NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

DEVON GRAY,

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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QUESTION PRESENTED

Whether under the Second Amendment methodology set forth in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), as clarified in *United States v. Rahimi*, 602 U.S. 680 (2024), 18 U.S.C. § 922(g)(1) is unconstitutional.

INTERESTED PARTIES

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

Petitioner Gray 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. Gray*, No. 22-cr-20258-BB (S.D. Fla. Oct. 26, 2023), *aff'd*, *United States v. Gray*, 2024 WL 4647991 (11th Cir. Nov. 1, 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 14.1(b)(iii).

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Devon Gray 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 23-10247 in that court on November 1, 2024, *United States v. Gray*, 2024 WL 4647991 (11th Cir. Nov. 1, 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 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 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 November 1, 2024, *United States v. Gray*, 2024 WL 4647991 (11th Cir. Nov. 1, 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 § 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), 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, *id.* at 626 & n. 26, 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*, *id.* at 626 ("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), this 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. 680 (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), *cert. granted, judgment vacated, remanded*, ___ S.Ct. ___, 2025 WL 76513 (U.S. Jan. 13, 2024). 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 that *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 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, *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 this Court handed down its decision in *Rahimi*, Petitioner asked the Eleventh Circuit to reconsider *Rozier/Dubois* in light of *Rahimi* in his case. But the Eleventh Circuit instead found its pre-*Bruen* approach precluding all challenges to § 922(g)(1) continued to govern even post-*Rahimi*. *United States v. Gray*, 2024 WL 4647991 (11th Cir. Nov. 1, 2024); Appendix A-1. Prior to that ruling, another petitioner before this Court asked the full Eleventh Circuit to recognize that *Rahimi* confirmed *Rozier/Dubois* no longer controlled Second Amendment analysis, and these prior circuit precedents had been abrogated. But the Eleventh Circuit denied rehearing en banc. *United States v. Rambo*, 2024 WL 3534730 (11th Cir. July 25, 2024), *pet. for reh'g en banc denied* (11th Cir. Oct. 23, 2024), *pet. for cert. filed* Dec. 5, 2024 (No. 24-6107). Not one judge on the Eleventh Circuit dissented from the denial of rehearing en banc in *Rambo*.

II. Factual and Procedural Background

In June 2022, the United States charged Petitioner Devon Gray 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. Appendix A-2.

Petitioner moved to dismiss the indictment as unconstitutional under the new two-step Second Amendment methodology set forth in *Bruen*. He noted that *Bruen* dictated that at Step One of Second Amendment 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 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*.

The government responded that *Rozier* remained controlling law after *Bruen*, and foreclosed Petitioner's Second Amendment challenge. It argued that the court therefore "need not address the two-step analysis outlined" in *Bruen*

The court held a hearing on the motion to dismiss, at which the government continued to maintain that it was unnecessary to engage in the *Bruen* analysis because of *Rozier*. At the conclusion of the hearing the court agreed—noting that it was bound to follow the Eleventh Circuit. It stated:

> THE COURT: I do not believe that—in reaching the decision today, that *Bruen* compels the conclusion that 922(g)(1) violates the Second Amendment or it abrogates the Supreme Court's holding in *Heller* that Second Amendment rights are subject to curtailment, based, in this case, on Mr. Gray's status as a convicted felon.
>
> I do want to point out that the *Bruen* decision did not address the possession of firearms by a convicted felon. And I cannot ignore the Supreme Court's decision in *Heller* and the Eleventh Circuit's decision, one binding and certainly one that has persuasive effect on this district court. That is the *Rozier* case[.] And I believe that the Court is bound to follow the Eleventh Circuit.
>
> But let me state that it may be that the Eleventh Circuit recedes from its decision in *Rozier*, in light of *Bruen*, and perhaps applies the means-end scrutiny test. But I believe that that is appropriate for the appellate court to reconsider its rulings, and

> this Court is bound to follow the Eleventh Circuit's decisions. And as such, Mr. Gray, the motion that has been filed on your attorneys' behalf [sic] would be denied.

Appendix A-6. After the hearing, the court entered a paperless order denying the motion "for the reasons stated on the record." Appendix A-7.

Having preserved his Second Amendment challenge, Petitioner pled guilty and the district court sentenced him to 51 months incarceration. Appendix A-8.

