No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

BRITTANY LYN ISAACSON,

Petitioner,
v.

UNITED STATES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment, both facially and as applied to Ms. Isaacson, in light of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 US. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024).

RELATED PROCEEDINGS

On June 25, 2024, judgment was entered against Petitioner Brittany Lyn Isaacson in *United States v. Isaacson*, No. 2:24-cr-00021-ABJ-2 (D. Wyo. Jun. 25, 2024), ECF No. 79. App. A1–A8.

On July 15, 2025, the Tenth Circuit affirmed Ms. Isaacson's conviction in an unpublished decision, *United States v. Isaacson*, No. 24-8044, 2025 U.S. App. LEXIS 17408 (10th Cir. 2024). App. A9–A10.

On August 11, 2025, the Tenth Circuit denied Ms. Isaacson's petition for en banc review. *United States v. Isaacson*, No. 24-8044 (10th Cir. Aug. 11, 2025), ECF No. 38. App. A11.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Brittany Lyn Isaacson, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on July 15, 2025.

OPINION AND ORDER BELOW

The Tenth Circuit's most recent unreported opinion in Ms. Isaacson's case is available at 2025 U.S. App. LEXIS 17408, and is in the Appendix at A9–A10.

STATEMENT OF JURISDICTION

The United States District Court for the District of Wyoming had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291, and entered judgment on July 15, 2025. App. A9–A10. The Tenth Circuit denied Ms. Isaacson's petition for en banc review on August 11, 2025. App. A11. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, U.S. CONST. amend. II:

> 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.

18 U.S.C. § 922(g)(1):

> 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 ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any

firearm or ammunition which has been shipped or transported interstate or foreign commerce.

STATEMENT OF THE CASE

Petitioner, Ms. Brittany Lyn Isaacson, pleaded guilty in the District of Wyoming to one count of possession of a firearm as a felon under 18 U.S.C. § 922(g)(1) (hereinafter, "Section 922(g)(1)"). The charge stemmed from Ms. Isaacson's alleged possession of a Taurus pistol and a Smith & Wesson pistol on or about October 31, 2023. Ms. Isaacson's sole qualifying felony conviction is nonviolent. *See* Tenth Cir. Opening Br., Case No. 24-8044, at 1, 26–27.

In her district court proceeding, Ms. Isaacson challenged the constitutionality of Section 922(g)(1) under the Second Amendment, both facially and as applied to her, in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). In her appellate court proceeding, Ms. Isaacson challenged the constitutionality of Section 922(g)(1) under the Second Amendment, both facially and as applied to her, in light of both *Bruen*, 597 U.S. 1, and *United States v. Rahimi*, 602 U.S. 680 (2024).

The Tenth Circuit rejected Ms. Isaacson's arguments based on "two precedential opinions." App. A10. Specifically, the panel found its opinions in *Vincent v. Garland*, 80 F.4th 1197, 1200–02 (10th Cir. 2023) (*Vincent I*) and *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025) (*Vincent III*), *petition for cert. filed* (U.S. May 8, 2025) (No. 24-1155), "control, requiring us to reject Ms. Isaacson's constitutional challenge to § 922(g)(1)." *Id.* (citation omitted). The Tenth Circuit wrongly decided that the presumptive validity of felon dispossession laws "was reaffirmed in *Rahimi*," "[s]o *Rahimi* doesn't clearly abrogate the presumptive validity of § 922(g)(1)." *Contra. Vincent III*, 127 F.4th at 1265 (citation omitted).

