No. 1D25-0377

In the District Court of Appeal of Florida, First District

CHRISTOPHER MICHAEL MORGAN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

SUPPLEMENTAL BRIEF OF THE STATE

On Appeal from the Circuit Court of the Seventeenth Judicial Circuit in Broward County
L.T. NO. 37-2022-CF-2746

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INTRODUCTION

The State of Florida confesses that its prohibition on possession of a firearm by a felon, § 790.23, Fla. Stat., violates the Second Amendment as applied to Appellant Christopher Morgan. The Second Amendment permits the government to disarm only dangerous felons. While broadly defined, that category does not include Morgan. As discussed below, this country's history of firearm regulation demonstrates that governments disarmed persons who (1) demonstrated, by virtue of a prior offense or other evidence in the record, a proclivity for violence or breaching the peace; (2) were involved in potentially dangerous activities; or (3) possessed qualities or traits indicating that their possession of firearms could threaten public safety. Neither Morgan's out-of-state conviction for carrying a firearm without a license nor any other evidence in the record indicates that he fits any of these descriptions and so can be disarmed under the Second Amendment. The State therefore requests that this Court reverse his felon-in-possession conviction.

BACKGROUND

In 2007, Morgan was convicted of carrying a firearm without a license in Pennsylvania—a third degree felony under Pennsylvania

law. *See* 18 Pa. C.S. § 6106(a)(1); *see also* R. 13. In 2022, during a traffic stop in Florida, Morgan voluntarily informed law enforcement that he had a firearm in the center console of his car and that he had been previously convicted of a felony under Pennsylvania law in 2007. R. 13. Shortly thereafter, the State charged Morgan with possession of a firearm by a felon. R. 14; *see also* § 790.23(1)(e), Fla. Stat. Other than the Pennsylvania conviction from nearly 20 years ago, Morgan has no criminal convictions. R. 251.

Morgan moved to dismiss, alleging that section 790.23 was unconstitutional both facially and as applied to him under the Second Amendment. R. 17. The trial court denied his motion, R. 211, 222–23, and Morgan subsequently pled no contest to his felon-in-possession charge. R. 223–24, 322. He reserved the right to appeal the denial of his motion to dismiss, and the trial court sentenced him to time served plus costs. R. 223, 325

On September 30, 2025, the State filed an answer brief in this appeal defending Morgan's conviction. On studied reflection, however, the State has determined that the felon-in-possession statute, as applied to Morgan, infringed the Second Amendment, because he was not a dangerous felon. Before oral argument, on February 13,

2026, the State notified the Court that it had changed its position and sought leave to file a supplemental brief explaining why. The Court granted the State leave. The State now submits that brief and continues to urge this Court to reverse.

ARGUMENT

In assessing a challenge to the constitutionality of a firearm restriction under the Second Amendment, this Court "is bound to follow" the U.S. Supreme Court's "text-history-tradition framework." *McDaniels v. State*, 419 So. 3d 1180, 1187–88 (Fla. 1st DCA 2025) (citing *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022)). Under that framework, the challenger first must show that the plain text of the Second Amendment applies to him and his conduct. If it does, "the government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

The State agrees with this Court that, under the two-step *Bruen* framework, section 790.23 is constitutional on its face. *See Edenfield v. State*, 379 So. 3d 5, 6 (Fla. 1st DCA 2022) (concluding that section 790.23 is facially constitutional under *Bruen*); *see also Nelson v. State*, 195 So. 2d 853, 856 (Fla. 1967) (concluding that section

790.23 was facially constitutional pre-*Bruen*). To succeed in a facial challenge, a litigant must demonstrate that no set of circumstances exist under which the law would be constitutional. *United States v. Rahimi*, 602 U.S. 680, 693 (2024). Many applications of section 790.23 "*precisely* track" Founding-era disarmament laws, including by disarming those who "levy war against" the State or give "aid and comfort" to its enemies. *Simpson v. State*, 368 So. 3d 513, 524–25 (Fla. 5th DCA 2023) (Pratt, J., concurring, joined by Jay, J.) (citing § 876.32, Fla. Stat.). Section 790.23 is thus facially constitutional.

The State no longer believes, however, that section 790.23 is constitutional as applied to Morgan. *Edenfield's* holding as to section 790.23's facial constitutionality does not control the outcome of Morgan's as-applied challenge, because a "ruling of facial constitutionality does not preclude a later action challenging the manner in which the Act is applied." *Agency for Heath Care Admin. v. Assoc. Indus. of Fla.*, 678 So. 2d 1239, 1243 (Fla. 1996). *Edenfield* did not decide whether the Second Amendment permits a State to disarm a person convicted twenty years prior of carrying a firearm without a license. Edenfield himself was a dangerous felon, as he had two previous

convictions for burglary of a dwelling. *Edenfield*, 379 So. 3d at 8 n.2. Edenfield's circumstances are quite different from Morgan's.

The State arrives at this conclusion for three reasons. First, the text of the Second Amendment covers Morgan's act of carrying a concealed firearm. Second, laws disarming nondangerous felons are not consistent with the Nation's historical tradition of firearm regulation. Third, Morgan's out-of-state felony conviction for carrying a firearm without a license does not sufficiently evince dangerousness, risk to public safety, or proclivity for breaching the peace sufficient to justify disarming him. Nor does any other evidence in the record.

I. Under *Bruen* Step One, Morgan is part of the "people," and carrying a concealed firearm is a means of "keep[ing] and bear[ing] Arms."

