NO. _____

In the

Supreme Court of the United States

JAMES GOULD, ***Petitioner,***

v.

UNITED STATES OF AMERICA, ***Respondent.***

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

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I. QUESTIONS PRESENTED

1. Whether permanent disarmament under 18 U.S.C. § 922(g)(4), based solely upon prior temporary involuntary commitment to a mental institution (as opposed to being a "mental defective" – i.e. during a current episode of mental illness, or incident to an adjudication of incompetence, or insanity), facially violates the Second Amendment under *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022).

2. Whether for purposes of establishing a "relevantly similar" historical analogue under *Bruen*'s step two, there are objective limits on the scope of "how" and "why" the compared regulations burden the Second Amendment right – such that categorial disarmament using a completely open-ended and overbroad "dangerousness" principle is entirely too generalized to use as part of *Bruen*'s analogical analysis.

II. LIST OF PARTIES AND RELATED CASES

PARTIES

Petitioner: James Gould

Respondent: United States of America

DIRECTLY RELATED PROCEEDINGS

United States v. Gould, 163 F.4th 795 (4th Cir. 2026). Opinion affirming the district court's denial of Gould's motion to dismiss entered January 2, 2026.

United States v. Gould, 672 F. Supp. 3d 167 (S.D. W. Va. 2023). Memorandum Opinion and Order denying Gould's motion to dismiss entered May 5, 2023; final judgment entered April 1, 2024.

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V. OPINIONS BELOW

The Fourth Circuit affirmed the denial of Gould's motion to dismiss after rehearing in a published decision, *United States v. Gould*, 163 F.4th 795 (4th Cir. 2026), which is attached to this Petition as Appendix A. The district court's memorandum opinion and order denying Gould's motion to dismiss is also a published decision, *United States v. Gould*, 672 F. Supp. 3d 167 (S.D. W. Va. 2023), and is attached to this Petition as Appendix B. Gould's final judgment order is unpublished and is attached as Appendix C.

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit, on rehearing, entered January 2, 2026. This Petition is filed within 90 days of the date the court's entry of its judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

This Petition requires interpretation and application of the Second Amendment to the United States Constitution:

> 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.

As well as the following provisions of the Gun Control Act of 1968, codified at 18 U.S.C. § 922:

> **(g)** It shall be unlawful for any person –

> **(4)** who has been adjudicated as a mental defective or who has been committed to a mental institution;
>
> * * *
>
> 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.

And codified at 18 U.S.C. § 924(a):

> (8) Whoever knowingly violates subsection (d) or (g) of section 922 shall be fined under this title, imprisoned for not more than 15 years, or both.

As well as 27 C.F.R. § 478.11, which further defines both "adjudicated as a mental defective" and "committed to a mental institution" as used in § 922(g)(4):

> *Adjudicated as a mental defective.*
>
> (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of a marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
>
> (1) Is a danger to himself or to others; or
>
> (2) Lacks the mental capacity to contract or manage his own affairs.
>
> (b) The term shall include –
>
> (1) A finding of insanity by a court in a criminal case; and
>
> (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

* * *

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

VIII. STATEMENT OF THE CASE

On May 3, 2022, a federal grand jury sitting in the Southern District of West Virginia returned a single count indictment charging James Gould with unlawfully possessing a Remington 12-gauge shotgun in his home, after having been previously committed to a mental institution, in violation of 18 U.S.C. § 922(g)(4). JA12.[1] Because that charge constituted an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the district court's May 5, 2023, memorandum and order denying Gould's *Bruen*-based motion to dismiss, JA117-143, and the final judgment imposed April 1, 2024, JA170, after Gould pled guilty to the indictment without a plea agreement. JA144, JA145; *see also Class v. United States*, 138 S. Ct. 798 (2018). Gould timely filed a notice of appeal on April 1, 2024. JA177. The Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

[1] "JA" refers to the Joint Appendix that was prepared in this case for the appeal to the Fourth Circuit.

A. Relevant Second Amendment Jurisprudence

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court rejected the collectivist, militia-based construction of the Second Amendment which had prevailed since 1939 in favor of an individual right to self-defense unconnected with militia service. Foundational to that individual right, this Court defined the "people" in the Second Amendment's plain text as including all members of the political community, not an unspecified subset. *Id.* at 579-580. This Court further defined "arms" as all bearable arms and "the substance of the right" (i.e. ***conduct***) protected by the Second Amendment as possessing and/or carrying "arms" for purposes of individual self-defense. *Id.* at 581-595. Rejecting Justice Breyer's interest-balancing approach for defining the scope of that individual right, this Court held that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

In so holding, this Court emphasized that it was not reading the Second Amendment to protect the individual right of citizens to carry any weapon whatsoever in any manner whatsoever and for whatever purpose, and that the right secured by the Second Amendment "is not unlimited." *Heller*, 554 U.S. at 595, 626. This Court further added, "[a]lthough we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearm by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and

qualifications on the commercial sale of firearms." *Id.* at 626-627. These regulations were identified "only as examples." *Id.* at 627 n.26.

