

No.

IN THE SUPREME COURT OF THE UNITED STATES

ZANE FLEMING, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a statute banning convicted nonviolent felons from possessing a firearm violates the Second Amendment to the United States Constitution.

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Court are as follows:

Zane Fleming, Petitioner.

State of Florida, Respondent.

RELATED PROCEEDINGS

Seventeenth Judicial Circuit of Florida:

State v. Fleming, 50-2022-CF-006192AXXX-MB

Fourth District Court of Appeal of Florida:

Fleming v. State, 414 So. 3d 175 (Fla. 4th DCA 2025)

Supreme Court of Florida

Fleming v. State, 2026 WL 658959 (Fla. 2026)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Zane Fleming, respectfully petitions for a writ of certiorari to review the judgment in this case of Florida's Fourth District Court of Appeal.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal has been published in the Southern Reporter. It is reported as *Fleming v. State*, 414 So. 3d 175 (Fla. 4th DCA 2025) A copy is reprinted in the appendix. A1-2.

JURISDICTION

This Court has jurisdiction to review final judgments or decrees “rendered by the highest court of a state in which a decision could be had.” 28 U. S. C. § 1257(a).

Florida’s Fourth District Court of Appeal affirmed Petitioner’s convictions and sentences in a written opinion on December 11, 2025. A1-2. Petitioner moved for rehearing and certification of a question of great importance, A3-14, and the Fourth District denied Petitioner’s motion on May 30, 2025. A15.

Petitioner sought to invoke the Florida Supreme Court’s discretionary review. A16-17. The Florida Supreme Court declined to accept jurisdiction on March 9, 2026. A18-19. The opinion of the Fourth District Court of Appeal is the final decree rendered by the highest state court in which a decision could be had.

Petitioner now seeks review at the Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

“No State shall . . . deprive any person of life, liberty, or property, without due process of law.”

II. The Second Amendment to the United States Constitution provides:

“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

III. Section 790.23(1)(a), Florida Statutes, provides:

It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been . . . [c]onvicted of a felony in the courts of this state

This section is reproduced in the appendix. A20-21.

STATEMENT OF THE CASE

The State charged Petitioner (Zane Fleming) with violating section 790.23, Florida Statutes—being a convicted felon in possession of a firearm. A22–23.

Petitioner filed a motion to dismiss the charge, arguing that Florida’s ban on felons possessing firearms violates the Second Amendment, both facially and as applied to him. A24–32.

The trial court held a hearing on Petitioner’s motion. A35–39. At the hearing, the Assistant State Attorney agreed that Petitioner did not have a violent history, and offered only that the statute clearly barred felons from possessing firearms. A38. The judge denied Petitioner’s motion. A38, A55–56.

Petitioner entered into a negotiated plea with the State to a lesser misdemeanor charge of carrying a concealed weapon. A38, A57. Petitioner preserved his right to appeal the denial of his dispositive motion to dismiss the charge against him, and the facts relevant to his motion to dismiss, by written agreed stipulation. A58–60.

On appeal to Florida’s Fourth District Court of Appeal, Petitioner argued that Florida’s felon-in-possession statute violates

the Second Amendment to the United States Constitution, both facially and as applied to him. Specifically, Petitioner argued that no founding-era firearm regulation ever categorically and permanently restricted a person with a nonviolent criminal history from possessing firearms solely because of their felon status, and that his particular circumstances and history did not make him an immediate threat that would support a bar to possession of firearms, let alone a permanent bar. A61–76.

The Fourth District affirmed Petitioner’s convictions in a written opinion. A1–2. The opinion explicitly treats Petitioner as a non-violent felon. The Fourth District affirmed based on what it interpreted to be binding precedent from this Court. The Fourth District cited to this Court’s opinion in *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), as well as a number of cases citing to *Heller* (*McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010), *New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1, 81 (2022), *United States v. Rahimi*, 602 U.S. 680, 682 (2024)). The Fourth District also cited a sister court opinion, as well as federal cases in support of its holding. The Fourth District did note that the holding in *Range v. Attorney General United States*, 124 F.4th 218 (3d Cir.

2024), contradicts its holding in this case.

