NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

TORRENCE DENARD WHITAKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether after *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. ___, 144 U.S. 144 S.Ct. 1889 (2024), a criminal defendant may raise an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1).

(2) If so, whether under the *Bruen/Rahimi* methodology, the Second Amendment is unconstitutional as applied to a defendant like Petitioner with only non-violent priors.

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Mr. Whitaker submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Torrence Denard Whitaker was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

The following proceedings directly relate to the case before the Court:

United States v. Whitaker, 22-CR-80196-KAM (S.D. Fla.), *aff'd*, *United States v. Whitaker*, 2024 WL 3812277 (11th Cir. Aug. 14, 2024).

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14(b)(1).

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Torrence Denard Whitaker respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 24-10693, in that court on August 14, 2024. *See United States v. Whitaker*, 2024 WL 3812277 (11th Cir. Aug. 14, 2024).

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1). A copy of the decision of the United States District Court for the Southern District of Florida, denying Petitioner's Motion to Dismiss, is contained in the Appendix (A-6).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The United States Court of Appeals had jurisdiction over this cause pursuant to 28 U.S.C. § 1291. The decision of the court of appeals was entered on August 14, 2024. *United States v.Whitaker*, 2024 WL 3812277 (11th Cir. Aug. 14, 2024). This petition is timely filed pursuant to SUP. CT. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment, U.S. Const. amend. II, 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, United States Code Section 922(g)(1) 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 possess in or affecting commerce, any firearm or ammunition . . .

STATEMENT OF THE CASE

I. Legal Background

In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), this Court recognized that based on the text of the Second Amendment and history, the amendment conferred an individual right to possess handguns in the home for self-defense. *Id*. at 581-82, 592-95. Soon thereafter, in *United States* v. *Rozier*, 598 F.3d 768 (11th Cir. 2010), the Eleventh Circuit was asked to pass on the constitutionality of 18 U.S.C. § 922(g)(1), *i.e.*, the federal felon-in-possession ban, as applied to a defendant with non-violent drug priors who possessed the firearm in his home for self-defense. And the Eleventh Circuit held that "statutes disqualifying felons from possessing a firearm *under any and all circumstances* do not offend the Second Amendment." *Id.* at 771 (emphasis added). Simply "by virtue of [any] felony conviction," the court held, Rozier could be constitutionally stripped of his Second Amendment right to possess a firearm even for self-defense in his home, and the circumstances of such possession were "irrelevant." *Id*.

Notably, the Eleventh Circuit reached that conclusion without considering the Second Amendment's "plain text," including *Heller*'s specific determination that reference to "the people" in the Second Amendment—consistent with the use of the same term in other amendments—"unambiguously refers" to "all Americans." 554 U.S. at 579-81. Instead, *Rozier* relied entirely upon dicta in *Heller* about "presumptively lawful" "longstanding prohibitions" against felons possessing firearms, even though there was no question about § 922(g)(1) in *Heller*, and the Court acknowledged it had not engaged in an "exhaustive historical analysis" on the point. *Compare Heller*, 554 U.S. at 626-27 & n. 26 ("we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment") *with Rozier*, 598 F.3d at 768 (ignoring the latter

caveat; finding dispositive, *Heller*'s comment, 554 U.S. at 626, that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons").

Over a decade later, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the Court clarified *Heller*'s text-and-history approach which had been uniformly misunderstood by the lower courts, and set forth a two-step "test" for deciding the constitutionality of all firearm regulations going forward. At "Step One," *Bruen* held, courts may consider *only* whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 17. If it does, *Bruen* held, "the Constitution presumptively protects that conduct." *Id.* And regulating presumptively protected conduct is unconstitutional unless the government, at "Step Two" of the analysis, can "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation"—that is, the tradition in existence "when the Bill of Rights was adopted in 1791." *Id.* at 37.

After *Bruen* but prior to this Court's decision in *United States v. Rahimi*, 602 U.S. ___, 144 S.Ct. 1889 (2024), the Eleventh Circuit decided *United States v. Dubois*, 94 F.4th 1284 (11th Cir. Mar. 5, 2024), *pet. for cert. filed* Oct. 8, 2024 (No. 24-5744). In *Dubois*, the Eleventh Circuit continued to follow its pre-*Bruen* approach in *Rozier*. It declined to conduct *Bruen*'s two-step analysis for Second Amendment challenges—viewing that as "foreclose[d]" by *Rozier*, 94 F.4th at 1291 and rejecting the suggestion *Bruen* had abrogated *Rozier*. *Id.* Rather, the Eleventh Circuit cited, as determinative, the dicta from *Heller* referenced above. *See Dubois, id.* at 1291-93 (stating the Court "made it clear" in *Heller*, *id.* at 626-27 & n. 26, that its holding "did not cast doubt" on felon-in-possession prohibitions," which were "presumptively lawful;" and in *Bruen*, 597 U.S. at 17, that its holding there was "'[i]n keeping with *Heller*'").

In the view of the Eleventh Circuit, *Bruen* did not abrogate the *Rozier* approach because "*Bruen* repeatedly stated that its decision was faithful to *Heller*." *Dubois*, 94 F.4th at 1293. Therefore, the Eleventh Circuit held that *Rozier* remained good law, and felons remained "*categorically 'disqualified*' from exercising their Second Amendment right." *Id*. at 1293 (quoting *Rozier*, 598 F.3d at 770–71) (emphasis added).

Although the Eleventh Circuit technically left the door open to reconsideration after this Court decided *Rahimi*, by stating: "We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1)," 94 F.4th at 1293, it soon shut that door—definitively. After the Court handed down its decision in *Rahimi*, Petitioner asked the Eleventh Circuit to reconsider *Rozier/Dubois* in light of *Rahimi* in his case, particularly given that *Rahimi* confirmed as-applied challenges were permitted. But the court refused. Instead, it granted the government's motion for summary affirmance, finding its pre-*Bruen* approach precluding all challenges to § 922(g)(1) continued to govern even post-*Rahimi*. *United States v. Whitaker*, 2024 WL 3812277, *3 (11th Cir. Aug. 14, 2024). And the Eleventh Circuit has since refused rehearing en banc on the issue. *See United States v. Rambo*, 2024 WL 3534730 (11th Cir. July 25, 2025), *reh'g en banc denied* (11th Cir. Oct. 23, 2024).