To show that he is presumptively protected by the Second Amendment under *Bruen* Step One, Morgan must demonstrate, first, that he is part of the "people" who have the "the right to keep and bear Arms" and, second, that his possession of the firearm is included within the acts of "keep[ing] and bear[ing] arms." U.S. Const. amend. II. Morgan can plainly show both.

The "people" in the Constitution "unambiguously refers to all members of the political community, not an unspecified subset." *Dist.*

of Columbia v. Heller, 554 U.S. 570, 580 (2008). Indeed, in six other places. when the Constitution discusses the "people," it refers to all people. This creates "a strong presumption that the Second Amendment right . . . belongs to all Americans," *id.* at 581, including those convicted of a crime.

"Indeed, where the Constitution extends its protections to only a subset of 'the people' and excludes those convicted of crimes, "it says so." *Simpson*, 368 So. 3d at 524–25 (Pratt, J., concurring, joined by Jay, J.). Section 2 of the Fourteenth Amendment, for instance, reduces a state's representation in the House if the state denies "or in any way abridge[s]" a citizen's right to vote, "except" where a state disenfranchises a citizen for "participat[ing] in rebellion, or other crime." The Second Amendment, in contrast, excludes no one from the people. In *Rahimi*, therefore, the U.S. Supreme Court found that the petitioner was part of the people, even though he was subject to a domestic violence restraining order and found by a court to pose a "credible threat to the physical safety of an intimate partner." 602 U.S. at 690; *see also id.* at 752 (Thomas, J., dissenting) (it is "*undisputed* that the Second Amendment applies to Rahimi"; "the people . . . refers to all members of the political community"); *Kanter v. Barr*,

919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting) ("Neither felons nor the mentally ill are categorically excluded from our national community"; "the question is [rather] whether the government has the power to disable the exercise of a right that [felons] otherwise possess."). By similar reasoning, despite being a convicted felon, Morgan is clearly a part of the "people" to whom the Second Amendment right attaches.

At the time of his arrest, moreover, Morgan was engaged in the precise conduct protected by the text of the Second Amendment. Carrying a firearm is unquestionably a way "to keep and bear arms." In short, Morgan is part of the "people," and he engaged in the acts of "keep[ing] and bear[ing] arms." The plain text of the Second Amendment covers him and his conduct. He meets Step One of *Bruen*.

II. Under *Bruen* Step Two, the State cannot meet its burden of identifying "relevantly similar" historical analogues to justify the disarmament of nondangerous felons.

The burden therefore shifts to the State to demonstrate that its firearm-in-possession statute is consistent with the Nation's historical tradition of firearm regulation. To do so, the State must identify "relevantly similar" historical analogues. *Bruen*, 597 U.S. at 29. And to locate such analogues, it is necessary to consider "how and why"

Florida's law burdens the right to self-defense. *Id.* "[I]ndividual self-defense is 'the *central component*' of the Second Amendment right." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at 599). "Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are *central* considerations when engaging in an analogical inquiry." *Bruen*, 597 U.S. at 29 (quotations omitted).

As for the "how," section 790.23 prohibits owning, possessing, or carrying concealed a firearm, ammunition, and electric weapons by all persons "[c]onvicted of a felony in the courts of this State[,]" a federal felony, or a felony in another state that "was punishable by imprisonment for a term exceeding 1 year." § 790.23(1)(a), (c), (e), Fla. Stat. Florida's prohibition is categorical; it does not distinguish according to the nature or recency of a previous felony conviction.

The "why" of section 790.23 appears to be two-fold. First, "[i]n its application to violent felons, it protects the public from those who pose a danger if armed." *Simpson*, 368 So. 3d at 525 (Pratt, J.,

concurring) (joined by Jay, J.).[1] But section 790.23 extends further: it applies to many felons who pose no danger to others.[2] As to these felons, the "why" is perhaps to "disarm[] those who have shown poor virtue, judgment, or character by committing offenses sufficiently blameworthy to be deemed felonies." *Id.*

Considered in light of this "how" and "why," the State's historical review, detailed below, confirms that section 790.23 may constitutionally be applied to dangerous felons. There are two major categories of disarmament laws that bear on the Second Amendment question posed by this case:

> (1) English and Founding-era laws disarming groups thought to pose a risk of armed insurrection—including British Loyalists, Catholics, slaves and freed Blacks, and Native Americans; and

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[1] *See also* 114 Cong. Rec. 14773 (daily ed. May 23, 1968) (statement of Sen. Russell Long of Louisiana) (explaining that the purpose of the precursor to the federal felon-in-possession ban was to "bar possession of a firearm from persons whose prior behaviors have established their violent tendencies" and who would be "a hazard to law-abiding citizens," if armed).

[2] For example, section 790.23 would disarm persons convicted of felonies such as bigamy, campaign-finance crimes, digging for artifacts on public lands, or falsifying the purchase price in a deed. But those persons—even if armed—pose no apparent risk of violence to others. *See* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 697 n.14 (2009).

> (2) Reconstruction-era laws disarming certain distrusted groups, such as minors, those of unsound mind, the intoxicated, and "tramps."

These two categories disclose an understanding that the government had the authority to disarm those considered too dangerous to be trusted with firearms.[3]

But governments of the same eras did not assert the same authority based merely on a person's "lack of virtue or good character," *Kanter*, 919 F.3d at 464 (Barrett, J., dissenting),[4] as might be inferred when an individual has been convicted of a nondangerous felony. It is more difficult, therefore, to build a historical case to justify a law disarming felons who pose no danger or threat to public safety. After

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[3] Many of these categorical restrictions—e.g., on possession of firearms by Catholics, slaves, Freed Blacks, and Native Americans—are odious and would be unconstitutional under the First or Fourteenth Amendments today. *See Rahimi,* 602 U.S. at 723 (Kavanaugh, J., concurring) (The Equal Protection Clause "sought to reject the Nation's history of racial discrimination, not to backdoor incorporate racially discriminatory and oppressive historical practices and laws into the Constitution."). But we can still extrapolate from these restrictions a valid "principle[] underlying the Second Amendment," *id.* at 692, which is that lawmakers were able to disarm persons *thought* to pose a risk of violence or to threaten the public safety, consistent with the historical right to bear arms.

