

No. __-____

IN THE
Supreme Court of the United States

MICHAEL A. NOLAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1)'s lifetime ban on firearm possession for all individuals previously convicted of a felony violates the Second Amendment as applied to the Petitioner.
2. Whether 18 U.S.C. § 922(g)(1), which prohibits the possession of any firearm that has, at some point, travelled in interstate commerce, exceeds Congress's power under the Commerce Clause of the Constitution.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are:

Michael A. Nolan, Petitioner

United States of America, Respondent

None of the parties to this proceeding are corporations, and none have stock ticker symbols. S. Ct. R. 14.1(b)(i).

RELATED CASES

- (1) *United States v. Nolan*, No. 25-4357, U.S. Court of Appeals for the Fourth Circuit. Judgment entered June 23, 2026.
- (2) *United States v. Nolan*, No. 3:24-cr-00179, U.S. District Court for the Eastern District of Virginia. Judgment entered June 24, 2025.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Michael A. Nolan respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unpublished opinion of the court of appeals affirming Mr. Nolan's conviction appears at App. 1a and can be found at 2026 WL 1802675. The district court's unpublished memorandum opinion appears at App. 7a and can be found at 2025 WL 422598.

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction over Petitioner's appeal pursuant to 28 U.S.C. § 1291 and issued its judgment on June 23, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8 of the United States Constitution provides in relevant part, "The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" U.S. Const. Art. I, sec. 8.

The Second Amendment of the Constitution provides:

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

18 U.S.C. § 922(g) provides, in relevant part:

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.

INTRODUCTION

This case presents two issues of vital importance. First, the circuits are deeply divided on whether the government, consistent with the Second Amendment, can permanently disarm U.S. citizens who have previously been convicted of a felony. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), this Court established a new test, rooted in the Second Amendment’s text and history, for assessing firearm regulations. The courts of appeals have struggled to consistently apply that test to the federal law prohibiting felons from possessing firearms, 18 U.S.C. § 922(g)(1). The circuits are deeply split on whether § 922(g)(1) is susceptible to as-applied challenges under the Second Amendment. This Court should grant the petition and resolve the disagreement between the circuits.

This Court should also grant the petition to correct the decision below. The circuits that have concluded that as-applied challenges are unavailable, including the Fourth Circuit, have authorized legislatures to brand large groups of people—like felons—as categorically dangerous and disarm them. But that conflicts with *United States v. Hemani*, 608 U.S. 772 (2026), where this Court applied *Bruen* to hold that the federal statute prohibiting unlawful drug users from possessing a firearm, 18 U.S.C. § 922(g)(3), is unconstitutional as applied to a defendant who used marijuana a few times a week. *Id.* at 794–95. This Court made clear that the government does not have the power to categorize a broad group of people, like drug users, as dangerous and disarm them. *Id.* at 792–94. For that reason, this Court should grant the petition and clarify that § 922(g)(1) is susceptible to as-applied challenges. At a

minimum, the Court should grant the petition in this case, vacate the judgment, and remand the case back to the Fourth Circuit for further consideration in light of *Hemani*.

Second, this Court should grant the petition to reexamine the constitutionality of 18 U.S.C. § 922(g)(1) under the Commerce Clause. Justice Thomas and a chorus of lower court judges have noted that § 922(g)'s expansive scope is hard to square with this Court's more recent Commerce Clause cases. *See Hemani*, 608 U.S. at 799 (Thomas, J., concurring) (collecting cases). This Court should resolve that tension and provide guidance to lower courts who are struggling to apply modern Commerce Clause doctrine to § 922(g)(1).

STATEMENT OF THE CASE

Proceedings in the District Court

In December 2024, a grand jury in the Eastern District of Virginia returned an indictment charging Petitioner Michael Nolan with possessing a firearm as a person with a prior felony conviction, in violation of 18 U.S.C. § 922(g)(1). C.A.J.A. 7.¹ Mr. Nolan's record included felony convictions for robbery and attempted robbery in 2010, when he was just 20 years old. C.A.J.A. 135–136.

Mr. Nolan filed three motions to dismiss the indictment. In his first motion, he argued that § 922(g)(1) violated his Second Amendment right to keep and bear arms. C.A.J.A. 9. Citing *Bruen*, he argued that criminalizing the mere possession of a firearm, even by a person with a prior felony conviction, was inconsistent with this

¹ Citations to the joint appendix filed in the Court of Appeals will be identified as "C.A.J.A." The joint appendix can be found at Docket Entries 18 and 19 on the Court of Appeals docket.

Nation’s historical tradition of firearm regulation. C.A.J.A. 9–26. Mr. Nolan’s second motion argued that § 922(g)(1) exceeds Congress’s power to regulate commercial activities under the Commerce Clause. C.A.J.A. 27. Finally, his third motion argued that § 922(g)(1) is unconstitutionally vague under the Due Process clause. C.A.J.A. 31.²

The district court denied all three motions in a memorandum opinion. App. 7a. The court concluded that Mr. Nolan’s Second Amendment and Commerce Clause challenges were squarely foreclosed by binding Fourth Circuit precedent. App. 9a-11a. The district court noted that the Fourth Circuit had reaffirmed its holdings that § 922(g)(1) does not violate the Second Amendment, either on its face or as applied to all felons. *See* App 9a (citing *United States v. Canada*, 123 F.4th 159, 161–162 (4th Cir. 2024), and *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, No. 24-6818 (June 2, 2025)). And it acknowledged that the Fourth Circuit had held that § 922(g)(1)’s jurisdictional element satisfies the nexus requirement for the Commerce Clause. *See* App. 10a-11a (citing *United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996)).

