No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHNELL LAVELL BARBER, II
Petitioner

-v-

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

2. Whether, as a statutory matter, 18 U.S.C. § 922(g)(1) prohibits a person's present intrastate possession of a firearm or ammunition for the sole reason that the firearm or ammunition previously crossed state lines.

3. Whether Congress may criminalize intrastate possession of a firearm or ammunition solely because they crossed state lines at some point before they came into the defendant's possession.

STATEMENT REGARDING PARTIES TO THE CASE

The names of all parties to the case are contained in the caption of the case.

RELATED PROCEEDINGS

U.S. District Court**:**

On January 23, 2023, judgment was entered against Petitioner Johnell Lavell Barber, II in *United States v. Barber*, No. 4:20-CR-00382. (Appendix A).

U.S. Court of Appeals:

On December 23, 2024, the Fifth Circuit affirmed Mr. Barber's conviction in an unpublished decision, United States v. Barber, No. 24-40069 (5th Cir. 2024). (Appendix B).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Johnell Lavell Barber, II (hereinafter "Barber") respectfully petitions for a Writ of Certiorari to review the judgement of the United States Circuit Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

On January 19, 2024, the United States District Court for the Eastern District of Texas Plano Division (District Court) sentenced Mr. Barber to 120 months of imprisonment. (Appendix A). The Fifth Circuit Court of Appeals (Fifth Circuit) affirmed this sentence on December 23, 2024. (Appendix B).

STATEMENT OF JURISDICTION

The United States District Court for the Eastern District of Texas had jurisdiction in this criminal action pursuant to 18 U.S.C. § 32231. The Fifth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and entered judgment on December 23, 2024. (Appendix B). This petition is being brought within ninety (90) days of that date and thus has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, U.S. CONST. amend. II:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The Commerce Clause of the Constitution, U.S. CONST. art. I, § 8, cl. 3:

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

18 U.S.C. § 922(g)(1):

> 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 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. § 921(a)(20):

> The term "crime punishable by imprisonment for a term exceeding one year" does not include—
>
> (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the

> proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

INTRODUCTION

This case provides this Court an opportunity to address vital and important federal questions that impact the lives of millions of American citizens. It also allows this Court to exercise its authority to address and resolve a split amongst the circuits regarding the constitutional questions presented herein.

STATEMENT OF THE CASE

On December 17, 2020, Johnell Lavell Barber, II was indicted by a Grand Jury in the Eastern District of Texas on one count alleging a violation of 18 U.S.C. § 922(g)(1) (Felon in Possession of a Firearm). Mr. Barber persisted in his plea of not guilty and proceeded to trial. On January 23, 2023, Mr. Barber's jury trial began before United States District Judge Sean D. Jordan. The jury rendered its verdict of guilty as to Count One on January 25, 2023.

On January 19, 2024, Mr. Barber appeared before United States District Judge Sean D. Jordan for sentencing. After adopting the Final PSR, Judge Jordan sentenced Barber to 120 months as to Count One.

In both his district court and appellate proceedings, Mr. Barber challenged the constitutionality of Section 922(g)(1) under the Second Amendment and the Commerce Clause.

I. Mr. Barber has consistently argued that Section 922(g)(1) is facially unconstitutional.

The first question presented in this petition is whether Section 922(g)(1) is unconstitutional under the Second Amendment in light of this Court's opinion in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

As Mr. Barber argued in his district and appellate proceedings, *Bruen* established a two-part test for evaluating Second Amendment challenges. The threshold inquiry is whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 142 S. Ct. at 2126. If so, "the Constitution presumptively protects that conduct," *id.*, and it cannot be restricted unless the *government* demonstrates, as relevant here, a historical tradition of "distinctly similar" regulations, *id.* at 2131-2132.

In establishing this text-and-history test, *Bruen* emphasized that the Second Amendment is robust and not easily infringed upon. If conduct is protected by the text of the Amendment, then it does not matter why the government wants to regulate it. *See id.* at 2126-27 (rejecting any form of "means-end scrutiny"). The government can only succeed if it "affirmatively prove[s] that its firearms regulation is part of the [nation's] historical tradition." *Id.* The evidence of any such tradition must be

substantial, *see, e.g.*, *id.* at 2153, 2156, and there must be a tight fit between the challenged regulation and any historical evidence, *see, e.g.*, *id.* at 2141-2147. If there are "multiple plausible interpretations" of the government's proffered evidence, the government has not met its burden. *Id.* at 2141 n.11; *see id.* at 2139. Simply put, under *Bruen*, Section 922(g)(1) is unconstitutional.

