No. ____

In The

Supreme Court of the United States

_____

Alonzo Ball,

Petitioner,

v.

the United States of America,

Respondent.

_____

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

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) is facially constitutional under the Second Amendment and the Nation's history and tradition of firearms regulation.

PARTIES TO THE PROCEEDING

Petitioner Alonzo Ball was the defendant before the district court and the appellant in the court of appeals.

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

RELATED PROCEEDINGS

This case arises from, and is related to, the following proceedings in the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Seventh Circuit:

United States v. Ball, No. 1:22-CR-449, motion to dismiss denied December 5, 2023; final judgment entered February 7, 2025.

United States v. Ball, No. 25-1284, order issued and judgment entered July 27, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Alonzo Ball respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The court of appeals' order summarily affirming Mr. Ball's conviction is attached as Appendix A. It is not reported. The district court's order denying Mr. Ball's motion to dismiss is attached as Appendix B.

JURISDICTION

The Seventh Circuit entered its order summarily affirming Mr. Ball's conviction on July 27, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the U.S. 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)(1) provides:

> Unlawful Acts
>
> (g) It shall be unlawful for any person—
>
> (1) Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; * * *
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

Late in the evening on October 13, 2021, Alonzo Ball was a passenger on a Chicago Transit Authority Red Line train. (R. 61, p. 2.)[1] While the train was stopped at the 69th Street station, Mr. Ball began to argue with another passenger. (R. 61, p. 2-3.) During the argument, Mr. Ball pulled out a Star Bonifacio Echeverria S.A. Model BM, 9mm semiautomatic pistol and held it in his right hand. (R. 61, p. 2-3.) Eventually, Mr. Ball tucked the pistol into his waistband and a few minutes later put it into his backpack. (R. 61, p. 3.) Chicago Police Department officers later boarded the train, arrested Mr. Ball, and recovered the pistol, which was unloaded, from his backpack. (R. 61, p. 3.) The firearm had travelled in interstate commerce and Mr. Ball knew he was a felon at the time he possessed the firearm. (R. 61, p. 3.)

On September 13, 2022, a grand jury sitting in the Northern District of Illinois returned a single-count indictment charging Mr. Ball with violating 18 U.S.C. § 922(g)(1) on or about October 13, 2021. (R. 1.)

Mr. Ball filed a motion to dismiss the indictment arguing § 922(g)(1) was unconstitutional under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). (R. 45.) After the motion was fully briefed, the district court denied the motion and held that § 922(g)(1) is constitutional. (App. 2a.) In summary, the district court held that, at *Bruen's* first step, felons are part of "the people" whose right to possess a firearm is protected by the Second Amendment. (App. 16a.) However, the court went on to hold that Mr. Ball's motion failed because § 922(g)(1) is similar enough to

[1] Citations contained herein are as follows: Record in the District Court: (R. __); and Appendices to this Petition: (App. __).

legislative efforts to regulate firearms at the Founding. (App. 30a.) Put another way, the district court held that § 922(g)(1) withstands Bruen's text-and-history analysis.

Mr. Ball pleaded guilty to the single-count indictment pursuant to a written plea agreement governed, in part, by Federal Rule of Criminal Procedure 11(a)(2). (R. 61.) With the government's consent, Mr. Ball preserved his right to appeal the court's denial of his motion to dismiss the indictment. (R. 61, p. 11.)

At the sentencing hearing on February 6, 2025, the district court imposed a sentence of 33 months' imprisonment, 2 years of supervised release, and the $100 special assessment. (R. 89.) Mr. Ball filed his notice of appeal on February 20, 2025. (R. 91.)

After Mr. Ball filed his notice of appeal, the Seventh Circuit issued opinions in *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), and *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). In *Prince*, the court of appeals upheld § 922(g)(1) as facially constitutional. The court first discussed the development of this Court's Second Amendment caselaw, from *District of Columbia v. Heller*, 554 U.S. 570 (2008), through *United States v. Rahimi*, 602 U.S. 680 (2024). *Prince*, 171 F. 4th at 1010. The court of appeals explained that *Rahimi* "held that people who have been adjudicated as dangerous, as by the issuance of a protective order, may be disarmed." *Id*. It then stated, without further historical explanation or discussion, that [t]he existence of a felony conviction is another plausible indicator of danger." *Id.* The court of appeals acknowledged that none of this Court's decisions "expressly addresses the validity of § 922(g)(1)." *Id.* But rather than proceed to the historical inquiry this Court has

required, the court of appeals simply suggested that "*Rahimi* recast *Bruen* to be more risk-centric (after observing that American history evinces this emphasis on danger)," and that, "given the current state of the law, represented by *Rahimi*, it is difficult to conclude that § 922(g)(1) cannot be applied to anyone, even a person with a string of convictions suggesting grave danger." *Id*.

