No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

TAYLOR HILDRETH,
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

PHILIP G. GALLAGHER
Interim Federal Public Defender
Southern District of Texas

SCOTT A. MARTIN
Assistant Federal Public Defender
Appellate Division Chief
Counsel of Record
440 Louisiana Street, Suite 1350
Houston, Texas 77002
(713) 718-4600
scott_martin@fd.org

QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1)—the statute that prohibits firearm possession by any person who was previously convicted of "a crime punishable by imprisonment for a term exceeding one year"—violates the Second Amendment.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- United States District Court for the Southern District of Texas:
  United States v. Taylor Hildreth, No. 4:21-cr-154-1 (June 23, 2022)

- United States Court of Appeals for the Fifth Circuit:
  United States v. Taylor Hildreth, No. 22-20301 (July 22, 2024)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Taylor Hildreth petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's opinion (App. 1a-11a) is reported at 108 F.4th 912.

JURISDICTION

The Fifth Circuit entered judgment on July 22, 2024. App. 1a. This petition is filed within 90 days of that date. *See* Sup. Ct. R. 13.1 & 13.3. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITTUIONAL AND STATUTORY PROVISIONS

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.

18 U.S.C. § 922(g)(1) provides:

> (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.

STATEMENT OF THE CASE

1. On March 25, 2021, a federal grand jury in the Houston Division of the Southern District of Texas returned a single-count indictment charging petitioner with being a felon in possession of a firearm (a "Firearms Import & Export, model Titan, .25 caliber pistol"), in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

On March 15, 2022, petitioner pleaded guilty to the indictment, without a plea agreement. In support of the guilty plea, the government proffered the following facts:

> On July 30th of 2020, Deer Park Police Department officers conducted a traffic stop on a vehicle in which the Defendant, Taylor Hildreth, was the front passenger.
>
> During a consensual search, officers located a Firearm[s] Import and Export model Titan .25 caliber pistol, hidden in a void behind the glove box. After being Mirandized, Hildreth admitted the firearm belonged to him.
>
> ATF agents determined that the recovered pistol meets the federal definition of a firearm, and that it was manufactured in the country of Italy, and had, therefore, traveled in interstate foreign commerce to have arrived in Texas.
>
> Mr. Hildreth had previously been convicted for assault of a family member in 2013 and felony assault in 2018[, and those prior convictions] would prevent him from lawfully possessing firearms.

Petitioner agreed that these facts were true.

On June 21, 2022, the district court sentenced petitioner to 80 months' imprisonment and three years' supervised release. The judgment was entered on June 23, 2022.

2. Petitioner appealed. On appeal, for the first time, petitioner challenged the constitutional basis for his conviction. As is relevant here, he argued that his guilty plea and

conviction should be set aside because Section 922(g)(1)'s categorical ban on firearm possession solely on account of a person's status as a felon is inconsistent with the Nation's historical tradition of firearm regulations, and thus violates the Second Amendment under the rule of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). App. 10a-11a.

The court of appeals affirmed. App. 11a. Consistent with its practice of rejecting unpreserved *Bruen*-based claims to Section 922(g)(1) on the ground that any constitutional defect is not yet plain in the absence of precedent resolving the issue, the court of appeals rejected the Second Amendment challenge. App. 10a-11a (citing *United States v. Jones*, 88 F.4th 571, 574 (5th Cir. 2023)).

REASONS FOR GRANTING THE PETITION

The question whether Section 922(g)(1) is compatible with the Second Amendment, as interpreted by this Court in *Bruen*, has split the circuits and produced widespread confusion and disagreement in the district courts. That question is implicated in thousands of cases each year, concerns a fundamental constitutional right, and remains unresolved after this Court's recent decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024). Nevertheless, the Court has deemed it prudent to return petitions raising *Bruen*-based challenges to Section 922(g)(1) to the lower courts for reconsideration with the benefit of *Rahimi*. The Court should take the same course here and grant the petition, vacate the Fifth Circuit's judgment, and remand for reconsideration in light of *Rahimi*. Alternatively, the Court should grant the petition and review the merits of this important constitutional question.

I. The question whether Section 922(g)(1) comports with the Second Amendment has divided the courts of appeals and its resolution is of surpassing importance.

As this Court recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and reiterated in *NYSRPA v. Bruen*, 597 U.S. 1 (2022), the Second Amendment guarantees to "all members of the political community," *Heller*, 554 U.S. at 581, the individual right to possess and carry firearms in common use for self-protection. *Bruen* adopted a "test rooted in the Second Amendment's text, as informed by history," for determining whether a modern-day regulation impermissibly infringes that right. *Bruen*, 597 U.S. at 19. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 24. At that point, it is the government's burden to

justify the law "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id*.

