No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DUANE JACKSON,

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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October 27, 2026

QUESTION PRESENTED

Following this Court's holding in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), courts must engage in a history-based analysis when deciding whether a firearm law is part of the historical tradition that delimits the outer boundaries of the right to keep and bear arms. To do so, a court must determine whether the Second Amendment's plain text covers a person's conduct; and, if so, whether the Government has demonstrated the law is consistent with the Nation's historical tradition of firearm regulation.

Here, the Third Circuit circumvented the *Bruen* framework in addressing Petitioner's as-applied challenge to his lifetime firearm ban imposed under 18 U.S.C. §922(g)(1), by focusing on his unrelated, temporary status as a probationer and supervised releasee. The question presented is: Whether a court may avoid analyzing an as-applied challenge to §922(g)(1)'s lifetime ban by looking, instead, at whether the individual is under some form of temporary supervision in the community?

PARTIES TO THE PROCEEDING

Petitioner, the defendant-appellant below, is Duane Jackson.

Respondent, the appellee below, is the United States of America.

RELATED PARTIES AND PROCEEDINGS

Undersigned is aware of none.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Duane Jackson, hereby petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit.

OPINION BELOW

The opinion of the Court of Appeals for the Third Circuit is unreported at *United States v. Duane Jackson*, No. 24-3293, 2026 WL 2186306 (3d Cir. July 29, 2026) (non-precedential), and is reproduced at Petition Appendix ("Pet. App.") 1a-6a.

JURISDICTION

The Court of Appeals affirmed Petitioner's conviction and sentence on July 29, 2026. Pet. App. 1a-6a. Judgment was entered the same day. Pet. App. 7a.

This petition for writ of certiorari is due on October 27, 2026. Supreme Court Rule 13.1.

This Court has jurisdiction over this timely filed petition under 28 U.S.C. §1254(1).

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

U.S. CONST. amend. II.

> **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.

18 U.S.C. §922(g)(1).

INTRODUCTION

In *Bruen*'s wake, courts have developed divergent approaches to analyzing Second Amendment challenges to felon-with-firearm prosecutions, like those under 18 U.S.C. §922(g)(1). In a troubling trend, some courts do not analyze the underlying analogues justifying the felon's disarmament, and instead permit disarmament under §922(g)(1) so long as the person is serving a non-custodial sentence in the community (on probation, parole, or supervised release). Under this framework, the court does not even ask if the individual's predicate conviction permits disarming him in the first place.

Petitioner Duane Jackson had prior felony convictions for conspiring to commit bank fraud and for carrying a firearm without a license. These convictions lack historical analogue justifying them as a basis for disarmament. But the Third Circuit concluded it need not address this failing, because circuit precedent holds "that the Second Amendment right to possess firearms does not extend to those, like Jackson, who were on federal supervised release or state probation at the time of the underlying conduct." Pet. App. 4a.

STATEMENT OF THE CASE

A. Legal Framework

"[W]hen the Second Amendment's plain text covers an individual's conduct," "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). "[Section] 922(g)(1) regulates Second Amendment

conduct." *Range v. Attorney General (Range II)*, 124 F.4th 218, 228 (3d Cir. 2024) (en banc). Thus, a "court must ascertain whether [18 U.S.C. §922(g)(1)] is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (citing *Bruen*, 597 U.S. at 29). "Why and how the regulation burdens the right are central to this inquiry." *Id.*

To meet this burden, the Government is not required "to point to a 'historical twin' or 'precis[e] … historical precursors.'" *United States v. Hemani*, 608 U.S. 772, 780 (2026) (citing *Rahimi*, 602 U.S. at 692). "The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more likely it is to be upheld." *Id.* "Conversely, the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review." *Id.* at 780-81.

B. Petitioner Jackson's Case

Mr. Jackson was convicted in Pennsylvania state court in 2011 of carrying a firearm without a license, in violation of 18 Pa. C.S. §6106; and in federal court in 2016 of conspiring to commit bank fraud, in violation of 18 U.S.C. §1349. Pet. App. 2a, 4a; Superseding Indictment (Third Circuit Appellate Appendix, Appx46-47).

