No. 25-

In the Supreme Court of the United States

SIDNEY DONNELL KIMBLE, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1), the federal statute that prohibits anyone who has been convicted of "a crime punishable by imprisonment for a term exceeding one year" from possessing a firearm, violates the Second Amendment either facially or as applied to individuals with convictions for non-violent offenses.

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Sidney Donnell Kimble,
No. 5:21-cr-355 (Dec. 1, 2023)

United States Court of Appeals for the Fifth Circuit:

United States v. Sidney Donnell Kimble,
No. 23-50874 (June 30, 2025)

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Petitioner Sidney Donnell Kimble respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

This Court's decision in *NYSRPA v. Bruen*, 597 U.S. 1 (2022), brought about a sea change in Second Amendment jurisprudence. In *Bruen*'s wake, the courts of appeals considered constitutional challenges to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1). They reached dramatically divergent results. And the Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), did little to quell the confusion. The courts of appeals continue to

be deeply divided after *Rahimi*. The Third, Fifth, and Sixth Circuits each acknowledge that § 922(g)(1) is vulnerable to as-applied challenges depending on the person's predicate felony conviction. By contrast, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have each upheld the statute in all of its applications (although based on different rationales).

The Fifth Circuit's decision below continues to deepen the intractable conflict in the courts of appeals over the scope of a fundamental right. And the Fifth Circuit's decision is wrong. Section 922(g)(1) is a mid-20th century innovation drafted when Congress believed—incorrectly—that the Second Amendment does not protect an individual right to bear arms. So Congress made no effort to pass a law that was "consistent with the Nation's historical tradition of firearm regulation." *See Bruen*, 597 U.S. at 24. Rather, it passed a sweeping ban that is irreconcilable with our history and tradition. Section 922(g)(1) is facially unconstitutional because its lifetime prohibition on gun possession imposes a historically unprecedented burden on the right to keep and bear arms. No historical firearm law imposed *permanent* disarmament. And the justification behind § 922(g)(1)—disarming a broad group of potentially irresponsible individuals—also fails historical scrutiny. At most, our history shows a tradition of disarming *violent*

individuals who threaten armed insurrection or pose a physical threat to others. Kimble falls within neither category. Although the Fifth Circuit determined that Kimble's predicate convictions for drug trafficking were "inherently dangerous," the record lacks evidence that his offenses involved guns or violence. And in *Rahimi*, this Court rejected the sweeping theory that Congress can disarm anyone it deems dangerous. So, at the very least, § 922(g)(1) is unconstitutional as applied to non-violent individuals like Kimble.

This question is critically important. Section 922(g)(1) is one of the most commonly charged federal offenses. Uncertainty about whether the statute is constitutional affects thousands of criminal cases each year, and challenges to the statute are congesting the lower courts' dockets. Even more concerning, § 922(g)(1) categorically and permanently prohibits millions of Americans—the vast majority of whom have non-violent convictions—from exercising their right to keep and bear arms.

This Court's intervention is urgently needed to resolve the scope of a fundamental constitutional right. This question will not go away, and this is an ideal vehicle to resolve it. The Court should grant certiorari.

OPINION BELOW

The Fifth Circuit's opinion is reported at 142 F.4th 308 and is reproduced at App. 1a–24a.

JURISDICTION

The Fifth Circuit entered its judgment on June 30, 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."

Section 922(g)(1) of Title 18 of the United States Code 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 … possess in or affecting commerce, any firearm or ammunition."

STATEMENT

A. Legal background.

1. "Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons." *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Indeed, "[b]ans on ex-felons possessing firearms were first adopted in the

1920s and 1930s, almost a century and a half after the Founding." Adam Winkler, *Heller's Catch-22*, 56 UCLA L. REV. 1551, 1563 (2009). In 1938, Congress criminalized firearm possession by individuals convicted of certain crimes for the first time. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). But that statute was much narrower than the modern version. The Federal Firearms Act only applied to someone "convicted of a crime of violence," *id.*, which included "murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking," and certain kinds of aggravated assault, *id.* § 1(6). The Act prohibited an individual with such a conviction from "receiv[ing]" a firearm, and it considered possession to be "presumptive evidence" of receipt.[1] *Id.* § 2(f).