II. Factual and Procedural Background

In December 2022, the United States charged Petitioner Torrence Denard Whitaker with a single count of violating 18 U.S.C. § 922(g)(1), for knowingly possessing a firearm and ammunition, while knowing that he had been convicted of a felony.

Petitioner moved to dismiss the indictment as both facially unconstitutional under the new two-step Second Amendment methodology set forth in *Bruen*, and unconstitutional as applied to him given that all of his priors—uttering a forged instrument, grand theft, possession of

oxycodone, tampering with evidence, possession of cocaine, possession of a firearm by a convicted felon, and burglary of a dwelling—were non-violent. Appendix A-6. He noted that *Bruen* dictated that at Step One of the analysis, the court asks only whether "the Second Amendment's plain text covers [the] individual's conduct." And if it does, the Constitution presumptively protects that conduct, and the burden falls on the government at Step Two to justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation—that is, the tradition in existence when the Bill of Rights was adopted in 1791. Petitioner argued § 922(g)(1) failed both steps of *Bruen*. Appendix A-6.

As support for an as-applied dismissal, Petitioner cited the then-recent opinions in *Range v. Att'y Gen. United States*, 69 F.4th 96 (3d Cir. 2023) (en banc) (finding no historical tradition of regulation for defendant convicted of making false statement on food stamp application), and *United States v. Bullock*, 679 F. Supp. 3d 501 (S.D. Miss. June 28, 2023) (finding § 922(g)(1) unconstitutional as applied to defendant previously convicted of aggravated assault and manslaughter).

The district court denied the motion to dismiss. The court concluded that *Bruen* did not undermine or abrogate the Eleventh Circuit's holding in *Rozier*, and even after *Bruen*, a statute categorically disqualifying felons from possessing firearms does not offend the Second Amendment. The district court did not address the specific as-applied challenge Mr. Whitaker raised given his unique set of non-violent priors. Appendix A-7.

Petitioner thereafter entered a guilty plea, and the district court sentenced him to 52 months incarceration.

On appeal, Petitioner continued to press both the facial and as-applied challenges he had preserved below. *See United States v. Whitaker*, DE 21 (11th Cir. June 27, 2024) (No. 24-10693).

Rather than responding on the merits, the United States instead moved for summary affirmance, arguing that both arguments were "squarely foreclosed" by *Dubois* which had reaffirmed the rule from *Rozier* that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment, and rejected the argument that *Bruen* abrogated *Rozier*. Appendix A-2. Petitioner opposed summary affirmance, arguing that *Rahimi* had confirmed *Bruen* set forth a new methodology, and clarified that methodology; neither *Rozier* nor *Dubois* had complied with the *Bruen/Rahimi* methodology, as neither case considered the plain text of the Second Amendment nor required the government to identify any Founding era analogues so the court could determine if there had been a consistent tradition of similar regulation that was "comparably justified" and imposed a "comparable burden;" and *Rahimi* had confirmed the error in rejecting all as-applied challenges post-*Bruen*. Petitioner asked the Court to decide his as-applied Second Amendment challenge as a matter of first impression under *Bruen* and *Rahimi*. Appendix A-3.

The Eleventh Circuit refused. Appendix A-1. It granted the government's motion for summary affirmance, and decided the case without any further merits briefing, because it found the government to be "clearly right" as a matter of law that Petitioner's challenges to the constitutionality of § 922(g)(1) were foreclosed by its still-binding prior precedents in *Rozier* and *Dubois*, which had not been abrogated by either *Bruen* or *Rahimi*. *United States v. Whitaker*, 2024 WL 3812277, *3 (11th Cir. 2024).

REASONS FOR GRANTING THE PETITION

I. The Circuits are Intractably Divided on Whether As-Applied Second Amendment Challenges to 18 U.S.C. §922(g)(1) are Cognizable after *Bruen* and *Rahimi*

This appeal asks, as a threshold question, whether after *Bruen* and *Rahimi* the government may categorically preclude a person who comes within the orbit of 18 U.S.C. 922(g)(1) from possessing a firearm simply because that person has a predicate felony conviction, or whether a defendant may mount a challenge that his prior record does not supply a basis, consistent with the Second Amendment, for permanent disarmament. Post-*Bruen*, but prior to *Rahimi*, both the Third and Ninth Circuit had granted as-applied challenges to § 922(g)(1) based on the specifics of the prior record. *See, e.g, Range v. Att'y Gen.*, 69 F.4th 96, 106 (3d Cir. June 6, 2023) (en banc); *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024). During that same period, the Seventh Circuit had assumed for the sake of argument that there was room for as-applied challenges to § 922(g), but noted that this Court had not yet specifically considered "whether non-violent offenders may wage as-applied challenges." *United States v. Gay*, 98 F. 4th 843, 846 (7th Cir. 2024). And three other circuits—in addition to the Eleventh in *Dubois*, the Eighth and Tenth Circuits as well, *see United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023); *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023)—had rejected felony-by-felony challenges and found the lifetime ban in § 922(g)(1) constitutional in all circumstances. In short, prior to *Rahimi*, the federal courts of appeals were cleanly split on this important, "pure question of law." *Atkinson* v. *Garland*, 70 F.4th 1018, 1025 (7th Cir. 2023) (Wood, J., dissenting).

Although the question was not directly presented in *Rahimi*, and the Court did not explicitly recognize this particular split in that case, as explained below, the manner by which the Court resolved *Rahimi* confirmed that as-applied challenges to the lifetime firearm ban in § 922(g)(1)

are indeed cognizable. After *Rahimi*, at least five circuits have weighed in on the as-applied question, and there is again a direct circuit split.

