No. _____

In the

Supreme Court of the United States

_____

Taddius Tyrone Woods,

Petitioner,

v.

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

_____

Christy Martin
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
christy_martin@fd.org

QUESTION PRESENTED

Whether 18 U.S.C. §922(g)(1) comports with the Second Amendment?

PARTIES TO THE PROCEEDING

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

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Federal Statutes

Constitutional Provisions

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Taddius Tyrone Woods, seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The unpublished opinion of the court of appeals is reported at *United States v. Woods*, No. 23-10849, 2024 WL 2599135 (5th Cir. May 24, 2024)(unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on May 24, 2024. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT STATUTE AND CONSTITUIONAL PROVISION

Section 922(g) of Title 18 reads in relevant part:

> 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.

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.

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

Petitioner Taddius Tyrone Woods pleaded guilty pursuant to a written plea agreement to the indictment charging him with having a prior felony conviction, knowing that he had such a conviction, and possessing a firearm in and affecting commerce, in violation of 18 U.S.C. § 922(g)(1). The court accepted his plea.

B. Appellate Proceedings

Petitioner appealed, arguing, inter alia, that he had a Second Amendment right to possess arms, and that a criminal conviction could not lie for the exercise of that right. He also contended that his guilty plea was invalid because the district court did not advise him of the constitutional limits on the government's power to prosecute him for possessing a firearm. He conceded that the claim was reviewable only for plain error.

The court of appeals affirmed. See Pet.App.A. It applied plain error review and found his claims foreclosed by circuit precedent. *Woods*, 2024 WL 2599135, at *1 (*citing United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023) (per curiam)).

REASONS FOR GRANTING THE PETITION

I. This Court should decide the constitutionality of 18 U.S.C. §922(g)(1) under the Second Amendment. It should hold the instant Petition pending resolution of any merits cases presenting that issue.

The Second Amendment guarantees "the right of the people to keep and bear arms." Yet 18 U.S.C. § 922(g)(1) denies that right, on pain of 15 years imprisonment, to anyone previously convicted of a crime punishable by a year or more. In spite of this facial conflict between the statute and the text of the constitution, the courts of appeals uniformly rejected Second Amendment challenges to the statute for many years. *See United States v. Moore*, 666 F.3d 313, 316-317 (4th Cir. 2012) (collecting cases). This changed, however, following *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022). *Bruen* held that where the text of Second Amendment plainly covers regulated conduct, the government may defend that regulation only by showing that it comports with the nation's historical tradition of gun regulation. *See Bruen*, 142 S. Ct. at 2129-2130. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *See id*. at 2127-2128.

In *United States v. Rahimi*, 144 S.Ct. 1889 (June 21, 2024), this Court held that 18 U.S.C. §922(g)(8) comports with the Second Amendment. That statute makes it a crime to possess a firearm during the limited time that one:

> is subject to a court order that … restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and … includes a finding that such person represents a credible threat to the physical safety of such intimate

> partner or child; or ….by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury…

18 U.S.C. §922(g)(8).

Upholding this statute, this Court emphasized its limited holding, which was "only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Rahimi*, 144 S.Ct. at 1903. That rationale plainly leaves ample space to challenge 18 U.S.C. §922(g)(1). Section (g)(1) imposes a permanent, not a temporary, firearm disability. And that disability can arise from all manner of criminal convictions that do not involve a judicial finding of future physical dangerousness.

Such a challenge could well be resolved against constitutionality of §922(g)(1). "Though recognizing the hazard of trying to prove a negative, one can with a good degree of confidence say that bans on convicts possessing firearms were un-known before World War I." C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?,* 32 Harv. J. L. & Pub. Pol'y 695, 708 (2009); *see also* Adam Winkler, *Heller's Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009) ("The Founding generation had no laws . . . denying the right to people convicted of crimes.").; Carlton F.W. Larson, *Four Exceptions in Search of A Theory:* District of Columbia v. Heller *and Judicial* Ipse Dixit, 60 Hastings L. J. 1371, 1376 (2009)("…state laws prohibiting felons from possessing firearms or denying firearms licenses to felons date from the early part of the twentieth century.); *United States v. Bullock*, 679 F.Supp.3d 501, 505 (S.D. Miss.

