

No.

IN THE
Supreme Court of the United States

JOSEPH FREDERICK JOHNSON,
Petitioner,

v.

UNITED STATES,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

18 U.S.C. § 922(g)(1) makes it a crime for any person “who has been [previously] convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year” to “possess ... any firearm or ammunition.”

Petitioner’s sole predicate felony is a 2015 state conviction for marijuana cultivation—a non-violent offense involving a substance that the federal government has since rescheduled and many States have legalized. The Tenth Circuit nevertheless affirmed his § 922(g)(1) convictions over his Second Amendment challenge because circuit precedent categorically foreclosed any as-applied challenge, regardless of the predicate offense.

The question presented, on which there is an acknowledged and entrenched 6-3 circuit split, is:

Whether an individual whose sole predicate felony is a non-violent offense may bring an as-applied Second Amendment challenge to § 922(g)(1)’s permanent dispossession of the right to keep and bear arms.

PARTIES TO THE PROCEEDING

Petitioner Joseph Frederick Johnson was
Defendant-Appellant below.

Respondent United States of America was
Plaintiff-Appellee below.

RELATED PROCEEDINGS

United States v. Johnson, No. 25-5159 (10th Cir.
judgment entered Apr. 29, 2026)

United States v. Johnson, No. 4:24-cr-00402-GKF-1
(N.D. Okla. judgment entered Oct. 16, 2025)

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INTRODUCTION

The question presented in this case implicates the core individual right to bear arms; it affects the liberty of millions of Americans; and it has fractured the federal courts of appeals into an entrenched six-to-three split that only this Court can resolve.

Joseph Johnson’s sole predicate for his § 922(g)(1) convictions is a decade-old state marijuana cultivation offense. He has never been convicted of a violent offense. Yet under the Tenth Circuit’s rule, the government permanently strips him of his right to keep and bear arms based on status alone—with no judicial finding of dangerousness and no chance to show that his disarmament lacks historical justification. In the Tenth Circuit and five others, no defendant may bring an as-applied challenge to this permanent disarmament. In the Third, Fifth, and Sixth Circuits, some may.

The circuit split is deep, acknowledged, and intractable. Nine circuits have weighed in, fracturing six to three in precedential and en banc decisions with vigorous dissents on each side. The Solicitor General has previously urged plenary review because this question has “deeply divided” courts, and there is a “special need for certainty about Section 922(g)(1) given the frequency with which the government brings criminal cases under it.” Suppl. Br. for the Federal Parties at 2-4, 10 n.5, *Garland v. Range*, No. 23-374 (U.S. June 24, 2024). This Court itself has addressed the question’s periphery—in *Bruen*, *Rahimi*, and *Hemani*—but not the threshold issue

dividing the circuits. Further percolation will not break the impasse. Only this Court can.

The question presented is a threshold and narrow one. The Court need not resolve every application of § 922(g)(1), devise a comprehensive test for which felons may be disarmed, or even decide the merits of Mr. Johnson's as-applied claim. It need only confirm what its precedents already establish: as-applied challenges to § 922(g)(1) are available when the predicate offense is non-violent. That modest holding would free the categorical circuits to undertake the individualized analysis *Bruen*, *Rahimi*, and *Hemani* demand—and would place the Second Amendment's still-developing post-*Heller* jurisprudence on the right foundation.

The stakes are enormous. Section 922(g)(1) is the third most common basis for federal prosecution and permanently disarms millions of Americans. Under the Tenth Circuit's rule, armed robbery and selling pigs without a license are treated identically: both trigger permanent loss of a fundamental right, with no hearing, no individualized inquiry, and no judicial review. In the circuits that foreclose as-applied challenges, the Second Amendment is, for millions, a right that exists only on paper.

Mr. Johnson asks only for the opportunity to subject his permanent disarmament to the constitutional scrutiny *Bruen*, *Rahimi*, and *Hemani* require. This Court should ensure he gets it.

The Court should grant certiorari.

OPINIONS AND ORDERS BELOW

The Tenth Circuit's unreported decision is available at 2026 WL 1162938 and reproduced at Pet. App. 1a-3a. The district court's unreported judgment and sentence are reproduced at Pet. App. 4a-22a.

JURISDICTION

The Tenth Circuit issued its decision on April 29, 2026. On July 23, 2026, Justice Gorsuch extended the time for filing a petition for a writ of certiorari to August 27, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(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.

18 U.S.C. § 922(g)(1) provides:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

Mr. Johnson is indicted under § 922(g)(1) based solely on a non-violent marijuana cultivation conviction

In December 2024, a federal grand jury indicted Petitioner Joseph Frederick Johnson on two counts of possessing a firearm and ammunition as a felon, in violation of § 922(g)(1). R. 10-11.¹ The charges arose from two police encounters—a routine traffic stop and a welfare check—during which officers discovered that Mr. Johnson possessed a firearm and ammunition. *See* R. 30-31. Both counts depended on his 2015 Colorado marijuana cultivation conviction, a non-violent offense and his only predicate felony. R. 10-11. That conviction, for growing marijuana plants, resulted in probation, not imprisonment, and terminated early. R. 10, 65.

Mr. Johnson moved to dismiss the indictment. R. 13-23. He argued that § 922(g)(1) is unconstitutional as applied to him under the two-step framework announced in *New York State Rifle & Pistol Ass’n, Inc.*

¹ Citations to the unsealed volume I record and supplemental record in the Court of Appeals are identified as “R.” and “Suppl. R.” and can be found at docket entries 19 and 22.

v. Bruen, 597 U.S. 1 (2022). First, his conduct—firearm possession—is protected by the Second Amendment’s plain text, and, as an American citizen, he is one of “the people” it protects. R. 15. Second, the government could not satisfy its burden because no historical tradition permanently disarms people who, like him, were convicted only of non-violent offenses. R. 16-17. He also argued that *United States v. Rahimi*, 602 U.S. 680, 690 (2024), underscores the government’s failure because there, unlike here, the regulation (§ 922(g)(8)) fit within a historical tradition of disarming individuals who threaten physical harm to others. R. 18.

Mr. Johnson acknowledged that binding circuit precedent—specifically, the Tenth Circuit’s opinion in *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026)—foreclosed his challenge. R. 14, 17. He therefore brought the motion to preserve the issue for appellate review. R. 15, 17.

