No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2026

WAYNE LAMAR DAVIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Since this Court decided New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022), federal courts of appeals, frontline public defenders, and prosecutors have grappled with whether 18 U.S.C. § 922(g)(1) is susceptible to as-applied Second Amendment challenges, producing a 7-to-4 circuit split. In this case, the Eleventh Circuit held that binding circuit precedent forecloses all as-applied Second Amendment challenges to § 922(g)(1), refusing to consider Petitioner's individual characteristics—including that his qualifying predicate convictions occurred more than two decades ago, that he successfully completed all terms of supervision, and that he has maintained a decade of documented rehabilitation and non-violence.

The question presented is:

> Whether 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to a person who is not currently dangerous and whose predicate felony convictions occurred over twenty years ago, and whether the courts of appeals may categorically foreclose such as-applied challenges without requiring the government to demonstrate that disarming that specific individual is consistent with this Nation's historical tradition of firearm regulation?

PARTIES TO THE PROCEEDING

Petitioner is Wayne Lamar Davis, who was the Defendant-Appellant in the court below.

Respondent is the United States of America, which was the Plaintiff-Appellee in the court below.

Because Petitioner is an individual, the corporate disclosure statement requirements of Supreme Court Rule 29.6 do not apply.

RELATED PROCEEDINGS

The proceedings directly related to this case in this Court and lower courts are:

- United States v. Wayne Lamar Davis, No. 24-11003, United States Court of Appeals for the Eleventh Circuit. Judgment entered August 19, 2026.

- United States v. Wayne Lamar Davis, No. 8:23-cr-00108-SDM-AEP, United States District Court for the Middle District of Florida. Judgment entered March 8, 2024.

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Petitioner Wayne Lamar Davis respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unreported but is available at 2026 WL 2153892 (11th Cir. Aug. 19, 2026), and is reproduced in the Appendix hereto ("Appx.") at Appx A. The order of the United States District Court for the Middle District of Florida denying Petitioner's motion to dismiss the indictment is unreported and is reproduced at Appx. B. The judgment of the Eleventh Circuit is reproduced at Appx. C.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on August 19, 2026 (Appx C.). No petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction under 18 U.S.C. § 3231.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to 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."

Title 18 U.S.C. § 922(g)(1) provides in pertinent part:

> "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."

Relevant provisions of 18 U.S.C. § 924(e) and 18 U.S.C. § 925(c) are reproduced in Appendix D (App. 6a–7a).

STATEMENT OF THE CASE

I. Statutory and Factual Background

This case presents an ideal vehicle to resolve whether the Second Amendment permits the lifetime disarmament of an individual whose predicate felony convictions occurred more than two decades ago and who poses no present danger of physical violence, and whether lower courts may foreclose such as-applied challenges under binding categorical rules.

Title 18 U.S.C. § 922(g)(1) permanently strips citizens of their fundamental Second Amendment rights upon conviction of any crime punishable by imprisonment for more than one year. The plain text of the Second Amendment presumptively protects the right of "the people" to "keep and bear Arms." Under *District of Columbia v. Heller*, 554 U.S. 570 (2008), that protection extends to ammunition, which is an indispensable component of the right to bear arms. *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014); *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018). Under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), when text covers an individual's conduct, the government must affirmatively prove

that its restriction is consistent with this Nation's historical tradition of firearm regulation.

On May 25, 2021, officers of the Tampa Police Department initiated a traffic stop of a vehicle driven by Petitioner Wayne Lamar Davis in Hillsborough County, Florida. During an inventory search following the stop, officers discovered a backpack containing a .32-caliber handgun and eight rounds of .32-caliber ammunition. Because of his prior criminal record, Petitioner was federally indicted on a single count charging him with possessing firearms and ammunition as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e).