REASONS FOR GRANTING THE WRIT

The Tenth Circuit erred in failing to apply the analytical framework to Second Amendment challenges clarified in *Bruen* and elaborated on in *Rahimi*, and instead holding that *Heller's* dicta forecloses all constitutional challenges to Section 922(g)(1). The court's decision conflicts with relevant decisions of this Court and conflicts with decisions of majority of other United States Courts of Appeal. This Court should grant the petition for a writ of certiorari and reverse.

i. The Tenth Circuit Erred In Holding Section 922(g)(1) Is Not Subject to the Standard for Applying the Second Amendment

The Second Amendment 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." U.S. CONST. amend. II. "The very text of the Second amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.'" *Dist. of Columbia v. Heller*, 554 U.S. 570, 592 (2008). It "is not a right granted by the Constitution. Neither is it in any manner dependent on that instrument for its existence." *Id.* (quoting *United States v. Cruikshank*, 92 U.S. 542, 553 (1876)). "[T]he right to keep and bear arms is among the 'fundamental rights necessary to our system of ordered liberty.'" *Rahimi*, 602 U.S. at 690 (citing *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010)). The founding generation believed that, when the right is infringed, "liberty, if not already annihilated, is on the brink of destruction." *Heller*, 554 U.S. at 606. "'Disarm a community and you rob them of the means of defending life. Take away their weapons of defense and you take away the inalienable right of defending liberty.'" *Rahimi*, 602 U.S. at 690 (citation

omitted). Today, "millions of Americans" rely on that right in possessing and carrying firearms for the "defense of self, family, and property." *Heller*, 554 U.S. at 624 n.24, 628.

When the government regulates that right, it bears a significant burden in justifying its regulation. *See Bruen*, 597 U.S. at 17. "In *Bruen*," this Court "explained that when a firearm regulation is challenged under the Second Amendment, the Government must show that the restriction 'is consistent with the Nation's historical tradition of firearm regulation.'" *Rahimi*, 602 U.S. at 689. "In keeping with *Heller*," this Court held:

> when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 597 U.S. at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)) (footnote omitted). This Court "reiterate[d]" that this is "the standard for applying the Second Amendment." *Id.* at 24.

"In what could only be described as the opinion's *deus ex machina* dicta, *Heller* simply declared that nothing in it 'cast[s] doubt on longstanding prohibitions on the possession of firearms by felons' or various other gun control laws." *United States v. McCane*, 573 F.3d 1037, 1049 (10th Cir. 2009) (Tymkovich, J., concurring) (quoting *Heller*, 554 U.S. at 626) (alteration in original). "[T]he felon dispossession dictum may lack the 'longstanding' historical basis that *Heller* ascribes to it. Indeed, the

scope of what *Heller* describes as 'longstanding prohibitions on the possession of firearms by felons,' 128 S.Ct. at 2816–17, is far from clear." *Id.*, at 1048 (Tymkovich, J., concurring).

> [M]ore recent authorities have *not* found evidence of longstanding dispossession laws. On the contrary, a number have specifically argued such laws did not exist and have questioned the sources relied upon by the earlier authorities. *See*, *e.g.*, Larson, *supra*, at 1374 (finding Kates's evidence of longstanding felon dispossession "surprisingly thin"); C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 709–10, 714 (2009) (challenging the evidence cited by both Dowlut and Kates). Instead, they assert, the weight of historical evidence suggests felon dispossession laws are creatures of the twentieth—rather than the eighteenth—century. *See*, *e.g.*, Marshall, supra, at 698–713 (comprehensively reviewing the history of state and federal dispossession laws); Larson, *supra*, at 1374 ("[S]o far as I can determine, no colonial or state law in eighteenth century America formally restricted the ability of felons to own firearms."); Adam Winkler, *Heller's Catch 22*, 56 UCLA L.Rev. 1551, 1561, 1563 (2009) (same). Together these authorities cast doubt on a categorical approach to felon dispossession laws.
>
> This uncertain historical evidence is problematic in light of *Heller's* Second Amendment interpretation. Central to the Court's holding are a detailed textual analysis and a comprehensive review of the Second Amendment's meaning at the time of its adoption.

Id. (Tymkovich, J., concurring) (citing Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L.J. 1371, 1372 (2009)) (footnote omitted; emphasis in original). "Given the uncertain pedigree of felon dispossession laws, though, the dictum sanctioning their application while simultaneously sidestepping the Second Amendment's original meaning is odd. One wonders, at least with regard to felon dispossession, whether the *Heller* dictum has swallowed the *Heller* rule." *Id.*, at 1049 (Tymkovich, J., concurring).

