No. 24-1458

IN THE
SUPREME COURT of the UNITED STATES

JASON KETZNER,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Second Amendment allows the federal government to permanently disarm Petitioner Jason Ketzner, due to prior felony convictions, regardless of the nature of those convictions and without any individualized judicial determination of his dangerousness.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner in this petition is Jason Ketzner, an individual resident of Colorado.

Respondent is the United States.

No corporate parties are involved in this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the U.S. District Court for the District of Colorado and the U.S. Court of Appeals for the Tenth Circuit:

United States v. Ketzner,

No. 21-cr-00036-GPG-JMC-1 (D. Colo. Dec. 8, 2023)

United States v. Ketzner,

No. 24-1458, unpublished (10th Cir. June 9, 2025)

No other proceedings relate directly to this case.

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PETITION FOR A WRIT OF CERTIORARI

Jason Ketzner respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit.

OPINIONS AND ORDERS BELOW

The Tenth Circuit's opinion is unpublished and reproduced at App. B. The district court's unreported decision is reproduced at App. A.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231 because Mr. Ketzner was criminally prosecuted for an offense against the laws of the United States, specifically 18 U.S.C. § 922(g)(1). The court of appeals had jurisdiction under 28 U.S.C. § 1291 because Mr. Ketzner timely appealed the district court's final judgment denying his motion to dismiss. 28 U.S.C. § 1254(1) supplies this Court's jurisdiction. The United States District Court for the District of Colorado entered judgment in this case on **December 8, 2023**. The United States Court of Appeals for the Tenth Circuit affirmed in an unpublished decision entered on **June 9, 2025**. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides:

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

18 U.S.C. § 922(g)(1) provides:

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 case presents an important constitutional question subject to a circuit split: Whether the Second Amendment allows the government to permanently disarm a United States citizen who has one or more years-old non-violent felony convictions, with no individualized judicial determination of that person's present dangerousness.

A split has developed in the Circuit Courts of Appeals regarding the constitutionality of 18 U.S.C. § 922(g)(1) in the wake of this Court's decision in *New York State Rifle & Pistol Association* v. *Bruen*, 597 U.S. 1 (2022). The *en banc* Third Circuit held that § 922(g)(1) criminalizing the possession of a firearm by anyone with a felony conviction could not constitutionally apply to a person convicted of the crime of making a false statement to obtain food stamps. See *Range* v. *Att'y Gen.*, 69 F.4th 96, 97 (3d Cir. 2023) (*en banc*). Conversely, the Tenth Circuit, in *Vincent* v. *Garland*, 80 F.4th 1197 (10th Cir. 2023), rejected a constitutional challenge to §

922(g)(1), holding that Congress could legislatively permanently disarm all felons regardless of the facts underlying the prior felony convictions. The Eighth Circuit agreed with the Tenth, seeing "no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." See *United States* v. *Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024).

By early 2024, a number of petitions raising this question were pending in this Court, including one filed from a prior decision of the Tenth Circuit, *Vincent* v. *Garland*, 80 F.4th 1197 (10th Cir. 2023), No. 23-683 and one filed by the United States from the Third Circuit's decision in *Range*, No. 23-374. The government urged this Court to hold all these petitions until it decided a case it had already agreed to hear concerning the constitutionality of 18 U.S.C. § 922(g)(8), *United States* v. *Rahimi*, 602 U.S. 680 (2024). This Court did so, and after deciding *Rahimi* this Court then issued decisions granting the petitions for certiorari in the cases concerning § 922(g)(1), vacating the decisions by the various courts of appeal and remanding the matter back to the appeals courts in each case "for further consideration in light of" *Rahimi*.

