No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TREMON STALEY

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

A. Fitzgerald Hall, Esq.
Acting Federal Defender

Jonas Cummings, Esq.
Counsel of Record
Research and Writing Attorney
200 West Forsyth St., Ste. 1240
Jacksonville, Florida 32202
Telephone: (904) 232-3039
Email: jonas_cummings@fd.org

QUESTIONS PRESENTED[1]

1. Whether 18 U.S.C. § 922(g)(1), the statute permanently prohibiting possession of firearms by persons convicted of a crime punishable by imprisonment for a term exceeding one year, is subject to as-applied challenges under the Second Amendment.

2. Whether § 922(g)(1) is constitutional under the Second Amendment as applied to Mr. Staley, whose prior felonies were themselves nonviolent gun-possession offenses.

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[1] The first question in this petition raises the same issue as other petitions, including *Marshall v. United States*, No. 25-5259 (response requested Aug. 19, 2025).

The second question is similar to—but distinct from—petitions that turn on the availability and scope of an as-applied challenge. *See, e.g.*, *Howard v. United States*, No. 25-5220 (response requested Aug. 19, 2025) ("Whether 18 U.S.C. §922(g)(1) comports with the Second Amendment as applied to a defendant whose most serious prior felony conviction is drug trafficking?"); *Vincent v. Bondi*, No. 24-1155 ("Whether the Second Amendment allows the federal government to permanently disarm Petitioner Melynda Vincent, who has one seventeen-year-old nonviolent felony conviction for trying to pass a bad check.").

RELATED PROCEEDINGS

United States District Court (M.D. Fla.)

United States v. Staley, Case No. 8:23-cr-228-CEH-UAM

United States Court of Appeals (11th Cir.)

United States v. Staley, No. 24-11503

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tremon Staley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion affirming Mr. Staley's conviction, *United States v. Staley*, No. 24-11503, 2025 WL 1625376 (11th Cir. June 9, 2025), is unpublished and provided as Appendix A.

JURISDICTION

The Eleventh Circuit issued its opinion on June 9, 2025. Justice Thomas granted Mr. Staley a 30-day extension of time to file the petition for writ of certiorari, extending the time to file until October 7, 2025. *Staley v. United States*, No. 25A244 (U.S. Aug. 29, 2025). This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the United States Constitution states that "[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.

Section 922(g)(1) of Title 18 to the United States Code states:

It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding on year, . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

INTRODUCTION

This petition presents important questions of federal law that can be settled only by this Court: can a criminal defendant raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) and, if so, what parameters apply to such a challenge? The Court's intervention is needed to resolve a growing split of authority among the Circuits.

The Eleventh Circuit, where Mr. Staley was prosecuted, as well as the Fourth, Eighth, Ninth, and Tenth Circuits uphold the validity of § 922(g)(1) in all respects, effectively foreclosing as-applied challenges to the statute. *See United States v. Dubois*, 139 F.4th 887, 892–94 (11th Cir. 2025), *reh'g denied*, (11th Cir. Sept. 2, 2025); *United States v. Hunt*, 123 F.4th 697, 708 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (mem.) (2025); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (mem.) (2025); *United States v. Duarte*, 137 F.4th 743, 759–62 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *petition for cert. filed*, (May 12, 2025) (No. 24-1155).

In contrast, the Third, Fifth, and Sixth Circuits allow as-applied challenges. *See Range v. U.S. Att'y Gen.*, 124 F.4th 218, 228–32 (3d Cir.

2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 467–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (mem.) (2025); *United States v. Williams*, 113 F.4th 637, 64–45, 657–63 (6th Cir. 2024). But even among those circuits, the courts differ in their methods for determining whether § 922(g)(1) is unconstitutional as applied to an individual defendant.

The disagreements demonstrate that further direction from this Court is needed after its decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). As the Eleventh Circuit recently reiterated, "We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1)." *Dubois*, 139 F.4th at 894. And that instruction is critical for individuals like Mr. Staley, whose prior convictions were neither violent nor punished as felonies at the time of the Founding. This Court should grant certiorari.

STATEMENT OF THE CASE

When Mr. Staley was sixteen years old, a shooting at a parade wounded him in the leg and took the life of his best friend. Doc. 63 (Presentence Investigation Report, or "PSR") ¶ 45.[2] The assailant was never found and an investigation remains ongoing. *Id.* Just a year later, he was robbed at gunpoint and shot in the other leg. *Id.* ¶ 46.

