

No.

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER R. DALEY, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state statute that bans all convicted felons from possessing firearms violates the Second Amendment to the United States Constitution.

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Court are as follows:

Christopher R. Daley, Petitioner.

State of Florida, Respondent.

RELATED PROCEEDINGS

Seventeenth Judicial Circuit of Florida:

State v. Daley, 21-10520CF10A.

Fourth District Court of Appeal of Florida:

Daley v. State, 436 So. 3d 209 (Fla. 4th DCA 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner (Christopher R. Daley) respectfully petitions for a writ of certiorari to review the judgment in this case of Florida's Fourth District Court of Appeal.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal has been published in the Southern Reporter: *Daley v. State*, 436 So. 3d 209 (Fla. 4th DCA 2026). A copy is reprinted in the appendix. See 2a.

JURISDICTION

This Court has jurisdiction to review final judgments or decrees “rendered by the highest court of a state in which a decision could be had.” 28 U. S. C. § 1257(a).

Florida’s Fourth District Court of Appeal affirmed Petitioner’s conviction and sentence in a *per curiam* affirmance with a case cite on May 13, 2026. See 2a. Subsequently, Petitioner moved for rehearing, which the court denied on June 30, 2026. See 3a.

Although the Florida Supreme Court is the highest state court in Florida, the Florida Supreme Court has held that it does not have jurisdiction to review a *per curiam* affirmance that cites a case that is not currently pending before it. See *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (holding that the Florida Supreme Court is “a court of limited jurisdiction”). In this case, the Fourth District’s *per curiam* affirmance cited *Fleming v. State*, 414 So. 3d 175 (Fla. 4th DCA 2025). During the timeframe Petitioner could seek review at the Florida Supreme Court, *Fleming* was no longer pending at the Florida Supreme Court. So Petitioner could not seek higher review there. The Fourth District was the highest state court in Florida where Petitioner could seek a decision. The Court has jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. The Second Amendment to the United States 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.”

II. The Fourteenth Amendment to the United States Constitution provides, in pertinent part: “No State shall . . . deprive any person of life, liberty, or property, without due process of law.”

III. Section 790.23(1)(a), Florida Statutes, provides, in pertinent part:

It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been . . . [c]onvicted of a felony in the courts of this state.

STATEMENT OF THE CASE

Respondent (the State of Florida) charged Petitioner with possession of a firearm by a convicted felon. See Fla. Stat. § 790.23(1). Petitioner entered into an open plea with Respondent, and the trial court adjudicated him guilty and sentenced him to time served.

On appeal to Florida's Fourth District Court of Appeal, Petitioner argued that Florida's felon-in-possession statute violates the Second Amendment. Petitioner pointed out that Florida's felon-in-possession statute does not comport with this country's historical tradition of firearm restrictions, as firearm restrictions during colonial times did not impose lifelong prohibitions on firearm possession because of a felony conviction. At most, firearm restrictions during colonial times were temporary and based on an express dangerousness finding.

The Fourth District affirmed Petitioner's conviction and sentence, citing *Fleming*. In *Fleming*, the defendant argued that section 790.23(1) is unconstitutional under the Second Amendment. 414 So. 3d at 176. The Fourth District disagreed, holding that "[b]inding precedent from the United States Supreme Court require[d] [this Court] to

conclude [that the Second Amendment] argument[] lack[ed] merit.” For support, the Fourth District cited a single line in *Heller*: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” See *Fleming*, 414 So. 3d, at 176 (citing and quoting *Heller*, 554 U. S., at 626). The Fourth District also cited a single line in *McDonald v. City of Chicago*, 561 U. S. 742 (2010), where the Supreme Court restated *Heller*’s line about “longstanding prohibitions.” See *Fleming*, 414 So. 3d at 176 (citing and quoting *McDonald*, 561 U. S., at 786).

