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SUPREME COURT, U.S.

No. 25- 26-5483

In the
Supreme Court of the United States

STEVEN WALKER,
Petitioner,
v.
UNITED STATES OF AMERICA, et al.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit
(No. 23-55525)

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner alleged below that, as a free, law-abiding citizen, he seeks to engage in conduct protected by the Second Amendment, the possession of arms for lawful self-defense; that the Amendment's plain text covers that conduct; and that, under this Court's decisions, the challenged federal and state restrictions are therefore presumptively unconstitutional unless the Government demonstrates that they are consistent with this Nation's historical tradition of firearm regulation. *See N.Y. Pistol & Rifle, Assn.* v. *Bruen*, 597 U.S. 1, 24 (2022); *Wolford v. Lopes*, 609 U.S. ___, slip op. at 7–8 (2026). The courts below nevertheless *sua sponte* dismissed Petitioner's complaint for failure to state a claim, at the pleading stage, without requiring either governmental defendant to answer the complaint, develop the historical record contemplated by *Bruen*, or carry the burden the Constitution requires them to bear.

The questions presented are:

1. Whether a court may reject a Second Amendment claim involving conduct covered by the Amendment's plain text without first requiring the Government to rebut the presumption that the challenged restriction is unconstitutional.

2. Whether a court may *sua sponte* dismiss a plausible Second Amendment claim at the pleading stage before requiring the Government to answer and carry its constitutional burden to overcome that presumption

PARTIES TO THE PROCEEDING

Petitioner Steven Walker, proceeding pro se, was the plaintiff in the district court and appellant in the court of appeals.

Respondents are the United States of America, the State of California, and Does 1 through 100, defendants-appellees below. The United States waived an answering brief in the court of appeals, and no governmental defendant answered the operative complaint or was required to justify the challenged infringements. (Appendix A at A-010—A-011.)

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Walker v. United States, et al., No. 3:20-cv-00031-DMS-AGS (S.D. Cal.), underlying district-court proceeding; post-*Bruen* dismissal entered October 28, 2022. (App. A-005—A-009).

Walker v. United States of America, et al., No. 20-55654 (9th Cir.), judgment entered May 25, 2021.

Walker v. United States, et al., No. 21-5464 (U.S.), certiorari denied December 6, 2021, 142 S. Ct. 595.

Walker v. United States, et al., No. 24-6046 (U.S.), Rule 11 petition; IFP denied January 27, 2025; reconsideration denied March 31, 2025, 145 S. Ct. 1467.

Walker v. United States of America, et al., No. 23-55525 (9th Cir.), judgment entered March 17, 2026; panel rehearing and rehearing en banc denied July 14, 2026. (A-001—A-004).

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OPINONS BELOW, JURISDICTION, & STANDING

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on March 17, 2026. Petitioner timely filed a petition for panel rehearing and rehearing en banc, which was denied on July 6, 2026. The court of appeals issued its mandate on July 14, 2026. (A-001—A-004.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

Petitioner seeks review of the court of appeals' affirmance of the district court's *sua sponte* dismissal of his First Amended Complaint under 28 U.S.C. § 1915(e)(2)(B)(ii). (A-001—A-009.)

As Petitioner alleged below, he seeks to engage in conduct protected by the Second Amendment, possessing arms for lawful self-defense. (A-006—A-008.) He alleged that the challenged federal and state laws infringe that conduct under threat of criminal prosecution, causing him to refrain from exercising a constitutional right. *(Ibid.)* He seeks declaratory and injunctive relief prohibiting enforcement of those laws against him. (*Ibid.*.) A plaintiff establishes Article III standing by alleging an intention to engage in conduct arguably affected with a constitutional interest, but proscribed by law, where there exists a credible threat of enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–61 (2014); *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392–93 (1988). Petitioner therefore alleged a present and ongoing constitutional injury fairly traceable to the challenged laws and redressable by the relief sought.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. art. I, § 8: "The Congress *shall have* Power To..." (enumerating limited and delegated powers).

U.S. Const. art. III, § 2: "The judicial Power *shall extend* to all Cases, in Law and Equity, *arising under* this Constitution..."

U.S. Const. art. VI, cl. 2: "This Constitution ... *shall be* the supreme Law of the Land..." (Supremacy Clause).

U.S. Const. amend. II: ". . . being necessary to the security of a free State, the right of the People to keep and bear Arms, *shall not be* infringed."

U.S. Const. amend. IX: "The enumeration in the Constitution, of certain rights, *shall not be* construed to deny or disparage others retained by the people."

U.S. Const. amend. XIV, § 1: "*No State shall* make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall* any State deprive any person of life, liberty, or property, without due process of law; *nor* deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner challenges federal and state laws that prohibit him from possessing arms for lawful self-defense in violation of the Second, Ninth, and Fourteenth Amendments, both facially and as applied. See, e.g., 18 U.S.C. § 922(g); Cal. Penal Code § 29800(a).[1]

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[1] The facial grievance asserts the challenged laws exceed constitutional authority. That under the plaint text prohibition of *shall not be infringed,* neither the state or federal government have a constitutionally delegated power to interfere with the right of the people to keep and bear arms. The as-applied grievance asserts that, even if those laws may be

In 2022, after granting Petitioner's post-*Bruen* Rule 60(b) motion to vacate the prior judgment and accepting the First Amended Complaint, the district court recognized Petitioner's allegations that he is presently law-abiding, seeks to possess a firearm for lawful self-defense, and is prohibited by the challenged laws from doing so based upon a single prior conviction. (App. A-005—A-008.) Those allegations, taken as true, correspond to the three plain-text inquiries subsequently reaffirmed in *Wolford*: whether the challenged law applies to one of "the people," concerns an "Arm," and restricts "keeping" or "bearing." 609 U.S. ___, slip. op. at 7. Petitioner does not challenge his decades-old conviction and accepts responsibility for the conduct underlying it. After completing his sentence, California discharged him from all existing felony commitments, ending the custodial supervision and restraints upon liberty arising from his sentence. He thereafter resumed the ordinary rights and responsibilities of the political community as a law-abiding citizen, taxpayer, registered voter, and sworn juror. Nevertheless, the district court *sua sponte* dismissed the action with prejudice without requiring either governmental defendant to answer, develop a historical record, or rebut the presumption of unconstitutionality arising from the facts alleged. (App. A-005—A-009.)

The United States waived its opportunity to file an answering brief on appeal. (App. A-010—A-011.) Nevertheless, the Ninth Circuit sustained the challenged restrictions without requiring either governmental defendant to answer the operative

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constitutionally applied in some circumstances, they are unconstitutional as applied to Petitioner's conduct because it falls within the Second Amendment's plain text and the Government has not demonstrated that making such conduct unlawful is consistent with this Nation's uniform historical tradition of firearm regulations.

complaint or demonstrate that those restrictions are consistent with this Nation's historical tradition of firearm regulation. The Ninth Circuit denied his timely petition for panel rehearing and rehearing en banc. (App. A-001—A-004). Thus, neither the United States nor California was ever required to rebut the presumption of unconstitutionality arising from Petitioner's alleged conduct.

This case therefore presents a pure question of law: whether a complaint plausibly alleging conduct covered by the Second Amendment may be dismissed at the plain-text stage through a categorical exclusion, before either governmental defendant is required to demonstrate that the challenged restrictions are consistent with this Nation's historical tradition of firearm regulation.

