

No. _____

IN THE
Supreme Court of the United States

REGINALD ROBINSON, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JASON J. TUPMAN

Federal Public Defender

RACHAEL STEENHOLDT

Assistant Federal Public Defender,

Counsel of Record

Office of the Federal Public Defender

Districts of South Dakota and North Dakota

112 Roberts Street N., Suite 200

Fargo, ND 58102

Rachael_Steenholdt@fd.org

701-239-5111

Attorneys for Petitioner

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1), which permanently prohibits possession of a firearm by a person who has been convicted of a crime punishable by imprisonment for a term exceeding one year, is subject to as-applied challenges under the Second Amendment.

LIST OF PARTIES

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

RELATED PROCEEDINGS

United States v. Reginald Robinson, Jr., No. 4:23-cr-40013, United States District Court for the District of South Dakota. Judgment entered June 25, 2024.

United States v. Reginald Robinson, Jr., No. 24-2416, United States Court of Appeals for the Eighth Circuit. Judgment entered June 23, 2025.

TABLE OF CONTENTS

	<u>Page(s)</u>
Question Presented.....	i
List of Parties.....	ii
Related Proceedings.....	ii
Table of Authorities	v
Petition for a Writ of Certiorari	1
Opinions Below	1
Jurisdiction	1
Constitutional & Statutory Provisions Involved	1
Introduction	2
Statement of the Case	3
Reasons for Granting the Petition	5
I. The courts of appeals are divided on the question presented	6
A. The Third, Fifth, and Sixth Circuits allow as-applied challenges, based on historical practices	6
B. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits reject individual assessment or as-applied challenges	11
II. The decision below was wrongly decided	16
A. <i>Rahimi</i> rejects “responsible citizens” categorizations as a complete basis for disarmament	16
B. <i>Rahimi</i> supports an individualized assessment of dangerousness.....	18

III.	The availability of discretionary relief under 18 U.S.C. § 925(c) has no bearing on the well-established circuit split at issue in this case.....	21
IV.	This case is an ideal vehicle for the question presented.....	23
V.	Other pending petitions involve the same question presented.....	24
	Conclusion.....	25
Appendix		
	Appendix A - Court of appeals opinion (June 23, 2025)	1a
	Appendix B - District court order denying motion to dismiss (Nov. 9, 2023)	12a
	Appendix C - Court of appeals judgment (June 23, 2025).....	27a

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Cunningham v. United States</i> , 144 S. Ct. 2713 (2024).....	4
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	5
<i>Jackson v. United States</i> , 144 S. Ct. 2710 (2024)	4
<i>McDonald v. City of Chicago, Ill.</i> , 561 U.S. 742 (2010)	5
<i>New York State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 597 U.S. 1 (2022)	3, 5, 22
<i>Range v. Att’y Gen. United States</i> , 124 F.4th 218 (3rd Cir. 2024)	2, 5-8
<i>United States v. Bean</i> , 537 U.S. 71 (2002).....	21
<i>United States v. Cunningham</i> , 114 F.4th 671 (8th Cir. 2024)	2, 4
<i>United States v. Cunningham</i> , 70 F.4th 502 (8th Cir. 2023)	4
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024)	2, 3, 5, 6, 8, 9
<i>United States v. Duarte</i> , 137 F.4th 743 (9th Cir. 2025)	2, 5, 11, 14, 17
<i>United States v. Dubois</i> , 139 F.4th 887 (11th Cir. 2025)	2, 5, 11, 15-17
<i>United States v. Hunt</i> , 123 F.4th 697 (4th Cir. 2024)	2, 5, 11-13, 17
<i>United States v. Jackson</i> , 110 F.4th 1120 (8th Cir. 2024).....	2, 4, 5, 11, 13, 14, 17, 18
<i>United States v. Jackson</i> , 121 F.4th 656 (8th Cir. 2024)	19
<i>United States v. Jackson</i> , 69 F.4th 495 (8th Cir. 2023).....	4
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	3, 4, 16-21
<i>United States v. Rozier</i> , 598 F.3d 768 (11th Cir. 2010).....	16, 17
<i>United States v. Stevens</i> , 559 U.S. 460 (2010)	23

<i>United States v. Veasley</i> , 98 F.4th 906 (8th Cir. 2024).....	4
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024)	3, 5, 6, 10, 19, 20, 23
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025)	2, 5, 11, 15, 17
<i>Zherka v. Bondi</i> , 140 F.4th 68 (2d Cir. 2025)	2, 5, 11, 12, 17

Constitutional Provisions

U.S. Const. amend. II	1, 5
-----------------------------	------

Statutes

18 U.S.C. § 922(g)(1)	i, 1-12, 14, 15, 18-22, 24
18 U.S.C. § 922(g)(3)	3, 4, 24
18 U.S.C. § 924(a)(2)	3
18 U.S.C. § 925(c).....	19, 21-23
28 U.S.C. § 1254(1)	1

