

In the Supreme Court of the United States

ROBERT LAWRENCE JEFFERY, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1), the federal statute that prohibits anyone who has been convicted of “a crime punishable by imprisonment for a term exceeding one year” from possessing a firearm, violates the Second Amendment as applied to an individual with a prior conviction for injury to an elderly person.

2. Whether, for Second Amendment challenges to § 922(g)(1), courts can consider only the elements of a prior conviction—not the underlying conduct—when determining whether an analogous historical tradition supports permanent disarmament.

PARTIES TO THE PROCEEDINGS

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Robert Lawrence Jeffery, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Jeffery, No. 5:21-CR-437-OLG(1) (Apr. 11, 2025) (judgment of conviction)

United States Court of Appeals for the Fifth Circuit:

United States v. Jeffery, No. 25-50316 (Jan. 7, 2026)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Lawrence Jeffery respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Jeffery challenged his 18 U.S.C. § 922(g)(1) prosecution as violative of the Second Amendment, but the district court denied the motion to dismiss, and the Fifth Circuit affirmed. The court of appeals reasoned that § 922(g)(1) is constitutional as applied to a defendant if he has a prior felony conviction that “involved physical violence” and that Jeffery’s 2015 Texas conviction for bodily injury

to an elderly person is such a conviction. Pet. App. 2a (citing *United States v. Simpson*, 152 F.4th 611, 614 (5th Cir. 2025), *cert. denied*, No. 25-6813, 2026 WL 795166 (U.S. Mar. 23, 2026), and *United States v. Bullock*, 123 F.4th 183, 184–85 (5th Cir. 2024) (per curiam), *cert. denied*, 146 S. Ct. 255 (2025)).

A person commits the offense of injury to an elderly person “if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a[n] ... elderly individual ... bodily injury.” Tex. Penal Code § 22.04(a)(3) (2011). Here, according to the presentence report’s summary of “court records,” Jeffery “caused bodily injury to ... an [] individual who was sixty-five (65) years of age or older, by striking the victim with his hand.” C.A. ROA.306.

Jeffery’s case reveals the deep flaws in the Fifth Circuit’s developing approach to analyzing the Second Amendment in the context of § 922(g)(1). While the Fifth Circuit correctly recognizes that at least some predicate convictions cannot withstand Second Amendment scrutiny, the court is slipping down the slope of considering untested facts to find predicate convictions “violent.” This overinclusive analysis divests people of their right to bear arms far beyond the Founders’ understanding of the Second Amendment right and beyond the plain text of § 922(g)(1). The

Court should intervene to stop the erosion of bedrock constitutional rights.

The Fifth Circuit is not the only court of appeals that is confused about how to analyze Second Amendment challenges to § 922(g)(1). The First, Second, Third, Fifth, Sixth, and Seventh Circuits each acknowledge that § 922(g)(1) is or might be vulnerable to as-applied challenges. *United States v. Mitchell*, 160 F.4th 169, 179 (5th Cir. 2025) (collecting cases). The Fourth, Eighth, Ninth, Tenth, and Eleventh, however, “have upheld the categorical application of § 922(g)(1) to all felons.” *Id.* at 178 (collecting cases).

These important questions will not go away. This Court should grant certiorari to resolve the scope of a fundamental constitutional right and how courts should conduct a Second Amendment analysis for a commonly used criminal statute. At minimum, the Court should hold this petition pending the outcome of *United States v. Hemani*, No. 24-1234 (U.S.), which involves a Second Amendment challenge to 18 U.S.C. § 922(g)(3) and could shed light on the required analysis.

OPINION BELOW

The Fifth Circuit’s opinion is reproduced at Pet. App. 1a–2a.

JURISDICTION

The Fifth Circuit entered its judgment on January 7, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment 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.”

The Fifth Amendment provides in part: “No person shall ... be deprived of life, liberty, or property, without due process of law[.]”

The Sixth Amendment provides in part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to be informed of the nature and cause of the accusation[.]”

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

A. Legal framework.

1. The Second Amendment protects “the right of the people to keep and bear Arms.” U.S. Const. amend. II. In *NYSRPA v. Bruen*

the Court announced a two-step framework for analyzing Second Amendment challenges “centered on constitutional text and history.” 597 U.S. 1, 22 (2022). At step one, courts must ask whether the “Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 17. If so, “the Constitution presumptively protects that conduct.” *Id.* At the second step, “[t]he 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 the Court’s later decision in *United States v. Rahimi*, 602 U.S. 680 (2024)—explain 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. *Id.* at 29; *Rahimi*, 602 U.S. at 692. These 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.