Soon after Congress passed the Federal Firearms Act, this Court decided a Second Amendment challenge to another federal firearm law. In *United States v. Miller*, two defendants challenged their indictment for transporting an unregistered short-barreled shotgun in interstate commerce. 307 U.S. 174, 175 (1939). This Court held that the Second Amendment did not protect the right to possess a short-barreled shotgun because such a weapon had no "reasonable relationship to the preservation or efficiency of a well

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[1] This possession-based presumption was short-lived. A few years later, this Court invalidated the presumption on due process grounds. *Tot v. United States*, 319 U.S. 463, 467 (1943).

regulated militia." *Id.* at 178. The Court explained that the Second Amendment was adopted "[w]ith obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces" and "must be interpreted and applied with that end in view." *Id.*

Applying similar militia-focused reasoning, courts of appeals rejected constitutional challenges to the Federal Firearm Act's provision prohibiting individuals convicted of violent crimes from receiving firearms. The First Circuit held that the Second Amendment did not protect someone who was not "a member of any military organization" and who used a firearm "without any thought or intention of contributing to the efficiency of the well regulated militia." *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942). The Third Circuit concluded that the Second Amendment "was not adopted with individual rights in mind," so it did not protect possession of a gun without "some reasonable relationship to the preservation or efficiency of a well regulated militia." *United States v. Tot*, 131 F.2d 261, 266 (3d Cir. 1942). And a California court of appeal upheld that state's felon-in-possession law, explaining that "the right to keep and bear arms is not a right guaranteed … by the federal constitution." *People v. Camperlingo*, 231 P. 601, 603 (Cal. Ct. App. 1924).

2. It was not until the 1960s that the federal felon-in-possession statute took on its modern form. At the time, Congress shared a widely held—but incorrect—understanding of the Second Amendment. In committee testimony, the Attorney General assured Congress that "[w]ith respect to the second amendment, the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms" and opined that "the right to bear arms protected by the second amendment relates only to the maintenance of the militia." *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary,* 89th Cong. 41 (1965). And Congress dismissed constitutional concerns about federal firearm regulations, explaining that the Second Amendment posed "no obstacle" because federal regulations did not "hamper the present-day militia." S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169. Congress relied on court decisions—including *Miller*—which held that the Second Amendment "was not adopted with the individual rights in mind." *Id.*

Unconstrained by the Second Amendment, "Congress sought to rule broadly," employing an "expansive legislative approach" to pass a "sweeping prophylaxis … against misuse of firearms." *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (first

quote); *Lewis v. United States*, 445 U.S. 55, 61, 63 (1980) (second and third quotes). In particular, Congress was concerned with keeping firearms out of the hands of broad categories of "potentially irresponsible persons, including convicted felons." *Barrett v. United States*, 423 U.S. 212, 220 (1976). So it enacted two significant changes that brought about the modern felon-in-possession ban. *First*, Congress expanded the Federal Firearms Act to prohibit individuals convicted of *any crime* "punishable by imprisonment for a term exceeding one year"—not just violent crimes—from receiving a firearm. *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961). *Second*, a few years later, Congress criminalized *possession* of a firearm—not just receipt—by anyone with a felony conviction. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

In the ensuing years, courts endorsed Congress's incorrect understanding of the Second Amendment and upheld the new, sweeping felon-in-possession prohibition. For example, the Sixth Circuit held that the Second Amendment did not limit Congress's "power to prohibit the possession of a firearm by a convicted felon." *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971). "Since the Second Amendment right 'to keep and bear Arms' applies only

to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm." *Id.* (citing *Miller*, 307 U.S. at 178). Other courts of appeals—relying on *Miller*—also rejected Second Amendment challenges to the statute because it did not obstruct the militia. *See*, *e.g.*, *United States v. Johnson*, 497 F.2d 548, 550 (4th Cir. 1974); *Cody v. United States*, 460 F.2d 34, 36–37 (8th Cir. 1972).

3. Fast forward a few decades. In *District of Columbia v. Heller*, this Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a "textual analysis" of the Second Amendment's language and surveyed the Amendment's "historical background." *Id.* at 578, 592. The Court had "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 595. Relying on the historical understanding of the Amendment, however, the Court recognized that "the right secured by the Second Amendment is not unlimited." *Id.* at 626. The Court identified several "longstanding" and "presumptively lawful" firearm regulations, such as prohibitions on felons possessing

firearms. *Id.* at 626–27 & n.27. But the Court cautioned that it was not "undertak[ing] an exhaustive historical analysis … of the full scope of the Second Amendment." *Id.* at 626. And it did not cite any historical examples of these "longstanding" laws, explaining that there would be "time enough to expound upon the historical justifications for the[se] exceptions … if and when those exceptions come before us." *Id.* at 635.