Other Materials

Brief for Respondent in Opposition, <i>Vincent v. Bondi</i> , No. 24-1155 (U.S. Aug. 11, 2025)	21
<i>Granting of Relief; Federal Firearms Privileges</i> , 90 Fed. Reg. 17835-01 (Apr. 29, 2025)	22
Kari Lorentson, <i>18 U.S.C. § 922(g)(1) Under Attack: The Case for As-Applied Challenges to the Felon-in-Possession Ban</i> , 93 Notre Dame L. Rev. 1723 (2018)	19
Petition for Writ of Certiorari, <i>Garland v. Range</i> , No. 23-374 (Oct. 5, 2023), 2023 WL 6623648	22
Petition for Writ of Certiorari, <i>Vincent v. Bondi</i> , No. 24-1155 (May 8, 2025)	24

Petition for Writ of Certiorari, <i>Zherka v. Bondi</i> , No. 25-269 (Sept. 5, 2025)	24, 25
Sup. Ct. R. 13.3	1
<i>Withdrawing the Attorney General’s Delegation of Authority</i> , 90 Fed. Reg. 13080-01 (Mar. 20, 2025)	21

PETITION FOR A WRIT OF CERTIORARI

Reginald Robinson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-11a) is available at 140 F.4th 989. The district court's order (App. 12a-26a) is unreported but is available at 2023 WL 7413088.

JURISDICTION

The court of appeals entered judgment on June 23, 2025. App. 27a. This petition is timely filed under Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. II:

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)(1):

It shall be unlawful for any person who . . . has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . . to 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 petition presents an important and recurring question of federal law that can only be settled by this Court: whether a criminal defendant may raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1). This Court has never addressed this question directly, and there is a clear and growing split of authority among the Circuits. The court below, the Eighth Circuit, does not allow as-applied challenges, holding “there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (*Jackson II*), *cert. denied*, No. 24-6517, --- S. Ct. ---, 2025 WL 1426707 (May 19, 2025) (Mem.); *see also United States v. Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024) (*Cunningham II*). The Second, Fourth, Ninth, Tenth, and Eleventh Circuits have reached the same or similar conclusions. *Zherka v. Bondi*, 140 F.4th 68, 96 (2d Cir. 2025), *petition for cert. filed*, (Sept. 5, 2025) (No. 25-269); *United States v. Hunt*, 123 F.4th 697, 708 (4th Cir. 2024) (*citing Jackson II*, 110 F.4th at 1125, 1127-28), *cert. denied*, No. 24-6818, --- S. Ct. ---, 2025 WL 1549804 (June 2, 2025) (Mem.); *United States v. Duarte*, 137 F.4th 743, 759-62 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025), *petition for cert. filed*, (May 8, 2025) (No. 24-1155); *United States v. Dubois*, 139 F.4th 887, 892-94 (11th Cir. 2025). In contrast, the Third, Fifth, and Sixth Circuits allow as-applied challenges to § 922(g)(1). *See Range v. Att’y Gen. United States*, 124 F.4th 218, 228-32 (3rd Cir. 2024) (*en banc*); *United States v. Diaz*, 116 F.4th 458, 467-72 (5th Cir. 2024), *cert. denied*, No. 24-6625, --- S. Ct. ---, 2025 WL 1727419

(June 23, 2025) (Mem.); *United States v. Williams*, 113 F.4th 637, 644-45, 657-63 (6th Cir. 2024).

The split in authority among the Circuits shows that the issue was not resolved by this Court's decisions in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) or *United States v. Rahimi*, 602 U.S. 680 (2024). This Court should grant certiorari and resolve this important and recurring issue.

STATEMENT OF THE CASE

This petition arises out of Robinson's conviction for possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(1), (g)(3), and 924(a)(2). Dist. Ct. Dkt. 1; Dist. Ct. Dkt. 89.¹ Robinson's felony record included a 2015 South Dakota conviction for possession with intent to distribute methamphetamine and a 2017 South Dakota conviction for unauthorized ingestion of a controlled substance and delivery or manufacture of a noncontrolled substance represented to be a controlled substance. Dist. Ct. Dkt. 84, at 9-10.

On February 7, 2023, Robinson was indicted under 18 U.S.C. § 922(g)(1) and (g)(3), with knowingly possessing a firearm while being a felon, and with knowing he was an unlawful user of a controlled substance. Dist. Ct. Dkt. 1. In the district court, Robinson moved to dismiss the indictment arguing that § 922(g)(1) and 922(g)(3) are unconstitutional under the Second Amendment, both facially and as applied to him, considering the non-violent nature of his previous convictions. Dist.

¹ All citations to "Dist. Ct. Dkt." are to the docket in *United States v. Robinson*, No. 4:23-cr-40013 (D.S.D.).

Ct. Dkt. 30; Dist. Ct. Dkt. 31, 2-11. The district court denied Robinson’s § 922(g)(1) motion based on the Eighth Circuit’s then-controlling decisions in *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023) (*Jackson I*) and *United States v. Cunningham*, 70 F.4th 502 (8th Cir. 2023) (*Cunningham I*). App. 15a-17a.² The district court denied Robinson’s facial challenge to § 922(g)(3) finding the prohibition of firearms was consistent with historical regulation of users of controlled substances. App. 17a-22a. The district court did not clearly address Robinson’s as-applied Second Amendment challenge to § 922(g)(3).³ App. 23a-25a.