On remand in *Vincent*, the Tenth Circuit held that "*Rahimi* doesn't undermine the panel's earlier reasoning or result." *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), petition for cert. filed No. 24-1155. The panel thus said courts within the Tenth Circuit remain bound by pre-*Rahimi*, pre-*Bruen* circuit precedent that "upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved." Likewise, "three other circuits

have held that *Rahimi* doesn't abrogate their earlier precedents upholding the constitutionality of § 922(g)(1)" across the board. *Id.* at 1265 (citing *United States v. Hunt*, 123 F.4th 697, 703–04 (4th Cir. 2024) cert. denied, No. 24-6818, 2025 WL 1549804 (U.S. June 2, 2025); *Jackson*, 110 F.4th at 1125; *United States v. Hester*, No. 23-11938, 2024 WL 4100901, at *1 (11th Cir. Sept. 6, 2024) (per curiam)) cert. denied, 145 S. Ct. 1212, 221 L. Ed. 2d 278, 2025 WL 581791 (2025). Following the Tenth Circuit's decision in *Vincent* after remand, another circuit, the Ninth has upheld § 922(g)(1) after this Court's decision in *Rahimi*. See *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025). A total of five Circuit Courts of Appeals have decided that this Court's decision in *Rahimi* did not change their prior determination that § 922(g)(1) is constitutional.

The Sixth Circuit, by contrast, held that its prior circuit precedent no longer controls, and that while "most applications of § 922(g)(1) are constitutional," the statute is susceptible to as-applied challenges by people whose "entire criminal record[s]" show that they are not "dangerous"—which, however, did not include the defendant before the court who was convicted of aggravated robbery. *United States* v. *Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). The Fifth Circuit, has applied the same reasoning or holding. *United States* v. *Diaz*, 116 F.4th 458, 465 (5th Cir. 2024), *cert. pet. docketed,* No. 24-6625 (Feb. 24, 2025). The *en banc* Third Circuit again held that § 922(g)(1) violates the Second Amendment as applied to the *Range* plaintiff. See *Range* v. *Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (*en banc*).

This Court should grant certiorari to resolve this important, recurring

question of whether its recent Second Amendment jurisprudence applies to analysis of the constitutionality of 18 U.S.C. § 922(g)(1).

STATEMENT OF THE CASE

Jason Ketzner was charged by Indictment with violating 18 USC § 922(g)(1), Felon in Possession of a Firearm. *United States v. Ketzner*, No. 21-CR-00036-GPG-JMC-1 (D. Colo.) (ECF 1 p.1). On December 4, 2023, Mr. Ketzner filed a Motion to Dismiss the Indictment, arguing that his charge under 18 U.S.C. § 922(g)(1) violated his Second Amendment right to bear arms with no justifiable historical analog. (ECF 27 p. 1). He argued that *Bruen* established the appropriate test, and that *Heller* did not foreclose his challenge, while recognizing the Tenth Circuit has held otherwise and that panel review of his position is currently foreclosed by binding precedent. (ECF 27 pp. 2-3).

Mr. Ketzner argued that *Bruen* requires the court to perform a rigorous review of the regulatory history of the founding era any time a law infringes on conduct covered by the plain text of the Second Amendment. He stated *Bruen* did not carve out any exceptions to the text-and-history test that it mandated and accordingly, the dictum in *Heller* concerning "longstanding prohibitions" on felons could no longer stand on its own. (ECF 27 p. 3). He asserted that felon dispossession laws cannot withstand the *Bruen* test and are unconstitutional. (ECF 27 pp. 3-4). Contending that he is part of "the people" within the meaning of the Second Amendment he argued:

> Just as the Amendment does not "draw[] a home/public distinction with respect to the right to keep and bear arms," *Bruen*, 142 S. Ct. at 2134, it also does not draw a felon/non-felon distinction. "Nothing in the Second Amendment's text," id., suggests that those who have been convicted of a felony are amendment's protection, see *Range v. Att'y Gen.*, 69 F.4th 96, 102 (3d Cir. 2023) (*en banc*) (determining that the petitioner, a nonviolent felon, was among "the people" protected by the Second Amendment).