After his motions were denied, Mr. Nolan entered a guilty plea to the indictment. C.A.J.A. 113–114. The district court later sentenced Mr. Nolan to 63 months of imprisonment and three years of supervised release. C.A.J.A. 319.³

² Mr. Nolan did not raise this issue on appeal and is not pursuing his vagueness challenge in this petition.

³ Mr. Nolan filed an objection to the presentence report’s calculation of his Sentencing Guidelines range. C.A.J.A. 160. He raised the issue on appeal as well, App. 3a, but he is not pursuing it in this petition.

Proceedings in the Court of Appeals

Mr. Nolan timely appealed to the Fourth Circuit and renewed his Second Amendment and Commerce Clause challenges. App. 2a. On June 23, 2026, the Fourth Circuit issued an unpublished, per curiam opinion affirming Mr. Nolan's conviction and sentence. App. 1a–5a. The court concluded that Mr. Nolan's constitutional claims were foreclosed by *Canada* and *Hunt* and that his Commerce Clause claim was foreclosed by *Wells*. App. 2a.

REASONS FOR GRANTING THE PETITION

I. The circuits disagree on whether a defendant may assert an as-applied challenge to a § 922(g)(1) conviction.

In *District of Columbia v. Heller*, this Court held that the Second Amendment confers an individual right to possess and carry weapons in case of confrontation. 554 U.S. 570, 592–595 (2008). After *Heller*, most circuit courts developed a two-part test to assess firearm regulations. *Bruen*, 597 U.S. at 18–19. The first step would assess whether the conduct being regulated fit within the historical scope of the Second Amendment right, and the second step would apply an appropriate form of means-ends scrutiny. *Id.* Applying that test, most courts upheld the constitutionality of § 922(g)(1).

But the landscape changed when this Court issued its decision in *Bruen*. This Court rejected any form of means-ends scrutiny and established a new two-part test focused on Second Amendment's text and history. At step one, courts must assess whether the regulated conduct is covered by the plain text of the amendment. *Id.* at 24. If it is, then at step two, the government bears the burden of justifying the challenged regulation by showing that it is consistent with this Nation's history and

tradition of firearm regulation. *Id.* After *Bruen*, there is a deepening split between the circuits over whether § 922(g)(1) is susceptible to as-applied challenges under the Second Amendment. See *Hemani*, 608 U.S. at 803 n.1 (Jackson, J., concurring) (noting current split). The Court should grant certiorari and resolve this intractable split.

A. As-applied challenges are available in three circuits.

1. The Third, Fifth, and Sixth Circuits have all held that § 922(g)(1) is open to as-applied challenges. See *Range v. Att’y Gen. United States*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458, 470 n.4, 472 (5th Cir. 2024), *cert. denied*, No. 24-6625 (Feb. 24, 2025); *United States v. Williams*, 113 F.4th 637, 657, 662–663 (6th Cir. 2024).⁴

All three circuits agree that at *Bruen* step one the plain text of the Second Amendment covers people with felony convictions because they are part of “the people” the amendment protects. *Williams*, 113 F.4th at 648–650; *Diaz*, 116 F.4th at 466; *Range*, 124 F.4th at 228. At step two, these circuits also agree that there is a history and tradition of disarming dangerous people from possessing firearms, *Williams*, 113 F.4th at 657; *Range*, 124 F.4th at 230; *United States v. Kimble*, 142

⁴ The D.C. and First Circuits have assumed that as-applied challenges are available. *United States v. Richardson*, No. 24-3151, 2026 WL 2451537, *3 (D.C. Cir. Aug. 21, 2026); *United States v. Levasseur*, No. 24-1687, 2026 WL 2731003, *4 (1st Cir. Sept. 16, 2026). In the Seventh Circuit, it is an “open” question whether as applied challenges are available to people “whose felony convictions do not suggest that firearms would be dangerous in their hands.” *United States v. Prince*, 171 F.4th 1009, 1012 (7th Cir. 2026), *cert. petition docketed*, No. 26-5228 (July 31, 2026).

F.4th 308, 314–15 (5th Cir. 2025),⁵ but the circuits have adopted different tests for determining whether a particular person is dangerous.

In the Third and Sixth Circuits, to determine if a particular defendant is dangerous, courts must “consider a convict’s entire criminal history and post-conviction conduct indicative of dangerousness, along with his predicate offense and the conduct giving rise to that conviction[.]” *Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025); *see also Williams*, 113 F.4th at 657. And the Sixth Circuit has held that it is the defendant’s burden “to show he’s not dangerous.” *Williams*, 113 F.4th at 662.

