No. _____

In the

Supreme Court of the United States

_____

Mykelti Antwone Simmons,
Petitioner,

v.

United States of America,
Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

I. Whether 18 U.S.C. § 922(g)(1) comports with the Second Amendment?

PARTIES TO THE PROCEEDING

Petitioner is Mykelti Antwone Simmons, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mykelti Antwone Simmons seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals was not published but is available at *United States v. Mykelti Antwone Simmons*, No. 25-10722, 2026 WL 464744 (5th Cir. Feb. 18, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on February 18, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Second Amendment to the U.S. Constitution 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." U.S. Const., amend. II.

STATUTORY PROVISIONS INVOLVED

Section 922(g)(1) of Title 18 reads in relevant part:

> (g) 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.

18 U.S.C. § 922(g)(1).

> Title 18 U.S.C. § 924(a) provides, in pertinent part,
>
> Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 924(a)(2) (2018) (amended 2022).

LIST OF PROCEEDINGS BELOW

1. *United States v. Mykelti Antwone Simmons*, 3:24-CR-131-E, United States District Court for the Northern District of Texas. Judgment and sentence entered on June 12, 2025. (Appendix B).

2. *United States v. Mykelti Antwone Simmons*, No. 25-10722, 2026 WL 464744 (5th Cir. Feb. 18, 2026) (unpublished), Court of Appeals for the Fifth Circuit. Judgment affirmed on February 18, 2026. (Appendix A).

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

A grand jury returned an indictment charging Appellant Mykelti Antwone Simmons with two counts of violating 18 U.S.C. § 922(g)(1) and 924(a)(8). ROA.8-9. Count 1 of that indictment alleged:

> On or about January 26, 2024, in the Dallas Division of the Northern District of Texas, the defendant, Mykelti Antwone Simmons, knowing that he had been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, that is, a felony offense, did knowingly possess, in and affecting interstate and foreign commerce, a firearm, to wit: a Smith & Wesson, Model SD40VE, .40 caliber pistol, bearing serial number DUF 1249.
>
> In violation of 18 U.S.C. §§922(g)(1) and 924(a)(8).

ROA.8. Although unspecified by the Indictment, Mr. Simmons's Presentence Report described his criminal history as including multiple adult felony convictions, including robbery causing bodily injury. ROA.114.

On September 11, 2024, Mr. Wilson executed a plea agreement. ROA.126-134. There, he agreed to waive his rights "to appeal the conviction, sentence, fine and order of restitution, and order of forfeiture." ROA.132. However, he reserved his right "to bring a direct appeal of [] a sentence exceeding the statutory maximum punishment" and "to challenge the voluntariness of this plea of guilty or this waiver[.]" ROA.132.

The district judge accepted Mr. Simmons's guilty plea. *See* ROA.191-92. The court sentenced him to 24 months' imprisonment and two years of supervised release. ROA.158-59.

B. Appellate Proceedings

On appeal, Petitioner argued that his § 922(g)(1) conviction could not pass constitutional muster under the Second Amendment, because the statute burdens conduct protected by the plain text of the Second Amendment, and there is no historical analogue of reasonable similarity, as required by *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 68 (2022).

The Fifth Circuit affirmed in an unpublished opinion, concluding that Petitioner's argument was foreclosed by *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024). [App. A at *1-2].

REASONS FOR GRANTING THIS PETITION

I. Lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions.

The Second Amendment guarantees "the right of the people to keep and bear arms." U.S. Const. amend. II. Yet § 922(g)(1) indiscriminately denies that right to anyone previously convicted of a crime punishable by a year or more. Despite the undeniable conflict between the constitutional and statutory text, Second Amendment challenges to § 922(g)(1) prosecutions have historically and uniformly failed. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting authorities).

But *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), minted a new text-and-history test for adjudicating Second Amendment claims. "When the Second Amendment's plain text covers an individual's conduct," the government now must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. No longer may the government defend a regulation by showing that it is narrowly tailored to achieve an important or even compelling state interest. *Id.* at 17–24. As for the particulars of the "historical inquiry" courts must conduct, *Bruen* explained that "whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" depends on "whether the two regulations are 'relevantly similar.'" *Id.* at 28–29 (quoting C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993)). Relevant similarity, as sketched out by *Bruen*, means that the regulations must match on "how and why" the Second Amendment right is burdened.

