

No. 26-_____

In the
Supreme Court of the United States

MAURICE SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the one-time sighting of a criminal suspect at a third party's home justifies a warrant to search that home for evidence of the non-resident suspect's alleged crime.

2. Whether a court assessing an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) may reject the challenge based on facts—such as the challenger's parole or probation status—that the statute does not make a basis for disarmament.

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14.1(b)(i), petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Maurice Smith was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. District Court for the Western District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit:

United States v. Maurice Smith, No. 2:22-cr-129-WSS-22 (W.D. Pa.) (Sept. 16, 2024).

United States v. Maurice Smith, No. 24-2734 (3d Cir.) (Dec. 16, 2025).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Maurice Smith respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The Third Circuit's opinion is unpublished but available at 2025 WL 3642024 and is reproduced at Pet. App. 1a–5a. The district court's opinion denying Smith's motion to dismiss is unpublished but available at 2024 WL 896772 and is reproduced at Pet. App. 8a–19a. The district court's opinion denying Smith's motion to suppress is reported at 720 F. Supp. 3d 384 and reproduced at Pet. App. 20a–29a.

JURISDICTION

The Third Circuit entered judgment on December 16, 2025, and denied Smith's timely petition for rehearing on July 7, 2026. Pet. App. 1a–7a. This petition is filed within 90 days of that denial. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the U.S. Constitution states:

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

The Fourth Amendment to the U.S. Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 18 U.S.C. § 922(g)(1) states:

It shall be unlawful for any person ... who has been convicted in any court of, a crime punishable by imprisonment or 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 petition presents two critically important constitutional questions. The first—whether a residential nexus is required to get a search warrant for a suspect at someone else’s home—had been easily resolved in the defendant’s favor by every court to consider it until the decision below. The second—how courts should assess as-applied Second Amendment challenges to 18 U.S.C. § 922(g)(1)—has divided and confused the lower courts.

First: Can a warrant issue to search a home based on nothing more than the one-time sighting of a non-resident criminal suspect at the home?

Decades ago, this Court clarified that entry into a home is markedly different depending on whether the targeted criminal suspect is a resident of the home. *Steagald v. United States*, 451 U.S. 204, 211–23 (1981). Police may enter a suspect’s home armed with nothing more than an arrest warrant. But to search a *third party*’s home for that suspect, they need a search warrant. Of course, any such warrant must explain why the suspect would be found in someone else’s home. The same is unquestionably true whether officers seek the suspect himself or evidence of his crimes. “The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which

entry is sought.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 556–57 (1978) (citations omitted).

Applying these principles, lower courts have scrutinized search warrants of third-party premises (hereafter, “third-party search warrants”) closely, and have uniformly rejected those lacking a sufficient nexus to the home. *See United States v. Griffin*, 188 F.4th 297, 312–15 (4th Cir. 2026); *United States v. Ralston*, 88 F.4th 776, 780 (8th Cir. 2023); *United States v. Cordova*, 792 F.3d 1220, 1223–26 (10th Cir. 2015); *United States v. Grant*, 682 F.3d 827, 832–41 (9th Cir. 2012); *United States v. Herron*, 215 F.3d 812, 814–15 (8th Cir. 2000); *United States v. Hove*, 848 F.2d 137, 139–40 (9th Cir. 1988); *United States v. Solario*, 577 F.2d 554, 555–56 (9th Cir. 1978); *see also United States v. Johnson*, 806 F. Supp. 3d 886, 892–94 (D. Minn. 2025). Such “bare bones” affidavits are too “lacking in indicia of probable cause” for the good-faith exception to the exclusionary rule to save them. *See United States v. Leon*, 468 U.S. 897, 923 (1984).

The panel below broke from that consensus. Invoking the good-faith exception, it upheld a third-party search of Smith’s home based on a single sighting there of a non-resident suspect. Every other court to consider a similar warrant has found it bare bones for want of a residential nexus. But the panel reasoned that, despite lacking any residential nexus, the affidavit was not *literally* bare bones, because it

included details about officer training and surveillance and was not “devoid of factual content.” Pet. App. 4a. That sets the bar far too low.

The panel’s decision misreads *Leon* and turns *Steagald* on its head. At best, it is an unexplained departure from every other circuit decision on third-party search warrants. At worst, it embodies a rule under which the home of a person suspected of nothing receives less protection than the home of a suspect. “From the founding onward, [this Court has] explained, the Fourth Amendment has sought to secure the ‘privacies of life’ against the exercise of ‘arbitrary power.’” *Chatrue v. United States*, 146 S. Ct. 2193, 2205 (2026) (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). The decision below licenses exactly that kind of arbitrary power. This Court should summarily reverse or grant certiorari.

Second: May a court reject an as-applied Second Amendment challenge to § 922(g)(1) based on facts—like the challenger’s parole or probation status—that play no role in the statute?

When a defendant challenges a firearm law under the Second Amendment, the government must show that *that law* is “consistent with this Nation’s historical tradition of firearm regulation.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022). That is so whether the challenge is facial or as-applied—courts must look to applications of the statute itself to determine its consistency with historical

tradition. The Third Circuit has, however, said otherwise in challenges to the felon-in-possession statute, 18 U.S.C. § 922(g)(1). *See United States v. Quailles*, 126 F.4th 215 (3d Cir. 2025); *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024). Rather than ask whether § 922(g)(1) is constitutional as applied, *Moore* and *Quailles* asked a different question: whether the government may disarm people while they are on terms of supervised release, parole, or probation. The approach, adopted by several other circuits as well, is part of a troubling trend in which lower courts sidestep Second Amendment challenges to statutes by instead conducting individualized inquiries of the challenger’s life for some other, statutorily irrelevant, reason to disarm them.

