No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ERNEST CLARK,
Petitioner,

v.

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

Since the Court issued its ruling in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), frontline defense lawyers and prosecutors, along with district courts, and courts of appeals, have grappled with how the holding applies to 18 U.S.C. § 922(g)(1). Is the statute facially invalid? Is it subject to as-applied challenge? If so, how does that challenge work? Criminal defense lawyers and prosecutors have spent hours litigating these issues. District courts and appellate courts have expended massive amounts of time ruling on these issues. Defense lawyers cannot stop raising the issue because this Court has not given us any final answers. Without answers from this Court, defense lawyers cannot tell clients that challenging the constitutionality of § 922(g)(1) is frivolous, even if the applicable court of appeals has rejected the argument. So, we must keep filing motions. We are stuck in purgatory, or Groundhog Day, or whatever metaphor strikes your fancy.

Perhaps the Court needed to flesh out *Bruen* on lesser used subsections of § 922(g) before tackling subsection (g)(1). *United States v. Rahimi*, 602 U.S. 680 (2024) (§ 922(g)(8)); *United States v. Hemani*, 146 S. Ct. 1677 (2026) (§ 922(g)(3)). That's understandable, but the time has come. We need an answer on § 922(g)(1).

The Question Presented is:

> Whether 18 U.S.C. § 922(g)(1), the federal statute that prohibits anyone who has been convicted of "a crime punishable by imprisonment for a term exceeding one year" from possessing a firearm, violates the Second Amendment facially or as applied to Petitioner, based solely on a 2008 nonviolent residential burglary and a 2013 nonviolent drug distribution conviction.

PARTIES TO THE PROCEEDING

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

RELATED PROCEEDINGS

United States District Court (N.D. Ill.):

United States v. Clark, No. 1:20-CR-00805 (October 30, 2024)

United States Court of Appeals (7th Cir.):

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ernest Clark 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 Seventh Circuit's order summarily affirming Mr. Clark's conviction is attached. (App. 1a.) It is not reported. The district court's order denying Mr. Clark's motion to dismiss and two motions to reconsider are attached. (App. 2a-12a.)

JURISDICTION

The Seventh Circuit entered its order summarily affirming Mr. Clark's conviction on August 10, 2026, and the petition is filed within 90 days of the Seventh Circuit's order. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution provides:

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

Section 922(g)(1) of Title 18 of the U.S. Code provides:

> It shall be unlawful for any person ... 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

The Seventh Circuit summarily affirmed the denial of Mr. Clark's facial and as-applied challenge to § 922(g)(1) based on its decisions in *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), and *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). (App. 1a.) *Prince* held that § 922(g)(1) "is valid in many applications and cannot be declared unconstitutional 'on its face.'" 171 F.4th at 1011. *Watson* held that § 922(g)(1) may be subject to as-applied challenge but concluded that the statute is constitutional when applied to a defendant with a prior conviction for a drug-distribution felony. 171 F.4th at 1025. The Seventh Circuit had previously stayed hundreds of § 922(g)(1) cases pending its decisions in *Prince* and *Watson*. Following those decisions the court began summarily affirming district court denials of as-applied challenges to § 922(g)(1) where the defendant has a prior drug distribution conviction. Because Mr. Clark has prior felony convictions for Illinois residential burglary and manufacturing/delivery of a controlled substance, his conviction was summarily affirmed. (App. 1a.)

I. Petitioner's § 922(g)(1) conviction rests on two nonviolent offenses.

On September 14, 2020, the defendant was the front seat passenger in a vehicle stopped by Chicago Police Department officers. (R.[1] 169 at 2.) The officers asked the driver and the defendant to exit the vehicle. (R. 169 at 2-3.) The driver complied while the defendant remained seated. (R. 169 at 3.) When the defendant eventually complied, a loaded Glock pistol with an obliterated serial number and extended

[1] We refer to district court filings as "R.", and filings in the court of appeals as "C. of A."

magazine was located on the seat. (R. 169 at 2-3.) Mr. Clark admitted that he possessed the firearm, it had traveled in interstate commerce, and at the time, he knew he had been convicted of a felony. (*Id.*)

On November 12, 2020, a single-count indictment was filed in the United States District Court for the Northern District of Illinois charging that on or about September 14, 2020, Mr. Clark knew he was a felon and knowingly possessed a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(g)(1). (R. 1.) The indictment included a forfeiture allegation for the firearm and ammunition. (Id.)