On appeal, Petitioner continued to press the facial Second Amendment challenge he had preserved below. He argued that the district court mistakenly believed that neither step of *Bruen* was applicable, finding that *Rozier* continued to control after *Bruen*. But in fact, he argued, *Bruen* rejected the mode of analysis in *Roz*ier, which did not heed *Heller*'s dictates and was inconsistent with the newly-articulated two-step methodology. *See United States v. Gray*, DE 14 (11th Cir. May 5, 2022) (No. 23-10247). The government responded that the court's binding precedent in *Rozier* precluded Petitioner's post-*Bruen* challenge. But even if felon possession *were* presumptively protected under *Bruen*, the government newly argued (after waiving its obligation to meet its *Bruen* Step Two burden before the district court), the "historical record shows that felons may be restricted from possessing firearms," since "the gun rights of certain groups have been categorically limited to promote public safety" for centuries. *United States v. Gray*, DE 20 (11th Cir. May 24, 2023).

After the government filed its Answer Brief, this Court granted certiorari in *Rahimi*. Petitioner immediately moved the Eleventh Circuit to stay the appellate briefing schedule pending issuance of the decision in *Rahimi*, because *Rahimi* could narrow the issues in his case regarding proper application of *Bruen*. In fact, he noted, some of the same *Bruen* Step Two arguments the government had raised in its Answer Brief, were made by the government in its *Rahimi* petition for certiorari. Although the Eleventh Circuit panel initially denied the request for a stay, Petitioner

moved for reconsideration and the court ultimately entered the requested stay—allowing Petitioner 30 days after *Rahimi* issued to file his Reply Brief.

While the stay was in place, before *Rahimi* issued, the Eleventh Circuit issued its decision in *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024) adhering to *Rozier*. But once *Rahimi* issued, Petitioner filed his Reply Brief arguing *inter alia*, that (1) *Rahimi* had confirmed that *Bruen* dictates a completely different mode of Second Amendment analysis from the dicta-based mode of analysis in *Rozier* and *Dubois*, and those decisions no longer controlled: (2) with regard to the "people" question in *Bruen* Step One, *Rahimi* had confirmed that the Court meant what it said when it declared in *Heller* that the Second Amendment right "belongs to all Americans;" and (3) *Rahimi* had finally confirmed that the government could not meet its *Bruen* Step Two burden of showing § 922(g)(1) is consistent with the nation's "historical tradition of firearm regulation" because there is no longstanding tradition of actual *regulation* dating to the Founding that was *both* "comparably justified" *and* imposed a "comparable burden" of lifetime disarmament—as was required to find the statute constitutional under the Second Amendment. *United States v. Gray*, DE 34 (11th Cir. July 22, 2024).

Without hearing oral argument, on November 1, 2024 the Eleventh Circuit affirmed. *United States v. Gray*, 2024 WL 4647991 (11th Cir. Nov. 1, 2024) (Appendix A-1). It held:

> Gray's facial challenge to the constitutionality of § 922(g)(1) fails under de novo review, as it is foreclosed by our holdings in both *Rozier*, which held that § 922(g)(1) does not violate the Second Amendment, and also *Dubois*, which held that *Bruen* did not abrogate *Rozier*. *Rozier*, 598 F.3d at 770-71; *Dubois*, 94 F.4th at 1293.
>
> Recently, the Supreme Court decided *United States v. Rahimi*, where it applied the *Bruen* methodology in evaluating the constitutionality of § 922(g)(8). *See* 144 S.Ct. 1889, 1896, 1898, 1902 (2024). The Supreme Court held that § 922(g)(8) did not facially violate the Second Amendment because regulations prohibiting the misuse of firearms by those who pose a credible threat of harm to others are part of this country's historical tradition. *Id.* at 1896.

> Nothing in *Rahimi* conflicts with or abrogates our prior decisions in *Dubois* and *Rozier*. To the contrary, the Supreme Court in *Rahimi* affirmed that the right to bear arms "was never thought to sweep indiscriminately." *Id.* at 1899-1902. Instead, the Court described a historical tradition of firearm regulation that included prohibiting classes of individuals from owning firearms and reiterated the presumptive legality of bans on firearm possession by felons. *Id.* Therefore, clearer instruction is required from the Supreme Court before we can reconsider the constitutionality of § 922(g)(1). *See Dubois*, 94 F.4th at 1293.
>
> Since the precedential effect of our decisions in *Dubois* and *Rozier* holding that § 922(g)(1) is constitutional remains intact, we are bound to apply them under the prior-panel-precedent rule. Thus, Gray's challenge to the constitutionality of § 922(g)(1) is foreclosed.

Id. at *2.

REASONS FOR GRANTING THE PETITION

I. The Lower Courts are Divided on Whether, Under the *Bruen/Rahimi* Second Amendment Methodology, § 922(g)(1) is Facially Unconstitutional.