Ever since the parade shooting, Mr. Staley has felt the need to carry a gun to protect himself and others—a fact the district judge recognized at sentencing. Doc. 82 at 16–18. Sadly, the decision to carry a gun for self-protection is what spawned his felony record to begin with: a conviction in 2019 for carrying a concealed firearm, followed by two convictions in 2020 for possession of a firearm by a felon, and another 2020 conviction for carrying a concealed firearm. Doc. 63 ¶¶ 25, 26, 28, 29.[3]

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[2] "Doc." refers to docket entries in the district court, and "App. Doc." refers to docket entries in the Court of Appeals.

[3] Mr. Staley also had misdemeanor convictions for trespassing and resisting arrest without violence. *Id.* ¶¶ 27, 29; *see* Fla. Stat. § 810.09(2) (trespass on a property other than a structure or conveyance is a first degree misdemeanor); Fla. Stat. § 843.02 (resisting arrest without violence is a first degree misdemeanor). Additionally, when he was 17 years old, he was placed on juvenile probation after being found guilty of resisting an officer without violence and carrying a concealed firearm,

In March 2023, Tampa police officers pulled over a vehicle in which Mr. Staley was a passenger and discovered that he was in possession of a loaded Walther PPQ pistol and some marijuana. Doc. 63 ¶¶ 5–6. As the district judge recognized, the gun "wasn't displayed, it wasn't being used, no one was threatened. [He] simply had it in [his] possession, but that in and of itself is a violation." Doc. 82 at 17.

A federal grand jury charged Mr. Staley with one count of possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). *See* Doc. 1 at 1. The indictment listed his prior convictions for carrying a concealed firearm and possession of a firearm by a felon. *Id.* He moved to dismiss the indictment, arguing that § 922(g)(1) violates the Second Amendment as applied to him. Doc. 19. The district court denied the motion, Doc. 37, relying on *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010), which held that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment."

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although adjudication was withheld. PSR ¶ 24. Under Florida law, a withhold of adjudication does not count as a conviction for the purpose of being considered a felon in possession. *United States v. Clarke*, 822 F.3d 1213, 1214 (11th Cir. 2016).

Mr. Staley proceeded to a bench trial on stipulated facts, after which the district court found him guilty. *See* Docs. 51, 81. He was sentenced on May 6, 2024, to a term of 15 months in prison followed by two years of supervised release. Doc. 70.

Mr. Staley appealed his conviction and sentence to the Eleventh Circuit. He argued that his § 922(g)(1) conviction should be vacated because the statute is unconstitutional under the Second Amendment, both facially and as applied. He asserted that *Bruen* abrogated the Eleventh Circuit's earlier decision in *Rozier*. He also argued that he is a member of "the people" who enjoy rights under the Second Amendment and that his conduct fell within the Second Amendment's plain text. Thus, he argued, his conduct was presumptively lawful under *Bruen*, and the government could not show that § 922(g)(1) fit within this Nation's tradition of firearm regulation.

The Eleventh Circuit ruled that Mr. Staley's argument was "foreclosed by our precedent" because the court "rejected the same challenge" in *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024).[4]

[4] This Court subsequently vacated *Dubois* and remanded for further proceedings in light of *Rahimi*. *Dubois v. United States*, 145 S. Ct. 1041

Appendix A at 2–3. The court also rejected an argument that § 922(g)(1) exceeded Congress' authority under the Commerce Clause, thereby affirming Mr. Staley's conviction and sentence. *Id.* at 3.

Mr. Staley now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. This Court's review is needed because the circuits are split on whether § 922(g)(1) is subject to an as-applied challenge under the Second Amendment and, if it is, how to analyze an as-applied challenge.

Whether § 922(g)(1)'s categorical ban is subject to as-applied challenges is an outstanding question after *Rahimi*. The courts of appeals are split on this important issue, with several circuits, like the Eleventh, holding that felons can never exercise Second Amendment rights, and other circuits permitting as-applied challenges but evaluating those challenges differently. The Court should grant certiorari to resolve these splits and to ensure that the availability of an as-applied challenge to § 922(g)(1) does not depend on geography.

(2025) (mem.). After supplemental briefing, the Eleventh Circuit reinstated its prior decision. 139 F.4th 887 (2025); *see supra* at 3.