(ECF 27 p. 9). In support of this proposition, he noted that *Heller* defined people to "unambiguously refer[. . .] to all members of the political community, not an unspecified subset" and "belongs to all Americans." *Heller*, 554 U.S. at 580-81. Further bolstering his argument, he noted that "people" as used in other sections in the Bill of Rights do not exclude felons and that to do so in the context of the Second Amendment would conflict with that principle. See *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting) (pointing out that *Heller* interprets "the word 'people' as referring to 'all Americans'" and that "[n]either felons nor the mentally ill are categorically excluded from our national community"); 69 F.4th at 102 ("[W]e see no reason to adopt an inconsistent reading of "the people."). (ECF 27 pp. 9-10). Once it is established that the plain text of the Second Amendment applies to Mr. Ketzner, the government must then establish that §922(g)(1) "is consistent with this Nation's historical tradition of firearm regulation. *Id.*" and that "18 U.S.C. § 922(g)(1) is unconstitutional unless the government shows a robust tradition of 'distinctly

similar historical regulation[s]' as of 1791, when the Second Amendment was ratified. *Id*." (Id. pp. 11-12). He asserted that the government could not make such a showing, noting that Federal law prohibiting individuals convicted of a crime from possessing a firearm was first enacted in 1938. (Id. p. 12).

Second, Mr. Ketzner argued that 18 U.S.C. § 922(g)(1) is unconstitutional as applied, if the government cannot demonstrate a distinctly similar historical tradition with respect to the particular circumstances of his given case. Accordingly, he asserted the district court could hold 18 U.S.C. § 922(g)(1) unconstitutional as applied to him even if the government could meet its burden to show 18 U.S.C. § 922(g)(1) can be constitutionally applied to some persons. (ECF 27 pp. 13-14).

The analysis under the plain text of the Second Amendment is the same for Mr. Ketzner's facial and as-applied challenges: his possession of a firearm is covered conduct, and therefore presumptively constitutional. He again argued, the government could not meet its burden of proving that felon dispossession was part of this nation's historical tradition of firearm regulation at the time of its founding and that was especially true with respect to citizens like Mr. Ketzner, who do not have any violent qualifying prior offenses under 18 U.S.C. § 922(g)(1).

He argued that as the Third Circuit reasoned in *Range*, "[t]hat Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that Mr. Ketzner is part of a similar group today." 69 F.4th at 105; see *United States v. Forbis*, 687 F.Supp.3d 1170 (N.D. Okla. Aug. 17, 2023) (granting an as-applied challenge for defendant

with history of drug possession) vacated on reconsideration, *United States v. Forbis*, No. 23-CR-133-GKF, 2023 WL 12057866, (N.D. Okla. Nov. 9, 2023); *United States v. Quailes*, 688 F. Supp. 3d 184 (M.D. Pa Aug. 22, 2023), reversed 126 F.4th 215 (3d Cir 2025), petition for cert. filed No. 24-7033 (trial court granting an as-applied challenge for defendant with drug trafficking convictions, reversed by the court of appeals because the defendant was on parole at the time); *United States v. Harper*, 2023 WL 5672311 (M.D. Pa. Sept. 1, 2023), reversed 126 F.4th 215 (3d Cir 2025) (trial court granting as-applied challenge for defendant with multiple armed robbery and drug trafficking convictions reversed by the court of appeals because the defendant was on parole at the time); *United States v. Bullock,* 679 F. Supp. 3d 501, 2023 WL 4232309 (S.D. Miss. 2023), rev'd and remanded, 123 F.4th 183, 2024 WL 5086426 (5th Cir. 2024) petition for cert. filed No. 25-5208 (trial court finding 18 U.S.C. § 922(g)(1) unconstitutional as applied to defendant with prior convictions for aggravated assault and manslaughter). Because the government was thus unable to prove the existence of a national "historical tradition of firearms regulation" that "supports depriving" a nonviolent felon of his Second Amendment right to possess firearms, the Third Circuit held § 922(g)(1) unconstitutional as applied to a man whose prior criminal history consisted solely of a nonviolent offense. See *Range*, 69 F.4th at 106. (ECF 27 p. 14).

Mr. Ketzner argued there is no pre-*Bruen* case law or scholarship that discusses founding-era evidence that felons automatically lost their Second Amendment rights based solely on their status as felons. (ECF 27 pp. 14-15). Even

if violent qualifying prior convictions require disarmament, Mr. Ketzner has no violent history that would suffice as a qualifying offense. (Id).

