No. _____

In the

Supreme Court of the United States

_____

Dwayne Lamonica Ford,

Petitioner,

v.

United States of America,

Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1) comports with the Second Amendment.

2. Whether Congress may criminalize intrastate firearm possession based solely on the firearm crossing state lines at some point before the defendant came to possess it.

PARTIES TO THE PROCEEDING

Petitioner is Dwayne Lamonica Ford, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RELATED PROCEEDINGS

- *United States v. Ford*, No. 4:24-CR-00062-P, U.S. District Court for the Northern District of Texas. Judgment entered on August 12, 2024.

- *United States v. Ford*, No. 24-10735, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on April 1, 2025.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceeding ii

Related Proceedings ii

Table of Contents iii

Appendices v

Table of Authorities vi

Petition for a Writ of Certiorari 1

Opinions Below 1

Jurisdiction 1

Provisions Involved 1

Statement of the Case 2

I. Facts and Proceedings in District Court 2

II. Appellate Proceedings 3

Reasons For Granting This Petition 3

I. Lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions. 3

A. The courts of appeals are deeply divided over the scope of the Second Amendment right. 5

B. This issue implicates the prosecution and incarceration of thousands of individuals. 9

II. This Court should delineate the boundaries of federal authority under the Commerce Clause in the firearm context. 10

A. Federal appellate courts differ on the relationship between *Scarborough* and *Lopez*. 13

B. An unchecked Commerce power would significantly expand Congress's reach into state affairs. 15

III. This Court can grant certiorari to address the Second Amendment issue in another case and hold the instant petition pending the outcome. 17

Conclusion 17

APPENDICES

Appendix A Opinion, *United States v. Ford*, No. 24-10735 (5th Cir. Apr. 1, 2025) 1a

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas 3a

TABLE OF AUTHORITIES

Page(s)

Federal Cases

A.L.A. Schechter Poultry Corp. v. United States,
295 U.S. 495 (1935) 15

Alderman v. United States,
562 U.S. 1163 (2011) 13, 16

District of Columbia v. Heller,
554 U.S. 570 (2008) 6

Kanter v. Barr,
919 F.3d 437 (7th Cir. 2019) 7

Lawrence on Behalf of Lawrence v. Chater,
516 U.S. 163 (1996) 17

N.L.R.B. v. Jones & Laughlin Steel Corp.,
301 U.S. 1 (1937) 16

Nat'l Fed'n of Indep. Bus. v. Sebelius,
567 U.S. 519 (2012) 16

New York State Rifle & Pistol Association, Inc. v. Bruen,
597 U.S. 1 (2022) 4

Range v. Att'y Gen.,
124 F.4th 218 (3d Cir. 2024) (en banc) 7, 8

Scarborough v. United States,
431 U.S. 563 (1977) 11

United States v. Bishop,
66 F.3d 569 (3d Cir. 1995) 14

United States v. Chesney,
86 F.3d 564 (6th Cir. 1996) 15

United States v. Cortes,
299 F.3d 1030 (9th Cir. 2002) 14

United States v. Crump,
120 F.3d 462 (4th Cir. 1997) 14

United States v. Diaz,
116 F.4th 458 (5th Cir. 2024) 3, 7, 8

United States v. Dorris,
236 F.3d 582 (10th Cir. 2000) 14

United States v. Duarte,
101 F.4th 657 (9th Cir. 2024) 7

United States v. Duarte,
137 F.4th 743 (9th Cir. 2025) 6, 7

United States v. Dubois,
94 F.4th 1284 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025) 6

United States v. Ford,
No. 24-10735, 2025 WL 973176 (5th Cir. Apr. 1, 2025) 3

United States v. Gateward,
84 F.3d 670 (3d Cir. 1996) 14

United States v. Hanna,
55 F.3d 1456 (9th Cir. 1995) 14

United States v. Hunt,
123 F.4th 697 (4th Cir. 2024) 6, 7

United States v. Jackson,
110 F.4th 1120 (8th Cir. 2024) 6, 7

United States v. Johnson,
42 F.4th 743 (7th Cir. 2022) 11

United States v. Kelly,
No. 3:22-CR-00037, 2022 WL 17336578 (M.D. Tenn. Nov. 16, 2022) 10