The district court denies Mr. Johnson’s motion

The district court denied Mr. Johnson’s motion, holding that it was bound by *Vincent*, 127 F.4th 1263. Pet. App. 26a.

In *Vincent*, the Tenth Circuit addressed § 922(g)(1)’s constitutionality after this Court granted, vacated, and remanded the case in light of *Rahimi*. *See Vincent*, 127 F.4th at 1264 & n.1. The plaintiff, like Mr. Johnson, had a non-violent predicate felony conviction (bank fraud) and argued that the Second Amendment barred applying § 922(g)(1) to non-violent offenders like

herself. *Id.* The Tenth Circuit disagreed. In a short opinion, it held that *Rahimi* did not abrogate circuit precedent that upheld § 922(g)(1) categorically. *Id.* at 1264-65 (discussing *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)). The court declared its precedent consistent with *Rahimi* and held that “felon dispossession laws are presumptively valid” and § 922(g)(1) is constitutional “for *all* individuals convicted of felonies.” *Id.* at 1265-66 (emphasis added).

The *Vincent* panel acknowledged the circuit split but refused to engage with it. It noted that the Sixth Circuit had concluded that its earlier precedent upholding § 922(g)(1) “is no longer viable” after *Rahimi*. *Id.* at 1265 (citing *United States v. Williams*, 113 F.4th 637, 648 (6th Cir. 2024)). But the *Vincent* panel insisted that its “sole task” on remand was “to consider the effect of *Rahimi*” on its prior precedent, not “to consult historical analogs,” as the Sixth Circuit had. *Id.*; *see id.* at 1265 n.2 (distinguishing Third and Fifth Circuit cases on similar grounds). Because *Rahimi* had “recognized” and “reaffirmed” the principle from *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26 (2008), that “felon dispossession laws are presumptively valid”—the principle at the core of the Tenth Circuit’s pre-*Rahimi* precedent—the court reasoned that its precedent remained intact. *Vincent*, 127 F.4th at 1265. The panel identified the Fourth, Eighth, and Eleventh Circuits as taking the same approach. *Id.*

Bound by *Vincent*, the district court held that “§ 922(g)(1) is facially constitutional and constitutional as applied to Mr. Johnson, without

regard to the nature of his prior conviction.” Pet. App. 26a-27a.

The Tenth Circuit affirms, holding that § 922(g)(1) properly applies to individuals convicted of non-violent offenses

Mr. Johnson then pleaded guilty to both counts but reserved his right to appeal the denial of his motion. R. 79-81. The court sentenced him to 12 months and 1 day of imprisonment with 3 years of supervised release. Pet. App. 7a-9a.

On appeal, Mr. Johnson argued that *Vincent* was wrongly decided and that § 922(g)(1) is unconstitutional as applied to him. He explained that *Bruen*’s framework required the Tenth Circuit to reconsider its pre-*Rahimi* precedent. CA10 Appellant’s Br. 7-9. He acknowledged that *Vincent* was binding, but he sought a ruling to preserve the issue for this Court’s review. *Id.* at 10-11.

The Tenth Circuit affirmed in a short order. Pet. App. 1a-3a. It held that *Vincent*, which “upheld the constitutionality of § 922(g)(1) over a Second Amendment objection as to any individual convicted of a prior felony, including a non-violent felony offender,” “compels” affirmance. Pet. App. 3a. The panel conducted no independent historical analysis.

REASONS FOR GRANTING THE WRIT

I. The Circuits Are Irreconcilably Split 6-3 Over Whether Individuals Convicted Of Non-violent Felonies May Bring As-Applied Challenges To § 922(g)(1).

Bruen “represented a sea-change in Second Amendment jurisprudence.” *United States v. Dorsey*, 105 F.4th 526, 530 (3d Cir. 2024). *Bruen* established that firearm possession is “presumptively protect[ed]” by the Second Amendment’s plain text and that a firearm regulation is unconstitutional unless the government demonstrates it is consistent with historical tradition. 597 U.S. at 17, 24. *Rahimi* refined that methodology, “applied [it] to the facts of th[e] case,” and upheld § 922(g)(8) only because the government showed a historical tradition of temporarily disarming “individuals who pose a credible threat to the physical safety of others.” 602 U.S. at 690, 693.

Following these decisions, the circuits split over whether defendants may bring as-applied challenges to § 922(g)(1). This precise, “robust,” and deep split fills pages of the federal reporters and has left lower courts in disarray. *United States v. Mancilla*, 155 F.4th 449, 454 n.5 (5th Cir. 2025) (Elrod, C.J., concurring). Three circuits (the Third, Fifth, and Sixth) permit such challenges in some cases; six circuits (the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh) categorically bar as-applied challenges, regardless of the nature of the predicate.

A. Three circuits permit as-applied challenges by non-violent offenders.

1. The en banc Third Circuit held that § 922(g)(1) cannot constitutionally disarm a defendant whose sole predicate was a non-violent conviction for food-stamp fraud. *Range v. Att’y Gen.*, 124 F.4th 218, 222-23 (3d Cir. 2024). Ten judges joined the opinion; three concurred in the judgment; and two dissented. The majority recognized that *Bruen* “abrogated” the circuit’s prior “Second Amendment jurisprudence,” including precedents categorically upholding § 922(g)(1). *Id.* at 225. It then applied *Bruen*’s two-step framework and sustained the as-applied challenge because the defendant’s conduct fell within the Second Amendment’s plain text and the government failed to identify a historical tradition of disarming non-violent felons. *Id.* at 225-32.

At step one, the court held that felons “remain[] among ‘the people’” protected by the Second Amendment. *Id.* at 226-28. At step two, it held that the government failed its historical burden because the earliest federal felon-in-possession law postdated the Founding Era and reached only *violent* offenders, not those convicted of fraud not “closely associated with physical danger.” *Id.* at 228-32. *Heller*’s reference to “longstanding” “felon-in-possession prohibitions” did not decide the issue because neither the government nor this Court had conducted the requisite historical analysis; and *Rahimi* simply “bless[ed] disarming (at least temporarily) physically dangerous people.” *Id.* at 228-29 & n.8, 230; *see also*, e.g., *Pitsilides v. Barr*, 128 F.4th 203, 213 (3d Cir. 2025) (remanding where predicate “bookmaking and

pool selling offenses” did not “involve inherently violent conduct”).