A. Three Circuits (the Third, Fifth, and Sixth Circuits) have recognized that an as-applied Second Amendment challenge is cognizable after *Rahimi*; however, two circuits (the Eighth and Eleventh) continue to reject any as-applied Second Amendment challenge. The Third, Fifth, and Sixth Circuits have each considered as-applied challenges to § 922(g)(1) after *Rahimi*, and confirmed that such challenges are indeed cognizable, even while rejecting such challenges based on the defendant's individual circumstances.

In *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), the Third Circuit entertained but rejected an as-applied challenge to § 922(g)(1) for a defendant on supervised release. The court cited *Rahimi* for holding that a 1790 Pennsylvania law disarming a convict while he served his criminal sentence "is sufficiently analogous to § 922(g)(1) as applied to convicts on supervised release." 111 F.4th at 270, 273.

In *United States v. Diaz*, 116 F. 4th 458 (5th Cir. 2024), the Fifth Circuit likewise entertained an as-applied challenge after *Rahimi*, and agreed with Diaz that his challenge based on the fact that his only priors were for car theft, evading arrest, and possession a firearm as a felon was not barred by pre-*Bruen* circuit precedent because *Bruen* established a new historical paradigm for analyzing Second Amendment claims, which made the circuit's pre-*Bruen* precedents obsolete. *Id.* at 467-71. However, the Fifth Circuit nonetheless found at *Bruen* Step Two that § 922(g)(1) was constitutional as applied to Diaz, given his prior conviction for car theft. Although the Fifth Circuit was clear that the mere fact that Diaz was a felon was *not* itself enough, *id.* at 469, the court found that "[t]aken together," historical "laws authorizing severe punishments

for thievery and permanent disarmament in other cases establish that our tradition of firearm regulation supports application of § 922(g)(1) to Diaz." *Id.* at 471.

Lastly, in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), the Sixth Circuit also entertained an as-applied challenge based on the specifics of the defendant's record. Although it agreed with the Fifth Circuit on several points, its *Bruen* Step Two inquiry was different. After conducting a "historical study," the Sixth Circuit held that "dangerousness" is the determinant of whether § 922(g)(1) is unconstitutional as applied to a particular defendant, and on that point the defendant bears the burden of demonstrating that in light of his "specific characteristics"—namely, his entire criminal record—he is not dangerous. *Id.* at 657-78, 659-63. And, given Williams' priors for aggravated robbery, attempted murder, and for "stashing a pistol that was used to murder a police officer," the court had "little trouble concluding that Williams is a dangerous felon," whom the government could constitutionally disarm for life. *Id.* at 662-63.

By contrast to the case-by-case approach of these three circuits, the Eighth and Eleventh Circuits have categorically barred all Second Amendment challenges to a § 922(g)(1) conviction, both before and after *Rahimi*. Indeed, the Eleventh Circuit held prior to *Bruen* in *Rozier*, and confirmed after *Bruen* in *Dubois*, that felons are "categorically 'disqualified' from exercising their Second Amendment right" "in all circumstances." *Dubois*, 94 F.4th at 1293 (quoting *Rozier*, 598 F.3d at 771) (holding the Eleventh Circuit's pre-*Bruen* precedent of *Rozier* survived *Bruen*). And in Petitioner's case, the Eleventh Circuit held that that the *Rozier/Dubois* rule even continued to apply even after *Rahimi*.

Similarly, the Eighth Circuit held both prior to and post-*Rahimi* that § 922(g)(1) is constitutional in all of its applications. As noted *supra*, after *Bruen*, in *United States v. Jackson*, the Eighth Circuit had explicitly rejected felony-by-felony litigation. And even after this Court

GVR'd for reconsideration in light of *Rahimi*, the Eighth Circuit (without soliciting briefing from the parties) stuck to its position—noting that "*Rahimi* does not change our conclusion" that "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." *United States v. Jackson*, 110 F. 4th 1120, 1122, 1125 (8th Cir. 2024). According to the Eighth Circuit, the mere status as a felon is sufficient to permanently disarm an individual, because a felon is "not a law-abiding citizen, and history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society;" indeed, "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id*. at 1127-29. *See also United States* v. *Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024) (confirming that post-*Rahimi*, "there is no need for felony-by-felony determinations regarding the constitutionality of § 922(g)(1) as applied to a particular defendant.")

B. The Eighth and Eleventh Circuits are wrong, given the resolution in *Rahimi* and for the reasons stated by the Fifth and Sixth Circuits. The Eleventh Circuit's pre-*Rahimi* decision in *Dubois* rejected every possible as-applied post-*Bruen* challenge to § 922(g)(1) without considering either text, historical regulations that might possibly be Founding era "analogues" for § 922(g)(1), or a defendant's prior record. But notably, that position was squarely rejected by the Court itself in *Rahimi*. Specifically, in holding that Rahimi's facial challenge failed because the statute "is constitutional as applied to the facts of Rahimi's own case," 144 S.Ct. at 1898, the Court necessarily and squarely rejected the position the government took at the *Rahimi* oral argument that as-applied challenges are unavailable in Second Amendment cases "if and when they come," 2023 WL 9375567, at *43. In fact, in making clear that the "no set of circumstances" standard from *United States v. Salerno*, 481 U.S. 739, 745 (1987) indeed applies to Second Amendment challenges, the Court necessarily recognized that as-applied Second Amendment challenges *are*

permitted. *See id.* ("[T]o prevail, the Government need only demonstrate that Section 922(g)(8) is constitutional in some of its applications.")

And notably, although an as-applied challenge to § 922(g)(1) was not before the Court in *Rahimi*, at the oral argument Justice Gorsuch recognized, in response to the government's now-provably-wrong assertion there that the Court should never entertain as-applied Second Amendment challenges, that there may indeed "be an as-applied *if it's a lifetime ban*." 2023 WL 9375567, at 43. Consistent with the implicit recognition of as-applied Second Amendment challenges in *Rahimi*, the Fifth and Sixth Circuits have rightly recognized that an as-applied challenge for § 922(g)(1) is indeed cognizable in certain circumstances.