United States v. Kirk,
105 F.3d 997 (5th Cir. 1997) 13

United States v. Kuban,
94 F.3d 971 (5th Cir. 1996) 13

United States v. Lemons,
302 F.3d 769 (7th Cir. 2002) 14

United States v. Lopez,
514 U.S. 549 (1995) 11, 12, 15, 16

United States v. Moore,
666 F.3d 313 (4th Cir. 2012) 4

United States v. Morrison,
529 U.S. 598 (2000) 13, 16

United States v. Patterson,
853 F.3d 298 (6th Cir. 2017) 13

United States v. Patton,
451 F.3d 615 (10th Cir. 2006) 14

United States v. Rahimi,
602 U.S. 680 (2024) 4, 5, 9, 12

United States v. Rawls,
85 F.3d 240 (5th Cir. 1996) 13, 14

United States v. Santiago,
238 F.3d 213 (2d Cir. 2001) 14

United States v. Schnur,
132 F.4th 863 (5th Cir. 2025) 8

United States v. Seekins,
52 F.4th 988 (5th Cir. 2022) 11, 16

United States v. Shelton,
66 F.3d 991 (8th Cir. 1995) 14

United States v. Smith,
101 F.3d 202 (1st Cir. 1996) 14

United States v. Williams,
113 F.4th 637 (6th Cir. 2024) 7, 8

United States v. Wright,
607 F.3d 708 (11th Cir. 2010) 14

Vincent v. Bondi,
127 F.4th 1263 (10th Cir. 2025) 6

Federal Statutes

18 U.S.C. § 922(g)(1) 2, 3, 5

18 U.S.C. § 922(q) 11

28 U.S.C. § 1254(1) 1

Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202, 82 Stat. 197 10

Constitutional Provisions

U.S. Const. Amendment II 1, 3

U.S. Const. Article I, § 8, cl. 3 ..... 1, 15

Other Authorities

Fiscal Year 2021 Overview of Federal Criminal Cases, U.S. SENTENCING COMM'N (April 2022) 9

FY 2024 Quick Facts 18 U.S.C. § 922(g) Firearms Offenses, U.S. SENTENCING COMM'N 10

Statistics – Inmate Offenses, Federal Bureau of Prisons 9

Statistics, Federal Bureau of Prisons 9

United States Attorneys' Annual Statistical Report Fiscal Year 2024, U.S. DEP'T OF JUSTICE 10

PETITION FOR A WRIT OF CERTIORARI

Dwayne Lamonica Ford seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's unpublished opinion is available at *United States v. Ford*, No. 24-10735, 2025 WL 973176 (5th Cir. Apr. 1, 2025). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence in *United States v. Ford*, No. 4:24-CR-00062-P (N.D. Tex. Aug. 12, 2024), is reprinted in Appendix B.

JURISDICTION

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

PROVISIONS INVOLVED

Article I, Section 8 of the United States Constitution:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

U.S. Const. art. I, § 8, cl. 3.

The Second Amendment to the United States Constitution:

> 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.

Section 922(g)(1) of Title 18, which provides in relevant part:

> (g) It shall be unlawful for any person—
>
> (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year…

> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(1).

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

The government indicted Dwayne Lamonica Ford for unlawful possession of a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). ROA.28-30. Ford moved to dismiss the indictment, arguing that § 922(g)(1) was unconstitutional because it violated the Second Amendment and lay beyond the scope of Congress's commerce power. ROA.42-52. The district court denied the motion as foreclosed by precedent. ROA.53-57.

Ford then pleaded guilty without a plea agreement. ROA.28-29, 60-61, 118. As part of his guilty plea, Ford executed a written stipulation of facts where he admitted that the firearm he possessed "had traveled at some time from one state to another or between any part of the United States and any other country." ROA.61; *see also* ROA.121. The stipulation did not specify when the firearm last traveled in commerce, or whether Ford's conduct or even a commercial transaction caused the firearm's last movement in commerce. ROA.61.

