

No. _____

In the
Supreme Court of the United States

Clarence Pearson,

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.
3. Whether, under abuse-of-discretion review and absent a finding of harmlessness, a court of appeals must vacate and remand when the sentencing record suggests the district court impermissibly weighed a sentencing factor.

PARTIES TO THE PROCEEDING

Petitioner is Clarence Pearson, 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. Pearson*, No. 4:24-cr-00290-O, U.S. District Court for the Northern District of Texas. Judgment entered on Apr. 25, 2025.
- *United States v. Pearson*, No. 25-10558, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on Mar. 5, 2026. Rehearing denied on Apr. 7, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Clarence Pearson 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The Fifth Circuit’s unpublished opinion is available at *United States v. Pearson*, No. 25-10558, 2026 WL 623090 (5th Cir. Mar. 5, 2026). It is reprinted in Appendix A to this Petition. The order denying rehearing is reprinted in Appendix B. The district court’s judgment and sentence in *United States v. Pearson*, No. 4:24-cr-00290-O (N.D. Tex. Apr. 25, 2025), is reprinted in Appendix C.

JURISDICTION

The Fifth Circuit entered judgment on Mar. 5, 2026 and denied rehearing on Apr. 7, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

U.S. Const. art. I, § 8, cl. 3:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

U.S. Const. amend. II:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

18 U.S.C. § 922(g)(1):

(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. § 3553(c)(2):

(c) Statement of reasons for imposing a sentence.--The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28....

18 U.S.C. § 3742(f)(1):

(f) Decision and disposition.--If the court of appeals determines that--

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate[.]

Fed. R. Crim. P. 52(a):

(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

In July 2003, Petitioner Clarence Pearson, then 18 years old, participated in a robbery that tragically ended with one of the robbers shooting an ice cream vendor in the head and killing him. ROA.199.¹ Pearson was convicted of aggravated robbery with a deadly weapon (a firearm) and, at age 19, was sentenced to 20 years' imprisonment. ROA.199. On July 21, 2023, when Pearson was 38 years old, he discharged that sentence. ROA.199.

A little over a year later, on September 20, 2024, Fort Worth, Texas police officers responded to a shooting at an apartment complex. ROA.194–95. Two children had sought emergency help from a neighbor because “their mother was ‘getting shot.’” ROA.195. The children identified Pearson, their mother’s boyfriend, as the shooter. ROA.195. Critically, Pearson—who had a long history of hallucinations, *see* ROA.203, 229, 235–38, 301—had a severe mental disease or defect that made him unable to appreciate the nature and quality of the wrongfulness of his actions at that time, ROA.168, 228–30 (citing 18 U.S.C. § 17(a)), 254. He had hallucinated that intruders were invading in his home, and he believed he was acting in self-defense when he shot the firearm. *See* ROA.195, 203. The record also indicates that immediately prior

¹ “ROA” refers to the record on appeal.

to the shooting, Pearson may have pointed the firearm at one of the children and choked their mother, Miranda Eversole. *See* ROA.195. *But see* ROA.230–32, 254–55.²

When they arrived on scene, officers encountered Pearson and his girlfriend, Miranda Eversole, together in a vehicle. ROA.195. Pearson was sitting in the passenger seat. ROA.195. Eversole, who had been shot, was intending to drive herself to the hospital. ROA.195. Officers arrested Pearson for aggravated assault. ROA.200. Eversole said that she had taken the firearm from Pearson and placed it under the driver’s seat. ROA.195. Officers ultimately found the firearm, a Smith & Wesson, .38 Special Revolver, on the floorboard of the vehicle. ROA.195–96.

On November 14, 2024, a grand jury in the Northern District of Texas indicted Pearson for unlawfully possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). ROA.8–10. Pearson moved to dismiss the indictment, arguing that § 922(g)(1) was unconstitutional as outside Congress’s commerce power and violative of the Second Amendment. ROA.28–38. The district court denied the motion in an electronic entry. ROA.4.

Pearson then pleaded guilty without a plea agreement. ROA.8, 105-06, 120. Before his guilty plea hearing, Pearson stipulated in writing that “the charged firearm had travelled in interstate or foreign commerce to reach Texas” because “it was not manufactured in Texas.” ROA.41. Pearson made no further admissions on when or how he came to possess the firearm. *See* ROA.41. At his guilty plea hearing, the

² The district court never ruled on this objection because it was in the alternative to the first and become moot once the district court sustained the first objection. *See* ROA.142–68.

presiding judge advised Pearson that conviction under 18 U.S.C. § 922(g)(1) required proof that “the possession of the charged firearm affected interstate or foreign commerce; that is, before the defendant possessed the charged firearm, it/they had traveled at some point from one state to another or between any part of the United States and any other country.” ROA.103–04. The magistrate judge then found a factual basis supported Pearson’s guilty plea based on Pearson’s written stipulation. ROA.41, 122–25. The judge recommended accepting Pearson’s guilty plea, and the district court later did so without objection. ROA.4–5, 51–52, 125–26.