After serving imprisonment on his federal bank-fraud conspiracy, he was "released to begin his [two-year] federal term of supervised release and [four-year] state term of probation in April 2020." Pet. App. 2a. While on supervision, Mr. Jackson was indicted for conspiring to straw-purchase firearms from April to

November 2021, under 18 U.S.C. §371 and §922(a)(6), and for being a felon in possession of firearms in 2021, in violation of 18 U.S.C. §922(g)(1). Pet. App. 2a-3a.

Mr. Jackson moved to dismiss the indictment, alleging the criminal charges violated his right to keep and bear arms under the Second Amendment. Pet. App. 3a. The district court denied his motion, and Mr. Jackson entered a conditional guilty plea, reserving the right to raise on appeal his Second Amendment challenge. *Id.*

On appeal, the Third Circuit declined to consider whether Mr. Jackson could be disarmed, under §922(g)(1), based on his non-violent predicate felony convictions. Pet. App. 4a. Instead, under circuit precedent, Mr. Jackson's status as a supervised releasee and probationer meant he had no Second Amendment right to possess a firearm at all: "the Second Amendment right to possess firearms does not extend to those, like Jackson, who were on federal supervised release or state probation at the time of the underlying conduct." Pet. App. 4a (citing *United States v. Moore*, 111 F.4th 266, 273 (3d Cir. 2024) ("A convict completing his sentence on supervised release does not have a Second Amendment right to possess a firearm."), and *United States v. Quailes*, 126 F.4th 215, 223 (3d Cir. 2025) ("Because parolees and probationers—like convicts on federal supervised release—are still serving their sentences, the Second Amendment affords them no protection.")).

REASONS FOR GRANTING THE PETITION

A. The courts of appeals have departed from this Court's *Bruen* test when analyzing Second Amendment challenges raised by probationers, parolees, and supervised releasees

Bruen's two-part test is well-established. *See, e.g.*, *Hemani*, 608 U.S. at 779-81. But lower courts mis-apply that framework when they analyze a §922(g)(1) challenger's status as a probationer, parolee, or supervised releasee—instead of analyzing the historical analogues that allegedly justify disarmament under §922(g)(1). Such analysis commits at least three methodological errors.

First, the *Bruen* test asks whether the challenged law itself is relevantly similar to our regulatory tradition. *Bruen* does not ask whether some other extant *or imagined* law—like one prohibiting probationers from possessing firearms and punishing them with up to 15 years in prison—might theoretically justify disarming the individual.

Although the latter might make for good policy (or a good charging decision if the law exists), *Bruen* rejected placing such value-laden tasks into judges' hands. Such "value-laden and political task[s]" are "usually reserved for the political branches." *Rahimi*, 602 U.S. at 732-33 (Kavanaugh, J., concurring). *Bruen* curtailed judges' "'roving commission to second-guess' legislators and administrative officers 'concerning what is best for the country.'" *Id.* (citation omitted). Analyzing an imagined law that disarms probationers, parolees, and supervised releasees—and punishes them with up to 15 years in prison, as §922(g)(1) does—"appears uncomfortably like legislation." *See id.* (citation omitted).

Instead, *Bruen* instructed courts to analyze *the challenged law*: "A court must ascertain whether *the new law* is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 602 U.S. at 692 (emphasis added; citing *Bruen*, 597 U.S. at 29 & n.7).