In its very short Response to Mr. Ketzner's motion, the government argued that binding Tenth Circuit cases have upheld 18 U.S.C. § 922(g)(1) as constitutional in all applications, even after the *Bruen* decision, citing to *United States v. McCane*, 573 F 3d 1037, 1047 (10th Cir. 2009), and *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023). (ECF 28 p. 1).

In the district court's Order, it found that 18 U.S.C. § 922(g)(1) does not violate the Second Amendment. (ECF 29 p. 3). In reaching its conclusion, the district court stated:

> [P]recedent from the U.S. Court of Appeals for the Tenth Circuit also requires this Court to dismiss Defendant's motion. Indeed, this Court is required to follow the precedent of the Tenth Circuit. *United States v. Spedalieri*, 910 F.2d 707, 709 n.2 (10th Cir. 1990). The Tenth Circuit addressed the constitutionality of § 922(g)(1) post-*Bruen* and held that "*Bruen* did not indisputably and pellucidly abrogate" the Tenth Circuit's precedential opinion in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), which "upheld the constitutionality of the federal ban for any convicted felon's possession of a firearm." *Vincent*, 80 F.4th at 1202-02. Thus, Defendant's arguments are foreclosed by *Vincent* and the Court must deny the motion.

(Id. pp. 2-3).

Following the denial of his Motion, Mr. Ketzner pleaded guilty pursuant to a Conditional Plea of Guilty without a plea agreement on September 10, 2024, specifically reserving his right to appeal the denial of his Motion to Dismiss. (ECF 58 p. 10). Mr. Ketzner did timely appeal from the trial court's denial of his Motion to Dismiss. Mr. Ketzner, recognizing that the appellate panel receiving his appeal would be bound by the decision of prior panels upholding the constitutionality of §922(g)(1) from claims similar to his, also sought initial *en banc* review of his appeal under F.R.A.P. 40(g). This request was denied.

On appeal, the Tenth Circuit panel's short unpublished decision explained that circuit precedent had categorically upheld § 922(g)(1) against claims of unconstitutionality based on the Second Amendment and pointed to the panel decision after remand in *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025) for the Tenth Circuit's most recent extended explanation for this conclusion. App.B .

REASONS FOR GRANTING THE PETITION

I. The Circuit split over 18 U.S.C. § 922(g)(1)'s validity will not resolve without this Court's intervention.

The circuits are split—with *en banc* rulings on both sides—over the constitutionality of § 922(g)(1) as applied to people with nonviolent felony convictions. The Third Circuit has applied *Bruen* and *Rahimi*'s analysis to hold that § 922(g)(1) cannot constitutionally apply to all people with non-violent criminal records. The Fifth and Sixth Circuits have agreed that *Bruen* and *Rahimi* abrogated earlier precedent upholding § 922(g)(1) and strongly suggested that the statute is

susceptible to as-applied challenges, though they have rejected such challenges by persons based on an evaluation of the particular criminal convictions of the person before that court. On the other hand, the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have upheld § 922(g)(1) as applied to all felons. All of these decisions were issued after this Court's decision in *Rahimi*. This split will persist until this Court steps in.

A. Three circuits hold that as-applied challenges to § 922(g)(1) require a case-specific historical analysis, under which the statute may be rendered inoperative.

The Third Circuit's *en banc* decision in *Range* provides the clearest sign that the Circuit split will not resolve without intervention from this Court. The *en banc* court held—and then reaffirmed on remand from this Court—that "*Bruen* abrogated our Second Amendment jurisprudence," such that courts "no longer conduct means-end scrutiny"; that a felon "remains among 'the people'" protected by the Second Amendment; and that "the Government has not shown that the principles underlying the Nation's historical tradition of firearms regulation support depriving Range of his Second Amendment right to possess a firearm," given his single, two-decade-old conviction for "food-stamp fraud." *Range,* 124 F.4th at 225, 228, 232. Four judges wrote concurring opinions and one judge dissented; all of the opinions thoroughly considered the issues and the historical evidence.