During the presentence investigation, U.S. Probation cross-referenced the calculation of Pearson’s offense level from U.S. SENT’G COMM’N, GUIDELINES MANUAL (USSG) §2K2.1(c)(1)(A) (Nov. 2024), to USSG §2A2.2, the offense guideline for aggravated assault. ROA.196–97. Pearson objected, raising an insanity defense to the cross-reference, which the district court sustained at sentencing. ROA.168, 228–30 (citing 18 U.S.C. § 17(a)), 254. In the end, the district court calculated Offense Level 17, Criminal History Category II, 27–33 months’ recommended imprisonment under the guidelines. ROA.168. But the district court upwardly varied from 27–33 months to 78 months. ROA.171. *See also* Pet. App’x a006. The court explained:

I believe an upward departure is necessary in this case. The defendant was released from prison following his part in a robbery, which was part of a capital murder, where the man the defendant was with, sounds like he executed the man selling ice cream by shooting him in the head.

Within a little over a year, the defendant is illegally possessing a firearm. He pointed it at a sleeping child, choked his girlfriend, and shot her two times.

Just punishment in this case requires more than the guidelines provide. The need to protect the public from other or future crimes of the defendant and impose just punishment for all of the conduct in this case, in my view, requires this sentence.

ROA.172. Pearson objected on reasonableness grounds, which the district court overruled for the reasons stated. ROA.173. In the statement of reasons, the court identified Pearson's history and characteristics, retribution, and deterrence (but not protection of the public) as the sentencing factors animating its sentence. ROA.265. The court also restated: "Within approximately 1 year of being released from TDC for Capital Murder the defendant possessed a firearm wherein he pointed the gun at a child and shot his girlfriend." ROA.265. Following the upward variance of 78 months' imprisonment, the court imposed three years of supervised release. ROA.172. *See also* Pet. App'x a006.

II. Appellate Proceedings

Pearson raised four challenges to his § 922(g)(1) conviction on appeal. *First*, Pearson argued that his sentence was substantively unreasonable because the district court sought retribution for acts Pearson committed while legally insane. *Second*, Pearson disagreed with how precedent interprets "in or affecting commerce" in 18 U.S.C. § 922(g). *Third*, Pearson argued that, if properly interpreted, Congress exceeded its commerce power when it enacted § 922(g). *Fourth*, Pearson 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. Pearson*, No. 25-10558, 2026 WL 623090 (5th Cir. Mar. 5, 2026), *reprinted at* Pet. App'x a001–

a003. On the reasonableness challenge, the court nodded to the parties’ disagreement on the standard of review, but it ultimately proceeded with review for abuse of discretion. Pet. App’x a002. Under that standard—and citing to the deference owed to the sentencing court’s discretion—the court held that the record did not show that the district court sought retribution as Pearson claimed. Pet. App’x a002. On the challenges to the conviction, the panel held that Pearson’s challenges were all foreclosed, Pet. App’x a002–a003, relying on *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), to dispose of the Second Amendment claim, Pet. App’x a003. Pearson sought panel rehearing on the sentencing issue, arguing that the panel’s reading of the record could not be squared with *Tapia v. United States*, 564 U.S. 319 (2011), and *United States v. Johnson*, 648 F.3d 273 (5th Cir. 2011). The court denied rehearing. Pet. App’x a004.

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 18 U.S.C. § 922(g)(1) indiscriminately denies that right to anyone “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.” This Court should decide whether, when, and how § 922(g)(1) prosecutions fall outside the Second Amendment’s unqualified command.

A. To sustain a prosecution under § 922(g)(1), the government must identify historical analogues that match “why” and “how” § 922(g)(1) burdens the Second Amendment right.

“When the Second Amendment’s plain text covers an individual’s conduct,” the government must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). (It matters not whether the regulation is narrowly tailored to achieve an important or even compelling state interest. *Id.* at 17–24.) The governing “historical inquiry” requires lower courts to find “a historical regulation” or “analogue” that is “relevantly similar” to a “modern firearm regulation” to establish the constitutionality of the modern law. *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), applied *Bruen* to a conviction under 18 U.S.C. § 922(g)(8)(C)(i). 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), emphasizing that a “a ‘historical *twin*’ is not required,” *id.* at 701 (quoting *Bruen*, 597 U.S. at 30) (emphasis in *Rahimi*). 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 courts in acute “need [of] a solid anchor for grounding their constitutional pronouncements.” *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

Last Term, the Court revisited how *Bruen* applies to federal firearm crimes in *United States v. Hemani*, 608 U.S. — , No. 24-1234, 2026 WL 1751710 (U.S. June 18, 2026). *Hemani* considered an attempted prosecution under 18 U.S.C. § 922(g)(3) against Ali Hemani “because he uses marijuana a few times a week.” 2026 WL 1751710, at *3, *11. *Hemani* held that the Second Amendment did not tolerate it. *Id.* at *11–12. *Hemani* again explicitly left unresolved, however, how *Bruen* applies to § 922(g)(1). *Id.* at *10 n.6, *11 (U.S. June 18, 2026).

