NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

STEVE TELUSME,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether after *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), a criminal defendant may raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1).

(2) If so, whether under the *Bruen/Rahimi* methodology, the Second Amendment is unconstitutional as applied to a defendant like Petitioner given his unique set of prior criminal convictions.

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Telusme was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

The following proceedings directly relate to the case before the Court:

United States v. Telusme, 24-CR-80076-AMC (S.D. Fla.), *aff'd*, *United States v. Telusme*, 2026 WL 471911 (11th Cir. Feb. 19, 2026).

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

QUESTIONS PRESENTED i

INTERESTED PARTIES ii

RELATED PROCEEDINGS iii

TABLE OF APPENDICES v

TABLE OF AUTHORITIES vi

PETITION FOR WRIT OF CERTIORARI 1

OPINION BELOW 2

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

I. Legal Background 3

II. Factual and Procedural Background 5

REASONS FOR GRANTING THE PETITION 7

I. The Circuits are Intractably Divided on Whether As-Applied Second Amendment Challenges to 18 U.S.C. § 922(g)(1) are Cognizable after *Bruen* and *Rahimi* 7

A. Three Circuits (the Third, Fifth, and Sixth) have recognized that as-applied Second Amendment challenges are cognizable after *Rahimi*. 7

1. The Third Circuit 8

2. The Sixth Circuit 10

3. The Fifth Circuit 14

B. By contrast, six circuits (the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh) reject any and all as-applied Second Amendment challenges, albeit for different reasons 17

1. The Tenth and Eleventh Circuits 18

2. The Fourth and Eighth Circuits 18

3. The Second and Ninth Circuits 20

C. The majority of the circuits are wrong, given the resolution in *Rahimi* and for the reasons stated by the Third, Fifth, and Sixth Circuits 21

II. The Circuits are Intractably Divided on Whether, Under the *Bruen/Rahimi* Methodology, the Second Amendment is Unconstitutional as Applied to a Defendant with Non-Violent Priors 22

A. The circuits are split on whether the *Bruen/Rahimi* methodology applies at all, and if so, whether felons are part of "the people" for *Bruen* Step One 22

1. The Third, Fifth, and Sixth Circuits agree that under the *Bruen* Step One analysis, felons are part of "the people" with Second Amendment rights, and § 922(g)(1) is therefore presumptively unconstitutional 22

2. While the Tenth and Eleventh Circuits refuse to apply the *Bruen/Rahimi* methodology altogether, the other four circuits that reject as-applied challenges at least purport to apply the new methodology, and the Second and Ninth Circuits agree with the Third, Fifth, and Sixth Circuits that felons are part of "the people" for *Bruen* Step One 25

B. After *Bruen/Rahimi*, § 922(g)(1) is presumptively unconstitutional at Step One of the required analysis, for the reasons stated by the Second, Third, Fifth, Sixth, and Ninth Circuits 26

C. Although the three circuits that acknowledge as-applied challenges are cognizable after *Bruen/Rahimi* disagree as to the proper Step Two analysis, § 922(g)(1) would likely be found unconstitutional as applied to Petitioner under the Third and Sixth Circuits' tests 29

III. This Case Presents Important and Recurring Questions, and Provides an Excellent Vehicle for the Court to Resolve both Circuit Conflicts 31

CONCLUSION 36

TABLE OF APPENDICES

Decision of the U.S. Court of Appeals for the Eleventh Circuit,

United States v. Telusme, 2026 WL 471911 (11th Cir. Feb. 19, 2026) A-1

Government's Motion for Summary Affirmance,

United States v. Telusme, DE 23 (11th Cir. Nov. 10, 2025) A-2

Indictment,

United States v. Telusme, No. 24-CR-80076-AMC (DE 16)

(S.D. Fla. June 18, 2024) A-3

Motion to Dismiss Indictment,

United States v. Telusme, No. 24-CR-80067-AMC (DE 30)

(S.D. Fla. Aug. 2, 2024) A-4

Paperless Order Denying Motion to Dismiss Indictment,

United States v. Telusme, No. 24-CR-80067-AMC (DE 33)

(S.D. Fla. Aug. 26, 2024) A-5

Judgment in a Criminal Case,

United States v. Telusme, No. 24-CR-80067-AMC (DE 50)

(S.D. Fla. Jan. 9, 2025) A-6

TABLE OF AUTHORITIES

Cases:

Atkinson v. Garland,

70 F. 4th 1018 (7th Cir. 2023) 26, 31

District of Columbia v. Heller,

554 U.S. 570 (2008) 3-4, 11, 14, 18-19, 22-26, 28

Dubois v. United States,

145 S. Ct. 1041, 220 L. Ed. 375 (Jan. 13, 2025) (No. 24-5744)........................... 4

Florida Commissioner of Agriculture v. Att'y Gen.,

148 F. 4th 1307 (11th Cir. Aug. 20, 2025).. 35

Kanter v. Barr,

919 F.3d 437 (7th Cir. 2019) 15

Kilbourn v. Thompson,

103 U.S. 168 (1880) 11

New York State Rifle & Pistol Association v. Bruen,

597 U.S. 1 (2022) 3-8, 12, 14, 15, 17-20, 22-31, 33-36

Pitsillides v. Barr,

128 F. 4th 203 (3d Cir. 2025) 30

Range v. Att'y Gen.,

124 F. 4th 218 (3d Cir. Dec. 23, 2024) (en banc) (*Range II*) 8-10, 23, 28, 30, 31

United States v. Diaz,

116 F. 4th 458 (5th Cir. 2024) 14-15, 24

United States v. Duarte,

137 F. 4th 743 (9th Cir. 2025) (en banc),

cert. denied Jan. 20, 2026, 2026 WL 135692 (No. 25-425)................... 20, 22, 26

United States v. Dubois,

94 F .4th 1284 (11th Cir. Mar. 5, 2024) ("*Dubois I*"),

cert. granted, judgment vacated, remanded,

145 S. Ct.1041 (Jan. 13, 2025) (No. 24-5744) 4, 6, 7, 11, 18, 19, 24

United States v. Dubois,

139 F. 4th 887 (11th Cir. June 2, 2025) ("*Dubois II*"),

reh'g en banc denied (11th Cir. Sept. 2, 2025) 5, 28, 32, 36

United States v. Goins,

118 F. 4th 794 (6th Cir. 2024) 13

United States v. Hernandez,

159 F. 4th 425 (5th Cir. 2025) 17

United States v. Hemani,

146 S. Ct. 326, 2025 WL 2949569 (U.S. Oct. 20, 2025) (No. 24-1234) 35-36

United States v. Hunt,

123 F. 4th 697 (4th Cir. Dec. 18, 2024) 19

United States v. Jackson,

110 F. 4th 1120 (8th Cir. 2024) (*Jackson II*),

reh'g en banc denied, 121 F. 4th 656 (8th Cir. 2024), *cert. denied*,

145 S. Ct. 2708 (U.S. May 19, 2025) (No. 24-6517) 10, 19, 21, 25, 35

United States v. Jimenez-Shilon,

34 F. 4th 1042 (11th Cir. 2022) 27

United States v. Kimble,

142 F. 4th 308 (5th Cir. 2025) 16-17

United States v. McCane,

573 F.3d 1037 (10th Cir. 2009) 18, 28

United States v. Meza-Rodriguez,

798 F.3d 664 (7th Cir. 2015) 27

United States v. Moore,

111 F. 4th 266 (3d Cir. 2024) 8, 13

United States v. Rahimi,

602 U.S. 680 (2024) 4-15, 17-19, 21-29, 31-36

United States v. Rozier,

598 F.3d 768 (11th Cir. 2010) 3-7, 18, 28

United States v. Salerno,

481 U.S. 739 (1987) 21

United States v. Verdugo–Urquidez,

494 U.S. 259, 265 (1990) 27

United States v. Walters,

151 F. 4th 122, 134-35 (3rd Cir. 2025) 30

United States v. Watson,

171 F.4th 1012, 1024-25 (7th Cir. 2026). 17, 26

United States v. Williams,

113 F. 4th 637 (6th Cir. 2024) 10-11, 13, 24, 29-30, 34

Vincent v. Bondi,

127 F. 4th 1263 (10th Cir. 2025)

pet. for cert filed May 8, 2025 (No. 24-1155) 18

Zherka v. Bondi,

140 F. 4th 68 (2d Cir. 2025),

pet. for cert. filed Sept. 9, 2025 (No. 25-269) 20, 26

Constitutional Provisions, Statutes, and Other Authorities:

