NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

TORRENCE DENARD WHITAKER,

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

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QUESTIONS PRESENTED

(1) Whether after *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), a criminal defendant may raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1).

(2) If so, whether under the *Bruen/Rahimi* methodology, the Second Amendment is unconstitutional as applied to a defendant like Petitioner with only non-violent priors.

INTERESTED PARTIES

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

Petitioner Whitaker was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

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

United States v. Whitaker, 22-CR-0196-KAM (D.D. Fla.), *aff'd*, *United States v. Whitaker*, 2024 WL 3812277 (11th Cir. Aug. 14, 2024), *cert. granted, judgment vacated, remanded*, *Whitaker v. United States*, 145 S.Ct. 1165 (Feb. 24, 2025), *United States v. Whitaker*, 2025 WL 1892566 (11th Cir. Jul. 9, 2025)

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Torrence Denard Whitaker 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 24-10693 in that court on July 9, 2025, *United States v. Whitaker*, 2025 WL 1892566 (11th Cir. July 9, 2025), on remand from this Court for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024).

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in Appendix A-1. A copy of the decision of the United States District Court for the Southern District of Florida, denying Petitioner's Motion to Dismiss, is contained in Appendix A-8.

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 had jurisdiction over this cause pursuant to 28 U.S.C. § 1291. The decision of the court of appeals was entered on July 9, 2025, *United States v. Whitaker*, 2025 WL 1892566 (11th Cir. July 9, 2025). Justice Thomas extended the due date for filing this position by 30 days on September 16, 2025. This petition is timely filed pursuant to SUP. CT. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment, U.S. Const. amend. II, provides:

> A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Title 18, United States Code Section 922(g)(1) provides:

> It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to possess in or affecting commerce, any firearm or ammunition . . .

STATEMENT OF THE CASE

I. Legal Background

In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), this Court recognized that based on the text of the Second Amendment and history, the amendment conferred an individual right to possess handguns in the home for self-defense. *Id*. at 581-82, 592-95. Soon thereafter, in *United States* v. *Rozier*, 598 F.3d 768 (11th Cir. 2010), the Eleventh Circuit was asked to pass on the constitutionality of 18 U.S.C. § 922(g)(1), the federal felon-in-possession ban, as applied to a defendant with non-violent drug priors who possessed the firearm in his home for self-defense. And the Eleventh Circuit held that "statutes disqualifying felons from possessing a firearm *under any and all circumstances* do not offend the Second Amendment." *Id.* at 771 (emphasis added). Simply "by virtue of [any] felony conviction," the court held, Rozier could be constitutionally stripped of his Second Amendment right to possess a firearm even for self-defense in his home, and the circumstances of such possession were "irrelevant." *Id*.

Notably, the Eleventh Circuit reached that conclusion without considering the Second Amendment's "plain text," including *Heller*'s specific determination that reference to "the people" in the Second Amendment—consistent with the use of the same term in other amendments—"unambiguously refers" to "all Americans." 554 U.S. at 579-81. Instead, *Rozier* relied entirely upon dicta in *Heller* about "presumptively lawful" "longstanding prohibitions" against felons possessing firearms, *id.* at 626 & n. 26, even though there was no question about § 922(g)(1) in *Heller*, and the Court acknowledged it had not engaged in an "exhaustive historical analysis" on the point. *Compare Heller*, *id.* at 626 ("we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment") *with Rozier*, 598 F.3d at 768 (ignoring the latter

caveat; finding dispositive, *Heller*'s comment, 554 U.S. at 626, that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons").

Over a decade later, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court clarified *Heller*'s text-and-history approach which had been uniformly misunderstood by the lower courts, and set forth a two-step "test" for deciding the constitutionality of all firearm regulations going forward. At "Step One," *Bruen* held, courts may consider *only* whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 17. If it does, *Bruen* held, "the Constitution presumptively protects that conduct." *Id.* And regulating presumptively protected conduct is unconstitutional unless the government, at "Step Two" of the analysis, can "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation"—that is, the tradition in existence "when the Bill of Rights was adopted in 1791." *Id.* at 37.

After *Bruen* but prior to this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), the Eleventh Circuit decided *United States v. Dubois*, 94 F.4th 1284 (11th Cir. Mar. 5, 2024) ("*Dubois I*"). In *Dubois I*, the Eleventh Circuit continued to follow its pre-*Bruen* approach in *Rozier*. It declined to conduct *Bruen*'s two-step analysis for Second Amendment challenges—viewing that as "foreclose[d]" by *Rozier*, 94 F.4th at 1291, and rejecting the suggestion *Bruen* had abrogated *Rozier*. *Id.* Rather, the Eleventh Circuit cited as determinative the dicta from *Heller* referenced above. *See Dubois I, id.* at 1291-93 (stating the Court "made it clear" in *Heller*, *id.* at 626-27 & n. 26, that its holding "did not cast doubt" on felon-in-possession prohibitions," which were "presumptively lawful;" and in *Bruen*, 597 U.S. at 17, that its holding was "'[i]n keeping with *Heller*'").

In the view of the Eleventh Circuit, *Bruen* did not abrogate the *Rozier* approach because "*Bruen* repeatedly stated that its decision was faithful to *Heller*." *Dubois I*, 94 F.4th at 1293. Therefore, the Eleventh Circuit held, *Rozier* remained good law, and felons remained "*categorically 'disqualified*' from exercising their Second Amendment right." *Id*. at 1293 (quoting *Rozier*, 598 F.3d at 770–71) (emphasis added).

Although the Eleventh Circuit technically left the door open to reconsideration after this Court decided *Rahimi*, by stating: "We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1)," 94 F.4th at 1293, it soon shut that door—definitively. After this Court handed down its decision in *Rahimi*, the defendant in *Dubois I* sought certiorari. And this Court granted certiorari, vacated the judgment, and remanded for further consideration in light of *Rahimi*. *Dubois v. United States*, 145 S.Ct. 1041 (Jan. 13, 2025) (No. 24-5744). The Eleventh Circuit panel ordered supplemental briefing on whether *Rahimi* had abrogated *Rozier*. *United States v. Dubois*, DE 77 (11th Cir. Feb. 21, 2025) (No. 22-10829). But after receiving that supplemental briefing, without hearing oral argument, the panel rendered its decision on remand, which was entirely consistent with its pre-*Rahimi* decision. *See United States v. Dubois*, 139 F.4th 887 (11th Cir. June 2, 2025) ("*Dubois II*"). Under the Eleventh Circuit's rigid "prior-panel-precedent rule," the *Dubois II* panel concluded *Rahimi* did not abrogate *Rozier*. *Id.* at 892-94; *see id.* at 893 (noting the only time the *Rahimi* majority "mentioned felons was to reiterate *Heller*'s conclusion that prohibitions 'on the possession of firearms by "felons and the mentally ill …" are "presumptively lawful;" "This endorsement of the underlying basis for our prior holding that section 922(g)(1) does not violate the Second Amendment suggests that *Rahimi* reinforced—not undermined—*Rozier*"). And as such, the *Dubois II* panel held, the pre-*Bruen* approach of *Rozier* continued to control the constitutionality of §922(g)(1) even after *Rahimi*.

Thus, no as-applied Second Amendment challenges to §922(g)(1) would be recognized. *Id.* For that reason, the *Dubois II* panel explained, it was reinstating its decision in *Dubois I*. *Id.* at 894.

Dubois sought, but was denied, rehearing en banc. *United States v. Dubois*, No. 22-10829, DE 89-2 (11th Cir. Sept. 2, 2025). As such, under the Eleventh Circuit's rigid prior panel precedent rule, unless this Court "clearly" abrogates the reasoning in *Dubois II*, it will bind all future panels of the court. *See Dubois II*, 139 F.4th at 892-93 (explaining that under the Circuit's "prior-panel-precedent rule," [a]n intervening Supreme Court decision abrogates our precedent only if [it] is both 'clearly on point' and 'clearly contrary to' our earlier decision;" the intervening decision must "demolish and eviscerate" the "fundamental props" of the panel decision; if the Supreme Court "does not discuss our precedent or 'otherwise comment on the precise issue before the prior panel, our precedent remains binding'") (citations and internal quotation marks omitted).

II. Factual and Procedural Background

In December 2022, the United States charged Petitioner Torrence Denard Whitaker with a single count of violating 18 U.S.C. § 922(g)(1), for knowingly possessing a firearm and ammunition, while knowing that he had been convicted of a felony. Appendix A-1.

Petitioner moved to dismiss the indictment as both facially unconstitutional under the new two-step Second Amendment methodology set forth in *Bruen*, and unconstitutional as applied to him given that all of his prior felonies—uttering a forged instrument, possession of oxycodone, tampering with evidence, possession of cocaine, possession of a firearm by a convicted felon, grand theft auto, and burglary of a dwelling—were non-violent. Appendix A-7.

Although the government did not dispute that Petitioner's prior felonies were indeed non-violent, it argued *Bruen* did not undermine or abrogate the Eleventh Circuit's holding in *Rozier*, and even after *Bruen*, a statute categorically disqualifying felons from possessing firearms did not

offend the Second Amendment. The district court agreed, and thus did not address the specific as-applied challenge Petitioner raised given his unique set of non-violent priors. Appendix A-8.

