No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRANDON J. TAYLOR,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Second Amendment permits 18 U.S.C. § 922(g)(1) to disarm a person based on a non-violent felony, such as Louisiana simple burglary, because the founding generation punished some felonies with death or estate forfeiture?

2. Whether 18 U.S.C. § 922(g)(1), which permanently bars persons convicted of crimes punishable by more than one year from possessing a firearm, is facially unconstitutional under the Second Amendment?

PARTIES TO THE PROCEEDING

Petitioner is Brandon J. Taylor, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Taylor*, No. 26-30205, 2026 WL 2244210 (5th Cir. Aug. 4, 2026) (unpublished), and is set forth at App. 001.

JURISDICTION

The judgment of the court of appeals was entered on August 4, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1) states in relevant part:

> (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. § 921(a)(20) states:

> (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—
>
> (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

La. R.S. 14:62 (2012) provided:

> A. Simple burglary is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60.
>
> B. Whoever commits the crime of simple burglary shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than twelve years, or both.

The Second Amendment to the U.S. Constitution provides in relevant part:

> 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.

INTRODUCTION

The Fifth Circuit has turned the gallows into a gun ban. Under its rule, the government may disarm a person for the rest of his life by showing that the founding generation once put people to death, or seized their estates, for a crime that resembles his. The court adopted that rule for vehicle theft in *United States v. Diaz*, reasoning that "if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." 116 F.4th 458, 469 (5th Cir. 2024). It has since applied the same reasoning to every burglary conviction.

Brandon Taylor is one of the people that rule reaches. The only felony the government relied on is a 2013 Louisiana conviction for simple burglary, an offense that is complete when a person enters a vehicle, a shed, or even a cemetery intending to take something of any value. The founders did not hang people for that. The common law reserved death for grand larceny (theft above a fixed value) and for breaking into a dwelling house at night, and *Diaz* relied on a New York statute that authorized death for theft of chattels "worth over five pounds." *Id.* at 468. Even the generic definition of burglary that this Court adopted under the Armed Career Criminal Act, which is broader than the common law, does not reach the entry of an ordinary vehicle. *Taylor v. United States*, 495 U.S. 575, 591, 599 (1990).

The courts of appeals are divided over how to decide as-applied challenges to § 922(g)(1), and the division decides cases like this one. The Fifth Circuit asks how the founders punished a crime with the same name. The Ninth and Second Circuits draw on the same punishment history in upholding the statute for every felon, and the Fourth, Eighth, Tenth, and Eleventh Circuits do not entertain as-applied challenges at all. The Third and Sixth Circuits ask instead whether the person's record shows that he is dangerous, and on October 13, 2026, the en banc Third Circuit applied that rule to hold the statute unconstitutional as applied to a man with non-violent predicates. The Fifth Circuit itself has reached opposite results on comparable records and has now granted rehearing en banc in a § 922(g)(1) case. Only this Court can settle the question, and it has not done so: last Term it said in terms that it did "not address" § 922(g)(1). *United States v. Hemani*, 608 U.S. 772, 794 (2026). The

question was pressed and decided below, it is outcome-determinative, and this case presents it well.

STATEMENT OF THE CASE

The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. Under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, when the Amendment's "plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. 1, 24 (2022).

Section 922(g)(1) makes it a federal crime for any person convicted of "a crime punishable by imprisonment for a term exceeding one year" to possess a firearm. 18 U.S.C. § 922(g)(1). The prohibition has no time limit and no exception for non-violent offenses, other than the narrow exclusions in 18 U.S.C. § 921(a)(20).

In *Diaz*, the Fifth Circuit held that the plain text of the Second Amendment covers the conduct § 922(g)(1) prohibits, so the burden falls on the government. 116 F.4th at 467. It cautioned that "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny." *Id.* at 469. But it upheld the statute as applied to a defendant with a vehicle theft conviction because theft was punishable by death or estate forfeiture at the founding. *Id.* at 467-70. The court added that "[o]ur opinion today does not foreclose future as-applied challenges by defendants with different predicate convictions." *Id.* at 470 n.4. Later panels applied *Diaz*'s punishment rationale to burglary. *United States v. Schnur*, 132 F.4th

863, 870-71 (5th Cir. 2025); *United States v. Alaniz*, 146 F.4th 1240, 1241-42 (5th Cir. 2025).