This Court did not identify, much less discuss or historically analyze, what "longstanding prohibitions" it was relying on, whether twentieth-century regulations such as the Gun Control Act and National Firearms Act or something else. This Court did conclude, however, by acknowledging that *Heller* was its first in-depth examination of the Second Amendment, that it was not intended to clarify the field, and that "[t]here will be time enough to expound upon the historical justifications for the exceptions . . . when those exceptions come before us." *Id.* at 635.

Based upon *Heller*'s *dicta*, the Government has consistently maintained that (a) Second Amendment protections only apply to law-abiding and responsible citizens, *see, e.g., United States v. Rahimi*, 602 U.S. 680, 772-774 (2024)(Thomas, J., dissenting), and (b) regulations like 18 U.S.C. § 922(g)(4) (permanently disarming the "mentally ill") are "longstanding" and therefore "presumptively lawful."

The Fourth Circuit (as well as many other lower courts), ultimately accepted many of the Government's assertions, adopting an intermediate scrutiny standard to adjudicate ***diminished*** Second Amendment protections for persons who were not "law-abiding and responsible" citizens (however those terms were supposed to be defined). *See, e.g., United States v. Chester*, 628 F.3d 673, 678 (4th Cir. 2010). Because the Second Amendment codified a pre-existing right, *United States v. Cruikshank*, 92 U.S. 542 (1875), and because *Heller* said the scope of Second Amendment

protections is subject to historical limitation, *Chester* created a two-step test for analyzing Second Amendment challenges.

Chester's first step ***combined*** a textual and historical inquiry regarding the Second Amendment's scope at the time of its ratification with whether the challenged regulation burdened otherwise protected conduct. If the regulation did burden protected conduct, then *Chester*'s second step was to apply the appropriate level of means end scrutiny. *Chester*, 628 F.3d at 680. *Chester* placed the burden for the textual-historical step one inquiry entirely on the defendant, and for the means-end scrutiny step two inquiry on the Government. *Chester*'s Second Amendment intermediate scrutiny construct was eventually adopted by every federal circuit.

Fourteen years after *Heller*, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court dispensed with means end scrutiny for Second Amendment challenges. *Bruen* effectively eliminated *Chester*'s step two, instead establishing a "text and history" framework for analyzing whether a firearm regulation violates the Second Amendment. Specifically, under that framework, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation of that conduct, the Government must demonstrate how such regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* at 17. Structurally, *Bruen*'s text and history standard still involves two distinct inquiries or steps. Where *Chester*'s step one ***combined*** a textual and historical inquiry regarding the scope of Second Amendment protections, however, *Bruen* split the analysis into two separate

questions.[2] The first is textual, simple, and arguably intended to provide meaningful deference to Second Amendment protections. The second consults history and requires an affirmative showing of a well-established and representative tradition of firearm regulation consistent with the statute being challenged. Unlike *Chester*'s original first step, *Bruen*'s second step places the burden squarely on the Government to establish a historical tradition supporting the challenged regulation. *Id.* at 17.

This Court's guardrails for establishing a historical tradition of firearm regulation were initially more rigorous than they are today. *Bruen* required identification of a distinctly similar historical regulation if the problem sought to be addressed by the modern firearm regulation existed at the time of the Founding. *Bruen*, 597 U.S. at 26. In that context, the absence of the distinctly similar regulation, founding era legislatures choosing to address it a different way, or founding era legislatures expressly rejecting addressing the problem the same as the modern regulation were all evidence that the modern regulation was unconstitutional. *Id.* at 26-27. On the other hand, if the problem sought to be addressed by the modern firearm regulation did not exist at the time of the founding, *Bruen* requires the Government to identify a historical analogue that is "relevantly similar." *Id.* at 28-29. To provide some metric for the "analogizer" to assess which similarities are important and which are not was necessary, *Bruen* settled on comparing how and

[2] Notably, *Bruen did not replace* means end scrutiny with a new inquiry into the nation's history of firearm regulation. *See Gould*, 163 F.4th at 797. *Bruen* bifurcated *Chester*'s existing first step, shifting the burden of carrying the historical inquiry to the Government and refining the contours of that inquiry further. *Bruen*'s step two was not a new factor in the analysis.

why the regulations burden a law-abiding citizen's right to armed self-defense. *Id.* at 29. In this context, analogical reasoning requires identifying a well-established and representative historical analogue, and not a historical twin. *Id.* at 30.