By contrast, the Fifth Circuit requires courts to “determine whether the government has identified a ‘class of persons at the Founding who were “dangerous” for reasons comparable to’ those Congress seeks to disarm today.” *Kimble*, 142 F.4th at 315 (citation omitted). The Fifth Circuit explicitly rejected “the view that courts should look beyond a defendant’s predicate conviction and assess whether the felon’s history and characteristics make him likely to misuse firearms.” *Id.* at 318 (citation and internal quotation marks omitted). In short, the Fifth Circuit’s test focuses on whether the defendant’s “predicate felony supports disarmament.” *United States v. Luna*, No. 25-40272, 2026 WL 2507689, *2 (5th Cir. Aug. 25, 2026).⁶

⁵ The Fifth Circuit has also held that “if a felon’s predicate offense ‘would have led to capital punishment or estate forfeiture’ at the Founding, then § 922(g)(1)’s permanent disarmament passes constitutional muster.” *Kimble*, 142 F.4th at 312 (quoting *Diaz*, 116 F.4th at 469–70).

⁶ After *Kimble*, the Fifth Circuit has suggested that courts can look at the conduct underlying the defendant’s predicate felony. *See, e.g., United States v. Morgan*, 147 F.4th 522, 528 (5th Cir. 2025). But in a recent case, the court clarified that it would “decline to adopt” that approach because it would create notice problems. *See United States v. Debrow*, 183 F.4th 402, 405–06 (5th Cir. 2026).

B. Six circuits hold that § 922(g)(1) is constitutional in every application.

1. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have all held that § 922(g)(1) is constitutional as applied to all people with at least one felony conviction—even minor or nonviolent convictions. *See United States v. Jackson*, 110 F.4th 1120, 1125, 1129 (8th Cir. 2024), *cert. denied*, No. 24-6517 (May 19, 2025); *Hunt*, 123 F.4th at 700; *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. pet. docketed*, No. 24-1155 (May 8, 2025); *United States v. Duarte*, 137 F.4th 743, 761–762 (9th Cir. 2025) (en banc); *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025); *Zherka v. Bondi*, 140 F.4th 68, 96 (2d Cir. 2025).

The Eighth Circuit reached that decision first in *Jackson*, 110 F.4th 1120. The court started by citing the language in *Heller* and other cases from this Court suggesting that felon-in-possession laws are presumptively valid. *Id.* at 1125. Turning to the *Bruen* analysis, the court concluded that “legislatures traditionally employed status-based restrictions to disqualify” people who “deviated from legal norms” or “presented an unacceptable risk of dangerousness” from possessing firearms. *Id.* at 1129. The court relied on two types of historical analogues to support its conclusion. First, it cited laws that prohibited certain disfavored groups—e.g., religious minorities, Native Americans, Loyalists—from possessing firearms. *Id.* at 1126–1127. Second, the court noted that at the time of the Founding most states “authorized punishments that subsumed disarmament—death or forfeiture of a perpetrator’s entire estate—for non-violent offenses” *Id.* at 1127. Considering the dicta in *Heller* and those historical laws, the Eighth Circuit concluded that “there is

no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *Id.* at 1125.

After *Jackson*, a number of other courts followed suit for one reason or another. The Tenth and Eleventh Circuits concluded that neither *Bruen* nor *Rahimi* had undermined its pre-*Bruen* precedent upholding the constitutionality of § 922(g)(1) in all its applications. *Vincent v. Bondi*, 127 F.4th 1263, 1265–1266 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893–894 (11th Cir. 2025). The Tenth Circuit, for example, noted that its pre-*Bruen* precedent “relied on *Heller*’s instruction that felon dispossession laws are presumptively valid,” and the court believed *Rahimi* “reaffirmed” that presumption. *Vincent*, 127 F.4th at 1265.

The Second and Ninth Circuits also cited *Heller*’s “presumptively lawful” language, but they conducted their own *Bruen* analysis, instead of merely relying on prior precedent. Both courts concluded that felons are covered by the plain text of the Second Amendment. *Duarte*, 137 F.4th at 754–755 (finding that Duarte “is one of ‘the people’ who enjoys Second Amendment rights”); *Zherka*, 140 F.4th at 77 (same). But both courts also held that § 922(g)(1), in all its applications, is consistent with this Nation’s historical tradition of firearm regulation. Like the Eighth Circuit in *Jackson*, the Second and Ninth Circuits supported their holdings by citing to (1) Founding-era criminal laws that punished many felonies with death and estate forfeiture and (2) colonial and Founding-era laws that categorically disarmed groups viewed as dangerous. *Duarte*, 137 F.4th at 755–761; *Zherka*, 140 F.4th at 80–91.

2. The Fourth Circuit took an all-of-the-above approach in *Hunt*. First, the Fourth Circuit held that its pre-*Bruen* precedent upholding § 922(g)(1)’s constitutionality, which rested primarily on the “presumptively lawful” dicta in *Heller*, was still good law. 123 F.4th at 702–704. In the *Hunt* panel’s view, “nothing in *Bruen* or *Rahimi* undermines ... this Court’s previous reliance on *Heller*’s express statements about” felon-in-possession laws. *Id.* at 704. The Fourth Circuit acknowledged that *Bruen* had “disavowed the second step of this Court’s former two-part test for considering Second Amendment challenges as ‘one step too many.’” *Id.* at 704 (*Bruen*, 597 U.S. at 19). The old two-part test required courts to engage in means-ends scrutiny at step two. But the *Hunt* panel concluded that the pre-*Bruen* decisions on § 922(g)(1) were still good law because they “did not rely on any sort of ‘means-end scrutiny.’” *Id.* (citation omitted). Instead, those cases determined, at step one of the old test, that felons fell “outside the scope of the Second Amendment.” *Id.* (citation omitted).

