No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DIJUAN TAYLOR,
PETITIONER

v.

UNITED STATES OF AMERICA,
RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether courts should analyze as-applied Second Amendment challenges to 18 U.S.C. § 922(g)(1) by examining whether historical tradition supports banning firearm possession by someone who has been convicted of the predicate disqualifying offenses that are the basis of the individual's disarmament under § 922(g)(1).

PARTIES TO THE PROCEEDINGS

Pursuant to this Court's Rule 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 Dijuan Taylor 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.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. District Court for the Western District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit:

United States v. Dijuan Taylor, No. 23-cr-91 (W.D. Pa.) (December 12, 2023);

United States v. Dijuan Taylor, No. 24-1993 (3d Cir.) (January 7, 2026).

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PETITION FOR WRIT OF CERTIORARI

Dijuan Taylor respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is unreported but available at *United States v. Taylor*, 2026 WL 49565 (3d Cir. 2026), and is reproduced at App. 1a-2a. The judgment of the Court of Appeals was entered on January 7, 2026. The district court's opinion denying Mr. Taylor's motion to dismiss the indictment is reproduced at App. 3a-6a.

JURISDICTION

The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a)(1). The Third Circuit issued its opinion on January 7, 2026. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States 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 of Title 18 of the United States Code provides:

> (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 foreign commerce.

STATEMENT

It is a fundamental tenet of our judicial system that the government may not obtain a conviction under an unconstitutional law. When an individual contends that the statute under which he is charged is unconstitutional—whether on its face or as applied—the government must show that the charged statute comports with the Constitution. That principle applies with full force in the Second Amendment context. As this Court has explained at length, when the government regulates arms-bearing conduct, it bears the burden of proving that its regulation is "consistent with this Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). Accordingly, when an individual argues that a charged law violates the Second Amendment, a court must determine whether that law (or the application of it at hand) is consistent with historical tradition.

The court of appeals' approach flouts that bedrock principle. Dijuan Taylor was convicted under 18 U.S.C. § 922(g)(1) of possessing a firearm after having two state convictions for carrying a firearm without a license. Mr. Taylor challenged his § 922(g)(1) conviction under the Second Amendment, arguing that the government cannot identify any historical tradition that supports permanently disarming individuals based on prior convictions for carrying a firearm without a license. Yet rather than resolve that question, the court of appeals relied on precedent that

addressed a different question entirely: whether the government may disarm individuals while they are serving probation.

That methodology would make eminent sense if Mr. Taylor had challenged a law barring possession of a firearm while on probation. But Mr. Taylor challenged his conviction (and accompanying 36-month prison sentence) under § 922(g)(1) for possessing a firearm after having been convicted of a felony. Whether the government may deprive people of firearms while they are on probation is entirely beside the point. Under a faithful application of *Bruen*'s methodology, the government cannot justify the constitutionality of the firearm law it chose to charge by showing that a hypothetical prosecution under a different (imagined) statute would not violate the Second Amendment. To the contrary, such sleights of hand have long been rejected by both this Court and others.

Even without *Bruen*, it should be obvious that the government cannot defend an application of a criminal statute by arguing that it would have been constitutional to deprive someone of their constitutional rights for a reason unrelated to the statute. Section 922(g)(1) prohibited Mr. Taylor from possessing a firearm because he had prior felony convictions. The government must show why *that* criminal prohibition—not some other hypothetical criminal provision—is constitutional. The court of appeals' decision affirming Mr. Taylor's § 922(g)(1) conviction and sentence without resolving the relevant question is gravely erroneous.

Unfortunately, the court of appeals' approach is emblematic of the profound confusion and division among the lower courts about how to analyze as-applied

challenges to § 922(g)(1). The court of appeals is not alone in holding that § 922(g)(1) may constitutionally be applied to individuals who are on probation, parole, or supervised release—even though that fact played no role in their § 922(g)(1) charge. The Fifth and Sixth Circuits have embraced that approach too. Indeed, the Fifth Circuit has done so even as it has (correctly) concluded in other contexts that § 922(g)(1) challenges must be resolved by examining whether historical tradition supports disarming someone for the predicate offense(s) underlying the § 922(g)(1) charge. Still other circuits have rejected as-applied challenges to § 922(g)(1) entirely, on the theory that having been convicted of a felony is itself sufficient justification to permanently deprive someone of Second Amendment rights, no matter what the prior felony was.

