

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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**Joseph Sowe,**

*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 Joseph Sowe, 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. Sowe*, No. 3:21-cr-00357-N, U.S. District Court for the Northern District of Texas. Judgment entered on July 7, 2025.
- *United States v. Sowe*, Nos. 25-10821, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on January 7, 2026.

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## **PETITION FOR A WRIT OF CERTIORARI**

Joseph Sowe 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The Fifth Circuit's unpublished opinion is available at *United States v. Sowe*, No. 25-10821, 2026 WL 45255 (5th Cir. Jan. 7, 2026). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence in *United States v. Sowe*, No. 3:21-cr-00357-N (N.D. Tex. July 7, 2025), is reprinted in Appendix B.

### **JURISDICTION**

The Fifth Circuit entered judgment on January 7, 2026. 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

In 2009, at age 17, Joseph Sowe was convicted of burglary of a habitation, for which he ultimately received a three-year imprisonment sentence. ROA.247-48.<sup>1</sup> He was released on parole in late 2011 and discharged the sentence in late 2013. ROA.247-48. More than seven years later, on February 11, 2021, Sowe backed his vehicle into another car in a 7-Eleven parking lot. ROA.244. Local police officers observed the accident and approached. ROA.244. Sowe slowly drove away until officers knocked on his driver's side window, ordering him to stop. ROA.244. When Sowe went to step out, officers smelled marijuana. ROA.244. They also saw what they suspected to be a bag of marijuana on the center console and a blunt in the ashtray. ROA.244. Sowe volunteered that there was more marijuana in the glove compartment. ROA.244. When officers went to look, they discovered a Smith and Wesson, Model SD40VE, .40-caliber pistol bearing Serial No. FYZ8683, between the middle console

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<sup>1</sup> "ROA" refers to Record On Appeal.

and passenger seat. ROA.244. This discovery led to Sowe's federal indictment for unlawful possession of a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). ROA.12-14.

Sowe 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.84-104. The district court denied the motion. ROA.116-18. Sowe then pleaded guilty without a plea agreement. ROA.185, 257. As part of his guilty plea, Sowe executed a written stipulation of facts where he admitted that "he knowingly possessed, in and affecting interstate and foreign commerce," the Smith and Wesson pistol. ROA.121. Sowe also admitted that "he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year," and that he knew it before the possession. ROA.121. The stipulation, however, did not specify when or how Sowe obtained the firearm, when the firearm last traveled in commerce, or whether Sowe's conduct or even a commercial transaction caused the firearm's last movement in commerce. ROA.121. It also did not detail Sowe's criminal history. ROA.121.

During the presentence investigation, U.S. Probation found that Sowe had been convicted of felony escape in addition to the burglary in 2009. ROA.247-48. The presentence report also settled on the following guideline calculations: Offense Level 14, Criminal History Category IV, and advisory guideline range of 27–33 months imprisonment. ROA.257. The district court adopted these calculations at sentencing.

ROA.274. But the district court also granted a downward departure due to overrepresentation of criminal history. ROA.235. Thus, the court sentenced Sowe using a 21–27 months guideline range as the sentencing anchor. ROA.235. The district court imposed 21 months of imprisonment and three years of supervised release. ROA.235–36, *see also* Pet. App’x a004–a005.

## II. Appellate Proceedings

Sowe raised three challenges to his § 922(g)(1) conviction on appeal. *First*, Sowe pressed his disagreement with how precedent interprets “in or affecting commerce” in 18 U.S.C. § 922(g). *Second*, Sowe argued that, if properly interpreted, Congress exceeded its commerce power when it enacted § 922(g). *Third*, Sowe maintained that his § 922(g)(1) conviction could not pass constitutional muster under the Second Amendment.

The Fifth Circuit affirmed in an unpublished opinion. *United States v. Sowe*, No. 25-10821, 2026 WL 45255 (5th Cir. Jan. 7, 2026) (reprinted at Pet. App’x a001–a002). The panel held that Sowe’s challenges were all foreclosed, relying on *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), to dispose of the Second Amendment challenge. 2026 WL 45255, at \*1; Pet. App’x a002.

### 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) denies that right to anyone previously convicted of a crime punishable by a year or more. Historically, Second Amendment

challenges to § 922(g)(1) prosecutions uniformly failed. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting authorities). But *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), changed the legal landscape.

Now “[w]hen 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.” *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 “historical inquiry” courts must conduct, “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 a permanent firearm possession ban regardless of any threat, judicially determined or otherwise, that an individual person may pose.

