

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL SHAUN DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

On Petition for 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

Whether Mr. Davis' conviction under 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment on its face.

PARTIES TO THE PROCEEDING

The Petitioner in this case is Michael Shaun Davis, and the respondent is the United States of America. Petitioner is an individual and therefore no Rule 29.6 disclosure is required.

RELATED CASES

U.S. Court of Appeals:

On April 16, 2026, the Tenth Circuit affirmed Mr. Davis' conviction in an unpublished decision, *United States v. Davis*, No. 24-7098, 2026 WL 1031094 (10th Cir. 2026). *See* Appendix A at App. A1-A7.

U.S. District Court:

On December 6, 2024, judgment was entered against Petitioner Michael Shaun Davis in *United States v. Davis*, No. 6-23-CR-00178-RAW-1 (E.D. Okla. Dec. 10, 2024). *See* Appendix B at App. A8-A14.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Michael Shaun Davis, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on April 16, 2026.

OPINIONS BELOW

The Tenth Circuit's unpublished opinion in Mr. Davis' case is available at 2026 WL 1031094 (10th Cir. 2026) and is included as Appendix A at A1-A7. The district court's judgment is included as Appendix B at App. A8-A14.

JURISDICTION

The United States District Court for the Eastern District of Oklahoma had jurisdiction in this criminal action pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and entered judgment on April 16, 2026. *See* App. A1-A7. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, 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:

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 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.

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.

STATEMENT OF THE CASE

In *Bruen*, this Court crafted a historical tradition test to assess the constitutionality of firearms regulations that contravene the Second Amendment’s plain text. *See New York State Rifle Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). In short, under that test, “[o]nly if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* Two years later, this Court reaffirmed this analysis and upheld 18 U.S.C. § 922(g)(8), reasoning there is a historical tradition of firearm regulation that allows the government to temporarily disarm those who were found to threaten the safety of others. *See United States v. Rahimi*, 602 U.S. 680, 698-99 (2024).

Despite this Court’s clear mandate that the historical tradition test be applied whenever a firearm regulation burdens the Second Amendment, the Tenth Circuit has refused to apply that test to challenges to 18 U.S.C. § 922(g)(1), which permanently prohibits those convicted of a felony from possessing any firearm or ammunition. This Court has not decided whether laws *permanently* banning those convicted of felonies are constitutional. *See Rahimi*, 602 U.S. at 713 (Gorsuch, J. concurring) (“We do not resolve whether the government may disarm an individual permanently.”). However, the Tenth Circuit reasons this Court’s dicta in *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), where it stated that its historical analysis showing that the Second Amendment protects

an individual right to own and possess firearms, did not “cast doubt on longstanding prohibitions on the possession of firearms by felons,” and still binds all lower courts. *See Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025) [hereinafter *Vincent II*], *petition for cert. denied*, no. 24-1155 (Mar. 2, 2026).

The Petitioner, Michael Shaun Davis, challenges the Tenth Circuit’s analysis of the constitutionality of § 922(g)(1) and asks this Court to settle this open question under the standards set forth in *Bruen*.

Mr. Davis was charged with a single count of Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1) in the Eastern District of Oklahoma. The § 922(g)(1) charge stemmed from Mr. Davis’ possession of a handgun on June 15, 2023. He moved to dismiss the § 922(g)(1) count in the indictment under the Second Amendment, arguing that, in light of *Bruen*, 597 U.S. 1, section 922(g)(1) was facially unconstitutional. The district court denied his motion to dismiss. Mr. Davis entered a guilty plea in the Eastern District of Oklahoma to being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1).

On appeal, Mr. Davis presented his challenge with respect to his conviction under *Bruen*, contending that § 922(g)(1) was facially unconstitutional. By that time, however, he acknowledged that his claims were foreclosed by Tenth Circuit precedent in *Vincent II*. Accordingly, Mr. Davis presented his claim for preservation only, and the Tenth Circuit affirmed based on *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) [hereinafter *Vincent I*]. *See App.* at A1-A7.

REASONS FOR GRANTING THE WRIT

The validity of § 922(g)(1) is an important question of federal law. Whether § 922(g)(1) is unconstitutional has large real-world implications. In fiscal year 2025 alone, there were 7,245 convictions under § 922. *See* U.S. Sent. Comm’n, *QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses* (June 2026), <https://www.ussc.gov/research/quick-facts/section-922g-firearms>. And § 922(g)(1) does not just curtail the Second Amendment rights of those persons convicted of violating it. It applies to nearly everyone who has committed any offense punishable by more than one year in prison, even those who have never misused a firearm. In other words, § 922(g)(1) disarms millions of Americans. *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 *Demography* 1795, 1806–08 (2017) (estimating that, as of 2010, 19 million people in the United States had felony records).

The burden on those millions of Americans is substantial: § 922(g)(1)’s ban on firearm possession is effectively permanent. And it applies to lawful possession of guns, including for self-defense within the home—the “central component” of the Second Amendment. *See Heller*, 554 U.S. at 599. Further, violating § 922(g)(1) could mean spending 15 years in prison. In short, § 922(g)(1) permanently, nearly completely, and in a draconian manner deprives millions of individuals of their ability to exercise a fundamental individual right.

In addition, the Tenth Circuit’s Second Amendment ruling is wrong on the merits because it does not apply *Bruen*’s mandatory test. The Tenth Circuit’s holding that § 922(g)(1) comports with the Second Amendment in its applications is erroneous. Mr. Davis contends here and contended below that § 922(g)(1) is facially unconstitutional under *Bruen* and *Rahimi*. The Tenth Circuit has erroneously refused to apply the constitutional test established in *Bruen* and applied in *Rahimi*. And that test, applied correctly, establishes that § 922(g)(1) cannot stand.