The disarray in the courts of appeals necessitates this Court's intervention. Indeed, lower courts have recognized that "there is significant disagreement about" how to analyze § 922(g)(1) challenges "that the Supreme Court should resolve." *United States v. Morton*, 123 F.4th 492, 498 n.2 (6th Cir. 2024). The Court should grant certiorari and hold that, when addressing as-applied challenges to § 922(g)(1), courts must ask whether historical tradition supports disarming people based on the felony offense(s) underlying the § 922(g)(1) charge. At the very least, the Court should grant, vacate, and remand with instructions for the court of appeals to decide whether Mr. Taylor can constitutionally be convicted of the crime with which he was actually charged.

A. Legal Background

In its seminal decision in *District of Columbia v. Heller*, this Court held that there is "no doubt … that the Second Amendment confer[s] an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). While the Court acknowledged that the right is not "unlimited," it looked to historical restrictions on firearm possession to inform its analysis of the constitutionality of the law at issue. *Id.* at 626-27, 631-34. The Court left a full-throated exposition of that historical analysis for another day.

Over the next decade, lower courts "coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny." *Bruen*, 597 U.S. at 17. But this Court ultimately rejected that approach in *Bruen*, explaining that a "judge-empowering 'interest-balancing inquiry'" would not sufficiently safeguard individuals' constitutional rights. *Id.* at 22. After all, as *Heller* made clear, "[a] constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Id.* at 23 (quoting *Heller*, 554 U.S. at 634). So the Court laid out a more robust constitutional framework steeped in "the Nation's historical tradition of firearm regulation." *Id.* at 24. Under that approach, if the regulated conduct is covered by the text of the Second Amendment, then it is presumptively protected, and the burden shifts to the government to justify its regulation. *Id.* To do so, the government must identify historical firearm restrictions that are analogous to the modern challenged regulation in their "how and why"—*i.e.*, the "modern and historical regulations" must "impose a comparable burden on the right of armed self-defense" that "is comparably justified." *Id.* at 29.

In *United States v. Rahimi*, 602 U.S. 680 (2024), this Court provided additional guidance on how to implement *Bruen's* methodology. *Rahimi* reiterated that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition" as evidenced by the government's proffered historical analogues. *Id.* at 692. This Court clarified that those analogues "need not be a 'dead ringer' or a 'historical twin'" for the challenged regulation. *Id.* But it reiterated that "[w]hy and how the [challenged] regulation burdens the right are central" to the Second Amendment inquiry. *Id.* In other words, the focus remains on whether the challenged regulation "impos[es] similar restrictions for similar reasons." *Id.* Applying that framework, this Court held that § 922(g)(8)(C)(i) is constitutionally sound, as it is grounded in a historical tradition of temporarily disarming individuals who have been found to pose "a credible threat to the physical safety of another." *Id.* at 702.

In short, as exemplified in *Rahimi*, *Bruen* tasks courts with conducting a categorical comparison of the mechanics of the challenged provision and the government's historical analogues to assess whether the challenged law passes constitutional muster.

B. Factual Background

1. On May 10, 2023, Dijuan Taylor was charged by indictment with one count of possessing a firearm and ammunition after being convicted of a crime punishable by more than one year of imprisonment, in violation of 18 U.S.C. § 922(g)(1). C.A. App. 21-22. The indictment identified two prior Pennsylvania

convictions as disqualifying Mr. Taylor from possessing a firearm under § 922(g)(1): convictions in September 2020 and June 2022 for carrying a firearm without a license, *see* 18 Pa. Cons. Stat. § 6106. C.A. App. 21.

2. Mr. Taylor moved to dismiss the indictment. Relying on *Bruen*, Mr. Taylor argued that 18 U.S.C. § 922(g)(1) violates the Second Amendment facially and as applied to him. C.A. App. 23-40. In response, the government argued (among other things) that Mr. Taylor's Second Amendment challenge failed because, at the time of the charged firearm possession, Mr. Taylor was serving state probation. C.A. App. 45-51; *see* C.A. App. 144-46. After multiple rounds of briefing, the district court denied Mr. Taylor's motion to dismiss the indictment. App. 3a-6a. Mr. Taylor entered a guilty plea, C.A. App. 141-42, and the district court sentenced him to 36 months of imprisonment followed by three years of supervised release, C.A. App. 3-4.

