No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

RAHEEM MORRISSETTE, 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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QUESTIONS PRESENTED

Is the lifetime ban on possession of firearms by all felons, codified at 18 U.S.C. § 922(g)(1), unconstitutional on its face, because it is permanent and applies to all persons convicted of felonies, even those who are not violent?

And is it unconstitutional as applied to Mr. Morrissette, who has no violent convictions?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner RAHEEM MORRISSETTE petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

Alternatively, Mr. Morrissette notes that numerous petitions raising the same issues are now or will shortly be filed in this Court. Accordingly, Mr. Morrissette requests that his petition be held pending those and/or other petitions if this Court anticipates that it may grant a writ of certiorari on the issues raised herein.

OPINIONS & ORDERS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is attached as appendix 1.

JURISDICTION

On November 7, 2024, the Eleventh Circuit affirmed the district court's judgment and sentence. No petition for rehearing was filed. The deadline to file this petition is February 5, 2025, under Supreme Court Rule 13. Therefore, this petition is timely. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1) states in relevant part:

(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.

The **Second Amendment to the U.S. Constitution** provides in relevant part:

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.

INTRODUCTION

Since this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the courts of appeal have been wrestling with facial and as applied challenges to the constitutionality of 18 U.S.C. § 922(g)(1). Some courts have rejected all challenges, relying on dicta in *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) and *Bruen*, that bans on possession of firearms by convicted felons are "presumptively lawful." *United States v. Dubois*, 94 F.4th 1284, 1292 (11th Cir. 2024); *Vincent v. Garland*, 80 F.4th 1197, 1201 (10th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2708 (2024). Some have rejected facial challenges but entertained as applied challenges. *Range v. Att'y. Gen.*, 2024 U.S. App. LEXIS 32560; __ F.4th __; 2024 WL 5199447 (3rd Cir. Dec. 23, 2024) (en banc); *United States v. Duarte*, 101 F. 4th 657, vacated and en banc granted, 108 F.4th 786 (9th Cir. 2024); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024).

Last term's opinion in *United States v. Rahimi*, 144 S. Ct. 1189 (2024), did not alter the state of disarray. Lower courts continue to be divided on whether *Bruen* meaningfully altered the test to be applied to bans on possession of firearms by convicted felons. *Compare United States v. Williams*, 113 F.4th 637, 662-63 (6th Cir. 2024) (rejecting as applied challenge by "dangerous person" but indicating persons with other categories of non-dangerous felonies might be successful) with *Diaz*, 116 F.4th at 469-70 (finding felon dispossession consistent with the historical tradition) and *United States v. Jackson*, 110 F.4th 1120, 1128-29 (8th Cir. 2024) (same, relying on Congress's judgment of what categories of persons are dangerous).

This is an important question. 8,040 cases were prosecuted in FY2023 under 18 U.S.C. § 922(g) in federal courts nationwide, the vast majority of which are § 922(g)(1). U.S. Sentencing Comm'n, "Quick Facts – 18 U.S.C. § 922(g) Offenses" (June 2024).[1] And thousands more are prosecuted under similar state statutes each year.

The Department of Justice agreed to certiorari in several cases last term, but none were granted argument. *See, e.g.*, *United States v. Duarte*, 108 F.4th 786, 787 (9th Cir. 2024) (dissenting from grant of en banc rehearing). But the question will not go

[1] Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY23.pdf (last visited December 2, 2024).

away, and a clear circuit split has continued. "[P]erhaps no single Second Amendment issue has divided the lower courts more than the constitutionality of the 18 U.S.C. § 922(g)(1) felon-disarmament's rule's application to certain nonviolent felons." *Id.* In sum, the circuits "require clearer instruction from the Supreme Court" regarding the constitutionality of 18 U.S.C. § 922(g)(1) after *Bruen* and *Rahimi*. *Dubois*, 94 F.4th at 1293.

