

No. _____

IN THE
Supreme Court of the United States

MERWIN SMITH,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Melissa K. Goymerac
Assistant Federal Public Defender
1010 Market, Suite 200
St. Louis, MO. 63101
(314) 241-1255
Melissa_Goymerac@fd.org

Attorney for Petitioner

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1), which prohibits anyone with a felony conviction from possessing a firearm, is constitutional as applied to every defendant, irrespective of the case-specific circumstances and despite the Second Amendment's command that, "the right of the people to keep and bear Arms, shall not be infringed."

PARTIES TO THE PROCEEDINGS

Petitioner (appellant below) is Merwin Smith.

Respondent (appellee below) is the United States of America.

RELATED PROCEEDINGS

United States v. Smith, No. 24-2445 (8th Cir. Jan. 23, 2026)

United States v. Smith, No. 4:22-cr-00167-SEP (E.D. Mo. July 2, 2024)

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PETITION FOR WRIT OF CERTIORARI

Merwin Smith respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The panel opinion of the court of appeals was unpublished. It is available on Westlaw at 2026 WL 183684 and is reprinted in the Appendix to the Petition (“Pet. App.”) at 1a-2a.

JURISDICTION

Petitioner invokes this Court’s jurisdiction under 28 U.S.C. § 1254(1).

The Eighth Circuit had jurisdiction under 28 U.S.C. § 1291. It entered its opinion and judgment on January 23, 2026, and Petitioner did not seek rehearing or en banc review. Therefore, this petition is timely under Sup. Ct. R. 13.

RELEVANT PROVISIONS

The **Second Amendment** states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

18 U.S.C. § 922(g)(1) states: “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.”

INTRODUCTION

This case presents an issue which impacts millions of Americans and has produced significant disagreement among the courts of appeal: whether the federal government may permanently bar anyone who has been convicted of a felony from possessing a firearm, without any consideration for the nature or age of the disqualifying prior offense.

Following *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), the Third, Fifth, Sixth, and Seventh Circuits have re-evaluated whether 18 U.S.C. § 922(g)(1), the federal felon-in-possession law, can be constitutionally applied to every individual who has been convicted of an offense “punishable by imprisonment for a term exceeding one year.” Those four circuits have concluded that the law is subject to as-applied challenges, while the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have held that § 922(g)(1) is constitutional in all of its applications.

This Court should grant the petition to resolve the disagreement between the circuits, provide certainty for criminal defendants, and prevent the years of litigation which will result if this disagreement is allowed to persist.

This Court should also grant the petition to correct the decision below. Lower courts that have rejected as-applied challenges—including the Eighth Circuit, where Petitioner’s conviction was affirmed—have misapplied *Bruen* and *Rahimi* in this context. Those precedents demonstrate that the government should not have been able to disarm or prosecute Petitioner without first proving his dangerousness or establishing that, based on his particular prior convictions, there was an analogous tradition of disarmament at the time of the Founding.

STATEMENT OF THE CASE

I. Legal Background¹

The Second Amendment protects a pre-existing right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). In fact, a direct predecessor to the Second Amendment can be found in the English Declaration of Rights—which secured, for certain members of the English population, an individual right to “have Arms for their Defence[.]” *Id.* at 593 (quoting 1 W. & M., ch. 2, § 7, in 3 Eng. Stat. at Large 441). Following the Glorious Revolution, the right to keep and bear arms became “fundamental” for all English subjects; so, by the 1760s and 1770s, the Crown’s attempt to disarm inhabitants of the most rebellious colonies provoked “polemical reactions by Americans[.]” *Id.* at 593-94.

After the Revolution, Americans sought more enduring protections for their rights; to that end, the federal Constitution was amended in 1791 to provide that “the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

With the Second Amendment in place, Founding-era legislatures avoided broad, class-based disarmament provisions which targeted felons: indeed, “Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.” *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting).

However, Congress abruptly switched course during the New Deal era. In 1938, our legislature criminalized the receipt of firearms by individuals with certain criminal convictions. *See* Federal Firearms Act, Pub. L. 75-785, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). That law—the Federal Firearms Act—was narrower than the modern-day

¹ This legal background—and some of the other content in this petition—was adapted from a prior petition filed by counsel in *United States v. Tracy Jenkins*, No. 25-5925, *cert denied*, 223 L. Ed. 2d 249 (U.S. Nov. 24, 2025).

disarmament provision in 18 U.S.C. § 922(g)(1); it only applied to those who received a firearm after having been convicted of a “crime of violence,” including murder, manslaughter, rape, mayhem, kidnapping, burglary, housebreaking, and certain kinds of aggravated assault. *Id.* at § 1(6).

