

**In the Supreme Court of the United States**

---

JERMAINE 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**

---

MAUREEN SCOTT FRANCO  
*Federal Public Defender*  
KRISTIN M. KIMMELMAN  
*Assistant Federal Public Defender*  
*Counsel of Record*  
OFFICE OF THE FEDERAL  
PUBLIC DEFENDER  
WESTERN DISTRICT OF TEXAS  
300 Convent Street, Suite 2300  
San Antonio, Texas 78205  
Kristin\_Kimmelman@fd.org  
(210) 472-6700

*Counsel for Petitioner*

---

## **QUESTIONS PRESENTED**

Below, Petitioner Jermaine Jackson challenged the constitutionality of 18 U.S.C. § 922(g)(1), which makes it a crime for a person convicted of a felony to possess a firearm. The court of appeals affirmed. The questions presented are:

1. Does 18 U.S.C. § 922(g)(1)'s lifetime ban on the possession of firearms by all felons violate the Second Amendment on its face and as applied to Jackson?
2. Can Congress criminalize intrastate possession of a firearm solely because it crossed state lines at some point before it came into a person's possession?

## **PARTIES TO THE PROCEEDING**

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Jermaine Jackson, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

## **RELATED PROCEEDINGS**

United States District Court for the Western District of Texas:

*United States v. Jermaine Jackson*, No. 7:24-CR-97-1 (Nov. 11, 2024) (judgment of conviction)

United States Court of Appeals for the Fifth Circuit:

*United States v. Jermaine Jackson*, No. 24-50930 (Mar. 12, 2026)

## TABLE OF CONTENTS

|                                                                                                                                                                                            |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Questions presented .....                                                                                                                                                                  | iv    |
| Parties to the Proceeding .....                                                                                                                                                            | v     |
| Related proceedings .....                                                                                                                                                                  | v     |
| Table of contents .....                                                                                                                                                                    | vi    |
| Table of authorities .....                                                                                                                                                                 | vii   |
| Opinion below.....                                                                                                                                                                         | 1     |
| Jurisdiction.....                                                                                                                                                                          | 1     |
| Constitutional and statutory provisions involved.....                                                                                                                                      | 2     |
| Statement .....                                                                                                                                                                            | 2     |
| Reasons for granting the petition .....                                                                                                                                                    | 5     |
| I. The Court should grant certiorari to determine whether<br>the categorical, lifetime ban on possessing a firearm,<br>under 18 U.S.C. § 922(g)(1), violates the Second<br>Amendment. .... | 5     |
| A. The courts of appeals are deeply divided over the<br>scope of a fundamental right.....                                                                                                  | 6     |
| B. The Court should address this important and<br>recurring issue of how the Second Amendment<br>analysis applies to § 922(g)(1). ....                                                     | 14    |
| II. This Court should grant certiorari to say whether<br>§ 922(g)(1) is a valid exercise of Congress' Commerce<br>Clause power.....                                                        | 16    |
| Conclusion .....                                                                                                                                                                           | 24    |
| Appendix                                                                                                                                                                                   |       |
| Court of appeals opinion (Mar. 12, 2026).....                                                                                                                                              | 1a–2a |

## TABLE OF AUTHORITIES

### Cases

|                                                                                                                          |            |
|--------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Bond v. United States</i> ,<br>572 U.S. 844 (2011) .....                                                              | 16, 21–23  |
| <i>District of Columbia v. Heller</i> ,<br>554 U.S. 570 (2008) .....                                                     | 12         |
| <i>Gibbons v. Ogden</i> ,<br>22 U.S. 1 (1824) .....                                                                      | 19         |
| <i>Jones v. United States</i> ,<br>529 U.S. 848 (2000) .....                                                             | 23         |
| <i>Nat’l Fed’n of Indep. Bus. v. Sebelius</i> ,<br>567 U.S. 519 (2012) .....                                             | 16–21      |
| <i>New York State Rifle &amp; Pistol Association, Inc. v. Bruen</i> ,<br>597 U.S. 1 (2022) .....                         | 3, 5–8, 12 |
| <i>Range v. Attorney General</i> ,<br>124 F.4th 218 (3d Cir. 2024) (en banc) .....                                       | 10         |
| <i>Rehaif v. United States</i> ,<br>588 U.S. 225 (2019) .....                                                            | 14         |
| <i>Scarborough v. United States</i> ,<br>431 U.S. 563 (1963) .....                                                       | 17, 21     |
| <i>United States v. Bass</i> ,<br>404 U.S. 336 (1971) .....                                                              | 23         |
| <i>United States v. Bullock</i> ,<br>123 F.4th 183 (5th Cir. 2024),<br><i>cert. denied</i> , 146 S. Ct. 255 (2025) ..... | 13         |
| <i>United States v. Darby</i> ,<br>312 U.S. 100 (1941) .....                                                             | 17–18      |