Petitioner moved for rehearing, which the Fourth District denied. See 3a

REASONS FOR GRANTING THE PETITION

Under Florida law, a person who has been convicted of a felony is permanently banned from exercising their right to bear arms under the Second Amendment to the United States Constitution. See Fla. Stat. § 790.23(1) (2021). The Florida Legislature enacted that permanent ban “to protect the public by preventing the possession of firearms by persons convicted of certain crimes or who are fugitives from justice.” *Nelson v. State*, 195 So. 2d 853, 855 (Fla. 1967). Trial judges cannot exercise any discretion in whether a firearm ban applies to a particular case. Accordingly, because Petitioner is a felon, he is one of thousands of Floridians who has been permanently banned from exercising his Second Amendment right to bear arms.

Petitioner challenged Florida’s permanent firearm ban in Florida’s Fourth District Court of Appeal, but to no avail. The court affirmed the constitutionality of Florida’s felon-in-possession statute.

This Court should grant Petitioner’s petition for a writ of certiorari for four reasons.

First, the Court should grant Petitioner’s petition for a writ of certiorari because the Fourth District—as well as appellate courts across the country—has misapplied the Court’s holding in *Heller*. In

Heller, the Court stated that its opinion should not be read as casting doubt on “longstanding prohibitions on the possession of firearms by felons.” The Fourth District, like numerous appellate courts across the country, has used that line as an analytical off-ramp. *Heller*, however, did not preclude appellate courts from reviewing the constitutionality of felon-in-possession statutes. The Court was simply noting that it would rule on the constitutionality of felon-in-possession in laws in a different case. Petitioner asks the Court to grant his petition for a writ of certiorari because *Heller*’s dicta does not preclude appellate review of the constitutionality of felon-in-possession statutes.

Second, the Court should grant Petitioner’s petition for a writ of certiorari because section 790.23 was enacted before the Court decided *Heller*, *New York State Rifle & Pistol Assn. v. Bruen*, 597 U. S. 1 (2022); and *United States v. Rahimi*, 602 U. S. 680 (2024) . All three decisions place burdens on the government’s ability to regulate a person’s right to bear arms that did not exist when the Florida Legislature enacted section 790.23. Review by the Court is needed to ensure section 790.23 complies with Court precedent that were issued after its enactment.

Third, section 790.23 conflicts with *Heller*, *Bruen*, and *Rahimi*. There is no historical analogue of a law that permanently banned a person from possessing any firearm because of their felon status. Section 790.23 strips a sizable portion of Florida’s adult population of their Second Amendment protections, based on the legislature’s view that felons are unworthy of exercising their Second Amendment right to bear arms. As noted by the Court in *Bruen*, “judicial deference to legislative interest balancing” is fundamentally inconsistent with the very notion that the Second Amendment protects a fundamental right. 597 U. S., at 26.

And fourth, there is a federal circuit split over the similarly worded federal law. Such a circuit split means that the issue of firearm bans for felons is ripe for the Court’s review.

a. *Heller* did not preclude future judicial review of felon-in-possession statutes.

Courts in Florida and across the nation have refused to review the constitutionality of felon-in-possession statutes because the Court in *Heller* held that those laws are “presumptively lawful.” That is a misreading of *Heller*.

In *Heller*, the Court opined that “[a]lthough [it was] not

undertak[ing] an exhaustive historical analysis . . . of the full scope of the Second Amendment, nothing in [its] opinion should be taken [as] cast[ing] doubt on longstanding prohibitions on the possession of firearms by felons.” 554 U. S., at 626. The Court was not stating, as many appellate courts across the country have read into it, that felon-in-possession statutes are constitutional. In fact, the Court in *Heller* couldn’t pass on the constitutionality of felon dispossession” laws, as such laws were not before the Court in *Heller*. *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (BARRETT, J., dissenting).

The *Heller* opinion is clear: The Court was not attempting to “clarify the entire field” of firearms restrictions, only those before it, and it would address the historical justifications for disarming felons when the issue was presented to the Court. *Heller*, 554 U. S. at 635. That time has now come.

The Court should grant Petitioner’s petition for a writ of certiorari to finally resolve whether felon-in-possession statutes violate the Second Amendment.

b. Section 790.23 was enacted before *Heller*, *Bruen*, and *Rahimi*.

The Florida Legislature enacted section 790.23 in 1955. See ch.