Despite having settled on a metric that should have been at least as deferential (or more) to Second Amendment protections as strict scrutiny analysis, two years later this Court further refined *Bruen*'s historical tradition requirements. In *United States v. Rahimi*, 602 U.S. 680 (2024), resort to distinctly similar regulations in any context effectively fell by the wayside, while the relevantly similar standard was untethered from any specific analogous historical regulation in favor of a basket of two completely different analogues used to form a composite comparable purpose and comparable burden. *Id.* at 691-692, 698-700. This Court actually went further, reducing the ultimate historical determination to whatever "principle" of firearm regulation our historical tradition would tolerate. *Id.* at 692. Given the briefing and substance of oral argument before this Court, it is unclear how the Court will resolve *United States v. Hemani*, Case No. 24-1234, and reconcile the illegal user prong of 18 U.S.C. § 922(g)(3) between *Bruen* and *Rahimi*, or what implications that ruling will have on the merits of the Fourth Circuit's ruling or Gould's Petition.

It is worth noting that the *Heller* majority opinion only mentions the "mentally ill" one time – in its "long standing prohibitions" *dicta.* 554 U.S. at 626. *Bruen* did not mention the "mentally ill" at all, except in passing where Justice Kavanaugh quoted *Heller*'s *dicta* in his concurrence. *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring). Contrary to the Fourth Circuit's assertions in at least three opinions, *see United*

States v. Canada, 123 F.4th 159, 160-161 (4th Cir. 2024); *United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024); and *Gould*, 163 F.4th at 799, this Court has yet to robustly reiterate *Heller's* presumptively lawful exceptions, other than to note that *dicta*'s mere existence rebutted certain arguments by litigants in other cases. *See McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010)(quoting *Heller's dicta* in response to municipalities' "doomsday proclamations" that incorporation of the Second Amendment would imperil every law regulating firearms); *Rahimi*, 602 U.S. at 699 (*Heller* never established a categorical rule that the Constitution prohibits regulations forbidding firearm possession in the home (responding to Rahimi's contrary argument that it did). "In fact, our opinion stated that many such prohibitions, like those on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'") *Id.* at 700. And like *Heller*, *Bruen* made clear it was not undertaking "an exhaustive historical analysis . . . of the full scope of the Second Amendment. 597 U.S. at 31.

Finally, given the Fourth and Eighth Circuits' adoption of an "accepted" historical tradition of disarming legal nonconformists and potentially "dangerous" citizens, *see United States v. Jackson*, 110 F.4th 1120, 1126-1128 (8th Cir. 2024); *Hunt*, 123 F.4th at 707-707; and *Gould*, 163 F.4th at 802-807, *Rahimi*'s rejection of "responsible" in defining the scope of Second Amendment rights for citizens is particularly relevant to this Petition. In *Rahimi* the Government contended the Second Amendment only protected law-abiding, "responsible" citizens. In response, this Court explicitly rejected the contention that someone may be disarmed simply

because they are not responsible, finding that "responsible" is a vague term, and it is unclear what such a rule would entail. Responding to the Government's attempt to conflate "responsible" with "not dangerous," this Court clarified that its use of "responsible" in *Heller* and *Bruen* was simply to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right; indeed, neither case said anything about the status of citizens who were not "responsible." *Rahimi*, 602 U.S. at 701-702; *see also* 772-773 (Thomas, J., dissenting)(further noting the Government's attempt to inject a "dangerousness" standard into the Court's Second Amendment precedents).

B. Facts Relevant to Gould's Petition.

1. Gould possesses a 12-guage shotgun in his home, 2 1/2 years after being briefly involuntarily committed.

On February 18, 2022, Gould possessed a Remington 11-87 12-gauge shotgun inside his home in Ravenswood, West Virginia. JA12. There is nothing in the record suggesting that at the time Gould was suffering from any mental disease or defect, nor that he was behaving in any manner to suggest otherwise. There likewise is nothing in the record indicating that Gould was doing anything with the shotgun to suggest he was a danger to himself or anyone else. Gould has never been adjudged mentally incompetent or as a mental defective, and was not subject to any pending mental institution commitment order at the time he possessed the shotgun.

Prior to February 18, 2022, Gould had been involuntarily committed to a mental institution by the Circuit Court of Jackson County, West Virginia, on July 30, 2019. JA12. The district court later found that Gould had also previously been

involuntarily committed for mental health examinations on three other occasions, all occurring over two and a half years or more prior to Gould possessing the shotgun in his home. JA117.

2. Gould is indicted for violating 18 U.S.C. § 922(g)(4), then moves to dismiss his indictment based on *Bruen*.

On May 3, 2022, Gould was indicted for violating 18 U.S.C. § 922(g)(4). JA12. Gould moved to dismiss his indictment on February 17, 2023, arguing under *Bruen* that § 922(g)(4)'s "committed to a mental institution" clause violated the Second Amendment. JA13-52. Relying on *Bruen*'s plain text and history standard, Gould argued that his keeping and bearing the Remington 12-gauge shotgun inside his own home was conduct presumptively protected by the Second Amendment, and that the Government would be unable to rebut that presumption where laws like § 922(g)(4), which permanently disarms person previously committed to a mental institution, were unknown to the founding generation and did not enjoy a well-established historical tradition in the United States.