To do so, the government must show that the challenged law is "'relevantly similar' to laws that our tradition is understood to permit." *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024). "Why and how the regulation burdens" the Second Amendment right "are central to this inquiry." *Id.* A contemporary law will likely pass the "relevantly similar" test where there is substantial evidence of founding-era laws that "impos[ed] similar restrictions" on firearm use "for similar reasons." *Id.*

In *Rahimi*, for example, the government presented "ample" historical evidence that the founding generation approved of the temporary disarmament of individuals found to pose "a clear threat of physical violence to another" upon a "judicial determination[]" that they "likely would threaten or had threatened another with a weapon." *Id.* at 1901-02. The contemporary law at issue, 18 U.S.C. § 922(g)(8)(C)(i), imposes a similar burden on the Second Amendment right by disarming a person only while he is subject to a domestic-violence restraining order backed by a judicial finding that he "'represents a credible threat to the physical safety' of another"; and that temporary "restrict[ion] on gun use" is similarly designed "to mitigate demonstrated threats of physical violence." *Id.* at 1901-02 (quoting 18 U.S.C. § 922(g)(8)(C)(i)). Because the modern provision aligned with both the "how" and the "why" of the historical tradition of "allow[ing] the Government to disarm individuals who present a credible threat to the physical safety of others," its application to the defendant posed no Second Amendment problem under *Bruen*. *Id.* at 1902.

1. Prior to *Rahimi*, the question whether Section 922(g)(1)'s permanent, status-based ban on firearm possession comports with a sufficiently similar American regulatory tradition was the subject of an entrenched split among the circuits. *Rahimi* did not resolve that question. And there is good reason to anticipate that the dispute will not only persist, but deepen, upon the lower courts' reconsideration.

a. Before *Rahimi*, three circuits—the Eighth, Tenth, and Eleventh—engaged *Bruen*-based challenges to Section 922(g)(1) and upheld the statute's status-based ban on firearm possession as permissible in all applications, including as to all felony offenses (even non-violent ones), and as to all arms (even those that are commonly used for self-defense, like petitioner's handgun). *See United States v. Jackson*, 69 F.4th 495, 501-06 (8th Cir. 2023), *cert. granted, judgment vacated and remanded*, — S. Ct. —, 2024 WL 3259675, at *1 (July 2, 2024); *Vincent v. Garland*, 80 F.4th 1197, 1197-1202 (10th Cir. 2023), *cert. granted, judgment vacated and remanded*, — S. Ct. —, 2024 WL 3259668, at *1 (July 2, 2024); *United States v. Dubois*, 94 F.4th 1284, 1291-93 (11th Cir. 2024).

In *Jackson*, the Eighth Circuit held that Section 922(g)(1) complies with the Second Amendment both "as applied to" the particular defendant and as to all "other convicted felons." 69 F.4th at 502. In reaching this decision, the court found three factors particularly salient: (1) *Heller*'s assurance that the Court's opinion should not be read "to cast doubt on longstanding prohibitions on the possession of firearms by felons," *id.* at 501 (quoting *Heller*, 554 U.S. at 626), (2) evidence of founding-era laws disarming disfavored political and racial groups such as "Native Americans," "Catholics," and "people who refused to declare

an oath of loyalty," *id.* at 502-03, and (3) *Bruen*'s "repeated statements" that the Second Amendment "protects the right of a 'law-abiding citizen.'" *Id.* at 503 (citing *Bruen*, 597 U.S at 9, 15, 26, 29-31, 38, 60, 70-71). These factors, the court reasoned, justified the conclusion that "history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society," as well as by "categories of persons based on [the legislature's] conclusion that the category as a whole present[s] an unacceptable risk of danger if armed." *Id.* at 504. Understanding Section 922(g)(1) to reflect that Congress had so concluded as to felons, the court deemed the statute "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 502.

The Tenth Circuit, in *Vincent*, concluded that *Bruen* had not clearly abrogated its prior decisions upholding Section 922(g)(1) against Second Amendment challenge. *See* 80 F.4th at 1200-02. The court thus reaffirmed its view that Section 922(g)(1) is constitutional as to "*any* convicted felon's possession of a firearm," *id.* at 1202 (emphasis in original), without requiring the government to demonstrate the statute's "consisten[cy] with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. In *Dubois*, the Eleventh Circuit likewise concluded that *Bruen* had not abrogated its earlier precedent upholding Section 922(g)(1) as constitutional in all applications. *See* 94 F.4th at 1291-92.

b. The Third and Ninth Circuits, in contrast, issued decisions striking down Section 922(g)(1)'s application as unconstitutional under *Bruen*. *See Range v. Att'y Gen.*, 69 F.4th 96 (3d. Cir. 2023) (en banc), *cert. granted, judgment vacated and remanded*, — S.Ct. —, 2024 WL 3259661, at *1 (July 2, 2024); *United States v. Duarte*, 101 F.4th 657, 664-91

(9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. July 17, 2024).