A. Although the Fourth and Eighth Circuits have found § 922(g)(1) constitutional in all circumstances under *Bruen/Rahimi*, the Eleventh Circuit (alone among the circuits) continues to so hold under its pre-*Bruen* mode of Second Amendment analysis—refusing to even attempt a *Bruen/Rahimi* analysis for § 922(g)(1). 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 analogous to *Rozier* 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*. Even the Eighth Circuit, which has precluded 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, loyalists, and Native Americans in colonial America). And, although the Fourth Circuit in *United States v. Hunt*, 123 F.4th 697, 702-04 (4th Cir. Dec. 18, 2024) was initially inclined after *Rahimi* to still follow its pre-*Bruen* precedent relying upon the "longstanding" and "presumptively lawful" prohibitions dicta in *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n. 26 (2008), the Fourth Circuit—unlike the Eleventh—did not stop its post-*Rahimi* analysis there. Ultimately, it ruled in the alternative that it was in complete agreement with the Eighth Circuit in *Jackson II* as to why § 922(g)(1) was facially constitutional under the *Bruen/Rahimi* test. *See id.* at 705-08 (citing certain "assurances" in *Rahimi*, in agreeing with the Eighth Circuit that "history" showed "categorical disarmament of people 'who have demonstrated disrespect for legal norms of society'"—even if not violent; concluding that since § 922(g)(1) was similarly justified as "an effort to address a risk of dangerousness," "there is no need for felony-by-felony litigation;" citing *Jackson II*, 110 F.4th at 1125-29).

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* 121 F.4th 656 (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. And the Fourth Circuit in *Hunt* ultimately went through what it believed to be a proper Step Two analysis as well—at least as an alternative basis to uphold the facial constitutionality of § 922(g)(1).

As such, as of this writing, the Eleventh Circuit remains the only circuit in this country which does not even attempt to conduct the *Bruen/Rahimi* Second Amendment analysis, even in

the alternative. It is the only circuit that continues to base its denials of well-founded Second Amendment challenges based on its pre-*Bruen* mode of analysis which reflexively followed dicta in *Heller*, over *Heller*'s holding on plain text, history, and tradition. The true outlier today, only the Eleventh Circuit refuses to engage in any *Bruen/Rahimi* analysis. Other circuits, as detailed below, have harshly criticized and rejected the Eleventh Circuit's approach. And while prior to *Rahimi*, several district courts had already held § 922(g)(1) facially unconstitutional, *Rahimi*'s clarification of the *Bruen* methodology should compel such a finding now.

For the reasons outlined below, the Eleventh Circuit is wrong in all regards.

B. After *Bruen/Rahimi*, the Third, Fifth and Sixth Circuits have rightly found § 922(g)(1) presumptively unconstitutional at Step One of the now-required analysis. In *Heller*, the 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. The *Rahimi* majority acknowledged that the Second Amendment "secures *for Americans* a means of self-defense." 602 U.S. at 691 (emphasis added). And Justice Thomas—who disagreed with the *Rahimi* majority *only* as to *Bruen* Step Two—provided a robust explanation of the proper Step One analysis, confirming that *any American citizen* is indeed among "the people" as a matter of the plain text. 602 U.S. at 752 (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." 602 U.S. at 773. In short, as Justice Thomas has now 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 774. And since that necessarily abrogates the assumptions underlying *Rozier* and *Dubois*, *Rahimi* should have compelled the Eleventh Circuit to conclude—as the Third, 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 *United States v. Moore*, 111 F.4th 266 (3d Cir. 2024), a panel of the Third Circuit was the first to hold post-*Rahimi*—consistent with the uniform post-*Bruen* view of the en banc Third Circuit in *Range v. Att'y Gen. United States*, 69 F.4th 96 (3d Cir. 2023) (en banc), *pet. for cert. filed sub nom Garland v. Range*, Oct. 5, 2023 (No. 23-374*), cert. granted, judgment vacated, remanded*, 144 S.Ct. 2706 (2024)—that any "adult citizen" is one of the "'people' whom the Second Amendment presumptively protects." *Moore*, 111 F.4th at 269. Therefore under *Bruen*, the *Moore* court reaffirmed, the burden shifts to the government at Step Two of the analysis to justify its regulation of arms-bearing conduct. *Id.* And indeed, the *Moore* court was clear that the fact that Moore was on supervised release did not relieve the government of its Step Two burden. *Id.* at n. 2. "To hold otherwise," the court explained, "would relegate the Second Amendment to 'a second-class right subject to an entirely different body of rules than the other Bill of Rights Guarantees.'" *Id.* (citing *Bruen*, 597 U.S.at 70, and caselaw establishing that the First and Fourth Amendments apply to those on parole, probation and supervised release, stating "So too for the Second Amendment").

