended

Second Amendment doctrine, replacing the Fourth Circuit's prior interest-balancing approach with an analysis grounded only in constitutional "text and history." Id. at 2129. Bruen instructs that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and the government may rebut the presumption of unconstitutionality only by showing that "the regulation is consistent with this Nation's historical tradition of firearm regulation." Id. at 2126.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In District of Columbia v. Heller, 554 U.S. 570 (2008), the Court recognized that based on the text of the Second Amendment and history, the amendment "conferred an individual right" "to possess and carry weapons in case of confrontation." Id. at 576, 582, 592-95. But in Heller the Court did not go any further than resolving the specific Second Amendment claim raised in that case. The Court did not establish a definitive test for evaluating other Second Amendment claims, define the broader contours of the fundamental Second Amendment right, or delimit the outer bounds of that right. See United States v. Jimenz-Shilon, 34 F.4th 1042, 1050 (11th Cir. 2022) (Newsom, J., concurring) (recognizing that Heller left the lower courts "in an analytical vacuum;" citing Silvester v. Becerra, 138 S. Ct. 945, 947 (2018) (Thomas, J., dissenting from denial of certiorari) ("acknowledging that the Supreme Court 'has not definitively resolved the standard for evaluating Second Amendment claims'")).

It was only in Bruen that the Court set forth an actual "test" for deciding the constitutionality of all firearm regulations. After first deciding that the courts of appeals had misunderstood and misapplied Heller by embracing means-end scrutiny as having any role in Second Amendment analysis, see Bruen, 142 S. Ct. at 2126-29, Bruen set forth the "text and

history" approach of Heller by newly bifurcating "text" and "history" into separate steps of an analysis to be used for deciding the constitutionality of all firearm regulations going forward. See Nat'l Rifle Ass'n v. Bondi, 61 F.4th 1317, 1321 (11th Cir. 2023).

At Step One of Bruen's Second Amendment test, courts are to consider only whether "the Second Amendment's plain text covers an individual's conduct." 142 S. Ct. at 2126. If it does, Bruen held, "the Constitution presumptively protects that conduct." Id. And, Bruen held, regulating presumptively protected conduct is unconstitutional unless the government at Step Two of the analysis can "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation"—that is, the tradition in existence "when the Bill of Rights was adopted in 1791." Bruen, 142 S. Ct. at 2137.

For the first time, Bruen also articulated specific burdens and rules to govern the historical "tradition" inquiry. First, Bruen made clear that the burden of proof at Step Two rests entirely with the government. The government alone must "establish the relevant tradition of regulation." Id. at 2135, 2149 n.25. If it does not, courts "are not obliged to sift the historical materials for evidence to sustain the [challenged] statute." Id. at 2150. Rather, Bruen held, consistent with ordinary "principle[s] of party presentation," courts must "decide a case based on the historical record compiled by the parties." Id. at 2130 n.6. If that record yields "uncertainties," the Court dictated, courts should rely on Bruen's "default rules"—the presumption of unconstitutionality at Step One and the government's burden at Step Two—"to resolve [those] uncertainties" in favor of the view "more consistent with the Second Amendment's command." Id.

Second, whereas in Heller and Bruen, "a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a 'distinctly similar' historical regulation addressing the problem is relevant evidence that the challenged regulation is

inconsistent with the Second Amendment." Bruen, 142 S. Ct. at 2131. Thus, § 922(g)(1) is unconstitutional unless the government shows a tradition of "distinctly similar historical regulation" as of 1791 when the Second Amendment was ratified. Id. at 2126, 2131.