In *Range*, the en banc Third Circuit applied *Bruen*'s text-and-history test and found Section 922(g)(1) unconstitutional as applied to a person whose prior conviction for making false statements in relation to food stamps had exposed him to more than a year in prison. *Range*, 69 F.4th at 98. First, the court rejected the government's contention that a person's past conviction for an offense punishable by over one year operates to remove him from "the people" to whom the right to keep and bear arms is vested. *Id.* at 101-03. Then, upon examination of the relevant historical evidence, the court held that the government had failed in its attempt to demonstrate a broad tradition of American laws imposing anything near a permanent ban on firearm possession on account of past misdeeds. *Id.* at 103-06. In reaching these conclusions, the Third Circuit rejected each of the factors the Eighth Circuit relied upon in *Jackson* to conclude the opposite. *See id.* at 101-06. As a dissenting judge observed, "the ruling is not cabined in any way and, in fact, rejects all historical support for disarming any felon." *See Range*, 69 F.4th at 116 (Shwartz, J.).

Duarte similarly perceived no historical tradition of permanent disarmament based on prior felony convictions for offenses that either did not exist, or were punished as misdemeanors, at the founding. The Ninth Circuit accordingly invalidated Section 922(g)(1)'s application to a defendant with prior convictions for modern-day felonies such as possessing drugs for sale, vandalism, and evading arrest. *See Duarte*, 101 F.4th at 688-91.

c. As the Solicitor General has acknowledged, *see* Supplemental Brief for the Federal Parties at 2, *Garland v. Range*, No. 23-374 (June 24, 2024), the Court's recent decision

in *Rahimi* clarified *Bruen*'s methodology to some extent, but did not resolve the deep and varied analytical disagreements that have driven the lower courts' conflicting applications of that methodology to Section 922(g)(1). The conflict over that question was already entrenched before *Rahimi*: the Third Circuit ruled en banc in *Range*, *supra*, while the Eighth Circuit twice declined requests to put the question to that full court. *See United States v. Jackson*, 85 F.th 468, 468-79 (8th Cir. 2023) (Stras, J., joined by Erickson, Grasz, and Kobes, J.J., dissenting from the denial of rehearing en banc); *United States v. Cunningham*, No. 22-1080, 2023 WL 5606171, at *1 (8th Cir. Aug. 30, 2023). And there is little doubt that the conflict will persist, and likely deepen, despite the Court's decisions to grant, vacate, and remand the petitions in *Jackson*, *Range*, *Vincent*, and others raising the same question for reconsideration in light of *Rahimi*. *See United States v. Duarte*, 108 F.4th 786, 787-88 (9th Cir. July 17, 2024) (Van Dyke, J., dissenting from the grant of rehearing en banc) (collecting GVR'd cases, and opining that "[n]othing in [this] Court's recent *Rahimi* decision controls or even provides much new guidance for these cases").

2. Resolving the question presented is also important. Despite serious concerns as to Section 922(g)(1)'s constitutionality in a wide array (if not all) of its applications under *Bruen*, the statute continues to result in the imprisonment of thousands of American citizens each year. *See* Petition for Writ of Certiorari at 22-24, *Garland v. Range*, No. 23-374 (Oct. 5, 2023) (marshaling statistics demonstrating that Section 922(g)(1) is the most frequently applied provision of Section 922(g)). And, for fear of the same fate, countless more individuals—like Ms. Vincent, Mr. Range, and Mr. Duarte—are deterred from engaging in

conduct that would otherwise come within the Second Amendment's core. Only this Court can settle this monumental question upon its inevitable return to the Court's docket.

II. The Court should grant the petition, vacate the Fifth Circuit's judgment, and remand for reconsideration in light of *Rahimi*.

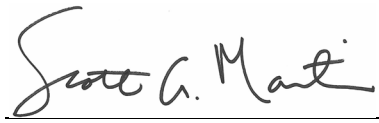
Given this Court's decisions to return petitions raising the question presented to the respective courts of appeals for reconsideration in light of *Rahimi*, the most prudent course is to follow the same path here. The Fifth Circuit has already received post-*Rahimi* supplemental briefing and heard oral argument in a pending case challenging Section 922(g)(1) as incompatible with *Bruen*'s methodology. *See United States v. Diaz*, No. 23-50452 (argued July 10, 2024). A GVR would allow petitioner to benefit from a favorable ruling in *Diaz*. *See Henderson v. United States*, 568 U.S. 266, 274 (2013) (holding that plain-error relief encompasses errors that become plain while an appeal is pending). And, in the event of an unfavorable result, it would permit petitioner to decide whether to seek this Court's review again after the issue has sufficiently percolated post-*Rahimi*. As an alternative, the Court may wish to grant the petition and review the merits of this important question in petitioner's case.

CONCLUSION

The Court should grant the petition, vacate the Fifth Circuit's judgment, and remand petitioner's case for reconsideration in light of *United States v. Rahimi*, 144 S. Ct. 1889 (2024). Alternatively, the petition should be granted.

Respectfully submitted,

PHILIP G. GALLAGHER
Interim Federal Public Defender
Southern District of Texas



SCOTT A. MARTIN
Assistant Federal Public Defender
Appellate Division Chief
Counsel of Record
440 Louisiana Street, Suite 1350
Houston, Texas 77002
(713) 718-4600
scott_martin@fd.org

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