Petitioner then pled guilty and was sentenced to 52 months incarceration. Appendix A-9.

On appeal, Petitioner continued to press his as-applied challenge preserved below. *See United States v. Whitaker*, DE 21 (11th Cir. June 27, 2024) (No. 24-10693). But rather than responding to his argument on the merits, the United States instead moved for summary affirmance, claiming it was "squarely foreclosed" by *Dubois I* which reaffirmed the rule from *Rozier* that "statutes disqualifying felons from possessing a firearm *under any and all circumstances* do not offend the Second Amendment, and rejected the argument that *Bruen* abrogated *Rozier*. Appendix A-5.

Although Petitioner opposed summary affirmance, arguing *Rahimi* had confirmed *Bruen* set forth a new methodology, and neither *Rozier* nor *Dubois* had complied with *Bruen/Rahimi*, the Eleventh Circuit granted the government's motion for summary affirmance, and decided the case without further merits briefing. It found the government to be "clearly right" as a matter of law that Petitioner's challenges to the constitutionality of § 922(g)(1) were foreclosed by its still-binding prior precedents in *Rozier* and *Dubois*, which had not been abrogated by either *Bruen* or *Rahimi*. *United States v. Whitaker*, 2024 WL 3812277, *3 (11th Cir. 2024). Appendix A-4.

Petitioner sought certiorari, continuing to press his argument that *Bruen* and *Rahimi* had abrogated *Rozier*, and that § 922(g)(1) was unconstitutional as applied to him given that his prior felonies were all non-violent. Even though the Eleventh Circuit had already considered *Rahimi* in granting the government's motion for summary affirmance, the Solicitor General asked the Court to grant certiorari, vacate the judgment, remand Petitioner's case for further consideration in light of *Rahimi* since *Dubois I* had been vacated and remanded to reconsider *Rahimi*.

The Court did so. *Whitaker v. United States*, 145 S.Ct. 1165 (Feb. 24, 2025) (No. 24-5997).

After the Eleventh Circuit issued its decision in *Dubois II*, reaffirming and reinstating the pre-*Bruen* approach of *Dubois I*, the government filed a supplemental letter brief arguing *Dubois II* had no effect on the court's previous rationale for granting summary affirmance. In his own supplemental brief, Petitioner agreed—noting *Dubois II* indeed required rejection of all Second Amendment challenges to the application of § 922(g)(1) in the Circuit. He noted, however, that because of the entrenched circuit conflict on whether as-applied challenges to § 922(g)(1) may be brought post-*Rahimi*, he was continuing to preserve his as-applied challenge for further review.

On July 9, 2025, the Eleventh Circuit issued its decision on remand, again summarily affirming "Whitaker's conviction because his arguments are foreclosed by binding precedent." *United States v. Whitaker*, 2025 WL 1892566 (11th Cir. July 9, 2025). It stated:

> The prior panel precedent rule requires us to follow our prior panel decisions unless they are overruled by this Court en banc or by the Supreme Court. *United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016). We reject Whitaker's challenge to the constitutionality of § 922(g)(1) because it is foreclosed by our holdings in *Rozier*, which held that § 922(g)(1) doesn't violate the Second Amendment, 598 F.3d at 770-1, and *Dubois II*, which held that neither *Bruen* nor *Rahimi* abrogated *Rozier*, 139 F.4th at 888-89. Accordingly we grant the government's motion for summary affirmance as to this claim because it is "clearly right as a matter of law" that § 922(g)(1) doesn't violate the Second Amendment.

Id. at *2. Appendix A-1.

REASONS FOR GRANTING THE PETITION

I. The Circuits are Intractably Divided on Whether As-Applied Second Amendment Challenges to 18 U.S.C. § 922(g)(1) are Cognizable after *Bruen* and *Rahimi*

This appeal asks, as a threshold question, whether after *Bruen* and *Rahimi* the government may categorically preclude a person who comes within the orbit of 18 U.S.C. § 922(g)(1) from possessing a firearm simply because that person has a predicate felony conviction, or whether a

defendant may mount a challenge that his prior record does not supply a basis, consistent with the Second Amendment, for permanent disarmament.

Although this question was not directly presented in *Rahimi*, as explained below, the manner by which the Court resolved *Rahimi* confirmed that as-applied challenges to the lifetime firearm ban in § 922(g)(1) are indeed cognizable. After *Rahimi*, the majority of circuits have weighed in on the as-applied question, and there is now an entrenched circuit split.

A. Three Circuits (the Third, Fifth, and Sixth) have recognized that as-applied Second Amendment challenges are cognizable after *Rahimi*. The Third, Fifth, and Sixth Circuits have each considered as-applied challenges to § 922(g)(1) after *Rahimi*, and confirmed that such challenges are indeed cognizable, even while rejecting some challenges based on the defendant's individual circumstances.

1. The Third Circuit. In *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), a panel of the Third Circuit was the first to confirm that an as-applied challenge to § 922(g)(1) is indeed cognizable post-*Rahimi*, although the *Moore* court ultimately rejected the challenge because the defendant was on supervised release at the time he possessed a firearm. *See id.* at 270, 273. Thereafter, in *Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. Dec. 23, 2024) (en banc) (*Range II*), upon remand from this Court to consider its post-*Bruen* as-applied ruling in *Range v. Att'y Gen.*, 69 F.4th 96 (3rd Cir. 2023) (en banc) (*Range I*) light of *Rahimi*, the en banc Third Circuit confirmed its pre-*Rahimi* view that as-applied challenges to § 922(g)(1) were not only cognizable, but indeed, the statute was unconstitutional as applied to people "like Range." 124 F.4th at 232.

Although the Third Circuit did not clarify exactly what a person "like Range" entailed, it noted *Rahimi* had "bless[ed] disarming (at least temporarily) physically dangerous people." *Id.* at 230. The court rejected the government's claim that Founding-era laws imposing status-based

restrictions on presumably "dangerous" groups like Blacks, Native Americans, Catholics, and Loyalists distrusted by the government, were comparably justified to § 922(g)(1). Beyond the unconstitutionality of certain of those restrictions, the majority emphasized Range was not part of any of these groups. And in any event, not only would such analogy be "'far too broad,'" *id.* at 229 (citing *Bruen*, 597 U.S. at 31), but indeed, the government's attempt to "stretch dangerousness to cover all felonies" by arguing "'those 'convicted of serious crimes, as a class, can be expected to misuse firearms,'" failed because it operated "at such a high level of generality that it waters down the right." *Id.* at 230 (citing *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring)).

The *Range II* court also squarely rejected the government's contention that permanent disarmament under § 922(g)(1) was "relevantly similar" to Founding-era laws that (1) imposed the death penalty for *some* nonviolent crimes (like forgery or counterfeiting) but not for crimes like false statement or embezzlement, or (2) required forfeiture of felons' weapons or estates. *Id.* at 230-31. Neither type of law was a sufficient analogue in terms of the burden imposed to uphold § 922(g)(1) as applied to Range, the court explained, because:

> [T]he Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation's history and tradition. Though our dissenting colleagues read *Rahimi* as blessing disarmament as a lesser punishment generally, the Court did not do that. Instead, it authorized temporary disarmament as a sufficient analogue to historic temporary imprisonment *only* to "respond to the use of guns to threaten the physical safety of others." *Compare Rahimi*, [602 U.S. at 699], *with United States v. Diaz*, 116 F.4th 458, 469-70 (5th Cir. 2024) (similarly broad reasoning).
>
> For similar reasons, Founding-era laws that forfeited felons' weapons or estates are not sufficient analogues either. Such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. ... [I]n the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society.
>
> Against this backdrop, it's important to remember that Range's crime—making a false statement on an application for food stamps—did not involve a firearm, so

> there was no criminal instrument to forfeit. And even if there were, government confiscation of the instruments of a crime (or a convicted criminal's entire estate) differs from a status-based lifetime ban on firearm possession.

124 F.4th at 231. As such, and because there was no record evidence indicating Range currently posed a physical danger to anyone, the Third Circuit enjoined the enforcement of § 922(g)(1) against him. *Id.* at 232.

While the Third Circuit expressed approval of the Sixth Circuit's post-*Rahimi* decision in *United States v. Williams*, 113 F.4th 637, 658-61 (6th Cir. 2024) because it drew a clear distinction for as-applied challenges between persons with dangerous and non-dangerous priors, the *Range II* court squarely rejected the contrary, "categorical" approach of the Eighth Circuit's post-*Rahimi* decision in *United States v. Jackson*, 1110 F.4th 1120, 1127-29 (9th Cir. 2024) (*Jackson II*), which refused all as-applied challenges to § 922(g)(1) on the overbroad and wrong assumption that anyone convicted of a "serious crime" "can be expected to misuse firearms." 124 F.4th at 230.

