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IN THE LINE OF FIRE: NAVIGATING FELONS AND GUN OWNERSHIP

*Varronika L. Siryon**

ABSTRACT

Gun violence remains a pervasive issue in the United States, exemplified by alarming rates of school shootings, mass shootings, and the intricate societal debate surrounding firearm regulation. Central to this discourse is the intersection of gun ownership rights and felony convictions, highlighting the significant legal and ethical dilemmas the Second Amendment poses. This Comment critically examines the historical context and current interpretations of the Second Amendment, particularly as they pertain to individuals with felony records. It argues for a reevaluation of the felon-in-possession statute, advocating for it to distinguish between violent and nonviolent crimes, or dangerous and nondangerous felons. This approach seeks to address the unjust consequences faced by nonviolent offenders, who often bear the same restrictions as their violent counterparts, leading to a cycle of disenfranchisement that hinders their reintegration into society.

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I. INTRODUCTION

Benjamin Prosser was a young man who earned accolades and graduated high school with honors.[1] Yet, the streets he walked were fraught with danger as he repeatedly fell victim to violent assaults and street robberies.[2] When he landed a job that required him to travel two hours daily, the pressure of his reality intensified and he decided to carry a firearm for self-defense.[3] Under New York's carry licensing requirement, police arrested Mr. Prosser, offered him a deal which he accepted,[4] and the law designated him a "violent felon."[5] The legal ramifications of this label would prohibit him from possessing a firearm and impede his future pursuits of meaningful employment.[6]

* J.D. Candidate 2026, Rutgers Law School. I am grateful to Professor Soled for her patience, insightful feedback, and invaluable advice, as well as to the *Rutgers University Law Review* staff for their diligent work throughout the editing process. This Comment is dedicated to my mother, Sandra Siryon, whose boundless love and encouragement have been the guiding light in my life; to my sister, Varrianna Siryon, who consistently sets the standard high, leads by example, and inspires me to embrace hard work and resilience; and to my brother, Varson Siryon, whose steady support fuels my ambition and reminds me that I am never alone on any journey. I also dedicate this work to my beloved grandparents, Jose and Maria Cabral, whose unyielding support and unconditional love have instilled in me perseverance and gratitude, and who continue to inspire me to pursue my dreams confidently.

1. Brief of the Black Attorneys of Legal Aid, The Bronx Defenders, Brooklyn Defender Services, et al. as Amici Curiae in Support of Petitioners at 20–21, N.Y. State Rifle & Pistol Ass'n, Inc. v. Corlett, (2021) (No. 20-843).
2. *Id.* at 21.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 20–22.

Similarly, Sam Little was a devoted thirty-year-old father who juggled school, work, and raising a neurologically and physically impaired son.[7] Mr. Little's past experiences left him emotionally and physically scarred.[8] Having survived a knife attack and witnessing the violent deaths of friends, Mr. Little understood the fragility of life.[9] One evening, on his way to a friend's birthday party in the neighborhood where he had previously been attacked at knifepoint, Mr. Little armed himself.[10] During his commute, police stopped, arrested, and charged him with a violent felony.[11] Because he was overwhelmed by the stress of the case, he quit school; he also lost a job offer because the open case made him ineligible for the position he was offered with the Department of Education.[12]

In a nation that has long grappled with gun ownership and the criminal justice system, Mr. Prosser's and Mr. Little's stories mirror a pressing dilemma: how can the law balance public safety and individual rights? Congress passed 18 U.S.C. § 922(g)(1) to prevent individuals with a demonstrated proclivity for violence, or whose firearm ownership would pose a threat to public safety, from possessing a firearm.[13] While this statute is meant to protect public safety, it sweeps too broadly and is too punitive.

The statistics are staggering. In 2024, 7,419 individuals were convicted under § 922(g).[14] Of the 7,419 individuals, 90.4% were convicted under § 922(g)(1) for having a previous felony conviction.[15] A conviction under this statute can result in up to fifteen years in prison.[16] This blanket prohibition does not distinguish between those who committed nonviolent crimes and those with histories of violent offenses. Thus, it perpetuates a narrative that all felons are inherently dangerous and

7. *Id.* at 22.
8. *See id.* at 22–23.
9. *See id.* at 23.
10. *Id.*
11. *Id.*
12. *Id.*
13. *See* United States v. Hedgepeth, 700 F. Supp. 3d 276, 282–83 (E.D. Pa. 2023); *see also* Folajtar v. Att'y Gen. of the United States, 980 F.3d 897, 913 (3d Cir. 2020) (Bibas, J., dissenting) (discussing the history of felon disarmament).
14. *Section 922(g) Firearms*, U.S. SENT'G COMM'N, https://www.ussc.gov/research/quick-facts/section-922g-firearms [https://perma.cc/YT2X-T9BH] (last visited Nov. 1, 2025).
15. *Id.* The felon-in-possession statute has a disproportionate impact on Black individuals, with 58.8% of charges in 2023 levied against Black offenders. *Id.*
16. 18 U.S.C. § 924(a)(8).

