

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRANCE J. TARDIEFF,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the lifetime ban on possession of firearms by all felons, codified at 18 U.S.C. § 922(g)(1), plainly unconstitutional on its face under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), because it is permanent and applies to all persons convicted of felonies?

PARTIES TO THE PROCEEDING

Petitioner is Terrance J. Tardieff, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction is unpublished and is set forth at App. 001.

JURISDICTION

The judgment of the court of appeals was entered on June 11, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1) states in relevant part:

(g) It shall be unlawful for any person—

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

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

The Second Amendment to the U.S. Constitution provides in relevant part:

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.

INTRODUCTION

Section 922(g)(1) forbids every person convicted of any felony from possessing any firearm, anywhere, for any purpose, for the rest of his life. It requires no finding that the person is dangerous. It has no end date. Nothing resembling it existed in England before the founding, in the colonies, in the early Republic, in antebellum America, or during Reconstruction. The first federal statute disarming any class of convicted persons was not enacted until 1938, 147 years after ratification, and it reached only those convicted of enumerated crimes of violence. Congress did not disarm felons as a class until 1961, and the prohibition took its present form in 1968, 177 years after the Second Amendment was ratified.

Terrance Tardieff was convicted under that statute and sentenced to fifty-seven months of imprisonment. He argued in the district court and in the Fifth Circuit that § 922(g)(1) cannot be squared with the Second Amendment as this Court construed it in *Bruen*. Both courts held the argument foreclosed by circuit precedent. The Fifth Circuit did so on an unopposed motion for summary affirmance, in a two-page unpublished order. App. 001.

The courts of appeals are not going to resolve this. Six circuits hold that a felony conviction ends the inquiry. Two permit a defendant to show that he may keep his arms notwithstanding a conviction. The Fifth Circuit asks instead how the founding generation punished the particular offense, an approach that has produced opposite results on comparable records within that circuit in the space of a single

year. The Seventh Circuit has expressly reserved the question. Four years after *Bruen* and two after *Rahimi*, the disagreement has hardened rather than resolved.

Nor has this Court supplied one. Last Term, in holding that a prosecution under § 922(g)(3) violated the Second Amendment, it declined to reach the provision at issue here, saying in terms that it did “not address 18 U.S.C. §922(g)(1)’s provision disarming individuals convicted of felonies.” *United States v. Hemani*, 608 U.S. ----, 146 S. Ct. 1677, 1693 (2026).

Bruen assigned the government the burden of affirmatively proving that a modern firearm regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms. For the broadest disarmament statute in the United States Code, a statute that reaches millions of Americans and roughly one in ten federal sentencings each year, that burden has never been carried, and the lower courts cannot agree on whether it must be. The question is ripe, it is important, and this case presents it squarely.

STATEMENT OF THE CASE

Terrance J. Tardieff's prosecution under 18 U.S.C. § 922(g)(1) rested on four prior Louisiana felony convictions. ROA.210. Three are property offenses: two convictions for simple burglary under La. R.S. 14:62, entered on April 1, 2008 and February 28, 2011, and one for felony theft under La. R.S. 14:67, entered on February 21, 2018. The fourth is simple robbery under La. R.S. 14:65, a charge amended down from armed robbery. The burglary and robbery convictions entered on April 1, 2008 rest on conduct committed when Mr. Tardieff was eighteen years old. ROA.349-54, 357-62, 364, 367-68, 373-74. In each of those proceedings the state sentencing court found on the record that he was not convicted of a crime of violence. ROA.351, 353, 361, 364.

On November 3, 2022, a grand jury in the Middle District of Louisiana charged Mr. Tardieff with one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). ROA.13. The indictment alleged that on July 4, 2022, he knowingly possessed a SCCY model CPX-2 nine-millimeter pistol. ROA.13.

Mr. Tardieff moved to dismiss the indictment, arguing that § 922(g)(1) is unconstitutional on its face and as applied to him under *Bruen*. ROA.47. The district court stayed the case pending this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), and then ordered further briefing in light of *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024). The parties briefed the question fully, ROA.80-93, 128-57, 186-208, and the district court heard argument on February 27, 2025, ROA.209,

258-309. The district court denied the motion in a two-page ruling that relied on its decision in another case. ROA.210-11.