Because these critical issues remain unresolved and the circuits remain split as a result, scores of cases soon will return to this Court, including the lead case in the Eleventh Circuit, *Andre Michael Dubois v. United States* (No. 24-5744), which was granted, vacated, and remanded on January 10, 2025. Accordingly, this Court should grant certiorari on the questions presented. This case is a good vehicle to resolve the questions. Mr. Morrissette preserved his facial and as-applied challenges in the district and appellate courts. Alternatively, if the Court anticipates that it may grant a writ of certiorari on the issues raised herein in another case, Mr. Morrissette requests that his petition be held pending resolution of that case.

STATEMENT OF THE CASE

In March 2023, a police officer in Mobile, AL, stopped the car Mr. Morrissette was driving for traffic violations. During a search of the car, the officer found a loaded pistol between the driver's seat and center console, a tiny amount (4.6 grams) of marijuana, and a digital scale.

Mr. Morrissette was charged in a one-count federal indictment with knowing possession of the firearm as a felon. At the time he possessed the pistol seized during the traffic stop, he had Alabama felony convictions for first-degree marijuana possession, third-degree burglary, and first-degree criminal mischief.

Mr. Morrissette filed a motion to dismiss the indictment on grounds that § 922(g)(1) violated the Second Amendment on its face and as applied to him according to the framework established in *Bruen*. He argued the statute was unconstitutional as applied to him because his prior convictions were non-violent. The district court denied the motion, citing pre-*Bruen* Eleventh Circuit precedent. Mr. Morrissette pled guilty to the charge without a plea agreement and was sentenced to serve 57 months in prison followed by three years of supervised release.

Mr. Morrissette appealed the district court's denial of his motion to dismiss the indictment. On appeal, he again argued that § 922(g)(1) was unconstitutional on its face and as applied to him. The Eleventh Circuit denied his claims in an unpublished decision without oral argument. As it had done in *Dubois*, the court hewed to its pre-

Bruen precedent that forecloses Second Amendment challenges to § 922(g)(1) and further concluded that *Rahimi* did not alter the analysis because *Rahimi* did not involve § 922(g)(1) and did not comment on the precise issues raised by Mr. Morrissette.

REASONS FOR GRANTING THE WRIT

As a non-violent felon, Mr. Morrissette contends that he retains the right to bear arms under the Second Amendment, and as such, his conviction under 18 U.S.C. § 922(g)(1) should be vacated. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court rejected the two-step history and means-end test that developed after *District of Columbia v. Heller*, 554 U.S. 570 (2008).

Bruen got rid of the second step. It found that "a constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Bruen*, 597 U.S. at 23 (quotations omitted). For a law to survive a Second Amendment challenge, the government must "identify an American tradition" justifying the law's existence. If it cannot, courts may no longer apply a "means-end scrutiny" to uphold the law under the second step. *Id.* at 17, 19, 38. Instead, the inquiry ends, and the law is unconstitutional.

And there is no relevantly similar historical analogue to a lifetime ban on possession of firearms for non-violent felons. Someone who attempted to evade their taxes twenty years ago and has not committed a crime since, should retain their Second Amendment rights. Someone who committed felony shoplifting at 18 and is

now a 40-year-old mother who has never been in trouble since, should retain their Second Amendment rights.

As one Justice has noted, no historical tradition of prohibiting felons from possessing firearms for life exists. *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting), abrogated by *Bruen*, 597 U.S. 1. Thus, § 922(g)(1) is unconstitutional on its face and as applied to Mr. Morrissette and his conviction under § 922(g)(1) should be reversed.

A. The text of the Second Amendment covers Mr. Morrissette's conduct.

The Second Amendment states that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. This provision of the Second Amendment codified people's pre-existing right to defend themselves from dangers inherent to living among others. *Bruen*, 597 U.S. at 21, 31-32. *Heller* and *Bruen* held that "the people" have a right to carry arms to defend themselves, both at home and in public. Because Mr. Morrissette's conduct is covered by the text of the Amendment, the burden then shifts to the government to justify the regulation by identifying a relevantly similar historical regulation.

B. Mr. Morrissette is among "the people."

But first, the preliminary question of whether Mr. Morrissette is among "the people" protected by the Second Amendment, must be answered. And he is. *Bruen* made reference to the rights of "ordinary, law-abiding citizen[s] to possess firearms.