stigmatizes people who have served their time, dismissing the possibility of rehabilitation and reintegration.[17]

Gun violence – whether that be in the form of mass shootings,[18] domestic violence incidents,[19] school shootings,[20] or street crime – increases the pressure on elected officials to implement effective reforms.[21] Some advocate for keeping firearms out of the hands of those who have demonstrated poor judgment.[22] But does preventing nonviolent felons from owning firearms actually reduce violence?[23] Or does it inadvertently reinforce a cycle of disenfranchisement that further alienates individuals seeking to reform their lives?

17. The stigma attached to having a felony conviction deeply affects individuals' lives. When society views them as devalued or dangerous, it often leads to lower self-esteem, diminished self-confidence, and negative thoughts about themselves and future interactions. Kelly E. Moore, Jeffrey B. Stuewig & June P. Tangney, *The Effect of Stigma on Criminal Offenders' Functioning: A Longitudinal Mediational Model*, 37 DEVIANT BEHAV. 196, 198 (2016).

18. Over the past five years, the nation has experienced more than 500 mass shootings annually. Janie Boschma, Curt Merrill & John Murphy-Teixidor, *Mass Shootings in the US Fast Facts*, CNN (Aug. 6, 2025), https://www.cnn.com/us/mass-shootings-fast-facts/index.html [https://perma.cc/BCM8-XGPB] (last visited Nov. 1, 2025).

19. On average, "more than [seventy] women are shot and killed by an intimate partner" each month. *Guns and Violence Against Women*, EVERYTOWN RSCH. & POL'Y (May 27, 2025), https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/ [https://perma.cc/2GYJ-RTFV].

20. *See generally Gunfire on School Grounds in the United States*, EVERYTOWN RSCH. & POL'Y, https://everytownresearch.org/maps/gunfire-on-school-grounds/ [https://perma.cc/4EYC-8DH7] (last visited Nov. 1, 2025) (discussing nationwide school shooting statistics).

21. *See generally* Ryan Stevens, *Governors' State Of The State Addresses: Key Themes And Major Policy Priorities*, DUANE MORRIS GOV'T STRATEGIES (Feb. 5, 2025), https://statecapitallobbyist.com/state-of-the-state-addresses/governors-state-of-the-state-addresses-key-themes-and-major-policy-priorities [https://perma.cc/A7LS-NBRS] (discussing public officials' administration commitments to public safety and illegal gun control).

22. *See Are Felon Gun Bans Constitutional?*, TALKS ON L., https://www.talksonlaw.com/briefs/are-felon-gun-bans-constutitutional [https://perma.cc/PHS8-3T8B] (last visited Nov. 1, 2025) ("[T]he Dangerousness Rationale . . . asserts that Second Amendment privileges can be curtailed for individuals who could potentially pose a threat to public safety.").

23. According to the U.S. Sentencing Commission 2005 Recidivism Release Cohort Datafile, violent offenders recidivated at a higher rate than non-violent offenders. U.S. SENT'G COMM'N, RECIDIVISM AMONG FED. VIOLENT OFFENDERS 11 (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190124_Recidivism_Violence.pdf [https://perma.cc/BY4J-6DHZ] (last visited Nov. 1, 2025) (examining federal offenders who were released from federal custody in 2005).

The Second Amendment embodies more than just the right to bear arms – it reflects the responsibility that comes with that right. In this intricate web of rights and responsibilities, reconsideration of § 922(g)(1), frequently referred to as the "felon-in-possession" statute, is crucial. Individuals who made wrong choices but are committed to change deserve an opportunity to reclaim their agency and reintegrate into society without an everlasting stigma.[24]

The law should distinguish between violent[25] and nonviolent[26] felons.[27] Unlike violent offenders, nonviolent offenders often do not pose a significant risk regarding firearm possession.[28] Nevertheless, the current ban is a one-size-fits-all approach that ignores the realities of nonviolent offenders. Further, with over nineteen million Americans living with felony convictions,[29] the implications of this law extend beyond individual lives, affecting families, communities, and society.[30]

By distinguishing between violent and nonviolent felonies or dangerous and nondangerous offenders this Comment addresses the pressing need to reassess the felon-in-possession statute. Part II of this Comment explores the historical and current state of the Second Amendment, examining its foundational principles and the evolution of

24. States vary in their provisions for regaining firearm privileges. Provisions can range from automatic restoration after sentence completion to requiring a full pardon. MARGARET COLGATE LOVE, THE MANY ROADS FROM REENTRY TO REINTEGRATION 27 (2022), https://ccresourcecenter.org/wp-content/uploads/2022/08/MRFRTR_8.24.22.pdf [https://perma.cc/3PV8-4JSR] (last visited Nov. 1, 2025). Still, firearms dispossession is indefinite in most states. *Id.* Importantly, no one may possess any firearm after a felony conviction under federal law. *Id.* at 28. Accordingly, recall that this Comment's focus is not on the varying mechanisms states use to restore gun rights, but rather on the fact that nonviolent and nondangerous offenders should not face disarmament in the first place.