On March 5, 2013, Mr. Taylor was convicted in the 19th Judicial District Court for East Baton Rouge Parish of simple burglary under La. R.S. 14:62. ROA.199. Louisiana then defined simple burglary as "the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than as set forth in R.S. 14:60." La. R.S. 14:62(A) (2012). Louisiana separately punishes aggravated burglary and simple burglary of an inhabited dwelling, La. R.S. 14:60, 14:62.2, and it lists aggravated burglary and simple burglary of an inhabited dwelling when a person is present as crimes of violence, while leaving simple burglary off that list, La. R.S. 14:2(B)(20), (60).

The government identified the simple burglary conviction as the predicate for the federal charge. ROA.200. Mr. Taylor also has a 2013 conviction for theft and attempted theft, but the government did not rely on it, and neither court below addressed it. ROA.41, 200, 204-05; App. 001-002.

The district court had jurisdiction under 18 U.S.C. § 3231. On February 22, 2024, a grand jury in the Middle District of Louisiana indicted Mr. Taylor on one count of possessing a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). ROA.14-16. The government described the circumstances of Mr. Taylor's January 2024 arrest in its district court filings, ROA.82, but those allegations were

not charged federally and are not part of the factual basis for his plea, which is limited to his possession of the pistol, ROA.270-71.

Mr. Taylor moved to dismiss the indictment, arguing that § 922(g)(1) violates the Second Amendment on its face and as applied to him. ROA.38-52. After a stay pending this Court's decision in *United States v. Rahimi*, 602 U.S. 680 (2024), and supplemental briefing in light of *Diaz*, the parties joined issue on the burglary question. The government argued that burglary was a capital crime at the founding and that "the Louisiana offense of simple burglary, like the generic offense of burglary, is inherently dangerous," adding that "burglary of a vehicle or watercraft creates the danger of a violent confrontation between defendant and the owner." ROA.82-90, 157. Mr. Taylor responded that Louisiana simple burglary lacks every element that made common-law burglary capital, that the common law did not treat the entry of a wagon or a vehicle as burglary, that this Court's categorical cases hold vehicle-burglary statutes broader than generic burglary, and that founding-era states punished even common-law burglary with terms of years rather than death. ROA.123-31.

The district court denied the motion. ROA.199-206. It held the facial challenge foreclosed by *Diaz*, ROA.203, and rejected the as-applied challenge based on founding-era burglary statutes and on "the Fifth Circuit's ruling in *Diaz* regarding the constitutionality of § 922(g)(1) as applied to a defendant with a conviction for the similar offense of theft," ROA.205.

Mr. Taylor then pleaded guilty without a plea agreement. ROA.247-76; see ROA.265. The court sentenced him to 27 months of imprisonment and three years of supervised release. ROA.209-11.

On appeal, Mr. Taylor argued that § 922(g)(1) is unconstitutional as applied to him and on its face, acknowledging that circuit precedent foreclosed both claims and raising them to preserve further review. The government moved, without opposition, for summary affirmance. The Fifth Circuit granted the motion in an unpublished per curiam opinion, holding that "[t]he parties are correct that Taylor's arguments are foreclosed," citing *Diaz*. App. 001-002.

Mr. Taylor's guilty plea did not waive his challenge to the constitutionality of the statute of conviction. *Class v. United States*, 583 U.S. 174, 178 (2018). The court of appeals rejected both claims on the merits, as foreclosed by circuit precedent, and not on any procedural ground. App. 001-002.

REASONS FOR GRANTING THE WRIT

I. THE COURTS OF APPEALS ARE DIVIDED OVER HOW TO DECIDE AS-APPLIED CHALLENGES TO § 922(G)(1), AND THE FIFTH CIRCUIT'S PUNISHMENT-BASED METHOD DECIDED THIS CASE

Nearly every court of appeals has now confronted § 922(g)(1) after *Bruen* and *Rahimi*. They have reached at least three incompatible answers about the method that governs as-applied challenges, and that method decided this case. Even the government argued below that § 922(g)(1) "is constitutional in all its applications," citing the Eighth Circuit's categorical rule. ROA.88 n.1. The conflict is over method, and the method is outcome-determinative here: a person with Mr. Taylor's predicate

is judged by the punishment the founders imposed for a crime with the same name in the Fifth Circuit, by an individualized inquiry in the Third and Sixth, and not at all in the Fourth, Eighth, Tenth, and Eleventh.

A. The Fifth Circuit treats founding-era capital punishment as a license for lifetime disarmament, and the Ninth and Second Circuits draw on the same history

The Fifth Circuit's framework rests on a syllogism. Because the founding generation punished theft with death or estate forfeiture, the court reasoned, "if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible." *Diaz*, 116 F.4th at 469. The court described that approach as offense-specific, assessing "as a categorical matter" whether a sufficient historical analogue exists for the defendant's particular offenses. *United States v. Hembree*, 165 F.4th 909, 912 (5th Cir. 2026). Applying it, the Fifth Circuit has held that "[f]ounding-era burglary laws support the constitutionality of disarming felony burglary convicts under § 922(g)(1)." *Alaniz*, 146 F.4th at 1241. The government invoked that holding to obtain summary affirmance, Gov't Mot. for Summ. Affirmance at 4, *United States v. Taylor*, No. 26-30205, 2026 WL 2244210 (5th Cir. Aug. 4, 2026) (unpublished), and the court of appeals agreed that Mr. Taylor's arguments were foreclosed. App. 001-002; *see* ROA.204-05.

The en banc Ninth Circuit relies on the same premise to uphold § 922(g)(1) for all felons. Citing *Diaz* and the history of capital punishment for felonies, it reasoned that "if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also

permissible." *United States v. Duarte*, 137 F.4th 743, 756 (9th Cir. 2025) (en banc). The Second Circuit likewise explained the absence of founding-era felon bans as "largely attributable to how the English and early Americans punished felons," noting that legislatures "imposed the death penalty and total estate forfeiture as punishments for the commission of felonies." *Zherka v. Bondi*, 140 F.4th 68, 81 (2d Cir. 2025). *Zherka* also relied on a broader "tradition of categorical legislative bans on firearms possession by classes of people perceived as dangerous," *id.* at 93, but it invoked the punishment history to explain the absence of founding-era felon bans. Those courts adopt a categorical rule rather than *Diaz*'s offense-by-offense inquiry, but they draw on the same punishment history.

B. The Third Circuit, sitting en banc, has declined to rest disarmament on the punishment history, and the Sixth Circuit demands more than the label of a felony, while the Seventh Circuit has left the question open

In *Range v. Attorney General*, the en banc Third Circuit acknowledged that founding-era practice punished some felonies with death, but it concluded that Range's offense "may be more analogous to other offense defined in the same law punishable by a term of imprisonment or fine," and it explained that "[w]hile some states at first punished nonviolent crimes 'such as forgery and horse theft' with death, . . . by the early Republic, many states assigned lesser punishments." 124 F.4th 218, 231 (3d Cir. 2024) (en banc) (citation omitted). It held that the government had not shown "that the principles underlying the Nation's historical tradition of firearms regulation support depriving Range of his Second Amendment right to possess a firearm." *Id.* at 232.

On October 13, 2026, the en banc Third Circuit built on *Range* in two decisions issued the same day. In *Williams v. Attorney General*, it held § 922(g)(1) unconstitutional as applied to a man whose disqualifying conviction was a 2005 drunk-driving offense. 2026 WL 3059230, at *1 (3d Cir. Oct. 13, 2026) (en banc). In *United States v. Bost*, it upheld the statute as applied to a defendant convicted of terroristic threats, holding "that some predicate crimes (like Bost's conviction for terroristic threats) demonstrate a prima facie risk of physical violence from misusing guns and that those convicted of such crimes may presumptively be disarmed based on those convictions alone." 2026 WL 3058147, at *1 (3d Cir. Oct. 13, 2026) (en banc). Under that rule, the question is whether the predicate crime itself shows a risk of violent misuse of firearms. A conviction for entering a vehicle with intent to steal should not qualify, because nothing in that offense involves violence or a threat to any person.

The Sixth Circuit also requires a showing of dangerousness and permits as-applied challenges, although it has listed burglary among the crimes that inherently pose a significant threat of danger, reasoning from this Court's observation that burglary can lead to a violent confrontation with an occupant. *United States v. Williams*, 113 F.4th 637, 659 (6th Cir. 2024). And the Seventh Circuit has expressly left the question open, "reserv[ing] decision on as-applied challenges by persons whose felony convictions do not suggest that firearms would be dangerous in their hands." *United States v. Prince*, 171 F.4th 1009, 1011-12 (7th Cir. 2026); see *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026).

C. Four circuits foreclose as-applied challenges altogether

The Fourth, Eighth, Tenth, and Eleventh Circuits do not permit as-applied challenges at all. The Eighth Circuit concluded "that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). The Fourth Circuit held "that neither *Bruen* nor *Rahimi* meets this Court's stringent test for abrogating otherwise-controlling circuit precedent." *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024). The Tenth and Eleventh Circuits held the same as to their pre-*Bruen* precedents. *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 889 (11th Cir. 2025).

D. The Fifth Circuit's own decisions confirm that the framework is unstable

The Fifth Circuit's offense-by-offense approach has produced divergent results on comparable predicates. The court has held § 922(g)(1) unconstitutional as applied to a single conviction for possessing methamphetamine, *Hembree*, 165 F.4th 909, and to a conviction for failing to pay child support, reasoning that the defendant "is a debtor, not a thief," *United States v. Cockerham*, 162 F.4th 500, 508 (5th Cir. 2025). Yet it treats every burglary conviction, whatever its elements, as one the founders would have punished with death, without asking whether the state offense resembles the burglary the founders actually punished. *Alaniz*, 146 F.4th at 1241-42. The court has itself acknowledged that it has "offered inconsistent answers" on how dangerousness may be shown. *United States v. Doucet*, No. 24-30656, 2025 WL 3515404, at *3 (5th Cir. Dec. 8, 2025) (per curiam) (unpublished); see *Hembree*, 165

F.4th at 913 ("Our caselaw strives to bring coherence to the felony-by-felony approach, but the challenge remains that certain predicate felonies have not yet been adjudged."). And on September 14, 2026, the court granted rehearing en banc in a § 922(g)(1) case and vacated the panel opinion. *United States v. Cordova*, No. 24-50564, 2026 WL 2683534 (5th Cir. Sept. 14, 2026) (order granting reh'g en banc). That grant reflects the disagreement within the circuit, but whatever the en banc court decides cannot change the rule in the Fourth, Eighth, Tenth, and Eleventh Circuits, which foreclose as-applied challenges altogether. Only this Court can resolve that conflict.

II. THE DECISION BELOW IS WRONG

A. The punishment rationale cannot be squared with *Bruen* and *Rahimi*

Bruen and *Rahimi* require the government to show that a modern law burdens the right for reasons and in ways relevantly similar to historical regulations. *Rahimi*, 602 U.S. at 692. The punishment rationale skips that inquiry. It treats any founding-era penalty severe enough to end a life as license for any lesser deprivation, without asking whether the historical law addressed the problem the modern law addresses or burdened the right of armed self-defense in a comparable way. On that logic, the government could disarm anyone convicted of any crime the founders punished with death, including forgery and counterfeiting, without ever identifying a tradition of firearm regulation. See *Duarte*, 137 F.4th at 756. Then-Judge Barrett's dissent in *Kanter v. Barr*, which the Fifth Circuit itself cited in *Diaz*, explained that "[f]ounding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons." 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). And the

history the punishment rationale relies on is incomplete, because many states assigned lesser punishments to non-violent crimes in the early Republic. *Range*, 124 F.4th at 231.

B. Even on its own terms, the punishment rationale does not reach Louisiana simple burglary

1. The theft tradition reached only grand larceny

Diaz rested on the founding-era punishment of theft. 116 F.4th at 468-69. But the common law did not punish all theft with death. Blackstone explained that "the inferior species of theft, or petit larciny, is only punished by imprisonment or whipping at common law," while "the punishment of grand larciny, or the stealing above the value of twelvepence . . . is at common law regularly death." 4 William Blackstone, Commentaries on the Laws of England *238-39 (Edward Christian et al. eds., Collins & Hannay 1830). *Diaz*'s New York source followed the same line, authorizing death "for theft of chattels worth over five pounds." 116 F.4th at 468 (describing Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664-65).

Louisiana simple burglary has no value threshold and requires no completed theft. It reaches entry "with the intent to commit a felony or any theft therein," and the offense is complete upon entry. La. R.S. 14:62(A) (2012). An offense of that kind does not correspond to the grand larceny the founders punished with death. The point is not that the modern statute must be a historical twin. It is that the value threshold marked the line the founders drew between theft punished by death and theft punished by whipping, and *Bruen* and *Rahimi* make the reasons for a historical penalty central. *Rahimi*, 602 U.S. at 692. Treating an offense without them as

equivalent is the kind of labeling that *Diaz* said "does not meet the level of historical rigor required by *Bruen* and its progeny." 116 F.4th at 469.

2. The burglary tradition centered on the invasion of a dwelling

The government's alternative analogue, founding-era burglary, fares no better. At common law, a burglar was one who "by night breaketh and entereth into a mansion-house, with intent to commit a felony." 4 Blackstone, *supra*, at *224 (quoting Sir Edward Coke). The time, the place, and the breaking were what made the offense capital. Louisiana simple burglary requires none of them. It can be committed in daylight, without force, by entering an unlocked car. La. R.S. 14:62(A) (2012). The Fifth Circuit has noted that burglary was a capital offense in seven states at the founding, but it acknowledged that burglary "was not a capital offense in founding-era Virginia and Pennsylvania." *United States v. Quiroz*, 125 F.4th 713, 724-25 (5th Cir. 2025). Although *Quiroz* held that the historical analysis "does not require unanimity in every instance," *id.* at 725, the divergence it acknowledged matters here. The government conceded below that several states "did not punish burglary with death" and that Pennsylvania abolished the death penalty for burglary in 1786, before the Second Amendment was ratified. ROA.150-51. A tradition that was divided even as to the nighttime invasion of a home cannot support permanent disarmament for entering a car.

This Court's Armed Career Criminal Act cases do not govern the historical inquiry, but they show that even modern law treats the entry of an ordinary vehicle differently from burglary. *Taylor* declined to adopt the common-law definition of

burglary, explaining that "[t]he arcane distinctions embedded in the common-law definition have little relevance to modern law enforcement concerns," and adopted a broader generic definition: "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." 495 U.S. at 593, 599. Even that broader definition does not reach a statute covering the "theft of goods from a 'locked' but unoccupied automobile." *Id.* at 591; see *Mathis v. United States*, 579 U.S. 500, 507 (2016). And *United States v. Stitt* brought vehicles within generic burglary only when they are "customarily used or adapted for overnight accommodation." 586 U.S. 27, 35 (2018).

The reason this Court gave for treating burglary as dangerous confirms the point. Burglary is dangerous because "[t]he fact that an offender enters a building to commit a crime often creates the possibility of a violent confrontation between the offender and an occupant, caretaker, or some other person who comes to investigate." *Taylor*, 495 U.S. at 588; *see Quarles v. United States*, 587 U.S. 645, 653 (2019). The government invoked that reasoning below, ROA.157, as did the Sixth Circuit in *Williams*, 113 F.4th at 659. But that rationale depends on the entry of a building that may be occupied. It does not describe the entry of a parked car. Louisiana itself draws that line: it classifies aggravated burglary and simple burglary of an inhabited dwelling when a person is present as crimes of violence, and it does not so classify simple burglary. La. R.S. 14:2(B)(20), (60).

III. THE QUESTION IS IMPORTANT, AND THIS CASE IS A GOOD VEHICLE TO RESOLVE IT

Section 922(g)(1) disarms for life nearly everyone it reaches. The Eighth Circuit has observed that "only 18.2 percent of felony convictions in state courts and 4.2 percent of federal felony convictions were for 'violent offenses.'" *Jackson*, 110 F.4th at 1125 n.2. Most people disarmed by § 922(g)(1), in other words, were convicted of non-violent offenses, and whether the Second Amendment permits their permanent disarmament, and on what theory, is a question of broad consequence.

Nor does the availability of administrative relief under 18 U.S.C. § 925(c) diminish the need for review. As the en banc Third Circuit explained, "that process has long lain dormant," and "even though the Attorney General has at last promulgated final regulations, the process has not yet resumed." *Bost*, 2026 WL 3058147, at *2. The court held that a defendant need not seek administrative relief before raising his constitutional defense. *Id.* A process under which the Attorney General "may grant" relief, and which has not resumed, cannot answer the constitutional question. 18 U.S.C. § 925(c).

This Court has repeatedly reserved the question. *Heller* described felon prohibitions as "presumptively lawful regulatory measures." *District of Columbia v. Heller*, 554 U.S. 570, 627 n.26 (2008). *Rahimi* repeated that description, 602 U.S. at 699, and last Term *Wolford* again quoted *Heller*'s statement that nothing in it "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Wolford v. Lopez*, 609 U.S. 185, 193 (2026). None of those cases decided the question, and *Hemani* said in terms that it did "not address 18 U.S.C. § 922(g)(1)'s

provision disarming individuals convicted of felonies (often including drug-related ones)." 608 U.S. at 794. *Hemani* did observe that § 922(g)(1) differs from the unlawful-user provision because it involves "some manner of pre-deprivation process before an individual's Second Amendment rights are lost," and for that reason said that "nothing in our opinion should be taken to cast doubt" on it. *Id.* at 791 n.6. But that observation, and the assurance that rests on it, concerns how a person comes to be disarmed. It does not answer whether a conviction for a non-violent offense, once obtained, can justify disarmament for life, which is the question here. A presumption is not a holding. The lower courts need to know whether it can be rebutted and how.