Although the government sought certiorari in *Range I*, and sought an extension to consider whether to file certiorari in *Range II*, it ultimately declined to seek certiorari in *Range II*—in implicit acknowledgement that indeed, § 922(g)(1) is *not* constitutional "under any and all circumstances," as the majority of circuits have agreed post-*Rahimi*.

2. The Sixth Circuit. As indicated above, in *Williams*, the Sixth Circuit likewise found as-applied challenges to §922(g) (1) cognizable, but offered additional explanations as to why such challenges to must be available. According to the Sixth Circuit, it was "history" that showed § 922(g)(1) could be "susceptible to an as-applied challenge in certain cases." *Id.* at 657. After conducting a "historical study" which it found revealed governments in England and colonial America disarmed groups that they deemed to be dangerous, the Sixth Circuit held that a

conviction under § 922(g)(1) "must focus on each individual's specific characteristics" in order to be consistent with the Second Amendment. *Id.* at 657.

In so concluding, the Sixth Circuit explained that accepting that all felons could be permanently disarmed—without a finding of dangerousness—would be incompatible with at least three strands of this Court's jurisprudence. *First*, it would be "inconsistent with *Heller*" because "[i]f courts uncritically deferred to Congress's class-wide dangerousness determinations, disarmament laws would most often be subject to rational-basis review," contrary to express statements in *Heller*. *Williams*, 113 F.4th at 660; *see Heller*, 554 U.S. at 628 n.27 ("If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.").

Second, the Sixth Circuit found, "history cuts in the opposite direction," as "English laws" and common-law "disarmament legislation" showed that, traditionally, "individuals had the opportunity to demonstrate that they weren't dangerous" and therefore it would be "mistaken" to "let the elected branches"—Congress—"make the dangerousness call" without any space for as-applied exceptions. *Id*. at 660.

Third, the Sixth Circuit reasoned, "complete deference to legislative line-drawing would allow legislatures to define away a fundamental right," which clashes with "[t]he very premise of constitutional rights" which "don't spring into being at the legislature's grace." *Id*. at 661; *see Kilbourn* v. *Thompson*, 103 U.S. 168, 199 (1880) ("[L]iving under a written constitution ... it is the province and duty of the judicial department to determine ... whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution[.]"). And, the Sixth Circuit concluded, "as-applied challenges

provide a mechanism for courts to make individualized dangerousness determinations." 113 F.4th at 661.

This view, the Sixth Circuit explained, was "differen[t] than" that held by "some of our sister circuits" prior to *Rahimi*, including the Eleventh in *Dubois I*, which the Sixth Circuit criticized as "hav[ing] read too much into the Supreme Court's repeated invocation of 'law-abiding, responsible citizens.'" *Id*. at 646. Accordingly, it held, "[t]he relevant principle from our tradition of firearms regulation is that, when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don't fit the class-wide generalization," and proscribing "resort to the courts through as-applied challenges . . . would abridge non-dangerous felons' Second Amendment rights." *Id*. at 662.

Notably, after conducting its "historical study," the Sixth Circuit concluded that history confirmed "legislatures may disarm groups of people, like felons, whom the legislature believes to be dangerous—so long as each member of that disarmed group has an opportunity to make an individualized showing that he himself is not actually dangerous." *Id.* at 663. Setting "dangerousness" as the determinant of whether § 922(g)(1) is unconstitutional as applied to a particular defendant, the Sixth Circuit held that at *Bruen* Step Two it is the defendant who bears the burden of demonstrating that in light of his "specific characteristics"—namely, his entire criminal record—he is not dangerous. *Id.* at 657-78, 659-63. To guide the dangerousness inquiry, the Sixth Circuit grouped priors into three broad categories, noting "certain categories of past convictions are highly probative of dangerousness, while others are less so." *Id.* at 658.

The Sixth Circuit's first category includes violent crimes against a person such as murder, rape, assault, and robbery—all of which were capital offenses at the Founding. And indeed, the Sixth Circuit held, that an individual previously committed one of these historical violent crimes

against a person is at least "strong evidence that an individual is dangerous, if not totally dispositive on the question." *Id.* The Sixth Circuit's second category includes crimes that are not strictly against a person, but nonetheless "pose a significant threat of danger" such as drug trafficking or burglary. *Id.* at 659. In its view, "most of these crimes put someone's safety at risk, and thus, justify a finding of danger," *although that presumption is rebuttable in an individual case*. *Id.* As for the final category of crimes—those that cause no physical harm to another person or the community (for example, mail fraud or making false statements)—the Sixth Circuit recognized, district court judges should "have no trouble concluding" that such crimes "don't make a person dangerous." *Id.*

Applying its tri-partite construct to Williams, the Sixth Circuit had no trouble concluding his as-applied challenge failed. Williams had previously been convicted of aggravated robbery for robbing two people at gunpoint, as well as attempted murder, and felon-in-possession in a case where he "agreed to stash a pistol that was used to murder a police officer." *Id.* Any of those convictions, the Sixth Circuit opined, demonstrated Williams was a "dangerous felon" whom the government could constitutionally disarm for life. *Id.* at 662-63.

3. The Fifth Circuit. In *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), the Fifth Circuit likewise entertained an as-applied challenge after *Rahimi*, but unlike the approach in the Third and Sixth Circuits, the Fifth Circuit's as-applied test was categorical (based on a particular class of felony), *not* an individualized dangerousness determination. As a threshold matter, the Fifth Circuit agreed with Diaz that his challenge based on the fact that his only priors were for car theft, evading arrest, and possession a firearm as a felon, was not barred by pre-*Bruen* circuit precedent, because *Bruen* established a new "historical paradigm" for analyzing Second Amendment claims, which made the circuit's pre-*Bruen* precedents obsolete. *Id.* at 467-71. And

notably, the Fifth Circuit made a point to state that "especially after *Rahimi*," it "respectfully disagree[ed]" with the Eleventh Circuit's approach relying on the "felons and mentally ill" language in *Heller* to uphold § 922(g)(1). *Diaz*, 116 F.4th at 466, n.2; *see also id.* at 466 ("Without precedent that conduct's *Bruen*'s historical inquiry into our Nation's tradition of regulating firearm possession by felons in particular, we must do so ourselves").

After conducting that historical inquiry for *Bruen* Step Two, the Fifth Circuit found that § 922(g)(1) was indeed constitutional as applied to Diaz because of his prior conviction for car theft, which it deemed analogous to the crime of "horse theft" which was a capital crime at the Founding. 116 F.4th at 468-69. Notably, the Fifth Circuit emphasized that the mere fact that Diaz was a felon was *not* itself enough, *id.* at 469; it simply found that "[t]aken together," historical "laws authorizing severe punishments for thievery and permanent disarmament in other cases establish that our tradition of firearm regulation supports application of § 922(g)(1) to Diaz." *Id.* at 471.

In concluding that as-applied Second Amendment challenges are permissible, the Fifth Circuit in *Diaz* agreed with the Sixth that a defendant's criminal history was what controlled. But its reasoning was different—*not* based on an individualized determination of dangerousness. In rejecting the proposition that "status-based gun restrictions" such as § 922(g)(1) categorically "foreclose Second Amendment challenges," and explaining that after *Bruen* and *Rahimi* "history and tradition" must be analyzed to "identify the scope of the legislature's power to take [the right] away," the Fifth Circuit quoted then-Judge Barrett's dissent in *Kanter* v. *Barr*, 919 F.3d 437 (7th Cir. 2019). *See* 116 F.4th at 466 (citing *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting) ("[A]ll people have the right to keep and bear arms," but "history and tradition support Congress's power to strip certain groups of that right"). Noting that *Bruen* "mandates" this approach, and *Rahimi* had just confirmed it, *id.* at 466, the Fifth Circuit was clear that "[s]imply classifying a crime as a

felony does not meet the level of historical rigor required by *Bruen* and its progeny... . [N]ot all felons today would have been considered felons at the Founding. Further, Congress may decide to change that definition in the future. Such a shifting benchmark should not define the limits of the Second Amendment[.]" *Id*. However, it reasoned, since at the Founding, "at least one of the predicate crimes that Diaz's § 922(g)(1) conviction relies on—theft—was a felony and thus would have led to capital punishment or estate forfeiture," "[d]isarming Diaz fits within this tradition of serious and permanent punishment." *Id.* at 470. It acknowledged the analysis would be different for "as-applied challenges by defendants with different predicate convictions." *Id.* at 470, n.4.

In a more recent case, *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025), the Fifth Circuit expanded upon its categorical as-applied test. The defendant in *Kimble* had two prior drug trafficking convictions. *Id.* at 309. While rejecting the government's purported analogy to Founding-era crimes penalizing the selling of "illicit goods," *see id.* at 314 (noting that government contention "stretches the analogical reasoning prescribed by *Bruen* and *Rahimi* too far"), the court in *Kimble* agreed with the government that that "[t]he Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous[.]" *Id.* at 314-15. But that was not the end of its analysis: the court emphasized that courts "must determine whether the government has identified a 'class of persons at the Founding who were "dangerous" for reasons comparable to' those Congress seeks to disarm today." *Id.* at 315 (citation omitted).