25. *Violent*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Of, relating to, or involving strong physical force.").

26. *Nonviolence*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("[A]bstention . . . from any behavior that is intended to hurt other people physically.").

27. "The statute bans possession outright without regard to how great a danger exists of misuse in the particular case." United States v. Teemer, 394 F.3d 59, 64 (1st Cir. 2005).

28. "[M]any felonies are not violent in the least, raising no particular suspicion that the convict is a threat to public safety. Perjury [and] securities law violations . . . do not indicate a propensity for dangerousness." Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 721 (2007).

29. *Mass Incarceration Directly Impacts Millions of People*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/graphs/directlyimpacted2022.html [https://perma.cc/D2WQ-YX3L] (last visited Nov. 1, 2025).

30. A felony conviction can lead to strained relationships, potential loss of child custody, financial difficulties due to job limitations, social exclusion, and emotional distress. *See* Matthew Cohen, *The Long-Term Impact of a Felony Conviction*, PERLMAN & COHEN (May 30, 2025), https://perlmancohen.com/blog/the-long-term-impact-of-a-felony-conviction [https://perma.cc/VJ3K-FLRE] (last visited Nov. 1, 2025).

jurisprudence surrounding firearm rights and regulations. Part III delves into the distinctions among felonies, focusing on the definitions and classifications that separate violent offenses from nonviolent ones. Part IV examines the felon-in-possession statute itself and discusses its legislative intent throughout various historical periods. Part V focuses on the circuit split regarding how to interpret the statute. Part VI argues for establishing an objective rule regarding firearm possession for individuals with nonviolent felony convictions, advocating for reform that allows these individuals to regain their rights while still addressing public safety concerns. Last, Part VII recaps the main findings.

II. THE HISTORY AND CURRENT STATE OF THE SECOND AMENDMENT

On December 15, 1791, the States ratified the Second Amendment to the United States Constitution[31] which 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."[32]

A. Historical Context

In Founding Era America, due to their experiences under British rule, American colonies distrusted standing armies.[33] Colonists believed that a well-regulated militia, composed of local citizens, was essential for safeguarding their freedoms and providing for the common defense.[34] Anti-Federalists feared the new federal government might neglect state militias during the Constitution's ratification debates.[35] They worried that a powerful federal government could oppress citizens by stripping the states and individuals of their ability to resist and defend themselves

31. *What Is the Second Amendment and How Is It Defined*, NAT'L RIFLE ASS'N – INST. FOR LEGIS. ACTION, https://www.nraila.org/what-is-the-second-amendment-and-how-is-it-defined/ [https://perma.cc/5Q69-TAJS] (last visited Nov. 1, 2025).

32. U.S. CONST. amend. II.

33. *Historical Background on Second Amendment*, LEGAL INFO. INST., https://www.law.cornell.edu/constitution-conan/amendment-2/historical-background-on-second-amendment [https://perma.cc/6SLL-KH6H] (last visited Nov. 1, 2025).

34. *See id.*; *see also The U.S. Constitution: Preamble*, UNITED STATES COURTS, https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/us [https://perma.cc/8YE4-G7W6] (last visited Nov. 1, 2025).

35. Silveira v. Lockyer, 312 F.3d 1052, 1080 (9th Cir. 2002); *see also Historical Background on Second Amendment*, *Constitution Annotated*, https://constitution.congress.gov/browse/essay/amdt2-2/ALDE_00013262 [https://perma.cc/GMR5-D2QT] (last visited Nov. 1, 2025) (discussing the ratification debates).

against potential federal overreach, particularly through disarmament.[36] Thus, Congress wrote the Second Amendment amidst fears of a tyrannical government and desires for a broader citizen militia.[37]

B. Evolution of Second Amendment Jurisprudence

Second Amendment jurisprudence illustrates the ongoing struggle to uniformly define the scope of gun rights in the United States.[38]

1. United States v. Miller (1939)

In *United States v. Miller*, the Court found a double-barreled shotgun was not part of any ordinary military equipment and its use could not contribute to the common defense.[39] Therefore, it held that the Second Amendment did not guarantee defendants the right to keep and transport the shotgun.[40] In essence, the *Miller* Court found the "Second Amendment is tied to the maintenance of the militia."[41]

2. District of Columbia v. Heller (2008)

In *District of Columbia v. Heller*, the Court considered whether the Second Amendment guarantees an individual right or a collective right,[42] holding that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia.[43] The Court further emphasized that, "nothing in [their] opinion should be taken to

36. *Silveira*, 312 F.3d at 1080; *see* 3 JONATHAN ELLIOT, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 392 (2d ed. 1861).