First, the conduct regulated by Section 922(g)(1) is covered by the Second Amendment. The plain text of the Amendment clearly covers possession of a firearm, including the firearm in this case. And Mr. Barber is clearly part of "the people" protected by the Amendment: The plain text does not draw a felon/non-felon distinction, *see id.* at 2134, and this Court has already determined that the phrase "the people" contained within the Amendment "unambiguously refers to all members of the political community, *not an unspecified subset*." *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (emphasis added).

Second, it is not possible for the government to meet its historical burden to support the constitutionality of the statute because there is no tradition of felon dispossession statutes predating the 20th century. *See, e.g.*, *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc); Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 142-143 & n.11 (2007) (concluding that "at no time between 1607 and 1815 did the colonial or state

governments of what would become the first fourteen states exercise a police power to restrict the ownership of guns by members of the body politic"). In other words, there was no "historical tradition," circa 1791, of gun regulations "distinctly similar" to Section 922(g)(1). *See Bruen*, 142 S. Ct. at 2130-31.

More recently, this Court analyzed the constitutionality of a different subsection of this statute (18 U.S.C. § 922(g)(8)) in *United States v. Rahimi*, 602 U.S. 680, 144 S.Ct. 1889, 219 L.Ed. 2d 351 (2024). While *Rahimi* held that subsection (g)(8) was constitutional and aligned with a historical tradition of "preventing individuals who threaten physical harm to others from misusing firearms," this ruling was explicitly made with the barring of possession to be temporary. *Rahimi*, 602 U.S. at 699 ("Like surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to Rahimi;" "If imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that section 922(g)(8) imposes is also permissible.) While *Rahimi* does indicate that there is a historical tradition for disarming those individuals who pose a "credible threat to the physical safety of others," *Rahimi* does not discuss if such a "credible threat" can be said to last in perpetuity. Indeed, this Court squarely rejected the idea that individuals such as Rahimi could be disarmed simply because they are not "responsible." *Id*. at 701. Instead, this Court specially limited to the following explicit holding: "We conclude

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*." *Id*. at 702.

Mr. Barber was not "temporarily" disarmed. The felony for which he was convicted as a precursor to this offense occurred in 2002. He was convicted in 2004 and served his sentence of 15 years before being released. While he was certainly subject to a court finding that, at one time, he posed a credible threat to others, Fifth Circuit case law assumes this finding to last a lifetime, a significant distinction. Especially when such a finding carries with it the dissolution of important civil rights.

Nevertheless, the Fifth Circuit rejected Mr. Barber's constitutional challenges under *Bruen* pursuant to recent Fifth Circuit precedent. *United States v. Diaz,* 116 F.4th 458, 471–72 (5th Cir. 2024); *United States v. French*, 121 F.4th 538, 538 (5th Cir. 2024). However, this decision seems to be slightly at odds with *Rahimi* given that *Rahimi* explicitly limited its holding to the temporary disarming of individuals.

II. Mr. Barber has also consistently argued that Section 922(g)(1) cannot, and does not, criminalize firearm possession unless the defendant's own possession affected commerce at the time he possessed it.

The second two questions presented in this petition relate to the interstate commerce element of Section 922(g)(1). Mr. Barber also raised this issue at the appellate level by arguing that the Government cannot and did not meet its burden

of proof to support a conviction since interstate commerce was not *actually* affected. In making this argument, counsel conceded that the current Fifth Circuit case law holds that an actual effect of interstate commerce is unnecessary yet raised the issue anyway to preserve the constitutionality of such a holding here. If current Fifth Circuit precedent holds, convictions under 922(g)(1) are violative of the commerce clause of the United States Constitution.

Section 922(g)(1) makes it a federal crime for somebody who has a qualifying felony conviction to "possess in or affecting commerce, any firearm or ammunition." Since *Scarborough v. United States*, 431 U.S. 563 (1977), federal felon-in-possession statutes have been construed to require only proof that the firearm in question moved across state lines—even if it did so before the person became a felon or possessed the firearm. *See id.* at 577. But as the text of Section 922(g)(1) makes clear, it is the prohibited person's *possession*, and not the firearm or ammunition, that must affect commerce, and that effect must be contemporaneous with any intrastate possession.

Second, if "affecting commerce" under Section 922(g)(1) has been correctly construed to require only proof that the firearm or ammunition in question moved across state lines at some point in the past, then that part of the statute must be unconstitutional under the Commerce Clause. Such a minimal nexus with interstate commerce is too attenuated to justify the enactment of Section 922(g)(1) under the

Commerce Clause, which, while broad, is still "subject to outer limits" and is not a grant of federal police power. *United States v. Lopez*, 514 U.S. 549, 556-57 (1995) (holding that federal law criminalizing possession of firearms within school zones exceeded Congress's commerce clause authority).