In doing so, the court explained, courts should *not* "look beyond a defendant's predicate conviction" and conduct "an individualized assessment that [the defendant] is dangerous." *Id.* at 318 (citation and internal quotation marks omitted). Applying that standard, the court concluded that § 922(g)(1) was constitutional as applied to Kimble because "[l]ike legislatures in the past that sought to keep guns out of the hands of potentially violent individuals, Congress today regards

felon drug traffickers as too dangerous to trust with weapons." *Id.* at 316. In its view, Kimble's prior drug trafficking crimes "underscores that he is the sort of dangerous individual that legislatures have long disarmed." *Id.* (finding "[c]lass-wide disarmament" of drug traffickers "accords with both history and precedent"). *See also id.* at 318 (noting the "narrowness" of its ruling approving class-wide disarmament of defendants convicted of "violent felonies like drug trafficking;" clarifying its "conclusion does not depend on an individualized assessment that Kimble is dangerous"). Notably, though, Judge Graves disagreed with the majority's "class-wide" reasoning, opining that an individualized assessment was necessary in an as-applied challenge because there are "cases involving people who were convicted of possession with intent offenses that did not involve a weapon or any violence." *Id.* at 318-322 (Graves, J., concurring in part and in the judgment).[1]

B. By contrast, six circuits (the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh) reject any and all as-applied Second Amendment challenges, albeit for different reasons. By contrast to the case-by-case, offender-specific approach of the above three circuits, the majority of the circuits to have now considered the issue post-*Rahimi* have categorically barred all Second Amendment challenges by all offenders to a § 922(g)(1) conviction—even those with non-violent priors who pose no current risk of dangerousness. These six circuits have reached that conclusion for different reasons.

[1] Although the Seventh Circuit has not addressed the question post-*Rahimi* of whether as-applied challenges to § 922(g)(1) are permissible, pre-*Rahimi* it squarely rejected the government's argument that *Heller*'s "presumptively lawful" dicta allowed courts "to sidestep *Bruen*." *Atkinson v. Garland*, 70 F.4th 1018, 1022 (7th Cir. 2023) ("We must undertake the text-and-history inquiry the Court so plainly announced and expounded upon at great length"). Thereafter, in *United States v. Gay*, 98 F.4th 843 (7th Cir. 2024), it assumed without deciding that as-applied challenges were available. *Id.* at 846-67 (assuming for the sake of argument that "there is *some* room for as-applied challenges, but that assumption does not assist Gay" who had 22 prior felonies including aggravated battery of a police officer, and he possessed a firearm while on parole).

1. The Tenth and Eleventh Circuits. At one end of the spectrum, lie the Tenth and Eleventh Circuits—both of which continue to follow their pre-*Bruen* approach even post-*Rahimi*, and thus reject every possible as-applied post-*Bruen* challenge to § 922(g)(1) without considering either text, historical regulations that might possibly be Founding era "analogues" for § 922(g)(1), or a defendant's prior record. Instead, what continues to reign supreme in these circuits is the *Heller* dicta on "longstanding" "presumptively unlawful" felon-in-possession bans. As noted *supra*, the Eleventh Circuit held prior to *Bruen* in *Rozier* (which followed that dicta), confirmed after *Bruen* in *Dubois I*, and reconfirmed after *Rahimi* in *Dubois II*, that felons are "categorically 'disqualified' from exercising their Second Amendment right" "in all circumstances." *Dubois I*, 94 F.4th at 1293; *Dubois II*, 139 F.4th at 893-94. In Petitioner's case, the Eleventh Circuit followed *Dubois II*. And notably, even prior to the Eleventh Circuit's reconfirmation in *Dubois II* that pre-*Bruen* precedent governed even after *Rahimi*, the Tenth Circuit had found that its similar pre-*Bruen* precedent likewise still governed after *Rahimi*, and required rejection of the argument that § 922(g)(1) did not apply to non-violent offenders. *See Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025) (holding *Rahimi* did not abrogate *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), which upheld the constitutionality of § "for all individuals convicted of felonies;"), *pet. for cert. filed* May 8, 2025 (No. 24-1155).

2. The Fourth and Eighth Circuits. Both the Fourth and Eighth Circuits have also found their pre-*Bruen* precedent rejecting all as-applied challenges still-controlling after *Bruen*. But they have nonetheless undertaken what they believe to be the correct *Bruen/Rahimi* analysis in the alternative to shore up their conclusions. In *United States v. Hunt*, 123 F.4th 697 (4th Cir. Dec. 18, 2024), the Fourth Circuit initially seemed to adopt the approach of the Tenth and Eleventh Circuits, deferring completely to its pre-*Bruen* rejection of all as-applied challenges. *Hunt*'s initial

merits discussion (Part III.A) was not only consistent with *Dubois I*; it even cited *Dubois I*, 94 F.4th at 1293, in following pre-*Bruen* Fourth Circuit precedent that had relied upon the same "longstanding" and "presumptively lawful" prohibitions dicta in *Heller*, n.26, to foreclose all as-applied challenges to § 922(g)(1), and "concluding that neither *Bruen* nor *Rahimi* abrogates this Court's precedent foreclosing as-applied challenges to Section 922(g)(1) and those decisions thus remain binding." 123 F.4th at 700, 702-04.

But notably, unlike the Tenth and Eleventh Circuits, the Fourth did not stop its analysis at its pre-*Bruen* precedent. Instead, it ruled in the alternative (in Part III.B) that even if were unconstrained by circuit precedent, § 922(g)(1) would not "pass constitutional muster" because it would fail "both parts" of the *Bruen* test. *Id.* at 702, 704. And with specific regard to Step Two of the analysis, it noted full agreement with the Eighth Circuit's reasoning in *United States v. Jackson,* 110 F.4th 1120 (8th Cir. 2024) (*Jackson II*), that given certain "assurances" in *Rahimi*, "history" showed "categorical disarmament of people 'who have demonstrated disrespect for legal norms of society'"—even if not violent. It concluded that since § 922(g)(1) was similarly justified as "an effort to address a risk of dangerousness," "there is no need for felony-by-felony litigation." *Hunt*, 123 F.4th at 125-26 (citing *Jackson II*, 110 F.4th at 125-19).

And indeed, in *Jackson II*, the Eighth Circuit had reasoned at Step Two of the analysis that *Rahimi* did "not change" its pre-*Rahimi* conclusion that "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)," due to two purported historical analogues: first, laws prohibiting disfavored groups such as religious minorities, Native Americans, Loyalists from possessing firearms; and second, laws authorizing "punishments that subsumed disarmament—death or forfeiture of a perpetrator's entire estate—for non-violent offenses." 110 F.4th at 1122, 1125-27. Therefore, the Eighth Circuit re-affirmed, the mere status as a felon is

sufficient to permanently disarm an individual. *Id.* at 1127-29 (underscoring that felons were not "law-abiding citizens," and arguing that history supports Congress' authority to prohibit possession of firearms by persons "who have demonstrated disrespect for legal norms of society" since "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms").

3. The Second and Ninth Circuits. Both the Second and Ninth Circuit have agreed with the Fourth and Eighth Circuits' alternative *Bruen* Step Two analysis, and have held based on that analysis—specifically, Founding-era laws categorically disarming "dangerous" groups, and punishing many felonies with death and estate forfeiture—that § 922(g)(1) is constitutional in all of its applications. *See United States v. Duarte*, 137 F.4th 743, 755-62 (9th Cir. 2025) (en banc), *pet. for cert. filed* Oct. 8, 2025 (No. 25-425); *Zherka v. Bondi*, 140 F.4th 68, 80-91 (2d Cir. 2025), *pet. for cert. filed* Sept. 9, 2025 (No. 25-269). Notably, though, these two circuits have squarely recognized at *Bruen* Step One, that felons are indeed among "the people" covered by the plain text of the Second Amendment. *See Duarte*, 137 F.4th at 754-55; *Zherka*, 140 F.4th at 77.

Nonetheless, despite their diverse rationales, all six of these Circuits doom all as-applied Second Amendment challenges. And as of this writing, the majority rule in the circuits is that *no* as-applied challenge to § 922(g)(1) will be recognized. The conflict is thoroughly entrenched.

C. The majority of the circuits are wrong, given the resolution in *Rahimi* and for the reasons stated by the Third, Fifth, and Sixth Circuits. The majority rule refusing to recognize any as-applied challenge to § 922(g)(1), is inconsistent with the reasoning of the Court in *Rahimi*. Specifically, in holding that Rahimi's facial challenge failed because the statute "is constitutional as applied to the facts of Rahimi's own case," 602 U.S. at 693, the Court necessarily and squarely rejected the position the government took at the *Rahimi* oral argument that as-applied challenges

are unavailable in Second Amendment cases "if and when they come." Tr. of Oral Argument, *United States v. Rahimi*, 2023 WL 9375567, at *43 (U.S. Nov. 7, 2023). In fact, in making clear that the "no set of circumstances" standard from *United States v. Salerno*, 481 U.S. 739, 745 (1987) indeed applies to Second Amendment challenges, the Court necessarily recognized that as-applied Second Amendment challenges *are* permitted. *See id.* ("[T]o prevail, the Government need only demonstrate that Section 922(g)(8) is constitutional in some of its applications.")