REASONS FOR GRANTING THE PETITION

Under Florida law, a person who has been convicted of a felony is permanently prohibited from possessing any firearm. Fla. Stat. § 790.23(1) (2021). The reason for this law is “to protect the public by preventing the possession of firearms by persons convicted of certain crimes or who are fugitives from justice.” *Nelson v. State*, 195 So. 2d 853, 855 (Fla. 1967). Trial judges have no discretion in whether to permanently dispossess someone with a felony record. Thus, Petitioner is one of thousands of Floridians who have been permanently deprived of their Second Amendment right to bear arms because of their felon status.

There are four reasons why the Court should grant Petitioner’s petition for a writ of certiorari.

First, the Court should grant Petitioner’s petition for a writ of certiorari because section 790.23 was enacted before the Court decided *Heller*, *Bruen*, and *Rahimi*. All three decisions place burdens on the government’s ability to regulate a person’s right to bear arms that did not exist when the Florida Legislature enacted section 790.23. Review by the Court is needed to ensure section

790.23 complies with Court precedent that issued after its enactment.

Second, the Court should grant Petitioner's petition for a writ of certiorari because section 790.23 conflicts with *Heller*, *Bruen*, and *Rahimi*. There is no historical analogue of a law that permanently prohibited a person from possessing any firearm because of their felon status after they completed their sentences. Section 790.23 strips a sizable portion of Florida's adult population of their Second Amendment protections, based on the legislature's view that felons are unworthy of exercising their Second Amendment right to bear arms.

Third, the Court should grant Petitioner's petition for a writ of certiorari because the Fourth District—as well as appellate courts across the country—misapplied the Court's holding in *Heller*. *Heller* did not preclude courts in Florida from applying *Bruen*'s two-prong test to felon-in-possession statutes, as the Fourth District held below.

And fourth, the Court should grant Petitioner's petition for a writ of certiorari because there is a federal circuit split over the similarly worded federal law that permanently dispossess a person of

their firearms due to their status as a felon. Such a circuit split means that the issue of firearm bans for felons is ripe for the Court’s review.

a. Section 790.23 was enacted before *Heller*, *Bruen*, and *Rahimi*.

The Florida Legislature enacted section 790.23 in 1955. See ch. 29766, § 1, at 422, Laws of Fla. (1955). At that time, the Supreme Court had not yet held that the Second Amendment guarantees an individual right to bear arms. Caselaw up to that point had uniformly held that the Second Amendment protects an individual right to bear arms that has a “reasonable relationship to the preservation or efficiency of a well-regulated militia.” See, *e.g.*, *United States v. Miller*, 307 U.S. 174, 178 (1939).

In 2008, the Court reversed course, holding, in *Heller*, for the first time that the Second Amendment protects an individual right to bear arms that is separate from militia service. *Heller* was decided fifty years after the enactment of section 790.23.

Subsequently, the Court issued two other Second Amendment cases—*Bruen* and *Rahimi*. Those cases cast doubt on a state legislature’s ability to permanently deprive a person of their Second

Amendment right to bear arms due to their felon status. Thus, the Court should grant certiorari to answer the question presented.

In *Heller*, the Court held that at the time of the Founding the right to keep arms was “a common way of referring to possessing arms, for militiamen and everyone else.” 554 U.S., at 583. Hence, the Second Amendment protects an individual right to bear arms that is not connected to militia service. The Court then acknowledged that the Second Amendment right to bear arms is not “unlimited” and can thus be reasonably regulated. *Id.*, at 595. To inform its analysis of whether the regulation at issue in *Heller* was reasonable, the Court looked to historical restrictions on firearm possession. *Id.*, at 626–27, 631–34. However, the Court left the details of how to do that historical analysis in other cases for another day.

As a result, courts across the country struggled to figure out how to use a historical analysis when determining whether a firearm regulation passed constitutional muster. Many of the tests that came out from lower courts combined history with some form of means-end testing.

