

No. 25-6079

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IN THE  
**Supreme Court of the United States**

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JAMES ANTHONY BRIAN MORELOCK,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Eleventh Circuit

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**REPLY IN SUPPORT OF PETITION FOR A WRIT  
OF CERTIORARI**

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## REPLY ARGUMENT

The government is forced to concede that the lower courts are divided on both issues Mr. Morelock raises, but dismisses these splits as “shallow.” BIO at 9, 10. Yet lower court division on challenges to the felon-in-possession statute, among the most commonly charged federal crimes, warrants this Court’s review. So too does the interpretation of a sentencing guideline whose near-identical statutory analogue has divided circuit courts.

### **I. The entrenched circuit split on § 922(g)(1) calls for this Court’s review.**

The government writes that every circuit to consider the issue since *United States v. Rahimi*, 602 U.S. 680 (2024), has found the felon-in-possession law to have “at least some valid applications.” BIO at 9. But the fact remains that three circuits permit as-applied challenges, while the rest do not. The Third, Fifth, and Sixth Circuits have all found that a categorical ban on gun possession by persons convicted of any felony does not comport with historical tradition. *See Range v. Attorney General*, 124 F.4th 218, 222 (3d Cir. 2024) (en banc) (history and tradition did not support permanent disarmament of man convicted of food-stamp fraud); *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024) (“Simply classifying a crime as a felony does not meet the level of historical rigor required.”); *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024) (“[H]istory shows that § 922(g)(1) might be susceptible to an as-applied challenge in certain cases.”).

This split has warranted significant attention from the circuit courts, with en banc decisions on both sides. The full

Ninth Circuit has weighed in against allowing as-applied challenges. *United States v. Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc). Meanwhile, the full Third Circuit has allowed such challenges, holding that the law is unconstitutional as applied to a man convicted of food-stamp fraud. *Range*, 124 F.4th at 222.

At one point, the government believed the *Range* decision *by itself* warranted review of the question here, because it “held an Act of Congress unconstitutional, conflicts with decisions of other courts of appeals, and has important practical consequences.” Pet. 25, *Garland v. Range*, No. 23-374. It was correct then.

While the government may be right that no court has invalidated a felon-in-possession conviction predicated on a prior felony like Mr. Morelock’s, BIO at 10, his inability to even raise such a challenge owes only to geography. Were he in any of the ten states making up the Third, Fifth, and Sixth Circuits, he would at least be allowed to try. The Eleventh Circuit was wrong to conclude he could not, and this Court’s intervention is warranted to correct the error.

## **II. The fledgling § 925(c) rights-restoration program does not undermine the need for review.**

The government surmises that lower court disagreement “may evaporate” after the reestablishment of the discretionary rights-restoration program of 18 U.S.C. § 925(c). BIO at 9-10. But there is much reason to doubt whether this program will even get off the ground, and even more reason to doubt that it would have any bearing on the constitutional analysis.

Until recently, administration of this program was delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). Yet Congress has barred funding for the program ever since 1992. *Logan v. United States*, 552 U.S. 23, 28 n.1 (2007).

The Attorney General now aims to work around this funding ban by withdrawing the delegation to ATF. *See* BIO at 8-11, *Vincent v. Bondi*, No. 24-1155. But Congress could easily act to hamper the entire Department of Justice, not merely the ATF, from implementing the program. This fledgling effort is too weak a basis for denying the petition.

Even if the program were reanimated, it would not alter the constitutional analysis. *Bruen* placed the burden on the government to justify its firearms regulation with a relevant historical analogue. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 19 (2022) (“[T]he government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”) That is, the government would need to show a historical analogue for a lifetime ban coupled with a discretionary relief program.

Yet it makes no attempt to do so here. This is especially noteworthy since *Bruen itself* struck down a scheme under which authorities “have discretion to deny concealed-carry licenses” if they found the application lacking in “cause or suitability.” 597 U.S. at 13-15.

Nascent efforts to jumpstart §925(c) do not change the situation in the lower courts, nor do they factor into the historical inquiry this Court expounded just four years ago

for government actions burdening the Second Amendment. This Court's review is still urgently needed.

**III. Only this Court can address the significant guidelines issue of attempted armed bank robbery.**

As the government points out, the U.S. Sentencing Commission added attempt crimes to the guidelines' definition of "crime of violence" in November 2023. BIO at 13. Yet there are doubtless many people whose offense predated this change and would face sentencing enhancement under the attempt-less definition of "crime of violence" for a prior attempted armed bank robbery conviction.

A person indicted today for a 2022 offense would enjoy the attempt-less Sentencing Guidelines definition of "crime of violence" based on ex post facto protections. *See Peugh v. United States*, 569 U.S. 530 (2013). Even today, offenses committed before the November 2023 change would be well within the five-year statute of limitations for most non-capital federal crimes. 18 U.S.C. § 3282.

This means that despite the Sentencing Commission's change, the number of people in Mr. Morelock's situation—facing sentencing enhancement for attempted armed bank robbery convictions under the earlier "crime of violence" definition—can continue to grow. Only this Court's intervention can settle whether they should face such enhancement or not.

The government also complains that Mr. Morelock "does not cite any other court of appeals decision address-

ing th[is] issue in the Guidelines context,” versus that of 18 U.S.C. § 924(c). BIO at 11-12. But as Mr. Morelock explained in his petition, Pet. at 6, the only distinction between the two is that §924(c) includes offenses where force is directed at *property*. This distinction matters not here.

Indeed, multiple courts of appeals have used their interpretations of §924(c)’s “crime of violence” definition to settle disputes over the guidelines’ near-identical “crime of violence” definition. For one, the decision below did so. Likewise, the Ninth Circuit has also relied on its §924(c) case law to answer questions on the guidelines’ “crime of violence” definition. *See United States v. Pastor*, 765 Fed. Appx. 162, 163 (9th Cir. 2019) (citing 9th Circuit decision on §924(c) “crime of violence” as “foreclos[ing]” defendant’s challenge to guidelines “crime of violence” enhancement).

In any case, the government offers no reason why §924(c)’s inclusion of offenses directing force at property should lead to a different outcome than for the guidelines definition omitting property-directed force.

Despite the government’s protestations, the “crime of violence” enhancement implicates a circuit split. Notwithstanding the 2023 amendment to the sentencing guidelines, the population of people in Mr. Morelock’s position—facing guidelines enhancement for attempted armed bank robbery—can still grow.

**CONCLUSION**

The Court should grant the petition for a writ of certiorari.

Respectfully Submitted,

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