Although an as-applied challenge to § 922(g)(1) was not before the Court in *Rahimi*, at the oral argument Justice Gorsuch nonetheless recognized, in response to the government's assertion there that the Court should never entertain as-applied Second Amendment challenges, that there may indeed "be an as-applied *if it's a lifetime ban*," 2023 WL 9375567, at 43—which § 922(g)(1) *is*. Consistent with the implicit recognition of as-applied Second Amendment challenges in *Rahimi*, the Third, Fifth, and Sixth Circuits have rightly recognized that as-applied challenges for § 922(g)(1) are indeed cognizable in certain circumstances. And notably, judges on the Eighth and Ninth Circuit have as well. *See Jackson II*, 121 F.4th at 657-58 (Stas, J., joined by Erickson, Grasz, and Kobes, J.J., dissenting from denial of rehearing en banc) (emphasizing that in *Rahimi*, the Court dealt with a facial challenge "by examining whether the statute was 'constitutional in some of its *applications*," including in "Rahimi's own case;" "If the Court meant to cut off all as-applied challenges to disarmament laws, as *Jackson II* concludes, it would have been odd to send that message by deciding Rahimi based on how *his* as-applied challenge would have gone;" [c]linging to the "presumptively lawful" dicta in *Heller* "is no excuse" because "a measure can be presumptively constitutional and still have constitutionally problematic applications. As-applied challenges exist for exactly this reason"); *Duarte*, 137 F.4th at 782-83 (Vandyke, J., concurring in the judgment in part and dissenting in part) (agreeing with the Sixth Circuit in *Williams* that "*Heller*

speaks only in terms of a presumption. A presumption must be defeasible. So the court's statement that felon-in-possession laws are only *presumptively* lawful implies that felon-in-possession laws must be unlawful in at least some instances") (internal citation omitted).

The Court should grant certiorari to resolve the circuit conflict on this threshold issue, and recognize explicitly that for all of the reasons articulated above, as-applied Second Amendment challenges are indeed cognizable after *Bruen/Rahimi*.

II. The Circuits are Intractably Divided on Whether Under the *Bruen/Rahimi* Methodology, § 922(g)(1) is Unconstitutional As Applied to a Defendant With Non-Violent Priors

A. The circuits are split on whether the *Bruen/Rahimi* methodology applies at all, and if so, whether felons are part of "the people" for Bruen Step One. While the Tenth and Eleventh Circuits refuse to apply the *Bruen/Rahimi* methodology altogether, and continue to rigidly defer to their pre-*Bruen* precedent, seven other circuits apply—or attempt to apply—both steps of the new *Bruen/Rahimi* methodology. And five circuits agree felons meet *Bruen* Step One.

1. The Third, Fifth, and Sixth Circuits agree that under the *Bruen* Step One analysis, felons are part of "the people" with Second Amendment rights, and § 922(g)(1) is therefore presumptively unconstitutional. Admittedly, these three circuits have applied different as-applied tests at *Bruen* Step Two. But, as detailed below, they agree on all key preliminary points for the analysis: namely, that *Bruen* and *Rahimi* abrogated their pre-*Bruen* caselaw upholding the constitutionality of § 922(g)(1); *Bruen/Rahimi* demands a different mode of analysis; *Heller*'s statement that felon-in-possession are "presumptively lawful" was non-binding dicta, which has not negated their duty to conduct their own historical analysis to determine whether § 922(g)(1) is consistent with the Nation's history and tradition of firearm regulation; and at *Brue*n Step One, the the term "the people" covers felons and accords them Second Amendment protections.

In *Range II*, the en banc Third Circuit reaffirmed its prior rulings that *Bruen* had abrogated its post-*Heller* Second Amendment jurisprudence; *Bruen* dictated an entirely new analysis; and under the "plain text" analysis for *Bruen* Step One, felons and those with felon-equivalents like Range were part of "the people" protected by the Second Amendment. 124 F.4th at 225-28. On the latter point, the Third Circuit—as it had before, but now with additional support from *Rahimi*—squarely rejected the government's contention that any type of criminal conduct removes citizens from "the people" protected by the Second Amendment because that right had only belonged to "law-abiding responsible citizens." *Id.* at 226-28.

The Third Circuit articulated four reasons for finding *Heller*'s references to "law-abiding citizens" "should not be read as rejecting *Heller*'s interpretation of 'the people,'" which "presumptively 'belongs to all Americans," 554 U.S. at 580-81: (1) the criminal histories of the plaintiffs in *Heller* and *Bruen* "were not at issue," so the references to "law-abiding citizens" in those cases were dicta which should not be over-read; (2) there was no reason to adopt a reading of "the people" that excluded Americans only from the Second Amendment when other constitutional provisions refer to "the people" and felons "retain their constitutional rights in other contexts," (3) even if all citizens had a right to keep and bear arms, that would not prohibit legislatures from constitutionally stripping certain people of that right (the view of then-Judge Barrett in *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019)); and (4) as the government even conceded in its en banc brief, *Rahimi* "makes clear that citizens are not excluded from Second Amendment protections just because they are not "responsible," because "responsible" is too vague a term that did not "derive from [Supreme Court] case law," and the same was true for the phrase "law-abiding." 124 F.4th at 226-27 (citing *Rahimi*, 602 U.S. at 701).

The Sixth Circuit agrees with the Third that as the Court recognized in *Heller*, the phrase "the people" in the plain text of the Second Amendment must have the same meaning as in both the First and Fourth Amendments, because the protections provided in those Amendments do not evaporate when the claimant is a felon. *Williams*, 114 F.4th at 649. *Id*. Excluding a felon from "the people" in the Second Amendment would exclude him from the First and Fourth Amendments too, the Sixth Circuit notes, which is "implausible under ordinary principles of construction" since "[c]ourts presume that words are used in a consistent way across provisions." *Id.* (citing *Hurtado v. California*, 110 U.S. 516, 533-34 [] (1884) ("The conclusion is equally irresistible, that when the same phrase was employed [elsewhere], ... it was used in the same sense and with no greater extent"); *Pulsifer v. United States*, 601 U.S. 124, 149 [] (2024)); and A. Scalia & B. Garner, *Reading Law* 170-171 (2012) (explaining in a given statute, the same term usually has the same meaning).

The Sixth Circuit has also rightly explained that *Bruen* and *Rahimi* "supersede[d] our circuit's past decisions on 922(g)." 113 F.4th at 646. Expressly disagreeing with the Eleventh Circuit in *Dubois I*, the Sixth Circuit held in *Williams*—as Petitioner argued to the Eleventh Circuit—that pre-*Bruen* circuit precedent cannot now be binding because:

> Intervening Supreme Court precedent demands a different mode of analysis. *Heller*, to be sure, said felon-in-possession statutes were "presumptively lawful." But felon-in-possession statutes weren't before the Court in *Heller* [.] And while *Bruen* didn't overrule any aspect of *Heller*, it set forth a new analytical framework for courts to address Second Amendment challenges. Under *Bruen*, courts must consider whether a law's burden on an individual's Second Amendment rights is "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 144 S. Ct. at 1898. Specifically, courts must study how and why the founding generation regulated firearm possession and determine whether the application of a modern regulation "fits neatly within" those principles. *Id*. at 1901.
>
> Our circuit's pre-*Bruen* decisions on § 922(g)(1) omitted any historical analysis. They simply relied on *Hell*er's one-off reference to felon-in-possession statutes. Those precedents are therefore inconsistent with *Bruen*'s mandate to consult

> historical analogs. Indeed, applying *Heller*'s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to "expound upon the historical justifications" for firearm-possession restrictions when the need arose. 554 U.S. at 635. Thus, this case is not as simple as reaffirming our pre-*Bruen* precedent.

113 F.4th at 648.

And notably, the Fifth Circuit reasoned similarly in *Diaz*. It held that pre-*Bruen* circuit precedents no longer control because *Bruen* "established a new historical paradigm for analyzing Second Amendment claims;" and the mention of felons in prior Supreme Court cases was "mere dicta" which "cannot supplant the most recent analysis set forth by the Supreme Court in *Rahimi*, which we apply today." It squarely rejected the government's "familiar argument" that for the *Bruen* Step One "plain text" analysis, felons are not part of "the people." 116 F.4th at 465-67.

