

No. 25-7465

In the Supreme Court of the United States

ALEX ANTONIO BYNES,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

1. Whether Florida Statute § 790.23, the state law that prohibits a convicted felon from possessing firearms, facially complies with the Second Amendment.

2. Whether the Court should overrule *Williams v. Florida*, 399 U.S. 78 (1970), and hold that the Sixth Amendment requires the use of 12-person juries in serious criminal cases.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE	1
ARGUMENT	3
I. The Court should deny Bynes’ petition for review of his claim that Florida’s felon-in- possession statute is facially unconstitutional.	3
A. The decision below is correct.....	4
B. Lower courts are not divided on the question presented.....	12
C. This case presents a poor vehicle.....	13
II. The Court should hold Bynes’ petition for review of his 12-person jury claim pending disposition of <i>Kian v. Florida</i> , No. 25-6623.	14
CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<i>Cunningham v. Florida</i> , 144 S. Ct. 1287 (2024)	3
<i>Dist. of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	7
<i>Gibson v. State</i> , 16 Fla. 291 (1877)	1
<i>Kanter v. Barr</i> , 919 F.3d 437 (7th Cir. 2019)	10
<i>Kian v. Florida</i> , No. 25-6623, 2026 WL 1718018 (June 15, 2026).....	14
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024)	13
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022).....	4, 5
<i>Sir John Knight’s Case</i> , 3 Mod. 117, 87 Eng. Rep. 75 (K.B. 1686)	5, 11
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024).....	12
<i>United States v. Duarte</i> , 137 F.4th 743 (9th Cir. 2025).....	7, 12
<i>United States v. Gay</i> , 98 F.4th 843 (7th Cir. 2024).....	12
<i>United States v. Hansen</i> , 599 U.S. 762 (2023)	13
<i>United States v. Hernandez</i> , 159 F.4th 425 (5th Cir. 2025).....	13
<i>United States v. Hunt</i> , 123 F.4th 697 (4th Cir. 2024).....	12
<i>United States v. Jackson</i> , 110 F.4th 1120 (8th Cir. 2024).....	12
<i>United States v. Kimble</i> , 142 F.4th 308 (5th Cir. 2025).....	11
<i>United States v. Langston</i> , 110 F.4th 408 (1st Cir. 2024).....	12
<i>United States v. Moore</i> , 111 F.4th 266 (3d Cir. 2024).....	12

<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)...	2, 3, 4, 5, 8, 9, 10, 11, 13
<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	5, 10
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024).....	10, 12, 13
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025).....	12
<i>Wash. St. Grange v. Wash. St. Republican Party</i> , 552 U.S. 442 (2008).....	13
<i>Waters v. State</i> , 1 Gill 302 (Md. 1843)	7
<i>Williams v. Florida</i> , 399 U.S. 78 (1970)	i, 1, 3, 14
<i>Zherka v. Bondi</i> , 140 F.4th 68 (2d Cir. 2025).....	12

Statutes

12 The Colonial Records of the State of Georgia 451 (Allen D. Candler ed., 1907)	7
1790 Act of N.C., A Manual of the Laws of North-Carolina 172 (1814)	7
1795 Mass. Acts ch. 134, § 16, in Acts and Resolves of Massachusetts, 1794–1795, ch. 26 (1896).....	9
18 U.S.C. § 922	11
2 The Lower Norfolk County Virginia Antiquary, pt. 1 (1899)	7
4 <i>Journals of the Continental Congress, 1774–1789</i> (Washington, D.C., Worthington Chauncey Ford ed., Library of Congress 1906).....	8
A Codification of the Statute Law of Georgia ch. 37, § 6, ¶ 45 (William A. Hotchkiss ed., 2d ed. 1848).....	7
Act for Disarming Papists, and Reputed Papists, Refusing to Take the Oaths to the	