An as-applied challenge to a statute is just that—a challenge to the application of that statute to a particular person. It does not ask whether the person could be lawfully disarmed under a different, hypothetical statute. *See Williams v. Illinois*, 399 U.S. 235, 238–39 (1970) (rejecting argument that “statute is not constitutionally infirm simply because the legislature could have achieved the same result by some other means”). When assessing a statute’s constitutionality, courts “consider[] only applications of the statute in which it actually authorizes or prohibits conduct.” *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). Section 922(g)(1) only prohibits firearm possession by felons—it says nothing about people on supervision. “An unconstitutional statute does not ‘become constitutional’ simply because it is applied

to a particular category of persons who could have been regulated, had the legislature seen fit to do so.” *People v. Burns*, 79 N.E.3d 159, 165–66 (Ill. 2015).

The lower courts are divided over the scope of the as-applied inquiry under § 922(g)(1). Most have come out the wrong way, ignoring this Court’s instructions on what constitutes an “application” of a statute in a constitutional challenge. The confusion has far-reaching implications beyond the Second Amendment, and this Court should grant certiorari to resolve the issue.

STATEMENT OF THE CASE

On August 31, 2022, Pittsburgh police executed a search warrant at Petitioner Maurice Smith's home. At the time, Smith was on parole and living in the house with his brother, Micah Latimer, and several others. But the search was entirely unrelated to Smith. Rather, police were looking for a non-resident, Damon Peters, who had an arrest warrant arising from an April 2022 shooting. Pet. App. 22a. The warrant authorized a search for Peters and for any firearms in the home. The affidavit said almost nothing about the target home itself, or about why officers expected to find Peters, or firearms he had used in a crime, at someone else's house. The closest it came was a single observation of Peters exiting the house the prior evening with resident Latimer,¹ carrying a fanny pack that officers purportedly "immediately recognized as a firearm." Pet. App. 23a. When police executed the warrant, they found Peters, Latimer, Smith, and others, detained them outside, and then searched the home extensively, resulting in the seizure of several firearms and ammunition, including a Glock 9 mm pistol attributed to Smith. Pet. App. 23a. At the time, Smith had felony convictions for unlicensed carry of a firearm, burglary, and robbery, and so he was charged with unlawful possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1).

¹ The search warrant also permitted a search for Latimer, who had a simple assault arrest warrant. But the affidavit in no way suggested that a broader search for firearms was related to Latimer. So, his inclusion in the warrant is irrelevant to the ultimate firearms search.

Smith moved to suppress the firearm. He argued that the warrant affidavit was “bare bones”—so lacking in indicia of probable cause that official belief in its existence was entirely unreasonable—and therefore *Leon*’s good-faith exception did not apply. He also moved to dismiss the indictment, arguing that § 922(g)(1) violates the Second Amendment as applied to him under *Bruen*, 597 U.S. 1. The district court denied both motions, Pet. App. 8a–23a, and Smith entered into a conditional guilty plea agreement, preserving his right to appeal both rulings. He was then sentenced to 37 months in prison and three years of supervised release.

Smith raised both issues on appeal. He raised the Second Amendment issue only for further review *en banc* or by this Court, because the Third Circuit had foreclosed such challenges for defendants, like Smith, who were under criminal supervision at the time they possessed the firearm. *See Quailles*, 126 F.4th 215; *Moore*, 111 F.4th 266. Pet. App. 4a.

On the suppression issue, Smith argued again that nothing in the affidavit supplied probable cause to believe Peters or illegal firearms would be found in his home, and that the affidavit was too bare bones for the good-faith exception. Pet. App. 2a. Smith’s position had overwhelming support in caselaw concerning searches related to non-resident suspects and third parties’ homes. *See Ralston*, 88 F.4th at 780; *Cordova*, 792 F.3d at 1223–26; *Grant*, 682 F.3d at 832–41; *Herron*, 215 F.3d at 814–15; *Hove*, 848 F.2d at 139–40; *Solario*, 577 F.2d at 555–56. The government

offered little defense of the warrant. It devoted most of its brief to mistaken preservation arguments, identified no case upholding a similar warrant, and did not meaningfully engage with the cases above.

The panel nonetheless affirmed in a non-precedential opinion. It did not decide whether the warrant was supported by probable cause, instead holding only that the good-faith exception applied under *Leon*, 468 U.S. 897. The panel acknowledged the affidavit's shortcomings but concluded it was not bare bones because "officers described their training and experience, outlined their surveillance efforts, and provided a narrative that, although flawed, was not devoid of factual content." Pet. App. 3a–4a.

Smith sought panel and *en banc* rehearing. He explained that the suppression decision misunderstood the bare-bones standard and conflicted with every other circuit decision on third-party search warrants. Moreover, on the Second Amendment issue, he asked the court to revisit *Quailes* and *Moore*, because a person's supervision status plays no role in § 922(g)(1) and so cannot defeat an as-applied challenge to the statute. The Third Circuit rule foreclosing such challenges for those on supervision is at odds with Supreme Court precedent defining what counts as an "application" of a statute for purposes of constitutional challenges. See *Patel*, 576 U.S. 409; *Williams*, 399 U.S. at 238–39. The court denied rehearing. Pet. App. 6a–7a.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Review to Clarify that a Third-Party Search Warrant With No Residential Nexus Is Bare Bones and Falls Outside the Good-Faith Exception.

The panel's suppression decision is grievously wrong. To counsel's knowledge, no court has endorsed a third-party search warrant like the one here. Rather, courts hold third-party warrants to a higher standard, routinely invalidating even detailed affidavits that fail to explain why evidence of a non-resident's crime would be found in someone else's home. The panel misunderstood the good-faith exception, suggesting that an affidavit could only be so bare-bones as to fall outside good-faith's reach if it is entirely "devoid of factual content." Pet. App. 4a. That is not the law. And the result is that Smith's home received less protection than it would have had he been the suspect—precisely what *Steagald* forbids.

