NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 2025 TERM,

ERIC DENNARD PARKER,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

BYRON CONWAY
Federal Public Defender

JONATHAN DODSON*

Federal Defenders of the Middle District of Georgia, Inc.
440 Martin Luther King, Jr., Blvd.
Suite 400
Macon, GA 31201
(478) 743-4747

**Counsel of Record*

QUESTIONS PRESENTED

1. Do convicted felons have a Second Amendment right, or do only law-abiding persons enjoy this right?

2. Does 18 U.S.C. §§ 922(g)(1) and 924(a)(2) withstand Second Amendment scrutiny in *all* of its applications, or is it unconstitutional as applied to some felons?

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Parker submits that there are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

The following proceedings directly relate to the case before the Court:

- *United States v. Parker*, No. 23-14227, 2025 WL 1805476 (11th Cir. July 1, 2025)

- *United States v. Parker*, No. 5:23-CR-00026-MTT-CHW-1 (M.D. Ga. Dec. 13, 2023) (dkt 41) (judgment convicting Parker of violating 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and imposing 110-month term of imprisonment)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

TABLE OF APPENDICES

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

ERIC DENNARD PARKER,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Eric Dennard Parker respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 24-10498, in that court on June 25, 2025. *United States v. Parker*, No. 23-14227, 2025 WL 1805476 (11th Cir. July 1, 2025).

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Parker,* No. 23-14227, 2025 WL 1805476 (11th Cir. July 1, 2025) (unreported), is Appendix 1.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The United States Court of Appeals for the Eleventh Circuit had jurisdiction over this cause pursuant to 28 U.S.C. § 1291. It entered its decision on July 1, 2025. This petition is timely filed pursuant to Sup. Ct. R. 13.1 and 13.5.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment. 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). Section 922(g)(1) of Title 18 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."

18 U.S.C. § 924(a)(2) (2021). Section 924(a)(2) of Title 18 read, on Parker's offense date: "Whoever knowingly violates subsections (a)(6), (d), (g), (h), (i), or (o) of section 922 shall be fined under this title, imprisoned not more than 10 years, or both."

INTRODUCTION

This Court broke new ground in *District of Columbia v. Heller*, 554 U.S. 570, 592-95 (2008), when it held that the Second Amendment, as understood by the Founding generation, constitutionalized a pre-existing, individual right to carry firearms, and not a collective, civic right to participate in militias. In *New York State Rifle & Pistol Association, Inc. v. Bruen,* 597 U.S. 1, 23-24 (2022), it expounded upon the originalist standard it had employed in *Heller*, adopting a two-part analysis. Accordingly, to determine whether a law violates the Second Amendment, courts

must first consider whether the plain text of the Second Amendment encompasses the conduct that the challenged law proscribes. *Id.* If so, the government bears the burden of proving a Founding-era legal tradition that is relevantly similar to the challenged law, in terms of how and why the law burdens the Second Amendment right. *Id.* at 24, 29. This Court provided an additional example of this historical analysis in *United States v. Rahimi*, 602 U.S. 680 (2024), holding that 18 U.S.C. § 922(g)(8) – which bars firearm possession by those under certain types of restraining orders – was not facially unconstitutional. It found that Founding-era "going armed" laws and surety bond laws together established a tradition of temporarily disarming some persons based on an individualized judicial finding that they had committed specific, serious misconduct with a gun, which was relevantly similar to § 922(g)(8). *Rahimi*, 602 U.S. at 698.

These decisions have triggered an avalanche of constitutional challenges to the various federal status-based prohibitions on possessing firearms. By far the most common such prohibition is 18 U.S.C. § 922(g)(1)'s disarmament of convicted felons. The analyses and holdings in these cases diverge widely from one another, splintering the Second Amendment into a number of Circuit splits. Most significantly to § 922(g)(1), *Rahimi* left open two important issues, which this case presents an opportunity to resolve.

The first issue is whether felons have any Second Amendment rights. The Eleventh Circuit has concluded they do not, without ever applying *Bruen*'s text-and-history test to the felon disarmament law established in 18 U.S.C. § 922(g)(1). *See*

United States v. Rozier, 598 F.3d 768, 770-71 (11th Cir. 2010); *United States v. Dubois*, 94 F.4th 1284, 1296 (11th Cir. 2024), *cert. granted, judgment vacated sub nom. Dubois v. United States*, 145 S. Ct. 1041 (2025) (Mem.), *reinstated by* 139 F.4th 887 (11th Cir. 2025). Although most other Circuits have not similarly bypassed the *Bruen* test, they are in sharp disagreement about how to reconcile the test with this Court's statements about "law-abiding citizens" and "longstanding prohibitions" on the possession of firearms by felons. *See Heller*, 554 U.S. at 625, 627-28, 635; *Bruen*, 597 U.S. at 29-31; *McDonald v. Chicago*, 561 U.S. 742, 786 (2010). This has led to a 5-3 split on the question of whether "felons" have Second Amendment rights.

The second issue is whether § 922(g)(1) is constitutional in all of its applications, or whether it may violate the Second Amendment as applied to some subset of convicted felons. The Eleventh Circuit implicitly rejects as applied challenges by holding that convicted felons are disqualified from having Second Amendment rights. Other Circuits have explicitly addressed the question, leading to a 3-4 Circuit split.

Resolving these issues is necessary to determine the rights of millions of convicted felons in this country, and would provide essential guidance to lower courts. If felons have Second Amendment rights, or if as applied challenges to felon disarmament laws are available, then this Court should say so, thus redirecting courts and litigants to focus their efforts on the scope of the permissible burdens on the Second Amendment rights of felons.

STATEMENT OF THE CASE

A. Legal Background

1. **English Firearm Right**. The Second Amendment codifies as "pre-existing" right. *Heller*, 554 U.S. at 579-81. This right stems from the English Declaration of Rights, which directly refuted the disarmament laws that preceded the Glorious Revolution. The English people became heavily armed during their 17th Century civil wars. David E. Vandercoy, *The History of the Second Amendment*, 28 Val. U. L. Rev. 1007, 1015 (1994). After the Restoration of the Monarchy, King Charles II began to disarm "disaffected persons" with the Militia Act of 1661. *Id*. at 1016. With the Game Act of 1671, he dramatically limited the right to hunt and barred possessing firearms by non-hunters. *Id*. King James II continued the disarmament policy, amassed a standing army, and replaced Protestants with Catholics at high government posts. *Id*. at 1016-1017.

This culminated in the Glorious Revolution, when King James II fled upon Prince William III landing in England with an army. *Id*. at 1017. A special parliament crowned King William and Queen Mary as co-sovereigns and adopted the Declaration of Rights of 1689. *Id*. An early draft of the Declaration of Rights recited the abuses of James II, including his disarming of Protestant subjects. *Id*. at 1018. The final version set forth the positive right of Protestant subjects to have arms for their defense, "as allowed by law" – a phrase referring to how arms were used. *Id*.; *see* 1 W. & M., Sess. 2, ch. 2 (1689).