In April 2023, Mr. Clark filed a motion to dismiss the indictment on Second Amendment grounds. (R. 109.) He asserted that § 922(g) was unconstitutional under *Bruen*. (*Id.*) The district court denied Mr. Clark's motion and held that § 922(g) was constitutional both facially and as applied to him. (App. 2a-4a.) Mr. Clark filed a motion to reconsider the denial of his motion to dismiss the indictment in light of *Atkinson v. Garland,* 70 F.4th 1018 (7th Cir. 2023*).* (R. 124.) On September 7, 2023, the court denied Mr. Clark's motion to reconsider and issued a written order the next day. (App. 5a-9a.) On November 16, 2023, Mr. Clark filed another motion to reconsider the denial of his motion to dismiss the indictment in light of *United States v. Prince*, 700 F. Supp. 3d 663 (N.D. Ill. 2023), *rev'd and remanded*, 171 F.4th 1009 (7th Cir. 2026), and the court again denied Mr. Clark's supplemental motion and found that § 922(g)(1) was constitutional under the Second Amendment and *Bruen*. (App. 10a-12a.)

On April 29, 2024, Mr. Clark pleaded guilty to the single-count indictment pursuant to a written plea agreement governed, in part, by Rule 11(a)(2). (R. 169.) With the government's consent, Mr. Clark preserved his right to appeal the court's denial of his motion to dismiss the indictment. (R. 169 at 11.) The district court sentenced Mr. Clark to 92 months' imprisonment followed by 3 years of supervised release. (R. 188.) Mr. Clark filed a timely notice of appeal.

II. The Seventh Circuit denied petitioner's facial and as-applied challenge to § 922(g)(1).

After Mr. Clark filed his notice of appeal, the Seventh Circuit issued two opinions: *Prince* and *Watson*. In *Prince*, the court held that § 922(g)(1) "is valid in many applications and cannot be declared unconstitutional 'on its face.'" 171 F.4th at 1011. In *Watson*, the court held that § 922(g)(1)'s disarmament is constitutional as applied to persons who committed felonies that are "inherently dangerous." 171 F.4th at 1013.

In *Watson*, the court, while acknowledging the "challenges" of the history-and-tradition analysis, identified two historical traditions to uphold § 922(g)(1) as applied to Watson: (1) the categorical disarmament of groups the legislature deemed "dangerous"—including slaves and Native Americans, and (2) the principle that the "greater includes the lesser," or that because legislatures at the Founding could impose the death penalty for serious crimes, they could also impose the lesser restriction of disarmament. *Watson*, 171 F.4th at 1018–23. The panel then invoked "common sense" and federal drug-and-gun caselaw to conclude that "Congress reasonably determined that a felony drug conviction is a 'dangerous' crime." *Id.* at

1023–24. Post-*Watson*, practitioners in the Seventh Circuit have recognized that any drug-distribution conviction is considered a *per se* "dangerous" offense warranting disarmament under circuit law.

Because Mr. Clark has prior convictions for residential burglary and delivering drugs, he had to acknowledge that under *Watson*'s holding, his as-applied challenge to § 922(g)(1) failed even though the offenses did not involve any violence. C. of A. 7 at 10-13. The government filed a motion for summary affirmance, which the Seventh Circuit granted. (App. 1a.)

REASONS FOR GRANTING THE PETITION

The courts of appeals are divided over whether § 922(g)(1) may be challenged as applied, and the circuits that permit such challenges cannot agree on how to decide them. That division alone warrants review of a statute that is among the most frequently prosecuted in the federal criminal code. Review is all the more warranted because the Seventh Circuit's rulings cannot be squared with this Court's Second Amendment precedent. *Prince* upheld § 922(g)(1) on its face without identifying any historical tradition, substituting a "risk-centric" reading of *Rahimi*, for the historical inquiry that *Bruen*, requires. And *Watson* rejected an as-applied challenge by relying on laws disarming religious minorities, enslaved people, and Native Americans—the kind of "tainted artifact" this Court refused to consider in *Wolford v. Lopez*, 146 S. Ct. 2032, 2053 (2026)—and on the assumption, rejected in *Hemani*, that an entire class of people is dangerous without proof. This Court should grant certiorari and hold that § 922(g)(1) is unconstitutional facially and as applied to defendants like the petitioner.