Following *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges that focused on the historical scope of the Second Amendment at step one and applied means-ends scrutiny at step two. *See*, *e.g.*, *Kanter*, 919 F.3d at 441–42; *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). And this Court's recognition that the Second Amendment protects an individual right brought renewed constitutional challenges to § 922(g)(1). But the courts of appeals almost uniformly rejected Second Amendment challenges to the statute, either applying means-ends scrutiny or relying on *Heller*'s "presumptively lawful" language. *See*, *e.g.*, *United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases); *but see Binderup v. Attorney General*, 836 F.3d 336, 351–57 (3d Cir. 2016) (en banc) (holding that § 922(g)(1) was unconstitutional as applied

to two individuals with underlying convictions that "were not serious enough to strip them of their Second Amendment rights.").

4. Then came *Bruen*. In *Bruen*, this Court held that the two-step framework adopted by the courts of appeals was "one step too many." 597 U.S. at 19. Instead, the Court explained that *Heller* demanded a test "centered on constitutional text and history." *Id.* at 22. Under this test, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* (cleaned up).

Bruen—and the Court's later decision in *Rahimi*—explain that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. "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.* (quoting *Bruen*, 597 U.S. at 29). The law need

not be a "historical twin," but analogical reasoning is also not a "regulatory blank check." *Bruen*, 597 U.S. at 30. "How" and "why" the regulations burden the right to bear arms are central to this inquiry. *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. These considerations ask whether the modern and historical regulations impose a "comparable burden" (the *how*) and "whether that burden is comparably justified" (the *why*). *Bruen*, 597 U.S. at 29. "Even when a law regulates arms-bearing for a permissible reason, … it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692.

B. Proceedings below.

1. In mid-2021, law enforcement officers approached Kimble to arrest him. C.A. ROA 281. Kimble ran away, discarding a pistol as he ran, and was eventually taken into custody. *Id.* at 281–82. Kimble had two earlier convictions for drug-trafficking offenses that were punishable by more than a year in prison. In 2012, he was convicted in Texas state court of manufacture or delivery of a controlled substance after he was found with crack cocaine and marijuana during a traffic stop. *Id.* at 284. And, in 2015, he was convicted in federal court of possessing with intent to distribute cocaine after a sale to a confidential source. *Id.* at 285. There is no evidence that Kimble had a firearm during either offense, and

nothing suggests that Kimble engaged in threatening or violent behavior during either incident. *See id.* at 284–85.

2. An indictment charged Kimble with being a felon in possession of a firearm in violation of § 922(g)(1). C.A. ROA 28–29. Kimble moved to dismiss the indictment. *Id.* at 130–62. He argued that § 922(g)(1) facially violates the Second Amendment under *Bruen*'s text-and-history test. *Id.* at 140–59. In the alternative, he argued that § 922(g)(1) is unconstitutional as applied to him because his underlying convictions were for "non-violent offenses." *Id.* at 160–61.

The district court denied Kimble's motion to dismiss, relying on its earlier decision in another case. C.A. ROA 179–80 (citing *United States v. Grinage*, 2022 WL 17420390 (W.D. Tex. Dec. 5, 2022)). In *Grinage*, the same court held that § 922(g)(1) was constitutional both facially and as applied to the defendant there because *Bruen* did not overrule earlier Fifth Circuit precedent upholding the statute and because felons are not among "the people" protected by the Second Amendment. 2022 WL 17420390, at *3–8. Kimble pleaded guilty to violating § 922(g)(1), C.A. ROA 254, and the district court sentenced him to 57 months' imprisonment, *id.* at 207.

3. Kimble appealed, and the Fifth Circuit affirmed. App. 1a–24a. The court rejected Kimble's facial challenge because it was

foreclosed by circuit precedent. *Id.* at 3a n.2 (citing *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025)). After explaining that "felons are unequivocally among 'the people' protected by the Second Amendment," *id.* at 4a (cleaned up), the court addressed the government's two theories to support applying § 922(g)(1) to Kimble.