U.S. Const. amend. II 2

18 U.S.C. § 922(g) 36

18 U.S.C. § 922(g)(1) 2-3, 5, 7-10,12, 14-22,24, 26, 28, 30-36

18 U.S.C. § 922(g)(3) 35-36

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1291 2

Sup. Ct. R. 13.1 2

Supp. Br. for the Federal Parties,

Garland v. Range, No. 23-374 (June 24, 2024) 31

Tr. of Oral Argument, *United States v. Rahimi*, No. 22-915,

2023 WL 9375567 (U.S. Nov. 7, 2023) 21

U.S. Sent'g Comm'n, Quick Facts: 18 U.S.C. § 922(g)

Firearms Offenses (May 2025) 31

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PETITION FOR WRIT OF CERTIORARI

Steve Telusme respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 25-10224 in that court on February 19, 2026, *United States v. Telusme*, 2026 WL 471911 (11th Cir. Feb. 19, 2026) .

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in Appendix A-1. A copy of the paperless order of the United States District Court for the Southern District of Florida, denying Petitioner's Motion to Dismiss, is contained in Appendix A-5.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The United States Court of Appeals had jurisdiction over this cause pursuant to 28 U.S.C. § 1291. The decision of the court of appeals was entered on February 19, 2026, *United States v. Telusme*, 2026 WL 471911 (11th Cir. Feb. 19, 2026). This petition is timely filed pursuant to SUP. CT. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment, U.S. Const. amend. II, 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.

Title 18, United States Code Section 922(g)(1) provides:

> It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to possess in or affecting commerce, any firearm or ammunition . . .

STATEMENT OF THE CASE

I. Legal Background

In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), this Court recognized that the Second Amendment conferred an individual right to possess handguns in the home for self-defense. *Id.* at 581-82, 592-95. Soon thereafter, in *United States* v. *Rozier*, 598 F.3d 768 (11th Cir. 2010), the Eleventh Circuit held that "statutes disqualifying felons from possessing a firearm *under any and all circumstances* do not offend the Second Amendment." *Id.* at 771 (emphasis added). Any convicted felon could be constitutionally stripped of his Second Amendment rights, and the circumstances of such possession were "irrelevant." *Id.*

The Eleventh Circuit did not consider the Second Amendment's "plain text," including that "the people" in the Second Amendment "unambiguously refers" to "all Americans." 554 U.S. at 579-81. Instead, *Rozier* relied entirely upon dicta in *Heller* about "presumptively lawful" "longstanding prohibitions" against felons possessing firearms, *id.* at 626 & n. 26, even though there was no question about § 922(g)(1) in *Heller*, and the Court acknowledged it had not engaged in an "exhaustive historical analysis" on the point. *Compare Heller*, *id.* at 626 ("we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment") *with Rozier*, 598 F.3d at 768 (ignoring the latter caveat).

Over a decade later, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court clarified *Heller*'s text-and-history approach which had been uniformly misunderstood by the lower courts, and set forth a two-step "test" for

deciding the constitutionality of all firearm regulations. At "Step One," *Bruen* held, courts may consider *only* whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 17. If it does "the Constitution presumptively protects that conduct." *Id.* Regulating presumptively protected conduct is unconstitutional unless the government, at "Step Two" of the analysis, can "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation"—that is, the tradition in existence "when the Bill of Rights was adopted in 1791." *Id.* at 37.

After *Bruen* but prior to this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), the Eleventh Circuit decided *United States v. Dubois*, 94 F. 4th 1284 (11th Cir. Mar. 5, 2024) ("*Dubois I*"). In *Dubois I*, the Eleventh Circuit continued to follow its pre-*Bruen* approach in *Rozier*. It declined to conduct *Bruen*'s two-step analysis for Second Amendment challenges. *Id.* Rather, the Eleventh Circuit cited as determinative the dicta from *Heller* referenced above. *See Dubois I, id.* at 1291-93.

In the view of the Eleventh Circuit, *Bruen* did not abrogate the *Rozier* approach because "*Bruen* repeatedly stated that its decision was faithful to *Heller*." *Dubois I*, 94 F. 4th at 1293. Therefore, the Eleventh Circuit held, *Rozier* remained good law, and felons remained "categorically 'disqualified' from exercising their Second Amendment right." *Id.* at 1293 (quoting *Rozier*, 598 F.3d at 770–71).

After *Rahimi*, this Court granted certiorari, vacated the judgment, and remanded Dubois's case for further consideration in light of *Rahimi*. *Dubois v. United*

States, 145 S. Ct. 1041 (Jan. 13, 2025) (No. 24-5744). However, after receiving supplemental briefing, without oral argument, the Eleventh Circuit panel rendered its decision on remand, which was consistent with its pre-*Rahimi* decision. *See United States v. Dubois*, 139 F. 4th 887 (11th Cir. June 2, 2025) ("*Dubois II*"). Under the Eleventh Circuit's rigid "prior-panel-precedent rule," the *Dubois II* panel concluded *Rahimi* did not abrogate *Rozier*. *Id.* at 892-94. Thus, no as-applied Second Amendment challenges to §922(g)(1) would be recognized in the Eleventh Circuit. *Id.*

Dubois was denied rehearing en banc. *United States v. Dubois*, No. 22-10829, DE 89-2 (11th Cir. Sept. 2, 2025). Unless this Court "clearly" abrogates the reasoning in *Dubois II*, it will bind all future panels of the Eleventh Circuit. *See Dubois II*, 139 F. 4th at 892-93.

II. Factual and Procedural Background

In June 2024, the United States charged Petitioner Steve Telusme with two counts of violating 18 U.S.C. § 922(g)(1), for knowingly possessing a firearm and ammunition, while knowing that he had been convicted of a felony, as well as one count of possession with intent to distribute a controlled substance and one count of possession of a firearm in furtherance of a federal drug trafficking crime. Appendix A-3.

Petitioner moved to dismiss the indictment as both facially unconstitutional under the new two-step Second Amendment methodology set forth in *Bruen*, and unconstitutional as applied to him given his unique set of prior felonies. Appendix A-4.

In Response, the government argued *Bruen* did not undermine or abrogate the Eleventh Circuit's holding in *Rozier*, and even after *Bruen*, a statute categorically disqualifying felons from possessing firearms did not offend the Second Amendment. The district court agreed, and thus did not address the specific as-applied challenge Petitioner raised given his unique set of priors. Appendix A-5. Petitioner then pled guilty and was sentenced to 200 months incarceration. Appendix A-6.

On appeal, Petitioner continued to press his as-applied challenge preserved below. *See Initial Brief of Appellant*, *United States v. Telusme*, 2025 WL 3001963 (DE 19) (11th Cir. Oct. 20, 2025) (No. 25-10224). But rather than responding to his argument on the merits, the United States instead moved for summary affirmance, claiming it was "squarely foreclosed" by *Dubois I* which reaffirmed the rule from *Rozier* that "statutes disqualifying felons from possessing a firearm *under any and all circumstances* do not offend the Second Amendment, and rejected the argument that *Bruen* abrogated *Rozier*. Appendix A-2.