Government, Mar. 1756, § 3, 7 Va. Stat. at Large 35 (William Waller Hening ed., 1820).....	6
Act for Forming and Regulating the Militia, Mar. 1757, 5 Pa. Stat. at Large 609 (James T. Mitchell & Henry Flanders eds., 1898)	6
Act for Preventing Negroes Insurrections, 1752, 2 Va. Stat. at Large 481 (William Waller Hening ed., 1823).....	7
Act for Regulating the Militia of the Province of Maryland, 1756, <i>in</i> 52 Proceedings and Acts of the General Assembly of Maryland, 1755–1756 (1935).....	6
Act of 1740, 7 S.C. Stat. at Large 410 (A.S. Johnson ed., 1840)	7
Act of 1775, 15 <i>The Public Records of the Colony of Connecticut, from May 1775, to June 1776</i> (Hartford, Case, Lockwood & Brainard Co. 1890)	8
Act of 1776, 7 R.I. Recs. 566 (John Russell Bartlett ed., 1862).....	6
Act of 1777, ch. 6, § 9, 24 N.C. Recs. 84 (Walter Clark ed., 1905).....	6
Act of Dec. 1775, 15 Conn. Pub. Recs., May 1775–June 1776, at 192 (Charles J. Hoadly ed., 1890)	6
Act of February 17, 1877, ch. 3010, § 6, 1877 Fla. Laws 54.....	1
Act of Mar. 31, 1779, ch. 836, § 5, 9 Pa. Stat. at Large 346 (James T. Mitchell & Henry Flanders eds., 1903).....	6
Act of May 1, 1776, ch. 21, §§ 1–3, 5 Mass. Acts & Resolves 479 (1886)	6
Act of May 5, 1777, ch. 3, 9 Va. Stat. at Large 281 (William Waller Hening ed., 1823)	6

Act of Sept. 20, 1777, ch. 40, § 20, Acts of the General Assembly of the State of New Jersey, Aug. 27, 1776–Oct. 11, 1777, (1777).....	6
Act to Prevent and Suppress Insurrections, 1778, ch. 8, 203 Hanson’s Laws of Md., 1763–1784 (Frederick Green ed., 1787).....	6
Fla. Stat. § 790.23	i, 1, 2, 3, 4, 5, 10, 11, 14
Fla. Stat. § 913.10	1, 2
Militia Act of 1662, 14 Car. 2 c. 3, § 13 (1662)	5, 11
Order of May 21, 1776, 15 <i>Documents Relating to the Colonial History of the State of New York</i> 103 (Albany, Weed, Parsons & Co. 1887).....	6, 9
Records of the Governor and Company of the Massachusetts Bay in New England (1628– 1641) (Nathaniel B. Shurtleff ed., 1853).....	7

Constitutional Provisions

U.S. Const. amend. II.....	4
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Other Sources

Bradley Chapin, <i>Criminal Justice in Colonial America, 1606–1660</i> (1983)	7
Charles Campbell, <i>History of the Colony and Ancient Dominion of Virginia</i> (1860)	7
Fla. Comm’n on Offender Review, <i>Rules of Executive Clemency</i>	13
Joseph G.S. Greenlee, <i>Disarming the Dangerous: The American Tradition of Firearm Prohibitions</i> , 16 Drexel L. Rev. 1 (2024).....	7
William Blackstone, <i>Commentaries on the Laws of England</i> 149 (10th ed. 1787).....	9

STATEMENT OF THE CASE

Florida law prohibits any person from “possessi[ng]” a firearm if that person has been convicted of a felony in a Florida court. Fla. Stat. § 790.23(1)(a). It is a second-degree felony to violate Florida’s felon-in-possession law, punishable by up to fifteen years in prison and a fine not to exceed \$10,000. *See id.* § 790.23(3).

Florida also uses six-person juries to try noncapital criminal defendants—a practice it has maintained since 1877. *See* Act of February 17, 1877, ch. 3010, § 6, 1877 Fla. Laws 54. Both the Florida Supreme Court and this Court have held that the use of six-person juries satisfy the jury-trial guarantees of both the Florida and the federal constitutions, respectively. *See Gibson v. State*, 16 Fla. 291, 300 (1877); *see also Williams v. Florida*, 399 U.S. 78 (1970). Florida therefore has continued its longstanding practice of using six-person juries in trials of noncapital offenses. *See* Fla. Stat. § 913.10.

