

No.

IN THE
Supreme Court of the United States

TRACY JENKINS,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 18 U.S.C. § 922(g)(1)'s lifetime ban on firearm possession for all individuals previously convicted of a crime punishable by more than one year violate the Second Amendment on its face?

INTERESTED PARTIES

All parties are named in the case caption.

RELATED PROCEEDINGS

United States v. Jenkins, No. 25-1169 (8th Cir.)

United States v. Jenkins, No. 4:23-cr-00108-SRC-1 (E.D. Mo.)

TABLE OF CONTENTS

Question Presented.....	i
Interested Parties	ii
Related Proceedings	ii
Table of Contents	iii
Table of Authorities.....	iv
Table of Appendices	vii
Petition for a Writ of Certiorari.....	1
Decision Below	1
Jurisdictional Statement.....	1
Relevant Provisions	1
Introduction	2
Statement of the Case	3
A. Legal Background.....	3
B. Procedural History and the Decision Below.....	7
Reasons for Granting the Writ	8
A. Confusion and division persist about the scope of this fundamental right, causing a pressing need for clarity.	8
B. The decision below is wrong.	11
C. This case is an adequate vehicle.	13
D. If this case is not a suitable vehicle, the Court should hold the petition pending its decision in another case presenting a similar challenge.....	13
Conclusion.....	14

TABLE OF AUTHORITIES

Cases:	Page:
<i>Barrett v. United States</i> , 423 U.S. 212 (1976).....	4
<i>Dawon Hennings v. United States</i> , No. 24-7260 (U.S. 2025).....	2
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	2-3, 5
<i>Henderson v. United States</i> , 568 U.S. 266 (2013).....	13
<i>Jackson v. United States</i> , 144 S. Ct. 2710 (U.S. 2024)	6
<i>Kanter v. Barr</i> , 919 F.3d 437 (7th Cir. 2019)	3, 5
<i>Lewis v. United States</i> , 445 U.S. 55 (1980)	4
<i>McDonald v. City of Chicago, Ill.</i> , 561 U.S. 742 (2010).....	10
<i>New York State Rifle & Pistol Association, Inc. v. Bruen</i> , 597 U.S. 1 (2022)	2, 5-6, 11
<i>Range v. Attorney General United States</i> , 124 F.4th 218 (3d Cir. 2024) (en banc)	9
<i>Rehaif v. United States</i> , 588 U.S. 225 (2019).....	10
<i>Scarborough v. United States</i> , 431 U.S. 563 (1977).....	4
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024)	9
<i>United States v. Duarte</i> , 137 F.4th 743 (9th Cir. 2025) (en banc)	9

<i>United States v. Dubois</i> , 139 F.4th 887 (11th Cir. 2025)	9
<i>United States v. Hunt</i> , 123 F.4th 697 (4th Cir. 2024)	8-9
<i>United States v. Jackson</i> , 69 F.4th 495 (8th Cir 2023)	6
<i>United States v. Jackson</i> , 110 F.4th 1120 (8th Cir. 2024)	6-7, 9, 11-12
<i>United States v. Jackson</i> , 121 F.4th 656 (8th Cir. 2024)	11-12
<i>United States v. Mull</i> , 113 F.4th 864 (8th Cir. 2024)	13
<i>United States v. Neal</i> , 715 F. Supp. 3d 1084 (N.D. Ill. 2024)	10
<i>United States v. Olano</i> , 507 U.S. 725 (1993)	13
<i>United States v. Prince</i> , 700 F. Supp. 3d 663 (N.D. Ill. 2023)	10
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	2, 6, 11-12
<i>United States v. Sharkey</i> , 131 F.4th 621 (8th Cir. 2025)	13
<i>United States v. Veasley</i> , 98 F.4th 906 (8th Cir. 2024)	7
<i>United States v. Taylor</i> , No. 4:23-CR-40001, 2024 WL 245557 (S.D. Ill. Jan. 22, 2024)	10
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024)	9
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025)	9