Petitioner opposed summary affirmance, arguing *Rahimi* had confirmed *Bruen* set forth a new methodology and clarified that methodology, and neither *Rozier* nor *Dubois* had complied with the *Bruen/Rahimi* methodology, as neither case considered the plain text of the Second Amendment nor required the government to identify Founding era analogues establishing a consistent tradition of similar regulation that was both "comparably justified" and imposed a "comparable burden." Petitioner asked the Eleventh Circuit, at the very least, to decide his as-applied challenge as a matter of first impression under *Bruen* and *Rahimi*. The Eleventh

Circuit granted the government's motion for summary affirmance, and decided the case without further merits briefing. It found the government to be "clearly right" as a matter of law that Petitioner's challenges to the constitutionality of § 922(g)(1) were foreclosed by its still-binding prior precedents in *Rozier* and *Dubois*, which had not been abrogated by either *Bruen* or *Rahimi*. *United States v. Telusme*, 2026 WL 471911, *3 (11th Cir. 2026). Appendix A-1.

REASONS FOR GRANTING THE PETITION

I. The Circuits are Intractably Divided on Whether As-Applied Second Amendment Challenges to 18 U.S.C. § 922(g)(1) are Cognizable after *Bruen* and *Rahimi*

This appeal asks, as a threshold question, whether after *Bruen* and *Rahimi* the government may categorically preclude a person from possessing a firearm simply because of a predicate felony conviction, or whether a defendant may mount a challenge that his prior record does not supply a basis, consistent with the Second Amendment, for permanent disarmament.

Although this question was not directly presented in *Rahimi*, the way the Court resolved *Rahimi* confirmed that as-applied challenges to the lifetime firearm ban in § 922(g)(1) are indeed cognizable. The majority of circuits have since weighed in on the as-applied question, and there is an entrenched circuit split.

A. Three Circuits (the Third, Fifth, and Sixth) have recognized that as-applied Second Amendment challenges are cognizable after *Rahimi*. The Third, Fifth, and Sixth Circuits have each considered as-applied challenges to § 922(g)(1) after *Rahimi*, and confirmed that such challenges are indeed cognizable,

even while rejecting some challenges based on the defendant's individual circumstances.

1. The Third Circuit. In *United States v. Moore*, 111 F. 4th 266 (3d Cir. 2024), a panel of the Third Circuit confirmed that an as-applied challenge to § 922(g)(1) is cognizable post-*Rahimi*, although the *Moore* court ultimately rejected the challenge because the defendant was on supervised release. *See id.* at 270, 273. Thereafter, in *Range v. Att'y Gen.*, 124 F. 4th 218 (3d Cir. Dec. 23, 2024) (en banc) (*Range II*), upon remand from this Court to consider in light of *Rahimi*, the en banc Third Circuit confirmed its pre-*Rahimi* view that as-applied challenges to § 922(g)(1) were not only cognizable, but indeed, the statute was unconstitutional as applied to people "like Range." 124 F. 4th at 232.

Although the Third Circuit did not clarify exactly what a person "like Range" entailed, it noted *Rahimi* had "bless[ed] disarming (at least temporarily) physically dangerous people." *Id.* at 230. The court rejected the government's claim that Founding-era laws imposing status-based restrictions on presumably "dangerous" groups like Blacks, Native Americans, Catholics, and Loyalists distrusted by the government, were comparably justified to § 922(g)(1). Beyond the unconstitutionality of certain of those restrictions, the majority emphasized Range was not part of any of these groups. And in any event, not only would such analogy be "'far too broad,'" *id.* at 229 (citing *Bruen*, 597 U.S. at 31), but indeed, the government's attempt to "stretch dangerousness to cover all felonies" by arguing "'those 'convicted of serious crimes, as

a class, can be expected to misuse firearms,"" failed because it operated "at such a high level of generality that it waters down the right." *Id.* at 230.

The *Range II* court also squarely rejected the government's contention that permanent disarmament under § 922(g)(1) was "relevantly similar" to Founding-era laws that (1) imposed the death penalty for *some* nonviolent crimes (like forgery or counterfeiting) but not for crimes like false statement or embezzlement, or (2) required forfeiture of felons' weapons or estates. *Id.* at 230-31. Neither type of law was a sufficient analogue in terms of the burden imposed to uphold § 922(g)(1) as applied to Range, the court explained, because:

> [T]he Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation's history and tradition . . . .
>
> For similar reasons, Founding-era laws that forfeited felons' weapons or estates are not sufficient analogues either. Such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. ... [I]n the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society.
>
> Against this backdrop, it's important to remember that Range's crime . . . did not involve a firearm, so there was no criminal instrument to forfeit. And even if there were, government confiscation of the instruments of a crime (or a convicted criminal's entire estate) differs from a status-based lifetime ban on firearm possession.

124 F. 4th at 231. Because there was no record evidence indicating Range currently posed a physical danger to anyone, the Third Circuit enjoined the enforcement of § 922(g)(1) against him. *Id.* at 232.

While the Third Circuit expressed approval of the Sixth Circuit's post-*Rahimi* decision in *United States v. Williams*, 113 F. 4th 637, 658-61 (6th Cir. 2024) because it drew a clear distinction for as-applied challenges between persons with dangerous and non-dangerous priors, the *Range II* court squarely rejected the contrary, "categorical" approach of the Eighth Circuit's post-*Rahimi* decision in *United States v. Jackson*, 110 F. 4th 1120, 1127-29 (8th Cir. 2024) (*Jackson II*), which refused all as-applied challenges to § 922(g)(1) on the overbroad and wrong assumption that anyone convicted of a "serious crime" "can be expected to misuse firearms." 124 F. 4th at 230.

The government ultimately declined to seek certiorari in *Range II*—in implicit acknowledgement that indeed, § 922(g)(1) is *not* constitutional "under any and all circumstances," as the majority of circuits have agreed post-*Rahimi*.

2. The Sixth Circuit. As indicated above, in *Williams*, the Sixth Circuit likewise found as-applied challenges to §922(g)(1) cognizable, but offered additional explanations as to why such challenges must be available. After conducting a "historical study" which it found revealed governments in England and colonial America disarmed groups that they deemed to be dangerous, the Sixth Circuit held that a conviction under § 922(g)(1) "must focus on each individual's specific characteristics." *Id.* at 657. The Sixth Circuit explained accepting that all felons could be permanently disarmed—without a finding of dangerousness—would be incompatible with at least three strands of this Court's jurisprudence.

First, it would be "inconsistent with *Heller*" because "[i]f courts uncritically deferred to Congress's class-wide dangerousness determinations, disarmament laws would most often be subject to rational-basis review," contrary to express statements in *Heller*. *Williams*, 113 F. 4th at 660; *see Heller*, 554 U.S. at 628 n.27 ("[i]f all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.").

Second, the Sixth Circuit found, "history cuts in the opposite direction," as "English laws" and common-law "disarmament legislation" showed that, traditionally, "individuals had the opportunity to demonstrate that they weren't dangerous." *Id*. at 660.

Third, the Sixth Circuit reasoned, "complete deference to legislative line-drawing would allow legislatures to define away a fundamental right," which clashes with "[t]he very premise of constitutional rights" which "don't spring into being at the legislature's grace." *Id*. at 661; *see Kilbourn* v. *Thompson*, 103 U.S. 168, 199 (1880) ("it is the province and duty of the judicial department to determine ... whether the powers of any branch of the government . . . have been exercised in conformity to the Constitution"). The Sixth Circuit concluded, "as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations." 113 F. 4th at 661.