3. On appeal, Mr. Taylor raised as-applied and facial Second Amendment challenges to § 922(g)(1). Because Mr. Taylor was on state probation at the time of his firearm possession, Mr. Taylor acknowledged that his Second Amendment challenges were foreclosed by the court of appeals' precedent holding that § 922(g)(1) is constitutional as applied to an individual serving a term of probation, parole, or supervised release. *See United States v. Quailes*, 126 F.4th 215 (3d Cir. 2025), *cert. denied,* 146 S. Ct. 127 (2025); *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), *cert. denied,* 145 S. Ct. 2849 (2025). For preservation purposes, Mr. Taylor argued that *Quailes* and *Moore* were wrongly decided. In addition, Mr. Taylor maintained that § 922(g)(1) violates the Second Amendment as applied to him because the

government cannot show a historical tradition that supports banning firearm possession by an individual who was previously convicted of possessing a firearm without a license in violation of state law. C.A. Br. 6-11.

4. The court of appeals affirmed. Relying on *Quailes* and *Moore*, *supra*, the court held that § 922(g)(1) is constitutional as applied to Mr. Taylor because he was serving state probation at the time of his firearm possession. App. 2a. In *Moore* and *Quailes*, the court of appeals had held that § 922(g)(1) is consistent with the Second Amendment as applied to individuals serving terms of supervised release, probation, or parole. In so holding, the court of appeals relied on founding-era laws providing for forfeiture of a person's entire estate upon conviction of a felony and a historical tradition of disarming "convicts" serving custodial sentences. *Quailes*, 126 F.4th at 221 & n.7; *Moore*, 111 F.4th at 269-71.

5. This timely petition follows.

REASONS FOR GRANTING THE PETITION

The decision below is patently wrong. Dijuan Taylor was convicted and punished under § 922(g)(1) because he possessed a firearm after having two state convictions for carrying a firearm without a license. Yet his § 922(g)(1) conviction was affirmed because he was serving probation at the time of his firearm possession. There is no other context in which the government may defend a conviction under a law that criminalizes constitutionally protected behavior by arguing that it could validly deprive the defendant of his constitutional rights for some other reason entirely. And certainly nothing in *Heller, Bruen*, or *Rahimi* suggests that, when a

defendant argues that his conviction violates the Second Amendment, the inquiry turns on whether there is *any* reason the individual could be punished for possessing a firearm consistent with historical tradition. To the contrary, this Court's cases and bedrock principles make plain that the government must defend the challenged law itself. The court of appeals failed to hold the government to that burden here.

The court of appeals is not alone in its approach. Multiple courts of appeals have made the category mistake of letting the government avoid defending § 922(g)(1) charges on their own terms by pointing to the fact that the individual was serving probation, parole, or supervised release at the time of his firearm possession. Indeed, even one circuit that typically *does* require the government to justify a § 922(g)(1) conviction by focusing on the predicate convictions has inexplicably abandoned that approach when it comes to individuals who were on supervised release when they possessed a firearm. Other circuits have rejected as-applied challenges to § 922(g)(1) altogether, on the theory that historical tradition supports disarming individuals who have shown a disregard for the law, no matter what law they violated.

In short, although most circuits have squarely addressed as-applied challenges to § 922(g)(1), they have hopelessly splintered on the basic question of how to analyze them. That disarray readily warrants this Court's attention. Indeed, lower courts have implored this Court for further guidance even after *Rahimi*. And this is a particularly good vehicle to answer the methodological question, as the Court would have the option of answering only that question here should it prefer to do so. The Court could simply resolve the analytical dispute over how to evaluate as applied

Second Amendment challenges that has fractured the lower courts and then remand for the court of appeals to consider Mr. Taylor's appeal under the proper framework. But in all events, whether through plenary review or summary reversal, the Court should not let the decision below stand, as Mr. Taylor is, at the very least, entitled to a resolution of the constitutional question he actually raised—namely, whether the government can send him to prison for 36 months because he possessed a firearm after having two prior state convictions for carrying a firearm without a license.

I. The Decision Below Defies This Court's Precedents And Exacerbates The Disarray In The Courts Of Appeals.

A. The Decision Below Is Egregiously Wrong.

1. There is no basis in law or logic to permit the government to defend the constitutionality of a conviction by speculating that it could have reached the same result via an entirely different statute (real or imagined). Indeed, that much should have been clear even without *Bruen* or *Rahimi*. In the context of a facial challenge, when assessing whether a statute is constitutional in any application, the Supreme Court "has considered only applications of the [challenged] statute in which it actually authorizes or prohibits conduct," not circumstances that are "irrelevant" to the challenged statute. *Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). In *Patel*, the City sought to defend the facial constitutionality of a statute authorizing certain warrantless searches by arguing that the law comports with the Fourth Amendment at least when applied to some searches, such as those resulting from exigencies or consent. *Id.* at 417. The Supreme Court squarely rejected that argument, explaining that the City's asserted "constitutional 'applications'" were "irrelevant" to the Court's

analysis because "they do not involve actual applications of the statute." *Id.* at 417-19; *see also Williams v. Illinois*, 399 U.S. 235, 241-42 (1970) (granting relief to the defendant after finding that the law the state enacted violated his equal protection rights—even though the state could "have appropriately fixed the penalty, in the first instance," and incarcerated the defendant for greater than one year for the same conduct).