If this Court were to agree with either of Mr. Barber's interstate commerce arguments, his conviction would need to be vacated. The mere fact that the firearm argued to have been in Mr. Barber's possession was manufactured outside of Texas would not be sufficient to sustain his conviction. Nevertheless, the Fifth Circuit affirmed Mr. Barber's conviction pursuant to existing circuit precedent with respect to his interstate commerce claims.

REASONS FOR GRANTING THE WRIT

I. Whether Section 922(g)(1) is unconstitutional under the Second Amendment is an important federal question on which circuits are divided.

With respect to Mr. Barber's Second Amendment challenges to Section 922(g)(1), this Court should grant this petition, vacate the underlying judgment, and remand to the Fifth Circuit Court of Appeals. It should do so for multiple reasons.

First, whether Section 922(g)(1) is unconstitutional is an important question of federal law. Section 922(g)(1) is heavily enforced. *See* U.S. Sent. Comm'n, "QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses" (July 2023). And it affects not only those persons convicted of violating it, but also nearly everyone else who has

previously committed any other felony or felony-equivalent offense (even if they never misused—or even used—a firearm). In other words, the constitutionality of the statute is a question that impacts millions of persons in this country. *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*," Demography 54 (2017) at 1806, 1808 (estimating that, as of 2010, there were 19 million people with felony records in the United States). For those millions of prohibited persons, the infringement on their Second Amendment rights is substantial: The ban on possession is effectively permanent, and it prohibits possession for any reason, even self-defense within one's home.

This already-important issue is even more significant because *Bruen* clearly set forth, for the first time, the test courts must use to evaluate the constitutionality of firearm laws under the Second Amendment. The heavy burden *Bruen* imposes on the government to defend any regulations that infringe on Second Amendment rights raises a serious question regarding the constitutionality of Section 922(g)(1)—one that has spurred a tremendous amount of litigation across the country.

Second, courts of appeals are divided on this issue. On one hand, the Fifth, Eighth, Tenth, and Eleventh Circuits have rejected challenges to the constitutionality of Section 922(g)(1). *See United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024); *United States v. French*, 121 F.4th 538, 538 (5th Cir. 2024); *United States v.*

Jackson, 69 F.4th 495 (8th Cir. 2023); *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) (relying on *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)); *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024). While the above Fifth Circuit cases were decided after the recent *Rahimi* decision by this Court, the others were prior to *Rahimi* being decided. Although those cases have been remanded to be considered in light of the Rahimi decision, there has been no indication thus far that the lower circuits will change their position on the constitutionality of 922(g)(1). Specifically, the Fifth Circuit analyzed the issue under both *Bruen* and *Rahimi*, while the Eighth Circuit endeavored to analyze the issue solely under *Bruen*'s legal test, and the Tenth and the Eleventh Circuits refused to reevaluate their pre-*Bruen* precedent. In the Fifth Circuit, the holding in *Diaz* rests on essentially two tenets: (1) that because "serious crimes" were historically punished by death, the less severe punishment of permanent disbarment fits within this framework, and (2) that colonial era "going armed laws" that had a weapon forfeiture provision demonstrated a historical precedent for disarming citizens. *Diaz*, 116 F.4th at 469—71. In the Tenth Circuit, that precedent summarily rejected a Second Amendment challenge to the statute based on the felon-in-possession dictum in *Heller—i.e.*, that nothing in that case "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *McCane*, 573 F.3d at 1047 (quoting *Heller*, 554 U.S. at 626). The Eleventh Circuit's precedent also relied heavily on *Heller* and did not put the

burden on the government to demonstrate an adequate historical tradition of distinctly similar statutes. *See United States v. Rozier*, 598 F.3d 768, 770-71 (11th Cir. 2010).

On the other hand, both the Third Circuit and the Ninth Circuit have ruled that there are at least some unconstitutional applications of the statute. The Third Circuit decided en banc that the statute is unconstitutional as applied to persons whose qualifying criminal history consisted solely of a nonviolent offense. *Range v. Att'y Gen.*, 69 F.4th 96 (3d Cir. 2023) (en banc). That holding was limited to the as-applied issue presented to it, but its reasoning was expansive and applies more broadly. Likewise, the Ninth Circuit recently ruled the statute unconstitutional as applied to a criminal defendant, in part because the government had not met its burden to prove that the defendant's previous convictions were of "a nature serious enough" by "Founding era standards" to "justify permanently depriving him of his fundamental Second Amendment rights." *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024).