This view was different than that held by "some of our sister circuits" prior to *Rahimi*, including the Eleventh in *Dubois I*, which the Sixth Circuit criticized as

"hav[ing] read too much into the Supreme Court's repeated invocation of 'law-abiding, responsible citizens.'" *Id*. at 646. Accordingly, it held, "[t]he relevant principle from our tradition of firearms regulation is that, when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don't fit the class-wide generalization." *Id*. at 662.

After conducting its "historical study," the Sixth Circuit concluded that history confirmed "legislatures may disarm groups of people, like felons, whom the legislature believes to be dangerous—so long as each member of that disarmed group has an opportunity to make an individualized showing that he himself is not actually dangerous." *Id.* at 663. Setting "dangerousness" as the determinant of whether § 922(g)(1) is unconstitutional as applied to a particular defendant, the Sixth Circuit held that at *Bruen* Step Two it is the defendant who bears the burden of demonstrating that in light of his "specific characteristics"—namely, his entire criminal record—he is not dangerous. *Id.* at 657-78, 659-63. To guide the dangerousness inquiry, the Sixth Circuit grouped priors into three broad categories, noting "certain categories of past convictions are highly probative of dangerousness, while others are less so." *Id.* at 658.

The Sixth Circuit's first category includes violent crimes against a person such as murder, rape, assault, and robbery—all of which were capital offenses at the Founding. Convictions for one of these violent crimes is at least "strong evidence that an individual is dangerous, if not totally dispositive on the question." *Id.* The second category includes crimes that are not strictly against a person, but nonetheless "pose

a significant threat of danger" such as drug trafficking or burglary. *Id.* at 659. In its view, "most of these crimes put someone's safety at risk, and thus, justify a finding of danger," although that presumption is rebuttable in an individual case. *Id.* As for the final category of crimes—those that cause no physical harm to another person or the community (for example, mail fraud or making false statements)—the Sixth Circuit recognized, district court judges should "have no trouble concluding" that such crimes "don't make a person dangerous." *Id.*

Applying its tri-partite, Williams's as-applied challenge failed. Williams had previously been convicted of aggravated robbery for robbing two people at gunpoint, as well as attempted murder, and felon-in-possession in a case where he "agreed to stash a pistol that was used to murder a police officer." *Id.* Any of those convictions, the Sixth Circuit opined, demonstrated Williams was a "dangerous felon" whom the government could constitutionally disarm for life. *Id.* at 662-63.

Thereafter, in *United States v. Goins*, 118 F. 4th 794 (6th Cir. 2024), the Sixth Circuit continued to apply *Williams*' "totality of facts," rebuttable "dangerousness" standard to a defendant who possessed a gun while on state probation for driving under the influence. Differing from the Third Circuit in *Moore* by acknowledging that history "may *not* support disarmament of *any* criminal defendant under *any* criminal justice sentence *in all circumstances*," 118 F. 4th at 804 (emphasis added), the Sixth Circuit nonetheless concluded temporary disarmament of Mr. Goins while on probation did not violate the Second Amendment because he had four "prior

convictions for the same dangerous conduct" which "evince[d] a likelihood of future dangerous conduct." *See id.* at 804-05.

3. The Fifth Circuit. In *United States v. Diaz*, 116 F. 4th 458 (5th Cir. 2024), the Fifth Circuit likewise entertained an as-applied challenge after *Rahimi*, but unlike the approach in the Third and Sixth Circuits, it's as-applied test was categorical, *not* an individualized dangerousness determination. The Fifth Circuit agreed with Diaz that *Bruen* established a new "historical paradigm" for analyzing Second Amendment claims, which made the circuit's pre-*Bruen* precedents obsolete. *Id.* at 467-71. The Fifth Circuit made a point to state that "especially after *Rahimi*," it "respectfully disagree[ed]" with the Eleventh Circuit's approach relying on the "felons and mentally ill" language in *Heller* to uphold § 922(g)(1). *Diaz*, 116 F. 4th at 466, n.2; *see also id.* at 466.

After conducting that historical inquiry for *Bruen* Step Two, the Fifth Circuit found § 922(g)(1) was indeed constitutional as applied to Diaz because of his prior conviction for car theft, which it deemed analogous to the crime of "horse theft" which was a capital crime at the Founding. 116 F. 4th at 468-69. The Fifth Circuit emphasized that Diaz was a felon and had a prior conviction for being a felon in possession, were *not* themselves enough, *id.* at 468-69 (noting the Diaz's prior for violating § 922(g)(1) "was not considered a crime until 1938 at the earliest"). However, it found that "[t]aken together," historical "laws authorizing severe punishments for thievery and permanent disarmament in other cases establish that

our tradition of firearm regulation supports application of § 922(g)(1) to Diaz." *Id.* at 471.

In concluding that as-applied Second Amendment challenges are permissible, the Fifth Circuit agreed with the Third and Sixth Circuits that a defendant's criminal history was what controlled, but it reasoned differently. It explained that after *Bruen* and *Rahimi* "history and tradition" must be analyzed to "identify the scope of the legislature's power to take [the right] away," and as support it quoted then-Judge Barrett's dissent in *Kanter* v. *Barr*, 919 F.3d 437 (7th Cir. 2019). *See* 116 F. 4th at 466 (citing *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting) ("[A]ll people have the right to keep and bear arms," but "history and tradition support Congress's power to strip certain groups of that right"). Noting that *Bruen* "mandates" this approach, and *Rahimi* had just confirmed it, *id.* at 466, the Fifth Circuit was clear that "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny . . . . [N]ot all felons today would have been considered felons at the Founding. Further, Congress may decide to change that definition in the future. Such a shifting benchmark should not define the limits of the Second Amendment[.]" *Id.* However, it reasoned, since at the Founding, "at least one of the predicate crimes that Diaz's § 922(g)(1) conviction relies on—theft—was a felony and thus would have led to capital punishment or estate forfeiture," "[d]isarming Diaz fits within this tradition of serious and permanent punishment." *Id.* at 470. Importantly, the Fifth Circuit acknowledged the analysis would be different for "as-applied challenges by defendants with different predicate convictions." *Id.* at 470, n.4.

In a subsequent case, *United States v. Kimble*, 142 F. 4th 308 (5th Cir. 2025), the Fifth Circuit applied its categorical test to a defendant with two prior drug trafficking convictions. *Id.* at 309. While rejecting the government's purported analogy to Founding-era crimes penalizing the selling of "illicit goods," *see id.* at 314, the court agreed with the government that that "[t]he Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous[.]" *Id.* at 314-15. But that was not the end of its analysis: the court emphasized that courts "must determine whether the government has identified a 'class of persons at the Founding who were "dangerous" for reasons comparable to' those Congress seeks to disarm today." *Id.* at 315 (citation omitted).

The Fifth Circuit was clear that courts should *not* look beyond a defendant's predicate conviction or conduct an individualized assessment of whether the defendant is dangerous. *Id.* at 318. The court concluded § 922(g)(1) was constitutional as applied to Kimble because "[l]ike legislatures in the past that sought to keep guns out of the hands of potentially violent individuals, Congress today regards felon drug traffickers as too dangerous to trust with weapons." *Id.* at 316. In its view, Kimble's prior drug trafficking crimes "underscores that he is the sort of dangerous individual that legislatures have long disarmed." *Id.* Judge Graves disagreed with the majority's "class-wide" reasoning, opining that an individualized assessment was necessary in an as-applied challenge because there are "cases involving people who were convicted of possession with intent offenses that did not

involve a weapon or any violence." *Id.* at 318-322 (Graves, J., concurring in part and in the judgment).[1]

Thereafter in *United States v. Hernandez*, 159 F. 4th 425 (5th Cir. 2025), the Fifth Circuit clarified in no uncertain terms that its as-applied test was categorical (based on the elements of the prior convictions), rather than fact-based and predicated on dangerousness. *See id.* at 428. "Put differently, [the Fifth Circuit] sift[s] the elements of a defendant's prior convictions through *Bruen*'s analogical framework, and not the defendant himself." *Id.*

Thus far, the Fifth Circuit noted in *Hernandez*, it had identified only "three categories of offenses" that will always "doom" a defendant's as-applied challenge to § 922(g)(1): namely, "theft, violence, and violating the terms of one's release by possessing arms while on parole." 159 F. 4th at 428. This includes defendants convicted of drug trafficking offenses. *Kimble*, 142 F. 4th at 317.