In *Bruen*, the Court rejected the means-end testing developed

by lower courts across the country. The Court stated that a “judge-empowering ‘interest-balancing inquiry’” would not sufficiently safeguard constitutional rights. *Id.*, at 22. That is because “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Id.*, at 23 (quoting *Heller*, 554 U. S., at 634). The Court thus stated that the proper test for determining whether a firearm regulation passes constitutional muster is whether “the government [can] demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*, at 17. “[T]he government may not simply posit that [a firearm] regulation promotes an important interest.” *Ibid.* The actual question that courts need to consider when analyzing whether an historical tradition exists is “how and why [a] [law] burden[s] a law-abiding citizen’s right to armed self-defense.” *Id.*, at 29.

“To carry its burden, the state or federal government must point to ‘historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation.’” *Edenfield v. State*, 379 So. 3d 5, 7–8 (Fla. 1st DCA 2023) (quoting *Bruen*, 597 U. S., at 27 (internal quotation marks omitted)). That is

because “[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Heller*, 554 U. S., at 634–35. And the most important historical evidence of the Second Amendment’s meaning comes from the founding era. *Ibid.*

The Court shed light on the *Bruen* test’s application in *Rahimi*. There, the Court held that a person who was subject to a domestic violence restraining order and was found to represent a credible threat could be temporarily prohibited from possessing a firearm. *Rahimi*, 602 U.S., at 702. The Court concluded that such a prohibition was facially constitutional because the nation’s tradition of firearm regulation allows the government to temporarily disarm dangerous/violent individuals so long as they present a credible threat to the physical safety of others. *Id.*, at 692.

The key in *Rahimi* is that there was a finding that Mr. Rahimi represented a credible threat. Thus, at the point in time Mr. Rahimi no longer represents a credible threat, he will be allowed to once again possess firearms. See *ibid.* (“[I]f laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for

similar reasons fall within a permissible category of regulations.”); *id.*, at 699 (“Moreover, like surety bonds of limited duration, Section 922(g)(8)’s restriction was temporary as applied to [Mr.] Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant ‘is’ subject to a restraining order. § 922(g)(8). In [Mr.] Rahimi’s case that is one to two years after his release from prison, according to Tex. Fam. Code Ann. § 85.025(c) (West 2019). App. 6–7.”).

In *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), then-Judge Barrett stated that although “[t]he historical evidence . . . support[s] . . . that [a] legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety,” that does not support “the proposition that the legislature can permanently deprive felons of the right to possess arms simply because of their status as felons.” *Id.*, at 454.

In light of the Court’s decisions that have come out since section 790.23 was enacted—*Heller*, *Bruen*, and *Rahimi*—review by the Court is needed to determine if a state legislature can permanently deprive a person of their Second Amendment right due

to their felon status.

b. There is no historical analogue of firearm regulations that permanently prohibited a person of possessing firearms because of their felon status.

For section 790.23 to pass the *Bruen* test, there must be a historical tradition of laws that permanently prohibited felons from possessing any firearm (the how) because they are felons (the why).

The historical record reveals that no such law ever existed. In fact, the State below was unable to point to any such law. Instead, the State cited any law that dispossessed a person who committed a crime. For example, the State argued that history shows that a person facing the death penalty or estate forfeiture were not within the scope of people entitled to possess arms. The State also cited the Militia Act of 1662, which dispossessed people who were dangerous to the peace of the kingdom, laws that dispossessed loyalists to the British Crown who refused to pledge their allegiance to the State, participants in Shays' Rebellion, and slaves, Catholics, and Native Americans for fear of violent revolt.

The State relied on generalized traditions of temporary dispossession laws. Such generalizations are not allowed. See *Bruen*, 597 U. S., at 30 ("To be clear, analogical reasoning under the Second

Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risk[s] endorsing outliers that our ancestors would never have accepted.” (alteration in original) (quotation marks omitted)); see also *McDaniels v. State*, 419 So. 3d 1180, 1194 (Fla. 1st DCA 2025) (“It is not enough to rely on a generalized tradition of firearms regulation, for at that level of abstraction almost any law could be sustained.”).

Finally, the State cited no authority that any of the dispossession laws it cited were permanent or applied only to people who had felony convictions.