Robinson then entered a conditional guilty plea and was sentenced to 60 months in prison. Dist. Ct. Dkt. 66, at 8-9; Dist. Ct. Dkt. 89, at 2. On appeal, the Eighth Circuit found that Robinson’s § 922(g)(1) arguments were foreclosed by its post-*Rahimi* decisions in *Cunningham II* and *Jackson II*, and that the facial challenge to § 922(g)(3) was foreclosed by *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024).⁴ App. 11a. The Eighth Circuit did not reach Robinson’s as-applied challenge to § 922(g)(3) because he was charged with alternative prohibited statuses

² While Robinson’s case was on appeal, this Court granted the petitions for a writ of certiorari in *Jackson I* and *Cunningham I*, vacated the judgments, and remanded for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). See *Jackson v. United States*, 144 S. Ct. 2710 (2024) (Mem.); *Cunningham v. United States*, 144 S. Ct. 2713 (2024) (Mem.). The Eighth Circuit issued *Jackson II* and *Cunningham II* during the pendency of Robinson’s appeal.

³ The Eighth Circuit found that the district court had reserved ruling on Robinson’s as-applied challenge to § 922(g)(3) for a determination of the facts at trial. App. 6a.

⁴ The Eighth Circuit also issued *Veasley* during the pendency of Robinson’s appeal.

for the same count and therefore the failure of his constitutional challenge to § 922(g)(1) alone was sufficient to sustain the indictment. App. 11a.

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

The Second Amendment to the United States 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.” U.S. Const. amend. II. The Second Amendment “confer[s] an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). It is a fundamental right, applicable against state and local governments, and entitled to the same protection as other fundamental rights enshrined in the Constitution. *See McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010) (plurality opinion). This Court has cautioned that it should not be treated as “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Id.* at 780; *see also Bruen*, 597 U.S. at 70.

The contours of any abridgement of this fundamental right are an issue of profound significance. The Circuit courts have reached opposing conclusions about the availability of individual, as-applied Second Amendment challenges in § 922(g)(1) cases. *Compare Zherka*, 140 F.4th at 96, *Hunt*, 123 F.4th at 708, *Jackson II*, 110 F.4th at 1125, 1127-28, *Duarte*, 137 F.4th at 759-62, *Vincent*, 127 F.4th at 1265-66, *and Dubois*, 139 F.4th at 892-94, *with Range*, 124 F.4th at 228-32, *Diaz*, 116 F.4th at 467-72, *and Williams*, 113 F.4th at 664-45, 657-63. This Court should

address and resolve the Circuit split regarding defendants’ ability to challenge the constitutionality of the prohibition on their right to possess firearms.

I. The courts of appeals are divided on the question presented.

Section 922(g)(1) makes it illegal for anyone convicted of “a crime punishable by imprisonment for a term exceeding one year” to ever possess a firearm. Since *Bruen*, Circuit courts across the country have reached different conclusions regarding the constitutionality of firearms regulations, including 18 U.S.C. § 922(g)(1). Relevant here, the Circuits disagree about the availability of as-applied challenges to prosecutions under § 922(g)(1). This Court should resolve this divide.

A. The Third, Fifth, and Sixth Circuits allow as-applied challenges, based on historical practices.

The Third, Fifth, and Sixth Circuits allow as-applied challenges in § 922(g)(1) prosecutions. In opinions issued after this Court’s opinion in *Rahimi*, these courts have focused their analysis on the second prong of the *Bruen* test, whether disarmament of the defendant is “consistent with the Nation’s historical tradition of firearm regulation.” *Diaz*, 116 F.4th at 467 (quoting *Bruen*, 597 U.S. at 24); *see also Range*, 124 F.4th at 228 (“[W]e must determine whether the Government has shown that applying § 922(g)(1) to Range would be ‘consistent with the Nation’s historical tradition of firearm regulation.’”) (quoting *Bruen*, 597 U.S. at 24)); *Williams*, 113 F.4th at 650-57 (examining historical firearms regulations from pre-Founding England through the post-Civil War era, concluding “[t]his historical study reveals that governments in England and

colonial America long disarmed groups that they deemed to be dangerous. . . . Each time, however, individuals could demonstrate that their particular possession of a weapon posed no danger to peace”). All three find that as-applied challenges are appropriate or required by this history.

Third Circuit:

In *Range*, the Third Circuit focused its analysis on the second prong of *Bruen*, after rejecting the Government’s argument that felons are not part of “the people” protected by the Second Amendment under the first prong. *See Range*, 124 F.4th at 226-28 (stating, in part, “[i]n sum, we reject the Government’s contention that ‘felons are not among ‘the people’ protected by the Second Amendment.’ *Heller* and its progeny lead us to conclude that [the defendant] remains among ‘the people’ despite his [prior conviction]”).