The Government did not dispute that Gould's shotgun was in common use at the time, or that his conduct of possessing that shotgun in his home was conduct generally protected by the Second Amendment; rather it asserted that the Second Amendment only applied to "law-abiding, responsible citizens." And, based on *Heller*'s *dicta,* that prohibitions on the possession of firearms by the mentally ill are "presumptively lawful." JA53; JA57-65. In the Government's view, prior temporary involuntary commitment to a mental institution makes citizens like Gould sufficiently untrustworthy, dangerous, and/or a threat to public safety to

permanently disarm them, even after they had been released and were no longer subject to mental health treatment or continuing court control.

With *Bruen*'s express rejection of means-end scrutiny, the Government took the non-law-abiding citizen construct a step further, insisting that instead of the diminished Second Amendment protections which had applied post-*Heller* for fourteen years, that citizens like Gould now enjoyed no Second Amendment protections at all. JA57-60. The Government claimed the *Bruen* concurrences supported its position, and strategically made this assertion in relation to *Bruen*'s step one as opposed to *Bruen*'s step two. JA60.

The Government further asserted that even if § 922(g)(4) regulated conduct protected by the Second Amendment, it was still consistent with the nation's historical tradition of firearm regulation. JA60-66. In support, the Government cited instances of justices of the peace seizing property to pay for the cost of locking up lunatics, as well as the historical practice of "generally disarming people deemed to be dangerous," including colonists who refused to swear loyalty oaths. JA65-66.

3. The district court denies Gould's motion and Gould subsequently enters a guilty plea to his indictment.

The district court denied defendant's motion to dismiss. 672 F. Supp. 3d 167 (S.D. W. Va. 2023). In its opinion, the district court initially equated Gould to John Hinckley, Jr., under § 922(g)(4).[3] *Id.* at 171-172. The district court then discussed

[3] Which was curious where Hinckley's firearm possession occurred during a bout of mental illness, he was adjudged not guilty by reason of insanity, and was subsequently civilly committed and under continuous court supervision for thirty

Heller's *dicta* about presumptively lawful "longstanding regulatory measures" disarming the mentally ill, but acknowledged Fourth Circuit precedent suggesting reliance on *Heller's dicta* might be "a potentially faulty practice." *Id.* at 176.

The district court assumed without deciding that Gould's conduct was protected by the Second Amendment, *id.* at 177, and proceeded to *Bruen*'s step two where it broadly construed § 922(g)(4) as intending to disarm dangerous persons in general rather than the mentally ill in particular. *Id.* at 180-182. This "why" was added to other generalized Congressional purposes of protecting the community from crime and preventing suicides. *Id.* at 182-183.

The district court then found the Government carried its burden of establishing an analogous historical tradition of firearm regulation through (1) the 1689 English Declaration of Rights, JA141, (2) the Address and Reasons for Dissent of the Minority of the Convention of the State of Pennsylvania, JA141-142, and (3) "copious sources discussing the historical basis of laws disarming individuals deemed 'dangerous' to society." *Id.* at 183-184. The Court favorably cited *United States v. Nutter*, 624 F. Supp. 3d 636 (S.D. W. Va. 2022), as another district opinion detailing historical laws prohibiting dangerous individuals from possessing firearms. 672 F. Supp. 3d at 183. Having reframed the intent of § 922(g)(4) as such, the district court had little

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years (from 1982 to 2022). *See* Vanessa Romo, *John Hinckley Jr., who tried to assassinate President Reagan, is granted full release,* NPR (June 15, 2022), https://www.npr.org/2022/06/15/1105370016/john-hinckley-who-tried-to-assassinate-president-reagan-is-granted-full-release (last visited March 31, 2026).

difficulty finding a historical tradition existed to support its constitutionality. *Id.* at 184.

On October 12, 2023, Gould entered a guilty plea to his indictment without a plea agreement, for which adjudication of guilt was deferred until sentencing. JA144-145. On April 1, 2024, Gould was adjudged guilty and sentenced to time served and a three-year term of supervised release. JA144-166, 167-173. Gould filed his notice of appeal the same day. JA174.

4. The Fourth Circuit affirms the district court's denial of Gould's motion to dismiss - finding pre-ratification incapacitation of the mentally ill, combined with legislatures' "accepted" authority to disarm "dangerous persons" as "relevantly similar" historical analogues to § 922(g)(4).