Accordingly, a court cannot reject a Second Amendment challenge by determining that a defendant's conduct or circumstances make it possible to imagine a law that could constitutionally disarm him. As one court aptly put it, "[a]n unconstitutional statute does not 'become constitutional' simply because it is applied to a particular category of persons who could have been regulated, had the legislature seen fit to do so." *People v. Burns*, 79 N.E.3d 159, 165-66 (Ill. 2015). That is why this Court invalidated a law categorically banning the display of signs outside its building under the First Amendment in *United States v. Grace*, 461 U.S. 171 (1983), even though the same behavior may have been regulated through "reasonable time, place and manner restrictions." *Id.* at 183-84. It also explains why this Court concluded in *United States v. Eichman*, 496 U.S. 310 (1990), that the government could not criminally punish a defendant for burning a Post Office flag under a law specifically outlawing flag burning, even though he could still be subject to prosecution for the destruction of federal property for the exact same conduct. *Id.* at 313 n.1, 316 n.5.

This understanding of as-applied challenges follows from bedrock principles of constitutional law. Any other approach would render the "as-applied challenge" label

a misnomer. As this Court has long observed, a court is "never to anticipate a question of constitutional law in advance of the necessity of deciding it." *United States v. Raines*, 362 U.S. 17, 21 (1960). If courts were instead authorized to sustain statutory enactments on the grounds that the government might have chosen another valid means to achieve the same result, they would stray from the case presented and answer constitutional questions that are not implicated. *Id.* Courts thus routinely reject government efforts to employ such sleights of hand. *See, e.g., United States v. Price*, 111 F.4th 392, 402 n.4 (4th Cir. 2024) (en banc) (rejecting an attempt to invoke defendant's felon status to defeat his constitutional challenge to § 922(k)'s ban on possessing firearms with obliterated serial numbers because regulating felon firearm possession was "not the law Congress enacted via § 922(k)").

That principle does not change when a court is tasked with addressing a Second Amendment challenge under *Bruen* and *Rahimi*. Both decisions made clear that the focus of the analysis turns on the mechanics and contours of the challenged regulation itself. *See Rahimi*, 602 U.S. at 692 ("Why and how the [challenged] regulation burdens the right are central to this inquiry."); *Bruen*, 597 U.S. at 29 (requiring courts to evaluate "how and why the [challenged] regulations burden" the Second Amendment right). Neither decision announced any rule giving judges or the government a roving license to investigate whether there is any conceivable reason that the party asserting his Second Amendment rights could be disarmed. It is little wonder why not: Such a rule not only would treat the Second Amendment "as a second-class right," *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality),

but would run afoul of the constitutional principles requiring strict adherence to examining the application of the challenged law to the facts at hand, *see Patel*, 576 U.S. at 418.

Take *Rahimi*. This Court focused exclusively on whether historical going-armed and surety laws were comparable to § 922(g)(8), even though the defendant there had not only threatened his domestic partner (prompting the domestic restraining order) but also threatened a woman with a firearm (prompting an aggravated assault charge) and was connected to five other shootings. *See* 602 U.S. at 687. Because the government charged *Rahimi* only with violating § 922(g)(8), the Court asked only whether § 922(g)(8) could pass constitutional muster, not whether the government could have constitutionally disarmed him on another basis. *See id.* at 690, 700-02; *see also id.* at 777 (Thomas, J., dissenting) ("This case is not about whether States can disarm people who threaten others.... Instead, the question is whether the Government can strip the Second Amendment right of anyone subject to a protective order[.]"). Just as with other constitutional questions, then, whether there may be other reasons the government could disarm someone is not a valid consideration in the proper constitutional analysis. *Cf. TikTok v. Garland*, 604 U.S. 56, 71-72 (2025) ("[W]e look [only] to the provisions of the Act that give rise to the effective TikTok ban that petitioners argue burdens their First Amendment rights" to address their as-applied challenge.).

2. Rather than follow these settled principles, the court of appeals answered a question not properly presented for its review—effectively affirming a

double deprivation of liberty (sending a man to prison and allowing him to be stripped of his right to keep and bear arms) without ever deciding whether the actual statute of conviction could constitutionally be applied to Mr. Taylor.