2. The Fifth Circuit likewise rejects categorical disarmament under the analysis *Bruen* and *Rahimi* require.

In a unanimous panel opinion, the court recognized that its precedents categorically upholding § 922(g)(1) were “obsolete” under *Bruen*’s “new historical paradigm.” *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024) (citation omitted). It dismissed *Heller*’s references to “longstanding” felon-in-possession prohibitions as “dicta” that cannot substitute for the historical analysis *Bruen* and *Rahimi* require. *Id.* at 465-66.

The court then performed that analysis and held that the government met its burden—but only because the defendant’s specific predicate, theft, sufficiently resembled capital offenses during the colonial era. *Id.* at 468-70. Critically, the court made clear that “[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and [*Rahimi*].” *Id.* at 469. The court declined to “foreclose future as-applied challenges by defendants with different predicate convictions.” *Id.* at 470 n.4.

The Fifth Circuit has since applied that approach to a series of non-violent predicates. In one case, the predicate was, as here, marijuana-related, and the court found no historical analog for permanently disarming someone on that basis. *United States v. Mitchell*, 160 F.4th 169, 174, 189-94 (5th Cir. 2025) (contrasting “non-violent” offenses with “violent” and

“dangerous” conduct, for which there is a “historical tradition” of disarmament). In another, it held § 922(g)(1) unconstitutional as applied to a defendant whose sole predicate was failure to pay child support. *United States v. Cockerham*, 162 F.4th 500, 504-07 (5th Cir. 2025). And in yet another, a divided panel held that attempted marijuana cultivation—the same predicate as Mr. Johnson’s—“clearly does not fit” within the historical categories justifying permanent disarmament, because “the Government does not dispute that there is nothing dangerous or violent in attempting to grow a marijuana plant.” *United States v. Doucet*, No. 24-30656, 2025 WL 3515404, at *4 (5th Cir. Dec. 8, 2025); see *United States v. Hembree*, 165 F.4th 909, 914-18 (5th Cir. 2026) (applying *Doucet* to methamphetamine possession).

3. The Sixth Circuit has similarly “revisit[ed]” its § 922(g)(1) cases after *Bruen* and *Rahimi*. *United States v. Williams*, 113 F.4th 637, 645 (6th Cir. 2024). Judge Thapar, joined by Judge Kethledge in full and Judge Davis concurring in the judgment, wrote an opinion abrogating circuit precedent upholding § 922(g)(1) as applied to all felons—concluding that *Bruen* and *Rahimi* mandated a “new” mode of analysis in which courts “consult historical analogs.” *Id.* at 645-48. The court found its prior cases “inconsistent with” that mandate because they relied on *Heller*’s “one-off reference to felon-in-possession statutes.” *Id.* at 648 (characterizing reference as “dicta”).

The court concluded that “§ 922(g)(1) might be susceptible to an as-applied challenge in certain cases.” *Id.* at 657. Restricting the Second Amendment

“only to” “law-abiding ... citizens”—to the categorical exclusion of all felons—is inconsistent with “the individualized nature of the right to keep and bear arms.” *Id.* at 646. History, the court found, shows a tradition of disarming people deemed “dangerous,” with “certain categories of past convictions” being “highly probative of dangerousness, while others are less so.” *Id.* at 658-59. “[V]iolent crimes” provide “strong,” “if not totally dispositive” evidence of dangerousness; non-violent crimes like “mail fraud” “cause no physical harm,” “don’t make a person dangerous,” and do not justify disarmament. *Id.* Because the defendant’s convictions were for aggravated robbery with a deadly weapon and attempted murder, the court rejected his challenge. *Id.* at 662. But it emphasized that “courts” should “have no trouble” sustaining challenges involving non-violent predicates. *Id.* at 659.

The Third, Fifth, and Sixth Circuits therefore agree on the threshold question: § 922(g)(1) is not all-or-nothing, and a categorical bar on as-applied challenges is incompatible with *Bruen* and *Rahimi*. Each permits a defendant to bring an as-applied challenge when lifetime disarmament rests solely on a non-violent predicate. They differ only on downstream questions—such as what criminal-record evidence courts may consider, see *United States v. Debrow*, 183 F.4th 402, 405-06 (5th Cir. 2026)—but not on the question presented.

B. Six circuits, including the Tenth Circuit, categorically bar all as-applied challenges to § 922(g)(1), regardless of the nature of the predicate offense.

In the Tenth Circuit and five sister circuits—the Second, Fourth, Eighth, Ninth, and Eleventh—the courthouse doors are shut to as-applied Second Amendment challenges to § 922(g)(1). The bar applies regardless of whether the predicate offense involved violence or has a historical analog justifying disarmament. These circuits have clung to pre-*Bruen* precedents categorically upholding § 922(g)(1) and rely heavily on *Heller*’s dictum that “longstanding prohibitions on the possession of firearms by felons” are “presumptively lawful,” 554 U.S. at 626, 627 n.26—even though *Heller* neither concerned those prohibitions nor analyzed their historical basis.

1. The Tenth Circuit’s decision in *Vincent*, decided on remand after *Rahimi*, is illustrative. *See supra* 5-6. The court concluded that *McCane*, its 2009 precedent “uph[olding] the constitutionality of § 922(g)(1)” regardless of “the type of felony involved,” “remains binding” notwithstanding *Rahimi*. *Vincent*, 127 F.4th at 1265-66; *see also Vincent v. Garland*, 80 F.4th 1197, 1199-1202 (10th Cir. 2023) (vacated decision similarly concluding that *Bruen* did not affect its precedent). *McCane* “relied on *Heller*’s instruction that felon dispossession laws are presumptively valid,” which *Rahimi* purportedly “reaffirmed.” *Vincent*, 127 F.4th at 1265; *see also Vincent*, 80 F.4th at 1201-1202 (similarly concluding that *Bruen* did not disturb this presumption). On that basis, the court concluded that *Rahimi* had not “indisputably and

pellucidly abrogated” *McCane*. *Vincent*, 127 F.4th at 1265; *see Vincent*, 80 F.4th at 1202 (same with respect to *Bruen*).

The court expressly disclaimed any obligation to “consult historical analogs,” even while acknowledging that *Bruen* and *Rahimi* “reiterated” the importance of doing so. *Vincent*, 127 F.4th at 1265. Its “sole task,” it reasoned, was to determine whether *Rahimi* clearly abrogated *McCane*, not to perform the historical analysis *Bruen* demands. *Id.*; *see Vincent*, 80 F.4th at 1200 (similarly explaining that its task was not to jettison *McCane* even if *Bruen*’s “new test” “might have ... undermined” it).