Following *Bruen*, the Tenth Circuit confirmed that in *McCane*, it "relied solely" on the presumptive lawfulness of felon dispossession statutes dictum in *Heller*, "reasoning that the Supreme Court had appeared to recognize the constitutionality of longstanding prohibitions on possession of firearms by convicted felons." *Vincent I*, 80 F.4th at 1201 (citing *McCane*, 573 F.3d at 1047). "Rather than seriously wrestling with how to apply" *Bruen*, the Tenth Circuit "continue[s] to simply reference the applicable *Heller* dictum and move on." *See McCane*, 573 F.3d at 1050 (Tymkovich, J., concurring). The Tenth Circuit has explained that "[t]hough *Bruen* created a new test for determining the scope of the Second Amendment, the Court didn't appear to question the constitutionality of longstanding prohibitions on possession of firearms by convicted felons." *Vincent I*, 80 F.4th at 1201. Thus, according to the Tenth Circuit, "*Bruen* did not indisputably and pellucidly abrogate (its) precedential opinion in *McCane*." *Id.* at 1202. This, however, results in an "artificial cabining of *Bruen*." *See United States v. Duarte*, 108 F.4th 786, 788 (9th Cir. 2024) (*Duarte II*) (Murguia, C.J., dissenting from the grant of rehearing en banc).

Following *Bruen* and the Tenth Circuit's decision in *Vincent I*, this Court decided *Rahimi*.

> In *Bruen*, we directed courts to examine our "historical tradition of firearm regulation" to help delineate the contours of the right. *Id.*, at 17. We explained that if a challenged regulation fits within that tradition, it is lawful under the Second Amendment. We also clarified that when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to "justify its regulation." *Id.*, at 24.

Rahimi, 602 U.S. at 691 (cleaned up). This Court "emphasized that its holding in *Rahimi* was a narrow one." *Duarte II*, 108 F.4th at 789 (Murguia, C.J., dissenting from the grant of rehearing en banc) (quoting *Rahimi*, 602 U.S. at 702 ("[W]e conclude only this: . . . .")).

> As Justice Gorsuch explained, the Court did not "decide . . . whether the government may disarm a person without a judicial finding that he poses a 'credible threat' to another's physical safety," "resolve whether the government may disarm an individual permanently," or "approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem . . . 'not responsible.'"

Id. (quoting *Rahimi*, 602 U.S. at 713 (Gorsuch, J., concurring)).

On remand following *Rahimi*, the Tenth Circuit found "[u]nder the Supreme Court's order, our sole task is to consider the effect of *Rahimi*." *Vincent III*, 127 F.4th at 1265. And again, the Tenth Circuit found "[i]n *McCane*, we relied on *Heller's* instruction that felon dispossession laws are presumptively valid." *Id.* (citing *McCane*, 573 F.3d at 1047). The Tenth Circuit further found that "[t]his presumption was reaffirmed in *Rahimi*." *Id.* (citing *Rahimi*, 602 U.S. at 682). Thus, the Court held that "*Rahimi* doesn't clearly abrogate the presumptive validity of § 922(g)(1)." *Id.* (citing *United States v. Hunt*, 123 F.4th 697, 703 (4th Cir. 2024), *petition for cert. denied sub. nom.*, 145 S. Ct. 2756 (Jun. 2, 2025) (No. 24-6818)).