INTRODUCTION

This Court has long recognized that the Constitution both delegates and limits governmental power. Where it expressly prohibits governmental action, no branch may exercise authority beyond those limits.[2] The Second Amendment embodies that principle. It did not create a new right but codified the pre-existing right of the people to keep and bear arms, commanding that it "shall not be infringed."[3] As *Heller*

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2 *See McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316, 405 (1819) (This government is acknowledged by all to be one of enumerated powers.); *cf. Leedom v. Kyne*, 358 U.S. 184, 188–91 (1958) (recognizing judicial authority to set aside governmental action taken "in excess of delegated powers" and "contrary to a specific prohibition," explaining that a "definite prohibition" like "shall not," cannot be disregarded and that enforcement was contemplated).

3 The original public understanding confirms that "infringe" means to violate, impair, or transgress the protected right. See Samuel Johnson, *A Dictionary of the English Language* (1755); Noah Webster, *American Dictionary of the English Language* (1828). The inquiry, therefore, is not whether historical regulations merely existed, but whether they demonstrate that the challenged restriction was historically understood *not to infringe* the right to keep and bear arms. If those regulations themselves infringed the right, they cannot establish the

recognized, the Second Amendment's meaning is fixed by its original public understanding. 554 U.S. 570, 592, 597–618 (2008) [4] Those precedents establish the governing methodology. When the Second Amendment's plain text covers an individual's conduct, that conduct is presumptively protected. The burden then rests with the Government—not the courts—to demonstrate that the challenged restrictions are consistent with this Nation's historical tradition of firearm regulation *before* they may be sustained. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24–44 (2022); *United States v. Rahimi,* 602 U.S. 680 (2024); *United States v. Hemani*, 608 U.S. ___ (2026); *Wolford v. Lopez*, 609 U.S. ___ (2026).

This case presents a fundamental question concerning both constitutional procedure and constitutional power. May a court dismiss a complaint plausibly alleging conduct covered by the Second Amendment's plain text, supply or presume the Government's justification for criminalizing that conduct, and sustain the challenged laws without requiring the Government to demonstrate that they are

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representative historical tradition the Second Amendment requires. See *Bruen*, 597 U.S. at 36 ("post-ratification adoption or acceptance of laws that *are inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text.")

[4] *Heller's* reliance on the Second Amendment's original public meaning reflects settled principles of constitutional interpretation. The Constitution's meaning is fixed upon its adoption unless amended through Article V. Courts interpret the Constitution as written; they do not revise its meaning or add limitations to its text. *Bostock v. Clayton County*, 590 U.S. 644, 654–55 (2020) ("If judges could add to, remodel, update, or detract from old statutory terms ... we would risk amending [the law] outside the legislative process reserved for the people's representatives."); *United States v. Sprague*, 282 U.S. 716, 731 (1931) (The Constitution was written to be understood by the voters. Where the intention is clear, there is no room for construction and no excuse for interpolation or addition). The phrase "shall not be infringed" therefore expresses a clear unqualified constitutional prohibition, not a conditional policy preference, and "cannot ... be overridden" with the view that it was intended to be ignored. *Leedom*, 358 U.S. at 189.

consistent with this Nation's historical tradition of firearm regulation? The answer implicates not only the protection secured by the Second Amendment, but also the adversarial process, the separation of powers, and the judiciary's duty to enforce the Constitution according to its text and original meaning.

REASONS FOR GRANTING THE WRIT

A. THERE IS A PRESCRIBED JUDICIAL METHOD FOR ADJUDICATING CASES ARISING UNDER THE CONSTITUTION.

Article III extends the judicial power to "all Cases, in Law and Equity, arising under this Constitution." U.S. Const. art. III, § 2. In assigning that responsibility to the Judiciary, the Constitution does more than confer jurisdiction. It prescribes the method by which constitutional controversies are to be resolved. Federal courts therefore adjudicate constitutional claims according to the Constitution's allocation of governmental powers, its express limitations upon those powers, and the adversarial process through which constitutional disputes are presented for decision.

From the beginning, this Court has recognized that the Federal Government possesses only those powers delegated by the People through the Constitution. "This government is acknowledged by all to be one of enumerated powers." *McCulloch*, 17 U.S. at 405. Equally fundamental is the principle that the Constitution imposes express limitations upon the exercise of those powers. As *Marbury v. Madison* explained, "[t]he powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, *the Constitution is written.*" 5 U.S. (1 Cranch) 137, 176 (1803). Judicial review therefore requires courts to determine not only whether governmental authority exists, but whether the Constitution permits its exercise in the particular case. *Id.* at 176–78.

This Court has consistently treated constitutional limitations as binding commands, not policy considerations subject to judicial balancing. *See, e.g., Boyd v. United States*, 116 U.S. 616, 635 (1886) (constitutional guarantees must be liberally construed to prevent gradual encroachment upon individual rights); *Lake County v. Rollins*, 130 U.S. 662, 670 (1889) (constitutional limitations are as binding as grants of power); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943) (fundamental rights are withdrawn from the vicissitudes of political controversy and placed beyond the reach of governmental majorities). Most recently, this Court reaffirmed that constitutional questions are resolved according to the Constitution's text, history, and structure—not judicial policy preferences—and that when government restricts an enumerated constitutional right, "the Government bears the burden of proving the constitutionality of its actions." *National Republican Senatorial Committee v. Federal Election Commission*, 609 U.S. ___, slip op. at 9–10, 20–21 (2026); *Trump v. Slaughter*, 609 U.S. ___, slip op. at 13 ("What text, history, and structure settle, the Court's precedent confirms."). The Constitution therefore prescribes not merely the existence of judicial review, but the manner in which constitutional claims must be adjudicated.[5] That constitutional method governs

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[5] Throughout the Constitution and federal statutes, the Supreme Court has consistently recognized that mandatory and prohibitory language such as "shall," "shall be," "shall not," and "no person shall" ordinarily imposes binding obligations not subject to judicially created exceptions absent textual authorization. *See, e.g., Ross v. Blake*, 578 U.S. 632, 639–40 (2016) ("The mandatory 'shall' ... normally creates an obligation impervious to

claims arising under the Second Amendment. Unlike constitutional provisions conferring governmental authority, the Amendment operates as an express restraint upon governmental power: "the right of the people to keep and bear Arms, *shall not be* infringed." U.S. Const. amend. II.

The inquiry therefore *begins with* the Amendment's plain text. If the challenged law applies to "the people," concerns "Arms," and infringes their keeping or bearing, the challenged conduct falls within the Amendment's plain text, and the Constitution presumptively protects it. *Wolford,* 609 U.S. ___, slip op. at 7-8.[6] Once that presumption appears, the Constitution assigns the next step to the Government, not the Court. The Government must justify the challenged restriction by demonstrating that it is consistent with this Nation's *historical tradition* of firearm regulation. *Bruen*, 597 U.S. at 24.[7] *Rahimi*, *Hemani*, and *Wolford* likewise applied

judicial discretion."); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *Sprague*, 282 U.S. at 731; *Bostock*, 590 U.S. at 654–55, 669–70.

6 *Wolford* confirms *the constitutional* methodology directing that "if a challenged law falls within the plain text of the Second Amendment, *it is presumptively unconstitutional*" because it may violate the preexisting right the Amendment codified. 609 U.S. ___, slip op. at 7–8 (2026). In doing so, *Wolford* confirms that the Amendment's self-executing prohibition governs the inquiry, requiring the Government to rebut that presumption through the required historical analysis. The Government's historical burden is therefore not satisfied merely by identifying historical firearm regulations. Rather, those regulations are constitutionally relevant only if they demonstrate that the challenged restriction is consistent with the original public understanding *of what did not constitute an infringement* of the preexisting right the Amendment codified.