Bruen, 597 U.S. at 8. But those comments were dicta, as the law-abiding nature of the person seeking to possess the firearm, and who is among the people, were not at issue in *Bruen*.

Mr. Morrissette is "part of 'the people' whom the Second Amendment protects." *Bruen*, 597 U.S. at 31-32 (quoting *Heller*, 554 U.S. at 580). "[T]he people" protected by the Second Amendment "unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580. Because "felons" are not "categorically excluded from our national community," they fall within the amendment's scope. *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting); accord *Folajtar v. Att'y Gen. of the U.S.*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting).

Comparison to other constitutional amendments confirms this view. As *Heller* explained, "the people" is a "term of art employed in select parts of the Constitution," including "the Fourth Amendment, . . . the First and Second Amendments, and . . . the Ninth and Tenth Amendments." *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). It is beyond challenge that felons are among "the people" whose "persons, houses, papers, and effects" enjoy Fourth Amendment protection. U.S. Const. Amend. IV; *see*, e.g., *United States v. Lara*, 815 F.3d 605 (9th Cir. 2016). And felons likewise enjoy "the right of the people" to "petition the government for redress of grievances." U.S. Const. Amend. I; *see*, e.g., *Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th Cir. 2017). If a person with a felony conviction is one of "the people"

protected by the First and Fourth Amendments, *Heller* teaches that he is one of "the people" protected by the Second Amendment, too.

This view was confirmed when this Court addressed a challenge to a different subsection of § 922(g) last term in *United States v. Rahimi*, 602 U.S. 680 (2024). The Court analyzed historical laws dealing with dangerous persons to find that § 922(g)(8) was consistent with historical tradition and constitutional. *Id.* But the Court never suggested for a moment that Mr. Rahimi was not one of "the people" protected by the Second Amendment. Accordingly, Mr. Morrissette is among "the people" to whom the Second Amendment applies.

C. There is no relevantly similar historical regulation that bans possession for life.

Bruen provided guidance on conducting historical analysis in the hunt for relevantly similar regulations. The Court can consider "whether 'historical precedent' from before, during, and even after the founding evinces a comparable tradition of regulation." *Bruen*, 597 U.S. at 27. But *Bruen* reminded that not all history is created equal. That is because "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Id.* at 34 (quotations omitted). Because the Second Amendment was adopted in 1791, earlier historical evidence "may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years." *Id.* Similarly, post-ratification laws that "are inconsistent with

the original meaning of the constitutional text obviously cannot overcome or alter that text." *Id.* at 36 (quotations and emphasis omitted).

Bruen also offered analytical guidance for evaluating historical clues. In particular, *Bruen* drew a distinction between two types of regulation. On the one hand, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century," the historical inquiry "will be relatively straightforward." *Id.* at 26-27. Courts should begin by deciding whether "a distinctly similar historical regulation address[ed] the problem." *Id.* If earlier generations did not regulate the problem, or if they regulated it "through materially different means," then the challenged regulation may violate the Second Amendment. *Id.* Likewise, if earlier generations rejected comparable regulations as unconstitutional, "that rejection surely would provide some probative evidence of unconstitutionality." *Id.*

In contrast, if a regulation implicates "unprecedented societal concerns," "dramatic technological changes," or regulations "unimaginable at the founding," the "historical inquiry . . . will often involve reasoning by analogy." *Id.* at 27-28. Courts may then ask whether historical regulations and the challenged regulation are "relevantly similar," with special attention to "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.*

In either case, the burden falls squarely on the government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the

outer bounds of the right to keep and bear arms." *Id.* at 19. If the government cannot do so, the infringement on the right cannot survive.

In *Heller*, this Court confirmed an individual's right to keep and bear arms but cautioned that this right is "not unlimited." 554 U.S. at 626. As an example, the Court provided, in dicta, a non-exhaustive list of "presumptively lawful regulatory measures"—i.e., ones that had not yet undergone a full historical analysis. *Id.* at 627 n.26 (emphasis added). This list included laws restricting possession by felons and the mentally ill and the carrying of firearms in "sensitive places." *Id.* at 626.