Mr. Tardieff pleaded guilty on April 29, 2025. ROA.214, 310-27. The factual basis was that on July 4, 2022, he knowingly possessed the pistol in Baton Rouge. ROA.322-23. The district court sentenced him to fifty-seven months of imprisonment, to run concurrently with his state sentences, and three years of supervised release. ROA.247-53, 339-40. He timely appealed. ROA.256.

The Fifth Circuit granted the government's unopposed motion for summary affirmance and affirmed in an unpublished per curiam order, holding the claims foreclosed by *United States v. Schnur*, 132 F.4th 863 (5th Cir. 2025), and *Diaz*. App. 001. No petition for rehearing was filed.

Mr. Tardieff's guilty plea did not waive his challenge to the constitutionality of the statute of conviction. *Class v. United States*, 583 U.S. 174, 178 (2018). The court of appeals rejected the claim as foreclosed by circuit precedent rather than on any procedural ground. App. 001.

REASONS FOR GRANTING THE WRIT

I. Section 922(g)(1) is facially unconstitutional under the Second Amendment because there is no historical tradition of prohibiting all felons from possessing all firearms for life

A. *Bruen* represented a fundamental shift in Second Amendment analysis

The Second Amendment to the U.S. Constitution mandates that a “well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In *District of Columbia v. Heller*, this Court held that the Second Amendment codifies an individual right to possess and carry weapons, explaining that the inherent right of self-defense is central to its protections. 554 U.S. 570, 628 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding “that individual self-defense is the central component of the Second Amendment right”).

Following *Heller*, but before *Bruen*, the Fifth Circuit and others “adopted a two-step inquiry for analyzing laws that might impact the Second Amendment.” *Hollis v. Lynch*, 827 F.3d 436, 446 (5th Cir. 2016). First, courts asked “whether the challenged law impinge[d] upon a right protected by the Second Amendment—that is, whether the law regulate[d] conduct that falls within the scope of the Second Amendment’s guarantee.” *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives [NRA]*, 700 F.3d 185, 194 (5th Cir. 2012); *see also United States v. McGinnis*, 956 F.3d 747, 754 (5th Cir. 2020). To make that determination, courts “look[ed] to whether the law harmonize[d] with the historical traditions associated with the Second Amendment guarantee.” *NRA*, 700 F.3d at 194. If the

regulated conduct was deemed to fall outside the scope of the Second Amendment's protection under that framework, then the law was deemed constitutional without further analysis. *McGinnis*, 956 F.3d at 754.

However, if the regulated conduct fell within the protective scope of the Second Amendment, courts proceeded to step two: determining and applying “the appropriate level of means-ends scrutiny—either strict or intermediate.” *Id.* (internal quotation marks and citation omitted). “[T]he appropriate level of scrutiny ‘depend[ed] on the nature of the conduct being regulated and the degree to which the challenged law burden[ed] the right.” *NRA*, 700 F.3d at 195 (quoting *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010)). Under that framework, “a ‘regulation that threaten[ed] a right at the core of the Second Amendment’—i.e., the right to possess a firearm for self-defense in the home—‘trigger[ed] strict scrutiny,’ while ‘a regulation that does not encroach on the core of the Second Amendment’ [was] evaluated under intermediate scrutiny.” *McGinnis*, 956 F.3d at 754 (quoting *NRA*, 700 F.3d at 194).

In *Bruen*, this Court expressly abrogated the two-step inquiry adopted by the Fifth Circuit and others and announced a new framework for analyzing Second Amendment claims. The Court reasoned that “[s]tep one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment’s text, as informed by history.” *Bruen*, 597 U.S. at 19. However, *Bruen* rejected the practice of applying “means-end scrutiny” to conduct deemed protected, explaining that “*Heller* and *McDonald* do not support applying means-end

scrutiny in the Second Amendment context.” *Id.* Under *Bruen*’s newly announced framework, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. And, upon such a finding, “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. Only upon the government making such a showing may a court “conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* (citation omitted). In other words, for a firearm regulation to pass constitutional muster, “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 19.