The Fourth Circuit affirmed the denial of Gould's motion to dismiss in a published opinion. *United States v. Gould*, 163 F.4th 795 (4th Cir. 2026). The Fourth Circuit's analysis of § 922(g)(4) consisted of multiple layers, not unlike the building of a dark roux. The court started with a premise no one has ever disputed: that Second Amendment protections are not unlimited.[4] *Id.* at 799. Where the Government asked the Court to sustain denial of Gould's motion based on *Heller's dicta*, however, the Court ultimately noted how § 922(g)(4) does not include the term "mentally ill" as used by *Heller*, which described persons ***currently*** experiencing mental illness. *Id.*

[4] Finding § 922(g)(4)'s involuntary commitment clause unconstitutional would not suggest otherwise.

at 800.[5] The court further agreed with the Ninth Circuit in *Mai v. United States*, 952 F.3d 1106, 1121 (9th Cir. 2020), that mental illness is not permanent, and that no guidance exists over how severe a given bout of mental illness must have been to be later denied Second Amendment protections. *Ibid.* Then the court correctly observed that "mentally ill" as used in this Court's Second Amendment decisions is as vague and undefined as the term "responsible," which is used by the Government as a synonym for "not dangerous" when referring to "law-abiding, *responsible* citizens" in *United States v. Rahimi*, 602 U.S. 680, 701-702 (2024). *Id*. at 800 n.9; *see also United States v. Harrison*, 153 F.4th 998, 1015 (10th Cir. 2025)(acknowledging that the court did not know what "law-abiding" means, or how many laws someone must break to fall outside the Second Amendment, or how severe those violations must be.).

Consistent with preceding decisions, *see United States v. Price*, 111 F.4th 392, 398 (4th Cir. 2024)(en banc), and *Biachi v. Brown*, 111 F.4th 438, 452-53 (4th Cir. 2024)(en banc), the Fourth Circuit briefly examined whether someone who had previously been involuntarily committed was "otherwise law-abiding," and whether the shotgun possessed was "a weapon in common use for a common purpose" to determine whether § 922(g)(4) burdens conduct protected by the Second Amendment. *Gould*, 163 F.4th at 800. Irrespective of its methodology, the court did correctly find that the committed-to-a-mental-institution clause of § 922(g)(4) burdens conduct

[5] Gould's position has consistently been that is what the "mental defective" prong of § 922(g)(4) deals with: citizens currently experiencing mental illness, particularly given the ATF regulation's definition of that term.

protected by the Second Amendment. Gould's firearm possession, therefore, was presumptively protected at *Bruen*'s step one. *Ibid.*

Turning to *Bruen*'s step two, the court identified § 922(g)(4)'s "how" as disarmament on pain of incarceration. *Gould*, 163 F.4th at 801. Rather than frame the "why" for § 922(g)(4) as preventing violence by citizens with mental illness or otherwise intoxicated by alcohol or drugs to the point of incapacity, the court opted to do what the district court did and substantially broadened and generalized the social problem addressed by § 922(g)(4), identifying it as "preventing violence by those found to pose an increased risk of danger to the community or themselves." *Id.* at 802. Framed so broadly, even with the interpretive ATF regulation, 27 C.F.R. § 478.11, made finding an historical principle supporting § 922(g)(4) (or practically any other provision of the Gun Control Act) virtually prescient.

The Fourth Circuit started its historical analysis by dismissing the absence of eighteenth-century laws specifically disarming the mentally ill, because the mentally ill "were cared for on an ad hoc and informal basis by family or the community." *Id.* at 802. The court then turned to "relevantly similar laws our tradition is understood to permit," and identified two "historical traditions" which in its view support § 922(g)(4)'s disarmament of citizens previously involuntarily committed to a mental institution. *Id.*

The first is "the actions of legislatures and communities that incapacitated those currently ***suffering from mental illness*** when the afflicted posed a danger to themselves or others. *Gould*, 163 F.4th at 802 (emphasis added). Critically, the court

did not rely on any well-established and representative regulatory tradition disarming the mentally ill in 1791, whether still in the throes of the affliction or well after it had ended. Instead, it relied on a loose collection of "practices" noted by historical writers regarding the temporary incapacitation of the mentally ill. Such practices did not focus on firearm possession or disarmament at all, but on individual incapacitation in the form of incarceration while actually experiencing the affliction. Once released, previously incapacitated citizens were still free to obtain other firearms, even after a previous forfeiture of estate. Nevertheless, the court found governments routinely incapacitated those suffering from severe mental illness, and they did so because the individual was considered a threat to that community. *Id.* at 803.

The second historical tradition was in the court's view an "accepted power of legislatures to disarm groups of people considered dangerous." *Gould*, 163 F.4th at 803. Here, the court pointed to pre-ratification laws disarming racial and religious minorities, which although unlawful today were nevertheless examples of a tradition of categorial disarmament based on dangerousness. The court then cited minority positions from the ratification debates, in particular the "highly influential" Dissent of the Minority of the Convention of Pennsylvania, proposing that the right to bear arms exclude persons "for crimes committed or real danger of public injury from individuals." *Id.* at 805. Ultimately the court followed the Eighth Circuit in *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), and the panel in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), to find "that legislatures historically imposed

restrictions that swept broadly, disarming all people that were, in the judgment of those early legislatures, potentially violent and dangerous." 163 F.4th at 805. *Jackson* and *Hunt*, however, actually went much farther, finding that legislatures traditionally possessed the discretion to disqualify categories of people from possessing firearms by those "who deviated from legal norms." *Hunt*, 123 F.4th at 706 (following *Jackson*, 110 F.4th at 1127).