Heller emphasized that "we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment." *Id.* And since this was the Court's "first in-depth examination of the Second Amendment," *Heller* explained that it could not "clarify the entire field." *Id.* at 635. But *Heller* promised that there would be "time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us." *Id.*

That time is now. The government cannot meet its burden to establish the requisite "relevantly similar" historical tradition. *Rahimi*, 602 U.S. at 681 (quoting *Bruen*, 597 U.S. at 29). As in *Bruen*, the "general societal problem" that § 922(g)(1) is designed to address—i.e., felons with access to guns—is one "that has persisted since the 18th century." 597 U.S. at 26. Thus, § 922(g)(1) is unconstitutional unless the government shows a robust tradition of "distinctly similar historical regulation." *Id.*

The government cannot meet its burden to establish § 922(g)(1)'s historical pedigree for a simple reason: neither the federal government nor a single state barred all people convicted of felonies until the 20th century. *See*, e.g., Adam Winkler, *Heller's Catch-*22, 56 U.C.L.A. L. Rev. 1551, 1563 (2009). The modern version of § 922(g)(1) was adopted 177 years after the Second Amendment—far too recently to alter its meaning. *Bruen*, 597 U.S. 66 n.28 ("[L]ate-19th-century evidence" and any "20th-century evidence . . . does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.").

Section 922(g)(1) very much contradicts earlier evidence from the relevant historical periods: "(1) . . . early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; [and] (4) Reconstruction." *Id.* at 34. Those periods lack evidence of any analogue to § 922(g)(1).

The government may argue that, historically, *some* jurisdictions *sometimes* regulated firearm use by those considered *presently* violent. But that is not a "distinctly similar historical regulation," *Bruen*, 597 U.S. at 26, for at least three reasons. First, not all people with a felony conviction are presently violent. Second, the historical regulations required an individualized assessment of a person's threat to society. And finally, the historical regulations almost always allowed people deemed violent to still possess weapons for self-defense. Thus, even those convicted of serious crimes—including rebellion—remained entitled to protect themselves in a dangerous

world, with firearms if necessary. Those laws' targeted nature makes them a far cry from declaring that any person, convicted of any felony, can never possess "the most popular weapon chosen by Americans for self-defense in the home." *Heller*, 554 U.S. at 629.

England, before the founding, did not ban felons from ever again possessing a firearm. *See Kanter*, 919 F.3d at 457 (Barrett, J., dissenting); C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Policy 695, 717 (2009); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 260 (2020). To the extent that England sought to disarm individuals, those regulations usually required a more culpable mental state and made exceptions for self-defense, both features absent from § 922(g)(1). *Rahimi* discusses at length the surety laws and laws against affray or going armed against the king's subjects. 602 U.S. at 693-98.

To the extent that England tried to disarm whole classes of subjects, it did so on unconstitutional grounds—and still permitted those targeted to keep arms for self-defense. For example, in the age of William and Mary (both Protestants), Catholics were presumed loyal to James II (a Catholic trying to retake the throne) and treasonous. Thus, Catholics could keep "Arms, Weapons, Gunpowder, [and] Ammunition," only if they declared allegiance to the crown and renounced key parts of their faith. *See Bruen*, 597 U.S. at 44-45 n.12 (quoting 1 Wm. & Mary c. 15, § 4, in 3

Eng. Stat. at Large 399 (1688)).

In short, the English never tried to disarm all felons. Rather, they tried to limit the use of firearms by those individuals found to be violent and rebellious. And even those individuals could keep arms for self-defense. A " distinctly similar" or "relevantly similar" historical regulation that is not. *Bruen*, 597 U.S. at 26-27.

"[T]here is little evidence of an early American practice of," forever barring all people convicted of a felony from ever again possessing a firearm. *Id.* at 46. The early United States accepted that those who committed crimes—even serious ones—retained a right to defend themselves. That can be seen in the colonies' and states' statutes, early American practice, and rejected proposals from state constitutional conventions. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting); *Folajtar*, 980 F.3d at 915 (Bibas, J., dissenting); *United States v. Chester*, 628 F.3d 673, 679 (4th Cir. 2010); *Binderup v. Att'y Gen. of the U.S.*, 836 F.3d 336, 368 (3d Cir. 2016) (en banc) (Hardiman, J., concurring).