29766, § 1, at 422, Laws of Fla. (1955). At that time, the Supreme Court had not yet held that the Second Amendment guarantees an individual right to bear arms. Instead, the Court had uniformly held that the Second Amendment protected an individual right to bear arms that had a “reasonable relationship to the preservation or efficiency of a well-regulated militia.” See, *e.g.*, *United States v. Miller*, 307 U. S. 174, 178 (1939).

In 2008, fifty years after Florida enacted its felon-in-possession statute, the Court reversed course, holding in *Heller* that the Second Amendment protects an individual right to bear arms that is separate from militia service. In *Heller*, the Court held that at the time of the Founding the right to keep arms was “a common way of referring to possessing arms, for militiamen and everyone else.” 554 U. S., at 583. Hence, the Second Amendment protects an individual right to bear arms that is not connected to militia service. The Court then acknowledged that the Second Amendment right to bear arms is not “unlimited” and can thus be reasonably regulated. *Id.*, at 595.

To inform its analysis of whether the regulation at issue in *Heller* was reasonable, the Court looked to historical restrictions on firearm possession. *Id.*, at 626–27, 631–34. However, the Court left

the details of how to do that historical analysis for another day. As a result, courts across the country struggled to figure out how to properly conduct the historical analysis. Many of the tests that came out from lower courts combined history with some form of means-end testing.

In *Bruen*, the Court rejected the means-end testing developed by lower courts across the country. The Court stated that a “judge-empowering ‘interest-balancing inquiry’” would not sufficiently safeguard constitutional rights. 597 U. S., at 22. That is because “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Id.*, at 23 (quoting *Heller*, 554 U. S., at 634). The Court thus stated that the proper test for determining whether a firearm regulation passes constitutional muster is whether “the government [can] demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*, at 17. “[T]he government may not simply posit that [a firearm] regulation promotes an important interest.” *Ibid.* The actual question that courts need to consider when analyzing whether an historical tradition exists is “how and why [a] [law] burden[s] a law-abiding citizen’s right to armed self-defense.” *Id.*, at

29.

“To carry its burden, the state or federal government must point to ‘historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation.’” *Edenfield v. State*, 379 So. 3d 5, 7–8 (Fla. 1st DCA 2023) (quoting *Bruen*, 597 U.S., at 27 (internal quotation marks omitted)). That is because “[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them.” *Heller*, 554 U.S., at 634–35. And the most important historical evidence of the Second Amendment’s meaning comes from the founding era. *Ibid.*

The Court shed light on the *Bruen* test’s application in *Rahimi*. There, the Court held that a person who was subject to a domestic violence restraining order and was found to represent a credible threat could be temporarily prohibited from possessing a firearm. *Rahimi*, 602 U.S., at 702. The Court concluded that such a prohibition was facially constitutional because the nation’s tradition of firearm regulation allows the government to temporarily disarm dangerous/violent individuals so long as they present a credible threat to the physical safety of others. *Id.*, at 692.

The key in *Rahimi* was that there was a finding that Mr. Rahimi

represented a credible threat. Thus, at the point in time Mr. Rahimi no longer represents a credible threat, he will be allowed to once again possess firearms. See *ibid.* (“[I]f 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.*, at 699 (“Moreover, like surety bonds of limited duration, Section 922(g)(8)’s restriction was temporary as applied to [Mr.] Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant ‘is’ subject to a restraining order. § 922(g)(8). In [Mr.] Rahimi’s case that is one to two years after his release from prison, according to Tex. Fam. Code Ann. § 85.025(c) (West 2019). App. 6–7.”).

In *Kanter*, then-Judge Barrett stated that although “[t]he historical evidence . . . sup-port[s] . . . that [a] legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety,” that does not support “the proposition that the legislature can permanently deprive felons of the right to possess arms simply because of their status as felons.” 919 F.3d, at 454.

In light of the Court’s decisions that have come out since section 790.23 was enacted—*Heller*, *Bruen*, and *Rahimi*—review by the Court is needed to determine if a state legislature can permanently deprive a person of their Second Amendment right due to the fact that they are a felon.

c. There is no historical analogue of firearm regulations that permanently prohibited a person from possessing firearms because of their felon status.

For section 790.23 to pass the *Bruen* test, there must be a historical tradition of laws that permanently prohibited felons from possessing any firearm (the how) because they are felons (the why).

