No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHNATHAN ANTON WILLIAMS,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED[1]

1. Whether 18 U.S.C. § 922(g)(1), the statute permanently prohibiting possession of firearms by persons convicted of a crime punishable by imprisonment for a term exceeding one year, is constitutional under the Second Amendment.

2. Whether 18 U.S.C. § 922(g)(1) is unconstitutional because it exceeds Congress's authority under the Commerce Clause as applied to intrastate possession of a firearm.

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[1] This first question in this petition, regarding whether the Eleventh Circuit correctly holds § 922(g)(1) constitutional without engaging in an as-applied analysis and categorically barring felons from possessing firearms, is also raised in other petitions, including *Jones v. United States*, No. 25-5820 (distributed for conference of Nov. 14, 2025). The question of whether § 922(g)(1) is subject to an as-applied challenge is also similar to—but distinct from—other petitions that turn on the availability and scope of an as-applied challenge. *See, e.g.*, *Howard v. United States*, No. 25-5220 (distributed for conference of November 21, 2025) ("Whether 18 U.S.C. §922(g)(1) comports with the Second Amendment as applied to a defendant whose most serious prior felony conviction is drug trafficking?"); *Vincent v. Bondi*, No. 24-1155 (distributed for conference of November 21, 2025) ("Whether the Second Amendment allows the federal government to permanently disarm Petitioner Melynda Vincent, who has one seventeen-year-old nonviolent felony conviction for trying to pass a bad check.").

RELATED PROCEEDINGS

United States District Court (M.D. Fla.)

United States v. Williams, Case No. 8:22-cr-308-JSM-AAS

United States Court of Appeals (11th Cir.)

United States v. Williams, No. 23-13858, 2025 WL 40266 (Jan. 7, 2025)

United States v. Williams, No. 23-13858, 2025 WL 2303513 (Aug. 11, 2025)

United States Supreme Court

Williams v. United States, No. 24-6892, 145 S. Ct. 2775 (2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Johnathan Anton Williams respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's unpublished opinion affirming Mr. Williams's conviction on remand, *United States v. Williams*, No. 23-13858, 2025 WL 2303513 (11th Cir. Aug. 11, 2025), is provided as Appendix A. This Court's order granting a petition for certiorari review vacating the judgment below, and remanding for further proceedings is reported at 145 S. Ct. 2775 (2025), and is provided as Appendix B. The Eleventh Circuit's original opinion, *United States v. Williams*, No. 23-13858, 2025 WL 40266 (11th Cir. Jan. 7, 2025), is unpublished and is provided as Appendix C. The Judgment in a Criminal Case adjudicating Mr. Williams guilty and imposing his sentence was entered by the United States District Court for the Middle District of Florida, Tampa Division, was entered on November 14, 2023, and is provided as Appendix D.

JURISDICTION

The Eleventh Circuit issued its opinion on remand on August 11, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 8 of Article I of the United States Constitution provides that "Congress shall have the power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The Second Amendment to the United States Constitution states that "[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."

Section 922(g)(1) of Title 18 to the United States Code states:

> It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding on year, . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

INTRODUCTION

This petition presents important questions of federal law that can only be settled by this Court: can a criminal defendant raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) and, if so, what parameters apply to such a challenge? The Court's intervention is needed to resolve a clear and growing split of authority among the Circuits.

The Eleventh Circuit, where Mr. Williams was prosecuted, as well as the Fourth, Eighth, Ninth, and Tenth Circuits uphold the validity of § 922(g)(1) in all respects, effectively foreclosing the possibility of as-applied challenges. *See United States v. Dubois*, 139 F.4th 887, 892–94 (11th Cir. 2025) (hereinafter referred to as *Dubois II*); *United States v. Hunt*, 123 F.4th 697, 708 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (Mem) (2025); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (Mem) (2025); *United States v. Duarte*, 137 F.4th 743, 759–62 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *petition for cert. filed*, (May 12, 2025) (No. 24-1155).