2. **Second Amendment**. Similarly, in the run-up to the Revolutionary War, King George III "began to disarm inhabitants of the most rebellious areas[]" of the Colonies. *Heller*, 554 U.S. at 594. Eight years after the American Revolution ended, the states ratified the Constitution, and then the Bill of Rights, including the Second Amendment's proscription against "infring[ing]" "the right of the people to keep and bear Arms[.]" U.S.CONST. AMEND. II. Given this history, "by the time of the founding," the right to bear arms was "understood to be an individual right protecting against both public and private violence." *Heller*, 554 U.S. at 594. It was thus designed to safeguard not only the people's right to private self-defense, but also to prevent the overbroad disarmament policies of tyrannical governments.

3. ***Heller***. Notwithstanding this history, for over 200 years after the Second Amendment was ratified, many understood the Second Amendment to protect only a collective right to raise militias. Under this interpretation, the Second Amendment was a civic right, like voting. Accordingly, it was " 'exercised by citizens, not individuals . . ., who act together in a collective manner, for a distinctly public purpose: participation in a well-regulated militia.' " *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019) (Barrett, J., dissenting) (quoting Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 491 (2004)). It followed that, since "this right was exercised for the benefit of the community (like voting and jury service), rather than for the benefit of the individual (like free speech or free exercise), it belonged only to virtuous citizens." *Id*. at 462-63.

Heller thoroughly debunked this interpretation of the Second Amendment, holding, based on "both text and history," that "the Second Amendment conferred an individual right to keep and bear arms." 554 U.S. at 595. Rejecting the "freestanding 'interest-balancing' " approach to determining the scope of this right that Justice Breyer proposed, it reasoned "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope is too broad." *Id*.at 634. Rather, the Second Amendment "is the very product of an interest balancing by the people[.]" *Id*. at 635. Based on this understanding of the Second Amendment, it held that the District of Columbia's ban on handguns violated the Second Amendment. *Id*.

In reaching this conclusion, this Court used the phrase "law-abiding citizens" on several occasions. It first referred to "law-abiding" citizens in addressing a precedent relied upon by the dissent – *United States v. Miller*, 307 U.S. 174 (1939). The majority "read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Heller*, 554 U.S. at 625. Thus, in characterizing *Miller*, *Heller* was talking about "*what* types of weapons *Miller* permits," not which persons the Second Amendment protects. *Id*. at 624 (italics in original).

Heller also commented "the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens." *Id*. at 625. This was not framed as part of its holding, or as a dispositive part of its analysis, and, indeed, the Court's historical review did not mention "law-abiding." It was geared towards ascertaining

whether the right, as originally understood, was connected to militia service. *Id*. at 605-619.

Heller's final use of the term "law-abiding" was in the following statement: "whatever else it leaves to future evaluation, [the Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id*. at 635. With the "whatever else" clause, this Court explicitly left open the outer limits of the Second Amendment. Instead, this sentence suggested that the floor of the Second Amendment's protection was of law-abiding citizens for self-defense in the home.

Another passage from *Heller* reads:

> [a]lthough we do not undertake an exhaustive historical analysis 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.

554 U.S. at 626-27. In a footnote to this sentence, it explained "[w]e identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." *Id*. at 627 n.26. In response to Justice Breyer's criticism that it had not adequately justified these exceptions, this Court assured "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. ***Rozier***. In *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), the Eleventh Circuit resolved a facial challenge to the bar on felons possessing firearms in 18 U.S.C. § 922(g)(1), holding this status-based prohibition does not violate the Second Amendment. It resolved the case based on the preliminary question of "whether [Rozier wa]s qualified to possess a handgun." *Id.* at 770-71. It believed this step was dictated by *Heller*'s reference to the presumed lawfulness of " 'longstanding prohibitions on the possession of firearms by felons . . . .' " *Id.* at 771 (quoting *Heller*, 554 U.S. at 626). In response to the defendant's argument that this passage was dicta, it held "to the extent that this portion of *Heller* limits the Court's opinion to possession of firearms by law-abiding and qualified individuals, it is not dicta." *Id.* at n.6. It concluded "Rozier, by virtue of his felony conviction, falls within" a class of people who could be constitutionally disarmed. *Id.* at 771.

5. ***Bruen***. In *Bruen*, 597 U.S. 1, this Court rejected the balancing test that courts of appeal had used after *Heller*, whereby the courts had applied varying levels of scrutiny 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.' " *Id.* at 18 (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011)). Instead, this Court exposited the two-part text-and-history test that it had applied in *Heller*. Accordingly, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. *Id.* at 17. For a law restricting such conduct to withstand Second Amendment scrutiny, the government

"must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id*.

Bruen repeated the phrase "ordinary, law-abiding citizen" throughout the decision, but these qualifiers did not purport to make law about persons who are not "ordinary" or "law-abiding." For the most part, this language characterized this Court's previous decisions, described the parties before the Court, or limited the scope of its holding. *See, e.g., id.* at 8 (*Heller*, and *McDonald*, 561 U.S. 742, "recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense.")

"Law-abiding" did appear several times in the Court's historical analysis. For example, *Bruen* explained that "two relevant metrics" in comparing traditional regulations to modern ones is "how and why the regulations burden a law-abiding citizens' right to armed self-defense." *Id*. at 29. Still, *Bruen* did not purport to preemptively adjudicate the rights of persons not before it. Rather, this phrase helped to focus its historical inquiry onto the laws most analogous to the law under review, which restricted the right of law-abiding New Yorkers. At most, *Bruen* implied, without deciding, that the rights of those who are not "law-abiding, responsible citizens" would require a different historical analysis.

6. ***Rahimi***. In *Rahimi*, 602 U.S. at 701-02, this Court put to bed the supposed binding status of its prior references to "responsible, law-abiding citizens." *Rahimi* was about 18 U.S.C. 922(g)(8)'s disarmament of persons subject to restraining orders issued based on an individualized finding that the person represents a credible threat

of violence to their intimate partner or child. This Court found the restriction was constitutional as applied to Rahimi, based on surety laws and so-called "going armed" laws, which together established an historical tradition of temporarily disarming persons based on an individualized judicial finding that they present a credible threat of violence. *Id*. at 695-98. It did not elaborate on the scope of the Second Amendment rights of those subject to this restriction (under step one of the *Bruen* analysis), other than to reject "the Government's contention that Rahimi may be disarmed simply because he is not 'responsible.' " *Id*. at 701. It explained "[i]n *Heller* and *Bruen*, we used the term 'responsible' to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right. But those decisions did not define the term and said nothing about the status of citizens who were not 'responsible.' The question was simply not presented." *Id*. at 701-02.

6. ***Dubois***. In *Dubois,* 139 F.4th 887, the Eleventh Circuit upheld § 922(g)(1) based on *Rozier*, 598 F.3d 768, and on its prior panel precedent rule. It specifically rejected the claim that *Bruen* and *Rahimi* had abrogated *Rozier*, reasoning "[i]f the Supreme Court 'never discussed' our precedent and did not 'otherwise comment[] on' the precise issue before the prior panel, our precedent remains binding." *Id*. at 892-93. Rather, "[t]o abrogate a prior-panel precedent, 'the later Supreme Court decision must 'demolish' and 'eviscerate' each of its 'fundamental props.' " *Id*. at 893 (quoting *Del Castillo v. Sec'y, Fla. Dep't of Health*, 26 F.4th 1214, 1223 (11th Cir. 2022)). It thus found:

> [b]ecause the Supreme Court "made it clear in *Heller* that [its] holding did not cast doubt" on felon-in-possession prohibitions, *McDonald*, 561 U.S. at 786 (plurality opinion), and because the Court made it clear in *Bruen* that its holding was "[i]n keeping with *Heller*," 142 S. Ct. at 2126, *Bruen* could not have clearly abrogated our precedent upholding section 922(g)(1)[.]