A. The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits do not allow as-applied challenges.

The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have broadly upheld § 922(g)(1), foreclosing *any* possibility of an as-applied challenge. *See Hunt*, 123 F.4th 697; *Jackson*, 110 F.4th 1120; *Duarte*, 137 F.4th 743; *Vincent*, 127 F.4th 1263; *Dubois*, 139 F.4th 887.

In *Hunt*, the Fourth Circuit applied its pre-*Bruen* reasoning that "people who have been convicted of felonies are outside the group of 'law-abiding responsible citizen[s]' that the Second Amendment protects." 123 F.4th at 704 (quoting *United States v. Moore*, 666 F.3d 313, 319 (4th Cir. 2012)). The court concluded that "*Bruen* and *Rahimi* . . . provide no basis . . . to depart from [its] previous rejection of the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms." *Id.*; *see id.* at 705 (explaining that § 922(g)(1) does not "regulate activity within the scope of the Second Amendment"). The Fourth Circuit added that it would reach the same conclusion if it applied *Bruen*'s historical test because "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id.* at 705 (internal quotation marks omitted).

In *Jackson*, the Eighth Circuit determined that "history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society," such as those convicted of a felony. 110 F.4th at 1127. Alternatively, the court reasoned that disarmament by classification was proper because "[l]egislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed," with "no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* at 1128.

In *Duarte*, the Ninth Circuit found a historical tradition of "permanent and categorical disarmament of felons," and joined the Fourth and Eighth Circuits' conclusions that § 922(g)(1) is constitutional as to "all" felons:

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

137 F.4th at 761.

In *Vincent*, the Tenth Circuit reaffirmed its pre-*Bruen* conclusion that § 922(g)(1) is constitutional. 127 F.4th at 1265–66 (concluding *Rahimi* did not abrogate *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)). The Tenth Circuit explained that even "nonviolent offenders" cannot challenge § 922(g)(1) as applied to them because such challenges are unavailable under *McCane*. *Id.* at 1266. "There [the Tenth Circuit] upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved." *Id.*

In *Dubois*, the Eleventh Circuit reaffirmed its pre-*Bruen* precedent holding that § 922(g)(1) is constitutional and allows for categorical disarmament of groups of people, including nonviolent felons. *Dubois*, 139 F.4th at 892–94 (concluding neither *Bruen* nor *Rahimi* abrogated *Rozier*, 598 F.3d at 768). The court said it would "require clearer instruction from the Supreme Court before [it could] reconsider the constitutionality of section 922(g)(1)." *Id.* at 894.

B. The Third, Fifth, and Sixth Circuits allow as-applied challenges but differ in their application.

By contrast, the Third, Fifth, and Sixth Circuits entertain as-applied challenges in § 922(g)(1) prosecutions. *See Range*, 124 F.4th at

228–32; *Diaz*, 116 F.4th at 467–72; *Williams*, 113 F.4th 637, 644–45, 657–63. But among these circuits, the reasoning and methodology for assessing an as-applied challenge differs, risking further confusion about how to evaluate the constitutionality of § 922(g)(1).

In *Range*, the Third Circuit rejected the government's arguments that historical disarmament of certain "classes," or "status-based restrictions" due to "dangerousness," are legitimate analogies to justify disarmament of all felons under § 922(g)(1). 124 F.4th at 229–30. "Any such analogy," the Third Circuit held, "would be 'far too broad[ ].'" *Id.* (quoting *Bruen*, 597 U.S. at 31). The Third Circuit concluded the government had not presented any historical analogue, such as a statute precluding a convict from regaining property after serving their sentence, that would justify the duration and scope of § 922(g)(1)'s absolute disarmament. *Id.*

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

In *Diaz*, the Fifth Circuit held that as applied-challenges are allowed even though § 922(g)(1) is facially valid. 116 F.4th at 467–72. The Fifth Circuit conducted the as-applied analysis by considering whether there was a tradition of disarmament for the individual's predicate crime. It reasoned that because felonies during the Founding era were punishable by death or estate forfeiture, the lesser penalty of permanent disarmament fit within the historical tradition of punishing those who commit similar crimes today. *Id.* at 467–69, 472. But, the court added, "not all felons today would have been considered felons at the Founding." *Id.* at 469. So, to determine whether § 922(g)(1) passed muster, the court examined whether the individual's past conviction was analogous to a crime that was a Founding-era felony. *Id.* at 468–70.