By contrast, the Third, Fifth, and Sixth Circuits allow as-applied challenges. *See Range v. U.S. Att'y Gen.*, 124 F.4th 218, 228–32 (3rd Cir.

2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 467–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (Mem) (2025); *United States v. Williams*, 113 F.4th 637, 64–45, 657–63 (6th Cir. 2024). But even among those circuits, the courts differ in methodology for determining whether § 922(g)(1) is unconstitutional as applied to individual defendants.

The disagreements demonstrate that further direction from this Court is needed after its decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). As the Eleventh Circuit recently reiterated, "We require clearer instruction from the Supreme Court before may reconsider the constitutionality of section 922(g)(1)." *Dubois*, 139 F.4th at 894. This Court should grant certiorari to provide such clarity.

STATEMENT OF THE CASE

Mr. Williams was charged, in August 2022, by indictment with Possession of a Firearm and Ammunition by a Convicted Felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).[2] Doc. 1. The indictment listed Mr. Williams's prior qualifying offenses as including a 2005 conviction for Robbery and Possession of Cocaine, a 2013 conviction for Possession of a Controlled Substance with Intent to Distribute, and a 2014 conviction of Felon in Possession of a Firearm. *Id.* at 2.

Mr. Williams moved to dismiss the Felon in Possession count as violating the Second Amendment and Commerce Clause. Doc. 32. He argued he was among the people protected by the Second Amendment, notwithstanding his felony convictions, and the total ban on firearms possession was inconsistent with the nation's historical tradition of firearms regulations. With respect to the Commerce Clause, Mr. Williams argued that his non-economic, intrastate possession of a

[2] Mr. Williams was also charged and found guilty of Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(b)(1)(C), and Possession of a Firearm in Furtherance of a Drug Trafficking Crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). Doc. 1; Doc. 50.

firearm did not substantially affect interstate commerce. The district court denied the motion. Doc. 35.

Mr. Williams waived his right to a jury trial and proceeded to a stipulated bench trial. Docs. 44-46. The facts he stipulated to included that a search of his vehicle revealed a Taurus 9mm pistol with a magazine and one round in the chamber, a Sig Sauer pistol magazine with 9mm ammunition, and one .45 round. Doc. 46 at 2. The pistol was manufactured in Brazil, four rounds of the ammunition were manufactured in Serbia, and seven rounds of ammunition were manufactured in the Philippines or Montana. *Id.* at 4. The judge found Mr. Williams guilty under § 922(g)(1). Doc. 50.

Mr. Williams appealed and argued that his § 922(g)(1) conviction should be vacated because the statute is unconstitutional under the Second Amendment facially and as applied to him. He argued that the Eleventh Circuit's precedent in *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), which held that § 922(g)(1) did not violate the Second Amendment, was abrogated by this Court's decision in *Bruen*. He also argued that he was a member of "the people" who enjoy rights under the Second Amendment, and his proposed course of conduct fell within the

Second Amendment's plain text. As a result, his conduct was presumptively lawful under *Bruen*, and the government could not show § 922(g)(1) was consistent with this Nation's tradition of firearms regulation.

The Eleventh Circuit rejected Mr. Williams's argument. In *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024) (hereinafter referred to as *Dubois I*), the Eleventh Circuit held that *Bruen* did not abrogate its precedent holding § 922(g)(1) constitutional "because the Supreme Court made it clear that *Heller* did not cast doubt on felon-in-possession prohibitions and that its holding in *Bruen* was consistent with *Heller*." *United States v. Williams*, No. 23-13858, 2025 WL 40266, at *2 (11th Cir. Jan. 7, 2025) (hereinafter referred to as *Williams I*). Mr. Williams's Commerce Clause challenge was likewise foreclosed by precedent. *Id.*

Approximately one week later, this Court vacated the Eleventh Circuit's decision in *Dubois* and remanded it for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). *Dubois v. United States*, 145 S. Ct. 1041 (2025) (Mem.). On remand, the Eleventh Circuit reinstated its previous opinion that neither *Bruen* nor *Rahimi* abrogated its precedent in *Rozier* holding that § 922(g)(1) is not unconstitutional

because felons are categorically unqualified to possess firearms. *Dubois II*, 139 F.4th at 893.

