No. _______

In the Supreme Court of the United States

JACKEY WAYNE NUNAMAKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The country is in the midst of a circuit split as to the appropriate resolution of challenges to 18 U.S.C. § 922(g)(1). Three circuits have opened the door to individuals with prior felony convictions retaining their right to possess firearms despite their convictions. Unlike those other circuits, the Tenth Circuit openly rejects application of the *Bruen* analysis when a defendant challenges the constitutionality of 18 U.S.C. § 922(g)(1).

Mr. Nunamaker has previous convictions for violations of Oklahoma Second Degree Burglary. However, Second Degree Burglary is indisputably not generic burglary, as it currently permits convictions based upon breaking into and stealing from vending machines or other coin-operated devices, and earlier versions included breaking into vehicles.

This Petition for Writ of Certiorari poses two questions:

1. Whether the Tenth Circuit's open rejection of *Bruen*, in reliance upon its pre-*Bruen* precedent, is appropriate in light of the current circuit split.

2. What is the appropriate standard to be applied when courts consider whether a particular prior felony offense allows Congress to permanently disarm an individual under penalty of imprisonment?

PARTIES TO THE PROCEEDINGS

Petitioner is Jackey Wayne Nunamaker, and he was the defendant and appellant in the proceedings below.

Respondent is the United States of America, and it was the plaintiff and appellee in the proceedings below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

District Court (*United States v. Nunamaker*, Case No. 24-CR-00278-GKF):

On October 7, 2024, the United States District Court for the Northern District of Oklahoma entered its Opinion and Order denying Mr. Nunamaker's motion to dismiss the indictment. Dkt. No. 31(*See* a004–a019) The District Court entered its Judgment and Commitment on July 8, 2025. Dkt No. 60 (*See* a020–a026).

United States Court of Appeals for the Tenth Circuit (Case No. 25-5112):

Mr. Nunamaker appealed the denial of his motion to dismiss the indictment. On March 16, 2026, the United States Court of Appeals for the Tenth Circuit affirmed the District Court's ruling. The Tenth Circuit's unpublished opinion may be accessed at 2026 WL 733652. (*See* a002–a003)

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

PETITION FOR WRIT OF CERTIORARI

Jackey Wayne Nunamaker respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINION BELOW

The Order and Judgment of the Tenth Circuit is an unpublished decision that may be accessed at 2026 WL 733652. (Pet. App., a002–a003). The District Court's Opinion and Order denying Mr. Nunamaker's Motion to Dismiss the Indictment and its Judgment and Commitment are reproduced in the appendix. (*Id.* at a004–a019).

JURISDICTION

The Tenth Circuit entered judgment on March 16, 2026. Petitioner did not seek rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution declares:

> 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.

The statute of prosecution, 18 U.S.C. § 922(g)(1), states:

> 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. . . .

18 U.S.C. § 921(a)(20) provides:

> The term "crime punishable by imprisonment for a term exceeding one year" does not include –
>
> (A) Any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) Any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

INTRODUCTION

Mr. Nunamaker asks this Court to grant his petition for writ of certiorari, vacate the decision of the Tenth Circuit, and remand for further proceedings. The Tenth Circuit's decision below was compelled by that Circuit's binding precedential decision in *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025).

Since this Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), multiple circuit splits have developed as courts wrestle with applying the *Bruen* analysis to challenges made to 18 U.S.C. § 922(g)(1).

The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have upheld the constitutionality of 18 U.S.C. § 922(g)(1) on a categorical basis as to all felons regardless of the nature of their prior convictions.[1] The Tenth and Eleventh Circuits reject application of the *Bruen* analysis in its entirety as to felons. *See Vincent*, 127 F.4th at 1265–66; *Dubois*, 139 F.4th at 892–94. The Third, Fifth, and Sixth Circuits have opened the door to challengers who claim their prior felony convictions do not permanently disqualify them from possessing firearms.[2] *Range v. Att'y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 467–

[1] *See United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887,892–94 (11th Cir. 2025)

[2] The First, Second, and Seventh Circuits have at least left the door unlocked, if not open. *See United States v. Langston*, 110 F.4th 408, 419–20 (1st Cir. 2024) (rejecting challenge because error was not plain); *United States v. Caves*, No. 23-6176, 2024 WL 5220649, at *1 (2d Cir. Dec. 26, 2024) (same); *United States v. Gay*, 98 F.4th 843, 846–47 (7th Cir. 2024) (assuming as-applied challenges to Section 922(g)(1) possible but rejecting challenge due to defendant's prior criminal history).