At sentencing, the court agreed with the guideline calculations that the probation department put forth in the Presentence Investigation Report ("PSR") and PSR Addendum: Offense Level 13, Criminal History Category III, advisory guideline range of 18–24 months' imprisonment. ROA.140, 178, 193. Prior to possessing the

firearm, the PSR also reflected that Ford received prior sentences for burglary of a building, unauthorized use of a motor vehicle, burglary of a vehicle, aggravated robbery, and assault of a public servant. ROA.169-71. The district court varied downward and imposed 10 months imprisonment and a two-year term of supervised release. ROA.75, 150.

II. Appellate Proceedings

In his appeal, Ford raised three challenges to his conviction and sentence. First, Ford argued that precedent misinterpreted "in or affecting commerce" as stated in 18 U.S.C. § 922(g). Second, Ford maintained that if precedent correctly interpreted the statute, then Congress exceeded its commerce power when it enacted § 922(g). Third, Ford maintained that the district court plainly erred because § 922(g)(1) could not pass constitutional muster under the Second Amendment.

The Fifth Circuit affirmed in an unpublished opinion. *United States v. Ford*, No. 24-10735, 2025 WL 973176 (5th Cir. Apr. 1, 2025) (reprinted at App. 1a–2a). It held that precedent foreclosed all claims, relying exclusively on *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), to dispose of Ford's Second Amendment challenge. App. 2a.

REASONS FOR GRANTING THIS PETITION

I. Lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions.

The Second Amendment guarantees "the right of the people to keep and bear arms." U.S. Const. amend. II. Yet § 922(g)(1) indiscriminately denies that right to

anyone previously convicted of a crime punishable by a year or more. The constitutional and statutory texts undeniably conflict, but Second Amendment challenges to § 922(g)(1) prosecutions have historically and uniformly failed. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting authorities).

Then came *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and a new text-and-history test for adjudicating Second Amendment claims. "When the Second Amendment's plain text covers an individual's conduct," the government now must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. No longer may the government defend a regulation by showing that it is narrowly tailored to achieve an important or even compelling state interest. *Id.* at 17–24. As for the particulars of the "historical inquiry" courts must conduct, *Bruen* explained that "whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" depends on "whether the two regulations are 'relevantly similar.'" *Id.* at 28–29 (quoting C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993)). Relevant similarity, as sketched out by *Bruen*, means that the regulations must match on "how and why" the Second Amendment right is burdened. *Id.* at 29. Otherwise stated, "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…." *Id.* (cleaned up).

United States v. Rahimi, 602 U.S. 680 (2024), then applied *Bruen* to a federal firearm crime. But *Rahimi* "conclude[d] 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*, 602 U.S. at 702 (emphasis added). True, *Rahimi* clarified that "the appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (citing *Bruen*, 597 U.S. at 26–31) (emphasis added). And it found that "Section 922(g)(8)['s]…prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition th[at] surety and going armed laws," both "founding era regimes," "represent." *Id.* at 698. But *Rahimi*'s reasoning left unresolved whether the government could invoke this tradition to justify a statute like § 922(g)(1) — which imposes an *uncabined* and *permanent* firearm possession ban irrespective of any threat, judicially determined or otherwise, that a person may pose. *Rahimi*, in other words, left plenty unresolved.

A. The courts of appeals are deeply divided over the scope of the Second Amendment right.

As Justice Jackson recently observed, "lower courts applying *Bruen*'s approach have been unable to produce consistent, principled results, and, in fact, they have come to conflicting conclusions on virtually every consequential Second Amendment issue to come before them." *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up). Some circuits see no need to conduct *Bruen*'s text-and-history analysis in the § 922(g)(1) context, relying instead on dicta predating *Bruen*. Others apply *Bruen*'s text-and-history framework but disagree about whether felons are part of "the people" protected by the Second Amendment, split on the traditions that justify § 922(g)(1), and vary as to whether the statute is vulnerable to as-applied challenges.

