

No.

IN THE SUPREME COURT OF THE UNITED STATES

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MOSES MARTIN, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

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

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**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI**

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**MOSES MARTIN,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D2024-0053

[December 11, 2025]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Frank Ledee, Judge; L.T. Case Nos. 10-17452CF10A, 11-1247CF10A, 11-4711CF10A, 11-5722CF10A, 12-4613CF10A, 14-243CF10A, 14-1340CF10A, and 21-9575CF10A.

Daniel Eisinger, Public Defender, and Benjamin Nathaniel Paley, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Rachael Kaiman, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

*Affirmed.*

GERBER, LEVINE and KLINGENSMITH, JJ., concur.

\* \* \*

***Not final until disposition of timely-filed motion for rehearing.***

**APPENDIX B**

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

January 9, 2026

MOSES MARTIN,  
Appellant(s)  
v.  
STATE OF FLORIDA,  
Appellee(s)

**CASE NO. - 4D2024-0053**  
L.T. No. - 10-17452CF10A; 11-  
1247CF10A; 11-4711CF10A

**BY ORDER OF THE COURT:**

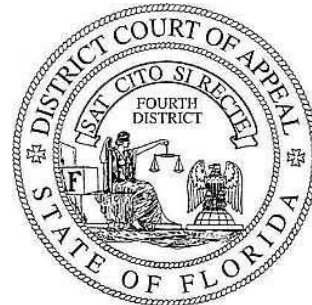
ORDERED that Appellant's December 11, 2025 motion for written opinion is denied.

Served:  
Crim App WPB Attorney General  
Rachael Kaiman  
Benjamin Paley  
Palm Beach Public Defender

KTH

**I HEREBY CERTIFY** that the foregoing is a true copy of the court's order.

  
**LONN WEISSBLUM, Clerk**  
**Fourth District Court of Appeal**  
4D2024-0053 January 9, 2026



II. SECTION 790.23 VIOLATES MR. MARTIN’S RIGHT TO BEAR ARMS UNDER THE UNITED STATES CONSTITUTION.

***a. The standard of review is de novo.***

“The constitutionality of a statute is a pure question of law subject to de novo review.” *City of Fort Lauderdale v. Dhar*, 185 So. 3d 1232, 1234 (Fla. 2016).

***b. This issue did not need to be preserved, because a facial challenge to a statute’s constitutionality can be raised for the first time on appeal.***

Mr. Martin is challenging the facial constitutionality of section 790.23. Although he admits that he did not raise this issue below, a facial challenge to a statute’s constitutionality does not need to be preserved for appeal, because it can be raised for the first time on appeal. *N.B. v. Fla. Dep’t of Child. & Fams.*, 183 So. 3d 1186, 1187 (Fla. 3d DCA 2016); *see also Fla. Dep’t of Agric. & Consumer Servs. v. Mendez*, 98 So. 3d 604, 608 (Fla. 4th DCA 2012) (“Unlike facial challenges to a statute, as-applied challenges are subject to the rules of preservation.”). Thus, this issue did not need to be preserved for appeal.

***c. The words of the United States Constitution must be interpreted based on their plain and ordinary meaning.***

The Constitution “was written to be understood by the voters.” *United States v. Sprague*, 282 U.S. 716, 731 (1931). Its “[w]ords are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 6, at 69 (2012). Thus, “where the intention [is] clear,” “there is no room for construction and no excuse for interpolation or addition.” *Sprague*, 282 U.S. at 731.

An appellate court’s review of a facial challenge to a statute is limited. *Abdool v. Bondi*, 141 So. 3d 529, 538 (Fla. 2014). “[A] determination that a statute is facially unconstitutional means that no set of circumstances exists under which the statute would be valid.” *Fla. Dep’t of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005). To make that determination, this Court will “consider only the text of the statute, not its specific application to a particular set of circumstances.” *Abdool*, 141 So. 3d at 538. Crucially, “[i]t is a fundamental principle of federal constitutional law that no state court is authorized to interpret any provision of the United States

Constitution . . . in a manner [that] is contrary to United States Supreme Court decisions interpreting the same provision of the United States Constitution.” *Miami Herald Publ’g Co. v. Ane*, 423 So. 2d 376, 384–85 (Fla. 3d DCA 1982).

“As in all constitutional challenges, [a] statute comes to [this] Court clothed with the presumption of correctness and all reasonable doubts about [a] statute’s validity must be resolved in favor of constitutionality.” *Dhar*, 185 So. 3d at 1234. “[T]o overcome the presumption of constitutionality, ‘the invalidity must appear beyond reasonable doubt.’” *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (quoting *Franklin v. State*, 887 So. 2d 1063, 1073 (Fla. 2004)).