Mr. Williams also petitioned for a writ of certiorari. As it had in *Dubois I*, this Court granted the petition, vacated the decision, and remanded to the Eleventh Circuit for further consideration in light of *Rahimi*. *Williams v. United States*, 145 S. Ct. 2775 (2024) (Mem.).

On remand, the Eleventh Circuit reiterated that neither *Bruen* nor *Rahimi* abrogated *Rozier*'s holding that § 922(g)(1) was a constitutional restriction of the Second Amendment rights of people with felony convictions. *United States v. Williams*, No. 23-13858, 2025 WL 2303513, at *2-3 (11th Cir. Aug. 11, 2025). Because the Eleventh Circuit categorically holds that § 922(g)(1) is lawful regardless of the nature of an individual's felony conviction, it did not examine Mr. Williams's criminal history to determine whether there is a history and tradition of disarming people with convictions like his. Despite the absence of any individual examination of Mr. Williams's circumstances, the Eleventh Circuit concluded "under both *Bruen* and *Rahimi*, § 922(g)(1) is constitutional as applied to Williams." *Id.* at *3.

The Eleventh Circuit also reaffirmed its holding that precedent foreclosed Mr. Williams's challenge to § 922(g)(1) under the Commerce Clause. *Id.* at *4 (citing *United States v. Stancil*, 4 F.4th 1193, 1200 (11th Cir. 2021)).

REASONS FOR GRANTING THE WRIT

I. This Court's review is needed to determine whether § 922(g)(1) is constitutional under the Second Amendment.

A. The circuits are split as to whether § 922(g)(1) is subject to as-applied challenges.

Whether § 922(g)(1)'s categorical ban is subject to as-applied challenges is an outstanding question after *Rahimi*. The courts of appeals are split on this important issue, with several circuits, like the Eleventh, holding that felons can never exercise a Second Amendment right, and other circuits permitting as-applied challenges but evaluating those challenges differently.[3] The Court should grant certiorari to resolve these

[3] Although the Eleventh Circuit stated that § 922(g)(1) is constitutional "as applied" to Mr. Williams, *see Williams II*, 2025 WL 2303513 at *3, it did so without consideration of what felony convictions Mr. Williams has. Instead, it reaffirmed its earlier holdings that Congress may constitutionally categorically ban felons from possessing firearms. *Dubois II*, 139 F.4th at 893. The simple use of the term "as applied" in *Williams* did not alter the Eleventh Circuit's approach of categorically finding the disarmament of felons constitutional.

splits and ensure that the availability of an as-applied challenge to § 922(g)(1) does not depend on geography.

1. The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits do not allow as-applied challenges.

The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have broadly upheld § 922(g)(1), foreclosing the possibility of viable as-applied challenges. *See Hunt*, 123 F.4th 697; *Jackson*, 110 F.4th 1120; *Duarte*, 137 F.4th 743; *Vincent*, 127 F.4th 1263; *Dubois II*, 139 F.4th 887.

In *Hunt*, the Fourth Circuit applied its pre-*Bruen* rationale that "people who have been convicted of felonies are outside the group of 'law-abiding responsible citizen[s]' that the Second Amendment protects." 123 F.4th at 704 (quoting *United States v. Moore*, 666 F.3d 313, 319 (4th Cir. 2012)). The circuit concluded that "*Bruen* and *Rahimi* . . . provide no basis . . . to depart from [its] previous rejection of the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms." *Id.*; *see id.* at 705 (explaining that § 922(g)(1) does not "regulate activity within the scope of the Second Amendment"). The Fourth Circuit also reasoned that it would reach the same conclusion if it applied *Bruen*'s historical test because "legislatures traditionally employed status-based

restrictions to disqualify categories of persons from possessing firearms." *Id.* at 705 (internal quotation marks omitted).

