No.

IN THE

Supreme Court of the United States

WILLIAM COLLINS, III,

Petitioner,

v.

PAMELA JO BONDI, Attorney General of the United States; DANIEL P. DRISCOLL, Acting Director Bureau of Alcohol, Tobacco, Firearms and Explosives; ANTHONY G. BROWN, Maryland Attorney General; LT. COL. ROLAND L. BUTLER, JR., Acting Secretary, Maryland State Police,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

MARC D. SCHIFANELLI
U.S. Army, SF (Ret.)
Founding Partner,
Schifanelli Law LLP
P.O. Box 1023
Stevensville, MD 21666

F. ANDREW HESSICK
RICHARD A. SIMPSON
ELIZABETH G. SIMPSON
Counsel of Record
160 Ridge Road
Chapel Hill, N.C. 27599
(919) 316-9613
egsimpson@gmail.com

Counsel for Petitioner

October 10, 2025

QUESTIONS PRESENTED

Petitioner William Collins, III, is an upstanding and law-abiding citizen. His only criminal history stems from youthful indiscretion: minor, nonviolent offenses committed as a young adult nearly 25 years ago. None of those offenses suggests that Collins poses a danger to anyone, and none of them would have resulted in his disarmament at the Founding. The questions presented are:

1. May the government deprive Collins of his Second Amendment right to bear arms based on these convictions?

2. May a person raise an as-applied challenge to a law that imposes an overly broad prohibition on the possession of a firearm?

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Collins v. Bondi*, No. 23-2218, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on May 15, 2025.

- *Collins v. Garland*, No. ADC-23-0042, U.S. District Court for the District of Maryland. Judgment entered October 20, 2023).

TABLE OF CONTENTS

TABLE OF APPENDICES

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished. Pet. App. 1a–2a. That opinion treated *United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025), as controlling. Pet. App. at 2a; *see id.* at 23a–43a. The opinion of the United States District Court for the District of Maryland is reported at 699 F.Supp.3d 409 (D. Md. 2023). Pet. App. 3a–18a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered judgment on May 15, 2025. Pet. App. 1a–2a. On July 23, 2025, the Chief Justice granted an application to extend time to file a petition for a writ of certiorari to October 10, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions of Amendments II and XIV to the United States Constitution and of the Maryland Code are reprinted in the appendix. Pet. App. 19a.

STATEMENT

I. Factual Background

Petitioner William Collins, III, is a forty-nine-year-old citizen and resident of Maryland who lives with his wife and children.[1] Amended Complaint ¶¶ 8-9, *Collins v. Garland*, No. 1:23-cv-42 (D. Md. May 27, 2023), Dkt. No. 18 ("Amended Complaint"). He is an employed, responsible, and law-abiding adult, without any propensity for violence, substance abuse, or mental illness. *Id.* ¶¶ 8–9, 21. Collins is an avid outdoorsman. *Id.* ¶ 9. He would like to possess a long gun for hunting and a handgun for self-defense. *Id.* ¶¶ 9, 15–16.

In 1997, when he was 21 years old, Collins was stopped in Maryland for driving while intoxicated. *Id.* ¶ 10. After being pulled over, Collins exited his vehicle and attempted to evade the police on foot. He was quickly apprehended. *Id.* On January 23, 1998, Collins pleaded guilty to Driving While Intoxicated ("DWI") and common law resisting arrest and received a suspended sentence of 18 months and a three-year probationary period. *Id.* He served no jail time. *Id.*

In 2001, when he was 25 years old, Collins was charged with DWI and "Possession of a Controlled Dangerous Substance" ("CDS"). *Id.* ¶ 11. He was convicted of both and received a one-year suspended sentence and a $500 fine. *Id.* Collins served no jail time. *Id.* At that time, the CDS offense was punishable by up to four years' imprisonment. Md. Code Ann., Art. 27 § 287 (repealed 2002). During the nearly 25 years since these two incidents, Collins has had no involvement with the criminal justice system and no negative interaction with law enforcement

[1] Because the district court dismissed the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), all well-pleaded allegations are taken as true.

whatsoever—in Maryland or in any other state, local, or federal jurisdiction. Amended Complaint ¶ 12.

For many years, Collins dutifully procured recreational hunting licenses from the State of Maryland for deer hunting, and he personally owned and used long guns. *Id.* ¶ 16. He properly registered his deer hunts with the state police. *Id.*

In 2022, Collins attempted to secure a Handgun Qualification License from Maryland for purposes of purchasing a handgun. *Id.* ¶ 15. Unknown to Collins, his decades-old past convictions prevented him from qualifying for the Handgun License and precluded him from owning long guns for hunting. Upon discovering that he could not acquire a handgun or lawfully maintain his ownership of hunting guns, Collins surrendered his long guns to state police as required by state law. *Id.* ¶ 17.

II. Legal Background

Both federal law and Maryland state law broadly prohibit virtually all individuals convicted of felonies from possessing firearms.

18 U.S.C. § 922(g)(1) provides:

> any person . . . 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.

Maryland law, as applicable to this case, states:

> [A] person may not possess a regulated firearm [or a rifle or shotgun] if the person . . . has been convicted of a disqualifying crime [including] . . . a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.

Md. Code Ann., Pub. Safety §§ 5-101(g)(3), 5-133(b)(1), 5-205.

These types of categorical prohibitions of gun possession are recent legal developments in American history. It was not until 1938 that Congress passed the first federal prohibition, making it unlawful for a person convicted of "crimes of violence" to transport or "receive" a firearm. Federal Firearms Act of 1938, Pub. L. No. 75-785, § 2(e), (f), 52 Stat. 1250, 1251.

Crimes of violence were defined and limited to "murder, manslaughter, rape, mayhem, kidnapping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year." *Id.* § 1(6), 52 Stat. at 1250. Scholars have described this early twentieth century practice as "reflect[ing] the traditions of previous centuries throughout American history: violent or otherwise dangerous persons were sometimes disarmed, but peaceable citizens—even if not necessarily law-abiding—were not." Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 274–75 (2020).

In 1961, Congress extended the prohibition for the first time beyond the prior restriction on enumerated violent felons. An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757, 757 (1961). Specifically, Congress struck out the "crime of violence" language and replaced it with a prohibition for those convicted of a "crime punishable by imprisonment for a term exceeding one year." *Id.* Section 992(g)(1) was given its current form in 1968 when Congress expanded the felon prohibition by replacing the "receive" element of the 1938 law with "possession." Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202, 82 Stat. 197, 236–37.

Today, Section 922(g)(1) encompasses nearly all felonies—violent and nonviolent—with only narrow exceptions for certain business-related offenses, state misdemeanors punishable by two years or less, and convictions that have been expunged or pardoned. 18 U.S.C. § 921(a)(20). Notably for this case, Section 922(g) also encompasses crimes classified by a state as misdemeanors, if they carry a term of imprisonment exceeding one year.[2]

The federal statute imposes a lifetime prohibition on firearm possession extending to decades-old, nonviolent convictions, regardless of an individual's subsequent rehabilitation, changed circumstances, or demonstrated lack of dangerousness. Violations of

[2] Both of Collins's crimes are classified as misdemeanors under State law and felonies under federal law. They render him subject to disarmament under both.

Section 922(g)(1) in turn can result in fifteen years' incarceration. 18 U.S.C. § 924(a)(8).

Maryland has disarmed certain criminals since at least 1941. 1941 Md. Laws 1064. Back then, the disarmament covered people convicted of a "crime of violence," defined as "murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year." *Id.* § 1(4). Today, Maryland's list of disqualifying crimes has grown to include "a crime of violence; a violation classified as a felony in the State; or a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years." Md. Code Ann., Pub. Safety § 5-101(g). Collins's convictions for resisting arrest and CDS each constitute a disqualifying crime under state law, and each preclude him from owning guns independently of federal law.

III. Decisions Below

After surrendering his firearms, Collins challenged the denial of his Handgun License application via the available administrative process. The Maryland Office of Administrative Hearings dismissed the appeal on December 12, 2022. Pet. App. 5a; Amended Complaint ¶ 18. After exhausting his administrative options, Collins filed suit in the District of Maryland to challenge his disarmament on Second Amendment grounds. Pet. App. 5a.

In addition to challenging the state firearm restriction, Collins brought an as-applied challenge to

18 U.S.C. § 922(g)(1), asserting that it deprived him of his Second Amendment rights. He sought an injunction prohibiting enforcement of both the state and federal bans against him.

In considering the Section 922(g)(1) challenge, the district court noted similarities between Collins's disarmament and the now-superseded Third Circuit's decision in *Range v. Att'y Gen. United States of Am.*, 69 F.4th 96 (3d Cir. 2023) (holding the appellant was among "the People" protected by the Second Amendment and the government did not meet its burden to show a historical tradition of disarming those convicted of making false statements to obtain food stamps), *cert. granted, judgment vacated sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024) (mem.). The district court requested supplemental briefing regarding Collins's as-applied challenge.

On October 20, 2023, the district court denied Collins's motion for summary judgment and granted Respondents' motions to dismiss. The district court held that under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022), Collins failed to allege sufficiently that he is a member of "The People" whose right to bear arms is protected by the Second Amendment. Pet. App. 13a. For that reason, the district court concluded that both Section 922(g)(1) and the Maryland statutes permissibly disarmed Collins. The district court further held that even if it undertook *Bruen*'s second step historical analysis, there were sufficient historical analogues to support class-wide disarmament of all felons as "consistent" with our Nation's traditions of firearm regulation. To support this conclusion, the district court relied on

Colonial-era laws targeting religious minorities and Loyalists. Pet. App. 15a–17a.

The Fourth Circuit affirmed the district court in an unpublished, *per curium* opinion, which treated its prior decision in *United States v. Hunt* as controlling. Pet. App. 1a–2a. In *Hunt* the Fourth Circuit held that as-applied challenges to Section 922(g)(1) are not permissible by reaffirming pre-*Bruen* caselaw excluding felons from "The People" protected by the Second Amendment. Pet. App. 28a–29a.

REASONS FOR GRANTING THE PETITION

"The constitutional right to bear arms in public for self-defense is not a 'second-class right[.]'" *Bruen*, 597 U.S. at 70. Nevertheless, six Circuit Courts of Appeal continue to uphold laws disarming citizens who are categorized as "felons," even though our Nation has no historical tradition of so broadly disarming its citizens.

The term "felon" has evolved over time; its definition is no longer consistent across the several States and territories, and the term no longer carries its historical meaning. Deeming someone a "felon" under these state laws thus "does not meet the level of historical rigor required by *Bruen* and its progeny." *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024).

Whenever the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify any regulation of that conduct by demonstrating that it is consistent with the Nation's historical traditions. *Bruen*, 597 U.S at 24. As an adult citizen who has spent his entire life in Maryland, Collins is one of "The People" of the United States. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (defining "The People" as a term of art referring to a class of persons who are part of a national community). Presumptively, his "right to bear arms" may not be infringed unless doing so is consistent with history.

At the Founding, the government permanently disarmed certain dangerous criminals—via capital punishment. But Collins is not among the categories of criminals who would have faced the prospect of that penalty. He has never committed any act or engaged in any behavior that "threaten[s] the physical safety of another." *United States v. Rahimi*, 602 U.S. 680, 698 (2024). All his criminal conduct would have been punished by fines or imprisonment. *See infra*, Section II.C.

As an immature young man decades ago, Collins dabbled in a controlled substance and while intoxicated, led the police on a brief, futile foot chase. No one was ever threatened or hurt. Since then, as a mature adult, Collins has been a "law-abiding, responsible citizen[]" for nearly 25 years. *Bruen*, 597 U.S. at 6. He has no substance abuse or mental health problems, and no history of violence. Collins wants to use arms for hunting and self-defense, and the Second Amendment, as applied to the States, secures his right to do so. *See McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

I. There is a deep and persistent split in the courts of appeals that warrants this Court's intervention

The circuits are sharply divided over whether a person convicted of a non-violent felony may present as-applied challenge to Section 922(g)(1) on the ground that its application to that person violates the Second Amendment.[3]

[3] Despite a series of remands from this Court to the circuit courts for consideration of *Rahimi*, the circuit split remains. *See United States v. Williams*, No. 23-13858, 2025 WL 40266 (11th Cir. Jan. 7, 2025), *cert. granted, judgment vacated*, 145 S. Ct. 2775 (2025) (mem.); *United States v. Dial*, No. 24-10732, 2024 WL 5103431 (11th Cir. Dec. 13, 2024), c*ert. granted, judgment vacated*, 145 S. Ct. 2697 (2025) (mem.); *United States v. Morrissette*, No. 24-10353, 2024 WL 4709935 (11th Cir. Nov. 7, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1468 (2025) (mem.); *United States v. Rambo*, No. 23-13772, 2024 WL 3534730 (11th Cir. July 25, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1163 (2025) (mem.); *United States v. Whitaker*, No. 24-10693, 2024 WL 3812277, at *1 (11th Cir. Aug. 14, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1165 (2025) (mem.); *United States v. Dubois*, 94 F.4th 1284 (11th Cir.), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (mem.), *and reinstated by* 139 F.4th 887 (11th Cir. 2025); *United States v. Canada*, 103 F.4th 257, 258 (4th Cir.), *cert. granted, judgment vacated*, 145 S. Ct. 432 (2024) (mem.); *United States v. Jones*, No. 23-10227, 2024 WL 1554865 (11th Cir. Apr. 10, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 432 (2024) (mem.), *and adhered to in part*, No. 23-10227, 2025 WL 1903020 (11th Cir. July 7, 2025); *United States v. Talbot*, No. 23-8025, 2024 WL 2013910 (10th Cir. May 7, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 430 (2024) (mem.); *United States v. Hoeft*, 103 F.4th 1357 (8th Cir.), *cert. granted, judgment vacated*, 145 S. Ct. 431 (2024), *and vacated*, 128 F.4th 917 (8th Cir. 2025); *United States v. Kirby*, No. 24-10142, 2024 WL 2846679, at *1 (11th Cir. June 5, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 430 (2024) (mem.), *and reinstated by* No. 24-10142, 2025 WL

In the Third, Fifth, and Sixth Circuits, federal courts permit as-applied challenges to a felon's disarmament and undertake the historical analysis prescribed in *Bruen*: whether an individual member of "The People" would have been disarmed at the Founding. *Range v. Att'y Gen. United States*, 124 F.4th 218 (3d Cir. 2024) (en banc); *United States v. Diaz*, 116 F.4th 458; *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024). To conduct this inquiry, these courts examine the facts of a felon's underlying conduct; specifically, whether the person's conduct demonstrates that he is "dangerous." *Range*, 124 F.4th at 232; *Diaz*, 116 F.4th at 470; *Williams*, 113 F.4th at 660.

In the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, however, a felon has no recourse at all, regardless of whether his underlying conviction provides any basis to believe that he is dangerous and regardless of how his crime would have been treated at the Founding. *Zherka v. Bondi*, 140 F.4th 68, 70 (2d Cir. 2025) (disarmed for conspiracy to make a false

---

2450513 (11th Cir. Aug. 26, 2025); *United States v. Mayfield*, No. 24-5020, 2024 WL 2891344, at *1 (10th Cir. June 10, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 430 (2024) (mem.); *United States v. Lindsey*, No. 23-2871, 2024 WL 2207445, at *1 (8th Cir. May 16, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 431 (2024) (mem.); *United States v. Pierre*, No. 23-11604, 2024 WL 1070655, at *1 (11th Cir. Mar. 12, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 412 (2024) (mem.); *United States v. Farris*, No. 22-1412, 2024 WL 159939, at *1 (10th Cir. Jan. 16, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 122 (2024) (mem.); *United States v. Willis*, No. 23-1058, 2024 WL 857058, at *1 (10th Cir. Feb. 29, 2024), *cert. granted, judgment vacated*, 145 S. Ct. 122 (2024) (mem.); *United States v. Borne*, No. 23-8008, 2023 WL 6383732, at *1 (10th Cir. Oct. 2, 2023), *cert. granted, judgment vacated*, 145 S. Ct. 123 (2024) (mem.).

statement to a bank); Pet. App. 24a (disarmed for breaking and entering a non-dwelling); *United States v. Jackson*, 110 F.4th 1120, 1122 (8th Cir. 2024) (disarmed for sale of controlled substances); *United States v. Duarte*, 137 F.4th 743, 748 (9th Cir. 2025) (disarmed for vandalism, evading a peace officer, and possession of a controlled substance for sale); *Vincent v. Bondi*, 127 F.4th 1263, 1264 (10th Cir. 2025) (disarmed for bank fraud); *Dubois*, 139 F.4th at 889 (disarmed for possession of marijuana with intent to distribute, sale of marijuana, possession of the psychedelic 5-MeO-DIPT, possession of THC oil, possession of movies for the purpose of unlawful distribution, and financial identity fraud).

Some of these courts undertake the *Bruen* historical analysis and stretch for reasons to uphold Section 922(g)(1) categorically. Others hold that the historical analysis is unnecessary because felons are not part of "The People" protected by the Second Amendment, so they were never meant to be covered by its ambit.

The circuit split is as intolerable as it is stubborn: it means that the scope of an individual's Second Amendment rights varies based on the state of his residence.

A. The Third, Fifth, and Sixth Circuit have decided as applied challenges to Section 922(g)(1) on the merits

In *Diaz,* the Fifth Circuit considered a felon facing a federal prosecution under Section 922(g)(1) after a vehicle stop and police seizure of drugs and a weapon. Diaz's pertinent criminal history included vehicle theft, and the Government proffered evidence that during the Colonial era, people convicted of an analogous crime—horse theft—could be subject to the death penalty. 116 F.4th at 468. On that basis, the Fifth Circuit concluded that "our country has a historical tradition of severely punishing people like Diaz who have been convicted of theft." *Id.* at 468–69. "Capital punishment is obviously permanent" so "[p]ermanent disarmament under Section 922(g)(1) does not punish such crimes 'to an extent beyond what was done at the founding.'" *Id.* at 469.

In *United States v. Williams*, the Sixth Circuit also considered a case of a felon facing federal prosecution for unlawfully possessing a gun. The Sixth Circuit concluded that Section 922(g)(1) is constitutional as applied to "dangerous people." 113 F.4th at 662–63. Williams had previous convictions for aggravated robbery and attempted murder; the court easily determined that these types of convictions are "highly probative of dangerousness." *Id.* at 658. In terms of guidance for lower courts, the Sixth Circuit directed judges to make "fact-specific" determinations "about how criminals commonly operate" to determine whether a defendant's past convictions are "dangerous." *Id.* at 660. It explicitly rejected the idea that courts should defer to Congress's legislative choice to disarm the entire class of "felons" because "[t]he very premise of constitutional rights is that they don't spring into being at the legislature's grace." *Id.* at 661.

So far, only the Third Circuit has granted relief to a felon. *Range*, 124 F.4th 218. Rather than a criminal prosecution, *Range* was an affirmative civil lawsuit, like the one, challenging application of Section 922(g) as applied to the plaintiff, who had been convicted of food stamp fraud. In upholding Range's as-applied change, the court reasoned that Range's conviction did not indicate that he posed any physical danger to others, and that during the Colonial era the crime would have been punished by imprisonment or a fine, not death. *Id*. at 227. The Third Circuit also rejected class-based historical analogues such as disarmament of disfavored groups like "Loyalists, Native Americans, Quakers, Catholics, and Blacks," holding those laws are not analogous because such restrictions based upon race or religion would be unconstitutional under the First and Fourteenth Amendments, so they are not appropriate historical counterparts. *Id.* at 229–30.

B. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuit prohibit as-applied challenges to Section 922(g)(1)

While there are qualitative differences in how the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have approached the question of felon disarmament, those courts all reject "felony-by-felony litigation" regarding the constitutionality of Section 922(g)(1). Instead, they hold that the Constitution poses no impediment to Section 922's categorical disarmament of everyone who bears the "felon" label.

1. In *Zherka*, the Second Circuit approved of class-wide felon disarmament (regardless of dangerousness) by relying on historical laws that disarmed "[r]eligious minorities, political dissenters, Native Americans, and persons of color"—even as it conceded that many of these laws are "offensive to

modern sensibilities" and "might well be deemed unconstitutional today." *Zherka*, 140 F.4th at 85. The court also cited the "tramp" laws in the late 1800s, which forbade "males begging for charity outside their home county" from possessing guns, suggesting that those laws are analogous because they show a legislative "perce[ption]" that such people *may* be dangerous, even absent individualized evidence of violence. *Id.* at 88–89.

2. The Eighth and Ninth Circuits' rationales for precluding as-applied challenges are similar. In *United States v. Jackson*, the Eighth Circuit considered a criminal defendant charged with violating Section 922(g)(1) based on his prior convictions for felony drug sales. 110 F.4th at 1122. Applying the *Bruen* framework, the court upheld categorial disarmament of felons on two independent bases. First, the court reasoned, the law is permissible because "legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms [regardless of violence]." *Id.* at 1127. To support that proposition, the court cited Colonial-era punishments of forfeiture or death for deceit, wrongful taking of property, and non-violent hunting offenses. *Id.* In the alternative, the court held that disarmament is permissible because an individualized determination of dangerousness is not necessary, as seen by historical disarmament of Protestants, Catholics, Native Americans, and Loyalists. *Id.* at 1128.

In *Duarte*, the Ninth Circuit adopted similar reasoning, holding that the government met its burden to justify Section 922(g)(1) under *Bruen* on two bases. First, at the Founding, crimes defined as felonies could be punished by death and estate forfeiture. *Duarte*, 137 F.4th at 756. Even though the category of "felony" is different now, the court reasoned that, historically, harsh punishments for felonies indicate that Section 922(g)(1) is consistent with the Second Amendment. *Id*. at 758. Second, the Ninth Circuit pointed to class-wide disarmament at the Founding—of religious minorities, Loyalists, and Black people, as well as "tramps." *Id*. at 759–60.

3. The Tenth Circuit and Eleventh Circuit both have relied on *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), which states that "nothing in [the] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons . . ." as dispositive. *See Vincent*, 127 F.4th at 1265 (Section 922(g)(1) is presumptively valid); *Dubois*, 139 F.4th at 891, 893 ("felons are unqualified [to bear arms] as 'a class' because they are not 'law-abiding citizens'"). These courts hold that nothing in *Bruen* or *Rahimi* undermines that statement, and on that basis neither court attempted to conduct any historical analysis pursuant to *Bruen*'s second step.

4. In *United States v. Hunt*, which it treated as controlling in this case, the Fourth Circuit agreed with *DuBois*, concluding that felons challenging Section 922(g)(1) fail at the "first step" of *Bruen* because that statute regulates activity outside the scope of the Second Amendment. Pet. App. 34a. In the alternative, however, and moving to the historical analysis at the second step of *Bruen*, the Fourth Circuit concurred with the Eighth Circuit that

"legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms" and that "Congress acted within the historical tradition when it enacted § 922(g)(1)." *Id.* at 36a (quoting *Jackson*, 110F.4th at 1129) The Fourth Circuit endorsed both of the Eighth Circuit's two historical justifications for felon disarmament: the power of a legislature to disarm categories of people determined to pose "a danger of misuse by those who deviated from legal norms" and the historical categorical disarmament of "potentially violent or dangerous" groups such as Protestants, Catholics, Native Americans, and Loyalists. *Id.* at 36a, 40a (quoting Jackson, 110 F.4th at 1127–28).

If Collins, a lifelong Maryland resident, moved 30 minutes down the road from Myersville, Maryland to State Line, Pennsylvania, which is in the Third Circuit, the result in this case would be different. Like the plaintiff in *Range*, Collins was convicted of non-violent felonies that were not capital offenses at the Founding and that provided no basis on which to conclude he is dangerous. Accordingly, under Third Circuit precedent, Collins would be entitled to a judgment determining that application of Section 922(g)(1) (or any similar state statute) as applied to him violates the Second Amendment. Yet, because Collins lives in Maryland, rather than minutes away in Pennsylvania, he has been deprived of his "fundamental rights necessary to our system of ordered liberty." *McDonald*, 561 U.S. at 778.

II. Under the proper conceptual approach, Section 922(g)(1) and the Maryland state law provisions disarming Collins violate the Second Amendment.

Felons are a fluid and diverse group that varies in composition from State to State and year to year. Collins is accurately labeled a federal "felon" based on the applicable Maryland law during the relevant years of his past conduct. He is also part of "The People" who were entitled to possess a gun at the Founding. He is a prime example of why felon-in-possession laws cannot be categorically constitutional.

This Court's review is critical because most of the lower courts that have considered the question presented, including the court below, get it wrong. Text, history, and tradition confirm that the Second Amendment right belongs to all "The People," including non-dangerous felons. As such, it is the type of right that is susceptible to as-applied challenges to government regulations that infringe it. These challenges are necessary for the Second Amendment to provide any meaningful constraints on the government's interference with individuals' right to "keep and bear arms" for the purpose of self-defense.

A. As-applied challenges must be available to protect Second Amendment rights

An as-applied constitutional challenge asks a court to invalidate a statute's application to a particular person or factual circumstance, not necessarily all its possible applications. Such challenges are integral to the protection of constitutional rights. They are "the basic building blocks of constitutional adjudication."

Gonzales v. Carhart, 550 U.S. 124, 168 (2007) (citation omitted). This approach recognizes that constitutional rights fundamentally are "personal rights." *Rakas v. Illinois*, 439 U.S. 128, 133 (1978). Indeed, as-applied challenges are preferable to facial challenges because they address specific circumstances rather than "rest[ing] on speculation." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 49–51 (2008).

The Bill of Rights, including the Second Amendment, is a list of individual rights grounded in natural law. Philip A. Hamburger, *Natural Rights, Natural Law, and American Constitutions*, 102 Yale L.J. 907, 910–915 (1993). The Founders considered these rights essential to preserve "the inestimable worth of free choice." *Faretta v. California*, 422 U.S. 806, 834, (1975). They understood that, under civil government, individuals sacrificed some of their freedom in exchange for protection by the government, but they also knew that "government might [] become a threat to the very natural liberty it was designed to secure," and therefore, people must retain "those portions of their natural liberty . . . that facilitated the preservation of freedom . . . ." Hamburger, *supra*, at 931–32.

> A people, entering into society, surrender such a part of their natural rights, as shall be necessary for the existence of that society. . . . They are conveyed by a written compact, expressing those which are given up, and the mode in which those reserved shall be secured. Language is so easy of explanation, and so difficult is it by words to convey exact ideas,

> that the party to be governed cannot be too explicit. The line cannot be drawn with too much precision and accuracy.
>
> *Essays of John DeWitt*, in 4 The Complete Anti-Federalist (H. Storing ed. 1981).

The Founders' conception of "natural rights," included the free exercise of religion, the freedom of the press, the right to bear arms, and the right to assemble. Hamburger, *supra*, at 919–20. They considered these rights to be God-given to the individual. *Id.* at 946.

Because these rights protect individuals from particular government actions, it stands to reason that infringements of these rights must be evaluated with respect to an individual's personal, factual circumstances. Case-by-case adjudication may sometimes be laborious and inefficient, but it is essential to preserve individual liberty. This Court has recognized as-applied challenges to government action under the First, Fourth, Fifth, Sixth, Seventh, and Eighth Amendments.[4] If the Court's declaration

---

[4] *See, e.g.*, *Ibanez v. Fla. Dep't of Bus. & Pro. Regul.*, 512 U.S. 136, 146 (1994) (evaluating an as-applied First Amendment challenge to a regulation); *Sibron v. New York*, 392 U.S. 40, 59–62 (1968) (declining to evaluate the facial constitutionality of a statute and instead undertaking a Fourth Amendment analysis specific to the facts in the case); *Reno v. Flores*, 507 U.S. 292 (1993) (describing the difference between a facial and as-applied Fifth Amendment due process challenge to detention of juvenile noncitizens); *United States v. Haymond*, 588 U.S. 634 (2019) (evaluating as-applied Sixth Amendment challenge to a statute governing revocation of supervised release); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) (evaluating an individual's right to a civil jury as applied to

that the Second Amendment is not "a second-class right," *McDonald*, 561 U.S. at 780, is to have meaning, courts must permit as-applied challenges based on the Second Amendment, just as they do with respect to other provisions of the Bill of Rights.

A contrary rule would make the Second Amendment a "second-class right." There is no indication that the Founders viewed it that way; rather, the right to bear arms was "conceived . . . to be the privilege of every citizen, and one of his most essential rights, to bear arms, and to resist every attack upon his liberty or property, by whomsoever made." *Debates in the House of Representatives*, The Pennsylvania Packet, Dec. 21, 1790, *reprinted in* 14 *Documentary History of the First Federal Congress* 93 (1995) (describing Rodger Sherman's position on state authority to exempt citizens from militia service). Additionally, at least two justices of this Court have specifically recognized the availability of as-applied challenges in a Second Amendment context. *Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring) ("As petitioners acknowledge, shall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge . . . .").

Section 1983 claims against a municipality); *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (holding that mandatory life-without-parole sentences violate the Eighth Amendment as applied to minors).

B. Felons are members of "the People" whose rights are protected by the Second Amendment

The Second Amendment provides that "[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." U.S. Const. amend. II (emphasis added). This Court has already provided guidance on who is part of "The People" protected by the Second Amendment. *Heller*, 554 U.S. at 580-81. As *Heller* explains, "The People" is used throughout the Constitution and "unambiguously refers to all members of the political community, not an unspecified subset." *Id.* at 580. Accordingly, *Heller* held that there is "a strong presumption that the Second Amendment right . . . belongs to all Americans." *Id.* at 581.

This conclusion is consistent with prior precedent as well. In *Verdugo-Urquidez*, this Court identified "The People" as a "term of art employed in select parts of the Constitution." 494 U.S. at 265. Specifically, *Verdugo-Urquidez* identified the First, Fourth, Ninth, and Tenth Amendments as parts of the Constitution where the term is used. Based on this observation, the Court concluded that "the People" must "refer[] to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.*

Felons are not categorically excluded from exercising their First Amendment or Fourth Amendment rights solely because of their status. Even while incarcerated, felons retain these rights, albeit with caveats based on the special security needs of the prison context. *See Bell v. Wolfish*, 441 U.S. 520, 545–46 (1979); *Pell v. Procunier*, 417 U.S. 817, 822 (1974). There is no historical precedent or other good reason to adopt a different rule in the Second Amendment context.

This Court's statement in *Heller* that "nothing in [the] opinion should be taken to cast doubt on the longstanding prohibitions on the possession of firearms by felons" does not negate this conclusion. 554 U.S. at 626. No one questions that Section 922(g)(1) is constitutional in many applications. That does not mean, however, that felons are excluded from "The People" covered by the text of the amendment. It would be inconsistent with this Court's reasoning in *Heller* and *Bruen* to eliminate a large subset of the American population from the "national community" without undergoing any historical analysis of its basis.

The inquiry into whether a person may be disarmed consistent with the Second Amendment must occur not at step one of the analysis (whether felons are included within the "People") but rather at step two where a court considers the "text, history, and tradition" framework set forth in *Bruen*. This approach is not only the most logically consistent with this Court's broader Second Amendment jurisprudence but also it mirrors this Court's recent opinion in *Rahimi*. There, in considering a challenge to 18 U.S.C. § 922(g)(8), this Court could have opted to forego a historical analysis by concluding that persons subject to a qualifying domestic violence restraining order are not part of "The People" covered by the Second Amendment. Instead, however, none of the members of the Court "question[ed] that the [challenged] law . . . addresses individual conduct covered by the text of the Second Amendment." *Rahimi*, 602 U.S. at 708 (Gorsuch, J., concurring).

The law at issue in this case and the one challenged in *Rahimi* are found in the same subsection of the U.S. Code. The logical conclusion is that individuals whose conduct is covered by those statutes are not categorically removed from "The People" whom the Second Amendment protects but rather are subject to potential disarmament on another basis.

Under this conceptual frame, the Fourth Circuit in the decision below, as well as the Second, Eighth, and Ninth Circuits, erred in relying on the Colonial era's religious, racial, and opinion-based exclusions of certain groups from "the People" entitled to bear arms to justify disarming all "felons." Those offensive exclusions of certain groups from "the People" say nothing about whether persons who *are* members of "the People" may be disarmed without some showing of dangerousness. These types of exclusions of entire groups from the category of "the People" have (rightly) been corrected by the enactment of the Fourteenth Amendment, which assures citizenship to "[a]ll persons born or naturalized in the United States." U.S. Const. amend. XIV, § 1. All U.S. citizens are necessarily part of "The People"; not all of "The People" are U.S. citizens. *See Verdugo-Urquidez*, 494 U.S. at 265.

The Second and Ninth Circuits' reliance on the "tramps" exclusion as an analogue to felon disarmament is misplaced. As an initial matter, the "tramps" exclusions date to the latter half of the nineteenth century—not to the Founding. Greenlee, *supra*, at 269. Beyond that, those exclusions were not nearly as restrictive as Section 922(g)(1) because "by definition, bans on tramps did not apply inside their home (or even their county)." *Id.* at 269–70. Unlike those disarmed under Section 922(g)(1), individuals disarmed under the nineteenth-century tramp laws still retained the fundamental right to bear arms for the purpose of self-defense in the home.

Finally, the Eight, Ninth, and Tenth Circuits' reliance on forfeiture laws as analogues is also misplaced because those punishments were temporary, not permanent. *See, e.g.*, Resolution of Mar. 13, 1776, in Journal of the Provincial Congress of South Carolina, 1776, at 77–78 (1776) (permitting restoration of arms to "any person who . . . shall convince the Committee aforesaid, that he sincerely desires to join in support to the American cause"); Mass. Gen. Laws 484 (1776) (permitting disarmed Loyalists to restore their right to possess arms upon a committee or court order). Such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. *See, e.g.*, Act of Dec. 21, 1771, ch. 540, N.J. Laws 343–344 (providing for the preservation of peer, and other game, and to prevent trespassing with guns); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69–70 (An act to prevent killing deer at unseasonable times, and for putting a stop to many abuses committed by white persons, under pretense of hunting). Thus, they are not good analogues for today's practice of permanent felon disarmament.

C. There is no historical basis to disarm persons convicted of non-violent crimes

Because the plain text of the Second Amendment protects the conduct prohibited by Section 922(g)(1) and Maryland state law, the government bears a heavy burden here—it "must 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." *Bruen*, 597 U.S. at 19. It cannot meet that burden because there is no historical tradition supporting disarming a person convicted of resisting arrest, nor is there a historical basis for disarming an individual convicted of possession of a controlled substance.

Blackstone's Commentaries do not recognize resisting arrest as a crime at common law. Rather, one could be charged with a crime relating to an incident of resisting arrest only if the act, itself, qualified as an independent crime. For example, if an arrestee killed a constable, he could be charged with murder. *See The Queen v. Tooley* (1710) 92 Eng. Rep. 349 (KB). But there was no independent offense of "resisting arrest."

To the extent there was a resisting arrest doctrine, it was a *defense*. Officials had no authority to arrest illegally, and a person possessed a limited "right" to resist an unlawful arrest. Paul G. Chevigny, *Right to Resist an Unlawful Arrest*, 78 Yale L.J. 1128, 1129–30 (1969). A person was entitled to use proportional force to resist an unlawful arrest. *John Bad Elk v. United*

States, 177 U.S. 529, 534 (1900). Killing was deemed to be disproportionate force, but even then, the illegality of the arrest could provide an excuse. The theory was that an illegal arrest was a provocation. Thus, if a person killed a constable to escape illegal detention, the killing would be classified as manslaughter rather than murder. *See id.*

Resisting arrest did not become a crime until the mid-1900s. Experts determined that resisting arrest in the field could lead to violence, and due process protections in the courts provided adequate recourse for unlawful arrests. Chevigny, *supra*, at 1133–34. Thus, because resisting arrest was not considered to be a crime in 1791, it cannot provide be a basis for depriving a person of her Second Amendment right to possess firearms.

To be sure, evading an arrest was considered a crime at the English common law, but the punishment was relatively minor. Someone convicted of the "escape of a person arrested upon criminal process" could be punished "by fine or imprisonment." 4 William Blackstone, Commentaries on the Laws of England 129–30 (5th ed. 1769). In New Jersey in 1788, The Conductor Generalis reports that escaping arrest was not a felony; it was a "misprisonment" that carries the punishment of fine and imprisonment. Conductor Generalis 281–82 (James Parker ed., 1794).

The analogue of Collins's crime of resisting arrest was not subject to capital punishment, nor was it considered a felony, so it did not result in forfeiture of any land or goods. Resisting arrest was a minor offense. Thus, there is no historical basis for disarming a person based on such a conviction. Additionally, as noted above, when felons were disarmed via forfeiture during the Founding era, it was not permanent; they could acquire arms upon completion of their sentence and reentry into society. *See Range*, 124 F.4th at 231.

Founding-era laws that forfeited felons' weapons or estates are not sufficient analogues either. As noted above, such laws often prescribed the forfeiture of the specific weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. *See, e.g.*, Act of Dec. 21, 1771, ch. 540, N.J. Laws 343–344 ("providing for the preservation of deer, and other game, and to prevent trespassing with guns"); Act of Apr. 20, 1745, ch. 3, N.C. Laws 69–70 ("An Act to prevent killing deer at unseasonable times, and for putting a stop to many abuses committed by white persons, under pretense of hunting"). So in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society.

Likewise, there is no historical basis for a regulation disarming a person convicted of possession of a controlled substance. There is very little evidence of any drug regulation until the late nineteenth century. Regulation of alcohol and intoxication is the closest contemporary historical analogue. *United States v. Connelly*, 117 F.4th 269, 279 (5th Cir. 2024) (citing David F. Musto, *The American Experience with Stimulants and Opiates,* 2 Persps. on Crime & Just. 51, 51 (1998)). Although the Founders adhered to the common-sense idea that a person who was *presently* impaired may lack the restraint needed to safely handle firearms, that does not support a modern regulation permanently disarming a person convicted of *possessing* a controlled substance at one moment in time. *See* Benjamin Rush, *An Inquiry into the Effects of Ardent Spirits upon the Human Body and Mind* 6 (8th ed., James Loring 1823).

This Court should grant review to resolve the issue of whether as-applied challenges to criminal disarmament laws are permissible and the constitutionality of applying these various state and federal provisions to people convicted of non-violent felonies, like Collins.

III. This case provides an ideal vehicle for the Court to address the permissible scope of disarmament of felons

This case is an ideal vehicle for the Court to address whether the Second Amendment places limitations on the scope of permissible disarmament of felons.

1. Collin's convictions were for non-violent conduct and provide no basis for concluding that he is dangerous. Since those convictions nearly 25 years ago, Collins has a long record of law-abiding and responsible conduct. Collins is a sober citizen who dutifully obtained hunting licenses, applied for a Handgun License, and surrendered his weapons when his Handgun License was denied. No facts are in dispute. This case thus cleanly presents a critical issue on which the Circuits are divided: whether the Second Amendment prohibits applying Section 922(g)(1) to disarm a person convicted of a non-violent

felony that would not have subjected the person to disarmament at the Founding.

In addition, as explained above, Collins was subject to disarmament under both federal and state law. Consequently, unlike many other cases in which review has been sought, this case presents the issue of how the Second Amendment applies to state laws disarming persons convicted of non-violent felonies. This case thus presents an opportunity to address more generally the issue of whether as-applied Second Amendment challenges to federal and state laws banning possession of firearms by felons.

2. The newly proposed Department of Justice ("DOJ")[5] regulations that would provide relief from Section 922(g) to some felons does not moot the issue as to the federal law nor will it solve the issue presented by similar state law bans. According to the Department, the proposed rule:

[5] On March 20, 2025, the DOJ issued an Interim Final Rule rescinding Bureau of Alcohol, Tobacco, Firearms and Explosives' ("ATF") authority to process relief-from-disability applications under Section 925(c), and on July 22, 2025, the Department published the proposed rule in the Federal Register. Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 90 Fed. Reg. 34394 (proposed July 22, 2025) (to be codified at 28 C.F.R. pt. 25, 107). This maneuver circumvented a longstanding Congressional appropriations rider that prevented the ATF from using any funds to adjudicate these applications. *See* Treasury, Postal Service, and General Government Appropriations Act, 1993, Public Law 102-393, 106 Stat. 1732 (1992); S. Rep. No. 353 (1992).

> will provide citizens whose firearm rights are currently under legal disability with an avenue to restore those rights, while keeping firearms out of the hands of dangerous criminals and illegal aliens. Ultimate discretion to grant relief will remain with the Attorney General, and she will exercise that discretion on a case-by-case basis in light of all available facts and evidence that bear on an individual's application. But absent extraordinary circumstances, violent felons, registered sex offenders, and illegal aliens, in particular, will remain presumptively ineligible for relief.

Press Release, U.S. Dep't of Just., Justice Department Publishes Proposed Rule to Grant Relief to Certain Individuals Precluded from Possessing Firearms (July 18, 2025). Applicants for relief must pay a fee and submit a lengthy and onerous application. Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 90 Fed. Reg. at 34397–99.

This proposed program does not solve the problem of felon disarmament. The Constitution is not discretionary. No person may be required to pay a fee and beg a bureaucrat for an act of grace to be permitted to exercise a fundamental constitutional right. *See e.g.*, *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153 (1969) (First Amendment forbids government from empowering its officials to "dispens[e] or withhold[]" permission to speak, assemble, picket, or parade on a discretionary basis); *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943) ("A state may not impose a charge for the enjoyment of a right granted by the federal constitution."); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966) (invalidating poll tax); *Zablock v. Redhail*, 434 U.S. 374 (1978) (invalidating law that premised entitlement to a marriage license on fully paying child support to existing children).

The proposed gun right restoration rules are fine for dangerous felons who have been permissibly disarmed in the first instance. They are unacceptable, however, for people in Collins's position, who have never done anything to forfeit their membership in "The People" protected by the Second Amendment.

Furthermore, the proposed regulations would not address the Maryland state law violations of Collins's Second Amendment rights. "Importantly, relief under section 925(c) only relieves the applicant of specific federal firearm disabilities. It does not restore the right to possess a firearm under state law if the applicant is independently subject to any such state-law prohibition." Application for Relief from Disabilities Imposed by Federal Laws with Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 90 Fed. Reg. at 34398. Maryland's law is far from unique. Every state except Vermont generally restricts firearm access after a person has been convicted of a felony. *Who Can Have a Gun: Firearm Prohibitions*, Giffords Law Center to Prevent Gun Violence (2025), https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/firearm-prohibitions/.

The proposed regulations do not, therefore, provide a reason for this Court to deny review. To the contrary, for those proposed regulations to work as intended, this Court must define the scope of the permissible disarmament of felons. The proposed regulations are intended to provide a means of discretionary relief for a person who has been lawfully prohibited from bearing arms. The Circuits are split as to whether all felons fall into that category. This Court must determine as a threshold issue whether the government may ban all felons from possessing firearms. For the proposed regulations to operate within the bounds of the Constitution, a program of discretionary relief must be limited to those who have been lawfully disarmed in the first place.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARC D. SCHIFANELLI
U.S. Army, SF (Ret.)
Founding Partner,
Schifanelli Law LLP
P.O. Box 1023
Stevensville, MD 21666

F. ANDREW HESSICK
RICHARD A. SIMPSON
ELIZABETH G. SIMPSON
Counsel of Record
160 Ridge Road
Chapel Hill, N.C. 27599
(919) 316-9613
egsimpson@gmail.com

October 10, 2025

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED MAY 15, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2218

WILLIAM COLLINS, III,

Plaintiff-Appellant,

v.

PAMELA JO BONDI, ATTORNEY GENERAL OF THE UNITED STATES; DANIEL P. DRISCOLL, ACTING DIRECTOR BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; ANTHONY G. BROWN, MARYLAND ATTORNEY GENERAL; LT. COL. ROLAND L. BUTLER, JR., ACTING SECRETARY, MARYLAND STATE POLICE,

Defendants-Appellees.

UNPUBLISHED

Appeal from the United States District Court for the District of Maryland, at Baltimore. Albert David Copperthite, Magistrate Judge. (1:23-cv-00042-ADC)

Submitted: April 23, 2025 Decided: May 15, 2025

Before WILKINSON and KING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Collins, III, appeals the district court's order granting Defendants' motions to dismiss Collins's amended complaint asserting Second and Fourteenth Amendment challenges to 18 U.S.C. § 922(g)(1) and Maryland state disbarment laws. We have reviewed the record and find no reversible error. *See United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024), *pet. for cert. filed*, No. 24-6818 (U.S. Mar. 20, 2025); *Hamilton v. Pallozzi*, 848 F.3d 614, 623 (4th Cir. 2017), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass'n Inc.*, 597 U.S. 1 (2022). Accordingly, we affirm the district court's order. *Collins v. Garland*, No. 1:23-cv-00042-ADC (D. Md., Oct. 20, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, DATED OCTOBER 20, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. ADC-23-0042

WILLIAMS COLLINS,

Plaintiff,

vs.

MERRICK B. GARLAND, *et al.*,

Defendants.