The Sixth Circuit thereafter agreed on these points and elaborated further. In *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024) it found 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. *Id.* 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" since

"[c]ourts presume that words are used in a consistent way across provisions." *Id.* (citing *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)); and A. Scalia & B. Garner, *Reading Law* 170-171 (2012) (explaining in a given statute, the same term usually has the same meaning). In *United States v. Goins*, 118 F.4th 794 (7th Cir. 2024), the Sixth Circuit reiterated post-*Rahimi* that there was "no textual basis to distinguish probationers from other felons, or from any other member of the political community." 118 F.4th at 798 n.3

The Sixth Circuit also 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 is not 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 *Bruen*, 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 *Hell*er'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.

Thereafter, the Fifth Circuit reasoned similarly in *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024). Indeed, it agreed that not only is a new Second Amendment methodology required after *Bruen* and *Rahimi*; 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").

Most recently, in *Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. Dec. 23, 2024) (en banc) (*Range II*), the full Third Circuit confirmed and elaborated on the view earlier expressed by the *Moore* panel. Notably, upon remand from this Court to consider its post-*Bruen* as-applied ruling in *Range I* light of *Rahimi*, the en banc Third Circuit reached the exact opposite conclusion from the Eleventh, Fourth, and Eighth Circuits. First, after considering *Rahimi*, the 10-judge *Range II* majority reaffirmed its prior rulings that *Bruen* had abrogated its post-*Heller* Second Amendment jurisprudence; *Bruen* dictated an entirely new analysis; and under the "plain text" analysis for *Bruen* Step One, felons and those with felon-equivalents like Range were part of "the people" protected by the Second Amendment. 124 F.4th at 225-28. On the latter point, the *Range II* majority—as it had in *Range I*, but now with additional support from *Rahimi*—squarely rejected the government's contention (accepted by the Eleventh Circuit even post-*Rahimi*) that any type of criminal conduct removes citizens from "the people" protected by the Second Amendment because that right had only belonged to "law-abiding responsible citizens." *Id.* at 226-28. Instead, the

Range II majority articulated four reasons for its express agreement with Range that the references to "law-abiding citizens" in *Heller* "should not be read as rejecting *Heller*'s interpretation of 'the people,'" which "presumptively 'belongs to all Americans," 554 U.S. at 580-81: (1) the criminal histories of the plaintiffs in *Heller* and *Bruen* "were not at issue," so the references to "law-abiding citizens" in those cases were dicta which should not be over-read; (2) there was no reason to adopt a reading of "the people" that excluded Americans only from the Second Amendment when other constitutional provisions refer to "the people" and felons "retain their constitutional rights in other contexts," (3) even if all citizens had a right to keep and bear arms, that would not prohibit legislatures from constitutionally stripping certain people of that right (the view of then-Judge Barrett in *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019)); and (4) as the government even conceded in its post-GVR en banc brief, *Rahimi* "makes clear that citizens are not excluded from Second Amendment protections just because they are not "responsible," because "responsible" was too vague a term that did not "derive from [Supreme Court] case law." And the same was true, the *Range II* majority found, for the phrase "law-abiding." 124 F.4th at 226-27 (citing *Rahimi*, 602 U.S. at 701).

The reasoning of these three circuits is consistent with *Heller*, and correct on these points. For the reasons stated above, 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; (3) Petitioner has thus met the new *Bruen* Step One; and (4) as the Third, Fifth, and Sixth Circuits have rightly 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.

The government cannot do so, however, as there was no relevantly similar Founding-era regulation.

C. After *Bruen/Rahimi*, the government cannot meet its Step Two burden because there is no historical tradition of *lifetime* felon disarmament dating to the Founding, which is necessary to uphold § 922(g)(1). Admittedly, just because the Second Amendment protects all Americans, that does not mean that the right to bear arms is "unlimited." *Bruen*, 597 U.S. 21. Indeed, even prior to *Bruen*, the plurality in *Binderup v. Att'y Gen.*, 836 F.3d 336 (3d Cir. 2016) (en banc), had recognized that "individuals with Second Amendment rights may nonetheless be denied possession of a firearm," *id.* at 355 (Ambro, J.)—an approach embraced thereafter in then-Judge Barrett's dissenting opinion in *Kanter v. Barr,* 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting) (explaining that "all people have the right to keep and bear arms," though the legislature may constitutionally "strip certain groups of that right."), and by the *Range II* majority.

As the *Range II* majority recognized, *Bruen* established strict rules for determining in what circumstances those pre-existing Second Amendment rights may be "stripped." Specifically, *Bruen* held, where as here an individual's conduct—possessing a firearm at home—is shown to be presumptively protected by the Second Amendment's plain text, a regulation restricting that fundamental right can only stand where the Government shows 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." 597 U.S. at 37.

And here, the government cannot meet that burden as to § 922(g)(1), because not only were there no felon disarmament regulations at or near the Founding; there were no Founding-era laws

specifically disarming *any* citizens or category of citizens—even for past firearm misuse or expected future misuse—*for life*.