The result was as astounding as it was irreconcilable with *Bruen* and *Rahimi*. The *Vincent* defendant, whose sole predicate was bank fraud, had no avenue to challenge her permanent disarmament. 127 F.4th at 1266. The court “rejected” any “individualized inquiry” and held that § 922(g)(1) applies to *all* felons, including “nonviolent offenders” like her. *Id.* (citation omitted). The Tenth Circuit has since rejected as-applied challenges involving similar non-violent predicates. *See, e.g., United States v. Warner*, 131 F.4th 1137, 1147-49 (10th Cir. 2025) (larceny or embezzlement); *United States v. Baker*, 155 F.4th 1188, 1206 (10th Cir. 2025) (wire fraud).

2. The Eleventh Circuit followed. In a case on remand after *Rahimi*, the court also rejected the argument that “nonviolent felons maintain a Second Amendment right to possess firearms.” *United States v. Dubois*, 139 F.4th 887, 889 (11th Cir. 2025), *reh’g*

en banc denied (Sept. 2, 2025). It explained that neither *Bruen* nor *Rahimi* “clearly abrogated” circuit precedent permitting § 922(g)(1) to “disqualify[] felons from possessing a firearm under any and all circumstances.” *Id.* at 891, 893 (citation omitted). Like the Tenth Circuit, it relied on *Heller*’s passing language about felon-in-possession prohibitions, treating it as undisturbed by *Bruen* and “endorsed” by *Rahimi*. *Id.* at 892. Two judges wrote separately to explain their view that Founding-era history also supported applying § 922(g)(1) categorically. *Id.* at 894-900 (Pryor, C.J., joined by Rosenbaum, J., concurring).

The Eleventh Circuit has applied that categorical rule even when the predicate was marijuana or other drug-possession offenses. *See, e.g., United States v. Joy*, No. 24-12302, 2026 WL 1602074, at *2 (11th Cir. June 4, 2026); *United States v. Rider*, No. 23-13043, 2025 WL 1684304, at *1-*3 (11th Cir. June 16, 2025).

3. The Second, Fourth, Eighth, and en banc Ninth Circuits likewise reject the “need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). Although these courts discuss history, they reach the same bottom line: no defendant, however non-violent the predicate, may challenge § 922(g)(1). *See Mancilla*, 155 F.4th at 454 n.5 (Elrod, C.J., concurring) (citing *Jackson*, 110 F.4th 1120, *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc), *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), and *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024)).

The Eighth Circuit reasoned that all felons may be permanently disarmed because they have “demonstrated disrespect for legal norms of society.” *Jackson*, 110 F.4th at 1127-29. It also relied on *Heller*’s language about felon-in-possession prohibitions, which it believed *Bruen* and *Rahimi* bolstered. *Id.* at 1125, 1128-29. Dissenting from the denial of rehearing en banc, judges responded that *Heller*’s “recycled” and “overused” “dictum” cannot “insulat[e] [§ 922(g)(1)] from Second Amendment scrutiny of *any* kind.” *United States v. Jackson*, 121 F.4th 656, 658 (8th Cir. 2024) (Stras, J., joined by Erickson, Grasiz & Kobes, JJ., dissenting). They explained that “[t]here is no Founding-era analogue for such a sweeping and indiscriminating rule,” which disarms even “non-dangerous felons” and leaves them no “way to prove” they should retain their Second Amendment rights. *Id.* at 657 (citation omitted). Nonetheless, the Eighth Circuit has applied its categorical rule to non-violent offenses including “marijuana possession.” *United States v. Peck*, 131 F.4th 629, 632 (8th Cir. 2025).

The Second, Fourth, and en banc Ninth Circuits likewise hold that neither *Bruen* nor *Rahimi* affects circuit precedent “reject[ing] ... the need for any case-by-case inquiry” under § 922(g)(1). *Hunt*, 123 F.4th at 703-04; *Duarte*, 137 F.4th at 750-52; *Zherka*, 140 F.4th at 74-75, 91-94. Each relies on *Heller*’s dicta. *Hunt*, 123 F.4th at 703-04; *Duarte*, 137 F.4th at 750-52; *Zherka*, 140 F.4th at 72-73. And each reads history as “confirm[ing]” the categorical application of § 922(g)(1). *Duarte*, 137 F.4th at 752, 756-61 (explaining that § 922(g)(1) reflects Congress’s permissible judgment broadly deeming felons

dangerous); *see Zherka*, 140 F.4th at 77-91 (similar); *Hunt*, 123 F.4th at 705-08 (similar). Accordingly, each has held that “§ 922(g)(1) is constitutional as applied to ... non-violent felons” and foreclosed any challenge based on the nature of the underlying offense. *Duarte*, 137 F.4th at 748, 762 (offenses included vandalism and evading a peace officer); *see Zherka*, 140 F.4th at 70-71, 91-93 (bank and tax fraud); *Hunt*, 123 F.4th at 700, 701-02 (breaking and entering). In the Ninth Circuit, this holding produced a fractured ruling—with one judge dissenting on the merits of the Second Amendment challenge because neither this Court’s “holdings and reasoning” nor any historical tradition “justify disarming non-violent felons.” *Duarte*, 137 F.4th at 784, 805 (VanDyke, J., concurring in the judgment in part and dissenting in part); *see also id.* at 766 (Collins, J., concurring in the judgment) (writing separately because majority’s analysis overread history and “sounds like rational basis review”); *id.* at 762 (R. Nelson, J., joined by Ikuta, J., concurring in the judgment) (concurring on appellate-preservation grounds). Nonetheless, the court has shown no indication that it will revisit § 922(g)(1)’s constitutionality.²

² Each circuit has since summarily rejected similar challenges premised on non-violent predicates. *See, e.g., United States v. Jones*, No. 23-422, 2026 WL 1122111, at *3 (9th Cir. Apr. 24, 2026) (driving under the influence); *United States v. Johnston*, No. 24-4661, 2025 WL 1720519, at *1 (4th Cir. June 20, 2025) (non-violent drug offense and driving under the influence); *United States v. Horan*, No. 24-1683-CR, 2025 WL 3526043, at *1 (2d Cir. Dec. 9, 2025) (unlicensed operation of a motor vehicle).