37. ELLIOT, *supra* note 36, at 392; *see* District of Columbia v. Heller, 554 U.S. 570, 592 (2008).

38. Courts have played a pivotal role in shaping Second Amendment jurisprudence, with landmark decisions defining its scope and limitations. *See, e.g.*, People v. James, 174 Cal. App. 4th 662, 676 (2009) (finding military weapons and similar assault weapons outside the scope of Second Amendment protection); Southerland v. Escapa, 176 F. Supp. 3d 786, 790 (C.D. Ill. 2016) (finding that "open carry of long guns for self-defense fits within the scope" of protection); Or. Firearms Fed'n v. Kotek, 682 F. Supp. 3d 874, 884 (D. Or. 2023) (considering whether magazines holding more than ten rounds of ammunition are protected).

39. United States v. Miller, 307 U.S. 174, 178 (1939).

40. *Id.*

41. DAVE SIDHU, CONG. RSCH. SERV., LSB11170, COURTS DISAGREE AS TO WHETHER THE FEDERAL FELON-IN-POSSESSION FIREARM PROHIBITION VIOLATES THE SECOND AMENDMENT, 1 (May 28, 2024).

42. District of Columbia v. Heller, 554 U.S. 570, 579–80 (2008).

43. *Id.* at 580, 582. The Second Amendment permits "law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

cast doubt on longstanding prohibitions on the possession of firearms by felons . . . ."[44]

3. New York State Rifle & Pistol Association v. Bruen (2022)

In *New York State Rifle & Pistol Association v. Bruen*, the Court found, "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms . . . ."[45] Further, the opinion directed lower courts to textually and historically analyze future Second Amendment challenges.[46]

III. DISTINCTIONS AMONG FELONIES: VIOLENT VS. NONVIOLENT

Violent felonies differ from nonviolent ones, and a one-size-fits-all approach does not work. For instance, a person who commits violent crimes, such as assault or robbery, directly threatens others' physical safety. This inherently differs from nonviolent actions like fraud, which, while serious, do not involve physical violence.

A. Definitions and Classifications

The distinction between violent and nonviolent felonies is not just semantic; it has real-world implications. Broad legal restrictions treating all felons equally can unfairly revoke their rights to own firearms, even when they pose a minimal risk to public safety compared to those with violent convictions.[47] Additionally, the societal implications of committing a felony or misdemeanor differ.[48]

A "crime of violence" is an offense that involves the actual, attempted, or threatened use of physical force against another person or their property, or a felony that inherently poses a "substantial risk" of such force being used during the commission of the offense.[49] Examples of serious nonviolent felonies that do not involve physical violence include theft, fraud, drug manufacturing, bribery, and identity theft.[50] Though

44. *Id.* at 626.

45. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 4 (2022).

46. *Id.* at 17. "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government . . . must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

47. *See supra* Part I.

48. *See supra* note 17 and accompanying text.

49. 18 U.S.C. § 16.

50. Jennifer Corbett, *Non-Violent Felony Crimes: Examples, Sentencing & Legal Help*, LEGALMATCH (Feb. 25, 2025), https://www.legalmatch.com/law-library/article/what-are-

serious, these offenses do not inflict physical harm through violence and thus fundamentally differ from violent crimes.

B. Legal Implications for Firearm Possession

Felony classifications directly impact Second Amendment rights. In *United States v. Smith*, the Court noted that because of "the felon-dispossession statute's failure to distinguish between violent and non-violent felons[,] . . . individuals convicted of tax evasion or white collar crimes can be lawfully and permanently dispossessed of their right to keep and bear arms."[51] The Court noted that § 922(g)(9) is better, as it narrowly addresses violent offenders, and Congress intended it as an extension of § 922(g)(1),[52] which should similarly be refined.