70 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024). The Third and Fifth Circuits place the burden upon the United States to demonstrate that the Nation's historical tradition of firearms regulation allows Congress to disarm someone with the prior felonies at issue in a given case.

This circuit split is unacceptable. The Constitution and the rights it protects cannot mean different things and apply differently depending on geographical location. When a right's existence depends upon which court has jurisdiction, it is no right at all. This Court should grant Mr. Nunamaker's petition for writ of certiorari to address the circuit split that has led to some felons remaining free to exercise their right to bear arms while others are being incarcerated for exercising that right.

STATEMENT

A. Factual Background

On August 21, 2024, in Northern District of Oklahoma Case Number 24-CR-278-GKF, the United States charged Jackey Wayne Nunamaker by Indictment with a single count of violating 18 U.S.C. § 922(g)(1): On November 24, 2023, Mr. Nunamaker allegedly knowingly possessed a firearm after being convicted of an offense punishable by imprisonment for a term exceeding one year. The firearm at issue was a Savage Arms, Model MSR-15. The Indictment listed five prior felony convictions:

1. Burglary in the Second Degree in November 2017.
2. Knowingly Concealing Stolen Property in November 2017.
3. Malicious Injury to Property Over $1000 in January 2011.
4. Burglary in the Second Degree in January 2011.
5. Burglary in the Second Degree in January 2011.

Following entry of a guilty plea without a plea agreement, the District Court sentenced Mr. Nunamaker to thirty months in custody of the Bureau of Prisons. (Pet. App'x at a020–a026).

B. Procedural History

Mr. Nunamaker filed a motion to dismiss the indictment for failure to state an offense under Federal Rule of Criminal Procedure 12(b)(3)(B)(v) on the basis that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to him and his prior alleged convictions.

Following briefing by both parties, and argument before the District Court, the District Court denied Mr. Nunamaker's motion to dismiss. (Pet. App'x at a004–a019). Mr. Nunamaker appealed that denial, challenging the constitutionality of his statute of conviction. The Tenth Circuit issued an unpublished Order and Judgment affirming the District Court's ruling on March 16, 2026. (*See* Pet. App'x at a002–a003). Mr. Nunamaker did not seek rehearing.

REASONS FOR GRANTING THE PETITION

I. This Court should grant Mr. Nunamaker's petition for writ of certiorari so it may address a circuit split that causes the Second Amendment to provide greater protection in some parts of the country than in others.

"A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In *Bruen*, this Court established the appropriate constitutional test to resolve questions concerning the legality of regulations impacting the bearing of arms: First, a court must ask whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 24. If the answer is yes, "the Constitution *presumptively* protects that conduct." *Id.* (emphasis added). Then, the government bears the burden to overcome that presumption and establish a regulation's constitutional permissibility by "demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* Then, and only then, "may a court conclude that the individual's conduct falls outside the Second Amendment's *unqualified command*." *Id.* (internal quotation marks omitted and emphasis added). With respect to the second step—consistency with historical tradition—this Court suggested that courts should consider "whether 'historical precedent' from before, during, and even after the founding evinces a comparable tradition of regulation." *Id.* at 27. However, this Court also made it clear that the burden of producing this historical precedent lay with the government, not with the defendant or even the courts; it even discouraged courts from "sift[ing] the historical materials for evidence to sustain" the regulation because "[t]hat is the [government's] burden." *Id.* at 60.

In *United States v. Rahimi*, 602 U.S. 680 (2024), this Court further elaborated on the *Bruen* test and explained that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 692. "Why and how the regulation burdens the right are central to this inquiry." *Id.* Where laws at the founding were designed to address a specific problem, that serves as "a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* On the other hand, even where a law might regulate firearms for permissible reasons, "it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.*

As explained in the Introduction to this Petition, a circuit split has divided the Nation with respect to the rights of individuals convicted of felonies to possess firearms. Five circuits categorically reject the rights of felons to possess firearms. Of those, two refuse to even apply the *Bruen* analysis when defendants challenge the constitutionality of 18 U.S.C. § 922(g)(1). The Tenth Circuit is one of those two circuits. Three circuits have opened the door to challenges. The Fifth Circuit, in particular, has demonstrated a willingness to find Section 922(g)(1) unconstitutional as applied to defendants based upon their criminal history. And the remaining circuits have stayed out of the fray, declining to explicitly rule in either direction in the few cases they have had before them.

A circuit split this extreme cannot be allowed to continue. The fractured state of the law means that Americans are going to prison in some jurisdictions while others find their right to bear arms protected.