And this Court's practice has been borne that out. For example, in *Rahimi*, numerous other laws would have justified imprisoning and disarming the petitioner—like "aggravated assault with a deadly weapon," or deadly conduct offenses for firing at people, vehicles, and a home.[1] *See Rahimi*, 602 U.S. at 686-88. That would have mooted the analysis of whether §922(g)(8)(C)(i) has appropriate historical analogues. But this Court analyzed the challenged statute, §922(g)(8), nonetheless. *Rahimi*, 602 U.S. at 690-99. And in *Hemani*, unlawful possession of drugs would have justified imprisoning and at least temporarily disarming petitioner while in prison. *See Hemani*, 608 U.S. at 778. But rather than imagine strawmen to defeat the Second Amendment challenge on alternative grounds, *cf. Rahimi*, 602 U.S. at 701 & n.2 (imagining strawmen to *grant* the Second Amendment challenge), this Court analyzed the Government's proffered analogues for §922(g)(3). *Hemani*, 608 U.S. at 781-91.

Second, the rule that probationers, parolees, and supervised releasees may be disarmed, without analyzing §922(g)(1), rests on the historical analogue of forfeiture laws. *See, e.g.*, *United States v. Moore*, 111 F.4th 266, 269-71 (3d Cir. 2024) ("during

[1] Texas Penal Code §22.05(b)(2).

the founding era, forfeiture laws temporarily disarmed citizens who had committed a wide range of crimes. Convicts could be required to forfeit their weapons and were prevented from reacquiring arms until they had finished serving their sentences."). But the analogue of forfeiture, or civil death, as a consequence of conviction was thoroughly refuted in Justice Barrett's dissent in *Kanter v. Barr*, 919 F.3d 437, 458-62 (7th Cir. 2019) (Barrett, J., dissenting). "[T]he rights of felons serving less than life were merely *suspended* during the term of the sentence." *Id.* at 461 (original emphasis; citing, *inter alia*, *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871) (explaining that a convict is "*civiliter mortuus*," but only "[f]or the time being, during his term of service in the penitentiary")). After the person is released from prison, continued restraint on her ancient right of armed self-defense[2] is "at odds with [the government's] own regulatory actions" deeming the person fit to be released. *Cf. Hemani*, 608 at 793.

Third, this blanket approach—probation, parole, or supervised release for any conviction disqualifies the person from Second Amendment protection—mirrors the overbroad approach to disqualifying any drug user from Second Amendment protection under §922(g)(3). *See Hemani*, 608 U.S. at 792-94. At minimum, like in the drug-§922(g)(3) context, some calibration must occur. "Without question, some unlawful users of controlled substances can pose a risk of violence," *id.* at 792, just as *some* newly-released felons might too. "But, by defining its scope through the

[2] *See Range v. Attorney General*, 124 F.4th 218, 236-46 (3d Cir. 2024) (en banc) (Matey, J., concurring) (compiling general law support for principle that Second Amendment codifies ancient right to armed self-defense).

[Controlled Substances Act]—a statute animated by a variety of other concerns—it is far from obvious that 18 U.S.C. § 922(g)(3) confines its reach to those who are categorically and unusually dangerous." *Id.*

So too for probationers, parolees, and supervised releasees. A variety of other concerns animate the length of someone's probation, parole, or supervised release—including legislatively imposed minimum terms. Even a model supervised releasee must serve one year of supervision before moving to have it terminated: "[18 U.S.C. §] 3583(e)(1) contemplates the termination of a term of supervised release only after a defendant has served one year of supervised release." *See United States v. Santana-Robles*, --- F.4th ----, 2026 WL WL 2857095, at *1 (3d Cir. Sept. 23, 2026). Like in §922(g)(3), there must be calibration to analyze the danger a probationer poses of violently mis-using firearms.

The Third Circuit's approach, here in Mr. Jackson's case, is emblematic of the problem. *See* Pet. App. 4a. The regulation at issue was §922(g)(1). But instead of analyzing whether analogues justified disarming Mr. Jackson under §922(g)(1), based on his prior non-violent fraud felony and non-violent firearm-possession felony, the Third Circuit analyzed whether Mr. Jackson could be disarmed under an imaginary law that disarms probationers and supervised releasees and punishes them with a sentence of up to 10 years in prison.[3]

[3] At the time of Mr. Jackson's §922(g)(1) conduct, the statutory maximum was 10 years in prison. *See* PSR ¶105. The statutory maximum is now 15 years in prison. *Compare* 18 U.S.C. §924(a)(2) (2021) (§922(g) crimes carry up to 10 years in prison), *with id.* §924(a)(8) (2022) (§922(g) crimes now carry up to 15 years in prison).