2. While the Tenth and Eleventh Circuits refuse to apply the *Bruen/Rahimi* methodology altogether, the other four circuits that reject as-applied challenges at least purport to apply the new methodology, and the Second and Ninth Circuits agree with the Third, Fifth, and Sixth Circuits that felons are part of "the people" for *Bruen* Step One. Only the Tenth and Eleventh Circuits consistently affirm denials of as-applied challenges based on their pre-*Bruen* mode of analysis which reflexively followed dicta in *Heller*, over *Heller*'s holding on plain text, history, and tradition. The other four circuits (the Second, Fourth, Eighth, and Ninth) have all at least attempted to apply the new *Bruen/Rahimi* framework. *See, e.g., Jackson II*, 110 F.4th at 1126-27 (justifying preclusion of all as-applied challenges after *Rahimi*, by purported Founding-era analogues for Step Two of the *Bruen* analysis). While Petitioner disputes the correctness of the Eighth Circuit's *Bruen* Step Two analysis for the reasons stated by the Third and Sixth Circuits, and by the dissenters from rehearing en banc in *Jackson II*, *see* 121 F.4th at 657-58 (8th Cir. Nov. 5, 2024) (Stas, J., joined by Erickson, Grasz, and Kobes, JJ., dissenting from rehearing en banc), at least the *Jackson II* panel recognized that *Bruen* and *Rahimi* do in fact dictate

a new methodology applicable to all Second Amendment claims which requires searching for a relevantly similar, Founding-era analogue. The Tenth and Eleventh will not even agree with that.

Even the Seventh Circuit, which has not yet addressed an as-applied challenge to § 922(g)(1) on the merits, has been clear that it is error to "avoid a *Bruen* analysis altogether" based on pre-*Bruen* precedent relying on *Heller*'s "presumptively lawful" dicta. *Atkinson v. Garland*, 70 F.4th 1018, 1022-25 (2023) ("Nothing," including pre-*Bruen* precedent citing the *Heller* dicta "allows us to sidestep *Bruen* in the way the government invites. … We must undertake the text-and-history inquiry the court so plainly announced and expounded upon at great length;" remanding so district court could apply *Bruen*'s methodology in the first instance).

And notably, although the Second and Ninth Circuits agree with the conclusion of the Fourth, Eighth, Ninth, and Tenth Circuits—that no as applied challenges may be brought—they only reach that conclusion *at Bruen Step Two*. *Zherka*, 140 F.4th at 77-96; *Duarte*, 137 F.4th at 755-62. At Step One of the analysis, both the Second and Ninth Circuits agree with the Third, Fifth, and Sixth Circuits, that indeed, felons are among "the people" covered by the Second Amendment. *See Zherka*, 140 F.4th at 75-77 (§ 922(g)(1) "clearly covers conduct that the Second Amendment presumptively protects;" to hold otherwise would be at odds with *Heller* which defined "the people" broadly to include "*all* Americans;" "We will not jeopardize the scope of other rights nor demean the status of Second Amendment rights by narrowly circumscribing the classes of Americans to whom those rights belong"); *Duarte*, 137 F.4th at 752-55 ("We adhere to the Supreme Court's definition of 'the people'" in *Heller*, which does not exclude felons;" Duarte's "status as a felon does not remove him from the ambit of the Second Amendment").

Plainly, the Tenth and Eleventh Circuits are the true outliers today, glued to their pre-*Bruen* approach. And for the reasons below, the Court should hold they are most definitely wrong.

B. After *Bruen/Rahimi*, § 922(g)(1) is presumptively unconstitutional at Step One of the required analysis, for the reasons stated by the Second, Third, Fifth, Sixth, and Ninth Circuits. In *Heller*, the Court was clear that "the people" as used in the Second Amendment "unambiguously refers" at the very least to "*all Americans*"—"not an unspecified subset"—because any other interpretation would be inconsistent with the Court's interpretation of the same phrase in the First, Fourth, Ninth, and Tenth Amendments. *Id.* at 579-81 (citing *United States v. Verdugo–Urquidez*, 494 U.S. 259, 265 (1990) ("the people" was a "term of art" at the time, which had the same meaning as in other parts of the Bill of Rights)).

Just as *Bruen* found dispositive that the Second Amendment does not "draw ... a home/public distinction with respect to the right to keep and bear arms," 597 U.S. at 32, it should be dispositive here—as a textual matter—that the Second Amendment likewise does not draw a felon/non-felon distinction. Indeed, even prior to *Bruen*, panels of the Eleventh and Seventh Circuits had recognized that the term "people" in the Second Amendment is *not* textually limited to law-abiding citizens. *See United States v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022) (noting even "dangerous felons" are "indisputably part of 'the people'" for Second Amendment purposes); *see also United States v. Meza-Rodriguez*, 798 F.3d 664, 671 (7th Cir. 2015) (a person's criminal record is irrelevant in determining whether he is among "the people" protected under the Second Amendment; the amendment "is not limited to such on-again, off-again protections").

But indeed, *if* there even *could* have been doubt on that point prior to *Rahimi*, there *cannot* be after *Rahimi*. That is because this Court in *Rahimi* squarely rejected the Solicitor General's proffered limitation of "the people" to the narrower subset of "law-abiding, responsible" citizens. The *Rahimi* majority acknowledged that the Second Amendment "secures *for Americans* a means of self-defense." 602 U.S. at 690 (emphasis added). And Justice Thomas—who disagreed with the

majority *only* as to *Bruen* Step Two—provided a robust explanation of the proper Step One analysis, confirming that *any American citizen* is among "the people" as a matter of the plain text. *Id.* at 752 (noting "the people" "unambiguously refers to all members of the political community, not an unspecified subset;'" "The Second Amendment thus recognizes a right 'guaranteed to "*all Americans*;"' citing *Bruen*, 597 U.S. at 70, and *Heller*, 554 U.S. at 581) (emphasis added).

Justice Thomas left no doubt about the implication of *Heller*/*Bruen/Rahimi* for "the people" question in § 922(g)(1), by confirming that "Not a single Member of the Court adopts the Government's [law-abiding, responsible citizen] theory." 602 U.S. at 773. In short, as Justice Thomas has definitively exposed, the "law-abiding, responsible citizen" theory unanimously rejected by *Rahimi* "is the Government's own creation, designed to justify every one of its existing regulations. It has no doctrinal or constitutional mooring." *Id.* at 774. And since that necessarily abrogates the assumptions underlying *Rozier* (and in turn, *Dubois II*), *Rahimi* should have compelled the Eleventh Circuit to conclude—as the Second, Third, Fifth, Sixth, and Ninth Circuits have now concluded—that this Court meant what it said when it declared in *Heller* that the Second Amendment right "belongs to all Americans." 554 U.S. at 581. The reasoning of all of these circuits is consistent with *Heller*, and correct on these points.

Based on *Heller*, *Rahimi*, and the analysis of all *five* of these courts, the Court should clarify definitively for the Tenth and Eleventh Circuits that pre-*Bruen* circuit precedents like *Rozier* and *McCane*, that did *not* apply the plain text-and-historical tradition test, cannot control after *Rahimi*. And then it should hold that (1) applying the Court's new methodology, felons are indeed part of "the people" covered by the Second Amendment's plain text; (2) felons thus meet the new *Bruen* Step One; (3) as per *Bruen/Rahimi*, that establishes a presumption that § 922(g)(1) is unconstitutional, and shifts the burden to the government to show at Step Two a tradition of

"relevantly similar" regulation (in terms of both the "why" and "how") dating to the Founding; and (4) the government cannot meet that burden for the reasons detailed by the Third Circuit in *Range II*, the dissenters from rehearing en banc in *Jackson II*, and Judge Van Dyke in *Duarte*.

C. Although the three circuits that acknowledge as-applied challenges are cognizable after *Bruen/Rahimi* disagree as to the proper Step Two analysis, § 922(g)(1) would likely be found unconstitutional as applied to Petitioner under the Third and Sixth Circuits' tests. Although Petitioner had multiple prior felony convictions, they were all—indisputably—non-violent. He was most recently convicted of uttering a forged instrument and grand theft (in 2019), and before that: possession of oxycodone (also in 2019), tampering with evidence (in 2014), simple possession of cocaine (in 2013 and 2014), exhibition and possession of a firearm by a convicted felon (in 2005), grand theft auto (in 2003), and two burglaries of a dwelling (in 1997, at the age of 16).

Since the Fifth Circuit has found § 922(g)(1) constitutional as applied to a defendant with a single prior for car theft, Petitioner's motion to dismiss would not succeed in the Fifth Circuit. But under the very different—dangerousness—tests applied by the Third and Sixth Circuits it is likely that Petitioner could rebut any presumption of dangerousness on the record here, and these circuits would find § 922(g)(1) unconstitutional as applied to him.

Notably, the fact that Petitioner did not use a firearm or engage in any physical harm to anyone during any of his prior felonies, would likely be dispositive under the tests of these circuits. As noted *supra*, unlike the Fifth Circuit, the Sixth has focused exclusively on a defendant's individualized (factual) dangerousness in prior felonies, as the determinant of an as-applied challenge—instructing courts to "focus on each individual's specific characteristics." *Williams*, 113 F.4th at 657. But Petitioner's record is nothing like Williams'. There is no record evidence

that he used a firearm in any of his prior felonies including his drug possession offenses, his felon-in-possession offense, or his two burglaries committed as a juvenile, almost two decades ago.