|                                                                                                                                                               |          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <i>United States v. Diaz</i> ,<br>116 F.4th 458 (5th Cir. 2024),<br><i>cert. denied</i> , 145 S. Ct. 2822 (2025).....                                         | 4, 12–13 |
| <i>United States v. Duarte</i> ,<br>137 F.4th 743 (9th Cir. 2025) (en banc),<br><i>cert. denied</i> , No. 25-425,<br>2026 WL 135692 (U.S. Jan. 20, 2026)..... | 11       |
| <i>United States v. Dubois</i> ,<br>139 F.4th 887 (11th Cir. 2025),<br><i>cert. denied</i> , No. 25-6281,<br>2026 WL 135685 (U.S. Jan. 20, 2026).....         | 9        |
| <i>United States v. Gay</i> ,<br>98 F.4th 843 (7th Cir. 2024).....                                                                                            | 11       |
| <i>United States v. Giglio</i> ,<br>126 F.4th 1039 (5th Cir. 2025).....                                                                                       | 4, 14    |
| <i>United States v. Hembree</i> ,<br>165 F.4th 909 (5th Cir. 2026),<br><i>cert. pending</i> No. 25-1219 (U.S.).....                                           | 8, 13    |
| <i>United States v. Jackson</i> ,<br>110 F.4th 1120 (8th Cir. 2024),<br><i>cert. denied</i> , 145 S. Ct. 2708 (2025).....                                     | 11       |
| <i>United States v. Kimble</i> ,<br>142 F.4th 308 (5th Cir. 2025).....                                                                                        | 13       |
| <i>United States v. Moore</i> ,<br>666 F.3d 313 (4th Cir. 2012) .....                                                                                         | 5        |
| <i>United States v. Morrison</i> ,<br>529 U.S. 598 (2000) .....                                                                                               | 16       |
| <i>United States v. Perryman</i> ,<br>965 F.3d 424 (5th Cir. 2020) .....                                                                                      | 5        |
| <i>United States v. Rahimi</i> ,<br>602 U.S. 680 (2024) .....                                                                                                 | 6–8, 12  |

|                                                                                                                                           |        |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------|
| <i>United States v. Schnur</i> ,<br>132 F.4th 863 (5th Cir. 2025) .....                                                                   | 13     |
| <i>United States v. Watson</i> ,<br>171 F.4th 1012 (7th Cir. 2026).....                                                                   | 10, 12 |
| <i>United States v. Williams</i> ,<br>113 F.4th 637 (6th Cir. 2024) .....                                                                 | 10     |
| <i>Vincent v. Bondi</i> ,<br>127 F.4th 1263 (10th Cir. 2025),<br><i>cert. denied</i> , No. 24-1155,<br>2026 WL 568283 (U.S.).....         | 9      |
| <i>Wickard v. Filburn</i> ,<br>317 U.S. 111 (1942) .....                                                                                  | 19     |
| <i>Zherka v. Bondi</i> ,<br>140 F.4th 68 (2d Cir. 2025),<br><i>cert. denied</i> , No. 25-269,<br>2026 WL 135708 (U.S. Jan 20, 2026) ..... | 9      |

## **Constitutional Provisions**

|                                   |              |
|-----------------------------------|--------------|
| U.S. Const. art. I § 8 cl. 1..... | 2            |
| U.S. Const. art. I § 8 cl. 3..... | 2, 16        |
| U.S. Const. amend. II .....       | 2–3, 8–9, 12 |

## **Statutes**

|                              |                  |
|------------------------------|------------------|
| 18 U.S.C. § 229 .....        | 22–23            |
| 18 U.S.C. § 229(a) .....     | 22–23            |
| 18 U.S.C. § 229F(8)(A) ..... | 22               |
| 18 U.S.C. § 922(g) .....     | 14, 17           |
| 18 U.S.C. § 922(g)(1).....   | iv, 2–15, 21, 23 |

|                                   |     |
|-----------------------------------|-----|
| 18 U.S.C. § 922(g)(8) .....       | 6   |
| 18 U.S.C. § 922(g)(8)(C)(i) ..... | 6–8 |
| 28 U.S.C. § 1254(1) .....         | 1   |