First, the court rejected the government's argument that Kimble's drug-trafficking predicates were analogous to founding-era felonies punishable by death or estate forfeiture such as knowing receipt of a stolen horse or forgery of public securities. App. 7a–11a. The court held that the government's reliance on these earlier crimes "stretches the analogical reasoning prescribed by *Bruen* and *Rahimi* too far." *Id.* at 10a–11a.

Second, the court agreed with the government's argument that Kimble's drug-trafficking convictions show that "he is the sort of dangerous individual that legislatures have long disarmed." App. 11a. The court held that the "Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous" and that this tradition "accords with (g)(1)'s rationale for disarming Kimble." *Id.* at 11–14. The court explained that "the Legislative, Executive, and Judicial Branches agree that drug trafficking is an inherently dangerous activity." *Id.* at 16. Thus, the court held that

§ 922(g)(1) is constitutional as applied to Kimble because his "predicate convictions for drug trafficking convey that he belongs to a class of dangerous felons that our regulatory tradition permits legislatures to disarm." *Id.* at 17.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are deeply divided over the scope of a fundamental constitutional right.

The courts of appeals are deeply divided over how to analyze Second Amendment challenges to § 922(g)(1). Some circuits see no need to conduct the text-and-history analysis required by *Bruen*, relying instead on this Court's dicta that felon-in-possession prohibitions are presumptively lawful. Others apply *Bruen*'s text-and-history framework but reach dramatically different results, disagreeing about which historical traditions justify § 922(g)(1), whether the statute is vulnerable to as-applied challenges, and (if so) how to analyze those challenges.

1. Several circuits have found § 922(g)(1) constitutional with no need for felony-by-felony litigation, but for drastically different reasons.

a. The Fourth, Tenth, and Eleventh Circuits have upheld § 922(g)(1) in all of its applications without conducting *Bruen*'s text-and-history test. These courts have all concluded that they

remained bound by their pre-*Bruen* precedent which, in turn, foreclosed as-applied challenges to § 922(g)(1) based on *Heller*'s statement that prohibitions on the possession of firearms by felons are "presumptively lawful." *See United States v. Hunt*, 123 F.4th 697, 702–04 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025), *pet. for cert. pending*, No. 24-1155 (U.S.); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025).

b. The Second, Eighth, and Ninth Circuits—as well as the Fourth Circuit as an alternative rationale—have upheld § 922(g)(1) across the board based on a historical analysis. *See Zherka v. Bondi*, 140 F.4th 68, 78–79 (2d Cir. 2025), *pet. for cert. pending*, No. 25-269 (U.S.); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 761–62 (9th Cir. 2024) (en banc); *see also Hunt*, 123 F.4th at 705–08. These courts relied on historical laws categorically disarming groups who were "not law-abiding" or "presented an unacceptable risk of danger if armed" to justify § 922(g)(1) in all of its applications. *See*, *e.g.*, *Jackson*, 110 F.4th at 1126–28.

2. By contrast, the Third and Sixth Circuits have each conducted a historical analysis and concluded that § 922(g)(1) is vulnerable to as-applied challenges.

a. The Third Circuit, sitting en banc, struck down § 922(g)(1) as applied to an individual convicted of food stamp fraud who did not "pose[ ] a physical danger to others." *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024). In doing so, the court rejected the government's reliance on status-based restrictions, emphasizing that founding-era laws disarmed distrusted groups—like loyalists, Native Americans, religious minorities, and Black Americans—based on fear of rebellion. *Id.* at 229–30. The court also rejected the government's reliance on capital punishment and forfeiture, explaining that "the 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 230–31.

b. The Sixth Circuit allows as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous." *United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). Although the court found historical support for disarming "presumptively dangerous" groups who posed a threat to public order—like religious minorities, Native Americans, loyalists, and freedmen—it explained that these laws all allowed individuals to show that they posed no danger. *Id.* at 657. So the court held that an individual

must be given an opportunity to show that he is "not dangerous" and "falls outside of § 922(g)(1)'s constitutionally permissible scope." *Id.* In conducting this inquiry, the court explained that courts can "consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction." *Id.* at 659–60.