In January 2023, Alex Antonio Bynes was arrested and charged with possessing a firearm as a convicted felon, in violation of section 790.23(1)(a). C.R. 97–98, 101–102. Bynes was driving at the time of his arrest and was pulled over for a traffic stop. His girlfriend was sitting in the passenger seat, and two men sat in the backseat. C.R. 101. After asking Bynes’ girlfriend to exit the car, the officer saw a firearm sitting in plain view in the center of the passenger seat where the girlfriend had just been sitting. C.R. 101. Although Bynes at first denied knowing about the firearm, he later told the officer that he had been “holding it” for

his “cousin,” had wanted it for “protection,” and was a convicted felon. C.R. 101, 219–21. The firearm was later found to contain two live rounds. C.R. 251. At trial, Bynes testified that he had lied to the officer about possessing the firearm to protect his girlfriend. Tr. 28.

The trial court empaneled a six-person jury as required by Florida law, as Bynes’s crime is not punishable by death. See Fla. Stat. § 913.10. Prior to his trial, Bynes stipulated that he was a convicted felon. C.R. 360. In fact, Bynes had been previously convicted of at least four felonies: aggravated assault with a deadly weapon and unlicensed carry of a concealed weapon in 2007, possession of more than 20 grams of marijuana with intent to sell in 2008, and grand theft of a motor vehicle in 2011. C.R. 124–26; Tr. 99–100.

The jury convicted Bynes of possessing a firearm as a convicted felon, in violation of section 790.23(1)(a). C.R. 89. He was sentenced to five years’ imprisonment, including a three-year mandatory-minimum term. C.R. 90, 120–23.

Bynes appealed his felon-in-possession conviction to Florida’s Fourth District Court of Appeal. Among other claims, he argued for the first time that section 790.23(1)(a) facially violates the Second Amendment because section 790.23’s “total lifetime ban” on firearm possession “does not comport with the historical restrictions on the right to bear arms.” Pet. App. 8a–9a. Specifically, Bynes pointed to historical surety laws and the domestic violence statute at issue in *United States v. Rahimi*, in which a factfinder performed an individualized assessment that a person

poses a clear threat of physical violence before prohibiting him or her from possessing firearms or posting a surety bond. Pet. App. 5a–7a; 602 U.S. 680 (2024). Accordingly, Bynes argued, section 790.23(1)(a) must do the same to facially comply with the Second Amendment. Pet. App. 7a

At no point has Bynes raised an as-applied challenge to the felon-in-possession statute.

Bynes also claimed on appeal for the first time that the Sixth and Fourteenth Amendments entitled him to be tried by a 12-person jury because *Williams* was “incorrectly decided” and does not comport with the public’s “understanding of the Sixth Amendment at the time of the Founding.” Pet. App. 9a–10a (citing *Cunningham v. Florida*, 144 S. Ct. 1287, 1287–88 (2024) (Gorsuch, J., dissenting from denial of certiorari)).

The Fourth District Court of Appeal affirmed Bynes’ conviction without discussion. Pet. App. 1a.

ARGUMENT

I. The Court should deny Bynes’ petition for review of his claim that Florida’s felon-in-possession statute is facially unconstitutional.

In the Second Amendment portion of his petition, Bynes raises the “most difficult challenge to mount successfully”—a facial challenge. *United States v. Rahimi*, 602 U.S. 680, 693 (2024); *see* Pet. 5 (“the facial constitutionality of a statute may be raised for the first time on appeal [in Florida courts]”). Specifically, he argues that section 790.23(1)(a) is facially unconstitutional “in light of *Rahimi*” because Florida’s law

permanently¹ prohibits felons from possessing firearms without first requiring a court to determine whether each individual felon poses a “clear threat of physical violence to another.” Pet. 9–11 (quoting *Rahimi*, 602 U.S. at 698).

For three reasons, the Court should decline to review the first question presented. The state court’s decision was correct on the merits, lower courts are not divided on the issue, and this case suffers from several vehicle problems.

A. The decision below is correct.

The Florida appellate court correctly affirmed Bynes’s conviction. As applied to dangerous felons (like Bynes himself), section 790.23(1)(a) burdens the right of armed self-defense in a manner comparable to relevant historical analogues. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 29 (2022).²

1. The Second Amendment provides that “the right of the people to keep and bear Arms[] shall not be infringed.” U.S. Const. amend. II. In assessing a challenge to the constitutionality of a firearm restriction under the Second Amendment, this Court looks to the constitutional “text and history.” *Bruen*, 597 U.S. at 22. To succeed, the challenger must first show that

¹ Florida offers a clemency process through which a felon’s firearm rights may be “restored,” Fla. Stat. § 790.23(2)(a), so its restriction is not necessarily “life-long,” as Bynes claims, Pet. 8.