I. The Courts of Appeals are divided over whether, and how, § 922(g)(1) may be challenged as applied.

The Seventh Circuit's decision in *Watson* contributes to a deep division in the courts of appeals over the threshold question of whether an individual may raise an as-applied challenge to § 922(g)(1) at all. Until this Court resolves that split, an individual's ability to invoke the Second Amendment in relation to the statute depends on geography. In some circuits, he may be imprisoned and permanently stripped of a constitutional right without even the opportunity to raise an as-

applied claim; in others, he may argue, and prevail, that § 922(g)(1) is unconstitutional as applied to him. This conflict underscores the need for this Court to weigh in regarding the proper framework for Second Amendment challenges under § 922(g)(1).

In addition to the Seventh Circuit, which entertained Watson's as-applied challenge,[2] the Fifth Circuit has recognized as-applied challenges under § 922(g)(1). In *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026), the panel held § 922(g)(1) unconstitutional as applied to a defendant whose sole predicate felony was possession of methamphetamine. It emphasized that the government bears a "heavy" burden to show that the challenged law is "relevantly similar to laws that our tradition is understood to permit," and concluded that the government had failed to carry that burden. *Id.* at 912, 916. The court also refused to treat simple possession as categorically "dangerous" enough to justify permanent disarmament. *Id.* at 917–18; *see also United States v. Martin*, No. 25–30712, 2026 WL 1180541, at *1 (5th Cir. Apr. 30, 2026) (following *Hembree* and holding § 922(g)(1) unconstitutional as applied to a defendant whose predicate conviction was also for drug possession).

As-applied challenges are also available in the Third Circuit. In *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc), the court held § 922(g)(1) unconstitutional as applied to an individual convicted of food-stamp fraud. The court reasoned that the government's asserted historical traditions were "far too

[2] The panel also "reserve[d] ruling on an as-applied challenge to § 922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not 'dangerous.'" *Watson*, 171 F.4th at 1025.

broad" to justify Range's penalty, emphasizing that "the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the particular (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation's history and tradition." *Id.* at 229, 231.

The Sixth Circuit has not yet invalidated § 922(g)(1) as applied to a particular defendant, but it has acknowledged the viability of doing so. In *United States v. Williams*, the court suggested that a person convicted of a felony who can show he poses no danger may fall outside § 922(g)(1)'s constitutional reach. 113 F.4th 637, 662 (6th Cir. 2024).

In the Second, Fourth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits, by contrast, such challenges are categorically unavailable, leaving defendants like Hembree, Martin, and Range permanently disarmed or imprisoned. *See Zherka v. Bondi*, 140 F.4th 68, 74–79, 91–93 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125–26 (8th Cir.), reh'g en banc denied, 121 F.4th 656 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 750–52, 761–62 (9th Cir. 2025) (en banc); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 888–89 (11th Cir. 2025); *Medina v. Whitaker*, 913 F.3d 152, 160 (D.C. Cir. 2019). Finally, the First Circuit has left for another day "whether as-applied challenges may be properly brought as to § 922(g)(1)." *United States v. Fort*, 176 F.4th 1, 7 (1st Cir. 2026).

The circuits that permit as-applied challenges are themselves divided on how to decide them, in particular, on whether a predicate offense may be deemed dangerous by category, or whether the government must carry its burden with evidence. The Fifth Circuit in *Hembree* emphasized the government's "heavy" burden and refused to treat simple drug possession as categorically "dangerous" enough to justify permanent disarmament. 165 F.4th at 912, 916–18. The Seventh Circuit in *Watson*, by contrast, deemed drug-distribution felonies dangerous as a class based on "common sense," without any evidence. 171 F.4th at 1023–24. The Third and Fifth Circuits have also held—or at least strongly suggested—that § 922(g)(1) is constitutional as applied to defendants with drug-trafficking convictions. See *United States v. Walters*, 151 F.4th 122, 134–35 (3d Cir. 2025); *United States v. Kimble*, 142 F.4th 308, 316–17 (5th Cir. 2025). But those decisions suffer from the same core flaw as *Watson*: they simply assume, without evidentiary support, that drug traffickers are categorically violent. How dangerousness is to be determined is therefore squarely presented here, and only this Court can resolve it.