7 This Court has long recognized a broader constitutional principle governing statutes that annex penalties to the assertion and exercise of enumerated constitutional rights. In *United States v Jackson*, the Court held that although Congress may pursue legitimate governmental objectives, it "cannot impose such a penalty in a manner that needlessly penalizes the assertion of a constitutional right." 390 U.S. 570, 582–83 (1968). The Court further explained that "[t]he question is not whether the chilling effect is `incidental' rather than intentional; the question is whether that effect *is unnecessary and therefore excessive*."

that same constitutional methodology by determining whether the Government had established a representative historical tradition sufficient to justify the challenged restriction in the circumstances presented. *United States v. Rahimi*, 602 U.S. 680, 691–703 (2024); *Hemani*, 608 U.S. ___, slip op. at 4–6; *Wolford*, slip op. at 3-10. Those decisions did not create a new framework. They reaffirmed and reflected the constitutional method prescribed by the Second Amendment itself. *Bruen*, 597 U.S. at 24.

That constitutional method likewise prescribes the respective roles of the Executive and the Judiciary. The Executive bears the responsibility to defend the constitutionality of the laws it seeks to enforce. The Judiciary adjudicates that defense, it does not assume it, because the Constitution requires judicial deference to the constitutional balance struck by the People, who elevated the right of free citizens to keep and bear arms above "all other" interests. *Bruen*, 597 U.S. at 26; *Lake County*, 130 U.S. at 673. As this Court has repeatedly recognized, ours is a neutral "party presentation principle," under which courts ordinarily "rely on the parties to frame the issues for decision." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).

Id. at 582. In *Shapiro v. Thompson*, the Court reaffirmed that principle, holding that the governmental purpose of deterring the exercise of the constitutional right to travel "cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible." 394 U.S. 618, 630–31 (1969). Petitioner respectfully submits that the lifetime criminal penalties imposed by 18 U.S.C. § 922(g)(1) and corresponding California law are precisely the type of unnecessary and "therefore excessive" penalties upon the assertion and exercise of an enumerated constitutional right condemned in *Jackson* and *Shapiro*. As demonstrated below in Part (B) thru (D), the Nation's historical tradition addressed the same governmental concerns through materially different, temporary, and conditional measures rather than through permanent criminal prohibitions imposed upon citizens who had completed their punishment and resumed the ordinary rights and responsibilities of the political community.

Judges are neutral arbiters who "call balls and strikes"; they do not step to the plate and swing the bat for either party. *Clark v. Sweeney*, 607 U.S. 1, 9–10 (2025) (per curiam). Consistent with that constitutional role, *Bruen* explained that Second Amendment cases are decided upon "the historical record compiled by the parties." 597 U.S. at 25 n.6. Likewise, in *Hemani*, the Government *conceded* that it bore the burden under *Bruen*, and this Court adjudicated whether that burden had been satisfied on the historical record developed by the parties. *Hemani*, slip op. at 4–6.[8]

Accordingly, the Constitution prescribes the method for adjudicating constitutional claims by assigning the burden of justification to the Government and confining judicial review to the controversy and record presented by the parties. The courts below departed from that method. (*Cf.* A-001—A009 & A-010—A011.)

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8 This Court also recognizes where constitutional interests are presumptively protected, procedural safeguards and the allocation of burdens serve to minimize the risk of erroneous constitutional deprivations. *Santosky v. Kramer*, 455 U.S. 745, 756 (1982). The Second Amendment follows that same constitutional principle. Once an individual's conduct falls within the Amendment's plain text it is presumptively protected and the Government bears the burden demonstrating that the challenged restriction is consistent with this Nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at24 (2022). That burden therefore serves as a *constitutional procedural safeguard, minimizing the risk of an erroneous deprivation absent the historical justification the Constitution requires.* Although Petitioner maintained below, and reserves here, that the Government's burden requires a clear and convincing historical showing commensurate with the Constitution's command—and this Court's requirement of *rigorous* judicial review, *see National Republican Senatorial Committee,* 609 U.S. ___, slip op. at 9–10, 20–21—this Court has yet had occasion to define the degree of historical persuasion necessary to satisfy that constitutional burden.

B. THE COURTS BELOW ABANDONED THE CONSTITUTION'S PRESCRIBED METHOD OF ADJUDICATION

1. The Government Was Never Required to Carry the Constitutional Burden Assigned by the Second Amendment

Petitioner's operative First Amended Complaint alleged that the lifetime firearm prohibitions imposed under federal and California law, as applied to him, criminalize his possession of firearms for lawful purposes, including self-defense in the home and therefore infringe upon his right to keep and bear. Proceeding without counsel, Petitioner was entitled to have his pleading liberally construed and its well-pleaded uncontested factual allegations accepted as true. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Accepting those allegations as true, the complaint established that Petitioner is among "the people," that the challenged laws regulate the keeping and bearing of "Arms," and that they criminalize his keeping of those arms for lawful purposes. The complaint therefore *plausibly* alleged a claim under the Second Amendment's plain text. Once that showing was made, "the Constitution presumptively protects that conduct," and the Government bore the burden of demonstrating that the challenged restrictions are consistent with this Nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 24; *Wolford*, 609 U.S. ___, slip op. at 7–8. The complaint further alleged that, despite having completed his sentence and been discharged from all commitments arising from his decades-old conviction, Petitioner remained subject to lifetime firearm prohibitions. Those allegations triggered the burden the Government was required to carry.

That constitutional inquiry never occurred. The district court dismissed the action *sua sponte* under 28 U.S.C. § 1915(e)(2)(B)(ii) before either governmental defendant was served or required to answer the operative complaint. (A-005—A-009.) On appeal, the United States waived its answering brief. (A-010—A-011.) Consequently, neither California nor the United States was ever required to identify representative historical analogues, present historical evidence, develop an adversarial historical record, or demonstrate that permanently criminalizing Petitioner's alleged conduct comports with the historical understanding of the right codified by the Second Amendment. Nevertheless, the Ninth Circuit affirmed *de novo* by relying upon categorical circuit reasoning derived from *dicta*, *Heller*, 554 U.S. at 625-635 & nn. 25-26; *United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010)(Which relied upon *Heller's dicta*), and *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025)(Which relied upon *Heller's dicta* and inner-circuit division), instead of determining whether the governmental defendants had carried the constitutional burden assigned by the Second Amendment. (App. A-001-002.) In doing so, the court abandoned both the constitutional methodology prescribed by *Bruen*, *Hemani*, and *Wolford* and the adversarial method of constitutional adjudication. Rather than deciding the issues presented by the parties, the court effectively supplied the Government's defense without requiring either sovereign to justify the challenged restrictions through the representative historical tradition the Constitution demands. *Sineneng-Smith*, 590 U.S. at 375); *Clark*, 607 U.S at 9-10. As *Bruen* explained, Second Amendment claims are adjudicated upon "the historical record compiled by the parties." 597 U.S. at 25 n.6. Here, no such record was ever developed.[9]

2. This Case Presents a Recurring Question Concerning the Allocation of Constitutional Burdens

This petition presents more than an alleged misapplication of this Court's Second Amendment precedents. It presents a recurring constitutional question concerning whether courts may sustain statutes that criminalize conduct presumptively protected by the Constitution without first requiring the Government to carry the constitutional burden assigned to it.