The Second Amendment's right to bear arms is, at its core, the right to defend oneself against attack from those who aim to do harm. *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008) (concluding that self-defense "was the central component" of the Second Amendment's right to bear arms (emphasis omitted)); *see also id.*, at 628 ("[T]he inherent right of self-defense has been central to the Second Amendment right."). The right of self-defense belongs to all individuals. As does the right of armed self-defense. This Court's test, as set forth in *Bruen*, "[U]ses history and tradition . . . to identify the scope of the legislature's power to take [the right to bear arms] away." *Diaz*, 116 F.4th at 466 (quoting *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting)). An individual's right to armed self-defense cannot depend on the jurisdiction in which he lives. The Constitution cannot abide such disparities in the law's application.

In the Tenth Circuit, Mr. Nunamaker could not even obtain meaningful review of his conviction under the *Bruen* standard created by this Court. The Tenth Circuit refuses to recognize the applicability of the *Bruen* analysis to challenges to the constitutionality of 18 U.S.C. § 922(g)(1) because it relies on a pre-*Bruen* precedent on this matter. *See United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009); *see also Vincent v. Garland*, 80 F.4th 1197, 1199 & 1202 (10th Cir. 2023), and *Vincent v. Bondi*, 127 F.4th at 1265.

In *Vincent v. Garland*, the Tenth Circuit panel relied upon a two-sentence analysis set forth in *McCane* to conclude that Section 922(g)(1) is constitutional as applied to all felons. 80 F.4th at 1199 & 1202. That panel declared that a later panel of the Tenth Circuit may disregard a prior precedent opinion of the circuit only when a Supreme Court decision "indisputably and pellucidly abrogated" that prior precedential opinion. *Id.* at 1200.

But this Court's decision in *Bruen* indisputably created a new test, and that test held conduct to be presumptively protected when it falls within the plain text of the Second Amendment. 597 U.S. at 24. Yet the panel in *Vincent v. Garland* held that *McCane* remained binding precedent even though *McCane* applied no test and treated felon-in-possession regulations as presumptively lawful rather than presumptively unlawful. *See* 573 F.3d at 1047.

Following this Court's decision in *Rahimi*, this Court granted certiorari, vacated the *Vincent v. Garland* panel's decision, and remanded for further consideration in light of *Rahimi*. *Vincent v. Garland*, 144 S. Ct. 2708 (2024).

On remand, the Tenth Circuit issued its decision in *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025). In an even shorter opinion, the panel explained that *McCane* "relied on *Heller*'s instruction that felon dispossession laws are presumptively valid." *Id.* at 1265. It concluded that "[t]his presumption was reaffirmed in *Rahimi*. So *Rahimi* doesn't clearly abrogate the presumptive validity of § 922(g)(1)." *Id.* (internal citation omitted). Subsequently, the panel held "that *McCane* remains binding." *Id.* at 1266.

But this Court did not reaffirm *Heller*'s statement. Rather, *Rahimi*'s brief discussion of that statement in *Heller* was in direct response to the petitioner's argument in that case that *Heller* invalidated a law that would prohibit gun possession in the home and, since 18 U.S.C. § 922(g)(8) led to a similar outcome, it too must be invalidated. *Rahimi*, 602 U.S. at 699. This Court swiftly rejected that argument and noted that *Heller* referred to similar statutes as "presumptively lawful." *Id.* But this was not an adoption of the *Heller* dicta as binding law moving forward; the question of whether firearms restrictions as to felons was not before this Court. Instead, this was a mere explanation for why *Heller* would not compel striking down every statute that had the collateral consequence of prohibiting firearm possession in the home. As the Chief Justice explained at the conclusion of the majority opinion in *Rahimi*, "[i]n *Heller*, *McDonald*, and *Bruen*, this Court did not 'undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment.' " *Id.* at 702 (quoting *Bruen*, 597 U.S. at 31).

The Tenth Circuit, relying upon *McCane*, has concluded that bans on the possession of firearms by felons are presumptively lawful, which is in direct contradiction to the rule announced in *Bruen*. It is not possible for some restrictions to be presumptively lawful, even without historical support, while most restrictions are presumptively unlawful unless there is sufficient historical support for them. Each regulation must be reviewed, and its constitutionality must be resolved, on its own merits.

This Court could properly grant Mr. Nunamaker's petition for writ of certiorari and summarily reverse the Tenth Circuit's ruling on that ground alone. However, Mr. Nunamaker believes a full merits ruling on the standard to be used in resolving as-applied challenges like those made by Mr. Nunamaker is appropriate.

II. The appropriate standard for determining if a felon may be disarmed and denied their right to possess a firearm must be dangerousness. The test to determine who is dangerous should avoid the pitfall of vagueness. The best test to achieve appropriate outcomes is the categorical approach.