Mr. Taylor appealed the conviction and sentence he received for violating § 922(g)(1). C.A. Br. 6-11. The government was therefore obligated to defend the appealed conviction by demonstrating that applying § 922(g)(1) to someone based on state convictions for carrying a firearm without a license is consistent with our Nation's historical tradition. *See Bruen*, 597 U.S. at 29. Nothing about that inquiry turns on an independent assessment of whether there are other reasons why Mr. Taylor could constitutionally be disarmed. Whether § 922(g)(1)'s prohibition on firearm possession imposes a burden on the Second Amendment right consonant with our Nation's tradition requires the court to review how the law actually regulates that behavior. Yet that is not what the court of appeals deemed constitutionally relevant. According to the court of appeals, all that mattered was that Mr. Taylor was on state probation at the time he possessed the firearm. App. 2a.

That reasoning is deeply flawed. The existence of § 922(g)(1) does not permit the court to probe all aspects of an individual's life for potential ways that the government might lawfully dispossess him of his Second Amendment (or any other fundamental) rights. That would entail standing in the stead of a legislature "to make a new law, not to enforce an old one." *United States v. Reese*, 92 U.S. 214, 221 (1875). Asking whether the government can constitutionally deprive someone who is serving a term of state probation of his Second Amendment rights would make sense

in the context of a challenge to a law that disarms someone who is on probation. But Mr. Taylor was not convicted and punished under any such (hypothetical) law. Mr. Taylor appealed his § 922(g)(1) conviction and accompanying 36-month prison sentence. Allowing the purported validity of a hypothetical uncharged law to justify Mr. Taylor's conviction and punishment under § 922(g)(1) turns the Second Amendment into a uniquely second-class right.

What is more, the Third Circuit's confusion about Second Amendment challenges led it to ignore its basic obligation to address Mr. Taylor's actual challenge that his conviction could not stand under § 922(g)(1)—a statute that dispossessed him of his Second Amendment rights solely because he had previously been convicted of state laws prohibiting firearm possessing without a license. Mr. Taylor's probation status is not constitutionally relevant to "why" and "how" § 922(g)(1) impinges on his Second Amendment rights.

The court of appeals' approach also runs headlong into the exact problem *Bruen* sought to solve—avoiding an "interest-balancing inquiry" that asks on a "case-by-case basis whether the right is really worth insisting upon." 597 U.S. at 22-23. *Bruen* adopted its historical-tradition approach to prevent judges from engaging in a subjective assessment of a defendant's worthiness of Second Amendment rights—"a value-laden and political task that is usually reserved for the political branches." *Rahimi*, 602 U.S. at 732-33 (Kavanaugh, J., concurring). Yet the court of appeals' approach encourages consideration of extra-offense characteristics unmoored from the statute that Congress enacted. *See Pitsilides v. Barr*, 128 F.4th 203, 210-13 (3d

Cir. 2025); *U.S. v. Bost*, No. 24-1719, Doc. No. 50 (en banc) (Oct. 31, 2025) (ordering briefs addressing what evidence courts may consider when evaluating Second Amendment as-applied challenges to § 922(g)(1)). Once a court steps away from the firearm regulation at hand and abandons the value-neutral analysis of how its particular features measure up against the features of historical regulations, it is left with only "value-laden" questions about who is deserving enough to exercise Second Amendment rights. That does not comport with what this Court has instructed courts to do when adjudicating Second Amendment challenges—namely, "apply faithfully the balance struck by the founding generation to modern circumstances." *Bruen*, 597 U.S. at 29 n.7.

In short, the government obtained a conviction because Mr. Taylor possessed a firearm after having been convicted in state court of carrying a firearm without a license—not because of any other action he took or any other detail about his background. After all, § 922(g)(1) regulates possession of a firearm by an individual who has been convicted of a felony, not possession of a firearm by an individual on probation. It is that decision to attach liberty-restricting consequences to an individual's firearm possession that ought to have been analyzed on appeal. The court of appeals grievously erred in choosing to analyze an entirely different question.

B. The Courts of Appeals Have Hopelessly Fractured Over How to Address As-Applied Challenges to § 922(g)(1).

The court of appeals' marked departure from the proper course warrants this Court's intervention. At the very least, the Court should vacate and remand with instructions for the court to address the challenge Mr. Taylor actually pressed:

whether § 922(g)(1) is constitutional, either on its face or as applied to him. The court of appeals held that Mr. Taylor may be disarmed and sent to prison without ever deciding that the statute the government charged him with violating could constitutionally be applied to him. That result, which turns the whole notion of an "as-applied challenge" upside-down, cannot stand, and justifies the strong medicine of summary reversal.