To the extent that the new nation sought to disarm people, the regulatory approach was much more limited than § 922(g)(1). For example, the Virginia colony disarmed Catholics, still viewed as traitors to the crown. Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 157 (2007) (citation omitted). But there was an exception for weapons allowed by a justice of the peace "for the defense of his

house and person." *Id.* And following the Declaration of Independence, Pennsylvania ordered that those who did not pledge allegiance to the Commonwealth and renounce British authority be disarmed. *Id.* at 159. Thus, to the extent that either regulation would comply with the Second Amendment, as understood today, they required a specific finding that a specific person posed a risk of violence to the state.

Colonial and Founding-era practice also suggests that committing a serious crime did not result in a permanent disarmament. For example, leaders of the seminal Massachusetts Bay colony once disarmed supporters of a banished seditionist. Greenlee, *supra*, at 263 (citations omitted). Nevertheless, "[s]ome supporters who confessed their sins were welcomed back into the community and able to retain their arms." *Id.* And in 1787, after the participants in Shay's Rebellion attacked courthouses, a federal arsenal, and the Massachusetts militia, they were barred from bearing arms, for three years, not life. *Id.* at 268–67. In fact, Massachusetts law required the Commonwealth to hold and then return the rebels' arms after that period. Sec'y of the Commonwealth, Acts and Resolves of Massachusetts 1786–87, at 178 (1893).

American practice and laws during the Nineteenth Century—before and after the Civil War—also confirm that § 922(g)(1) does not comport with the "Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 33. The United States continued to regulate—but not ban—firearm possession by those feared to be violent. *See Bruen*, 597 U.S. at 55 (holding that 19th century surety laws allowed people likely to

breach the peace to still keep guns for self-defense or if they posted a bond). But, as discussed above, that is not similar to § 922(g)(1). There is no evidence of a precursor to § 922(g)(1)'s broad, class-based ban. In fact, there are at least two documented instances where attempts to disarm a class of offenders was rejected as inconsistent with the right to bear arms.

First, as with Shay's Rebellion, Congress declined to disarm southerners who fought against the Union in the Civil War. *Whether the Second Amendment Secures an Individual Right*, 28 Op. O.L.C. 126, 226 (2004). The reason: some northern and Republican senators feared that doing so "would violate the Second Amendment." *Id.*

Second, when a Texas law ordered that people convicted of unlawfully using a pistol be disarmed, it was struck down as unconstitutional under the Texas constitution. *Jennings v. State*, 5 Tex. Ct. App. 298 (1878).

In sum, the 19th century history provides clear evidence that mass disarmament for people convicted of an offense is unconstitutional. Not only was there a consistent practice of allowing people who broke the law to keep weapons for self-defense—at least one state appellate court and Congress agreed that disarming lawbreakers was unconstitutional. As *Bruen* teaches: "[I]f some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." 597 U.S. at 27.

Rahimi did not affect this analysis—and, in fact, made all the clearer § 922(g)(1)'s lack of constitutional backing. The prohibition there passed constitutional muster because there were historical analogues temporarily disarming those who were violent. 602 U.S. at 692-93. The restraining order subsection of § 922(g) passed constitutional muster because there is an individualized finding of dangerousness, after notice and an opportunity to be heard, and the restriction lasts only as long as the restraining order does. *Id.* at 690.

"Why and how the regulation burdens the right are central to the inquiry." *Id.* at 692. Section 922(g)(1) contains a lifetime prohibition on possession of firearms by all convicted felons. Without an individualized determination of ongoing dangerousness, it violates the Second Amendment on its face and as applied to Mr. Morrissette. Mr. Morrissette's conviction under § 922(g)(1) must be vacated.

CONCLUSION

Based on the foregoing arguments, Petitioner Raheem Morrissette requests that the Court grant this petition for a writ of certiorari.

Date: January 27, 2025

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