No. ______________

In the

Supreme Court of the United States

Cedric Cornell Jackson,

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

I. Whether 18 U.S.C. § 922(g) permits conviction for the possession of any firearm that has ever crossed state lines at any time in the indefinite past, and, if so, if it is facially unconstitutional?

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

PARTIES TO THE PROCEEDING

Petitioner is Cedric Cornell Jackson, who was the Defendant-Petitioner in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

INDEX TO APPENDICES iv

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATUTORY PROVISIONS INVOLVED 2

LIST OF PROCEEDINGS BELOW 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THIS PETITION 6

I. Lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions. 6

II. This Court should delineate the boundaries of federal authority under the Commerce Clause in the firearm context. 13

CONCLUSION 20

INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit

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

TABLE OF AUTHORITIES

Page(s)

Federal Cases

A.L.A. Schechter Poultry Corp. v. United States,
295 U.S. 495 (1935) 18

Alderman v. United States,
562 U.S. 1163, 131 S. Ct. 700 (2011) 16, 19

District of Columbia v. Heller,
554 U.S. 570 (2008) 8

Henderson v. United States,
568 U.S. 266 (2013) 13

Kanter v. Barr,
919 F.3d 437 (7th Cir. 2019) 9

N.L.R.B. v. Jones & Laughlin Steel Corp.,
301 U.S. 1 (1937) 19

Nat'l Fed'n of Indep. Bus. v. Sebelius,
567 U.S. 519 (2012) 19

New York State Rifle & Pistol Association, Inc. v. Bruen,
597 U.S. 1 (2022) 6, 7, 8

Range v. Att'y Gen.,
124 F.4th 218 (3d Cir. 2024) (en banc) 9, 10

Scarborough v. United States,
431 U.S. 563 (1977) 13, 14, 15, 16, 17, 18, 19

United States v. Bishop,
66 F.3d 569 (3d Cir. 1995).. 17

United States v. Chesney,
86 F.3d 564 (6th Cir. 1996) 17, 18

United States v. Cortes,
299 F.3d 1030 (9th Cir. 2002) 17

United States v. Crump,
120 F.3d 462 (4th Cir. 1997) 17

United States v. Diaz,
116 F.4th 458 (5th Cir. 2024) 9

United States v. Dorris,
236 F.3d 582 (10th Cir. 2000) 17

United States v. Duarte,
101 F.4th 657 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024) 9

United States v. Duarte,
137 F.4th 743 (9th Cir. 2025) 8, 9, 10

United States v. Dubois,
94 F.4th 1284 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025) 8

United States v. Gateward,
84 F.3d 670 (3d Cir. 1996) 17

United States v. Hanna,
55 F.3d 1456 (9th Cir. 1995) 17

United States v. Hunt,
123 F.4th 697 (4th Cir. 2024) 8

United States v. Johnson,
42 F.4th 743 (7th Cir. 2022) 13

United States v. Kelly,
No. 3:22-CR-00037, 2022 WL 17336578 (M.D. Tenn. Nov. 16, 2022) 12