3. The Fifth Circuit's decision below underscores the deep divisions between the courts of appeals.

a. The Fifth Circuit splits with other courts of appeals on two preliminary questions. Unlike the Fourth, Tenth, and Eleventh Circuits—which have held that they remain bound by their pre-*Bruen* precedent, *see supra* 15–16—the Fifth Circuit agrees with the Third and Sixth Circuits that *Bruen* rendered its prior precedent obsolete. App. 5a & n.4 (recognizing split); *Range*, 124 F.4th at 225; *Williams*, 113 F.4th at 647–48. And the Tenth and Eleventh Circuits have declined to conduct any historical analysis based on *Heller*'s "presumptively lawful" language. *See supra* 15–16. By contrast, the Fifth Circuit has joined the Third and Sixth Circuits in refusing to treat that language as controlling. *Diaz*, 116 F.4th at 466; *Range*, 124 F.4th at 228–29; *Williams*, 113 F.4th at 648. Instead, these courts acknowledge that *Bruen* requires a text-and-history analysis.

b. The Fifth Circuit's historical analysis also diverges from other circuits in several respects. The Second, Fourth, Eighth, and Ninth Circuits have all held that history supports upholding § 922(g)(1) regardless of a defendant's underlying conviction. *See supra* 16. But the Fifth Circuit—like the Third and Sixth Circuits, *see supra* 17–18—"permit[s] as-applied challenges" to the statute. App. 5a (cleaned up).

The Fifth Circuit's as-applied analysis, however, conflicts with how the Third and Sixth Circuits evaluate as-applied challenges. *First*, the Fifth Circuit recognizes that individuals can be disarmed if their predicates "were subject to the death penalty" at the founding. App. 5.a. This conflicts with the Third Circuit's rejection of capital punishment as an analogue for the felon-in-possession statute. *Range*, 124 F.4th at 230–31. *Second*, the Fifth Circuit recognizes that "those who have been convicted of violent offenses" can be disarmed under § 922(g)(1). App. 6a. But its analysis differs from the Third and Sixth Circuits' analysis. Those courts require an individualized assessment of dangerousness that considers a defendant's entire criminal record, not just the underlying felony. *Williams*, 113 F.4th at 663; *Pitsilides v. Barr*, 128 F.4th 203, 211 (3d Cir. 2025). The Fifth Circuit, however, has concluded that it is

limited to analyzing the felony predicates that triggered § 922(g)(1). App. 11a–12a (recognizing split).

* * *

The courts of appeals are fractured over how to conduct the Second Amendment analysis, and the splits are entrenched and deepening. This Court's intervention is needed to resolve the scope of the right to keep and bear arms.

II. The decision below is wrong and conflicts with this Court's precedent.

The Fifth Circuit's decision below correctly noted that, under the plain text of the Second Amendment, "convicted felons are unequivocally among 'the people' protected by the Second Amendment." App. 4a (cleaned up). After all, this Court has explained that "the people" "unambiguously refers to all members of the political community," so the right to keep and bear arms belongs to "all Americans." *Heller*, 554 U.S. at 580. But the Fifth Circuit misapplied *Bruen*'s historical analysis. Section 922(g)(1) does not align with our Nation's tradition of firearm regulation on either of the two central considerations: how and why it burdens the right to keep and bear arms. *See Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. The difference in *how* § 922(g)(1) burdens the right to bear arms is fatal to the statute facially, and *why* it burdens the

right to bear arms dooms the statute as applied to non-violent offenders like Kimble.

A. Section 922(g)(1) is facially unconstitutional because it imposes an unprecedented lifetime ban on firearm possession.

1. Section 922(g)(1) facially violates the Second Amendment because it imposes a sweeping, historically unprecedented lifetime ban that prevents millions of Americans from possessing firearms for self-defense. The government has not cited a single historical gun law that imposed a *permanent* prohibition on the right to keep and bear arms—even for self-defense. In other words, no historical regulation "impose[s] a comparable burden on the right of armed self-defense." *See Bruen*, 597 U.S. at 29.

That is hardly surprising. When Congress passed the modern felon-in-possession statute—four decades before *Heller* and more than a half-century before *Bruen*—it did not believe that the Second Amendment protected an individual right to keep and bear arms. *See supra* 7–8. So Congress did not try to pass a law that aligned with the "Nation's historical tradition of firearm regulation." *See Bruen*, 597 U.S. at 17. Instead—dismissing the Second Amendment as "no obstacle," *see supra* 7—it employed an "expansive legislative approach" to pass a "sweeping prophylaxis … against misuse of firearms." *Lewis*, 445 U.S. at 61, 63. And that sweeping, *permanent*

prohibition on gun possession imposes a burden far broader than any firearm regulation in our Nation's history.