In *Williams*, the Sixth Circuit found that it was "history" that showed § 922(g)(1) could be "susceptible to an as-applied challenge in certain cases." 113 F.4th at 657. Indeed, after conducting a "historical study" which it found revealed governments in England and colonial America disarmed groups that they deemed to be dangerous, the Sixth Circuit held that a conviction under § 922(g)(1) "must focus on each individual's specific characteristics" in order to be consistent with the Second Amendment. *Id.* at 657.

In so concluding, the Sixth Circuit explained that accepting that all felons could be permanently disarmed—without a finding of dangerousness—would be incompatible with at least three strands of this Court's jurisprudence. *First*, it would be "inconsistent with *Heller*" because "[i]f courts uncritically deferred to Congress's class-wide dangerousness determinations, disarmament laws would most often be subject to rational-basis review," contrary to express statements in *Heller*. *Williams*, 113 F.4th at 660; *see Heller*, 554 U.S. 570, 628 n.27 (2008) ("If all that was required to overcome the right to keep and bear arms was a rational basis, the Second

Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.").

Second, the Sixth Circuit found, "history cuts in the opposite direction," as "English laws" and common-law "disarmament legislation" showed that, traditionally, "individuals had the opportunity to demonstrate that they weren't dangerous" and therefore it would be "mistaken" to "let the elected branches"—Congress—"make the dangerousness call" *vel non* without any space for as-applied exceptions. *Id*. at 660.

Third, the Sixth Circuit reasoned, "complete deference to legislative line-drawing would allow legislatures to define away a fundamental right," which clashes with "[t]he very premise of constitutional rights" which "don't spring into being at the legislature's grace." *Id*. at 661; *see Kilbourn* v. *Thompson*, 103 U.S. 168, 199 (1880) ("[L]iving under a written constitution . . . it is the province and duty of the judicial department to determine . . . whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution[.]"). And, the Sixth Circuit concluded, "as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations." 113 F.4th at 661.

This view, the Sixth Circuit explained, was "differen[t] than" that held by "some of our sister circuits" including the Eleventh Circuit, which the court criticized as "hav[ing] read too much into the Supreme Court's repeated invocation of 'law-abiding, responsible citizens.'" *Id*. at 646. Accordingly, "[t]he relevant principle from our tradition of firearms regulation is that, when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don't fit the class-wide generalization" and thus proscribing "resort to the courts

through as-applied challenges . . . would abridge non-dangerous felons' Second Amendment rights." *Id*. at 662.

In concluding that as-applied challenges are permissible, the Fifth Circuit in *Diaz* agreed with the Sixth that a defendant's criminal history was what controlled. But its reasoning was different. In rejecting the proposition that "status-based gun restrictions" such as 922(g)(1) categorically "foreclose Second Amendment challenges," and explaining that after *Bruen* and *Rahimi* "history and tradition" must be analyzed to "identify the scope of the legislature's power to take [the right] away," the Fifth Circuit quoted then-Judge Barrett's dissent in *Kanter* v. *Barr*, 919 F.3d 437 (7th Cir. 2019). *See* 116 F.4th at 466 (citing Kanter, 919 F.3d at 452 (Barrett, J., dissenting) ("[A]ll people have the right to keep and bear arms," but "history and tradition support Congress's power to strip certain groups of that right"). Noting that *Bruen* "mandates" this approach, and *Rahimi* had just confirmed it, *id.* at 466, the Fifth Circuit was clear that "[s]imply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny. . . . [N]ot all felons today would have been considered felons at the Founding. Further, Congress may decide to change that definition in the future. Such a shifting benchmark should not define the limits of the Second Amendment[.]" *Id*. However, the Court reasoned, at the Founding, "at least one of the predicate crimes that Diaz's § 922(g)(1) conviction relies on—theft—was a felony and thus would have led to capital punishment or estate forfeiture," and therefore "[d]isarming Diaz fits within this tradition of serious and permanent punishment." *Id.* at 470. But undoubtedly, the Fifth Circuit acknowledged, the analysis would be different for "as-applied challenges by defendants with different predicate convictions." *Id.* at 470, n.4.

The Court should grant certiorari to resolve the circuit conflict on this issue, and recognize explicitly that for the above reasons, as-applied Second Amendment challenges are indeed

cognizable after *Bruen/Rahimi*. While admittedly, en banc proceedings are currently pending in both the Third and Ninth Circuits (in *Range* and *Duarte*), both of these courts previously recognized that as-applied challenges to § 922(g)(1) are available. And the government has not argued in either en banc case that anything in *Rahimi* specifically casts doubt on that proposition.

II. The Circuits are Intractably Divided on Whether, Under the *Bruen/Rahimi* Methodology, the Second Amendment is Unconstitutional As Applied to a Defendant With Non-Violent Priors

A. Only the Eleventh Circuit still follows its pre-*Bruen* mode of Second Amendment analysis after *Rahimi*. The Eleventh Circuit is the only Circuit in the country at this juncture that refuses to *even try* to apply the new Second Amendment methodology set forth in *Bruen* and clarified in *Rahimi*. Although the Tenth Circuit, like the Eleventh Circuit, had continued to adhere to a post-*Heller* precedent after *Bruen*, *see Vincent v. Garland*, 80 F. 4th 1197 (10th Cir. 2023), after the GVR in *Vincent* for reconsideration in light of *Rahimi*, the Tenth Circuit asked for full supplemental briefing by both parties as to the impact of *Rahimi*. And even the Eighth Circuit, which has continued to preclude all as-applied challenges after *Rahimi*, at least justified that result by identifying what it believes are appropriate analogues for Step Two of the *Bruen* analysis. *See United States v. Jackson*, 110 F. 4th 1120, 1126-27 (8th Cir. 2024) (*Jackson II*) (relying on disarmament of various groups, including religious minorities and Native Americans in colonial America).