Petitioner was fifty-three years old at the time of the arrest. All of Petitioner's prior qualifying felony convictions were over twenty years old, committed in the 1990s: a 1993 Florida state conviction for robbery with a firearm and aggravated assault, a 1998 Florida state conviction for resisting an officer with violence, and a 1998 federal conviction for conspiracy to possess with intent to distribute cocaine base for which he was sentenced to 240 months' imprisonment. Following his release from federal custody over a decade prior to the instant offense, Petitioner successfully completed all terms of supervised release, obtained and maintained steady employment, and actively mentored youth through community programs and the Police Athletic League, compiling an unblemished record of non-violence for over ten years.

II. Proceedings in the District Court

On July 24, 2023, Petitioner filed a motion to dismiss the indictment, arguing that 18 U.S.C. § 922(g)(1) violates the Second Amendment on its face and as applied to him under Bruen. Petitioner asserted that as an American citizen, he is part of "the people" protected by the Second Amendment, that ammunition is protected under *Heller*, and that the government could point to no founding-era historical tradition justifying the permanent, lifetime disarmament of individuals with remote criminal convictions who pose no present danger.

On March 8, 2024, the district court (Steven D. Merryday, J.) denied the motion (Appx. B). The court held that it was bound by the Eleventh Circuit's decision in *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024), which concluded that *Bruen* did not abrogate prior circuit precedent upholding § 922(g)(1). The district court refused to conduct an individualized historical inquiry into whether disarming an individual with decades-old predicate convictions aligned with founding-era tradition.

Following the denial of his motion to dismiss, Petitioner entered a conditional guilty plea to the possession of ammunition, expressly reserving the right to appeal the district court's order. Although the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), subjected Petitioner to a statutory mandatory minimum of 15 years' imprisonment, the district court sentenced him to 210 months' imprisonment (17.5 years), heavily weighing his remote offenses from the 1990s and discounting his decade of rehabilitation.

III. Proceedings in the Eleventh Circuit

On appeal to the United States Court of Appeals for the Eleventh Circuit, Petitioner raised two claims: (1) that 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to him under *Bruen*; and (2) that his 210-month prison sentence is substantively unreasonable. In his brief, Petitioner acknowledged that under binding Eleventh Circuit precedent in *Dubois* and *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), the panel was bound to reject his constitutional claim, but he explicitly preserved the issue for en banc and Supreme Court review. The government conceded that *Dubois* and *Rozier* foreclosed Petitioner's Second Amendment challenge under circuit precedent.

On August 19, 2026, the Eleventh Circuit affirmed in an unpublished per curiam opinion (Appx. A). As to the Second Amendment, the panel held in a single sentence: "Davis's Second Amendment challenge is foreclosed by binding precedent. See *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024) (holding that *Bruen* did not abrogate *Rozier*, which held that § 922(g)(1) does not violate the Second Amendment)." The panel also affirmed the 210-month sentence, holding that the district court did not abuse its discretion under *Gall v. United States*, 552 U.S. 38 (2007).

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because the federal courts of appeals are intractably divided over the constitutionality of § 922(g)(1) and the availability of as-applied Second Amendment challenges following *Bruen*. In four circuits (the

Third, Sixth, Ninth, and Tenth), courts have recognized that § 922(g)(1) is susceptible to as-applied challenges and have struck down felon-disarmament convictions where historical analogues were lacking. In seven circuits (the Second, Fourth, Fifth, Seventh, Eighth, Eleventh, and D.C. Circuits), courts have adopted a rigid, categorical approach that categorically forecloses as-applied challenges, treating all individuals with felony records as permanently stripped of Second Amendment rights regardless of the age, nature, or dangerousness of their offenses.

Moreover, the Eleventh Circuit's mechanical foreclosure of Second Amendment review collides directly with this Court's recent decisions in *United States v. Rahimi*, 602 U.S. 680 (2024), *United States v. Hemani*, 146 S. Ct. 1677 (2026), and *Wolford v. Lopez*, 146 S. Ct. 2032 (2026). In *Wolford*, this Court expressly repudiated reliance on discriminatory historical enactments—the very foundation upon which many lower courts have rested § 922(g)(1). This petition presents an exceptional, recurring question of constitutional law that only this Court can resolve.