After Mr. Shoffner's sentencing hearing, the Court issued its opinion in United States v. Rahimi, ___ U.S. ___, 144 S.Ct. 1889 (2024). In Rahimi, the Supreme Court reversed the Fifth Circuit's holding that 18 U.S.C. § 922(g)(8) was unconstitutional because it did not fit within the nation's tradition of firearm regulation. Id. 18 U.S.C. § 922(g)(8) makes unlawful the possession of firearms of individuals subject to certain kinds of domestic violence protective orders. In explaining the Bruen standard, the Court in Rahimi stated:

> Nevertheless, some courts have misunderstood the methodology of our recent Second Amendment cases. These precedents were not meant to suggest a law trapped in amber. As we explained in Heller, for example, the reach of the Second Amendment is not limited only to those arms that were in existence at the founding. 554 U.S. at 582, 128 S.Ct. 2783. Rather, it "extends, prima facie, to all instruments that constitute bearable arms, even those that were not [yet] in existence." Ibid. By that same logic, the Second Amendment permits more than just those regulations identical to ones that could be found in 1791. Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.
>
> As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. 597 U.S. at 26-31, 142 S.Ct. 2111. A court must ascertain whether the new law is "relevantly similar" to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id.*, at 29, 142 S.Ct. 2111. Discerning and developing the law in this way is "a commonplace task for any lawyer or judge." *Id.,* at 28, 142 S.Ct. 2111.
>
> Why and how the regulation burdens the right are central to this inquiry. *Id.*, at 29, 142 S.Ct. 2111. For example, 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. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, "it still may be analogous enough to pass constitutional muster." *Id.*, at 30, 142 S.Ct. 2111. The law must comport with the

> principles underlying the Second Amendment, but it need not be a "dead ringer" or a "historical twin." *Ibid.* (emphasis deleted).

Rahimi, 144 S.Ct. at 1897-98.

In light of this explanation, the Supreme Court identified two relevant parallels that supported the constitutionality of 18 U.S.C. § 922(g)(8), based on the requirement for finding that the defendant was subject to an order finding that he poses a credible threat to the physical safety or another or if the order prohibits the use, attempted use, or threatened use of physical force. The first of these were the surety laws well entrenched in the common law which could be invoked to prevent all forms of violence, including spousal abuse. Rahimi, 144 S.Ct. at 1899-1900. The second of these were the "going armed to the terror of the people" laws. Id. at 1900-1901.

On remand in light of Rahimi, the Fourth Circuit in United States v. Canada failed to engage in any substantive analysis under the Bruen standard. Instead, it relied on a pre-Bruen precedent stating that 18 U.S.C. § 922(g)(1) is "presumptively lawful" and eschewed further analysis. United States v. Canada, 123 F.4th 159, 161-62 (4th Cir. 2024). After Canada, the Fourth Circuit later upheld the categorical application of 18 U.S.C. § 922(g)(1) to all felons regardless of the circumstances of their crimes . See United States v. Hunt, 123 F.4th 697, 707-08 (4th Cir. 2024) (rejecting an as-applied challenge on a categorical basis). Accordingly, the Fourth Circuit affirmed the instant case pursuant to these precedents.

In so doing, the Fourth Circuit was joined by the approaches of at least three other circuits. See, e.g., United States v. Dubois, 94 F.4th 1284, 1289 (11th Cir. 2024) cert. granted, judgment vacated, ___U.S.___ , 145 S. Ct. 1041, 220 L.Ed.2d 375 (2025) ; Vincent v. Bondi, 127 F.4th 1263, 1265-66 (10th Cir. 2025); United States v. Duarte, 137 F.4th 743 (9th Cir. 2025) (en banc); United States v. Jackson, 110 F.4th 1120, 1129 (8th Cir. 2024).

Other circuits have rejected as-applied challenges, but have left open the possibility that 18 § 922(g)(1) might be unconstitutional for some defendants on that basis. See United States v. Diaz, 116 F.4th 458, 471 (5th Cir. 2024) (reasoning that the defendant's underlying felony was sufficiently similar to a death-eligible felony at the founding); United States v. Williams, 113 F.4th 637, 661-62 (6th Cir. 2024) (rejecting an as-applied challenge because the defendant's criminal record sufficiently showed that he was dangerous enough to warrant disarmament). United States v. Gay, 98 F.4th 843, 846-47 (7th Cir. 2024) (assuming for the sake of argument that there is some room for an as-applied challenge, but rejecting the defendant's specific as-applied challenge because his prior felonies included aggravated battery of a peace officer and possession of a weapon while in prison).