To start, five circuits "have upheld the categorical application of § 922(g)(1) to all felons." *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025) (citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025)); *Duarte*, 137 F.4th at 748 ("Today, we align ourselves with the Fourth, Eighth, Tenth and Eleventh Circuits and hold that § 922(g)(1) is not unconstitutional as applied to non-violent felons like Steven Duarte."). Each placed significant weight on this Court's statement in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008), that "prohibitions on the possession of firearms by felons" are "presumptively lawful." *See Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29 *Vincent*, 127 F.4th at 1265; *Dubois*, 94 F.4th at 1293; *Duarte*, 137 F.4th at 750–52.

The Fourth, Eighth and Ninth Circuits went farther. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *See Hunt*, 123 F.4th at 704–08. The Eighth Circuit reached the same end point based on the history alone. *See Jackson*, 110 F.4th at 1126–29. The en banc Ninth Circuit most recently "agree[d] with the Fourth and Eighth Circuits that…historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons."

Duarte, 137 F.4th at 761 (citing *Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706.).[1]

That said, two circuits — including the Fifth Circuit — have endorsed that "§ 922(g)(1) might be unconstitutional as applied to at least *some* felons." *Duarte*, 137 F.4th at 748 (citing *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024)). And "the Third Circuit has held that § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps." *Duarte*, 137 F.4th at 748 (citing *Range v. Att'y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)). The Fifth Circuit split with its sister courts by first discarding the notion that *Heller*'s "presumptively lawful" dicta could "supplant the most recent analysis set forth by the Supreme Court in *Rahimi*…." *Diaz*, 116 F.4th at 466. On this point, the Third Circuit and Sixth Circuit agree. *Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit endorsed capital punishment at the founding as a dispositive historical analogue, *see Diaz*, 116 F.4th at 467–70, whereas the Third Circuit found the historical availability of the death penalty irrelevant, *see Range*, 124 F.4th at 231; *accord Kanter v. Barr*, 919 F.3d 437, 461–62 (7th Cir. 2019), *abrogated by Bruen* (Barrett, J., dissenting). The linchpin for the Third Circuit's constitutional holding instead

[1] In *Duarte*, the en banc Ninth Circuit overruled a panel opinion holding the statute unconstitutional as applied to a person with prior convictions for vandalism, drug possession, and evading arrest. *See United States v. Duarte*, 101 F.4th 657, 661–63 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *on reh'g en banc*, 137 F.4th 743 (9th Cir. 2025).

relied on the lack of evidence that the claimant "poses a physical danger to others." *Range*, 124 F.4th at 232.

For its part, the Sixth Circuit blessed "governments label[ing] whole classes as presumptively dangerous," *Williams*, 113 F.4th at 657, but "refuse[d] to defer blindly to § 922(g)(1) in its present form." *Range*, 124 F.4th at 230 (citing *Williams*, 113 F.4th at 658–61). According to the Sixth Circuit, "history shows that § 922(g)(1) might be susceptible to an as-applied challenge" by individuals who show they are "not dangerous…." *Williams*, 113 F.4th at 657. The Fifth Circuit later agreed with this "dangerousness" demarcator. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the two circuits still depart on the scope of the "dangerousness" inquiry. *Compare Schnur*, 132 F.4th 863, 867 ("In assessing Schnur's criminal history under § 922(g)(1), this court 'may consider prior convictions that are 'punishable by imprisonment for a term exceeding one year.'" (quoting *Diaz*, 116 F.4th at 467)) *with Williams*, 113 F.4th at 659–60 ("When evaluating a defendant's dangerousness, a court may consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction.").