This Court has long recognized that once conduct constitutes the exercise of a constitutional right, the Government may not justify a statutory classification that imposes criminal penalties upon the exercise of a constitutional right by relying upon the very deterrent purpose those penalties are designed to achieve. *Shapiro*, 394 U.S. at 630–31, *quoting Jackson*, 390 U.S. at 581, explained that a law *whose purpose* is to chill *the assertion* of a constitutional right by imposing a penalty upon those *who*

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[9] Unlike the plaintiffs recently before the Ninth Circuit in *Knife Rights*, who pursued only a facial challenge and whom that Court observed remained free to pursue future as-applied challenges, Petitioner asserted both facial and as-applied challenges from the outset. Nevertheless, before either governmental defendant was required to answer the operative complaint, present historical evidence, or carry the constitutional burden prescribed by *Bruen*, both claims were dismissed with prejudice. The Ninth Circuit then affirmed by relying upon *United States v. Duarte*—a fully litigated criminal prosecution decided upon a developed adversarial record—to dispose of Petitioner's civil constitutional action *without requiring that same constitutional process.* (A-001-002); *cf. Knife Rights, Inc. v. Bonta*, No. 24-5536, slip op. at 4–10 (Wardlaw, J., concurring in denial of rehearing en banc). *Cf.* id. at 22–28 (VanDyke, J., dissenting from denial of rehearing en banc and criticizing the Ninth Circuit's post-*Bruen* methodology for adjudicating Second Amendment claims).

choose to exercise it is "patently unconstitutional."[10] That principle bears directly upon the constitutional methodology prescribed here. Once the challenged law applies to "the people," concerns "Arms," and restricts their keeping or bearing, the challenged restriction *is presumptively unconstitutional* unless the Government demonstrates that imposing that criminal classification is consistent with this Nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 24–44; *Wolford*, 609 U.S. ___, slip op. at 7–11.

Some courts faithfully apply *Bruen* and *Wolford*, beginning with that constitutional premise and requiring the Government to establish a representative historical tradition supporting the challenged restriction. Others resolve the threshold inquiry through categorical judicial determinations that prevent the Government from ever being required to positively justify making the protected conduct unlawful *and* criminally punishable. Compare *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc), with *Duarte*, 137 F.4th 743. The disagreement therefore concerns not merely whether particular restrictions survive constitutional review, but whether courts may sustain criminal penalties imposed upon the exercise of an enumerated constitutional right without first requiring the Government to carry the burden the Constitution assigns, and whether the effect of those penalties

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10 "[T]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—*the power* to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U. S., at 634. We then concluded: "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Bruen*, 597 U.S. at 23.

are *unnecessarily excessive when* compared to historical analogues. *Cf. Jackson,* 390 U.S. at 582.

This case squarely presents that recurring question. Although the Ninth Circuit touched upon this Court's framework in *Duarte*, it affirmed dismissal in this case without requiring either California or the United States to answer the operative complaint, develop the historical record contemplated by *Bruen*, or demonstrate that permanently criminalizing Petitioner's alleged conduct is consistent with this Nation's historical tradition of firearm regulation. (App. 001-004.). *Hemani* and *Wolford* reaffirm that constitutional methodology, making this case an appropriate vehicle to restore uniformity concerning the allocation of constitutional burdens under the Second Amendment.

C. THE COURTS OF APPEALS HAVE ADOPTED CONFLICTING APPROACHES TO THE GOVERNMENT'S CONSTITUTIONAL BURDEN UNDER THE SECOND AMENDMENT

1. This Court's Recent Decisions Define the Historical Showing the Government Must Make

As explained in Reasons A thru B *infra*, once the challenged conduct falls within the Second Amendment's plain text, the Constitution presumptively protects that conduct and assigns the burden of historical justification to the Government. This Court's decisions in *Rahimi*, *Hemani*, and *Wolford* applied that constitutional method and further defined the historical showing necessary to satisfy that burden.

In *United States v. Rahimi*, the Court examined under a facial challenge whether the Government had established a historical tradition supporting the *temporary* disarmament of *an individual* judicially determined to present a credible threat of physical danger. 602 U.S. at 692–703. The Court focused upon the relevant historical "how" and "why"—whether analogous laws burdened the exercise of the right in a comparable manner and for comparable reasons. *Id.* at 692–700.

In *United States v. Hemani*, an as-applied challenge, the Government *acknowledged that it bore the burden* under *Bruen*, and this Court determined on *de novo* review whether that burden had been carried upon the historical record developed by the parties. 608 U.S. ___, slip op. at 4–6 (2026). The Court did not presume the restriction constitutional because Congress identified a broad regulated category. It did the opposite and examined whether the Government's historical evidence justified criminalizing *the individual* defendant's protected conduct.

Most recently, *Wolford v. Lopez,* addressing broad pre-enforcement challenges to state firearm regulations, reaffirmed that the Government must establish a representative historical tradition, not merely identify isolated enactments, local practices, or regulations that differ from the challenged restriction in the relevant how and why. 609 U.S. ___, slip op. at 7-18. The historical evidence must therefore demonstrate a sufficiently widespread and well-accepted national practice corresponding to the modern restriction in constitutionally relevant respects.

Together, these decisions establish that the Government cannot satisfy its burden through broad historical themes, modern policy judgments, or categorical doctrines. It must demonstrate a representative historical tradition showing how analogous regulations burdened the *individual's* exercise of the right and why they were historically imposed. That is the standard against which the divergent approaches of the courts of appeals—and the proceedings below—must be measured.

2. The Divergent Approaches of the Courts of Appeals Demonstrate the Need for This Court's Review

As explained above, this Court's recent decisions prescribe a single constitutional method for adjudicating Second Amendment claims. Although the courts of appeals generally acknowledge that *Bruen* assigns the burden of historical justification to the Government, they have adopted materially different approaches for determining whether that burden has been affirmatively satisfied. The resulting disagreement concerns not merely the outcome of Second Amendment litigation, but the constitutional method by which Article III courts adjudicate presumptively protected conduct.

For example, the Third Circuit's *en banc* decision in *Range,* a civil action, illustrates one approach. After concluding that Mr. Range's proposed possession of a firearm fell within the Second Amendment's plain text and that "the Constitution presumptively protects that conduct," the court required the Government to demonstrate that applying 18 U.S.C. § 922(g)(1) to him was consistent with this Nation's historical tradition of firearm regulation. *Id.* 124 F.4th at 228–32. Throughout the litigation, the Government's historical showing remained the dispositive constitutional inquiry. On the other hand, the Ninth Circuit's *en banc* decision in *Duarte*, a criminal action, employed a materially different methodology. Although acknowledging that *Bruen* assigns the burden of historical justification to the Government, the court concluded *on a developed* record that the historical regulations upon which it relied *broadly justified* a categorical permanent criminalization of that defendant's conduct without requiring the Government to establish that those regulations burdened analogous conduct for comparable historical reasons. The constitutional inquiry thus shifted from whether the Government had established a representative historical tradition through relevantly similar historical analogues to whether the court could characterize disparate historical regulations at a sufficiently high level of generality to uphold the statute. *Duarte*, 137 F.4th at 747–48, 755–62 & 805 (dissent by VanDyke J.)(Majority announces the broadest of holdings, giving legislatures unconstrained authority to disarm entire swaths of our citizenry). That methodological divergence assumed constitutional significance in the proceedings below.