In *Bruen* and *Rahimi*, this Court established and applied a test for evaluating laws, like § 922(g)(1), that infringe on a person’s fundamental Second Amendment rights. The cases instruct that (1) conduct covered by the Second Amendment’s plain text is presumptively protected and cannot be restricted, *Bruen*, 597 U.S. at 24, unless (2) the government can demonstrate a historical tradition of “relevantly similar” firearms regulations from the founding era, *id.* at 24, 29. To do so, the government must prove that the challenged law is sufficiently similar to historical laws with respect to “both why and how it burdens the Second Amendment right.” *Rahimi*, 602 U.S. at 698. That means the government must explain how the challenged law is sufficiently similar to founding-era tradition with respect to both its purpose and the degree to which it infringes on the Second Amendment right—taking into consideration metrics like procedural protections, duration of infringement, and severity of penalty. *Id.* at 698–99. “Even when a law regulates arms-bearing for a permissible reason . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Id.* at 692.

The Tenth Circuit wrongly failed to apply this controlling test in upholding § 922(g)(1). In *United States v. McCane*—a pre-*Bruen* decision—the Tenth Circuit summarily deemed § 922(g)(1) consistent with the Second Amendment based on unexplained dicta in *Heller* that “nothing in [that] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009) (quoting *Heller*, 554 U.S. at 626–27). After *Bruen*, the Tenth Circuit declared itself bound by its pre-*Bruen* decision in *McCane* and refused to revisit § 922(g)(1)’s constitutionality under *Bruen*’s new test. See *Vincent I*, 80 F.4th 1197. Following this Court’s decision in *Rahimi*, this Court vacated the Tenth Circuit’s decision in *Vincent I* and directed it to reconsider its decision in light of *Rahimi*. Rather than doing so, the Tenth Circuit issued a three-page decision that again deemed its hands tied by *McCane* and again conducted no history-

and-tradition analysis. *See Vincent II*, 127 F.4th 1263. And, in Mr. Davis’s case, the Tenth Circuit followed suit, holding that it was bound by circuit precedent. App. at A1-A7.

It is erroneous for the Tenth Circuit to continue to afford controlling weight to *Heller*’s dicta in the wake of *Bruen* and *Rahimi*. This Court has made clear that the legal tests it imposes are binding and so supersede its dicta. In *Seminole Tribe of Fla. v. Florida*, it stated that both the “result” of its opinion and “those portions of the opinion necessary to that result” are binding, even on itself. 517 U.S. 44, 67 (1996). Indeed, this Court has repeatedly stressed that its dicta, even when repeated, does not resolve issues it has not yet addressed.

Further, under the test established in *Bruen* and applied in *Rahimi*, § 922(g)(1) is unconstitutional. First, the conduct regulated by § 922(g)(1) is covered by the Second Amendment. The plain text of the Second Amendment clearly covers possession of a firearm, including the firearm in this case. And Mr. Davis is clearly part of “the people” protected by the Second Amendment: The plain text does not draw a felon/non-felon distinction, *Bruen*, 597 U.S. at 32, and this Court has already determined that the phrase “the people” contained within the Second Amendment “unambiguously refers to all members of the political community, *not an unspecified subset*.” *Heller*, 554 U.S. at 580 (emphasis added).

Second, the government cannot meet its burden to show a relevantly similar tradition of firearms regulation that would insulate § 922(g)(1) from a Second Amendment attack. There is no historical analogue for § 922(g)(1), let alone a sufficiently robust tradition of such analogues. Although the government need not point to a “historical twin,” *Rahimi*, 602 U.S. at 701, this Court nonetheless requires an especially close fit between modern and historical regulations, *compare Bruen*, 597 U.S. at 55–59 (surety statutes insufficiently similar to broad prohibition on public carry), *with Rahimi*, 602 U.S. at 698–99 (surety statutes sufficiently similar to temporary restriction on firearm possession by individuals subject to certain restraining orders). Accordingly, the government needs

to show that the founding generation tried to prevent persons convicted of felonies or felony-equivalent crimes from simple possession of firearms for *any* purpose—and that it did so in a manner sufficiently comparable to § 922(g)(1). But there is no tradition of felon dispossession statutes—at either the federal or state level—predating the 20th century. Section 922(g)(1) itself only traces its origins back to 1938, when Congress passed the Federal Firearms Act that prohibited only certain felons with “a few violent offenses” from receiving firearms. *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The statute was not amended to prohibit the “possession by all felons” until the 1960s. *Id.* And scholars have not identified founding-era colonial or state felon dispossession statutes either. *See, e.g.*, Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 142-43 & n.11 (2007). The “Founders themselves could have adopted” laws like § 922(g)(1) to “confront” the “perceived societal problem” posed by felons. *Bruen*, 597 U.S. at 27. Yet they did not, and that inaction means § 922(g)(1) is unconstitutional in all applications.

Moreover, the statute is independently unconstitutional because of the extraordinary burden it puts on the Second Amendment right of every person it impacts. Section 922(g)(1) indefinitely—and for all practical purposes, permanently—bans all firearm possession, so long as the firearm traveled in interstate commerce at some point. The government cannot identify any historical tradition of relevantly similar firearm regulations that so completely infringed upon an individual’s ability to exercise such a fundamental right. *See Rahimi*, 602 U.S. at 699–702.

CONCLUSION

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

Respectfully submitted,

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