B. The circuits have split on how to analyze Second Amendment challenges raised by probationers, parolees, and supervised releasees

The circuits have split on how to analyze Second Amendment challenges to §922(g)(1) raised by persons on probation, parole, or supervised release. The split is entrenched. This Court's guidance is necessary.

The Third Circuit applies a blanket approach prohibiting probationers, parolees, and supervised releasees from raising Second Amendment challenges to §922(g)(1) prosecution. *See United States v. Moore*, 111 F.4th 266, 272-73 (3d Cir. 2024), *cert. denied*, No. 24-968, 145 S.Ct. 2849 (June 30, 2025); *United States v. Quailes*, 126 F.4th 215, 223 (3d Cir. 2025), *cert. denied*, No. 24-7033, 146 S.Ct. 127 (Oct. 6, 2025). The Fifth and Seventh Circuits have followed the Third Circuit's approach. *See United States v. Giglio*, 126 F.4th 1039, 1041, 1044-46 (5th Cir. 2025); *United States v. Gay,* 98 F.4th 843, 847 (7th Cir. 2024) ("we conclude that parolees lack the same armament rights as free persons").

The Sixth Circuit takes a nuanced approach, rejecting that a challenger's "status on supervised release is dispositive of the constitutional inquiry." *United States v. Hostettler*, 170 F.4th 539, 545 (6th Cir. 2026). The Sixth Circuit correctly observes that "our historical forfeiture laws and pretrial detention practices 'may not support disarmament of *any* criminal defendant under *any* criminal justice sentence in *all* circumstances.'" *Id.* Instead, the defendant's status as a probationer, parolee, or supervised releasee is one factor to consider. *See id.* at 543 (identifying three

factors district court did not consider). And "at least some nexus may have to exist between the dangerousness of the [underlying] crime and the [firearm] restriction imposed" during supervision. *Id.* at 545.

In contrast, the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits do not analyze whether historical tradition supports disarming a defendant based on her prior felony conviction(s), nor do those circuits ask whether the defendant was on probation, parole, or supervised release. These circuits deem §922(g)(1) to be constitutional in all applications, foreclosing as-applied Second Amendment challenge. *See United States v. Hunt*, 123 F.4th 697, 707-08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1127-29 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025); *United States v. Dubois (Dubois III)*, 139 F.4th 887, 888 (11th 2025); *United States v. Morrissette*, No. 24-10353, 2025 WL 3471699, at *3 (11th Cir. 2025) (non-precedential per curiam)

C. This is an ideal vehicle

Petitioner's case is an ideal vehicle to resolve this circuit split, and issue guidance on the role that a challenger's status on supervision plays in the *Bruen* analysis. The issue is cleanly presented and outcome-determinative. *See* Pet. App. 4a. Should this Court decide that status on probation or supervised release does not doom someone's Second Amendment challenge to §922(g)(1), then Mr. Jackson's case

should be remanded for reconsideration in light of the test or analysis this Court announces.

Alternatively, Mr. Jackson's case has a well-developed record. If the Court chooses a multi-factor or expansive test (similar to the Sixth Circuit's), then Mr. Jackson's district court record contains sufficient district-court litigation conducive to that analysis (in this Court or on remand to the Third Circuit). If the Court chooses a more limited test, in which the disqualifying predicates are the lead consideration, then Mr. Jackson's disqualifying predicates were non-violent (fraud conspiracy and carrying a firearm without a license).

CONCLUSION

For all these reasons, Petitioner humbly asks this Honorable Court grant the petition for a writ of certiorari, and reiterate to lower courts that the proper comparator for the historical analogues in *Bruen* part two is the firearm law that the defendant is actually charged with violating: 18 U.S.C. § 922(g)(1).

Respectfully submitted,

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