It is inevitable that this Court will eventually have to resolve the question of Section 922(g)(1)'s constitutionality under *Bruen* and, in doing so, will likely have to craft a separate test to determine when a person's felony conviction permits their disarmament. The circuits are hopelessly split in determining whether at least some felons may possess firearms. Those concluding that some felons may possess firearms have failed to create tests that ensure citizens are not subject to vague or ambiguous standards that dictate whether they may possess a firearm.

The Third Circuit rejected blanket prohibitions on felons possessing firearms, and it instead tied the propriety to prohibitions on possessing firearms to dangerousness because not all felonies are created equal. *Range*, 124 F.4th at 230. But the Third Circuit declined to provide a methodology to this approach except to imply that a predicate offense must demonstrate dangerousness. *Id.* at 231–32.

The Sixth Circuit split the baby. It concluded that historical tradition supported class-based disarmament of dangerous people, but it held that history also requires individuals to have an avenue to demonstrate they are not dangerous.

Williams, 113 F.4th at 661–62. The Sixth Circuit would place this burden on an individual, not the government. *Id.* at 657–58.

The Fifth Circuit has seemingly recognized two approaches: One premised on dangerousness, the other premised on historical availability of the death penalty. In *Diaz*, the Fifth Circuit required the United States to "demonstrate that the Nation has a longstanding tradition of disarming someone with a criminal history analogous to" the defendant. 116 F.4th at 467. Since *Diaz*, the Fifth Circuit's main method of determining the constitutional validity of the application of Section 922(g)(1) to punish a given defendant compares the modern predicate felony conviction with potential historical analogues that would have supported severe punishments at the time of the Second Amendment's adoption. *See id*, at 468–70; *accord United States v. Landrum*, 168 F.4th 771, 774 (5th Cir. 2026).

In another decision, the Fifth Circuit also concluded that predicate felony offenses demonstrating a history of violent criminal behavior may also support disarmament. *Schnur*, 132 F.4th 863, 869–70. There, the Fifth Circuit concluded that a prior "crime of violence" conviction justified disarmament because it provided the necessary evidence that a person posed a threat to society if armed. *Id.* at 870.

This second approach remains flawed, but Mr. Nunamaker believes it more closely aligns with the appropriate constitutional framework. Judge Bibas had the right of it when he declared that "[a]s an original matter, the Second Amendment's touchstone is dangerousness." *Folajtar v. Att'y Gen.*, 980 F.3d 897, 924 (3d Cir. 2020)

(Bibas, J., dissenting). This reflects Justice Barrett's dissent in *Kanter v. Barr* while on the Seventh Circuit:

> The historical evidence . . . support[s] a . . . proposition: that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety. This is a category simultaneously broader and narrower than "felons"—it includes dangerous people who have not been convicted of felonies but not felons lacking indicia of dangerousness.

Kanter v. Barr, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting). And given the centrality of the right to defend oneself against harm under the Second Amendment, a dangerousness test ensures that only those whose previous criminal conduct demonstrates they would pose a danger to others if armed have their rights of self-defense constrained.

But the question remains: How do we determine dangerousness? No matter what approach is ultimately taken to resolve the "dangerousness" question, it must provide clear, predictable answers that allow courts to provide consistent outcomes and, more significantly, to allow law enforcement, prosecutors, and citizens to determine if conduct is properly prohibited by law and subject to criminal punishment. If prohibitions on the possession of firearms by felons came with mere civil penalties, a looser approach to the dangerousness analysis might be appropriate. But these prohibitions impose criminal penalties. For example, a person convicted under 18 U.S.C. § 922(g)(1) faces potential imprisonment up to fifteen years. These criminal penalties compel a higher standard for clarity in determining whether a person's conduct is protected or may be prohibited. The absence of a clear standard risks creating a new constitutional problem: vagueness.

The Fifth Amendment guarantees that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This Court's vagueness jurisprudence initially emphasized the need for notice to citizens: A law must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so he may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Later, that emphasis shifted to risks of arbitrary or standardless enforcement. *Kolender v. Lawson*, 461 U.S. 353, 357–58 (1983). "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned*, 408 U.S. at 108–09.