The Fifth Circuit has likewise held that *Bruen* and *Rahimi* abrogated circuit precedent that "upheld the constitutionality of § 922(g)(1)." *Diaz*, 116 F.4th at 465. The court also rejected the government's reliance on references in *Heller*, *Bruen*,

and *Rahimi* to "regulations that prohibit convicted felons from carrying firearms," explaining that "none of those cases actually concerned § 922(g)(1)," so the "mentions of felons in those cases are mere dicta." *Id.* at 465–66.

Applying *Bruen*'s analysis, the Fifth Circuit rejected facial and as-applied challenges by a defendant with felony convictions for "vehicle theft, evading arrest, and possessing a firearm as a felon," given how theft was historically punished. *Id.* at 467. However, the court emphasized that "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny," because "not all felons today would have been considered felons at the Founding." *Id.* at 469. A Second Amendment challenge to § 922(g)(1) requires a case-specific analysis of whether "at least one of the predicate crimes that [the defendant's] § 922(g)(1) conviction relies on . . . was a felony" that "fits within [the] tradition of serious and permanent punishment." *Id* at 469–70. *Diaz* thus allows for "future as-applied challenges by defendants with different predicate convictions." *Id.* at 470 n.4.

The Sixth Circuit has similarly held that "*Bruen* requires a history-and-tradition analysis that our circuit hasn't yet applied to" § 922(g)(1), meaning "we must revisit our prior precedent." *Williams*, 113 F.4th at 645. As Judge Thapar explained for the court, "other circuits have read too much into the Supreme Court's repeated invocation of 'law-abiding, responsible citizens,'" especially since *Bruen* and *Rahimi* "demand[] a different mode of analysis" than the courts had applied before. *Id.* at 646–48.

Applying the new historical analysis, the Sixth Circuit rejected the defendant's facial challenge because "history and tradition demonstrate that Congress may disarm individuals they believe are dangerous," and "most applications of § 922(g)(1) are constitutional" in light of that rule. *Id.* at 657. "But history shows that § 922(g)(1) might be susceptible to an as-applied challenge in certain cases." *Id.* Throughout history, "individuals could demonstrate that their particular possession of a weapon posed no danger to peace," so "without resort to the courts through as-applied challenges," § 922(g)(1) "would abridge non-dangerous felons' Second Amendment rights." *Id.* at 657, 661. The defendant in *Williams*, however, had multiple violent felony convictions, so he "may be constitutionally disarmed." *Id.* at 662.

The Seventh Circuit has not yet decided an appeal where it considered the constitutionality of 922(g)(1). However, in *United States v. Carbajal-Flores*,143 F.4th 877 (7th Cir. 2025), the court considered a challenge to the constitutionality of 18 U.S.C. § 922(g)(5) and said that they thought it possible that § 922(g)(1) might be unconstitutional as applied to some future litigants: "After *Bruen*, our circuit has not yet decided whether a defendant can lodge an as-applied challenge to any subsection of § 922(g). In *United States v. Gay*, we 'assume[d] for the sake of argument that there [was] some room for as-applied challenges, to § 922(g)(1)'s ban on felons possessing firearms. 98 F.4th 843, 846 (7th Cir. 2024).'" In the *Carbajal-Flores* case the Seventh Circuit did apply the *Bruen* historical analysis to its consideration of 18 U.S.C. § 922(g)(5) as applied to the defendant before it.

B. Five circuits have held that § 922(g)(1) is constitutional in every application.

In addressing constitutional challenges to firearm prohibitions, the Fourth Circuit has reaffirmed that its prior precedent remains controlling, holding that its "previous decisions rejecting as-applied challenges to Section 922(g)(1) remain binding because they can be read 'harmoniously' with *Bruen* and *Rahimi* and have not been rendered 'untenable' by them." *Hunt*, 123 F.4th at 703. cert. denied, No. 24-6818, 2025 WL 1549804 (U.S. June 2, 2025). In so holding, the court relied on the same statements in *Heller*, *Bruen*, and *Rahimi* about "restrictions on felons possessing firearms," *id*., that the Fifth Circuit dismissed as "mere dicta," *Diaz*, 116 F.4th at 465–66.