The rule in these six circuits is absolute: Anyone permanently disarmed under § 922(g)(1) cannot challenge that disarmament under the Second Amendment. The rule applies no matter how old, minor, or bloodless the offense; even though several of these circuits acknowledge that felons remain among “the people” protected by the Second Amendment. *See Duarte*, 137 F.4th at 752-55; *Zherka*, 140 F.4th at 75-77.

This split is intractable. Both sides have assessed *Bruen* and *Rahimi* and reached diametrically opposed conclusions in precedential and en banc opinions with vigorous dissents. Dozens of thoughtful judges, doing their level best, have fractured again and again on this question. *Compare Range*, 124 F.4th at 290-95 (Shwartz, J., dissenting), *with Duarte*, 137 F.4th at 779-805 (VanDyke, J., concurring in the judgment in part and dissenting in part). The circuits themselves acknowledge the divide, describing their “entrenched circuit split,” *Mitchell*, 160 F.4th at 178, and observing they “require[d]” this Court’s “instruction” before they could conclusively resolve § 922(g)(1)’s constitutional application. *Dubois*, 139 F.4th at 893-94. The few remaining circuits to weigh in have simply declined to choose a side. *See, e.g., United States v. Richardson*, --- F.4th ---, No. 24-3151, 2026 WL 2451537, at *3 (D.C. Cir. Aug. 21, 2026); *United States v. Fort*, 176 F.4th 1, 7-8 (1st Cir. 2026); *cf. United States v. Watson*, 171 F.4th 1012, 1024-25 (7th Cir. 2026) (“reserv[ing] ruling on an as-applied challenge to § 922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not

‘dangerous’’). Further percolation will not resolve this conflict. Only this Court can.

To break the impasse, this Court need only resolve the question presented. Whether as-applied challenges to § 922(g)(1) are cognizable at all is a narrow, threshold issue. If this Court holds they are, it can leave it to the lower courts to continue assessing the downstream questions that arise when courts evaluate those challenges. *See supra* 12.

II. The Categorical Approach Conflicts With *Bruen*, *Rahimi*, And *Hemani*, And Is Wrong.

By foreclosing all as-applied challenges to § 922(g)(1), the categorical circuits exempt an entire category of firearm regulation from the constitutional scrutiny *Bruen* requires. A right that can never be vindicated “is no constitutional guarantee at all.” *Bruen*, 597 U.S. at 23 (quoting *Heller*, 554 U.S. at 634). A rule that treats armed robbery and marijuana cultivation identically cannot be squared with a framework that demands “relevantly similar” historical analogs. *Id.* at 29. The “how” and “why” matter, *id.*; a rule that refuses to examine either defies this Court’s precedent.

A. *Bruen*, *Rahimi*, and *Hemani* establish that disarmament requires historically grounded, individualized justifications, not categorical status-based bans.

Bruen made clear that the Second Amendment “presumptively protects [individual] conduct” covered by its “plain text.” 597 U.S. at 24. *Rahimi* applied that

rule and upheld § 922(g)(8) because temporary disarmament took effect “only once a court has found that the defendant ‘represents a credible threat to the physical safety’ of another.” 602 U.S. at 699 (quoting § 922(g)(8)(C)(i)). The statute thus “matche[d] the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* Those analogs required an *individualized* determination of dangerousness *before* disarmament—not a categorical prohibition.

The “why” of this historical tradition was preventing harm by dangerous individuals. *Id.* at 690, 693, 698. That principle presupposes an *individualized* dangerousness inquiry. “[A] court must be careful not to read a principle at such a high level of generality that it waters down the right.” *Id.* at 740 (Barrett, J., concurring). Treating “dangerousness” as a catch-all to disarm *all* felons reads the tradition at precisely that impermissible level of abstraction.

The Tenth Circuit’s rule *permanently* disarms a person based on status alone, without any finding of dangerousness, any hearing on the arms question, or any temporal limit. If the Second Amendment tolerates temporary disarmament only when the government demonstrates a threat and provides predeprivation process, it cannot tolerate permanent disarmament where neither safeguard exists and the predicate offense involved no violence.

“[F]acial challenge[s]” cannot fully protect Second Amendment rights because they “necessarily leave[]

open the question whether the statute might be unconstitutional as applied in ‘particular circumstances.’” *Id.* at 713 (Gorsuch, J., concurring) (citation omitted). That includes, for example, “whether the government may disarm a person without a judicial finding that he poses a ‘credible threat’ to another’s physical safety,” or “whether the government may disarm an individual permanently.” *Id.* Those are not questions the Court must answer now. It need only decide whether courts may ask those questions at all. *See Kanter v. Barr*, 919 F.3d 437, 467 (7th Cir. 2019) (Barrett, J., dissenting).

Hemani punctuates the point. This Court unanimously held that § 922(g)(3) violated the Second Amendment as applied to a marijuana user, rejecting the government’s effort to “automatically strip [a defendant] of his Second Amendment right to possess a firearm because he uses marijuana a few times a week.” *United States v. Hemani*, 146 S. Ct. 1677, 1693 (2026). Recognizing the “[s]eismic changes” in this nation’s treatment of marijuana, the Court declined “to suggest that the millions of Americans who now regularly use marijuana are categorically and unusually dangerous.” *Id.* Petitioner’s predicate is a 2015 Colorado marijuana cultivation—the very category of non-violent, drug-related conduct that *Hemani* held insufficient to justify disarmament absent individualized proof of dangerousness.

B. *Heller*’s “presumptively lawful” dictum does not foreclose as-applied challenges.

The categorical circuits rely on *Heller*’s statement that “longstanding prohibitions on the possession of

firearms by felons” are “presumptively lawful regulatory measures.” 554 U.S. at 626, 627 n.26. That dictum cannot bear the weight placed on it.

Heller concerned a District of Columbia ban on handgun possession in the home. *Id.* at 573-74. It did not decide the constitutionality of felon-in-possession laws. The passage referencing those laws appeared in a non-exhaustive list, *id.* at 626-27 & n.26. And the Court cautioned that “since this case represents this Court’s first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field.” *Id.* at 635.

Lower courts may not “rest [their] interpretation of the basic meaning” and “scope” of a constitutional right “upon such ... dictum in a case where the point was not at issue and was not argued.” *Id.* at 625 & n.25; see *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (“I agree with the majority that *Heller*’s dictum does not settle the question before us.”). The categorical circuits nevertheless treat that dictum as controlling. See, e.g., *Vincent*, 127 F.4th at 1265.