While Petitioner disputes the correctness of the Eighth Circuit's *Bruen* Step Two analysis for the reasons stated by the dissenters from rehearing en banc in *Jackson II*, see ___F.4th ___, 2024 WL 4683965 (8th Cir. Nov. 5, 2024) (Stas, J., joined by Erickson, Grasz, and Kobes, JJ., dissenting from rehearing en banc), at least the *Jackson II* panel recognized that *Bruen* and *Rahimi* do in fact dictate a new methodology applicable to all Second Amendment claims which requires

searching for a relevantly similar, Founding era historical analogue. Only the Eleventh Circuit does not, consistently affirming denials of well-founded as-applied challenges based on pre-*Bruen* mode of analysis which had reflexively followed dicta in *Heller*, over *Heller*'s holding on plain text, history, and tradition. A true outlier today, only the Eleventh Circuit refuses to even engage in any *Bruen/Rahimi* analysis. Other circuits, notably, have harshly criticized and rejected the Eleventh Circuit's approach. And district courts across the country—both prior to and after *Rahimi*—have recognized that § 922(g)(1) would indeed be unconstitutional as applied to a defendant, like Petitioner, with non-violent priors.

For the reasons outlined below, the Eleventh Circuit is clearly wrong.

B. After *Bruen/Rahimi*, § 922(g)(1) is presumptively unconstitutional at Step One of the required analysis, for the reasons stated by the Fifth and Sixth Circuits.

In *Heller*, Court was clear that "the people" as used in the Second Amendment "unambiguously refers" at the very least to "*all Americans*"—"not an unspecified subset"—because any other interpretation would be inconsistent with the Court's interpretation of the same phrase in the First, Fourth, Ninth, and Tenth Amendments. *Id.* at 579-81 (citing *United States v. Verdugo–Urquidez*, 494 U.S. 259, 265 (1990) ("the people" was a "term of art" at the time, which had the same meaning as in other parts of the Bill of Rights)).

Just as *Bruen* found dispositive that the Second Amendment does not "draw . . . a home/public distinction with respect to the right to keep and bear arms," 597 U.S. at 32, it should be dispositive here—as a textual matter—that the Second Amendment likewise does not draw a felon/non-felon distinction. Indeed, even prior to *Bruen*, panels of the Eleventh and Seventh Circuits had recognized that the term "people" in the Second Amendment is *not* textually limited to law-abiding citizens. *See United States v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022)

(noting that even "dangerous felons" are "indisputably part of 'the people'" for Second Amendment purposes); *see also United States v. Meza-Rodriguez*, 798 F.3d 664, 671 (7th Cir. 2015) (a person's criminal record is irrelevant in determining whether he is among "the people" protected under the Second Amendment; the amendment "is not limited to such on-again, off-again protections").

But indeed, *if* there even *could* have been doubt on that point prior to *Rahimi*, there *cannot* be after *Rahimi*. That is because this Court in *Rahimi* squarely rejected the Solicitor General's proffered limitation of "the people" to the narrower subset of "law-abiding, responsible" citizens. Although the *Rahimi* majority confirmed the Second Amendment "secures *for Americans* a means of self-defense," *id.* at 1897 (emphasis added), Justice Thomas—who disagreed with the majority *only* as to *Bruen* Step Two—supported that with a robust explanation of the proper Step One analysis, confirming that *any American citizen* is among "the people" as a matter of the plain text. 144 S.Ct. at 1933 (noting "the people" "unambiguously refers to all members of the political community, not an unspecified subset;'" "The Second Amendment thus recognizes a right 'guaranteed to "*all Americans*;"' citing *Bruen*, 597 U.S. at 70, and *Heller*, 554 U.S. at 581) (emphasis added).

Justice Thomas left no doubt about the implication of *Heller*/*Bruen/Rahimi* for "the people" question in § 922(g)(1), by confirming that "Not a single Member of the Court adopts the Government's [law-abiding, responsible citizen] theory." 144 S.Ct. at 1944. In short, as Justice Thomas has definitively exposed, the "law-abiding, responsible citizen" theory unanimously rejected by *Rahimi* "is the Government's own creation, designed to justify every one of its existing regulations. It has no doctrinal or constitutional mooring." *Id.* at 1945. And since that necessarily abrogates the assumptions underlying *Rozier/Dubois*, *Rahimi* should have compelled the Eleventh

Circuit to conclude—as the Fifth and Sixth Circuits have now concluded—that this Court meant what it said when it declared in *Heller* that the Second Amendment right "belongs to all Americans." 554 U.S. at 581.

In *Williams*, the Sixth Circuit rightly agreed with the argument made by Petitioner below that as the Court recognized in *Heller*, the phrase "the people" in the plain text of the Second Amendment must have the same meaning as in both the First and Fourth Amendments, because the protections provided in those Amendments do not evaporate when the claimant is a felon. 114 F.4th at 649. *Id*. Excluding a felon from "the people" in the Second Amendment would exclude him from the First and Fourth Amendments too, the Sixth Circuit reasoned, which is "implausible under ordinary principles of construction. Courts presume that words are used in a consistent way across provisions. *See Hurtado v. California*, 110 U.S. 516, 533-34 [] (1884) ("The conclusion is equally irresistible, that when the same phrase was employed [elsewhere], . . . it was used in the same sense and with no greater extent"); *Pulsifer v. United States*, 601 U.S. 124, 149 [] (2024)); *see also* A. Scalia & B. Garner, Reading Law 170-171 (2012) (explaining in a given statute, the same term usually has the same meaning).