² In pending litigation in state court, Florida has taken the position that a felon who is *not* dangerous retains his or her Second Amendment right to bear arms and cannot lawfully be dispossessed under section 790.23(1)(a).

the plain text of the Second Amendment applies to him and his conduct. *See id.* at 24. If it does, “the government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* “Why and how” a particular historical analogue burdens the right to armed self-defense is “central to this inquiry.” *Rahimi*, 602 U.S. at 692.

To succeed in a facial challenge, a litigant must demonstrate that “no set of circumstances exist[] under which” the law would be constitutional. *Id.* at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). In other words, the State must show merely that section 790.23(1)(a) is constitutional in “some of its applications.” *Id.*

2. Applying *Bruen*’s test, section 790.23(1)(a) is undoubtedly constitutional in many applications. History is replete with laws disarming dangerous individuals. Take the early English examples of governments disarming individuals who “misus[e] weapons to harm or menace others,” such as brigands, highway men, and those “judge[d] dangerous to the Peace of the Kingdome.” *Rahimi*, 602 U.S. at 693–94 (citing *Sir John Knight’s Case*, 3 Mod. 117, 118, 87 Eng. Rep. 75, 76 (K.B. 1686); Militia Act of 1662, 14 Car. 2 c. 3, § 13 (1662)). Many of these groups were thought to pose a risk of armed insurrection.

Likewise, early American regulations targeted individuals and groups who were thought to be too dangerous to be trusted with firearms. For example, a number of states disarmed Loyalists and others who

refused to swear an oath to the Union during the Revolutionary War.³ In a similar vein, some American colonies disarmed Catholics who were thought to pose a risk of plotting with France to impose Catholic rule in America.⁴ Other colonies disarmed Protestants, like Anne Hutchinson and her Antinomian followers,

³ See Act of Mar. 31, 1779, ch. 836, § 5, 9 Pa. Stat. at Large 346, 347–48 (James T. Mitchell & Henry Flanders eds., 1903); Act of May 1, 1776, ch. 21, §§ 1–3, 5 Mass. Acts & Resolves 479, 479–81 (1886); Act of May 5, 1777, ch. 3, 9 Va. Stat. at Large 281, 281–82 (William Waller Hening ed., 1823); Act of 1776, 7 R.I. Recs. 566, 567 (John Russell Bartlett ed., 1862); Act of 1777, ch. 6, § 9, 24 N.C. Recs. 84, 89 (Walter Clark ed., 1905); Act to Prevent and Suppress Insurrections, 1778, ch. 8, 203 Hanson’s Laws of Md., 1763–1784, at 193 (Frederick Green ed., 1787); Act of Dec. 1775, 15 Conn. Pub. Recs., May 1775–June 1776, at 192, 193 (Charles J. Hoadly ed., 1890); Order of May 21, 1776, in 15 *Documents Relating to the Colonial History of the State of New York* 102, 103 (Berthold Fernow ed., 1887); Act of Sept. 20, 1777, ch. 40, § 20, Acts of the General Assembly of the State of New Jersey, Aug. 27, 1776–Oct. 11, 1777, at 84, 90 (1777).

⁴ See Act for Forming and Regulating the Militia, Mar. 1757, 5 Pa. Stat. at Large 609, 610 (James T. Mitchell & Henry Flanders eds., 1898) (authorizing seizure of arms belonging to any “papists or reputed papists”); Act for Regulating the Militia of the Province of Maryland, 1756, in 52 *Proceedings and Acts of the General Assembly of Maryland, 1755–1756*, at 454 (1935) (same); Act for Disarming Papists, and Reputed Papists, Refusing to Take the Oaths to the Government, Mar. 1756, § 3, 7 Va. Stat. at Large 35, 36 (William Waller Hening ed., 1820) (“[N]o Papist, or reputed Papist [refusing to take an oath of allegiance] shall, or may have, or keep in his house or else-where, or in the possession of any other person to his use, or at his disposition, any arms, weapons, gunpowder or ammunition[.]”).