B. Under the new framework, Section 922(g)(1) violates the Second Amendment because firearm possession is protected by the Amendment’s plain text, and the government cannot show a historical tradition of categorically disarming felons

Straightforward application of *Bruen*’s test makes clear that Section 922(g)(1) cannot survive constitutional scrutiny, and the Fifth Circuit was wrong to hold otherwise.

1. The text of the Second Amendment covers Mr. Tardieff’s conduct, and he is among “the people” the Amendment protects

The plain text of the Second Amendment protects the right to possess and carry weapons for self-defense. *See Heller*, 554 U.S. at 583-92. And *Bruen* clarified that this right extends outside of the home. 597 U.S. at 10. Section 922(g)(1) is a permanent and complete ban on any firearm possession by felons in any context. Thus, the

statute regulates, and in fact fully prohibits, conduct that is presumptively protected under the plain text of the Second Amendment. As a result, the statute is presumptively unconstitutional under *Bruen*. *Id.* at 24.

In an attempt to sidestep this straightforward conclusion, the government has adopted a novel argument that a person's status as a "felon" excludes that person from the Second Amendment's protections. But the plain text of the Second Amendment and this Court's precedent hold otherwise. In *Heller*, this Court rejected the theory that "the people" protected by the Second Amendment was limited to a specific subset, that is, those in a militia. 554 U.S. at 579-81, 592-600. The Court explained that when the Constitution refers to "'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset," and there is thus a "strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." *Id.* at 580-81.

Comparison to other constitutional amendments confirms this view. As *Heller* explained, "the people" is a "term of art employed in select parts of the Constitution," including "the Fourth Amendment, . . . the First and Second Amendments, and . . . the Ninth and Tenth Amendments." *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). It is beyond challenge that felons are among "the people" whose "persons, houses, papers, and effects" enjoy Fourth Amendment protection. U.S. Const. amend. IV; see *United States v. Lara*, 815 F.3d 605 (9th Cir. 2016). And felons likewise enjoy "the right of the people" to "petition the government for a redress of grievances." U.S. Const. amend. I; see *Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th

Cir. 2017). If a person with a felony conviction is one of “the people” protected by the First and Fourth Amendments, *Heller* teaches that he is one of “the people” protected by the Second Amendment, too.

This view was confirmed when this Court addressed a challenge to a different subsection of § 922(g) in *United States v. Rahimi*, 602 U.S. 680 (2024). The Court analyzed historical laws dealing with dangerous persons to find that § 922(g)(8) was consistent with historical tradition and therefore constitutional. *Id.* at 693-96. But the Court never suggested for a moment that Mr. Rahimi was not one of “the people” protected by the Second Amendment. Accordingly, Mr. Tardieff is among “the people” to whom the Second Amendment applies.

2. There is no relevantly similar historical regulation that bans firearm possession for life

Bruen provided guidance on conducting historical analysis in the hunt for relevantly similar regulations. The Court can consider “whether ‘historical precedent’ from before, during, and even after the founding evinces a comparable tradition of regulation.” *Bruen*, 597 U.S. at 27. But *Bruen* reminded that “not all history is created equal.” *Id.* at 34. That is because “[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Id.* (quotation marks omitted). Because the Second Amendment was adopted in 1791, earlier historical evidence “may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years.” *Id.* Similarly, post-ratification laws that “are inconsistent with the original meaning of the constitutional text obviously

cannot overcome or alter that text.” *Id.* at 36 (quotation marks and emphasis omitted).

Bruen, and later *Rahimi*, also offered analytical guidance for evaluating historical clues. As this Court explained in *Rahimi*: “A court must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, ‘apply[ing] faithfully the balance struck by the founding generation to modern circumstances.’” *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29). In doing so, “[w]hy and how the regulation burdens the right are central to this inquiry.” *Id.* Thus, “if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Id.* Importantly, though, “[e]ven 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.* And this Court made clear that the burden falls squarely on the government to “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Bruen*, 597 U.S. at 19. If the government cannot do so, the infringement on the right cannot survive.