The Fourth Circuit then described the combination of historical practices incapacitating the acutely mentally ill with categorical racial and religious disarmaments as an "unambiguous history and tradition of disarming and incarcerating those whose [mental] illness made them a danger to themselves or others." *Gould*, 163 F.4th at 805.

Having so overbroadly framed the historical principle involved, the Fourth Circuit applied it to § 922(g)(4). The court noted West Virginia's requirement that to be involuntarily committed a court had to find an individual likely to pose a risk of danger to themselves or others. *Gould*, 163 F.4th at 806. The court also chose to characterize § 922(g)(4)'s disarmament as "not categorically permanent" – in other words, temporary – comparing it to 18 U.S.C. § 922(g)(3) and § 922(g)(8). The Court then relied on a state procedure that permitted a court to restore a person's firearm right ***only*** if the petitioner could show by clear and convincing evidence that they can responsibly possess a firearm, do not pose a danger to public safety, and that restoration is not contrary to the public interest. *Ibid. (compare Bruen*, 597 U.S. at 12). The court then dismissed the further absence of historical regulations disarming

citizens released from mental institutions, due to a lack of mental institutions generally during the founding era. *Id.* at 807. The Court concluded by finding that release from involuntary commitment is not the same as a judicial determination that the previously afflicted citizen is no longer dangerous. *Ibid.* Following that reasoning, the court ultimately found § 922(g)(4) to be facially constitutional under the Second Amendment.

IX. REASONS FOR GRANTING THE WRIT

A. Review is necessary to resolve (1) whether prior involuntary commitment to a mental institution alone is sufficient to permanently disarm and deprive citizens of Second Amendment protections, and (2) whether an open-ended "dangerous person" principle constitutes a sufficient "why" for a "relevantly similar" historical tradition that would render § 922(g)(4) constitutional.

Both the district court and Fourth Circuit ultimately decided Gould's motion to dismiss at *Bruen*'s step two. That step requires the Government to prove that there are sufficiently similar historical analogues to the challenged regulation – in this case, § 922(g)(4) – to survive Second Amendment scrutiny. The analogues presented by the Government, upon which the courts below relied, are anything but well-established and representative - nor are their "whys" meaningfully comparable enough to be relevantly similar to § 922(g)(4). Whether such analogues are sufficient to support the constitutionality of § 922(g)(4) is a critically important federal question regarding *Bruen's* step two that this Court needs to resolve. *See* Rule of the Supreme Court 10(c).

Section 922(g)(4) has two operative provisions. One disarms those who have "been adjudicated as a mental defective." The other, under which Gould was prosecuted, disarms those who have been involuntarily committed to any mental institution. Prior involuntary commitment to a mental institution is simply not the same as being a "mental defective," which 27 C.F.R. § 478.11 defines as being in a state of mental illness (i.e. currently mentally ill) or having been found by a court to be incompetent or not guilty by reason of insanity. Section 922(g)(4)'s "mental defective" clause has a much better chance of being consistent with the historical "practice" of incapacitating the currently mentally ill while they are afflicted, with circumstantial disarmament resulting from temporary incarceration during the acute event. That "mental defective" prong of § 922(g)(4) presents a much more relevantly similar "how' and "why" to the *Gould* panel's putative historical analogues, than the committed-to-a-mental institution alternative under § 922(g)(4). As Judge Heytens asked out loud during panel oral argument in this case, the question is whether the committed-to-a-mental-institution statutory firearm disability is a sufficient proxy for "dangerousness" to justify the permanent disarmament arising under § 922(g)(4). Gould maintains that the Second Amendment's text and history demonstrate it is not. And in light of the procedural burdens to rights restorations for persons previously committed to a mental institution, the Fourth Circuit was incorrect to conclude that § 922(g)(4) is a temporary disarmament similar to 18 U.S.C. § 922(g)(8) (only applicable during the term of the triggering domestic violence protective order)

or the illegal user prong of 18 U.S.C. § 922(g)(3) (only applicable during a citizen's period of continuing voluntary drug use).

The Fourth Circuit's focus on pre-ratification categorical disarmaments of racial and religious minorities likewise misses the mark. As Justice Thomas observed in his *Rahimi* dissent, the whys of pre-ratification disarmaments of Catholics, native Americans, and slaves went to concerns involving preventing insurrection and rebellion, not just categorically disarming generally "dangerous" categories of people. *Rahimi*, 602 U.S. at 756 (Thomas, J., dissenting). To the extent such practices persisted post-ratification they applied to native Americans and slaves on the grounds that they were not American citizens entitled to Second Amendment protections. But as the Fourth Circuit has demonstrated, expanding and broadly framing the purposes of comparable analogues easily circumvents such details.

Above all else, both the district court's and the Fourth Circuit's analyses demonstrate the importance of correctly framing the relevantly similar historical tradition at step two of *Bruen*'s analysis. That framing is no doubt influenced by twenty-first century sensibilities, even when the exercise is supposed to be an examination of eighteenth-century traditions. Jurists would not be human if their analysis did not gravitate toward the familiar, which in the Second Amendment context has been in favor of existing firearm regulations. This dynamic favors upholding existing and future firearm regulations without regard for the deference to the Second Amendment that *Bruen* requires.