who were suspected of sedition,⁵ as well as Puritans in Virginia who were deemed to be “Abettors to much sedition and Munity.”⁶ Laws disarming slaves and freed Blacks⁷ and prohibiting the sale of firearms to Native Americans⁸ were also common. To be sure, many of these categorical restrictions were built on benighted prejudices and would be unconstitutional

⁵ Massachusetts Colony leadership in 1637 convicted Antinomian Anne Hutchinson of sedition. See Bradley Chapin, *Criminal Justice in Colonial America, 1606–1660*, at 102–04 (1983). They banished Hutchinson and several supporters from the colony; but of those permitted to remain, they disarmed 75. See Records of the Governor and Company of the Massachusetts Bay in New England (1628–1641), at 211–12 (Nathaniel B. Shurtleff ed., 1853).

⁶ See 2 The Lower Norfolk County Virginia Antiquary, pt. 1, at 15 (1899) (statement made in court in May 1648); see also Charles Campbell, *History of the Colony and Ancient Dominion of Virginia* 212 (1860).

⁷ See, e.g., *Dist. of Columbia v. Heller*, 554 U.S. 570, 611–12 (2008) (citing *Waters v. State*, 1 Gill 302, 309 (Md. 1843) (“free blacks were treated as a ‘dangerous population,’” leading to laws that “ma[de] it unlawful for them to bear arms”); see also Act for Preventing Negroes Insurrections, 1752, 2 Va. Stat. at Large 481, 481–82 (William Waller Hening ed., 1823); A Codification of the Statute Law of Georgia ch. 37, § 6, ¶ 45, at 813 (William A. Hotchkiss ed., 2d ed. 1848); Act of 1740, 7 S.C. Stat. at Large 410 (A.S. Johnson ed., 1840); 1790 Act of N.C., A Manual of the Laws of North-Carolina 172 (1814); 12 The Colonial Records of the State of Georgia 451, 452 (Allen D. Candler ed., 1907).

⁸ These laws were part of “an ongoing military conflict” and their purpose was “to limit the danger of armed encounters with hostile Native Americans.” *United States v. Duarte*, 137 F.4th 743, 795–96 (9th Cir. 2025) (VanDyke, J., concurring in part and dissenting in part) (citing Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev. 1, 29 (2024)).

under the First or Fourteenth Amendments today. *See Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring) (explaining that the Equal Protection Clause “sought to reject the Nation’s history of racial discrimination, not to backdoor incorporate racially discriminatory and oppressive historical practices and laws into the Constitution”). But courts can still extrapolate from these restrictions a valid “principle[] underlying the Second Amendment,” *id.* at 692, independent of the distorted application of that principle to particular historical facts. The principle is that society disarmed persons deemed to pose a risk of violence or to threaten the public safety, consistent with the well-recognized general right to bear arms. That precept is firmly a part of the original public meaning of the Second Amendment

Laws disarming those who refused to swear loyalty oaths speak to the same principle. Individuals who “have not associated” and who “refuse[d] to associate, to defend, by arms, these United Colonies”⁹ were dangerous or at least possessed qualities or traits indicating that their possession of firearms could threaten the public safety. Such persons were “inimical to the liberties of” the “United Colonies in America,”¹⁰ and thus could not keep their firearms. Some colonies

⁹ 4 *Journals of the Continental Congress, 1774–1789*, at 205 (Washington, D.C., Worthington Chauncey Ford ed., Library of Congress 1906).

¹⁰ Act of 1775, 15 *The Public Records of the Colony of Connecticut, from May 1775, to June 1776*, at 193 (Hartford, Case, Lockwood & Brainard Co. 1890).

went so far as to order that the firearms of the “disaffected persons” be given to Revolutionary soldiers to arm them for war.¹¹

Similarly, surety and “going armed” laws disarmed persons believed to pose a danger to others. *See Bruen*, 597 U.S. at 49–50, 56 & n.23; *see also Rahimi*, 602 U.S. at 695–98. Although surety laws included a judicial determination of dangerousness, such laws nevertheless support the principle that dangerous people could be disarmed. Such laws “targeted the misuse of firearms,” *Rahimi*, 602 U.S. at 696, by requiring those likely to pose a danger to others to post a bond to go “armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon.”¹² Likewise, “going armed” laws prohibited “riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land.” *Id.* at 697–98 (citing 4 W. Blackstone, *Commentaries on the Laws of England* 149 (10th ed. 1787) (emphasis deleted)). Individuals who violated going armed laws were disarmed and “imprison[ed].” *Id.* at 697.