The Seventh Circuit concluded that this focus on danger from *Rahimi* was equally applicable to § 922(g)(1). *Id*. at 1011. It further noted a "sampling" of decisions from other courts of appeals finding § 922(g)(1) facially valid, although it acknowledged that "federal courts across the country have disagreed about the implications of *Bruen* and *Rahimi*" in many applications. *Id*. The Seventh Circuit also cited to a contemporaneous decision from another panel of that court, *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). Although the court of appeals did not explain the relevance of *Watson* to the reader, in *Watson* the Seventh Circuit rejected an as-applied challenge by another individual to 922(g)(1), based on that individual's "dangerous" prior felony for possessing an illegal drug with intent to distribute. However, nowhere in *Prince* did the Seventh Circuit articulate or describe a historical tradition or compare that tradition to determine if § 922(g)(1) was consistent with it—not even the tradition this Court articulated in *Rahimi*.

Because Mr. Ball has a prior conviction for aggravated battery, he had to acknowledge that after *Prince* and *Watson* his challenge to § 922(g)(1) failed. The government filed a motion for summary affirmance, which the Seventh Circuit granted. (App. 1a.)

REASONS FOR GRANTING THE PETITION

The Second Amendment "is the very product of an interest balancing by the people." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). That balance, this Court has said, is secured by "this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). To that end, *Bruen* and its applications "demand attention to this history," *United States v. Hemani*, 146 S.Ct. 1677, 1685 (2026), because careful attention to it is the only way to "apply faithfully the balance struck by the founding generation to modern circumstances." *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

The Seventh Circuit did not heed these repeated explanations in *Prince* and the many cases summarily affirmed after *Prince*, including Mr. Ball's. Despite having held that § 922(g)(1) was facially constitutional, *Prince* never articulated a historical tradition nor, as a result, did it compare § 922(g)(1) to any such tradition. Instead, it wholly misdescribed this Court's decision in *Rahimi* as a case that "recast *Bruen* to be more risk-centric." The Seventh Circuit did not even examine the historical tradition from *Rahimi* to see if that tradition properly aligns with § 922(g)(1).

Although several courts of appeals have erroneously relied on dicta from *Heller* to shirk this Court's clear requirement to review the historical tradition for Second Amendment claims, in *Prince* the Seventh Circuit took a further novel approach: it invoked a broad, generic principle it discerned not from history but from *Rahimi* about "risk" and "danger," and simply imported that far too general principle into a different law to conclude that "the existence of a felony conviction is another plausible

indicator of danger," and therefore a permissible constitutional regulation. *Prince*, 171 F. 4th at 1010. No matter whether the tradition from *Rahimi* had any bearing on the mechanics or history of (g)(1).

This practice does not comport with this Court's Second Amendment jurisprudence. This Court should grant certiorari and hold that § 922(g)(1) is unconstitutional. At a minimum, this Court should grant, vacate, and remand the opinion below for further consideration in light of this Court's decisions in *United States v. Hemani* and *Wolford v. Lopez*.

I. The Seventh Circuit's reasoning in *Prince* conflicts with this Court's Second Amendment precedent and is incorrect.

A. This Court's decisions, from *Bruen* to *Wolford*, require a historical inquiry at an appropriately modest level of generality.

The Second Amendment guarantees an "individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The right is among those "fundamental rights necessary to our system of ordered liberty." *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). As this Court explained at length in *Bruen*, the Second Amendment is not secured by a "judge-empowering 'interest-balancing inquiry,'" but instead by attention to "our Nation's historical tradition of firearm regulation." 597 U.S. at 22, 24. The government bears the significant burden to make this showing, which looks for "relevantly similar" regulations, accounting for modern circumstances," and focuses on "[w]hy and how the regulation burdens the right." *Rahimi*, 602 U.S. at 692. While the government need not show a "dead ringer" or

"historical twin," this inquiry is not license to "uphold every modern law that remotely resembles a historical analogue." *Bruen*, 597 U.S. at 30.

