No.

IN THE SUPREME COURT OF THE UNITED STATES

MOSES MARTIN, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

DANIEL EISINGER
Public Defender

Benjamin Nathaniel Paley
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, FL 33401
(561) 355–7600

Bpaley@pd15.org
Lmattocks@pd15.org
Appeals@pd15.org

QUESTION PRESENTED

Does a statute banning all convicted felons from possessing a firearm violates the Second Amendment to the United States Constitution?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before the Court are as follows:

Moses Martin, Petitioner.

State of Florida, Respondent.

RELATED PROCEEDINGS

Seventeenth Judicial Circuit of Florida:

State v. Martin, 21-9575CF10A (Dec. 19, 2023).

State v. Martin, 14-1340CF10A (Dec. 19, 2023).

State v. Martin, 14-243CF10A (Dec. 19, 2023).

State v. Martin, 12-4613CF10A (Dec. 19, 2023).

State v. Martin, 11-5772CF10A (Dec. 19, 2023).

State v. Martin, 11-4711CF10A (Dec. 19, 2023).

State v. Martin, 11-1247CF10A (Dec. 19, 2023).

State v. Martin, 10-17452CF10A (Dec. 19, 2023).

Fourth District Court of Appeal of Florida:

Martin v. State, 426 So. 3d 520 (Fla. 4th DCA 2025).

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

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Petitioner, Moses Martin, respectfully petitions for a writ of certiorari to review the judgment of Florida's Fourth District Court of Appeal in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal has been published in the Southern Reporter. It is reported as *Martin v. State*, 426 So. 3d 520 (Fla. 4th DCA 2025). A copy is in the appendix. See 1a.

JURISDICTION

This Court has jurisdiction to review final judgments or decrees "rendered by the highest court of a state in which a decision could be had." 28 U. S. C. § 1257(a).

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences without written opinion on December 11, 2025. 1a. Petitioner moved for a written opinion, and the Fourth District denied Petitioner's motion on January 8, 2025, 2a.

Although the Florida Supreme Court is the highest state court in the State of Florida, the Florida Supreme Court has held that it does not have jurisdiction to review decisions of Florida's district courts of appeal entered without a written opinion. See *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006); *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (holding that the Florida Supreme Court is "a court of limited jurisdiction"). Petitioner could thus not seek higher review at the Florida Supreme Court. Because the Fourth District was the highest court in the State of Florida where Petitioner could seek a decision, the Court has jurisdiction.

Petitioner now seeks review at the Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment

Section 1 of the Fourteenth Amendment provides, in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

The Second Amendment

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."

Fla. Stat. § 790.23(1)(a).

> 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 . . . [c]onvicted of a felony in the courts of this state . . . .

STATEMENT OF THE CASE

The State charged Petitioner with violating Florida Statutes Section 790.23—being a convicted felon in possession of a firearm. Petitioner entered into a negotiated plea with the State.

On appeal to Florida's Fourth District Court of Appeal, Petitioner argued, *inter alia*, that Florida's felon-in-possession statute violates the Second Amendment to the United States Constitution. Specifically, Petitioner argued that *no* founding-era firearm regulation ever categorically and permanently restricted a person from possessing firearms because of their felon status.

The Fourth District affirmed Petitioner's convictions without an opinion.

REASONS FOR GRANTING THE PETITION

Under Florida law, a person who has been convicted of a felony is permanently prohibited from possessing any firearm. Fla. Stat. § 790.23(1) (2021). The trial judges have no discretion in whether to permanently dispossess someone with a felony record. The reason for this law is "to protect the public by preventing the possession of firearms by persons convicted of certain crimes or who are fugitives from justice." *Nelson v. State*, 195 So. 2d 853, 855 (Fla. 1967). Petitioner is one of thousands of Floridians who have been permanently deprived of their Second Amendment right to bear arms because of their felon status.

There are four reasons why the Court should grant Petitioner's petition for a writ of certiorari.

First, the Court should grant Petitioner's petition for a writ of certiorari because section 790.23 was enacted before the Court decided *District of Columbia v. Heller*, 554 U. S. 570 (2008); *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U. S. 1 (2022); and *United States v. Rahimi*, 602 U. S. 680 (2024). All three decisions place burdens on the government's ability to regulate a person's right to bear arms that did not exist when the Florida Legislature

enacted section 790.23. Review by the Court is needed to ensure section 790.23 complies with Court precedent that came out after section 790.23's enactment.

Second, the Court should grant Petitioner's petition for a writ of certiorari because section 790.23 conflicts with *Heller*, *Bruen*, and *Rahimi*. There is no historical analogue of a firearm regulation that permanently prohibited a person from possessing any firearm because of their felon status after they have completed their sentence. Section 790.23 strips a sizable portion of Florida's adult population of their Second Amendment protections, based on the legislature's view that felons are unworthy of exercising their Second Amendment right to bear arms.

Third, the Court should grant Petitioner's petition for a writ of certiorari because the Fourth District—as well as appellate courts across the country—misapplied the Court's holding in *Heller*. *Heller* did not preclude courts in Florida from applying *Bruen*'s two-prong test to felon-in-possession statutes.