B. Six circuits (the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh) reject any and all as-applied Second Amendment challenges, albeit for different reasons. By contrast to the case-by-case, offender-specific approach of the above three circuits, the majority of the circuits to have now considered the issue post-*Rahimi* have categorically barred all Second Amendment challenges by all offenders to a § 922(g)(1) conviction—even those with non-violent

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[1] Finding that felons are part of the people, but rejecting an as-applied challenge to §922(g)(1) for a defendant with a prior drug trafficking conviction, the Seventh Circuit has reserved ruling on whether §922(g)(1) is constitutional as applied to a felon whose predicate felony was not dangerous. *United States v. Watson*, 171 F.4th 1012, 1024-25 (7th Cir. 2026).

priors who pose no current risk of dangerousness. These six circuits have reached that conclusion for different reasons.

1. The Tenth and Eleventh Circuits. At one end of the spectrum, lie the Tenth and Eleventh Circuits—both of which continue to follow their pre-*Bruen* approach even post-*Rahimi*, and thus reject every as-applied post-*Bruen* challenge to § 922(g)(1) without considering either text, historical regulations that might possibly be Founding era "analogues" for § 922(g)(1), or a defendant's prior record. Instead, they cling to the *Heller* dicta on "longstanding" "presumptively unlawful" felon-in-possession bans. As noted *supra*, the Eleventh Circuit held prior to *Bruen* in *Rozier* (which followed that dicta), confirmed after *Bruen* in *Dubois I*, and reconfirmed after *Rahimi* in *Dubois II*, that felons are "categorically 'disqualified' from exercising their Second Amendment right" "in all circumstances." *Dubois I*, 94 F. 4th at 1293; *Dubois II*, 139 F. 4th at 893-94. In Petitioner's case, the Eleventh Circuit followed *Dubois II*. The Tenth Circuit has also found its pre-*Bruen* precedent still govern after *Rahimi*, and rejected the argument that § 922(g)(1) does not apply to non-violent offenders. *See Vincent v. Bondi*, 127 F. 4th 1263, 1265 (10th Cir. 2025) (holding *Rahimi* did not abrogate *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), *pet. for cert. denied* 2026 WL 568283, No. 24-1155 (March 2, 2026)).

2. The Fourth and Eighth Circuits. Both the Fourth and Eighth Circuits have also found their pre-*Bruen* precedent rejecting all as-applied challenges still-controlling after *Bruen*. But they have nonetheless undertaken what they believe to be the correct *Bruen/Rahimi* analysis in the alternative to shore up their conclusions.

In *United States v. Hunt*, 123 F. 4th 697 (4th Cir. Dec. 2024), the Fourth Circuit initially seemed to adopt the approach of the Tenth and Eleventh Circuits, deferring completely to its pre-*Bruen* rejection of all as-applied challenges. *Hunt*'s initial merits discussion (Part III.A) was not only consistent with *Dubois I*; it even cited *Dubois I*, 94 F. 4th at 1293, in following pre-*Bruen* Fourth Circuit precedent that had relied upon the same "longstanding" and "presumptively lawful" prohibitions dicta in *Heller*, n.26, to foreclose all as-applied challenges to § 922(g)(1), and "concluding that neither *Bruen* nor *Rahimi* abrogates this Court's precedent foreclosing as-applied challenges to Section 922(g)(1) and those decisions thus remain binding." 123 F. 4th at 700, 702-04.

Unlike the Tenth and Eleventh Circuits, the Fourth Circuit did not stop its analysis at its pre-*Bruen* precedent. Instead, it ruled in the alternative (in Part III.B) that even if it were unconstrained by circuit precedent, § 922(g)(1) would not "pass constitutional muster" because it would fail "both parts" of the *Bruen* test. *Id.* at 702, 704. In Step Two of the analysis, it noted full agreement with the Eighth Circuit's reasoning in *United States v. Jackson,* 110 F. 4th 1120 (8th Cir. 2024) (*Jackson II*), that "history" showed "categorical disarmament of people 'who have demonstrated disrespect for legal norms of society'"—even if not violent. It concluded that since § 922(g)(1) was similarly justified as "an effort to address a risk of dangerousness," holding "there is no need for felony-by-felony litigation." *Hunt*, 123 F. 4th at 125-26.

In *Jackson II*, the Eighth Circuit reasoned at Step Two of the analysis that *Rahimi* did "not change" its pre-*Rahimi* conclusion that "there is no need for felony-

by-felony litigation regarding the constitutionality of § 922(g)(1)," due to two purported historical analogues: first, laws prohibiting disfavored groups such as religious minorities, Native Americans, Loyalists from possessing firearms; and second, laws authorizing "punishments that subsumed disarmament—death or forfeiture of a perpetrator's entire estate—for non-violent offenses." 110 F. 4th at 1122, 1125-27. Therefore, the Eighth Circuit re-affirmed, the mere status as a felon is sufficient to permanently disarm an individual. *Id.* at 1127-29.

3. The Second and Ninth Circuits. Both the Second and Ninth Circuit have agreed with the Fourth and Eighth Circuits' alternative *Bruen* Step Two analysis, and have held based on that analysis—Founding-era laws categorically disarming "dangerous" groups and punishing many felonies with death and estate forfeiture—that § 922(g)(1) is constitutional in all of its applications. *See United States v. Duarte*, 137 F. 4th 743, 755-62 (9th Cir. 2025) (en banc), *pet. for cert. denied* 2026 WL 135692, No. 25-425 (Oct. 8, 2025); *Zherka v. Bondi*, 140 F. 4th 68, 80-91 (2d Cir. 2025), *pet. for cert. denied* 2026 WL 135708, No. 25-269 (Sept. 9, 2025). Notably, though, these two circuits have squarely recognized at *Bruen* Step One, that felons are indeed among "the people" covered by the plain text of the Second Amendment. *See Duarte*, 137 F. 4th at 754-55; *Zherka*, 140 F. 4th at 77.

Nonetheless, despite their diverse rationales, all six of these Circuits doom all as-applied Second Amendment challenges. And as of this writing, the majority rule in the circuits is that *no* as-applied challenge to § 922(g)(1) will be recognized. The conflict is thoroughly entrenched.

C. The majority of the circuits are wrong, given the resolution in *Rahimi* and for the reasons stated by the Third, Fifth, and Sixth Circuits. The majority rule refusing to recognize any as-applied challenge to § 922(g)(1), is inconsistent with the reasoning of *Rahimi*.

Specifically, in holding Rahimi's facial challenge failed because the statute "is constitutional as applied to the facts of Rahimi's own case," 602 U.S. at 693, this Court necessarily and squarely rejected the position the government took at the *Rahimi* oral argument that as-applied challenges are unavailable in Second Amendment cases. Tr. of Oral Argument, *United States v. Rahimi*, 2023 WL 9375567, at *43 (U.S. Nov. 7, 2023). In fact, in making clear that the "no set of circumstances" standard from *United States v. Salerno*, 481 U.S. 739, 745 (1987) indeed applies to Second Amendment challenges, the Court necessarily recognized that as-applied Second Amendment challenges *are* permitted. *See id.*

Although § 922(g)(1) was not before the Court in *Rahimi*, at oral argument Justice Gorsuch nonetheless recognized, in response to the government's assertion there that the Court should never entertain as-applied Second Amendment challenges, that there may indeed "be an as-applied *if it's a lifetime ban*," 2023 WL 9375567, at 43—which § 922(g)(1) *is*. The Third, Fifth, and Sixth Circuits have rightly recognized that as-applied challenges for § 922(g)(1) are cognizable in certain circumstances. And judges on the Eighth and Ninth Circuits have as well. *See Jackson II*, 121 F. 4th at 657-58 (Stas, J., joined by Erickson, Grasz, and Kobes, J.J.,

dissenting from denial of rehearing en banc); *Duarte*, 137 F. 4th at 782-83 (Vandyke, J., concurring in the judgment in part and dissenting in part).