The open-ended "dangerous person" historical tradition now accepted by the Fourth Circuit in *Hunt* and *Gould* is no different than the argument for which Justice Thomas called out the Government in *Rahimi*. 602 U.S. at 774-777 (Thomas, J., dissenting)(which the majority in part supported – *see id.* at 701-702). The disarming-the-dangerous tradition stems from the idea that the Second Amendment points to general principles, not a historically grounded right. While this Court's opinion treated historical analogues as not being trapped in amber, *id.* at 699, Justice Gorsuch's *Rahimi* concurrence correctly noted that the right protected by the Second Amendment plainly is. *Id.* at 710-711 (Gorsuch, J., concurring).

The Government has asserted, and several courts have agreed, that one of the general principles of our national tradition of firearm regulation is that Congress can disarm anyone it deems dangerous or otherwise unfit to possess a firearm. Applying this principle, Congress can impose practically ***any*** firearm regulation so long as it targets dangerous or unfit persons. Of course, Congress would dictate what "dangerous' and "unfit" means and to whom they apply. Whether a person could keep, bear, or even possess firearms would then be entirely up to Congress' policy choice. This goes far beyond deference to legislative regulation, and effectively guts the Second Amendment. Instead of a substantive right guaranteed to every individual ***against*** Congress, the right would be controlled *by* Congress. *Rahimi*, 602 U.S. at 775 (Thomas, J, dissenting). Justice Thomas has warned that the very "dangerous person" analogues relied upon by the Fourth Circuit in this case show how where "majoritarian interests alone dictate who is 'dangerous' and thus can be disarmed,

disfavored groups become easy prey." *Ibid.* If allowed to stand, such would enable majoritarian interests to determine who can and cannot exercise their constitutional rights, and easily produce a world where political minorities with disfavored cultural views are deemed the next danger to society. This "dangerous person" principle, therefore, contradicts the Second Amendment's plain text – that the right of the people shall not be infringed. "A constitutional guarantee subject to future judges [or Congresses'] assessments of its usefulness is no constitutional guarantee at all." *Ibid.* (quoting *Heller).*

The subtle magnitude of the problem can be easily illustrated by a controversial example. It has been documented that five recent mass shootings have been perpetrated by transgender individuals or persons undergoing gender transition therapy.[6] Given that neutral fact, using the Fourth Circuit's accepted authority of legislatures to broadly disarm categories of dangerous persons, what is left to stop Congress from disarming citizens undergoing or having already completed gender replacement therapy as a new 18 U.S.C. § 922(g)(10) – based solely on the perceived correlation between these individuals and mass shootings? Under the Fourth Circuit's dangerous person principle the impact of such a speculative § 922(g)(10) is the same as § 922(g)(4). This expanded principle of historical firearm regulation is so

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[6] Elaine Mallon, *Back-to-back public shootings prompt reflection on history of trans mass killers*, KOMONEWS, National News Desk (Feb. 17, 2026), https://komonews.com/news/nation-world/back-to-back-shootings-prompt-reflection-on-history-of-trans-mass-killers-robert-dorgan-school-shooters-charlie-kirk-mental-illness-gun-safety-bipoloar-rhode-island-canada (last visited March 30, 2026) (Annunciation Catholic Church and School, Covenant School, Club Q Nightclub, Stem School Highlands Ranch, Rite Aid Distribution Center).

overbroad, it enshrines virtually all existing and prospective firearm regulations at the expense of the Second Amendment itself.

Justice Thomas again summed up the problem concisely in his *Rahimi* dissent. The Second Amendment stemmed from and in reaction to the very "dangerous person" laws relied upon by the Government, and adopted by district court and Fourth Circuit. Put another way, laws targeting "dangerous" persons is what led to the Second Amendment in the first place. *Rahimi*, 602 U.S. at 754-755 (Thomas, J., dissenting). Given this actual history, the Fourth Circuit erred in its analysis, and §922(g)(4)'s committed-to-a-mental-institution clause should be declared facially unconstitutional by this Court.

B. This case is a very good vehicle for addressing the constitutionality of § 922(g)(4)'s prior commitment-to-a-mental-institution clause, and whether our Nation's historical tradition of firearm regulation is truly now defined by an open-ended, all-inclusive dangerousness standard that extends to virtually every existing federal firearm regulation.

Gould's case is a very good vehicle for addressing the issues presented above. His case involves exceptionally important, controlling, and recurring questions going to the appropriate Second Amendment historical analysis under *Bruen*'s step two.