In *Heller*, this Court confirmed an individual’s right to keep and bear arms but cautioned that this right is “not unlimited.” 554 U.S. at 626. In the same passage the Court wrote: “Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to

cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-27. That list was dicta, offered “only as examples” and expressly not purporting “to be exhaustive.” *Id.* at 627 n.26. No historical analysis accompanied it. And since this was the Court’s “first in-depth examination of the Second Amendment,” *Heller* explained that it could not “clarify the entire field.” *Id.* at 635. But *Heller* promised 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.* That time is now. The government cannot meet its burden to establish the requisite “relevantly similar” historical tradition. *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29).

The government cannot meet its burden to establish Section 922(g)(1)’s historical pedigree for a simple reason: neither the federal government nor a single state barred all people convicted of felonies until the twentieth century. *See, e.g.*, Adam Winkler, *Heller’s Catch-22*, 56 U.C.L.A. L. Rev. 1551, 1563 (2009). The modern version of Section 922(g)(1) was adopted 177 years after the Second Amendment. *Bruen*, 597 U.S. at 66 n.28 (“[L]ate-19th-century evidence” and any “20th-century evidence . . . does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.”).

Section 922(g)(1) very much contradicts earlier evidence from the relevant historical periods: “(1) . . . early modern England; (2) the American Colonies and the

early Republic; (3) antebellum America; (4) Reconstruction” *Bruen*, 597 U.S. at 34. Those periods lack evidence of any analogue to Section 922(g)(1).

The government may argue that, historically, some jurisdictions sometimes regulated firearm use by those considered presently violent. But not all people with a felony conviction are presently violent. Moreover, the historical regulations required an individualized assessment of a person’s threat to society. And finally, the historical regulations almost always allowed people deemed violent to still possess weapons for self-defense. Thus, even those convicted of serious crimes, including rebellion, remained entitled to protect themselves in a dangerous world, with firearms if necessary. Those laws’ targeted nature makes them a far cry from declaring that any person, convicted of any felony, can never possess “the most popular weapon chosen by Americans for self-defense in the home.” *Heller*, 554 U.S. at 629.

England, before the founding, did not ban felons from ever again possessing a firearm. *See Kanter v. Barr*, 919 F.3d 437, 457 (7th Cir. 2019) (Barrett, J., dissenting); C. Kevin Marshall, *Why Can’t Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Policy 695, 717 (2009); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 260 (2020). To the extent that England sought to disarm individuals, those regulations usually required a more culpable mental state and made exceptions for self-defense, both features absent from Section 922(g)(1). *Rahimi* discusses at length the surety

laws and laws against affray or going armed against the king's subjects. 602 U.S. at 693-99.

To the extent that England tried to disarm whole classes of subjects, it did so on discriminatory grounds that would be unconstitutional today, and yet still permitted those targeted to keep arms for self-defense. For example, in the age of William and Mary, both Protestants, Catholics were presumed loyal to James II, a Catholic trying to retake the throne, and treasonous. Yet even Catholics, who as this Court has noted “fell beyond the protection of the right to have arms, and who were stripped of all ‘Arms, Weapons, Gunpowder, [and] Ammunition,’ were at least allowed to keep ‘such necessary Weapons as shall be allowed . . . by Order of the Justices of the Peace . . . for the Defence of his House or Person.’” *Bruen*, 597 U.S. at 45 n.12 (quoting 1 Wm. & Mary c. 15, § 4, in 3 Eng. Stat. at Large 399 (1688)). In short, the English never tried to disarm all felons. Rather, they tried to limit the use of firearms by those individuals found to be violent and rebellious. And even those individuals could keep arms for self-defense. A “relevantly similar” historical regulation that is not. *Bruen*, 597 U.S. at 29.

There is likewise little evidence of an early American practice of forever barring all people convicted of a felony from ever again possessing a firearm. The early United States accepted that those who committed crimes, even serious ones, retained a right to defend themselves. That can be seen in the colonies' and states' statutes, early American practice, and rejected proposals from state constitutional conventions. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting); *Folajtar v. Att'y*

Gen. of the United States, 980 F.3d 897, 915 (3d Cir. 2020) (Bibas, J., dissenting); *Chester*, 628 F.3d at 681; *Binderup v. Att’y Gen. of the U.S.*, 836 F.3d 336, 368 (3d Cir. 2016) (en banc) (Hardiman, J., concurring in part and concurring in the judgments).