That said, the lower courts would be better served by plenary review, as the court of appeals' approach is emblematic of the profound confusion that pervades when it comes to § 922(g)(1) challenges. The Sixth Circuit has embraced an approach similar to that of the court of appeals, sanctioning a free-floating inquiry into whether there is any reason an individual could be disarmed consistent with the Second Amendment, rather than focusing on the predicate convictions the government invoked. The Fifth Circuit has taken the opposite (correct) approach as a general matter, focusing on the actual felonies underlying the § 922(g)(1) charge. But even that court has lost the plot vis-à-vis defendants on supervised release, probation, or parole: The Fifth Circuit joined the court of appeals in rejecting an as-applied challenge to § 922(g)(1) because the defendant was on supervised release, even though that status played no role in securing the § 922(g)(1) conviction. And other circuits have held that § 922(g)(1) is not susceptible to as-applied challenges at all. In short, the case law in the lower courts is a mess, and this Court's guidance is desperately needed.

1. The approach of the court of appeals is no anomaly. Other circuits likewise have indicated that § 922(g)(1) is constitutional as applied to individuals who were on probation, parole, or supervised release when they possessed a firearm, even though that had nothing to do with the government's § 922(g)(1) charge. In *United States v. Goins*, the Sixth Circuit considered an as-applied Second Amendment challenge to § 922(g)(1). *See* 118 F.4th 794, 797 (6th Cir. 2024). Instead of addressing the felonies underlying the defendant's § 922(g)(1) conviction, the court relied on three "aspects" of the defendant's case to hold that Congress could disarm him. *Id.* Specifically, (1) the defendant possessed a firearm in violation of a condition of his state probation, (2) he was serving probation "for a dangerous crime," and (3) "his repeated actions demonstrated a likelihood of future dangerous conduct." *Id.* In the court's view, the fact that the defendant was on probation at the time of his firearm possession was the "most important[]" factor supporting the court's conclusion that § 922(g)(1) could be constitutionally applied to the defendant. *Id.* at 804-05; *see also id.* at 801-02 ("[O]ur nation's historical tradition of forfeiture laws, which temporarily disarmed convicts while they completed their sentences, also supports disarming those on parole, probation, or supervised release."); *but see United States v. Hostettler,* No. 24-3403, 2026 WL 787913, at *4 (6th Cir. Mar. 20, 2026) (distinguishing *Goins* and rejecting the government's argument that the defendant's "status on supervised release is dispositive of the constitutional inquiry").

Even outside the probation, parole, or supervised release context, the Sixth Circuit does not analyze § 922(g)(1) challenges by focusing on whether the

government has proven that historical tradition supports depriving an individual of his Second Amendment rights based on the predicate offenses underlying the individual's conviction. The court has instead concluded that, because some historical regulations allowed "individuals [to] demonstrate that their particular possession of a weapon posed no danger to peace," a defendant challenging § 922(g)(1) as applied must make an individualized showing "that he is not dangerous." *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). According to the court, because "officials of old" made individualized assessments of dangerousness, courts today must "focus on each individual's specific characteristics." *Id.* at 657. That includes the individual's "entire criminal record"—"not just the predicate offense for purposes of § 922(g)(1)"—and potentially even "information beyond criminal convictions" as well. *Id.* at 657-58, 658 n.12.

The Fifth Circuit, for its part, has sometimes gotten the inquiry right. In *United States v. Diaz*, for example, the court confronted an as-applied challenge raised by a criminal defendant who had previously been convicted of car theft, evading arrest, and possessing a firearm as a felon. 116 F.4th 458, 467 (5th Cir. 2024), *cert. denied,* 145 S. Ct. 2822 (2025). Although the parties' briefing had discussed the defendant's "various drug offenses," none of which was punishable by imprisonment for more than one year, the court limited its focus to only his "predicate offenses under § 922(g)(1)." *Id.* Indeed, the court expressly declined to address a contemporaneous drug charge filed in the same indictment because § 922(g)(1) "rel[ies] on previous history." *Id.* As the court explained, the relevant question is

whether there is "a longstanding tradition of disarming someone with a [felony] history analogous to [the defendant's]." *Id.*; *see* Pet. for Cert. 4, *United States v. Cockerham*, No. 25-1029 (Feb. 27, 2026) ("the Fifth Circuit generally asks how conduct analogous to the predicate crime underlying the Section 922(g)(1) charge would have been treated at the founding").