*Rahimi* thus still left lower courts “at sea when it comes to evaluating” § 922(g)(1), placing the court in acute “need [of] a solid anchor for grounding their constitutional pronouncements.” *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring). Lacking that guidance, “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.” *Id.* 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 Supreme Court 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. The courts of appeals have also split on the traditions that justify § 922(g)(1), and they vary as to whether the statute is vulnerable to as-applied challenges.

To start, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits “have upheld the categorical application of § 922(g)(1) to all felons.” *United States v. Duarte*, 137 F.4th 743, 747–48 (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)); *Zherka v. Bondi*, 140 F.4th 68, 75, 78–79 (2d Cir. 2025). 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; *Zherka*, 140 F.4th at 75 (relying on pre-*Bruen* precedent that cited *Heller*’s presumptively lawful language to conclude that the statute is facially constitutional).

The Second, Fourth, Eighth and Ninth Circuits went even 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 “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).<sup>2</sup> The Second Circuit later joined the ranks on this side of the split. *Zherka*, 140 F.4th at 78–79.

On the other end, the Sixth Circuit has 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. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024)). “[T]he 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)). And the Fifth Circuit has reversed § 922(g)(1) convictions on as-applied grounds. *See United States v. Hembree*, 165 F.4th 909, 910 (5th Cir. 2026); *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025); *United States v. Mitchell*, 160 F.4th 169, 173 (5th Cir. 2025); *United States v. Doucet*, No. 24-30656, 2025 WL 3515404 (5th Cir. Dec. 8, 2025). *See also United States v. Diaz*, 116 F.4th 458, 469–70 & n.4 (5th Cir. 2024) (first opening the door to as-applied constitutional challenges post-*Bruen*).

The Third, Fifth, and Sixth Circuits agree *Heller*’s “presumptively lawful” dicta could not “supplant the most recent analysis set forth by the Supreme Court in *Rahimi*....” *Diaz*, 116 F.4th at 466. *See also Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit alone endorsed capital punishment at the founding as the dispositive historical analogue, *see Diaz*, 116 F.4th at

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<sup>2</sup> 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).

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 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 in part with this analysis. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the circuits departed on the scope of the inquiry. *Compare United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025), *with Williams*, 113 F.4th at 659–60. The Third Circuit aligns with the Sixth Circuit on this point. *Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025).

**II. In any event, this Court should hold the instant petition pending the outcome in *United States v. Hemani*, No. 24-1234 (U.S. argued Mar. 2, 2026).**

This term, the Court will decide whether the government may constitutionally prosecute Ali Danial Hemani under 18 U.S.C. § 922(g)(3) based on proof of habitual or regular marijuana use. *See generally* Pet. for Cert., *United States v. Hemani*, No. 24-1234 (U.S. June 2, 2025), 2025 WL 1593262. According to the government, Hemani’s prosecution falls within a historical principle that allows for the temporary

disarmament of categories of people based on the legislature’s judgment that the disarmed category poses a “special danger” of firearm misuse. *See* Br. for the United States, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 12, 2025), 2025 WL 3708950, at \*10, at \*37–40; Reply Br. for the United States, *United States v. Hemani*, No. 24-1234 (U.S. Feb. 19, 2026), 2026 WL 499787, at \*1, at \*5–8; Tr. Oral Argument 3:11–18, *United States v. Hemani*, No. 24-1234 (U.S. Mar. 2, 2026). If the Court accepts that analytical approach for drawing the boundaries of Second Amendment protection, there exists a “reasonable probability” that the Fifth Circuit would reconsider the methodology it adopted in *Diaz*. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996). *See also* Pet. for Cert., *United States v. Cockerham*, No. 25-1029 (U.S. Feb. 27, 2026), 2026 WL 596482, at \*4 (also citing *Lawrence* for proposition that *Hemani* could affect the Fifth Circuit’s analysis on the constitutionality of § 922(g)(1) prosecutions).

For instance, *Hemani* touches on the scope of the historical principle that can be drawn from founding-era surety laws. *See* 2025 WL 3708950, at \*22–23, \*26; 2026 WL 499787, at \*7, \*12–13; *Hemani* Tr. 3:19–4:6, 6:5–10. *Hemani* also relatedly involves whether and to what extent laws at the founding that imposed punishment other than disarmament can serve as historical analogues. *See* 2025 WL 3708950, at \*25–26; 2026 WL 499787, at \*7–11. Both considerations are critical to *Diaz*’s analysis. *See Diaz*, 116 F.4th at 468–71 & n.5. As such, Sowe respectfully requests the Court to hold the instant petition pending the outcome in *Hemani*. *See 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).