United States v. Kirk,
105 F.3d 997 (5th Cir. 1997) (en banc) (per curiam) 16

United States v. Kuban,
94 F.3d 971 (5th Cir. 1996) 16

United States v. Lemons,
302 F.3d 769 (7th Cir. 2002) 17

United States v. Lopez,
514 U.S. 549 (1995) 14, 15, 16, 17, 18, 19

United States v. Moore,
666 F.3d 313 (4th Cir. 2012) 6

United States v. Morrison,
529 U.S. 598 (2000) 15, 19

United States v. Olano,
507 U.S. 725 (1993) 13

United States v. Patterson,
853 F.3d 298 (6th Cir. 2017) 16

United States v. Patton,
451 F.3d 615 (10th Cir. 2006) 17

United States v. Rahimi,
602 U.S. 680 (2024) 7, 8, 11, 15

United States v. Rawls,
85 F.3d 240 (5th Cir. 1996) (per curiam) 16, 17

United States v. Santiago,
238 F.3d 213 (2d Cir. 2001) (per curiam) 17

United States v. Schnur,
132 F.4th 863 (5th Cir. 2025) 10

United States v. Seekins,
52 F.4th 988 (5th Cir. 2022) 13, 18

United States v. Shelton,
66 F.3d 991 (8th Cir. 1995) (per curiam) 17

United States v. Smith,
101 F.3d 202 (1st Cir. 1996) 17

United States v. Williams,
113 F.4th 637 (6th Cir. 2024) 9, 10

United States v. Wright,
607 F.3d 708 (11th Cir. 2010) 17

Vincent v. Bondi,
127 F.4th 1263 (10th Cir. 2025) 8

Federal Statutes

18 U.S.C. § 922(g)(1) 2, 4, 5, 6, 7, 8, 9, 10, 12, 15, 16, 17

18 U.S.C. § 922(q) 14

18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V) 14

18 U.S.C. § 924(a) 2

18 U.S.C. § 924(a)(2) (2018) (amended 2022) 2, 4

28 U.S.C. § 1254(1) 1

Pub. L. No. 90-351, § 1202, 82 Stat. 197 13

Rules

Fed. R. Crim. P. 52(b) 12

Constitutional Provisions

U.S. Const. amend. II 1, 5, 6, 7, 8, 12, 13

U.S. Const. amend. V 1

U.S. Const. amend. VI 2

U.S. Const. art. I, § 8 1

U.S. Const. art. I, § 8, cl. 3 .... 14, 15, 18, 19

Other Authorities

C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993) 6

Fiscal Year 2021 Overview of Federal Criminal Cases at 4, U.S. Sent'g Comm'n (April 2022) 11

FY 2024 Quick Facts 18 U.S.C. § 922(g) Firearms Offenses, U.S. Sent'g Comm'n 12

Statistics, Federal Bureau of Prisons 11

United States Attorneys' Annual Statistical Report Fiscal Year 2024 tbl. 3(C), U.S. Dep't of Justice 12

PETITION FOR A WRIT OF CERTIORARI

Petitioner Cedric Cornell Jackson seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals was not published but is available at *United States v. Cedric Cornell Jackson*, No. 25-10881, 2026 WL 207494 (5th Cir. Jan. 27, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on January 27, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 8 of the United States Constitution provides in relevant part, "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, sec. 8.

The Second Amendment to the U.S. Constitution 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.

The Fifth Amendment to the U.S. Constitution provides, in pertinent part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

The Sixth Amendment to the U.S. Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." U.S. Const. amend. VI.

STATUTORY PROVISIONS INVOLVED

Section 922(g)(1) of Title 18 reads 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).

Title 18 U.S.C. § 924(a) provides, in pertinent part,

> Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 924(a)(2) (2018) (amended 2022).

LIST OF PROCEEDINGS BELOW

1. *United States v. Cedric Cornell Jackson*, 3:21-CR-524, United States District Court for the Northern District of Texas. Judgment and sentence entered on July 24, 2025. (Appendix B).

2. *United States v. Cedric Cornell Jackson*, No. 25-10881, 2026 WL 207494 (5th Cir. Jan. 27, 2026) (unpublished), Court of Appeals for the Fifth Circuit. Judgment affirmed on January 27, 2026. (Appendix A).

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

A grand jury returned a one-count indictment charging Petitioner Cedric Cornell Jackson with violating 18 U.S.C. § 922(g)(1) and 924(a)(2). ROA.12. The indictment alleged:

> On or about July 27, 2021, in the Dallas Division of the Northern District of Texas, the defendant, Cedric Cornell Jackson, knowing that he had been convicted of a crime punishable by imprisonment for a term exceeding one year, that is, a felony offense, did knowingly possess, in and affecting interstate and foreign commerce, a firearm, to wit: a Smith and Wesson, Model SD9, 9 millimeter caliber Luger, bearing serial number FZR4204.
>
> In violation of 18 U.S.C. §§922(g)(1) and 924(a)(2).

ROA.12. Although unspecified by the Indictment, Petitioner's Presentence Report described his criminal history as including multiple felony convictions, including those for drug-trafficking and burglary. Presentence Report, *United States v. Jackson*, No. 3:21-CR-00524-X, ECF No. 69, ("PSR") at 6-9.

Petitioner pled guilty to the indictment without a plea agreement. ROA.157, 183; *see also* PSR at 3. In advance of entering his plea, Petitioner signed a factual resume. ROA.145-50. Regarding the firearm's connection to interstate commerce, the factual resume stipulated only: "The Smith and Wesson firearm was not manufactured in Texas, and therefore it had to have traveled in interstate and/or foreign commerce before it came into Mr. Jackson's possession." ROA.148.