<i>Zherka v. Bondi</i> , 140 F.4th 68 (2d Cir. 2025).....	9
Constitutional Provisions:	Page:
U.S. CONST. AMEND. II.....	1
Statutes:	Page:
18 U.S.C. § 922(g)(1)	1
28 U.S.C. § 1254	1
28 U.S.C. § 1291	1
Other Authorities & Materials:	Page:
An Act to Strengthen the Federal Firearms Act (1961).....	4
David E. Vandercoy, <i>The History of the Second Amendment</i> , 28 VAL. U. L. REV. 1007 (1994) .	3
Federal Firearms Act (1938)	3-4
Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary, 89th Cong. 41 (1965)	4
Omnibus Crime Control and Safe Streets Act of 1968.....	4
S. Rep. No. 90-1097 (1968)	4
Supplemental Brief for the Federal Parties, <i>Jackson v. United States</i> , No. 23-6170 (U.S. June 24, 2024)	9-10
U.S. Sent’g Comm’n, <i>Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses</i> (May 2025)	10

TABLE OF APPENDICES

Appendix A: Judgment of the United States Court of Appeals for the Eighth Circuit, <i>United States v. Jenkins</i> , No. 25-1169 (8th Cir. Aug. 22, 2025).....	1a
Appendix B: Initial Judgment of the United States District Court for the Eastern District of Missouri, <i>United States v. Jenkins</i> , No. 4:23-cr-00108-SRC-1 (E.D. Mo. Jan. 15, 2025).....	2a
Appendix C: Amended Judgment of the United States District Court for the Eastern District of Missouri, <i>United States v. Jenkins</i> , No. 4:23-cr-00108-SRC-1 (E.D. Mo. Jan. 23, 2025).....	11a

PETITION FOR A WRIT OF CERTIORARI

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

DECISION BELOW

A copy of the Eighth Circuit's judgment appears at Pet. App. 1a. The Eighth Circuit did not issue an accompanying opinion.

JURISDICTIONAL STATEMENT

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States.

The Eighth Circuit had jurisdiction under 28 U.S.C. § 1291. It entered its judgment on August 22, 2025, and Petitioner did not seek rehearing or en banc review.

RELEVANT PROVISIONS

The Second Amendment reads: "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.

18 U.S.C. § 922(g)(1) reads: "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."

INTRODUCTION¹

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court held that the Second Amendment codified a pre-existing, individual right to keep and bear arms. Lower courts spent the next fourteen years trying to discern that right's scope.

This Court stepped into the fray again in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), expounding upon *Heller* and adopting a two-part analysis. Under *Bruen*, courts adjudicating a Second Amendment challenge must first consider whether that Amendment's plain text encompasses the conduct that the challenged law proscribes. If it does, then the government must prove a relevantly similar Founding-era legal tradition.

The Court provided an example of the historical inquiry in *United States v. Rahimi*, 602 U.S. 680 (2024). *Rahimi* held that 18 U.S.C. § 922(g)(8), which bars firearm possession by those under certain restraining orders, was not facially unconstitutional. It relied on two common Founding-era regimes that it found to be similar to § 922(g)(8): "going armed" laws and surety bonds. Like § 922(g)(8), these laws typically applied based on individualized findings involving specific, serious misconduct with a gun. Moreover, also like § 922(g)(8), the disarmament they permitted was temporary and subject to exceptions.

Bruen and *Rahimi* triggered litigation over status-based firearm restrictions. Section 922(g)(1), the federal ban on possession by those with a felony record, sits at the center of that storm. To date, challenges have wrought disparate outcomes and significant confusion.

Petitioner's case is a suitable vehicle by which to quell that confusion.

¹ Mr. Jenkins borrows much of this petition, with permission, from a similar petition filed in *Dawon Hennings v. United States*, No. 24-7260, *pet. for cert. denied* 145 S. Ct. 2829 (U.S. June 23, 2025).

STATEMENT OF THE CASE

A. Legal Background

1. The Second Amendment codifies a pre-existing right to keep and bear arms. *Heller*, 554 U.S. at 579-81. That right stems from the English Declaration of Rights, which refuted disarmament laws that preceded the Glorious Revolution and King James II's ousting. *See generally* David E. Vandercoy, *The History of the Second Amendment*, 28 VAL. U. L. REV. 1007, 1015 (1994). The run-up to the Revolutionary War saw similar efforts on the other side of the Atlantic as King George III "began to disarm the inhabitants of the most rebellious areas[]" of the Colonies. *Heller*, 554 U.S. at 594.