2. The regulation at issue here—18 U.S.C. § 922(g)(1)—prohibits the possession of a firearm by a felon. Such bans “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); see *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.”). Congress first criminalized firearm possession by individuals convicted of certain crimes in 1938. See Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). That statute was much narrower than the modern version, applying 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).

It was not until the 1960s that the federal felon-in-possession statute took on its modern form—applying to possession of a firearm by a person convicted of any felony.¹ At the time, Congress shared a widely held—but incorrect—understanding that the Second Amendment “was not adopted with the individual rights in mind.” S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169 (explaining that the Second Amendment posed “no obstacle” because federal regulations did not “hamper the present-day militia”); *see United States v. Miller*, 307 U.S. 174, 178 (1939) (explaining 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”). The Supreme Court corrected that understanding in *District of Columbia v. Heller*, holding 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). *Heller* eventually led to *Bruen*, which explained that *Heller* demanded a test “centered on constitutional text and history.” 597 U.S. at 22.

¹ *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961); Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

B. Proceedings below.

1. In May 2021, Jeffery was sitting on the front porch of a house with another individual when police officers arrived to execute a search warrant. When Jeffery saw the officers, he dropped a .40 caliber pistol—which had traveled in interstate commerce—and entered the house. Jeffery was charged with possessing a firearm as a felon, in violation of § 922(g)(1). Jeffery had only one prior felony conviction: bodily injury to an elderly person.² C.A. ROA.306.

2. Jeffery moved to dismiss the indictment, arguing that § 922(g)(1) violated the Second Amendment facially and as applied to him under the analysis laid out in *Bruen*. A magistrate judge issued a report and recommendation to deny Jeffery’s motion. The magistrate judge relied on the Fifth Circuit’s then-existing, pre-*Bruen* precedent to reject Jeffery’s facial challenge to § 922(g)(1). As for his as-applied challenge, the magistrate judge found—without explanation—that Jeffery could not show that the application of § 922(g)(1) “to the facts of his case would violate his constitutional rights.” C.A. ROA.146. Jeffery objected to the magistrate’s

² In Texas, a person commits bodily injury to an elderly person if “he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a ... [person 65 years of age or older] ... bodily injury.” Tex. Penal Code § 22.04(a)(3), (c)(2) (2011).

report and recommendation and urged the district court to apply the *Bruen* framework to his Second Amendment challenge and dismiss the indictment. The district court adopted the magistrate judge's report and recommendation without change and denied Jeffery's motion to dismiss the indictment.

3. Jeffery entered a conditional plea to the indictment, preserving his right to appeal the district court's ruling on the motion to dismiss. He admitted that he had been convicted of the felony offense of bodily injury to an elderly person, but his admission did not include a description of the conduct underlying that conviction. In the presentence report prepared prior to sentencing, however, the probation officer summarized the allegations from "court records" and the "offense report." C.A. ROA.306. According to those documents, Jeffery struck the jaw of his girlfriend's grandmother, a person over 65 years old, when he was visiting her residence.

4. The district court sentenced Jeffery to time served, followed by three years' supervised release.

5. On appeal, Jeffery raised both facial and as-applied challenges to the constitutionality of § 922(g)(1) under *Bruen*'s framework, as clarified in *Rahimi* and the Fifth Circuit's decision in *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). *Diaz*, the seminal Fifth Circuit case

applying *Bruen* and *Rahimi*'s analyses to § 922(g)(1), established three points: (1) “felons” are part of “the people,” and thus § 922(g)(1) is presumptively unconstitutional, *id.* at 466–67; (2) § 922(g)(1) is facially constitutional, *id.* at 471–72; and (3) § 922(g)(1) was constitutional as-applied to Diaz because—when considering only his prior convictions—his prior felony for vehicle theft was relevantly similar to the Founding-era crime of horse theft, which was punishable by death or estate forfeiture, *id.* at 467, 469–70.