It wasn’t until 1961 that Congress passed a law prohibiting the receipt of firearms by anyone who had been convicted of a crime “punishable by imprisonment for a term exceeding one year.” *See An Act to Strengthen the Federal Firearms Act*, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961). Lawmakers of that era held the widespread but erroneous view that “the right to bear arms . . . relates only to the maintenance of the militia.” *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 89th Cong. 41* (1965) (statement of Attorney General Katzenbach). As a result, Congress took an “expansive legislative approach” in order to keep arms from “potentially irresponsible persons, including convicted felons.” *Lewis v. United States*, 445 U.S. 55, 61 (1980); *Barrett v. United States*, 423 U.S. 212, 220 (1976). By 1968, our legislature had expanded the Federal Firearms Act to criminalize the possession—as opposed to the receipt—of firearms and ammunition by anyone with a felony conviction. *See Omnibus Crime Control and Safe Streets Act of 1968*, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

District of Columbia v. Heller debunked the myth that the Second Amendment only guarantees a collective, militia-based right to bear arms. *See* 554 U.S. at 595. However, the *Heller* Court also emphasized, in dicta, that, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]” *Id.* at 626. Calling these prohibitions “presumptively lawful,” *id.* at n.26, *Heller* assured

readers that “there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” *Id.* at 635.

Fourteen years later, *New York State Rifle & Pistol Association, Inc. v. Bruen* adopted a two-step test to identify laws which unconstitutionally restrict the Second Amendment right to bear arms. 597 U.S. 1, 17 (2022). Under step one, courts consider whether the text of the Second Amendment encompasses conduct that the challenged law proscribes; for “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* And, if a law restricts protected conduct, the government “must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* If the government cannot establish “relevantly similar” historical analogue, the challenged law is unconstitutional. *Id.* at 29.

This Court used the *Bruen* test to evaluate the constitutionality of a federal criminal statute in *United States v. Rahimi*, 602 U.S. 680 (2024). That case addressed the constitutionality of 18 U.S.C. § 922(g)(8), which disarms individuals who are subject to a restraining order containing a finding that they present a “credible threat” to the physical safety of another. 18 U.S.C. § 922(g)(8). Ultimately, the *Rahimi* Court found that § 922(g)(8) was facially constitutional, noting that two historical analogues (surety laws and “going armed” laws) could be read together to establish a tradition confirming that “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” 602 U.S. 680 at 698.

Rahimi referenced *Heller’s* dicta on presumptive lawfulness. *Id.* at 699. However, it did not address the propriety of status-based disarmament provisions other than 18 U.S.C. § 922(g)(8). *See id.* at 702 (“In *Heller*, *McDonald*, and *Bruen*, this Court did not undertake an

exhaustive historical analysis . . . of the full scope of the Second Amendment. Nor do we do so today.” (internal quotations and citation omitted)).

The Eighth Circuit, which includes the District where Petitioner committed his offense, applied *Bruen* to 18 U.S.C. § 922(g)(1) in *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023), *vacated by* 2024 WL 3768055 (8th Cir. Aug. 8, 2024) (“*Jackson I*”). *Jackson I* found that § 922(g)(1) was constitutional in all of its applications; however, that opinion was vacated and remanded for further consideration in light of *Rahimi*. *See Jackson v. United States*, No. 23-6170, 144 S. Ct. 2710 (U.S. July 2, 2024).

Three days after resubmission, the Eighth Circuit issued an opinion which held, again, that § 922(g)(1) was constitutional. *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), *rh’g pet. denied*, 121 F.4th 656 (8th Cir. 2024), *pet. for cert. denied*, 145 S. Ct. 2708 (U.S. May 19, 2025) (“*Jackson II*”). Like *Jackson I*, *Jackson II* held that “there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *Id.* at 1125. The opinion relied heavily on *Heller’s* dicta about the presumptive lawfulness of felon-in-possession laws. *See id.* at 1125, 1128-29. And it reasoned that because legislatures “traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms Congress acted within the historical tradition when it enacted § 922(g)(1)[.]” *Id.* at 1129.