Ultimately, the Fifth Circuit rejected Diaz's as-applied challenge after comparing his prior convictions to offenses that were felonies in the eighteenth century. *Id.* Diaz had been convicted of vehicular theft, which the court analogized to horse theft, a crime that "would have led to capital punishment or estate forfeiture" during the Founding era. *Id.* at 469–70.

In *Williams*, the Sixth Circuit identified as-applied challenges as an important and historical mechanism for individuals in a class

susceptible to disarmament to prove that they "don't fit the class-wide generalization." 113 F.4th at 650–57. The court cited, as an example, Colonial-era statutes that disarmed Loyalists unless they "demonstrated they were not dangerous to the fledgling revolutionary project" or "showed 'satisfactory reasons' for needing weapons." *Id.* at 653–54. Comparing that historical tradition to § 922(g)(1), the Sixth Circuit found that without as-applied challenges, § 922(g)(1) would not provide adequate opportunity for individuals to seek an exception to disarmament. *Id.* at 657–61.

The Sixth Circuit put the burden on the individual challenging the statute to "make an individualized showing that he himself is not actually dangerous." *Id.* at 663. According to the Sixth Circuit, individuals are presumptively "dangerous" and thus will have a difficult time meeting their burden on an as-applied challenge if they have been convicted of crimes against a person or a crime inherently posing a threat of danger, including drug trafficking and burglary. *Id.*

Williams's history included two felony counts of aggravated robbery, both involving the use of a gun. *Id.* at 662. Because he had "availed himself of his constitutionally required opportunity to show he

is not dangerous' and "his record demonstrates that he is dangerous," the Sixth Circuit rejected his as-applied challenge. *Id.* at 663.

II. The Court's review is needed because the decision below—refusing to consider Mr. Staley's Second Amendment challenge even though his prior convictions are neither violent nor analogous to a Founding-era felony—is wrong.

Under *Bruen*'s historical test, as affirmed by *Rahimi*, the decision below cannot stand. Section 922(g)(1) violates the Second Amendment as applied to Mr. Staley because the Nation's historical tradition of firearm regulation does not permit the federal government to permanently disarm someone based solely on having nonviolent convictions that are not analogous to Founding-era felonies.

A. The Eleventh Circuit failed to apply the history-and-tradition test required by *Bruen* and *Rahimi*.

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 Rahimi*, 602 U.S. at 691–92. Even so, the Eleventh Circuit conducted no analysis of text, history, and tradition despite this Court's admonitions to do so in *Bruen* and *Rahimi*.

Instead of conducting the test prescribed by this Court, the Eleventh Circuit relied on *Heller*'s dicta that felon disarmament laws are presumptively lawful. *Dubois*, 139 F.4th at 891–93; Appendix A at 2–3 (relying on *Dubois*). But *Heller* did not examine the historical justifications for such laws. *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008). Nor did *Heller*, or any subsequent decision, define who enjoys rights under the Second Amendment. *Rahimi*, 602 U.S. at 701. And this Court rejected the notion—advanced by the government in *Rahimi*—that an individual "may be disarmed simply because he is not 'responsible.'" *Id.* As a result, the appellate court's reliance on dicta to foreclose *all* Second Amendment challenges to § 922(g)(1), without any historical analysis, was error.

Under a proper analysis, § 922(g)(1) cannot be constitutionally applied to Mr. Staley. There is no historical justification for excluding Mr. Staley from "the people" based on prior felony convictions that were not analogous to Founding-era felonies, nor is there a historical justification for permanently disarming him on this basis.

B. Mr. Staley is among "the people" described in the Second Amendment.

The phrase "the people" in the Second Amendment "unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580. As Justice (then-Judge) Barrett has recognized, felons are not "categorically excluded from our national community" and fall within the amendment's scope. *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting).

As *Heller* explained, "the people" is a "term of art employed in select parts of the Constitution," including the First, Second, Fourth, Ninth, and Tenth Amendments. 554 U.S. at 579–80. Felons are indisputably among "the people" whose "persons, houses, papers, and effects" enjoy Fourth Amendment protection. U.S. Const. Amend. IV; *United States v. Lara*, 815 F.3d 605, 609 (9th Cir. 2016). Felons likewise enjoy "the right of the people" to "petition the government for redress of grievances." U.S. Const. Amend. I; *Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th Cir. 2017). If a person with a felony conviction is one of "the people" protected by the First and Fourth Amendments, *Heller* teaches that such a person is one of "the people" protected by the Second Amendment too. *See also Range*, 124 F.4th at 226–28.