Yet the Fifth Circuit has inexplicably departed from that approach when it comes to defendants who were on supervised release, probation, or parole when they possessed a firearm in violation of § 922(g)(1). *See United States v. Giglio*, 126 F.4th 1039 (5th Cir. 2025). In *Giglio*, following the court of appeals' lead, the Fifth Circuit affirmed a § 922(g)(1) conviction based solely on the fact that the defendant was on supervised release when he was charged. In the view of the *Giglio* court, so long as "the government may disarm those who continue to serve sentences for felony convictions," it does not matter if that is what the charged law actually did. *Id.* at 1044 (emphasis added); *see also id.* at 1045-46.

2. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have taken yet another approach. In those circuits, courts do not analyze whether historical tradition supports disarming a defendant for the predicate felony conviction(s), or ask whether the defendant was on supervised release, parole, or probation. Those circuits instead eschew as-applied challenges entirely, having deemed § 922(g)(1) to be constitutional in all its applications.

The Second Circuit's decision in *Zherka v. Bondi* is illustrative. *See* 140 F.4th 68 (2d Cir. 2025), *cert. denied,* No. 25-269, 2026 WL 135708 (Jan. 20, 2026). Despite

reviewing "the historical tradition of disarmament laws" and finding nothing like "modern felon-in-possession laws" in "the pre-Founding and Founding periods," *id.* at 78-79, the Second Circuit reasoned that historical "[c]lass-wide … legislative disarmament" laws against Catholics, Native Americans, Blacks, and the homeless immunize § 922(g)(1) from any constitutional attack, *id.* at 86-91. The Second Circuit thus held that the judiciary must defer to a legislature's views of which groups are too "dangerous" to keep and bear arms. *Id.* at 90.

The Fourth Circuit reached the same conclusion in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), *cert. denied,* 145 S. Ct. 2756 (2025). After reviewing historical examples of disarmament, the Fourth Circuit purported to derive from them a tradition of "disarm[ing] categories of people based on a legislative determination that such people 'deviated from legal norms.'" *Id.* at 707. Applying this guiding principle, the court saw no constitutional problem with any application of § 922(g)(1), deeming it a permissible exercise of the legislature's supposedly broad discretion to disarm categories of persons of its choosing. *Id.*

The Eighth Circuit likewise adopted a categorical rule barring as-applied challenges to § 922(g)(1), concluding that "legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms." *United States v. Jackson*, 110 F.4th 1120, 1127 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025). The Eighth Circuit did not undertake the type of historical analysis contemplated by *Bruen* and *Rahimi*. Indeed, the court "ma[de] no attempt to explain how the burden imposed by

the felon-in-possession statute, which lasts for a lifetime, is comparable to any of the Founding-era laws it discusses." *United States v. Jackson*, 121 F.4th 656, 660 (8th Cir. 2024) (Stras, J., dissenting from the denial of rehearing en banc).

The Ninth, Tenth, and Eleventh Circuits have similarly foreclosed as-applied challenges to § 922(g)(1). In *United States v. Duarte*, the en banc Ninth Circuit reaffirmed its pre-*Bruen* precedent that "felons are categorically different from the individuals who have a fundamental right to bear arms," and held that "§ 922(g)(1) constitutionally prohibits the possession of firearms by felons," even as to non-violent offenders. 137 F.4th 743, 750 (9th Cir. 2025), *cert. denied*, No. 25-425, 2026 WL 135692 (Jan. 20, 2026); *see also id.* at 761 ("historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons"). In *Vincent v. Bondi*, the Tenth Circuit continued to rely on pre-*Rahimi* precedent that had resolved the matter by invoking dicta from *Heller* observing that the prohibition on felon firearm possession is "presumptively lawful." 127 F.4th 1263, 1264 (10th Cir. 2025), *cert. denied*, No. 24-1155, 2026 WL 568283 (Mar. 2, 2026). The Eleventh Circuit has taken the same tack, holding that neither *Bruen* nor *Rahimi* displaced prior circuit precedent upholding § 922(g)(1) based solely on *Heller*'s "presumptively lawful" dicta. *See, e.g., United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025), *cert. denied,* No. 25-6281, 2026 WL 135685 (Jan. 20, 2026).

* * *

In sum, not only have multiple courts embraced the flawed logic the court of appeals employed here, but courts more generally have hopelessly fractured on how

to properly apply *Bruen*'s historical-tradition framework to as-applied Second Amendment challenges to § 922(g)(1). This clear confusion "about [key aspects] of the analysis" calls out for this Court to intervene and resolve the recurring methodological issues that have caused the circuits to splinter. *Morton*, 123 F.4th at 498 n.2.

II. The Question Presented Is Exceptionally Important, and This Case Is An Effective Vehicle For This Court To Address It.