I. The Courts of Appeals Are Irreconcilably Split on the Constitutionality of § 922(g)(1) and the Availability of As-Applied Challenges

A. Circuits Permitting As-Applied Second Amendment Challenges

The split among the circuits is mature, deeply entrenched, and acknowledged by judges across the country:

• Third Circuit: In *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (en banc), the en banc Third Circuit held that 18 U.S.C. § 922(g)(1) violated the Second Amendment as applied to an individual convicted decades earlier of making a false

statement on a food stamp application. The Third Circuit held that the government failed to carry its burden of demonstrating a founding-era tradition of disarming non-dangerous citizens.

• Tenth Circuit: In *United States v. Hembree*, 165 F.4th 909 (10th Cir. 2025) the Tenth Circuit held that § 922(g)(1) is subject to as-applied constitutional challenges under *Bruen*.

• Ninth Circuit: In *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024), a panel held § 922(g)(1) unconstitutional as applied to non-violent felons, holding that founding-era history contains no principle justifying lifetime disarmament for individuals who have served their sentences.

• Sixth Circuit: In *United States v. Williams*, 113 F.4th 637, 662 (6th Cir. 2024), the Sixth Circuit recognized that a person with a felony conviction who demonstrates that he poses no danger falls outside § 922(g)(1)'s constitutional reach, emphasizing that the administrative relief mechanism under 18 U.S.C. § 925(c) remains practically unavailable due to chronic congressional defunding.

B. Circuits Categorically Foreclosing As-Applied Challenges

In stark contrast, seven circuits have shut the courthouse door to all as-applied challenges:

1. Eleventh Circuit: In *United States v. Parr*, (2026 WL 2858728 Sept. 23 2026) the Eleventh Circuit held that § 922(g)(1) is categorically immune to as-applied challenges, reaffirming its pre-*Bruen* decision in *Rozier* as binding law.

2. Second Circuit: In *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), the Second Circuit held that felons are categorically excluded from Second Amendment protection under *Heller*'s dictum.

3. Fourth Circuit: In *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), the Fourth Circuit foreclosed as-applied challenges to § 922(g)(1).

4. Eighth Circuit: In *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), the court affirmed that § 922(g)(1) is constitutional as applied to all felons.

5. Seventh Circuit: In *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), the court rejected as-applied challenges.

6. D.C. Circuit: In *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019), the court held that all felons are excluded from Second Amendment protection.

7. Fifth Circuit: In *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), the court upheld § 922(g)(1) categorically against constitutional challenge.

C. The Issue Is Recurring and Presents Immense Practical Significance

The conflict among the circuits produces intolerable geographic disparity in the enforcement of federal criminal law. A defendant residing in the Third or Sixth Circuit may assert an as-applied constitutional defense, whereas an identical defendant prosecuted in Florida, Georgia, or Alabama is automatically foreclosed from doing so.

This issue affects thousands of criminal prosecutions each year. In fiscal year 2025 alone, 10.8% of all federal criminal defendants (7,245 individuals) were sentenced under 18 U.S.C. § 922(g), and 89% of those convictions fell under

subsection (g)(1). U.S. Sentencing Commission, Quick Facts: 18 U.S.C. § 922(g) Firearms (FY 2025). Approximately 19 million Americans possess a felony record. 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). Under the Eleventh Circuit's rule, every one of these individuals is subject to lifetime disarmament without any judicial opportunity to demonstrate present non-dangerousness.

II. The Eleventh Circuit's Categorical Approach Collides with This Court's Binding Precedents in Bruen, Rahimi, and Hemani

The Eleventh Circuit's refusal to permit as-applied challenges flouts *Bruen*'s core methodology. In *Bruen*, 597 U.S. at 17, this Court held that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The burden then rests squarely on the government to justify its regulation by pointing to historical analogues from the founding era. 18 U.S.C. § 922(g)(1) did not exist at the Founding; the first federal restriction on felon firearm possession was not enacted until the Federal Firearms Act of 1938, and categorical disarmament of non-violent felons was not enacted until the Gun Control Act of 1968.

