NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANDREW REESE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

VIRGINIA L. GRADY
Federal Public Defender

JOSH LEE
Assistant Federal Public Defender
Counsel of Record for Petitioner
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1), which prohibits felons from possessing firearms or ammunition, violates the Second Amendment—either on its face or as applied to the petitioner, who has no violent felony conviction.

2. Whether § 922(g)(1), which purports to make a felon's intrastate possession of firearms and ammunition a federal crime solely because those items crossed state lines at some point, exceeds Congress's Commerce Clause authority.

RELATED PROCEEDINGS

U.S. District Court (2019 case)

On February 5, 2020, the United States District Court for the District of Colorado entered a criminal judgment against Petitioner Andrew Reese in *United States v. Andrew Reese*, No. 1:19-cr-00144. Later, on February 26, 2024, the same court entered a revocation judgment against Petitioner Reese under the same caption and case number. That judgment, which is challenged by this Petition, appears in the Appendix at A34–35.

U.S. District Court (2023 case)

On February 26, 2024, the United States District Court for the District of Colorado entered a criminal judgment against Petitioner Reese in *United States v. Andrew Reese*, 1:23-cr-00111. That judgment, which is challenged by this Petition, appears in the Appendix at A27–A33.

U.S. Court of Appeals

On May 13, 2025, the United States Court of Appeals for the Tenth Circuit affirmed the district court's judgments in *United States v. Andrew Reese*, Nos. 24-1069 & 24-1070. That order and judgment, which is the subject of this Petition, appears in the Appendix at A36–A38.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Constitutional Provisions

Sentencing Guidelines

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Andrew Reese, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on May 13, 2025.

OPINION BELOW

The Tenth Circuit's opinion in Mr. Reese's consolidated appeals, Nos. 24-1069 & 24-1070, is unpublished. It is available at 2025 WL 1378166, and it appears in the Appendix at A36–A38.

JURISDICTION

The United States District Court for the District of Colorado had jurisdiction over the criminal actions against Mr. Reese pursuant to 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction over Mr. Reese's consolidated appeals pursuant to 28 U.S.C. § 1291, and entered judgment on May 13, 2025. App. A35–A37. This Court has jurisdiction under 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, U.S. Const. art. I, § 8, cl. 3:

> The Congress shall have Power . . . To 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.

STATEMENT OF THE CASE

In 2023, Petitioner Andrew Reese was serving a term of federal supervised release imposed by the United States District Court for the District of Colorado in *United States v. Reese*, No. 1:19-cr-00144 ("the 2019 case"). He was arrested by Denver police allegedly in possession of a handgun and ammunition. As a result, federal prosecutors charged him with one count of being a felon in possession of a firearm in *United States v. Reese*, No. 1:23-cr-00111 ("the 2023 case"). At the same time, Mr. Reese's federal probation officer petitioned to revoke his supervised release in the 2019 case.

Mr. Reese filed two motions to dismiss the indictment in the 2023 case. The first argued that the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1), violates the Second Amendment—both on its face and as applied to him. The as-applied challenge maintained that Mr. Reese does not have any conviction for a *violent* felony and that the Second Amendment does not allow the government to disarm people for nonviolent felonies. Mr. Reese's second motion to dismiss argued that § 922(g)(1)

exceeds Congress's authority under the Commerce Clause. The district court denied both motions on the merits. App. A2–A18.

After the district court denied his motions to dismiss, Mr. Reese entered a conditional plea of guilty to the § 922(g)(1) charge, reserving his right to appeal the district court's denial of his two motions to dismiss. Mr. Reese also admitted to two violations of the conditions of his supervised release—the most serious of which was the firearm possession that gave rise to the new § 922(g)(1) charge.

For the new § 922(g)(1) conviction in the 2023 case, the district court imposed a sentence of 63 months' imprisonment. The court imposed a consecutive 22-month sentence for Mr. Reese's supervised release violations in the 2019 case. In that case, both the Guidelines range and the district court's exercise of sentencing discretion were driven by the court's understanding the Mr. Reese's supervised release violations included a violation of 18 U.S.C. § 922(g)(1)—and thus involved a new felony offense. *See* U.S.S.G. §§ 7B1.1(a)(2), 7B1.4; App. A20–A26.