By contrast, the Third Circuit has held that 18 § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps. See Range v. Att'y Gen., 124 F.4th 218, 222-23 (3d Cir. 2024) (en banc).

B. 18 U.S.C. § 922(g)(1) is Unconstitutional under Bruen's Standard.

Respectfully, criminalizing gun and ammunition possession pursuant to 18 U.S.C. § 922(g)(1) is unconstitutional under Bruen's "text and history" standard. 142 S. Ct. at 2138. This, ultimately, is the issue with the Bruen standard. If it is taken seriously and applied as directed, even in light of Rahimi, 18 U.S.C. § 922(g)(1) cannot survive the analysis, even though the Court has previously upheld 18 U.S.C. § 922(g)(1).

First, the Second Amendment's "plain text" entitles "the people" to the right to keep and bear arms, and nothing in that text or the Supreme Court's cases holds that felons are not among "the people." Excluding felons from Second Amendment protection would violate the Supreme Court's holding in District of Columbia v. Heller, 554 U.S. 570 (2008), that "the people" includes

everyone who is "part of [the] national community"; that the right to bear arms "belongs to all Americans"; and that "the people" means the same thing in the Second Amendment as it does in the First, Fourth, and Ninth Amendments.

Second, under Bruen's "text and history" standard, the government cannot rebut the presumption that § 922(g)(1) is unconstitutional. The United States' "historical tradition of firearm regulation" shows that felon-disarmament laws did not appear until the 20th century— well after the period Bruen deems relevant. And the government cannot discharge its burden by likening § 922(g)(1) to laws that disarmed supposedly "dangerous" or "unvirtuous" groups. Those categories are far too broad under a proper Bruen analysis simply because almost all disarmament laws both before and after the ratification of the Second Amendment have been predicated on the supposed dangerousness or lack of virtue of the target population.

C. The Second Amendment's plain text protects the right of "the people," not only "law-abiding, responsible" people, to keep and bear arms.

The Second Amendment protects the right of "the people" to keep and bear arms. Founding era dictionaries define "people" as "those who compose a community," and extending to "every person." *See, e.g., 2 Samuel Johnson, A Dictionary of the English Language (1766) ("A nation; those who compose a community")*, available at *https://tinyurl.com/y95erjwf; Thomas Dyche & William Pardon, A New General English Dictionary (14th ed. 1771)* ("People" "signifies every person, or the whole collection of inhabitants in a nation or kingdom"*)*, available at *https://tinyurl.com/uk4b4fxd*.

Heller consistently interpreted "the people" as "unambiguously refer[ing] to all members of the national community, not an unspecified subset." Heller, 554 U.S. at 580. Heller began with a "textual analysis" of the Second Amendment's "operative" clause, initially observing the phrase "the right of the people" also appears in the First and Fourth Amendments. Id. at 578-79. Relying

on its earlier construction of "the people" in the Fourth Amendment, the Court observed that "the people" is "a term of art." Id. *(*quoting United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990)). "'[Its uses] sugges[t] that 'the people,'" as used across the Bill of Rights as well as in the preamble, "'refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.'" Id. at 579-81 (quoting Verdugo-Urquidez, 494 U.S. at 265*)*. The phrase "the people" thus created "a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." Id. at 581.

Indeed, Bruen cites Heller as directly stating, "[t]he Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to certain reasonable, well defined restrictions.'" Bruen, 142 S. Ct. at 2156 (citing Heller); see also Range v. Att'y Gen., 69 F.4th 96, 102 (3d Cir. 2023) ("Unless the meaning of the phrase 'the people' varies from provision to provision—and the Supreme Court in Heller suggested it does not—to conclude that Range is not among 'the people' for Second Amendment purposes would exclude him from those rights as well.").