The stakes of this conflict cannot be overstated. Section 922(g)(1) is one of the most frequently prosecuted provisions in the federal criminal code. In fiscal year 2025, 10.8% of defendants sentenced in federal court (7,245 out of 66,662) were sentenced for offenses involving § 922(g), and 89% of those were convicted under subsection (g)(1). U.S. Sent'g Comm'n, Quick Facts: 18 U.S.C. § 922(g) Firearms (Fiscal Year 2025) (available at https://www.ussc.gov/research/quick-facts/section-922g-firearms) (last visited October 16, 2026). The average prison time for a §

922(g) conviction, for defendants *not* sentenced as armed career criminals, was 70 months' imprisonment. *Id.* Because no one knows how this Court will rule, defense counsel cannot tell these clients that a challenge to § 922(g)(1) is frivolous, even where the governing court of appeals has rejected it; so the motions, and the litigation they generate in the district courts and courts of appeals, will continue until this Court answers the question. Meanwhile, the circuit split means thousands of individuals may seek as-applied relief while thousands of others are denied even the opportunity to raise such a claim. This amounts to an intolerable state of affairs in cases involving imprisonment and the loss of a constitutional right.

Apart from the disagreement among the circuits, § 922(g)(1) demands this Court's attention because it operates on a massive scale to strip millions of Americans of what this Court has called a "fundamental righ[t] necessary to our system of ordered liberty." *Rahimi*, 602 U.S. at 690; 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 (2017) (estimating that 19 million Americans had a felony record as of 2010). The statute's sweep also compounds the well-recognized problem of overcriminalization in this country; "criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part). Given the sheer volume of prosecutions under § 922(g)(1), its constitutionality is an important question worthy of this Court's review.

II. The Seventh Circuit's *Prince* decision 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 "the 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. *Bruen* and its applications thus "demand this attention to history," *Hemani*, 146 S. Ct. at 1685, because careful attention to it is the only way to apply "faithfully the balance struck by the founding generation to modern circumstances." *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29 and n.7).

This Court has now applied *Bruen*'s historical inquiry in three subsequent cases. *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. 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 "[a]n 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.

Hemani addressed 18 U.S.C. § 922(g)(3), which prohibits the possession of a firearm by an "unlawful user . . . of a controlled substance." 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." *Hemani*, 146 S. Ct. at 1686. 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 that 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 1683 (quoting *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)).

In *Wolford*, 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 rule is just too wide." *Id.* at 2052.

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. *Hemani*, 146 S. Ct. at 1687. 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."). That makes sense,

because *Bruen* explicitly abrogated means-end scrutiny. 597 U.S. at 19. A historical tradition that can rely on vague principles like risk, danger, or the need to monitor those who regularly use intoxicants would "uphold every modern law that remotely resembles a historical analogue" and invite the return of the very interest balancing *Bruen* rejected. *Id.* at 30. 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.

The Seventh Circuit did not conduct that inquiry. 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. Although *Prince* squarely acknowledged that "[n]one of the Supreme Court's decisions expressly addresses the validity of § 922(g)(1)," 171 F.4th at 1010, it did not "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). Even as the court purported to rely on *Rahimi*, it did not describe the historical tradition *Rahimi* applied or explain why that tradition would be relevantly similar to § 922(g)(1). *Prince*, 171 F.4th at 1010–11. So too when it cited the decisions of other courts of

appeals; nowhere does *Prince* describe, approve, disapprove, or discuss at all the historical discussions from those other cases.[3]

Instead, the court reasoned that "*Rahimi* recast *Bruen* to be more risk-centric (after observing that American history evinces this emphasis on danger)," that "a felony conviction is another plausible indicator of danger," and that the "current state of the law" therefore 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." *Prince*, 171 F.4th at 1010. 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. And *Rahimi* did no such thing. A "risk-centric" approach is exactly the kind of principle *Bruen* warned against: one that "risks endorsing outliers our ancestors would never have accepted." *Bruen*, 597 U.S. at 30 (quotation omitted).

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,

[3] 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.

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.* at 693. And *Rahimi* squarely rejected an effort by the government to introduce an amorphous, untethered "responsible" citizen test. *Id.* at 701–02.

Hemani and *Wolford* confirm that *Rahimi* did not announce a free-floating danger principle. In both cases the government defended the law as a response to the risk of firearm misuse. *Hemani*, 146 S. Ct. at 1689; *Wolford*, 146 S. Ct. at 2046, 2058 (Barrett, J., concurring). In both, this Court struck the law down, not by asking whether it reduced risk, but by examining the specific tradition the government offered. *Hemani* did not treat *Rahimi*'s surety laws as a ready-made tradition; it rejected reliance on those very laws, explaining that "[t]o warrant the imposition of a surety of the peace, just being a habitual drunkard wasn't usually enough." *Hemani*, 146 S. Ct. at 1690–91. And *Wolford* never mentioned the *Rahimi* tradition, even though the anti-poaching laws there were designed to "prevent diverse Abuses, Damages, and Inconveniences that had arisen by Persons Carrying Guns, and presuming to hunt on other people's lands." *Wolford*, 146 S. Ct. at 2051 (internal quotations and brackets omitted). The Seventh Circuit's "risk-centric" reading of *Rahimi* cannot survive either decision. This Court should grant certiorari and confirm that it is the historical test that applies.