This Court has now applied *Bruen*'s historical inquiry in three subsequent cases: *Rahimi*, 602 U.S. 692 *United States v. Hemani*, 146 S.Ct. 1677 (2026), and *Wolford v. Lopez*, 146 S.Ct. 2032 (2026). *Rahimi* addressed a challenge to 18 U.S.C. § 922(g)(8)(C)(i), which "bars an individual from possessing a firearm if his restraining order includes a finding that he poses 'a credible threat to the physical safety' of a protected person." 602 U.S. at 693. *Rahimi* reiterated that "[w]hy and how the regulation burdens the right are central to this inquiry," such that "laws imposing similar restrictions for similar reasons" are likely permissible, while laws whose restrictions "extend beyond what was done at the founding" will not be. *Id.* at 692–693. After reviewing historical instances of sureties and the "going armed" laws, this Court identified a historical tradition of individual disarmament of a specific person who was demonstrated to "pose[] a clear threat of physical violence to another." *Id.* at 698. Section 922(g)(8)(C)(i), which enacted the *temporary* disarmament of "an individual found by a court to pose a credible threat to the physical safety of another" person, fell neatly within that tradition. *Id.* at 702.

Rahimi's holding was carefully limited. It rejected the government's effort to introduce an amorphous "responsible" citizen test into the Second Amendment analysis. *Id.* at 701–702. It cautioned that it was not describing "the full scope of the Second Amendment." *Id.* at 702. And, despite the government's urging, it passed on the opportunity to address the constitutionality of the related provision in

§ 922(g)(8)(C)(ii), for restraining orders that contain a prohibition of the use of force against others without any particularized finding of risk. *Id.* at 693.

This Court's decision in *Hemani* addressed the constitutionality of 18 U.S.C. § 922(g)(3), which prohibits the possession of a firearm by an "unlawful user . . . of a controlled substance." This Court once again looked to the "why" and "how" of the law to understand whether § 922(g)(3) was consistent with the historical tradition. *Hemani*, 146 S.Ct. at 1686. The government argued that a collection of historical regulations loosely understood as "habitual drunkard laws" supported § 922(g)(3)'s ban on individual gun possession "from the moment he becomes an unlawful user of any controlled substance until he ceases." *Id.* This Court rejected that argument, observing that the proffered analogues "fail[ed] under every measure." *Id.* at 1694. Even though § 922(g)(3) was targeted at unlawful drug users, and the habitual drunkard laws might also loosely be described as laws targeted at those who "regularly use intoxicants," *Hemani* explained this was too general a principle to extrapolate from the historical tradition the government provided. *Id.* at 1687, 1693–94. The Second Amendment, this Court explained, does not afford the government "the kind of broad power to designate any group as dangerous and thereby disqualify its members from having a gun," a power that would swallow the Second Amendment whole. *Id.* at 1693 (quoting *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)).

In *Wolford v. Lopez*, decided a few weeks later, this Court reviewed a new Hawai'i law requiring affirmative consent to carry a firearm on private property anywhere in the State. 146 S.Ct. at 2040. This Court acknowledged that the State's

proffered analogues had demonstrated a more limited tradition of firearms regulation focused on "unauthorized hunting." *Id.* at 2050. This tradition had the "obvious aim" of preventing certain "distinctive harms and risks associated with unauthorized hunting"—including a possible "risk of inadvertently inflicting death or serious injury," among other disruptions. *Id.* at 2052. Hawai'i's modern, sweeping law, by contrast, went far beyond that purpose. And so even though "[b]oth sets of laws respond to the dangers and harms that someone with a gun can cause on another person's property," *id.* at 2061 (Kagan, J., dissenting), *Wolford* held the law unconstitutional. "[T]he gap between the State's anti-poaching analogues and its new rules is just too wide." *Id.* at 2052.

