No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JERRY OTIS MOORE,

v.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 18 U.S.C. § 922(g)(1) comply with the text and historical tradition of the Second Amendment in permanently disarming all felons, regardless of offense type, rehabilitation, or any individualized judicial finding of current dangerousness, as the Fifth and Eighth Circuits have held, or does § 922(g)(1) violate the Second Amendment when applied to nonviolent felons, as the Third Circuit has held?

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OPINIONS BELOW

The judgment of the United States Court of Appeals for the Fifth Circuit in *United States v. Moore*, Nos. 24-50695 and 24-50698 (consolidated), is attached as [App. A]. The judgment of the District Court is attached as [App. B].

JURISDICTION

The jurisdiction of the Fifth Circuit Court of Appeals was invoked from the denial by the United States District Court for the Western District of Texas, under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

The decision of the Court of Appeals was entered on July 3, 2025 [App. A]. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case concerns the constitutionality of 18 U.S.C. § 922(g)(1), which prohibits felons, both nonviolent and violent, from possessing firearms. The relevant constitutional and statutory provisions are as follows.

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.

Title 18 U.S.C. § 922(g)(1) provides: "It shall be unlawful for any person—(1) who has been convicted in any court of, a crime punishable by imprisonment for a

term exceeding one year; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."[1]

These provisions are central to this case. Petitioner challenges the constitutionality of § 922(g)(1), as applied to felons, under the Second Amendment and the interpretive framework established by *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___ (2022).

STATEMENT OF THE CASE

In 2014, petitioner Jerry Otis Moore pleaded guilty in the United States District Court for the Western District of Texas to conspiracy to distribute methamphetamine and possession of a firearm in relation to drug trafficking. He was sentenced to a term of imprisonment followed by supervised release. After completing his prison sentence, Mr. Moore was released in 2022.

On December 17, 2023, while still on supervised release, Mr. Moore was involved in a domestic dispute in Midland County, Texas. Witnesses reported that shots were fired, though law enforcement recovered no physical evidence such as shell casings or bullet strikes. Several accounts conflicted about whether a weapon was

[1] 18 U.S.C. § 922(g)(1).

even fired, and Mr. Moore denied discharging a firearm. When officers later located Mr. Moore, they found a pistol in his vehicle, which he admitted he owned.

A federal grand jury indicted Mr. Moore on one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He pleaded guilty. At sentencing, the government urged an upward variance based on the disputed allegations that Mr. Moore had discharged a firearm and on his prior criminal history. The district court imposed a 120-month sentence, followed by three years of supervised release, the statutory maximum, citing both his record and the alleged conduct. The court also revoked Mr. Moore's supervised release in his earlier case and imposed a concurrent three-year revocation sentence.

On appeal, Mr. Moore argued that the district court's reliance on unsubstantiated allegations rendered his sentence procedurally and substantively unreasonable, that the court improperly relied on his past political associations in violation of the First Amendment, and that § 922(g)(1) is unconstitutional under the Second Amendment as interpreted in *Bruen* and *Rahimi*.[2] Because petitioner did not object to the constitutionality of § 922(g)(1) in the district court, the Fifth Circuit reviewed that challenge only for plain error. Because the revocation sentence was based in part on the felon-in-possession conviction, the consolidated appeal is fully resolved by this Court's treatment of the § 922(g)(1) issue. Petitioner has prior

[2] *N.Y. State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022); *United States v. Rahimi*, 144 S. Ct. 1889 (2024).

convictions, including drug and assault offenses, but the court of appeals did not base its decision on the specific facts of his record; it held the challenge foreclosed by precedent.

Petitioner does not renew his sentencing-related due-process and First Amendment claims here and seeks review solely of his Second Amendment challenge. The Fifth Circuit affirmed, holding that binding precedent foreclosed his constitutional challenge to § 922(g)(1) and that his sentencing arguments lacked merit. This petition follows.