Because the panel departed from this Court's precedent and from that of every other circuit to address the question, this Court should summarily reverse. Failing that, it should grant certiorari to clarify what the Fourth Amendment requires before officers may search a third party's home for a non-resident suspect's evidence.

A. The Decision Below Is Wrong.

1. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and it directs that "no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. “One’s home is sacrosanct, and unreasonable government intrusion into the home is ‘the chief evil against which the wording of the Fourth Amendment is directed.’” *United States v. Zimmerman*, 277 F.3d 426, 431 (3d Cir. 2002) (quoting *Payton v. New York*, 445 U.S. 573, 585 (1980)).

“Search warrants are not directed at persons; they authorize the search of ‘place[s]’ and the seizure of ‘things,’” and a warrant for items “is reasonable ‘only when there is ‘probable cause’ to believe that they will be uncovered in a particular dwelling.” *Zurcher*, 436 U.S. at 555 (citations omitted). “The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” *Id.* at 556–57.

While “the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands,” *Arizona v. Evans*, 514 U.S. 1, 10 (1995), courts have “establish[ed] an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial,” *Herring v. United States*, 555 U.S. 135, 139 (2009). The rule is “designed to safeguard against future violations of Fourth Amendment rights through the rule’s general deterrent effect.” *Evans*, 514 U.S. at 10. Therefore, exclusion is not warranted in every case. Under the “good faith”

exception, when “police act under a warrant that is invalid for lack of probable cause, the exclusionary rule does not apply if the police acted ‘in objectively reasonable reliance’ on the subsequently invalidated search warrant.” *Herring*, 555 U.S. at 142 (quoting *Leon*, 468 U.S. at 922).

In *Leon*, this Court identified four circumstances in which the good-faith exception does not apply including, as applicable here, when the affidavit is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” 468 U.S. at 923, 926 (citations omitted). This is sometimes referred to as a “bare bones affidavit.” *Id.* at 915. “A bare-bones affidavit should not be confused with one that lacks probable cause.” *United States v. White*, 874 F.3d 490, 497 (6th Cir. 2017). “Bare bones’ affidavits contain wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause.” *United States v. Morton*, 46 F.4th 331, 336 (5th Cir. 2022) (en banc). Examples include affidavits that rely only on boilerplate language and unexplained officer beliefs, see *United States v. Lewis*, 81 F.4th 640, 647–51 (6th Cir. 2023), or on an unknown, unproven informant without corroboration, see *United States v. Wilhelm*, 80 F.3d 116, 121 (4th Cir. 1996).

Likewise, an affidavit “with stale facts and a missing residential nexus” can be bare bones. *United States v. Griffin*, 188 F.4th 297, 313 (4th Cir. 2026). “It is axiomatic that the nexus required by the Fourth Amendment is between the

contraband being sought and the place being searched.” *Ralston*, 88 F.4th at 780. Even an affidavit that recounts “considerable detail” about unlawful conduct may be bare bones if it fails to “establish a nexus between the house to be searched and the evidence sought[.]” *United States v. Wilson*, 153 F.4th 478, 485 (5th Cir. 2025); *see also United States v. Underwood*, 725 F.3d 1076, 1086 (9th Cir. 2013) (detailed affidavit was bare bones when it provided “no factual basis for the conclusion that drug trafficking evidence would be found at [the] home”); *United States v. Griffith*, 867 F.3d 1265, 1278 (D.C. Cir. 2017).

Lower courts apply the nexus requirement strictly to third-party warrants, and they routinely find them to be bare bones when the affidavits fail to clearly connect the home to evidence of the non-resident suspect’s crimes. *See, e.g., Griffin*, 188 F.4th at 312–15; *Ralston*, 88 F.4th at 780; *Cordova*, 792 F.3d at 1223–26; *Grant*, 682 F.3d at 832–41; *Herron*, 215 F.3d at 814–15; *Hove*, 848 F.2d at 139–40; *Solario*, 577 F.2d at 555–56; *see also Johnson*, 806 F. Supp. 3d at 892–94. The third-party nature of these warrants makes them “uniquely infirm,” because their affidavits “focus[] suspicion of illegal activity solely on a separate suspect who actually was the investigation’s primary suspect.” *United States v. Carpenter*, 341 F.3d 666, 672 (8th Cir. 2003) (discussing *Herron*).

2. The panel departed from that practice. It held the third-party search warrant here was not bare bones even though the affidavit never explained why a

non-resident or his firearms would be found at Smith’s home. A single sighting of the suspect leaving the home assuredly does not supply that explanation. Indeed, the affidavit did not even explain what firearms officers sought or why they would be illegal. But the central defect was the missing residential nexus. The panel overlooked that shortcoming and failed to identify any indicia of probable cause in the affidavit, instead reasoning it was not literally bare bones, because the “officers described their training and experience, outlined their surveillance efforts, and provided a narrative that, although flawed, was not devoid of factual content.” Pet. App. 3a–4a.

But bare bones in this context does not mean “devoid of factual content.” The “bar may be low, but it is not subterranean.” *Wilson*, 153 F.4th at 488. The question is whether the affidavit supplies indicia of probable cause *to search the place*—not whether it contains facts of some kind. A warrant must rest on a residential nexus, especially when the evidence sought belongs to someone who does not live there. Extensive but irrelevant detail cannot substitute for that nexus. *See, e.g., Ralston*, 88 F.4th at 781 (even where an affidavit is “detailed, focused, and probative as to [a non-resident suspect’s] criminal activity,” it is bare bones if it lacks “specifics connecting [the resident] or his residence to the offenses under investigation.”). The “existence of some relevant facts does not make every inference connecting evidence to the place to be searched reasonable.” *Griffin*, 188 F.4th at 308. “A reasonable officer would

know that probable cause is not supplied by stating everything one knows about a particular item one would like to find to solve a [] case, if the mass of facts simply does not plausibly connect the place searched to the item sought.” *Grant*, 682 F.3d at 841.