Wolford also rejected a proposed reliance on 18th-century laws prohibiting black people from carrying firearms, just like *Bruen* before it, 597 U.S. at 60–63. *Wolford* underscored the extent to which that era's Black Codes and other tools "aimed to perpetuate the subjugation of blacks" were antithetical to the scope of the Second Amendment right. *Id.* at 2053. Indeed, the "claim that this tainted artifact illuminates the original understanding of the right to keep and bear arms cannot be taken seriously." *Id.*

Together, *Rahimi*¸ *Hemani*, and *Wolford* flesh out what this Court articulated in *Bruen*: the government must point to a specific and definite tradition of regulation, not simply a generic purpose. Regulation of the right must be attuned to the "specific places that are prone to particular 'abuses' of the right," which may justify "'focused regulations' to address the threat." *Wolford*, 146 S.Ct. at 2058 (Barrett, J. concurring);

see also Rahimi, 602 U.S. at 700 ("The conclusion that focused regulations like the surety laws are not a historical analogue for a broad prohibitory regime like New York's does not mean that they cannot be an appropriate analogue for a narrow one."). Specific laws surrounding carrying firearms in sensitive places, *Bruen*, 597 U.S. at 30, or requiring affirmative consent for particular areas, *Wolford*, 146 S.Ct. at 2052, do not stand for broad principles that can be expanded to entire jurisdictions, untethered from the scope and design of the laws that made up that historical tradition. By contrast, modern laws that more closely track the form of those historical regulations, like that of *Rahimi*'s disarmament of a person subject to a court order with a particularized finding of risk to another, fit more neatly within the historical traditions they are genuinely rooted in.

This makes sense, as *Bruen* explicitly abrogated means-end scrutiny from the Second Amendment analysis. 597 U.S. at 19. The ability to extrapolate *some* generic governmental purpose or interest from a historical tradition is not what this Court has instructed the lower courts to do. Such a broad allowance would give license to "uphold every modern law that remotely resembles a historical analogue," and invite the return of the very interest balancing *Bruen* rejected. 597 U.S. at 30. If federal courts too often deferred "to the determinations of legislatures" when applying intermediate scrutiny, 597 U.S. at 26, a historical tradition that can rely on vague principles like risk, danger, or the need to monitor those who "regularly use intoxicants" will be no better. The government must instead articulate a historical tradition that is meaningfully connected to the historical laws and other sources it relies on.

B. The Seventh Circuit did not articulate a historical tradition of firearms regulation, as this Court requires, and instead substituted a generic "risk-centric" analysis.

With this background in mind, the Seventh Circuit's failure to follow this Court's precedent comes into stark relief. To begin, in *Prince* the Seventh Circuit simply did not conduct the historical inquiry this Court requires for the Second Amendment. As this Court has now repeatedly explained, a firearms regulation must be "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. A reviewing court must "apply faithfully the balance struck by the founding generation to modern circumstances." *Rahimi*, 602 U.S. at 692. *Bruen* and its applications "demand attention to this history." *Hemani*, 146 S.Ct. at 1685. In each of the three cases since *Bruen*, this Court conducted a discrete historical analysis and weighed the different historical traditions relevant to the specific statute at issue. In none has this Court adopted a generic dangerousness principle as a substitute for a historical inquiry in the case before it.

Yet the Seventh Circuit did exactly that in *Prince*. The court of appeals did not engage in a historical analysis or explain the historical tradition grounding its decision. Even as the court of appeals purported to rely on *Rahimi*, it did not describe the historical tradition *Rahimi* applied or explain why that historical tradition would be relevantly similar to § 922(g)(1). *Prince*, 171 F. 4th at 1010-12. So too when it cited to the decisions of other courts of appeals: nowhere does the *Prince* opinion describe,

approve, disapprove, or discuss at all the historical discussions from those other cases.[2]

All this, despite squarely acknowledging that "[n]one of the Supreme Court's decisions expressly addresses the validity of § 922(g)(1)." *Id*. at 1010. But rather than take the obvious next step and "undertake the text-and-history inquiry [this] Court so plainly announced and expounded upon at great length," *Atkinson v. Garland*, 70 F.4th 1018, 1022 (7th Cir. 2023), the Seventh Circuit simply stopped. It concluded that because *"Rahimi* recast *Bruen* to be more risk-centric," the "current state of the law" made it "difficult to conclude that § 922(g)(1) cannot be applied to *anyone*, even a person with a string of convictions suggesting grave danger." *Id*. Without first articulating a historical tradition, however, the Seventh Circuit could not, and did not, describe how § 922(g)(1) was "consistent" with that still undescribed tradition.