At rearraignment, the magistrate advised Petitioner that § 922(g)(1) required the government to prove *inter alia* that Petitioner knowingly possessed a firearm, and "that the firearm possessed traveled in interstate or foreign commerce; that is,

before the Defendant possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country." ROA.181.

The district judge accepted Petitioner's guilty plea. *See* ROA.191-92. The court sentenced him to 24 months' imprisonment and two years of supervised release. ROA.158-59.

B. Appellate Proceedings

In his appeal, Petitioner raised challenges to his conviction. First, Petitioner maintained that the district court plainly erred because his § 922(g)(1) conviction could not pass constitutional muster under the Second Amendment. Second, Mr. Jackson maintained that if precedent correctly interpreted the statute, then Congress exceeded its commerce power when it enacted § 922(g).

The Fifth Circuit affirmed in an unpublished opinion, holding that precedent foreclosed Petitioner's claims. [App. A. at *1-2].

REASONS FOR GRANTING THIS PETITION

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

The Second Amendment guarantees "the right of the people to keep and bear arms." U.S. Const. amend. II. Yet § 922(g)(1) indiscriminately denies that right to anyone previously convicted of a crime punishable by a year or more. Despite the undeniable conflict between the constitutional and statutory text, Second Amendment challenges to § 922(g)(1) prosecutions have historically and uniformly failed. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting authorities).

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

Id. at 29. Otherwise stated, "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations…." *Id.* (cleaned up).

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

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

As Justice Jackson recently observed, "lower courts applying *Bruen*'s approach have been unable to produce consistent, principled results, and, in fact, they have come to conflicting conclusions on virtually every consequential Second Amendment

issue to come before them." *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up). Some circuits see no need to conduct *Bruen*'s text-and-history analysis in the § 922(g)(1) context, relying instead on dicta predating *Bruen*. Others apply *Bruen*'s text-and-history framework but disagree on whether felons are part of "the people" protected by the Second Amendment, are split on the traditions that justify § 922(g)(1), and vary as to whether the statute is vulnerable to as-applied challenges.

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

The Fourth, Eighth and Ninth Circuits went farther. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *See Hunt*, 123 F.4th at 704–08. The Eighth Circuit reached the

same end point based on history alone. *See Jackson*, 110 F.4th at 1126–29. The en banc Ninth Circuit most recently "agree[d] with the Fourth and Eighth Circuits that…historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons." *Duarte*, 137 F.4th at 761 (citing *Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706.).[1]

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

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

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 with this "dangerousness" demarcator. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the two circuits still depart on the scope of the "dangerousness" inquiry. *Compare Schnur*, 132 F.4th 863, 867 ("In assessing Schnur's criminal history under § 922(g)(1), this court 'may consider prior convictions that are 'punishable by imprisonment for a term exceeding one year.''" (quoting *Diaz*, 116 F.4th at 467)) *with Williams*, 113 F.4th at 659–60 ("When evaluating a defendant's dangerousness, a court may consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction.").

Disagreements abound intra-circuit too. In *Range*, the en banc Third Circuit generated six opinions, including one dissent. The Ninth Circuit in *Duarte*, also en banc, generated four opinions, including one partial dissent. *Williams*, a panel decision, produced a concurrence in the judgment only.

In short, jurists "are currently at sea when it comes to evaluating firearms legislation" and in acute "need [of] a solid anchor for grounding their constitutional pronouncements." *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

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

As of October 9, 2025, the Bureau of Prisons reported that it imprisons 155,197 people.[2] And as of September 27, 2025, 22% of inmates (31,722) were incarcerated for "Weapons, Explosives, [and] Arson" offenses, the second largest category of offenses within the federal prison population.[3] "For more than 25 years" in fact, firearm crimes have been one of the "four crime types" that "have comprised the majority of federal felonies and Class A misdemeanors[.]"[4] In fiscal year 2021, "[c]rimes involving firearms were the third most common federal crimes[.]"[5] Of the 57,287 individuals sentenced, 8,151 were firearm cases—a 14.2% share.[6] This represents an 8.1% increase from the year before, despite the number of cases reported to the U.S. Sentencing Commission declining by 11.3% and hitting an all-time low since fiscal year 1999.[7] In fiscal year 2024, 7,419 of the cases reported to the U.S. Sentencing

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[2] *Statistics*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/population_statistics.jsp (last visited October 16, 2025).