In particular, § 922(g)(1) includes a wide variety of offenses that are irrelevant to firearms. Moreover, it encompasses too broad a range of offenders who are no more violent than the average individual.[53] For example, an Arizona law makes it a felony to knowingly litter over 300 pounds of a prohibited material, which would place any convicted litterbug within the scope of § 922(g)(1)'s prohibition.[54] When the felon-in-possession law rests on the proposition that the legislature has a legitimate interest to disarm those with a propensity for violence or whose gun possession threatens public safety,[55] it is difficult to reconcile that interest with banning guns for individuals who litter 301 pounds. Such sweeping generalizations minimize the complexity of true public safety concerns and distract lawmakers from addressing those who genuinely endanger our communities.[56]

non-violent-felonies.html [https://perma.cc/W6JE-ZABT] (last visited Nov. 1, 2025); *Level of Penal Offenses*, YPD CRIME, https://ypdcrime.com/penal.law/b_felonies.php [https://perma.cc/XB8R-UKTQ] (last visited Nov. 1, 2025).

51. United States v. Smith, 742 F. Supp. 2d 855, 863 (S.D. W. Va. 2010).

52. *Id.*

53. *See* Jeffrey Giancana, *The "Scourge" of Armed Check Fraud: A Constitutional Framework for Prohibited Possessor Laws*, 51 U. MICH. J. L. REFORM 409, 410–12 (2018).

54. ARIZ. REV. STAT. ANN. § 13-1603(B)(1) (2024).

55. Kanter v. Barr, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting).

56. "[S]uch laws are wildly overinclusive; many felonies are not violent in the least, raising no particular suspicion that the convict is a threat to public safety." Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 721 (2007).

C. The Argument for Differential Treatment Based on Felony Type

Section 922(g)(1) should apply only to those convicted of dangerous or violent felonies.[57] Amendments to federal and state statutes, or judicial precedent, could limit the scope of 922(g)(1).[58]

Congress's power to prohibit people from possessing guns extends only to people who are *dangerous*.[59] In *Kanter v. Barr*, Kanter challenged federal and state felon dispossession laws that prevented him from owning a firearm.[60] He pled guilty to one count of mail fraud,[61] a crime that primarily involved deceit and manipulation for financial gain, rather than physical harm to others.[62] In Kanter's case, a first-time offender who was married, employed, and convicted of white-collar fraud, it is arduous to argue that disarming him furthered any governmental objective or interest in preventing armed violence.[63]

Concerns exist regarding burdening the judiciary, uncertainty, and inconsistencies associated with creating an exception for nonviolent or nondangerous felons.[64] One critique is the difficulty in distinguishing between dangerous and nondangerous felons because it requires lower courts to "parse numerous state statutes."[65] Equally important, policy considerations cannot override fundamental rights. Complaints that advance individualized assessments "are too burdensome to litigate," and governmental "efforts to administer individualized disarmament relief of

57. *See* Binderup v. Att'y Gen. United States, 836 F.3d 336, 350 (3d Cir. 2016) (en banc) (quoting United States v. Torres-Rosario, 658 F.3d 110, 113 (1st Cir. 2011)) ("[S]ome offenses may be 'so tame and technical as to be insufficient to justify the ban.'"). *See generally* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 HARV. J. OF L. & PUB. POL'Y 695 (2009) (arguing individuals convicted of white-collar offenses are not dangerous to the community and should retain firearm rights).

58. "[W]e recognize that § 922(g)(1) may be subject to an overbreadth challenge at some point because of its disqualification of all felons, including those who are non-violent . . . ." United States v. Williams, 616 F.3d 685, 693 (7th Cir. 2010).

59. *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting).

60. *Id.* at 438.

61. *Id.* at 440.

62. *See id.*

63. Reply Brief of Plaintiff-Appellant Rickey I. Kanter at 14, Kanter v. Barr, 919 F.3d 437 (7th Cir. 2019) (No. 16-CV-1121).

64. *See* Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1605–06 (2022) (arguing that limiting § 922(g)(1) to violent crimes poses problems for the judiciary, law enforcement, public safety, and felons); Rehaif v. United States, 588 U.S. 225, 261 (2019) (Alito, J., dissenting) ("The majority today opens the gates to a flood of litigation . . . ."). When evolving the law, some judges may understandably hesitate to "open the floodgates." However, courts must respond to shifting societal values and address evidence of flaws within existing rules, as part of the judicial process, to ensure the pursuit of justice.

65. Stevenson, *supra* note 64, at 1612–13.

the now-defunded Section 925(c) [have] yielded poor results," suggest that similar difficulties will arise with § 922(g)(1).[66] These grievances reflect a defeatist perspective.