Hemani and *Wolford* confirm this methodology contravenes this Court's precedent. Those cases do not rely on generalized principles from prior cases; each conducts a discrete historical inquiry focused on the specific regulation at issue. In each case, for example, the government's defense of the challenged law included a concern for the risk or danger from the misuse of firearms. *See*, *e.g.*, *Hemani*, 146 S.Ct. at 1689; *Wolford*, 146 S.Ct. at 2046 (law requiring firearms safety classes), 2058 (Barrett, J., concurring) ("Hawaii is responding to the general danger associated with the presence of firearms"). In each case, this Court held the law unconstitutional and

[2] Nor is it clear what these citations accomplish, as the circuit courts do not agree among themselves as to which historical sources are appropriate comparators, the scope of the tradition they support, or how § 922(g)(1) comports and should be construed.

rejected that proffered basis. And in each case, this Court did so by inquiring into the specific historical tradition at issue, rather than relying on *Bruen* or *Rahimi* as having already established some general historical principle. *Hemani* expressly rejected a reliance on the exact same surety laws *Rahimi* relied on when upholding § 922(g)(8)(C)(i). 146 S.Ct. at 1690–91.

What reasoning *Prince* supplied in place of that historical tradition fares no better. The court of appeals suggested that "*Rahimi* recast *Bruen* to be more risk-centric (after observing that American history evinces this emphasis on danger)," further reasoned that "a felony conviction is another plausible indicator of danger," and therefore found that sufficient to sustain § 922(g)(1). *Prince*, 171 F. 4th at 1010. Of course, *Rahimi* did no such thing, and this Court has never countenanced such a vague historical principle as proper for the Second Amendment. Nor would it. A "risk-centric" approach is exactly the kind of principle *Bruen* warned against; one that "risks endorsing outliers our ancestors would never have accepted," 597 U.S. at 30, and wanders perilously close to the vague means-end scrutiny tests *Bruen* soundly rejected.

Rahimi is replete with evidence that it was not articulating a general risk or danger principle to be uncritically applied to statutes not before it. It was one application of *Bruen*'s historical inquiry, not an "exhaustive historical analysis of the full scope of the Second Amendment. *Rahimi*, 602 U.S. at 702 (quoting *Bruen*, 597 U.S. at 31) (internal ellipsis omitted). It "start[ed] and stop[ed]" with subsection (C)(i) of § 922(g)(8), declining to address the constitutionality of subsection (C)(ii), which

disarms someone whose restraining order "prohibits the use, attempted use, or threatened use of physical force"—even though the court of appeals below had done so and the government urged this Court to do so. *Id.* And *Rahimi* squarely rejected an effort by the government to introduce an amorphous, untethered "responsible" citizen test. *Id.* at 701–02. Allegations and discussions of Mr. Rahimi's personal conduct or character beyond the findings required by the statute similarly make no appearance in the analysis of § 922(g)(8)(C)(i)'s constitutionality.

Hemani and *Wolford* lay any doubt to rest. In *Hemani*, this Court addressed the constitutionality of another subsection of § 922(g), § 922(g)(3), but nowhere did this Court describe or apply *Rahimi* as putting forward a general, "risk-centric" approach. Instead, *Hemani* examined the specific historical laws in the tradition in that distinct case, elaborating principles specific to that tradition and the law before it. This Court directly addressed the government's contention that § 922(g)(3) was intended "to protect the public from 'unusually dangerous' individuals who will 'misuse firearms.'" *Hemani*, 146 S.Ct. at 1689. Despite this seemingly "risk-centric" purpose, *Hemani* did not look to *Rahimi* to supply supporting authority. Rather, the government provided, and this Court reviewed, a wholly distinct set of historical authorities, and explicitly acknowledged that the *Rahimi* tradition was not broadly generalizable. *Hemani*, 146 S.Ct. at 1691 ("To warrant the imposition of a surety of the peace, just being a habitual drunkard wasn't usually enough."). Likewise in *Wolford*: even though the historical tradition consisted of laws designed to "prevent diverse Abuses, Damages, and Inconveniences that had arisen by Persons Carrying Guns, and

presuming to hunt on other people's lands," the tradition from *Rahimi* made no appearance. 146 S.Ct. at 2051 (internal quotations and brackets omitted).