The *Range* court rejected the Government’s arguments that historical disarmament of certain groups of people, “classes” or “status-based restrictions,” due to their “dangerousness” are legitimate analogies to justify disarmament of all felons under § 922(g)(1). *Id.* at 229-30 (noting, “[a]ny such analogy would be ‘far too broad[]’ ” (quoting *Bruen*, 597 U.S. at 31)). Moreover, it found that capital punishment or estate forfeiture imposed in our early history was not analogous to § 922(g)(1), particularly when the underlying criminal conduct is unlike colonial-era criminal offenses. *Id.* at 230-31. “[T]he Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime

disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation’s history and tradition.” *Id.* at 231. Further, it noted that the Government had not presented any historical analogues, such as statutes precluding a convict from regaining property after serving their sentence, which would justify the duration and scope of § 922(g)(1)’s disarmament. *Id.*

Ultimately, the Third Circuit found § 922(g)(1) unconstitutional as applied to Range, given the nature of his prior offense, his age of his conviction, his lack of a risk of danger to others, and the lack of a “longstanding history and tradition of depriving people like Range of their firearms.” *Id.* at 232.

Fifth Circuit:

The Fifth Circuit also allows as-applied challenges based on its review of historical practices regarding firearms regulation in comparison to § 922(g)(1). In *Diaz*, the court considered whether the defendant’s underlying conviction, leading to his present disarmament, would have been considered a “felony” in the 18th Century. *Diaz*, 116 F.4th at 468 (explaining, in part, “[t]he fact that Diaz is a felon today, then, does not necessarily mean that he would have been one in the 18th Century”). Further, the Fifth Circuit examined the history of § 922(g)(1) itself, which previously only restricted those who committed felonies reflecting “violent tendencies” from possession of firearms. *Id.* at 468-69. Overall, the Fifth Circuit analyzed the “why” and “how” of historical disarmament of felons, in relation to the modern crime of conviction, rather than the categorization of the defendant as a felon. *See id.* “Simply classifying a crime as a felony does not meet

the level of historical rigor required by *Bruen* and its progeny.” *Id.* at 469.

Therefore, because “not all felons today would have been considered felons at the Founding” and because the definition of a felon has varied historically, “[s]uch a shifting benchmark should not define the limits of the Second Amendment, without further consideration of how that right was understood when it was first recognized.” *Id.*

In other words, the Fifth Circuit determined first whether the individual defendant’s prior conviction was analogous to a felony at the Founding, and second, whether disarmament would have been within the historical tradition of punishment for that analogous crime. Because the Fifth Circuit considers the historical tradition of disarmament relative to each crime, as-applied challenges to § 922(g)(1) are allowed, despite the statute’s facial validity. *Id.* at 468-71.

Ultimately, the Fifth Circuit rejected Diaz’s challenge after analyzing his prior criminal history relative to the Founding. *Id.* at 468-70. Diaz had been convicted of vehicular theft, which the court analogized to horse theft, a crime that at the Founding “would have led to capital punishment or estate forfeiture.” *Id.* at 469-70. Therefore, § 922(g)(1) was constitutional, as applied, because “[d]isarming Diaz fits within this tradition of serious and permanent punishment.” *Id.* at 470.

Sixth Circuit:

Finally, the Sixth Circuit has identified as-applied challenges to § 922(g)(1) as an important and historical mechanism for individuals in a class

susceptible to disarmament to seek an exception to being personally disarmed. *Williams*, 113 F.4th at 650-57. After extensively analyzing historical disarmament practices, the Sixth Circuit noted that the disarmament of a class of people traditionally included means by which an individual member of that class could seek a personal exception to collective disarmament. *Id.* Comparing that historical tradition to § 922(g)(1), the *Williams* court found that without as-applied challenges, § 922(g)(1) would not provide adequate opportunity for individuals to seek an exception to disarmament. *Id.* at 657-61. “When a disarmament statute doesn’t provide an administrative scheme for individualized exceptions, as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations.” *Id.* at 661. In other words, a means to seek an exception is a necessary component of this Nation’s historical disarmament traditions.

The Sixth Circuit then considered Williams’s criminal history in light of the historical traditions. *Id.* at 661-62. Williams’s history included two felony counts of aggravated robbery, both involving the use of a gun. *Id.* at 662. “Because Williams’s criminal record shows that he’s dangerous, his as-applied challenge fails.” *Id.* Therefore, “[t]he government may, consistent with the Second Amendment, punish him for possessing a firearm.” *Id.*

B. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits reject individual assessment or as-applied challenges.

On the other hand, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have disallowed as-applied challenges to § 922(g)(1), based on their review of historical traditions allowing the disarmament of classes of people deemed either dangerous, not law abiding, or not responsible, by a legislature, or based on pre-*Bruen* circuit precedents. *Zherka*, 140 F.4th at 96; *Hunt*, 123 F.4th at 708; *Jackson II*, 110 F.4th at 1125, 1127-28; *Duarte*, 137 F.4th at 759-62; *Vincent*, 127 F.4th at 1265-66; *Dubois*, 139 F.4th at 892-94. Essentially, these courts found that because large classes of people were prohibited from possessing firearms in the past, § 922(g)(1) is applicable to all members of that class (felons), without exception.

