**NO.**

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**IN THE**
**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 2025**

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**MARCUS RAMBO,**

***Petitioner,***

**v.**

**UNITED STATES OF AMERICA,**

***Respondent.***

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

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# 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 Rambo 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. Rambo*, 23-cr-20149-CMA (S.D. Fla. Aug. 10, 2023), *aff'd*, *United States v. Rambo*, 2024 WL 3534730 (11th Cir. July 25, 2024), *pet. for reh'g en banc denied* (11th Cir. Oct. 23, 2024) (No. 23-13772), *cert. granted, judgment vacated, remanded*, *Rambo v. United States*, 145 S.Ct. 1163 (Feb. 24, 2025) (No. 24-6107), *United States v. Rambo*, 2025 WL 2952622 (11th Cir. Oct. 20, 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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Marcus Rambo 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 23-13772 in that court on October 20, 2025, *United States v. Rambo*, 2025 WL 2952622 (11th Cir. Oct. 20, 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-6.

## 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 October 20, 2025, *United States v. Rambo*, 2025 WL 2952622 (11th Cir. Oct. 20, 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 Marcus Rambo 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-4.

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 his priors—a 2012 Florida conviction (when he was 17) for carrying a concealed weapon, possession of cannabis, and possession of a firearm by a minor; a 2013 Florida conviction for carrying a concealed firearm; a 2015 Florida conviction for battery on a corrections officer by "touch or strike;" and a 2019 federal conviction for possession of a firearm by a convicted felon—were non-violent. Appendix A-5.

Although the government did not dispute that Petitioner's prior felonies were indeed non-violent, it argued that *Rozier* remained controlling law after *Bruen*, and even if not, the "historical record" showed all felons may be restricted from possessing firearms." The government did not respond to Petitioner's as-applied challenge, based on his specific priors.

In reply, Petitioner pointed out that *Rozier* never considered the Second Amendment's plain text as *Bruen* required at Step One, nor did the government show at Step Two that there was a longstanding historical tradition of disarming a person like himself who had never been convicted of a crime of violence and whose prior convictions related primarily to the unlawful possession of firearms—"the very right at issue here."

In a sur-reply, the government maintained *Rozier* continued to control, but if it did not, what controlled after *Bruen* was the "Founding-era understanding that *even non-violent law-breakers*" like those who refused to take loyalty oaths "could be disarmed." The government noted with significance that Petitioner was on federal supervised release after serving a 27-month sentence for a prior § 922(g)(1) conviction when he committed the instant offense. And, without citing any authority, it challenged Petitioner's reliance on the categorical approach in arguing that his "touch or strike" battery conviction under Fla. Stat. §§ 784.03 and 784.07 was non-violent.

The district court denied the motion to dismiss, citing the government's response, its sur-reply, *Rozier*, and district court cases that had followed *Rozier* post-*Bruen*. Appendix A-6. The court did not acknowledge Petitioner's different, non-violent priors, or specifically address his as-applied challenge based on his specific priors.

Having preserved his Second Amendment challenge, Petitioner pled guilty and the district court sentenced him to 30 months incarceration. Appendix A-7.

On appeal, Petitioner continued to press his as-applied challenge. *See United States v. Rambo*, DE 26 (11th Cir. Mar. 21, 2024) (No. 23-13772). Rather than responding on the merits, however, the United States moved for summary affirmance, arguing that Petitioner's challenges were "squarely foreclosed" by *Dubois* which had 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*. Petitioner opposed summary affirmance, arguing that: *Rahimi* had confirmed *Bruen* set forth a new methodology, and clarified that methodology; neither *Rozier* nor *Dubois* had complied with the *Bruen/Rahimi* methodology, as neither case considered the plain text of the Second Amendment nor required the government to identify Founding era analogues so the court could determine if there had been a consistent tradition of similar regulation that was both "comparably justified" and imposed a "comparable burden;" and *Rahimi* had confirmed the error in rejecting all as-applied challenges post-*Bruen*. Petitioner asked the court, at the very least, to decide his as-applied challenge as a matter of first impression under *Bruen* and *Rahimi*.