Unlike *Range* and *Duarte*, Petitioner's civil constitutional challenge was dismissed before either California, or the United States answered the operative complaint or carried the burden assigned by the Second Amendment. (A-001–A-009.) Nevertheless, the Ninth Circuit relied on *Duarte*'s criminal categorical analysis to affirm the *sua sponte* dismissal without requiring either governmental defendant to develop the historical record through the adversarial process. (A-001–A-002.) The disagreement among the courts of appeals therefore extends beyond differing historical conclusions. It concerns whether the Government's historical showing remains the dispositive constitutional inquiry throughout the litigation, or whether categorical judicial doctrines may effectively replace that inquiry. This Court's decisions in *Rahimi*, *Hemani*, and *Wolford* require the former. The proceedings below employed the latter, and warrants this Court's review.[11]

3. **The Proceedings Below Produced No Representative Historical Tradition Supporting the Permanent Infringement of Petitioner's Presumptively Protected Conduct.**

Because the Government never answered Petitioner's operative complaint or carried its constitutional burden, the proceedings below produced no representative historical tradition supporting the permanent infringement of Petitioner's presumptively protected conduct. Nevertheless, the historical regulations upon which governments have relied to defend modern firearm restrictions in other litigation—including those assembled by the Ninth Circuit in *Duarte*—likewise fail to establish such a tradition. Many of those regulations imposed *temporary restrictions* upon individuals who remained subject to criminal punishment, judicial supervision, or a judicial determination *of present* dangerousness. Others regulated materially different conduct, served materially different governmental purposes, or imposed materially different legal consequences. None establishes a representative, widespread, and well-established historical tradition of permanently infringing upon and criminalizing the exercise of the right to keep and bear arms by a free, law-abiding citizen who has paid his debt to society, been discharged from supervision,

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[11] The constitutional methodology prescribed by *Bruen* and reaffirmed in *Rahimi*, *Hemani*, and *Wolford* consistently focuses on *the individual's challenged conduct* and the Government's justification for restricting *that conduct*. At no point does the constitutional inquiry shift from the individual's presumptively protected conduct to the categorical validity of legislative classifications divorced from the historical burden the Government must carry. *Cf. Duarte*, 137 F.4th at 761-62.

resumed the ordinary rights and civic responsibilities of the political community, and seeks to possess firearms for lawful purposes, including self-defense in the home.

That conclusion follows directly from this Court's recent Second Amendment jurisprudence. In *Rahimi*, the Court upheld 18 U.S.C. § 922(g)(8) because the Government established a historical tradition supporting the *temporary* disarmament *of an individual* judicially determined to present a current credible threat of physical violence. 602 U.S. at 692–703. In *Hemani*, by contrast, the Court held that the Government failed to establish, through the historical record, that the categorical application of § 922(g)(3) *to an individual* comports with this Nation's historical tradition of firearm regulation. 608 U.S. ___, slip op. at 4–6 (2026). And in *Wolford*, the Court rejected historical analogues that failed to establish the representative historical tradition required to sustain the challenged restrictions. 609 U.S. ___, Slip. Op. at 7-18. Collectively, these decisions confirm that broad historical themes, generalized assertions of dangerousness, or categorical judicial doctrines cannot substitute for the representative historical showing the Constitution requires.

The analysis that follows demonstrates that the historical authorities assembled in *Duarte* do not establish the representative, widespread, and well-established historical tradition required by *Bruen, Rahimi, Hemani*, and *Wolford*. Accordingly, even had the Government answered Petitioner's complaint and attempted to carry its constitutional burden, those historical authorities would still fail to justify the permanent infringement and criminalization of Petitioner's presumptively protected conduct.

D. THE GOVERNMENT CANNOT ESTABLISH A REPRESENTATIVE HISTORICAL TRADITION SUPPORTING THE PERMANENT INFRINGEMENT AND CRIMINALIZATION OF PETITIONER'S PRESUMPTIVELY PROTECTED CONDUCT

Reasons A thru C demonstrate that neither governmental defendant was required to answer Petitioner's operative complaint or carry the constitutional burden assigned by the Second Amendment. Although no adversarial historical record was developed below, this Court has already examined most of the historical regulations upon which governments consistently rely to defend modern firearm restrictions. Measured against the constitutional methodology reaffirmed in *Bruen*, *Rahimi*, *Hemani*, and *Wolford*, those historical analogues do not establish a representative, widespread, and well-accepted national tradition supporting the permanent infringement of Petitioner's presumptively protected conduct. Instead, they reflect *temporary* restrictions addressing punishment, ongoing supervision, current dangerousness, or legal incapacity—historical circumstances materially different from the lifetime criminalization challenged here.

1. *Heller's* "Presumptively Lawful" *Dicta* Cannot Displace the Historical Inquiry the Constitution Requires

The principal historical question presented in this case begins with this Court's observation in *District of Columbia v. Heller* that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons," which it described as "presumptively lawful." 554 U.S. 570, 626–27 & n.26 (2008). That *observation*, however, neither resolved the historical question presented here nor relieved the Government of its burden to demonstrate that the challenged restriction is consistent with this Nation's historical tradition of firearm regulation.

Heller itself recognized the limited significance of *dicta* addressing issues neither presented nor argued by the parties. Rejecting reliance upon an earlier footnoted observation concerning firearm restrictions, the Court explained that it was "inconceivable" that it would rest its interpretation of a constitutional guarantee upon "such a footnoted dictum in a case where the point was not at issue and was not argued." *Id.* at 625 n.25. Consistent with that principle, the Court acknowledged that there would be "time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us." *Id.* at 635.[12]

That time has now come. As explained in Reasons A thru C, *Bruen* held that once the Second Amendment's plain text covers *an individual's* conduct, "the Constitution presumptively protects *that conduct*," and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24. *Rahimi*, *Hemani*, and *Wolford* applied that same constitutional methodology, and *Wolford* further clarified

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[12] Likewise, in *Metropolitan Stevedore Co. v. Rambo*, the Court rejected decades of lower-court *dicta* inconsistent with the governing statutory text, emphasizing that interpretation must begin with the text itself and remain faithful to the statute's structure and purpose. 515 U.S. 291, 296–300 (1995). Rejecting reliance upon accumulated dicta, the Court observed that "[b]reath spent repeating dicta does not infuse it with life" and that *unnecessary observations* "are neither authoritative nor persuasive." *Id.* at 300. The same principle applies here. *Heller*'s reserved observation concerning "longstanding prohibitions" was not intended to replace the Second Amendment's text, the constitutional methodology later prescribed in *Bruen*, *Rahimi*, *Hemani*, and *Wolford*, nor the Government's corresponding constitutional burden.

that the Government must establish *a representative, widespread, and well-accepted historical tradition* corresponding to the challenged restriction in both the relevant how and why. Slip op. at 7–11. Read together, *Heller, Bruen, Rahimi, Hemani,* and *Wolford* direct that an infringement cannot qualify as the kind of "longstanding" prohibition contemplated by *Heller's dicta* unless it reflects a representative, widespread, and well-accepted historical tradition supporting a materially similar restriction, imposed in a materially similar manner and for a materially similar purpose. The question presented, therefore, is not whether *Heller's* historically unresolved *dicta* may be transformed into a categorical rule. It is whether the historical regulations previously relied upon by this Court and the courts of appeals collectively establish the representative historical tradition required by the *plain text command* of the Second Amendment before permanently infringing upon and criminalizing Petitioner's presumptively protected conduct.

2. The Historical Regulations Previously Examined by This Court Do Not Establish a Representative, Widespread, and Well-Accepted National Historical Tradition

The historical regulations most frequently invoked in modern Second Amendment litigation have been already examined by this Court and the courts of appeals. The relevant constitutional question is not whether those regulations existed, but whether they collectively establish the representative, widespread, and well-accepted national tradition *Wolford* now requires *before permanently criminalizing* Petitioner's presumptively protected conduct and whether they are consistent with the plain text command, that the right shall not be infringed.