And indeed, as Petitioner has consistently argued below, the Sixth Circuit has rightly determined that its pre-*Bruen*, pre-*Rahimi* precedent was no longer viable because *Bruen* and *Rahimi* "supersede[d] our circuit's past decisions on 922(g)." 113 F.4th at 646. Expressly disagreeing with the Eleventh Circuit in *Dubois*, the Sixth Circuit held—just as Petitioner argued to the Eleventh Circuit—that pre-*Bruen* circuit precedent isn't binding because:

> Intervening Supreme Court precedent demands a different mode of analysis. *Heller*, to be sure, said felon-in-possession statutes were "presumptively lawful." But felon-in-possession statutes weren't before the Court in *Heller* or *McDonald*. And while *Bruen* didn't overrule any aspect of *Heller*, it set forth a new analytical framework for courts to address Second Amendment challenges. Under *Brue*n, courts must consider whether a law's burden on an individual's Second

> Amendment rights is "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 144 S. Ct. at 1898. Specifically, courts must study how and why the founding generation regulated firearm possession and determine whether the application of a modern regulation "fits neatly within" those principles. *Id*. at 1901.
>
> Our circuit's pre-*Bruen* decisions on § 922(g)(1) omitted any historical analysis. They simply relied on *Heller*'s one-off reference to felon-in-possession statutes. Those precedents are therefore inconsistent with *Bruen*'s mandate to consult historical analogs. Indeed, applying *Heller*'s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to "expound upon the historical justifications" for firearm-possession restrictions when the need arose. 554 U.S. at 635. Thus, this case is not as simple as reaffirming our pre-*Bruen* precedent.

Williams, 113 F.4th at 648.

And notably, the Fifth Circuit reasoned similarly in *Diaz*. There, the Fifth Circuit agreed post-*Rahimi* that not only is a new Second Amendment methodology required after *Bruen*; but indeed, as a matter of "plain text" felons are part of "the people," and any prior precedent relying on the *Heller* dicta without conducting the newly-mandated historical analysis no longer controls. *See Diaz*, 116 F.4th at 465-67 (pre-*Bruen* circuit precedents no longer control because *Bruen* "established a new historical paradigm for analyzing Second Amendment claims;" the mention of felons in prior Supreme Court cases was "mere dicta" which "cannot supplant the most recent analysis set forth by the Supreme Court in *Rahimi*, which we apply today;" squarely rejecting the government's "familiar argument" that for the *Bruen* Step One "plain text" analysis, felons are not part of "the people").

The reasoning of the Fifth and Sixth Circuits is consistent with *Heller*, and correct on these points. For the reasons stated in *Diaz* and *Williams*, the Court should clarify for the Eleventh Circuit that: (1) a pre-*Bruen* circuit precedent like *Rozier*, or a post-*Bruen* circuit precedent like *Dubois* that did *not* apply the plain text-and-historical tradition test does not control after *Bruen/Rahimi*; (2) applying the Court's new methodology, felons are indeed part of "the people" covered by the Second Amendment's plain text, and Petitioner has thus met the new *Bruen* Step

One; and (3) as both the Fifth and Sixth Circuits have recognized, as per *Bruen* and *Rahimi*, this establishes a presumption that §922(g)(1) is unconstitutional, and shifts the burden to the government to show at Step Two a tradition of at least "relevantly similar" regulation (in terms of both the "why" and "how") dating to the Founding.

C. After *Bruen/Rahimi*, the lower courts are in complete disarray as to the proper as-applied Step Two analysis. Petitioner's prior convictions are non-violent. He was previously convicted of uttering a forged instrument, grand theft, possession of oxycodone, tampering with evidence, possession of cocaine, possession of a firearm by a convicted felon, and burglary of a dwelling. As the Solicitor General acknowledged in its Supplemental Brief for the Federal Parties in *Garland v. Range*, prior to *Rahimi*, many district courts had found criminal records containing very serious, and even demonstrably violent, convictions to *not* provide a valid basis for permanent disarmament.[1] Multiple courts had also found a record consisting of drug or other clearly non-

[1] *See, e.g.*, *United States* v. *Williams*, No. 23-cr-20201, 2024 WL 731932, at *1 n.2 (E.D. Mich. Feb. 22, 2024) ("first and second- degree murder") (citation omitted); *United States* v. *Bullock*, 679 F. Supp. 3d 501, 506 (S.D. Miss. 2023) ("aggravated assault and manslaughter"); *United States* v. *Brunner*, No. 23-cr-30088, 2024 WL 1406190, at *1 n.1 (S.D. Ill. Apr. 2, 2024) ("possession of a stolen firearm, carjacking, and use of a firearm" during and in furtherance of a crime of violence) (capitalization omitted); *United States* v. *Cherry*, No. 23-cr-30112, 2024 WL 379999, at *1 n.1 (S.D. Ill. Feb. 1, 2024) ("aggravated robbery and attempted vehicular hijacking") (capitalization omitted); *United States* v. *Harper*, 689 F. Supp. 3d 16, 20 (M.D. Pa. 2023) ("multiple armed robberies"); *United States* v. *Leblanc*, No. 23-cr-45, 2023 WL 8756694, at *2 (M.D. La. Dec. 19, 2023) ("armed robbery"); *United States* v. *Anderson*, No. 23-cr-594, 2023 WL 7531169, at *1 (N.D. Ill. Nov. 13, 2023) ("aggravated rob-bery with a firearm"); *United States* v. *Griffin*, No. 21-cr-693, 2023 WL 8281564, at *1 (N.D. Ill. Nov. 30, 2023) ("robbery"); *United States* v. *Salme-Negrete*, No. 22-cr-637, 2023 WL 7325888, at *1 (N.D. Ill. Nov. 7, 2023) ("robbery, aggravated battery/use of a deadly weapon, and aggravated unlawful use of a weapon"); *United States* v. *Diaz*, No. 20-cr-597, 2023 WL 8019691, at *1 (N.D. Ill. Nov. 20, 2023) ("aggravated discharge of a firearm, aggravated battery, and domestic battery"); *United States* v. *Delaney*, No. 22-cr-463, 2023 WL 7325932, at *1 (N.D. Ill. Nov. 7, 2023) ("aggravated bat-tery"); *United States* v. *Crisp*, No. 23-cr-30006, 2024 WL 664462, at *1 n.1 (S.D. Ill. Feb. 16, 2024) ("aggravated discharge of a firearm").