Nor could the dictum bind because *Heller* did not “undertake an exhaustive historical analysis ... of the full scope of the Second Amendment.” 554 U.S. at 626. Put another way, *Heller* could not have held that § 922(g)(1) is valid in all applications because it did not conduct the text, history, and tradition analysis *Bruen* requires. Treating armed robbery and marijuana cultivation as historically identical—simply because both offenses are “punishable by imprisonment for a term exceeding one year”—reinstates the means-end scrutiny *Bruen* forbids. It

makes Congress's policy judgment dispositive instead of requiring historical support for the specific application.

Even on its own terms, a “presumption” is rebuttable. The categorical circuits have converted *Heller*'s restraint into an irrebuttable rule, treating a footnote as a holding that no felon may challenge § 922(g)(1). “Making the leap from *presumptively* constitutional to *always* constitutional ... is too much for that overused line to bear, no matter how you read it.” *Jackson*, 121 F.4th at 658 (Stras, J., dissenting from denial of reh'g en banc).

Hemani confirms the point. The Court expressly “d[id] not address ... § 922(g)(1)'s provision disarming individuals convicted of felonies (often including drug-related ones).” 146 S. Ct. at 1693. That reservation would be pointless if *Heller* had already decided the question.

More fundamentally, *Hemani* reinforces the methodology: the text-history-and-tradition framework must be applied rigorously to the specific regulation, individual, and historical analogs. *See id.* at 1686 (rejecting the government's argument that “[i]t doesn't matter what controlled substance an individual uses, in what amounts he does so, or whether his drug use has ever made him a danger to himself or others”). The Court rejected the government's insistence that it need not “show that a particular individual is regularly incapacitated,” since § 922(g)(3) otherwise “sweeps in large numbers of people without regard to whether their substance use has the kind of incapacitating effect on them that

historical habitual drunkard laws normally required.” *Id.* at 1689. Because it was “far from obvious” that the statute “confines its reach to those who are categorically and unusually dangerous,” the government had to show individualized dangerousness. *Id.* at 1692; *see id.* at 1693.

The categorical circuits reject that approach. But “affording the government that kind of ‘broad power to designate any group as dangerous and thereby disqualify its members from having a gun’ would risk allowing it to ‘quickly swallow’ the Second Amendment.” *Hemani*, 146 S. Ct. at 1693 (quoting *Kanter*, 919 F.3d at 465 (Barrett, J., dissenting)). “*Hemani* shows that it may be essential to evaluate current dangerousness case by case to resolve an as-applied challenge.” *United States v. Rose*, 180 F.4th 930, 935 (7th Cir. 2026).

C. The historical record does not support categorical disarmament of all felons.

“History does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons.” *Kanter*, 919 F.3d at 464 (Barrett, J., dissenting); *see id.* at 461 (“[H]istory confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one’s status as a convicted felon or to the uniform severity of punishment that befell the class.”). The government bears the burden of demonstrating that § 922(g)(1)’s categorical disarmament is “part of” our historical tradition. *Bruen*, 597 U.S. at 19. It cannot.

The first federal felon-in-possession law was not enacted until 1938 and prohibited only certain violent felons from *receiving* firearms; it was not until 1961, “some 170 years after the Second Amendment’s ratification,” that Congress extended the ban to *possession* by *all* felons. *Range*, 124 F.4th at 229.

No jurist or scholar has “been able to identify” “founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a” sweeping prohibition. *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). At the Founding, “[p]eople considered dangerous lost their arms. But being a criminal had little to do with it.” *United States v. Jackson*, 85 F.4th 468, 472 (8th Cir. 2023) (Stras, J., dissenting from denial of reh’g en banc). The historical tradition regulated *dangerousness*, not *status*. The dangerousness principle requires “proportionality and tailoring between the government’s interests and the burden on the right,” “support[ing] a distinction between some felonies and others.” William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1511 (2024). The surety and going-armed laws *Rahimi* identified as historical analogs “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” 602 U.S. at 699. Those laws left room for “individuals ... to show they were not as dangerous as the government thought.” *Jackson*, 85 F.4th at 476 (Stras, J., dissenting from denial of reh’g en banc). Thus, even presumptive disarmament came with a right to contest it. *See United States v. Cordova*, 176 F.4th 381, 396 (5th Cir. 2026) (Oldham, J., concurring) (“[T]he early American evidence shows

that disarmament can be applied only to certain dangerous criminals, and even then they had a chance to contest their dangerousness.”). No Founding-era regime imposed permanent, irrebuttable disarmament on an “otherwise free citizen” based solely on a non-violent offense, much less denied him any avenue to challenge it. *Range*, 124 F.4th at 249 (Phipps, J., concurring).

The categorical circuits identify no sufficient historical analog. The Ninth Circuit invokes Founding-era capital punishment across offenses as proof that lesser restrictions are permissible. *Duarte*, 137 F.4th at 756. But the fact “that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting). Surety laws at most temporarily deprived an individual of arms upon a specific finding of dangerousness. *See Rahimi*, 602 U.S. at 695-99; *Bruen*, 597 U.S. at 55-59. Forfeiture laws reached only firearms used in a violation and did not prohibit anyone from acquiring new arms. *See Range*, 124 F.4th at 231. Other analogs—temporary restrictions on minors or the mentally ill, and disarmament of Loyalists and enslaved persons “expected to take up arms against the government,” *Duarte*, 137 F.4th at 792-99 (VanDyke, J., concurring in the judgment in part and dissenting in part)—bear no resemblance to § 922(g)(1)’s permanent, categorical, and unreviewable disarmament of non-violent offenders.

The categorical approach conflicts with each element of this Court’s Second Amendment trilogy: *Bruen* demands historical analysis rather than means-end scrutiny; *Rahimi* ties disarmament to demonstrated dangerousness; and *Hemani* rejects the government’s “current say-so” as a justification untethered to history. Each requires, at minimum, the opportunity to challenge § 922(g)(1) as applied.

