No. _____

In the

Supreme Court of the United States

_____

Marcus Delars Branson,

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 prior to the defendant's possession.

PARTIES TO THE PROCEEDING

Petitioner is Marcus Delars Branson, who was the Defendant-Appellee in the court below. Respondent, the United States of America, was the Plaintiff-Appellant in the court below.

RELATED PROCEEDINGS

- *United States v. Marcus Branson*, No. 3:23-cr-61-1 (S.D. Miss. Aug. 16, 2024) (judgment of conviction)
- *United States v. Marcus Branson*, No. 24-60417, 139 F.4th 475 (5th Cir. June 4, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Marcus Delars Branson seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's opinion is reported at 143 F.4th 670 and is reproduced in Appendix A at App. 1a-7a.

JURISDICTION

The Fifth Circuit entered its judgment on June 4, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The Second Amendment provides: "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 of the United States Code provides, in relevant part: "It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition."

STATEMENT

A. Legal background.

1. The Second Amendment guarantees "the right of the people to keep and bear arms." U.S. CONST. amend. II. Yet, the federal felon-in-possession ban, enacted in 1938, 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 cases). The Second Amendment was long treated as a "second-class" right. *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 780 (2010) (plurality opinion); Robert J. Cottrol, *Structure, Participation, Citizenship, and Right: Lessons from Akhil Amar's Second and Fourteenth Amendments*, 87 Geo. L.J. 2307, 2324 (1999).

2. That began to change with *District of Columbia v. Heller*, 554 U.S. 570 (2008), when the Court decided that the Second Amendment guarantees individuals the right to keep and bear arms in their home for self-defense. The scope of the right to bear arms was held fully applicable to the States in *McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010). The Court of Appeals, however, "coalesced around a 'two-step' framework for analyzing Second Amendment Challenges that combine[d] history with means-end scrutiny." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17 (2022).

3. This Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) marked a sea change, announcing a new framework for

considering Second Amendment challenges. *Bruen* rejected the appellate courts' existing "two-step" framework replacing it with a new analysis: "When the Second Amendment's plain text covers an individual's conduct," the government must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24.

4. *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 (internal citation omitted). The Court pointed to two metrics to determine relevant similarity: "*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29. These metrics ask whether the modern and historical regulations impose a "comparable burden" (the how) and "whether that burden is comparably justified" (the why). *Id.*

5. The Court provided additional explanation in *United States v. Rahimi*, 602 U.S. 680 (2024) when considering a Second Amendment challenge to 18 U.S.C. § 922(g)(8). Applying the principles of *Bruen*, the Court explained that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. *Rahimi*, 602 U.S. at 692. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id.* (quoting *Bruen*, 597 U.S. at 29). The law need not be a "historical twin," but analogical reasoning is also not a "regulatory blank check." *Bruen*, 597 U.S. at 30. "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 done at the founding." *Rahimi*, 602 U.S. at 692.

B. Factual background.

1. Marcus Delars Branson was charged by indictment with one count of possession of a firearm by a person who has previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of § 922(g)(1). ROA.245 (indictment).

2. Branson had a prior 2018 conviction for bank robbery for which he was sentenced to a 37-month term of imprisonment, followed by a three-year term of supervised release. ROA.212 (order denying motion to dismiss), 300 (presentence report [PSR] ¶ 9). He was released from custody in September of 2020. ROA.300.

3. On March 24, 2023, United States Probation (USPO) conducted a home visit of Branson's residence in Jackson, Mississippi. ROA.38. During the visit, two firearms were found in Branson's home, supporting his § 922(g)(1) charge. ROA.212; *see* ROA.265.

4. Branson moved to dismiss the indictment, arguing that § 922(g)(1) is unconstitutional in light of the Supreme Court's decision in *Bruen* and violated the Second Amendment as applied to him. ROA.38-43. The Government opposed the motion to dismiss, *see* ROA.45-61, and the district court denied the motion on the pleadings on March 13, 2024, determining that it was bound by pre-*Bruen* Fifth Circuit precedents upholding § 922(g)(1), ROA.212-13.