Id. at 893. It similarly found that "*Rahimi* reinforced – not undermined – *Rozier*[,]" since it had quoted "*Heller*'s conclusion that prohibitions 'on the possession of firearms by 'felons and the mentally ill . . .' are 'presumptively lawful[.]' '" *Id*. (quoting *Rahimi*, 602 U.S. at 699 (quoting *Heller*, 554 U.S. at 627 n.26)). It ended "[w]e require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1)." *Id*. at 894.

B. Procedural History

1. Eric Dennard Parker pleaded guilty to one count of knowingly possessing a firearm after being convicted of a felony in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Dist. Ct. dkt. 36 (plea sheet). He did not argue in District Court that 18 U.S.C. §§ 922(g)(1) and 924(a)(2) violated the Second Amendment facially or as applied to him.

In sentencing him, the District Court adopted his Presentence Investigation Report, which detailed his prior criminal convictions: possessing alcohol as a minor, forgery, obstruction of law enforcement, possessing cocaine, theft by taking, fleeing or eluding, smash and grab burglary, and attempted smash and grab burglary, and numerous shopliftings. Dist. Ct. dkt. 50 (statement of reasons adopting PSR without change) at 1; 46 (PSR) at ¶¶22-57, The District Court imposed a 24-month prison

term, consecutive to sentences received in three Georgia prosecutions, to be followed by three years supervised release. Dist. Ct. dkt. 49 (judgment).

2. On appeal, Parker argued that 18 U.S.C. §§ 922(g)(1) and 924(a)(2) violated the Second Amendment. 11th Cir. dkt. 12 (initial brief). He first acknowledged that his facial argument was then foreclosed by Eleventh Circuit precedent, but nonetheless pressed the argument for further review. *Id*. at 18 (citing to the page numbers generated by Pacer appearing in blue at the top of the page, not those at the bottom of the page).

He then explained how the statements in this Court's prior decisions about law-abiding citizens and longstanding felon disarmament laws were dicta, noting that the rights of felons were not implicated in those cases, and that this Court had not purported to conclusively determine the Second Amendment rights of felons. *Id*. at 19-21. He argued that *Bruen* had abrogated *Rozier*, in that (1) it had employed a test that the Eleventh Circuit had not used in *Rozier*, and that dictated a different result than *Rozier*, and, relatedly, that (2) *Bruen*'s test made clear there was no atextual inquiry as to whether a defendant *has* a Second Amendment right; rather, the Founding-era meaning of the constitutional text, or a relevantly similar historical tradition of firearm regulations were the only bases for finding § 922(g)(1) constitutional. *Id*. at 21-24.

He argued under *Bruen*'s first step that the conduct for which he was convicted qualified as "to keep and bear arms," and that he was among "the people" whose right to do so should not be infringed, drawing on Founding-era dictionaries, and this

Court's case law. *Id*. at 24-26. Turing to *Bruen*'s second step, he contended that a categorical ban on felons possessing firearms was inconsistent with any relevantly similar historical tradition. *Id*. at 17-37.

Methodologically, he argued that, because the potential danger posed by felons was not a new problem, the historical tradition should be "distinctly similar" according to *Bruen*, 597 U.S. at 26. 11th Cir. dkt 12 at 27-28. He noted that most of the historical precedents the government had offered in other cases did not exist near enough to the Founding era, that the few laws that did exist during this time were too few to qualify as a "tradition," and that none of them were distinctly similar enough to the categorical, permanent disarmament of modern felons. *Id*. at 28-33. He further noted that the Second Amendment and its English precursor were adopted to counter overbroad disarmament laws. *Id*. at 34-36. He finally contended that the unratified drafts of the Second Amendment sometimes offered in defense of § 922(g)(1) should bear little weight, given that these drafts were ultimately rejected. *Id*. at 37.

Under a separate point heading, he argued that § 922(g)(1) was unconstitutional as applied to those with a record like his. First, he noted that his guilty plea only stipulated to his status as a felon, and not some other status, so § 922(g)(1) was unconstitutional as applied to him even if he qualified for some other category that could be constitutionally disarmed. *Id*. at 37. Moreover, he argued the government would be unable to show an historical tradition of disarming those

convicted of theft, shoplifting, burglary, forgery, possessing cocaine, or obstructing law enforcement. *Id*. at 38.

3. As to Parker's facial challenge, the government rested entirely on a single-page argument that this challenge was foreclosed by Circuit precedent. 11th Cir. dkt. 17 at 14. As to his as applied challenge, it argued that the "maximum authorized penalty" was a permissible benchmark to use to delineate a category of persons who may be constitutionally disarmed, so there was no need to look beneath the felon label. *Id*. at 15-16. It contended, under Separation of Powers principles, that only Congress has the power to determine who can be disarmed. *Id*. at 17. It argued there was no reason to treat the firearm right differently than the right to vote or hold public office, each of which felons can forfeit. *Id*. at 17-18. It then faulted Parker for not offering "a workable test" for individualized as-applied challenges, without mentioning the *Bruen* test. *Id*. at 18-19. Finally, it argued that, in the absence of binding precedent resolving the point in his favor, Parker could not show that any Second Amendment violation would be plain error. *Id*. at 19-20.

4. In reply, Parker walked back his concession that *Dubois* foreclosed his facial argument, contending that the *Rahimi* decision, published after he filed his initial brief, had abrogated *Dubois* and *Rozier*. 11th Cir. dkt 19 at 10-15. He noted that *Rahimi* had unequivocally stated that its characterizations of the petitioners in prior decisions as "responsible" were dicta. *Id*. at 11. He argued that there was no logical or grammatical reason to treat "law-abiding" – a grammatically parallel adjective in those decisions – differently, and that *Rahimi* therefore undercut the

reasoning of *Rozier*, relied upon in *Dubois*, that the "law-abiding" qualifier was binding law compelling courts to hold that felons have no Second Amendment rights. 11th Cir. dkt. 19 at 11-15.

As to *Bruen's* textual step, he argued *Rahimi* necessarily foreclosed any argument that "law-abiding" is a limitation on who qualifies as "the people." *Id* at 15-16. As to its historical step, he noted how *Rahimi* had clarified the *Bruen* methodology in numerous ways. It had reaffirmed the temporal scope of the historical inquiry, in relying on legal regimes that existed "[b]y the 1700s and early 1800s[.]" *Id*. at 16 (quoting *Rahimi*, 602 U.S. at 694). It had not employed the "distinctly similar" test outlined in *Bruen*. *Id*. It had provided an example of how prevalent an historical practice must have been to qualify as a "tradition," relying on surety laws "well entrenched in the common law' and on the books in 10 Founding-era jurisdictions, and on "going armed" laws enacted by statute in 4 Founding-era jurisdictions and applied at common law in others. *Id*. at 17; *see Rahimi*, 602 U.S. at 695-98. He then contended that the commonalities between the surety and going armed legal regimes and the temporary disarmament of those subject to certain domestic violence related injunctions under 18 U.S.C. § 922(g)(8), did not extend to § 922(g)(1). 11th Cir. dkt. 19 at 18. While the former types of disarmament were each predicated upon an individualized finding of potential violence or past dangerous behavior with a gun, a modern felony conviction does not necessarily encompass such a finding. *Id*. at 18-19. Surety laws permitted exceptions for self-defense, while § 922(g)(1) does not. *Id*. at 19. And *Rahimi* had emphasized that surety bonds and § 922(g)(8)'s disarmament

were both "of limited duration," while § 922(g)(1) permanently disarms felons. 11th Cir. dkt. 19 at 19 (quoting *Rahimi*, 602 U.S. at 699).