Although the Second Amendment's text does not circumscribe "the people" whose rights it guarantees, in other cases, the government has argued that "the people" are only "law-abiding, responsible" citizens such that (at least) those with prior convictions for offenses punishable by more than one year (including state law misdemeanors punishable by more than two years' imprisonment) are categorically outside the scope of those entitled to Second Amendment protections. See, e.g., United States v. Range*,* 123 F.4th 159, 226 (4th Cir. 2024) (en banc). But, to read "the people" protected by the Second Amendment as excluding "felons" would be contrary to text and at odds with the cardinal rule of statutory interpretation that "identical words used in

different parts of the same statute are generally presumed to have the same meaning." See IBP, Inc. v. Alvarez, 546 U.S. 21, 34 (2005). The untenable result would be to single out the Second Amendment for "specially unfavorable treatment." See McDonald v. City of Chicago, 561 U.S. 742, 780 (2010). As Judge Bibas in the Third Circuit has observed, felons "are part of 'We the People of the United States.' U.S. Const. pmbl. So they too share in the Second Amendment 'right of the people to keep and bear Arms,' subject only to the historical limits on that right." Folajtar v. Att'y Gen., 980 F.3d 897, 912-13, 923 (3d Cir. 2020) (Bibas, J., dissenting); see also Range, 69 F.4th at 101- 03; United States v. Meza-Rodriguez, 798 F.3d 664, 672 (7th Cir. 2015) ("'the people' in the Second Amendment has the same meaning as it carries in other parts of the Bill of Rights"); United States v.Jimenez-Shilon, 34 F.4th 1042, 1044-45 (11th Cir. 2022) (relying on founding-era dictionaries to construe "the people").

Moreover, excluding "felons" from "the people" categorically precludes as-applied challenges, as it prevents any felon from ever surviving Bruen's "plain text" test at step one. Cf. Binderup v. Att'y Gen'l, 836 F.3d 336 (3d Cir. 2016) (en banc) (finding 18 U.S.C. § 922(g)(1)'s permanent bar on firearm possession was unconstitutional as applied to petitioners with remote convictions for state misdemeanors punishable by more than two years that inter alia did not involve physical violence or threats of violence).

In addressing the government's argument in that case that the Second Amendment applied only to "law-abiding, responsible citizens", the Third Circuit observed:

> Who are "law-abiding" citizens in this context? Does it exclude those who have committed summary offenses or petty misdemeanors, which typically result in a ticket and a small fine? No. We are confident that the Supreme Court's references to "law-abiding, responsible citizens" do not mean that every American who gets a traffic ticket is no longer among "the people" protected by the Second Amendment. Perhaps, then, the category refers only to those who commit "real crimes" like felonies or felony-equivalents? At English common law, felonies were so serious they were punishable by estate forfeiture and even death. William Blackstone,

> Commentaries on the Laws of England 54 (1769). But today, felonies include a wide swath of crimes, some of which seem minor. And some misdemeanors seem serious. As the Supreme Court noted recently: "a felon is not always more dangerous than a misdemeanant." Lange v. California, —— U.S. ——, 141 S. Ct. 2011, 2020, 210 L.Ed.2d 486 (2021) (cleaned up). As for the modifier "responsible," it serves only to undermine the Government's argument because it renders the category hopelessly vague. In our Republic of over 330 million people, Americans have widely divergent ideas about what is required for one to be considered a "responsible" citizen.

Range v. Att'y Gen, 69 F.4th 96, 102 (3d Cir. 2023). The Third Circuit thus found that Mr. Range was among "the people" for purposes of Second Amendment protection despite his prior false statement conviction. Id. at 103.