And fourth, the Court should grant Petitioner's petition for a writ of certiorari because there is a federal circuit split over the similarly worded federal law that permanently dispossess a person of

their firearms due to their status as a felon. Such a circuit split means that the issue of firearm bans for felons is ripe for the Court's review.

a. Section 790.23 was enacted before *Heller*, *Bruen*, and *Rahimi*.

The Florida Legislature enacted section 790.23 in 1955. See ch. 29766, § 1, at 422, Laws of Fla. (1955). At that time, the Supreme Court had not yet held that the Second Amendment guarantees an individual right to bear arms. Caselaw up to that point had uniformly held that the Second Amendment protects an individual right to bear arms that has a "reasonable relationship to the preservation or efficiency of a well regulated militia." See, *e.g.*, *United States v. Miller*, 307 U. S. 174, 178 (1939).

In 2008, the Court reversed course, holding, in *Heller*, for the first time that the Second Amendment protects an individual right to bear arms that is separate from militia service. Heller was decided fifty years after the enactment of section 790.23.

Subsequently, the Court issued two other Second Amendment cases—*Bruen* and *Rahimi*. Those cases cast doubt on a state legislature's ability to permanently deprive a person of their Second

Amendment right to bear arms due to their felon status. Thus, the Court should grant certiorari to answer the question presented.

In *Heller*, the Court held that at the time of the Founding the right to keep arms was "a common way of referring to possessing arms, for militiamen and everyone else." 554 U. S., at 583. Hence, the Second Amendment protects an individual right to bear arms that is not connected to militia service. The Court then acknowledged that the Second Amendment right to bear arms is not "unlimited" and can thus be reasonably regulated. *Id.*, at 595. To inform its analysis of whether the regulation at issue in *Heller* was reasonable, the Court looked to historical restrictions on firearm possession. *Id.*, at 626–27, 631–34. However, the Court left the details of how to do that historical analysis in other cases for another day.

As a result, courts across the country struggled to conduct a historical analysis when determining whether a firearm regulation passed constitutional muster. Many of the tests that came out from lower courts combined history with some form of means-end testing.

In *Bruen*, the Court rejected the means-end testing developed

by lower courts across the country. The Court stated that a "judge-empowering 'interest-balancing inquiry'" would not sufficiently safeguard constitutional rights. 597 U. S., at 22. That is because "[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). The Court thus stated that the proper test for determining whether a firearm regulation passes constitutional muster is whether "the government [can] demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*, at 17. "[T]he government may not simply posit that [a firearm] regulation promotes an important interest." *Ibid.* The actual question that courts need to consider when analyzing whether an historical tradition exists is "how and why [a] [law] burden[s] a law-abiding citizen's right to armed self-defense." *Id.*, at 29.

"To carry its burden, the state or federal government must point to 'historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation.'" *Edenfield v. State*, 379 So. 3d 5, 7–8 (Fla. 1st DCA 2023) (quoting *Bruen*, 597 U. S., at 27 (internal quotation marks omitted)). That is

because "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Heller*, 554 U. S., at 634–35. And the most important historical evidence of the Second Amendment's meaning comes from the founding era. *Ibid.*

The Court shed light on the *Bruen* test's application in *United States v. Rahimi*, 602 U. S. 680 (2024). There, the Court held that a person who was subject to a domestic violence restraining order and was found to represent a credible threat could be temporarily prohibited from possessing a firearm. *Id.*, at 702. The Court concluded that such a prohibition was facially constitutional because the nation's tradition of firearm regulations allows the government to temporarily disarm dangerous/violent individuals so long as they (1) present a credible threat to the physical safety of others and (2) are afforded due process. *Id.*, at 692.

The key in *Rahimi* is that there was a finding that Mr. Rahimi represented a credible threat. Thus, at the point in time Mr. Rahimi no longer represents a credible threat, he will be allowed to once again possess firearms. See *ibid.* ("[I]f laws at the founding regulated firearm use to address particular problems, that will be a strong

indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations."); *id.*, at 699 ("Moreover, like surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to [Mr.] Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant 'is' subject to a restraining order. § 922(g)(8). In [Mr.] Rahimi's case that is one to two years after his re-lease from prison, according to Tex. Fam. Code Ann. § 85.025(c) (West 2019). App. 6–7.").

In *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), then-Judge Barrett stated that although "[t]he historical evidence . . . support[s] . . . that [a] legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety," that does not support "the proposition that the legislature can permanently deprive felons of the right to possess arms simply because of their status as felons." *Id.*, at 454.

In light of the Court's decisions that have come out since section 790.23 was enacted—*Heller*, *Bruen*, and *Rahimi*—review by the Court is needed to determine if a state legislature can

permanently deprive a person of their Second Amendment right due to their felon status.

b. There is no historical analogue of firearm regulations that permanently prohibited a person of possessing firearms because of their felon status.

For section 790.23 to pass the *Bruen* test, there must be a historical tradition of laws that permanently prohibited felons from possessing any firearm (the how) because they are felons (the why).