Disagreements thus abound — not only inter-circuit, but intra-circuit too. In *Range*, the en banc Third Circuit generated six opinions, including one dissent. The Ninth Circuit in *Duarte*, also en banc, generated four opinions, including one partial dissent. *Williams*, a panel decision, produced a concurrence in the judgment only. These splits confirm that jurists "are currently at sea when it comes to evaluating

firearms legislation" and in acute "need [of] a solid anchor for grounding their constitutional pronouncements." *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

B. This issue implicates the prosecution and incarceration of thousands of individuals.

As of June 19, 2025, the Bureau of Prisons reported that it imprisons 155,762 people.[2] And as of June 21, 2025, 22% of inmates (31,740) were incarcerated for "Weapons, Explosives, [and] Arson" offenses, the second largest category of offenses within the federal prison population.[3] "For more than 25 years" in fact, firearm crimes have been one of the "four crime types" that "have comprised the majority of federal felonies and Class A misdemeanors[.]"[4] In fiscal year 2021, "[c]rimes involving firearms were the third most common federal crimes[.]"[5] Of the 57,287 individuals sentenced, 8,151 were firearm cases—a 14.2% share.[6] This represents an 8.1% increase from the year before, despite the number of cases reported to the U.S. Sentencing Commission declining by 11.3% and hitting an all-time low since fiscal year 1999.[7] In

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[2] *Statistics*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/population_statistics.jsp (last visited June 25, 2025).
[3] *Statistics – Inmate Offenses*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (last visited June 25, 2025).
[4] *Fiscal Year 2021 Overview of Federal Criminal Cases* at 4, U.S. SENTENCING COMM'N (April 2022), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf.
[5] *Id.* at 19.
[6] *Id.* at 1, 5.
[7] *Id.* at 2.

fiscal year 2024, 7,419 of the cases reported to the U.S. Sentencing Commission involved convictions under 18 U.S.C. § 922(g) — 90.4% of those involved § 922(g)(1) convictions specifically.[8]

These figures only capture the tail end of the criminal process. The scope of prosecutions looms larger. "The Department of Justice filed firearms-related charges in upwards of 13,000 criminal cases during the 2021 fiscal year." *United States v. Kelly*, No. 3:22-CR-00037, 2022 WL 17336578, at *3 (M.D. Tenn. Nov. 16, 2022) (citing Executive Office for United States Attorneys, U.S. Dept. of Justice, Annual Statistical Report Fiscal Year 2021 at 15 (Table 3C), available at https://www.justice.gov/usao/page/file/1476856/download). That number remained above 10,000 in fiscal year 2024.[9] The scale of the question presented warrants this Court's attention.

II. This Court should delineate the boundaries of federal authority under the Commerce Clause in the firearm context.

A predecessor to 18 U.S.C. § 922(g), the Omnibus Crime Control and Safe Streets Act of 1968 prohibited "[a]ny person who…has been convicted by a court of the United States or of a State…of a felony" from receiving, possessing, or transporting "in commerce or affecting commerce any firearm." Pub. L. No. 90-351, § 1202, 82 Stat. 197. In *Scarborough v. United States*, this Court addressed "whether proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the *statutorily* required nexus between the possession of a firearm by a convicted

[8] *FY 2024 Quick Facts 18 U.S.C. § 922(g) Firearms Offenses*, U.S. SENTENCING COMM'N, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY24.pdf.

[9] *United States Attorneys' Annual Statistical Report Fiscal Year 2024* tbl. 3(C), U.S. DEP'T OF JUSTICE, *available at* https://www.justice.gov/usao/media/1399686/dl?inline.

felon and commerce." *Scarborough v. United States*, 431 U.S. 563, 564 (1977) (emphasis added). *Scarborough* answered this question "yes," but the Court did not linger on the constitutional implications of its statutory construction. *See id.* at 577; *see also United States v. Johnson*, 42 F.4th 743, 750 (7th Cir. 2022) (noting that the decision in *Scarborough* "was one of statutory interpretation"); *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc) ("[T]he Court's holding in *Scarborough* was statutory, not constitutional.").

By contrast, this Court *did* examine the constitutional question presented by 18 U.S.C. § 922(q) in *United States v. Lopez*, 514 U.S. 549 (1995). The statute "made it a federal offense '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.'" *Id.* at 551 (quoting 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V)). The district court held that the act constituted a valid exercise of Congress's commerce power, but the appellate court reversed. *Id.* at 551–52. This Court affirmed the appellate court's ruling that the statute lay "beyond the power of Congress under the Commerce Clause." *Id.* at 552.