Other circuits have also recently come to this position in respect to adjudicating Bruen challenges to the constitutionality of 18 U.S.C. § 922(g)(1). "Nothing in the Second Amendment's text draws a distinction among the political community between felons and non-felons—or, for that matter, any distinction at all." United States v. Williams, 113 F.4th 637, 649 (6th Cir. 2024), "Accordingly, because Duarte is undoubtedly a member of the national community, he is part of 'the people' and the 'Constitution presumptively protects' his right to possess a firearm. United States v. Duarte, 137 F.4th 743, 755 (9th Cir. 2025).

The Second Amendment text must be accorded its plain meaning—the same meaning it carries in other parts of the Bill of Rights—as "unambiguously" referring to all members of the national community. Thus, because 18 U.S.C. § 922(g)(1) regulates conduct the Second Amendment protects, section 922(g)(1)'s prohibition on felons possessing guns is presumptively unconstitutional under Bruen's plain text standard.

D. Bruen's historical test requires that the government show a robust tradition of "distinctly similar" historical precursors.

The government's burden at Step Two of the new Bruen analysis does not stop at identifying a "distinctly similar historical regulation." Rather, the government must show that the

challenged regulation "is consistent with the Nation's historical tradition of firearm regulation." Id. And a "tradition" of regulation requires more than one or two isolated examples. It requires a "widespread" historical practice "broadly prohibiting" the conduct in question. Id. at 2137-38. Although Bruen did not establish a clear threshold for determining when a historical practice rises to the level of a "tradition," it did hold that "a single law in a single State" is not enough, and even expressed doubt that regulations of three of the thirteen colonies "could suffice." Id. at 2142-45.

To rebut the presumption of unconstitutionality, the government must demonstrate that a challenged regulation "is consistent with the Nation's historical tradition of firearm regulation." Bruen, 142 S. Ct. at 2130. Crucially, the nature of that burden varies depending on what kind of problem a statute is designed to address—specifically, whether the problem is old or new. In "some cases," where "a challenged regulation addresses a general societal problem that has persisted since the 18th century," the historical inquiry is "fairly straightforward." Id. at 2131. The government must identify a robust tradition of "distinctly similar" founding-era regulations. Id. If "the Founders themselves could have adopted" a particular regulation "to confront [a longstanding] problem," but did not do so, that is evidence the statute is unconstitutional today. Id. So, too, if some jurisdictions in the founding era attempted to enact analogous regulations but those proposals were rejected on constitutional grounds. Id.

At the threshold, then, courts faced with a Bruen challenge must identify the problem at which a statute is aimed, and then determine whether it existed in 1791 or instead grows out of "unprecedented," "unimaginable" societal changes. Id. at 2132. Felons' access to firearms, at which § 922(g)(1) is directed, has posed a (potential) problem since well before 1791.

No such laws from the founding era exist. See, e.g., Royce de R. Barondes, The Odious Intellectual Company of Authority Restricting Second Amendment Rights to the "Virtuous," 25

Tex. Rev. L. & Pol. 245, 291 (2021) (noting the lack of "any direct authority whatsoever" for the view that felons were "deprived of firearm rights" at the founding); C. Kevin Marshall, Why Can't Martha Stewart Have A Gun?, 32 Harv. J. L. & Pub. Pol'y 695, 708 (2009) (same).

The first felon-in-possession laws similar to § 922(g)(1) did not appear until the 20th century. Today's 18 § 922(g)(1) traces its origins to 1938, when Congress passed a statute, the Federal Firearms Act, prohibiting certain felons from "receiving" firearms. United States v. Skoien, 614 F.3d 638, 640 (7th Cir. 2010) (en banc) (citing c. 850, § 2(f), 52 Stat. 1250, 1251 (1938)). At that time, the statute "covered only a few violent offenses," id., prohibiting firearm "receipt" by those convicted of crimes such as murder, rape, and kidnapping. United States v. Booker, 644 F.3d 12, 24 (1st Cir. 2011).