The historical record reveals that no such law ever existed. In fact, the State below was unable to point to any such law. Instead, the State cited any law that disposed a person who committed a crime. For example, the State argued that history shows that a person facing the death penalty or estate forfeiture were not within the scope of people entitled to possess arms. The State also cited the Militia Act of 1662, which dispossessed people who were dangerous to the peace of the kingdom, laws that dispossessed loyalists to the British Crown who refused to pledge their allegiance to the State, participants in Shays' Rebellion, and slaves, Catholics, and Native Americans for fear of violent revolt.

The State relied on generalized traditions of temporary dispossession laws. Such generalizations are not allowed. See *Bruen*,

597 U. S., at 30 ("To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risk[s] endorsing outliers that our ancestors would never have accepted." (alteration in original) (quotation marks omitted)); see also *McDaniels v. State*, 419 So. 3d 1180, 1194 (Fla. 1st DCA 2025) ("It is not enough to rely on a generalized tradition of firearms regulation, for at that level of abstraction almost any law could be sustained.").

Finally, the State cited no authority that any of the dispossession laws it cited were permanent or applied only to people who had felony convictions.

Accordingly, the government failed to meet its burden to prove that there is an historical analogue of the government permanently dispossessing a person of firearms after they had completed their sentences because of their felon status. The historical record shows only dispossession laws that were temporary in nature and/or involved an individualized determination from a judge that a person was dangerous——as emphasized by the Court in *Rahimi*.

Section 790.23(1) permanently dispossess felons of any firearm; it is not a one-to-two year ban; and it provides no mechanism for getting the right to bear arms returned after a number of years have passed or circumstances have changed—except for asking for a restoration of rights from the governor. In fact, no prior firearm regulation has ever categorically and permanently restricted people from possessing firearms because they are a felon, even after their sentence was complete.

c. *Heller* did not preclude future judicial review of felon-in-possession statutes.

Courts in Florida and across the nation have refused to review the constitutionality of felon-in-possession statutes because they have misread the Court's holding in *Heller*. Those courts have relied on Heller's dicta that felon-in-possession statutes are "presumptively lawful." Such inaction by courts constitutes a misreading of the Court's *Heller* decision.

In *Heller*, the Court opined that "[a]lthough [it was] not undertak[ing] an exhaustive historical analysis . . . of the full scope of the Second Amendment, nothing in [its] opinion should be taken [as] cast[ing] doubt on longstanding prohibitions on the possession

of firearms by felons." 554 U. S., at 626. However, the Court did not, at any point in *Heller*, decide the constitutionality of felon-in-possession laws. In fact, "[t]he constitutionality of felon dispossession was not before the Court in *Heller*." *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting). The Court was simply noting that since *Heller* was the first time the Court held that there is an individual right to bear arms, many hypotheticals might come up. The Court would rule on those hypotheticals in later cases. *Heller*, 554 U. S., at 635. However, as noted by the Court in *Bruen*, "judicial deference to legislative interest balancing" is fundamentally inconsistent with the very notion that the Second Amendment protects a fundamental right. 597 U. S., at 26.

d. The federal circuit courts of appeals are split on the federal felon-in-possession statute.

Finally, the Court should grant certiorari due to a federal circuit split over the constitutionality of the similarly worded federal ban on felons possessing firearms. See 18 U. S. C. § 922(g)(1). Because the federal ban is similar to Florida's ban, the Court should consider the fact that there is a circuit split regarding the federal ban when deciding whether to grant certiorari in this case.

Since *Bruen*, the federal circuits have charted diverging paths on whether the federal ban on felons possessing firearms violates the Second Amendment. On one side, there are the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. They held that the federal ban on felons possessing firearms meets constitutional muster. See *United States v. Hunt*, 123 F.4th 697, 704-08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *Browne v. Reynolds*, 150 F.4th 975 (8th Cir. 2025); *United States v. Duarte*, 137 F.4th 743, 747-48 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025).

On the other end, the Third Circuit has charted a course all by itself, holding in *Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024), that the federal felon-in-possession statute does not meet constitutional muster, as the historical record shows that laws that permanently prohibited a person from possessing any firearm even after their sentence is complete because they are a felon did not exist. The Third Circuit stated that during the early years of the Republic, punishments for nonviolent crimes were often less than what would normally be given. Furthermore, the Third

Circuit noted that de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors is not rooted in our Nation's history and tradition. The Third Circuit acknowledged that it is the only federal circuit court to hold as such.

Range has presented an ideal opportunity for the Court to step in and resolve this issue due to the circuit split. There are now multiple opinions the Court can use to assist them. See *Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (KAVANAUGH, J., respecting the denial of certiorari) ("The AR–15 issue was recently decided by the First Circuit and is currently being considered by several other Courts of Appeals. Opinions from other Courts of Appeals should assist this Court's ultimate [decision-making] on the AR–15 issue." (citations omitted)). *Range* remains good law, as the United States failed to timely file a petition, and it has created a circuit split on a federal law. The Court should grant certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL EISINGER
Public Defender

BENJAMIN NATHANIEL PALEY
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421Third Street
West Palm Beach, FL 33401
(561) 355–7600

Bpaley@pd15.org
Lmattocks@pd15.org
Appeals@pd15.org