Bearing these bitter episodes in mind, the People sought to protect their arms after the Revolution. They ratified the Constitution and the Bill of Rights, which included the Second Amendment. "[B]y the time of the founding," the right to bear arms was "understood to be an individual right protecting against both public and private violence." *Id.*

With the Second Amendment as a backdrop, legislatures shied away from broad, class-based restrictions on arms. That was true even for those who had a prior record. "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).

2. Congress abruptly switched course during the New Deal era. For the first time, it criminalized firearm possession by individuals convicted of certain crimes. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938).

That statute was narrower than the modern version. Its felon-in-possession provision 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.* at § 1(6). Those with such a conviction could not “receive” a firearm, and the law treated possession as “presumptive evidence” of receipt. *Id.* at § 2(f).

In the 1960s, this prohibition took its modern form. Great Society-era Congresses believed 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). These powers that be dismissed constitutional concerns over federal firearm laws, explaining that the Second Amendment posed “no obstacle” because such 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 deemed itself unconstrained and “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, it acted to keep arms from “potentially irresponsible persons, including convicted felons.” *Barrett v. United States*, 423 U.S. 212, 220 (1976).

To that end, it enacted two changes to the then-current ban.

First, it expanded the Federal Firearms Act to prohibit those 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, it later criminalized *possession*—not just receipt— of a firearm 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.

3. In 2008, *Heller* debunked the myth that the Second Amendment had nothing to say about such laws. *Heller* held that “the Second Amendment conferred an individual right to keep and bear arms.” 554 U.S. at 595.

That holding was significant. But in some corners, *Heller* became just as well known for its dicta. An oft-quoted passage reads:

Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on *longstanding prohibitions* on the possession of firearms *by felons* and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626-27 (emphasis added). *Heller* called these prohibitions “presumptively lawful,” *id.* at 627 n.26, and assured readers that “there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us,” *id.* at 635.

4. Following *Heller*, most courts of appeal crafted a balancing test whereby varying levels of scrutiny applied depending on “ ‘how close the law comes to the core of the Second Amendment right and the severity of the law’s burden on that right.’ ” *Bruen*, 597 U.S. at 18 (quoting *Kanter*, 919 F.3d at 441).

Bruen rejected that balancing test. In its place, it swapped in a two-part text-and-history standard. It held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. And if a law restricts protected conduct, the government “must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*

Several Justices wrote separately to note their belief that *Bruen* did not upset *Heller's* dictum about the presumptive lawfulness of felon-in-possession bans. *See id.* at 72 (Alito, J., concurring); *id.* at 80-81 (Kavanaugh, J., concurring, joined by Roberts, C.J.); *id.* at 129-30 (Breyer, J., dissenting, joined by Sotomayor and Kagan, JJ.).

5. The Court provided further guidance in *Rahimi*. *Rahimi* considered 18 U.S.C. 922(g)(8), which disarms persons subject to restraining orders issued based on an individualized finding that the restrainee represents a credible threat of violence to their intimate partner or child. The Court found the restriction fit within the historical tradition of temporarily disarming persons based on an individualized finding that they present a credible threat of violence. 602 U.S. 680 at 695-98.

Along the way, *Rahimi* quoted *Heller's* dicta about presumptive lawfulness. *Id.* at 699. However, as in its other recent forays into the Second Amendment, it did not address the propriety of laws other than the one before it. *See id.* at 702 (“In *Heller*, *McDonald*, and *Bruen*, this Court did not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment. Nor do we do so today.”) (citation omitted).

6. The Eighth Circuit, which includes the District where Petitioner committed his offenses, applied *Bruen* to § 922(g)(1) in *United States v. Jackson*, 69 F.4th 495 (8th Cir 2023), *vacated by* 2024 WL 3768055 (8th Cir. Aug. 8, 2024). However, that decision did not survive *Rahimi*. *See Jackson v. United States*, 144 S. Ct. 2710 (U.S. July 2, 2024) (granting certiorari, vacating the judgment, and remanding case for further consideration in light of *Rahimi*).

