No. _____

IN THE

Supreme Court of the United States

KENNAN ALEXIS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) violates the Second Amendment either facially or as applied to individuals who, like Petitioner, only have felony convictions for non-violent drug offenses.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Alexis*, No. 2:23-cr-223, U.S. District Court for the Eastern District of Louisiana. Judgment entered August 20, 2024.
- *United States v. Alexis*, No. 24-30811, U.S. Court of Appeals for the Fifth Circuit. Judgment entered November 7, 2025.

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JUDGMENT AT ISSUE

On November 7, 2025, a panel of the U.S. Court of Appeals for the Fifth Circuit affirmed Petitioner's judgment. The unpublished opinion is available on Westlaw at 2025 WL 3124475, and a copy is attached as part of the Appendix. App. 1a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Fifth Circuit entered its decision on November 7, 2025. App. 1a. This petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13(3) because it is being filed within 90 days of the Fifth Circuit's entry of judgment.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Second Amendment to the U.S. Constitution 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.

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

A. Legal background.

"Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons." *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Rather, "[b]ans on ex-felons possessing firearms were first adopted in the 1920s and 1930s, almost a century and a half after the Founding." Adam Winkler, *Heller's Catch-22*, 56 UCLA L. REV. 1551, 1563 (2009). In 1938, Congress criminalized firearm receipt by individuals convicted of certain crimes for the first time. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). But that statute was much narrower than the modern version. The Federal Firearms Act only applied to someone "convicted of a crime of violence," *id.*, which included "murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking," and certain kinds of aggravated assault, *id.* § 1(6).

Soon after Congress passed the Federal Firearms Act, this Court decided a Second Amendment challenge to another federal firearm law. In *United States v. Miller*, two defendants challenged their indictment for transporting an unregistered short-barreled shotgun in interstate commerce. 307 U.S. 174, 175 (1939). This Court held that the Second Amendment did not protect the right to possess a short-barreled shotgun because such a weapon had no "reasonable relationship to the preservation or efficiency of a well regulated militia." *Id.* at 178. The Court explained that the Second Amendment was adopted "[w]ith obvious purpose to assure the continuation

and render possible the effectiveness of [militia] forces" and "must be interpreted and applied with that end in view." *Id.*

Following *Miller*, the courts of appeals applied similar militia-focused reasoning and rejected constitutional challenges to the Federal Firearm Act's provision prohibiting individuals convicted of violent crimes from receiving firearms. For example, the First Circuit held that the Second Amendment did not protect someone who was not "a member of any military organization" and who used a firearm "without any thought or intention of contributing to the efficiency of the well regulated militia." *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942). And the Third Circuit concluded that the Second Amendment "was not adopted with individual rights in mind," so it did not protect possession of a gun without "some reasonable relationship to the preservation or efficiency of a well regulated militia." *United States v. Tot*, 131 F.2d 261, 266 (3d Cir. 1942).

It was not until the 1960s that the federal felon-in-possession statute took on its modern form. At that time, Congress shared the militia-based understanding of the Second Amendment outlined in *Miller*. In committee testimony, the Attorney General assured Congress that "[w]ith respect to the second amendment, the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms" and opined that "the right to bear arms protected by the second amendment relates only to the maintenance of the militia." *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary,* 89th Cong. 41 (1965). Congress dismissed constitutional

concerns about federal firearm regulations, explaining that the Second Amendment posed "no obstacle" because federal regulations did not "hamper the present-day militia." S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169. Congress relied on court decisions—including *Miller*—which held that the Second Amendment "was not adopted with the individual rights in mind." *Id.*

Thus, without concern for the Second Amendment, "Congress sought to rule broadly," employing an "expansive legislative approach" to pass a "sweeping prophylaxis … against misuse of firearms." *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (first quote); *Lewis v. United States*, 445 U.S. 55, 61, 63 (1980) (second and third quotes). Congress was particularly concerned with keeping firearms out of the hands of broad categories of "potentially irresponsible persons, including convicted felons." *Barrett v. United States*, 423 U.S. 212, 220 (1976). Therefore, it expanded the Federal Firearms Act to prohibit individuals convicted of *any crime* "punishable by imprisonment for a term exceeding one year"—not just violent crimes—from receiving a firearm. *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961). A few years later, Congress went further and criminalized mere *possession* of a firearm—not just receipt—by anyone with a felony conviction. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

Courts upheld the new, sweeping felon-in-possession prohibition—again, based on an incorrect understanding of the Second Amendment. For example, the Sixth Circuit held that the Second Amendment did not limit Congress's "power to

prohibit the possession of a firearm by a convicted felon." *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971). "Since the Second Amendment right 'to keep and bear Arms' applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm." *Id.* (citing *Miller*, 307 U.S. at 178). Other courts of appeals—relying on *Miller*—also rejected Second Amendment challenges to the statute. *See, e.g.*, *United States v. Johnson*, 497 F.2d 548, 550 (4th Cir. 1974); *Cody v. United States*, 460 F.2d 34, 36–37 (8th Cir. 1972).

Decades later, in *District of Columbia v. Heller*, this Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a "textual analysis" of the Second Amendment's language and surveyed the Amendment's "historical background." *Id.* at 578, 592. The Court had "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 595. Relying on the historical understanding of the Amendment, however, the Court recognized that "the right secured by the Second Amendment is not unlimited." *Id.* at 626. The Court identified several "longstanding" and "presumptively lawful" firearm regulations, such as prohibitions on felons possessing firearms. *Id.* at 626–27 & n.27. But the Court cautioned that it was not "undertak[ing] an exhaustive historical analysis … of the full scope of the Second Amendment." *Id.* at 626. And it did not cite any historical examples of these "longstanding" laws, explaining that there would be "time enough to expound

upon the historical justifications for the[se] exceptions … if and when those exceptions come before us." *Id.* at 635.

Following *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges, which focused on the historical scope of the Second Amendment at step one, and applied means-ends scrutiny at step two. *See*, *e.g.*, *Kanter*, 919 F.3d at 441–42; *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). And this Court's recognition that the Second Amendment protects an individual right brought renewed constitutional challenges to § 922(g)(1). But the courts of appeals almost uniformly rejected Second Amendment challenges to the statute, either applying means-ends scrutiny or relying on *Heller*'s "presumptively lawful" language. *See*, *e.g.*, *United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases); *but see Binderup v. Attorney General*, 836 F.3d 336, 351–57 (3d Cir. 2016) (en banc) (holding that § 922(g)(1) was unconstitutional as applied to two individuals with underlying convictions that "were not serious enough to strip them of their Second Amendment rights.").

Then, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, this Court held that the prevailing two-step framework was "one step too many." 597 U.S. 1, 19 (2022). The Court explained that *Heller* demanded a test "centered on constitutional text and history." *Id.* at 22. Under this test, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

"Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* (cleaned up).

Bruen—and this Court's later decision in *United States v. Rahimi*, 602 U.S. 680 (2024)—explained that "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. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* (quoting *Bruen*, 597 U.S. at 29). The law need not be a "historical twin," but analogical reasoning is also not a "regulatory blank check." *Bruen*, 597 U.S. at 30. "How" and "why" the regulations burden the right to bear arms are central to this inquiry. *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. More specifically, these two considerations ask whether the modern and historical regulations impose a "comparable burden" (the *how*) and "whether that burden is comparably justified" (the *why*). *Bruen*, 597 U.S. at 29. "Even when a law regulates arms-bearing for a permissible reason, … it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692.

B. Proceedings below.

On April 30, 2024, Petitioner pleaded guilty to two counts of possessing a firearm after being convicted of a felony offense, in violation of 18 U.S.C. § 922(g)(1). In support of his guilty plea, Petitioner admitted that he had previously been convicted of drug-related offenses punishable by terms of imprisonment exceeding

one year. Specifically, Petitioner had prior felony convictions for possessing and distributing marijuana, possessing heroin, and possessing with intent to distribute cocaine—offenses he committed between 1999 and 2013.

At sentencing, Petitioner's Sentencing Guidelines range was 70 to 87 months. That range was calculated under U.S.S.G. § 2K2.1, which is the Guideline applicable to firearm offenses. The district court determined that a within-Guidelines sentence was appropriate and sentenced Petitioner to 78 months.

Petitioner appealed his § 922(g)(1) convictions. On appeal, he argued that the statute is plainly unconstitutional under the framework established by this Court in *Bruen*, either facially or as applied to individuals like him, whose only prior felony convictions are for non-violent drug offenses.

While Petitioner's appeal was pending, the Fifth Circuit decided *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025). In *Kimble*, the court held that § 922(g)(1) "is constitutional as applied to defendants with predicate felonies for drug-trafficking offenses because of the intrinsic violence of the drug trade." *Id.* at 312. After explaining that "felons are unequivocally among 'the people' protected by the Second Amendment," *id.* at 311 (cleaned up), the court addressed the government's two theories in support of applying § 922(g)(1) to Mr. Kimble, who, like Petitioner, had only non-violent drug-related prior felonies.

First, the court rejected the government's argument that drug-trafficking is analogous to founding-era felonies punishable by death or estate forfeiture such as knowing receipt of a stolen horse or forgery of public securities. *Id.* at 312-14. The

court held that the government's reliance on these earlier crimes "stretches the analogical reasoning prescribed by *Bruen* and *Rahimi* too far." *Id.* at 314.

Second, the court agreed with the government's argument that drug-trafficking convictions show that a person "is the sort of dangerous individual that legislatures have long disarmed." *Id.* The court held that the "Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous" and that this tradition "accords with (g)(1)'s rationale for disarming" individuals like Mr. Kimble. *Id.* at 314-17. Deviating from *Bruen*'s historical focus, the court also emphasized that "the Legislative, Executive, and Judicial Branches agree that drug trafficking is an inherently dangerous activity." *Id.* at 317. Thus, the court held that § 922(g)(1) is constitutional as applied to defendants like Mr. Kimble because his "convictions for drug trafficking convey that he belongs to a class of dangerous felons that our regulatory tradition permits legislatures to disarm." *Id.* at 318.

Applying *Kimble* in Petitioner's case, Fifth Circuit affirmed his conviction because "[h]is challenge fails under controlling Fifth Circuit precedent. *See United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025)." App. 1a. Notably, the Fifth Circuit later held that § 922(g)(1) is *unconstitutional* as applied to individuals with prior felony convictions for drug *possession*. *See United States v. Hembree*, _ F.4th _, 2026 WL 217125 (5th Cir. Jan. 27, 2026). Thus, under Fifth Circuit precedent, Petitioner's prior drug trafficking offenses—which he committed more than 20 years before possessing the firearms in this case—permanently barred him from possessing a firearm, while his prior drug possession convictions did not.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are deeply divided over the scope of a fundamental constitutional right.

The courts of appeals are deeply divided over how to analyze Second Amendment challenges to § 922(g)(1). Some circuits see no need to conduct the text-and-history analysis required by *Bruen*, relying instead on this Court's dicta that felon-in-possession prohibitions are presumptively lawful. Others apply *Bruen*'s text-and-history framework but reach dramatically different results, disagreeing about which historical traditions justify § 922(g)(1), whether the statute is vulnerable to as-applied challenges, and (if so) how to analyze those challenges.

Several circuits have found § 922(g)(1) constitutional with no need for felony-by-felony litigation, but for drastically different reasons. The Fourth, Tenth, and Eleventh Circuits have upheld § 922(g)(1) in all of its applications without conducting *Bruen*'s text-and-history test. These courts have all concluded that they remained bound by their pre-*Bruen* precedent which, in turn, foreclosed as-applied challenges to § 922(g)(1) based on *Heller*'s statement that prohibitions on the possession of firearms by felons are "presumptively lawful." *See United States v. Hunt*, 123 F.4th 697, 702–04 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025), *pet. for cert. pending*, No. 24-1155 (U.S.); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025).

The Second, Eighth, and Ninth Circuits—as well as the Fourth Circuit as an alternative rationale—have upheld § 922(g)(1) across the board based on a historical analysis. *See Zherka v. Bondi*, 140 F.4th 68, 78–79 (2d Cir. 2025), *cert. denied*, No. 25-

269 (U.S. Jan. 20, 2026); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 761–62 (9th Cir. 2024) (en banc); *see also Hunt*, 123 F.4th at 705–08. These courts relied on historical laws categorically disarming groups who were "not law-abiding" or "presented an unacceptable risk of danger if armed" to justify § 922(g)(1) in all of its applications. *See*, *e.g.*, *Jackson*, 110 F.4th at 1126–28.

By contrast, the Third, Fifth, and Sixth Circuits have each conducted a historical analysis and concluded that § 922(g)(1) is vulnerable to as-applied challenges. The Third Circuit, sitting en banc, struck down § 922(g)(1) as applied to an individual convicted of food stamp fraud who did not "pose[ ] a physical danger to others." *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024). In doing so, the court rejected the government's reliance on status-based restrictions, emphasizing that founding-era laws disarmed distrusted groups—like loyalists, Native Americans, religious minorities, and Black Americans—based on fear of rebellion. *Id.* at 229–30. The court also rejected the government's reliance on capital punishment and estate forfeiture, explaining that "the 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." *Id.* at 230–31.

The Sixth Circuit allows as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous." *United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). Although the court found historical support for disarming

"presumptively dangerous" groups who posed a threat to public order—like religious minorities, Native Americans, loyalists, and freedmen—it explained that these laws also allowed individuals to show that they posed no danger. *Id.* at 657. Therefore, the court held that an individual must be given an opportunity to show that he is "not dangerous" and "falls outside of § 922(g)(1)'s constitutionally permissible scope." *Id.* In conducting this inquiry, the court explained that courts can "consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction." *Id.* at 659–60.

The Fifth Circuit's decision in *Kimble*—which foreclosed Petitioner's challenge—underscores the deep divisions between the courts of appeals. Unlike the Fourth, Tenth, and Eleventh Circuits—which have held that they remain bound by their pre-*Bruen* precedent—the Fifth Circuit agrees that *Bruen* rendered prior precedent obsolete and therefore allows as-applied challenges. *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024). The Fifth Circuit's as-applied analysis, however, conflicts with how the Third and Sixth Circuits evaluate as-applied challenges in at least two ways.

First, the Fifth Circuit reasons that individuals can be disarmed if their predicates "were subject to the death penalty" at the founding. *Id.* at 311. This conflicts with the Third Circuit's rejection of capital punishment as an analogue for the felon-in-possession statute. *Range*, 124 F.4th at 230–31. *Second*, the Fifth Circuit holds that "those who have been convicted of violent offenses" can be disarmed under § 922(g)(1), but its analysis differs from the Third and Sixth Circuits' analysis.

Kimble, 142 F.4th at 312. Those courts require an individualized assessment of dangerousness that considers a defendant's entire criminal record, not just the underlying felony. *Williams*, 113 F.4th at 663; *Pitsilides v. Barr*, 128 F.4th 203, 211 (3d Cir. 2025). The Fifth Circuit, however, has concluded that it is limited to categorically analyzing only the defendant's prior felony convictions, *i.e.*, those convictions that triggered § 922(g)(1). *Kimble*, 142 F.4th at 312.

* * *

In sum, the courts of appeals are fractured over how to conduct the Second Amendment analysis, and the splits are entrenched and deepening. This Court's intervention is needed to resolve the scope of the right to keep and bear arms.

II. Fifth Circuit caselaw on this question is wrong and conflicts with this Court's precedent.

Kimble correctly noted that, under the plain text of the Second Amendment, "convicted felons are unequivocally among 'the people' protected by the Second Amendment." *Kimble*, 142 F.4th at 311 (cleaned up). After all, this Court has explained that "the people" "unambiguously refers to all members of the political community," so the right to keep and bear arms belongs to "all Americans." *Heller*, 554 U.S. at 580. But the Fifth Circuit otherwise misapplied *Bruen*'s historical analysis. Section 922(g)(1) does not align with our Nation's tradition of firearm regulation on either of the two central considerations: how and why it burdens the right to keep and bear arms. *See Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. The difference in *how* § 922(g)(1) burdens the right to bear arms is fatal to the statute

facially, and *why* it burdens the right to bear arms dooms the statute as applied to non-violent offenders like Petitioner.

A. Section 922(g)(1) is facially unconstitutional because it imposes an unprecedented lifetime ban on firearm possession.

Section 922(g)(1) facially violates the Second Amendment because it imposes a sweeping, historically unprecedented lifetime ban that prevents millions of Americans from possessing firearms for self-defense. The government has never cited a single historical gun law that imposed a *permanent* prohibition on the right to keep and bear arms—even for self-defense. In other words, no historical regulation "impose[s] a comparable burden on the right of armed self-defense." *See Bruen*, 597 U.S. at 29.

That is hardly surprising. When Congress passed the modern felon-in-possession statute—four decades before *Heller* and more than a half-century before *Bruen*—it did not believe that the Second Amendment protected an individual right to keep and bear arms. Therefore, Congress did not try to pass a law that aligned with the "Nation's historical tradition of firearm regulation"—it didn't think it had too. *See Bruen*, 597 U.S. Instead, Congress employed an "expansive legislative approach" to pass a "sweeping prophylaxis … against misuse of firearms." *Lewis*, 445 U.S. at 61, 63. And that sweeping, *permanent* prohibition on gun possession imposes a burden far broader than any firearm regulation in our Nation's history.

In at least some cases, the Fifth Circuit has recognized that § 922(g)(1)'s permanent disarmament requires a historical analogue that also had a permanent effect. For example, in *Diaz*, the court recognizes that § 922(g)(1) imposes "permanent

disarmament" and reasoned that capital punishment was a proper analogue because it is "obviously permanent." 116 F.4th at 469. In *Kimble*, by contrast, the court never cited any historical firearm regulation—or any historical law for that matter—that justified permanent disarmament of individuals convicted of what the court deemed "an inherently dangerous activity." *Kimble*, 142 F.4th at 316. Under either the *Diaz* or *Kimble* standard, there is no tradition of permanent disarmament justifying § 922(g)(1).

Starting with the *Diaz* standard, the Fifth Circuit's acceptance of capital punishment as a historical analogue justifying permanent disarmament conflicts with this Court's precedent in two ways.

First, this Court requires the government to show that a modern gun law aligns with our "historical tradition of *firearm* regulation." *Bruen*, 597 U.S. at 24 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In other words, the government's historical analogues must regulate *firearms*. In *Rahimi*, this Court relied only on historical laws that "specifically addressed firearms violence." 602 U.S. at 694–95. So too in *Bruen*. 597 U.S. at 38–66. Capital punishment, however, is not a *firearm* regulation, and therefore cannot justify § 922(g)(1). The Fifth Circuit has reached a contrary conclusion by misreading *Rahimi*.

The Fifth Circuit asserted that *Rahimi* "consider[ed] several historical laws that were not explicitly related to guns." *Diaz*, 116 F.4th at 468. But *Rahimi* says otherwise. In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going armed laws—that both "specifically addressed firearms violence." 602 U.S.

at 694–95. To be sure, surety laws were not "passed *solely* for the purpose of regulating firearm possession or use." *Diaz*, 116 F.4th at 468. But this Court emphasized that, "*[i]mportantly for this case*, the surety laws also targeted the misuse of firearms." *Rahimi*, 602 U.S. at 696 (emphasis added). In other words, historical laws that did *not* target the misuse of firearms—like capital punishment and estate forfeiture—are *not* proper analogues.

The Fifth Circuit also noted in *Diaz* that this Court accepted a greater-includes-the-lesser argument in *Rahimi*. *Diaz*, 116 F.4th at 469. That is true as far as it goes. *Rahimi* held that "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament … is also permissible." 602 U.S. at 699. But it does not follow, as the Fifth Circuit concluded, that "if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." *Diaz*, 116 F.4th at 469. This Court explained that the purpose of imprisonment under the going armed laws was "to respond to the use of guns to threaten the physical safety of others." *Rahimi*, 602 U.S. at 699. So both the greater historical punishment (imprisonment under the going armed laws) and the lesser modern restriction (disarmament under 18 U.S.C. § 922(g)(8)) had the same purpose—curbing gun violence. Not so here. Again, capital punishment did not target gun violence.

Second, this Court has also emphasized that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of

Rights guarantees." *Bruen*, 597 U.S. at 70 (cleaned up). But the Fifth Circuit's reasoning—that because capital punishment is an "obviously permanent" deprivation of an individual's right to bear arms, the lesser restriction of permanent disarmament is permissible for individuals who are not executed, *Diaz*, 116 F.4th at 469—conflicts with how the Constitution treats other fundamental rights.

"Felons, after all, don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment." *Williams*, 113 F.4th at 658. "No one suggests that such an individual has no right to a jury trial or be free from unreasonable searches and seizures." *Id.* And "we wouldn't say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding." *Kanter*, 919 F.3d at 461–62 (Barrett, J., dissenting). "The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Id.* at 462. Rather, "history confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one's status as a convicted felon or to the uniform severity of punishment that befell the class." *Id.* at 461.

Turning to the *Kimble* standard, the Fifth Circuit has not articulated any tradition of permanently disarming individuals "whose past criminal conduct evinces a special danger of misusing firearms." *Kimble*, 142 F.4th at 314. Indeed, the court's analysis in *Kimble* never cites a single permanent or lifetime ban on firearm use. The court noted that "[g]overnments in England and colonial America long disarmed

groups they deemed to be dangerous." *Id.* at 315 (quoting *Williams*, 113 F.4th at 657). Even assuming this "dangerousness" theory could justify § 922(g)(1), the court in *Kimble* never grappled with the fact that these historical categorical deprivations were not *permanent*. Rather, they gave individuals "a reasonable opportunity to prove that they don't fit the class-wide generalization." *Williams*, 113 F.4th at 661. Section 922(g)(1), by contrast, imposes a categorical restriction with no opportunity to regain the right to keep and bear arms.[1]

A law is not compatible with the Second Amendment if it regulates the right to bear arms "to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692. Section 922(g)(1) does just that. It imposes a lifetime ban on firearm possession that would have been unimaginable to the Founders. Thus, § 922(g)(1) facially violates the Second Amendment because there are "no set of circumstances" under which it is valid. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

B. Section 922(g)(1) is unconstitutional as applied to individuals convicted of non-violent offenses.

Even if § 922(g)(1) is facially constitutional, the statute violates the Second Amendment as applied to individuals, like Petitioner, with non-violent felony

[1] The government has recently reestablished an administrative process for restoring firearm rights authorized in 18 U.S.C. § 925(c). *See Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025) (explaining that the Department of Justice "anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c)"). But § 925(c) is irrelevant here for a simple reason: it was unavailable to Petitioner. Beginning in 1992 and continuing until after his convictions in this case, § 925(c) was "inoperative" because Congress prohibited using appropriated funds to investigate or act on relief applications. *Logan v. United States*, 552 U.S. 23, 28 n.1 (2007).

convictions. The government has not cited a tradition of disarming such individuals. The government's historical evidence shows—at most—a tradition of disarming violent individuals who threaten armed insurrection or threaten the physical safety of others. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (explaining that historical evidence shows "that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety"). Thus, the statute is unconstitutional as applied to persons like Petitioner, who were convicted of non-violent felony drug offenses.

Again, Congress was not concerned with the Second Amendment—much less the country's history of firearm regulation—when it expanded federal law to prohibit all non-violent felons from possessing firearms in the 1960s. Instead, Congress was concerned with "keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons." *Barrett*, 423 U.S. at 220. Of course, this Court recently rejected—unanimously and resoundingly—the government's argument that someone "may be disarmed simply because he is not 'responsible.'" *Rahimi*, 602 U.S. at 701.

Before *Kimble*, the Fifth Circuit held that history supported disarming individuals convicted of "violent crimes." *See*, *e.g.*, *United States v. Schnur*, 132 F.4th 863, 867–70 (5th Cir. 2025) (aggravated battery causing great bodily injury); *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) (manslaughter and aggravated assault); *United States v. Isaac*, 2024 WL 4835243, at *1 (5th Cir. Nov. 20, 2024) (aggravated assault with a deadly weapon). At least as to the "why," disarming

individuals convicted of violent conduct is justified by the going-armed laws discussed at length in *Rahimi*, which "mitigate[d] demonstrated threats of physical violence." *Schnur*, 132 F.4th at 870 (quoting *Rahimi*, 602 U.S. at 697). The Fifth Circuit has also considered whether there was a historical tradition of disarming "dangerous" individuals. It found that there was such a tradition but that it was limited to disarming "political traitors" and "potential insurrectionists." *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024).

In *Kimble*, however, the Fifth Circuit broadly held that § 922(g)(1) was constitutional as applied to people like Mr. Kimble (and, by extension, Petitioner) even though there is no evidence that they pose a demonstrated threat of physical violence, were convicted of an offense that involved violence, or are political traitors or potential insurrectionists. Rather, the court held that Mr. Kimble (and, by extension, Petitioner) could be disarmed because "Congress today regards felon drug traffickers as too dangerous to trust with weapons" and drug trafficking is "an inherently dangerous activity." *Kimble*, 142 F.4th at 316. But this Court has already rejected this sweeping "dangerousness" theory.

In *Rahimi*, the government argued that Congress may disarm individuals who are not "responsible." Gov't Br. 27–28, *United States v. Rahimi*, No. 22-915 (U.S. Aug. 14, 2023). And, according to the government, "a person is not 'responsible' if his possession of a firearm would pose a danger of harm to himself or others." *Id.*; *see id.* at 29 ("[A] person is not responsible and thus may be disarmed if his possession of a firearm would endanger himself or others."). At oral argument, the government

confirmed that it was using "'responsible' as a placeholder for dangerous." Tr. of Oral Arg. 10–12, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023).

This Court unanimously rejected that theory. *Rahimi*, 602 U.S. at 701–02; *id.* at 772–73 (Thomas, J., dissenting) ("The Government … argues that the Second Amendment allows Congress to disarm anyone who is not 'responsible' …. Not a single Member of the Court adopts the Government's theory."). The Court stated that "responsible" is a "vague term" and it is "unclear what such a rule would entail." *Id.* at 701 (majority opinion). And by deeming the term "responsible" vague, the Court necessarily rejected the government's proposed definition: that irresponsible means dangerous. *See*, *e.g.*, Tr. of Oral Arg. 10–12, *Rahimi*, *supra* (No. 22-915). So *Rahimi* is directly at odds with the Fifth Circuit's determination that Congress can disarm anyone it deems dangerous.

Indeed, the Fifth Circuit's standard—whether "Congress today regards [a group] as too dangerous to trust with weapons," *Kimble*, 142 F.4th at 314-15—would simply be a return to the kind of "judicial deference to legislative interest balancing" that this Court rejected in *Bruen*. 597 U.S. at 26. As the Third Circuit has recognized, a generic "dangerousness" standard is "far too broad" and "operates at such a high level of generality that it waters down the right." *Range,* 124 F.4th at 230 (quoting *Bruen*, 597 U.S. at 31 (first quote); *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring) (second quote)).

In short, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from

those who have not." *Rahimi*, 602 U.S. at 700. Petitioner's prior convictions for non-violent drug offenses do not establish that he poses a credible threat to the physical safety of others. Thus, at the very least, § 922(g)(1) violates the Second Amendment as applied to non-violent offenders like Petitioner.

III. This is a critically important and recurring question.

The Court should grant the petition because the question presented is critically important and recurring. After all, "§ 922(g) is no minor provision." *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Out of about 64,000 cases reported to the Sentencing Commission in Fiscal Year 2023, more than 7,100 involved convictions under § 922(g)(1). *See* U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses*, at 1 (June 2024). Those convictions accounted for over 10% of all federal criminal cases. *See id.* The government itself has acknowledged "the special need for certainty about Section 922(g)(1) given the frequency with which the government brings criminal cases under it." Gov't Supp. Br. at 10 n.5, *Garland v. Range*, No. 23-374 (U.S. June 24, 2024).

Even beyond new prosecutions, § 922(g)(1)'s reach is staggering. The statute prohibits millions of Americans from exercising their right to keep and bear arms for the rest of their lives. Recent estimates of the number of individuals with felony convictions range from 19 million to 24 million. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1591 (2022) (citations omitted). And § 922(g)(1) is particularly troubling because most of the individuals it prohibits from possessing firearms are peaceful, with convictions for only non-violent offenses. Less than 20% of state felony convictions and less than 5% of federal felony convictions are

for violent offenses. *See* Dep't of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, at 3 (Table 1.1) (rev. Nov. 2010); Dep't of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022*, at 12 (Table 7) (Jan. 2024).

Given § 922(g)(1)'s widespread impact both on new prosecutions and on the millions of non-violent Americans it permanently prohibits from exercising a fundamental constitutional right, this Court should answer this important and recurring question as soon as possible.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks the Court to grant this petition for a writ of certiorari. In the alternative, if the Court grants certiorari in another case challenging the constitutionality of 18 U.S.C. § 922(g)(1), this petition should be held pending resolution of that case.

Alternatively, the Court should hold this petition pending resolution of *United States v. Hemani*, No. 24-1234 (set for argument March 2, 2026). The Court granted certiorari in *Hemani* and will address the constitutionality of 18 U.S.C. § 922(g)(3), which prohibits unlawful drug users from possessing firearms. Considering the similarity of the issues, the Court should hold this petition pending resolution of *Hemani* if it does not grant certiorari in this (or another § 922(g)(1)) case.

Respectfully submitted,

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