In the alternative, the Fourth Circuit held that § 922(g)(1) "would survive Second Amendment scrutiny" in any event, "without regard to the specific conviction that established [the defendant's] inability to lawfully possess firearms." 123 F.4th at 700. In the Fourt Circuit Court's view, "the historical record contains ample support for the categorical disarmament of people 'who have demonstrated disrespect for legal norms of society,'" like felons. *Id*. at 706. Further, the court "conclude[d] that Section 922(g)(1) is also justified as 'an effort to address a risk of dangerousness.'" *Id*. at 707. Thus, the court saw "no need for felony-by-felony litigation regarding the constitutionality of Section 922(g)(1)." *Id*. at 700 (cleaned up).

In so holding, the Fourth Circuit relied heavily on the Eighth Circuit's similar decision in *United States v. Jackson*, one of the cases that this Court remanded after

Rahimi. See 110 F.4th 1120, 1121 (8th Cir. 2024). There, too, the Eighth Circuit relied on alleged "assurances by the Supreme Court" that "longstanding prohibitions on the possession of firearms by felons" remain valid. *Id.* at 1125. And, after reviewing the historical record, the court concluded that "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id.* at 1129. "Whether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons." *Id.* The Eighth Circuit thus concluded the statute is thus constitutional in every application. *Id.* at 1125. Rehearing *en banc* was denied over a four-judge dissent. See *United States* v. *Jackson*, 121 F.4th 656 (8th Cir. 2024). In the dissenters' view, "what *Jackson* says about as-applied challenges conflicts with" both the Second Amendment's text and this Court's precedents. *Id.* at 656–57 (Stras, J., dissenting from denial of rehearing *en banc*). The panel decision "deprives tens of millions of Americans of their right 'to keep and bear Arms' for the rest of their lives . . . without a finding of a credible threat to the physical safety of others or a way to prove that a dispossessed felon no longer poses a danger." *Id.* at 657 (citations omitted). "Other courts," the dissent noted, "have not made the same mistake." *Id.* at 658.

The Ninth Circuit, in an *en banc* decision in *United States v. Duarte*, 137 F.4th 743, 2025 WL 1352411 (9th Cir. May 9, 2025) applied a plain error standard of review, as the constitutionality of § 922(g)(1) was not raised in the trial court. The

court performed the historical analysis of § 922(g)(1) called for by *Bruen* and concluded that applying § 922(g)(1) to all felons was not unconstitutional.

The Tenth Circuit reached the same result in *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025) petition for cert. filed No. 24-1155, though without any historical analysis. It concluded merely that *Bruen* and *Rahimi* did not abrogate earlier circuit precedent upholding § 922(g)(1).

The Eleventh Circuit agreed, albeit in an unpublished decision. The Court summarily rejected the defendant's facial and as-applied challenges to § 922(g)(1), explaining: "Our binding precedents . . . foreclose Hester's argument that section 922(g)(1) violates the Second Amendment," and neither *Bruen* nor *Rahimi* "undermine our interpretation." *United States* v. *Hester*, No. 23-11938, 2024 WL 4100901, at *1–2 (Sept. 6, 2024) (per curiam), cert. denied, 145 S. Ct. 1212, 221 L. Ed. 2d 278, 2025 WL 581791 (2025). "To the contrary, *Rahimi* reiterated that prohibitions on the possession of firearms by felons and the mentally ill are presumptively lawful." *Id.* (cleaned up). Thus, "the government is 'clearly correct as a matter of law' that section 922(g)(1) is constitutional under the Second Amendment." *Id.*; see also *United States* v. *Langston*, 110 F.4th 408, 420 (1st Cir. 2024) (on plain-error review, the defendant "fail[ed] to show that § 922(g)(1) clearly and obviously violates the Second Amendment as applied to him, given his previous convictions under Maine law for theft and drug trafficking"), *cert. denied,* 145 S. Ct. 581 (2024).

In short, at least eight circuits have addressed § 922(g)(1)'s

constitutionality since *Rahimi*. Three allowed as-applied challenges based on the defendant's specific criminal record and the relevant historical record. Five categorically rejected such claims. The former camp includes the Third Circuit's *en banc* decision, while the latter includes the Eighth Circuit's refusal to rehear *Jackson en banc*.