Mr. Reese timely appealed the judgments in both cases to the United States Court of Appeals for the Tenth Circuit. On Mr. Reese's motion, the Tenth Circuit consolidated the two appeals. Mr. Reese filed a consolidated opening brief arguing (1) that 18 U.S.C. § 922(g)(1) violates the Second Amendment on its face and as applied to him and (2) that § 922(g)(1) exceeds Congress's authority under the Commerce Clause. Mr. Reese maintained that not just his new § 922(g)(1) conviction

but also his revocation sentence should be reversed—because the length of the revocation sentence was predicated on the notion that he had violated § 922(g)(1). That said, Mr. Reese's brief acknowledged that Tenth Circuit precedent foreclosed his claims on the merits and stated that they were being raised to preserve further review in this Court. Given this, the government declined to file an answer brief.

The Tenth Circuit issued an unpublished order and judgment denying Mr. Reese's claims on the merits. Regarding Mr. Reese's facial and as-applied Second Amendment challenges, the Tenth Circuit held that these were foreclosed by *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009), and *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025). App. A37. Those cases, the Tenth Circuit explained, "upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved." *Id.* (quoting *Vincent*, 127 F.4th at 1266).

As for Mr. Reese's Commerce Clause challenge, the Tenth Circuit held that this failed because it had previously "affirmed the constitutionality of § 922(g) under the Commerce Clause on numerous occasions," citing as examples its decisions in *United States v. Urbano*, 563 F.3d 1150, 1154 (10th Cir. 2009), *United States v. Dorris*, 236 F.3d 582, 584–86 (10th Cir. 2000), and *United States v. Bolton*, 68 F.3d 396, 400 (10th Cir. 1995). App. A37–38. Specifically, the Tenth Circuit said that its precedent holds that § 922(g)(1)'s "requirement that the firearm have been, at some time, in interstate

commerce, is sufficient to establish its constitutionality under the Commerce Clause." *Id.* (quoting *Bolton*, 68 F.3d at 400).

In the meantime, the plaintiff in *Vincent v. Bondi*—one of the cases that the Tenth Circuit cited as foreclosing Mr. Reese's Second Amendment challenge—petitioned this Court to review the Tenth Circuit's position that § 922(g)(1) is categorically constitutional without regard to the type and age of the felony that triggers the disarmament. *See* Petition for Writ of Certiorari, *Vincent v. Bondi*, No. 24-1155 (U.S. May 8, 2025). That petition remains pending.

Mr. Reese now petitions this Court for review of the Tenth Circuit's decision in his case.

REASONS FOR GRANTING THE WRIT

Mr. Reese respectfully submits that the Court should grant review in *Vincent* (or another petition challenging § 922(g)(1)) and hold Mr. Reese's petition pending its resolution of that case. The Court should then rule that § 922(g)(1) is unconstitutional on its face or in some applications, grant Mr. Reese's petition, and order the Tenth Circuit to afford Mr. Reese the benefit of its new Second Amendment ruling.

On the other hand, if the Court rules in *Vincent* (or a similar case) that § 922(g)(1) is categorically consistent with the Second Amendment in all of its applications, then Mr. Reese would request that the Court grant plenary review of the Commerce Clause question presented in this Petition. And if the Court altogether

denies review of all the other petitions challenging § 922(g)(1), Mr. Reese respectfully submits that the Court should grant plenary review of both questions presented in his Petition.

For several reasons, both questions presented warrant this Court's review.

I. The Validity of § 922(g)(1) Is an Important Question of Federal Law.

First, whether § 922(g)(1) is unconstitutional in all or some of its applications has large real-world implications. In fiscal year 2023 alone, there were over 7,100 convictions under the statute. *See* U.S. Sent. Comm'n, *QuickFacts: 18 U.S.C. § 922(g) Firearms Offenses* (June 2024), https://www.ussc.gov/research/quick-facts/section-922g-firearms. And § 922(g)(1) doesn't just curtail the Second Amendment rights of those persons convicted of violating it. It applies to nearly everyone who has previously committed any offense punishable by more than a year in prison, even those who have never misused a firearm. In other words, § 922(g)(1) serves to disarm millions of Americans. *See* Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 Demography 1795, 1806–08 (2017) (estimating that, as of 2010, 19 million people in the United States had felony records).

The burden on those millions of Americans is substantial: § 922(g)(1)'s ban on firearm possession is effectively permanent. And it applies to entirely lawful possession of guns, including for self-defense within the home—the "central

component" of the Second Amendment, *see Heller*, 554 U.S. at 599. Further, violating § 922(g)(1) could mean spending 15 years in prison. In short, § 922(g)(1) permanently, nearly completely, and in a draconian manner deprives millions of individuals of their ability to exercise a fundamental individual right.