Parker next argued that no other legal traditions were sufficiently similar to the sweeping disarmament worked by § 922(g)(1). No laws with a similar "why" to § 922(g)(1) existed, unless the motivation for prior disarmament laws is categorized at a level so broad and abstract as to swallow the Second Amendment entirely. *Id.* at 21-23. And no laws with a similar "how" to § 922(g)(1) existed, in that most historical precedents the government had relied on elsewhere provided for temporary disarmament and individualized exceptions. *Id.* at 23-24. Estate forfeiture was not an adequate tradition, as it never took hold in the United States, and even in England, it did not come with a prospective bar on possessing new property, including new firearms. *Id.* at 24-25. Finally, permanent disarmament as a collateral consequence of capital punishment or life imprisonment was an inadequate tradition, because these punishments applied to a much narrower set of offenses than the modern felon, and in practice, Founding-era capital punishment " 'no longer inevitably followed a felony conviction.' " *Id.* at 25-26 (quoting *Kanter*, 919 F.3d at 459).

Parker claimed that neither *Dubois*, 139 F.4th 887, nor *Rozier*, 598 F.3d 768, foreclosed his as applied challenge, as those defendants had raised only facial challenges, and those opinions had not addressed as applied challenges. 11th Cir. dkt. 19 at 28. But *Rahimi* had strongly implied that as applied challenges are available to felons, in repeatedly couching its analysis in a way that left open as applied

challenges on other facts. 11th Cir. dkt. 19 at 28-29. He argued that the government's reliance on the fact that some other constitutional provisions were interpreted with reference ot the maximum authorized penalty of an offense was irrelevant, as *Bruen*'s text-and-history test did not govern those provisions. *Id*. at 29-30. Nor did the Bruen test raise a Separation of Powers concern; while Congress may determine the consequences of criminal convictions, it is the Judiciary's prerogative to faithfully apply the Constitution to such laws. *Id*. at 30.

As to the government's claim that there was no workable test for as applied challenges, he noted that *Bruen* had established a "workable test," and that the distinction between facial and as-applied challenges " 'goes to the breadth of the remedy employed by the Court[,]' " not " 'the substantive rule of law necessary to establish a constitutional violation[.]' " *Id*. at 31 (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010)).

Next, he argued "assuming that some offenses were so serious in the 1700s and early 1800s that life imprisonment or death was a virtually automatic consequence of conviction, Parker has never been convicted of such an offense." *Id*. at 32. He noted that the first federal criminal statute punished with death treason, murder, piracy, manslaughter on the high seas, counterfeiting a public security of the United States, and rescuing a person convicted of a capital offense. *Id*. at 33; *see An Act for the Punishment of Certain Crimes Against the United States*, 1 Stat. 112, Cha. IX (1790). He further relied on an 1824 treatise to elucidate Founding-era sentencing for various offenses under common law. *See* 6 Nathan Dane, A GENERAL ABRIDGEMENT AND

DIGEST OF AMERICAN LAW, WITH OCCASIONAL NOTES AND COMMENTS (Boston, Cummings, Hilliard & Co. 1824). At common law, petit larceny was punished by whipping, not death. *Id*. at 34. And Georgia smash-and-grab burglary, which punishes causing $500 or more in damage in the course of stealing from a retail establishment, had more in common with retail theft than common law burglary. Forgery at common law was punished by "hard labor" or imprisonment for up to ten years. *Id*. at 34-35. The closest Founding-era analogue to obstruction was punishable by a year or less of imprisonment. *Id*. at 36. Criminalizing drug possession was an early 20th century innovation, and there was a Founding-era tradition of children drinking alcohol, not being punished for it. *Id*. at 36-37. Hence, Parker concluded the government could not show a sufficiently similar tradition of permanently disarming persons with criminal convictions like his. *Id*. at 38.

5. Parker filed a notice of supplemental authority when this Court vacated *Dubois*, *see United States v. Dubois*, No. 24-5744, 2025 WL 76413 (S.Ct. Jan. 13, 2025), and argued that this relieved him of his concession that *Dubois* controlled. 11th Cir. dkt. 21. The Eleventh Circuit agreed to hold his appeal in abeyance pending its reconsideration of *Dubois*, 11th Cir. dkt. 23, and Parker filed another supplemental authority advising the panel when *Dubois* was reaffirmed. 11th Cir. dkt. 24.

C. The Decision Below

The Eleventh Circuit affirmed in *United States v. Parker,* No. 23-14227, 2025 WL 1805476 (11th Cir. July 1, 2025). It reviewed the issue *de novo*, but found that

Parker's argument was foreclosed by prior precedent. *Id.* at *1. It outlined the relevant case law, starting with *Rozier*'s holding that felons were disqualified from possessing firearms, which it based on *Heller*'s mention of the presumptive validity of longstanding prohibitions like felon disarmament laws. *Id.* at *2. It briefly summarized the *Bruen* test, and noted that *Bruen* had "again confirmed that the Second Amendment protects the right of 'law-abiding citizens' to possess handguns for self-defense." *Id.* It explained how *Rahimi* had rejected an overly strict application of the *Bruen* test, before concluding that § 922(g)(8) was constitutional. *Id.* And it pointed out that *Dubois* had held that neither *Bruen* nor *Rahimi* had abrogated *Rozier*. *Id.* As there was no other decision that overruled or abrogated *Rozier*, it was bound to reject Parker's claims. Its reasoning made no distinction between facial and as-applied challenges.

REASONS FOR GRANTING THE WRIT

I. The Circuits are split over whether convicted felons have Second Amendment rights.

One of the most pressing questions still open after *Rahimi* is who exactly has an individual right to a firearm under the Second Amendment? This Court provided strong guidance in *Heller*, 554 U.S. at 579-81. It discussed the meaning of "the people" in determining whether this phrase signified an individual or collective right, ultimately concluding with "a strong presumption that the Second Amendment right is exercised individually and belongs to *all Americans*." *Id.* (italics added.) Yet *Heller* also referred on several occasions to the Second Amendment right as belonging to

"law-abiding citizens." *Id*. at 625, 635; *see also Bruen*, 597 U.S. at 9, 15, 26, 29, 30, 31, 38, 60, 70, 71. And it asserted that "longstanding prohibitions on the possession of firearms by felons and the mentally ill," among other laws, were "presumptively lawful regulatory measures[.]" *Id*. at 626 & n.6; *see also McDonald*, 561 U.S. at 786, 90.

The Circuits are confused about how this language fits into *Bruen*'s two-step analysis. Some believe the "longstanding" qualifier suggests it is part of the historical inquiry. One court believes it informs how to interpret the plain meaning of "the people." Several, including the Eleventh Circuit, see this language as triggering a preliminary inquiry, apparently divorced from text and history – what one commentator dubbed "*Bruen* step zero." Jeff Campbell, *There Is No Bruen Step Zero: The Law-Abiding Citizen And the Second Amendment*, 26 U.D.C. L. Rev. 71 (2023). From this melee, a well-developed Circuit split has emerged over whether "felons," that is, people convicted of an offense punishable by over a year of imprisonment, have forfeited their individual right to a firearm.