## Other Authorities

|                                                                                                                                                                                 |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Dep’t of Justice, Bureau of Justice Statistics,<br>Sean Rosenmerkel et al., <i>Felony Sentences in State Courts</i> ,<br>2006— <i>Statistical Tables</i> (rev. Nov. 2010) ..... | 15 |
| Dep’t of Justice, Bureau of Justice Statistics, Mark A. Motivans,<br><i>Federal Justice Statistics, 2022</i> (Jan. 2024) .....                                                  | 15 |
| Dru Stevenson, <i>In Defense of Felon-in-Possession Laws</i> ,<br>43 CARDOZO L. REV. 1573 (2022) .....                                                                          | 14 |
| Tr. of Oral Arg., <i>United States v. Rahimi</i> ,<br>No. 22-915 (U.S. Nov. 7, 2023) .....                                                                                      | 6  |
| U.S. Sentencing Commission,<br><i>Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses</i> (June 2024)<br>.....                                                                    | 14 |



# In the Supreme Court of the United States

---

JERMAINE 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

---

Petitioner Jermaine Jackson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

### OPINION BELOW

A copy of the unpublished opinion of the court of appeals, *United States v. Jackson*, No. 24-50930 (5th Cir. Mar. 12, 2026) (per curiam), is reproduced at App. 1a–2a.

### JURISDICTION

The Fifth Circuit entered its judgment on March 12, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I § 8 of the U.S. Constitution provides that “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. 1, 3.

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. IV.

Section 922(g)(1) of Title 18 of the U.S.C. provides:

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.

## STATEMENT

1. Law enforcement officers in Midland, Texas, stopped Jackson after observing a traffic violation. C.A. ROA.182. They found a small amount of marijuana on Jackson and a handgun under his driver’s seat. *Id.* Jackson told officers he had the firearm for his

protection, and he also admitted to having prior a felony conviction. *Id.* at 183. Officers later discovered that the firearm found in Jackson’s car was manufactured outside of Texas. *Id.* at 183–84.

2. Jackson was indicted for possessing a firearm as a felon. C.A. ROA.127; *see* 18 U.S.C. § 922(g)(1). The indictment alleged that Jackson possessed a firearm that had “been shipped and transported in interstate and foreign commerce,” “knowing that he had been convicted of a crime punishable by imprisonment for a term exceeding one year.” C.A. ROA.127.

3. Jackson moved to dismiss the charge, arguing that § 922(g)(1) is unconstitutional under the Second Amendment, both facially and as applied to him, under this Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). C.A. ROA.36–55. He also argued that the statute exceeds Congress’s power under the Commerce Clause but acknowledged that argument was foreclosed by circuit precedent. *Id.* at 56–61. Citing its prior decisions, the district court denied the motion. *Id.* at 93–94.

4. Jackson pleaded guilty to count one of the indictment without a plea agreement. C.A. ROA.144. He admitted that he had a previous conviction for possession of a controlled substance and was on parole when he was arrested for the instant offense. *Id.* at

143, 181, 183. He also admitted that the firearm he possessed had moved in interstate commerce. *Id.* at 181–84.

5. In addition to drug possession convictions, the presentence report reflected that Jackson had been convicted of burglary of a habitation in 1998, when Jackson was 16 years old. C.A. ROA.191.

6. The district court sentenced Jackson to 84 months’ imprisonment and three years’ supervised release. C.A. ROA.115–16, 166.

7. On appeal, Jackson argued that § 922(g)(1) is unconstitutional on two grounds.

First, he argued that, under the new analytical test established in *Bruen*, the statute violates the Second Amendment, both facially and as applied to him. Jackson conceded that the Fifth Circuit precedent foreclosed his challenges, and the court of appeals agreed. App. 2a (citing *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025); *United States v. Giglio*, 126 F.4th 1039, 1044–45 (5th Cir. 2025)).

Second, Jackson argued that the statute exceeds Congress’s enumerated powers under the Commerce Clause. Jackson conceded that the Fifth Circuit had previously ruled against this claim, and the court of appeals agreed. App. 2a (citing *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013)).