However, four other Circuits read the *Heller*—and historical record—very differently. As discussed below, those circuits refused to shut the door on all Second Amendment challenges to § 922(g)(1): they allow as-applied challenges in cases like Petitioner’s.

II. Factual and Procedural History

Petitioner Merwin Smith was charged with a violation of 18 U.S.C. § 922(g)(1) after police officers found a pistol strapped between his shoulder blades. Pet. App. 1a. Prior to trial,

he filed an objection asserting that his prosecution “violate[d] the Second Amendment.” Dist. Ct. Dkt. 93 at 1.² He argued that his conduct—carrying a 9mm Smith & Wesson—was protected under Second Amendment despite the fact that his criminal history included three felony convictions for possession of a controlled substance, two felony convictions for tampering with a motor vehicle, two felony convictions for possessing a firearm as a felon, and one felony conviction for resisting arrest. *Id.* at 1-3; *see also* Dist. Ct. Dkt. 125 at 6-20 (Presentence Investigation Report).

Petitioner acknowledged, in his initial objection, that his challenge was foreclosed by the Eighth Circuit’s decision in *Jackson I*. Dist. Ct. Dkt. 93 at 1. The District Court agreed; it overruled the objection and the case proceeded to trial. Dist. Ct. Dkt. 142 at 74. Following Petitioner’s conviction, the District Court imposed a sentence of 120 months in custody, followed by a 2-year term of supervised release. Pet. App. at 4a-5a.

On appeal, Petitioner argued that 18 U.S.C. § 922(g)(1) was “facially unconstitutional and unconstitutional as applied.” Pet. C.A. Br. at 31 (8th Cir. Nov. 22, 2024). He again acknowledged that his claims were foreclosed, this time by *Jackson II*. *See id.* at 31. However, Petitioner emphasized that the Eighth Circuit’s case law was out-of-step with the law from other circuits, argued that only dangerous felons could be constitutionally disarmed, and emphasized that, in his case, the government had not made any showing of dangerousness. *Id.* at 33, 41.

The Eighth Circuit’s response was brief: it concluded, in a single sentence, that it was required to reject Petitioner’s claims under *Jackson II*. Pet. App. at 2a. Thus, the judgment of the District Court was affirmed. *Id.*

² “Dist. Ct. Dkt.” refers to the docket in *United States v. Smith*, No. 4:22-cr-00167-SEP (E.D. Mo.).

REASONS FOR GRANTING THE WRIT

I. The courts of appeal are divided over the constitutionality of 18 U.S.C. § 922(g)(1).

Even after *Rahimi*, the circuit courts of appeal are openly split over the constitutionality of 18 U.S.C. § 922(g)(1). There is significant disagreement about whether the statute is susceptible to as-applied challenges and, if so, how lower courts should evaluate those challenges. Unless this Court intervenes, it will be impossible to reach a consensus; each side has marshalled this Court's case law in support of its position and each side claims that its approach is supported by historical tradition.

A. Six circuits hold that § 922(g)(1) is constitutional every case.

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have held that § 922(g)(1) is constitutional in every application. All of those courts relied on the dicta in *Heller* to support their holdings. See *Zherka v. Bondi*, 140 F.4th 68, 73, 93-94 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026); *United States v. Hunt*, 123 F.4th 697, 703-05 (4th Cir. 2024), *cert. denied*, No. 24-6818, 145 S. Ct. 2756 (U.S. June 2, 2025); *Jackson*, 110 F.4th at 1125; *United States v. Duarte*, 137 F.4th 743, 750-52 (9th Cir. 2025) (en banc), *cert. denied*, No. 25-425, 2026 WL 135692 (U.S. Jan. 20, 2026); *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, 890-94 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026).³ Thus, the dicta in *Heller* has taken on a talismanic quality, short-circuiting the *Bruen* analysis and bolstering the claim that that felon-in-

³ The First Circuit has also relied upon *Heller's* dicta to deny a Second Amendment challenge to § 922(g)(1), although that case was decided under a plain error standard. See *United States v. Langston*, 110 F.4th 408, 419-20 (1st Cir. 2024), *cert. denied*, No. 24-5795, 145 S. Ct. 581 (U.S. Nov. 18, 2024).

possession laws are universally constitutional, even though *Heller* acknowledged that this Court had not conducted the historical vetting required to decide the issue. 554 U.S. at 635.