If the government has the time and resources to enforce a broad law like § 922(g)(1), it must ensure that individuals posing no threat to public safety do not have their fundamental rights unjustly stripped. This is, recognizably, a task easier said than done. Still, the *Schrader v. Holder* Court cautioned Congress to expect this kind of litigation.[67] Further, as Judge Hardiman highlighted, assessing as-applied constitutional challenges based on facts a challenger presents and considering those against evidence the government offers "is not only something courts are equipped to do, it is [their] constitutional duty."[68]

To alleviate some of these concerns, Congress could proactively list federal felony offenses it classifies as "violent" or "dangerous" in the statute. This would prevent individuals without having a propensity for violence from being subject to § 922(g)(1), put citizens on notice,[69] and provide courts with a detailed list of serious, violent felonies – including murder, manslaughter, and assault with intent to commit murder – thereby narrowing which offenses are sufficient to disarm felons.[70] Such explicit guidance enhances clarity and alleviates the potential for inconsistencies or uncertain outcomes with respect to the enumerated felonies.[71]

66. *See* Brief of Amicus Curiae Second Amendment Foundation, Inc. in Support of Appellant Urging Reversal at 28, Kanter v. Barr, 919 F.3d 437 (7th Cir. 2019) (No. 16-CV-1121).

67. *See* Schrader v. Holder, 704 F.3d 980, 992 (D.C. Cir. 2013) ("[T]he federal firearms ban will remain vulnerable to a properly raised as-applied constitutional challenge brought by an individual who, despite a prior conviction, has become a 'law-abiding, responsible citizen[]' entitled to 'use arms in defense of hearth and home.'" (quoting District of Columbia v. Heller, 554 U.S. 570, 635 (2008))).

68. Binderup v. Att'y Gen. United States, 836 F.3d 336, 366 n.13 (3d Cir. 2016) (Hardiman, J., concurring) (citing U.S. CONST. arts. III, VI cl. 2).

69. *See* Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) (to provide sufficient notice to citizens about which offenses are felonies, a statute must define criminal offenses with sufficient definiteness that ordinary people can understand what conduct is prohibited).

70. *See generally* 18 U.S.C. § 3559(c)(2)(F)(i) (describing in detail what the term "serious violent felony" means and providing examples of such).

71. Attaching "near-dispositive weight to the felony label," as the majority does in *Folajtar*, is erroneous. *See* Folajtar v. Att'y Gen. United States, 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting).

IV. FELON-IN-POSSESSION STATUTE

Historically, the government has a long tradition of disarming people who posed a danger to others.[72] Encapsulated within "danger" was "violence."[73] As the *Folajtar* dissent correctly recognized, Second Amendment rights were limited for *dangerous* felons,[74] and founding-era legislatures systematically disarmed groups they deemed a threat to public safety.[75] Yet this historical practice does not endorse legislative authority to sweepingly disarm individuals solely based on their felonious status.[76]

English tradition, from which American tradition developed, supports the proposition that *dangerous* people should be prevented from accessing weapons.[77] In Colonial America, this English tradition continued,[78] with the ultimate goal of disarming dangerous individuals.[79] During the Constitution's ratification, Samuel Adams proposed an amendment to guarantee that the Constitution was "never construed . . . to prevent the people of the United States who are peaceable citizens, from keeping their own arms."[80] Throughout American history, every arms prohibition was based on perceived dangerousness.[81] History and tradition inform us that felon bans are only justified to disarm violent or dangerous persons.[82]

72. *Id.* at 913 (Bibas, J., dissenting); *see also* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, Part III (2020) (describing English and Colonial American traditions of arms prohibitions).

73. *See* Greenlee, *supra* note 72, at 274, 285.

74. *Folajtar*, 980 F.3d at 914 (3d Cir. 2020) (Bibas, J., dissenting).

75. Kanter v. Barr, 919 F.3d 437, 454–58 (7th Cir. 2019) (Barrett, J., dissenting).

76. *Id.* at 458.

77. Greenlee, *supra* note 72, at 258.

78. *Id.* at 262.

79. *Id.* at 265.

80. *Id.* 265–66 (quoting 2 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 675 (1971)). In the founding area, according to contemporaneous dictionary definitions, "peaceable" meant "nonviolent," rather than "law-abiding." Greenlee, *supra* note 72, at 266 (citing 2 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 1773); THOMAS SHERIDAN, A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE 438 (2d ed. 1789)).

81. Greenlee, *supra* note 72, at 267.

82. *See id.* at 271–72.

V. EXAMINATION OF CIRCUIT SPLITS

A closer examination of circuit splits illuminates the inconsistencies in how federal appeals courts interpret the felon-in-possession prohibition.