1. The Government bears the burden of showing a tradition.

As a preliminary matter, *Bruen* prescribed two ways of conducting the required historical tradition inquiry. Where a modern statute is directed at a "longstanding" problem that "has persisted since the 18th century," *Bruen* directed a "straightforward" inquiry: if there is no historical tradition of "distinctly similar" regulation, the regulation is unconstitutional. *Id.* at 26-28 (conducting this "straightforward" inquiry to strike down New York's restriction on public carry of firearms). However, if the statute is directed at "unprecedented societal concerns or dramatic technological changes," or problems "unimaginable at the founding," then and only then *Bruen* held, are courts empowered to reason "by analogy." *Id.* at 28. Courts in such a case ask only whether historical analogues are "*relevantly* similar." *Id.* at 29 (emphasis added). Notably, the "central considerations" in a "relevantly similar" inquiry are what *Bruen* called the "*how* and *why:"* "whether modern and historical regulations impose a *comparable burden* on the right of armed self-defense and whether that burden is *comparably justified*." *Id.* (emphasis added).

If there were any lack of clarity about this prior to *Rahimi*, this Court confirmed in *Rahimi* that *both* a comparable burden *and* a comparable justification for Founding-era regulations are required in a "relevantly similar" analysis; a comparable justification alone does *not* suffice. *See* 144 S.Ct. at 1899-1902 (finding, from among the multitude of purported "analogues" the government proffered in its brief, *see* Brief for the United States, *United States v. Rahimi*, 2023 WL 5322645, at **13-27 (U.S. Aug. 14, 2023), that *only* "*two distinct legal regimes" "specifically addressed firearms violence*"—namely, only the surety and going-armed laws were "'relevantly similar' *in both why and how it burden*s the Second Amendment;" explaining "the penalty" is

"another relevant aspect of the burden," and "[t]he burden that Section 922(g)(8) imposes on the right to bear arms also fits within the Nation's regulatory tradition") (emphasis added); *see also id.* at 1907 (Gorsuch, J., concurring) (reiterating the important methodological point that the government must show *both* a "comparable justification" *and* a comparable burden").

In contrast to the modern problem of gun violence by domestic abusers which *Rahimi* analyzed under the "relevantly similar" standard, *see* 602 U.S. 692, the colonies were heavily populated with felons sent from England in 1791, and thus, the problem of felon gun violence addressed by § 922(g)(1) was "longstanding."[1] Thus, the Court should rightly analyze § 922(g)(1) under the "straightforward" analysis used in both *Heller* and *Bruen*, where the challenged statutes likewise aimed to prevent interpersonal gun violence. *See id.* at 750 (Thomas, J., dissenting).

However, even *if* the Court were to employ the more nuanced "relevantly similar" analysis used in *Rahimi* to assess whether the government has met its burden to "establish the relevant tradition of regulation" for § 922(g)(1), *Bruen* dictates—and *Rahimi* confirms—that this Court must hold the government to four additional rules:

First, to establish a true "*tradition*" of "historical regulation," the government must point to *actual early regulations*, that is, laws or statutes—not proposals or vague "understandings" never enacted into law. *See Rahimi*, 602 U.S. at 692 (focusing on the burdens imposed by

[1]*See, e.g.*, Encyclopedia Virginia, "Convict Labor during the Colonial Period," *available at* encyclopediavirginia.org/entries/convict-labor-during-the-colonial-period/(last accessed January 28, 2025) (noting that as of 1776, Virginia alone housed at least 20,000 British convicts). Notably, in 1751, Ben Franklin even wrote a satirical article entitled "Rattle-Snakes for Felons," criticizing the way England had been ridding itself of its felons by sending them to the colonies to grow their population, and suggesting that rattlesnakes be sent back to England as "suitable returns for the human serpents sent us by our Mother Country." Bob Ruppert, "The Rattlesnake Tells the Story," *Journal of the American Revolution* (Jan. 2015).

"regulations" and "laws at the founding"); *id.* at 757 (Thomas, J., dissenting) (explaining that under *Bruen*, rejected proposals "carry little interpretive weight").

Second, the government must then show the same type of regulation was actually *prevalent* in the country at the Founding, that is, the firearm regulation(s) on which it relies were "well-established and representative." "[A] single law in a single State" is not enough; instead, a "widespread" historical practice "broadly *prohibiting*" the conduct in question is required. *Bruen*, 597 U.S. at 36, 38, 46, 65 (expressing doubt that regulations in even *three* of the thirteen colonies "could suffice") (emphasis added).