[4] Other rights, like voting or serving on juries, could be taken away based on a showing of bad character. *Id.*

an exhaustive review, the State has concluded that it cannot meet its burden.

A. Early English and American laws disarming groups thought to pose a risk of armed insurrection are not relevantly similar to laws disarming nondangerous felons.

For our purposes, Founding-era history is most probative, as "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Bruen*, 597 U.S. at 34 (citing *Heller*, 554 U.S. at 634–35). But in both *Heller* and *Bruen*, the Supreme Court examined English law as well. The history between the Stuart Restoration in 1660 and the Glorious Revolution in 1688 is "particularly instructive," *Bruen*, 597 U.S. at 42 (citing *Heller*, 554 U.S. at 592), as the English right to bear arms was codified in 1689 in the English Bill of Rights. *See* Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev. 1, 7 (2024). That bill "has long been understood to be the predecessor to our Second Amendment." *Heller*, 554 U.S. at 593. Courts examining the constitutionality of felon-in-possession laws thus often look to 17th-century English laws to better understand

the Second Amendment. *See Kanter*, 919 F.3d at 456 (Barrett, J., dissenting).

Together, English and early American history reveals numerous examples of groups who were disarmed because they were thought, rightly or wrongly, to pose a threat to the peace of society. These historical analogues support disarmament of dangerous felons. But they do not support disarmament of nondangerous felons like Morgan.

1. English disarmament laws.

English disarmament laws up to and including the 1689 English Bill of Rights "repeatedly stated that the[ir] purpose was to prevent danger" from insurrection. Greenlee, *Disarming the Dangerous*, 16 Drexel L. Rev. at 6–7. For example:

• A 1650 Act explained in its preamble that its intent was to put England "into a posture of Defence" against "all tending to the utter overthrow of the Safety of the Nation." An Act for Setling of the Militia of the Commonwealth of England 931 (July 11, 1650). It directed commissioners to "disarm . . . all Papists, and other ill-affected persons that have of late appeared . . . against this present Parliament, or against the present Government." *Id.* at 934.

• A 1655 ordinance directed the army to "disarm all known Popish and dangerous and seditious persons," out of fear that they would provide armed support to Charles I's son, who had been exiled to France and—just as the English Protestants worried—later became King Charles II. 8 Calendar of State Papers, Domestic Series, 1655, at 44 (Mary Anne Everett Green ed., 1881); Greenlee, *Disarming the Dangerous*, 16 Drexel L. Rev. at 11. But the English at that time still thought the right to self-defense so important that they permitted Catholics to "retain those weapons that local justices . . . thought necessary 'for the Defence of his House or Person.'" Joyce Lee Malcom, *The Right of the People to Keep and Bear Arms: The Common Law Tradition*, 10 Hastings Const. L.Q. 285, 308–09 (1983) (internal citation omitted).

• Mere months after Charles II ascended to the throne, he ordered "disaffected persons watched and not allowed to assemble, and *their arms seized*; fortresses to be secured, all risings suppressed." 1 Calendar of State Papers, Domestic Series, of the Reign of Charles II, 1660–61, at 150 (Mary Anne Everett Greene ed., 1860) (emphasis added).

• A 1661 Privy Council ordinance observed that "many Factious and Turbulent Persons" have "entered into Dangerous Plotts" that "endangered his Majesties Sacred Person." William Phillips, The Lords-Lieutenant of Shropshire, *in Transactions of the Shropshire Archaeological and Natural History Society*, ser. 3, vol. 4, at 141, 156 (1904). It therefore ordered that officers should "disarm all such persons as are Notoriously known to be of ill Principles," who have "shewn any Disaffection," or who have "disturbed the public Peace." *Id.*

• The 1662 Militia Act empowered "lord-lieutenants" and "deputy-lieutenants" to "disarm the disaffected." 4 Cobbett's Parliamentary History of England 1374–75 (1808).

• It was a common law offense to go "armed to terrify the King's subjects." *Kanter*, 919 F.3d at 456 (Barrett, J., dissenting) (quoting *Sir John Knight's Case*, 87 Eng. Rep. 75, 76 (K.B. 1686)). Those who violated such laws faced imprisonment and forfeiture of their "armour." *Id.*

• Numerous laws from that period sought to disarm persons to suppress insurrection,[5] particularly after members of certain sects attempted to violently overthrow the government. Anti-Catholic "panic" set in, and then widespread disarmament took place "throughout the country" during the "Popish Plot" of 1678,[6] during which the public mistakenly believed that a Catholic conspiracy intended to assassinate the king and slaughter Protestants.[7] A real conspiracy against Charles II and his brother James developed shortly after, known as the Rye House Plot of 1683.[8] In the wake of these events, government officials were commanded to disarm

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[5] 1 Calendar of State Papers, Domestic Series, of the Reign of Charles II, 1660–1661, at 473–74 (Mary Anne Everett Green ed., 1860); *see also* An Act Declaring the Sole Right of the Militia to Be in King and for the Present Ordering & Disposing the Same, 13 Car. 2 c. 6; An Act for Ordering the Forces in the Several Counties of this Kingdom, 14 Car. 2. c. 3, § 13; 2 Calendar of State Papers, Domestic Series, of the Reign of Charles II, 1661–1662, at 538 (Mary Anne Everett Green ed., 1861).