The Tenth Circuit's decision in *Vincent v. Bondi* is a good example of this trend. *Vincent* reasoned that pre-*Bruen* case law "relied on *Heller*'s instruction that felon dispossession laws are presumptively valid," concluded that *Rahimi* "reaffirmed" this "instruction" and, for that reason, found that prior precedent upholding § 922(g)(1) had not been abrogated. 127 F.4th at 1265. Without license to re-examine its prior case law, the Tenth Circuit found itself bound to uphold § 922(g)(1) against an as-applied challenge—and, indeed, against *all* as-applied challenges. *Id.* at 1266.

The Tenth Circuit was not alone in concluding that *Bruen* and *Rahimi* did not abrogate prior case law upholding 18 U.S.C. § 922(g)(1); the Fourth and Eleventh Circuits reached the same conclusion. *See Hunt*, 123 F.4th at 704 ("*Bruen* and *Rahimi* . . . provide no basis for a panel to depart from this Court's previous rejection of the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms"); *Dubois*, 139 F.4th at 894 ("We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1).").

The Fourth Circuit did not rely solely on its prior precedent; like the Second, Eighth, and Ninth Circuits, it attempted to apply the two-step *Bruen* test. *See Hunt*, 123 F.4th at 705-08; *Zherka*, 140 F.4th at 75-91; *Jackson*, 110 F.4th at 1126-29; *Duarte*, 137 F.4th at 752-61. At step two, all four of these courts supported their holdings by citing to pre- and post-Revolutionary laws which disarmed groups seen as dangerous or non-law-abiding. *Hunt*, 123 F.4th at 705-08; *Zherka*, 140 F.4th at 84-91; *Jackson*, 110 F.4th at 1126-28; *Duarte*, 137 F.4th at 759-61. As the Second Circuit explained in *Zherka*,

English, American colonial, and early American histories abound with examples of laws demonstrating that legislatures had broad authority to regulate firearms, including by disarming large classes of people based on their status alone. Religious minorities, political dissenters, Native Americans, and persons of color were among the disfavored groups that historical legislatures disarmed based on a perception that persons in those categories were inherently dangerous or non-law-abiding.

140 F.4th at 85. The Eighth Circuit—the first court to address this issue after *Rahimi*—did not think it made any difference whether those actions were characterized as “restrictions on persons who deviated from legal norms” or restrictions on “persons who presented an unacceptable risk of dangerousness”; whatever the case may have been, said the Eighth Circuit, those laws were analogous enough to conclude that “Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons.” *Jackson*, 110 F.4th at 1129.

B. Following *Rahimi*, four circuits have allowed as-applied challenges to § 922(g)(1).

In contrast, Third, Fifth, and Sixth, and Seventh Circuits have refused to foreclose as-applied challenges to 18 U.S.C. § 922(g)(1). *See Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, n.4 (5th Cir. 2024), *cert. denied*, No. 24-6625, 145 S. Ct. 2822 (U.S. June 23, 2025); *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024); *United States v. Watson*, No. 24-2432, 2026 WL 905433, at *1 (7th Cir. Apr. 2, 2026). Two of these courts have found § 922(g)(1) unconstitutional as applied and two have not; however, all agree that *Bruen* and *Rahimi* require a “fresh look” at § 922(g)(1). *Watson*, 2026 WL 905433, at *4 (quoting *United States v. Seiwert*, 152 F.4th 854, 861 (7th Cir. 2025)); *see also Range*, 124 F.4th at 225 (holding that *Bruen* abrogated prior case law addressing the constitutionality of 18 U.S.C. § 922(2)(1)); *Diaz*, 116 F.4th at 465 (same); *Williams*, 113 F.4th at 647-48 (same).