While the *Diaz* approach (whether the crime was historically punishable by death) seems appealing, it captures non-dangerous criminal conduct like forgery and counterfeiting. *Folajtar*, 980 F.3d at 905 (noting that such offenses were punishable by death at the founding). The United States has begun to point this out in its favor when addressing challenges to 18 U.S.C. § 922(g)(1). *See, e.g.*, *United States v. Smith*, No. 24-5106, Opening Brief of United States, Doc. 19, at 21 (10th Cir. March 28, 2025). Thus, that approach captures conduct broader than what is historically supported as a basis for disarmament under threat of criminal punishment. Further, the *Diaz* approach invites the vagueness problem: Whether a particular modern offense has a historical analogue that permits permanent prohibition is difficult to discern without subjecting individuals to arrest and lengthy court proceedings. *See, e.g.*, *United States v. Gomez*, 773 F. Supp. 3d 257 (N.D. Tex. 2025) (holding, after extensive analysis, that persons convicted of felony possession of marijuana could not be prohibited from possessing firearms).

Instead, *Schnur* started down the correct path. The test should ask whether the individual's prior offense[s] are violent or are uniquely dangerous (such as offenses like burglary, robbery, and kidnapping). This approach aligns with Congress's earliest attempt to prohibit the possession of certain firearms by certain people. *See* Federal Firearms Act of 1938, Pub. L. 75-785, 52 Stat. 1250. Thus, Mr. Nunamaker proposes that the categorical and modified-categorical approaches provide the best test to avoid the constitutional vagueness problem while also capturing conduct that demonstrates an individual has a proclivity to engage in violent criminal behavior.

There is much jurisprudence surrounding this test, so it becomes easier to apply than other tests. Crimes that are categorically violent include as an element the use, attempted use, or threatened use of physical force against the person of another. *See, e.g.*, *United States v. Taylor*, 596 U.S. 845, 848 (2022); *Johnson v. United States*, 576 U.S. 591, 594 (2015). Where the prior offense has different manners in which it may be committed, and those different manners are themselves elements of the offense, the modified-categorical approach may be used to determine if the offense is a violent felony. *See Mathis v. United States*, 579 U.S. 500, 505–06 (2016).

And for other offenses that may not necessarily be violent, but nonetheless demonstrate the person poses a unique danger to society if armed, the generic versions of those crimes, along with the categorical approach, can separate the truly dangerous offenses from the non-dangerous offenses. For example, generic burglary can rightly be considered a uniquely dangerous offense because it involves "a crime 'contain[ing] the following elements: an unlawful or unprivileged entry into . . . a building or other structure, with intent to commit a crime.' " *Id.* at 504. But not all burglaries satisfy this definition, and therefore not all burglaries should automatically disqualify a person from ever possessing a gun (and subjecting them to criminal penalties if they do possess a gun).

Mr. Nunamaker's case is a prime example of this in action. He has multiple prior convictions for Second-Degree Burglary. However, in Oklahoma, Second-Degree Burglary may be committed by breaking into a vending machine or similar coin-operated device.[3] Okla. Stat. tit. 21, § 1435 (2022). Those who break into a vending machine are not as dangerous as those who break into a building with the intent to commit a crime therein, and they should not be subject to the same limitations on their Second Amendment rights. Precisely which generic offenses should lead to permanent disarmament may best be left to further historical analysis, but it should be those offenses which demonstrate a proclivity to engage in violent criminal behavior or which pose a unique danger that violence will result from the offense.

This approach allows properly-trained law enforcement and prosecutors to determine whether an individual is violating the law or acting within their Second Amendment rights when they possess a firearm. If law enforcement incorrectly

[3] Earlier versions of this statute, such as were in effect at the time of Mr. Nunamaker's convictions, also included breaking and entering vehicles. *See* Okla. Stat. tit. 21, § 1435 (2017), *superseded on* November 1, 2018.

arrests someone, courts are well-equipped to quickly resolve the error and dismiss the charges under this test. Further, citizens are positioned to obtain legal advice about whether their possession would be protected. Any other test leads to guesswork, protracted litigation, and individuals sitting in jail cells for conduct that is protected by the Constitution.

Mr. Nunamaker's right to possess a firearm, without being subject to criminal punishment, should not change based on where he lives. Nor should his right to meaningful review depend on the jurisdiction in which he is prosecuted. At a minimum, this Court should grant Mr. Nunamaker's petition for writ of certiorari and summarily reverse the Tenth Circuit's decision on the grounds that it has improperly refused to apply *Bruen* to Section 922(g)(1) challenges. However, Mr. Nunamaker believes a full merits decision is appropriate because the nature of his prior convictions should not preclude him from possessing a firearm in the future, nor should they result in his imprisonment for possessing a firearm.

Therefore, Mr. Nunamaker respectfully requests this Court grant his petition for writ of certiorari so that it may resolve the circuit split dividing Second Amendment rights across the nation.

CONCLUSION

For the reasons stated herein, this Court should grant the Petition for Writ of Certiorari and set a schedule for merits briefing in this matter.

Respectfully submitted,

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