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

Had the court below engaged in the historical inquiry, it would have seen that § 922(g)(1) is a modern anomaly, unmoored from the Nation's history. No law,

treatise, or authority has ever been found disarming someone after the completion of their sentence before the 20th century. 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). The Founding generation was intimately familiar with felony convictions, capital punishment, and firearms; the historical silence speaks volumes. 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. The Seventh Circuit's companion decision in *Watson* attempted to supply the history *Prince* omitted, but as explained in Part III, the traditions it identified cannot bear that weight.

Moreover, the current version of § 922(g)(1) was intentionally broadened away from prior convictions for violent offenses. Its predecessor 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); *see* 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,

Congress intentionally uncoupled § 922(g)(1) from the specific facts or nature of a person's prior convictions.

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—even if a narrower tradition might support a narrower law. Undoubtedly there are some private lands in Hawai'i subject to disruptive hunting practices, where Hawai'i could, under a properly consistent law, impose an affirmative consent requirement. That did not save the statewide law, because, as Justice Barrett explained, "Hawaii 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). So too here: Section 922(g)(1) responds to the general danger of firearms in the hands of anyone with a felony conviction, not to any specific, heightened risk of misuse.

III. The Seventh Circuit's *Watson* decision rests on faulty historical analogies and unsupported assumptions about dangerousness.

A. *Watson*'s group-disarmament tradition rests on laws the Constitution left behind, and its "why" does not match § 922(g)(1).

Watson's first tradition—class-wide disarmament of groups deemed "dangerous"—rests on some of the most ignominious chapters in Anglo-American law. The panel recounted how English sovereigns disarmed Catholics, political dissidents, and the Welsh, and then turned to colonial and early American laws disarming enslaved persons, Native Americans, and free Black people. *Watson*, 171 F.4th at

1020–22. One such law was an 1852 prohibition on firearms possession by "Black people in Mississippi." *Id.* at 1022 (quoting *Zherka*, 140 F.4th at 88 n.50). The panel acknowledged that "this sad tradition includes laws repugnant by today's standards" and that "[m]any of these laws would violate the Fourteenth Amendment." *Id.* Yet it concluded that "for this analysis their import cannot be ignored. These laws reflect the boundaries of the legislature's power to enact class-wide disarmament laws consistent with the Second Amendment." *Id.* The Sixth and Fifth Circuits have reasoned the same way. *Williams*, 113 F.4th at 655 ("Classifying people as dangerous simply because of their race or religion was wrong from the beginning and unconstitutional from 1868. Nevertheless, these pre-Fourteenth Amendment laws provide insight into how early Americans conceived of the right to bear arms embodied in the Second Amendment."); *Kimble*, 142 F.4th at 315 (quoting *Williams*).

This Court rejected that analysis in *Wolford*, decided about three months after *Watson*. Hawai'i there sought to rely on an 1865 Louisiana law enacted as part of the Black Codes. 146 S. Ct. at 2053. This Court refused: those laws "aimed to perpetuate the subjugation of blacks," and the Fourteenth Amendment was designed to reject this very type of discrimination against formerly enslaved people and to ensure their rights to keep and bear arms. *Id.* "[U]nless we put history entirely out of our minds, Hawaii's claim that this tainted artifact illuminates the original understanding of the right to keep and bear arms cannot be taken seriously." *Id.*; *see also Bruen*, 597 U.S. at 60–63; *Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring) ("in using pre-ratification history, courts must exercise

care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind"). *Watson*'s conclusion that these laws "reflect the boundaries of the legislature's power," 171 F.4th at 1022, cannot survive *Wolford*.