The Eleventh Circuit refused. It granted the government's motion for summary affirmance, and decided the case without any further merits briefing, finding—based on *Rozier* and *Dubois*—that the government was "clearly correct as a matter of law" that § 922(g)(1) was constitutional under the Second Amendment "facially and as applied to Rambo." *United States v. Rambo*, 2024 WL 3534730,

at *2 (11th Cir. July 25, 2024). According to the panel, the Eleventh Circuit's "binding precedents in *Dubois* and *Rozier*" "foreclose[d]" Petitioner's Second Amendment arguments, and

> *Rahimi* did not abrogate *Dubois* or *Rozier* because it did not "demolish" or "eviscerate" the "fundamental props" of those precedents.[1] *Rahimi* did not discuss § 922(g)(1) at all, nor did it undermine our previous interpretation of *Heller*. To the contrary, *Rahimi* reiterated that prohibitions "like those on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'" *United States v. Rahimi*, 144 S.Ct.1889, No. 22-915, slip op., at 15 (June 21, 2024)(quoting *Heller*, 554 U.S. at 626).

*Rambo*, 2024 WL 3534730, at *2.

Petitioner sought rehearing en banc, arguing (1) As confirmed by *Rahimi*, *Bruen* dictates a completely different mode of Second Amendment analysis from the dicta-based mode of analysis in *Rozier* and *Dubois*; and (2) the decisions in *Bruen* and *Rahimi* were "clearly on point" and abrogated *Rozier* and *Dubois*—even though the latter involved different statutes and this Court did not specifically discuss our circuit precedent—because *Bruen/Rahimi* changed the applicable mode of analysis. But on October 23, 2024, the Eleventh Circuit denied rehearing en banc. Not one member of the court dissented. Appendix A-3.

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*.

The Court did so. After it vacated and remanded in *Dubois I*, the Court granted certiorari, vacated, and remanded for further consideration in light of *Rahimi* in Petitioner's case as well. *Rambo v. United States*, 145 S.Ct. 1163 (Feb. 24, 2025) (No. 24-6107).

[1] This very rigid standard for abrogation was the one followed in *Dubois*, 94 F.4th at 1293.

Although Petitioner sought permission from the Eleventh Circuit to file a supplemental brief upon remand, the court denied that request "without prejudice to renewal at a later date." Instead, the court ordered that Petitioner's appeal be held in abeyance pending the resolution and issuance of the mandate by the court in *Dubois II*.

After the Eleventh Circuit issued its decision in *Dubois II*, reaffirming and reinstating the pre-*Bruen* approach of *Dubois I*, the government filed a letter of supplemental authority arguing *Dubois II* had no effect on the court's previous rationale for granting summary affirmance. In response to the government's letter, Petitioner acknowledged *Dubois II* indeed required rejection of all Second Amendment challenges to the application of § 922(g)(1) in the Circuit. He noted, however, that the mandate had not yet issued in that case and it was likely the petitioner in *Dubois II* would seek rehearing en banc given that several circuits had by then held, contrary to the determination of the *Dubois II* panel, that pre-*Bruen/Rahimi* precedents upholding § 922(g)(1) no longer govern, and as-applied Second Amendment challenges to § 922(g)(1) are indeed cognizable.

After rehearing en banc was sought and denied in *Dubois II*, on July 9, 2025, the Eleventh Circuit issued its decision on remand in Petitioner's case, again concluding that "that Rambo's arguments are foreclosed by our binding precedent." *United States v. Rambo*, 2025 WL 2952622 (11th Cir. Oct. 20, 2025). It stated:

> The prior panel precedent rule requires us to follow our binding precedent unless and until it is overruled or abrogated by the Supreme Court or by this Court sitting en banc. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). "To constitute an 'overruling' for the purposes of this prior panel precedent rule, the Supreme Court decision must be clearly on point," and it must "actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel." *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (quotation omitted). And to do that, "the later Supreme Court decision must 'demolish' and 'eviscerate'" each of the prior precedent's "fundamental props." *Dubois II*, 139 F.4th at 893 (quotation omitted). …
>
> Our prior precedent [] holds that the statutory disqualification of felons from possessing a firearm does not violate the Second Amendment. *Rozier*, 598 F.3d at 771. In *Rozier*, we relied on *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), which "recognized § 922(g)(1) as a presumptively lawful longstanding prohibition." *Id.* at

> 770-71 & n.6 (quotation omitted). More recently, in *Dubois II*, we reexamined *Rozier* and concluded that it remained binding in this Circuit after *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *Rahimi*. 139F.4th at 888-89. We explained that "far from 'demolish[ing]' or 'eviserat[ing]' *Rozier*'s reliance on *Heller*, *Bruen* repeatedly stated that its decision was faithful to *Heller*. *Id.* at 893 (quotation omitted). And *Rahimi*—which did not even mention felons except to reiterate *Heller*'s conclusion that prohibitions "on the possession of firearms by 'felons and the mentally ill …' and 'presumptively lawful'"—likewise did not undermine *Rozier*'s reliance on *Heller*. *Id.* at 893-94 (ellipsis in the original) (quoting *Rahimi*, 602 U.S. at 599).