* *

MEMORANDUM OPINION

Defendants Merrick B. Garland and Steven Dettelbach (the "Federal Defendants") and Anthony G. Brown and Roland L. Butler, Jr. (the "State Defendants") have moved this Court in respective motions to dismiss Plaintiff William Collins, III's ("Plaintiff") Complaint. ECF Nos. 1, 21, 22.[1] Plaintiff responded in opposition to Defendants'

1. On January 9, 2023, this case was assigned to United States Magistrate Judge A. David Copperthite for all proceedings in accordance with Standing Order 2019-07. ECF No. 6. All parties voluntarily consented in accordance with 28 U.S.C. § 636(c). ECF No. 16.

Motions and moved the Court for summary judgment. ECF No. 25. As directed by the Court, the parties then filed supplemental briefing. ECF Nos. 30, 33, 34, 35. After considering all parties' Motions, the responses thereto, and the supplemental briefing, the Court finds that no hearing is necessary. Loc.R. 105.6 (D.Md. 2023). For the reasons stated herein, Defendants' Motions are GRANTED and Plaintiff's Motion is DENIED.

Factual and Procedural Background

When reviewing a motion to dismiss, this Court accepts as true the facts alleged in the challenged complaint. *See Williams v. Kincaid*, 45 F.4th 759, 765-66 (4th Cir. 2022). Plaintiff is a resident of Frederick County, Maryland. ECF No. 18 at ¶ 8. On June 7, 1997, Plaintiff was pulled over while driving in Frederick County and then fled from his vehicle on foot. *Id.* at ¶ 10. Plaintiff was later apprehended and charged with Driving While Intoxicated (DWI) under § 21-902(b) of the Maryland Transportation Article and Resisting Arrest. *Id.* On January 23, 1998, Plaintiff pled guilty to both charges. *Id.* On December 21, 2001, Plaintiff was charged with a second DWI, as well as Possession of a Controlled Dangerous Substance ("CDS Possession") pursuant to the current iteration § 5-601 of the Maryland Criminal Law Article. *Id.* at ¶ 11. Plaintiff contends that his Resisting Arrest conviction has been removed from State public records (*Id.* at ¶ 13), but that his CDS Possession conviction is ineligible for expungement because it arose out of the same incident as an alcohol-related traffic conviction. *Id.* at ¶ 14.

On June 19, 2022, Plaintiff applied to the Maryland State Police for a Handgun Qualification License ("HQL") pursuant to §§ 5-117 and 5-117.1 of the Maryland Public Safety Article. *Id.* at ¶ 15. On June 30, 2022, Plaintiff's application was denied based on his Resisting Arrest and CDS Possession convictions. *Id.* at ¶ 18. The denial was upheld by the Maryland Office of Administrative Hearings. *Id.*

On January 9, 2023, Plaintiff filed his initial Complaint. In an Amended Complaint filed March 27, 2023, Plaintiff asserted that he is now a "responsible, law-abiding citizen" with no "history of violent behavior, conduct, or convictions that would . . . suggest that he would pose any more danger to the community by possession of a firearm than would any other law-abiding U.S. citizen." *Id.* at ¶ 21. On April 4, 2023, the Federal Defendants and the State Defendants filed Motions to Dismiss. ECF Nos. 21, 22. The Federal Defendants moved to dismiss Count III of the Complaint, while the State Defendants moved to dismiss the Complaint in its entirety. *Id.* Plaintiff responded in opposition on April 24, 2023, and additionally filed a Motion for Summary Judgment, to which both Defendants responded in opposition on May 8, 2023. On June 8, 2023, in light of the *en banc* decision in *Range v. Att'y Gen.*, 69 F.4th 96 (3rd Cir. 2023), the Court directed the parties to file supplemental briefing.

Discussion

Standard of Review

The purpose of a Rule 12(b)(6) motion is to test the sufficiency of the Complaint, not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 243. (4th Cir. 1999)). Upon reviewing a motion to dismiss, the Court accepts "all well-pleaded allegations as true and construe[s] the facts in the light most favorable to the plaintiffs." *In re Willis Towers Watson plc Proxy Litig.*, 937 F.3d 297, 302 (4th Cir. 2019) (citations omitted). However, it does not accept as true legal conclusions couched as factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citations omitted). The Complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570). Facial plausibility exists when Plaintiff "pleads factual content that allows the court to draw the reasonable inference that [Defendant] is liable for the misconduct alleged." *Id.* An inference of a "mere possibility of misconduct" is not sufficient to support a plausible claim. *Id.* at 679. "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S.

Analysis

Plaintiff asserts that the application of §§ 5-133(b)(1), 5-144, and 5-205(b)(1) of the Maryland Public Safety Article and 18 U.S.C. § 922(g)(1) against him violates his Second and Fourteenth Amendment rights. ECF No. 18 at ¶¶ 26, 30, 34. He seeks declaratory and injunctive relief pursuant to 28 U.S.C. §2201, et seq. (Count I) and 42 U.S.C. § 1983 (Counts II & III), requesting (1) that the Court declare the aforementioned statutes unconstitutional as applied to him and (2) that the Court enjoin the State and Federal Defendants from enforcing the statutes against him. *Id.* The Defendants argue that Plaintiff has failed to state claims for relief as to all claims. *See* ECF Nos. 21, 22. The Court agrees with Defendants.

Plaintiff's Challenge to §§ 5-133(b)(1), 5-144, and 5-205(b)(1) of the Maryland Public Safety Article (Counts I&II)

In Counts I and II of the Amended Complaint, Plaintiff argues that "it is unconstitutional to apply against him, personally, the firearms prohibitions contained in §§ 5-133(b)(1), 5-144, and 5-205(b)(1) of the Maryland Public Safety Article and deny him his right to possess a handgun or any other firearm, regulated or unregulated, for use in self-defense, sport, or any other lawful purpose." ECF No. 18 at ¶¶ 26, 30. Plaintiff brings only this "as-applied" challenge, and does not challenge the constitutionality of the statutory provisions on their face. *Id.; see U.S. v. Jackson*, No. ELH-22-141, 2023 U.S. Dist. LEXIS 33579, 2023 WL 2242873, at *2-3 (D.Md. Mar. 3, 2023) (In contrast to a facial challenge, "an as-applied challenge is 'based on a developed factual record and the application of a statute to a specific person[.]" (citing *Richmond Med. Ctr. for Women v. Herring*, 570 F.3d 165, 172 (4th Cir. 2009) (en banc))). The State Defendants contend that "Plaintiff fails to state a claim upon which relief can be granted . . . because he is not a law-abiding citizen entitled to the protections of the Second Amendment." ECF No. 18.

The Second Amendment to the U.S. Constitution guarantees that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In recent decades, the Supreme Court has further delineated the extent of the Second Amendment's protections and has consistently upheld the disarmament of convicted felons. *See District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 2126, 213 L. Ed. 2d 387 (2022). In *Heller*, the Supreme Court held that the Second Amendment protects "the right of *law-abiding*, responsible citizens to use arms in defense of hearth and home." 554 U.S. at 635. (emphasis added). The Court further stressed that "nothing in our opinion should be taken to cast doubt on *longstanding prohibitions on the possession of firearms by felons* and the mentally ill[.]" *Id.* at 626. As with other fundamental rights, "the right secured by the Second Amendment is not unlimited." *Id.*

In *McDonald*, the Supreme Court held that the Second Amendment is applicable to the states pursuant to the Due Process Clause of the Fourteenth Amendment. 561 U.S. at 778. And, it "again made clear that the Second Amendment permits 'reasonable firearms regulations.'" *Jackson*, 2023 U.S. Dist. LEXIS 33579, 2023 WL 2242873, at *3 (quoting *Heller*, 561 U.S. at 785).

Following *Heller* and *McDonald*, the federal appellate courts, including the Fourth Circuit, implemented a "two-step" approach to "assess the constitutionality of firearms regulations, applying strict or intermediate scrutiny and conducting a means-ends analysis to determine whether the state's interest in a regulation was sufficient to overcome whatever burden the law placed on an individual's Second Amendment right." *Jackson*, 2023 U.S. Dist. LEXIS 33579, 2023 WL 2242873, at *3; *see also U.S. v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). However, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 2126, 213 L. Ed. 2d 387 (2022), the Supreme Court rejected the two-step approach. It instructed that:

> To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that

> the individual's conduct falls outside the Second Amendment's "unqualified command."

(internal citations omitted).

In applying this new test, "[a] court must first determine whether 'the Second Amendment's plain text covers an individual's conduct.'" *Jackson*, 2023 U.S. Dist. LEXIS 33579, 2023 WL 2242873, at *3 (quoting *Bruen*, 142 S. Ct. at 2126). "If it does not, the analysis ends, and the government's regulation is valid. However, if the conduct at issue is covered by the Amendment's text, the conduct is presumed protected," and the government must demonstrate whether the regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.*

Courts have been divided since *Bruen* as to whether its holding provides support for or undermines the longstanding theory that the Second Amendment only protects law-abiding citizens' right to bear arms. *See Range*, 69 F.4th at 103 ("[W]e reject the Government's contention that only law-abiding, responsible citizens are counted among the people protected by the Second Amendment." (internal quotations omitted)); *but compare with Cusick v. U.S. Dep't of Justice*, No. TDC-22-1611, 2023 U.S. Dist. LEXIS 147157, 2023 WL 5353170 (D.Md. Aug. 18, 2023) ("While Bruen . . . expanded the right to include possession outside of the home for self-defense, it cannot fairly be read to have expanded the Second Amendment right to non-law-abiding citizens."); *and U.S. v. Jackson*, 69, F.4th 495, 502-03 (8th Cir. 2023) (holding that *Bruen* reaffirmed that the Second Amendment right is subject to reasonable, well-defined restrictions, such as prohibitions on the possession of firearms by felons.") (internal citations omitted)).

I agree with the courts that have concluded that the Second Amendment only extends its protections to law-abiding citizens. *See U.S. v. Costianes*, No. JKB-21-0458, 2023 U.S. Dist. LEXIS 88339, 2023 WL 3550972 at *4 (D.Md. May 18, 2023). It is clear from *Bruen* that the Supreme Court did not intend felons to be among "the people" whose conduct the Second Amendment protects. *See U.S. v. Lane*, No. 3:23cr62 (RCY), 2023 U.S. Dist. LEXIS 155192, 2023 WL 5663084, at *8 (D.Md. Aug. 31, 2023). Indeed, the Court takes care to describe the petitioners, for whom the Court found, as "*law-abiding*, adult citizens." *Bruen*, 142 S. Ct. at 2125 (emphasis added). It further declares that the Second Amendment "elevates above all other interests the right of *law-abiding, responsible citizens* to use arms" for self-defense. *Id.* at 2131 (emphasis added) (quoting *Heller*, 554 U.S. at 635). "Considering *Bruen*'s constant qualification that its analysis operates within the context of 'law-abiding, responsible citizens,' the dicta in *Heller* and *McDonald* still define the outer bounds of 'the people' who may enjoy an uninhibited right to bear arms under the Second and Fourteenth Amendments." *U.S. v. Riley*, 635 F. Supp. 3d 411, 424-25 (ED. Va. 2022).

Having settled that the Second Amendment only protects law-abiding citizens, applying *Bruen* to Plaintiff's challenge to the firearms prohibitions at issue requires the Court to make a determination as to "(1) whether the Second Amendment's plain text covers the plaintiff's potential conduct and, if so, (2) whether the defendants have demonstrated that the regulation at issue here is consistent with the Nation's historical tradition of firearm regulation." *Campiti v. Garland*, No. 3:22-cv-177 (AWT), at *2, 649 F. Supp. 3d 1, 2023 U.S. Dist. LEXIS 4042 (D. Conn. Jan. 10, 2023).

Plaintiff's potential conduct is the possession of a regulated firearm, despite his previous convictions. Under § 5-133(b)(1), an individual in Maryland may not possess a regulated firearm, such as a handgun, if the person "has been convicted of a disqualifying crime." A "disqualifying crime" under the statute means: "(1) a crime of violence; (2) a violation classified as a felony in the State; or (3) *a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years*." § 5-101(g) (emphasis added). In the Amended Complaint, Plaintiff acknowledges that he has been convicted of both Resisting Arrest and CDS Possession. *See* ECF No. 18 at ¶¶ 10-18. At the time of Plaintiff's conviction in 1998, Resisting Arrest was a common law offense; typically, the only limitation on punishments for common law offenses without statutory penalties is the prohibition against cruel and unusual punishments in violation of the Eighth Amendment. *See State V. Huebner*, 305 Md. 601, 608, 505 A.2d 1331 (1986). In 2004, the Maryland General Assembly codified the crime of Resisting Arrest and made it subject to imprisonment not exceeding 3 years. *See* § 9-408(c). In 2001, Plaintiff was convicted of CDS Possession, which was at the time punishable by a maximum sentence of four years imprisonment. *See* Md. Code, Article 27 § 287 (repealed by Acts of 2002). A first time CDS Possession offense is now subject to imprisonment not exceeding 1 year. *See* Md. Code § 5-601. Plaintiff is thus barred from owning a firearm under § 5-101(g) of the Maryland Public Safety Act, as he has been convicted of a misdemeanor—CDS Possession—that carried a statutory penalty of more than two years at the time of his conviction.

I find that the plain text of the Second Amendment does not cover Plaintiff's potential conduct, and that he has failed to sufficiently allege that he falls within the category of law-abiding citizens entitled to Second Amendment protections. *See Hamilton v. Pallozzi*, 848 F.3d 614, 624 (4th Cir. 2017). Firearms prohibitions, such as those at issue here, are included within a class of regulatory measures that are presumptively lawful under *Heller*. *See id.* Thus, in order to rebut this presumption of lawfulness, and successfully state a claim upon which relief can be granted, "a litigant claiming an otherwise constitutional enactment is invalid as applied to him must show that his factual circumstances remove his challenge from the realm of ordinary challenges." *Id.* (quoting *U.S. v. Moore*, 666 F.3d 313, 320 (4th Cir. 2012)). Plaintiff is unable to demonstrate such circumstances. His theory is that he is a "responsible, law-abiding United States citizen who has no history of violent behavior or any other conduct that would suggest that he poses a danger to the community should he possess a firearm." ECF No. 18 at ¶ 24.

This is insufficient. Plaintiff emphasizes the nonviolent nature of his crimes, but it is of little matter. "[C]ourts in this Circuit and elsewhere have repeatedly rejected

Second Amendment challenges to disarmament statutes brought by felons with nonviolent offenses of conviction." *Hamilton*, 165 F.Supp.3d at 327 (holding that a Maryland resident convicted of felony credit-card theft, forgery, and fraud was not an average, law-abiding, responsible citizen, and granting defendant's motion to dismiss); *see also U.S. v. Pruess*, 703 F.3d 242, 247 (4th Cir. 2012) (We now join our sister circuits in holding that application of the felon-in-possession prohibition to allegedly non-violent felons like Pruess does not violate the Second Amendment.").

I find that Plaintiff has failed to plausibly allege that his conduct is covered by the Second Amendment's plain text. Defendants' Motions to Dismiss are GRANTED as to Counts I and II.

Plaintiff's Challenge to 18 U.S.C. § 922(g)(1) (Count III)

In Count III of the Amended Complaint, Plaintiff argues that "it is unconstitutional to apply against him individually the provisions of 18 U.S.C. § 922(g)(1) and deny him his right to possess a handgun or any other firearm, regulated or unregulated, for use in self-defense, sport or any other lawful purpose." ECF No. 18 at ¶ 34.

18 U.S.C. § 922(g)(1) provides that:

> [i]t 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 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.

(emphasis added).

Plaintiff has been convicted of a crime that is punishable by imprisonment for a term exceeding one year and is thus subject to § 922(g)(1)'s prohibition. His argument as to why § 922(g)(1) is unconstitutional as applied to him follows the same failed logic as his argument regarding the state law provisions. He again contends that he is a "rehabilitated, responsible, law-abiding United States citizen who has no history of violent behavior or any other conduct that would suggest that he poses a danger to the community should he possess a firearm." ECF No. 18 at ¶ 33. However, as detailed above, Plaintiff's previous criminal convictions exclude him from the category of law-abiding citizens who are entitled to the protections of the Second Amendment. I find that Plaintiff has failed to plausibly allege that the plain text of the Second Amendment covers his potential conduct, and Defendants' Motions to Dismiss are GRANTED as to Count III.

The Challenged Statutes are Consistent with the Nation's Historical Tradition of Firearm Regulation

Because I have found that Plaintiff has failed to plausibly allege that the plain text of the Second Amendment covers his potential conduct as to all Counts, there is no need to proceed to *Bruen*'s second step and determine whether the challenged statutes are consistent with the Nation's historical tradition of firearm regulation. *See Bruen*, 142 S. Ct. at 2127. However, assuming *arguendo* that Plaintiff had met his burden to prove he was a law abiding citizen, Plaintiff's challenges would still fail because the contested statutes pass muster.

In *Bruen*, the Court stated that its new test would require "courts to assess whether modem firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at 2131. It cautioned that "[l]ike all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are 'relevantly similar.'" *Id.* at 2132 (citing C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993)). Without providing an "exhaustive survey of the features that render regulations relevantly similar," the Court did offer two baseline metrics—courts should consider "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2132-33. I find that the modern felon disarmament statutes that Plaintiff challenges have historical analogues in "how" and "why" they burden Second Amendment rights.

"History shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people." *Jackson*, 69 F.4th at 502. And as the Fourth Circuit has noted, "[m]ost scholars of the Second Amendment agree that the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the government could disarm 'unvirtuous citizens.'" *U.S. v. Carpio-Leon*, 701 F.3d 974, 979-80 (4th Cir. 2012) (quoting *United States v. Yancey*, 621 F.3d 681, 684-85 (7th Cir. 2010)). Early examples include "[r]estrictions on the possession of firearms . . . [in] England in the late 1600s, when the government disarmed non-Anglican Protestants who refused to participate in the Church of England." *Jackson*, 69 F.4th at 502 (citing Joyce Lee Malcom, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (1994)). In revolutionary America, "Massachusetts, Virginia, Pennsylvania, Rhode Island, North Carolina, and New Jersey prohibited possession of firearms by people who refused to declare an oath of loyalty." *Id.* at 503. These historical prohibitions provide the requisite analog for our modern policy of disarming those who have committed serious crimes. Throughout our Nation's history, legislatures have sought to prohibit those deemed reasonably dangerous from possessing firearms. "Analogical reasoning requires only . . . a well-established and representative historical analogue, not a historical twin." *Bruen*, 142 S.Ct. at 2133. Therefore, I find that, even if Plaintiff had stated a claim upon which relief could be granted, his claim would likely fail to pass the second *Bruen* step, as the challenged statutes are consistent with our historical tradition of firearm regulation.

Conclusion

For the reasons set forth in this Memorandum Opinion, Defendants' Motions (ECF No. 21 and 22) are GRANTED.

Thus, Plaintiff's Motion for Summary Judgment (ECF No. 25) is DENIED. A separate Order will follow.

Date: 20 October 2023

/s/ A. David Copperthite
A. David Copperthite
United States Magistrate Judge

APPENDIX C — EXCERPTS OF FEDERAL AND STATE STATUTES

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

U.S. Const. amend. II

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.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. § 922

* * *

(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.

* * *

18 U.S.C. § 925

* * *

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

* * *

Md. Code Ann., Pub. Safety § 5-101.

* * *

(g) "Disqualifying crime" means:

(1) a crime of violence;

(2) a violation classified as a felony in the State; or

(3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.

* * *

(r) "Regulated firearm" means:

(1) a handgun; or

(2) a firearm that is any of the following specific

assault weapons or their copies, regardless of which company produced and manufactured that assault weapon:

* * *

Md. Code Ann., Pub. Safety § 5-133.

* * *

(b) Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if the person:

(1) has been convicted of a disqualifying crime;

* * *

Md. Code Ann., Pub. Safety § 5-205.

* * *

(b) A person may not possess a rifle or shotgun if the person:

(1) has been convicted of a disqualifying crime as defined in § 5-101 of this title;

* * *

APPENDIX D — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED DECEMBER 18, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4525

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MATTHEW RYAN HUNT,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Irene C. Berger, District Judge. (2:21-cr-00267-1)

Argued: October 30, 2024 Decided: December 18, 2024

Before WYNN, HARRIS, and HEYTENS, Circuit Judges.

Affirmed by published opinion. Judge Heytens wrote the opinion, which Judge Wynn and Judge Harris joined.

TOBY HEYTENS, Circuit Judge:

In *United States v. Canada*, No. 22-4519, 2024 U.S. App. LEXIS 30900, 2024 WL 5002188 (4th Cir. Dec. 6, 2024), this Court reaffirmed that 18 U.S.C. § 922(g)(1)—commonly known as the felon-in-possession statute—is facially constitutional, while leaving for another day whether (and if so, when) as-applied challenges may succeed. Today, we answer that question.

Before the Supreme Court's decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), and *United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024), this Court held that a person who has been convicted of a felony cannot make out a successful as-applied challenge to Section 922(g)(1) "unless the felony conviction is pardoned or the law defining the crime of conviction is found unconstitutional or otherwise unlawful." *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017). Consistent with the Eleventh Circuit's decision in *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024), we hold that neither *Bruen* nor *Rahimi* meets this Court's stringent test for abrogating otherwise-controlling circuit precedent and that our precedent on as-applied challenges thus remains binding. In addition—and in the alternative—we hold that Section 922(g)(1) would survive Second Amendment scrutiny even if we had the authority to decide the issue anew. Having concluded "there is no need for felony-by-felony litigation regarding the constitutionality of " Section 922(g)(1), *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), we reject appellant Matthew Hunt's as-applied challenge without regard to the specific conviction that established his inability to lawfully possess firearms.

I.

In late 2021—after the Supreme Court's groundbreaking decisions in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), but before *Bruen* or *Rahimi*—a grand jury charged Hunt with violating Section 922(g)(1). That statute prohibits people who have "been convicted in any court of" "a crime punishable by imprisonment for a term exceeding one year" from possessing firearms. 18 U.S.C. § 922(g)(1). The indictment identified Hunt's 2017 conviction for breaking and entering, in violation of West Virginia Code § 61-3-12, as the predicate offense for the Section 922(g)(1) charge.

In May 2022—the month before the Supreme Court decided *Bruen*—Hunt pleaded guilty without raising a Second Amendment challenge. On appeal, however, Hunt argues that Section 922(g)(1) "violates the Second Amendment, both facially and as-applied to" him. Hunt Br. 11. He also asserts the district court erred in applying a four-point enhancement to his offense level under Section 2K2.1(b)(6)(B) of the federal sentencing guidelines.

II.

The parties disagree about the standard of review for Hunt's constitutional challenge. When properly preserved, this Court generally reviews constitutional claims de novo. See, *e.g.*, *United States v. Pruess*, 703 F.3d 242, 245 (4th Cir. 2012). But matters change when a defendant fails to timely raise an issue before the district court. In that situation, reviewing courts typically apply the more government-friendly plain-error doctrine. See, *e.g.*, *United States v. Olano*, 507 U.S. 725, 733-34, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993).