Heller began this Court's modern historical inquiry by examining the original public understanding of the Second Amendment through English and Founding-era authorities, including Blackstone, Tucker, Rawle, Story, the English Bill of Rights, and the Federalist and Anti-Federalist debates. Those authorities uniformly described the right to keep and bear arms as a pre-existing right retained by the people and understood the Amendment as a constitutional prohibition upon governmental power, while expressly reserving the historical justification for the "presumptively lawful" regulations referenced in *dicta*. 554 U.S. at 598–626, n.25, & 635.

Bruen then examined the principal historical regulations advanced to justify restrictions on the public carrying of arms, including surety laws, going-armed (affray) laws, colonial enactments, early state regulations, and nineteenth-century territorial laws. After examining those sources, the Court concluded that they did not establish a representative historical tradition supporting New York's licensing regime because they burdened the right in materially different ways or reflected isolated and geographically limited practices. 597 U.S. at 31–70.

Rahimi revisited many of those same historical regulations. Rather than treating them as supporting broad legislative authority, the Court held that surety laws and going-armed laws demonstrated only a historical tradition permitting the temporary disarmament *of individuals* judicially determined to present a current credible threat of physical violence. The Court therefore accepted those historical analogues only insofar as they justified *temporary* restrictions tied to present dangerousness, not permanent criminal prohibitions imposed after punishment had ended. 602 U.S. at 690–702. In *Range*, the Third Circuit upon a GVR from this Court, adopted *Rahimi's* principles, required the Government to justify the permanent application of § 922(g)(1) through identical representative historical evidence and concluded that the historical analogues failed to support the challenged restriction. 124 F.4th 218, 225–32 (3d Cir. 2024) (en banc). By contrast, and despite this Court's narrowing historical analysis, the Ninth Circuit in *Duarte* synthesized many of those same historical sources—including punishment, forfeiture, allegiance laws, dangerousness regulations, legal incapacity, intoxication laws, vagrancy laws, and other categorical restrictions—into broad principles of legislative authority, concluding that legislatures may permanently disarm not only persons convicted of felonies but any class they deem dangerous. 137 F.4th at 755–62.[13]

Most recently, however, *Hemani* and *Wolford* substantially refined that methodology. In *Hemani*, this Court evaluated only the historical analogues actually presented by the Government—including intoxication laws, vagrancy laws, and other asserted historical analogues—and concluded that each burdened materially

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[13] Neither the Second Amendment nor 18 U.S.C. § 922(g)(1) employs the categorical term "felon." The Amendment protects "the right of the people to keep and bear Arms," while § 922(g)(1) applies only to persons *convicted* of specified offenses. Courts may not add categorical exclusions that neither the Constitution nor Congress adopted. *Bostock*, 590 U.S. at 654–55, 669–70; *Sprague*, 282 U.S. at 731; *Iselin v. United States*, 270 U.S. 245, 251 (1926); *Dean v. United States*, 556 U.S. 568, 572 (2009); cf. *United States v. Stevens*, 559 U.S. 460, 481 (2010). Nor is *Duarte*'s rejection of "felony-by-felony litigation" readily reconciled with Congress's retention of § 925(c), which authorizes individualized determinations. *United States v. Bean*, 537 U.S. 71 (2002). Petitioner respectfully submits that *Duarte* replaced the individualized inquiry required by *Bruen* and reaffirmed in *Wolford* with a categorical exclusion found in neither the Second Amendment, nor § 922(g)(1).

different persons, for materially different reasons, and through materially different means than the categorical restriction the Government sought to defend. *Hemani*, slip op. at 7–18.

Wolford further clarified that localized customs, isolated enactments, historical outliers, and broad historical themes cannot satisfy the Government's burden. Instead, the Government must establish a representative, widespread, and well-accepted national historical tradition corresponding to the challenged restriction in both the relevant how and why. 609 U.S. ___, slip op. at 13–24.

Measured against the constitutional methodology now reaffirmed in *Bruen*, *Rahimi*, *Hemani*, and *Wolford*, many of the historical analogues upon which *Duarte* relied have either been rejected as materially different or no longer satisfy the representative historical tradition this Court now requires. Accordingly, the historical regulations previously examined by this Court and the courts of appeals do not establish a representative, widespread, and well-accepted national tradition supporting the permanent criminalization *of Petitioner's* presumptively protected conduct. Reason D(3) examines those historical authorities individually and collectively.

3. Based on Text, History, and Tradition, the Historical Analogues Relied Upon to Defend Modern Firearm Restrictions Do Not Establish a Representative, Widespread, and Well-Accepted National Tradition Supporting the Permanent Disarmament of Free Citizens

As explained in Reasons C and D(2), the Government must establish a representative, widespread, and well-accepted historical tradition corresponding to the challenged restriction in both the relevant *how* and *why*. Measured against that standard, the historical analogues relied upon in modern Second Amendment litigation do not establish a representative national tradition supporting the permanent disarmament of free citizens who have paid their debt to society and resumed the ordinary rights and responsibilities of the political community.

a. The Historical Analogues Relied Upon in *Duarte* Do Not Establish the Representative Historical Tradition Required by This Court's Recent Decisions

As summarized above, *Duarte* relied upon substantially the same historical authorities previously examined by this Court, including historical punishments, forfeiture, allegiance laws, and categorical restrictions imposed upon persons deemed dangerous or legally incapable. *See* 137 F.4th at 755–62. The constitutional question, however, is not whether those historical regulations existed, but whether they establish the representative, widespread, and well-accepted national historical tradition required by the Second Amendment's plain-text understanding. They do not. The principal historical analogues consistently relied upon by governments and examined by this Court share a common feature: each addressed a present condition, present legal status, or present threat through restrictions limited to that circumstance.

Capital punishment and estate forfeiture extinguished life or property as punishment for crime, not the future exercise of constitutional liberty by persons who had satisfied their sentences. Allegiance laws burdened persons whose present loyalty to the sovereign was in question during periods of political conflict. Surety and going-armed laws addressed individuals judicially determined to present a current threat of violence. Restrictions upon intoxicated persons, minors, persons of unsound mind, vagrants, and other legally incapacitated persons responded to temporary conditions or continuing legal disabilities affecting the individual's present capacity to exercise the right. None imposed or recognized a permanent firearm disability surviving the completion of punishment upon a free citizen who had paid his debt to society and resumed the ordinary rights and responsibilities of the political community.

Measured against this Court's constitutional methodology, those historical analogues cannot sustain the judgment below. *Bruen* requires a historical analogue corresponding to the challenged restriction in both the relevant how and why. *Rahimi* recognized only the temporary disarmament of persons judicially determined to present a current credible threat of physical violence. *Hemani* rejected analogues burdening materially different persons, for materially different reasons, and through materially different means than the challenged restriction. Most recently, *Wolford* reaffirmed that localized customs, isolated enactments, and broad historical themes cannot establish the representative, widespread, and well-accepted national historical tradition the Constitution requires. Considered individually or collectively, the historical analogues upon which *Duarte* relied do not satisfy that constitutional standard.

b. The Nation's Broader Historical Practice Confirms the Same Conclusion

The broader historical record confirms that distinction. The Founding-era Militia Acts of 1792 and 1795 required ordinary members of the political community to keep arms and imposed no continuing firearm disability based solely upon a completed criminal conviction. Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271, 271–72; Act of Feb. 28, 1795, ch. 36, § 1, 1 Stat. 424, 424. Revolutionary loyalty laws and nineteenth-century surety and affray laws likewise imposed temporary or conditional restraints tied to present disloyalty or contemporaneous threatening conduct, not permanent disarmament after punishment ended. See *Bruen*, 597 U.S. at 46–67; *Rahimi*, 602 U.S. at 692–700. Each addressed a present condition through temporary or conditional measures. None imposed or recognized a permanent firearm disability surviving the completion of punishment or the cessation of the condition justifying the restraint.