[6] Greenlee, *Disarming the Dangerous*, 16 Drexel L. Rev. at 17.

[7] *See generally* Titus Oates, *A True Narrative of the Horrid Plot and Conspiracy of the Popish Party, against the Life of His Sacred Majesty, the Government, and the Protestant Religion* (1679).

[8] *Rye House Plotters*, Nat'l Portrait Gallery, https://perma.cc/ED7L-JNFF.

"dangerous and disaffected persons"[9] but to "connive at no man suspected to have the least inclination to disturb the peace."[10] Importantly, lords lieutenants were ordered "not to seize fowling pieces nor wearing swords nor any other thing that is trifling and not capable of being employed to do mischief in tumults or insurrections."[11]

• The 1689 English Bill of Rights provided that "the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law." *Heller*, 554 U.S. at 593 (quoting 1 W. & M. c. 2, § 7, *in* 3 Eng. Stat. at Large 441. Some have understood the phrase "allowed by Law" to mean that "the legislature—Parliament—had the power and discretion to determine who was sufficiently loyal and law-abiding to exercise the right to bear arms."[12] But these English laws, including the English Bill of Rights

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[9] 10 Calendar of State Papers, Domestic Series, 1670, at 237 (Mary Anne Everett Green ed., 1895).

[10] 25 Calendar of State Papers, Domestic Series, July 1–Sept. 30, 1683, at 94 (F.H. Blackburne Daniell & Francis Bickley eds., 1934).

[11] *Id.*.

[12] *Range v. Att'y Gen.*, 53 F.4th 262, 275 (3d Cir. 2022), *reh'g en banc granted, opinion vacated sub nom. Range v. Att'y Gen.*, 56 F.4th 992 (3d Cir. 2023), *& on reh'g en banc sub nom. Range v. Att'y*

arms provision, were enacted to prevent *armed insurrection*, uprisings, or breaches of the peace—not to disarm persons who had previously committed nonviolent crimes.

• Blackstone's Commentaries likewise explained that there would have been "a general toleration" of "papists" in England if they merely insisted on holding to a "difference of opinion in religion." 4 William Blackstone, *Commentaries* *54. But because they insisted on "subversion of the civil government," the disarmament laws were necessary to "counteract" Catholics' "dangerous . . . spirit." *Id.*

* * * * *

In short, under the body of English laws that serves as a precursor to the Second Amendment, the government disarmed persons likely to engage in armed insurrection against the Crown, or to take up arms against their fellow countrymen.

2. American disarmament laws.

The American colonies and the American states around the time of the Founding likewise understood the government to have the power to disarm feared insurrectionists. For example:

Gen., 69 F.4th 96 (3d Cir. 2023), *cert. granted, judgment vacated sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024).

• Loyalists and others who refused to swear an oath to the Union during the Revolutionary War were subjects of disarmament. The Continental Congress recommended that legislatures "disarm persons 'who are notoriously disaffected to the cause of America, or who have not associated, and shall refuse to associate, to defend, by arms, these United Colonies.'" Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 264 (2020) (quoting 1 Journals of the Continental Congress, 1774–1789, at 285 (1906)). Six states enacted such laws.[13]

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[13] Act of Mar. 31, 1779, ch. 836, § 5, 9 Pa. Stat. at Large 346, 347–48 (James T. Mitchell & Henry Flanders eds., 1903); Act of May 1, 1776, ch. 21, §§ 1–3, 5 Mass. Acts & Resolves 479, 479–81 (1886); Act of May 5, 1777, ch. 3, 9 Va. Stat. at Large 281, 281–82 (William Waller Hening ed., 1823); Act of 1776, 7 R.I. Recs. 566, 567 (John Russell Bartlett ed., 1862); Act of 1777, ch. 6, § 9, 24 N.C. Recs. 84, 89 (Walter Clark ed., 1905); Act to Prevent and Suppress Insurrections, 1778, ch. 8, 203 Hanson's Laws of Md., 1763–1784, at 193 (Frederick Green ed., 1787); Act of Dec. 1775, 15 Conn. Pub. Recs., May 1775–June 1776, at 192, 193 (Charles J. Hoadly ed., 1890) (disarming those who "libel[ed] or defame[d] any of the resolves of the Honorable Congress of the United Colonies" or were found to be "inimical to the liberties of this Colony and the other United Colonies in America"); Order of May 21, 1776, *in* 15 *Documents Relating to the Colonial History of the State of New York* 102, 103 (Berthold Fernow ed., 1887) (ordering the supplying of its militias with "such good Arms fit for soldiers use as they may have collected by disarming disaffected persons"); Act of Sept. 20, 1777, ch. 40, § 20, Acts of the General Assembly of the State of New Jersey, Aug. 27, 1776–Oct. 11,

• Another group considered to pose a threat of insurrection within the colonies was Catholics. "American Protestants worried that their Catholic neighbors were plotting with Catholic France to impose Catholic rule throughout America." Greenlee, *Disarming the Dangerous*, 16 Drexel L. Rev. at 35–36. Three colonial laws disarmed Catholics at the height of the French and Indian War.[14] These laws bore "the same rationale" as the laws disarming Loyalists who refused to swear an oath of allegiance to the Union. Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y at 723.

1777, at 84, 90 (1777) (granting authority to Council of Safety "to deprive and take from such Persons as they shall judge disaffected and dangerous to the present Government, all the Arms, Accoutrements and Ammunition which they own or possess").

[14] *See* Act for Forming and Regulating the Militia, Mar. 1757, 5 Pa. Stat. at Large 609, 610 (James T. Mitchell & Henry Flanders eds., 1898) (authorizing seizure of arms belonging to any "papists or reputed papists"); Act for Regulating the Militia of the Province of Maryland, 1756, *in* 52 Proceedings and Acts of the General Assembly of Maryland, 1755–1756, at 454 (1935) (same); Act for Disarming Papists, and Reputed Papists, Refusing to Take the Oaths to the Government, Mar. 1756, § 3, 7 Va. Stat. at Large 35, 36 (William Waller Hening ed., 1820) ("[N]o Papist, or reputed Papist [refusing to take an oath of allegiance] shall, or may have, or keep in his house or elsewhere, or in the possession of any other person to his use, or at his disposition, any arms, weapons, gunpowder or ammunition[.]").

• Colonial leadership disarmed certain Protestants as well. Massachusetts Colony leadership in 1637 convicted Antinomian Anne Hutchinson of sedition.[15] They banished Hutchinson and several supporters from the colony; but of those permitted to remain, they disarmed 75.[16] Those who repented of their antinomian beliefs and support for Hutchinson were permitted to keep their arms.[17] The disarmament order specified that the government worried that her supporters might "make some suddaine irruption upon those that differ from them in judgment."[18] And Anglican leaders in the Virginian colony disarmed numerous Puritans in 1648 who were deemed to be "Abettors to much sedition and Munity."[19]

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[15] Bradley Chapin, *Criminal Justice in Colonial America, 1606–1660*, at 102–04 (1983).

[16] 1 Records of the Governor and Company of the Massachusetts Bay in New England (1628–1641), at 211–12 (Nathaniel B. Shurtleff ed., 1853).

[17] *Id.*

[18] 1 Winthrop's Journal: History of New England (1630–1649), at 241 (James Kendall Hosmer ed., 1908).

[19] 2 The Lower Norfolk County Virginia Antiquary, pt. 1, at 15 (1899) (statement made in court in May 1648); *see also* Charles Campbell, *History of the Colony and Ancient Dominion of Virginia* 212 (1860).

• Eight colonies prohibited the sale of firearms to Native Americans.[20] These laws were part of "an ongoing military conflict" and their purpose was "to limit the danger of armed encounters with hostile Native Americans." *United States v. Duarte*, 137 F.4th 743, 795–96 (9th Cir. 2025) (VanDyke, J., concurring in part and dissenting in part) (citing Greenlee, *Disarming the Dangerous*, 16 Drexel L. Rev. at

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[20] *See* 1 Journals of the House of Burgesses of Virginia, 1619–1658/59, at 13 (H.R. McIlwaine ed., 1915) (making it a crime to "sell or give any Indians any piece shott, or poulder, or any other armes offensive or defensive"); Act Respecting the Indians, 1633, *in* The Charters and General Laws of the Colony and Province of Massachusetts Bay 133 (1814) (banning the selling or bartering of "any gun or guns, powder, bullets, shot, [or] lead, to any Indian whatsoever"); Ordinance of Mar. 31, 1639, *in* Laws and Ordinances of New Netherland, 1638–1674, at 19 (1868) ("every Inhabitant of *New Netherland* . . . is most expressly forbidden to sell any Guns, Powder or Lead to the Indians, on pain of being punished by Death"); The Public Records of the Colony of Connecticut, Prior to the Union With New Haven Colony, May 1665, at 529–30 (1850) (barring repairing an Indian's gun or selling one to an Indian); Act to Prohibit the Selling of Guns, Gunpowder, or other Warlike Stores to the Indians, Oct. 22, 1763, § 1, *in* 6 Pa. Stat. at Large 319, 319–20 (James T. Mitchell & Henry Flanders eds., 1899) (banning giving, selling, bartering, or exchanging with any Indian "any guns, gunpowder, shot, bullets, lead or other warlike stores without license"); Act for Prohibiting All Trade with the Indians, Oct. 27, 1763, *in* 58 Proceedings and Acts of the General Assembly of Maryland, 1762–63, at 419, 420 (J. Hall Pleasants ed., 1941) (prohibiting selling or giving "Gun Powder Shot or lead" to Indians over a certain quantity).

29).[21] Several laws required citizens to carry arms for self-protection against Native Americans, including at church, court, public assemblies, and during travel and fieldwork.[22]

• Numerous colonial laws disarmed slaves and freed Blacks, worrying about the risk of violence if they assembled together in groups.[23] *See Heller*, 554 U.S. at 611–12 (citing *Waters v. State*, 1 Gill 302, 309 (Md. 1843) ("free blacks were treated as a 'dangerous

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[21] *See also, e.g.*, Act Prohibiting Trade with Indians, 1675, 2 Va. Stat. at Large 336 (William Waller Hening eds., 1823) (ordering that "any person . . . within this colony . . . presum[ing] to trade . . . with any Indian any powder, shott or armes . . . shall suffer death without benefitt of clergye").

[22] *See* Nicholas J. Johnson et al., *Firearms Law and the Second Amendment: Regulation, Rights, and Policy* 130, 189–90 (3d ed. 2021); *see also Heller*, 554 U.S. at 601 ("Many colonial statutes required individual arms-bearing for public safety reasons").