Second, after reaffirming its earlier precedent, the Fourth Circuit concluded that even if it applied the *Bruen* test, § 922(g)(1) would be constitutional in all its applications. The Fourth Circuit has put its own gloss on the first step of the analysis. Instead of examining the plain text, the Fourth Circuit “look[s] to the historical scope of the Second Amendment,’ and use[s] that history to interpret what is and is not protected by the constitutional text.” *Id.* at 705 (quoting *United States v. Price*, 111 F.4th 392, 401 (4th Cir. 2024) (en banc)). And instead of doing its own analysis of the history, the court relied entirely on *Heller*’s “presumptively lawful” language to conclude that felons fall outside the scope of the Second Amendment entirely. *Id.* at

705. The Fourth Circuit is the only circuit court to conclude, at step one, that the plain text of the Second Amendment does not extend to people with felony convictions.

Even if the Second Amendment did afford felons some protection, the Fourth Circuit held, at step two, that § 922(g)(1) is consistent with this Nation’s history and tradition of firearm regulation. Relying heavily on the Eighth Circuit’s reasoning in *Jackson*, the court held that § 922(g)(1) is justified by this nation’s history of disarming (1) people “who deviated from legal norms” and (2) categories of people who posed “a risk of dangerousness.” *Id.* at 706 (quoting *Jackson*, 110 F.4th at 1127). The court concluded that the first principle derived from early laws that “regularly punished felons and other non-violent offenders with estate forfeiture or death—far greater punishments than ‘subsumed disarmament.’” *Id.* (quoting *Jackson*, 110 F.4th at 1127). And the court concluded that the colonial and Founding-era laws that prohibited certain groups of people—*e.g.*, religious minorities, Native Americans, Loyalists—from possessing firearms established a tradition of categorically disarming groups deemed dangerous. *Id.* at 706–707.

In sum, the courts of appeals are intractably split as to whether defendants can raise as-applied challenges to § 922(g)(1) under the Second Amendment. This deepening split has created an untenable situation, where an individual’s Second Amendment rights depend on where he happens to live. An individual with a minor, non-violent felony conviction who lives in Pennsylvania can possess a firearm without fear of being prosecuted under § 922(g)(1)—unless he crosses the border into West

Virginia, where § 922(g)(1) would still apply to him. To resolve such discrepancies, this Court should grant review and bring uniformity to this area of law.

II. The Fourth Circuit’s Second Amendment decisions are inconsistent with *Bruen* and this Court’s post-*Bruen* cases.

This Court should also grant the petition because the view adopted by the circuits barring as-applied challenges—including the Fourth Circuit—is erroneous. The Fourth Circuit’s decision in *Hunt* provides a good overview of the various arguments defending the constitutionality of § 922(g)(1) and even goes further than most other circuits. As showcased in *Hunt*, the reasoning adopted by circuits upholding § 922(g)(1) in all its applications is inconsistent with *Bruen*’s text-and-history approach.

A. The Fourth Circuit’s opinion relies on dicta and nonbinding precedent.

The Fourth Circuit’s pre-*Bruen* case law, which relies almost exclusively on dicta in *Heller*, is no longer good law. After *Heller*, the Fourth Circuit held that § 922(g)(1) was facially constitutional because *Heller* had identified felon-in-possession laws “as ‘presumptively lawful regulatory measures.’” *United States v. Moore*, 666 F.3d 313, 318 (4th Cir. 2012) (quoting *Heller*, 554 U.S. at 626–627, n.26). *Moore* left open the possibility of as-applied challenges for individuals who could prove they were a “law-abiding responsible citizen[].” *Id.* at 319 (quoting *Heller*, 554 U.S. at 635). But the Fourth Circuit ultimately concluded that a person with a prior felony (even a non-violent one) “cannot be returned to the category of ‘law-abiding, responsible citizens’ for the purposes of the Second Amendment ..., unless the felony conviction is pardoned or the law defining the crime of conviction is found

unconstitutional or otherwise unlawful.” *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017); *see also United States v. Pruess*, 703 F.3d 242, 247 (4th Cir. 2012) (holding that § 922(g)(1) is constitutional as applied “to allegedly non-violent felons”).

Those decisions are not consistent with *Bruen*. This Court’s dicta in *Heller* that identifies felon-in-possession laws as “presumptively lawful” does not resolve § 922(g)(1)’s constitutionality. The legality of § 922(g)(1) was simply not at issue in *Heller*, so this Court’s language is non-binding. *See Rahimi*, 602 U.S. at 701–702 (declining to apply dicta in *Heller* or *Bruen* on an issue that “was simply not presented” in either case); *see also Williams*, 113 F.4th at 648.