A. The Second, Third, Fifth, Sixth, and Ninth Circuits hold that the plain meaning of the constitutional phrase "the people" includes convicted felons.

In *Range v. U.S. Attorney General*, 124 F.4th 218, 226 (3d Cir. 2024), the Third Circuit considered whether a convicted felon challenging the constitutionality of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) was "one of 'the people' who have Second Amendment rights." It concluded that *Heller*'s references to the Second Amendment rights of "law-abiding citizens," 554 U.S. at 625, was dicta, which did not negate

Heller's conclusion that the "Second Amendment right . . . presumptively 'belongs to all Americans.' " *Range*, 124 F.4th at 226 (quoting *Heller*, 554 U.S. at 580, 581). After all, "the criminal histories of the plaintiffs in *Heller*, *McDonald*, and *Bruen* were not at issue in those cases." *Id*.

It gave four additional reasons for construing "the people" to include felons. First, "[f]elons are not categorically barred from" exercising other rights that the Constitution attaches to "the people" – such as the First and Fourth Amendment rights. *Id*. Second, like the adjective "responsible" that this Court found too vague in *Rahimi*, 144 S.Ct. at 1903, the phrase "law-abiding" was "too vague a concept to dictate the Second Amendment's applicability[.]" *Range*, 124 F.4th at 227. Third, to hold that felons were not among "the people" would "devolve[] authority to legislators to decide whom to exclude" from the scope of the Second Amendment. *Id*. at 228. And finally, construing "the people" to include felons would not necessarily prevent some felon disarmament, since legislatures could still " 'strip certain groups' " of their Second Amendment rights under step two of the *Bruen* test, if supported by an adequate historical precedent. *Id*. at 226-27 (quoting *Kanter*, 919 F.3d at 452).

The Fifth Circuit likewise held that the phrase "the people" encompasses felons. *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024). It recounted two approaches to defining the scope of "the people." "[O]ne approach 'uses history and tradition to identify the scope of the right, and the other uses that same body of evidence to identify the scope of the legislature's power to take it away.' " *Id*. (quoting *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting)). It concluded that *Rahimi* implicitly

endorsed the latter approach, in that this Court had "assum[ed] that Rahimi was protected by the Second Amendment even though he committed 'family violence[.]' " *Id*. (quoting *Rahimi*, 144 S.Ct. at 1898).

The Sixth Circuit applied similar reasoning in *United States v. Williams*, 113 F.4th 637, 649 (6th Cir. 2024). It quoted *Heller*'s conclusion that " 'the people' 'unambiguously refers to all members of the political community, not an unspecified subset.' " *Id*. (quoting *Heller*, 554 U.S. at 580). And, like the Third Circuit, it noted that "the people" in other sections of the Bill of Rights did not exclude felons. *Id*. As to this Court's prior references to "law-abiding citizens," neither *Heller* nor *Bruen* "used [this phrase] to define the scope of the right to keep and bear arms." *Id*. at 646 (quoting *Heller*, 554 U.S. at 580-81). It rejected the theory that the Second Amendment right only extended to the virtuous, since "the founding generation applied this virtuous-citizen approach to civic rights only[,]" meaning rights that "were exercised collectively, for the benefit of the community." *Id*. at 647. Of course, *Heller* held that "the right to bear arms *doesn't* stem from the collective need for a militia[,]" but was "an individual right unconnected to any other civic activity." *Id*. (italics added).

The Second Circuit has also held "felons are part of 'the people.' " *Zherka v. Bondi*, 140 F.4th 68, 75 (2d Cir. 2025) (capitalization removed.) Like other Circuits, it rejected the government's reliance on this Court's dicta concerning "law-abiding" persons and the "presumptive[]" validity of felon disarmament laws. It reasoned " '[t]hough the Supreme Court has suggested that law-abiding, responsible, and/or

ordinary individuals are protected by the Second Amendment, it is far from clear whether the negative of those adjectives describe[s] individuals who stand *outside* the Second Amendment or instead those who may be disarmed *consistent with* that Amendment.' " *Id.* at 76 (quoting *Antonyuk v. James*, 120 F.4th 941, 981-82 (2d Cir. 2024) (italics in *Antonyuk*). It also pointed to *Heller*'s holding that "the people" includes " '*all* Americans,' " and " 'all members of the political community,' " including "a felon who has completed his sentence[.]" *Id.* (quoting *Heller*, 554 U.S. at 580-81 (italics added in *Zherka*). Finally, it reasoned that excluding felons from "the people" would be inconsistent with the interpretation of "the people" in the First and Fourth Amendments to include them. *Id.* at 77.

The Ninth Circuit holds that a person's "status as a felon does not remove him from the ambit of the Second Amendment[.]" *United States v. Duarte*, 137 F.4th 743, 754 (9th Cir. 2025) (*en banc*). It rejected the government's reliance on a civil war era treatise by Thomas Cooley, which discussed historical exclusions from "the people" in terms of "collective rights," not individual ones such as the Second Amendment. *Id.* at 753. It pointed out that felons are not excluded from the individual rights bestowed by the First and Fourth Amendments. *Id.* at 753-54. Though it acknowledged some "conflicting interpretations of history," it "adhere[d] to the Supreme Court's definition of 'the people,' which does not exclude felons." *Id.* at 754 (quoting *Heller*, 554 U.S. at 580).

B. The Fourth Circuit holds that "the people" excludes non-law-abiding citizens.

The Fourth Circuit is the only Circuit to squarely hold that "the people" excludes convicted felons. In applying *Bruen* step one, it used history to construe the text of the Second Amendment, since the Amendment codified a pre-existing right. *United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024). It then noted *Heller*'s references to "law-abiding citizens" and its assurances as to the "presumptive[] lawful[ness]" of "longstanding" prohibitions on felons possessing firearm. *Id.* Seizing on the "longstanding" qualifier, it concluded "these limitations arise from the historical tradition." *Id.* It quoted " '[f]or most of our history . . . the Federal Government did not significantly regulate the possession of firearms by *law-abiding citizens*.' " *Id.* (quoting *Heller*, 554 U.S. at 625) (ellipsis and italics added in *Hunt*).

C. The Seventh and Eleventh Circuits hold that the Second Amendment permits disarming non-law-abiding citizens, without reference to the constitutional text or regulatory history.

In *United States v. Gay*, 98 F.4th 843 (7th Cir. 2024), the Seventh Circuit concluded Gay was "not a 'law-abiding, responsible' person who ha[d] a constitutional right to possess firearms." *Id.* It did not explain how or why his loss of his firearm right followed from his non-law-abiding status, except to reference this Court's use of these qualifiers to describe the Petitioners in *Heller*. *Id.* at 846.

The Eleventh Circuit also relies on this Court's references to the "law-abiding" in holding felons can be constitutionally disarmed. *Rozier*, 598 F.3d 768. In affirming the constitutionality of § 922(g)(1), it asked the preliminary question "whether one is

qualified to possess a firearm." *Id*. at 770 (italics in original.) It believed that *Heller*'s statement regarding "longstanding prohibitions" "suggest[ed] that statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." *Id*. at 771. And it specifically rejected the contention that *Heller*'s references to "law-abiding citizens" was dicta. *Id*. at 771 n.6.