In *Jackson*, the Eighth Circuit determined that "history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society," such as those convicted of a felony. 110 F.4th at 1127. Alternatively, the circuit reasoned that disarmament by classification was proper because "[l]egislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed," with "no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* at 1128.

In *Duarte*, the Ninth Circuit found a historical tradition of "permanent and categorical disarmament of felons," and joined the Fourth and Eighth Circuits' conclusions that § 922(g)(1) is constitutional as to "all" felons:

> Legislatures have historically retained the discretion to punish those who commit the most severe crimes with permanent deprivations of liberty, and legislatures could disarm on a categorical basis those who present a "special danger of misuse" of firearms. *Rahimi*, 602 U.S. at

> 698. We agree with the Fourth and Eighth Circuits that either historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons. *See Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706.

Id. at 761.

In *Vincent*, the Tenth Circuit reaffirmed its pre-*Bruen* conclusion that § 922(g)(1) is constitutional. 127 F.4th at 1265–66 (concluding Rahimi did not abrogate *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)). The Tenth Circuit explained that even "nonviolent offenders" cannot challenge § 922(g)(1) as applied to them, because such challenges are unavailable under *McCane*. *Id.* at 1266. "There [the Tenth Circuit] upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved." *Id.*

In *Dubois II*, the Eleventh Circuit reaffirmed its pre-*Bruen* precedent holding that § 922(g)(1) is constitutional and allows for categorical disarmament of groups of persons, including nonviolent felons. *Dubois*, 139 F.4th at 892–94 (concluding neither *Bruen* nor *Rahimi* abrogated *Rozier*, 598 F.3d at 768).

2. The Third, Fifth, and Sixth Circuits allow as-applied challenges but differ as to their application.

By contrast, the Third, Fifth, and Sixth Circuits entertain as-applied challenges in § 922(g)(1) prosecutions. *See Range*, 124 F.4th at 228–32, *Diaz*, 116 F.4th at 467–72, *Williams*, 113 F.4th 637, 64–45, 657–63. But among those decisions, the reasoning and methodology for assessing an as-applied challenge differs, risking further confusion on how to evaluate the constitutionality of § 922(g)(1).

In *Range*, the Third Circuit rejected the government's arguments that historical disarmament of certain groups of people, "classes" or "status-based restrictions," due to their "dangerousness" are legitimate analogies to justify disarmament of all felons under § 922(g)(1). 124 F.4th at 229–30. "Any such analogy," the Third Circuit held, "would be 'far too broad[ ].'" *Id.* (quoting *Bruen*, 597 U.S. at 31). The Third Circuit also concluded the government had not presented any historical analogues, such as statutes precluding a convict from regaining property after serving their sentence, which would justify the duration and scope of § 922(g)(1)'s disarmament. *Id.*

Ultimately, the Third Circuit found § 922(g)(1) unconstitutional as applied to Range, given the nature of his prior offense, the age of his conviction, his lack of a risk of danger to others, and the lack of a "longstanding history and tradition of depriving people like Range of their firearms." *Id.* at 232. 8

In *Diaz*, the Fifth Circuit held that as applied challenges are allowed despite the statute's facial validity. 116 F.4th at 468–71. The Fifth Circuit conducted the as-applied analysis by considering the historical traditional of disarmament for the individual's predicate crime. It determined first whether the individual's prior conviction was analogous to a felony at the Founding, and second, whether disarmament would have been within the historical tradition of punishment for that analogous crime conducted. 116 F.4th at 468–71.

Under this analysis, the Fifth Circuit rejected Diaz's as-applied challenge. *Id.* at 468-70. Diaz had been convicted of vehicular theft, which the court analogized to horse theft, a crime that at the Founding "would have led to capital punishment or estate forfeiture." *Id.* at 469-70.