## REASONS FOR GRANTING THE PETITION

- I. **The Court should grant certiorari to determine whether the categorical, lifetime ban on possessing a firearm, under 18 U.S.C. § 922(g)(1), violates the Second Amendment.**

The Second Amendment guarantees “the right of the people to keep and bear arms.” Yet § 922(g)(1) denies that right, on pain of imprisonment, to anyone previously convicted of a crime punishable by a year or more. Despite this facial conflict between the statute and the text of the constitution, the courts of appeals uniformly rejected Second Amendment challenges for decades. *See United States v. Moore*, 666 F.3d 313, 316–317 (4th Cir. 2012) (collecting cases). This changed, however, following *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). *Bruen* held that where the text of Second Amendment plainly covers regulated conduct, the government must defend that regulation by showing that it comports with the nation’s historical tradition of gun regulation. 597 U.S. at 24. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *Id.* at 19–24.

**A. The courts of appeals are deeply divided over the scope of a fundamental right.**

After *Bruen*, the courts of appeals have grappled with whether § 922(g)(1) infringes on the right protected by the Second Amendment. The Court’s decision in *United States v. Rahimi*, 602 U.S. 680 (2024), which applied the *Bruen* framework for analyzing Second Amendment challenges to a criminal law for the first time, did not resolve the constitutionality of § 922(g)(1).

1. *Rahimi* held that 18 U.S.C. § 922(g)(8)(C)(i)—which prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that the person represents a credible threat to the physical safety of others—is constitutional. *Rahimi*, 602 U.S. at 690. *Rahimi* also rejected the government’s theory that the Second Amendment allows Congress to disarm anyone who is not “responsible” and “law-abiding.”<sup>1</sup> *Id.* at 701; *see id.* at 772–73 (Thomas, J., dissenting) (“The Government ... argues that the Second Amendment allows Congress to disarm anyone who is not ‘responsible’ and ‘law-abiding.’

---

<sup>1</sup> At oral argument, the government said that it was not invoking the “law-abiding” prong of its proposed rule for individuals subject to § 922(g)(8). *See* Tr. of Oral Arg. 8–9, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023). So the majority opinion discussed only the “responsible” prong. *Rahimi*, 602 U.S. at 701–02. In his dissenting opinion, Justice Thomas—who agreed with the majority in rejecting the government’s theory—provided a more robust analysis discussing both prongs. *Id.* at 773–78 (Thomas, J., dissenting).

Not a single Member of the Court adopts the Government’s theory.”).

This narrow decision embraces *Bruen*’s focus on text, history, and tradition. It reiterates that “[w]hy and how the regulation burdens the right are central” to the inquiry regarding “whether the new law is relevantly similar to laws that our tradition is understood to permit, applying faithfully the balance struck by the founding generation to modern circumstances.” *Id.* at 692. But *Rahimi*’s historical analysis otherwise provides little guidance here. Section 922(g)(8)(C)(i) restricts gun possession temporarily if a restraining order “includes a finding that [a] person represents a credible threat to the physical safety of [an] intimate partner or child.” In other words, the statute “restricts gun use to mitigate demonstrated threats of physical violence” and applies only once a court has made an individualized finding that such a threat exists. *Rahimi*, 602 U.S. at 698. Section § 922(g)(1), by contrast, is a categorical ban that prohibits everyone convicted of a crime punishable by more than one year in prison from possessing a gun permanently—without any individualized finding and regardless of whether they misuse firearms to threaten others.

The stark differences between § 922(g)(1) and § 922(g)(8)(C)(i) confirm that the Court’s decision upholding the latter does not resolve the constitutionality of the former, and the issue plainly merits certiorari.

2. Since *Rahimi*, the courts of appeals have not uniformly rejected Second Amendment challenges. The Fifth Circuit recently held that one of Jackson’s prior convictions—for simple drug possession—does not survive the traditional historical inquiry to support disarmament. *See United States v. Hembree*, 165 F.4th 909, 918 (5th Cir. 2026), *cert. pending* No. 25-1219 (U.S.). And both the Third and Fifth Circuits have held § 922(g)(1) to be unconstitutional as to prior convictions for certain nonviolent crimes. *See, e.g., Range v. Att’y Gen. of U.S.*, 124 F.4th 218, 213–32 (3d Cir. 2024) (*en banc*) (prior conviction for false statement on a food stamp application); *United States v. Cockerham*, 162 F.4th 500, 510 (5th Cir. 2025) (prior conviction for failure to pay child support).

3. The courts of appeals are also deeply divided over how to analyze Second Amendment challenges to § 922(g)(1). *United States v. Mitchell*, 160 F.4th 169, 178 (5th Cir. 2025) (collecting cases and describing “entrenched circuit split”).