Gould's case implicates the mental illness example of *Heller's* longstanding prohibition *dicta*, firearm regulations affecting the mentally ill, and, relatedly, firearm possession by citizens previously released from involuntary commitment to a mental institution. No longstanding regulation of firearm possession associated with former acute or existing mental illness has previously come before this Court. In that

context, this case also involves needed guardrails for *Bruen*'s step two, falling somewhere between the two extremes of *Bruen* and *Rahimi*. It also presents the opportunity to reaffirm the absence of any open-ended substantive "dangerousness" standard in this Court's Second Amendment precedents.

This case further presents the opportunity to fully address the vague and undefined metrics of "law-abiding," "dangerous," and "mentally ill" being used by the Government and courts to limit Second Amendment protections under *Bruen*'s text and history standard.

This case pointedly illustrates how *Rahimi*'s "principle" construction of historical analogues in *Bruen*'s step two can be manipulated by expansive framing and overgeneralization of analogical metrics, to the point *Bruen*'s "text and history" analysis has arguably become even less deferential to the Second Amendment than the means-end scrutiny rejected by *Bruen* or the interest balancing mechanism rejected by *Heller*. This case squarely puts before the Court whether as a matter of this nation's tradition of firearm regulation, Section 922(g)(4)'s commitment-to-a mental-institution clause is an appropriate proxy for depriving citizens of Second Amendment protections. It is hard to conceive of more important federal questions in the Second Amendment context at this time, and this case is more than an appropriate vehicle for them to be decided by this Court.

Again, this case represents the first post-*Bruen* examination of 18 U.S.C. § 922(g)(4), which currently impacts over 1.2 million citizens involuntarily committed

annually.[7] Where § 922(g)(4) lacks any plainly legitimate sweep, it is both important and necessary for this Court to accept review of Gould's case. And even were the Fourth Circuit to be fully reversed on the merits, it would in no way insulate citizens actively suffering from mental illness from being subject to regulations temporarily limiting their Second Amendment rights.

X. CONCLUSION

Through this Petition, one of *Heller's* expressed exceptions, 554 U.S. at 635, is now before the Court: whether § 922(g)(4)'s prior commitment-to-a mental-institution clause is consistent with any long-standing presumptively lawful tradition of disarming such persons.

The answer to this question is not just exceptionally important to the ongoing development of Second Amendment constitutional standards post-*Heller*, but also to the 1.2 million citizens involuntary committed annually in the United States. Further "percolation" of this question "is of little value" given the Fourth Circuit's approach to the issue, which if allowed to stand will effectively render the Second Amendment meaningless. *See Snope v. Brown*, 602 U.S. ___,145 S. Ct. 1534, 1538 (June 2, 2025) (Thomas, J., dissenting denial of cert.); Antonin Scalia, *Opening Statement on American Exceptionalism to Senate Judiciary Committee*, American Rhetoric Online Speech Bank (Oct. 5, 2011)(explaining how Bill of Rights protections can be no more

[7] Natalia Emanuel, Pim Welle & Valetin Bolotnyy, *A Danger to Self and Others: Health and Criminal Consequences of Involuntary Hospitalization*, Fed. Reserve Bank of New York Staff Report, no. 1158 (July 2025), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1158.pdf (last visited March 30, 2026).

than parchment guarantees).[8] Yet until this Court is consistently vigilant in enforcing it, the right to bear arms will remain even less than "second class right." *See McDonald,* 561 U.S. at 780.

Citizens with prior involuntary commitments, like Gould, are not denied the exercise of any other fundamental constitutional right until only after demonstrating they not dangerous. Such a requirement is no different than the "may issue" firearm permit regimes deemed unconstitutional by *Bruen*. A prior involuntary commitment without further compulsory treatment, a finding of incompetency or insanity, further court control, or extended civil commitment is a poor and insufficient proxy for dangerousness justifying post-release deprivation of Second Amendment rights. Citizens with such past commitments, without more, should be free to exercise their right to possess a firearm under the Second Amendment – particularly in their homes for purposes of self-defense - just like they would any other fundamental right. *Bruen*, 597 U.S. at 70. Gould's Petition should be granted.[9]

Respectfully submitted,

JAMES GOULD

By Counsel

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[8] https://www.americanrhetoric.com/speeches/antoninscaliaamericanexceptionalism.htm (last visited March 31, 2025).

[9] In the alternative, given the Government's and many courts' regular linkage of 18 U.S.C. §§ 922(g)(4) and 922(g)(3), petitioner asks that the Court stay any decision regarding his Petition pending its ruling in *United States v. Hemani*, Case No. 24-1234 (argued March 2, 2026).

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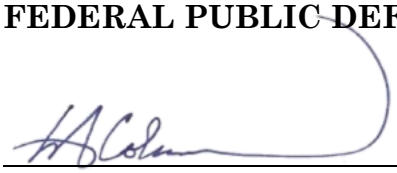

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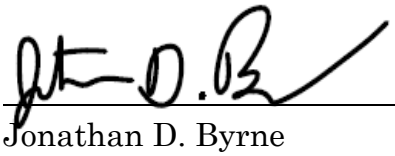

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Dated: May 1, 2026