Id. at 29. Otherwise stated, "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations…." *Id.* (cleaned up).

United States v. Rahimi, 602 U.S. 680 (2024), then applied *Bruen* to a federal firearm crime. But *Rahimi* "conclude[d] only this: An individual *found by a court* to pose a credible *threat to the physical safety of another* may be *temporarily* disarmed consistent with the Second Amendment." *Rahimi*, 602 U.S. at 702 (emphasis added). True, *Rahimi* clarified that "the appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (citing *Bruen*, 597 U.S. at 26–31) (emphasis added). And it found that "Section 922(g)(8)['s]…prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition th[at] surety and going armed laws," both "founding era regimes," "represent." *Id.* at 698. But *Rahimi*'s reasoning left unresolved whether the government could invoke this tradition to justify a statute like § 922(g)(1) — which imposes an *uncabined* and *permanent* firearm possession ban irrespective of any threat, judicially determined or otherwise, that a person may pose. When it comes to § 922(g)(1), *Rahimi* left plenty unresolved.

A. The courts of appeals are deeply divided over the scope of the Second Amendment right.

As Justice Jackson recently observed, "lower courts applying *Bruen*'s approach have been unable to produce consistent, principled results, and, in fact, they have come to conflicting conclusions on virtually every consequential Second Amendment

issue to come before them." *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up). Some circuits see no need to conduct *Bruen*'s text-and-history analysis in the § 922(g)(1) context, relying instead on dicta predating *Bruen*. Others apply *Bruen*'s text-and-history framework but disagree on whether felons are part of "the people" protected by the Second Amendment, are split on the traditions that justify § 922(g)(1), and vary as to whether the statute is vulnerable to as-applied challenges.

Five circuits "have upheld the categorical application of § 922(g)(1) to all felons." *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025) (citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025)); *Duarte*, 137 F.4th at 748 ("Today, we align ourselves with the Fourth, Eighth, Tenth and Eleventh Circuits and hold that § 922(g)(1) is not unconstitutional as applied to non-violent felons like Steven Duarte."). Each placed significant weight on this Court's statement in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008), that "prohibitions on the possession of firearms by felons" are "presumptively lawful." *See Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29 *Vincent*, 127 F.4th at 1265; *Dubois*, 94 F.4th at 1293; *Duarte*, 137 F.4th at 750–52.

The Fourth, Eighth and Ninth Circuits went farther. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *See Hunt*, 123 F.4th at 704–08. The Eighth Circuit reached the

same end point based on history alone. *See Jackson*, 110 F.4th at 1126–29. The en banc Ninth Circuit most recently "agree[d] with the Fourth and Eighth Circuits that…historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons." *Duarte*, 137 F.4th at 761 (citing *Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706.).[1]

Two circuits — including the Fifth Circuit — have endorsed that "§ 922(g)(1) might be unconstitutional as applied to at least *some* felons." *Duarte*, 137 F.4th at 748 (citing *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024)). And "the Third Circuit has held that § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps." *Duarte*, 137 F.4th at 748 (citing *Range v. Att'y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)). The Fifth Circuit split with its sister courts by first discarding the notion that *Heller*'s "presumptively lawful" dicta could "supplant the most recent analysis set forth by the Supreme Court in *Rahimi*…." *Diaz*, 116 F.4th at 466. On this point, the Third Circuit and Sixth Circuit agree. *Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit endorsed capital punishment at the founding as a dispositive historical analogue, *see Diaz*, 116 F.4th at 467–70, whereas the Third Circuit found the historical availability of the death penalty irrelevant, *see Range*,

[1] In *Duarte*, the en banc Ninth Circuit overruled a panel opinion holding the statute unconstitutional as applied to a person with prior convictions for vandalism, drug possession, and evading arrest. *See United States v. Duarte*, 101 F.4th 657, 661–63 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *on reh'g en banc*, 137 F.4th 743 (9th Cir. 2025).

124 F.4th at 231; *accord Kanter v. Barr*, 919 F.3d 437, 461–62 (7th Cir. 2019), *abrogated by Bruen* (Barrett, J., dissenting). The linchpin for the Third Circuit's constitutional holding instead relied on the lack of evidence that the claimant "poses a physical danger to others." *Range*, 124 F.4th at 232.