To be sure, two different firearms laws may be rooted in a similar historical tradition. But this Court has made clear that the proper approach is to articulate and review that the historical tradition is relevant and consistent, something the Seventh Circuit failed to do in *Prince*. Thus, it failed to acknowledge that surety laws, which required a particularized showing of a future risk, are inconsistent with a generic felon prohibition that requires no particularized showing, in fact requires no detail at all about a prior conviction. But in each of *Rahimi*, *Hemani*, and *Wolford*, this Court engaged in a specific analysis of how the historical tradition connected with the challenged law. This Court should grant certiorari and confirm that it is this historical test that applies, not means-end scrutiny by another name.

C. Section 922(g)(1) is novel and inconsistent with the Nation's tradition of firearms regulation.

More fundamentally, if the Seventh Circuit had engaged in the historical inquiry, guided by this Court's decisions from *Heller* to (now) *Wolford*, it would have seen that § 922(g)(1) is a modern anomaly, unmoored from the Nation's history. Throughout Mr. Ball's case and across the country, no law, treatise, or authority has ever been found disarming someone after the completion of their sentence before the 20th century. And no historical tradition supports the strictness of § 922(g)(1)'s restraint, operating as a total ban on possession with no opportunity for an individual to avail themselves of an exception.

While *Prince* did not engage in this history, it was issued alongside another decision of the Seventh Circuit, *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). Unlike *Prince*, in *Watson* the court of appeals did conduct the historical inquiry this Court demands to assess the validity of § 922(g)(1) as applied to the defendant in that case. It read that history to determine that "individuals convicted of dangerous felonies" may be disarmed, consistent with a purported tradition of disarmament for "dangerousness." *Watson* described what it saw as "two enduring traditions that merit consideration," which it ultimately held together supported a dangerous felon disarmament principle. But the two traditions it relied on are insufficient, particularly so in light of *Hemani* and *Wolford*.

The first tradition *Watson* relied on are class-wide bans on firearm possession for political groups that "threatened public safety and stability"—largely by being opposed to the governing state authority. 171 F.4th at 1021. As *Watson* itself accurately conceded, these laws represent a discrete historical tradition focused on the disarmament of dissident political or social groups, and are aimed at suppressing perceived dissent or rebellion. "Whether rebelling like the Welsh, or perceived as threatening rebellion like the Catholics, such groups threatened public safety and stability." *Id.* at 1020. So too is this the tradition carried forth in the United States: "Slaves and Native Americans were thought to pose more immediate threats to public safety and stability and were disarmed as a matter of course." *Id.* at 1021 (quoting *Kanter*, 919 F.3d at 458 (Barrett, J., dissenting) (internal ellipses omitted)). And

"Loyalists, too, were disarmed because of their perceived threat against the Revolution." *Watson*, 171 F.4th at 1021.

The historical record confirms that this tradition does not support a broad, generalized "danger" principle. The English Bill of Rights applied only to Protestants, so laws disarming Catholics shed little light on the scope of the right. *Heller*, 554 U.S. at 593; *see also* Clement Fatovic, *The Anti-Catholic Roots of Liberal and Republican Conceptions of Freedom in English Political Thought*, 66 J. Hist. Ideas 37, 43 (2005) ("Throughout the seventeenth century it was widely believed that closet Catholics throughout the country formed a deadly fifth column lying in wait to slaughter Protestants and force their religion on the nation with Catholics."); Jacqueline Rose, *Robert Brady's Intellectual History and Royalist Antipopery in Restoration England*, 122 Eng. Hist. Rev 1287, 1289 (2007).

Slaves and Native Americans were similarly perceived at the time to be beyond the scope of the right—indeed, in the case of slaves, of course, as property. *Bruen*, 597 U.S. at 60 (explaining how *Dred Scott v. Sandford* feared that recognizing black citizenship would allow black citizens "to keep and carry arms wherever they went"); Joyce Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right*, 141 (1994); Don B Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 217 n.54 (1983). So too with the Loyalist disarmaments, which were self-evidently wartime measures that aimed to preserve the stability of the fledgling revolutionary government. Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73

Fordham L. Rev. 487, 506–07 (2004); *see* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing* Arms, 20 Wyo. L. Rev. 249, 265 (2020) ("Like the English, and out of similar concerns of violent insurrections, the colonists disarmed those who might rebel against them."). As the Third Circuit has explained, absent a fear that an individual is "disloyal to his country," these Founding-era disarmament laws have no relationship to a felony disarmament, an analogy that would be "far too broad." *Range v. Attorney General*, 124 F.4th 218, 229–230 (3d Cir. 2024) (en banc).