[23] *See, e.g.*, Act for Preventing Negroes Insurrections, 1752, 2 Va. Stat. at Large 481, 481–82 (William Waller Hening ed., 1823); A Codification of the Statute Law of Georgia ch. 37, § 6, ¶ 45, at 813 (William A. Hotchkiss ed., 2d ed. 1848); Act of 1740, 7 S.C. Stat. at Large 410 (A.S. Johnston ed., 1840); *see also* 1790 Act of N.C., A Manual of the Laws of North-Carolina 172 (1814) ("When any number of negroes, or other slaves, or free people of color, shall collect together in arms, and be going about the country, committing thefts and alarming the inhabitants of any county, it shall be the duty of the commanding officer of such county to suppress[ ] such depredations or insurrections."); *see also* 12 The Colonial Records of the State of Georgia 451, 452 (Allen D. Candler ed., 1907) (petitioning the Governor that "all Slaves may be immediately disarmed").

population,'" leading to laws that "ma[de] it unlawful for them to bear arms'"). Several states explicitly prohibited slaves and Blacks from possessing firearms.[24] *See* Jamie G. McWilliam, *Refining the Dangerousness Standard in Felon Disarmament*, 108 Minn. L. Rev. Headnotes 315, 319–20 (2024). But "[f]ree Blacks could often keep and bear arms if they were found to be unlikely to engage in revolt." Greenlee, *Disarming the Dangerous*, 16 Drexel L. Rev. at 28 (citing

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[24] *See* Act of 1664, 2 The Colonial Laws of New York from the Year 1664 to the Revolution 687 (James B. Lyon ed., 1894) (making it unlawful "for any Slave or Slaves to have or use any gun Pistoll sword Club or any other Kind of Weapon whatsoever" unless in the presence of their master); Act for the Trial of Negroes, *in* 1 Laws of the State of Delaware 104 (Samuel & John Adams eds., 1797) (regulating the possession of weapons by "any Negro or Mulatto slave"); Act Relating to Servants and Slaves, Sept. 29, 1704, *in* 26 Proceedings and Acts of the General Assembly of Maryland, Sept. 1704–Apr. 1706, at 254, 261 (William Hand Browne ed., 1906) ("[N]o Negro or other Slave within this Province shall be permitted to carry any Gunn or any other Offensive Weapon"); Acts of Assembly, Passed in the Province of New York, from 1691, to 1718, at 144 (1719) ("[I]t shall not be Lawful for any Negro, Indian, or Mulatto Slave, to have or use any Gun or Pistol, but in his Master's . . . Presence"); A Codification of the Statute Law of Georgia ch. 37, § 6, ¶ 42, at 812 (William A. Hotchkiss ed., 2d ed. 1848) ("It shall not be lawful for any slave, unless in the presence of some white person, to carry and make use of firearms, or any offensive weapon whatsoever"); Act of 1740, 7 S.C. Stat. at Large 404 (same); Act of 1755, 18 The Colonial Records of the State of Georgia 117–18 (Allen D. Candler ed., 1910) ("[I]t shall not be Lawfull for any Slave . . . to Carry and make use of Fire Arms" except with a ticket that must be renewed each month).

1806 Md. Laws 46–47; 8 Del. Laws 208 (1832)). The fact that freed slaves could possess arms if they were shown to be peaceable demonstrates that the disarmament laws were intended to prevent danger, not merely to "promote faithfulness to the sovereign." *Id.*

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The foregoing history demonstrates that the fundamental right to bear arms preexisting ratification of the Second Amendment was understood to permit English and early American governments to disarm dangerous persons, including those who posed a risk of engaging in an armed uprising, inciting armed unrest, or breaching the peace. It remains the case today that governments can and do disarm persons who threaten the public safety. *See Rahimi*, 602 U.S. at 680.

B. Ante bellum and Reconstruction-era laws disarming minors, those of unsound mind, the intoxicated, and "tramps" are not relevantly similar to laws disarming nondangerous felons.

The State has also considered the evidence of ante bellum and Reconstruction-era laws that disarmed certain groups deemed not trustworthy to bear arms:

• **Minors.** Ten states in the mid-to-late 19th century prohibited the possession or sale of firearms to those below a certain age.[25]

• **The mentally infirm.** Three late-19th century laws prohibited the sale of firearms to those of unsound mind.[26]

• **Drunkards.** Four states in the mid-to-late 19th century prohibited the possession of firearms by those who were intoxicated.[27]

• **"Tramps."** Thirteen states during the Reconstruction era prohibited the possession of firearms by those who were deemed

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[25] Act of July 13, 1892, ch. 159, § 5, 27 Stat. 116, 117 (D.C.); Act of Feb. 2, 1856, No. 26, § 1, 1855 Ala. Acts 17; Act of Apr. 8, 1881, ch. 548, § 1, 16 Del. Laws 716, 716; Act of Feb. 17, 1876, No. 128, § 1, 1876 Ga. Laws 112, 112; Act of Feb. 10, 1882, ch. 4, §§ 1–2, 1882 N.J. Acts 13, 13–14; Act of May 10, 1883, ch. 375, § 1, 1883 N.Y. Laws 556, 556; Act of Mar. 6, 1893, ch. 514, § 1, 1893 N.C. Pub. Laws 468, 468; Act of June 10, 1881, No. 124, § 1, 1881 Pa. Laws 111, 111–12; Act of Apr. 13, 1883, ch. 374, § 1, 1883 R.I. Acts & Resolves 157, 157; Act of Nov. 16, 1896, No. 111, § 1, 1896 Vt. Acts & Resolves 83, 83.

[26] Act of Feb. 4, 1881, ch. 3285, No. 67, § 1, 1881 Fla. Laws 87, 87; Act of Mar. 5, 1883, ch. 105, § 1, 1883 Kan. Sess. Laws 159; Act of Feb. 17, 1899, ch. 1, § 52, 1899 N.C. Pub. Laws 3.