This Court should grant certiorari to resolve the circuit conflict on this threshold issue, and recognize explicitly that as-applied Second Amendment challenges are cognizable after *Bruen/Rahimi*.

II. The Circuits are Intractably Divided on Whether Under the *Bruen/Rahimi* Methodology, § 922(g)(1) is Unconstitutional As Applied to a Defendant With Non-Violent Priors

A. The circuits are split on whether the *Bruen/Rahimi* methodology applies at all, and if so, whether felons are part of "the people" for Bruen Step One. While the Tenth and Eleventh Circuits refuse to apply the *Bruen/Rahimi* methodology altogether, and continue to rigidly defer to their pre-*Bruen* precedent, eight other circuits apply—or attempt to apply—both steps of the new *Bruen/Rahimi* methodology. And six circuits agree felons meet *Bruen* Step One.

1. The Third, Fifth, and Sixth Circuits agree that under the *Bruen* Step One analysis, felons are part of "the people" with Second Amendment rights, and § 922(g)(1) is therefore presumptively unconstitutional. These three circuits have applied different as-applied tests at *Bruen* Step Two, but they agree on all key preliminary points for the analysis: namely, that *Bruen* and *Rahimi* abrogated their pre-*Bruen* caselaw upholding the constitutionality of § 922(g)(1); *Bruen/Rahimi* demands a different mode of analysis; *Heller*'s statement that felon-in-possession prohibitions are "presumptively lawful" was non-binding dicta; and at

Bruen Step One, the term "the people" covers felons and accords them Second Amendment protections.

In *Range II*, the en banc Third Circuit reaffirmed its prior rulings that *Bruen* had abrogated its post-*Heller* Second Amendment jurisprudence; *Bruen* dictated an entirely new analysis; and under the "plain text" analysis for *Bruen* Step One, felons are part of "the people" protected by the Second Amendment. 124 F. 4th at 225-28. On the latter point, the Third Circuit squarely rejected the government's contention that any type of criminal conduct removes citizens from "the people" protected by the Second Amendment because that right had only belonged to "law-abiding responsible citizens." *Id.* at 226-28.

The Third Circuit articulated four reasons for finding *Heller*'s references to "law-abiding citizens" "should not be read as rejecting *Heller*'s interpretation of 'the people,'" which "presumptively 'belongs to all Americans," 554 U.S. at 580-81: (1) the criminal histories of the plaintiffs in *Heller* and *Bruen* "were not at issue," so the references to "law-abiding citizens" in those cases were dicta; (2) there was no reason to adopt a reading of "the people" that excluded Americans only from the Second Amendment when other constitutional provisions refer to "the people" and felons "retain their constitutional rights in other contexts," (3) legislatures can constitutionally strip certain people of the right to keep and bear arms; and (4) *Rahimi* "makes clear that citizens are not excluded from Second Amendment protections just because they are not "responsible." 124 F. 4th at 226-27 (citing *Rahimi*, 602 U.S. at 701).

The Sixth Circuit agrees with the Third that the phrase "the people" in the plain text of the Second Amendment must have the same meaning as in both the First and Fourth Amendments, because the protections provided in those Amendments do not evaporate when the claimant is a felon. *Williams*, 114 F. 4th at 649. Excluding a felon from "the people" in the Second Amendment would exclude him from the First and Fourth Amendments too which is "implausible under ordinary principles of construction" since "[c]ourts presume that words are used in a consistent way across provisions." *Id.* (citations omitted).

The Sixth Circuit has also rightly explained that *Bruen* and *Rahimi* "supersede[d] our circuit's past decisions on 922(g)." 113 F. 4th at 646. Expressly disagreeing with the Eleventh Circuit in *Dubois*

.*3 I*, the Sixth Circuit held in *Williams*—as Petitioner argued to the Eleventh Circuit—that pre-*Bruen* circuit precedent cannot now be binding because:

> intervening Supreme Court precedent demands a different mode of analysis. *Heller*, to be sure, said felon-in-possession statutes were "presumptively lawful." But felon-in-possession statutes weren't before the Court in *Heller* [.] And while *Bruen* didn't overrule any aspect of *Heller*, it set forth a new analytical framework for courts to address Second Amendment challenges. . . . [C]ourts must study how and why the founding generation regulated firearm possession and determine whether the application of a modern regulation "fits neatly within" those principles.
>
> Our circuit's pre-*Bruen* decisions on § 922(g)(1) omitted any historical analysis. They simply relied on *Hell*er's one-off reference to felon-in-possession statutes. Those precedents are therefore inconsistent with *Bruen*'s mandate to consult historical analogs.

113 F. 4th at 648 (internal citations omitted).

The Fifth Circuit reasoned similarly in *Diaz*. It held that pre-*Bruen* circuit

precedents no longer control because *Bruen* "established a new historical paradigm for analyzing Second Amendment claims;" and the mention of felons in prior Supreme Court cases was "mere dicta" which "cannot supplant the most recent analysis set forth by the Supreme Court in *Rahimi*, which we apply today." It squarely rejected the government's "familiar argument" that for the *Bruen* Step One "plain text" analysis, felons are not part of "the people." 116 F. 4th at 465-67.

2. While the Tenth and Eleventh Circuits refuse to apply the *Bruen/Rahimi* methodology altogether, the other five circuits that reject as-applied challenges at least purport to apply the new methodology, and the Second, Seventh, and Ninth Circuits agree with the Third, Fifth, and Sixth Circuits that felons are part of "the people" for *Bruen* Step One. Only the Tenth and Eleventh Circuits consistently affirm denials of as-applied challenges based on their pre-*Bruen* precedents which reflexively followed dicta in *Heller*. The other five circuits (the Second, Fourth, Seventh, Eighth, and Ninth) have all at least attempted to apply the new *Bruen/Rahimi* framework. *See, e.g., Jackson II*, 110 F. 4th at 1126-27 (justifying preclusion of all as-applied challenges after *Rahimi*, by purported Founding-era analogues for Step Two of the *Bruen* analysis). While Petitioner disputes the correctness of the Eighth Circuit's *Bruen* Step Two analysis for the reasons stated by the Third and Sixth Circuits, at least the *Jackson II* panel recognized that *Bruen* and *Rahimi* do in fact dictate a new methodology applicable to all Second Amendment claims.

Even the Seventh Circuit has been clear that it is error to "avoid a *Bruen* analysis altogether" based on pre-*Bruen* precedent relying on *Heller*'s "presumptively lawful" dicta. *Atkinson v. Garland*, 70 F. 4th 1018, 1022-25 (2023). Although the Seventh Circuit has upheld § 922(g)(1) for a felon with a prior drug trafficking conviction, it has reserved ruling on an as-applied Second Amendment challenge to § 922(g)(1) by a felon with a non-dangerous predicate conviction. *Watson*, 171 F. 4th at 1024-25.