The Third Circuit was the first to find 18 U.S.C. § 922(g)(1) unconstitutional as applied. Sitting en banc, it enjoined the enforcement of § 922(g)(1) against Bryan Range, who wanted to purchase a gun despite his conviction for making a false statement to obtain food stamps. *Range*, 124 F.4th at 222-23, 232. At step one of the *Bruen* analysis, the court found that Range and his proposed conduct were “protected by the Second Amendment.” *Id.* at 228. At step two, the court acknowledged a “tradition of disarming people who pose a clear threat of physical violence[.]” *Id.* at 230 (cleaned up). However, it found that Range’s disarmament was not part of this tradition because there was “no evidence that he poses a physical danger to others or that food-stamp fraud is closely associated with physical danger.” *Id.*⁴

The Fifth Circuit found § 922(g)(1) unconstitutional as applied in two cases: *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) and *United States v. Mitchell*, 160 F.4th 169 (5th Cir. 2025). Cockerham had a prior conviction for failure to pay child support; a conviction which, the Fifth Circuit reasoned, was part of a historical tradition which allowed for the incarceration (and concomitant disarmament) of debtors but allowed for release (and rearmament) once their debts were paid. 162 F.4th at 504. Given that Cockerham “was no longer delinquent and had fully paid the child support debt for which he was convicted at the time he was found in possession of a firearm,” the Fifth Circuit found “no historical justification to disarm him[.]” *Id.* at 504, 506.

Mitchell had a prior conviction for felony possession of a firearm by an unlawful user of a controlled substance. *Mitchell*, 160 F.4th at 174. At the time of that conviction, evidence showed that Mitchell was a habitual marijuana user; however, there was no evidence that he

⁴ The Third Circuit has since clarified that, in its view, “disarmament is justified as long as a felon continues to present a special danger of misusing firearms.” *Pitsilides v. Barr*, 128 F.4th 203, 210 (3d Cir. 2025) (cleaned up).

was ever actively intoxicated while in possession of a firearm. *Id.* at 193-94. Those facts mattered because the Fifth Circuit identified “intoxication laws” as the historical tradition which came closest to supporting Mitchell’s disarmament. *Id.* at 192. Intoxication laws banned individuals under the influence from carrying firearms; however, those laws involved temporary rather than permanent disarmament and, as a result, were not sufficiently analogous to § 922(g)(1) as it applied in this context. *Id.* at 193. Mitchell’s conviction was unconstitutional. *Id.* at 195.

C. There is significant methodological division among the circuits that allow as-applied challenges.

The Fifth Circuit has been clear about its approach to evaluating as-applied challenges: it focuses on the “nature of the predicate offense rather than on the defendant’s broader criminal history or individual characteristics.” *Cockerham*, 162 F.4th at 507 (quoting *United States v. Hernandez*, 159 F.4th 425, 428 (5th Cir. 2025)). The Seventh Circuit also appears to have adopted this approach. *See Watson*, 2026 WL 905433, at *10-11 (focusing on the defendant-appellant’s predicate convictions in order to resolve the appeal). In contrast, however, the Third and Sixth Circuits have held that courts must examine “‘each individual’s specific characteristics,’ which ‘necessarily requires considering the individual’s entire criminal record—not just the predicate offense for purposes of § 922(g)(1).’” *Pitsilides*, 128 F.4th at 211 (quoting *Williams*, 113 F.4th at 657-58). There is, therefore, a “split-within-a-split”: a methodological dispute which can also be resolved if the Court grants certiorari.

D. Without intervention, division will only continue to grow.

To recap, six circuits have rendered § 922(g)(1) immune to Second Amendment challenges, and have relied on this Court’s dicta in order to do so. Four circuits have refused to defer blindly to § 922(g)(1): two permit as-applied challenges, although they have not yet

encountered a meritorious one, and two have found § 922(g)(1) unconstitutional as applied. This state of affairs shows that the circuits are a long way from finding consensus: without this Court’s intervention, these conflicts will only become more deeply entrenched.

II. The decision below was wrong.

The Eighth Circuit decided Petitioner’s appeal based on *Jackson II*, an opinion that overreads *Heller* and misapplies the *Bruen* test.