[27] *See* Act of Feb. 23, 1867, ch. 12, § 1, 1867 Kan. Sess. Laws 25; Act of Feb. 28, 1878, ch. 46, § 2, 1878 Miss. Laws 175; 1 Mo. Rev. Stat. ch. 24, art. II, § 1274 (1879); Act of Apr. 3, 1883, ch. 329, § 3, 1883 Wis. Sess. Laws, vol. 1, at 290.

"tramps."[28] An Ohio court upheld its tramp disarmament law under the state right to bear arms because it applied to a group known "to terrify and alarm a peaceful people." *State v. Hogan*, 63 Ohio St. 202, 208 (1900) ("A man may carry a gun for any lawful purpose, for business or amusement, but he cannot go about with that or any other dangerous weapon to terrify and alarm a peaceful people."); *see also* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 270 (2020) ("The point of prohibiting armed tramps from threatening harm to another's person or property was plainly to prevent violence.").

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[28] Act of Mar. 27, 1879, ch. 59, § 4, 1879 Conn. Pub. Acts 393, 394; Act of Mar. 27, 1879, ch. 155, § 8, 1879 Del. Laws 223, 225; Act of May 3, 1890, ch. 43, § 4, 1890 Iowa Acts 68, 68–69; Act of Apr. 24, 1880, ch. 257, § 4, 1880 Mass. Acts 231, 232; Miss. Rev. Code § 2964 (1880); Act of Aug. 1, 1878, ch. 38, § 2, 1878 N.H. Laws 170, 170; Act of May 5, 1880, ch. 176, § 4, 1 N.Y. Laws 296, 297; Act of Mar. 12, 1879, ch. 198, § 2, 1879 N.C. Sess. Laws 355, 355; Act of June 12, 1879, § 2, 76 Ohio Laws 191, 192; Act of Apr. 30, 1879, No. 31, § 2, 1879 Pa. Laws 33, 34; Act of Apr. 9, 1880, ch. 806, § 3, 1880 R.I. Acts & Resolves 110, 110; Act of Nov. 26, 1878, No. 14, § 3, 1878 Vt. Acts & Resolves 29, 30; Act of Mar. 4, 1879, ch. 188, § 4, 1879 Wis. Sess. Laws 273, 274.

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To the extent these laws may be considered relevant history, *but see Bruen*, 597 U.S. at 83 (Barrett, J., concurring) (questioning "reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights."), they support the disarmament only of individuals considered too unstable—dangerous—to be trusted to bear dangerous weapons. They do not support the disarmament of nondangerous felons.

III. Morgan is not a dangerous felon.

To sum up, English, Founding-era, and Reconstruction-era firearm regulations disarmed dangerous persons who (1) by virtue of a prior offense or other evidence in the record, had demonstrated a proclivity for violence or breaching the peace; (2) were involved in activities that were potentially dangerous; or (3) possessed qualities or traits indicating that their possession of firearms could threaten public safety. This, the State submits, is the proper test for assessing whether a person is sufficiently dangerous so as to justify disarming him. Numerous courts have thus concluded[29] that legislatures may

[29] *Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) ("The record contains no evidence that Range poses a physical danger to

only permanently disarm a person consistent with the Second Amendment if that person is dangerous or otherwise "present[s] a threat to others." *Rahimi*, 602 U.S. at 698. Governments at or near the Founding disarmed "those who have demonstrated *a proclivity for violence* or whose possession of guns would otherwise *threaten the public safety*." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (emphasis added). Indeed, "the Second Amendment's touchstone is dangerousness." *Folajtar v. Att'y Gen.*, 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting). The State agrees with this assessment.

Morgan, however, does not present a risk to public safety. By itself, his felonious conduct posed no danger or risk of physical harm to others; he simply carried a firearm concealed without a state

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others," based on his 20-year-old conviction for making a false statement to obtain food stamp assistance); *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) ("The historical record demonstrates 'that legislatures have the power to prohibit dangerous people from possessing guns.'"); *United States v. Kimble*, 142 F.4th 308, 314–15 (5th Cir. 2025) ("The Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous, and § 922(g)(1)'s prohibition on gun possession by individuals convicted of drug-trafficking felonies enacts such a disarmament regime consistent with *Bruen's* "why" and "how" test."); *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024) (a person is "dangerous, and can thus be disarmed, if he has committed . . . a crime that inherently poses a significant threat of danger, including (but not limited to) drug trafficking and burglary").

license. Nothing in the record suggests he threatened anyone with the firearm or used it to perpetrate some dangerous crime or otherwise threaten a breach of the peace. And he has had no other convictions in the 20 years since that first conviction. R.251.

To be sure, most felonies indicate dangerousness and thus are within the permissible sweep of section 790.23. Florida law designates many felonies as especially dangerous for purposes of enhanced sentencing:

- Treason
- Murder
- Manslaughter
- Sexual battery
- Carjacking
- Home-invasion robbery
- Robbery
- Arson
- Kidnapping
- Aggravated assault with a deadly weapon
- Aggravated battery
- Aggravated stalking
- Aircraft piracy

- Unlawful throwing, placing, or discharging of a destructive device or bomb
- Any felony that involves the use or threat of physical force or violence against an individual
- Armed burglary
- Burglary of a dwelling or occupied structure
- Any felony committed with certain weapons
- Any lewd of lascivious offenses committed upon or in the presence of persons under age 16
- Aggravated child abuse
- Possession of child sexual abuse materials and traveling to meet a child

See, e.g., § 775.082(9), Fla. Stat. (prison releasee reoffenders); § 775.084(b), Fla. Stat. (habitual felony offenders); § 776.08, Fla. Stat. (defining a "forcible felony"). The Florida Supreme Court has also described the felonies enumerated in the felony-murder statute, § 782.04(1)(a)2., Fla. Stat., as "dangerous." *Mills v. State*, 476 So. 2d 172, 178 (Fla. 1985); *see also Williams*, 113 F.4th at 663 ("A person convicted of a crime is "dangerous," and can thus be disarmed, if he has committed (1) a crime "against the body of another human being," including (but not limited to) murder, rape, assault, and robbery, or (2) a crime that inherently poses a significant threat of

danger, including (but not limited to) drug trafficking and burglary."). In the State's view, at least these felonies may serve as predicates for disarmament under section 790.23, consistent with the Second Amendment.