It was not until 1961 that Congress amended that statute to prohibit "receipt" "by all felons." Skoien, 614 F.3d at 640 (citing Pub. L. 87-342, 75 Stat. 757) (noting that under the statute, "possession" was evidence of "receipt"). And it was not until 1968, that Congress formally "changed the 'receipt' element of the 1938 law to 'possession,' giving 18 U.S.C. § 922(g)(1) its current form." Id. Thus, the first firearm regulation in America broadly prohibiting all felons from possessing firearms was not enacted until almost two centuries after the Nation's founding, when the modern version of § 922(g)(1) became law.

Section 922(g)(1) is the first law in our nation's history to broadly prohibit all felons from possessing a firearm. There was nothing before the 20th century, even in individual colonies or states. See Carlton F.W. Larson, Four Exceptions in Search of a Theory, 60 Hastings L.J. 1371, 1376 (2009) ("state laws prohibiting felons from possessing firearms or denying firearm licenses to felons date from the early part of the twentieth century"). As Bruen makes clear, such "belated

innovations . . . come too late to provide insight into the meaning of the Constitution in [1791]." 142 S. Ct. at 2137.

In sum, there was no "historical tradition," circa 1791, of gun regulations "distinctly similar" to § 922(g)(1). The "Founders themselves could have adopted" laws like § 922(g)(1) to "confront" the "perceived societal problem" of violence posed by felons possessing firearms. Bruen, 142 S. Ct. at 2131. But they declined to do so, and that inaction indicates § 922(g)(1) "[i]s unconstitutional." Id.

Finally, and quite importantly, felons were not only permitted to possess firearms at the time of the founding due to the absence of any laws specifically prohibiting them from doing so; felons were affirmatively required to possess firearms as members of the militia. Notably, in Heller, the Supreme Court recognized that "the Second Amendment's prefatory clause"—i.e., "A well-regulated Militia, being necessary to the security of a free State"—"announce[d] the purpose for which the right was codified: to prevent elimination of the militia." 554 U.S. at 599. Given that preventing elimination of the militia was a purpose of the Second Amendment, it is reasonable that the Second Amendment's protections would at least have extended to those who would have been in the militia at the time of the founding. And historical evidence from that period, which is the most relevant period as per Bruen, confirms that this group most definitely included felons.

Heller specifically defined the term "militia" in the Second Amendment's prefatory clause to mean "all males physically capable of acting in concert for the common defense." 554 U.S. at 595. Indeed, statutory law from the founding era demonstrates that "all males" required to serve in the militia encompassed felons. Specifically, in the first Militia Act enacted one year after the Second Amendment's ratification, Congress was clear that "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen

years, and under the age of forty-five years . . . shall severally and respectively be enrolled in the militia." Act of May 8, 1792, § 1, 1 Stat. 271. The Act of 1792 further stipulated that "every citizen so enrolled . . . shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt," and various other firearm accoutrements, including ammunition. Id. Although the Act "exempted" many classes of people from these requirements (e.g., "all custom-house officers," "all ferrymen employed at any ferry on the post road"), felons notably were not among those exempted. Id. § 2, § 1 Stat. 272.

The fact that Founding era militia statutes did not exclude felons, and did require all militia members to possess firearms, confirms that the government cannot meet its heavy burden under Bruen's Step Two of showing that § 922(g)(1) is "consistent with the Nation's historical tradition of firearm regulation." At the most relevant time period under Bruen, namely, the time period immediately preceding and post-dating adoption of the Second Amendment, see Bruen, 142 S. Ct. at 2136 ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them"), all white, able-bodied citizen/felons between the ages of 18-45 were required to serve in both the national and many state militias. And because of their militia obligation, these citizen/felons were required to possess firearms. Thus, for all of the foregoing reasons, 18 U.S.C. § 922(g)(1) is facially unconstitutional.