Historical practice during imprisonment and parole reflects the same principle. Restrictions upon constitutional liberty historically accompanied custody, punishment, and supervision because they arose from a person's present legal status, not from a permanent civic disability surviving completion of sentence. Even incarcerated felons would, in limited circumstances, be entrusted with firearms where institutional judgment deemed them trustworthy. See *Hutto v. Finney*, 437 U.S. 678, 682–83 & n.6 (1978). Likewise, *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974), and *Pell v. Procunier*, 417 U.S. 817, 822–23 (1974), recognize that restrictions upon constitutional liberty arise from lawful confinement and supervision, not the permanent extinguishment of constitutional rights. Upon completion of punishment, individuals ordinarily resume the exercise of the freedoms secured by the Bill of Rights. Completion of a criminal sentence ordinarily restores the enjoyment of enumerated constitutional rights whose exercise was lawfully diminished during incarceration or supervision. Former prisoners again enjoy the freedoms of speech, religious exercise, peaceable assembly, petition, and association secured by the First Amendment; the protections against unreasonable searches and seizures guaranteed by the Fourth Amendment; and the ordinary exercise of the procedural safeguards secured by the Fifth and Sixth Amendments, although certain civic rights and responsibilities may remain subject to independent constitutional or statutory qualifications. *See, e.g., Morrissey*, 408 U.S. at 482 (parolee remains in legal custody until sentence expires); *Wolff*, 418 U.S. at 555–56 ("there is no iron curtain drawn between the Constitution and the prisons of this country"); *Pell*, 417 U.S. at 822–23 ("a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system"). The Second Amendment is no exception, for it likewise protects an enumerated constitutional right whose exercise may be temporarily restricted during criminal punishment but may not thereafter be permanently criminalized absent a representative historical tradition sufficient to satisfy the Government's burden. This Court has never recognized a general constitutional principle that a completed criminal conviction permanently extinguishes the exercise of an enumerated constitutional right. *Bruen*, 597 U.S. at 24 & 70 ("The constitutional right to bear arms ... is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.")

Accordingly, the historical practices governing punishment, supervision, and the restoration of constitutional liberty do not establish a representative, widespread, and well-accepted national tradition supporting the permanent disarmament of free citizens who have paid their debt to society and resumed the ordinary rights and responsibilities of the political community. The Government therefore must clearly demonstrate—and courts should not assume via *dicta*—that such a tradition exists. *See Bruen*, 597 U.S. at 24; *Hemani*, slip op. at 4–8; *Wolford*, slip op. at __

Modern legislation confirms the same understanding. The Federal Firearms Act of 1938 prohibited firearm possession only by persons convicted of specified crimes of violence. Congress substantially expanded those disabilities in 1961 and 1968, but retained individualized restoration through 18 U.S.C. §§ 921(a)(20) and 925(c), recognizing that conviction and continuing firearm disability are distinct legal questions. State law reflects the same principle. Numerous States restore firearm rights automatically or through judicial proceedings following completion of sentence or restoration of civil rights. See, *e.g.*, Ariz. Rev. Stat. § 13-910; Tex. Penal Code § 46.04(a); 13 Vt. Stat. Ann. § 4017. These enactments reflect restoration, not permanent dispossession, as the governing historical principle.[14]

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[14] Twentieth-century federal firearm legislation cannot itself establish the representative historical tradition the Second Amendment requires the Government to prove. It may, however, illuminate the absence of such a tradition by demonstrating that broad, permanent, categorical firearm disabilities emerged as modern legislative developments rather than as continuations of a representative historical practice dating to the Founding or Reconstruction. *See United States v. Hemani*, 608 U.S. ___, slip op. at 19 (Government must establish that the historical record supports "the categorical restriction it urges"); *id.*, Thomas, J., concurring, slip op. at 1–5 (modern enactments remain subject to the Constitution's original meaning).

Judicial examination and historical scholarship likewise reach the same conclusion. Then-Judge Barrett concluded that history supports disarming persons who are presently dangerous, not permanently disarming citizens solely because of a prior conviction. *Kanter v. Barr*, 919 F.3d 437, 451–69 (7th Cir. 2019) (Barrett, J., dissenting). Judge Phipps similarly found no historical analogue for the lifetime disarmament of an otherwise free citizen who has repaid his debt to society. *Range v. Attorney General*, 124 F.4th at 249–50 (Phipps, J., concurring). Leading historical scholarship reaches the same conclusion. *See* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695 (2009); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249 (2020); Carlton F.W. Larson, *Four Exceptions in Search of a Theory*, 60 Hastings L.J. 1371 (2009). The Duke Center for Firearms Law's Repository of Historical Gun Laws likewise reveals no representative, widespread, and well-established national tradition of permanently disarming free citizens who have completed their criminal sentences. *See* Duke Center for Fire-arms Law, *Historical Gun Laws, Repository of Historical Gun Laws*, @ https://firearmslaw.duke.edu/repository-of-historical-gun-laws

Considered collectively, the Nation's historical regulations, statutory practice, judicial examination, and historical scholarship point in the same direction: history regulated present dangerousness, present incapacity, present punishment, present supervision, or present disloyalty through temporary measures contingent upon those circumstances. It did not establish a representative, widespread, and well-accepted national tradition supporting the permanent disarmament of free citizens who have paid their debt to society and resumed the ordinary rights and responsibilities of the political community.

E. REVIEW IS NECESSARY TO RESTORE CONSTITUTIONAL UNIFORMITY

Reasons A thru D demonstrate both that the courts below departed from the constitutional methodology prescribed by this Court and that the historical record presently before this Court does not establish the representative, widespread, and well-accepted national tradition necessary to sustain the permanent criminalization of Petitioner's presumptively protected conduct. This case therefore presents an exceptional vehicle for this Court's review. Because neither governmental defendant was required to answer Petitioner's operative complaint or carry the constitutional burden assigned, the procedural errors below prevented the development of the adversarial historical record the Constitution requires. At the same time, the historical authorities already examined by this Court, together with the Nation's broader historical practice, do not establish the representative historical tradition required by the Second Amendment as set forth in *Bruen*, *Rahimi*, *Hemani*, and *Wolford*. This combination of procedural error and an undeveloped historical justification makes this case an appropriate vehicle for summary disposition, a GVR, or plenary review.

1. The Constitution Does Not Permit Enumerated Rights To Possess Different Geographic Meanings

This Court recently reaffirmed that "The Second Amendment has the same meaning in all parts of the United States" and that "merely local attitudes can neither shrink nor inflate the meaning of fundamental Bill of Rights guarantees." *Wolford v. Lopez*, 609 U.S. ____, slip op. at 18-19. That principle reflects a fundamental rule of constitutional interpretation: enumerated rights possess one national meaning and may not expand or contract according to regional doctrine or geographic boundaries.

The conflict below produces precisely the constitutional disparity *Wolford* forbids.