REASONS FOR GRANTING THE PETITION

I. This case deepens an entrenched circuit split which this Court has not yet addressed.

A. The courts of appeals are openly and irreconcilably divided on § 922(g)(1)'s constitutionality.

The lower courts' approaches to § 922(g)(1) after *Bruen* and *Rahimi* are inconsistent and cannot be reconciled.[3] The Third Circuit, sitting en banc, struck down § 922(g)(1) as applied to a nonviolent conviction for food-stamp fraud.[4] The court held that the people protected by the Second Amendment include individuals with felony convictions and that permanent disarmament of non-dangerous persons lacked historical precedent.[5] By contrast, in *Diaz*, the Fifth Circuit upheld § 922(g)(1), reading *Bruen* to permit categorical restrictions on felons.[6] The Eighth Circuit has reached similar conclusions, treating felon disarmament as categorically permissible without individualized inquiry. Other courts have taken varying approaches, some suggesting that the statute may be unconstitutional as applied to certain classes of offenders but not others. Still others have sidestepped the question entirely by invoking plain-error review.

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[3] *Bruen*, 142 S. Ct. 2130 (2022); *Rahimi*, 144 S. Ct. 1889 (2024).
[4] *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023).
[5] *Range*, 69 F.4th 96.
[6] *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *Bruen*, 142 S. Ct. 2130 (2022).

The result is an entrenched and acknowledged split. In some jurisdictions, individuals with decades-old nonviolent felonies may not be permanently stripped of Second Amendment rights; in others, they are disarmed for life without any possibility of restoration. This divergence produces conflicting outcomes for thousands of federal defendants and undermines uniformity in the application of constitutional law. Only this Court can resolve the conflict.

B. This Court has not resolved whether § 922(g)(1)'s lifetime prohibition on all felons is consistent with the Second Amendment.

The Second Amendment guarantees that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In *Bruen*, the Court clarified that the scope of this right must be assessed by reference to "the Nation's historical tradition of firearm regulation," not interest balancing.[7] The Court's framework directs lower courts to evaluate whether modern firearm restrictions are "relevantly similar" to historical analogues.[8]

Two years later, in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), the Court considered § 922(g)(8), which prohibits firearm possession by individuals subject to a domestic-violence restraining order.[9] The Court upheld that provision, emphasizing two features that tethered it to historical tradition: (1) the restriction was temporary,

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[7] *Bruen*, 142 S. Ct. 2130 (2022).
[8] Id. at 2132.
[9] *Rahimi*, 144 S. Ct. 1889 (2024).

and (2) it was imposed following an individualized finding of dangerousness.[10] The Court stressed that categorical disarmament absent such findings raised distinct constitutional concerns.

Section 922(g)(1) presents precisely the unresolved question. Unlike § 922(g)(8), it imposes a permanent, status-based prohibition on all felons, violent and nonviolent alike, without any individualized adjudication of present danger. Nor does federal law provide a meaningful avenue for restoring rights once lost. Whether such a sweeping rule fits within the Second Amendment's historical tradition has not been decided by this Court and is the central fault line now dividing the courts of appeals.

II. This issue is important and recurring.

A. The question presented arises in thousands of cases each year, magnifying the stakes for uniform resolution.

Section 922(g)(1) is among the most frequently charged provisions in the U.S. Code. According to Sentencing Commission data, at the federal level, felon-in-possession prosecutions number in the thousands annually, representing a significant percentage of all federal criminal cases.[11] And that figure does not include the countless state-level felonies that trigger federal disqualification. This staggering volume underscores the urgent need for clarity. In some circuits, individuals with

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[10] *Rahimi*, 144 S. Ct. 1889 (2024).

[11] U.S. Sentencing Comm'n, Quick Facts: Felon in Possession of a Firearm (2024).

decades-old, nonviolent convictions retain no avenue for restoring their Second Amendment rights. In others, courts have held that permanent disarmament of non-dangerous persons is unconstitutional. Consequently, the scope of a fundamental constitutional right depends on geography.

Moreover, the statutory maximum for a single § 922(g)(1) violation is ten years' imprisonment, comparable to or even greater than penalties for violent offenses. When combined with enhancements or upward variances, defendants face extremely severe consequences for conduct that may be wholly divorced from violence or present danger. The combination of frequency and severity makes this one of the most consequential recurring constitutional questions before the Court.

The statute's sweep is extraordinary. It applies to all felony convictions, violent or nonviolent, recent or remote. A person convicted decades ago of a nonviolent property or regulatory offense is treated identically to one with a recent violent record. Once imposed, the ban is permanent, with no realistic statutory mechanism for individualized rights restoration. Even governors' pardons or state-level restorations of civil rights may not suffice under federal law. By permanently disarming broad swaths of the population without individualized assessment, the statute risks undermining the very principle of "the people" at the heart of the Second Amendment. The Court's review is necessary to ensure that one of the most frequently applied criminal laws aligns with constitutional limits.