violent offenses—as here—did *not* provide a basis for permanent disarmament.[2] Although the Fifth and Sixth Circuits have disagreed as to the appropriate as-applied test post-*Rahimi*—with the Fifth Circuit finding § 922(g)(1) constitutional as applied to a defendant with a car theft prior, and the Sixth suggesting (without deciding) that a non-violent drug offense and a burglary conviction might as well, *Williams*, 113 F.4th at 659—district courts have continued to find § 922(g)(1) unconstitutional as applied to defendants with priors analogous to, or even more serious than, those of Petitioner. *See, e.g, United States v. Brown*, 2024 WL 466527 (S.D. Ill. Nov. 4, 2024) (finding § 922(g) unconstitutional as applied to a defendant with a residential burglary and domestic battery conviction; defendant is included in "the people" protected by the Second Amendment, and none of the historical laws offered by the government imposed a comparable burden of permanent disarmament for a status, rather than criminal conduct); *United States v. Smith*, No. 24-cr-00228-GKF, 2024 WL 4138621, at *9 (N.D. Okla. Sept. 10, 2024) (dismissing a § 922(g)(1) indictment where "the government [did] not show[] that drug possession [was] . . . linked to violence such that [the defendant] would present a danger to the public if armed") (citation omitted) (emphasis omitted); *United States v. Forbis*, ___ F. Supp. 3d ___, 2024 WL 3824642 (N.D. Okla. Aug. 14,

[2] *United States* v. *Hostettler*, No. 23-cr-654, 2024 WL 1548982, at *1-*2 (N.D. Ohio Apr. 10, 2024) (possession of a controlled substance, forgery, receiving stolen property, carrying a concealed weapon, aggravated possession of drugs, and felon in possession of a firearm); *United States* v. *Taylor*, No. 23-cr-40001, 2024 WL 245557, at *1 n.1 (S.D. Ill. Jan. 22, 2024) (conspiracy to manufacture methamphetamine); *United States* v. *Jones*, No. 23-cr-74, 2024 WL 86491, at *2 (S.D. Miss. Jan. 8, 2024) ("many felony drug offenses, but those are nonviolent crimes"); *United States* v. *Daniel*, No. 20-cr-2, 2023 WL 7325930, at *1 (N.D. Ill. Nov. 7, 2023) ("possession of a controlled substance and delivery of a controlled substance, in addition to convictions under Illinois narcotics laws"); *United States* v. *Quailes*, 688 F. Supp. 3d 184, 187-188 (M.D. Pa. 2023) ("four prior Pennsylvania convictions for felony drug offenses involving the possession with intent to distribute heroin and cocaine"); *United States* v. *Martin*, No. 23-cr-40048, 2024 WL 728571, at *1 n.1 (S.D. Ill. Feb. 22, 2024) ("obstructing justice") (capitalization omitted); *Williams* v. *Garland*, No. 17-cv-2641, 2023 WL 7646490, at *1 (E.D. Pa. Nov. 14, 2023) (recidivist "DUI at the highest rate of intoxication").

2024) (granting renewed motion to dismiss § 922(g)(1) indictment for defendant with two prior convictions for unlawful possession of methamphetamine, and one for driving under the influence).

Had Petitioner filed his motion to dismiss before the courts that decided *Brown*, *Smith*, *Forbis*, or any of the courts listed in footnote 2, his motion would have been granted because all of his priors are non-violent.

III. This Case Presents Important and Recurring Questions, and Provides an Excellent Vehicle for the Court to Resolve both Circuit Conflicts

As acknowledged by the Solicitor General in the aftermath of *Rahimi,* the conflict over the constitutionality of § 922(g)(1) is unlikely to resolve itself without further intervention by this Court. *See* Supp. Br. for the Federal Parties, *Garland v. Range*, No. 23-374, at *5 (June 24, 2024). Disagreement about § 922(g)(1)'s constitutionality has already had widespread and disruptive effects. *Id*. In fiscal year 2022, convictions under § 922(g)(1) accounted for nearly 12% of all federal criminal cases. *Id*. Petitioner asks that the Court grant plenary review to resolve two direct circuit splits that existed prior to *Rahimi*, but have only deepened since *Rahimi*—particularly since these splits lie at the intersection of constitutional rights and criminal law. *See Gillard v. Mississippi*, 464 U.S. 867, 873 (1983) (Marshall, J., dissenting from denial of certiorari) ("Although the issues has arisen repeatedly" failure to grant review means "criminal defendants in Mississippi and numerous other states have no legal remedy for what . . . may well be a constitutional defect."). And Petitioner's case presents an ideal vehicle for resolving both important and recurring legal questions raised herein, for multiple reasons.

First, both issues raised herein were pressed by Petitioner in the district court and on appeal. There is no possible argument in this case, as there may be in other cases that will come before this Court, that Petitioner's as-applied challenge should be reviewed deferentially for "plain

error" only. *Compare Duarte*, 101 F. 4th at 663 (as-applied challenge not preserved and therefore potentially subject to plain-error review). The dispute on the applicability of plain error review, currently being litigated before the en banc Ninth Circuit in *Duarte*, will not impact this case.

Second, Petitioner's case is unlike other cases that have recently come before the Court raising these very same issues, but the court of appeals did not have a prior opportunity to consider the impact of *Rahimi*. Such cases have necessitated a GVR so that the Eleventh Circuit could consider the impact of *Rahimi* in the first instance. *See, e.g., Pierre v. United States*, ___ S.Ct. ___, 2024 WL 4529801 (U.S. Oct. 21, 2024) (No. 24-37). Here, by contrast to *Pierre* and also *Dubois*, *pet. for cert*. filed Oct. 8, 2024 (No. 24-5744), Petitioner specifically argued to the Eleventh Circuit that *Rahimi* confirmed as-applied challenges were permissible after *Bruen*, and that his as-applied challenge met both steps of this Court's new *Bruen/Rahimi* methodology. Nonetheless, the Eleventh Circuit refused to consider that methodology because of binding pre-*Rahimi* circuit precedent.