Third, a "*longstanding*" tradition is required, and that accounts for time. Per *Bruen*, "when it comes to interpreting the Constitution, not all history is created equal" because "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them," which in the case of the Second Amendment, was in 1791. *Id.* at 34. Courts must "guard against giving postenactment history more weight than it can rightly bear." *Id.* at 35. As the historical evidence moves past 1791, the less probative it becomes.

Finally, the government "bears the burden" of "affirmatively prov[ing] 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. Consistent with "the principle of party presentation," courts are "entitled to decide a case based on the historical record compiled by the parties." *Id.* at 25, n. 6. They "are not obliged to sift the historical materials for evidence to sustain [a] statute." *Id.* at 60. If "history [is] ambiguous at best," the statute is unconstitutional. *Id.* at 39-40.

In short, to meet the *Bruen* Step Two inquiry, the government must affirmatively present evidence of actual historical regulations that were: *not only* "comparably justified" to § 922(g)(1), *but also* imposed a "comparable burden;" sufficiently prevalent to constitute a true "tradition;" and

date to the Founding. While the government was able to make such a showing in *Rahimi* because surety and "going armed" laws established a tradition of "*temporarily* disarm[ing]" an "individual *found* by a court to *pose a credible threat* to the physical safety of another," 602 U.S. at 702 (emphasis added), for the reasons described below, the government cannot meet its burden for § 922(g)(1) with any longstanding "relevantly similar" regulations.

2. The Government cannot meet its burden for § 922(g)(1) because there is no longstanding tradition of depriving felons from possessing a firearm.

The government cannot meet its *Bruen* Step Two burden in this case for multiple reasons.

First, federal law has only included a general prohibition on firearm possession by individuals convicted of crimes punishable by over a year—meaning, for all felons—since 1961. *See* Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961). And, a law passed 170 years after the Second Amendment's ratification cannot meet the "longstanding" requirement of *Bruen*. *See id.* at 36-37 (emphasizing "belated innovations" from the 20th century "come too late to provide insight into the meaning of the Constitution in [1791];" citing with approval the Chief Justice's dissent in *Sprint Communications Co. v. APCC Services, Inc*., 554 U.S. 269, 312 (2008)); *see also Bruen*, *id.* at 66 n.28 (declining to "address any of the 20th century historical evidence brought to bear by [the government] or their *amici*").

Second, even the earliest version of § 922(g)(1), which applied exclusively to certain types of *violent criminals*, and prohibited them from "*receiving*" firearms, was only enacted in 1938, well after the Bill of Rights was adopted (1791)—and also, to the extent it is relevant, well after the Fourteenth Amendment was enacted (1868). The Federal Firearms Act of 1938, Pub. L. No. 75-785, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938). And indeed, it was not until even later—1968—that Congress gave § 922(g)(1) its current form, prohibiting *all felons* from possessing firearms.

Third, as scholars and historians have long pointed out, "no colonial or state law in eighteenth century America formally restricted"—much less prohibited, *permanently and under pain of criminal punishment*—"the ability of felons to own firearms."[2] Indeed, even before *Bruen*, judges—including then-Judge Barrett in *Kanter*—had so recognized. *See* 919 F.3d at 451, 458 (Barrett, J., dissenting) ("Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons," and "no[] historical practice supports a legislative power to categorically disarm felons because of their status as felons").

Finally, the lack of any longstanding tradition in this country of permanently disarming felons may well be explicable by the fact that at the Founding, felons—unlike many other classes of citizens—were *not* exempted from militia service. And indeed, as militia members, they were not simply *permitted* to possess arms; they were actually *required* to purchase and possess arms for militia service. *See* Federal Militia Act of May 8, 1792, §§ 1-2, 1 Stat. 272 ("each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years ... *shall* severally and respectively be enrolled in the militia, and that every citizen so enrolled "*shall*, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt," and various other firearm accoutrements, including ammunition; exempting many classes of people from this requirement—such as "all custom-house officers"—but *not* felons). Moreover, the militia statutes of eight states (Pennsylvania, Massachusetts, New York, Georgia, New Hampshire, Delaware,

[2]Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L.J. 1371, 1374 (2009); *accord* C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009); Royce de R. Barondes, *The Odious Intellectual Company of Authority Restricting Second Amendment Rights to the "Virtuous"*, 25 Tex. Rev. L. & Pol. 245, 291 (2021); Adam Winkler, *Heller's Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009).

Maryland and Connecticut), passed shortly before or after 1791, contained similar requirements, and similarly did not exempt felons.[3]

Given this primary historical evidence, the government cannot show a historical tradition dating to the Founding of gun regulation either "distinctly" or "relevantly" similar to § 922(g)(1).

3. The historical analogues that supported § 922(g)(8) in *Rahimi* cannot support § 922(g)(1) because they were not "comparably justified," nor did they impose a "comparable burden" of disarmament for life.