In his opening brief—which was filed after *Bruen* but before *Rahimi*—Hunt spends several pages arguing the plain-error standard is inapplicable despite his admitted failure to raise a Second Amendment argument in the district court. He relies on *Class v. United States*, 583 U.S. 174, 138 S. Ct. 798, 200 L. Ed. 2d 37 (2018), which held that even an unconditional guilty plea does not "bar a criminal defendant from later appealing his conviction on the ground that the statute of conviction violates" the Second Amendment. *Id.* at 176. In Hunt's view, "[t]he same principles that motivated the decision in *Class* militate against finding forfeiture here." Hunt Br. 13. In contrast, the government's response brief—also filed before *Rahimi*—ignores that argument and simply asserts, in a single conclusory sentence, that the plain-error standard applies. See Gov't Br. 12.

After briefing was complete, this Court held the case in abeyance pending a decision in another case involving a facial challenge to Section 922(g)(1). Once that case was decided, Hunt asked permission to file supplemental briefs "[b]ecause numerous significant Second Amendment cases have been decided since Hunt filed his reply brief." ECF 45, at 1. The government did not oppose the motion, and this Court granted it.

In his supplemental brief, Hunt notes that the government never responded to his argument that the plain-error standard does not apply here. Hunt also points out that the Ninth Circuit agreed with his view in its since-vacated opinion in *United States v. Duarte*, 101 F.4th 657 (2024), vacated and reh'g en banc granted, 108 F.4th 786 (9th Cir. 2024) (mem.). In its supplemental brief, the government finally engages with Hunt's standard of review argument, contending in two brief paragraphs that Hunt's assertions improperly conflate waiver (the issue in *Class*) and forfeiture (the issue here), and that they conflict with the Supreme Court's consistent refusal to recognize a futility exception to plain-error review.

This is not how things are supposed to work. In the typical case—that is, one without a supplemental briefing order—the government's failure to respond to an argument featured prominently in an opening brief would have deprived this Court of an adversarial presentation about a disputed legal issue. True, there was a supplemental briefing order here. But we did not permit supplemental briefing to hear further argument about the relevance of *Class*—a decision that was already more than six years old at that point. Cf. *United States v. Heyward*, 42 F.4th 460, 470 n.6 (4th Cir. 2022) (emphasizing that parties may not use post-argument letters to advance arguments or present authorities that could have been included in the merits-stage briefs). And even in its supplemental brief, the government fails to address the main argument against plain-error review flagged by the Ninth Circuit's vacated decision in *Duarte*, which relies on the interplay between Federal Rules of Criminal Procedure 12 (which governs pretrial motions) and 52(b) (which governs appellate review of forfeited claims). See *Duarte*, 101 F.4th at 663 (discussing Rules 12(b)(3) and 52(b)).

We think the prudent course is to assume—solely for the sake of argument—that the plain-error standard does not apply here and that we review Hunt's constitutional claims de novo. We have often taken that approach when the standard of review is disputed, see, *e.g.*, *United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 160-61 (4th Cir. 2024); *Bowman v. Stirling*, 45 F.4th 740, 752-53 (4th Cir. 2022); *United States v. Davis*, 184 F.3d 366, 372 n.7 (4th Cir. 1999), and neither party challenges our authority to do so. Such a course seems particularly warranted here, both because the briefing about the standard of review leaves much to be desired and a report by the federal rules advisory committee specifically flags—but does not purport to resolve—questions about the proper relationship between Rule 12 and Rule 52. See *United States v. Guerrero*, 921 F.3d 895, 898 (9th Cir. 2019) (per curiam) (discussing the Report of the Advisory Committee on Federal Rules of Criminal Procedure to the Standing Committee on Rules of Practice and Procedure 5-6 (May 2013)).

III.

Turning to the merits, we reject Hunt's facial and as-applied Second Amendment challenges. A panel of this Court has held that Section 922(g)(1) remains facially constitutional after *Bruen* and *Rahimi*, see *Canada*, 2024 U.S. App. LEXIS 30900, 2024 WL 5002188, at *2, and we are bound by that decision. See, *e.g.*, *McMellon v. United States*, 387 F.3d 329, 333 (4th Cir. 2004) (en banc) ("one panel cannot overrule another"). For that reason, Hunt's facial challenge fails.

We also reject Hunt's as-applied challenge. First, we conclude that neither *Bruen* nor *Rahimi* abrogates this Court's precedent foreclosing as-applied challenges to Section 922(g)(1) and those decisions thus remain binding. Second—and in the alternative—we conclude that Section 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent.

A.

"[A] panel of this court is bound by prior precedent from other panels" and may not overturn prior panel decisions unless there is "contrary law from an en banc or Supreme Court decision." *Taylor v. Grubbs*, 930 F.3d 611, 619 (4th Cir. 2019) (quotation marks removed). "We do not lightly presume that the law of the circuit has been overturned." *Id.* (quotation marks removed). Instead, "[a] Supreme Court decision overrules or abrogates our prior precedent only if our precedent is *impossible* to reconcile with" that decision. *Short v. Hartman*, 87 F.4th 593, 605 (4th Cir. 2023) (quotation marks removed; emphasis added). "If it is possible for us to read our precedent harmoniously with Supreme Court precedent, we must do so." *Id.* (quotation marks removed).

Neither the Second Amendment nor *Bruen* are immune from these general rules. To the contrary, our en banc Court recently concluded that *Bruen* "did not abrogate" the Court's pre-*Bruen* holding that a Maryland statute regulating certain assault weapons was constitutional. *Bianchi v. Brown*, 111 F.4th 438, 448 (4th Cir. 2024) (en banc). Applying the same rules here, we conclude that this Court's previous decisions rejecting as-applied challenges to Section 922(g)(1) remain binding because they can be read "harmoniously" with *Bruen* and *Rahimi* and have not been rendered "untenable" by them. *Short*, 87 F.4th at 605 (first quote); *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 504 (4th Cir. 2023) (second quote).

The first relevant pre-*Bruen* decision is *United States v. Moore*, 666 F.3d 313 (4th Cir. 2012), which rejected facial and as-applied challenges to Section 922(g)(1). See *id.* at 319-20. *Moore* relied on the Supreme Court's statements in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" and that restrictions on felons possessing firearms were "presumptively lawful regulatory measures." *Id.* at 317-18 (quoting *Heller*, 554 U.S. at 626, 627 n.26). *Moore* further concluded the defendant there did "not fall within the category of citizens to which the *Heller* court ascribed the Second Amendment protection of 'the right of *law-abiding responsible* citizens to use arms in defense of hearth and home.'" *Id.* at 319 (quoting *Heller*, 554 U.S. at 635).

To be sure, *Moore* left open the "possibility" that some hypothetical challenger could "rebut the presumptive lawfulness of § 922(g)(1) as applied" to that person. 666

F.3d at 320. But this Court's later decisions repeatedly rejected such challenges, including those brought by "allegedly non-violent felons." *Pruess*, 703 F.3d at 247; see *United States v. Smoot*, 690 F.3d 215, 221-22 (4th Cir. 2012). And this Court ultimately held "[a] felon cannot be returned to the category of 'law-abiding, responsible citizens' for the purposes of the Second Amendment . . . unless the felony conviction is pardoned or the law defining the crime of conviction is found unconstitutional or otherwise unlawful," thus foreclosing the vast majority of as-applied challenges. *Hamilton*, 848 F.3d at 626.

Those decisions are neither impossible to reconcile with *Bruen* and *Rahimi* nor rest on a mode of analysis that has been rendered untenable by them. This Court's post-*Heller* and pre-*Bruen* decisions relied on two strands of authority to reject as-applied challenges to Section 922(g)(1): (1) *Heller*'s pronouncement that restrictions on firearms possession by those who have been convicted of felonies were "longstanding" and "presumptively lawful"; and (2) a determination—stemming from *Heller*—that such individuals were, as a group, excluded from the category of "law-abiding, responsible citizens" whose conduct is protected by the Second Amendment. Nothing in *Bruen* or *Rahimi* contradicts either rationale.

Far from abandoning *Heller*'s language about "longstanding" and "presumptively lawful" restrictions on felons possessing firearms, the Supreme Court has repeatedly reaffirmed its applicability. Two years after *Heller*, the plurality opinion in *McDonald v. City of Chicago*, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894

(2010), described *Heller* as making "clear . . . that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill'" and again "repeat[ed] those assurances." *Id.* at 786 (quoting *Heller*, 554 U.S. at 626). The Court's opinion in *Bruen* did not repeat those assurances. But that opinion also "did not mention felons or section 922(g)(1)," *Dubois*, 94 F.4th at 1293, and it described its holding as "consistent with" and "[i]n keeping with" *Heller*. See *Bruen*, 597 U.S. at 10, 17; see also *id.* at 72 (Alito, J., concurring) (noting that the Court's opinion "decide[d] nothing about who may lawfully possess a firearm"). And most recently, in *Rahimi*, the Court reiterated *Heller*'s pronouncement that "prohibitions, like those on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'" *Rahimi*, 144 S. Ct. at 1889 (quoting *Heller*, 554 U.S. at 626, 627 n.26). In short, nothing in *Bruen* or *Rahimi* undermines—much less fatally—this Court's previous reliance on *Heller*'s express statements about this exact sort of law. Accord *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 221-22 (4th Cir. 2024) (en banc) (considering *Bruen* and relying on *Heller's* "longstanding" and "presumptively lawful" language).

The same is true about this Court's pre-*Bruen* conclusion that people who have been convicted of felonies are outside the group of "law-abiding responsible citizen[s]" that the Second Amendment protects. *Moore*, 666 F.3d at 319; accord *Hamilton*, 848 F.3d at 626. To be sure, *Bruen* later disavowed the second step of this Court's former two-part test for considering Second Amendment challenges as "one step too many." 597 U.S. at 19 (rejecting "means-end scrutiny"). But *Bruen* also described the first step of our former test as "broadly consistent with *Heller*." *Id.* And our en banc Court has concluded that *Bruen* "did not disturb" the analysis this Court conducted under that "first step," including holdings about whether a given situation is "outside the ambit of the individual right to keep and bear arms." *Bianchi*, 111 F.4th at 448 (quotation marks removed).

Because *Bruen* rejected only one step of our former two-part test, the distinction between different types of pre-*Bruen* decisions matters. *Moore* did not rely on any sort of "means-end scrutiny" in rejecting the defendant's Second Amendment challenge. *Bruen*, 597 U.S. at 19. Instead, it held the defendant's conduct was "plainly outside the scope of the Second Amendment." *Moore*, 666 F.3d at 320. So too in *Pruess*, which said the defendant's "conduct lies outside the scope of the Second Amendment's protection" and rejected the defendant's assertion "that historical sources weigh in his favor." 703 F.3d at 246 & n.3. And again in *Hamilton*, which never discussed means-end scrutiny and resolved the case at "step one" of this Court's former test. 848 F.3d at 627. *Bruen* and *Rahimi* thus provide no basis for a panel to depart from this Court's previous rejection of the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms. See *Hamilton*, 848 F.3d at 626-29.

B.

What we have said so far is enough to reject Hunt's as-applied Second Amendment challenge. But even if we were deciding this case unconstrained by this Court's pre-*Bruen* precedent, Hunt's challenge would still fail. Under *Bruen*, courts must first consider whether "the challenged law regulates activity falling outside the scope of the [Second Amendment] right as originally understood." 597 U.S. at 18 (quotation marks removed). If the law regulates activity protected by the right, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17. We conclude Hunt's as-applied challenge fails both parts of that test.