### **III. 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 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* be-

cause 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”).

### CONCLUSION

Petitioner Joseph Sowe respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit, or at minimum, hold the petition pending the outcome in *Hemani*.

Respectfully submitted this 7th day of April, 2026.

**JASON D. HAWKINS**  
**Federal Public Defender**  
**Northern District of Texas**

*/s/ Maria Gabriela Vega*

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*Attorney for Petitioner Joseph Sowe*

# United States Court of Appeals for the Fifth Circuit

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No. 25-10821  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 7, 2026

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSEPH SOWE,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:21-CR-357-1

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Before DAVIS, JONES, and HO, *Circuit Judges.*

PER CURIAM:\*

Joseph Sowe pleaded guilty to possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1), and he was sentenced to 21 months of imprisonment. On appeal, he argues that this court's precedent misinterprets § 922(g) because the statute requires more than merely past interstate travel at an indeterminate time and that, as interpreted by this

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 25-10821

court, the statute exceeds Congress's authority under the Commerce Clause. He also argues that the statute is unconstitutional on its face in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). He concedes his arguments are foreclosed but nevertheless raises the arguments to preserved them for further review. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time in which to file a brief.

As he concedes, Sowe's Commerce Clause challenge is foreclosed. See *United States v. Jones*, 88 F.4th 571, 573 (5th Cir. 2023); *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013). The parties are also correct that Sowe's facial challenge to § 922(g)(1) is foreclosed. See *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). Because summary affirmance is appropriate here, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

**JOSEPH SOWE**

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:21-CR-00357-N(1)**

§ USM Number: **59140-509**

§ **Marti Rachel Morgan**

§ Defendant's Attorney

**THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	<b>Count 1 of the Indictment filed August 3, 2021.</b>
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

**Title & Section / Nature of Offense**

18 U.S.C. §§ 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon

**Offense Ended**

02/11/2021

**Count**

1

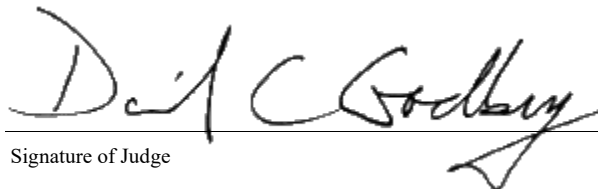
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Count(s)  is  are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

**JUNE 30, 2025**

Date of Imposition of Judgment



Signature of Judge

**DAVID C. GODBEY,  
CHIEF UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**JULY 7, 2025**

Date

DEFENDANT: JOSEPH SOWE
CASE NUMBER: 3:21-CR-00357-N(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 (Twenty-One) months as to count 1. This sentence shall run concurrently to any sentence imposed in Case No. F-2152281 in the 265th Judicial District Court of Dallas County, Dallas, Texas.

[X] The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a facility in the Dallas/Fort Worth, Texas area, if possible.

[X] The defendant is remanded to the custody of the United States Marshal.

[ ] The defendant shall surrender to the United States Marshal for this district:

[ ] at [ ] a.m. [ ] p.m. on

[ ] as notified by the United States Marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

[ ] before 2 p.m. on

[ ] as notified by the United States Marshal.

[ ] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSEPH SOWE  
CASE NUMBER: 3:21-CR-00357-N(1)

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years as to Count 1.**

### MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: JOSEPH SOWE  
CASE NUMBER: 3:21-CR-00357-N(1)

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at [www.txnp.uscourts.gov](http://www.txnp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: JOSEPH SOWE  
CASE NUMBER: 3:21-CR-00357-N(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$20 per month.

DEFENDANT: JOSEPH SOWE  
CASE NUMBER: 3:21-CR-00357-N(1)

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	<b>Assessment</b>	<b>Restitution</b>	<b>Fine</b>	<b>AVAA Assessment*</b>	<b>JVTA Assessment**</b>
<b>TOTALS</b>	\$100.00	\$.00	\$.00	\$.00	\$.00

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution
  - the interest requirement for the  fine  restitution is modified as follows:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.  
\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22  
\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSEPH SOWE  
CASE NUMBER: 3:21-CR-00357-N(1)

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payments of \$ \_\_\_\_\_ due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
**It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several  
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.