5. Branson pleaded guilty to the indictment without a plea agreement. ROA.229 (judgment), 256, 267 (change of plea). The district court sentenced Branson

to a 41-month term of imprisonment, to run consecutively to his revocation sentence, followed by a three-year term of supervised release, to run concurrently with the revocation sentence. ROA.229-31 (judgment), 285-86 (sentencing).

6. In his appeal, Branson raised five challenges: (1) § 922(g)(1) violated the Second Amendment as applied to him; (2) § 922(g)(1) facially violates the Second Amendment; (3) § 922(g)(1) is unconstitutionally vague; (4) § 922(g)(1) violates the Commerce Clause; and (5) § 922(g)(1) violates the Equal Protection Clause. The Fifth Circuit affirmed in a published opinion. *United States v. Branson*, 139 F.4th 475 (5th Cir. 2025). It held that his facial challenge under the Second Amendment, his Commerce Clause-based argument, and his equal protection argument were foreclosed. *Id.* at 477. It denied his as-applied challenge because it found bank robbery was a "theft-related felony" foreclosed by prior precedent. *Id.* Finally, it found that any vagueness challenge failed on plain error review. *Id.* at 478-79.

REASONS FOR GRANTING THIS PETITION

I. This issue is ripe for review because lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions.

Millions of individuals have prior felony convictions. Yet, the circuit split on the proper analysis and methodological approach to apply when considering a Second Amendment challenge to § 922(g)(1) allows for inconsistent application of the right based solely on geographic location. 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). The majority of the courts of appeals have now weighed in on the issue, but they have all taken different and conflicting approaches to resolving Second Amendment challenges to § 922(g)(1) after *Bruen* and *Rahimi*. 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 to reach dramatically different results. The circuits disagree about whether felons are part of "the people" protected by the Second Amendment in step one, they are split over which traditions justify § 922(g)(1), and they vary as to whether the statute is even vulnerable to as-applied challenges.

To begin, six circuits have upheld the categorical application of § 922(g)(1) to all individuals with felony convictions. *See Zherka v. Bondi*, 140 F.4th 35, 96 (2d Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 890 (11th Cir. 2025); *United States v. Duarte*, 137 F.4th 743, 752 (9th Cir. 2025) (en banc); *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). Each placed significant weight on this Court's statement in *Heller* that "prohibitions on the possession of firearms by felons" are "presumptively lawful." 554 U.S. at 626–27 & n.26; *see Zherka*, 140 F.4th at 73, 93-94; *Dubois*, 94 F.4th at 891; *Duarte*, 137 F.4th at 752; *Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29; *Vincent*, 127 F.4th at 1265.

The Tenth and Eleventh Circuits have held that pre-*Bruen* precedent relying on *Heller* remains binding. *Vincent*, 127 F.4th at 1266; *Dubois,* 94 F.4th at 893. The Fourth, Eighth, Ninth, and Second Circuits have gone even further. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *Hunt*, 123 F.4th at 704–08. And it refuses to entertain as-applied challenges to § 922(g)(1). *Id.* at 700. The Eighth Circuit upheld § 922(g)(1) as constitutional without the "need for felony-by-felony litigation," *Jackson*, 110 F.4th at 1125, finding legislatures have long exercised authority to disarm broad categories of people "not law-abiding" or who "presented an unacceptable risk of danger if armed," *id.* at 1126-28. The Ninth Circuit "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. The Second Circuit has agreed, finding that a felon-by-felon approach would face the "practical difficulties and potential unfairness" which the categorical approach was developed to avoid. *Zherka*, 140 F.4th at 95 (internal quotation marks and citations omitted).