A one-time sighting of a non-resident suspect at the third-party’s home does not suffice: it “is an isolated incident that fails to show [the third party] allowed [the suspect] to use his home for purposes of [the suspect’s criminal] enterprise,” and fails to “provide any indicia of probable cause.” *Cordova*, 792 F.3d at 1225; *see also Solario*, 577 F.2d at 555–56 (fact that suspect was seen three times at third party’s home with a firearm, “does not provide the basis for an inference that the weapon would be found at the [third party’s] home, since there was no indication that it had been or would be kept there”).

3. This Court’s precedents already distinguish between residents and non-residents in closely related settings. Police may enter a suspect’s home to execute an arrest warrant, but they need a search warrant to enter a *third party*’s home to arrest him. *See generally Steagald*, 451 U.S. at 211–23. And while officers may obtain “warrants to search property on which there is probable cause to believe that fruits, instrumentalities, or evidence of crime is located, whether or not the owner or possessor of the premises to be searched is himself reasonably suspected of complicity in the crime being investigated,” *Zurcher*, 436 U.S. at 550, such a warrant must still

establish a nexus between the place and the non-resident's criminal evidence, *id.* at 554–58.

Steagald rested in part on the concern that “an arrest warrant may serve as the pretext for entering a home in which the police have a suspicion, but not probable cause to believe, that illegal activity is taking place.” 451 U.S. at 215. This case raises the same concern. Officers had repeatedly seen Peters in public, yet they waited to arrest him until they had a warrant to search Smith's home. *See* Pet. App. 22a–23a. The pretext concern is not alleviated if a third-party search warrant survives without any nexus between the non-resident and the home. A warrant, like the one here, that merely establishes the basis to arrest a non-resident suspect, is no different from the arrest warrant held insufficient in *Steagald*. Under either, the “police could search all the homes of [a suspect's] friends and acquaintances,” based solely on probable cause to arrest the suspect. *Steagald*, 451 U.S. at 215. The warrant here “may have protected [the suspect, Peters] from an unreasonable seizure,” but “it did absolutely nothing to protect [Smith's] privacy interest in being free from an unreasonable invasion and search of his home.” *Id.* at 213.

Finally, the Founders would not have tolerated a warrant like the one here. The absence of a particularized nexus in English general warrants and colonial writs of assistance motivated the Fourth Amendment's adoption. *See Steagald*, 451 U.S. at 220 (citing *Payton*, 445 U.S. at 608–09 (White, J., dissenting); *Boyd*, 116 U.S. at 624–

29; Nelson B. Lasson, *THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION* 13–78 (1937)). General warrants specified an offense and left officials free to decide who should be arrested and where to search for evidence. *Id.* Writs of assistance, closer still to the third-party warrant here, “noted only the object of the search ... and thus left customs officials completely free to search any place where they believed such goods might be.” *Id.* A search warrant that specifies a location, with no stated connection to the criminal or his evidence is functionally no different from such a writ. In fact, even the “obnoxious writs of assistance ... did not go as far as this, but only authorized the examination of ships and vessels, and persons found therein ... and to enter into and search any suspected vaults, cellars, or warehouses for such goods.” *Boyd*, 116 U.S. at 623.

The decision below goes further still. So long as an affidavit is not completely “devoid of factual content,” *see* Pet. App. 4a, the panel would permit a search of an unsuspecting citizen’s home based only on a bare assertion that a non-resident’s evidence might be found there. That subjects third-party search warrants to less scrutiny than ordinary ones, leaving innocent third parties *more* vulnerable to police intrusions into their homes, than suspects themselves. That cannot be and, thankfully, is not the law.

B. The Decision Below Departs from Every Other Circuit to Address Third-Party Search Warrants by Not Requiring a Residential Nexus.

The decision below, read with other Third Circuit case law, reveals a potential circuit split over how to treat third-party search warrants under *Leon*'s bare-bones affidavit standard. Other circuits scrutinize such warrants closely. The panel here suggested they need hardly be scrutinized at all.

Every other circuit to consider the question—the Fourth, Eighth, Ninth, and Tenth—has recognized, expressly or implicitly, that a third-party search warrant is bare bones unless it clearly spells out a residential nexus—*i.e.*, an adequate reason to believe the non-resident's evidence will be found in someone else's home. *See Griffin*, 188 F.4th at 312–15; *Ralston*, 88 F.4th at 780; *Cordova*, 792 F.3d at 1223–26; *Grant*, 682 F.3d at 832–41; *Herron*, 215 F.3d at 814–15; *Hove*, 848 F.2d at 139–40; *Solario*, 577 F.2d at 555–56. As discussed above, this comports with this Court's differing warrant requirements to arrest criminal suspects depending on whether they are in their own home or a third-party's home. *See Steagald*, 451 U.S. 204.

It appears that the Third Circuit takes a narrower view of what makes an affidavit bare bones under *Leon*. It acknowledges “very few situations in which an affidavit is ‘so lacking in probable cause as to render official belief in its existence entirely unreasonable.’” *United States v. Rosario*, 180 F.4th 512, 525 (3d Cir. 2026). Those situations include only “when the affidavit: is a ‘bare bones’ document lacking factual detail, relies on pieces of ‘stale evidence,’ or relies on an uncorroborated or

unreliable anonymous tip.” *Id.* at 525 n.27 (quoting *United States v. Pavulak*, 700 F.3d 651, 664 (3d Cir. 2012)). The Third Circuit has never found a third-party warrant bare bones. And the panel here understood “lacking factual detail” literally—that is, the detail need not be material, and need not supply a residential nexus, so long as the affidavit is not “devoid of factual content.” *See* Pet. App. 4a. To be sure, the Third Circuit requires a nexus when officers search a suspect’s *own* home—though, there, the nexus is readily inferred. *See United States v. Stearn*, 597 F.3d 540, 558–60 (3d Cir. 2010). Here, where the suspect was a *non-resident*, counterintuitively, the panel abandoned the nexus requirement altogether.