To the extent that the new nation sought to disarm people, the regulatory approach was much more limited than Section 922(g)(1). For example, in 1756 Virginia ordered the disarmament of everyone who refused a statutory test of allegiance, a measure that reached Catholics but turned on allegiance rather than faith. 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, 157 (2007). Even then there was an exception for weapons allowed by a justice of the peace “for the defense of his house and person,” and the act directed the justices to return the arms of anyone who later submitted to the test. *Id.* And following the Declaration of Independence, Pennsylvania ordered that those who did not pledge allegiance to the Commonwealth and renounce British authority be disarmed. *Id.* at 159. Thus, to the extent that either regulation would comply with the Second Amendment as understood today, they required a specific finding that a specific person posed a risk of violence to the state.

Colonial and founding-era practice also suggests that committing a serious crime did not result in permanent disarmament. For example, leaders of the seminal Massachusetts Bay colony once disarmed supporters of a banished seditionist. Greenlee, *supra*, at 263. Nevertheless, “[s]ome supporters who confessed their sins

were welcomed back into the community and able to retain their arms.” *Id.* And in 1787, after the participants in Shays’ Rebellion attacked courthouses, a federal arsenal, and the Massachusetts militia, they were barred from bearing arms for three years, not for life. *Id.* at 268-69. In fact, Massachusetts law required the Commonwealth to hold and then return the rebels’ arms after that period. Sec’y of the Commonwealth, *Acts and Resolves of Massachusetts 1786–87*, at 178 (1893).

American practice and laws during the nineteenth century, before and after the Civil War, also confirm that Section 922(g)(1) does not comport with the “Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 34. The United States continued to regulate, but not ban, firearm possession by those feared to be violent. *See id.* at 56 (explaining that nineteenth century surety laws allowed people likely to breach the peace to still keep guns for self-defense or if they posted a bond). But, as discussed above, that is not similar to Section 922(g)(1). There is no evidence of a precursor to Section 922(g)(1)’s broad, categorical ban. In fact, there are at least two documented instances where attempts to disarm a class of offenders were rejected as inconsistent with the right to bear arms.

First, as with Shays’ Rebellion, when Congress disbanded the organized militia forces of the former Confederate States after the Civil War, it declined to disarm their members. Steven G. Bradbury, et al., *Whether the Second Amendment Secures an Individual Right*, 28 Op. O.L.C. 126, 2004 WL 2930974, *59 (2004). The bill’s sponsor struck the word “disarmed” from the provision in the face of opposition from several northern senators, who objected that disarming the citizens from whom the militia

was drawn “would violate the Second Amendment.” *Id.* Second, when a Texas law ordered that people convicted of unlawfully using a pistol be disarmed, it was struck down as unconstitutional under the Texas constitution. *Jennings v. State*, 5 Tex. Ct. App. 298, 298 (1878).

In sum, the nineteenth century history provides clear evidence that mass disarmament for people convicted of an offense is unconstitutional. Not only was there a consistent practice of allowing people who broke the law to keep weapons for self-defense; at least one state appellate court and Congress agreed that disarming lawbreakers was unconstitutional. As *Bruen* teaches: “[I]f some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.” 597 U.S. at 27.

Rahimi did not affect this analysis, and in fact made all the clearer Section 922(g)(1)’s lack of constitutional backing. The prohibition there passed constitutional muster because there were historical analogues temporarily disarming those proven to be presently violent. 602 U.S. at 695-98. The restraining order subsection of § 922(g) passed constitutional muster because there is an individualized finding of dangerousness, after notice and an opportunity to be heard, and the restriction lasts only as long as the restraining order does. *Id.* at 688-89, 699.

Again, “[w]hy and how the regulation burdens the right are central to this inquiry.” *Id.* at 692. Section 922(g)(1) contains a lifetime prohibition on possession of firearms by all convicted felons, without an individualized determination of ongoing

dangerousness. It therefore violates the Second Amendment on its face, and Mr. Tardieff's conviction under Section 922(g)(1) must be vacated.

