

No. _____

In the Supreme Court of the United States

DANTE DELRAY VECERA, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

*Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Title 18 U.S.C. § 922(g)(1) categorially bars all convicted felons (meaning those convicted of “a crime punishable by imprisonment for a term exceeding one year”) from possessing firearms “in or affecting commerce” or which have been “shipped or transported in interstate or foreign commerce.” Vecera’s conviction under this statute presents two issues:

- 1) Does § 922(g)(1) violate the Second Amendment, facially or as applied to Vecera?
- 2) Does § 922(g)(1) exceed Congress’s powers under the Commerce Clause?

Parties to the Proceeding

The parties to the proceeding in the court whose judgment is sought to be reviewed are:

- Petitioner Dante Delray Vecera, 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 v. Vecera*, No. 5:24-cr-521-JKP-1 (W.D. Tex. July 17, 2025) (entering judgment of criminal conviction)
- *United States v. Vecera*, No. 25-50590 (5th Cir. Apr. 10, 2026) (per curiam) (unpublished) (granting motion for summary affirmance and affirming judgment of district court)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Dante Delray Vecera 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A copy of the unpublished opinion of the court of appeals, *United States v. Vecera*, No. 25-50590 (5th Cir. Apr. 10, 2026) (per curiam), is reproduced at Pet. App. 1a–2a.

Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit were entered on April 26, 2026. This petition is filed

within 90 days after the judgment's entry. *See* Sup. Ct. R. 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Section 922(g)(1) of Title 18 of the United States Code provides: “It shall be unlawful for any person ... who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce, any firearm or ammunition.”

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.

Statement

Vecera raises two challenges to his conviction of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). First, he argues that the district court erred by denying his motion to dismiss the indictment because the statute violates the Second Amendment under this Court's decision in *NYSYRPA v. Bruen*, 597 U.S. 1 (2022), both facially and as applied to him. Second, Vecera argues that the statute exceeds Congress's power under the Commerce Clause.

A. Legal background.

1. “Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.” *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Indeed, “[b]ans on ex-felons possessing firearms were first adopted in the 1920s and 1930s, almost a century and a half after the Founding.” Adam Winkler, *Heller’s Catch-22*, 56 UCLA L. REV. 1551, 1563 (2009). In 1938, Congress criminalized firearm possession by individuals convicted of certain crimes for the first time. *See* Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1250, 1251 (1938). But that statute was much narrower than the modern version. The Federal Firearms Act only applied to someone “convicted of a crime of violence,” *id.*, which included “murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking,” and certain kinds of aggravated assault, *id.* § 1(6). The Act prohibited an individual with such a conviction from “receiv[ing]” a firearm, and it considered possession to be “presumptive evidence” of receipt. *Id.* § 2(f).

2. It was not until the 1960s that the federal felon-in-possession statute took on its modern form. At the time, Congress shared a widely held—but incorrect—understanding of the Second Amendment. In committee testimony, the Attorney General assured Congress that “[w]ith respect to the second amendment, the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms” and opined that “the right to bear

arms protected by the second amendment relates only to the maintenance of the militia.” *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinq. of the Sen. Comm. on the Judiciary*, 89th Cong. 41 (1965). And Congress dismissed constitutional concerns about federal firearm regulations, explaining that the Second Amendment posed “no obstacle” because federal regulations did not “hamper the present-day militia.” S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2169. Congress relied on court decisions—including *United States v. Miller*, 307 U.S. 174 (1939)—which held that the Second Amendment “was not adopted with the individual rights in mind.” *Id.*

Unconstrained by the Second Amendment, “Congress sought to rule broadly,” employing an “expansive legislative approach” to pass a “sweeping prophylaxis ... against misuse of firearms.” *Scarborough v. United States*, 431 U.S. 563, 572 (1977) (first quote); *Lewis v. United States*, 445 U.S. 55, 61, 63 (1980) (second and third quotes). In particular, Congress was concerned with keeping firearms out of the hands of broad categories of “potentially irresponsible persons, including convicted felons.” *Barrett v. United States*, 423 U.S. 212, 220 (1976). So it enacted two significant changes that brought about the modern felon-in-possession ban. *First*, Congress expanded the Federal Firearms Act to prohibit individuals convicted of *any crime* “punishable by imprisonment for a term exceeding one year”—not just violent crimes—from receiving a firearm.

See An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, § 2, 75 Stat. 757, 757 (1961). *Second*, a few years later, Congress criminalized *possession* of a firearm—not just receipt—by anyone with a felony conviction. See Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 1202(a)(1), 82 Stat. 197, 236.