Even *if* the government is permitted to reason "by analogy" under the "relevantly similar" standard from *Rahimi*, it still cannot meet its heavy burden here because there was no historical tradition of *any* analogous regulation in the Founding era that was *not only* "comparably justified" to § 922(g)(1), *but also* posed a "comparable burden" (*lifetime disarmament*), as *Bruen/Rahimi* requires.

The surety and going-armed statutes that *Rahimi* found proper "analogues" to the temporary ban in § 922(g)(8)(C)(i) based on a "credible threat," are ***not*** proper analogues for §922(g)(1)'s all-felon lifetime ban—for obvious reasons. As a threshold matter, § 922(g)(8)(C)(i) "restricts gun use to mitigate demonstrated threats of physical violence" and applies only once a court has made an individualized finding that "a credible threat" exists. *Rahimi*, 602 U.S. at 698. By contrast, § 922(g)(1) is a categorical ban, prohibiting every person convicted of a felony from possessing a gun—without an individualized finding and whether or not they threaten others. And

[3]*See* Mitchell, Statutes at Large of Pennsylvania, Act of March 20, 1780, §§ III, XXI, at 146, 154 (1700-1809); Wright and Potter, 7 Acts and Laws of the Commonwealth of Massachusetts, 1780-1805, ch. 14, at 381-82,389-90 (1898); Thomas Greenleaf, Laws of the State of New-York, Act of April 4, 1786, at 227-28, 232-33 (1792); Marbury, Digest of Laws of the State of Georgia, Act of December 24, 1792, §§ 9-10, at 350 (1802); Constitution and Laws of the State of New-Hampshire, Act of Dec. 28, 1792, at 251-52, 256 (1805); Laws of the State of Delaware, ch. XXXVI, §§ 1, 2, 4, at 1134-36 (1797); Herty, Digest of the Laws of Maryland, "Militia," §§ 7, 15, 19, 20, at 367-70 (1799); and Public Statute Laws of the State of Connecticut, Title CXII, ch. I, §§ 1, 10, at 499-500, 505-06 (1808).

although a person subject to a surety bond received "significant procedural protections" and "could obtain an exception if he needed his arms for self-defense," *id.* at 697, that is never allowed for a felon.

Importantly for the *Bruen/Rahimi* "comparable justification" analysis, surety statutes were intended to mitigate "demonstrated threats of physical violence"—just like § 922(g)(8)—which is why they required "individualized" findings. 602 U.S. at 698. But § 922(g)(1) contains *no* requirement that a felon pose a threat. And "going-armed" laws likewise "provided a mechanism for punishing those who had menaced others with firearms." *Id.* at 681. Indeed, "going-armed" laws required a judicial determination that "a particular defendant ... had *threatened another with a weapon. Id.* at 699 (emphasis added). In other words, both of these early legal regimes criminalized specific—and serious—misconduct with a gun either in the past, or expected in the near future. Section 922(g)(1), on the other hand, bans a category of people from possessing firearms whether or not they have "terrif[ied] the good people of the land," *id.* at 697, or in fact, whether they have ever used or misused a gun.

Finally, and important for the separately-required "comparable burden" analysis—the "how" metric in *Bruen*—the Court was clear in *Rahimi* that the "penalty" is a crucial component of the burden imposed by a statute. *Id.* at 699. That is why the Court repeatedly underscored that § 922(g)(8)'s restriction is "temporary"—it exists only "so long as the defendant 'is' subject to a restraining order." *Id.* And in stark contrast, § 922(g)(1)'s categorical ban is *for life*. Thus, both analogue regimes *Rahimi* relied on to hold § 922(g)(8) fits within our Nation's tradition of firearm regulation are distinguishable in both the "why" and the "how" from § 922(g)(1). They therefore cannot serve as proper analogues for upholding § 922(g)(1) here.

Notably, the government at no time, in any case before any court at any level in this

country, has *ever* been able to identify *any* Founding-era analogue that, like the surety and going-armed laws, "importantly . . . targeted the misuse of firearms," 602 U.S. at 696, ***and also*** categorically disarmed any citizen or any group of citizens, ***for life***. Thus, the government will not be able to satisfy both the "why" and the "how"—that is, the "comparable justification" ***and*** "comparable burden"—components of the "relevantly similar" analysis, which *Bruen* held, and *Rahimi* has confirmed, is the minimum requirement for every Second Amendment case going forward. As such, § 922(g)(1) is facially unconstitutional under *Bruen/Rahimi*. Unlike § 922(g)(8)(C)(i) it violates the Second Amendment in all circumstances. *Rahimi*, 602 U.S. at 693.