Notably, a district court in the Sixth Circuit—following *Williams*—recently found § 922(g)(1) unconstitutional as applied to a defendant with a prior for attempted possession of crack cocaine. *See United States v. Banks*, __ F. Supp.3d __, 2025 WL 2243968 (N.D. Ohio Aug. 6, 2025). The *Banks* court explained that "the gravamen of *Williams*'s dangerousness analysis is physical harm to others. Id. at *3. And while "[a] criminal record containing a conviction for an offense directly involving significant physical harm to one or more persons," or a "pattern of conduct risking or causing physical harm" is "likely to make that defendant dangerous enough to be disarmed under the Second Amendment," "a record involving only convictions that are highly attenuated from such harm is unlikely to render that defendant dangerous." *Id.* The *Banks* court found the defendant met that standard for two reasons. First, attempted possession of a personal use amount of drugs is not analogous to drug trafficking in terms of dangerousness. *Id.* at **8-9. *See id.* at *9 (noting that *Williams* drew a line between crimes that "cause no physical harm to another or the community" and those that "pose a significant threat of danger" like drug trafficking, and "mere drug possession is not typically characterized by the systematic spread of drugs throughout a community and is not normally accompanied by the illicit financial motivations that make violence more likely;" citing *United States v. Leary*, 422 F. App'x 502, 508-09 (6th Cir. 2011) (distinguishing between a "user" and a "seller" of drugs)). Second, the defendant's attempted drug possession occurred *over a decade* prior to his firearm possession, and the focus of *Williams* is upon the defendant's "tendency toward dangerousness at the time he engaged in the conduct for which he seeks constitutional protection." *Id.* at *6. Both considerations would allow Petitioner to rebut any presumption of dangerousness under the Sixth Circuit's as-applied test.

And the Third Circuit would likely agree on the non-dangerousness point. Here as in *Range II*, 124 F.4th at 232, there is no record evidence Petitioner posed a danger to anyone at the time of his December 2022 firearm possession. Although the Third Circuit opined after *Range II*, that disarmament might be justified on different facts if "a felon continues to 'present a special danger of misus[ng] firearms," *Pitsillides v. Barr*, 128 F.4th 203, 210 (3d Cir. 2025), and that determination "may depend on more than just the nature of his prior felony," *id.* at 211, and require consideration of "intervening conduct," *id.* at 212, the record shows no "intervening conduct" by Petitioner which would suggest he posed a physical danger to the public when armed at the time of the offense here. He was arrested without incident. And his last conviction, for uttering a forged instrument and grand theft (of a stolen check) was based on conduct in 2019. He was not involved in any criminal conduct evidencing physical dangerousness in the years since his release from jail on that offense, prior to his arrest for the instant offense. And indeed, while the Third Circuit in *Pitsilides* opined that drug *trafficking* might be the kind of conviction justifying disarmament because dealing drugs runs the risk of violence, 128 F.4th at 213, Petitioner has no priors for trafficking—only for mere possession for personal use which is qualitatively different; it does not inherently risk violence to anyone. Thus, under the totality of circumstances here, the Third Circuit, like the Sixth, would likely have found § 922(g)(1) unconstitutional as applied to Petitioner.

If the Court agrees that the relevant as-applied test is one of dangerousness, as applied by the Third and Sixth Circuits, it should find that on this record any possible presumption of dangerousness could have been effectively rebutted had the Eleventh Circuit permitted an as-applied challenge. In either the Third or Sixth Circuits, Petitioner's motion to dismiss the § 922(g)(1) charge would likely have been granted.

III. This Case Presents Important and Recurring Questions, and Provides an Excellent Vehicle for the Court to Resolve both Circuit Conflicts

As acknowledged by the Solicitor General in the aftermath of *Rahimi,* the conflict over the constitutionality of § 922(g)(1) is unlikely to resolve itself without further intervention of this Court. *See* Supp. Br. for the Federal Parties, *Garland v. Range*, No. 23-374, at 5-6 (June 24, 2024). In June 2024, *the government itself* candidly recognized that disagreement about § 922(g)(1)'s constitutionality had already had widespread and disruptive effects. *Id*. In fiscal year 2022, it noted (citing the Sentencing Commission's "Quick Facts" for firearm offenses), convictions under § 922(g)(1) accounted for nearly 12% of all federal criminal cases. *Id*. And notably, the Commission's "Quick Facts" for fiscal year 2024 disclose that 90% of all § 922(g) convictions were under § 922(g)(1). *U.S. Sent'g Comm'n, Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (May 2025). Moreover, since there are millions of Americans with felony convictions of one sort or another, allowing the decisions of six circuits barring all as-applied Second Amendment challenges to persist without any consideration of an individual's actual record and current dangerousness, will effectively strip non-dangerous citizens of their Second Amendment rights based on blind deference to the type of legislative judgment *Bruen* decried.

Petitioner asks that the Court grant plenary review in this case to resolve two direct circuit splits that existed prior to *Rahimi*, but have only deepened since *Rahimi*. And Petitioner's case presents an ideal vehicle for resolving both important and recurring legal questions raised herein, for multiple reasons.

First, both issues raised herein were pressed by Petitioner in the district court and on appeal. There is no possible argument by the government in this case, as there may be in other cases now before this Court, that Petitioner's as-applied challenge should be reviewed deferentially for "plain error" only, and would fail under that deferential standard.

Second, not only did the Eleventh Circuit panel below squarely reject Petitioner's as-applied challenge based on *Bruen/Rahimi* under its rigid "prior panel precedent" rule; the Eleventh Circuit was asked to rehear its ruling in *Dubois II* en banc, and it refused to do so. Since there was not one vote for rehearing en banc, there is ***no*** chance the Eleventh Circuit will reconsider its barring of *all* as-applied challenges without the intervention of this Court. And the majority of judges in active service on both the Eighth and Ninth Circuits are in agreement with the Eleventh Circuit that § 922(g)(1) is constitutional in all circumstances.

Third, Issue I raises what is unfortunately a threshold obstacle for defendants in the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits—but *not* for defendants in the Third, Fifth, and Sixth Circuits. It is unjustifiable that from the very outset, defendants in these six Circuits are being denied the type of constitutional review being accorded similarly-situated defendants three other circuits after *Bruen* and *Rahimi*. Plainly, constitutional rights and the right to meaningful appellate review should not vary by geography. The refusal of these six circuits to entertain any Second Amendment as-applied challenges is not only contrary to *Rahimi*; it has equal protection implications. As Judge Stras and three other Eighth Circuit dissenters recognized even prior to *Rahimi*, "By cutting off as-applied challenges" to § 922(g)(1), courts "create a group of second-class citizens: felons who, for the rest of their lives, cannot touch a firearm, no matter the crime they committed or how long ago it happened." *United States v. Jackson*, 85 F.4th 468, 469 (8th Cir. 2023) (*Jackson I*) (Stras, J., joined by Erickson, Grasz, and Kobes, JJ, dissenting from denial of rehearing en banc). And post-*Rahimi*, these same Eighth Circuit judges elaborated further. *See Jackson II*, 121 F.4th at 658 (Stras, J., joined by Erickson, Grasz, and Kobes, JJ, dissenting from denial of rehearing en banc) (noting that "other courts have not made the same mistake" of "insulating felon-dispossession laws from Second Amendment scrutiny of any kind;"

citing *Diaz*, *Moore*, *Williams*; Judge VanDyke's dissent from the grant of rehearing en banc in *Duarte*; and Judge Agee's concurrence in the judgment in *United States v. Price*, 111 F.4th 392, 413 (4th Cir. 2024) (en banc) (recognizing that whether "§ 922(g)(1) is unconstitutional as applied to certain, non-violent felons ... is far from settled")).

A grant of certiorari in Petitioner's case would allow the Court to kill not only "two birds with one stone"—but three—and settle multiple sub-conflicts among the circuit courts vis-à-vis the constitutionality of § 922(g)(1) after *Bruen*/*Rahimi*. That is because, *in this single case*, the Court could *first* clarify that pre-*Bruen* circuit precedents that did not consider either the plain text of the Second Amendment or any history cannot govern after *Bruen* and *Rahimi*, and at *Bruen* Step One felons are indeed part of "the people" with Second Amendment rights; *second*, it could address the threshold error after *Rahimi* made by four Circuits in barring all as-applied challenges to § 922(g)(1) due to an erroneous *Bruen* Step Two analysis; and *finally*, it could resolve the conflict among the three circuits that correctly recognize as-applied challenges, as to what type of prior criminal record renders § 922(g)(1) unconstitutional as applied. Resolving all of these issues in a single case would be the most efficient resolution possible of the multiple Second Amendment as-applied questions now dividing the lower courts.

Fourth, with specific regard to Issue II(C), the lower courts are deeply divided on the standard that should govern an as-applied challenge. In fact, not only the circuits but the district courts as well are all over the map on this question. And the split shows no signs of lessening. Notably, although the Seventh Circuit has not yet issued a post-*Rahimi* decision on whether as-applied challenges are cognizable and if so, the standard for evaluating them, a district court in the Seventh Circuit has found § 922(g)(1) unconstitutional as applied to a defendant with priors analogous to, or even more serious than, Petitioner. *See, e.g., United States v. Brown*, 2024 WL

4665527 (S.D. Ill. Nov. 4, 2024) (finding § 922(g)(1) unconstitutional as applied to a defendant with a residential burglary and domestic battery conviction; none of the historical laws offered by the government imposed a comparable burden of permanent disarmament for a status, rather than criminal conduct).