Three days after receiving this Court’s remand of *Jackson I*, the Eighth Circuit issued substantially the same opinion as before (*Jackson II*). *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), *pet. for cert. denied*, 145 S. Ct. 2708 (U.S. May 19, 2025), *rh’g pet. denied*, 121

F.4th 656 (8th Cir. 2024). *Jackson II* concluded “that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *Id.* at 1125.

The *Jackson II* panel wrote that “legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms.” *Id.* at 1129. It further said that “[w]hether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons.” *Id.*

Jackson II relied heavily on *Heller’s* dicta about presumptive lawfulness. *See id.* at 1125, 1128-29. The Eighth Circuit has cited that dicta as its basis for distinguishing § 922(g)(1) from other laws that it has found amenable to as-applied Second Amendment challenges. *See United States v. Veasley*, 98 F.4th 906, 909 n.2. (8th Cir. 2024), *pet. for cert. denied*, 145 S. Ct. 304 (U.S. Oct. 7, 2024).

B. Procedural History and the Decision Below

Petitioner pleaded guilty to a § 922(g)(1) offense and an unrelated sex offense. Dist. Ct. Dkt. 67 (Minute Entry), 68 (Plea Agreement). He did not argue that § 922(g)(1) violated the Second Amendment.

The District Court initially imposed a 510-month prison term on the sex offense count and a concurrent 180-month term on the § 922(g)(1) count. Pet. App. 3a. Because that judgment exceeded the sex offense’s statutory maximum, the District Court later amended its judgment to impose 360 months for the sex offense, consecutive to 150 months for the § 922(g)(1) offense. *Id.* at 12a.

Petitioner appealed, maintaining that § 922(g)(1) violates the Second Amendment on its face. COA Appellant’s Br., 8-15 (8th Cir. June 6, 2025). He contended that the Second Amendment’s text covered his conduct. *Id.* at 8-12. He then averred that the government could not prove the law’s historical bona fides because the statute “has two features that render it unconstitutional.” *Id.* at 12. He emphasized that § 922(g)(1) imposes “a lifelong ban” and “requires no individualized determination of dangerousness.” *Id.*

Rather than filing a merits brief, the government moved for summary affirmance. COA Motion (8th Cir. July 28, 2025). It argued that Petitioner waived his facial challenge under his plea agreement. *Id.* at 6-9. It also observed that if he did not waive his claim, his argument nevertheless failed under *Jackson II*. *Id.* at 4-6.

The Eighth Circuit summarily affirmed Petitioner’s conviction. Pet. App. 1a. It did so “on the basis that the challenge to the felon-in-possession of a firearm conviction is foreclosed by [*Jackson II*].” *Id.*

REASONS FOR GRANTING THE WRIT

A. Confusion and division persist about the scope of this fundamental right, causing a pressing need for clarity.

Courts are struggling to find a coherent way to adjudicate § 922(g)(1) challenges following *Bruen* and *Rahimi*. Petitioner acknowledges that no Circuit has yet held that § 922(g)(1) is facially unconstitutional. However, there is still a clear split of authority on related matters.

1. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have foreclosed challenges to the felon-in-possession restriction, many while relying on *Heller*’s dicta. See *Zherka v. Bondi*, 140 F.4th 68, 96 (2d Cir. 2025), *pet. for cert. filed*, 25-269 (U.S. Sep. 5, 2025); *United States v. Hunt*, 123 F.4th 697, 707-08 (4th Cir. 2024), *pet. for cert. denied*, 145 S.

Ct. 2756 (U.S. June 2, 2025); *Jackson*, 110 F.4th at 1125, 1129; *United States v. Duarte*, 137 F.4th 743, 761-62 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025), *pet for cert. filed*, 24-1155 (May 8, 2025); *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025).