With respect to Section 922(g)(1), the Tenth Circuit is among the courts that "have misunderstood the methodology of" this Court's "recent Second Amendment cases." *See Rahimi*, 602 U.S. at 691. "*Rahimi* did not address presumptively lawful regulations in any way that dictates a different course than one set out in *Bruen*." *Rocky Mt. Gun Owners v. Polis*, 121 F.4th 96, 122 (10th Cir. 2024). The Tenth Circuit

appears to recognize that "*Bruen* explicitly outlines a two-step process for determining the constitutionality of *any law or regulation* that burdens a Second Amendment right." *Id.*, at 121 (emphasis added). The Tenth Circuit has acknowledged "the apparent tension between the *Bruen* twostep framework and the safe harbor list of presumptively lawful regulations." *Id.*, at 120. To resolve this "tension," the Tenth Circuit held that a "law or regulation from the *Heller* safe harbor list," aside from Section 922(g)(1), does "not implicate the plain text of the Second Amendment." *Id.*, at 120 & n.6. As such, presumptively lawful regulations – other than Section 922(g)(1) – do "not require" a court "to proceed beyond *Bruen* step one." *Id.*, at 120. This safe harbor concept is simply without support in either *Bruen* or *Rahimi* given the manner in which both cases explicitly describe the test to be applied to Second Amendment challenges. Neither *Bruen* nor *Rahimi* contemplate the proposition that *Heller* created a safe harbor for certain regulations. The Fifth Circuit referred to the Tenth Circuit's analysis as "a category error," noting that there are "baleful implications of limiting the right [to possess firearms] at the outset by means of narrowing regulations not implied in the text." *Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 127 F.4th 583, 590 & n.2 (5th Cir. 2025). Even if it is determined that *Heller* did indeed create a safe harbor list, despite the apparent recognition of the unequivocal dictates of this Court, the Tenth Circuit paradoxically maintains that Section 922(g)(1) is constitutional without subjecting it to "*the standard* for applying the Second Amendment" outlined in *Bruen*. *See Bruen*, 597 U.S. at 24 (emphasis added).

"Developments in the world may change, facts on the ground may evolve, and new laws may invite new challenges, but the Constitution the people adopted remains our enduring guide." *Rahimi*, 602 U.S. 709–10 (Gorsuch, J., concurring) (citing *Bruen*, 597 U.S. at 27–28) (additional citations omitted). This "Court in *Heller* cautioned that a 'constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.'" *Id.*, at 734 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 634)). A "court may not 'extrapolate' from the Constitution's text and history 'the values behind [that right], and then . . . enforce its guarantees only to the extent they serve (in the courts' views) those underlying values." *Id.*, at 710–11 (Gorsuch, J., concurring) (citing *Giles v. California*, 554 U.S. 353, 375 (2008)) (alterations in original).

> Discerning what the original meaning of the Constitution requires in this or that case may sometimes be difficult. *Asking that question, however, at least keeps judges in their proper lane, seeking to honor the supreme law the people have ordained rather than substituting our will for theirs*. And whatever indeterminacy may be associated with seeking to honor the Constitution's original meaning in modern disputes, that path offers surer footing than any other this Court has attempted from time to time. Come to this Court with arguments from text and history, and we are bound to reason through them as best we can. (As we have today.) Allow judges to reign unbounded by those materials, or permit them to extrapolate their own broad new principles form those sources, and no one can have any idea how they might rule. (Except the judges themselves.) Faithful adherence to the Constitution's original meaning may be imperfect guide, but I can think of no more perfect one for us to follow.

Id., at 711–12 (Gorsuch, J., concurring) (emphasis added). The Tenth Circuit erred in not even asking the question.

"Among all the opinions issued in" *Rahimi*, "its central messages should not be lost. The Court reinforces the focus on text, history, and tradition, following exactly the path we described in *Bruen*." *Id.*, at 714 (Gorsuch, J., concurring) (citation omitted). After *Bruen*, "this Court's directive was clear: A firearm regulation that falls within the Second Amendment's plain text is unconstitutional unless it is consistent with the Nation's historical tradition of firearm regulation." *Id.*, at 747 (Thomas, J., dissenting) (citation omitted). The Tenth Circuit's failure to apply the standard to Second Amendment challenges involving Section 922(g)(1), and continued reliance "on *Heller's* one-off reference to felon-in-possession statutes," *see United States v. Williams*, 113 F.4th 637, 647–48 (6th Cir. 2024), strikes a similar chord to the Government's unpersuasive "responsible, law-abiding" citizens arguments rejected by this Court. *Rahimi*, 602 U.S. at 701–02, 772–77 (Thomas, J., dissenting).