A. The Eighth Circuit

The Eighth Circuit has upheld the constitutionality of § 922(g)(1), reasoning that Congress acted within historical tradition when it enacted the prohibition.[83] In *United States v. Jackson*, the Court found that § 922(g)(1) is constitutional as applied to a defendant who was previously convicted of selling controlled substances.[84] More generally, the Court held that § 922(g)(1) is constitutional when applied to "convicted felons,"[85] reasoning that the law aligns with the Nation's historical tradition of firearm regulation.[86]

B. The Third Circuit

By contrast, the Third Circuit held that the felon-in-possession ban is unconstitutional as applied to specific parties.[87] In *Range v. Attorney General United States*, the Court considered whether the felon-in-possession law violated Range's Second Amendment right when he had a prior conviction for making a false statement to obtain food stamps.[88] In 1995, Range struggled to provide for his wife and their three young children on 300 dollars weekly.[89] Range's wife understated his income on a food stamp application, and Range accepted responsibility, leading to his guilty plea for making a false statement.[90] Despite completing probation and paying restitution, Range's status as a devoted family man was overshadowed by the lasting impacts of his misdemeanor conviction, which barred him from possessing a gun.[91]

Concluding that § 922(g)(1) was inapplicable to Range, the Court found no basis to conclude that Range posed a physical danger to others and held that the Government failed to meet its burden of showing a

83. United States v. Jackson, 110 F.4th 1120, 1129 (8th Cir. 2024).
84. *Id.* at 1125–29.
85. *Id.* at 1125–26.
86. *Id.* at 1126–28.
87. Range v. Att'y Gen. United States, 124 F.4th 218, 232 (3d Cir. 2024).
88. *Id.* at 222–23.
89. *Id.* at 223.
90. *Id.*
91. *See id.*

longstanding history and tradition of disarming people similarly situated to him.[92] More generally, the Third Circuit has held that § 922(g)(1) applies broadly to individuals convicted of "serious crimes," whether violent or nonviolent.[93]

C. The Seventh Circuit

The Seventh Circuit has upheld the statute's constitutionality by analogy to modern statutes and historical traditions of firearm regulation. In *United States v. Williams*, the Court addressed a violent felon's challenge to § 922(g)(1) and noted that precedent requires courts to deem "disarmament bans only as 'presumptively lawful.'"[94] Nonetheless, the Court held that Williams, who was convicted of a violent felony robbery, could not support his claim that § 922(g)(1) was not substantially related to preventing him from committing further violence.[95] The Court acknowledged § 922(g)(1) may face overbreadth challenges in the future because it applied to all felons, but upheld it in Williams' case, reasoning he was "not the ideal candidate" to challenge its constitutionality due to his violent felon status.[96]

In *United States v. Gay*, the Court addressed a direct constitutional challenge to § 922(g)(1).[97] The *Gay* Court held that because of the defendant's prior twenty-two felony convictions, including violent offenses, he did not qualify as someone who possessed Second Amendment rights.[98] Interestingly, the *Gay* Court noted that "[t]he Justices have yet to consider the question whether non-violent offenders may wage as-applied challenges to § 922(g)(1)," and that "[w]e may assume for the sake of argument that there is *some* room for as-applied challenges . . . ."[99] Nonetheless, the Court held Gay was ineligible for an

92. *See Range*, 124 F.4th at 229–32. "Such a law cannot be applied to Range who does not exhibit behavior intentionally threatening the life or safety of another." *Id.* at 246 (Matey, J., concurring). "[T]here is no historical analogue for permanently disarming a citizen based on a prior conviction for food-stamp fraud." *Id.* at 246 (Phipps, J., concurring). "Over two decades have passed since Range completed his sentence . . . during which he has demonstrated law-abiding, peaceful behavior and shown his possession of firearms would not pose any danger to the public. The ban of § 922(g)(1) should no longer apply to him." (Roth, J., concurring). *Id.* at 286.

93. Binderup v. Att'y Gen. United States, 836 F.3d 336, 348–49 (3d Cir. 2016).

94. United States v. Williams, 616 F.3d 685, 692 (7th Cir. 2010).

95. *Id.* at 694.

96. *Id.* at 693.

97. United States v. Gay, 98 F.4th 843, 846 (7th Cir. 2024).

98. *Id.* at 846–47.

99. *Id.* at 846.

as-applied challenge because, as a non-law-abiding citizen, he was not a 'person' under the Second Amendment.[100]

VI. IN SEARCH OF AN OBJECTIVE RULE

To promote fairness and predictability, ensuring individuals receive equal treatment regardless of residence or where legal matters arise, a consistent legal framework is essential.

A. Need for Clarity and Uniformity

The current patchwork of interpretations distinguishing between violent and nonviolent felonies underscores an urgent need for clarity and uniformity in applying the law. The disparate rulings create a legal landscape fraught with uncertainty and leave felons – particularly those convicted of nonviolent offenses – at the mercy of circuit-specific interpretations.[101]

Further, inconsistent application of the law can lead to arbitrary outcomes, where two individuals with similar backgrounds and convictions may face markedly different legal consequences based solely on their geographic location. Thus, a nonviolent felon in the Sixth Circuit may be granted relief and allowed to possess firearms, while a similarly situated individual in the Eighth Circuit could face a permanent bar.[102] This lack of uniformity not only creates injustice on an individual level but also challenges the credibility of the legal system.