This case is a good vehicle. Mr. Taylor raised the question by pretrial motion, the parties litigated the burglary analogue in detail, and both courts below decided it on the merits. ROA.38-52, 82-90, 119-34, 149-58, 199-206; App. 001-002. Review is de novo. *Alaniz*, 146 F.4th at 1241. The plea did not waive the claim. *Class*, 583 U.S. at 178. The government designated a single predicate, the simple burglary conviction, ROA.200, and both courts below decided the case on that predicate. ROA.204-05; App. 001-002. Mr. Taylor's record also includes a 2013 conviction for theft and attempted theft, ROA.41, 200, and the Fifth Circuit allows courts to consider convictions beyond the designated predicate, *Alaniz*, 146 F.4th at 1242. That conviction does not make the question any less decisive. The government never relied on it, and so never tried to show that it involved the kind of grand larceny the founders punished with death, and whether the attempted theft is even punishable by more than a year was questioned below. ROA.41 n.7. The theft conviction therefore presents the same

question as the burglary conviction: whether a non-violent property offense that the founders would not have punished with death can justify disarmament for life. *See* Part II.B.1, supra. If the punishment rationale fails, neither conviction sustains Mr. Taylor's disarmament, and his § 922(g)(1) conviction must be vacated.

The government's description of the circumstances of Mr. Taylor's arrest does not change that. Those allegations were never charged federally, are not part of the factual basis, ROA.270-71, and played no role in either decision below, ROA.199-206; App. 001-002. Other circuits that permit as-applied challenges consider a defendant's broader record, *see Williams*, 113 F.4th at 659-60, but the method under review here is the Fifth Circuit's, which asks, offense by offense and "as a categorical matter," whether the defendant's convictions fit a founding-era tradition. *Hembree*, 165 F.4th at 912. Under that method the question turns on the defendant's convictions, not on unproven allegations. *See id.* at 912-13. And although the court of appeals did not write at length, the core of Mr. Taylor's argument, that Louisiana simple burglary is not the burglary the founders punished with death, was raised and decided in the district court, ROA.123-31, 204-05, and *Alaniz* forecloses it categorically in the Fifth Circuit, so further development below would not change the answer.

The Court's recent denials of petitions presenting the general question do not counsel otherwise. The Third Circuit's en banc decisions in *Williams* and *Bost*, issued on October 13, 2026, are the full court's first applications of *Range* since those denials, one to a non-violent predicate and one to a violent predicate, and they confirm that the Third Circuit's rule is settled circuit law. They sharpen the conflict on the precise

point that decided this case: whether disarmament must rest on a showing tied to dangerousness, or whether it is enough that the founders punished something like the offense with death.

IV. THE COURT SHOULD ALSO DECIDE WHETHER § 922(G)(1) IS FACIALLY UNCONSTITUTIONAL

Mr. Taylor also preserved his facial challenge. Section 922(g)(1) "bears little resemblance to laws in effect at the time the Second Amendment was ratified." *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 196 (5th Cir. 2012) (describing *United States v. Booker*, 644 F.3d 12, 23-24 (1st Cir. 2011)). As the Fifth Circuit explained, the statute "was not enacted until 1938, was not expanded to cover non-violent felonies until 1961, and was not re-focused from receipt to possession until 1968." *Id.* As then-Judge Barrett explained, "[h]istory does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons." *Kanter*, 919 F.3d at 464 (Barrett, J., dissenting). In her view, history supports disarming only "a category of people that it deems dangerous," *id.*, and § 922(g)(1) is not limited to that category. The historical question, as Judge Bibas framed it, is whether "all felons, dangerous and nondangerous alike, [were] equally excluded from the Second Amendment," and the answer is that "they were not." *Folajtar v. Att'y Gen.*, 980 F.3d 897, 914 (3d Cir. 2020) (Bibas, J., dissenting).

Rahimi upheld § 922(g)(8) because it disarms only "[a]n individual found by a court to pose a credible threat to the physical safety of another," and only temporarily. 602 U.S. at 702. Section 922(g)(1) has neither feature. It disarms for life every person

within its reach, with no finding of dangerousness at all. That question warrants review on its own, because this Court has not decided it, while several courts of appeals have treated this Court's assurances as though they answered it. See *Jackson*, 110 F.4th at 1125.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this October 30, 2026,

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