[3] *Statistics – Inmate Offenses*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (last visited October 16, 2025).

[4] *Fiscal Year 2021 Overview of Federal Criminal Cases* at 4, U.S. SENTENCING COMM'N (April 2022), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf.

[5] *Id.* at 19.

[6] *Id.* at 1, 5.

[7] *Id.* at 2.

Commission involved convictions under 18 U.S.C. § 922(g) — 90.4% of those involved § 922(g)(1) convictions specifically.[8]

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

If the Court grants certiorari to decide the constitutionality of § 922(g)(1), it should hold the instant case pending the outcome, then grant certiorari, vacate the judgment below, and remand if the outcome recognizes the unconstitutionality of § 922(g)(1) in a substantial number of cases.

It is true that the Second Amendment challenge was not preserved in district court, and that any review will therefore eventually have to occur on the plain error standard. *See* Fed. R. Crim. P. 52(b). This means that to obtain relief Petitioner must show error, that is clear or obvious, that affects substantial rights, and that seriously

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

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

affects the fairness, integrity, or public reputation of judicial proceedings. *See United States v. Olano*, 507 U.S. 725, 732 (1993). But as shown above, there is at least a reasonable probability that the Defendant could establish clear or obvious violation of his Second Amendment rights if this Court evaluates the constitutionality of 9§ 22(g)(1), which it should quickly do. And the obviousness of error may be shown any time before the expiration of direct appeal. *Henderson v. United States*, 568 U.S. 266 (2013). Finally, a finding that the Defendant has been sentenced to prison for exercising a basic constitutional right would affect the outcome and cast doubt on the fairness of the proceedings, to say the least.

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

A predecessor to 18 U.S.C. § 922(g), the Omnibus Crime Control and Safe Streets Act of 1968 prohibited "[a]ny person who…has been convicted by a court of the United States or of a State…of a felony" from receiving, possessing, or transporting "in commerce or affecting commerce any firearm." Pub. L. No. 90-351, § 1202, 82 Stat. 197. In *Scarborough v. United States*, this Court addressed "whether proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the *statutorily* required nexus between the possession of a firearm by a convicted felon and commerce." *Scarborough v. United States*, 431 U.S. 563, 564 (1977) (emphasis added). *Scarborough* answered this question "yes," but the Court did not linger on the constitutional implications of its statutory construction. *See id.* at 577; *see also United States v. Johnson*, 42 F.4th 743, 750 (7th Cir. 2022) (noting that the decision in *Scarborough* "was one of statutory interpretation"); *United States*

v. Seekins, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc) ("[T]he Court's holding in *Scarborough* was statutory, not constitutional.").

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

In so doing, the Court cabined Congress's commerce power to "three broad categories of activity" subject to regulation: (1) "the use of the channels of interstate commerce"; (2) activities, even if intrastate, that threaten "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.* at 558–59 (internal citations omitted). The Court quickly disposed of any justification for § 922(q) under the first two categories, focusing its inquiry on the third. *Id.* at 559. It noted that § 922(q) was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise," elaborating in a footnote that "States possess primary authority for defining and enforcing the criminal law" and that federal criminalization of

"conduct already denounced as criminal by the States…effects a change in the sensitive relation between federal and state criminal jurisdiction." *Id.* at 561 & n.3. The Court also expressed deep concern that the government's arguments for why possession of a firearm in a local school zone substantially affected commerce lent themselves to no limiting principle, opening the door to a "a general federal police power." *Id.* at 563–66. Ultimately, the Court concluded that "possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567. "Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce." *Id.*

Given *Lopez*, it is "doubt[ful] that § 922(g)(8)" — and by extension § 922(g)(1) — "is a proper exercise of Congress's power under the Commerce Clause." *Rahimi*, 602 U.S. at 765 n.6 (2024) (citing *Lopez*, 514 U.S. at 585 (Thomas, J., concurring)) (Thomas, J., dissenting). But lower courts cannot conclusively resolve the tension between *Scarborough* and *Lopez*. The ultimate question posed by *Lopez* — "whether" intrastate possession of a firearm that crossed state lines long before the regulated possession "affect[s] interstate commerce sufficiently to come under the constitutional power of Congress to regulate" — "can be settled finally only by this Court." *United States v. Morrison*, 529 U.S. 598, 614 (2000) (cleaned up).

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

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

The Fifth Circuit is not alone. *See, e.g.*, *United States v. Patterson*, 853 F.3d 298, 301–02 (6th Cir. 2017) ("If the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent," i.e., *Scarborough*, "that does not squarely address the constitutional issue." (quoting *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. at 703 (Thomas, J., dissenting

from denial of certiorari))); *United States v. Cortes*, 299 F.3d 1030, 1037 n.2 (9th Cir. 2002) (although "[t]he vitality of *Scarborough* engenders significant debate," committing to "follow *Scarborough* unwaveringly" "[u]ntil the Supreme Court tells us otherwise"); *United States v. Bishop*, 66 F.3d 569, 587–88, 588 n.28 (3d Cir. 1995) (noting that, until the Supreme Court is more explicit on the relationship between *Lopez* and *Scarborough*, a lower court is "not at liberty to overrule existing Supreme Court precedent"); *United States v. Patton*, 451 F.3d 615, 634–35 (10th Cir. 2006) (collecting cases).

Nine courts of appeals have upheld § 922(g)(1) based solely on *Scarborough*'s minimal nexus test. *See United States v. Smith*, 101 F.3d 202, 215 (1st Cir. 1996); *United States v. Santiago*, 238 F.3d 213, 216–17 (2d Cir. 2001) (per curiam); *United States v. Gateward*, 84 F.3d 670, 671–72 (3d Cir. 1996); *Rawls*, 85 F.3d at 242–43; *United States v. Lemons*, 302 F.3d 769, 771–73 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992 (8th Cir. 1995) (per curiam); *United States v. Hanna*, 55 F.3d 1456, 1461–62, 1462 n.2 (9th Cir. 1995); *United States v. Dorris*, 236 F.3d 582, 584–86 (10th Cir. 2000); *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). Only two courts of appeals have engaged in *Lopez*'s substantial-effects test and reasoned that § 922(g)(1) is constitutional under it. *See United States v. Crump*, 120 F.3d 462, 466 & n.2 (4th Cir. 1997) (citing *United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995) (en banc), *abrogated on other grounds by Rehaif v. United States*, 588 U.S. 225 (2019)); *United States v. Chesney*, 86 F.3d 564, 568–70 (6th Cir. 1996). Because courts often fail to apply the *Lopez* test to these firearm possession cases at

all, defendants across the country lack the constitutional protection from congressional overreach provided by *Lopez*. For instance, applying *Lopez* would demand that § 922(g)'s "possess in or affecting commerce" element require either: 1) proof that the defendant's offense caused the firearm to move in interstate commerce; or, at least, 2) proof that the firearm moved in interstate commerce at a time reasonably near the offense. But *Scarborough* continues to control the outcome in a large majority of circuits, leaving the "empty, formalistic" requirement of a jurisdictional provision as the only check on Congress' power to criminalize this kind of intrastate activity. *Chesney*, 86 F.3d at 580 (Batchelder, J., concurring).

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

The federal government's enumerated powers are "few and defined," while the powers which remain in the state governments are "numerous and indefinite." *Lopez*, 514 U.S. at 552 (citing The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961)). One such enumerated power is "[t]o regulate Commerce . . . among the several States[.]" U.S. Const. art. I, § 8, cl. 3. But without limits on federal regulatory power, our nationwide regulation would become "for all practical purposes . . . completely centralized" in a federal government. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 548 (1935). And "constitutional limits on governmental power do not enforce themselves;" instead, "[t]hey require vigilant—and diligent—enforcement." *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from denial of rehearing en banc).

"Congress may conclude that a particular activity substantially affects interstate commerce" to regulate the activity, but Congress's mere act of legislating

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

Petitioner did not challenge the constitutionality of the statute in district court. This probably presents an insurmountable vehicle problem for a plenary grant in the present case. Nonetheless, the issue is worthy of certiorari, as discussed above, and the Court has no shortage of cases presenting it.

CONCLUSION

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

Respectfully submitted this 15th day of April, 2026.

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