The Fifth and the Sixth Circuits have determined that § 922(g)(1) might be unconstitutional as applied to at least *some* felons. *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); *id.* at 657, 663 (allowing as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous"). 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. *Range v. Attorney General*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc))

The Fifth Circuit split with the other circuits by 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. But when considering a historical tradition, the Fifth Circuit endorsed severe and permanent punishment at the founding as a dispositive historical analogue, *see id.*, 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. The Third Circuit instead relied on the lack of evidence that the claimant "poses a physical danger to others" to find the statute unconstitutional as applied. *Range*, 124 F.4th at 232.

The Sixth Circuit allows as-applied challenges to § 922(g)(1) by individuals who show that they are "not dangerous." *Williams*, 113 F.4th at 657, 663. The Seventh Circuit has assumed that as-applied challenges to § 922(g)(1) are available, but it concluded that an individual who had convictions for violent felonies and was on parole at the time he possessed a firearm was "not a 'law-abiding, responsible' person

who has a constitutional right to possess firearms." *United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024) (quote at 847).

The courts of appeals are deeply divided at each stage of the Second Amendment analysis. This Court's intervention is required to resolve the scope and governing analysis of the right to keep and bear arms.

II. The decision below is incorrect and in conflict with this Court's precedent.

The Fifth Circuit's decision in *Diaz*, followed by the panel below, correctly held that, under the plain text of the Second Amendment, felons are part of "the people" protected by the Amendment. 116 F.4th at 467; App. 3a. After all, this Court has explained that "the people" "unambiguously refers to all members of the political community," so the right to keep and bear arms belongs to "all Americans." *Heller*, 554 U.S. at 580. But the Fifth Circuit misapplied *Bruen*'s historical analysis. Section 922(g)(1) does not align with our Nation's tradition of firearm regulation on either of the two central considerations: how and why it burdens the right to keep and bear arms. *See Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. The difference in how § 922(g)(1) burdens the right to bear arms is fatal to the statute facially, and why it burdens the right to bear arms dooms the statute as applied to non-violent offenders like Branson**.**

III. Section 922(g)(1) is facially unconstitutional.

This Court has explained that "for reasons relating both to the proper functioning of courts and to their efficiency, the lawfulness of the particular application of the law should ordinarily be decided first." *Bd. Of Trustees of State*

Univ. of New York v. Fox, 492 U.S. 469, 485 (1989). "Once a case is brought," however, "no general categorical line bars a court from making broader pronouncements of invalidity in properly 'as-applied' cases." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010) (quoting Richard H. Fallon, Jr., As-Applied and Facial Challenges and Third-Party Standing, 113 HARV. L. REV. 1321, 1339 (2000)). Although Branson did not raise a facial challenge below, this Court has the ability to consider a facial challenge to § 922(g)(1) with his properly brought as-applied case. *See id.*

Section 922(g)(1) facially violates the Second Amendment because it imposes a broadly sweeping and historically unprecedented permanent lifetime ban on the possession of firearms for self-defense. The Government has failed to and cannot cite any historical firearm regulations that "impose[s] a comparable burden on the right of armed self-defense." *Bruen*, 597 U.S. at 29.

A law is not compatible with the Second Amendment if it regulates the right to bear arms "to an extent beyond what was done at the founding." *Rahimi*, 502 U.S. at 692. Section 922(g)(1) goes far beyond what was permissible at the Founding. It therefore facially violates the Second Amendment because there are "no set of circumstances" under which it is valid. *Id.* at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

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

Article I, § 8 of the United States Constitution provides: "Congress shall have power" to "regulate Commerce with foreign Nations, and among the several States,

and with the Indian Tribes." The test for determining the scope of Congressional power to regulate activities affecting interstate commerce is set forth in *United States v. Lopez*, 514 U.S. 549 (1995). In *Lopez*, this Court found that "the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce." *Id.* at 559. The *Lopez* decision appeared to, but did not expressly, overrule the more permissive test for federal regulation of gun possession articulated in *Scarborough v. United States*, 431 U.S. 563 (1977), which required only the "minimal nexus that the firearm have been, at some time, in interstate commerce." *Id.* at 575; *cf. United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc) (suggesting the holding in *Scarborough* was statutory, and not constitutional).