In so doing, the Court cabined Congress's commerce power to "three broad categories of activity" subject to regulation: (1) "the use of the channels of interstate commerce"; (2) activities, even if intrastate, that threaten "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.* at 558–59 (internal citations omitted). The Court quickly disposed of any justification for § 922(q) under the first two categories,

focusing its inquiry on the third. *Id.* at 559. It noted that § 922(q) was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise," elaborating in a footnote that "States possess primary authority for defining and enforcing the criminal law" and that federal criminalization of "conduct already denounced as criminal by the States…effects a change in the sensitive relation between federal and state criminal jurisdiction." *Id.* at 561 & n.3. The Court also expressed deep concern that the government's arguments for why possession of a firearm in a local school zone substantially affected commerce lent themselves to no limiting principle, opening the door to a "a general federal police power." *Id.* at 563–66. Ultimately, the Court concluded that "possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567. "Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce." *Id.*

Given *Lopez*, it is "doubt[ful] that § 922(g)(8)" — and by extension § 922(g)(1) — "is a proper exercise of Congress's power under the Commerce Clause." *Rahimi*, 602 U.S. at 765 n.6 (2024) (citing *Lopez*, 514 U.S. at 585 (Thomas, J., concurring)) (Thomas, J., dissenting). But lower courts cannot conclusively resolve the tension between *Scarborough* and *Lopez*. The ultimate question posed by *Lopez* — "whether" intrastate possession of a firearm that crossed state lines long before the regulated

possession "affect[s] interstate commerce sufficiently to come under the constitutional power of Congress to regulate" — "can be settled finally only by this Court." *United States v. Morrison*, 529 U.S. 598, 614 (2000) (cleaned up).

A. Federal appellate courts differ on the relationship between *Scarborough* and *Lopez*.

Federal courts have "cried out for guidance from this Court" on this issue for decades. *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from denial of certiorari). Simply put, "*Scarborough* is in fundamental and irreconcilable conflict with the rationale of the United States Supreme Court in [*Lopez*]." *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting). Still, the Fifth Circuit "continue[s] to enforce § 922(g)(1)" because it is "not at liberty to question the Supreme Court's approval of the predecessor statute to [§ 922(g)(1)]." *United States v. Kirk*, 105 F.3d 997, 1015 n.25 (5th Cir. 1997) (en banc) (per curiam). *See also United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996) (per curiam) (Garwood, J., concurring) ("one might well wonder how it could rationally be concluded that mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm had, perhaps decades previously before the charged possessor was even born, fortuitously traveled in interstate commerce," but concluding that *Scarborough*'s "implication of constitutionality" "bind[s] us, as an inferior court,…whether or not the Supreme Court will ultimately regard it as a controlling holding in that particular respect.").

The Fifth Circuit is not alone. *See, e.g.*, *United States v. Patterson*, 853 F.3d 298, 301–02 (6th Cir. 2017) ("If the *Lopez* framework is to have any ongoing vitality,

it is up to this Court to prevent it from being undermined by a 1977 precedent," i.e., *Scarborough*, "that does not squarely address the constitutional issue." (quoting *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. at 703 (Thomas, J., dissenting from denial of certiorari))); *United States v. Cortes*, 299 F.3d 1030, 1037 n.2 (9th Cir. 2002) (although "[t]he vitality of *Scarborough* engenders significant debate," committing to "follow *Scarborough* unwaveringly" "[u]ntil the Supreme Court tells us otherwise"); *United States v. Bishop*, 66 F.3d 569, 587–88, 588 n.28 (3d Cir. 1995) (noting that, until the Supreme Court is more explicit on the relationship between *Lopez* and *Scarborough*, a lower court is "not at liberty to overrule existing Supreme Court precedent"); *United States v. Patton*, 451 F.3d 615, 634–35 (10th Cir. 2006) (collecting cases).