B. Proposed Approach

The Supreme Court should establish a clear and uniform standard regarding the felon-in-possession prohibition. The Sixth Circuit's unique standard is ideal. In *United States v. Morton*,[103] the Court held that while

100. *Id.* at 846–47.

101. *See supra* Part V.

102. *Contrast* United States v. Parham, 119 F.4th 488, 495–96 (6th Cir. 2024) (citing United States v. Williams, 113 F.4th 637, 657, 663 (6th Cir. 2024)) (finding § 922(g)(1) to be "constitutional in 'most applications,' 'so long as each member of that disarmed group has an opportunity to make an individualized showing that he himself is not actually dangerous.'"), *with* United States v. Jackson, 110 F.4th 1120, 1127–28 (8th Cir. 2024) ("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.").

103. United States v. Morton, 123 F.4th 492 (6th Cir. 2024). Police officers arrested Morton for having outstanding warrants, and when they searched his vehicle, found three handguns. *Id.* at 494. Morton had "at least six prior felony convictions." *Id.* at 494–50.

felons are "people" protected by the Second Amendment, the government can prohibit felons' firearm possession consistent with historical practice.[104] Because the government can disarm individuals convicted of violent felonies, such as murder, rape, assault, and robbery,[105] § 922(g)(1) is constitutional as applied to Morton because his criminal history, including shooting at his ex-girlfriend, demonstrates dangerousness.[106]

Instead of opting for categorical group determinations, courts should make individualized findings of a threat of danger where the legislature fails to act.[107] The Supreme Court must balance protecting the public and safeguarding the constitutional rights of individuals with nonviolent histories. Rather than delineating an unequivocal line, the legislature should statutorily identify felonies that are inherently dangerous or violent, such as domestic violence offenses, and those that are not.[108] This does not require an exhaustive characterization of every felony, although some cases may call for a more nuanced, fact-specific inquiry. For patently nonviolent felonies like check forgery or providing false information on a public assistance application, the legislature should exclude such individuals from § 922(g)(1). The critical factor is § 922(g)(1)'s "demonstrated proclivity for violence" prong that requires concrete evidence of an individual's propensity for violent behavior.

VII. CONCLUSION

The complexities surrounding the felon-in-possession law and its implications for the Second Amendment necessitate a thorough reevaluation of the legal standard. Stories of individuals like Benjamin Prosser and Sam Little illustrate the statute's impact on those who seek

Further, Morton had multiple non-felony assault convictions, which included an altercation in which he fired a shot at his ex-girlfriend. *Id.* at 495. He argued that the statute violates the Second Amendment as applied to him because his prior felony convictions were nonviolent. *Id.* Morton's prior behavior demonstrates a clear propensity for violence and thus the Court properly concluded Morton should be stripped of his Second Amendment rights.

104. *Id.* at 497.

105. *Id.* at 499.

106. *Id.*

107. *See* Chip Brownlee, *More Than a Thousand Felons Have Challenged Their Gun Bans Since the Supreme Court's Bruen Decision*, THE TRACE (Sept. 12, 2024), https://www.thetrace.org/2024/09/felon-gun-ban-law-bruen-supreme-court/ [https://perma.cc/3U34-F3LK].

108. *See* United States v. Prince, 700 F. Supp. 3d 663, 672 (N.D. Ill. 2023) (reasoning that "the legislature has the authority to categorically regulate firearm possession by individuals who have demonstrated that they cannot be trusted to obey the law, or pose some other danger to the political community if armed.").

to improve their lives after serving their sentences.[109] These narratives highlight that current law does not adequately differentiate between violent and nonviolent offenders, leading to unjust consequences for those who pose minimal, if any, risk to public safety.[110]

Second, the felon-in-possession statute's broad application perpetuates a cycle of disenfranchisement, criminalizing nonviolent individuals without corresponding public safety concerns.[111] By failing to account for the nature of offenses when revoking Second Amendment rights, the law stigmatizes and incapacitates individuals who have served their time.[112]

Finally, the existing legal framework is inconsistent across jurisdictions, leading to arbitrary outcomes.[113] Labeling someone as a "felon" serves as one mechanism through which the government can unconstitutionally restrict legal access to firearms, and such a broad designation includes individuals with no demonstrated proclivity for violence. This Comment does not advocate for free-for-all firearm possession; rather, it calls for a careful reevaluation of the felon-in-possession statute to respect the original intent of the Second Amendment – that only violent or dangerous individuals should be barred from gun possession.

109. *See supra* Part I.
110. *See supra* Part I.
111. *See supra* Part I.
112. *See supra* Part I.
113. *See supra* Part V.