This Court should intervene to correct the opinion below, the sole outlier circuit court decision to endorse a third-party search warrant like this.

C. The Question Presented Is Critically Important and this Case is an Ideal Vehicle.

The question presented here is also critically important. Smith received a 37-month prison sentence, after a dubious police raid of his home that had nothing to do with him. Physical “entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Payton*, 445 U.S. at 585. The concern is greatest when the resident is suspected of nothing, which is why *Steagald* requires a search warrant to arrest a non-resident in a third party’s home. The panel drained that requirement of meaning by upholding a bare-bones warrant with no nexus to Smith’s

home at all. Had Smith been charged in the Fourth, Eighth, Ninth, or Tenth Circuit, precedent would have required reversal of his conviction.

This case is also an ideal vehicle. The issue was fully preserved and the decision below is, to counsel's knowledge, the only appellate decision to uphold such a warrant. Because the opinion is non-precedential, it does not create a formal circuit split. But that is no reason to deny review. The decision reached a result contrary to every comparable case without citing a single one. When a district court errs in a criminal case, the defendant is entitled to trust that a court of appeals will correct the error, not affirm it without regard to the case law and without a meaningful path to further review.

The outcome in this case is utterly wrong and arbitrary, and this Court should intervene before other courts follow the panel's lead.

II. The Court Should Grant Review to Decide the Proper Scope of an As-Applied Second Amendment Challenge to § 922(g)(1).

The Third Circuit's approach to as-applied Second Amendment challenges to 18 U.S.C. § 922(g)(1) is also manifestly wrong and, indeed, would be unrecognizable in any other constitutional context. The Third Circuit and others hold that § 922(g)(1) is constitutional in cases where the defendant was under criminal supervision, like parole or probation, at the time they possessed a firearm. *See Quailles*, 126 F.4th 215; *Moore*, 111 F.4th 266. That is a non sequitur. Section 922(g)(1) does not disarm people because they are on supervision; it disarms people because they have felony

convictions. Supervision status therefore has nothing to do with the statute, and nothing to do with a challenge to it. An as-applied challenge remains a challenge to a statute, not a free-ranging inquiry into whether any unrelated fact about the defendant's life might justify disarming him.

This Court has never allowed a constitutional challenge to be rejected on facts irrelevant to the challenged statute. It is bedrock (and common sense) that the government cannot defend an unconstitutional law by pointing to a different, hypothetical law that would be permissible. Yet the Third Circuit is not alone in upholding § 922(g)(1) on these grounds. And other circuits have shut down as-applied challenges to § 922(g)(1) altogether. Only the Fifth Circuit has meaningfully resisted the broader approach. The circuits are hopelessly confused and divided over this crucial question and require this Court's intervention to ensure that Second Amendment challenges receive the same care as every other constitutional claim.

A. The Decision Below is Wrong.

1. The Second Amendment to the U.S. Constitution provides: "the right of the people to keep and bear arms, shall not be infringed." U.S. Const. amend. II. That text guarantees "the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). This is not a "second-class right." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010). Nor is it reserved for a select few. Like other fundamental rights enshrined in the

Constitution, the right to bear arms belongs to “all Americans.” *Heller*, 554 U.S. at 581. It “codified a right ‘inherited from our English ancestors’”: “the inherent right of self-defense.” *Id.* at 599, 628 (quoting *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897)).

Like “most individual rights, the Second Amendment has its limits. ... But when the government crosses the line from permissible regulation into unconstitutional infringement, courts have a duty to say so in the cases before them—no less in the Second Amendment context than in any other.” *United States v. Hemani*, 608 U.S. 772, 779 (2026). This Court has rejected making that assessment by resorting to “means end scrutiny,” or to “judicial deference to legislative interest balancing[.]” *Bruen*, 597 U.S. at 23–24. Instead, it employs a two-step framework rooted in text and history: (1) “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct,” and (2) in such cases, the “government must then justify its regulation by demonstrating that it is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 24.

To identify that tradition, courts look to “what *Bruen* called historical analogues,” or “old legal rules from which a court may draw a strong inference that the modern law at issue is consistent with the codified right.” *Wolford v. Lopez*, 609 U.S. 185, 196 (2026). How much weight a historical regulation carries depends on number of factors: how widely it was adopted, how well accepted it was, whether it existed at the Founding, and, most important, whether it is “‘relevantly similar’ to

the modern law.” *Id.*; see also *Bruen* 597 U.S. at 34 (cautioning against historical evidence from too long before or after the Founding).

Relevant similarity turns on “*how* and *why* the regulations burden” the “right to armed self-defense.” *Bruen*, 597 U.S. at 29 (emphasis added). “The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more likely it is to be upheld. Conversely, the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review.” *Hemani*, 608 U.S. at 780–81. The government need not identify a “dead ringer” or “historical twin” for the challenged regulation, but it must show that regulation is “consistent with the principles that underpin our regulatory tradition.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024). Still “courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would never have accepted.” *Bruen*, 597 U.S. at 30 (cleaned up). Courts “must be careful not to read a principle at such a high level of generality that it waters down the right.” *Rahimi*, 602 U.S. at 739–40 (Barrett, J., concurring). The standard demands a “close historic analogue,” and should not be misused to try to “glean from historic exceptions overarching, ‘policies,’ ‘purposes,’ or ‘values’ to guide [courts] in future cases.” *Id.* at 710 (Gorsuch, J., concurring).