In *Williams*, the Sixth Circuit identified as-applied challenges to § 922(g)(1) as an important and historical mechanism for individuals in

a class susceptible to disarmament to prove that they "don't fit the class-wide generalization." 113 F.4th at 650–57. Comparing that historical tradition to § 922(g)(1), the Sixth Circuit found that without as-applied challenges, § 922(g)(1) would not provide adequate opportunity for individuals to seek an exception to disarmament. *Id.* at 657–61.

The Sixth Circuit put the burden on the individual challenging the statute to "make an individualized showing that he himself is not actually dangerous." *Id.* at 663. According to the Sixth Circuit, individuals are presumptively "dangerous" and thus will have a difficult time meeting their burden on an as-applied challenge if they have been convicted of crimes against a person or a crime inherently posing a threat of danger, including drug trafficking and burglary. *Id.*

Williams's history included two felony counts of aggravated robbery, both involving the use of a gun. *Id.* at 662. Because he had "availed himself of his constitutionally required opportunity to show he is not dangerous' and "his record demonstrates that he is dangerous," the Sixth Circuit rejected his as-applied challenge. *Id.* at 663.

B. The Court's review is needed because the decision below that § 922(g)(1) is constitutional under the Second Amendment is wrong.

Under *Bruen*'s historical test, as affirmed by *Rahimi*, the decision below cannot stand. Section 922(g)(1) violates the Second Amendment as applied to Mr. Williams because the Nation's historical tradition of firearms regulation does not permit a permanent, categorical ban on firearms possession for any and all felony offenses.

1. The Eleventh Circuit failed to apply the history-and-tradition test required by *Bruen* and *Rahimi*.

For a firearms regulation to survive a Second Amendment challenge, "the 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." *Bruen*, 597 U.S. at 19; *see also Rahimi*, 602 U.S. at 691–92. Even so, the Eleventh Circuit conducted no analysis of text, history, and tradition even after this Court instructed it to reconsider its decision in light of *Rahimi*.

In lieu of conducting the test prescribed by this Court, the Eleventh Circuit relied on *Heller*'s dicta that felon disarmament laws are presumptively lawful. *Dubois II*, 139 F.4th at 891–93; *Williams*, 2025 WL 2303513, at *2-3. But *Heller* did not examine the historical justifications

for such laws. *Heller*, 554 U.S. at 635. Nor did *Heller*, or any subsequent decision, define who enjoys rights under the Second Amendment. *Rahimi*, 602 U.S. at 701. And this Court did not accept that the simple fact that an individual may not be a "responsible," law-abiding citizen as a sufficient standard to remove him from the people protected by the Second Amendment, as was argued by the government in *Rahimi*. As a result, the appellate court's reliance on dicta to categorically ban all Second Amendment challenges to § 922(g)(1) with no historical analysis was error.

Under a proper analysis, § 922(g)(1) cannot be constitutionally applied to Mr. Williams. There is no historical justification for excluding Mr. Williams from "the people" based on prior felony convictions that occurred nearly a decade or more before his current offense.

2. Mr. Williams is among "the people" described in the Second Amendment.

The phrase "the people" in the Second Amendment "unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580. As Justice, then Judge, Barrett has recognized, felons are not "categorically excluded from our national

community" and fall within the amendment's scope. *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting).

Indeed, as *Heller* explained, "the people" is a "term of art employed in select parts of the Constitution," including "the Fourth Amendment, . . . the First and Second Amendments, and . . . the Ninth and Tenth Amendments." 554 U.S. at 579-80. Indisputably, felons are among "the people" whose "persons, houses, papers, and effects" enjoy Fourth Amendment protection. U.S. Const. Amend. IV; *United States v. Lara*, 815 F.3d 605, 609 (9th Cir. 2016). Felons likewise enjoy "the right of the people" to "petition the government for redress of grievances." U.S. Const. Amend. I; *Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th Cir. 2017). If a person with a felony conviction is one of "the people" protected by the First and Fourth Amendments, *Heller* teaches that such a person is one of "the people" protected by the Second Amendment too. *See also Range*, 124 F.4th at 226–28.

3. The government cannot show a historical tradition of permanently disarming felons who have not been found to be a danger.