Second Circuit:

In *Zherka*, the Second Circuit held, “Because legislatures at or near the Founding had the authority to pass laws disarming large classes of people based on status alone, . . . the Second Amendment does not bar Congress from passing laws that disarm convicted felons, regardless of whether the crime of conviction is nonviolent.” *Zherka*, 140 F.4th at 93. The Second Circuit examined English, American colonial, early American, and 20th century American status-based disarmament laws, historical punishments for felonies generally, and historical debates over ratification of the Constitution and did not find a historical twin for § 922(g)(1) in the colonial era. *Id.* at 77-91. Instead, it found “relevantly similar”

historical analogues under *Bruen* given the severe punishment felons historically faced, the belief of some Founders that Congress had the authority to disarm individuals who committed crimes, and the existence of historical precedents for class-based prohibitions on firearms. *Id.* The Second Circuit further found that history does *not* support the assertion that status-based disarmament laws are only permissible if they include a mechanism for individuals to prove they are not too dangerous to own a firearm. *Id.* at 91 (disagreeing with *Williams*, 113 F.4th at 659-63). The court noted that those convicted under § 922(g)(1) can restore their right to possess firearms if they are pardoned, have their civil rights restored, or have their conviction expunged. *Id.* at 92. Finally, the Second Circuit concluded that historical disarmament statutes that permitted members of the disfavored group to possess firearms under narrow circumstances are sufficiently similar to § 922(g)(1) in light of this Court’s statement that the historical analogue need not be a “historical twin.” *Id.*

Fourth Circuit:

In *Hunt*, the Fourth Circuit applied its pre-*Bruen* rationale “that people who have been convicted of felonies are outside the group of ‘law-abiding responsible citizen[s]’ that the Second Amendment protects.” *Hunt*, 123 F.4th at 704 (quoting *United States v. Moore*, 666 F.3d 313, 319 (4th Cir. 2012)). Post-*Bruen*, the circuit adhered to its precedent that felons’ possession of firearms falls “outside the ambit of the individual right to keep and bear arms.” *Id.* (quoting *Bianchi v. Brown*, 111 F.4th 438, 448 (4th Cir. 2024) (en banc)).

Consequently, “*Bruen* and *Rahimi* thus provide no basis . . . to depart from this Court’s previous rejection of the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms.” *Id.*

Therefore, under the first prong of the *Bruen* test, the Fourth Circuit found that felons are not part of “the people” protected by the Second Amendment, because they are not law abiding. *Id.* at 705 (explaining that § 922(g)(1) does not “regulate activity within the scope of the Second Amendment”). As to the second prong, the *Hunt* court joined *Jackson II*’s historical analysis and conclusions, explained below. *Id.* at 705-06 (stating, in part, “[w]e agree that ‘either reading’ of the relevant history ‘supports the constitutionality of § 922(g)(1) as applied to [Hunt] and other convicted felons’ ” (quoting *Jackson II*, 110 F.4th at 1126)).

Eighth Circuit:

In *Jackson II*, the Eighth Circuit found that “legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by *those who deviated from legal norms*, not merely to address a person’s demonstrated propensity for violence.” *Jackson II*, 110 F.4th at 1127 (emphasis added). Thus, it held that the Second Amendment allows permanent disarmament of anyone who is “*not a law-abiding citizen*, and history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society.” *Id.* (emphasis added). As an alternative justification, it reasoned that disarmament

by classification was proper because “[l]egislatures historically prohibited possession by categories of persons based on a conclusion that the *category as a whole presented an unacceptable risk of danger* if armed.” *Id.* at 1128 (emphasis added).

Consequently, on the Eighth’s Circuit theory, disarmament of the class precludes consideration of challenges by the individual. “This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.” *Id.* The *Jackson* II court rejected the suggestion that “a presumption of constitutionality [] could be rebutted on a case-by-case basis.” *Id.*

Ninth Circuit:

In *Duarte*, the Ninth Circuit conducted its own review of the history of firearms regulations, finding § 922(g)(1) consistent with that tradition. *Duarte*, 137 F.4th at 755-62. Based on this review, the Ninth Circuit found a tradition of “permanent and categorical disarmament of felons,” and joined the Fourth and Eighth Circuits’ conclusions that § 922(g)(1) is constitutional as to “all” felons:

Legislatures have historically retained the discretion to punish those who commit the most severe crimes with permanent deprivations of liberty, and legislatures could disarm on a categorical basis those who present a “special danger of misuse” of firearms. *Rahimi*, 602 U.S. at 698, 144 S.Ct. 1889. We agree with the Fourth and Eighth Circuits that either historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons. *See Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706.

Id. at 761. This included “Duarte and other non-violent felons.” *Id.* at 762.