The disparity did not arise merely from differing assessments of historical evidence. It also reflects differing constitutional methodologies. In the Ninth Circuit, the analytical framework developed from *Heller*'s dicta stating that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" and identifying such regulations as "presumptively lawful regulatory measures." 554 U.S. 626–27 & n.26. Relying upon that *dicta, Vongxay* concluded that "[n]othing in *Heller* can be read legitimately to cast doubt on the constitutionality of § 922(g)(1)," and further explained that its holding was "buttressed by the fact that *Younger* upheld the very type of gun possession restriction that the Supreme Court deemed `presumptively lawful.'" 594 F.3d at 1114–17. Building upon that foundation, the *en banc* court in *Duarte* concluded that the Supreme Court's repeated "assurances" made clear that felon-in-possession laws "are presumptively constitutional," and relied upon that *dicta* before undertaking its historical analysis. 137 F.4th 747–52. That methodology cannot be reconciled with the framework reaffirmed in *Hemani* and *Wolford.* As Justice Barrett explained, although the Second Amendment's text has a fixed meaning that must be satisfied before a challenged law is deemed presumptively unconstitutional, courts may not "smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry." "*The answer is and always has been no.*" *Wolford*, Barrett, J., concurring, 609 U.S. slip op. at 2 n. 1. Rather than first determining whether Petitioner's conduct fell within the Second Amendment's plain text and requiring the Government to justify the challenged restrictions through a representative historical tradition, the methodology adopted in *Vongxay* and reaffirmed in *Duarte* effectively inserted a categorical exclusion into the plain-text inquiry itself, thereby relieving the Government of the constitutional burden (App. A-001—A-0011.)

. However, the Third, Fifth, Sixth, and Seventh Circuits recognize that the completion of criminal punishment presents a materially different constitutional inquiry from continuing punishment. *See United States v. Moore*, 111 F.4th 266, 273–75 (3d Cir. 2024) (concluding that historical tradition supports temporarily disarming persons while they complete their sentences); *United States v. Quailes*, 126 F.4th 215, 223–24 (3d Cir. 2025) (extending *Moore*'s reasoning to parole and probation); *United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024) ("parolees lack the same armament rights as free persons"); *United States v. Giglio*, 126 F.4th 1039, 1044–46 (5th Cir. 2025) (adopting *Moore*'s distinction between continuing punishment and completed punishment); *United States v. Goins*, 118 F.4th 794, 801–05 (6th Cir. 2024) (holding that historical tradition supports the temporary disarmament of persons on probation, parole, or supervised release because those sanctions remain part of the criminal sentence). By contrast, the Ninth Circuit resolves Second Amendment challenge through a categorical and meaningful constraints methodology it created, that does not distinguish between citizens who remain subject to criminal punishment and free citizens who have completed their sentences. *See Vongxay*, 594 F.3d at 1115–18; *Duarte*, 137 F.4th at 746-48, 755-762. Under this approach, completion of punishment, the passage of time, and successful reintegration do not alter the constitutional inquiry because the historical analysis never reaches whether the challenged regulation burdens a materially different person for materially different reasons.

The result is that similarly situated citizens receive materially different constitutional protection depending upon the circuit in which they reside. That is not merely disagreement over historical evidence. It is disagreement over the Constitution's meaning. *Wolford* forecloses that result. The Constitution cannot assign one meaning to the Second Amendment in Pennsylvania, another in Texas, and another in California. "Shall not be infringed" possesses one national meaning.

2. This Court Has Consistently Required Uniform National Protection for Enumerated Rights

Wolford reflects a longstanding constitutional principle. This Court has consistently held that enumerated constitutional rights possess one national meaning and may not vary according to state law, local policy, or regional doctrine. *Malloy v. Hogan*, 378 U.S. 1, 10–14 (1964); *Cooper v. Aaron*, 358 U.S. 1, 18–19 (1958).

The Court has likewise rejected attempts to accomplish indirectly through traditional governmental authority what the Constitution forbids directly. *Marsh v. Alabama*, 326 U.S. 501, 506–09 (1946); *City of Ladue v. Gilleo*, 512 U.S. 43, 54–58

(1994); *Buchanan v. Warley*, 245 U.S. 60, 74–82 (1917); *Tyler v. Hennepin County*, 598 U.S. 631, 642–48 (2023). Nor has the Court permitted blanket classifications to replace the individualized constitutional inquiry the Constitution requires. *Romer v. Evans*, 517 U.S. 620, 632–35 (1996); *Keyishian v. Board of Regents*, 385 U.S. 589, 605–10 (1967); *Department of Agriculture v. Moreno*, 413 U.S. 528, 534–38 (1973).

The same constitutional principles govern the Second Amendment

3. The Constitution Supplies Its Own Rules of Interpretation

The Constitution itself supplies the rules governing interpretation of its enumerated guarantees. The Ninth Amendment functions as a rule of constitutional construction, cautioning courts against interpretations that diminish rights retained by the people. Consistent with that principle, *Bruen* explained that where competing historical evidence permits more than one plausible interpretation, courts must adopt the interpretation "more consistent with the Second Amendment's command" that the right "shall not be infringed." 597 U.S. at 44 n.11.

Justice Barrett reaffirmed the same principle in *Wolford*, explaining that constitutional rights cannot become matters of political preference because "[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy." *Wolford*, 609 U.S. ___, ___ (2026) (Barrett, J., concurring) (quoting *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943)).

Together, the Ninth Amendment, along with *Bruen* thru *Wolford* establish a common constitutional rule: constitutional text governs, representative history informs its application, and courts may not diminish the national meaning of an enumerated right through geographically confined doctrine or categorical presumptions.

4. The Ninth Circuit's Categorical Methodology Reduces the Second Amendment to a Second-Class Right

This Court has repeatedly held that the Second Amendment "is not a second-class right." *Bruen*, 597 U.S. at 70. Yet the decision below, which was part of the Ninth Circuit majority's "deep-seated prejudice" against the Second Amendment right (*Id.*, 137 F.4th at 805 (VanDyke J, dissenting), afforded Petitioner's claim a categorical methodology that relieved the Government of the burden required by the Constitution. Instead of requiring representative historical proof, the majority below treated Petitioner's completed conviction and discharge as sufficient to justify permanent criminalization of his presumptively protected conduct. If allowed to stand, the decision below will continue to produce materially different constitutional protection for identical conduct depending solely upon the circuit in which a citizen resides. *E.g. Wolford*, 609 U.S. ____, Slip. Op 14 (Barrett, J. concurring)(a majority's opposition to a constitutional right is not a permissible basis for restricting it.).

5. This Court's Intervention Is Necessary to Restore Constitutional Uniformity

This case presents the recurring question whether courts may resolve Second Amendment claims through categorical judicial doctrine without first requiring the Government to carry the constitutional burden this Court prescribed in *Bruen*. The proceedings below never required either governmental defendant to do so. Instead, categorical judicial doctrine supplied the constitutional answer. (A-001–A-009.)

Until this Court intervenes, the Second Amendment's command that the right to keep and bear arms "shall not be infringed" will continue to yield to geographically confined doctrine rather than one uniform national Constitution required by Article VI, cl. 2. This Court's review is necessary not merely to resolve disagreement over historical evidence, but to restore the constitutional method of adjudication the Second Amendment requires and to ensure that an enumerated constitutional right possesses the same meaning throughout the United States.

Wolford reaffirms that when "a challenged law falls within the plain text of the Second Amendment, *it is presumptively unconstitutional*," and that "the Second Amendment has *the same meaning in all parts* of the United States." 609 U.S. ___, slip op. at 7, 16–19. Until this Court intervenes, the Constitution's command that the right to keep and bear arms "shall not be infringed" will continue to yield to geographically confined circuit doctrine and categorical interest balancing, displacing the Government's constitutional burden and constitutional uniformity.

That is where the courts below fundamentally erred: they permitted restrictions presumptively unconstitutional under this Court's prescribed methodology to permanently infringe upon and criminalize Petitioner's protected conduct without ever requiring the Governments to affirmatively prove that those restrictions comport with the historical understanding of the preexisting right the Second Amendment codified.

CONCLUSION

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

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Respectfully submitted,

By________________________

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