2. Under that framework, § 922(g)(1) violates the Second Amendment at least as applied to some felons. In the countless § 922(g)(1) challenges since *Bruen*, the government has yet to offer a single example of a Founding-era felon-disarmament law. See *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.”). Because § 922(g)(1) addresses “a general societal problem that has persisted since the 18th century, the lack of a *distinctly similar* historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Bruen*, 597 U.S. at 26 (emphasis added). Indeed, the government’s defense of § 922(g)(1) should be a non-starter, because felons were not only *permitted* firearms at the Founding—like most people they were *required* to keep them.²

This case illustrates how the government has sidestepped that hurdle: it changes the question. *Moore*, though nominally a Second Amendment challenge to § 922(g)(1), opens by framing the issue as “Does a convict completing his sentence on supervised release have a constitutional right to possess a firearm?” *Moore*, 111 F.4th

² See, e.g., Second Militia Act, § 1, 1 Stat. 271 (May 8, 1792) (requiring citizens to keep firearms, and not including felons among the exceptions); Royce de R. Barondes, *The Odious Intellectual Company of Authority Restricting Second Amendment Rights to the “Virtuous”*, 25 TEX. REV. L. & POL. 245, 278 (2021) (finding no evidence that those with criminal convictions were excluded from militia duties or firearm ownership); Nicholas J. Johnson, et al., FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY 185, 191–92 (3d ed. 2022) (explaining colonies typically required indentured servants—often felons—to be armed for militia service).

at 267. From there, it proceeds to “justify disarming Moore while he was on supervised release,” by looking to historical forfeiture laws which disarmed convicts while they completed their sentences. *Id.* at 269. But that is not the question an as-applied challenge to § 922(g)(1) poses. As with any Second Amendment challenge, the question is “whether any analogue or collection of analogues is ‘relevantly similar’ to the *modern law*.” *Wolford*, 609 U.S. at 196 (emphasis added). The Third Circuit treated the challenge not as one to a particular regulation—§ 922(g)(1)—but as an open-ended search for some other justification for disarming the defendant.

3. That approach departs from this Court’s longstanding understanding of what an “application” of a statute is for purposes of *facial* constitutional challenges. When entertaining a constitutional challenge to a statute, courts “must be careful not to go beyond the statute’s facial requirements and speculate about ‘hypothetical’ or ‘imaginary’ cases.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008). “The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined.” *United States v. Raines*, 362 U.S. 17, 22 (1960). “If on its face the challenged provision is repugnant ... specification of details of the offense intended to be charged would not serve to validate it.” *Lanetta v. New Jersey*, 306 U.S. 451, 453 (1939).

For example, in *City of Los Angeles v. Patel*, the Court considered a Fourth Amendment challenge to a municipal code provision that authorized warrantless searches of certain motel records. 576 U.S. 409. The city argued that searches under the provision would be constitutional in certain circumstances, such as emergency situations, where consent was given, or where the police had a warrant. *Id.* at 417–18. This Court explained that the purportedly constitutional applications the city identified were “irrelevant to [the Court’s] analysis because they do not involve actual applications of the statute.” *Id.* at 419. “Legislation is measured for consistency with the Constitution by its impact on those whose conduct it affects. The proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” *Id.* at 418 (cleaned up).

The Court rejected a similar sleight of hand in *Williams v. Illinois*, 399 U.S. 235. *Williams* was an equal protection challenge to a law that permitted indigent criminal defendants to serve extra prison time beyond a statutory maximum if they failed to pay their court-imposed fines. The state insisted that the law was “not constitutionally infirm simply because the legislature could have achieved the same result by some other means”—for instance, by collecting a “fine from an indigent person in circumstances where no imprisonment [was] included in the judgment.” *Id.* at 238–39. The Court easily rejected the argument, because the hypothetical “does not resolve the issue” presented by the challenged law. *Id.* at 239. Equal protection

“requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status.” *Id.* at 244. The Court acknowledged the “numerous alternatives” to achieve the same goal, which the state was “free to choose from,” *id.* at 244–45, but their availability said nothing about the statute actually before the Court.

The same principle appears whenever this Court strikes down an unconstitutional law while acknowledging that the government may pursue the same goals by other, lawful means. *See, e.g., United States v. Grace*, 461 U.S. 171, 183–84 (1983); *United States v. Eichman*, 496 U.S. 310, 316 n.5 (1990). Those alternatives never salvage the statute at hand. In *Eichman*, the Court recognized that several of the parties challenging a flag-burning statute had also been charged with “causing willful injury to federal property,” and the Court’s First Amendment ruling left that prosecution untouched. *Id.* at 313 n.1. But the existence of a permissible prosecution had no bearing on the challenge to the flag-burning statute itself.

There is no reason an “application” of a challenged statute should mean something different in the Second Amendment context. After all, the Second Amendment is not a “second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees[.]” *McDonald*, 561 U.S. at 780. “An unconstitutional statute does not ‘become constitutional’ simply because it is applied

to a particular category of persons who could have been regulated, had the legislature seen fit to do so.” *Burns*, 79 N.E.3d at 165–66.

Bruen and *Rahimi* instruct us to consider whether the *challenged regulation* is consistent with the principles that underpin our regulatory tradition. In a § 922(g)(1) case, the challenged regulation is, of course, § 922(g)(1) itself. The question, then, is whether § 922(g)(1), as applied to a particular defendant, comports with the Second Amendment—not whether some *hypothetical* statute could constitutionally apply to the defendant.