Watson's reliance on these laws has a further problem: it cannot be squared with this Court's clear statements in *Bruen* and, even more emphatically, in *Wolford*. As *Watson* acknowledged, "this sad tradition includes laws repugnant by today's standards," and "[m]any of these laws would violate the Fourteenth Amendment." 171 F.4th at 1022. One law *Watson* relied on, for example, is an 1852 prohibition on firearms possession by "Black people in Mississippi" enacted in the lead up to the civil war, an outgrowth of laws prohibiting slaves from carrying firearms. *Id.* (quoting *Zherka v. Bondi*, 140 F.4th 68, 88 n.50 (2d Cir. 2025)). Despite purporting to understand these laws as the historical wrongs they are, the Seventh Circuit considered them as relevant regardless.

This Court had twice repudiated such usage when the court of appeals issued its decisions in *Prince* and *Watson*. *See Bruen*, 597 U.S. at 63; *Rahimi*, 602 U.S. at 694. Any lingering doubt was put to rest in *Wolford*, where Hawai'i sought to rely on an 1865 Louisiana law enacted as part of the infamous Black Codes. 146 S.Ct. at

2053. This Court emphatically rejected that effort: those laws "aimed to perpetuate the subjugation of blacks" by restricting their rights and stripping them of the means for self-defense, and so these laws did not illuminate the historical tradition. *Id.* It was not close: "Hawai'i's claim that this tainted artifact illuminates the original understanding of the right to keep and bear arms cannot be taken seriously." *Id.* In so doing, *Wolford* simply underscores what has been true since *Bruen*, that historical regulations that improperly *infringe* upon the Second Amendment make no sense as sources of meaningful insight into the proper understanding of that right.

The second tradition *Watson* relied on was the existence of capital punishment for felony crimes at the Founding. 171 F.4th at 1022. But capital punishment has always been a plain "why" mismatch. *See, e.g., Hemani*, 146 S.Ct. at 1689. Capital punishment has never had as its *purpose* disarmament; disarmament was simply a consequence of execution, imposed for punitive and retributive purposes.

Here, the historical silence speaks volumes. The Founding generation was intimately familiar with felony convictions, capital punishment, and firearms. The American tradition of capital punishment was to move away from it, "replac[ing] execution with incarceration as the punishment for all but a few crimes." Will Tress, *Unintended Collateral Consequences: Defining Felony in the Early American Republic*, 57 Clev. St. L. Rev. 461, 468 (2009); *see* An Act for the Punishment of Certain Crimes Against the United States, First Congress, Sess. II, Ch. 9, 1 Stat. 112, 119 (imposing a term of years for, among others, manslaughter, misprision of treason, mayhem, perjury, and larceny). And those with felony convictions were excluded from

some collective rights at the Founding—just not from the individual right of secured by the Second Amendment. Indeed, there is not a single "case or statute from [the Founding] era that imposed or authorized [felon] bans", *Folajtar v. Attorney General*, 980 F.3d 897, 915 (3d Cir. 2020) (Bibas, J., dissenting).

Watson suggested that because "legislatures could define a 'serious crime as a felony and impose the death penalty," § 922(g)(1) is permissible as well under a "greater includes the lesser" theory. 171 F.4th at 1022. But this reasoning skips a step: the greater includes the lesser, *Rahimi* says, when the greater and the lesser belong to the same historical tradition, the same "why." 602 U.S. at 699. And § 922(g)(1) is not part of the same historical tradition as punishment for a *specific crime*, with penological purposes of deterrence or retribution. It is a categorical prohibition that applies regardless of the prior offense, unrelated to those purposes. Section 922(g)(1) is frequently a burden imposed by a different sovereign, the federal government, in light of a state conviction, and often for convictions that would not be permissibly punished as federal crimes at all.