2. In other cases, the Fifth Circuit has recognized that § 922(g)(1)'s permanent disarmament requires a historical analogue that also permanently prevented individuals from possessing guns. In *Diaz*, the court noted that § 922(g)(1) imposes "permanent disarmament" and held that on capital punishment was a proper analogue because it is "obviously permanent." 116 F.4th at 469. In the decision below, however, the court never cited any historical firearm regulation that justified permanent disarmament of individuals convicted of inherently dangerous felonies. Under either standard, there is no tradition of permanent disarmament justifying § 922(g)(1).

a. The Fifth Circuit's acceptance of capital punishment as a historical analogue justifying permanent disarmament, *see* App. 5a, conflicts with this Court's precedent in three ways.

First, this Court requires the government to show that a modern gun law aligns with our "historical tradition of *firearm* regulation." *Bruen*, 597 U.S. at 24 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In other words, the government's historical analogues must regulate *firearms*. In *Rahimi*, this Court relied only on historical laws that "specifically addressed firearms

violence." 602 U.S. at 694–95. So too in *Bruen*. 597 U.S. at 38–66. Capital punishment, however, is not a *firearm* regulation. So they cannot justify § 922(g)(1). The Fifth Circuit has reached a contrary conclusion by misreading *Rahimi*.

The Fifth Circuit asserted that *Rahimi* "consider[ed] several historical laws that were not explicitly related to guns." *Diaz*, 116 F.4th at 468. But *Rahimi* says otherwise. In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going armed laws—that both "specifically addressed firearms violence." 602 U.S. at 694–95. To be sure, surety laws were not "passed *solely* for the purpose of regulating firearm possession or use." *Diaz*, 116 F.4th at 468. But this Court emphasized that, "*[i]mportantly for this case*, the surety laws also targeted the misuse of firearms." *Rahimi*, 602 U.S. at 696 (emphasis added). In other words, historical laws that did *not* target the misuse of firearms—like capital punishment and estate forfeiture—are *not* proper analogues.

The Fifth Circuit also noted that this Court accepted a greater-includes-the-lesser argument in *Rahimi*. *Diaz*, 116 F.4th at 469. That is true as far as it goes. *Rahimi* held that "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary

disarmament … is also permissible." 602 U.S. at 699. But it does not follow, as the Fifth Circuit concluded, that "if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." *Diaz*, 116 F.4th at 469. This Court explained that the purpose of imprisonment under the going armed laws was "to respond to the use of guns to threaten the physical safety of others." *Rahimi*, 602 U.S. at 699. So both the greater historical punishment (imprisonment under the going armed laws) and the lesser modern restriction (disarmament under 18 U.S.C. § 922(g)(8)) had the same purpose—curbing gun violence. Not so here. Again, capital punishment did not target gun violence.

Second, this Court has also emphasized that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Bruen*, 597 U.S. at 70 (cleaned up). But the Fifth Circuit's reasoning—that because capital punishment is an "obviously permanent" deprivation of an individual's right to bear arms, the lesser restriction of permanent disarmament is permissible for individuals who are not executed, *Diaz*, 116 F.4th at 469—conflicts with how the Constitution treats other fundamental rights.

"Felons, after all, don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment." *Williams*, 113 F.4th at 658. "No one suggests that such an individual has no right to a jury trial or be free from unreasonable searches and seizures." *Id.* And "we wouldn't say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding." *Kanter*, 919 F.3d at 461–62 (Barrett, J., dissenting). "The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Id.* at 462. Rather, "history confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one's status as a convicted felon or to the uniform severity of punishment that befell the class." *Id.* at 461.

b. The Fifth Circuit has not articulated any tradition of permanently disarming individuals "whose past criminal conduct evinces a special danger of misusing firearms." *See* App. 6a. Indeed, the court's analysis never cites a single permanent or lifetime ban on firearm use. *Id.* at 11a–16a. The court noted that "[g]overnments in England and colonial America long disarmed groups they deemed to be dangerous." *Id.* at 11a (quoting *Williams*,