Some circuits see no need to conduct the text-and-history analysis required by *Bruen*. Instead, the Tenth and Eleventh



Circuits rely instead on this Court’s dicta that felon-in-possession prohibitions are presumptively lawful. *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025), *cert. denied*, No. 24-1155, 2026 WL 568283 (U.S. Mar. 2, 2026); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026). And the Fourth Circuit concluded that felons are not among “the people” protected by the Second Amendment. *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025).

Others apply *Bruen*’s text-and-history framework but reach dramatically different results. And in analyzing the historical evidence, the circuits are split over which traditions justify § 922(g)(1), whether the statute is vulnerable to as-applied challenges, and (if so) what standard to apply.

The Second Circuit upheld § 922(g)(1), reasoning that it “has long been permissible to regulate firearms possession through legislative proscription on a class-wide basis, without a particularized finding that the individuals disarmed pose a threat to society.” *Zherka v. Bondi*, 140 F.4th 68, 78–79 (2d Cir. 2025) (cleaned up), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan 20, 2026).

The Third Circuit, sitting en banc, struck down § 922(g)(1) as applied to an individual convicted of food stamp fraud who did not “pose[ ] a physical danger to others,” rejecting all attempts by the government to find a historical analogue. *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.” *United States v. Williams*, 113 F.4th 637, 657, 663 (6th Cir. 2024). The court held that an individual must be given an opportunity to show that he is “not dangerous” and “falls outside of § 922(g)(1)’s constitutionally permissible scope.” *Id.* at 657. In conducting this dangerousness inquiry, the court explained that courts can “consider a defendant’s entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction.” *Id.* at 659–60.

The Seventh Circuit has “reserve[d] ruling on an as-applied challenge to § 922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not ‘dangerous.’” *United States v. Watson*, 171 F.4th 1012, 1025 (7th Cir. 2026). But the court held that there is a historical tradition supporting that “the legislature may determine that classes of people are dangerous.” *Id.* at 1022. Accordingly, it has rejected challenges by a defendant with prior felonies for drug trafficking, *id.* at 1024, and for aggravated battery of a peace officer and possession of a weapon while in prison, *United*

*States v. Gay*, 98 F.4th 843, 846–47 (7th Cir. 2024) (emphasis in original).

The Eighth Circuit upheld § 922(g)(1) as constitutional across the board based on historical tradition and laws prohibiting certain groups of people—religious minorities, Native Americans, and those who refused to declare an oath of loyalty to the nation and their specific state governments—from possessing guns. *United States v. Jackson*, 110 F.4th 1120, 1126 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025).

Similar to the Second and Seventh Circuits, the Ninth Circuit similarly held that the government met its burden under *Bruen*’s second step based on historical evidence consistent with “two regulatory principles that: (1) legislatures may disarm those who have committed the most serious crimes; and (2) legislatures may categorically disarm those they deem dangerous, without an individualized determination of dangerousness.” *United States v. Duarte*, 137 F.4th 743, 760–62 (9th Cir. 2025) (en banc), *cert. denied*, No. 25-425, 2026 WL 135692 (U.S. Jan. 20, 2026).

4. The Fifth Circuit’s approach underscores the deep divisions between the courts of appeals.

The Fifth Circuit splits with other circuits on two preliminary questions. Unlike the Fourth, Ninth, Tenth, and Eleventh

Circuits—which have held that they remain bound by their pre-*Bruen* precedent—the Fifth Circuit agrees with the Third and Sixth Circuits that *Bruen* rendered its prior precedent obsolete. *Diaz*, 116 F.4th at 465. And while some circuits have declined to conduct any historical analysis based on *Heller*’s “presumptively lawful” language, the Fifth Circuit joined the Third, Sixth, and Seventh Circuits in refusing to treat that language as controlling.<sup>2</sup> *Id.* at 466; see *Watson*, 171 F.4th at 1016–17. Instead, these courts acknowledge that *Bruen* requires a full text-and-history analysis. *Id.*

At *Bruen*’s first step, the Fifth Circuit adopted the majority view by holding that felons are part of “the people” protected by the Second Amendment. *Id.* at 466–67.

At the second step, the Fifth Circuit’s historical analysis diverges from other circuits in several respects. The Second, Fourth, Eighth, and Ninth Circuits have held that history supports upholding § 922(g)(1) regardless of a defendant’s underlying conviction. But the Fifth Circuit has left the door open for “as-

---

<sup>2</sup> The Fifth Circuit expressly rejected the Eleventh Circuit’s reliance “solely upon *Rahimi*’s mention of *Heller*’s ‘felons and the mentally ill’ language in upholding the constitutionality of § 922(g)(1).” *Diaz*, 116 F.4th at 466 n.2

applied challenges by defendants with different predicate convictions.” *Diaz*, 116 F.4th at 469 & 470 n.4.

At first, the Fifth Circuit limited its analysis to whether the felony predicates that triggered § 922(g)(1) were relevantly similar to crimes that subjected the convictions to “serious and permanent punishment” at the founding. *Diaz*, 116 F.4th at 470 & n.4. The Fifth Circuit has since held that § 922(g)(1) is constitutional as applied to individuals convicted of “dangerous and violent crimes.” *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024), *cert. denied*, 146 S. Ct. 255 (2025); *see also United States v. Schnur*, 132 F.4th 863, 869 (5th Cir. 2025). This is different than the line drawn by the Third Circuit (whether a person poses a physical danger to others) and the Sixth Circuit (whether a person is dangerous). And the Fifth Circuit also held that drug trafficking is an inherently violent crime that can subject a person to permanent disarmament. *United States v. Kimble*, 142 F.4th 308, 316–17 (5th Cir. 2025). But it recently decided that simple possession of a controlled substance—one of Jackson’s predicate felonies—cannot. *See Hembree*, 165 F.4th at 918.

Last, the Fifth Circuit has held that defendants who are serving a sentence such as parole when they possessed a firearm can be disarmed under § 922(g)(1), joining the Third and Sixth Circuits—

even though § 922(g)(1) does not disarm people on parole. *See United States v. Giglio*, 126 F.4th 1039, 1044 (5th Cir. 2025).

**B. The Court should address this important and recurring issue of how the Second Amendment analysis applies to § 922(g)(1).**

The Court should grant the petition because these questions are critically important and recurring. After all, “§ 922(g) is no minor provision.” *Rehaif v. United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Out of about 64,000 cases reported to the Sentencing Commission in Fiscal Year 2023, more than 7,100 involved convictions under § 922(g)(1). *See* U.S. Sent’g Comm’n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* 1 (June 2024). Those convictions accounted for over 10% of all federal criminal cases. *See id.*

Even beyond new prosecutions, § 922(g)(1)’s reach is staggering. The statute prohibits millions of Americans from exercising their right to keep and bear arms for the rest of their lives. Recent estimates of the number of individuals with felony convictions range from 19 million to 24 million. Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 CARDOZO L. REV. 1573, 1591 (2022) (citations omitted).

And § 922(g)(1) is particularly troubling because most of the individuals it prohibits from possessing firearms are peaceful, with

convictions for only non-violent offenses. Less than 20% of state felony convictions and less than 5% of federal felony convictions are for violent offenses. *See* Dep’t of Justice, Bureau of Justice Statistics, Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006—Statistical Tables*, at 3 (Table 1.1) (rev. Nov. 2010); Dep’t of Justice, Bureau of Justice Statistics, Mark A. Motivans, *Federal Justice Statistics, 2022*, at 12 (Table 7) (Jan. 2024). A felon living in a neighborhood beset by crime deserves to know whether he may defend himself against violence by possessing a handgun, or whether such self-defense is undertaken only on pain of 15 years’ imprisonment.

Given § 922(g)(1)’s widespread impact both on new prosecutions and on the millions of non-violent Americans it prohibits from exercising a fundamental constitutional right, this Court should answer these important and recurring questions as soon as possible. At minimum, the Court should hold Jackson’s petition pending both the decision in *United States v. Hemani*, No. 24-1234 (U.S.) (argued March 2), which asks whether 18 U.S.C. § 922(g)(3) is constitutional as applied to an unlawful user of controlled substances, and the petition in *Hembree*, which addresses whether § 922(g)(1) violates the Second Amendment rights of a person with a prior felony for possessing controlled substances.

**II. This Court should grant certiorari to say whether § 922(g)(1) is a valid exercise of Congress’ Commerce Clause power.**

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.” *Nat’l Fed’n of Indep. Bus. (NFIB) v. Sebelius*, 567 U.S. 519, 533 (2012). Powers outside those explicitly enumerated by the Constitution are denied to the National Government. *See id.* at 534 (“The Constitution’s express conferral of some powers makes clear that it does not grant others.”). There is no general federal police power. *See United States v. Morrison*, 529 U.S. 598, 618–619 (2000). Every exercise of Congressional power must be justified by reference to a particular grant of authority. *See NFIB*, 567 U.S. at 535 (“The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions.”). A limited central government promotes accountability and “protects the liberty of the individual from arbitrary power.” *Bond v. United States*, 572 U.S. 844, 863 (2011).