2023)("The government's brief in this case does not identify a 'well-established and representative historical analogue' from either era supporting the categorical disarmament of tens of millions of Ameri-cans who seek to keep firearms in their home for self-defense."), appeal pending No. 23-60408 .

As the government noted in a recent Supplemental Brief urging this Court to grant certiorari regarding §922(g)(1), many district courts have invalidated the statute even as to defendants with extremely serious felony records. *See* Supplemental Brief for the Federal Parties in Nos. 23-374, *Garland v. Range*; 23-683, *Vincent v. Garland*; 23-6170, *Jackson v. United States*; 23-6602, *Cunningham v. United States*, and 23-6842, *Doss v. United States*, at p.4, n.1 (June 24, 2024)(collecting 12 such cases)(hereafter "Supplemental Federal Parties).[1]

As noted, the government has now asked this Court to grant certiorari in a wide range of cases presenting the constitutionality of §922(g)(1). All of those Petitions were granted, and the cases remanded in light of *Rahimi*, *supra*. *See Garland v. Range*, No. 23-374, 2024 WL 3259661 (July 2, 2024); *Vincent v. Garland*, No. 23-6170, 2024 WL 3259668 (July 2, 2024); *Jackson v. United States*, No. 23-6170, 2024 WL 3259675 (July 2, 2024); *Cunningham v. United States*, No. 23-6602, 2024 WL 3259687 (July 2, 2024); *Doss v. United States*, No. 23-6842, 2024 WL 3259684 (July 2, 2024). Notably, this Court remanded both those cases that resulted in a

[1] Av*ailable at* *https://www.supremecourt.gov/DocketPDF/23/23-374/315629/20240624205559866_23-374%20Supp%20Brief.pdf*, *last visited August 13, 2024.*

finding of 922(g)(1)'s unconstitutionality (like *Range*), and those that found it constitutional, (the remainder). This demonstrates that *Rahimi* does not clearly resolve the constitutional status of the statute – were that so, it would be unnecessary to remand those cases in which the arms-bearer lost in the court of appeals. This Court should grant certiorari to decide this momentous issue, and, if it does so in another case, should hold the instant Petition pending the outcome. *See Stutson v. United States*, 516 U.S. 163, 181 (1996)(Scalia, J., dissenting)("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided.").

This is so notwithstanding the failure of preservation in the district court, which may ultimately occasion review for plain error. *See United States v. Olano*, 507 U.S. 725, 732 (1993). For one, an error may become "plain" any time while the case remains on direct appeal. *See Henderson v. United States*, 568 U.S. 266 (2013). Further, procedural obstacles to reversal – such as the consequences of non-preservation – should be decided in the first instance by the court of appeals. *See Henry v. Rock Hill*, 376 U.S. 776, 777 (1964)(per curiam)(GVR "has been our practice in analogous situations where, not certain that the case was free from all obstacles to reversal on an intervening precedent"); *Torres- Valencia v. United States*, 464 U.S. 44 (1983)(per curiam)(GVR utilized over government's objection where error was conceded; government's harmless error argument should be presented to the court of appeals in the first instance); *Florida v. Burr*, 496 U.S. 914, 916-919 (1990)(Stevens,

J., dissenting)(speaking approvingly of a prior GVR in the same case, wherein the Court remanded the case for reconsideration in light of a new precedent, although the claim recognized by the new precedent had not been presented below); *State Farm Mutual Auto Ins. Co. v. Duel*, 324 U.S. 154, 161 (1945)(remanding for reconsideration in light of new authority that party lacked opportunity to raise because it supervened the opinion of the court of appeals).

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 21st day of August, 2024.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Christy Martin
Christy Martin
Assistant Federal Public Defender
Federal Public Defender's Office
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: (214) 767-2746
E-mail: christy_martin@fd.org

Attorney for Petitioner