Also relevant to Jeffery's case were the Fifth Circuit's decisions in *United States v. Bullock*, 123 F.4th 183 (5th Cir. 2024) (*per curiam*), *cert. denied*, 146 S. Ct. 255 (2025), and *United States v. Schnur*, 132 F.4th 863 (5th Cir. 2025). *Bullock* reasoned that the conduct underlying the defendant's prior convictions for aggravated assault and manslaughter—he killed a person while firing a gun into a crowd— “fit[] neatly’ within our Nation's historical tradition” of “prohibit[ing] dangerous people from possessing guns.” *Id.* at 185 (quoting *Rahimi*, 602 U.S. at 698, and *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting)). *Schnur* held that the defendant's “felony conviction for a ‘crime of violence’ [aggravated battery causing great bodily injury] indicates that he poses a threat to public safety and the

orderly functioning of society” and the “regulation of such person’s ability to possess a firearm” accords with the nation’s history of punishment of those who have been convicted of violent offenses. *Schnur*, 132 F.4th at 870; *see also United States v. Simpson*, 152 F.4th 611, 614–15 (5th Cir. 2025), *cert. denied*, No. 25-6813, 2026 WL 795166 (U.S. Mar. 23, 2026) (holding § 922(g)(1) constitutional as applied to defendant with prior conviction for evading arrest because the offense involved violent conduct).

The Fifth Circuit has expanded its “violent conduct” theory to include predicate offenses—even if committed without violence or a weapon—that are inherently dangerous. In *United States v. Kimble*, the court addressed “whether a predicate drug-trafficking felony also justifies permanent disarmament under [§ 922(g)(1)] even after the defendant has served his full sentence.” 142 F.4th 308, 312 (5th Cir. 2025), *cert. denied*, No. 25-5747, 2026 WL 135675 (U.S. Jan. 20, 2026). The answer was yes: “In short, the Legislative, Executive, and Judicial Branches agree that drug trafficking is an inherently dangerous activity, and Congress has responded to that threat by disarming convicted drug traffickers via § 922(g)(1).” *Id.* at 317. Because a “predicate felony conviction” for drug trafficking “‘indicates that [Kimble] poses a threat to public safety and the orderly functioning of society,’ his (g)(1)

conviction is ‘consistent with this Nation’s historical tradition of firearm regulation and punishment of people who have been convicted of violent offenses.’” *Id.* (quoting *Schnur*, 132 F.4th at 870).

Jeffery argued that § 922(g)(1) violates the Second Amendment facially and as-applied to him but acknowledged the Fifth Circuit’s precedent foreclosed his argument. He nevertheless argued below, for purposes of preserving the arguments for further review, that *Diaz*, *Bullock*, *Schnur*, and their progeny had been wrongly decided. The government moved for summary affirmance based on Jeffery’s concessions. Jeffery took no position on the motion.

The Fifth Circuit granted the government’s motion, agreeing with the parties that Jeffery’s facial and as-applied challenges were foreclosed by *Diaz*, *Simpson*, and *Bullock*. Pet. App. 2a.

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). *United States v. Mitchell*, 160 F.4th 169, 178 (5th Cir. 2025) (collecting cases and describing “entrenched circuit split”). 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. Examining the text, the circuits disagree about whether felons are part of “the people” protected by the Second Amendment. And in analyzing the historical evidence, the circuits are split over which traditions justify § 922(g)(1), whether the statute is vulnerable to as-applied challenges, and (if so) what standard to apply.

1. Several circuits see no need for felony-by-felony as-applied litigation, but for drastically different reasons.

a. The Eighth Circuit upheld § 922(g)(1) as constitutional across the board based on historical laws prohibiting certain groups of people—religious minorities, Native Americans, and those who refused to declare an oath of loyalty—from possessing guns. *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *see also United States v. Hunt*, 123 F.4th 697, 705–08 (4th Cir. 2024) (adopting similar reasoning as alternative ground for holding § 922(g)(1) constitutional in every instance), *cert. denied*, 145 S. Ct. 2756 (2025).

b. The Second and Ninth Circuits largely agree with the Eighth Circuit’s historical approach. As the Second Circuit reasons, it “has long been permissible to regulate firearms possession through

legislative proscription on a class-wide basis, without a particularized finding that the individuals disarmed pose a threat to society.” *Zherka v. Bondi*, 140 F.4th 68, 78–79 (2d Cir. 2025) (cleaned up), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan 20, 2026). The Ninth Circuit has similarly held that the government met its burden under *Bruen*’s second step based on historical evidence consistent with “two regulatory principles that: (1) legislatures may disarm those who have committed the most serious crimes; and (2) legislatures may categorically disarm those they deem dangerous, without an individualized determination of dangerousness.” *United States v. Duarte*, 137 F.4th 743, 761–62 (9th Cir. 2024) (en banc), *cert. denied*, No. 25-425, 2026 WL 135692 (U.S. Jan. 20, 2026).