Even on their own terms, these laws cannot support a broad, generalized "danger" principle, because their "why" does not match the "why" of § 922(g)(1). They were rooted in a narrow concern: rebellion against the sovereign, insurrection against the political order, or organized violence against the community.[4] *Duarte*, 137 F.4th at 797 (VanDyke, J., concurring in part and dissenting in part) (citing Jamie G. McWilliam, *Refining the Dangerousness Standard in Felon Disarmament*, 108 Minn. L. Rev. Headnotes 315, 324–25 (2024)). As *Watson* itself conceded, "[w]hether rebelling like the Welsh, or perceived as threatening rebellion like the Catholics, such groups threatened public safety and stability." 171 F.4th at 1020. "Loyalists, too, were disarmed because of their perceived threat against the Revolution." *Id.* at 1021. 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. Slaves and Native Americans were perceived at the time to be beyond the scope of the right—indeed, in the case of slaves, as property. *Bruen*, 597 U.S. at 60; Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 141 (1994). And the Loyalist disarmaments were self-evidently wartime measures that aimed to preserve the

[4]The Fifth Circuit in *Rahimi* also pointed out that such laws "may well have been targeted at groups excluded from the political community—i.e., written out of 'the people' altogether—as much as they were about curtailing violence or ensuring the security of the state." *United States v. Rahimi*, 61 F.4th 443, 457 (5th Cir. 2023), *rev'd,* 602 U.S. 680 (2024).

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). 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*, 124 F.4th at 229–30.

Section 922(g)(1) is worlds apart from that tradition. It punishes the simple fact of possession combined with the fact of a prior conviction for any "crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). The statute makes no distinction between violent and nonviolent predicate offenses, let alone offenses posing a risk to the sovereign or governing political order. Section 922(g)(1) sweeps in food-stamp fraud, after all.

B. The "greater includes the lesser" rationale is flawed.

Unwilling to rest its holding solely on the first tradition, the Seventh Circuit turned to a second: because "legislatures could define a 'serious' crime as a felony and impose the death penalty," they could also impose the lesser restriction of disarmament. *Watson*, 171 F.4th at 1022–23. The panel found support in *Rahimi*'s observation that "the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible" because going-armed laws imposed the greater punishment of imprisonment. 602 U.S. at 699; *Watson*, 171 F.4th at 1023. But the greater includes the lesser, *Rahimi* says, only when the greater and the lesser belong to the same historical tradition, the same "why." 602 U.S. at 699. As

the Second Circuit explained, this Court was merely "point[ing] out that specific early weapons regulations (the 'going armed' laws) imposed more severe penalties than the disarmament statutes at issue in that case," not sanctioning "blanket reliance on eighteenth century capital punishment practice to validate any lesser deprivation later imposed on felons." *Zherka*, 140 F.4th at 83.

Capital punishment has always been a plain "why" mismatch. *See, e.g.*, *Hemani*, 146 S. Ct. at 1689. Capital punishment never had disarmament as its purpose; disarmament was simply a consequence of execution, imposed for punitive and retributive purposes. Section 922(g)(1), by contrast, is a categorical prohibition that applies regardless of the prior offense, unrelated to those purposes—frequently 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. *Hemani* confirms the point. Even though historical laws regulating "habitual drunkards" could lead to their imprisonment, this Court did not apply a greater-includes-the-lesser theory, because those laws' purposes were "nothing like the purpose the government ascribe[d] to § 922(g)(3)." 146 S. Ct. at 1690–91.

The theory's premise is also historically fragile. As then-Judge Barrett recognized in *Kanter*, the historical support for the premise that all felonies were punishable by death is "shaky." 919 F.3d at 458 (Barrett, J., dissenting). "During the period leading up to the founding, the connection between felonies and capital punishment started to fray." *Id.* at 459. The colonies "further limited the scope of

crimes eligible for the death penalty relative to the English Common Law," and even for those crimes that were capital, "[t]he colonies carried out the death penalty 'pretty sparingly.'" *Duarte*, 137 F.4th at 788 (VanDyke, J., concurring in part and dissenting in part); *Folajtar*, 980 F.3d at 920 (Bibas, J., dissenting). The American tradition was to move away from capital punishment, "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). If the claimed "greater" capital punishment of all felonies "was in fact a historical fiction," then the greater-includes-the-lesser rationale cannot work. *Duarte*, 137 F.4th at 790 (VanDyke, J., concurring in part and dissenting in part).

And even on its own terms, the theory cannot apply to this petitioner. A "felony" at the Founding "was a good deal narrower than now." *Lange v. California*, 594 U.S. 295, 311 (2021); *see also Tennessee v. Garner*, 471 U.S. 1, 14 (1985). Many offenses that are classified as felonies today—including offenses like the petitioner's—were not criminal at all at the Founding, let alone punishable by death. *Garner*, 471 U.S. at 14. The "greater" punishment was never available in the first place.