Tenth Circuit:

Since *Rahimi*, the Tenth Circuit has reaffirmed its pre-*Bruen* conclusion that § 922(g)(1) is constitutional. *Vincent*, 127 F.4th at 1265-66 (concluding *Rahimi* did not abrogate *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)). Further, the *Vincent* court explained that even “nonviolent offenders” cannot challenge § 922(g)(1), as applied to them, because such challenges are unavailable under *McCane*. *Id.* at 1266. “There we upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved.” *Id.* “*McCane* instead upheld the constitutionality of § 922(g)(1) for all individuals convicted of felonies.” *Id.* Like the Second, Fourth, Eighth, and Ninth Circuits, the Tenth Circuit treats all felons as a class, whose members cannot challenge their disarmament individually.

Eleventh Circuit:

Finally, the Eleventh Circuit recently reaffirmed its pre-*Bruen*, pre-*Rahimi* precedent that held § 922(g)(1) is constitutional and allows for categorical disarmament of groups of persons, including felons. *Dubois*, 139 F.4th at 892-94 (concluding neither *Bruen*, nor *Rahimi*, abrogated *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010) (per curiam)). In *Rozier*, the Eleventh Circuit held:

Rozier’s Second Amendment right to bear arms is not weighed in the same manner as that of a law-abiding citizen, such as the appellant in *Heller*. While felons do not forfeit their constitutional rights upon being convicted, their status as felons substantially affects the level of protection those rights are accorded.

The Court made this clear when it referred to those “disqualified from the exercise of Second Amendment rights.” [*Heller*, 554 U.S. at 635]. *Heller* stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” *Id.* [at 626]. This language suggests that statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment. Recently, in *United States v. White*, we held that *Heller* recognized § 922(g)(1) as “a presumptively lawful longstanding prohibition.” *White*, 593 F.3d 1199, 1205–06 (11th Cir.2010).

Thus, statutory restrictions of firearm possession, such as § 922(g)(1), are a constitutional avenue to restrict the Second Amendment right of certain classes of people. Rozier, by virtue of his felony conviction, falls within such a class. Therefore, the fact that Rozier may have possessed the handgun for purposes of self-defense (in his home), is irrelevant.

Rozier, 598 F.3d at 771 (footnote omitted). Under *Rozier*, the Eleventh Circuit’s prohibition on as applied challenges is based on the determination that classes of citizens may be categorically disarmed. *Id. Dubois* reaffirms this rationale after *Rahimi*. *Dubois*, 139 F.4th at 892-94. This rationale is essentially the same as applied in the Second, Fourth, Eighth, Ninth, and Tenth Circuits.

II. The decision below was wrongly decided.

A. *Rahimi* rejects “responsible citizens” categorizations as a complete basis for disarmament.

The rationale of the *Zherka*, *Hunt*, *Jackson II*, *Duarte*, *Vincent*, *Dubois*, and *Rozier* courts, authorizing classification-based disarmament, is at odds with this Court’s analysis in *Rahimi*. Under *Rahimi*, an argument that a defendant or class is not “responsible” is not a valid standalone basis for disarmament.

Rahimi, 602 U.S. at 701-02. A deeper historical analysis is required.

In *Rahimi*, the Court “reject[ed] the Government’s contention that *Rahimi* [could] be disarmed simply because he is not ‘responsible.’” *Id.* at 701. As the

Court explained, “such a line” does not “derive from our case law.” *Id.* Although *Heller* and *Bruen* “used the term ‘responsible’ to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right,” they “said nothing about the status of citizens who were not ‘responsible.’” *Id.* at 701-02. That “question was simply not presented” in *Heller* or *Bruen*. *Id.* at 702. Further, “[r]esponsible’ is a vague term” since “[i]t is unclear what such a rule would entail.” *Id.* at 701; *see also id.* at 775 (Thomas, J., dissenting on other grounds) (“[T]he Government’s ‘law-abiding, dangerous citizen’ test—and indeed any similar, principle-based approach—would hollow out the Second Amendment of any substance. Congress could impose any firearm regulation so long as it targets ‘unfit’ persons. And, of course, Congress would also dictate what ‘unfit’ means and who qualifies.”).

Under *Rahimi*’s analysis, Robinson and others like him cannot be disarmed simply because modern legislatures have broadened the scope of felony convictions or deemed felons as a whole “irresponsible” or “dangerous.” Therefore, the reliance on the categorization of a group of people as irresponsible, dangerous, or not law abiding is insufficient to warrant complete and permanent disarmament after *Rahimi*. *See, e.g., Zherka*, 140 F.4th at 77-91; *Hunt*, 123 F.4th at 703-08; *Jackson II*, 110 F.4th at 1127-29; *Duarte*, 137 F.4th at 759-62; *Vincent*, 127 F.4th at 1265-66; *Dubois*, 139 F.4th at 892-94; *Rozier*, 598 F.3d at 771. The historical analysis and analogues referenced by those courts are insufficient or a misapplication of the *Bruen* standard, as clarified by *Rahimi*.