*Id.* at *1. 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*. *Id.* at 273. The *Moore* court, however, ultimately rejected the challenge because the defendant was on supervised release at the time he possessed a firearm. *See id.* at 270-72 (finding that "Although criminal justice worked differently in the founding era than it does today, it is also true that a convict could be temporarily disarmed as part of his sentence. So the 'prohibition on the possession of firearm' by a convict subject to a criminal sentence 'fits neatly within the tradition' embodied by forfeiture laws;" citing *Rahimi*, 144 S.Ct. at 1901).

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*, l110 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 found 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 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. And, the Sixth Circuit concluded, "as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations." *Id.*

This view, the Sixth Circuit explained, was "differen[t] than" that of "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.

Thereafter, in *United States v. Goins*, 118 F.4th 794 (6th Cir. 2024), the Sixth Circuit continued to apply *Williams*' "totality of facts," rebuttable "dangerousness" standard to a defendant who possessed a gun while on state probation for driving under the influence. Differing from the

Third Circuit in *Moore* by acknowledging that history "may *not* support disarmament of *any* criminal defendant under *any* criminal justice sentence *in all circumstances*," 118 F.4th at 804 (emphasis added), the Sixth Circuit nonetheless concluded temporary disarmament of Mr. Goins while on probation did not violate the Second Amendment because he had four "prior convictions for the same dangerous conduct" which "evince[d] a likelihood of future dangerous conduct." *Id.* *See id.* at 804-05 (noting Goins was charged with five DUIs, and convicted of four, during an 8-year period; in one incident, his actions caused an accident requiring him to be transported to the hospital; and in the same 8-year period he was twice convicted of public intoxication and twice convicted of driving on a suspended license; all in all, his record revealed "a dangerous pattern of misuse of alcohol and motor vehicles, often together," and "his actions, including causing a motor vehicle accident pose a danger to public safety").

**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 § 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 for this case, however, the Fifth Circuit emphasized that the mere fact that Diaz was a felon, and had a prior for being a felon-in-possession, were *not* themselves enough. *Id.* at 468-69 (noting that Diaz' prior for violating § 922(g)(1) "was not considered a crime until 1938 at the earliest"). The *Diaz* court 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 Third and Sixth Circuits that a defendant's criminal history was what controlled, but it reasoned differently. It rejected the proposition that "status-based gun restrictions" such as § 922(g)(1) categorically "foreclose Second Amendment challenges." It explained 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," but as support it 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*. It was only because 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," that the Fifth Circuit found "[d]isarming Diaz fits within this tradition of serious and permanent punishment." *Id.* at 470. It acknowledged, importantly, that the analysis would be different for "as-applied challenges by defendants with different predicate convictions." *Id.* at 470, n.4.

In a subsequent case, *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025), the Fifth Circuit expanded upon its categorical as-applied test for a defendant with 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 Fifth Circuit 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 (emphasis added). 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 Fifth Circuit was clear that 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 Fifth Circuit 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 the Fifth Circuit's 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").

Thereafter in *United States v. Hernandez*, 159 F.4th 425 (5th Cir. 2025), the Fifth Circuit clarified in no uncertain terms that in distinct contrast to the approaches of the Third and Sixth Circuits, its own as-applied test was categorical (based on the elements of the prior convictions), rather than fact-based and predicated on dangerousness. *See id*. at 428 ("our circuit's binding precedent espouses evaluating as-applied challenges to § 922(g)(1) by focusing on the nature of the predicate offense rather than on the defendant's broader criminal history or individual characteristics;" quoting *Kimble* which followed *Diaz* in holding "[t]he relevant consideration is a defendant's 'prior convictions that are punishable by imprisonment for a term exceeding one year,' not unproven conduct charged contemporaneously with a defendant's [§ 922](g)(1) indictment or prior conduct that did not result in a felony conviction;" "Put differently, we sift the elements of a defendant's prior convictions through *Bruen*'s analogical framework, and not the defendant himself").

Thus far, the Fifth Circuit noted in *Hernandez*, it had identified only "three categories of offenses" that will always "doom" a defendant's as-applied challenge to § 922(g)(1): namely, "theft, violence, and violating the terms of one's release by possessing arms while on parole." 159 F.4th at 428. On the latter point, relevant here, the Fifth Circuit found in *United States v. Contreras*, 125 F.4th 725 (5th Cir. 2025)—consistent with the view of the Third Circuit in *Moore*, and contrary to the Sixth Circuit's approach in *Goins*—that as-applied challenges by such defendants are *not* cognizable because there was a historical tradition at the Founding of requiring convicts to forfeit their weapons and preventing them from reacquiring them until they had finished serving their sentences. *Id.* at 732-33 (holding such tradition supports temporarily disarming felons while serving their terms of supervised release).