II. The Circuits Are Split Over the Second Amendment Question.

As the certiorari petition in *Vincent* explains in detail, the question of whether § 922(g)(1) violates the Second Amendment is the subject of an open, well-developed, and intractible circuit split. *See* Petition for Writ of Certiorari at 2–4, 7–13, *Vincent v. Bondi*, No. 24-1155 (U.S. May 8, 2025).

III. The Tenth Circuit's Second Amendment Ruling Is Wrong.

The Tenth Circuit's holding that § 922(g)(1) comports with the Second Amendment in any and all of its applications is erroneous. Mr. Reese contends here and contended below that § 922(g)(1) is unconstitutional, both facially and as applied to him, under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). The Tenth Circuit has erroneously refused to apply the constitutional test established in *Bruen* and applied in *Rahimi*. And that test, applied correctly, establishes that § 922(g)(1) cannot stand.

In *Bruen* and *Rahimi*, this Court established and applied a test for evaluating laws, like § 922(g)(1), that infringe on a person's fundamental Second Amendment rights. The cases instruct that (1) conduct covered by the Second Amendment's plain

text is presumptively protected and cannot be restricted, *Bruen*, 597 U.S. at 24, unless (2) the government can demonstrate a historical tradition of "relevantly similar" firearms regulations from the founding era, *id.* at 24, 29. To do so, the government must prove that the challenged law is sufficiently similar to historical laws with respect to "both why and how it burdens the Second Amendment right." *Rahimi*, 602 U.S. at 698. That means the government must explain how the challenged law is sufficiently similar to founding-era tradition with respect to both its purpose and the degree to which it infringes on the Second Amendment right—taking into consideration metrics like procedural protections, duration of infringement, and severity of penalty. *Id.* at 698–99. "Even when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* at 692.

The Tenth Circuit has wrongly failed to apply this controlling test in upholding § 922(g)(1). In *McCane*—a pre-*Bruen* decision—the Tenth Circuit summarily deemed § 922(g)(1) consistent with the Second Amendment based on unexplained dicta in *District of Columbia v. Heller,* 554 U.S. 570 (2008), that "nothing in [that] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009) (quoting *Heller*, 554 U.S. at 626–27). After *Bruen*, the Tenth Circuit declared itself bound by its pre-*Bruen* decision in *McCane* and refused to revisit § 922(g)(1)'s constitutionality under

Bruen's "new test." *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023). Following this Court's decision in *Rahimi*, this Court vacated the Tenth Circuit's decision in *Vincent v. Garland* and directed it to reconsider in light of *Rahimi*. Rather than doing so, the Tenth Circuit issued a three-page decision that again deemed its hands tied by *McCane* and again failed to conduct any history-and-tradition analysis. *See Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025). And in Mr. Reese's case, the Tenth Circuit again held that "*McCane* remains binding after *Bruen* and *Rahimi*." App. A37.

It's erroneous for the Tenth Circuit to continue to afford controlling weight to *Heller*'s dicta in the wake of *Bruen* and *Rahimi*. 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 opinion 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." 597 U.S. 629, 646 (2022); *see id.* at 645 ("[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 holds significant weight in lower courts, *see, e.g.*, *Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996), 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. Here, *Bruen* unquestionably established a new, binding test for courts to use when analyzing Second Amendment challenges. It's erroneous for the Tenth Circuit not to apply that test.

Further, under the test established in *Bruen* and applied in *Rahimi*, § 922(g)(1) is unconstitutional. That's because, first, the conduct regulated by § 922(g)(1) is covered by the Second Amendment. The plain text of the Amendment clearly covers possession of a firearm, including the firearms in this case. And Mr. Reese is clearly part of "the people" protected by the Amendment: The plain text does not draw a felon/non-felon distinction, *Bruen*, 597 U.S. at 32, 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*," *Heller*, 554 U.S. at 580 (emphasis added).

Second, the government cannot meet its historical burden to support the constitutionality of the statute. There is no historical analogue for § 922(g)(1), let alone a sufficiently robust tradition of such analogues. Although the government need not point to a "historical twin," *Rahimi*, 602 U.S. at 701, this Court nonetheless

requires an especially close fit between modern and historical regulations, *compare Bruen*, 597 U.S. at 55–59 (surety statutes insufficiently similar to broad prohibition on public carry), *with Rahimi*, 602 U.S. at 698–99 (surety statutes sufficiently similar to temporary restriction on firearm possession by individuals subject to certain restraining orders). Accordingly, the government needs to show that the founding generation tried to prevent persons convicted of felonies or felony-equivalent crimes from simple possession of firearms for *any* purpose–and that it did so in a manner sufficiently comparable to § 922(g)(1).