c. The Fourth Circuit refuses to consider as-applied challenges on several grounds, including that felons are not among “the people” protected by the Second Amendment. *Hunt*, 123 F.4th at 700.

d. The Tenth and Eleventh Circuits, relying on this Court’s dicta that felon-in-possession prohibitions are presumptively lawful, see no need to conduct the text-and-history analysis required by *Bruen*. *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025), *cert. denied*, No. 24-1155, 2026 WL 568283 (U.S. Mar. 2, 2026); *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).

2. The Third and Sixth Circuits recognize that as-applied challenges to § 922(g)(1) are viable, but they analyze these challenges differently.

a. 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) (en banc). 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 dismissed the government’s “dangerousness” principle, which would encompass even non-violent offenders, as “far too broad.” *Id.* at 230 (cleaned up). Finally, the court rejected the government’s reliance on capital punishment and 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.

b. 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). 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—but explained that these laws all allowed individuals to show that they posed no danger. *Id.* at 657. So 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 dangerousness 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.

3. The Seventh Circuit has assumed “there is *some* room for as-applied challenges,” but rejected a challenge by a defendant because his prior felonies included aggravated battery of a peace officer and possession of a weapon while in prison. *United States v. Gay*, 98 F.4th 843, 846–47 (7th Cir. 2024) (emphasis in original).

4. The Fifth Circuit’s approach underscores the deep divisions between the courts of appeals.

a. The Fifth Circuit splits with other circuits on two preliminary questions. Unlike the Second, Fourth, Ninth, Tenth, and Eleventh Circuits—which have held that they remain bound by their pre-*Bruen* precedent—the Fifth Circuit agrees with the Third and Sixth Circuits that *Bruen* rendered its prior precedent obsolete. *Diaz*, 116 F.4th at 466. And while some circuits have declined to conduct any historical analysis based on *Heller*’s “presumptively lawful” language, the Fifth Circuit joined the Third and Sixth Circuits in refusing to treat that language as controlling.³ *Id.* Instead, these courts acknowledge that *Bruen* requires a full text-and-history analysis. *Id.*

b. At *Bruen*’s first step, the Fifth Circuit adopted the majority view by holding that felons are part of “the people” protected by the Second Amendment. *Id.* at 466–67.

c. At the second step, the Fifth Circuit’s historical analysis diverges from other circuits in several respects. The Second, Fourth, Eighth, and Ninth Circuits have held that history supports upholding § 922(g)(1) regardless of a defendant’s underlying conviction. But the Fifth Circuit left the door open for “as-applied

³ The Fifth Circuit expressly rejected the Eleventh Circuit’s reliance “solely upon *Rahimi*’s mention of *Heller*’s ‘felons and the mentally ill’ language in upholding the constitutionality of § 922(g)(1).” *Diaz*, 116 F.4th at 466 n.2

challenges by defendants with different predicate convictions.” *Diaz*, 116 F.4th at 469 & 470 n.4. At first, the Fifth Circuit limited its analysis to whether the felony predicates that triggered § 922(g)(1) were relevantly similar to crimes that subjected the convictions to “serious and permanent punishment” at the founding. *Diaz*, 116 F.4th at 470 & n.4. The Fifth Circuit has since held that § 922(g)(1) is constitutional as applied to individuals convicted of “violent crimes.” *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) (per curiam), *cert. denied*, 146 S. Ct. 255 (2025); *see also United States v. Schnur*, 132 F.4th 863, 869 (5th Cir. 2025). This is different than the line drawn by the Third Circuit (whether a person poses a physical danger to others) and the Sixth Circuit (whether a person is dangerous).

* * *

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. The decision below is wrong and conflicts with this Court’s precedent.