E. As applied to Mr. Shoffner, § 922(g)(1) is unconstitutional.

Applying the foregoing analyses to the facts of this case, § 922(g)(1) is also unconstitutional as applied to Mr. Shoffner. Mr. Shoffner was born and raised in Asheboro, North Carolina and thus is a lifelong citizen of the United States. He is thus one of "the people" that the Second Amendment demands must be allowed to bear arms and carry necessary ammunition to make a gun operable. See, e.g., Range, 69 F.4th at 104-05 (rejecting government's argument "'legislatures

traditionally used status-based restrictions' to disarm certain groups of people", and that "[a]part from the fact that those restrictions based on race and religion now would be unconstitutional under the First and Fourteenth Amendments, the Government does not successfully analogize those groups to Range and his individual circumstances"). The Second Amendment presumptively protects his conduct in possessing a gun and ammunition in this case. Because the government will be unable to show that § 922(g)(1)as applied to Mr. Shoffner is "consistent with the Nation's historical tradition of firearm regulation," Bruen, 142 S. Ct. at 2130, the district court should have dismissed Mr. Shoffner's Indictment.

## CONCLUSION

For the above stated reasons, Petitioner respectfully requests that the Court grant this Petition for Certiorari, vacate his sentence, remand the matter to the district court with the instruction to vacate the judgments and dismiss both cases against him, and grant whatsoever other relief the Court may find just and proper.

Respectfully submitted this the 15th day of September, 2025.

SETH A. NEYHART
*Counsel of Record*
LAW OFFICE OF
SETH A. NEYHART
5226 Revere Road
Durham, NC 27713
(202) 870-0026
setusn@hotmail.com

*Counsel for Petitioner*

# APPENDIX

## TABLE OF APPENDICES

*Page*

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

**No. 24-4579**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS JARRELL SHOFFNER,

Defendant - Appellant.

---

**No. 24-4629**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS JARRELL SHOFFNER,

Defendant - Appellant.

---

Appeals from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:24-cr-00058-TDS-1; 1:21-cr-00113-TDS-1)

---

Submitted: June 12, 2025 Decided: June 16, 2025

---

Before HARRIS and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

---

Affirmed by unpublished per curiam opinion.

---

**ON BRIEF:** Seth A. Neyhart, LAW OFFICE OF SETH A. NEYHART, Durham, North Carolina, for Appellant. Randall S. Galyon, Acting United States Attorney, Julie C. Niemeier, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Jarrell Shoffner appeals his conviction for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and the judgment revoking his supervised release. Shoffner argues that § 922(g)(1) is facially unconstitutional and unconstitutional as applied to him following *New York State Rifle & Pistol Ass'n v. Bruen*, in which the Supreme Court held that a firearm regulation is valid under the Second Amendment only if it "is consistent with this Nation's historical tradition of firearm regulation." 597 U.S. 1, 17 (2022). We affirm.

Two of our recent decisions foreclose Shoffner's challenges on appeal. In *United States v. Canada*, we considered and rejected a constitutional challenge to § 922(g)(1), holding that "Section 922(g)(1) is facially constitutional because it has a plainly legitimate sweep and may constitutionally be applied in at least some set of circumstances." 123 F.4th 159, 161 (4th Cir. 2024) (internal quotation marks omitted). Likewise, in *United States v. Hunt*, we affirmed "the Supreme Court's repeated instruction that longstanding prohibitions 'on the possession of firearms by felons . . . are presumptively lawful.'" 123 F.4th 697, 708 (4th Cir. 2024) (citing *United States v. Rahimi*, 602 U.S. 680, 699 (2024)), *petition for cert. filed*, No. 24-6818 (U.S. Mar. 20, 2025).

Accordingly, we affirm the district court's judgments. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: June 16, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

No. 24-4579 (L)
(1:24-cr-00058-TDS-1)

---

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

THOMAS JARRELL SHOFFNER

Defendant - Appellant

---

No. 24-4629
(1:21-cr-00113-TDS-1)

---

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

THOMAS JARRELL SHOFFNER

Defendant - Appellant

---

J U D G M E N T

---

In accordance with the decision of this court, the judgments of the district court are affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK