

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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**EDWARD JUNIOR GIBBS**

*Petitioner,*

v.

**THE STATE OF FLORIDA,**

*Respondent.*

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*On Petition for a Writ of Certiorari to the  
District Court of Appeal of Florida, Third District*

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***PETITION FOR WRIT OF CERTIORARI***

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February 10, 2026

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## **QUESTION PRESENTED**

Whether a categorical ban on the possession of firearms by persons with prior felony convictions is unconstitutional as applied to a defendant with non-violent traffic offenses.

## **PARTIES TO THE PROCEEDINGS**

There are no parties to the proceeding other than those named in the caption of the case.

Petitioner Edward Junior Gibbs was the defendant in the trial court and the appellant below. Respondent State of Florida was the plaintiff in the trial court and the appellee below.

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## OPINION BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 50 Fla. L. Weekly D2221b (Fla. Dist. Ct. App. Oct. 8, 2025), and is attached as Appendix A. That court’s order denying rehearing, attached as Appendix B, is unpublished.

## JURISDICTION

The District Court of Appeal of Florida rendered its decision on October 8, 2025, in a “*per curiam* affirmed” opinion with citations indicating a federal circuit court split. Petitioner filed a timely motion for written opinion or rehearing on October 23, 2025, which the District Court denied on November 12, 2025. In the absence of a written opinion providing a basis for discretionary review by the Supreme Court of Florida, the District Court of Appeal is the highest and final state decision. FLA. CONST. art. V, § 3; *Persaud v. State*, 838 So. 2d 529, 531–32 (Fla. 2003) (Supreme Court of Florida “does not have jurisdiction to review *per curiam* decisions of the district courts of appeal that merely affirm with citations to cases not pending review in this Court.”). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. CONST. amend. II.

It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony in the courts of this state.

FLA. STAT. § 790.23(1) (2025).

## STATEMENT OF THE CASE

This case presents the best opportunity for this Court to consider the constitutionality of firearm bans for persons convicted of non-drug, non-violent crimes that the state has chosen to classify as felonies. Petitioner Edward Junior Gibbs was charged and convicted of possession of a firearm by a felon. (App. C14-16, C211-13). The predicate felony conviction in the charging document was “unlawful driving as a habitual traffic offender,” which dated back to March 28, 2006. (App. C15). *See*

FLA. STAT. § 322.34(5) (2025).<sup>1</sup> Mr. Gibbs was designated a habitual traffic offender in 2004 because he was convicted of misdemeanor driving while his license was suspended three times within the previous five years. (App. C152-53). *See* FLA. STAT. § 322.264(1)(d) (2025). Mr. Gibbs’s criminal record only contains one additional felony conviction for the same offense, for which he was convicted on the same date. Mr. Gibbs was not sentenced to prison for either conviction. (App. C138-50).

At the time of his arrest in April 2023, Mr. Gibbs possessed a firearm while in the backyard of his own home (App. C129). The police had received a “shot-spotter” alert, and when they encountered Mr. Gibbs they believed he might have been drinking. (App. C130). The arresting officer’s complaint form alleges that Mr. Gibbs told another officer that he fired the gun. (App. C129-30). However, Mr. Gibbs was never charged with discharging a firearm or disorderly intoxication. *See* FLA. STAT. §§ 790.15(1), 856.011 (2025).

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<sup>1</sup> “Any person who has been designated a habitual traffic offender as defined by s. 322.264 and who drives any motor vehicle upon the highways of this state while designated a habitual traffic offender is guilty of a felony of the third degree.” FLA. STAT. § 322.34(5) (2025).

Mr. Gibbs filed two motions to dismiss the information pursuant to the Second Amendment and this Court’s analysis in *Bruen*.<sup>2</sup> (App. C22-51). Mr. Gibbs argued that Florida’s prohibition on firearm possession by convicted felons was unconstitutional as applied to him, a person with two non-violent, administrative felony convictions from nearly seventeen years prior. (App. C39-40). The state argued that Mr. Gibbs was properly charged because he is not “a law-abiding citizen” and because “numerous courts have conducted a post-*Bruen* analysis and concluded that convicted felon statutes pass current constitutional scrutiny.” (App. C78-188). The court denied the motions, and Mr. Gibbs pleaded guilty, reserving his right to appeal. (App. C200, 203-04). He was sentenced to four years of probation. (App. C189-95).

On appeal, the District Court of Appeal of Florida, Third District, declined to issue a written opinion, but affirmed *per curiam* with citations indicating a federal circuit split on this issue. The court thereby found Florida’s prohibition on firearms possession by felons constitutional as applied to Mr. Gibbs, and aligned itself with the federal circuits finding

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<sup>2</sup> *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

the parallel federal statute, 18 U.S.C. § 922(g)(1), constitutional. (App. A.1-5). The District Court conducted no historical analysis. (App. A.1-5).

Petitioner Edward Gibbs filed a timely motion for rehearing or written opinion on October 23, 2025. The District Court denied rehearing on November 12, 2025. (App. B.1-2).

## REASONS FOR GRANTING THE PETITION

### **I. The lower courts are split on the constitutionality of laws prohibiting the possession of firearms by persons with non-violent felony convictions.**

Section 790.23(1)(a), Florida Statutes, makes it “unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm” if that person has been convicted “of a felony in the courts of this state[.]” FLA. STAT. § 790.23 (2025). This prohibition was modeled after the federal statute, 18 U.S.C. § 922(g)(1).<sup>3</sup> Under either statute,

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<sup>3</sup> The federal statute states in relevant part:  
(g) It shall be unlawful for any person--  
(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

• • •

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or

felons may not keep or bear firearms for the duration of their life, regardless of whether the predicate conviction was for a violent crime.

These prohibitions manifestly infringe on the right to keep and bear arms. “[T]he Constitution presumptively protects that conduct,” and therefore, “to justify its regulation, . . . the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). “Why and how the regulation burdens the right are central to this inquiry.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024). “Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Id.*

There is no historical support for a legislative power to permanently dispossess **all** felons of firearms. As then-Judge Amy Coney Barrett explained:

The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing - or explicitly authorizing the legislature to impose - such a ban. But at least thus far, ***scholars have not been able to identify any such laws.***

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foreign commerce. 18 U.S.C. § 922(g)(1).

*Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett J., dissenting), *abrogated by Bruen*, 597 U.S. 1 (emphasis added). Simply put, “[h]istory does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons.” *Id.* at 464.

The government argues that other Founding-Era prohibitions on certain groups owning firearms are analogous to the prohibitions on felons. As the Florida District Court below acknowledged, the federal circuits are split on this question. The Third Circuit rejected the government’s analogy, stating: “That Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that [the defendant] Range is part of a similar group today. And any such analogy would be ‘far too broad.’” *Range v. Attorney Gen. United States*, 124 F.4th 218, 229 (3d Cir. 2024) (quoting *Bruen*, 597 U.S. at 31).

Likewise, the Fifth Circuit rejected a categorical rule that anyone with a prior felony could be disarmed: “Simply 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, without further consideration of how that right was understood when it was first recognized.” *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025) (ultimately finding that historical analogies supported disarming a person with Mr. Diaz’s specific type of criminal convictions). *See also United States v. Cockerham*, 162 F.4th 500, 503-07 (5th Cir. 2025) (finding § 922(g)(1) unconstitutional as applied where the predicate felony was failing to pay child support).

Other circuits, looking at the exact same history, have upheld such prohibitions by concluding that “[t]his history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons. Not all persons disarmed under historical precedents—not all Protestants or Catholics in England, not all Native Americans, not all Catholics in Maryland, not all early Americans who declined to swear an oath of loyalty—were violent or dangerous persons.” *United States v. Jackson*, 110 F.4th 1120, 1128 (8th

Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025). The Fourth Circuit followed *Jackson*, extensively relying on and quoting its analysis. *United States v. Hunt*, 123 F.4th 697, 705-08 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025). As did the Ninth Circuit. See *United States v. Duarte*, 137 F.4th 743, 755-62 (9th Cir. 2025), *cert. denied*, No. 25-425, 2026 WL 135692 (U.S. Jan. 20, 2026).

The Tenth Circuit, conducting its own historical review, held similarly, although it required a judicial determination of dangerousness. *United States v. Harrison*, 153 F.4th 998, 1023-32 (10th Cir. 2025) (“History shows legislatures can disarm those believed to pose a risk of future danger. . . . [T]he district court must inquire into whether non-intoxicated marijuana users pose a risk of future danger.”).

The Sixth Circuit, again looking at this same history, held: “This historical study reveals that governments in England and colonial America long disarmed groups that they deemed to be dangerous. . . . And even though some of those classifications would offend both modern mores and our current Constitution, there is no doubt that governments have made such determinations for centuries.” *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). The Sixth Circuit, however, added a

caveat: “Each time, however, individuals could demonstrate that their particular possession of a weapon posed no danger to peace.” *Id.*

Still other circuits declined to conduct any historical analysis whatsoever, even after *Rahimi*, instead relying dicta from this Court<sup>4</sup> facially approving prohibitions on felons possessing firearms. *United States v. Langston*, 110 F.4th 408, 419-20 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 581 (2024); *United States v. Young*, No. 23-10464, 2024 WL 3466607, at \*9 (11th Cir. July 19, 2024), *cert. denied*, 145 S. Ct. 1097 (2025); *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010) (reaffirmed after *Rahimi* by *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026)); *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009) (reaffirmed after *Rahimi* in *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025)).

Thus, under the law as it now stands, from Minnesota south to Arkansas, plus the western and southeastern coasts, state legislatures

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<sup>4</sup> *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 786 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008); *cf. United States v. Rahimi*, 602 U.S. 680, 699 (2024) (noting that language in *Heller* said only that such restrictions are “presumptively lawful.”).

can restrict the Second Amendment right of any group that it finds dangerous. Western states are the same, except the determination of dangerousness is judicial, not legislative. Pennsylvania, Texas, and Louisiana on the other hand, prohibit group-based restrictions. In the mid-West there can be group-based restrictions, but a person must be allowed to prove they are exempt. And in the northeast and the deep south, prohibiting persons with prior felony convictions from possession of firearms is an exception to *Bruen* and *Rahimi*'s requirement of a historical analysis.

A person on a road trip from St. Louis to Cincinnati to Philadelphia and then Atlanta (or Boston) would have four different constitutional interpretations governing whether they could bear arms if that person had a prior felony conviction. Only this Court can resolve this conflict.

## **II. This case is the best vehicle.**

This case presents a suitable vehicle for providing much-needed guidance to resolve this pure constitutional question. Mr. Gibbs's two non-violent felony convictions, adjudicated on the same date, were both for traffic offenses – habitually driving with a suspended license. Even in

an age where legislatures have greatly expanded the number of crimes that are felonies, it would be difficult to find a more banal, non-violent felony.

Moreover, this case is better suited than other recent certiorari petitions to this Court because they involved drug crimes. The link between drug crimes and violence is well-known. *Williams*, 113 F.4th at 659. In *Jackson v. United States*, the petitioner had “11 previous felony convictions, including for drug crimes and for possessing a weapon as a felon. The district court also found that [he] had ‘proven himself to be both dangerous and unable to abide by the law.’” Brief for Respondent at 12, *Jackson v. United States*, No. 24-6517 (U.S. April 11, 2025), *cert. denied*. 145 S. Ct. 2708 (2025) (mem.). In *Duarte v. United States*, the defendant’s prior felony convictions included vandalism (2013), possession of a controlled substance for sale (2016), and two counts of evading a peace officer (2016 and 2019). Petition for Writ of Certiorari at 4, *Duarte v. United States*, No. 25-425 (Oct. 6, 2025), *cert. denied*, 2026 WL 135692 (U.S. Jan. 20, 2026). In *Thompson v. United States*, still pending before this Court, the petitioner had two prior felony convictions

for attempted distribution of cocaine. Petition for Writ of Certiorari at 3, *Thompson v. United States*, No. 25-5434 (U.S. Aug. 20, 2025).

This case is also better than recent cases involving fraud or theft. Fraud is the kind of theft-related crime for which there are historical reasons to suggest a person may lose their right to bear arms. *See Diaz*, 116 F.4th at 468. In *Zherka v. Bondi*, the petitioner’s predicate felony was conspiracy to make a false statement to a bank and to file a false federal income tax return. *Zherka v. Bondi*, 140 F.4th 68, 70-71 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026). While originally awaiting trial on that indictment, the trial court concluded that petitioner was “a danger to the community by reason of prior instances of violence (and more recent boasts about that violence), as well as a history of obstruction of justice.” *United States v. Zherka*, 592 Fed. Appx. 35, 36 (2d Cir. 2015) (Summ. Order). In *Hunt v. United States*, the defendant was convicted of a breaking and entering theft offense that occurred much more recently than Mr. Gibbs’s predicate offense (2017 versus 2006). *Hunt*, 123 F.4th at 700. In *Vincent v. Bondi*, also still pending before this Court, the petitioner “was convicted of federal felony bank fraud and sentenced to probation for presenting a fraudulent check

for \$498.12 at a grocery store.” Petition for Writ of Certiorari at 5, *Vincent v. Bondi*, No. 24-1155 (U.S. May 8, 2025).

There are no such historical antecedents for traffic offenses. And there is nothing to suggest that repeatedly driving without a license made Mr. Gibbs too dangerous to retain his Second Amendment right. He lost his right simply because the Florida legislature chose to label certain recurring traffic offenses as not just crimes, but felonies.

### CONCLUSION

The right to bear arms is one of the most fundamental rights enjoyed by the American people. The decision below devolves authority to legislatures to decide whom to exclude from the people protected by the Second Amendment simply by deciding what criminal offense should be labeled a felony. “[S]uch extreme deference gives legislatures unreviewable power to manipulate the Second Amendment by choosing a label.” *Range*, 124 F.4th at 228 (internal quotation omitted).

The federal circuit courts are entrenched in their inconsistent answers to this issue. Only this Court can resolve this conflict. The facts in this case lend themselves to determining whether a group-based ban on the possession of firearms by persons with prior felony convictions is

unconstitutional as applied to a defendant with non-violent, non-drug offenses. We respectfully request that the Court grant this petition for certiorari and hear this case.

Respectfully submitted,

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