The law is different in the Fifth and Sixth Circuits. Those Circuits have left open the possibility of as-applied challenges that would be foreclosed in the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. *See United States v. Diaz*, 116 F.4th 458, 470 n.4 (5th Cir. 2024), *pet. for cert. denied*, 145 S. Ct. 2822 (U.S. June 23, 2025); *United States v. Williams*, 113 F.4th 637, 657, 662-663 (6th Cir. 2024). The Sixth Circuit has recognized that every person with a record enjoys “a constitutionally required opportunity to show that he is not dangerous[.]” *Id.* at 663. The Fifth Circuit, while not explicitly adopting a “dangerousness” standard, has explicitly declined to “foreclose” future as-applied challenges. *Diaz*, 116 F.4th at 470 n.4.

One other Circuit—the Third—has gone furthest still. Sitting en banc, it has found § 922(g)(1) to be unconstitutional as applied. *See Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024) (en banc).

To recap, six Circuits have rendered § 922(g)(1) immune to Second Amendment challenges. Two others permit as-applied challenges, although they have not yet encountered a meritorious one. And the Third Circuit has found the federal prohibition unconstitutional as applied. This state of affairs shows that the Circuits are a long way from finding consensus, despite *Bruen* and *Rahimi*’s guidance.

2. Section 922(g)(1) has not only vexed Circuit courts. It “has also deeply divided district courts.” Supplemental Brief for the Federal Parties, *Jackson v. United States*, No. 23-

6170, 4 (U.S. June 24, 2024). Several district courts have invalidated the statute, including some in cases that “have involved felons with convictions for violent crimes, such as murder, manslaughter, armed robbery, and carjacking.” *Id.*; *see also id.* n.1 (collecting cases).

3. Notably, a few district courts have done what Petitioner urged the Eighth Circuit to do below: invalidate § 922(g)(1) on its face. *See United States v. Neal*, 715 F. Supp. 3d 1084, 1093 (N.D. Ill. 2024), *appeal docketed*, No. 24-1220 (7th Cir. Feb 13, 2024); *United States v. Taylor*, No. 4:23-CR-40001, 2024 WL 245557, at *5 (S.D. Ill. Jan. 22, 2024), *appeal docketed*, 24-1244 (7th Cir. Feb. 16, 2024); *United States v. Prince*, 700 F. Supp. 3d 663, 675-76 (N.D. Ill. 2023), *appeal docketed*, No. 23-3155 (7th Cir. Nov. 9, 2023).

Some of those facial decisions may not survive appellate review. However, their existence highlights the untenable current state. In Petitioner’s St. Louis hometown, the government is free to bring § 922(g)(1) prosecutions against everyone with a record, no matter how remote or non-violent that record might be. Yet just across the Mississippi River in Illinois, several judges have concluded that the government cannot constitutionally prosecute a § 922(g)(1) case against *anyone*. So although the Second Amendment protects a “fundamental” right, *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010), its scope now depends on the vagaries of geography.

4. Confusion over § 922(g) is no minor thing, because that law is “no minor provision.” *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). The government prosecuted nearly 7,500 § 922(g) cases in fiscal 2024. U.S. Sent’g Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (May 2025). More than 90% of the convictions from those prosecutions were won thanks to “a prior felony conviction.” *Id.*

Chaos over § 922(g)(1)’s status thus affects thousands of people every year. This Court should step in to resolve the ongoing uncertainty over a critical criminal law.

B. The decision below is wrong.

The Eighth Circuit decided Petitioner’s appeal based on *Jackson II*, an opinion that is inconsistent with the Court’s Second Amendment jurisprudence.

Under *Bruen*, the central considerations for historical analysis are “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” 597 U.S. at 29. Those metrics remain key after *Rahimi*. See 602 U.S. at 692 (“Why and how the regulation burdens the right are central to this inquiry.”).

Jackson II’s analysis fails under both metrics. It omitted any discussion of the first. See *United States v. Jackson*, 121 F.4th 656, 660 (8th Cir. 2024) (Stras, J., dissenting from the denial of rehearing en banc) (“*Jackson II* . . . makes no attempt to explain how the burden imposed by the felon-in-possession statute, which lasts for a lifetime, is comparable to any of the Founding-era laws it discusses.”). It therefore failed to reckon with § 922(g)(1)’s defining feature: a *lifetime* ban on possessing *any* firearm or ammunition, *without exception*. That extreme burden has no parallel in our tradition. Cf. *Rahimi*, 602 U.S. at 699 (discussing the tradition of *temporary* disarmament).