Third, not only did the Eleventh Circuit squarely reject Petitioner's as-applied challenge based on *Bruen/Rahimi*, under strict application of its "prior panel precedent" rule. The Eleventh Circuit was asked in another as-applied case, *United States v. R*ambo, to reconsider *Rozier/Dubois* en banc in light of *Bruen/Rahami*, and declare *Rozier/Dubois* abrogated. And it squarely refused to do so. Since there was not one vote for rehearing en banc in *Rambo*, there is ***no*** chance the Eleventh Circuit will reconsider its barring of *all* as-applied challenges without the intervention of this Court.

Fourth, Issue I raises what is unfortunately a threshold obstacle for defendants in the Eighth and Eleventh Circuits—but not for defendants in other circuits. It is unjustifiable that from the very outset, defendants in these two Circuits are being denied the type of review being accorded

similarly-situated defendants in the other circuits after *Bruen* and *Rahimi*. Plainly, the right to review should not vary by geography. The refusal of these two circuits to entertain any Second Amendment as-applied challenges is not only contrary to *Rahimi*; it has equal protection implications. As Judge Stras and three other Eighth Circuit judges recognized even prior to *Rahimi*, "By cutting off as-applied challenges" to § 922(g)(1), the courts "create a group of second-class citizens: felons who, for the rest of their lives, cannot touch a firearm, no matter the crime they committed or how long ago it happened." *United States v. Jackson*, 85 F.4th 468, 469 (8th Cir. 2023) (Stras, J., joined by Erickson, Grasz, and Kobes, JJ, dissenting from denial of rehearing en banc).

And post-*Rahimi*, these same Eighth Circuit judges dissented from rehearing en banc after the *Jackson* panel reaffirmed its pre-*Rahimi* position. *See United States v. Jackson*,___ F.4th ___, 2024 WL 4683965, at *2 (8th Cir. Nov. 5, 2024) (order denying rehearing en banc) (Stras, J., joined by Erickson, Grasz, and Kobes, JJ) (noting that "other courts have not made the same mistake" of "insulating felon-dispossession laws from Second Amendment scrutiny of any kind;" citing *Diaz*, *Moore*, *Williams*, *Gay*; Judge Vanyke's dissent from the grant of rehearing en banc in *Duarte*, and Judge Agee's concurrence in the judgment in *United States v. Price*, 111 F.4th 392, 413 (4th Cir. 2024) (en banc) (recognizing that whether "§ 922(g)(1) is unconstitutional as applied to certain, non-violent felons . . . is far from settled")). Although Judge Stras opined that the Eighth Circuit is the only "post-*Rahimi* outlier," *id.*, that is actually incorrect. The Eleventh Circuit is an even farther outlier, because the Eleventh is the only circuit to blindly follow its pre-*Bruen* mode of analysis, and not even give lip-serve to the *Bruen/Rahimi* methodology.

A grant of certiorari in Petitioner's case would allow the Court to not only "kill two birds with one stone"—but three. That is because, in *this single case*, the Court could squarely address

the threshold error made by the Eighth and Eleventh Circuits in barring all as-applied challenges to § 922(g)(1); clarify that pre-*Bruen* circuit precedents that did not consider either the plain text of the Second Amendment or any history cannot govern after *Bruen* and *Rahimi*; and then resolve the deep conflict among the lower courts as to what type of prior criminal record renders § 922(g)(1) unconstitutional as applied. Resolving all of these issues in a single case would be the most efficient resolution possible of the Second Amendment issues now dividing the circuits.

Fifth, with specific regard to Issue II, the lower courts are deeply divided on the standard that should govern an as-applied challenge. In fact, not only the circuits but the district courts as well are all over the map on this question. They were split before *Rahimi*; they are split after *Rahimi*; and the split shows no signs of lessening. Notably, the government has consistently argued for a tradition of disarming "dangerous" individuals. But even *if* a such a tradition can be shown consistent with *Bruen* and *Rahimi*, if "dangerous" means "violent" then that tradition would be irrelevant to a defendant like Petitioner, whose priors are indisputably non-violent.

Sixth, because Petitioner has several different types of non-violent priors—not only drug offenses without the use of firearms, but also offenses such as uttering a forged instrument and possession of a firearm by a convicted felon—this single petition would permit the Court to consider the constitutionality of § 922(g)(1) "across a range" of non-violent circumstances. Supp. Br. for United States, *Garland v. Range*, *supra*, at 6. Granting this Petition would therefore be consistent with the Solicitor General's suggestion immediately after *Rahimi* that the Court grant certiorari to consider Rahimi's application to § 922(g)(1) cases involving different types of priors. Although the Court rejected that suggestion at the time, deciding instead to afford the courts of appeals the opportunity to reconsider their prior rulings in light of *Rahimi*, there is no need for

such action here since the Eleventh Circuit has definitively declined to consider ***any*** as-applied challenge after *Rahimi*.

Finally, although there are currently en banc proceedings in the Third Circuit in *Range*, and in the Ninth Circuit in *Duarte*, and the Tenth Circuit is reconsidering its decision in *Vincent* with the benefit of supplemental briefing from the parties on the impact of *Rahimi*, the Court need not and should not wait for the decisions in these other circuit cases before granting certiorari. Regardless of the result reached in these proceedings, any additional lower court decisions at this juncture will simply exacerbate the already-deep Circuit split on the issues raised herein.

However, if the Court does ultimately choose to resolve the issues raised herein in another case or set of cases, Petitioner asks that the Court hold his case pending its resolution of such case(s).

CONCLUSION

Based on the foregoing, the petition for certiorari should be granted. Alternatively, the Court should hold this petition pending its decision in any other case(s) that will resolve the issues presented herein.

Respectfully submitted,

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