II. The Tenth Circuit's decision in Ketzner was wrongly decided.

Under *Bruen*'s historical test, the decision below cannot stand. Section 922(g)(1) violates the Second Amendment as applied to Mr. Ketzner because the historical tradition of firearms regulation in the United States did not permit the federal government to permanently disarm someone based solely on the fact of prior nonviolent criminal convictions. That is true especially where no evidence suggests that the person poses, or has ever posed, a threat to anyone else.

A. The Tenth Circuit failed to apply *Bruen* and *Rahimi*'s history-and-tradition test.

This Court has made clear that, for a firearms regulation to survive a Second Amendment challenge, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19; see also *United States* v. *Jackson*, 85 F.4th 468, 469 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing *en banc*) (collecting cases noting the government's burden). Even so, the Tenth Circuit conducted no such analysis.

After this Court reversed and remanded the Tenth Circuit's decision in the

Vincent case, instead of undertaking the sort of analysis that was applied by this Court in the *Rahimi* case, the Tenth Circuit panel just upheld 18 U.S.C. § 922(g)(1) without any analysis at all. The panel on remand based their decision on dicta from *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *Rahimi* that those decisions did not reach the question of the constitutionality of laws prohibiting possession of firearms by felons. It is true that this Court has not yet ruled on the question of 18 U.S.C. 922(g)(1)'s compatibility with the Second Amendment, whether in *Heller* or *Rahimi*. With respect, Mr. Ketzner submits that the dicta cited in the Tenth Circuit's 2025 *Vincent* decision missed the point of the action taken by this Court in the *Vincent* case. That dicta does not support the *Vincent* court's apparent determination that 18 U.S.C. § 922(g)(1) was excluded by the Supreme Court from being evaluated under the analysis applied to other weapons control laws in *Heller, Bruen* and *Rahimi*.

The Tenth Circuit was invited, by this Court's action in the *Vincent* case, to undertake a *Rahimi* type analysis in the first instance. Instead the panel on remand in *Vincent* chose to do no analysis of the historical underpinning (if any) of a blanket ban on possession of firearms by felons for life. No analysis of whether 18 U.S.C. § 922(g)(1)'s ban being for the life of the felon and how that ban interfaces with the Second Amendment was made. No analysis was made of whether felons are entitled by the Second Amendment to an individualized assessment of their present or future dangerousness before banning firearm possession. In *Rahimi*, the ban on firearms possession by Mr. Rahimi, a person subject to a domestic violence

restraining order, was found to be constitutional at least in part because the loss of his firearm rights was limited in time and because a court had made an individualized assessment of Mr. Rahimi's dangerousness to others in the restraining order proceeding. Neither of those of those factors are present in 18 U.S.C. § 922(g)(1), or to the proceedings involving Mr. Ketzner. His ban on firearms possession is for life, and without any regard for the facts underlying his prior convictions.

In short, the law in the Tenth Circuit is essentially that while other courts may conclude some felons can possess firearms under the Second Amendment, it categorically refuses to assist in that endeavor. Indeed, there is a clear split between circuit courts of appeal that seek to try to apply the Supreme Court's recent jurisprudence on the Second Amendment, and circuits that are categorically refusing to treat the right to keep and bear arms as anything approaching a civil right like other civil rights protected by the Constitution. Unfortunately, the Tenth Circuit has fallen into the group of circuits practicing judicial non-acquiescence as to the Second Amendment.

B. The government cannot permanently disarm people merely because of nonviolent criminal convictions.

Under the proper analysis, § 922(g)(1) cannot constitutionally apply to Mr. Ketzner. First, he is indisputably among "the people" protected by the Second Amendment. Second, there was no history or tradition of permanently disarming nonviolent offenders when the Second Amendment was ratified. Thus, §

922(g)(1)'s permanent prohibition on firearm possession by nonviolent offenders—even those who have been indisputably reformed and pose no threat to others—is overbroad.