Notably, even prior to *Rahimi*, three district judges strictly applying *Bruen*'s dictates found that § 922(g)(1) was indeed facially unconstitutional. *See, e.g., United States v. Prince*, 700 F.Supp.3d 663 (N.D. Ill. Nov. 2, 2023) (Gettleman, J.); *United States v. Hale*, 717 F.Supp.3d 704, 701 n.1 (N.D. Ill. Feb. 14, 2024) (citing other opinions by Judge Gettleman); *United States v. Taylor*, No. 23-cr-40001, 2024 WL 245557 (S.D. Ill. Jan. 22, 2024) (Yandle, J.); *United States v. Martin*, 718 F.Supp.3d 899 (S.D. Ill. Feb. 22, 2024) (Yandle, J.); *United States v. Neal*, 715 F. Supp.3d 1084 (N.D. Ill. Feb. 7, 2024)(Ellis, J.).

And while admittedly, no circuit court has yet found § 922(g)(1) facially unconstitutional post-*Rahimi*, the clarification of *Bruen*'s methodology in *Rahimi*—and the absence of any Founding era analogue disarming felons for life—compels a conclusion of facial unconstitutionality here. *See United States v. Brown*, 2024 WL 4665527, at *5 (S.D. Ill. Nov. 4, 2024) (Yandle, J.) (recognizing post-*Rahimi* that none of the historical "analogues" offered by the government imposed a "comparable burden" on the Second Amendment right of felons to keep and bear arms; distinguishing loyalty oath statutes which did not result in permanent disarmament, and laws authorizing capital punishment and estate forfeiture for certain felonies, which were

severe penalties imposed for criminal conduct, but "not for status crimes that arose from otherwise lawful conduct by felons who had completed their sentences;" as such, finding § 922(g)(1) unconstitutional, both facially and as applied to the defendant). *See also Range II*, 124 F.4th at 230-31 (squarely rejecting the government's contention that permanent disarmament under § 922(g)(1) was "relevantly similar" to Founding-era laws that (1) imposed the death penalty for *some* nonviolent crimes (like forgery or counterfeiting) but not for crimes like false statement or embezzlement, or (2) required forfeiture of felons' weapons or estates); *id.* at 250 (Phipps, J., concurring) (opining that "any law imposing a permanent restriction on the 'right of the people to keep and bear arms' is constitutionally suspect as a facial matter").

II. This Case Presents an Important and Recurring Constitutional Question for § 922(g)(1) Defendants, and Provides an Excellent Vehicle for the Court to Resolve it.

The post-*Bruen* Second Amendment challenge raised herein has been raised by scores of § 922(g)(1) defendants in the wake of *Bruen* and *Rahimi*. It was meticulously briefed by Petitioner in the district court and on appeal, and it was squarely rejected by the Eleventh Circuit upon *de novo* review based on its pre-*Bruen* methodology. As such, there is no possible argument in this case, as there may be in other cases that will come before this Court, that Petitioner's facial challenge to § 922(g)(1) should be reviewed deferentially for "plain error" only.

Nor is this a case like *Dubois v. United States*, ___ S.Ct. ___, 2025 WL 7651 (U.S. No. 24-5744), where a remand is necessary to allow the court of appeals to consider the impact of *Rahimi*, in the first instance. The Eleventh Circuit panel below had a full and fair opportunity to consider the impact of *Bruen* and *Rahimi* here, and found both cases inapplicable.

Nor is it necessary for the Court to await en banc consideration of the impact of *Bruen* and *Rahimi* by the Eleventh Circuit, as that court has already been presented with a petition for

rehearing en banc in *Rambo*, No. 24-6107, and refused to reconsider its continued adherence to its post-*Heller* approach in *Rozier*, in light of *Bruen* and *Rahimi*.

As noted in the petitions for writ of certiorari in *Rambo*, and *United States v. Whitaker*, No. 24-5997, at this time there is a deep conflict among the circuits on multiple sub-issues relevant to as-applied challenges. While many petitioners have sought and will seek certiorari to resolve that deeply entrenched conflict, by asking the Court to consider the specifics of their cases—and indeed, a grant of certiorari in such a case could well resolve the circuit conflict as to *Bruen* Step One discussed *supra*—the Court may not be able to definitively resolve the broader issue of facial constitutionality in a case asking it to resolve only an as-applied challenge.

Since the issue of facial constitutionality impacts all § 922(g)(1) defendants, in the interests of judicial economy the Court should take a preserved facial challenge case like this as a companion to whichever case(s) will be used to resolve the post-*Rahimi* circuit conflict on as-applied challenges. However, if the Court chooses to resolve the facial constitutionality of § 922(g)(1) in another case, 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 issue presented herein.

Respectfully submitted,

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January 30, 2025