III. The Question Presented Is Important And Recurring, And Further Percolation Is Unnecessary.

Whether § 922(g)(1) permits as-applied challenges is among the most consequential federal criminal-law questions this Court has left unresolved. It implicates a core individual right, *see, e.g., Bruen*, 597 U.S. at 32-33, 70, and an entrenched circuit split with courts invalidating a federal statute’s application in some circumstances. That alone is reason enough to warrant review. *See, e.g., Iancu v. Brunetti*, 588 U.S. 388, 392 (2019) (Court “usual[ly] ... grant[s] certiorari” “when a lower court has invalidated a federal statute”). But the case for review is stronger still: The statute reaches millions, its consequences are permanent, there is no alternative remedy, and the lower courts have shown they will not correct course on their own. As the Solicitor General previously explained, the disagreement “affects a significant portion of the federal criminal docket” and thus creates a “special need for certainty ... given the frequency with which the government

brings criminal cases under” § 922(g)(1). Suppl. Br. at 5, 10 n.5, *Range*.

Section 922(g)(1) “is no minor provision,” *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). It is the workhorse of the federal firearms docket. To say that “[f]elon-in-possession cases are common in federal court,” *Jackson*, 85 F.4th at 479 (Stras, J., dissenting), is a vast understatement: The numbers are staggering. In fiscal year 2025, the Sentencing Commission reported 7,245 § 922(g) convictions out of 66,662 total federal cases, 89% of which fell under § 922(g)(1).³ Section 922(g)(1) offenses accounted for nearly 10% of all federal sentencings and were the third most common federal crime.⁴ An estimated 19 to 24 million Americans have felony records.⁵ Taken together, § 922(g)(1) is the basis for thousands of prosecutions and incarcerations each year, and permanently disarms “tens of millions” more. *Jackson*, 121 F.4th at 657 (Stras, J., dissenting). Every day this Court leaves the question presented unresolved, individuals are sentenced under a regime that multiple circuits have held violates the Second Amendment. “Section

³ U.S. Sent’g Comm’n, *Quick Facts: Felon in Possession of a Firearm* 1 (2025), <https://tinyurl.com/mr29kz8r>.

⁴ U.S. Sent’g Comm’n, *Quick Facts*, *supra* n.3, at 1; U.S. Sent’g Comm’n, *2025 Annual Report* 14 (2025), <https://tinyurl.com/6n58vaps>; Suppl. Br. at 5, *Range* (citing similar statistics).

⁵ Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 Cardozo L. Rev. 1573, 1574 & n.3, 1591 (2022).

922(g)(1) is no statutory backwater. It is among the most frequently prosecuted crimes in the federal code. In Fiscal Year 2021 ... the federal government obtained 7,454 convictions: nearly one every hour, 24/7/365.” *United States v. Luna*, No. 25-40272, 2026 WL 2479220, at *3 (5th Cir. Aug. 24, 2026) (Willett, J., concurring) (footnotes omitted).

The statute’s constitutional problem follows from its extraordinary breadth. Its burdens fall disproportionately on people with non-violent predicates. Only about 4% of federal felony convictions, and fewer than 20% of state ones, are for violent offenses.⁶ Yet § 922(g)(1) reaches well beyond “crimes like murder, assault, and rape” to cover *any* felony punishable by over a year of imprisonment. *Kanter*, 919 F.3d at 466 (Barrett, J., dissenting). That encompasses “an immense and diverse category,” from Mr. Johnson’s offense—cultivating marijuana in Colorado—to bank and tax fraud in New York, “selling pigs without a license in Massachusetts, redeeming large quantities of out-of-state bottle deposits in Michigan, and countless other state and federal offenses.” *Id.*; *see also* Suppl. Br. at 7, *Range* (explaining that “one of the most common and most important contexts in which the government seeks to enforce Section 922(g)(1)” is “non-violent drug crimes”). “[C]riminal laws have grown so exuberantly

⁶ Mark A. Motivans, *Federal Justice Statistics, 2023*, U.S. Dep’t of Justice, Bureau of Justice Statistics 13 tbl. 7 (Mar. 2025), <https://tinyurl.com/5n847buu>; Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, U.S. Dep’t of Justice, Bureau of Justice Statistics 3 tbl.1.1 (rev. Nov. 2010), <https://tinyurl.com/y9t9wp94>.

and come to cover so much previously innocent conduct that almost anyone can be arrested for something.” *Cockerham*, 162 F.4th at 503 (quoting *Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part)). “[J]udges, scholars, and civil rights experts” have called the statute “wildly overinclusive.” *Id.* (citing *Kanter*, 919 F.3d at 466 (Barrett, J., dissenting), and other sources).

Under *Bruen*, the answer to that breadth is individualized constitutional review. Under the Tenth Circuit’s rule and those of its five sister circuits, individual circumstances never matter. The result is a constitutional dead zone for swaths of Americans convicted under § 922(g)(1).

Section 925(c) permits the Attorney General to relieve an applicant of the prohibition, but it does not provide an alternative remedy. The provision has been a dead letter since 1992. *See Williams*, 113 F.4th at 661 (“[T]he program remains practically unavailable[.]”); *Range*, 124 F.4th at 276 (Krause, J., concurring in the judgment) (review is “not, in practice, meaningfully available”). The government’s recent effort to revive § 925(c) through a final agency rule does nothing for people like Mr. Johnson because the provision offers only prospective relief.⁷ In any event, the existence of a constitutional right cannot turn on the executive’s willingness to restore it when

⁷ Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 91 Fed. Reg. 54,054 (Aug. 20, 2026).

asked. *Cf. United States v. Stevens*, 559 U.S. 460, 480 (2010) (“We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.”).

Further percolation will not resolve the split. The Solicitor General said as much two years ago: After *Rahimi*, the government urged this Court to “grant plenary review” in *Range* because the circuit split “is unlikely to resolve itself without further intervention” and perpetuates “uncertainty about” § 922(g)(1)’s constitutionality across “a significant proportion of the federal criminal docket.” Suppl. Br. at 3, 5, *Range*. That rings even truer today. In the intervening years, the split has deepened: four more circuits have joined the fray—the Second and Fourth on one side, the Fifth and Sixth on the other—and other circuits have doubled down on remand from this Court or acknowledged the conflict and declined to weigh in. *See supra* 10-12, 14-18. In *Hemani*, this Court addressed the individual circumstances warranting disarmament under a neighboring subsection of § 922, *supra* 21, 23-24, yet the categorical circuits continue to apply “a law trapped in amber,” *Rahimi*, 602 U.S. at 691—wedded to a rigid approach that forecloses any individualized inquiry under § 922(g)(1). If anything, *Hemani* has hardened, not softened, the divide.