While in the view of the Fifth Circuit drug trafficking categorically falls in the "violence" category due the risk of violence in trafficking cases, *see Kimble*, 142 F.th at 314, 318, simply using drugs (even habitually) does not. *United States v. Mitchell*, 160 F.4th 169, 189-94 (5th Cir. 2025) (noting no relevantly similar analogue to Mitchell's situation of using drugs while on supervision, but not possessing a firearm while actively under the influence of marijuana on supervision; holding § 922(g)(1) was unconstitutional as applied to Mitchell).

Notably, though, the Fifth Circuit has recognized § 922(g)(1) is unconstitutional in other circumstances where the defendant has not actually been convicted of a categorically violent crime, irrespective of arrests for demonstrably violent conduct. *See, e.g., United States v. Cockerham*, __ F.4th __, 2025 WL 3653336, at *5 (5th Cir. Dec. 17, 2025) (reiterating that "our circuit" has not taken the approach of the Third and Sixth Circuits, of looking beyond a defendant's prior convictions to assess whether he is likely to misuse firearms; holding under a categorical analysis that § 922(g)(1) is unconstitutional as applied to a defendant whose only felony prior was for failure to pay child support, even though "other aspects" of his background—such as arrests for aggravated assault and domestic violence—"suggest that he may indeed be violent").

**B. 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. 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 § 922(g)(1) "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. 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 Circuit 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," holding "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 history supports Congress' authority to prohibit possession of firearms by those

"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 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 Circuits 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 prohibitions 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 this 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.* (citations omitted).

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 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); *see also United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024) (assuming without deciding post-*Rahimi*, that "there is some room for as-applied challenges").

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 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 it should then 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 Sixth Circuit's test.** Although Petitioner had multiple prior felony convictions, they were all—indisputably—non-violent. He was previously convicted of being a minor in possession of a firearm, being a felon in possession of a firearm and ammunition, carrying a concealed firearm, simple possession of cannabis, and battery on a correctional officer under Fla. Stat. § 784.07. Notably, the latter offense is essentially a *misdemeanor* battery in violation of Fla. Stat. § 784.03 (either by means of "touch or strike" as charged here, or by "causation of harm" which was *not* charged here), committed against a correctional officer. What

raises what is simply misdemeanor conduct to the level of a third degree felony in Florida is the status of the victim—*not* any aggravated conduct by the offender. Indeed, as this Court recognized in *Johnson v. United States*, 599 U.S. 133 (2010) the Florida Supreme Court has been clear that a battery can be committed by any offensive touching, "no matter how slight," and may include no more than a "'ta[p] . . . on the shoulder without consent.'" *Id.* at 133 (citing *State v. Hearns*, 961 So. 2d 211, 219 (Fla. 2007)).

Under the categorical approach of the Fifth Circuit, § 922(g)(1) would be unconstitutional as applied to a defendant with any of these categorically non-violent priors. The Fifth Circuit in *Diaz* was clear that there was no historical analogue for any offense involving merely possessing a firearm. *See* 116 F.4th at 468. However, since the Fifth Circuit in *Contreras* thereafter found § 922(g)(1) constitutional as applied to a defendant (like Petitioner) who possessed a firearm while on supervised release, Petitioner's motion would not succeed in the Fifth Circuit. And the same would be true in the Third Circuit, which—while recognizing dangerousness is the key for most as-applied challenges—held in *Moore* that because history and tradition support disarming convicts who are completing their sentences, § 922(g)(1) is constitutional as applied to any defendant who possesses a firearm while on supervised release. 111 F.4th at 273.