C. The government cannot show a historical tradition of permanently disarming felons with nonviolent convictions and who have not been found to be a danger.

When examining a regulation's validity under the Second Amendment, "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. To evaluate whether a modern regulation is relevantly similar to what our tradition is understood to permit, courts should not require regulations be "dead ringers" or "historical twins." *Id.* Instead, "[w]hy and how the regulation burdens the right are central to th[e] inquiry." *Id.*

"[I]f laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* Even so, a modern-day regulation "may not be compatible with the [Second Amendment] right if it [imposes restrictions] to an extent beyond what was done at the founding." *Id.* Instead, a challenged regulation must "be analogous enough to pass constitutional muster." *Id.* (quoting *Bruen*, 597 U.S. at 30).

The government cannot show a relevant Founding-era analogue to the "why" or the "how" of § 922(g)(1) as applied to Mr. Staley. As to the "why," no evidence has emerged of any significant Founding-era permanent firearms restrictions on citizens like Mr. Staley who were convicted of nonviolent offenses. 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.*

As to the "how," no Founding-era evidence has emerged of class-wide, lifetime bans on the possession of firearms just because of one's conviction status. In fact, total bans on felon possession existed nowhere until at least the twentieth century. 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*, 919 F.3d at 454 (Barrett, J., dissenting).

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; *Rahimi*, 602 U.S. at 695–96. By contrast, § 922(g)(1) imposes a permanent ban on a class-wide basis, regardless of a class member's peaceability. Nor were forfeiture laws like § 922(g)(1), because they involved forfeiture only of specific firearms. They did not prevent the subject from acquiring replacement arms or keeping other arms he 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 game hunting); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69-70 (same); *see also Range v. Att'y Gen.*, 69 F.4th 96, 104–05 (3d Cir. 2023) (en banc), *cert. granted, judgment vacated sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024), *opinion on remand at Range v. Att'y Gen.*, 124 F.4th 218.

For these reasons, the Eleventh Circuit's categorical rule disqualifying all felons—including Mr. Staley, whose prior felony convictions are nonviolent—from exercising their Second Amendment right is without historical or textual support and is wrong.

D. The government cannot show that Mr. Staley's prior felony convictions are analogous to Founding-era felonies.

At the Founding of the Nation, death and estate forfeiture were standard penalties for committing a felony. *Diaz*, 116 F.4th at 467–68. So, according to the Fifth Circuit, the lesser penalty of permanently disarming a felon withstands historical scrutiny—*if* the defendant's past felony conviction is analogous to a crime that was a felony in the Founding era. *Id.* at 468–72 (upholding the facial validity of § 922(g)(1) but asking whether the defendant's prior felonies were analogous to Founding-era felonies); *but see Kanter*, 919 F.3d at 458–62 (Barrett, J., dissenting) (challenging the premise that all Founding-era felonies were punishable by execution or civil death, or that such a tradition would support permanently disarming felons who completed their sentence); *Range*, 124 F.4th at 230–31 (examining the eighteenth century practice of punishing felonies by death or estate forfeiture before concluding that "in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society").

Even if the Fifth Circuit is correct that the Nation's tradition of making felonies punishable by death or estate forfeiture were enough to

justify § 922(g)(1) as applied to some felons, it would not justify § 922(g)(1) as applied to every felon—which the Fifth Circuit itself recognized. "Simply 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." *Diaz*, 116 F.4th at 469. The felony category was "a good deal narrower" in the eighteenth century compared to now, *Lange v. California*, 594 U.S. 295, 311 (2021), with many crimes that were once "classified as misdemeanors, or nonexistent, at common law . . . now [punished as] felonies," *Tennessee v. Garner*, 471 U.S. 1, 14 (1985). And "because the felony label is arbitrary and manipulable," a number of felonies today "are far less serious than those at common law." *Folajtar v. Att'y Gen.*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting), *abrogation recognized by Range*, 69 F.4th at 100–01. The "shifting benchmark" of which crimes count as felonies "should not define the limits of the Second Amendment." *Diaz*, 116 F.4th at 469.