B. *Rahimi* supports an individualized assessment of dangerousness.

Under both *Bruen* and *Rahimi*, the government bears the burden to show that 18 U.S.C. § 922(g)(1) is consistent with our Nation’s traditions of firearm regulation even as applied to nonviolent offenders like Robinson. While the government need not show a “historical twin,” it must still demonstrate that its modern firearms regulation is “relevantly similar” to the “why and how” of historical regulations, such that it faithfully reflects “the balance struck by the founding generation.” *Rahimi*, 602 U.S. at 692. The “why and how” of the historical authorities cited in *Jackson II*, concerning the disarmament of political or social groups posing a danger to the state, are not analogous to the permanent disarmament of felons under § 922(g)(1). *Jackson II*, 110 F.4th at 1126-27 (discussing broad-scale disarmament of religious, racial, and political minorities). Applying the reasoning of *Rahimi*, these historical precedents are too different and too broad to warrant the wholesale, permanent disarmament of felons, without the possibility of individualized assessment, as explained by the courts on the other side of the split.

The precise holding of *Rahimi* is straightforward and limited, “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Rahimi*, 602 U.S. at 702. This holding is clear that if a “court” has determined that an “individual” poses a “credible” threat, the individual may be “temporarily” disarmed. *Rahimi* itself, although deciding a facial challenge,

walked through how *Rahimi*'s as-applied challenge would have gone to determine its validity. *Id.* at 698-99; *see also United States v. Jackson*, 121 F.4th 656, 657 (8th Cir. 2024) (Stras, J., dissenting in denial of rehearing en banc) (stating "If the Court meant to cut off all as-applied challenges to disarmament laws . . . it would have been odd to send that message by deciding *Rahimi* based on how *his* as-applied challenge would have gone" (emphasis in original)).

In contrast, 18 U.S.C. § 922(g)(1), effects a *permanent* and categorical ban on the possession of firearms by *all* persons convicted of felony-type offenses. Notably, Congress, in passing this law, categorized all people who have been convicted of felony-type offenses as a threat to others, regardless of the nature and age of their offense, and as opposed to an individualized determination by a court. *See Rahimi*, 602 U.S. at 702. Moreover, § 922(g)(1) does not provide a practical means for individuals to challenge its application, other than as-applied challenges. *See Williams*, 113 F.4th at 661 (discussing 18 U.S.C. § 925(c) and its limitations). Until 1992, 18 U.S.C. § 925(c) allowed a person prohibited from possessing a firearm to administratively apply for rearmament, but Congress had since refused to appropriate funds to effectuate this process. *Id.*; Kari Lorentson, *18 U.S.C. § 922(g)(1) Under Attack: The Case for As-Applied Challenges to the Felon-in-Possession Ban*, 93 Notre Dame L. Rev. 1723, 1726-27 (2018). Though the Attorney General has sought to revive § 925(c)'s administrative program for rearmament, this fledgling program has no established support under *Bruen*'s historical analogue requirement and it fails to

cure the constitutional defect of categorically disarming individuals in the first place. *See* section III, *supra* (discussing that any potential discretionary relief under § 925(c) has no bearing on the circuit split at issue in this case).

The mechanisms provided by § 922(g)(1) profoundly and impermissibly differ from “how” firearms were historically regulated. Traditional temporary and limited disarmaments were less onerous and burdensome than § 922(g)(1)’s permanent and complete disarmament, particularly when read to preclude individual challenges. *See Williams*, 113 F.4th at 657-61 (concluding “The relevant principle from our tradition of firearms regulation is that, when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don’t fit the class-wide generalization. That principle is satisfied whether the official is an executive agent or a court addressing an as-applied challenge”). Further, § 922(g)(1) stands in stark contrast to the surety laws discussed in *Rahimi* that provided an individualized assessment of dangerousness or means of obtaining exceptions. *Rahimi*, 602 U.S. at 693-700. The surety laws and “going armed” laws, therefore, do not support the expansive limitations and permanent restrictions imposed by § 922(g)(1), nor a reading that precludes as-applied challenges. Moreover, as discussed above, *Rahimi* rejects a categorical disarmament theory. *Id.* at 701-02, 775.

In *Rahimi*, this Court left open whether disarmament laws are subject to as-applied challenges, whether disarmament must be based on the existence of an individualized “threat” determination, and whether a challenge can be made

to the duration of such disarmament. *See cf. id.* at 713 (Gorsuch, J., concurring). The question of whether § 922(g)(1) is subject to as-applied challenges raises these questions and continues to divide the courts of appeals. The Court should grant certiorari, address the conflicting conclusions drawn by the circuits from the historical information, and resolve the question of whether as-applied challenges are available under the Second Amendment.

III. The availability of discretionary relief under 18 U.S.C. § 925(c) has no bearing on the well-established circuit split at issue in this case.