Moreover, “applying *Heller*’s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to ‘expound upon the historical justifications’ for firearm-possession restrictions when the need arose.” *Williams*, 113 F.4th at 648 (quoting *Heller*, 554 U.S. at 635). In *Bruen*, this Court reaffirmed that courts must analyze the historical record before adjudicating the constitutionality of a challenged regulation. The type of regulation at issue in *Bruen*—a law restricting the concealed carry of firearms in public—was also identified as a “presumptively lawful” regulation in *Heller*. *Heller*, 554 U.S. at 626 (noting that “the majority of 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues”). If *Heller*’s description of concealed-carry bans were dispositive, this Court would simply have deferred to *Heller* and upheld New York’s statute on that basis. But this Court instead undertook an exhaustive historical survey of the law governing concealed carriage, from medieval England up to late-19th-century America. *Bruen*, 597 U.S. at 33–70. And

after reviewing that history, this Court reached a conclusion different from its off-hand remark in *Heller*, holding that laws burdening concealed carriage are *unconstitutional*, at least where the state also forbids open carry. *See id.* at 52–55, 59.

Bruen is clear: Rather than treating *Heller*’s “presumptively lawful” passage as dispositive, courts must actually investigate the historical record to determine whether a firearm regulation is in fact consistent the Second Amendment. Every type of firearm regulation—even those on *Heller*’s “presumptively lawful” list—must be rigorously scrutinized to determine whether they are “consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24.

But, before *Bruen*, the Fourth Circuit explicitly declined to engage in such a historical analysis; instead, the court simply assumed that felons fall outside the Second Amendment’s ambit because of the “presumptively lawful” language in *Heller*. *Moore*, 666 F.3d at 318 (explaining that the “analysis is more streamlined when a presumptively lawful regulatory measure is under review”); *Pruess*, 703 F.3d at 246 n.3 (“Because the presumption of constitutionality from *Heller* and *Moore* governs, we need not pursue an analysis of the historical scope of the Second Amendment right”). Indeed, in one case, the Fourth Circuit said that courts faced with as-applied challenges to § 922(g)(1) “need not undertake an extensive historical inquiry to determine whether the conduct at issue was understood to be within the scope of the Second Amendment at the time of ratification.” *Hamilton*, 848 F.3d at 624.

Because this Court’s pre-*Bruen* case law failed to “undertake an extensive historical inquiry” to determine the constitutionality of § 922(g)(1), it is no longer binding.

B. The Fourth Circuit misapplies the *Bruen* two-step test.

1. The Fourth Circuit has also misapplied the first part of the *Bruen* analysis. This Court has instructed that, at step one, the challenger must show that “the Second Amendment’s plain text covers” the conduct being regulated. *Bruen*, 597 U.S. at 24; *see also Hemani*, 608 U.S. at 780 (“To determine whether the government infringes the Second Amendment, we begin by asking whether the Amendment’s terms cover the conduct in question”). This is generally an easy burden to meet because the plain text covers any “arms-bearing conduct.” *Rahimi*, 602 U.S. at 691. If that burden is met, then at step two, the government must show that the challenged regulation “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24; *Rahimi*, 602 U.S. at 691 (“[W]hen the Government regulates arms-bearing conduct ... it bears the burden to ‘justify its regulation.’” (citation omitted)). In short, the burden is on the government to prove that the regulation is historically justified.

But, as one member of this Court has already noted, the Fourth Circuit’s post-*Bruen* case law places “the burden of producing historical evidence on the wrong party.” *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J, dissenting from denial of certiorari). Indeed, the Fourth Circuit requires challengers—not the government—to show that the conduct being regulated fits within “the historical scope of the Second Amendment right.” *Hunt*, 123 F.4th at 705 (quoting *Price*, 111 F.4th at 401). And, by collapsing the step-two historical analysis into step one, the Fourth Circuit ignores the plain text altogether. In *Hunt*, for example, the court does not quote the text of the Second Amendment or even use the words “plain text” at all.

If the Fourth Circuit had properly conducted the step-one inquiry, it would have concluded that § 922(g)(1) regulates conduct covered by the plain text of the Second Amendment. Indeed, every circuit to have addressed this question, aside from the Fourth Circuit, has reached that conclusion. *See, e.g., Williams*, 113 F.4th at 649 (“On balance, the Second Amendment’s plain text presumptively protects Williams’s conduct.”); *Duarte*, 137 F.4th at 752–753 (same).

The Second Amendment protects “the right of the people to keep and bear Arms.” U.S. Const. amend. II. Section 922(g)(1) clearly regulates conduct protected by text of the amendment: the ability to “keep and bear Arms” for self-defense. *Zherka*, 140 F.4th at 76 (concluding that “Section 922(g)(1) clearly covers conduct that the Second Amendment presumptively protects”). The only issue is whether felons are part of “the people” entitled to Second Amendment rights. The answer to that question is also unequivocally, “yes.” *Heller* explicitly held that “the people” protected by the Second Amendment includes “all Americans,” not an “unspecified subset.” *Heller*, 554 U.S. at 580–81. In other words, the Second Amendment applies to every person who is a member of our “national community.” *Id.* at 580 (citation omitted). And that community surely includes people with felony convictions, like Mr. Jefferson. *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting) (concluding that felons are not “categorically excluded from our national community”).

To be sure, *Heller* does say that the Second Amendment protects the rights of “law-abiding, responsible citizens,” 554 U.S. at 635, but as *Rahimi* clarified, this

Court used that term simply “to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right.” 602 U.S. at 701–02. In other words, that descriptor was meant to define the core of the right, not its outer limits. Moreover, other amendments, like the First and Fourth Amendments, also refer to “the people,” but “[f]elons are not categorically barred from First or Fourth Amendment protection because of their status.” *Range*, 124 F.4th at 226. It would make scant sense to exclude felons from “the people” for Second Amendment purposes, when felons are still entitled to “constitutional rights in other contexts.” *Id.*; see also *Zherka*, 140 F.4th at 77 (reaching similar conclusion); *Duarte*, 137 F.4th at 753–754 (same); *Williams*, 113 F.4th at 649 (same).