United States v. Bonner, 159 F.4th 338, 344–45 (5th Cir. 2025) (Willett, J., concurring) (cleaned up). The “‘as-applied’ label does not control what a party must plead or prove ... what matters is that the remedy sought is properly ‘tailored to redress the plaintiff’s particular injury.’” *United States v. Adams*, 914 F.3d 602, 608 (8th Cir. 2019) (Kelly, J., concurring). The injury here is the “§ 922(g)(1) conviction, and [courts] should limit [their] analysis to the facts that trigger that criminal sanction, *i.e.*, the facts that the government needed to prove in order to apply the statute to the case.” *Id.*

Nothing in this Court’s recent Second Amendment decisions—*Bruen*, *Rahimi*, *Hemani*, or *Wolford*—supports the Third Circuit’s approach. None suggests that judges may comb through a challenger’s history for non-statutory reasons he could lawfully be disarmed. The facts of several of the cases would have been easily susceptible to such an approach if it were permissible. In *Rahimi*, the Court recounted troubling background details about the defendant’s history beyond his restraining

order, all of which no doubt spoke to his dangerousness or the need for his disarmament. 602 U.S. at 686–88. But the Court set those facts aside in its historical inquiry. It asked only what 18 U.S.C. § 922(g)(8) actually prohibited—possession by a person subject to a protective order—and compared that to the historical analogues. *See id.* at 693–701. So too in *Hemani*, 608 U.S. 772. The defendant there was suspected of terrorism-related activity, yet the Court’s analysis addressed only his drug use, because that was the sole statutory basis for his disarmament under 18 U.S.C. § 922(g)(3).

B. Circuit Courts are Intractably Divided Over How to Analyze As-Applied Challenges to § 922(g)(1).

It is no secret that lower courts have struggled with how to apply the framework announced in *Bruen*, including on the scope of as-applied challenges to § 922(g)(1). They have acknowledged “there is significant disagreement about” how to resolve § 922(g) challenges “that the Supreme Court should resolve.” *United States v. Morton*, 123 F.4th 492, 498 n.2 (6th Cir. 2024). Courts are specifically divided on the issue raised here, and unfortunately appear to be moving further and further away from this Court’s precedent.

The Third Circuit is not alone—in the Second Amendment context courts have evinced profound confusion over the otherwise uncontroversial tautology that a constitutional challenge to a statute should have something to do with that challenged statute. The Fifth, Sixth, Seventh, and D.C. Circuits have joined it, or

signaled agreement, in rejecting Second Amendment challenges to § 922(g)(1) based on the defendant’s statutorily irrelevant status as a parolee or probationer. *See United States v. Giglio*, 126 F.4th 1039, 1043–46 (5th Cir. 2025); *United States v. Goins*, 118 F.4th 794, 801–05 (6th Cir. 2024); *United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024); *United States v. Richardson*, __ F.4th __, 2026 WL 2451537, at *3–7 (D.C. Cir. 2026).³

That rule flows from the extraordinarily broad view of as-applied challenges the Third and Sixth Circuits have adopted. The Sixth Circuit has held that, when bringing an as-applied challenge to § 922(g)(1), the defendant—not the government—has the “burden to demonstrate that he is not dangerous,” and the court must “focus on each individual’s specific characteristics,” including his “entire criminal record—not just the predicate offense of purposes of § 922(g)(1).” *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). The Sixth Circuit left open whether courts could “consider information beyond criminal convictions,” *id.* at 657 n.12, but the Third Circuit went further. In as-applied § 922(g)(1) challenges, its 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

³ The Sixth Circuit has since clarified that supervision status is not dispositive of the constitutional question, and that courts should do more factfinding to show a “nexus ... between the dangerousness of the crime and the restriction imposed.” *United States v. Hostettler*, 170 F.4th 539, 545 (6th Cir. 2026).

conviction, to evaluate whether he meets the threshold for continued disarmament.” *Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025).

The Fifth Circuit’s endorsement of the supervision rule in *Giglio* is puzzling, because that court otherwise refuses to consider facts beyond the predicate felony in as-applied challenges to § 922(g)(1). It has “explicitly” rejected the Third Circuit’s view in *Pitsilides* that such challenges involve an “individualized assessment” of dangerousness, which “‘look beyond’ a defendant’s predicate conviction[.]” *United States v. Hembree*, 165 F.4th 909, 912 (5th Cir. 2026); *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025). “The relevant consideration is a defendant’s ‘prior convictions that are punishable by imprisonment for a term exceeding one year,’ not unproven conduct charged contemporaneously ... or prior conduct that did not result in a felony conviction.” *Id.* (citing *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024)); *see also United States v. Mitchell*, 160 F.4th 169, 186–87 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 2800 (2026). Unrelated facts, including conduct punishable under other statutes, “cannot justify a § 922(g)(1) conviction.” *United States v. Luna*, __ F.4th __, 2026 WL 2507689, at *2 (5th Cir. Aug. 25, 2026). As Judge Willett explained: “The question ... is whether § 922(g)(1), as applied to a particular defendant, comports with the Second Amendment—not whether some *hypothetical* statute could constitutionally apply to the defendant.” *Bonner*, 159 F.4th at 345 (Willett, J., concurring). Yet to reject § 922(g)(1) challenges based on supervision status, the Fifth

Circuit pivoted from its own rule, insisting that “we must factor in the particularities of an individual’s circumstances when adjudicating as-applied challenges[.]” *Giglio*, 126 F.4th at 1045.

The Fourth Circuit has likewise recognized, at least on occasion, that an as-applied Second Amendment challenge is confined to the statute actually challenged. *See United States v. Price*, 111 F.4th 392, 402 n.4 (4th Cir. 2024) (en banc). *Price* was an as-applied challenge to 18 U.S.C. § 922(k), which bars possession of firearms with altered serial numbers. A concurring judge would have resolved the case on the ground that the defendant was also a felon who could be disarmed outright: if the defendant “can be constitutionally prohibited from possessing *any* firearm without running afoul of the Second Amendment, then he can surely be prohibited from possessing a discrete subset of firearms[.]” *Id.* at 411–14 (Agee, J., concurring). The majority rejected the argument, explaining that “that is not the law Congress enacted via § 922(k),” and that adopting the theory would “ignore the question that is squarely presented in this case and instead cast about for any alternate theory[.]” *Id.* at 402 n.4.