***d. The Bruen test has two steps, both of which must be met for a firearm regulation to meet constitutional muster.***

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.” Amend. II, U.S. Const. Because the Second Amendment protects an individual right to bear arms, “the government may not simply posit that [a firearm] regulation promotes an important interest.” *N.Y. State Rifle & Pistol*

*Ass’n v. Bruen*, 597 U.S. 1, 17 (2022). “Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*

The Supreme Court has articulated a two-step analysis “when passing on the constitutionality of a firearm [regulation].” *Edenfield v. State*, 379 So. 3d 5, 7 (Fla. 1st DCA 2023). “First, courts must determine whether ‘the Second Amendment’s plain text covers an individual’s conduct[.]’” *Id.* (quoting *Bruen*, 597 U.S. at 24). “If so, then the ‘Constitution presumptively protects that conduct,’ and therefore, the Government ‘must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.’” *Id.* (quoting *Bruen*, 597 U.S. at 24). “Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Bruen*, 597 U.S. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)). “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*, 379 So. 3d at 7–8 (quoting *Bruen*, 597 U.S. at 27).

***e. Section 790.23 fails to meet either step of the Bruen test and fails to meet constitutional muster.***

The first step in the *Bruen* analysis is whether Mr. Martin is protected by the Second Amendment. The Second Amendment’s text makes it clear that it applies to “the people.” See amend. II, U.S. Const. “[T]he people . . . refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). As can be seen, there is no felon/non-felon distinction within the term “the people” in the Second Amendment. See also *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022) (describing felons as “indisputably part of ‘the people’” under the Second Amendment); *United States v. Meza-Rodriguez*, 798 F.3d 664, 671 (7th Cir. 2015) (holding that a person’s criminal record is irrelevant in determining whether the person is among “the people” protected under the Second Amendment). Thus, Mr. Martin is protected by the Second Amendment.

The second step in the *Bruen* analysis is whether an historical tradition exists that supports permanently dispossessing felons of firearms. The State bears the burden to prove so. Here, the State cannot meet its burden, as there is more than enough historical evidence to support the fact that nonviolent felons either were not permanently dispossessed of firearms or were not deprived at all of their firearms.

In *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), the State of Wisconsin and the United States offered three rationales for categorical bans of felons possessing firearms. First, they claimed that “there is some evidence suggesting that founding-era legislatures deprived felons of the right” to bear arms. *Id.* at 454 (Barrett, J., dissenting). “Second, they argue[d] that because the states put felons to death at the time of the founding, no one would have questioned their authority to take felons’ guns too.” *Id.* “And third, they insist[ed] that founding-era legislatures permitted only virtuous citizens to have guns, and felons are not virtuous citizens.” *Id.*

In response, 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.*

Recently, in *United States v. Rahimi*, 602 U.S. 680 (2024), the Supreme Court held, in its first post-*Bruen* Second Amendment case, that a person who was subject to a domestic violence restraining order and was found to represent a credible threat could be temporarily circumscribed from possessing a firearm. *Id.* at 702. The Court concluded that such a prohibition was facially constitutional because the nation’s tradition of firearm regulation allows the government to temporarily disarm individuals so long as they present a credible threat to the physical safety of others. *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 id.* (“[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 Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant ‘is’ subject to a restraining order. § 922(g)(8). In Rahimi’s case that is one to two years after his release from prison, according to Tex. Fam. Code Ann. § 85.025(c) (West 2019). App. 6–7.”).

Here, no set of circumstances exists under which section 790.23 could be constitutionally applied, as it permanently deprives any felon (violent or nonviolent) of possessing firearms.<sup>4</sup> Unlike in *Rahimi*, section 790.23 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. In fact, no founding-era firearm regulation ever categorically and permanently restricted felons from possessing firearms.

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<sup>4</sup> Mr. Martin is not saying that the State cannot prohibit a felon from possessing firearms for the rest of that felon’s life while serving a life sentence. In fact, the State is justified in doing so under its authority to regulate prisons. See § 944.47(1)(a)5., Fla. Stat. (2024) (prohibiting felons from possessing firearms or weapons of any kind in state prisons). However, that statute is not at issue in this case.

Because section 790.23 is a permanent ban, it is not analogous to any prior firearm regulation. Thus, this Court should reverse Mr. Martin's conviction and sentence.

**III. SECTION 790.23 VIOLATES MR. MARTIN'S RIGHT TO BEAR ARMS UNDER THE FLORIDA CONSTITUTION.**

***a. The standard of review is de novo.***

"The constitutional validity of a law is a legal issue subject to *de novo* review by this [C]ourt." *Norman v. State*, 159 So. 3d 205, 210 (Fla. 4th DCA 2015).

***b. This issue is preserved because a facial challenge to a statute's constitutionality can be raised for the first time on appeal.***

Mr. Martin is challenging the facial constitutionality of section 790.23. Although he admits that he did not raise this issue below, a facial challenge to a statute's constitutionality does not need to be preserved for appeal, because it can be raised for the first time on appeal. *N.B.*, 183 So. 3d at 1187; *see also Mendez*, 98 So. 3d at 608 ("Unlike facial challenges to a statute, as-applied challenges are subject to the rules of preservation."). Thus, this issue did not need to be preserved for appeal.