In any case, to the extent that *Heller*, *Bruen*, and *Rahimi* left this question open, *Hemani* conclusively resolves it. *Hemani* concludes that § 922(g)(3) burdens the Second Amendment rights of people who are unlawful users of controlled substances—in other words, people who are by definition not law-abiding. But *Hemani* did not scrutinize whether unlawful drug users are law-abiding or responsible or part of the political community. Instead, it recognized that because § 922(g)(3) “bans a class of people including Mr. Hemani from possessing essentially any firearm for any purpose,” it “burdens conduct presumptively protected by the Second Amendment.” 608 U.S. at 781. The Second Amendment protects *all* Americans, not just those who are law-abiding or responsible, and courts may not elide the historical analysis *Bruen* requires by excluding broad swaths of people from Second Amendment protections.

2. Finally, the Fourth Circuit incorrectly concluded that the government had met its burden to show that § 922(g)(1) is consistent with this Nation’s history and tradition of firearm regulation. The historical laws the government identified are simply not sufficiently analogous to § 922(g)(1) because they do not justify permanently disarming people who are dangerous or who have “deviated from legal norms.” *Hunt*, 124 F.4th at 706 (citation omitted). For example, the Fourth Circuit concluded that permanent disarmament is allowed because Founding-era felons were punished with estate forfeiture or death. *Id.* But that gets the history wrong. By ratification “many states were moving away from making felonies ... punishable by death in America.” *Range*, 124 F.4th at 227. And under most estate forfeiture laws “a felon could acquire arms after completing his sentence and reintegrating into society.” *Id.* at 231.

Even if the Fourth Circuit is right about the history, the mere fact that some felonies were capital crimes at the Founding does not mean that felons today lose all their rights. “Felons, after all, don’t lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment.” *Williams*, 113 F.4th at 658; *see also Zherka*, 140 F.4th at 82 (“That felons could be executed when the Bill of Rights was enacted does not mean that anyone convicted of a felony today forfeits all civil rights.”). Nor does the existence of the death penalty at the Founding tell us how the Founding generation would have treated individuals who were not sentenced to death, served their sentences, and re-entered society. *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

Next, the Fourth Circuit points to historical regulations that disarmed certain groups—such as, disfavored religious groups or political dissidents—based on their status. *Hunt*, 123 F.4th at 706–07. But none of those laws matches “how” or “why” § 922(g)(1) regulates firearm possession. *See Rahimi*, 602 U.S. at 692. Those historical laws were aimed at politically disruptive groups who the Founders feared might engage in rebellion or counter-revolution. “The Founders did not disarm English Loyalists because they were believed to lack self-control; it was because they were viewed as political threats to our nascent nation’s integrity.” *United States v. Connelly*, 117 F.4th 269, 278 (5th Cir. 2024). The Fourth Circuit also failed to grapple with the ways that those historical laws preserved the right to bear arms. Unlike § 922(g)(1), most of the historical status-based prohibitions had mechanisms in place for individuals “to demonstrate that they weren’t dangerous” and retain their arms. *Williams*, 113 F.4th at 660; *see also Range*, 124 F.4th at 275 (Krause, J., concurring in judgment) (detailing how disarmed individuals could rebut the presumption that they posed a risk or danger).

The larger issue is that the Fourth Circuit authorizes modern-day legislatures to disarm large groups of people deemed to be categorically dangerous without any limitation. But this Court recently clarified that “affording the government that kind of ‘broad power to designate any group as dangerous and thereby disqualify its members from having a gun’ would risk allowing it to ‘quickly swallow’ the Second Amendment.” *Hemani*, 608 U.S. at 793–94 (quoting *Kanter*, 919 F.3d at 465 (Barrett, J., dissenting)); *see also Williams*, 113 F.4th at 660 (“[C]omplete deference to legislative line-drawing would allow legislatures to define away a fundamental

right.”). Thus, a categorical disarmament law is only constitutional if it “confines its reach to those who are categorically and unusually dangerous.” *Hemani*, 608 U.S. at 792.

In *Hemani*, for example, this Court held that § 922(g)(3) did not meet that standard as applied to someone who regularly used marijuana. This Court determined that § 922(g)(3) was not limited to categorically dangerous people because it disarms *any* person “who regularly uses any drug found on any [Controlled Substances Act] schedule.” *Hemani*, 608 U.S. at 792. As this Court noted, “[d]rugs can be added to [the CSA’s] schedules for a variety of reasons having little or nothing to do with their potential to induce violence.” *Id.* With respect to marijuana specifically, this Court emphasized that the federal government had effectively curtailed its enforcement efforts against marijuana users. *Id.* at 792–93. For that reason, this Court refused to “conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing.” *Id.* at 793.