In addition, the Seventh Circuit has remanded a Section 922(g)(1) case with instructions regarding the thorough examination of the historical evidence now required under *Bruen*. *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). In remanding, the Seventh Circuit rejected the government's attempt to "avoid a *Bruen* analysis altogether" using *Heller*'s felon-in-possession dictum, finding that

"[n]othing allow[ed] [the Court] to sidestep *Bruen* in the way the government invites" and that the Court "must undertake the text-and-history inquiry the [Supreme Court] so plainly announced and expounded upon at great length." *Id.* at 1022. In another case, the Seventh Circuit rejected one defendant's *Bruen* claim while leaving open the possibility that there is "room for as-applied challenges" to Section 922(g)(1) in other cases. *United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024).

Third, the Tenth Circuit's decision in *Vincent* declined to apply this Court's decision in *Bruen* even though it recognized that *Bruen* established the legal test for Second Amendment challenges. Instead, the Tenth Circuit relied on its pre-*Bruen* precedent that summarily rejected a Second Amendment challenge to Section 922(g)(1) based entirely on unexplained dictum in *Heller*. The Eleventh Circuit, too, did not apply *Bruen*'s test, including *Bruen*'s instruction that the burden to demonstrate a historical tradition of distinctly similar statutes falls on the government. In other words, at least two of the circuits that have rejected *Bruen* challenges to Section 922(g)(1) have thus far done so without correctly applying the mandatory legal test set forth by this Court. That provides a separate reason that this Court's review of the issue is warranted.

Indeed, this Court has made clear that the legal tests it imposes are binding and trump its dicta. In *Seminole Tribe of Fla. v. Florida*, it stated that both the

"result" of its opinions and "those portions of the opinion necessary to that result" are binding, even on itself. 517 U.S. 44, 67 (1996). In contrast, this Court has repeatedly stressed that its dicta, even when repeated, does not resolve issues it has not yet addressed. In *Oklahoma v. Castro-Huerta*, for example, it found entirely unpersuasive prior "tangential dicta" that addressed an issue that, until that case, "did not previously matter all that much and did not warrant [the] Court's review." 142 S. Ct. 2486, 2499 (2022); *see id.* at 2498 ("[T]he Court's dicta, even if repeated, does not constitute precedent."). And in *Heller* itself, the Court stated that "[i]t is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued." 554 U.S. at 625 n.25. Thus, while this Court's dicta has significant weight on lower courts, *see, e.g.*, *Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996), the upshot of this Court's cases is evident: If faced with a choice between relying exclusively on this Court's dicta or applying a binding legal test, lower courts must employ the latter. *Id*.

Here, *Bruen* unquestionably established a binding test for courts to use when analyzing Second Amendment challenges. *See Diaz*, 116 F.4th at 465 (noting the "historical analysis required by *Bruen* and its progeny). The second step requires careful and robust historical analysis, and it expressly places the burden on the government to present any historical evidence. *See id.* Accordingly, courts must hold

the government to its task and undergo the requisite historical analysis before rejecting or accepting any Second Amendment challenges to Section 922(g)(1). That some circuits have not done so—instead preferring to rely on pre-*Bruen* precedent that does not correctly apply the legal test—is another reason this Court should address the merits of the issue.

II. Mr. Barber's interstate commerce arguments raise important federal questions that impact millions of people in the United States.

In addition, this Court should also grant Mr. Barber's petition on his alternative arguments that: (1) the text of Section 922(g)(1) requires more than a minimal nexus to interstate commerce, and (2) Congress exceeded its Commerce Clause authority when it enacted the relevant portion of the statute.

First, like Mr. Barber's *Bruen* claims, the resolution of his interstate commerce claims would impact millions of gun owning citizens in the United States given that the vast majority of firearms in existence have some de minimis and tangential relation to interstate commerce . *See supra* at 8-9.

In addition, his statutory argument raises the distinct concern that courts across the country have been applying one of this nation's most heavily enforced criminal statutes in a manner that is both contrary to Congress's intent and which overreads and misconstrues this Court's decision in *Scarborough,* 431 U.S. 563.

Indeed, the plain language of Section 922(g)(1) makes clear that it is the defendant's possession that must affect commerce, at the time of that possession. For example, the adverbial phrase "in or affecting commerce" directly follows—and clearly modifies—the verb "possess"; it does not—and cannot—modify the nouns "firearm or ammunition." *Cf. Nielsen v. Preap*, 139 S. Ct. 954, 964 (2019) (reasoning that, because "an adverb cannot modify a noun," an adverbial phrase cannot be read to modify a noun). This conclusion is reinforced by the present-participle phrase "affecting commerce," which indicates that the effect on interstate commerce must occur at the same time as the possession to fall within the ambit of Section 922(g)(1). That forecloses any reading of the statute to concern possession of a firearm that occurs only *after* the conduct affecting interstate commerce has been completed.

