No. _____

In the

Supreme Court of the United States

Samuel York,

Petitioner,

v.

United States,

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is 18 U.S.C. § 922(g)(1)—convicted felon in possession of a firearm—facially unconstitutional under the Second Amendment?

2. Does 18 U.S.C. § 922(g)(1) violate the Commerce Clause when the government's only jurisdictional burden is to prove that a part of the firearm crossed state lines at some point in the indeterminate past?

PARTIES TO THE PROCEEDING

Petitioner is Samuel York, who was the Defendant-Appellant in the court below. Respondent, the United States, was the Plaintiff-Appellee in the court below. No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States Court of Appeals for the Fifth Circuit and the Northern District of Texas:

- *United States v. York*, No. 24-10178, 2025 WL 1201877, 2025 U.S. App. LEXIS 9938 (5th Cir. Apr. 25, 2025)
- *United States v. York*, No. 5:22-cr-00115-H-BQ-1 (N.D. Tex. Feb. 22, 2024)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Samuel York seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at *United States v. York*, No. 24-10178, 2025 WL 1201877, 2025 U.S. App. LEXIS 9938 (5th Cir. Apr. 25, 2025). The district court did not issue a written opinion.

JURISDICTION

The Fifth Circuit entered judgment on April 25, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RULES AND GUIDELINES PROVISIONS

This Petition involves the Second Amendment, the Commerce Clause, and 18 U.S.C. § 922(g)(1):

> 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.

> To regulate commerce with foreign nations, and among the several states, and with the Indian tribes[.]

U.S. Const. art. I, sec 8, clause 3.

> It shall be unlawful for any person … who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year … to … possess in or affecting commerce, any firearm or ammunition[.]

18 U.S.C. § 922(g)(1).

STATEMENT OF THE CASE

On April 4, 2022, a police officer responded to a car accident in Lubbock, Texas. While the officer was investigating the accident, he was approached by a concerned citizen who claimed to see a man waving a firearm, while sitting inside a car, in the McDonald's drive-thru. The citizen then pointed the officer to the car, which was still in the drive-thru.

The officer approached the car in the drive-thru and spoke with its driver, Petitioner Samuel York. Mr. York denied having a firearm, stating instead that he was holding a cellphone. Mr. York, however, consented to a search of his vehicle. During the search, the officer found a handgun.

Mr. York pleaded guilty one count of felon-in-possession of a firearm, under 18 U.S.C. § 922(g)(1), and was sentenced to an upward variant sentence of 60 months imprisonment. As part of his plea, Mr. York entered into a conditional plea agreement that specifically authorized him to appeal the claims he raised in his motion to dismiss: a facial Second Amendment challenge and a Commerce Clause challenge to § 922(g)(1).

Before the Fifth Circuit, Mr. York advanced the issues raised in his motion to dismiss, under both the Second Amendment and the Commerce Clause. While the appeal was pending, the Fifth Circuit decided *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), which foreclosed a Second Amendment facial challenge to § 922(g)(1). The Fifth Circuit accordingly rejected Mr. York's Second Amendment challenge based on *Diaz*. *United States v. York*, No. 24-10178, 2025 WL 1201877, 2025

U.S. App. LEXIS 9938 (5th Cir. Apr. 25, 2025). The Fifth Circuit likewise rejected Mr. York's Commerce Clause challenge based on binding circuit precedent. *Id*. (citing *United States v. Jones*, 88 F.4th 571, 573 (2023)).

REASONS FOR GRANTING THIS PETITION

I. 18 U.S.C. § 922(g)(1) is facially unconstitutional under the Second Amendment.

The possession element of 18 U.S.C. § 922(g)(1) prohibits, and criminalizes, the keeping of arms for members of the American political community. This goes against the plain text of the Second Amendment and thus requires the government to bring forth historical evidence that the founding generation would have nonetheless regarded the statute as valid. *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S. Ct. 2111, 2129–30 (2022). The government cannot meet its burden to make this historical showing under the *Bruen-Rahimi* analysis.