And notably, although the Second and Ninth Circuits agree with the conclusion of the Fourth, Eighth, Ninth, and Tenth Circuits—that no as applied challenges may be brought—they only reach that conclusion *at Bruen Step Two*. *Zherka*, 140 F. 4th at 77-96; *Duarte*, 137 F. 4th at 755-62. At Step One of the analysis, the Second, Seventh, and Ninth Circuits agree with the Third, Fifth, and Sixth Circuits, that indeed, felons are among "the people" covered by the Second Amendment. *See Zherka*, 140 F. 4th at 75-77; *Watson*, 171 F. 4th at 1018; *Duarte*, 137 F. 4th at 752-55.

Plainly, the Tenth and Eleventh Circuits are the true outliers today, glued to their pre-*Bruen* approach. This Court should hold they are most definitely wrong.

B. After *Bruen/Rahimi*, § 922(g)(1) is presumptively unconstitutional at Step One of the required analysis, for the reasons stated by the Second, Third, Fifth, Sixth, Seventh, and Ninth Circuits. In *Heller*, this Court was clear that "the people" as used in the Second Amendment "unambiguously refers" at the very least to "*all Americans*"—"not an unspecified subset"—because any other

interpretation would be inconsistent with the Court's interpretation of the same phrase in the First, Fourth, Ninth, and Tenth Amendments. *Id.* at 579-81 (citing *United States v. Verdugo–Urquidez*, 494 U.S. 259, 265 (1990).

Just as *Bruen* found dispositive that the Second Amendment does not "draw ... a home/public distinction with respect to the right to keep and bear arms," 597 U.S. at 32, it should be dispositive here—as a textual matter—that the Second Amendment likewise does not draw a felon/non-felon distinction. Indeed, even prior to *Bruen*, panels of the Eleventh and Seventh Circuits had recognized that the term "people" in the Second Amendment is *not* textually limited to law-abiding citizens. *See United States v. Jimenez-Shilon*, 34 F. 4th 1042, 1046 (11th Cir. 2022) (noting even "dangerous felons" are "indisputably part of 'the people'" for Second Amendment purposes); *see also United States v. Meza-Rodriguez*, 798 F.3d 664, 671 (7th Cir. 2015) (a person's criminal record is irrelevant in determining whether he is among "the people" protected under the Second Amendment).

If there *could* have been doubt on that point prior to *Rahimi*, there *cannot* be after *Rahimi*. Because *Rahimi* squarely rejected the Solicitor General's proffered limitation of "the people" to the narrower subset of "law-abiding, responsible" citizens. The majority acknowledged that the Second Amendment "secures for Americans a means of self-defense." 602 U.S. at 690. Justice Thomas—who disagreed with the majority *only* as to *Bruen* Step Two—provided a robust explanation of the proper Step One analysis, confirming that *any American citizen* is among "the people" as a matter of the plain text. *Id.* at 752.

Justice Thomas left no doubt about the implication of *Heller*/*Bruen* / *Rahimi* for "the people" question in § 922(g)(1), confirming "[n]ot a single Member of the Court adopts the Government's [law-abiding, responsible citizen] theory." 602 U.S. at 773. In short, the "law-abiding, responsible citizen" theory unanimously rejected by *Rahimi* has no doctrinal or constitutional mooring. *Id.* at 774. That necessarily abrogates the assumptions underlying *Rozier* (and in turn, *Dubois II*), and *Rahimi* should have compelled the Eleventh Circuit to conclude—like the Second, Third, Fifth, Sixth, Seventh, and Ninth Circuits—that this Court meant what it said when it declared in *Heller* that the Second Amendment right "belongs to all Americans." 554 U.S. at 581. The reasoning of all of these circuits is consistent with *Heller*, and correct on these points.

Based on *Heller*, *Rahimi*, and the analysis of all of these courts, this Court should clarify definitively for the Tenth and Eleventh Circuits that pre-*Bruen* circuit precedents like *Rozier* and *McCane* cannot control after *Rahimi*. Additionally, this Court should then hold that (1) applying the Court's new methodology, felons are indeed part of "the people" covered by the Second Amendment's plain text; (2) felons thus meet the new *Bruen* Step One; (3) as per *Bruen* / *Rahimi*, that establishes a presumption that § 922(g)(1) is unconstitutional, and shifts the burden to the government to show at Step Two a tradition of "relevantly similar" regulation (in terms of both the "why" and "how") dating to the Founding; and (4) the government cannot meet that burden for the reasons detailed by the Third Circuit in *Range II*.

C. Although the three circuits that acknowledge as-applied challenges are cognizable after *Bruen/Rahimi* disagree as to the proper Step Two analysis, § 922(g)(1) would likely be found unconstitutional as applied to Petitioner under the Third and Sixth Circuits' tests. Although Petitioner had multiple prior felony convictions, his last violent offense occurred more than 15 years ago. His prior felony convictions consist of robbery, possession with intent to sell, sale, and possession of narcotics, fleeing or attempting to elude, battery on a law enforcement officer, resisting an officer with violence, dealing in stolen property, false verification of ownership, and driving while license suspended as a habitual offender. Notably, none of his priors suggest that he has ever misused a firearm or used a firearm to facilitate a criminal offense.

Because the Fifth Circuit has found § 922(g)(1) constitutional as applied to a defendant with prior drug trafficking convictions, Petitioner's motion to dismiss would not succeed in the Fifth Circuit. But under the dangerousness tests applied by the Third and Sixth Circuits it is likely that Petitioner could rebut any presumption of dangerousness, and these circuits would find § 922(g)(1) unconstitutional as applied to him.

The fact that Petitioner did not use a firearm or engage in any serious physical harm to anyone during his prior felonies, would likely be dispositive under the tests of these circuits. As noted *supra*, the Sixth has focused exclusively on a defendant's individualized (factual) dangerousness in prior felonies, instructing courts to "focus on each individual's specific characteristics." *Williams*, 113 F. 4th at 657. Petitioner's

record is nothing like Williams'. There is no record evidence that he used a firearm in any of his prior felonies including his drug trafficking offenses.

The Third Circuit would likely agree on the non-dangerousness point. Here, as in *Range II*, there is no evidence Petitioner posed a danger to anyone at the time of his April or June 2023 firearm possession. Although the Third Circuit opined after *Range II*, that disarmament might be justified on different facts if "a felon continues to 'present a special danger of misus[ng] firearms," *Pitsillides v. Barr*, 128 F. 4th 203, 210 (3d Cir. 2025), and that determination "may depend on more than just the nature of his prior felony," *id.* at 211, and require consideration of "intervening conduct," *id.* at 212, the record shows no "intervening conduct" by Petitioner which would suggest he posed a physical danger to the public at the time of the offense here. Admittedly, the Third Circuit has denied an as-applied challenge to § 922(g)(1) where the defendant had three prior convictions for drug trafficking convictions. *United States v. Walters*, 151 F. 4th 122, 134-35 (3rd Cir. 2025). However, in *Walters*, the Third Circuit was reviewing the defendant's challenge for plain error, because he had not objected below. *Id.* at 127. In contrast, Mr. Telusme preserved his challenge to § 922(g)(1) before the District Court. Under the totality of circumstances here, the Third Circuit, like the Sixth, would likely have found § 922(g)(1) unconstitutional as applied to Petitioner.

If the Court agrees that the relevant as-applied test is one of dangerousness, as applied by the Third and Sixth Circuits, it should find on this record any possible presumption of dangerousness could have been effectively rebutted had the Eleventh

Circuit permitted an as-applied challenge. In either the Third or Sixth Circuits, Petitioner's motion to dismiss the § 922(g)(1) charge would likely have been granted.