When examining a regulation's validity under the Second Amendment, "the appropriate analysis involves considering whether the

challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. To evaluate whether a modern regulation is relevantly similar to what our tradition is understood to permit, courts should not require regulations be "dead ringers" or "historical twins." *Id.* Instead, "[w]hy and how the regulation burdens the right are central to th[e] inquiry." *Id.*

"[I]f laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* Even so, a modern-day regulation "may not be compatible with the [Second Amendment] right if it [imposes restrictions] to an extent beyond what was done at the founding." *Id.* Instead, a challenged regulation must "be analogous enough to pass constitutional muster." *Id.* (quoting *Bruen*, 597 U.S. at 30).

The government cannot show a relevant Founding-Era analogue to either the "why" or the "how" of § 922(g)(1) as applied to Mr. Williams. As to the "why," no evidence has emerged of any significant Founding-era permanent firearms restrictions on citizens like Mr. Williams. Joseph

G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo L. Rev. 249, 283 (2020). While the historical record suggests that dangerousness sometimes supported disarmament, conviction status alone did not connote dangerousness to the Founding generation. *Id.*

As to the "how," no Founding-era evidence has emerged of class-wide, lifetime bans on firearms possession merely because of conviction status. In fact, total bans on felon possession existed nowhere until at least the turn of the twentieth century. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009). As then-Judge Barrett explained: "The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing-or explicitly authorizing the legislature to impose-such a ban. But at least thus far, scholars have not been able to identify any such laws." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting).

Founding-era surety and forfeiture laws are not sufficiently analogous to § 922(g)(1) to survive Second Amendment scrutiny. Unlike § 922(g)(1), Founding-era surety laws at most temporarily deprived an owner of his arms if he was found to pose a unique danger to others.

Bruen, 597 U.S. at 55-59; *Rahimi*, 602 U.S. at 695–96. By contrast, § 922(g)(1) imposes a permanent ban on a class-wide basis, regardless of a class member's actual peaceableness. Nor were forfeiture laws like § 922(g)(1), because they involved forfeiture only of specific firearms. They did not prevent the subject from acquiring replacement arms or keeping other arms they already possessed. *See, e.g.*, Act of Dec. 21, 1771, ch. 540, N.J. Laws 343-44 (providing for forfeiture of hunting rifles used in illegal game hunting); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69-70 (same); *see also Range*, 69 F.4th at 104-05 (Krause, J., dissenting).

For these reasons, the Eleventh Circuit's categorical rule disqualifying all felons—including Mr. Williams, whose prior felony convictions are removed in time from his instant offense—from exercising their Second Amendment right is without historical or textual support and is wrong.

C. The Court's review is needed because what § 922(g)(1) is constitutional under the Second Amendment is an important issue.

The Court should grant Mr. Williams's petition because the questions are vitally important. Section 922(g) "is no minor provision." *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). It

accounts for almost 12.5% of all federal criminal convictions. *See* U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (July 2024), *available at* https://tinyurl.com/2p9nwh7n. Around 88.5% of all § 922(g) convictions in fiscal year 2023 were under § 922(g)(1). *Id.*

Moreover, although the right to keep and bear arms is among the "fundamental rights necessary to our system of ordered liberty," *McDonald v. Chicago*, 561 U.S. 742, 778 (2010), felony convictions are "the leading reason" for background checks to result in the denial of this individual right, and over two million denials have taken place since the creation of the federal background-check system in 1998. *See* Crim. Justice Info. Servs. Div., Fed. Bureau of Investigation, U.S. Dep't of Justice, *National Instant Criminal Background Check System Operational Report 2020-2021*, at 18 (Apr. 2022).

Whether the Second Amendment permits as-applied challenges to § 922(g)(1) convictions—and if so, how to conduct that as-applied analysis—is, therefore, exceptionally important. It is also a question on which courts have not been able to agree. *See* Part I, *supra*. Accordingly, as the government previously stressed, there are "important interests in certainty regarding the constitutionality of one of the most-often enforced

criminal statutes, which can only be provided by this Court resolving the question." Supp. Br. of Respondent, *Garland v. Range*, No. 23-374, 2024 WL 3258316, at *4 (S. Ct. June 26, 2024).