Members of this Court and other Circuit Courts have recognized that *Lopez* and *Scarborough* are irreconcilable. *See Alderman v. United States*, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from denial of certiorari) ("*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez*."); *see Seekins*, 52 F.4th at 991-92 (Ho, J., dissenting) (citing cases); *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting) ("[T]he precise holding in *Scarborough* is in fundamental and irreconcilable conflict with the rationale of [*Lopez*]."). But this Court has not addressed the precise impact of *Lopez* on *Scarborough*. *See United States v. Hill*, 927 F.3d 188, 215 n.10 (4th Cir. 2019) (Agee, J., dissenting) ("While some tension exists between *Scarborough* and the Supreme Court's decision in *Lopez*,

the Supreme Court has not granted certiorari on a case that would provide further guidance").

This minimal nexus requirement in *Scarborough* does not satisfy *Lopez*. Mere gun possession—the crime for which Branson was convicted—involves entirely local, non-commercial activity. It does not involve participation in any cognizable market. *See Rawls*, 85 F.3d at 243 (Garwood, J., concurring) ("[O]ne might well wonder how it could be rationally 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"). *Scarborough*'s reading of the § 922(g)(1) nexus element is thus too broad, and it impermissibly extends federal power over purely local activity.

Given *Lopez*, it is "doubt[ful] that § 922(g)(8) 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). Lacking clear guidance, courts after *Scarborough* have continued to hold that § 922(g)(1)'s nexus element can be satisfied if the firearm traveled—at any point—across a state boundary. *See, e.g., United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996). 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*, 131 S. Ct. at 702 (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). Yet, 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 Rawls*, 85 F.3d at 243 (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) (quoting *Alderman*, 131 S. Ct. at 703 (Thomas, J., dissenting from denial of certiorari)) ("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."); *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. *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*. Applying *Lopez* would demand that § 922(g)'s "possess

in or affecting commerce" element require (1) proof that the defendant's offense caused the firearm to move in interstate commerce; or, at minimum (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 (internal quotation marks and citation omitted). Regulation of commerce amongst the states is one such enumerated power, but without limits on that 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).

The Commerce Clause power "must be read carefully to avoid creating a general federal authority akin to the police power." *NFIB v. Sebelius*, 567 U.S. 519, 536 (2012); *see also Alderman*, 131 S. Ct. at 703 (Thomas, J., dissenting) ("[P]ermit[ting] Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines" would be "[s]uch an expansion of federal authority" as to "trespass on state police powers."). "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." *United States v. Morrison*, 529 U.S. 598, 614 (2000) (quoting *Lopez*, 514 U.S. at 557 n.2) (cleaned up).

"[C]onstitutional limits on governmental power do not enforce themselves;" but instead, "require vigilant—and diligent—enforcement." *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from denial of rehearing en banc). To find that § 922(g)(1) does not constitute Congressional overreach under the Commerce Clause supports a view that it is enough to confer federal jurisdiction "that some object (or component of an object) at some unknown (and perhaps unknowable) point in time traveled across state lines"; it is therefore "hard to imagine anything that would remain outside the federal government's commerce power." *Id.* at 990 (Ho, J., dissenting). "There is no plausible reading of the Commerce, as originally understood by our Founders, that could possibly give the federal government such reach." *Id.* (citations omitted).

CONCLUSION

Petitioner Marcus Branson respectfully submits that this Court should grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

If the Court grants certiorari in another case raising the same issues, Branson 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).

Respectfully submitted this 2nd day of September, 2025.

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Respondent.

CERTIFICATE OF SERVICE

I certify that on September 2, 2025, as required under Supreme Court Rule 29.3, I have served copies of the enclosed Petition for a Writ of Certiorari and Motion for Leave to Proceed *In Forma Pauperis* on all parties required to be served by enclosing a copy of each in an envelope and delivering it to FedEx, a third-party commercial carrier for delivery within three calendar days to:

Solicitor General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW, Room 5614
Washington, D.C. 20530

/s/ *Michael L. Scott*
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