It did not consider the historical roots of felon disarmament statutes. Nor did it claim that the text of the Second Amendment excludes felons. Rather, it extracted from *Heller* an additional – binding and dispositive – preliminary question.

Notwithstanding the intervening decisions of this Court, it continues to adhere to *Rozier*. Hence, it reaffirmed *Rozier* in *Dubois*, 139 F.4th 887, and affirmed the 18 U.S.C. § 922(g)(1) conviction of Parker. *But see United States v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022) (stating in dicta that "dangerous felons" are "indisputably a part of 'the people' " under the Second Amendment).

D. Whether "the people" includes felons remains an open question in the First, Eighth, Tenth, and District of Columbia Circuits.

The First Circuit has not opined, even in dicta, on whether felons are among "the people." It rejected a Second Amendment challenge to 18 U.S.C. § 922(g)(1) under the second prong of the plain error standard. *United States v. Langston*, 110 F.4th 408 (1st Cir. 2024). It reasoned that Langston could not show an error that was plain, because there was no binding precedent holding that § 922(g)(1) violated the Second Amendment, and because *Rahimi* did not otherwise "compel" such a holding. *Id*. at 419.

The Eighth Circuit has stated:

> [n]either felons nor the mentally ill are categorically excluded from our national community. That does not mean that the government cannot prevent them from possessing guns. Instead, it means that the question is whether the government has the power to disable the exercise of a right that they otherwise possess, rather than whether they possess the right at all.

Worth v. Jacobson, 108 F.4th 677, 692 (8th Cir. 2024). This statement, however, was unnecessary to its holding, which addressed whether a statute barring possessing firearms by persons under 21 years old was unconstitutional as applied to 18- to 20-year olds. *Cf. United States v. Jackson*, 110 F.4th 1120, 1126 (8th Cir. 2024) (holding § 922(g)(1) did not violate the Second Amendment based on adequate historical foundation, without addressing whether felons had Second Amendment rights).

Similarly, the Tenth Circuit suggested that felons are among "the people" in dicta, in another case involving a challenge to a ban on firearm possession by those under 21, as applied to 18- to 20-year-olds. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 115-16 (10th Cir. 2024). Confronting the state's contention that to qualify as one of "the people" a person must possess "full legal rights, including the right to vote," it explained "one example of how that cannot be" was the case of "American citizens with felony convictions." *Id*. at 116. "These individuals are both 'person[s]' and 'citizens,' and thus, must also be included in 'the people.' " *Id*. Yet they have been "consistently disenfranchised." *Id*.; *cf. Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025) (*Rahimi* did not abrogate pre-*Bruen* precedent finding § 922(g)(1)

constitutional based on *Heller*'s conclusions that felon disarmament laws are presumptively lawful).

The District of Columbia Circuit has not specifically addressed the textual question of whether "the people" encompasses felons. But it held, before *Bruen* clarified that the textual and historical inquiries were distinct analytical steps, that "tradition and history" showed that felons were not "within the scope of those entitled to possess arms." *Medina v. Whitaker*, 913 F.3d 152, 157-59 (D.C. Cir. 2019). It reasoned that Founding-era felonies were all punishable by death or estate forfeiture, and found it "difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms." *Id.* at 158.

E. The plurality of the Circuits are correct that felons retain their individual firearm rights.

For a number of reasons, including those articulated by the Second, Third, Fifth, Sixth, and Ninth Circuits, this Court should conclude that the Second Amendment right belongs even to convicted felons, and that any restriction on their rights depends on the Founding-era tradition of firearms regulations.

First, the normal meaning of "the people" at the time of the Founding encompassed the non-law-abiding. *Heller*, 554 U.S. at 576-77, made clear that courts should construe the Second Amendment's text based on its "normal and ordinary" meaning "to ordinary citizens of the founding generation." While this might "include an idiomatic meaning," it "excludes secret or technical meanings[.]" *Id.* at 577.

Nothing about "the people" even hints at an idiomatic meaning. Rather, founding-era dictionaries defined "people" to encompass the entire political community. *See* Thomas Dyche & William Pardon, A New General English Dictionary (14th ed. 1771) ("signifies every person, or the whole collection of inhabitants in a nation or kingdom."); Noah Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) ("the body of persons who compose a community, town, city or nation.")

Second, *Heller* broadly construed "the people" consistently with this plain meaning. After reviewing every constitutional reference to "the people," it concluded the phrase "unambiguously refers to all members of the political community, not an unspecified subset." 554 U.S. at 580. It therefore held there was "a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." *Id*. at 581.

Third, "the political community" is not coextensive with those persons having the right to vote or serve on a jury. Such collective, civic rights are "exercised for the benefit of the community," unlike individual rights, such as free speech or free exercise. *Kanter*, 919 F.3d at 462-64 (Barrett, J. dissenting). And *Heller* unequivocally rejected the contention that the Second Amendment was merely a civic right, holding instead that it "conferred an individual right to keep and bear arms." 554 U.S. at 594.

Fourth, as the Third Circuit recognized, limiting "the people" to non-felons would "devolve[] authority to legislators to decide whom to exclude" from the scope of the Second Amendment. *Range*, 124 F.4th at 228. *Heller* concluded that such a delegation was untenable, reasoning the Second Amendment could not protect *only*

"citizens' right to use a gun in an organization from which Congress has plenary authority to exclude them." 554 U.S. at 600. Reading the Second Amendment in this way would be particularly awkward, given that categorical disarmament laws were precisely what triggered the Second Amendment and its English precursor. *Id*. at 592-94.

Fifth, permitting legislatures to narrow the scope of the Second Amendment by the expedient of their criminal sentencing laws would effectively foreclose as-applied challenges to any restrictions based on felony status. After all, if the Second Amendment excludes everyone who has incurred the label "felon," then no such persons would have standing to challenge their disarmament, even as applied. Yet *Rahimi* strongly implied that as-applied challenges under the Second Amendment are available, as outlined under the next point heading.

Sixth, *Rahimi* specifically rejected "responsible" as a binding part of its prior precedents *and* as a workable limitation on the scope of the Second Amendment right. *Id*. at 701-02. It reasoned "[r]esponsible is a vague term[,]" and its prior references to "responsible" citizens in *Heller* and *Bruen* was dicta that said "nothing about the status of citizens who were not 'responsible.' " *Id*. at 702. The same goes for "law-abiding." This Court's precedent says nothing about the Second Amendment rights of the non-law-abiding, and "law-abiding" is a vague term. "[O]ne doesn't need an adjudication of guilt (or liability, or anything else) to have broken the law." Campbell, *There is No Bruen Step Zero*, 26 U. D.C. L. Rev. at 80. Does law-abiding only implicate those who break a criminal law? "Laws with civil penalties are laws just the same."

Id. What about laws with no penalties, like the health insurance mandate of the Affordable Care Act? *Cf. California v. Texas*, 593 U.S. 659 (2021) ($0 penalty for not obtaining health insurance).