This history reflects that governments may disarm “those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten

¹¹ *See, e.g.*, Order of May 21, 1776, 15 *Documents Relating to the Colonial History of the State of New York* 103 (Albany, Weed, Parsons & Co. 1887) (ordering the supplying of its militias with “such good Arms fit for soldiers use as they may have collected by disarming disaffected persons”).

¹² 1795 Mass. Acts ch. 134, § 16, in *Acts and Resolves of Massachusetts, 1794–1795*, ch. 26, pp. 66–67 (1896); *see also Rahimi*, 602 U.S. at 696 (“At least nine other jurisdictions” passed similar surety laws to Massachusetts’s.).

the public safety.” *Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting).

Florida’s felon-in-possession ban will inevitably entail countless applications to defendants with prior felonies evincing dangerousness. Several easy cases come to mind. A defendant with a prior homicide conviction is dangerous. *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024) (explaining that an offender previously convicted of “murder” can be dispossessed because homicide is “a crime against the body of another human being,” proof that the offender is “dangerous”). Section 790.23(1)(a) could therefore be constitutionally applied to that defendant. Same with the defendant previously convicted of dangerous crimes like rape, arson, terrorism, bombmaking, armed robbery, home-invasion burglary, and the like. *See Williams*, 113 F.4th at 663 (“rape,” “robbery,” “assault,” and “burglary” evince dangerousness). Those categories of modern offenders are relevantly similar to the categories of individuals who were routinely dispossessed of their firearms at the Founding. The existence of these lawful applications of section 790.23(1)(a) defeats any facial challenge under *Rahimi* and *Salerno*.

Yet even if Bynes had brought an as-applied claim, he would lose. Indeed, Bynes is precisely the sort of dangerous felon who lacked Second Amendment rights at the Founding. Of his four previous felony convictions, Bynes’s convictions for aggravated assault with a deadly weapon in 2007 and grand theft of a motor vehicle in 2011 are manifestly dangerous felonies. *See* C.R. 124–26. They are crimes of violence. And Bynes’s aggravated assault conviction involved

violence against another person *with a firearm*. In addition, Bynes’s conviction for possession of more than 20 grams of marijuana with intent to sell in 2008 likewise constitutes a dangerous felony. A person who possesses an amount of drugs sufficient to evince an intent to sell those drugs has demonstrated a willingness to undertake illicit means, potentially including violence, to maintain possession of and access to contraband. *See United States v. Kimble*, 142 F.4th 308, 316 (5th Cir. 2025) (concluding that history and tradition support disarming persons convicted of drug trafficking under 18 U.S.C. § 922(g)(1) because “drug dealers use guns to protect their business” and selling drugs is an “*inherent[ly] violent[t]*” trade).

Thus, Bynes’ own convictions demonstrate that he poses a “clear threat of physical violence to another,” and as a result, he can be lawfully disarmed under section 790.23(1)(a). *Rahimi*, 602 U.S. at 698. The early English laws disarming those who “misus[e] weapons to harm or menace others,” such as brigands, highway men, and those “judge[d] dangerous to the Peace of the Kingdome,”¹³ the laws disarming British Loyalists and religious groups thought to pose a risk of violence towards others, and the surety and going armed laws—all prohibited individuals from possessing firearms who presented a special danger of misusing them. So too does section 790.23(1)(a) as applied to Bynes.

¹³ *See, e.g., Rahimi*, 602 U.S. at 693–94 (citing *Sir John Knight’s Case*, 3 Mod. 117, 118, 87 Eng. Rep. 75, 76 (K.B. 1686); Militia Act of 1662, 14 Car. 2 c. 3, § 13 (1662)).