1.

Our en banc Court recently concluded "the limitations on the scope of the Second Amendment right identified in *Heller*" are properly assessed as part of *Bruen*'s first step because those limitations "are inherent in the text of the amendment." *United States v. Price*, 111 F.4th 392, 401 (4th Cir. 2024) (en banc). The proper inquiry, *Price* explained, requires us to "look[] to the historical scope of the Second Amendment," and use that history to interpret what is and is not protected by the constitutional text. *Id.*

Heller repeatedly described the core of the Second Amendment right as protecting "law-abiding" citizens. 554 U.S. at 625, 635. In contrast, *Heller* made clear that restrictions on firearms possession by those who are not law-abiding—*i.e.*, felons—are "presumptively lawful." *Id.* at 626, 627 n.26. These limitations arise from the historical tradition. See *id.* at 626 (referring to prohibitions on felons possessing firearms as "longstanding"); *id.* at 625 ("For most of our history . . . the Federal Government did not significantly regulate the possession of firearms by *law-abiding* citizens." (emphasis added)). Taken together, *Heller* instructs that the "*pre-existing* right" "codified" in the Second Amendment protects firearms possession by the law-abiding, not by felons. *Id.* at 592.

Nothing in *Bruen* or *Rahimi* alters this reading of *Heller*. As for *Bruen*, our en banc Court has already held that "[n]othing in *Bruen* abrogated *Heller*'s extensive discussion of the contours of the scope of the right enshrined in the Second Amendment." *Price*, 111 F.4th at 400. The same is true of *Rahimi*, which pointedly repeated *Heller*'s statement that "prohibitions . . . on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'" 144 S. Ct. at 1902 (quoting *Heller*, 554 U.S. at 626, 627 n.26)). We thus conclude that Section 922(g)(1) "regulates activity"—that is, the possession of firearms by felons—that "fall[s] outside the scope of the [Second Amendment] right as originally understood." *Bruen*, 597 U.S. at 18 (quotation marks removed).

2.

Even if Section 922(g)(1) did regulate activity within the scope of the Second Amendment, we would reach the same conclusion at the second step of the *Bruen* analysis.

Rahimi provides important guidance on this point. See 144 S. Ct. at 1897 (describing some lower courts as having "misunderstood the methodology of [the Supreme Court's] recent Second Amendment cases"). The Court emphasized that neither *Heller* nor *Bruen* "suggest[s] a law trapped in amber," and that the Second Amendment "permits more than just those regulations identical to ones that could be found in 1791." *Id.* at 1897-98. Instead, the relevant question is "whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition," including "[w]hy and how the regulation burdens the right." *Id.* at 1898 (emphasis added). Modern regulations need not be "a dead ringer" or "historical twin" for a founding-era regulation; only a "historical analogue" is required. *Id.* at 1898, 1903 (quotation marks removed).

Like the Eighth Circuit, we "conclude that legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms" and that "Congress acted within the historical tradition when it enacted § 922(g)(1)." *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024). In canvassing the historical record, the Eighth Circuit identified "two schools of thought" justifying regulations restricting felons from possessing firearms. *Id.* at 1126. One justification is that "legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms." *Id.* at 1127. The second is that legislatures had the ability to disarm particular people "to address a risk of dangerousness," which readily attaches to people who have already been found guilty of having broken the law. *Id.* We agree that "either reading" of the relevant history "supports the constitutionality of § 922(g)(1) as applied to [Hunt] and other convicted felons." *Id.* at 1126.

To begin, the historical record contains ample support for the categorical disarmament of people "who have demonstrated disrespect for legal norms of society." *Jackson*, 110 F.4th at 1127. Early legislatures regularly punished felons and other nonviolent offenders with estate forfeiture or death—far greater punishments that "subsumed disarmament." *Id.* Indeed, "[t]he idea of felony [was] so generally connected with that of capital punishment," it was "hard to separate them." 4 William Blackstone, *Commentaries* 98 (1st ed. 1769).

Hunt insists this point proves too much because "[f]elons . . . don't lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment." Hunt Suppl. Br. 10 (quotation marks removed). That argument cannot be squared with *Rahimi*, which also relied on a greater-includes-the-lesser theory in holding that "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament . . . is also permissible." 144 S. Ct. at 1902. As the Supreme Court has explained, the Second Amendment "codified a *pre-existing* right." *Heller*, 554 U.S. at 592. And "it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms," *Medina v. Whitaker*, 913 F.3d 152, 158, 439 U.S. App. D.C. 294 (D.C. Cir. 2019), even though the same person may have continued to enjoy certain other constitutional protections.

At any rate, there is more. Colonial-era offenders who committed non-violent hunting offenses were ordered to forfeit their firearms. See, *e.g.*, Act of Oct. 9, 1652, *Laws and Ordinances of New Netherlands* 138 (1868) (forbidding partridge and game hunting "on pain of forfeiting the gun"). And a contemporaneous source that *Heller* described as "highly influential," 554 U.S. at 604, maintained people should have a right to bear arms "*unless for crimes committed*, or real danger of public injury from individuals." 2 Bernard Schwartz, The Bill of Rights: A Documentary History 665 (1971) (emphasis added) (quoting "the highly influential minority proposal in Pennsylvania" discussed in *Heller*).

English and colonial American governments also enacted other types of categorical bans on the possession of firearms by those who refused to follow less formal legal norms. Governments disarmed "non-Anglican Protestants who refused to participate in the Church of England," "people who refused to declare an oath of loyalty," and others. *Jackson*, 110 F.4th at 1126. True, many of these specific prohibitions would today be understood to violate other constitutional restrictions. But those examples remain "relevant here in determining the historical understanding of the right to keep and bear arms." *Id.* at 1127. And those examples suggest legislatures historically had the power to disarm categories of people based on a legislative determination that such people "deviated from legal norms," and "not merely to address a person's demonstrated propensity for violence." *Id.*

Hunt insists the evidence that the founding generation disarmed felons is mixed at best. But Hunt's argument commits the same mistake the Supreme Court identified in *Rahimi*—insisting on a historical "twin" rather than an "analogue." 144 S. Ct. at 1903. To evaluate whether a historical analogue justifies a modern regulation, we consider "[w]hy and how the regulation burdens the right." *Id.* at 1898. And here, both the why (whether "modern and historical regulations" impose a "burden" on the Second Amendment right that was "comparably justified") and the how (whether the regulations "impose a comparable burden on the right of armed self-defense") support Section 922(g)(1)'s constitutionality. *Bruen*, 597 U.S. at 29. Just as early legislatures retained the discretion to disarm categories of people because they refused to adhere to legal norms in the precolonial and colonial era, today's legislatures may disarm people who have been convicted of conduct the legislature considers serious enough to render it a felony.

When asked about this point at oral argument, Hunt worried about allowing legislatures to make certain conduct a felony and then prohibiting people from exercising their otherwise constitutionally protected right to possess a firearm for having engaged in that conduct. See Oral Arg. 31:40-33:55. We agree the power to determine the content of the criminal law is serious business. But legislatures have always had that power, and it is subject to few constitutional constraints. And there is no doubt that legislatures can subject people found to have engaged in serious criminal conduct to consequences the Constitution would otherwise forbid, including—most notably—deprivations of "life, liberty, or property." U.S. Const. amend. XIV, § 1. We conclude the same is true of the ability to lawfully possess a firearm.

Our conclusion that Section 922(g)(1) satisfies *Bruen*'s second step remains true "[i]f the historical regulation of firearms possession is viewed instead as an effort to address the risk of dangerousness." *Jackson*, 110 F.4th at 1127. "Legislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed." *Id.* at 1128. A determination of dangerousness was sometimes made by status, like "[r]eligious minorities, such as Catholics," or "Native Americans," and sometimes by conduct, like non-oath-takers. *Id.* at 1126. Those historical restrictions swept broadly, disarming all people belonging to groups that were, in the judgment of those early legislatures, potentially violent or dangerous. Even though "not all Protestants or Catholics in England, not all Native Americans, not all Catholics in Maryland, not all early Americans who declined to swear an oath of loyalty . . . were violent or dangerous persons," all could be disarmed. *Id.* at 1128. "This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* Instead, as here, past conduct (like committing a felony) can warrant keeping firearms away from persons "who might be expected to misuse them." *Id.*

Based on this history, we conclude that Section 922(g)(1) is also justified as "an effort to address a risk of dangerousness." *Jackson*, 110 F.4th at 1127. In enacting that statute, Congress found that "the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals . . .) is a significant factor in the prevalence of lawlessness and violent crime in the United States." Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901(a)(2), 82 Stat. 197, 225; see *Barrett v. United States*, 423 U.S. 212, 218, 96 S. Ct. 498, 46 L. Ed. 2d 450 (1976) (noting that Congress "sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous"). And because felons, by definition, have "demonstrated disrespect for legal norms of society," the legislature has determined that "the category as a whole present[s] an unacceptable risk of danger if armed." *Jackson*, 110 F.4th at 1127-28. That legislative judgment accords with historical tradition regulating non-law-abiding persons and is consistent with the Supreme Court's repeated instruction that longstanding prohibitions "on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'" *Rahimi*, 144 S. Ct. at 1902 (citations removed). "[T]hese assurances by the Supreme Court, and the history that supports them," reinforces our conclusion that "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." *Jackson*, 110 F.4th at 1125. We thus reject Hunt's as-applied constitutional challenge at step two of the *Bruen* analysis as well.

IV.

Hunt's final argument involves his sentence. The Federal Sentencing Guidelines call for a four-level increase in a defendant's base offense level if that defendant "used or possessed any firearm or ammunition in connection with any other felony offense." U.S.S.G. § 2K2.1(b)(6)(B). The district court applied that enhancement here. It first found it "more likely so than not that [Hunt] fired [a] gun . . . inside an apartment building, while under the influence of controlled substances during a domestic violence incident, with another person present in the apartment." JA 61. The court further concluded that Hunt's conduct "constitute[d] wanton endangerment" under West Virginia law. *Id.* "In assessing a challenge to a sentencing court's application of the Guidelines, we review the court's factual findings for clear error and its legal conclusions de novo." *United States v. Allen*, 446 F.3d 522, 527 (4th Cir. 2006).

Hunt does not challenge the district court's legal conclusion that the conduct described in the factual findings is an "act with a firearm which creates a substantial risk of death or serious bodily injury to another." W. Va. Code § 61-7-12 (describing the felony of wanton endangerment). Instead, Hunt argues that the district court clearly erred in finding—by a preponderance of the evidence—that he fired a gun in the apartment.

We are unpersuaded. For one thing, there was significant evidence that *someone* fired a gun: a neighbor heard gunshots from Hunt's apartment just minutes before the police arrived; officers found bullet casings on the floor of the apartment; and tests revealed gunshot residue on both Hunt and the other person in his apartment. Further, if somebody fired a gun, there was significant evidence that it was Hunt. When officers entered the apartment, the gun was lying on the bed next to Hunt and a bullet casing was on the bedroom floor. The other person in the apartment was unconscious in a different room. What is more, Hunt later seemed to admit that he had, in fact, fired the gun, asking the other person who had been in the apartment during a recorded phone call: "What was I shooting at? I didn't shoot at you, did I?" Taken as a whole, we conclude there was sufficient evidence for the district court to determine, by a preponderance of the evidence, that Hunt fired a gun in the apartment.

* * *

The district court's judgment is

AFFIRMED.