Accordingly, the government failed to meet its burden to prove that there is an historical analogue of the government permanently dispossessing a person of firearms because of their felon status after they had completed their sentences, particularly those convicted of nonviolent crimes. The historical record shows only dispossession laws that were temporary in nature and/or involved an individualized determination from a judge that a person was dangerous—as emphasized by the Court in *Rahimi*.

Section 790.23(1) permanently dispossess felons of any firearm; it is not a one-to-two year ban; and it provides no mechanism for getting the right to bear arms returned after a number of years have passed or circumstances have changed—except for asking for a restoration of rights from the governor. No prior firearm regulation has ever categorically and permanently restricted people from possessing firearms because they are a felon, even after their sentence was complete.

c. *Heller* did not preclude future judicial review of felon-in-possession statutes.

Courts in Florida and across the nation have refused to review the constitutionality of felon-in-possession statutes because, according to those courts, the Court in *Heller* held that those laws are “presumptively lawful.” The Fourth District Court did so in this case. Such inaction by courts constitutes a misreading of the Court’s *Heller* decision, and, as noted by the Court in *Bruen*, “judicial deference to legislative interest balancing” is fundamentally inconsistent with the very notion that the Second Amendment protects a fundamental right. 597 U. S., at 26.

In *Heller*, the Court opined that “[a]lthough [it was] not

undertak[ing] an exhaustive historical analysis . . . of the full scope of the Second Amendment, nothing in [its] opinion should be taken [as] cast[ing] doubt on longstanding prohibitions on the possession of firearms by felons.” 554 U. S., at 626. However, the Court did not, at any point in *Heller*, decide the constitutionality of felon-in-possession laws. In fact, “[t]he constitutionality of felon dispossession was not before the Court in *Heller*.” *Kanter*, 919 F.3d, at 453 (Barrett, J., dissenting). The *Heller* opinion is clear: it was not attempting to “clarify the entire field” of firearms restrictions, only those before it, and it would address the historical justifications for disarming felons when the issue was presented to the Court. *Heller*, 554 U.S. at 635. That time has come.

d. The federal circuit courts of appeals are split on the federal felon-in-possession statute.

Finally, the Court should grant certiorari due to a federal circuit split over the constitutionality of the similarly worded federal ban on felons possessing firearms. See 18 U.S.C. § 922(g)(1). Because the federal ban is similar to Florida’s ban, the Court should consider the fact that there is a circuit split regarding the federal ban when deciding whether to grant Petitioner’s petition for

a writ of certiorari in this case.

Since *Bruen*, the federal circuits have chartered diverging paths on whether the federal ban on felons possessing firearms violates the Second Amendment. On one side, there are the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. They held that the federal ban on felons possessing firearms meets constitutional muster. See *United States v. Hunt*, 123 F.4th 697, 704-08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *Browne v. Reynolds*, 150 F.4th 975 (8th Cir. 2025); *United States v. Duarte*, 137 F.4th 743, 747-48 (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, 893 (11th Cir. 2025).

On the other end, the Third Circuit has chartered a different course, holding in *Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024), that the federal felon-in-possession statute does not meet constitutional muster, as the historical record shows that laws that permanently prohibited a person from possessing any firearm even after their sentence is complete because they are a felon did not exist. The Third Circuit stated that during the early years of the Republic, punishments for nonviolent

crimes were often less than what would normally be given. Furthermore, the Third Circuit noted that de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors is not rooted in our Nation's history and tradition. The Third Circuit acknowledged that it is the only federal circuit court to hold as such. The result in Petitioner's case directly conflicts with the result in *Range*, as noted by the Fourth District Court in its opinion.

Range has presented an ideal opportunity for the Court to step in and resolve this issue due to the circuit split. There are now multiple opinions the Court can use to assist them. See *Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (Kavanaugh, J., respecting the denial of certiorari) ("The AR-15 issue was recently decided by the First Circuit and is currently being considered by several other Courts of Appeals. Opinions from other Courts of Appeals should assist this Court's ultimate decisionmaking on the AR-15 issue. (citations omitted)). *Range* remains good law, as the United States failed to timely file a petition for a writ of certiorari, and it has created a circuit split on a federal law. The Court should grant certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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