Heller never purported to immunize § 922(g)(1) from review, yet *Jackson II* intimated otherwise. See 110 F.4th at 1125 (“The Supreme Court has said that nothing in *District of Columbia v. Heller* . . . should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons Given these assurances by the Supreme Court, and the history that supports them, we conclude that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).”). That was wrong: “Making the leap from *presumptively* constitutional to *always* constitutional, like *Jackson II* does, is too much for that overused line to bear, no matter how you read it.” *United States v. Jackson*, 121 F.4th 656, 658 (8th Cir. 2024) (Stras, J., dissenting from the denial of rehearing en banc). After all, “a measure can be presumptively constitutional and still have constitutionally problematic applications.” *Id.* And “applying *Heller*’s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to ‘expound upon the historical justifications’ for firearm-possession restrictions when the need arose.” *Williams*, 113 F.4th at 648 (quoting *Heller*, 554 U.S. at 635).

Of course, *Jackson II* did not only rely on the dicta in *Heller*, it purported to apply the *Bruen* test. However, its analysis was incomplete: *Bruen* instructed courts to ask “how” and “why” a challenged regulation burdens the Second Amendment right to bear arms. *Rahimi*,

602 U.S. at 692. *Jackson II* did not account for how severely § 922(g)(1) burdens that right. Indeed, the Eighth Circuit failed to reckon with the law’s defining feature: a *lifetime* ban on possessing *any* firearm, *without exception*.⁵ See *Jackson*, 121 F.4th at 660 (Stras, J., dissenting). Such an extreme burden has no parallel in our tradition: as *Rahimi* noted, comparable disarmament laws were “of limited duration” and were not permanent. 602 U.S. at 699.

Jackson II also watered down the second part of the *Bruen* analysis, which looks at the “why” behind firearm restrictions. After examining historical analogues which targeted disfavored groups, *Jackson II* concluded that “legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms.” 110 F.4th at 1129. But, by operating at such a high level of generality, *Jackson II* gave “deference to Congress’s blanket determination that a group numbering in the tens of millions and ranging from murderers to ketchup-bottle tamperers categorically presents an unacceptable risk of danger if armed.” *Jackson*, 121 F.4th at 660 (Stras, J., dissenting) (cleaned up). Such deference is a threat to our liberty, which each member of this Court acknowledged in *Rahimi*. See 602 U.S. at 772-73 (Thomas, J., dissenting).

So, by failing to pay sufficient attention to “how” or “why,” *Jackson II* played fast and loose with our fundamental rights. The opinion below, which affirmed Petitioner’s conviction, added nothing to *Jackson II* and did not shore up any of its faults. This Court should grant certiorari to correct these errors and provide the guidance that lower courts clearly need.

⁵ There is a statutory provision, 18 U.S.C. § 925(c), which allows “[a] person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition [to] make application to the Attorney General for relief from the disabilities imposed by Federal laws[.]” However, “Congress hasn’t funded the program in decades.” *Williams*, 113 F.4th at 661. And even if there *were* a robust § 925(c) program, a law preventing individuals from exercising their core constitutional rights does not become permissible simply because the government has the discretion to allow exceptions.

III. This case is a good vehicle to address an issue which impacts millions of Americans.

Confusion over § 922(g) is no minor thing, because that law is “no minor provision.” *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Millions of Americans have felony convictions. 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, 1808 (2018). They are all disqualified from possessing firearms on pain of imprisonment.

In fact, the government prosecuted nearly 7,500 cases under § 922(g) in fiscal year 2024, and over 90% of those prosecutions were brought “because of a prior felony conviction.” U.S. Sent’g Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses*, 1 (May 2025). Without any certainty over the status of § 922(g)(1), many of those prosecuted under § 922(g)(1) will seek review of their convictions. And, though most lower courts have addressed the law’s constitutionality, there is no indication that they will be able to resolve their disagreements without intervention; as a result, litigation will continue until this Court speaks definitively.

This case is the right vehicle to address whether 18 U.S.C § 922(g)(1) is susceptible to as-applied challenges. Petitioner raised a Second Amendment claim at each stage of his case, so there are no standard-of-review or preservation issues. In addition, Petitioner did not object to the description of his criminal history in the Presentence Investigation Report, so there is a clear record of his individualized circumstances and criminal history. This Court can—and should—correct the injustice wrought in this case.

CONCLUSION

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

Respectfully submitted this 21st day of April, 2026,

Melissa K. Goymerac
Assistant Federal Public Defender
1010 Market Street, Suite 200
St. Louis, Missouri 63101
Telephone: (314) 241-1255
Fax: (314) 421-3177
E-mail: Melissa_Goymerac@fd.org

Attorney For Petitioner