1. Mr. Ketzner is among "the people" protected by the Second Amendment.

Under *Bruen*, the first question is whether the Second Amendment's text protects Mr. Ketzner. 597 U.S. at 24. As the Third Circuit correctly understood in *Range*, American citizens with prior felony convictions are among "the people" protected by the Bill of Rights — including the Second Amendment. See 69 F.4th at 101–02. "[O]ther Constitutional provisions reference 'the people,'" including the First and Fourth Amendments. *Id.* "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 felons are "not among 'the people' for Second Amendment purposes would exclude" them from those other rights as well. *Id.* There is "no reason to adopt an inconsistent reading of 'the people.'" *Id.* Any argument that felons, solely because of conviction status, have forfeited their Second Amendment rights would have to independently surmount the *Bruen* text, history, and tradition test.

2. The Government cannot show a historical tradition of permanently disarming nonviolent offenders.

Section 922(g)(1) offends the Second Amendment to the extent it prohibits firearms possession based solely on felony conviction status. For a regulation to

survive Second Amendment scrutiny, the Government must provide evidence of analogous regulations from the Founding Era to show the regulation at issue comports with our nation's history and tradition of the right to bear arms. Only a historical "analogue" is required, and not a "twin," but courts must consider the "why" and "how" of the challenged regulation and their purported historical counterparts to determine if an analogous relationship exists. *Bruen*, 597 U.S. at 29.

The government cannot show a relevant Founding Era analogue to either the "why" or the "how" of § 922(g)(1). As to the "why," no evidence has emerged of any significant Founding-era firearms restrictions on citizens like Mr. Ketzner who committed only non-violent offenses and posed no physical threat to others. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 283 (2020). While the historical record suggests that dangerousness sometimes supported disarmament, conviction status alone did not connote dangerousness to the Founding generation. *Id.* At the Founding, "[p]eople considered dangerous lost their arms. But being a criminal had little to do with it." *Jackson*, 85 F.4th at 470–72 (Stras, J., dissenting from denial of rehearing *en banc*).

As to the "how," no Founding-era evidence has emerged of class-wide, lifetime bans on firearms possession merely because of conviction status. In fact, total bans on felon possession existed nowhere until at least the turn of the twentieth century. C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009). As then-Judge Barrett explained: "The best historical support

for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban. But at least thus far, scholars have not been able to identify any such laws." *Kanter* v. *Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. at 18–19 & n.4.

Founding-era surety and forfeiture laws are not sufficiently analogous to § 922(g)(1) to survive Second Amendment scrutiny. Unlike § 922(g)(1), Founding era surety laws at most temporarily deprived an owner of his arms if he was found to pose a unique danger to others. *Bruen*, 597 U.S. at 55–59. By contrast, § 922(g)(1) imposes a permanent ban on a class-wide basis, regardless of a class member's actual peaceableness. Neither did forfeiture laws like § 922(g)(1) deprive felons of the ability to possess firearms, because they involved forfeiture only of specific firearms. They did not prevent the subject from acquiring replacement arms or keeping other arms they already possessed. See, e.g., Act of Dec. 21, 1771, ch. 540, N.J. Laws 343–44 (providing for forfeiture of hunting rifles used in illegal gamehunting); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69–70 (same); see also *Range*, 69 F.4th at 104–05.

III. The question presented is important and recurring.

This Court should grant the petition because the question posed is vitally important. A circuit split on the validity of a federal statute alone typically warrants review. See, e.g., *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019). That is even more true when the question presented concerns the scope of a core constitutional right. Cf.

McDonald v. *City of Chicago*, 561 U.S. 742, 795–96 (2010) (Scalia, J., concurring). The Court should decide whether peaceful American citizens who have paid their debt to society may be permanently deprived of the right to self-defense, despite the Second Amendment's guarantee.

IV. This case is the best vehicle.

Mr. Ketzner's case is an ideal vehicle to decide this question. The issue was raised in the district court and thoroughly briefed and presented to the district court and the Tenth Circuit. Unlike in the *Vincent* case, Mr. Ketzner's liberty is at stake here. He is currently imprisoned for his conviction for violating 922(g)(1). Mr. Ketzner was convicted of several felonies all of which were non-violent and related to his use of methamphetamine. He was incarcerated for them, and after his release led a law abiding and methamphetamine free life.

Respectfully submitted this 17th day of September 2025.

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