B. Political remedies are fragmentary and inadequate, underscoring the need for judicial resolution.

The Department of Justice has recognized the overbreadth of categorical firearm bans, occasionally supporting administrative or legislative measures to restore rights for certain classes of offenders. Past administrations as well as the current Trump Administration have signaled openness to restoring rights in select cases through clemency or pilot restoration efforts. States, too, maintain their own patchwork systems of pardons and civil-rights restorations.

But these remedies are inconsistent, discretionary, and subject to political winds. One defendant may regain his rights through gubernatorial action, while another identically situated individual remains permanently barred under federal law. High-profile individuals with access to political capital may secure clemency, while ordinary citizens cannot. Such inequity only magnifies the constitutional stakes while also implicating Equal Protection principles, for identically situated individuals are subject to radically different outcomes based not on law but on political favor, gubernatorial discretion, or access to clemency. A constitutional right cannot turn on the vagaries of politics. Until this Court speaks, the scope of a core constitutional right will continue to depend on geography, prosecutorial discretion, or political favor, precisely the type of instability and arbitrariness that the Constitution was designed to prevent. Only a clear constitutional rule from this Court can provide the necessary uniformity.

III. The decision below was incorrect.

A. Section 922(g)(1) lacks the safeguards this Court deemed essential in *Bruen* and *Rahimi*.

This Court has directed that firearm restrictions must be "relevantly similar" to historically accepted measures.[12] In *Rahimi*, the Court upheld § 922(g)(8) because it was temporary and imposed after an individualized finding of dangerousness, features that mirrored historical practice.[13] Section 922(g)(1) has neither safeguard. It imposes a lifetime prohibition triggered solely by the fact of a felony conviction, with no consideration of rehabilitation, passage of time, or present danger. It offers no meaningful avenue for restoration of rights. The categorical, permanent sweep of § 922(g)(1) is without historical precedent, and under *Bruen* and *Rahimi*, it should not survive.[14]

B. The historical record confirms that categorical lifetime disarmament is unprecedented.

The historical record from the Founding era provides no support for § 922(g)(1)'s sweeping lifetime prohibition. To the contrary, the limited firearm restrictions that existed were targeted, temporary, and linked to specific circumstances of dangerousness. At the Founding, militia laws required that all able-

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[12] *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022).
[13] *United States v. Rahimi*, 144 S. Ct. 1889, (2024); *Bruen,* 142 S. Ct. 2130 (2022).
[14] *Rahimi,* 144 S. Ct. 1889 (2024).

bodied free men be armed.[15] These provisions did not carve out felons or other broad classes of offenders. To the extent disarmament was imposed, it was generally tied to rebellion, active threats, or refusal to take loyalty oaths.[16] Such measures were both conditional and reversible, reflecting a concern with immediate public danger rather than permanent exclusion from "the people."

This Court in *Bruen* emphasized that modern firearm restrictions must be "relevantly similar" to historical regulations.[17] Nothing in early American practice supports the notion that all felons, regardless of offense, rehabilitation, or present conduct were permanently stripped of their Second Amendment rights. The government has argued in other cases that longstanding prohibitions on felons are themselves evidence of constitutionality. But those prohibitions on felons are products of the twentieth century, not the eighteenth.[18] A statute of modern origin cannot supply the historical analogue required by *Bruen*. The Court's intervention is necessary to align federal firearms law with constitutional history.

In addition, the government may attempt to rely on historical statutes disarming certain groups, but many of those enactments arose in the antebellum South and were rooted in the preservation of slavery and racial hierarchy. Others

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[15] See, e.g., Militia Act of 1792, 1 Stat. 271.

[16] See Saul Cornell & Nathan DeDino, "A Well Regulated Right," 73 Fordham L. Rev. 487, 506–7 (2004).

[17] *Bruen*,142 S. Ct. at 2132.

[18] See C. Kevin Marshall, "Why Can't Martha Stewart Have a Gun?," 32 Harv. J.L. & Pub. Pol'y 698–710 (2009).

emerged during Reconstruction and the early twentieth century, often as tools of Jim Crow or nativist social control. None of these discriminatory measures reflects the kind of neutral and enduring historical tradition that *Bruen* requires, and all stand far removed from the Founding. They were often overtly racist, aimed at preventing black freedmen from exercising newly recognized rights, excluding Native Americans from citizenship and arms-bearing, or reinforcing Jim Crow social hierarchies.[19] Other restrictions grew out of early twentieth-century nativist sentiment and fears of immigrant-labor unrest. Such discriminatory measures reflected prejudice and political expedience, not a neutral principle of public safety. They cannot serve as the kind of enduring historical tradition that *Bruen* requires.