Bruen held that where the text of Second Amendment plainly covers regulated conduct, the government may defend that regulation only by showing that it comports with the nation's historical tradition of gun regulation. *Bruen*, 142 S. Ct. at 2129-30. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *Id*. at 2127-28.

In *United States v. Rahimi*, 144 S. Ct. 1889 (2024), this Court held that 18 U.S.C. § 922(g)(8) comports with the Second Amendment. That statute makes it a crime to possess a firearm during the limited time that one is subject to a domestic-violence restraining order. 18 U.S.C. §922(g)(8). Upholding this statute, this Court emphasized its limited holding, which was "only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Rahimi*, 144 S. Ct. at 1903. That rationale leaves ample space to challenge 18 U.S.C. §922(g)(1). Section (g)(1) imposes

a permanent, not a temporary, firearm disability. And that disability can arise from all manner of criminal convictions that do not involve a judicial finding of future physical dangerousness.

Such a challenge could well be resolved against the constitutionality of §922(g)(1). *See* C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J. L. & Pub. Pol'y 695, 708 (2009) ("Though recognizing the hazard of trying to prove a negative, one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I."); *see also* Adam Winkler, *Heller's Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009) ("The Founding generation had no laws … denying the right to people convicted of crimes."); *see also* Carlton F.W. Larson, *Four Exceptions in Search of A Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L. J. 1371, 1376 (2009) ("[S]tate laws prohibiting felons from possessing firearms or denying firearms licenses to felons date from the early part of the twentieth century.").

Following *Rahimi*, the government asked this Court to grant certiorari in a wide range of cases presenting the constitutionality of §922(g)(1). *See* Supplemental Brief for the Federal Parties in Nos. 23-374, *Garland v. Range*; 23-683, *Vincent v. Garland*; 23-6170, *Jackson v. United States*; 23-6602, *Cunningham v. United States*, and 23-6842, *Doss v. United States*, at p.4, n.1 (June 24, 2024) (collecting 12 such cases). All of those Petitions were granted, and the cases remanded in light of *Rahimi*.

Notably, this Court remanded both those cases that resulted in a finding of §922(g)(1)'s unconstitutionality (like *Range*), and those that found it constitutional

(the remainder). This demonstrates that *Rahimi* does not clearly resolve the constitutional status of the statute—were that so, it would be unnecessary to remand those cases in which the arms-bearer lost in the court of appeals. This Court should grant certiorari to decide this momentous issue, and, if it does so in another case, should hold this Petition pending the outcome. *See Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) ("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided.").

II. 18 U.S.C. § 922(g)(1), as interpreted by the Fifth Circuit, exceeds Congress's power under the Commerce Clause.

18 U.S.C. § 922(g)(1) should require proof of more than interstate activity at the time a firearm was manufactured—perhaps either recent movement in interstate commerce or some commercial conduct on a defendant's part. In the absence of such a connection to interstate commerce, the statute exceeds Congress's power under the Commerce Clause.

In *Scarborough v. United States*, this Court held, as a matter of statutory interpretation, that the government could satisfy the interstate commerce element of Section 922(g)'s predecessor, 18 U.S.C. § 1201(a) (repealed 1986), by proving that the firearm had traveled across state lines at any prior point, even if the defendant's possession occurred all in one state. *See* 431 U.S. 563, 577 (1977). Eighteen years later, in *United States v. Lopez*, 514 U.S. 549 (1995), the Court struck down a statute that made it a federal crime "for any individual knowingly to possess a firearm at a

place that the individual knows, or has reasonable cause to believe, is a school zone," 18 U.S.C. § 922(q)(1)(A), reasoning that the law violated the Commerce Clause because it "neither regulate[d] a commercial activity nor contain[ed] a requirement that the possession be connected in any way to interstate commerce." 514 U.S. at 551. *Lopez* clarified that, for a law that regulates neither the channels nor the instrumentalities of commerce to nevertheless comport with the Commerce Clause, the regulated activity must "substantially affect" interstate commerce. *Id*. at 559. Section 922(q) failed that test because there was no evidence that the intrastate, non-commercial act of possessing a gun in close proximity to a school had the requisite "substantial" impact on interstate economic activity, and the statute "contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affect[ed] interstate commerce." *Id*. at 561.