II. This Court's review is warranted to decide whether § 922(g)(1) is unconstitutional because it exceeds Congress' authority under the Commerce Clause

Section 922(g)(1) of Title 18 makes it unlawful for a convicted felon "to . . . possess *in or affecting commerce*, any firearm or ammunition." 18 U.S.C. § 922(g)(1) (emphasis added). Unlike other statutory provisions, § 922(g)(1) does not limit "commerce" to "interstate or foreign commerce" for possession offenses. *Compare* 18 U.S.C. § 922(g)(1), *with* 18 U.S.C. § 921(a)(2); 18 U.S.C. § 922(a)(1), (a)(2), (e), (f)(1), (g) (shipping, transporting, or receiving). Nor does § 922(g)(1) limit federal prosecutions to cases where the defendant's possession *substantially* affected interstate or foreign commerce.

In *Scarborough v. United States*, 431 U.S. 563, 564-78 (1977), this Court considered the predecessor statute to § 922(g) and held that evidence that the firearm had previously traveled in interstate commerce was sufficient to satisfy the interstate commerce element. The Court reached this conclusion as a matter of statutory interpretation, finding

that Congress did not intend "to require any more than the *minimal* nexus that the firearm have been, at some time, in interstate commerce." 431 U.S. at 575 (emphasis added); *see id.* at 577. But *Scarborough* predates this Court's decision in *United States v. Lopez*, 514 U.S. 549 (1995), and did not resolve whether the Constitution requires that the criminal activity (here, possession) substantially affect interstate commerce. *See, e.g., Alderman v. United States*, 562 U.S. 1163, 1168 (2011) (Thomas, Scalia, JJ., dissenting from the denial of certiorari) ("If the *Lopez* [constitutional] framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent [*Scarborough*] that does not squarely address the constitutional issue.").

Based on *Lopez*, § 922(g)(1) exceeds Congress's power under the Commerce Clause. In *Lopez*, this Court outlined the "three broad categories of activity that Congress may regulate under its commerce power": (i) "the use of the channels of interstate commerce," (ii) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities," and (iii) "those activities having a substantial

relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." 514 U.S. at 558-59 (citations omitted).

As to the third category, the Court expressed that, "admittedly, [its] case law has not been clear whether an activity must 'affect' or 'substantially affect' interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause." *Id.* at 559. The Court concluded, "consistent with the great weight of [its] case law, that the proper test requires an analysis of whether the regulated activity '*substantially affects*' interstate commerce." *Id.* (emphasis added). And based on this "substantially affects" standard, the Court held that 18 U.S.C. § 922(q), which prohibited the possession of a firearm in a school zone, exceeded Congress's Commerce Clause authority. *Id.* at 559-68.

Section 922(g)(1) likewise exceeds Congress's Commerce Clause authority, because it does not require that the possession "substantially affect" interstate commerce. This petition therefore presents an opportunity to reconcile the statutory-interpretation decision in *Scarborough* with the constitutional decision in *Lopez*. Indeed, in Mr. Williams's case, the only connection to interstate or foreign commerce was that the firearm and ammunition were manufactured outside of the

State of Florida and therefore traveled to Florida *prior to* his possession. Because the Government's authority to prosecute such cases raises an important and recurring question, Mr. Williams respectfully seeks this Court's review. *See, e.g.*, *Rahimi*, 144 S. Ct. at 1940 n.6 (Thomas, J., dissenting) ("I doubt that § 922(g) (8) is a proper exercise of Congress's power under the Commerce Clause").

CONCLUSION

For the above reasons, Mr. Williams respectfully requests that this Court grant his petition for a writ of certiorari. Alternatively, he requests the Court hold his petition pending its decision on petitions raising the same or related issues, *see supra* at i n.1, and dispose of it accordingly.

Respectfully submitted,

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