Finally, a broad construction of "the people" does not prevent all limitations on felons' firearm rights. Permissible restrictions turn on the "history and tradition" concerning "the scope of the legislature's power" to limit the Second Amendment rights of certain persons. *Kanter*, 919 F.3d at 452. This is *Bruen*'s second step, by which a government must show that its law is "consistent with this Nation's historical tradition of firearm regulation." 597 U.S. at 43. The government could still try to show that § 922(g)(1) is constitutional by demonstrating a Founding-era tradition of firearm regulations that is "distinctly similar" to § 922(g)(1)'s permanent disarmament of felons, in terms of "how and why the regulations burden" the firearm right. *Id*. at 26-29.

II. The Circuits are split over whether § 922(g)(1) is consistent with the Second Amendment in all its applications.

Another question that remains open after *Rahimi* is whether the felon disarmament law of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) might be unconstitutional as applied to a subset of felons. On this point, the Third, Fifth, and Sixth Circuits hold such challenges are available in some circumstances. The Fourth, Eighth, Ninth, and Eleventh Circuits hold the contrary.

A. The Third, Fifth, and Sixth Circuits hold that as-applied Second Amendment challenges to 18 U.S.C. § 922(g)(1) and 924(a)(2) are available.

In *Range*, 124 F.4th 218, the Third Circuit held that § 922(g)(1) was unconstitutional as applied to a person whose only felony conviction was for fraudulently obtaining food stamps. It noted that *Rahimi* had approved "disarming (at least temporarily) physically dangerous people[,]" but it rejected the government's attempt "to stretch dangerousness to cover all felons and even misdemeanors that federal law equates with felonies." *Id*. at 230. It rejected the argument that the capital punishment sometimes associated with nonviolent crimes during the Founding era validated § 922(g)(1), concluding this practice did "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 231. Nor did Founding- era estate forfeiture laws constitutionalize § 922(g)(1), as they did not "affect[] the perpetrator's right to keep and bear arms generally." *Id*. And Range's offense did not involve a firearm that Founding-era laws might have required he forfeit. *Id*.

In *Diaz*, 116 F.4th 458, the Fifth Circuit entertained an as-applied challenge to § 922(g)(1). It began its historical analysis: "[Diaz's] only relevant criminal convictions for our purposes are car theft, evading arrest, and possessing a firearm as a felon. To survive Diaz's as-applied challenge, the government must demonstrate that the Nation has a longstanding tradition of disarming someone with a criminal history analogous to this." *Id*. at 467. It then reviewed Founding era laws severely

punishing and ordering estate forfeiture for theft. *Id*. at 467-68. It found § 922(g)(1) constitutional as applied to Diaz based on these laws, but "emphasiz[ed] that [its] holding [wa]s not premised on the fact that Diaz is a felon." *Id*. at 469.

In *Williams*, 113 F.4th at 657, the Sixth Circuit recognized a Founding-era history of disarming the dangerous, and then employed a "fact-specific" dangerousness determination based on Williams's criminal history to determine whether his disarmament, pursuant to § 922(g)(1), was consistent with that history. *Id*. at 660, 662-63. His challenge failed because he had been previously convicted of aggravated robbery. *Id*. at 662. It summarized:

> [a] person convicted of a crime is 'dangerous,' and can thus be disarmed, if he has committed (1) a crime 'against the body of another human being,' including (but not limited to) murder, rape, assault, and robbery, or (2) a crime that inherently poses a significant threat of danger, including (but not limited to) drug trafficking and burglary. A person in either of those categories will have a very difficult time, to say the least, of showing he is not dangerous.

Id. at 663; *see also United States v. Goins*, 118 F.4th 794, 804-05 (6th Cir. 2024) (§ 922(g)(1) constitutional as applied to person whose criminal history revealed "a dangerous pattern of misuse of alcohol and motor vehicles, often together[.]").

B. The Second, Fourth, Eighth, and Ninth Circuits have explicitly held that § 922(g)(1) is not subject as-applied challenges by convicted felons, while the Eleventh Circuit rejects such challenges based on its prior precedent.

In *Zherka*, 140 F.4th at 91, the Second Circuit initially found that § 922(g)(1) did not violate the Second Amendment on its face, based on the historical tradition of firearms regulations. It reasoned "before, during, and shortly after the Founding,

legislative bodies regulated firearms by prohibiting their possession by categories of persons perceived to be dangerous." *Id.* at 88. It then considered whether § 922(g)(1) was unconstitutional as applied to non-violent felons. It rejected "the proposition that status-based disarmament laws were permissible only if they also provided a mechanism for individuals to prove that they were not too dangerous to own a firearm." *Id.* at 91. It further pointed to 18 U.S.C. § 921(a)(20), which provides a process for convicted felons to regain their Second Amendment rights when a conviction is expunged or pardoned. More fundamentally, it reasoned that the "how and why" of the historical disarmament laws – notwithstanding that some of these laws provided for exceptions beyond those available to § 922(g)(1)'s bar – were sufficiently similar to § 922(g)(1) for it to withstand Second Amendment scrutiny. *Id.* at 92.

In *Hamilton v. Pallozzi*, 848 F.3d 614, 626-28, 626 n.11 (4th Cir. 2017), the Fourth Circuit held that § 922(g)(1) was constitutional as applied even to non-dangerous felons, while leaving open the possibility of as applied challenges on the part of those convicted of misdemeanors that are punishable by over a year, and persons whose "conviction is pardoned or [when] the law defining the[ir] crime of conviction is found unconstitutional or otherwise unlawful[.]" After this Court's intervening decisions in *Bruen* and *Rahimi*, the Fourth Circuit reaffirmed its rejection of most as-applied challenges in *Hunt*, 123 F.4th at 703-05. It reasoned "the historical record contains ample support for the categorical disarmament of people 'who have demonstrated disrespect for the legal norms of society.' " *Id.* at 706 (quoting

Jackson, 110 F.4th at 1126). It reached the same conclusion even if the relevant historical tradition was disarming the dangerous, since these historical restrictions nonetheless "swept broadly, disarming all people belonging to groups that were, in the judgment of those early legislatures, potentially violent or dangerous." *Id.* at 707.

The Eighth Circuit also maintains that § 922(g)(1) is constitutional in all of its applications. In *Jackson*, 110 F.4th at 1122, 1125, it concluded, based on the Supreme Court's statements regarding the presumptive validity of longstanding felon disarmament laws "and the history that supports them" that "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." It cited the disarmament of disfavored categories of people in England and colonial America, as well as the failed amendments to the Second Amendment offered by the Anti-Federalists of Pennsylvania that would have withheld the right " 'for crimes committed, or real danger of public injury from individuals.' " *Id.* at 1127 (citation omitted.) Like the Fourth Circuit, its holding was the same whether the historical tradition is characterized as the disarmament of lawbreakers, or more specifically as the disarmament of dangerous persons. Either way, the prior categorical disarmament policies validated § 922(g)(1). *Id.* at 1127-28.

Finally, the Ninth Circuit holds "the historical tradition is sufficient to uphold application of § 922(g)(1) to all felons[,]" thus foreclosing as applied challenges to § 922(g)(1). *Duarte*, 137 F.4th at 761. It cited two primary reasons. First, the fact that many crimes were punishable by death or estate forfeiture during the Founding era, implied that "the lesser restriction of permanent disarmament is also permissible."