And the current version of § 922(g)(1) was intentionally broadened to expand the scope of its coverage away from prior convictions for violent offenses. Its predecessor law was, and prohibited the carrying of firearms by those convicted of a prior crime of violence. Federal Firearms Act of 1938, Pub. L. No. 75-785, ch. 850, § 2(d), 52 Stat. 1250 (June 30, 1938). Congress expanded the definition beyond that group to control general access to firearms, not because it determined it had drawn too narrow a border for dangerous individuals in the 1938 law. *Huddleston v. United States*,

415 U.S. 814, 824 (1974) (explaining that the Omnibus Crime Control and Gun Control Acts of 1968 were "aimed at restricting public access to firearms" generally). The relevant Congressional findings were placed in the Act and passed into law in the statutes at large. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901(a)(2), (7), 82 Stat. 225, 225, 226. In doing so, the law enacted a broad prohibition of firearms carry, intentionally uncoupling § 922(g)(1) from the specific facts or nature of a person's history. But by uncoupling (g)(1) from that prior requirement, Congress underscored the extent to which it was not tied to the nature of the prior convictions.

Felony punishment was a serious consequence for serious actions—but if it enacted disarmament, it did so only inadvertently, in service of separate regulatory and social objectives. Again, *Hemani* and *Wolford* confirm this reasoning would stretch too far. *Hemani* rejected the constitutionality of § 922(g)(3), even in the face of historical laws regulating "habitual drunkards" that could lead to their imprisonment. 146 S.Ct. at 1690–91. And this Court did not apply a greater includes the lesser theory: even though there was no debate these laws existed, their purposes were "nothing like the purpose the government ascribe[d] to § 922(g)(3), and so there was no "greater punishment" to refer to. *Id.* at 1691. So too in *Wolford*, where this Court acknowledged a tradition of requiring affirmative consent in some contexts for carrying a firearm on private property. The existence of that means of regulating the carrying of a firearm did not carry the day—the tradition it was in service of was no match to Hawai'i's.

Finally, *Wolford* confirms that § 922(g)(1)'s constitutional problem is a facial one. A law that is inconsistent with the Nation's historical tradition of firearm regulation as to its breadth and purpose is facially unconstitutional. And in *Wolford*, that was true even as this Court agreed that there was a narrower tradition of regulation that might be permissible. Undoubtedly there are some private lands in Hawai'i subject to disruptive hunting practices, and therefore places where Hawai'i could, under a properly consistent law, impose an affirmative consent requirement like the one it sought to do statewide. This did not save the law: because Hawai'i's law was not in keeping with that historical tradition, it did not matter that the narrower tradition existed. As Justice Barrett explained in her concurrence the problem was that "Hawai'i is responding to the general danger associated with the presence of firearms, not to any specific, heightened risk of their misuse." *Wolford*, 146 S.Ct. at 2058 (Barrett, J., concurring).

II. The question presented is exceptionally important, and this case is an effective vehicle to address it.

The constitutionality of § 922(g)(1), and the appropriate methodology for assessing it, are exceptionally important questions that have abounded in the lower courts since 2022. Section 922(g) prosecutions accounted for over 11% of all federal prosecutions in Fiscal Year 2024, and over 90% of those involved § 922(g)(1)—approximately 6,706 federal cases. U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* (May 2025). And there are many orders of magnitude more people with a prior felony conviction who are currently disarmed by § 922(g)(1) who are not currently being prosecuted, by one study's estimate as many as 19 million Americans.

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, 1806–1807 (2017) (available at https://link.springer.com/article/10.1007/s13524-017-0611-1). While this issue remains "unsettled," *Prince*, 171 F. 4th at 1011, every one of those thousands or millions of people must look for answers from the courts—many unlawfully and unconstitutionally disarmed in the interim.

In *Prince*, the Seventh Circuit acknowledged that the federal courts "have disagreed about the implications of *Bruen*." *Id.* The eight circuits to have weighed in on the issue are intractably split among themselves as to the proper understanding of the Second Amendment and how to apply the test to § 922(g)(1). There is little chance, as a result, that the courts will resolve these issues on their own. Moreover, as *Prince* demonstrates, many lower courts have eschewed the historical inquiry even after *Bruen* and will continue to do so. While both *Hemani* and *Wolford* further underscore why § 922(g)(1) is unconstitutional, neither is a sea change in the law. When this Court conducted a facial analysis of the law at issue in *Rahimi*, it did so by describing and comparing a historical tradition. As happened between *Heller* and *Bruen*, the lower courts have continued to resist the plain implications of this Court's requirements for a historical examination. This Court should step in and address those deviations sooner rather than later.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, this Court should grant, vacate, and remand the decision below for further consideration of *United States v. Hemani* and *Wolford v. Lopez*.

Respectfully submitted,

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