> The Government, for its part, tries to rewrite the Second Amendment to salvage its case. It argues that the Second Amendment allows Congress to disarm anyone who is not "responsible" and "law-abiding." Not a single member of the Court adopts the Government's theory. Indeed, the Court disposes of it in half a page-and for good reason. The Government's argument lacks any basis in our precedents and would eviscerate the Second Amendment altogether.

Id., at 772–73 (cleaned up). Any "claim that (this) Court already held the Second Amendment protects only 'law-abiding, responsible citizens' is specious at best." *Id.*, at 773 (Thomas, J., dissenting) (citation and footnote omitted). "In reality, the 'law-abiding, dangerous citizen' test is . . . designed to justify every one of (the Government's) existing regulations. It has no doctrinal or constitutional mooring."

Id., at 774 (Thomas, J., dissenting). "Perhaps judges' jobs would be easier if they could simply strike the policy they prefer. And a principle that the government always wins surely would be simple for judges to implement. But either approach would let judges stray far from the Constitution's promise." *Id.*, at 712–13 (Gorsuch, J., concurring) (citing *Heller*, 554 U.S. at 634).

ii. The Tenth Circuit's Steadfast Refusal to Subject Section 922(g)(1) to the Standard for Applying the Second Amendment Conflicts with the Majority of Other United States Courts of Appeal

The Tenth Circuit's decision conflicts with authoritative decisions of the majority of other United States Courts of Appeal regarding whether either or both facial and as-applied challenges to Section 922(g)(1) are permitted in light of the test established in *Bruen* and *Rahimi*. Four circuits have applied *Bruen* and *Rahimi*'s analytical framework to determine whether both facial and as-applied challenges to Section 922(g)(1) are permitted. *United States v. Duarte*, 137 F.4th 743, 746–62 (9th Cir. 2025) (en banc) (*Duarte III*), *petition for cert. filed* (U.S. Oct. 6, 2025) (No. 25-0425); *United States v. Diaz*, 116 F.4th 458, 465–72 (5th Cir. 2024), *petition for cert. denied*, 145 S. Ct. 2822 (Jun. 23, 2025) (No. 24-6625); *Williams*, 113 F.4th at 644–63; and *United States v. Jackson*, 110 F.4th 1120, 1125–29 (8th Cir. 2024), *petition for cert. denied*, 145 S. Ct. 2708 (May 19, 2025) (No. 24-6517). Two circuits have applied *Bruen* and *Rahimi's* analytical framework to determine only whether as-applied challenges to Section 922(g)(1) are permitted. *Zherka v. Bondi*, 140 F.4th 68, 75–96 (2d Cir. 2025), *petition for cert. filed* (U.S. Sep. 5, 2025) (No. 25-0269) and *Range v. Att'y Gen. United States*, 124 F.4th 218, 224–32 (3d Cir. 2024) (en banc). One circuit

has found that its prior reliance on *Heller's* presumptively lawful language foreclosing facial challenges to Section 922(g)(1) "survives *Bruen*." *Zherka*, 140 F.4th at 75. Only two other circuits, like the Tenth Circuit, have found their prior reliance on *Heller's* presumptively lawful language foreclosing both facial and as applied challenges to Section 922(g)(1) undisturbed without actually applying *Bruen* or *Rahimi*'s analytical framework. *Hunt*, 123 F.4th at 702–05; and *United States v. Dubois*, 139 F.4th 887, 892–94 (11th Cir. 2025), *reh'g en banc denied*, 2025 U.S. App. LEXIS 22747 (11th Cir. Sep. 2, 2025).