In the following years, numerous jurists have identified and called upon this Court to resolve the apparent tension between *Lopez* and *Scarborough*. Justice Thomas, for instance, has observed that "*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez* because it reduces the constitutional analysis to the mere identification of a jurisdictional hook" that, like Section 922(g)'s jurisdictional element, "seems to permit Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines." *Alderman v. United States*, 131 S. Ct. 700, 702-03 (2011) (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari). That result, Justice Thomas explained, is

not only inconsistent with the *Lopez* framework but "could very well remove any limit on the commerce power" if taken to its logical extension. *Id*. at 703.

Despite similarly perceiving *Scarborough* as in fundamental and irreconcilable conflict with *Lopez*, the prevailing view of the courts of appeals is that *Scarborough* implicitly assumed the constitutionality of § 922(g)'s predecessor statute, and that "[a]ny doctrinal inconsistency between *Scarborough* and [this] Court's more recent decisions is not for [the lower courts] to remedy." *United States v. Alderman*, 565 F.3d 641, 645 (9th Cir. 2009); *United States v. Patton*, 451 F.3d 615, 636 (10th Cir. 2006); *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting); *see also United States v. Kirk*, 105 F.3d 997, 1015 n.25 (5th Cir. 1997) (en banc) (Jones, J., for half of the equally divided court) ("not[ing] the tension between" *Scarborough* and *Lopez* but observing that the Fifth Circuit has felt constrained to nevertheless "continue to enforce § 922(g)(1)" because a court of appeals is "not at liberty to question the Supreme Court's approval of [Section 922(g)'s] predecessor statute").

The courts of appeals have therefore made clear their intention to follow *Scarborough* "until the Supreme Court tells [them] otherwise." *Patton*, 451 F.3d at 648. And nine of those courts have specifically upheld the constitutionality of § 922(g)(1) based on *Scarborough*'s minimal-nexus test. *See United States v. Smith*, 101 F.3d 202, 215 (1st Cir. 1996); *United States v. Santiago*, 238 F.3d 213, 216-17 (2d Cir. 2001); *United States v. Gateward*, 84 F.3d 670, 671-72 (3d Cir. 1996); *United States v. Rawls*, 85 F.3d 240, 242-43 (5th Cir. 1996); *United States v. Lemons*, 302 F.3d 769, 771-72 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992 (8th Cir.

1995); *United States v. Hanna*, 55 F.3d 1456, 1461-62, 1462 n.2 (9th Cir. 1995); *United States v. Dorris*, 236 F.3d 582, 584-86 (10th Cir. 2000); *United States v. Wright*, 607 F.3d 708, 715-16 (11th Cir. 2010).

This question is important and independently warrants review. Section 922(g)(1) is one of the most often-applied federal criminal statutes. Yet, as Justice Thomas has observed, and as many lower-court judges have echoed, the degree of proof needed to convict under that statute is in serious tension with the Court's modern understanding of the limited nature and scope of the federal power to regulate noneconomic, intrastate activity. In recently urging the Fifth Circuit to reconsider this issue *en banc*, Judge Ho emphasized that the "constitutional limits on governmental power do not enforce themselves." *United States v. Seekins*, 52 F.4th 988, 989 (5th Cir. 2022) (Ho, J., dissenting from the denial of rehearing en banc). The interpretation of § 922(g)(1)'s jurisdictional element that the circuits understand *Scarborough* to require effectively "allows the federal government to regulate any item so long as it was manufactured out-of-state—without any regard to when, why, or by whom the item was transported across state lines." *Id.* at 990. That broad conception of federal regulatory authority is at odds with the *Lopez* framework. Only this Court can "prevent [that framework] from being undermined by a 1977 precedent that d[id] not squarely address the constitutional issue." *Alderman*, 131 S. Ct. at 703 (Thomas, J., dissenting from the denial of certiorari).

CONCLUSION

Petitioner respectfully requests that this Court grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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