Section 922(g)(1) suffers from the same overbreadth problem as § 922(g)(3) because it is not “confine[d] ... to those who are categorically and unusually dangerous.” Like regular drug use, a felony conviction is a poor proxy for determining whether someone is currently violent or dangerous. State legislatures have broad powers to promulgate felony offenses. *See United States v. Morrison*, 529 U.S. 598, 618 (2000) (“[W]e can think of no better example of the [states’] police power ... than the suppression of violent crime and vindication of its victims”). In exercising that power, legislatures have created many felony offenses that do not target violent or dangerous conduct. For example, perjury and fraud are typically categorized as

felonies, but those offenses have nothing to do with a person’s propensity to commit violence in the future. And even for more “violent” offenses, the mere fact that someone previously engaged in violent or dangerous conduct does not mean that person will be violent and dangerous for the rest of their lives.

In short, the Fourth Circuit’s precedent barring as applied challenges to § 922(g)(1) is inconsistent with this Court’s holding in *Hemani*. This Court should therefore grant the petition and clarify that as-applied challenges to § 922(g)(1) are available. In the alternative, this Court should grant Mr. Jefferson’s petition, vacate the judgment, and remand the case to the Fourth Circuit to reassess Mr. Jefferson’s Second Amendment claim with the help of *Hemani*.

III. This Court should grant certiorari to resolve the tension between *Scarborough v. United States*, 431 U.S. 563 (1963) and this Court’s more recent Commerce Clause jurisprudence.

Section 922(g)(1) makes it unlawful for individuals with prior felony convictions to “possess in or affecting commerce, any firearm or ammunition ... which has been shipped or transported in interstate or foreign commerce.” This Court, analyzing § 922(g)(1)’s predecessor statute, held that the “in or affecting commerce element” did not require “any more than the minimal nexus that the firearm have been, at some time, in interstate commerce.” *Scarborough v. United States*, 431 U.S. 563, 575 (1977). The Fourth Circuit, and other lower courts, have repeatedly “read ‘in or affecting commerce’ in § 922(g) as broadly as the Supreme Court read the almost identical term in *Scarborough*.” *United States v. Ervin*, 131 F.4th 253, 259 (4th Cir. 2025). Thus, the interstate commerce element of § 922(g) is satisfied so long as “the

firearm had travelled in interstate or foreign commerce at some point during its existence.” *Id.* (citation omitted).

Although *Scarborough* only resolved a question of statutory interpretation, courts—including this one—have assumed that *Scarborough* implicitly held that the jurisdictional element satisfied the Commerce Clause. *United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996) (explaining that the existence of the “jurisdictional element” in § 922(g) “satisfies the minimal nexus required for the Commerce Clause”); *United States v. Bonner*, 159 F.4th 338, 342 (5th Cir. 2025) (Willett, J., concurring).

But, as Justice Thomas recently explained, “Section 922(g) ... ‘cannot be reconciled’ with this Court’s modern Commerce Clause doctrine.” *United States v. Hemani*, 608 U.S. 772, 797 (2026) (Thomas, J., concurring) (citation omitted). The Commerce Clause grants Congress the power to “regulate Commerce ... among the several States.” U.S. Const., Art. I, § 8, cl. 3. In more recent cases, this Court has “identified three broad categories of activity that Congress may regulate under its commerce power”: (1) the “channels of interstate commerce”; (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce”; and (3) “activities having a substantial relation to interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-559 (1995).

Section 922(g)(1) does not fall squarely into any of these categories. The statute clearly does not regulate the channels or instrumentalities of interstate commerce. Thus, the only question is whether § 922(g)(1) regulates activity that, taken in the aggregate, would substantially affect interstate commerce. *Lopez*, 514 U.S. at 561. This Court has only “sustained federal regulation of intrastate activity

based upon the activity’s substantial effects on interstate commerce,” where “the activity in question has been some sort of economic endeavor.” *United States v. Morrison*, 529 U.S. 598, 611 (2000); *see also Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 557 (2012) (“We have said that Congress can anticipate the *effects* on commerce of an economic activity.”).

Simple gun possession is not an “economic endeavor.” *See Hemani*, 608 U.S. at 798 (Thomas, J., concurring) (“The mere possession of a firearm that long ago crossed state lines is not ‘economic activity’ in any sense”). Indeed, in *Lopez*, this Court determined that the regulation of firearm possession in a school zone “has nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.” 514 U.S. at 561; *see also Bonner*, 159 F.4th at 342 (Willett, J, concurring) (noting that “the economic consequences of [a defendant’s] individual act of [firearm] possession is hardly ‘substantial’”).

Given the deep inconsistencies between *Scarborough* and *Lopez*, many judges have concluded that § 922(g)(1) exceeds Congress’s power under the Commerce Clause. *Hemani*, 608 U.S. at 799 (Thomas, J., concurring) (collecting cases). But the Fourth Circuit has rejected Commerce Clause challenges to § 922(g)(1). *See Wells*, 98 F.3d at 811. In *Wells*, the Fourth Circuit held that § 922(g)(1)—unlike the statute at issue in *Lopez*—included a “jurisdictional element, requiring the Government to show that a nexus exists between the firearm and interstate commerce” *Id.* And the court further held that the jurisdictional element “satisfies the minimal nexus required for the Commerce Clause.” *Id.* (citing *Scarborough*, 431 U.S. at 575).