Jackson II also watered down the second metric. See *Jackson*, 121 F.4th at 660 (Stras, J., dissenting from the denial of rehearing en banc) (“The justification gets short shrift too.”). The *Jackson II* panel listed disparate laws that had targeted the rights of disfavored persons, saying that “[h]istory shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people.” *Jackson*, 110 F.4th at

1126. This survey led it to conclude that “legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms.” *Id.* at 1129.

In operating at such a high level of generality, *Jackson II* collapsed this metric into impermissible “deference to Congress’s blanket determination that a group numbering in the tens of millions and ranging from murderers to ketchup-bottle tamperers categorically ‘present[s] an unacceptable risk of danger if armed.’ ” *Jackson*, 121 F.4th at 660 (Stras, J., dissenting from denial of rehearing en banc) (quoting *Jackson*, 110 F.4th at 1128).

Rahimi requires greater precision. That decision featured several separate opinions, but this Court’s members *unanimously* rejected the premise that a government can disarm someone merely by affixing a label to them. *See* 602 U.S. at 772-73 (Thomas, J., dissenting) (noting that “[n]ot a single Member of the Court adopts the Government’s theory” that it can “disarm anyone who is not ‘responsible’ and ‘law-abiding’ ”). In place of “vague” and “unclear” labels, *id.* at 701, *Rahimi* defined the second metric narrowly, saying that “[s]ection 922(g)(8) restricts gun use to mitigate *demonstrated threats* of physical violence.” *Id.* at 698 (emphasis added); *see also id.* at 702 (“[W]e conclude only this: An individual *found by a court* to *pose a credible threat* to the physical safety of another may be *temporarily* disarmed consistent with the Second Amendment.”) (emphases added).

Jackson II’s analysis thus fails along both *Bruen* metrics. The first is absent from the opinion. The second appears in the opinion, but in unrecognizable form. The summary disposition below added nothing to *Jackson II* and did not purport to shore up any of its faults.

The Court should grant this petition and set the historical record straight.

C. This case is an adequate vehicle.

This petition presents a clean question with no loose ends. A ruling favorable to Petitioner would make the Eighth Circuit’s error plain in his case. *Cf. Henderson v. United States*, 568 U.S. 266, 279 (2013). And while Petitioner forfeited this issue below, he did not waive it; the Eighth Circuit recognized as much when it reached the merits rather than adopting the government’s waiver argument. *See* Pet. App. 1a; *see also United States v. Olano*, 507 U.S. 725, 733 (1993) (explaining why “[w]aiver is different from forfeiture”).

Further, the Eighth Circuit currently resolves all Second Amendment challenges to § 922(g)(1) based on *Jackson II*, regardless of the standard of review or whether the challenge is facial or as-applied. *See, e.g., United States v. Sharkey*, 131 F.4th 621, 622 (8th Cir. 2025) (holding that *Jackson II* foreclosed preserved facial and as-applied Second Amendment challenges); *United States v. Mull*, 113 F.4th 864, 869-70 (8th Cir. 2024) (holding that *Jackson II* foreclosed unpreserved Second Amendment challenge). If the Court settles Petitioner’s unpreserved facial claim, its holding will translate to preserved challenges, both facial and as-applied.

D. If this case is not a suitable vehicle, the Court should hold the petition pending its decision in another case presenting a similar challenge.

The Court has another viable option: it can hold this petition pending disposition of a related challenge. Similar petitions appear on a recurring basis, with at least one pending at seemingly any time. *See, e.g., Compton v. United States*, No. 25-5358 (pending petition that presents question of “whether 18 U.S.C. § 922(g)(1)’s lifetime ban on firearm possession for all individuals previously convicted of any felony offense violates the Second Amendment, either facially or as applied to the Petitioner”). This approach would promote judicial economy.

CONCLUSION

Based upon the foregoing, the petition should be granted or, alternatively, held pending a decision in a case that poses a substantially similar question.

Respectfully submitted this 17th day of October, 2025,

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