113 F.4th at 657). Even assuming this "dangerousness" theory could justify § 922(g)(1) (*but see infra* 29–30), the court never grappled with the fact that these historical categorical deprivations were not *permanent*. Rather, they gave individuals "a reasonable opportunity to prove that they don't fit the class-wide generalization." *Williams*, 113 F.4th at 661. Section 922(g)(1), by contrast, imposes a categorical restriction with no opportunity to regain the right to keep and bear arms.[2]

3. A law is not compatible with the Second Amendment if it regulates the right to bear arms "to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692. Section 922(g)(1) does just that. It imposes a lifetime ban on firearm possession that would have been unimaginable to the Founders. Thus, § 922(g)(1) facially violates the Second Amendment because there are "no set

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[2] The government has recently reestablished an administrative process for restoring firearm rights authorized in 18 U.S.C. § 925(c). *See Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025) (explaining that the Department of Justice "anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c)"). But § 925(c) is irrelevant here for a simple reason: it was unavailable to Kimble. Beginning in 1992—decades before Kimble's underlying convictions—and continuing until well after Kimble's conviction in this case, § 925(c) was "inoperative" because Congress prohibited using appropriated funds to investigate or act on relief applications. *Logan v. United States*, 552 U.S. 23, 28 n.1 (2007). And even moving forward, § 925(c) will not remedy any constitutional concerns because the relief provision has features that this Court has held are inconsistent with the Second Amendment. *See* Diaz Reply Br. 11–13, *United States v. Diaz*, No. 24-6625 (U.S. May 30, 2025).

of circumstances" under which it is valid. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

B. Section 922(g)(1) is unconstitutional as applied to individuals convicted of non-violent offenses.

1. Even if § 922(g)(1) is facially constitutional, the statute violates the Second Amendment as applied to individuals with non-violent convictions. The government has not cited a tradition of disarming non-violent individuals. The government's historical evidence shows—at most—a tradition of disarming violent individuals who threaten armed insurrection or threaten the physical safety of others. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (explaining that historical evidence shows "that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety").

Again, Congress was not concerned with the Second Amendment—much less the country's history of firearm regulation—when it expanded federal law to prohibit even non-violent felons from possessing firearms in the 1960s. *See supra* 7–8. Instead, Congress was concerned with "keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons." *Barrett*, 423 U.S. at 220. Of course, this Court recently rejected the government's argument that someone

"may be disarmed simply because he is not 'responsible.'" *Rahimi*, 602 U.S. at 701. But it is no surprise that Congress's sweeping law prohibiting anyone even potentially irresponsible from possessing a firearm exceeds the limits of the Second Amendment—limits that this Court only clarified decades later.

2. Before this case, the Fifth Circuit held that history supported disarming individuals convicted of "violent crimes." *See*, *e.g.*, *United States v. Schnur*, 132 F.4th 863, 867–70 (5th Cir. 2025) (aggravated battery causing great bodily injury); *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) (manslaughter and aggravated assault); *United States v. Isaac*, 2024 WL 4835243, at *1 (5th Cir. Nov. 20, 2024) (aggravated assault with a deadly weapon). At least as to "why," disarming individuals convicted of violent conduct is justified by the going-armed laws discussed at length in *Rahimi*, which "mitigate[d] demonstrated threats of physical violence." *Schnur*, 132 F.4th at 870 (quoting *Rahimi*, 602 U.S. at 697). The Fifth Circuit also considered whether history supported a tradition of disarming "dangerous" individuals. It found that there was such a tradition but that it was limited to disarming "political traitors" and "potential insurrectionists." *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024).

In the decision below, however, the Fifth Circuit held that § 922(g)(1) was constitutional as applied to Kimble even though there is no evidence that he poses a demonstrated threat of physical violence, was convicted of an offense that involved violence, or is a political traitor or potential insurrectionist. Rather, the court held that he could be disarmed simply because "Congress today regards felon drug traffickers as too dangerous to trust with weapons" and drug trafficking is "an inherently dangerous activity." App. 14a–16a. But this Court has already rejected this sweeping "dangerousness" theory.

In *Rahimi*, the government argued that Congress may disarm individuals who are not "responsible." Gov't Br. 27–28, *United States v. Rahimi*, No. 22-915 (U.S. Aug. 14, 2023). And, according to the government, "a person is not 'responsible' if his possession of a firearm would pose a danger of harm to himself or others." *Id.*; *see id.* at 29 ("[A] person is not responsible and thus may be disarmed if his possession of a firearm would endanger himself or others."). At oral argument, the government confirmed that it was using "'responsible' as a placeholder for dangerous." Tr. of Oral Arg. 10–12, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023).