And even if legislatures at the Founding could have imposed death for all felonies, the greater-includes-the-lesser reasoning leads to absurd results when applied to other constitutional rights. "[W]e wouldn't say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding." *Kanter*, 919 F.3d at 461–62 (Barrett, J., dissenting). "No one suggests that [someone with a felony conviction] has no right to a jury trial or [to] be free from unreasonable searches and seizures." *Williams*, 113 F.4th at 658. "The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

C. Combining insufficient historical analogies does not create a sufficient historical tradition.

Confronted with two traditions that provide weak support for § 922(g)(1), the panel stacked them together in the apparent hope that their combined weight would be sufficient. *See Watson*, 171 F.4th at 1020 (concluding that "'[t]aken together,' these traditions support disarming those with dangerous felonies") (quoting *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025) (Pryor, C.J., concurring)).

But under *Bruen*, *Rahimi*, and *Hemani*, identifying numerous insufficient historical examples does not make a sufficient historical tradition. The government's burden is to demonstrate that the challenged regulation is "relevantly similar" to historical laws in both purpose and operation—that is, to identify a coherent historical practice whose "why" and "how" actually track the modern statute. The

Seventh Circuit identified no such practice. Instead, it cited one tradition (disarming groups deemed "dangerous") that fails to match § 922(g)(1)'s justification as applied to the petitioner, and a second tradition (capital punishment for "felons") that fails to match both justification and burden.

In repeatedly emphasizing that "[w]hy and how the regulation burdens the right are central to th[e] inquiry," *Rahimi*, 602 U.S. at 692 (citing *Bruen*, 597 U.S. at 29), this Court has never suggested that the "why" can be cherry-picked from one tradition, and the "how" from another. Instead, this Court has explained that the laws should be considered "relevantly similar" only if they address a comparable problem for comparable reasons and place a comparable burden on the right holder. *Id.*; *Bruen*, 597 U.S. at 27–30. These metrics should not be independent boxes that can be checked by reference to entirely different historical regimes; they must cohere in a single analogy that demonstrates the modern law is "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692; *see also id.* at 771–72 (Thomas, J., dissenting) (the question is "whether a single historical law has both a comparable burden and justification as § 922(g)(8), not whether several laws can be cobbled together to qualify").

Hemani reinforces the point. This Court held that the government's historical analogues—vagrancy laws, civil-commitment statutes, and surety laws—"targeted different kinds of people, did so for different purposes, and operated in different ways" than § 922(g)(3). 146 S. Ct. at 1687. The government in *Hemani* attempted precisely what the Seventh Circuit did here: it marshaled multiple historical traditions, each

insufficient on its own, and urged the Court to view them as collectively establishing the required analogy. It should have instead evaluated each proffered tradition on its own merits and found each wanting. *See id*. at 1687–95.

The government may respond that this Court in *Rahimi* allowed reliance on "two distinct legal regimes" that shared a common tradition. 602 U.S. at 694. But this Court did so only because both the surety laws and going-armed laws "specifically addressed firearms violence," *id*. at 694–95, and both "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another." *Id*. at 699. These were not disparate traditions stitched together at a high level of abstraction to compensate for each other's shortcomings. Indeed, as Justice Barrett cautioned in concurrence: "[A] court must be careful not to read a principle at such a high level of generality that it waters down the right." 602 U.S. at 740 (Barrett, J., concurring).

Allowing the government to fill one tradition's gaps with another converts the analogical inquiry into a "regulatory blank check," *Bruen*, 597 U.S. at 30, that "allow[s] legislatures to creatively fashion new categorical exclusions." *Duarte*, 137 F.4th at 767 (Collins, J., concurring). This Court should grant certiorari to make explicit that the government cannot satisfy its burden by mixing and matching historical traditions; the inquiry demands a coherent historical practice that is, standing alone, relevantly similar to the challenged regulation.

D. Assumptions about dangerousness cannot replace evidence of it.

Even if felons who are dangerous may be disarmed consistent with the Second Amendment, serious questions remain about how courts are to determine who qualifies as dangerous. This case allows the Court to clarify that the inquiry turns on evidence, not judicial presumptions about entire classes.