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.” *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up).

B. The lower courts have split on the Second Amendment’s text, history, and application to § 922(g)(1) prosecutions today.

To start, 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.

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits all “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).³ 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 multiple as-applied grounds. *See*

³ 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).

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 467–70; the Third Circuit, for its part, 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). Instead, the linchpin for the Third Circuit’s constitutional holding relied on the lack of evidence that the claimant “poses a physical danger to others.” *Range*, 124 F.4th at 232.

The Sixth Circuit adopted a mixed approach: It blessed “governments label[ing] whole classes as presumptively dangerous,” *Williams*, 113 F.4th at 657, but it “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. 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”).

III. The lower court abdicated its responsibility—handed to it by this Court—to review the reasonableness of Pearson’s sentence for abuse of discretion.

The sentencing factors—and more to the point, the facts informing the weighing of each factor—that drove the court’s upward variance here are debatable. *See* ROA.172; *see also* ROA.265. But the court below erred by picking the reading of the record that cut against Pearson for three reasons. *See* Pet. App’x a002.

First, the court reviewed for abuse of discretion, not plain error. Pet. App’x a002. Under that standard of review, this Court’s precedent makes clear that the record need only suggest the error, not confirm it. *Compare Tapia v. United States*, 564 U.S. 319, 334, 337 (2011) *with Esteras v. United States*, 606 U.S. 185, 202–03 (2025). *Tapia* held that “the Sentencing Reform Act precludes federal courts from imposing or lengthening a prison term in order to promote a criminal defendant’s

rehabilitation.” 564 U.S. at 321. The district court had imposed a top of the guidelines sentence, citing two sentencing factors: rehabilitation and deterrence. *Id.* at 321–22; *see also id.* at 335–36 (Sotomayor, J., joined by Alito, J., concurring). Thus, the “sentencing transcript” only “*suggest[ed]* the possibility that Tapia’s sentence was based on her rehabilitative needs.” *Id.* at 334 (emphasis added). What is more, the concurring Justices did not find that suggestion particularly convincing. *Id.* at 337 (Sotomayor, J., joined by Alito, J., concurring) (“I am skeptical that the thoughtful District Judge imposed or lengthened Tapia’s sentence to promote rehabilitation[.]”). But the justification was “not perfectly clear,” so the concurring Justices could not “be certain” that the sentencing court “did not lengthen Tapia’s sentence to promote rehabilitation in violation of § 3582(a).” *Id.* at 337. Accordingly, the Court unanimously remanded. *Id.* at 335, 337.

Second, the court below improperly imbued the deference owed to a sentencing court’s sentencing discretion with a presumption of regularity. *See* Pet. App’x a002. Such a presumption, however, directly conflicts with the oversight appellate courts are supposed to provide to federal criminal sentences. By statute, a sentencing court that upwardly varies must state with specificity its reasons for doing so. 18 U.S.C. § 3553(c)(2). And the sentencing court “must adequately explain the chosen sentence” precisely for the purpose of “meaningful appellate review.” *Gall v. United States*, 552 U.S. 38, 50 (2007). “[T]he appellate court” must then “satisfy” itself, based on the sentencing judge’s justification, that the district court had “a reasoned basis for exercising his own legal decisionmaking authority.” *Rita v. United States*, 551 U.S. 338,

356 (2007) (citing 18 U.S.C. § 3553(c)); *see also id.* at 364 (Stevens, J., concurring) (“appellate courts” must “evaluate what motivated the district judge’s individualized sentencing decision.”). If a district court that “fail[s] to adequately explain the chosen sentence” commits “significant procedural error” because the lack of justification prevents meaningful appellate review, *Gall*, 552 U.S. at 51, it follows that an appellate court cannot look the other way when the court’s explanation suggests an unreasoned basis for the exercise of discretion, even if it does not make it “express[]” or establish it “by unmistakable implication” as may be required under plain-error review. *Esteras*, 606 U.S. at 203.

Third, the court engaged in no harmless error analysis. *See* Pet. App’x a002. Under this Court’s precedent, Pearson had only the “burden of showing that the district court” improperly weighed a “factor at sentencing,” not the “burden of proving that the invalid [weighing] was determinative in the sentencing decision.” *Williams v. United States*, 503 U.S. 193, 203 (1992). Once he showed that the court’s justification at least suggested the error, “a remand is appropriate unless the reviewing court concludes, on the record as a whole, that the error was harmless” under Federal Rule of Criminal Procedure 52(a). *Id.* Instead, the court below improperly collapsed the error and harmlessness inquiries into one.

CONCLUSION

Petitioner Clarence Pearson 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 6th day of July, 2026.

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