This Court unanimously rejected that theory. *Rahimi*, 602 U.S. at 701–02; *id.* at 772–73 (Thomas, J., dissenting) ("The Government

… argues that the Second Amendment allows Congress to disarm anyone who is not 'responsible' …. Not a single Member of the Court adopts the Government's theory."). The Court stated that "responsible" is a "vague term" and it is "unclear what such a rule would entail." *Id.* at 701 (majority opinion). And by deeming the term "responsible" vague, the Court necessarily rejected the government's proposed definition: that irresponsible means dangerous. *See*, *e.g.*, Tr. of Oral Arg. 10–12, *Rahimi*, *supra* (No. 22-915). So *Rahimi* is directly at odds with the Fifth Circuit's determination that Congress can disarm anyone it deems dangerous.

Indeed, the Fifth Circuit's standard—whether "Congress today regards [a group] as too dangerous to trust with weapons," App. 14a—would simply be a return to the kind of "judicial deference to legislative interest balancing" that this Court rejected in *Bruen*. 597 U.S. at 26. As the Third Circuit has recognized, a broad "dangerousness" standard is "far too broad" and "operates at such a high level of generality that it waters down the right." *Range,* 124 F.4th at 230 (quoting *Bruen*, 597 U.S. at 31 (first quote); *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring) (second quote)).

3. In short, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible

threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700. Kimble's prior drug-trafficking convictions—neither of which involved a gun or threats, C.A. ROA 284–85—do not establish that he poses a credible threat to the physical safety of others. Thus, at the very least, § 922(g)(1) violates the Second Amendment as applied to non-violent offenders like Kimble.

III. This is a critically important and recurring question.

The Court should grant the petition because the question is critically important and recurring. After all, "§ 922(g) is no minor provision." *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Out of about 64,000 cases reported to the Sentencing Commission in Fiscal Year 2023, more than 7,100 involved convictions under § 922(g)(1). *See* U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses*, at 1 (June 2024). Those convictions accounted for over 10% of all federal criminal cases. *See id.* The government itself has acknowledged "the special need for certainty about Section 922(g)(1) given the frequency with which the government brings criminal cases under it." Gov't Supp. Br. at 10 n.5, *Garland v. Range*, No. 23-374 (U.S. June 24, 2024).

Even beyond new prosecutions, § 922(g)(1)'s reach is staggering. The statute prohibits millions of Americans from exercising their right to keep and bear arms for the rest of their lives. Recent estimates of the number of individuals with felony convictions range from 19 million to 24 million. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1591 (2022) (citations omitted). And § 922(g)(1) is particularly troubling because most of the individuals it prohibits from possessing firearms are peaceful, with convictions for only non-violent offenses. Less than 20% of state felony convictions and less than 5% of federal felony convictions are for violent offenses. *See* Dep't of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, at 3 (Table 1.1) (rev. Nov. 2010); Dep't of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022*, at 12 (Table 7) (Jan. 2024).

Given § 922(g)(1)'s widespread impact both on new prosecutions and on the millions of non-violent Americans it prohibits from exercising a fundamental constitutional right, this Court should answer this important and recurring question as soon as possible.

IV. This case is an ideal vehicle for addressing this question.

1. This case presents an ideal vehicle for addressing whether § 922(g)(1) violates the Second Amendment. The case cleanly presents a purely legal issue. There are no jurisdictional problems, factual disputes, or preservation issues. Kimble thoroughly briefed his facial and as-applied Second Amendment challenges in both the district court and the court of appeals. The district court squarely addressed both challenges, C.A. ROA 179–80, as did the Fifth Circuit in a precedential opinion, App. 1a–24a.

2. In the alternative, there are several pending petitions for writ of certiorari that, if granted, would bear on the question presented here. *See*, *e.g.*, *Vincent v. Bondi*, No. 24-1155 (U.S.); *Zherka v. Bondi*, No. 25-269 (U.S.). If the Court grants certiorari in any of these pending cases presenting a facial or as-applied challenge to § 922(g)(1), it should at least hold Kimble's petition pending that decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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