But there is no tradition of felon dispossession statutes—at either the federal or state level—predating the 20th century. Section 922(g)(1) itself only traces its origins back to 1938, when Congress passed the Federal Firearms Act that prohibited only certain felons with "a few violent offenses" from receiving firearms. *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The statute was not amended to prohibit the "possession by all felons" until the 1960s. *Id.* And scholars have not identified founding-era colonial or state felon dispossession statutes either. *See, e.g.*, 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, 142-43 & n.11 (2007). The "Founders themselves could have adopted" laws like Section 922(g)(1) to "confront" the "perceived societal problem" posed by felons. *Bruen*, 597

U.S. at 27. Yet they did not, and that inaction means § 922(g)(1) is unconstitutional in all applications.

Moreover, the statute is independently unconstitutional because of the extraordinary burden it puts on the Second Amendment right of every person that it impacts. Section 922(g)(1) indefinitely—and for all practical purposes, permanently—bans all firearm possession, so long as the firearm traveled in interstate commerce at some point. The government has been unable to identify any historical tradition of relevantly similar firearm regulations that so completely infringed upon an individual's ability to exercise such a fundamental right. *See Rahimi*, 602 U.S. at 699–702.

Finally, even if there were *some* constitutional applications of § 922(g)(1), under the correct test established in *Bruen* and applied in *Rahimi*, the statute is still unconstitutional as applied to Mr. Reese. Indeed, the problems with § 922(g)(1) are particularly apparent with respect to Mr. Reese. He is prohibited from possessing firearms solely due to *nonviolent* prior offenses. To the extent there could be constitutional applications of § 922(g)(1), it is the government's burden to demonstrate where to draw that line. But at minimum, and based on the factors this Court found critical in *Rahimi*—duration of infringement, individualized procedural protections, and the danger posed by the defendant to another person's physical safety—the government cannot do so for persons like Mr. Reese.

IV. The Commerce Clause Question Has Been Fully Aired in the Lower Courts.

Turning to the Commerce Clause question, there's nothing to be gained from allowing it to further percolate in the lower courts. Every circuit has addressed this question and held—wrongly, *see infra*—that § 922(g) is a proper exercise of Congress's power under the Commerce Clause. *E.g.*, *Fraternal Ord. of Police v. United States*, 173 F.3d 898, 907–08 (D.C. Cir. 1999); *United States v. Joost*, 133 F.3d 125, 131 (1st Cir. 1998); *United States v. Santiago*, 238 F.3d 213, 217 (2d Cir. 2001); *United States v. Leuschen*, 395 F.3d 155, 160-61 (3d Cir. 2005); *United States v. Bostic*, 168 F.3d 718, 723 (4th Cir. 1999); *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013); *United States v. Chesney*, 86 F.3d 564, 568–69 (6th Cir. 1996); *United States v. Wilson*, 159 F.3d 280, 286 (7th Cir. 1998); *United States v. Joos*, 638 F.3d 581, 586 (8th Cir. 2011); *United States v. Jones*, 231 F.3d 508, 514-15 (9th Cir. 2000); *United States v. Dorris*, 236 F.3d 582, 584–86 (10th Cir. 2000); *United States v. Dupree*, 258 F.3d 1258, 1259 (11th Cir. 2001).

Opinions in new appeals raising this issue do nothing more than summarily point to prior decisions so holding. *See, e.g.*, App. A36–A38; *United States v. Ryan*, No. 24-2529, 2025 WL 2017468, at *1 n.1 (9th Cir. July 18, 2025) (unpublished); *United States v. Miranda*, No. 24-50502, 2025 WL 1927694, at *1 (5th Cir. July 14, 2025) (unpublished); *United States v. Lowry*, No. 23-1516, 2025 WL 1912353, at *1 (3d Cir. July 11, 2025) (unpublished). Thus, if the Commerce Clause issue is certworthy—and

it is—there's no reason to wait any longer. Any insight that the lower courts could bring to this issue has already been realized.

V. The Tenth Circuit's Commerce Clause Ruling Is Wrong.

The lower courts are mistaken: the Commerce Clause does not support § 922(g)(1). Section 922(g)(1) makes it a federal crime for someone with a qualifying felony conviction to "possess in or affecting commerce, any firearm or ammunition." Since *Scarborough v. United States*, 431 U.S. 563 (1977), the federal felon-in-possession statute has been construed to require only proof that the firearm in question moved across state lines at some point—even if it did so before the person became a felon or possessed the firearm. But this minimal nexus with interstate commerce is too attenuated to justify the enactment of § 922(g)(1) under the Commerce Clause.