Nine courts of appeals have upheld § 922(g)(1) based solely 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) (per curiam); *United States v. Gateward*, 84 F.3d 670, 671–72 (3d Cir. 1996); *Rawls*, 85 F.3d at 242–43; *United States v. Lemons*, 302 F.3d 769, 771–73 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992 (8th Cir. 1995) (per curiam); *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 (11th Cir. 2010). Only two courts of appeals have engaged in *Lopez*'s substantial-effects test and reasoned that § 922(g)(1) is constitutional under it. *See United States v. Crump*, 120 F.3d 462, 466 & n.2 (4th Cir. 1997) (citing *United States v. Langley*, 62 F.3d 602, 606 (4th Cir.

1995) (en banc), *abrogated on other grounds by Rehaif v. United States*, 588 U.S. 225 (2019)); *United States v. Chesney*, 86 F.3d 564, 568–70 (6th Cir. 1996). Because courts often fail to apply the *Lopez* test to these firearm possession cases at all, defendants across the country lack the constitutional protection from congressional overreach provided by *Lopez*. For instance, applying *Lopez* would demand that § 922(g)'s "possess in or affecting commerce" element require either: 1) proof that the defendant's offense caused the firearm to move in interstate commerce; or, at least, 2) proof that the firearm moved in interstate commerce at a time reasonably near the offense. But *Scarborough* continues to control the outcome in a large majority of circuits, leaving the "empty, formalistic" requirement of a jurisdictional provision as the only check on Congress' power to criminalize this kind of intrastate activity. *Chesney*, 86 F.3d at 580 (Batchelder, J., concurring).

B. An unchecked Commerce power would significantly expand Congress's reach into state affairs.

The federal government's enumerated powers are "few and defined," while the powers which remain in the state governments are "numerous and indefinite." *Lopez*, 514 U.S. at 552 (citing The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961)). One such enumerated power is "[t]o regulate Commerce . . . among the several States[.]" U.S. Const. art. I, § 8, cl. 3. But without limits on federal regulatory power, our nationwide regulation would become "for all practical purposes . . . completely centralized" in a federal government. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 548 (1935). And "constitutional limits on governmental power do not enforce

themselves;" instead, "[t]hey require vigilant—and diligent—enforcement." *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from denial of rehearing en banc).

"Congress may conclude that a particular activity substantially affects interstate commerce" to regulate the activity, but Congress's mere act of legislating "does not necessarily make it so." *Morrison*, 529 U.S. at 614 (quoting *Lopez*, 514 U.S. at 557 n.2) (cleaned up). Here, inserting the phrase "which has been shipped or transported in interstate or foreign commerce" after any object connected to intrastate activities that Congress may want to police cannot fulfill the constitutional requirement. *See Alderman*, 131 S. Ct. at 702 (Thomas, J., dissenting from the denial of certiorari) ("*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."). A judicial blessing of constitutional magnitude for this minimal nexus would "effectually obliterate the distinction between what is national and what is local and create a completely centralized government." *Lopez*, 514 U.S. at 557 (quoting *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)). The Commerce Clause power would be reduced to a rubber stamp, opening the door to a federal police power in direct contravention of the federal government the Constitution enshrines. *See Morrison*, 529 U.S. at 618 ("the Founders denied the National Government" "the police power," "reposed in the States"); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (the Commerce Clause "must be read carefully to avoid creating a general federal authority akin to the police power").

III. This Court can grant certiorari to address the Second Amendment issue in another case and hold the instant petition pending the outcome.

Even if the Court is not inclined to grant certiorari review here, the Second Amendment questions are worthy of certiorari, and the Court has other opportunities to review them. *See, e.g.*, *Moore v. United States*, No. 24-968 (U.S. Mar. 7, 2025). If the Court grants certiorari in another case raising the same issues, Ford accordingly requests that the Court hold the instant petition and grant, vacate, and remand if the Court thereafter disapproves of § 922(g)'s constitutionality or limits the statute's application *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 166 (1996); *Stutson v. United States*, 516 U.S. 163, 181(1996) ("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.") (Scalia, J., dissenting) (emphasis in original).

CONCLUSION

Petitioner Dwayne Lamonica Ford respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 26th day of June, 2025.

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