Id. at 757. And second, there was an "historical tradition of disarming 'categories of persons thought by a legislature to present a special danger of misuse.' " *Id*. at 759 (quoting *Rahimi*, 602 U.S. at 698). It highlighted the laws in thirteen states categorically disarming so-called "tramps." *Id*. at 760-61. While it acknowledged that these sorts of categorical disarmaments would likely be unconstitutional on other grounds, they nonetheless showed an historical tradition consistent with felon disarmament. *Id*.

C. The First and Seventh Circuits have left the availability of as-applied Second Amendment challenges unresolved, while the Tenth, Eleventh, and D.C. Circuits continue to apply pre-*Bruen* precedent that forecloses such challenges.

The First Circuit rejected an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) under plain error review in *Langston*, 110 F.4th 408. It thus affirmed a § 922(g)(1) based on the absence of binding precedent on point, with little discussion of the merits, other than to note this court's statements about the presumptive validity of "longstanding prohibitions" such as those on felons possessing firearms.

In *Gay*, 98 F.4th 843, the Seventh Circuit assumed without deciding "that there is some room for as-applied challenges," but held § 922(g)(1) constitutional as applied to a person convicted of 22 felonies including aggravated battery on an officer and possessing a weapon in prison. It has not elaborated further on the question in a published opinion.

The Eleventh Circuit, as previously discussed, continues to hold that felons are disqualified from the Second Amendment's protections, by virtue of their being felons. *Rozier*, 598 F.3d at 770-71. By implication, this forecloses any as applied challenge by a convicted felon, since § 922(g)(1) cannot violate a non-existent right. However, having never applied the *Bruen* test *de novo* to § 922(g)(1), it has not squarely held that as applied challenges are unavailable.

The Tenth Circuit has followed a similar course, adhering to its pre-*Bruen* decision finding § 922(g)(1) constitutional, *see United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), even after this Court's remand for consideration of *Rahimi*. *Vincent*, 127 F.4th at 1265.

The District of Columbia Circuit has not modified its pre-*Bruen* precedent either. In *Medina*, 913 F.3d at 158-59, it rejected the argument that the historical tradition only justified disarming dangerous persons, noting that Massachusetts and Pennsylvania disarmed those who would not swear loyalty to the United States during the revolution. It also held that felons were not "within the scope of those entitled to possess arms[.]" *Id*. at 158. As in the Tenth and Eleventh Circuits, this implies that felons do not have standing to mount as-applied Second Amendment challenges, though this Circuit has never explicitly held so.

D. This Court should hold that § 922(g)(1) is subject to as-applied challenges, depending on the historical traditions analogous to a person's specific criminal history.

In looking beneath the felony label, the Third, Fifth, and Sixth Circuits most faithfully apply the historical analysis outlined in *Heller*, *McDonald*, *Bruen*, and

Rahimi. Accordingly, this Court should hold that disarming all modern "felons" is too broad a measure to find support in the Founding-era historical traditions, for three primary reasons.

First, it is illogical to conclude the disarmament policies that prompted the firearm right in England and the United States suggests that the Second Amendment tolerated such policies. Rather, the Second Amendment is a bulwark against such policies, as *Heller* recognized in concluding that the Second Amendment was "understood to be an individual right protecting against both public and private violence." 554 U.S. at 594.

Second, the various disarmament laws cited by the Second, Fourth, Eighth, and Ninth Circuits apply to many different groups, but not to felons, and the only throughline connecting these heterodox disarmament laws is that they were motivated by the belief that these groups could not be trusted with guns. Hence, these laws are only similar to § 922(g)(1) at a very general level. If this is enough to provide constitutional cover to § 922(g)(1), it is difficult to conceive of any limit to whom a legislature could not disarm. Particularly in times of social upheaval, one can imagine all kinds of nefarious laws directed at various disfavored groups.

The contrary position is that if the majority of a legislature decides a disfavored group should be disarmed, the Second Amendment stands down, since, historically, other authorities have found that other groups should be disarmed. If the Second Amendment was intended as a meaningful check on the power of the government to restrict firearms, this cannot be. While nearly every firearm restriction has some

conceivable connection to public safety, failing to require a closer connection between a challenged law and the historical tradition would make the Second Amendment a paper tiger, less protective of the right to a firearm than the means-end analysis that *Bruen* struck down. The Second Amendment should not permit disarming a group of people based only on the fact that someone, or some legislature, at some point, decided to disarm an entirely different category of people, based on that group's perceived characteristics.

Finally, there are more specific regulatory traditions that may justify disarming dangerous persons for some amount of time, such as those identified in *Rahimi*, 602 U.S. at 694-98, *Diaz*, 168 F.4th at 468-69, and *Williams*, 113 F.4th at 652-57. This Court need not identify every such tradition to resolve the split over whether as applied challenges are available. It is enough to conclude that text of the Second Amendment covers Parker's possessing firearms, and that the relevant history of firearm regulation does not validate his disarmament based only on the fact that he is a felon. Because the Eleventh Circuit has not considered whether a specific historical tradition is sufficiently similar to disarming someone with a criminal record like Parker's, it should be permitted to do so in the first instance.

III. This case is an excellent vehicle.

This case presents an excellent opportunity to resolve these important, recurring questions. The Eleventh Circuit reviewed Parker's claims *de novo*, notwithstanding the government's argument that plain error applied, since it involved the constitutionality of a federal statute. *See also United States v. Dawson*,

64 F.4th 1227, 1239 (11th Cir. 2023) (parties cannot forfeit " 'the application of the correct law or [to] stipulate to an incorrect legal test.' ")

Although its reasoning was premised on the prior panel precedent rule, this precedent implicates both of the Circuit splits that Parker outlines. The Eleventh Circuit's rule that felons are disqualified from possessing firearms by implication defines them as outside of "the people" who have Second Amendment rights. Hence, rather than complicating the question of whether felons have Second Amendment rights under *Bruen*'s first step, the Eleventh Circuit's rule tees up the issue perfectly.

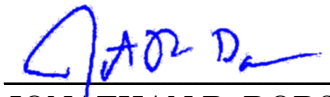
Moreover, the Eleventh Circuit's rule necessarily forecloses as applied challenges, since those without Second Amendment rights have no standing to make such challenges. At the same time, Mr. Parker's criminal record presents an ideal vehicle to look beneath the felon label and address various categories of offenses, as well as how various historical traditions such as Founding-era capital punishment would apply to these categories under *Bruen*'s second step. He briefed each category below, referencing the first federal criminal statute, and an early treatise outlining Founding-era punishments for similar offenses, and showing that no offense analogous to his was punishable by death or life imprisonment.

For these reasons, this petition presents a timely and exceptional vehicle to resolve two important questions that impact the rights of millions of felons and that have bedeviled courts facing repeated waves of Second Amendment challenges.

CONCLUSION

Based upon the foregoing, the petition should be granted. Parker asks this Court to grant certiorari and review the decision of the United States Court of Appeals for the Eleventh Circuit, or, in the alternative, to grant this petition, and summarily reverse its decision for further consideration in light of *Rahimi*.

Respectfully submitted this 28th day of October, 2025,



JONATHAN R. DODSON
Assistant Federal Defender
Fl. Bar No. 50177
*Counsel of Record
Federal Defenders of the
Middle District of Georgia, Inc.
440 Martin Luther King, Jr. Boulevard, Suite 400
Macon, Georgia 31201
Tel: (478) 743-4747
Fax: (478) 207-3419
E-mail: jonathan_dodson@fd.org