The post-*Hemani* landscape proves the point. In the weeks since *Hemani* was decided, every categorical circuit to consider the question has declined to revisit its precedent and has affirmatively invoked *Hemani* as a reason not to do so. *See United States v. Grant*, No. 25-1699, 2026 WL 1860000, at *1

n.2 (2d Cir. June 29, 2026) (concluding that *Hemani* “does not abrogate” circuit precedent foreclosing as-applied challenges to § 922(g)(1)); *United States v. Ruston*, No. 25-2753, 2026 WL 2210102, at *1 (8th Cir. July 31, 2026) (same); *United States v. Russell*, No. 25-3747, 2026 WL 1802858, at *1 (9th Cir. June 23, 2026) (same).

Each circuit seized on *Hemani*’s observation that its holding “should not be taken to suggest ‘that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse.’” 146 S. Ct. at 1692 n.6 (quoting *Rahimi*, 602 U.S. at 698). But that caveat preserved the question; it did not decide it. The question still hanging in the balance is whether peaceful Americans can ever challenge the permanent deprivation of their right to keep and bear arms. Only this Court can answer that question.

IV. This Case Is An Ideal Vehicle.

This case presents the question in its cleanest form. The issue was preserved at every stage, arises on an undisputed record, comes from the circuit whose cursory, dictum-driven, and ahistorical approach most urgently demands correction, and involves a predicate offense that this Court has already evaluated in a neighboring provision of the same statute.

Preservation. Mr. Johnson preserved his Second Amendment challenge in his motion to dismiss, R. 13-

18, and renewed it on appeal, CA10 Appellant’s Br. 4-5, 7-16.

A clean record with no factual disputes. Because this case arises on a motion to dismiss, the Court need not resolve contested facts. The indictment’s allegations—that Mr. Johnson was charged with two counts under § 922(g)(1) based on a single predicate conviction for marijuana cultivation in 2015—must be taken as true. R. 10-11; *see, e.g., Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 343 n.16 (1952). Marijuana cultivation is indisputably non-violent. *See, e.g., Doucet*, 2025 WL 3515404, at *4. The government never argued otherwise. *Compare* R. 17-18, *and* CA10 Appellant’s Br. 3, 6, 13, *with* R. 30-31, 51, *and* CA10 Appellee’s Br. 3, 23-24. No factual issue therefore complicates the legal question.

The government instead argued that it need not defend the predicate on the merits. It invoked this Court’s observation, in a case involving specific penalties for firearm use *during drug trafficking*, that “drugs and guns are a dangerous combination.” *Smith v. United States*, 508 U.S. 223, 240 (1993); *see* CA10 Appellee’s Br. 23. But Mr. Johnson was never convicted of drug trafficking or using a firearm in a crime; his sole predicate was marijuana cultivation. Stripped of that inapposite analogy, the government’s only argument is legal: “The fact that [Mr.] Johnson’s prior conviction was allegedly non-violent is irrelevant” under circuit precedent categorically rejecting as-applied challenges. CA10 Appellee’s Br. 24. Whether that premise is correct is the question presented. This case isolates it.

The circuit most in need of correction. The Tenth Circuit has taken the most rigid approach of any categorical circuit. In *Vincent*, it categorically barred as-applied challenges based almost entirely on *Heller*'s non-binding dictum. It conducted no independent historical analysis, engaged neither the text-history-and-tradition methodology *Bruen* requires nor the individualized dangerousness inquiry *Rahimi* endorsed, and, on remand from this Court after *Rahimi*, rubber-stamped its decade-old § 922(g)(1) precedent. See *supra* 5-6, 13-14. *Bruen*, *Rahimi*, and now *Hemani* demand more. This case gives the Court the opportunity to say so.

Predicate offense. Mr. Johnson's 2015 marijuana cultivation conviction is not merely non-violent in the abstract—it is the same category of marijuana-related conduct this Court just evaluated under a neighboring subsection of § 922(g). In *Hemani*, the Court cited “[s]eismic changes” in marijuana policy and declined “to suggest that the millions of Americans who now regularly use marijuana are categorically and unusually dangerous.” 146 S. Ct. at 1693. If current marijuana *use* does not categorically justify disarmament under § 922(g)(3), a decade-old marijuana *cultivation* conviction cannot categorically justify *permanent* disarmament under § 922(g)(1). This case is an ideal vehicle to hold that non-violent felons may bring as-applied challenges where, as here, the sole predicate is plainly non-violent.

Although this Court has considered and denied other petitions challenging § 922(g)(1) in recent Terms, those petitions presented a host of vehicle issues. Some raised only facial Second Amendment

challenges—unlikely to succeed because § 922(g)(1) likely has valid applications, including to those who are currently incarcerated. *See, e.g.*, Br. for the U.S. in Opp. 3-4, *French v. United States*, No. 24-6623 (U.S. Apr. 11, 2025). Others arose from circuits that, unlike the Tenth Circuit, paid at least “lip-service” to *Bruen* and *Rahimi*’s instruction to consider historical analogs. Pet. for Writ of Certiorari 24, *Duarte v. United States*, No. 25-425 (U.S. Oct. 6, 2025). Still others involved violent predicates that made those petitioners poor standard-bearers for an as-applied challenge. *See, e.g.*, Br. for the U.S. in Opp. 2, 6-7, *Beaird v. United States*, No. 25-5343 (U.S. Jan. 9, 2026) (noting that petitioner’s predicate convictions included aggravated assault against a public servant); Mem. for the U.S. in Opp. 3, *Mitchell v. United States*, No. 25-5417 (U.S. Oct. 20, 2025) (noting that petitioner’s predicate convictions included malicious wounding, “during which petitioner shot his victim in the chest”). And several involved civil plaintiffs—not criminal defendants like Mr. Johnson—whom the government urged to exhaust the nascent § 925(c) administrative process. *See, e.g.*, Br. for the Resp’t in Opp. 8-11, *Vincent v. Bondi*, No. 24-1155 (U.S. Aug. 11, 2025); Br. for the Fed. Resp’ts in Opp. 5-6, *Collins v. Bondi*, No. 25-458 (U.S. Dec. 12, 2025). This case presents none of those obstacles. It is a criminal case, with a preserved as-applied challenge, an undisputed non-violent predicate, and a decision below that refused even to consult historical analogs. It is the ideal vehicle for resolving the question presented.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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