Interpreting Section 922(g)(1)'s prohibition of possession of firearms to require a contemporaneous effect on interstate commerce also makes sense when the statute is read as a whole. If Congress wanted to make it a crime for a felon to possess a firearm that had previously "been shipped or transported in interstate or foreign commerce," it would have said so—as it did with respect to the *receipt* portion of the statute. *See* 18 U.S.C. § 922(g)(1) (also making it a crime for a felon "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce").

Nonetheless, the Fifth Circuit and other courts have wrongly construed Section 922(g)(1) to include circumstances in which a firearm or ammunition crossed state lines at some point before the defendant's possession, whether or not the defendant had anything to do with that. *See, e.g.*, *United States v. Penn*, 969 F.3d 450, 459 (5th Cir. 2020) (holding that it is only required that the firearm has "a past connection to interstate commerce.) *Scarborough*, however, addressed a different felon firearms prohibition, enacted as part of the Omnibus Crime Control and Safe Streets Act of 1968. Pub. L. No. 90-351, § 1201, 82 Stat. 197, 236 (June 19, 1968). The 1968 law was repealed and replaced with the Firearms Owners' Protection Act of 1986, Pub. L. No. 99-308, §§ 102, 104, 100 Stat. 449, 452, 459 (May 19, 1986). Unlike the 1968 Act, *see Scarborough*, 431 U.S. at 570-71, the 1986 Act was "painstakingly crafted to focus law enforcement on the kinds of Federal firearms violations most likely to contribute to violent firearms crime," 131 Cong. Rec. S23-03, 1985 WL 708013, at *2 (daily ed. Jan. 3, 1985). *Scarborough*, furthermore, predates this Court's clarification of the scope of Congress's Commerce Clause authority in cases like *Lopez*. This Court's intervention is needed to clarify that *Scarborough* is neither controlling nor persuasive regarding the statutory interpretation of Section 922(g)(1).

Finally, Mr. Barber's alternative, constitutional argument under the Commerce Clause asserts that circuit courts have understood the statute in a way

that conflicts with *United States v. Lopez*, 514 U.S. 549 (1995). Under modern Commerce Clause jurisprudence, Congress may rely on the clause to regulate: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce," or the movement of "persons or things in interstate commerce" using those instrumentalities; and (3) "activities having a substantial relation to interstate commerce," *i.e.*, activities that "substantially affect interstate commerce." *Lopez*, 514 U.S. at 558-59. But Section 922(g)(1) does not fall within any of those three categories of permissible Commerce Clause regulation. *See id.* at 561 (firearms possession in a school zone "has nothing to do with 'commerce' or any sort of economic enterprise").

Any theoretical link between a felon's mere possession of a firearm and potential downstream effects on commerce is so attenuated that, if accepted, it would allow Congress to "regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce." *Id.* at 564. Such a broad reading of Congress's Commerce Clause authority would be antithetical to the Founders' purpose in creating a federal government of enumerated powers—and in withholding from Congress "a plenary police power that would authorize enactment of every type of legislation." *Id.* at 566. This Court's intervention is thus necessary to avoid grave federalism concerns.

* * *

CONCLUSION

For the forgoing reasons, the Court should grant the Petition for Writ of Certiorari, vacate the underlying judgment, and remand for reconsideration in light of the resolution of that petition. The Court should also grant Mr. Barber's petition on the interstate commerce questions presented within.

Respectfully submitted this 13th day of March 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAILING

I hereby certify that, on the 13th day of March 2025, the original Petition and its Appendix, **as well as the Motion to Proceed in Forma Pauperis,** were sent to the Court by FedEx Express mail.

I also certify that on the same day, one copy of both the Petition and its Appendix were sent to Johnell Lavell Barber, II, at:

Grayson County Jail
200 S. Crockett Street
Sherman, TX 75090

Lastly, I hereby certify that, on the same day, a true and correct copy of this Petition and Appendix was sent by FedEx Express mail to:

Solicitor General of the United States
950 Pennsylvania Ave., N.W.; Room 5616
Washington, DC 20530-0001

/s/ Ryne T. Sandel
RYNE T. SANDEL

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a Writ of Certiorari contains 4,313 words, excluding the parts of the Petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

SIGNED THIS THE 13th DAY OF MARCH 2025.

/s/ Ryne T. Sandel
RYNE T. SANDEL