The state appellate court was thus quite right to reject Bynes’ facial Second Amendment claim.

B. Lower courts are not divided on the question presented.

Additionally, Bynes does not cite a single decision from any court that has held a felon-in-possession statute facially unconstitutional, nor has he pointed to a decision holding that the Second Amendment requires an individualized determination of dangerousness. No such decisions exist.

To the contrary, every court of appeals to consider the facial constitutionality of a felon-in-possession statute since *Bruen* has held that such statutes are constitutional in at least some of their applications. *See, e.g., United States v. Langston*, 110 F.4th 408, 413 (1st Cir. 2024); *Zherka v. Bondi*, 140 F.4th 68, 88–89 (2d Cir. 2025); *United States v. Moore*, 111 F.4th 266, 272–73 (3d Cir. 2024); *United States v. Hunt*, 123 F.4th 697, 705–08 (4th Cir. 2024); *United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024); *United States v. Gay*, 98 F.4th 843, 846–47 (7th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125–29 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025).

And no court of appeals has held that the Second Amendment requires courts to perform an individualized assessment of whether each felon poses a “clear threat of physical violence to another.” Pet. 9 (emphasis removed). Rather, at the very least, courts regard an individual’s criminal history sufficient to establish

whether that person is dangerous. *See Williams*, 113 F.4th at 659–60 (6th Cir.); *United States v. Hernandez*, 159 F.4th 425, 428 (5th Cir. 2025).

The absence of a circuit split regarding these issues further demonstrates that Bynes’s petition does not merit review.

C. This case presents a poor vehicle.

Finally, Bynes’ case suffers from numerous vehicle problems. This Court generally disfavors facial challenges. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024); *Rahimi*, 602 U.S. at 693; *United States v. Hansen*, 599 U.S. 762, 784–85 (2023); *Wash. St. Grange v. Wash. St. Republican Party*, 552 U.S. 442, 450–51 (2008). Bynes has offered no reason why his facial challenge is uniquely suited for review. Were this Court to take up the question of the legality of a felon-in-possession ban, it should do so in a case involving an as-applied claim.

That is especially true given the nature of the question presented. Bynes asks the Court to address whether the Second Amendment forbids a “lifetime ban” on firearm possession by “all convicted felons.” Pet. 10. But Florida’s law does not impose any “lifetime ban.” Instead, it offers a clemency process¹⁴

¹⁴ *See* Fla. Comm’n on Offender Review, *Rules of Executive Clemency* at 7, <https://tinyurl.com/mryr5x4t> (explaining that a person may apply to regain firearms rights when eight years have passed since he completed all terms of his felony sentence, and has no outstanding detainers, criminal charges, victim restitution payments, or pecuniary penalties totaling more than \$1,000).

through which a felon’s firearm rights may be “restored.” Fla. Stat. § 790.23(2)(a). Indeed, the statute under which Bynes was convicted provides that “[t]his section shall not apply to a person . . . whose civil rights and firearm authority have been restored.” *Id.* That statute thus does not even implicate the question presented. Nor has Bynes alleged that he petitioned for clemency and was denied, such that the ban, as applied to him, might be tantamount to a lifetime ban.

On top of that, the appellate opinion below contains no Second Amendment analysis, and Bynes did not present his constitutional challenge to the trial court. This case is thus a poor vehicle for this Court to address the constitutionality of a felon-in-possession prohibition for the very first time.

The Court should deny certiorari as to the first question presented.

II. The Court should hold Bynes’ petition for review of his 12-person jury claim pending disposition of *Kian v. Florida*, No. 25-6623.

In his second question presented, Bynes also contends that this Court should review the Fourth District’s summary decision and use it as a vehicle to overrule *Williams v. Florida*, 399 U.S. 78 (1970). On June 15, 2026, this Court granted review in *Kian v. Florida*, No. 25-6623, 2026 WL 1718018 (June 15, 2026), which presents the identical legal issue. Consequently, the Court should hold Bynes’s petition in abeyance pending resolution of this same issue in *Kian* and then dispose of Bynes’s petition accordingly.

CONCLUSION

The petition for a writ of certiorari should be denied as to Bynes' Second Amendment claim and held in abeyance pending this Court's resolution of *Kian*.

Respectfully submitted.

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