The Constitution grants Congress the 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. But this power



“must be read carefully to avoid creating a general federal authority akin to the police power.” *NFIB*, 567 U.S. at 536.

Notwithstanding these limitations, and the text of the Commerce Clause, this Court has held that “[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states,” and includes a power to regulate activities that “have a substantial effect on interstate commerce.” *United States v. Darby*, 312 U.S. 100, 118–119 (1941). Relying on this expansive vision of Congressional power, this Court held in *Scarborough v. United States*, 431 U.S. 563 (1963), that a predecessor statute to 18 U.S.C. § 922(g) reached every case in which a felon possessed firearms that had once moved in interstate commerce. *Scarborough* dismissed concerns of lenity and federalism, finding that Congress had intended the interstate nexus requirement only as a means to insure the constitutionality of the statute. *See* 431 U.S. at 577.

It is difficult to square *Scarborough*, and the expansive concept of the commerce power upon which it relies, with more recent holdings of the Court in this area. In *NFIB*, five members of this Court found that the individual mandate component of the Affordable Care Act could not be justified by reference to the Commerce

Clause. *See* 567 U.S. at 557–58 (Roberts, C.J. concurring). Although this Court recognized that the failure to purchase health insurance affects interstate commerce, five Justices did not think that the constitutional phrase “regulate Commerce ... among the several States” could reasonably be construed to include enactments that compelled individuals to engage in commerce. *See id.* at 550 (Roberts, C.J. concurring). Rather, they understood that phrase to presuppose an existing commercial activity to be regulated. *See id.* (Roberts, C.J. concurring).

The majority of this Court in *NFIB* thus required more than a demonstrable effect on commerce; the majority required that the challenged enactment itself be a regulation of commerce—that it affect the legality of pre-existing commercial activity. Possession of firearms, like the refusal to purchase health insurance, may “substantially affect commerce.” But such possession is not, without more, a commercial act.

To be sure, *NFIB* does not explicitly repudiate the “substantial effects” test. Indeed, the Chief Justice’s opinion quotes *Darby*’s statement that “[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states....” *NFIB*, 567 U.S. at 549 (Roberts, C.J. concurring) (quoting *Darby*,

312 U.S. at 118–119); *see also id.* at 552–553 (Roberts, C.J. concurring) (distinguishing *Wickard v. Filburn*, 317 U.S. 111 (1942)). It is therefore perhaps possible to read *NFIB* narrowly: as an isolated prohibition on affirmatively compelling persons to engage in commerce. But it is difficult to understand how this reading of the case would be at all consistent with *NFIB*’s textual reasoning.

This is so because the text of the Commerce Clause does not distinguish between Congress’s power to affect commerce by regulating non-commercial activity (like possessing a firearm) and its power to affect commerce by compelling people to join a commercial market (like health insurance). Rather the Clause simply says that Congress may “regulate ... commerce between the several states.” And that phrase either is or is not limited to laws that affect the legality of commercial activity. Five justices in *NFIB* took the text of the Clause seriously and permitted Congress to enact only those laws that were, themselves, regulations of commerce. *NFIB* thus allows Congress only the power “to prescribe the rule by which commerce is to be governed.” *Gibbons v. Ogden*, 22 U.S. 1, 196 (1824).

And indeed, much of the Chief Justice’s language in *NFIB* is consistent with this view. His concurring opinion rejected the government’s argument that the uninsured were “active in the market

for health care” because they were “not currently engaged in any commercial activity involving health care....” *NFIB*, 567 U.S. at 556 (Roberts, C.J. concurring). Significantly, the Chief Justice observed that “[t]he individual mandate’s regulation of the uninsured as a class is, in fact, particularly divorced from any link to existing commercial activity.” *Id.* (Roberts, C.J. concurring). He reiterated that “[i]f the individual mandate is targeted at a class, it is a class whose commercial inactivity rather than activity is its defining feature.” *Id.* (Roberts, C.J. concurring). He agreed that “Congress can anticipate the effects on commerce of an economic activity,” but did not say that it could anticipate a non-economic activity. *Id.* at 557 (Roberts, C.J. concurring). And he finally said that Congress could not anticipate a future activity “in order to regulate individuals not currently engaged in commerce.” *Id.* (Roberts, C.J. concurring). Accordingly, *NFIB* provides substantial support for the proposition that enactments under the Commerce Clause must regulate commercial or economic activity, not merely activity that affects commerce.