The Fifth, Sixth, Eighth and Ninth Circuits have applied *Bruen* and *Rahimi*'s analytical framework to determine whether both facial and as-applied challenges to Section 922(g)(1) are permitted. *Duarte III*, 137 F.4th at 746–62; *Diaz*, 116 F.4th at 465–72; *Williams*, 113 F.4th at 644–63; and *Jackson*, 110 F.4th at 1125–29. Notably, each of these circuits, like the Tenth Circuit, had previously rejected "arguments challenging the constitutionality of" Section 922(g)(1) reasoning that the Supreme Court "explicitly stated in *Heller* that 'nothing in our opinion should be taken to cast doubt on the longstanding prohibitions on the possession of firearms by felons.'" *McCane*, 573 F.3d at 1047 (citations omitted).[1] The Fifth Circuit found that because

[1] *United States v. Carey*, 602 F.3d 738, 741 (6th Cir. 2010) (citation omitted); *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010) (citation omitted); *United States v. Vongxay*, 594 F.3d 1111, 1114–15 (9th Cir. 2010); and *United States v. Irish*, 285 Fed.Appx. 326, at *327 (8th Cir. Jul. 31, 2008).

Heller, *Bruen*, and *Rahimi* did not "actually concern[] § 922(g)(1), they are not binding precedent . . . . The Court did not complete any historical analysis on laws forbidding felons from possessing firearms, as required by *Bruen*. The mentions of felons in those cases are mere dicta." *Diaz*, 116 F.4th at 466 (citation omitted). According to the Sixth Circuit, "In the Second Amendment context, the Supreme Court's mode of analysis has changed since we last upheld § 922(g)(1)'s constitutionality. *Bruen* requires a history-and-tradition analysis that our circuit hasn't yet applied to this statute. That means we must revisit our prior precedent." *Williams*, 113 F.4th at 645. After applying the test mandated by *Bruen*, the Sixth Circuit held

> § 922(g)(1) is constitutional on its face and as applied to dangerous people. Our nation's historical tradition confirms *Heller's* assumption that felon-in-possession laws are "presumptively lawful." The history reveals that 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 662–63. To be sure, the Eighth and Ninth Circuits have applied *Bruen's* analytical framework to arrive at their earlier conclusions that were based on *Heller's* dicta. According to the Ninth Circuit, "Our application of *Bruen's* constitutional test to Duarte's conduct confirms" that "our holding in *Vongxay* remains consistent with the Supreme Court's articulation of Second Amendment rights." *Duarte III*, 137 F.4th at 752. The Eighth Circuit "concluded . . . Congress acted within the historical tradition when it enacted § 922(g)(1)" "[g]iven these assurances by the Supreme Court, and the history that supports them." *Jackson*, 110 F.4th at 1125, 1129.

The Second and Third Circuits have applied *Bruen* and *Rahimi*'s analytical framework to determine whether as-applied challenges to Section 922(g)(1) are permitted. The Second Circuit found it had "not previously resolved the discrete" question of "the constitutionality of § 922(g)(1) as applied," and held it "therefore must conduct a *Bruen* analysis of that claim." *Zherka*, 140 F.4th at 75. Similarly, the Third Circuit "[h]aving explained how *Bruen* abrogated [its] Second Amendment jurisprudence" applied *Bruen* to determine only the constitutionality of Section 922(g)(1) as applied. *Range*, 124 F.4th at 225, 232.

"When this Court adopts a new legal standard, as we did in *Bruen*, we do not do so in a vacuum. The tests we establish bind lower court judges, who then apply those legal standards to the cases before them." *Rahimi*, 602 U.S. 741 (Jackson, J., concurring). At least the Second, Third, Fifth, Sixth, Eighth, and Ninth Circuits applied *Bruen's* legal standard to Section 922(g)(1). The Tenth Circuit, like the Fourth and Eleventh Circuits, refuses. While the circuits applying *Bruen* to Section 922(g)(1) "appear to be diverging in both approach and outcome as they struggle to conduct the inquiry *Bruen* requires of them," *id.*, at 743 (Jackson, J., concurring), they nonetheless are following *Bruen's* "commands." *See Rocky Mt. Gun Owners*, 121 F.4th at 117.

CONCLUSION

For all of these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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