But the Fourth Circuit reads *Scarborough* for more than it is worth. This Court “has never held that § 922(g) is constitutional whenever the *Scarborough* test is satisfied.” *Hemani*, 608 U.S. at 800 (Thomas, J., concurring). After all, *Scarborough* was a case about statutory interpretation, not constitutional meaning. *Id.*; see also *Bonner*, 159 F.4th at 342 (Willet, J., concurring).

In addition, Fourth Circuit places too much weight on the presence of a jurisdictional hook. In other contexts, the court has acknowledged that “a jurisdictional hook is not a talisman that wards off all constitutional challenges.” *United States v. Hill*, 927 F.3d 188, 208 (4th Cir. 2019) (alterations adopted) (quoting *United States v. Patton*, 451 F.3d 615, 632 (10th Cir. 2006)). Indeed, several jurists have noted that *Scarborough* is inconsistent with *Lopez* because “it reduces the constitutional analysis to the mere identification of a jurisdictional hook” *Alderman v. United States*, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from the denial of certiorari). A jurisdictional element must be a “meaningful one,” and not “a pretextual incantation evoking the phantasm of commerce.” *United States v. Maxwell*, 446 F.3d 1210, 1218 (11th Cir. 2006) (alterations adopted) (citation omitted).

The jurisdictional element for § 922(g)(1) is not meaningful because under *Scarborough* “mere transportation across state lines is sufficient” to satisfy its requirements. *Ervin*, 131 F.4th at 259 (cleaned up). Nearly every firearm will meet that test, giving Congress nearly unlimited power to regulate firearms. See *Hemani*, 608 U.S. at 801 (Thomas, J., concurring) (explaining that “treating Congress’s jurisdictional element as dispositive could very well remove any limit on the

commerce power” (cleaned up)). Simply put, “[a] jurisdictional hook that restricts a statute to items that bear a ‘trace of interstate commerce’ is no restriction at all.” *Patton*, 451 F.3d at 633 (quoting *Jones v. United States*, 529 U.S. 848, 857 (2000)). And, as a result, it violates the Constitution, which “with[eld] from Congress a plenary police power that would authorize enactment of every type of legislation.” *Lopez*, 514 U.S. at 566.

In sum, many courts and jurists have recognized that there is “considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases.” *Patton*, 451 F.3d at 636; *id.* at 634–35 (collecting cases); *see also Hemani*, 608 U.S. at 802 (Thomas, J., concurring). This Court should grant certiorari in this case and provide guidance for lower courts.

IV. The issues presented are important and recurring.

The constitutionality of § 922(g)(1) is an exceptionally important issue given that millions of Americans have felony convictions on their records. *See Sarah K.S. Shannon, et al., The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 *Demography* 1795, 1806 (2018), available at <https://tinyurl.com/mt7frvhn> (finding that 19 million people had felony convictions on their records in 2010). Section 922(g)(1) permanently bars these Americans from exercising their Second Amendment rights, and because of decisions like the one below, many are not even allowed to assert as applied challenges to restore their rights.

This issue of § 922(g)(1)’s constitutionality is also recurring and unlikely to resolve itself soon. Section 922(g)(1) is routinely prosecuted in federal courts. In

fiscal year 2024, for example, 7,419 cases involved convictions under § 922(g) and 90.4% of those convictions were under § 922(g)(1). U.S. Sent. Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (May 2025), available at <https://tinyurl.com/3yte33nu>. Second Amendment challenges in § 922(g)(1) cases have multiplied in the wake of *Bruen* and *Rahimi*. Given the conflicting analyses provided by the various circuits, criminal defendants will continue to pursue these claims and file petitions with the Court until the issue is settled. In addition, jurists have continued to express doubts that § 922(g)(1) is a “valid exercise of Congress’s commerce power.” See *Luna*, 2026 WL 2507689, at *4. Indeed, the Fifth Circuit even recently agreed to hear the issue en banc. See *United States v. Squire*, 182 F.4th 481, 481–82 (5th Cir. 2026).

There is no need for this Court to wait for further percolation in the lower courts because most courts have spoken on both issues. Moreover, there is no indication that the lower courts will be able to resolve their numerous disagreements about the constitutionality of § 922(g)(1) or various aspects of the Second Amendment analysis. In fact, some jurists have already asked this Court to step in and provide clarity on the topic. See *United States v. Morton*, 123 F.4th 492, 498 n.2 (6th Cir. 2024) (noting that “there is significant disagreement” about the Second Amendment analysis in the § 922(g)(1) context “that the Supreme Court should resolve”). And jurists have also asked this Court to provide guidance on the Commerce Clause issue. *Bonner*, 159 F.4th at 343 (Willet, J. concurring).

IV. This case is a good vehicle to decide these important questions.

This case is the right vehicle to decide that § 922(g)(1) is unconstitutional. Mr. Nolan preserved his claims in both the district court and the court of appeals. Both the district court and the Fourth Circuit had an opportunity to address the Second Amendment and Commerce Clause issues, and there are no lurking jurisdictional or remedial issues. In addition, there is no reason to think that either issue will go away soon, so this Court should grant a petition to settle the issue quickly.

CONCLUSION

For the reasons given above, the petition for a writ of certiorari should be granted and the case set for plenary review. In the alternative, the Court should grant the petition, vacate the Fourth Circuit's order, and remand for reconsideration in light of *United States v. Hemani*, 608 U.S. 772 (2026).

Respectfully submitted,

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