But the Fourth Circuit has otherwise joined the Second, Eighth, Ninth, Tenth, and Eleventh Circuits in a different, equally troubling approach: foreclosing as-applied challenges altogether by holding § 922(g)(1) “constitutional as applied to *all* felons.” *United States v. Mancilla*, 155 F.4th 449, 454 n.5 (5th Cir. 2025) (Elrod, J.,

concurring) (citing *Zherka v. Bondi*, 140 F.4th 68, 74–75, 77–79, 91–93 (2d Cir. 2025), *cert. denied*, 2026 WL 135708 (2026); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *United States v. Jackson*, 110 F.4th 1120, 1125–26 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 750–52, 761–62 (9th Cir. 2025) (en banc), *cert. denied*, 2026 WL 135692 (2026); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026); *United States v. Dubois*, 139 F.4th 887, 888–89 (11th Cir. 2025), *cert. denied*, 2026 WL 135685 (2026));⁴ *see also United States v. Jackson*, 121 F.4th 656, 657–59 (8th Cir. 2024) (Stras, J., dissenting from denial of pet. for rehearing) (criticizing the decision to foreclose as-applied challenges to § 922(g)(1)).

And although the Eighth Circuit has shut the door on as-applied challenges to § 922(g)(1), it has, like the Third Circuit, endorsed a probing individualized inquiry for as-applied challenges to other firearm statutes. *See United States v. Wako*, 182 F.4th 766, 770–71 (8th Cir. 2026) (reversing for post-trial consideration of motion to dismiss 18 U.S.C. § 922(n) charge). Courts in that circuit often defer challenges to provisions like §§ 922(g)(3) and (n) until after trial, where “ruling on the as-applied

⁴ The First Circuit appears to take an entirely different approach, requiring *defendants*, instead of the government, to “show that the historical analogues the [district court] relied on were not ‘relevantly similar’ to § 922(g)(1)[.]” *United States v. Levasseur*, __ F.4th __, 2026 WL 2731003, at *7 (1st Cir. Sept. 16, 2026). This approach not only ignores *Bruen*’s command that the *government* bears the burden to show consistency with historical tradition, *see* 597 U.S. at 24, it appears to misapprehend the nature of *de novo* review. The Sixth Circuit has a similarly misguided requirement that a § 922(g)(1) challenger has the “burden to demonstrate that he is not dangerous, and thus falls outside of § 922(g)(1)’s constitutionally permissible scope[.]” *Williams*, 113 F.4th at 657.

challenge requires ‘resolving factual issues related to [the] alleged offense[.]’” *United States v. Baxter*, 127 F.4th 1087, 1091 (8th Cir.), *cert denied*, 146 S. Ct. 294 (2025).

The lower courts are no doubt divided on this question. But, worse, they are turning ordinary constitutional principles on their head, and doing so only in the Second Amendment context. This Court should intervene.

C. This Case is an Ideal Vehicle to Address this Critically Important Issue.

Smith’s case is an ideal vehicle. He preserved the question at every stage, despite circuit precedent foreclosing it, precisely so that this Court could review it. And the question is likely outcome-determinative; with the supervision rule removed, Smith could finally press his as-applied challenge to § 922(g)(1) under a faithful application of *Bruen*, *Rahimi*, and *Hemani*. As explained above, the government has identified no historical tradition of disarming felons at all, let alone felons with records like Smith’s. That challenge has a strong likelihood of success, particularly given the *en banc* Third Circuit’s recognition that § 922(g)(1) is unconstitutional at least as applied to some defendants. *See Range v. Att’y Gen.*, 124 F.4th 218 (3d Cir. 2024) (*en banc*).

The issue is also one of critical importance. Lower courts are misreading this Court’s instructions on what counts as an “application” of a statute in the context of a constitutional challenge. So far, that confusion has been confined to Second Amendment challenges to § 922(g)(1), but absent this Court’s intervention it likely

will not stay there. The Third Circuit’s untethered approach to as-applied challenges also presents significant separation of powers concerns—in essence, the courts have rewritten § 922(g)(1) to sweep in conduct Congress did not prohibit, and all for the dubious purpose of disposing of legitimate constitutional challenges by criminal defendants. This Court has long warned against construing statutes so broadly, that it allows “the courts to step inside’ to announce to whom the statute may be applied. ... “This would, to some extent, substitute the judicial for the legislative department of the government.” *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330 (2006) (citation omitted). Courts that do so act “to make a new law, not to enforce an old one.” *United States v. Reese*, 92 U.S. 214, 221 (1875).

Millions of Americans have felony records and face disarmament under § 922(g)(1). See Lahny Silva, *The Trap Chronicles, Vol. 3: Felons & Firearms*, 84 Md. L. Rev. 309, 384 (2025). In fiscal year 2025 alone, there were 7,245 reported convictions under 18 U.S.C. § 922(g), 89% of them based on prior felony convictions. U.S. Sent. Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (June 2026). Decisions like the Third Circuit’s bar untold numbers of those defendants from challenging § 922(g)(1) simply because they were on some form of supervision. The rule misreads basic precepts of constitutional law to deprive criminal defendants of meaningful constitutional relief.

Over the past four years, this Court has taken considerable interest in Second Amendment cases, including challenges to federal criminal laws, *see, e.g., Rahimi*, 602 U.S. 680; *Hemani*, 608 U.S. 772, but has thus far not waded into the thorny Second Amendment questions surrounding § 922(g)(1). Yet the “constitutionality of the felon-in-possession statute is as ‘exceptionally important’ as ever[.]” *Jackson*, 121 F.4th at 660 (Stras, J., dissenting from denial of pet. for rehearing). This case presents a discrete but essential question about that frequently litigated statute, and it would leave it to the lower courts to continue percolating on the ultimate question of § 922(g)(1)’s constitutionality. Correcting how courts frame as-applied challenges is a necessary first step in that developing area of law.

CONCLUSION

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

Respectfully submitted,

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