C. Militia obligations at the Founding assumed universal armament.

American society and law at the Founding assumed that citizens would be armed. The Militia Act of 1792 required "every free able-bodied white male citizen" of the appropriate age to maintain a musket or rifle.[20] These statutes contained no carveouts for felons as a class. On the contrary, they reflected the civic duty of virtually all citizens to keep and bear arms in defense of the republic. The government's theory rejects this historical basis and assumes that broad categories of people were excluded from "the people" protected by the Second Amendment. If

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[19] Id. at 726.

[20] Militia Act of 1792, 1 Stat. 271 (1792).

anything, the Founding generation took for granted that armament was the rule and that disarmament could be justified only in narrow, exceptional circumstances.

D. Founding-era disarmament was temporary and tied to present threats.

When disarmament did occur in the late eighteenth and early nineteenth centuries, it was limited and conditional. Revolutionary-era legislatures sometimes disarmed those who refused to swear loyalty oaths or who were "notoriously disaffected" toward the cause.[21] These restrictions ended once the crisis passed or the individual swore allegiance. Similarly, statutes aimed at rebels, insurrectionists, or actively dangerous persons tied firearm restrictions to an immediate threat of violence. They did not impose a lifetime disability based on past conduct alone. In short, early American law treated disarmament as a temporary response to ongoing danger, not a permanent mark of unworthiness.

E. Felon disarmament is a twentieth-century innovation.

The modern practice of disarming all felons, regardless of offense type, dates only to the mid–twentieth century. The Federal Firearms Act of 1938 prohibited firearm possession by certain violent offenders.[22] Congress first extended the

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[21] See Act of May 1, 1776, ch. 21, 1776 Mass. Acts 479.

[22] See ch. 850, § 2(f), 52 Stat. 1250;

prohibition in 1961 to crimes punishable by more than one year in prison, and in 1968, Congress codified the modern felon-in-possession ban, sweeping in all felony convictions regardless of type.[23] That shift reflected a modern policy judgment, not an inherited constitutional tradition. Leading scholarship confirms that the categorical lifetime disarmament embodied in § 922(g)(1) was unknown at the Founding and is purely a modern invention.[24] The absence of any such analogue in early American law is fatal under this Court's interpretive framework.

IV. This case presents a clean vehicle.

A. This case presents no procedural complications.

On procedural grounds, this petition cleanly presents the unresolved constitutional question regarding § 922(g)(1). The issue was expressly raised in the court of appeals, which reviewed it under plain error and deemed it foreclosed by circuit precedent rather than rejecting it on any factual ground. When petitioner pleaded guilty and challenged § 922(g)(1), the panel affirmed solely by reference to *Diaz* and other binding authority.[25] There are no unresolved factual disputes. The question presented is purely legal: whether Congress may impose a permanent, categorical firearm ban on all felons without individualized findings of dangerousness

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[23] Pub. L. No. 87-342, 75 Stat. 757; Also see 18 U.S.C. § 922(g).

[24] See C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 735 (2009).

[25] *Diaz,* 116 F.4th 458.

or a meaningful avenue for rights restoration. That posture makes the case a straightforward vehicle for this Court to address the merits.

Although the Fifth Circuit reviewed the claim under the plain-error standard, that posture does not diminish the suitability of this case for review. This Court has repeatedly granted certiorari where important constitutional questions, whether preserved or raised for the first time on appeal, were deemed foreclosed by precedent.[26] Lower courts have made clear that they will consider themselves bound by stare decisis until this Court provides clarity. Only this Court can resolve the entrenched split and provide uniform guidance on one of the most frequently charged federal statutes.

B. Petitioner's background does not detract from the vehicle posture.

Nor does petitioner's background complicate the question. This case is not about whether petitioner personally should possess a firearm. It is about whether Congress may impose a permanent, categorical ban on all felons without any individualized finding of dangerousness or any avenue for rights restoration. That constitutional question is squarely presented, cleanly preserved, and urgently in need of resolution.

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[26] See, e.g., *Class v. United States*, 138 S. Ct. 798 (2018).

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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