II. The question whether Section 922(g)(1) violates the Second Amendment has divided the courts of appeals, this Court has reserved it, and its resolution is of great importance

A. This Court reserved the question again last Term in *Hemani*

Last Term this Court held that the government's prosecution of a defendant under the unlawful-user provision of 18 U.S.C. § 922(g)(3) violated the Second Amendment. *United States v. Hemani*, 146 S. Ct. 1677 (2026). In doing so the Court expressly declined to decide the question presented here. It stated: "We do not address 18 U.S.C. §922(g)(1)'s provision disarming individuals convicted of felonies (often including drug-related ones)." *Id.* at 1693. In a footnote the Court explained that subsections (g)(1) and (g)(4) "involve some manner of pre-deprivation process before an individual's Second Amendment rights are lost," and that "[f]or that reason, they differ from subsection (g)(3) and 'nothing in our opinion should be taken to cast doubt' on them." *Id.* at 1692 n.6 (quoting *Heller*, 554 U.S. at 626).

Hemani confirms both that a subsection of § 922(g) can fail *Bruen's* test and that the broadest subsection of all remains unexamined. The footnote's reference to pre-deprivation process does not answer the facial question. Whatever process a criminal prosecution supplies, it is process directed at a different question. A conviction establishes that the defendant committed the offense charged. It involves no finding, and gives the defendant no occasion to contest, whether he can safely be trusted with a firearm at any point in the decades that follow. Section 922(g)(8), which

this Court upheld in *Rahimi*, required a judicial finding that the defendant posed a credible threat to the physical safety of another, after notice and an opportunity to be heard, and it lasted only as long as the order that produced it. 602 U.S. at 688-89, 699. Section 922(g)(1) requires no such finding and never ends.

B. The courts of appeals are irreconcilably divided

Since *Bruen*, the courts of appeals have reached irreconcilable conclusions about how to analyze Second Amendment challenges to § 922(g)(1), and defendants with materially identical records now obtain opposite results depending on where they are prosecuted.

A first group of circuits has foreclosed such challenges altogether. The Eighth Circuit held in *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), that legislatures historically had broad authority to disqualify categories of persons from possessing firearms, that Congress acted within that tradition, and that individualized determinations of dangerousness are not required. *Id.* at 1125-29. The en banc Ninth Circuit reached the same result in *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc). The Second, Fourth, Tenth, and Eleventh Circuits have taken the same position. *See Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025).

A second group permits as-applied challenges, and one of the two has granted relief. The Sixth Circuit held in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), that governments have traditionally had authority to disarm groups deemed

dangerous, provided that individuals within those groups have an opportunity to show they do not pose a danger, and that courts should consider a defendant's entire criminal record and assess whether his offenses fall into historically recognized categories of dangerous crimes. *Id.* at 657-61. *Williams* itself rejected a facial challenge, upheld the statute as applied to a defendant whose prior convictions included aggravated robbery and attempted murder, and affirmed. *Id.* at 642, 657. The en banc Third Circuit held § 922(g)(1) unconstitutional as applied to a man whose prior conviction was for making false statements to obtain food stamps. *Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024) (en banc). It rejected the contention that a past conviction removes a person from “the people,” *id.* at 226-28, and held that the government had failed to demonstrate a tradition of imposing anything near a permanent ban on firearm possession on account of past misdeeds, *id.* at 228-32. Aligning itself with the Sixth Circuit, it refused to “defer blindly to § 922(g)(1) in its present form,” faulting the statute as “far too broad[]” and as operating “at such a high level of generality that it waters down the right.” *Id.* at 229-30 (quoting *Bruen*, 597 U.S. at 31, and *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring)).

The Fifth Circuit occupies a third position. It has rejected facial challenges but asks, offense by offense, how the founding generation punished the crime that produced the conviction. In *Diaz*, the court parted ways with other circuits by holding that *Bruen* abrogated its prior decisions upholding § 922(g)(1), that *Heller*’s reference to “longstanding prohibitions on the possession of firearms by felons” was not binding precedent, and that felons are among “the people” protected by the Second

Amendment. 116 F.4th at 465-66 & n.2. It nonetheless upheld the statute as applied to that defendant because “[a]t the time of the Second Amendment’s ratification, those—like *Diaz*—guilty of certain crimes—like theft—were punished permanently and severely.” Id. at 472. The court cautioned that “not all felons today would have been considered felons at the Founding,” id. at 469, and expressly reserved the future: “[o]ur opinion today does not foreclose future as-applied challenges by defendants with different predicate convictions.” Id. at 470 n.4.