In *United States v. Rahimi*, 602 U.S. at 698, this Court clarified that firearm regulations are constitutional only if they are "relevantly similar" in why and how they burden the right. *Rahimi* upheld 18 U.S.C. § 922(g)(8) because it applied to individuals subject to domestic violence restraining orders who had been judicially found to pose a credible threat of physical violence to others. Unlike § 922(g)(8), §

922(g)(1) imposes a lifetime, permanent ban without any judicial finding of present dangerousness.

Furthermore, in *Wolford v. Lopez*, 146 S. Ct. 2032 (2026), this Court expressly repudiated reliance on discriminatory historical enactments to justify modern Second Amendment restrictions. *Wolford* held that 18th- and 19th-century laws disarming Black Americans, Native Americans, and religious minorities cannot serve as historical analogues because they reflected "invidious discrimination" that the Fourteenth Amendment was specifically designed to eradicate. *Id.* at 2048-53. Lower court decisions that rely on discriminatory antebellum laws to establish a broad legislative power to disarm entire classes of citizens directly violate *Wolford*.

III. The Categorical Disarmament of Individuals with Remote Predicates Finds No Grounding in Historical Tradition

A. The "Why" of Founding-Era Regulations Contrasts Sharply with Modern Categorical Disarmament

The historical record contains no founding-era tradition of permanently disarming individuals based on non-violent or remote criminal convictions. Founding-era disarmament laws targeted individuals who demonstrated an imminent threat of taking up arms against the government (such as during Shays' Rebellion or the Revolutionary War) or who were found dangerous to the peace. Once peace was restored or an individual took an oath of allegiance, disarmament ceased.

B. The "Greater Includes the Lesser" Capital Punishment Rationale Fails

Lower courts have attempted to justify § 922(g)(1) on the theory that because common-law felonies were historically punishable by death or estate forfeiture, the legislature possesses the "lesser" power to impose lifetime disarmament. This logic is demonstrably flawed. At common law, capital punishment was reserved for a narrow category of heinous crimes; modern federal and state law classifies thousands of non-violent, regulatory offenses as felonies. Under the government's logic, the state could permanently strip convicted felons of their First, Fourth, or Sixth Amendment rights simply because capital punishment was once permissible—a proposition this Court has never sanctioned.

C. Cobbling Together Inapposite Analogies Violates Bruen

Confronted with the absence of genuine historical analogues, lower courts have stitched together disparate historical laws—colonial hunting restrictions, surety statutes, and discriminatory loyalty oaths—to concoct a general regulatory tradition. This Court rejected that exact "mix-and-match" methodology in *United States v. Hemani*, 146 S. Ct. at 1687–95. In *Hemani*, the Court invalidated the categorical disarmament of unlawful drug users under 18 U.S.C. § 922(g)(3), holding that fragmented historical pieces cannot be cobbled together to eviscerate constitutional rights.

IV. Second Amendment Review Demands Concrete Evidence of Dangerousness Rather than Lifetime Presumptions

Under *Rahimi* and *Bruen*, the Second Amendment demands that the government demonstrate that the individual disarmed poses an actual, credible

threat of physical violence. Petitioner was fifty-three years old at the time of the instant traffic stop. His qualifying convictions occurred in 1993 and 1998—over twenty years prior. He had maintained a decade of documented rehabilitation, steady employment, and community service mentoring youth. Treating an individual as permanently dangerous thirty years after an offense is an irrebuttable presumption that offends basic constitutional principles.

V. Section 925(c) Does Not Cure the Constitutional Violation

Finally, 18 U.S.C. § 925(c) provides no answer to Petitioner's constitutional challenge. Although § 925(c) authorizes administrative relief from firearm disabilities, Congress has defunded the program every year since 1992. As this Court held in *United States v. Stevens*, 559 U.S. 460, 480 (2010), constitutional protections do not "leave us at the mercy of noblesse oblige." The government cannot condition fundamental constitutional rights on an administrative relief mechanism that it intentionally deprives of funding.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

November 17, 2026

Respectfully submitted,

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