Here, the factual basis for Jackson’s guilty plea does not state that his possession of the gun was an economic activity. It says only that the firearm he possessed had moved in interstate commerce. C.A. ROA.181–84. Under the reasoning of *NFIB*, this should have

been fatal to the conviction. As explained by *NFIB*, the Commerce Clause permits Congress to regulate only activities, i.e., the active participation in a market. But § 922(g)(1) criminalizes *all* possession, without reference to economic activity. It therefore sweeps too broadly.

Further, the factual basis for Jackson’s guilty plea fails to show that he was engaged in the relevant market at the time of the regulated conduct. The Chief Justice has noted that Congress cannot regulate a person’s activity under the Commerce Clause unless the person affected is “currently engaged” in the relevant market. *NFIB*, 567 U.S. at 557 (Roberts., C.J. concurring). As an illustration, the Chief Justice provided the following example: “An individual who bought a car two years ago and may buy another in the future is not ‘active in the car market’ in any pertinent sense.” *Id.* at 556 (Roberts., C.J. concurring). As such, *NFIB* brings into serious question the long-standing notion that a firearm which has previously and remotely passed through interstate commerce should be considered to indefinitely affect commerce without “concern for when the [initial] nexus with commerce occurred.” *Scarborough*, 431 U.S. at 577.

*Scarborough* stands in even more direct tension with *Bond v. United States*, which shows that § 922(g)(1) ought not be construed

to reach the possession by felons of every firearm that has ever crossed state lines. Bond was convicted of violating 18 U.S.C. § 229, a statute that criminalizes the knowing possession or use of “any chemical weapon.” *Bond*, 572 U.S. at 853; 18 U.S.C. § 229(a). She placed toxic chemicals on the car door, mailbox, and door knob of a romantic rival. *See id.* at 852. This Court reversed her conviction, holding that any construction of the statute capable of reaching such conduct would compromise the chief role of states and localities in the suppression of crime. *See id.* at 865–866. The Court instead construed the statute to reach only the kinds of weapons and conduct associated with warfare. *See id.* at 859–862.

Notably, § 229 defines the critical term “chemical weapon” broadly as including “a toxic chemical,” defined as “any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.” 18 U.S.C. § 229F(8)(A). Further, the statute criminalizes the use or possession of “any” such weapon, not of a named subset. 18 U.S.C.

§ 229(a). This Court nonetheless applied a more limited construction of the statute, reasoning that statutes should not be read in a way that sweeps in purely local activity:

The Government’s reading of section 229 would “alter sensitive federal-state relationships,” convert an astonishing amount of “traditionally local criminal conduct” into “a matter for federal enforcement,” and “involve a substantial extension of federal police resources.” [*United States v. Bass*, 404 U.S. [336,] 349–350, 92 S. Ct. 515 [(1971)]]. It would transform the statute from one whose core concerns are acts of war, assassination, and terrorism into a massive federal anti-poisoning regime that reaches the simplest of assaults. As the Government reads section 229, “hardly” a poisoning “in the land would fall outside the federal statute’s domain.” *Jones [v. United States]*, 529 U.S. [848,] 857, 120 S. Ct. 1904 [(2000)]. Of course Bond’s conduct is serious and unacceptable—and against the laws of Pennsylvania. But the background principle that Congress does not normally intrude upon the police power of the States is critically important. In light of that principle, we are reluctant to conclude that Congress meant to punish Bond’s crime with a federal prosecution for a chemical weapons attack.

*Bond*, 572 U.S. at 863.

As in *Bond*, it is possible to read § 922(g)(1) to reach the conduct admitted here: possession of an object that once moved across state lines, without proof that the defendant’s conduct caused the object to move across state lines, nor even proof that it moved across state lines in the recent past. But to do so would intrude deeply on the traditional state responsibility for crime control. Such a reading would allow Congress to criminalize virtually any

conduct anywhere in the country, with little or no relationship to commerce or to the interstate movement of commodities.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MAUREEN SCOTT FRANCO  
*Federal Public Defender*  
KRISTIN M. KIMMELMAN  
*Assistant Federal Public Defender*  
*Counsel of Record*  
OFFICE OF THE FEDERAL  
PUBLIC DEFENDER  
WESTERN DISTRICT OF TEXAS  
  
*Counsel for Petitioner*

June 9, 2026