III. This Case Presents Important and Recurring Questions, and Provides an Excellent Vehicle for the Court to Resolve Multiple Circuit Conflicts

As acknowledged by the Solicitor General in the aftermath of *Rahimi,* the conflict over the constitutionality of § 922(g)(1) is unlikely to resolve itself without further intervention of this Court. *See* Supp. Br. for the Federal Parties, *Garland v. Range*, No. 23-374, at 5-6 (June 24, 2024). In June 2024, *the government itself* candidly recognized that disagreement about § 922(g)(1)'s constitutionality had already had widespread and disruptive effects. *Id*. In fiscal year 2022, it noted convictions under § 922(g)(1) accounted for nearly 12% of all federal criminal cases. *Id*. And notably, the Commission's "Quick Facts" for fiscal year 2024 disclose that 90% of all § 922(g) convictions were under § 922(g)(1). *U.S. Sent'g Comm'n, Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (May 2025). Moreover, since there are millions of Americans with felony convictions of one sort or another, allowing the decisions of six circuits barring all as-applied Second Amendment challenges to persist without any consideration of an individual's actual record and current dangerousness, will effectively strip non-dangerous citizens of their Second Amendment rights based on blind deference to the type of legislative judgment *Bruen* decried.

Petitioner asks that the Court grant plenary review in this case to resolve the circuit splits that have deepened since *Rahimi*. Petitioner's case presents an ideal vehicle for resolving those circuit splits for multiple reasons.

First, both issues raised herein were pressed by Petitioner in the district court and on appeal. There is no possible argument that Petitioner's as-applied challenge should be reviewed deferentially for "plain error" only.

Second, not only did the Eleventh Circuit panel below squarely reject Petitioner's as-applied challenge under its rigid "prior panel precedent" rule; the Eleventh Circuit was asked to rehear its ruling in *Dubois II* en banc, and it refused to do so. Since there was not one vote for rehearing en banc, there is no chance the Eleventh Circuit will reconsider its barring of *all* as-applied challenges without the intervention of this Court. And the majority of judges in active service on both the Eighth and Ninth Circuits are in agreement with the Eleventh Circuit that § 922(g)(1) is constitutional in all circumstances.

Third, Issue I raises what is unfortunately a threshold obstacle for defendants in the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits—but *not* for defendants in the Third, Fifth, Sixth, of Seventh Circuits. It is unjustifiable that from the very outset, defendants in these six Circuits are being denied the type of constitutional review being accorded similarly-situated defendants in at least three, if not four, other circuits. Constitutional rights and the right to meaningful appellate review should not vary by geography. The refusal of these six circuits to entertain any Second Amendment as-applied challenges has equal protection implications.

A grant of certiorari in Petitioner's case would allow the Court to settle multiple sub-conflicts among the circuit courts, because, *in this single case*, the Court could *first* clarify that pre-*Bruen* circuit precedents that did not consider either the plain text of the Second Amendment or any history cannot continue to govern, and at *Bruen* Step One felons are part of "the people" with Second Amendment rights; *second*, it could address the erroneous Bruen Step Two analysis made by four Circuits in barring all as-applied challenges to § 922(g)(1); and *finally*, it could resolve the conflict among the three circuits that correctly recognize as-applied challenges, as to what type of prior criminal record renders § 922(g)(1) unconstitutional as applied. Resolving all of these issues in a single case would be the most efficient resolution possible of the multiple Second Amendment as-applied questions now dividing the lower courts.

Fourth, with specific regard to Issue II(C), the lower courts are deeply divided on the standard that should govern an as-applied challenge. Although the government has consistently argued for a tradition of disarming "dangerous" individuals, Petitioner disputes that such a tradition can be shown consistent with *Bruen* and *Rahimi*, because there are no Founding-era analogues that are *both* comparably justified to § 922(g)(1), *and* impose a comparable burden of lifetime disarmament. But indeed, even *if* the government *could* show a longstanding tradition of permanently disarming dangerous individuals who have either misused firearms or otherwise recently engaged in violent conduct, such a tradition would be

irrelevant to a defendant like Petitioner, whose prior violent convictions are more than 15 years old, under either a categorical or fact-based approach.

Fifth, if the Court believes some measure of dangerousness should determine whether § 922(g)(1) is constitutional as applied to a particular defendant, this is the ideal case for the Court to flesh out the contours of such a rule, including which party bears the burden of proof. While the Sixth Circuit in *Williams* placed the burden on the defendant to show he is not dangerous, *Bruen/Rahimi* indicates the Step Two burden is on the government. And here, the government did not even attempt to meet that burden. Nor is there any recent available evidence that could support a finding of current dangerousness.

Sixth, the Court need not and should not wait for further input from other circuits. As of this writing, the Fourth Circuit has aligned itself with the post-*Rahimi* analysis of the Eighth Circuit, and a 10-judge majority of the Third Circuit has aligned itself with the post-*Rahimi* analysis of the Sixth and rejected that of the Fifth. The Tenth and Eleventh Circuits have dug in to their pre-*Bruen* approaches. The Eleventh has refused to reconsider its approach en banc. While the Third and Ninth Circuits have considered both issues presented for review herein en banc, they have reached conflicting conclusions. The Second Circuit is now in lockstep with the Ninth. With the current array of circuit decisions, and conflicting individual opinions from within four of the circuits, the Court now has before it a full panoply of approaches to consider. Any additional Circuit decisions at this juncture will simply exacerbate the already-deep Circuit splits.

Seventh, this Court should grant certiorari in Petitioner's case, and hear it in the term following *United States v. Hemani*, 146 S. Ct. 326 (cert. granted, Oct. 20, 2025) (No. 24-1234). *Hemani* addresses an as-applied challenge to another subsection of § 922(g)—namely, § 922(g)(3) which prohibits possession of a firearm by an "unlawful user" of a controlled substance. In *Florida Commissioner of Agriculture v. Att'y Gen.*, 148 F. 4th 1307 (11th Cir. Aug. 20, 2025), the Eleventh Circuit entertained an as-applied challenge to § 922(g)(3) without hesitation; it applied the *Bruen/Rahimi* framework correctly; and it concluded under that framework that a prosecution of a non-violent Florida medical marijuana user under § 922(g)(3) indeed violated the Second Amendment. *See* 148 F. 4th at 1320-21. Significantly, under the heading "Second Amendment *framework*," the Eleventh Circuit stated in *Florida Commissioner*: "We begin our analysis by laying out the *applicable legal framework for assessing Second Amendment challenges*." *Id.* at 1314 (emphasis added). In thereafter detailing the two analytical steps under the *Bruen/Rahimi* "framework," the Court rightly did not limit the applicability of that framework to only the specific statute there before it: §922(g)(3). Since no logical reason to except § 922(g)(1) but not § 922(g)(3) from the *Bruen/Rahimi* framework and as-applied challenges, the question arises—as aptly posed by Judge Stras in *Jackson II*— "Why one and not the other?" 121 F. 4th at 659.

While admittedly, the Court denied the petition for writ of certiorari filed in *Jackson II*, that denial predated its grant of certiorari in *Hemani*. And it now makes eminent sense to not only consider as-applied challenges to these almost-contiguous

subsections of the same federal statute together given the certiorari grant in *Hemani*, but to do so *in an Eleventh Circuit case* since the Eleventh Circuit's rule is the most extreme. Subsequent Eleventh Circuit panels will continue this willful blindness to *Bruen/Rahimi* ***only*** in § 922(g)(1) cases, which will cause an avalanche of petitions challenging the Eleventh Circuit's obsolete Second Amendment reasoning in *Dubois II*, filed by defendants in Florida, Georgia, and Alabama to flood this Court unless it steps in and "clearly" abrogates the pre-*Bruen* approach in *Dubois II*.

CONCLUSION

Based on the foregoing argument and authority, the petition for certiorari should be granted. Alternatively, if the Court chooses to grant certiorari in another case or set of cases to resolve the issues raised herein, Petitioner asks the Court to hold his case pending its resolution of such case(s). At the very least, it should hold this case until it resolves the related as-applied challenge under § 922(g)(3) in *Hemani* and permit supplemental briefing after it renders that decision.

Respectfully submitted,

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