While Congress's Commerce Clause power is broad, it is "subject to outer limits" and is not a grant of federal police power. *United States v. Lopez*, 514 U.S. 549, 556–57, 566 (1995). Congress may rely on the clause to regulate: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce" (such as ships and railroads), 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." *Id.* at 558–59.

Section 922(g)(1) does not fall within any of these three categories of permissible Commerce Clause regulation. The prohibition of firearm possession by those with qualifying prior convictions plainly does not fall within the first two *Lopez* categories. It does not regulate the use of the channels of interstate commerce; nor does it regulate the instrumentalities of interstate commerce, or the movement of persons or things in interstate commerce.

The mere possession of a firearm that at one point traveled in interstate commerce also does not "substantially affect" interstate commerce. Possession of a firearm, standing alone, is not a commercial or economic activity. Further, any theoretical link between a felon's mere possession of a firearm and potential downstream effects on commerce are so attenuated that, if accepted, they would impermissibly allow Congress a general police power. *Lopez*, 514 U.S. at 564. Put another way, it would authorize "the federal government [to] regulate virtually every tangible item anywhere in the United States," it being "hard to imagine any physical item that has not traveled across state lines at *some* point in its existence, either in whole or in part." *United States v. Seekins*, 52 F.4th 988, 990 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc). 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." *Lopez*, 514 U.S. at 566.

Accordingly, the mere possession of a firearm that at some point traveled in interstate commerce does not "substantially affect" interstate commerce. Because § 922(g)(1) does not fall within any of the three categories of Commerce Clause regulation identified in *Lopez*, it is unconstitutional.

Scarborough should not be read to hold otherwise. In *Scarborough*, this Court construed a predecessor to § 922(g)(1) and held that the statute only required proof that the firearm had previously traveled in interstate commerce. 431 U.S. at 566–67. The Court reasoned that Congress intended to assert "its full Commerce Clause power" in enacting the law. *Id.* at 571. But while *Scarborough* assumes that enacting a prohibition on felons possessing firearms is a proper exercise of Congress's Commerce Clause authority, "[n]o party alleged that the statute exceeded Congress' authority, and the Court did not hold that the statute was constitutional." *Alderman v. United States*, 131 S. Ct. 700, 701 (2011) (Thomas, J., dissenting from denial of certiorari). Consequently, the decision cannot be treated as precedent on the constitutional question.

In light of this Court's subsequent clarification of the scope of Congress's Commerce Clause authority in *Lopez*—which "cabined the constitutional power of the federal government under the Commerce Clause" in a manner that is

"fundamental[ly] inconsisten[t]" with what some lower courts have read *Scarborough* to hold—it is now clear that § 922(g)(1) is unconstitutional. *Seekins*, 52 F.4th at 991 (Ho, J., dissenting from denial of rehearing en banc).

VI. This Case Is a Good Vehicle for Both Questions Presented.

If this Court doesn't invalidate § 922(g)(1) in a different case, Mr. Reese's case presents a suitable vehicle for resolving the questions presented. First, the questions are squarely presented: they were raised in the lower courts, and both courts decided them on the merits. Next, Mr. Reese's case presents the Court with a variety of remedial options on the Second Amendment issue: the Court could hold that the Tenth Circuit erred by blindly deferring to *Heller*'s dicta and remand for it to actually apply *Bruen*'s test; it could hold that the Tenth Circuit erred by categorically refusing to entertain as-applied challenges to § 922(g)(1); it could hold that § 922(g)(1) is unconstitutional as applied to people like Mr. Reese—who has no conviction for a violent felony; or it could hold that § 922(g)(1) is unconstitutional on its face.

Finally, Mr. Reese would be well represented in this Court. Undersigned counsel recognizes that he lacks expertise in Supreme Court practice. In the event that plenary review were granted, he would make every effort to partner with a specialized Supreme Court practitioner. This experienced Supreme Court practitioner, not the undersigned, would take the lead in drafting the merits briefs and deliver oral argument in this Court.

CONCLUSION

This Court should hold Mr. Reese's petition pending a favorable ruling in *Vincent* or another case challenging § 922(g)(1). Alternatively, the Court should grant plenary review of the two questions presented herein.

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

/s/ Josh Lee
JOSH LEE
Assistant Federal Public Defender
Counsel of Record
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002