The historical record reveals that no such law ever existed. In fact, the State below was unable to point to any such law. Instead, the State cited any law that dispossessed a person who committed a crime. For example, the State argued that history shows that a person facing the death penalty or estate forfeiture was not within the scope of people entitled to possess arms. The State also cited (1) the Militia Act of 1662 (which dispossessed people who were dangerous to the peace of the kingdom), (2) laws that dispossessed loyalists to the British Crown who refused to pledge their allegiance to the State, (3) and

laws that dispossessed slaves, Catholics, and Native Americans for fear of violent revolt.

The State relied on generalized traditions of temporary dispossession laws, which are not allowed. See *Bruen*, 597 U. S., at 30 (“To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risk[s] endorsing outliers that our ancestors would never have accepted.” (alteration in original) (quotation marks omitted)); see also *McDaniels v. State*, 419 So. 3d 1180, 1194 (Fla. 1st DCA 2025) (“It is not enough to rely on a generalized tradition of firearms regulation, for at that level of abstraction almost any law could be sustained.”).

Finally, the State cited no authority that any of the dispossession laws it cited were permanent or applied only to people who had felony convictions.

Accordingly, the government failed to meet its burden to prove that there is an historical analogue of the government permanently dispossessing a person of firearms because of their felon status after they had completed their sentences. The historical record shows only

dispossession laws that were temporary in nature and/or involved an individualized determination from a judge that a person was dangerous—as emphasized by the Court in *Rahimi*.

Section 790.23(1) permanently bans all felons from possessing firearms; it is not a one-to-two year ban; and it provides no mechanism for getting the right to bear arms returned after a number of years have passed or circumstances have changed—except for asking for a restoration of rights from the governor. In fact, no prior firearm regulation has ever categorically and permanently restricted people from possessing firearms because they are a felon, even after their sentence was complete.

d. The federal circuit courts of appeals are split on the federal felon-in-possession statute.

Finally, the Court should grant certiorari due to a federal circuit split over the constitutionality of the similarly-worded federal firearm ban. See 18 U.S.C. § 922(g)(1). Because the federal firearm ban is similar to Florida’s firearm ban, the Court should consider the fact that there is a circuit split regarding the federal ban when deciding whether to grant certiorari in this case.

Since *Bruen*, the federal circuits have chartered diverging paths

on whether the federal ban on felons possessing firearms violates the Second Amendment. On one side, there are the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. They held that the federal ban on felons possessing firearms meets constitutional muster. See *United States v. Hunt*, 123 F.4th 697, 704-08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *Browne v. Reynolds*, 150 F.4th 975 (8th Cir. 2025); *United States v. Duarte*, 137 F.4th 743, 747-48 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025).

On the other end, the Third Circuit has chartered a different course, holding in *Range v. Attorney General United States*, 124 F.4th 218 (3d Cir. 2024), that the federal felon-in-possession statute does not meet constitutional muster, as the historical record shows that laws that permanently prohibited a person from possessing any firearm even after their sentence is complete because they are a felon did not exist. The Third Circuit stated that during the early years of the Republic, punishments for nonviolent crimes were often less than what would normally be given. Furthermore, the Third Circuit noted that de facto lifetime disarmament for all felonies and felony-

equivalent misdemeanors is not rooted in our Nation’s history and tradition. The Third Circuit acknowledged that it is the only federal circuit court to hold as such. The result in Petitioner’s case directly conflicts with the result in *Range*, as noted by the Fourth District Court in its opinion.

Range has presented an ideal opportunity for the Court to step in and resolve this issue due to the circuit split. There are now multiple opinions the Court can use to assist them. See *Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (KAVANAUGH, J., respecting the denial of certiorari) (“The AR–15 issue was recently decided by the First Circuit and is currently being considered by several other Courts of Appeals. Opinions from other Courts of Appeals should assist this Court’s ultimate decisionmaking on the AR–15 issue. (citations omitted)). *Range* remains good law, as the United States failed to timely file a petition, and it has created a circuit split on a federal law. The Court should grant certiorari.

CONCLUSION

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

Respectfully submitted,

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