Robinson expects the government will argue that rearmament under § 925(c) has since been revived, and the scheme thus solves the permanent disarmament problem and “may evaporate” the circuit split. *See* Brief for Respondent in Opposition at 3, *Vincent v. Bondi*, No. 24-1155 (U.S. Aug. 11, 2025). 18 U.S.C. § 925(c) allows a person prohibited from possessing a firearm to administratively apply for rearmament. *See* 18 U.S.C. § 925(c). Section 925(c) has historically been inoperable because the authority to review applications was delegated to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and since 1992, appropriation bills have prohibited ATF from using appropriated funds to review and grant any such applications. *See United States v. Bean*, 537 U.S. 71, 74-75 (2002). The Attorney General has withdrawn authority to review applications from the ATF, *see Withdrawing the Attorney General’s Delegation of Authority*, 90 Fed. Reg. 13080-01 (Mar. 20, 2025) (to be codified at 27 C.F.R. pts. 47828, 0), and has begun processing applications and granting relief to a few

applicants under the statute. *See Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17835-01 (Apr. 29, 2025). But even if the § 925(c) program is revived, this would not solve the circuit split at issue in this case.

First, it is far from clear that the new § 925(c) program will successfully get off the ground. The Attorney General circumvented Congress’s funding ban by withdrawing delegation to ATF, but Congress could easily pass another appropriations rider that reaches the entire Department of Justice. Even if the program maintains operational funding, several of the same historical problems may reappear. As the government itself explained in *Range*: “Congress found [the § 925(c)] program unworkable and abandoned it” because it was too expensive and “too many ... felons whose gun ownership rights were restored went on to commit crimes with firearms.” Petition for Writ of Certiorari at 21-22, *Garland v. Range*, No. 23-374 (Oct. 5, 2023), 2023 WL 6623648 (citation omitted).

Second, even if the government can successfully revive an agency program that Congress has deliberately killed every year since 1992, the government cannot meet its burden to show a historical analogue under *Bruen* for the combination of provisions § 922(g)(1) and § 925(c): a permanent-disarmament-plus-discretionary-relief scheme by a government official. Indeed, *Bruen* itself invalidated a regime that “grant[ed] licensing officials discretion to deny [firearms] licenses based on a perceived lack of need or suitability.” *Bruen*, 597 U.S. at 13.

And third, even more fundamentally, the possibility of discretionary relief from a government functionary does not save an otherwise unconstitutional law, “The very premise of constitutional rights is that they don’t spring into being at the legislature’s grace.” *Williams*, 113 F.4th at 661. Section 925(c) places the burden on the applicant and provides for the granting of relief only upon a special showing that the applicant is not dangerous, whereas Robinson’s challenge here is the initial disarmament should never have happened. Just because a government may in its discretion grant an exception to permanent disarmament, does not mean that barring a person from exercising a core constitutional right becomes permissible. Or stated differently, an unconstitutional statute should not be upheld “merely because the Government promised to use it responsibly.” *United States v. Stevens*, 559 U.S. 460, 480 (2010).

In short, even assuming the government can revive a dormant program from 1992, the government still cannot find a historical analogue for this scheme under *Bruen*, and § 925(c) cannot cure the constitutional violations caused by disarming offenders like Robinson whose disarmament was never valid to begin with.

IV. This case is an ideal vehicle for the question presented.

This case squarely presents the Second Amendment issues driving the Circuit split. Robinson has been permanently disarmed based on his prior felony convictions. His felony-level criminal history includes possession with intent to

distribute methamphetamine, the unauthorized ingestion of a controlled substance, and delivery or manufacture of a noncontrolled substance represented to be a controlled substance. *See* Dist. Ct. Dkt. 67, at 2; *see also* Dist. Ct. Dkt. 84, at 9-10. Robinson argued below that § 922(g)(1) is unconstitutional as applied to him. Dist. Ct. Dkt. 31, at 10-11. The district court denied his motion to dismiss without determining whether he is a dangerous person. App. 12a-26a. The Eighth Circuit applied its categorical prohibition on as-applied challenges to § 922(g)(1) and cut off Robinson’s ability to litigate his dangerousness and the constitutionality of a lifetime firearm ban. App. 11a. Moreover, the Eighth Circuit declined to address Robinson’s as-applied challenge to § 922(g)(3) based on its categorical rule that § 922(g)(1) is constitutional in all its applications.

This case provides the opportunity for this Court to make clear that § 922(g)(1) is subject to as-applied challenges, to adopt a standard for evaluating as-applied challenges to lifetime firearm prohibitions based on prior convictions, and to guide lower courts in addressing similar issues moving forward. This case is an ideal vehicle for the question presented.

V. Other pending petitions involve the same question presented.

Finally, in the alternative, the Court could hold this petition in abeyance pending resolution of at least two other petitions raising the same question presented. *See, e.g.*, Petition for Writ of Certiorari, *Vincent v. Bondi*, No. 24-1155 (May 8, 2025); Petition for Writ of Certiorari, *Zherka v. Bondi*, No. 25-269 (Sept.

5, 2025). The resolution of these cases may impact the Court's resolution of the present petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 18th day of September, 2025.

Respectfully submitted,

JASON J. TUPMAN
Federal Public Defender
By:

/s/ Rachael Steenholdt
Rachael Steenholdt
Assistant Federal Public Defender
Office of the Federal Public Defender
Districts of South Dakota and North Dakota
112 Robert St. N., Suite 200
Fargo, ND 58102
Rachael_Steenholdt@fd.org
Phone: (701) 239-5111

Counsel of Record for Petitioner