In *Hemani*, this Court made clear that the government cannot satisfy its burden under the Second Amendment by asking courts to accept, on faith, that the people it seeks to disarm are categorically dangerous. The government argued that § 922(g)(3) disarms unlawful drug users to "protect the public from 'unusually dangerous' individuals who will 'misuse . . . firearms' to commit 'violent crime[s].'" 146 S. Ct. at 1689. This Court refused to credit that assertion, troubled by the government's argument that "none of this turns on how much marijuana Mr. Hemani uses or what effect it has on him." *Id.* at 1693. In sum, the government "asks us to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing. All based on little more than its current say-so, one at odds with its own regulatory actions." *Id.*

Regarding the purported connection between drugs and violence, moreover, this Court explained that "[w]ithout question, some unlawful users of controlled substances can pose a risk of violence." *Id.* at 1692. But "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.* The lesson of *Hemani* is therefore clear: the Second Amendment demands more than a casual assumption that an entire class of people is dangerous.

Instead, the inquiry requires proof that the defendant's prohibited conduct makes him incapacitated, violent, or otherwise dangerous. *Id.* at 1693.

The same constitutional deficiency that doomed the government's position in *Hemani* dooms its position here. The Seventh Circuit summarily affirmed the petitioner's conviction because he has two prior non-violent convictions for residential burglary and manufacturing or distributing less than 15 grams of cocaine. The government did not present any evidence that either offense involved violence. Based solely on these convictions, the Seventh Circuit found the petitioner was forever disarmed. The Seventh Circuit's finding in *Watson* that "Congress reasonably determined that a felony drug conviction is a 'dangerous' crime," that should lead to permanent disarmament was not supported by any citation of Congressional findings.

The *Watson* panel asserted that "[f]ederal caselaw well substantiates that drugs and guns together are dangerous." *Watson*, 171 F.4th at 1023. But the cases it cited all involved situations in which firearms were actually used, or at heightened risk of being used, in connection with drug crimes. *See Muscarello v. United States*, 524 U.S. 125, 126, 132 (1998) (analyzing 18 U.S.C. § 924(c)(1), which imposes mandatory prison time upon a person who "uses or carries a firearm" "during and in relation to" a "drug trafficking crime"); *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 287 (2025) (explaining that cartels use firearms "to commit serious crimes—drug dealing, kidnapping, murder, and others"); *Richards v. Wisconsin*, 520 U.S. 385, 391 n.2 (1997) (making vague reference to the "link[] between drugs and violence" in a case evaluating the propriety of a no-knock entry).

The panel likewise invoked 18 U.S.C. § 924(c) and U.S.S.G. § 2D1.1(b)(1), which punish or enhance sentences for firearm possession or use during a drug crime, and concluded that "[a] dealer of illegal drugs is more than just irresponsible; he is a threat to the physical safety of society." *Watson*, 171 F.4th at 1024. Unlike this case, none of those authorities involved a felon who possessed a firearm apart from the drug activity in question.

The Seventh Circuit's reliance on its own "common sense" is, at bottom, an invitation to decide Second Amendment cases based on assumptions rather than evidence, precisely what *Hemani* rejected. This Court should grant certiorari to make clear that what is impermissible under § 922(g)(3) after *Hemani* is equally impermissible under § 922(g)(1): neither the government nor the court may invoke "common sense," i.e., its own say-so, to label an entire class of people "dangerous."

E. Section 925(c) does not cure the constitutional problem.

Toward the end of *Watson*, the Seventh Circuit invoked 18 U.S.C. § 925(c) for the proposition that "felon status does not necessarily mean permanent disarmament." *Watson*, 171 F.4th at 1025. But § 925(c) offers no meaningful answer to the petitioner's as-applied challenge. The statute authorizes the Attorney General to restore a felon's firearm rights upon a showing that the person "will not be likely to act in a manner dangerous to public safety" and that the public interest supports rearmament. 18 U.S.C. § 925(c). Yet Congress defunded that program in 1992, leaving the remedy "practically unavailable." *Williams*, 113 F.4th at 661. The Attorney General has since published a final rule reviving the program, which took

effect on September 21, 2026. *See* Application for Relief from Disabilities Rule, 91 Fed. Reg. 54054 (Aug. 20, 2026). That rule was of no use to Mr. Clark, who possessed the gun at issue in 2020.

In any event, the government cannot defeat an as-applied challenge because it might, in the Attorney General's discretion, "reinstate" a fundamental constitutional right. This Court rejected a similar argument in *United States v. Stevens*, 559 U.S. 460, 480 (2010), where the government defended a statute reaching large swaths of protected speech by promising to use it only against "extreme" unprotected speech: "the First Amendment protects against the Government; it does not leave us at the mercy of noblesse oblige." *Id.* Just so here. The Second Amendment protects the right to keep and bear arms against the government; it does not leave citizens to ask the government nicely for permission to exercise it.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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