The State also considers drug convictions to be dangerous, whether for trafficking, sale, delivery, possession or use of drugs. *See Kimble*, 142 F.4th at 316 (concluding that history and tradition supports disarming those convicted of drug trafficking because English and Founding-era legislatures "sought to keep guns out of the hands of potentially violent individuals," and "drug dealers use guns to protect their business because of the *inherent violence* of the trade"). The drug trade is notoriously violent, and drug use often leads to addiction and a desperate desire to obtain more drugs, no matter the cost or consequence. *See id.* at 322 (Graves, J., concurring in part) ("The cases involving drug *users* often involve weapons. Users of illicit drugs are criminals who often associate with other criminals, like the drug traffickers they keep in business, and they often do things that criminals do that cause danger[.]"). A conviction for the possession or use of illegal drugs is thus "a crime that inherently poses a significant threat of danger." *Williams*, 113 F.4th at 663. A person in possession

of unlawful drugs has demonstrated a willingness to undertake illicit means, potentially including violence, to maintain possession of and access to contraband. Because the relevant history reveals that legislatures may disarm persons for previously committing violent or potentially violent crimes, drug possession and use—like drug trafficking, violent crimes, breaches of the peace, or other past crimes revealing a threat to public safety—fit comfortably within section 790.23's coverage.

Even if convicted only of a nondangerous felony, an individual could still be considered a dangerous felon, who therefore should not possess firearms, for other reasons. At some point, for instance, repeated lawlessness, violent or not, gives reason to doubt that a person can safely bear arms. *See Heller*, 554 U.S. at 635 (the Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home"); *cf., e.g.*, *United States v. Allen*, 488 F.3d 1244, 1254 (10th Cir. 2007) ("Because evaluation of future dangerousness could otherwise veer into speculation, it generally is evaluated on the basis of the defendant's recidivism, which takes into account prior convictions and prior similar adult misconduct."). Early American history demonstrates that officials were

capable of making dangerousness determinations before disarming a person, such as under early American surety laws.[30] Modern trial courts are well-positioned to determine whether a convicted felon is dangerous and therefore subject to disarmament. They already determine whether an individual is dangerous in multiple circumstances, including when determining whether a criminal defendant should be detained before trial,[31] at sentencing,[32] and after probation violations for certain crimes, among others.[33] But Morgan has

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[30] *See* Robert Leider, *The Myth of the "Massachusetts Model"*, Duke Ctr. for Firearms Law (June 16, 2022), https://firearmslaw.duke.edu/2022/06/the-myth-of-the-massachusetts-model (surety laws authorized justices of the peace to require individuals suspected of "future misbehavior" to post a bond, which meant that they must pay a certain amount of money to possess a "dirk, dagger, sword, pistol, or other offensive and dangerous weapon").

[31] *See* § 907.041(1), Fla. Stat. ("It is the policy of this state that persons committing serious criminal offenses, [including by] posing a threat to the safety of the community . . . be detained upon arrest.").

[32] *See* § 775.082(10), Fla. Stat. (For low-point felony sentences, a judge can only sentence a person to prison based on written findings that a non-prison sentence would "present a danger to the public.").

[33] *See* § 948.06(4), Fla. Stat. ("In determining the danger posed by the offender's or probationer's release, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender's or probationer's past and present conduct, including convictions of crimes.").

received no such adjudication, and the State is not aware of any other evidence to suggest he has become dangerous since his 2007 conviction.

CONCLUSION

In sum, Morgan is unlike the dangerous persons the governments in England and early America would disarm. Morgan's sole, predicate conviction is carrying a firearm without a license almost 20 years ago. The act of carrying a firearm without a license does not involve an inherent threat of danger like the crimes of burglary or drug trafficking. *See Williams*, 113 F.4th at 663. The crime of carrying a firearm without a license (from almost 20 years ago) is not a crime "against the body of another human being" or a crime that "inherently poses a significant threat of danger." *Id.* And the record shows that, when law enforcement officers pulled Morgan over in a traffic stop in Florida, he *volunteered* that he had a firearm in his center console and a 2007 conviction from Pennsylvania. R.13. Morgan's forthright, voluntary cooperation with law enforcement further supports the notion that Morgan is not a dangerous person.

If any record evidence suggested that Morgan might pose a danger or risk to public safety, the State would seek a remand to the trial

court for a finding as to Morgan's dangerousness. But there is no such record evidence, so there is no need for a remand. Because section 790.23 violates the Second Amendment as applied to Morgan, this Court can and should reverse his conviction.

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March 18, 2026

CERTIFICATE OF COMPLIANCE

Undersigned certifies that this document complies with the font and word count requirements of Fla. R. App. P. 9.045(e) and 9.210(a)(2).

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CERTIFICATE OF SERVICE

I CERTIFY that on March 18, 2006, I electronically filed the foregoing document with the Clerk of the Court using the Florida courts' e-filing portal, causing it to be served on all counsel of record:

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