How to resolve § 922(g)(1) challenges is an exceptionally important question given the frequency with which the federal government seeks to dispossess citizens of firearms under § 922(g)(1). In fiscal year 2024 alone, over 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), perma.cc/2GZH-ADYB. And yet, "only 18.2 percent of felony convictions in state courts and 4.2 percent of federal felony convictions were for 'violent offenses.'" *Jackson*, 110 F.4th at 1125 n.2 (citation omitted). Adding that data to the increasing volume of constitutional challenges to those convictions, it is critical that courts have a shared (and correct) understanding of how to resolve them. Indeed, the government itself has made precisely this point in seeking review of decisions unfavorable to its maximalist position regarding the constitutionality of § 922(g)(1). *See, e.g.,* Pet. For Rhg. En Banc 19-20, *United States v. Duarte*, No. 22-50048 (9th Cir. May 14, 2024); Pet. for. Cert. 24-25, *Garland v. Range*, No. 23-374 (Oct. 5, 2023).

Moreover, there are more than 19 million Americans—a non-trivial proportion of the citizenry—with felony records. *See* Sarah K.S. Shannon et al., *The Growth,*

Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010, 54 Demography 1795, 1806 (2018), perma.cc/6TNR-NEFU. And many individuals charged with violating § 922(g)(1) do so while on probation, parole, and supervised release. Left standing, the decision below effectively strips a sizeable portion of the adult population of as-applied challenges to § 922(g)(1) based on a consideration that has nothing to do with what that statute prohibits.

There is no need to await further percolation in the lower courts. Most of the courts of appeals have already spoken, and there are no signs that they will all be able to independently reconcile their various disagreements about even the most fundamental aspects of the Second Amendment analysis. To the contrary, the intractable confusion and conflict has already prompted the circuits to implore this Court for guidance. *See, e.g., Morton*, 123 F.4th at 498 n.2 (asking "the Supreme Court [to] resolve" the "significant disagreement" among the circuits on this issue); *Jackson*, 121 F.4th at 660 (Stras, J., dissenting from the denial of rehearing en banc) (underscoring that "[t]he constitutionality of the felon-in-possession statute is as 'exceptionally important' as ever").

This case presents a particularly effective vehicle for providing guidance as to the proper mode of analysis, as the Court could choose not to delve into the ultimate question of whether historical tradition supports punishing Mr. Taylor for possessing a firearm based on his prior carrying-without-a-license convictions that served as the predicates for his § 922(g)(1) charge. Because the court of appeals chose to sustain Mr. Taylor's § 922(g)(1) conviction based on an entirely irrelevant characteristic of

his background (his probation status), this Court would have the option of simply resolving the cross-cutting question of how courts should approach these challenges, then letting the court of appeals apply the proper framework in the first instance.

The petition should therefore be granted. In the alternative, the Court should hold the petition for a writ of certiorari pending the resolution of *United States v. Hemani*, cert. granted, No. 24-1234 (oral argument held Mar. 2, 2026), which presents the question whether 18 U.S.C. § 922(g)(3), the federal statute prohibiting unlawful users of controlled substances from possessing firearms, violates the Second Amendment. If appropriate, the Court should then grant certiorari in this case, vacate the court of appeals' judgment, and remand the case for further consideration in light of *Hemani*. *See* Pet. for Cert. 3-5, *United States v. Cockerham*, No. 25-1029 (Feb. 27, 2026) (asking this Court to hold petition raising constitutionality of § 922(g)(1) under the Second Amendment pending resolution of *Hemani*).

At a bare minimum, though, this Court should grant, vacate, and remand with instructions for the court of appeals to consider Mr. Taylor's challenge to his § 922(g)(1) conviction itself, without any free-floating inquiry into whether the government might have some independent basis for stripping Mr. Taylor of his Second Amendment rights. Whatever room for debate there may be about whether § 922(g)(1) is susceptible to as-applied challenges, there should be no debate that the government must defend § 922(g)(1) charges by grounding § 922(g)(1) in historical tradition. By failing to follow that bedrock rule, the court of appeals not only risked sanctioning a violation of the Second Amendment, but deprived Mr. Taylor of his right

to a full and fair adjudication of the Second Amendment challenge he raised. The Court should not let that egregious mistake stand.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, this Court should hold the petition for a writ of certiorari pending the resolution of *United States v. Hemani*, cert. granted, No. 24-1234 (oral argument held Mar. 2, 2026). If appropriate, the Court should then grant the petition, vacate the court of appeals' judgment, and remand the case for further consideration in light of *Hemani*.

Respectfully submitted,

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