That approach has proved unstable in practice. In the year before Mr. Tardieff’s appeal was decided, the Fifth Circuit held § 922(g)(1) unconstitutional in three cases while affirming in others on comparable records. *See United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025) (felony nonpayment of child support); *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026) (simple possession of methamphetamine); *United States v. Doucet*, No. 24-30656, 2025 WL 3515404 (5th Cir. Dec. 8, 2025) (unpublished) (attempted cultivation of marijuana). Whether a defendant keeps his Second Amendment rights in that circuit turns on how closely a modern statutory label tracks an offense that was severely punished at common law, a question on which the panels have not converged.

The Seventh Circuit has reserved the merits. In *United States v. Prince*, it declined to decide whether § 922(g)(1) may constitutionally be applied to a person whose felony convictions do not suggest that firearms would be dangerous in his hands, observing that “the one thing on which all courts of appeals that have addressed the question after *Bruen* agree is that § 922(g)(1) is valid in many

applications and cannot be declared unconstitutional ‘on its face.’” 171 F.4th 1009, 1011 (7th Cir. 2026); *accord United States v. Watson*, 171 F.4th 1012, 1025 (7th Cir. 2026). That agreement reflects the demands of the facial-challenge standard rather than a considered judgment that the statute’s central applications are valid. *Prince* illustrates the point because the court reached its conclusion after noting that counsel had disclaimed any as-applied challenge, that the defendant’s prior convictions were for armed robbery and aggravated battery, and that “[i]t would not be possible to argue with a straight face that firearms are harmless in Prince’s hands.” *Id.*

The division is not academic. The same statute, measured against the same Constitution, is invariably valid in six circuits, subject to defeasance in two, contingent on founding-era punishment practice in a ninth, and an open question in a tenth. That is not a stable constitutional rule, and only this Court can supply one.

C. The question is of exceptional and recurring importance

Resolving the question presented matters far beyond this case. As Justice Alito has observed, “§ 922(g) is no minor provision.” *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Of the 66,662 cases reported to the United States Sentencing Commission in fiscal year 2025, 7,245 involved convictions under § 922(g), and eighty-nine percent of those rested on a prior felony conviction. U.S. Sent’g Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* 1 (FY 2025). By those figures, sentencings under § 922(g)(1) account for roughly one in ten federal sentencings each year. The government has itself acknowledged “the special need for certainty about Section 922(g)(1) given the frequency with which the government

brings criminal cases under it.” Gov’t Supp. Br. at 9 n.5, *Garland v. Range*, No. 23-374 (U.S. June 24, 2024).

Beyond new prosecutions, the statute’s reach is staggering. It prohibits millions of Americans from exercising their right to keep and bear arms for the rest of their lives. Recent estimates of the number of individuals with felony convictions range from nineteen million to twenty-four million. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 *Cardozo L. Rev.* 1573, 1591 (2022). And § 922(g)(1) is particularly troubling because most of the people it disarms are peaceful, with convictions for nonviolent offenses only. Less than twenty percent of state felony convictions and less than five percent of federal felony convictions are for violent offenses. *See* Dep’t of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, at 3 tbl.1.1 (rev. Nov. 2010); Dep’t of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022*, at 12 tbl.7 (Jan. 2024).

Mr. Tardieff is one of them. Three of his four convictions are property offenses, the fourth was reduced from armed robbery to simple robbery, and the state sentencing courts found on the record that the burglary and robbery convictions were not crimes of violence. The United States has nonetheless disarmed him permanently. Whether it may do so is a question the lower courts have now answered in incompatible ways, that this Court has expressly left open, and that governs the liberty of millions of Americans and the validity of thousands of federal convictions each year. This Court should answer it now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this September 9, 2026,

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