But indeed, under the more nuanced dangerousness test applied in the Sixth Circuit—where a presumption of dangerousness may always be rebutted, and current dangerousness is the key—it is likely Petitioner could rebut any presumption of dangerousness on the record here. The Sixth Circuit, notably—unlike the Third and Fifth—determines dangerousness based on the "totality of the circumstances," rather than reducing dangerousness to the single circumstance of violating the terms of one's supervised release. And the Sixth Circuit would likely find § 922(g)(1) unconstitutional as applied to Petitioner because Petitioner did not *use* a firearm or cause any physical harm to anyone during any of his prior felonies. Notably, Petitioner's record is nothing like that of the defendants in

either *Williams* or *Goins*. Quite different from *Williams*, Petitioner's two felon-in-possession offenses did not assist with covering up a violent crime; in fact, they were unrelated to any other criminal activity. Rather, his prior firearm offenses were all simply expressions of the very Second Amendment right *Bruen* recognized to carry a firearm outside the home for self-defense. And unlike *Goins*, Petitioner has never been involved in risky behavior combining the misuse of alcohol and motor vehicles such as DUIs, which "demonstrably pose[d] a danger to public safety." Finally, even in Petitioner's decades-old battery on a correctional officer offense, he merely pushed the officer. There was no evidence of any physical harm caused.

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*, 793 F. Supp.3d 896 (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 901. 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 was not analogous to drug trafficking in terms of dangerousness. *See id.* at 908 (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;" unlike drug trafficking, "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"). 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 905. Both considerations would allow Petitioner to rebut any presumption of dangerousness from his battery offense under the Sixth Circuit's as-applied test.

If the Court agrees that the Sixth Circuit's approach is correct, it should find that on this record any possible presumption of current dangerousness could have been effectively rebutted. Here, notably, when the vehicle in which Petitioner was a passenger was stopped, he was fully cooperative and even spontaneously advised law enforcement, "I have a gun on me." In the Sixth Circuit, on these facts, Petitioner's motion to dismiss his § 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 Multiple 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 circuit splits that have deepened since *Rahimi*. His case is an ideal vehicle for resolving them 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 denied rehearing en banc in this very case. And thereafter, it was asked to rehear its ruling in *Dubois II* en banc, and it again refused to do so. Since there was not one vote for rehearing en banc either time, 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 on both the Eighth and Ninth Circuits are in agreement with the Eleventh 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 have rightly recognized, "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); *see also 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*, and Judge VanDyke's dissent from the grant of rehearing en banc in *Duarte*).

A grant of certiorari in Petitioner's case would allow the Court to kill many "birds with one stone," by settling 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; *third*, it could resolve the conflict between the Third and Fifth Circuits on the one hand, and the Sixth Circuit on the other, as to whether possessing a firearm on supervised release categorically bars an as-applied challenge to § 922(g)(1); 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. And the split shows no signs of lessening. Although the government has consistently argued for a tradition of disarming "dangerous" individuals, Petitioner 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 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 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) could support a finding of current dangerousness.

*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 *en banc* 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.

There have notably 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. And repeatedly, different judges in the Fifth Circuit have criticized that court's post-*Rahimi*, categorical approach—albeit for different reasons. In *Kimble*, Judge Graves expressly 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." 142 at 318-322 (Graves, J., concurring in part and in the judgment). In *Mitchell*, Judge Haynes dissented from the majority's reversal of the denial of the motion to dismiss on grounds of the defendant's demonstrated dangerousness. 160 F.4th at 195-96 (Hayes, J., dissenting). And in *United States v. Bonner*, 159 F.4th 338 (5th Cir. 2025), two additional Fifth Circuit judges separately concurred to criticize the approach of *Diaz* as "stray[ing] from first principles." *Id.* at 340 (Willett, J. joined by Duncan J.). *See id.* at 344-45 (noting, *inter alia*, that *Rahimi* made clear that the relevant tradition at *Bruen* Step Two was "this Nation's historical tradition of firearm *regulation*," but *Diaz* analogized to statutes authorizing capital punishment for felonies, and "capital punishment is a 'firearm regulation' only in the loosest sense; "That is not how the Supreme Court conducts its own history and tradition analyses.")

With the current array of 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 causing or threatening great 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 Circuit 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, as it is the logical case to follow *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. 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.

Since there is no cogent 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 sequentially given that cert. grant, but to do so *in an Eleventh Circuit case*. That is because the Eleventh Circuit's rule (deferring to its pre-*Bruen* precedent on § 922(g)(1)) is the most extreme, resulting from its extreme prior precedent rule, mandating that subsequent panels follow prior panel precedent despite 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. *See also United States v. Beaubrun*, 2026 WL 63119, at *3 (11th Cir. Jan. 8, 2026) (refusing to apply the *Bruen/Rahimi* approach of either *Bondi* or *Florida Commissioner* in a § 922(g)(1) case "because neither *Bondi* nor *Florida Commissioner* involved a challenge to a felon disarmament statute"). And 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 obsolete Second Amendment reasoning in *Dubois II*, by defendants in Florida, Georgia, and Alabama. Those petitions will 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 in *Hemani*.

Respectfully submitted,

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