Section 922(g)(1), as applied to a defendant with a conviction for causing bodily injury to an elderly person does not align with our Nation’s tradition of firearm regulation on either of the two

central considerations: how and why the regulation burdens the right to keep and bear arms. *See Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. The Fifth Circuit’s reliance on the *conduct* underlying the predicate conviction, rather than the elements of the conviction, also raises constitutional, statutory, and practical concerns.

A. Section 922(g)(1) is unconstitutional as applied to individuals with a prior felony conviction such as bodily injury to an elderly person.

Section 922(g)(1) violates the Second Amendment as applied to individuals like Jeffery who do not pose a present threat of violence based on their prior convictions. Indeed, the government has not cited any tradition of disarming non-violent individuals.

The government’s historical evidence shows—at most—a tradition of disarming violent individuals who threaten armed insurrection or presently 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”). But the government has not shown a tradition of *permanent*

disarmament for such individuals.⁴ It thus fails the “how” metric of *Bruen*.

The government’s evidence also fails the “why” metric. The Fifth Circuit has broadly framed the tradition of disarming violent individuals and used it to find § 922(g)(1) constitutional as applied to individuals with convictions that involved no misuse of firearms and did not result in any judicial finding that the person is a credible threat to others. *See, e.g.*, Pet. App. 2a (any prior conviction that “involved physical violence” conviction was violent conduct); *United States v. Reyes*, 141 F.4th 682, 686 (5th Cir. 2025) (prior conviction for evading arrest was violent conduct); *Kimble*, 142 F.4th at 312; *Schnur*, 132 F.4th at 870 (aggravated battery conviction “indicates that he poses a threat to public safety and the orderly functioning of society”). Essentially, the court of appeals is holding that § 922(g)(1) is constitutional as applied to people whose felony convictions at one time revealed “dangerous behavior.” *Simpson*, 152 F.4th at 614.

⁴ In its line of cases holding that § 922(g)(1) is constitutional as applied to someone convicted of a violent crime, the Fifth Circuit has cited historical affray laws. *Bullock*, 123 F.4th at 185. But those laws did not *permanently* deprive individuals of the right to keep and bear arms. *See Rahimi*, 602 U.S. at 770 (Thomas, J., dissenting) (“affray laws prohibited only carrying certain weapons (‘dangerous and unusual’) in a particular manner (‘terrifying the good people of the land’ without a need for self-defense) and in particular places (in public”).

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 loose determination of whether a prior conviction is "violent" leaves a person's Second Amendment right subject to a judge's whim, returning to the kind of "judicial deference to legislative interest balancing" that this Court rejected in *Bruen*, 597 U.S. at 26. A 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. Jeffery's prior conviction for causing bodily injury to an elderly person does not establish that he poses a present, credible threat to the physical safety of others. Thus, § 922(g)(1) violates the Second Amendment as applied to non-violent offenders like Jeffery.

B. A conduct-specific approach to analyzing Second Amendment challenges to § 922(g)(1) creates insurmountable constitutional, statutory, and practical problems.

On top of failing to satisfy the how/why *Bruen* metrics, the Fifth Circuit’s reliance on the alleged conduct underlying the decades-old conviction for bodily injury to an elderly person introduces other constitutional, statutory, and practical problems.

1. The Fifth Amendment’s Due Process Clause “protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). And under the Sixth Amendment, those elements must be proved to a jury—not a judge. *Sullivan v. Louisiana*, 508 U.S. 275, 277–78 (1993).

In the context of a § 922(g)(1) prosecution, it is no longer enough for the government to prove beyond a reasonable doubt that an individual has been convicted of a crime punishable by more than one year’s imprisonment. That is because “[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny.” *Diaz*, 116 F.4th at 469. Rather, “the government must demonstrate that the Nation has a longstanding tradition of disarming someone with a criminal history analogous to [the defendant’s].” *Id.* at 467. And a constitutionally imposed requirement for a conviction under § 922(g)(1) to survive a Second

Amendment challenge is functionally equivalent to an element of the offense that the government must prove to a jury. *See generally United States v. Daniels*, 124 F.4th 967 (5th Cir. 2025) (reversing conviction because “the government’s burden of proof was too low, as it was not required to convince a jury” of the relevant fact required to render a conviction under 18 U.S.C. § 922(g)(3) consistent with the Second Amendment), *pet. for cert. pending*, No. 24-1248 (U.S.).