Applying this framework to Mr. Staley, none of his past felony offenses were punished *as felonies* at the time of the Founding. His felony record consists of two prior convictions for carrying a concealed firearm

and two prior convictions for possession of a firearm by a felon. Doc. 63 ¶¶ 25, 26, 28, 29. A "solitary" seventeenth-century New Jersey statute prohibited the concealed carry of certain firearms, but this statute applied only to "unusual or unlawful weapons" and the Supreme Court regarded it as an outlier. *Bruen*, 597 U.S. at 47–49. Other states began to prohibit the concealed carry of firearms in the nineteenth century, but there is scant evidence that carrying a concealed weapon was punishable by death, estate forfeiture, or permanent disarmament. *See id.* at 52–55 (exploring efforts by states in the early to mid-19th century to proscribe the concealed carry of pistols and other small weapons). Rather, violations of early weapons regulations, like the Statute of Northampton and colonial "armed offensively" laws, were generally met with fines, imprisonment, or forfeiture of the *specific* weapon—not death, estate forfeiture, or disarmament for life. *See id.* at 40 (noting that a violation of the Statute of Northampton was punishable by forfeiture of armor to the King and imprisonment at the King's pleasure); *id.* at 57 ("In *Heller*, we noted that founding-era laws punishing unlawful discharge 'with a small fine and forfeiture of the weapon . . ., not with significant criminal penalties,' likely did not 'preven[t] a person in the founding era from

using a gun to protect himself or his family from violence, or that if he did so the law would be enforced against him.'" (quoting *Heller*, 554 U.S. at 633–34)).

Similarly, "possessing a firearm as a felon . . . was not considered a crime until 1938 at the earliest." *Diaz*, 116 F.4th at 468; *see* Marshall, *supra* p. 19, at 708 (explaining that blanket prohibitions on the possession of firearms by felons did not exist until the twentieth century). As with restrictions on concealed carry, laws punishing the possession of a firearm by a felon have no Founding-era provenance.

None of Mr. Staley's past felony offenses are analogous to a crime that was punished as a felony at the time of the Founding. Accordingly, banning Mr. Staley for life from exercising his Second Amendment rights cannot withstand historical scrutiny under the analytical framework employed in *Diaz*, 116 F.4th at 468–72.

III. The Court's review is needed because Mr. Staley's petition presents an important issue.

The Court should grant Mr. Staley's petition because the questions presented are timely and significant. Section 922(g) "is no minor provision." *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). It accounts for 12% of all federal criminal convictions. *See*

U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (Fiscal Year 2024), *available at* https://tinyurl.com/4djbwbyx (last accessed Sep. 23, 2025). Around 90% of all § 922(g) convictions in fiscal year 2024 fell under § 922(g)(1). *Id.*

Moreover, although the right to keep and bear arms is among the "fundamental rights necessary to our system of ordered liberty," *McDonald v. Chicago*, 561 U.S. 742, 778 (2010), felony convictions are "the leading reason" for background checks to result in the denial of this individual right, and over two million denials have taken place since the creation of the federal background-check system in 1998. *See* Crim. Justice Info. Servs. Div., Fed. Bureau of Investigation, U.S. Dep't of Justice, *National Instant Criminal Background Check System Operational Report 2020-2021*, at 18 (Apr. 2022).

Whether the Second Amendment permits as-applied challenges to § 922(g)(1) convictions—and if so, how to conduct that as-applied analysis—is, therefore, exceptionally important. It is also a question on which courts have been unable to agree. *See* Part I, *supra*. Accordingly, as the government previously stressed, there are "important interests in certainty regarding the constitutionality of one of the most-often enforced

criminal statutes, which can only be provided by this Court resolving the question." Supp. Br. of Respondent, *Garland v. Range*, No. 23-374, 2024 WL 3258316, at *4 (June 26, 2024).

CONCLUSION

For the above reasons, Mr. Staley respectfully asks this Court to grant his petition for a writ of certiorari. Alternatively, he requests that the Court hold his petition pending its decision on petitions raising the same or related issues, *see supra* at i n.1, and dispose of it accordingly.

Respectfully submitted,

A. Fitzgerald Hall, Esq.
Acting Federal Defender

/s/ Jonas Cummings
Jonas Cummings, Esq.
Counsel of Record
Research and Writing Attorney
200 West Forsyth St., Suite 1240
Jacksonville, Florida 32202
Telephone: (904) 232-3039
Email: jonas_cummings@fd.org

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