Although the government has consistently argued for a tradition of disarming "dangerous" individuals, Petitioner—like the district judge in *Brown*, 2024 WL at 4665527, at *5—disputes that such a tradition can be shown consistent with *Bruen* and *Rahimi*, because there are no Founding-era analogues that are *both* comparably justified to § 922(g)(1), *and* impose a comparable burden of lifetime disarmament. But indeed, even *if* the government *could* show a longstanding tradition of permanently disarming dangerous individuals who have either misused firearms or otherwise engaged in violent conduct, such a tradition would be irrelevant to a defendant like Petitioner, whose priors are indisputably non-violent under either a categorical or fact-based approach.

If the Court believes some measure of dangerousness should determine whether § 922(g)(1) is constitutional as applied to a particular defendant, this is the ideal case for the Court to flesh out the contours of such a rule. Indeed, the Court could use the several crimes in Petitioner's record to provide much-needed guidance to the lower courts on whether the dangerousness analysis for as-applied challenges is appropriately categorical or fact-based; if the latter, the relevance of remote convictions and those incurred when the defendant was a minor (Petitioner's two burglary convictions arose from conduct that occurred at the age of 16—almost two decades ago); and which party bears the burden of proof. While the Sixth Circuit in *Williams* placed the burden on the defendant to show he is not dangerous, *Bruen/Rahimi* indicates the Step Two burden is on the government. And here, the government did not even attempt to meet that

burden. Nor is there any available evidence that (if credited) would or could support a finding of current dangerousness. Notably, with particular regard to Petitioner's two juvenile burglaries committed almost 20 years ago, the Pre-Sentence Report states that "[t]he circumstances for this case are not available."

Sixth, because Petitioner has several different types of non-violent priors, this single case would permit the Court to consider the constitutionality of § 922(g)(1) "across a range" of non-violent circumstances. Supp. Br. for the Federal Parties, *Garland v. Range*, at 6. Granting this Petition would therefore be consistent with, but more efficient than, the Solicitor General's suggestion immediately after *Rahimi* that the Court grant certiorari in several cases, and consolidate them for briefing and argument, to consider *Rahimi*'s application to § 922(g)(1) cases involving different types of priors. Although the Court rejected that suggestion at the time, deciding instead to afford the courts of appeals the opportunity to reconsider their prior rulings in light of *Rahimi*, there is no need for such action here since the Eleventh Circuit has definitively declined to consider ***any*** as-applied challenge after *Rahimi*. And five other circuits now agree.

Seventh, the Court need not and should not wait for further input on the impact of *Rahimi* from any other circuit at this juncture. That is because, as of this writing, the Fourth Circuit has clearly aligned itself with the post-*Rahimi* analysis of the Eighth Circuit, and a 10-judge majority of the Third Circuit has aligned itself with the post-*Rahimi* analysis of the Sixth and rejected that of the Fifth. The Tenth and Eleventh Circuits have clearly dug in to their pre-*Bruen* approaches. The Eleventh has refused to reconsider its approach en banc despite *Rahimi.* And while the Third and Ninth Circuits have considered both issues presented for review herein en banc, they have reached conflicting conclusions. The Second Circuit is now in lockstep with the Ninth. And there

have been strong dissents (or opinions concurring in the judgments reached, but disagreeing as to the reasoning employed) from within the Third, Fifth, Eighth, and Ninth Circuits.

With the current array of nine circuit decisions, and conflicting individual opinions from within four of the circuits, the Court now has before it a full panoply of approaches to consider. And because of Petitioner's unique record of diverse priors—none of which involved the use of firearms or any other violent act threatening bodily harm to another—the Court will be able to use this single case as a comprehensive vehicle to provide clarity to the lower courts on the many sub-issues impacting the post-*Rahimi* as-applied analysis in § 922(g)(1) cases, so justice will no longer vary by locale. Any additional lower court decisions at this juncture will simply exacerbate the already-deep Circuit split on the issues raised herein.

Eighth, what makes the most sense at this juncture is to grant certiorari in Petitioner's case, and hear it at the same time, or at least in the same term as *United States v. Hemani*, ___ S.Ct. ___, 2025 WL 2949569 (cert. granted, Oct. 20, 2025) (No. 24-1234). *Hemani* will address an as-applied challenge to another subsection of § 922(g)—namely, § 922(g)(3) which prohibits possession of a firearm by an "unlawful user" of a controlled substance. Notably, in *Florida Commissioner of Agriculture v. Att'y Gen.*, 148 F.4th 1307 (11th Cir. Aug. 20, 2025), the Eleventh Circuit entertained an as-applied challenge to § 922(g)(3) without hesitation; it applied the *Bruen/Rahimi* framework correctly; and it concluded under that framework that a prosecution of a non-violent Florida medical marijuana user under § 922(g)(3) indeed violated the Second Amendment. *See* 148 F.4th at 1320-21 (holding the government had "failed to meet its burden of establishing that the challenged laws and regulations as applied to medical marijuana users are consistent with this Nation's history and tradition of firearm regulation").

Significantly, under the heading "Second Amendment *framework*," the Eleventh Circuit stated in *Florida Commissioner*: "We begin our analysis by laying out the *applicable legal framework for assessing Second Amendment challenges*." *Id.* at 1314 (emphasis added). In thereafter detailing the two analytical steps under the *Bruen/Rahimi* "framework," the Court rightly did not limit the applicability of that framework to only the specific statute there before it: §922(g)(3). To the contrary, it described that framework as applying to *all* Second Amendment *challenges* by stating: (1) In *Bruen*, the Supreme Court adopted a *two-part test*, under which at the first step, "courts *must* determine whether the Second Amendment's plain text covers an individual's conduct;" (2) "*If an individual's conduct is covered by the Second Amendment, then 'the Constitution presumptively protects that conduct*;" (3) "At the second step, the Government *is required* to 'justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation," *id.* at 1314-16 (citing *Bruen*, 597 U.S. at 24, 26); and (4) in *Rahimi*, "the Supreme Court *reaffirmed the test* it adopted in *Bruen*," and "reemphasized that '[w]hy and how the regulation burdens the [Second Amendment] right are central to [a court's] inquiry." *Id.* at 1316 (citing *Rahimi*, 602 U.S. at 692) (emphasis added).

Since no logical reason to except § 922(g)(1) but not § 922(g)(3) from the *Bruen/Rahimi* framework and as-applied challenges, the question arises—as aptly posed by Judge Stras in *Jackson II*— "Why one and not the other?" 121 F.4th at 659 (noting that before *Jackson II*, the Eighth Circuit had "invited as-applied challenges to the drug-user-in-possession statute, 18 U.S.C. § 922(g)(3), which is found in the same section of the U.S. Code;" citing *United States v. Veasley*, 98 F.4th 906, 912-16 (8th Cir. 2024) (stating that "the door [is] open to those as applied challenges").

While admittedly, the Court denied the petition for writ of certiorari filed in *Jackson II*, that denial predated its grant of certiorari in *Hemani*. And it now makes eminent sense to not only consider as-applied challenges to these almost-contiguous subsections of the same federal statute together given that cert. grant, but to do so *in an Eleventh Circuit case* since the Eleventh Circuit's rule (deferring to its pre-*Bruen* precedent on § 922(g)(1)) is the most extreme. And that is because—as argued in the petition for certiorari filed contemporaneously herewith in *Curtis Solomon v. United States*—the Eleventh Circuit's prior-panel-precedent rule is *also* the most rigid among the circuits, mandating that subsequent panels follow prior panel precedent notwithstanding intervening decisions of this Court clarifying the relevant "mode of analysis."

Notably, although the en banc Eleventh Circuit was clear in *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. Mar. 14, 2025) (en banc), that the *Bruen/Rahimi* methodology indeed applies broadly to *all* "law[s] regulating arms-bearing conduct," *id.* at 1114—and § 922(g)(1) is certainly such a law—subsequent Eleventh Circuit panels (first in *Dubois II*, but then in Petitioner's case in deference to *Dubois II*) have refused to even apply the clear dictates of their en banc court in § 922(g)(1) cases. And indeed, subsequent Eleventh Circuit panels will continue this willful blindness to *Bruen/Rahimi* ***only*** in § 922(g)(1) cases, which will cause an avalanche of petitions challenging the Eleventh Circuit's obsolete Second Amendment reasoning in *Dubois II*, filed by defendants in Florida, Georgia, and Alabama to flood this Court unless it steps in and "clearly" abrogates the pre-*Bruen* approach in *Dubois II*.

CONCLUSION

Based on the foregoing argument and authority, the petition for certiorari should be granted. Alternatively, if the Court chooses to grant certiorari in another case or set of cases to resolve the issues raised herein, Petitioner asks the Court to hold his case pending its resolution of

such case(s). At the very least, it should hold this case until it resolves the related as-applied challenge under § 922(g)(3) in *Hemani* and permit supplemental briefing after it renders that decision.

Respectfully submitted,

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