Here, however, a jury did not determine beyond a reasonable doubt that Jeffery’s earlier conviction involved dangerous and violent conduct. Indeed, the Texas offense can be committed by a reckless or criminally negligent act or by omission. Tex. Penal Code § 22.04(a)(3). Instead of a jury, the court of appeals made that determination. *See* Pet. App. 2a. Allowing courts—rather than juries—to find essential facts required to uphold a § 922(g)(1) conviction violates both the Fifth and Sixth Amendments. By contrast, focusing on a prior conviction’s elements—rather than the underlying conduct—remedies these “serious Sixth Amendment concerns.” *See Descamps v. United States*, 570 U.S. 254, 269 (2013).

2. The Fifth Circuit’s conduct-specific approach to analyzing as-applied challenges to § 922(g)(1) also conflicts with the plain text of the statute, which criminalizes firearm possession by individuals

with certain *convictions*, not individuals who engaged in certain *conduct*.

It is a fundamental principle that an “application” of a statute considers only conduct that the challenged statute “actually authorizes or prohibits.” *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). Situations that “do not involve actual applications of the statute” are “irrelevant” to the analysis. *Id.* at 417–19. In other words, “[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).

So courts analyzing an application of § 922(g)(1) to a particular defendant must look to the conduct the statute prohibits: firearm possession by someone “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.” Relying on this statutory text, the Fifth Circuit initially and correctly explained that it could consider only a defendant’s “prior *convictions* that are ‘punishable by imprisonment for a term exceeding one year.’” *Diaz*, 116 F.4th at 467 (quoting § 922(g)(1); emphasis added). In other words, § 922(g)(1) “refers to predicate offenses in terms not of prior conduct but of prior ‘convictions.’” *Shepard v. United States*, 544 U.S. 13, 19 (2005).

But the Fifth Circuit reversed course and now applies a conduct-specific approach to as-applied challenges that bases an application of § 922(g)(1) on a fact the statute never mentions: whether the conduct underlying a prior conviction was violent. *See* Pet. App. 2a. And basing a conviction on an element unconnected to the statutory text raises an additional serious constitutional concern. The Due Process Clause requires a criminal law to “to give ordinary people fair notice of the conduct it punishes.” *Johnson v. United States*, 576 U.S. 591, 595 (2015). But, as written, § 922(g)(1) provides no notice that someone could be convicted based on violent *conduct* (as opposed to a violent *conviction*).

3. Finally, the Fifth Circuit’s conduct-specific approach is unworkable because of the same “daunting” “practical difficulties and potential unfairness” that this Court has long recognized are inherent in determining the conduct underlying a prior conviction. *See Taylor v. United States*, 495 U.S. 575, 601 (1990).

The conduct-specific approach would result in burdensome and inefficient “relitigation of past convictions in minitrials conducted long after the fact.” *Moncrieffe v. Holder*, 569 U.S. 184, 200–01 (2013). When trying to determine the facts underlying past offenses, courts—and juries too, *see supra* 32–33—“would have to expend resources examining (often aged) documents.” *Descamps*, 570 U.S.

at 270. If the defendant pleaded guilty, “there often is no record of the underlying facts.” *Taylor*, 495 U.S. at 601. Even if there is, the meaning of the available documents “will often be uncertain.” *Id.* Even more concerning, “the statements of fact in them may be downright wrong.” *Id.* “A defendant, after all, often has little incentive to contest facts that are not elements of the charged offense—and may have good reason not to.” *Id.*

* * *

The upshot is that the Fifth Circuit’s conduct-specific approach risks punishing millions of Americans and stripping them of their fundamental right to keep and bear arms based on facts that have not been proven to a jury beyond a reasonable doubt, are not relevant to the statutory prohibition (and so fail to provide adequate notice), and are based on untested allegations that the person had little incentive to contest. The Court should grant certiorari and reject the flawed conduct-specific approach.

III. These questions are critically important and will recur.

The Court should grant the petition because these questions are 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* 1 (June 2024). Those convictions accounted for more than 10% of all federal criminal cases. *See id.*

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 nonviolent 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 prohibits from

exercising a fundamental constitutional right, this Court should answer these important and recurring questions as soon as possible. At minimum, the Court should hold Jeffery's petition pending the decision in *United States v. Hemani*, No. 24-1234 (U.S.) (argued March 2), which asks whether 18 U.S.C. § 922(g)(3) is constitutional as applied to an unlawful user of controlled substances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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