For its part, the Sixth Circuit blessed "governments label[ing] whole classes as presumptively dangerous," *Williams*, 113 F.4th at 657, but "refuse[d] to defer blindly to § 922(g)(1) in its present form." *Range*, 124 F.4th at 230 (citing *Williams*, 113 F.4th at 658–61). According to the Sixth Circuit, "history shows that § 922(g)(1) might be susceptible to an as-applied challenge" by individuals who show they are "not dangerous…." *Williams*, 113 F.4th at 657. The Fifth Circuit later agreed with this "dangerousness" demarcator. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the two circuits still depart on the scope of the "dangerousness" inquiry. *Compare Schnur*, 132 F.4th 863, 867 ("In assessing Schnur's criminal history under § 922(g)(1), this court 'may consider prior convictions that are 'punishable by imprisonment for a term exceeding one year.'" (quoting *Diaz*, 116 F.4th at 467)) *with Williams*, 113 F.4th at 659–60 ("When evaluating a defendant's dangerousness, a court may consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction.").

Disagreements abound intra-circuit too. In *Range*, the en banc Third Circuit generated six opinions, including one dissent. The Ninth Circuit in *Duarte*, also en banc, generated four opinions, including one partial dissent. *Williams*, a panel decision, produced a concurrence in the judgment only.

In short, jurists "are currently at sea when it comes to evaluating firearms legislation" and in acute "need [of] a solid anchor for grounding their constitutional pronouncements." *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

B. This issue implicates the prosecution and incarceration of thousands of individuals.

As of October 9, 2025, the Bureau of Prisons reported that it imprisons 155,197 people.[2] And as of September 27, 2025, 22% of inmates (31,722) were incarcerated for "Weapons, Explosives, [and] Arson" offenses, the second largest category of offenses within the federal prison population.[3] "For more than 25 years" in fact, firearm crimes have been one of the "four crime types" that "have comprised the majority of federal felonies and Class A misdemeanors[.]"[4] In fiscal year 2021, "[c]rimes involving firearms were the third most common federal crimes[.]"[5] Of the 57,287 individuals sentenced, 8,151 were firearm cases—a 14.2% share.[6] This represents an 8.1% increase from the year before, despite the number of cases reported to the U.S. Sentencing Commission declining by 11.3% and hitting an all-time low since fiscal year 1999.[7] In fiscal year 2024, 7,419 of the cases reported to the U.S. Sentencing

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[2] *Statistics*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/population_statistics.jsp (last visited October 16, 2025).

[3] *Statistics – Inmate Offenses*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (last visited October 16, 2025).

[4] *Fiscal Year 2021 Overview of Federal Criminal Cases* at 4, U.S. SENTENCING COMM'N (April 2022), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf.

[5] *Id.* at 19.

[6] *Id.* at 1, 5.

[7] *Id.* at 2.

Commission involved convictions under 18 U.S.C. § 922(g) — 90.4% of those involved § 922(g)(1) convictions specifically.[8]

These figures only capture the tail end of the criminal process. The scope of prosecutions looms larger. "The Department of Justice filed firearms-related charges in upwards of 13,000 criminal cases during the 2021 fiscal year." *United States v. Kelly*, No. 3:22-CR-00037, 2022 WL 17336578, at *3 (M.D. Tenn. Nov. 16, 2022) (citing Executive Office for United States Attorneys, U.S. Dept. of Justice, Annual Statistical Report Fiscal Year 2021 at 15 (Table 3C), available at https://www.justice.gov/usao/page/file/1476856/download). That number remained above 10,000 in fiscal year 2024.[9] The scale of the question presented warrants this Court's attention.

[8] *FY 2024 Quick Facts 18 U.S.C. § 922(g) Firearms Offenses*, U.S. SENTENCING COMM'N, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY24.pdf.

[9] *United States Attorneys' Annual Statistical Report Fiscal Year 2024* tbl. 3(C), U.S. DEP'T OF JUSTICE, *available at* https://www.justice.gov/usao/media/1399686/dl?inline.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 12th day of May, 2026.

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