3. In *District of Columbia v. Heller*, this Court held for the first time that the Second Amendment codifies an individual right to keep and bear arms—a right that is not limited to militia service. 554 U.S. 570, 579–600 (2008). In reaching this conclusion, the Court conducted a “textual analysis” of the Second Amendment’s language and surveyed the Amendment’s “historical background.” *Id.* at 578, 592. The Court had “no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.* at 595. Relying on the historical understanding of the Amendment, however, the Court recognized that “the right secured by the Second Amendment is not unlimited.” *Id.* at 626. The Court identified several “longstanding” and “presumptively lawful” firearm regulations, such as prohibitions on felons possessing firearms. *Id.* at 626–27 & n.27. But the Court cautioned that it was not “undertak[ing] an exhaustive historical analysis ... of the full scope of the Second Amendment.” *Id.* at 626. And it did not cite any historical examples of these “longstanding” laws, explaining that there would be “time enough to expound upon the historical justifications for

the[se] exceptions ... if and when those exceptions come before us.” *Id.* at 635. The Court then turned to the District of Columbia handgun ban at issue, finding that it was historically unprecedented and thus violated the Second Amendment. *Id.* at 629, 631–35.

After *Heller*, the courts of appeals coalesced around a two-step framework for analyzing Second Amendment challenges that focused on the historical scope of the Second Amendment at step one and applied means-ends scrutiny at step two. *See, e.g., Kanter*, 919 F.3d at 441–42; *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). And this Court’s recognition that the Second Amendment protects an individual right to bear arms brought renewed constitutional challenges to § 922(g)(1). But the courts of appeals almost uniformly rejected Second Amendment challenges to the statute, either applying means-ends scrutiny or relying on *Heller*’s “presumptively lawful” language. *See, e.g., United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting cases). The lone exception was the Third Circuit, which held that § 922(g)(1) was unconstitutional as applied to two individuals with underlying convictions—one for corrupting a minor and the other for carrying a handgun without a license—that “were not serious enough to strip them of their Second Amendment rights.” *Binderup v. Attorney General*, 836 F.3d 336, 351–57 (3d Cir. 2016) (en banc).

4. Then came *Bruen*, which this Court held that the two-step framework adopted by the courts of appeals was “one step too many.” *Id.* at 19. Instead, the Court explained that *Heller* demanded a test “centered on constitutional text and history.” *Id.* at 22. Under this test, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. “The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. “Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* (cleaned up).

Bruen—and the Court’s later decision in *Rahimi*—explain that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024). “A court must ascertain whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, ‘apply[ing] faithfully the balance struck by the founding generation to modern circumstances.’” *Id.* (quoting *Bruen*, 597 U.S. at 29). The law need not be a “historical twin,” but analogical reasoning is also not a “regulatory blank check.” *Bruen*, 597 U.S. at 30. “How” and “why” the regulations burden the right to bear arms are central to this inquiry. *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S.

at 692. These considerations ask whether the modern and historical regulations impose a “comparable burden” (the *how*) and “whether that burden is comparably justified” (the *why*). *Bruen*, 597 U.S. at 29. “Even when a law regulates arms-bearing for a permissible reason, ... it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Rahimi*, 602 U.S. at 692.

B. Proceedings below.

1. Police officers encountered Vecera unresponsive behind the wheel of a vehicle that was blocking traffic on a freeway access road. He had a marijuana cigarette behind one of his ears. Officers could also see what appeared to be a baggie of heroin nearby. After reviving Vecera, the officers found a loaded handgun in his right pants pocket. A search of the vehicle revealed more drugs, \$450 in cash, a small digital scale, and an open 100-count box of needles.

2. Because Vecera had prior felony convictions, he was charged in a one-count indictment, and later a superseding indictment, with “possess[ing] a firearm, that is, a Smith and Wesson model SD9 VE pistol, 9x19 mm caliber, serial number FDL2113, said firearm having been shipped and transported in interstate commerce,” in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He moved to dismiss the indictment, arguing that the statute is unconstitutional both facially and as applied to him under the Second Amendment as interpreted in *Bruen*. He also

argued that § 922(g)(1) violates the Commerce Clause. Vecera acknowledged that the facial and Commerce Clause challenges were foreclosed by precedent, but he raised them to preserve them for possible further review.

3. The district court denied Vecera’s motion to dismiss. It concluded that Vecera’s prior Nevada felony convictions for burglary and sexually motivated coercion, which were committed as part of a single criminal episode, were analogous to colonial-era laws “impos[ing] capital punishment and/or estate forfeiture as penalties for incidents such as this where a burglary is committed in combination with an assault.” Given the permissible punishment, the court concluded that those prior offenses sufficed to make § 922(g)(1) constitutional as applied to Vecera under the Fifth Circuit’s decision in *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025).¹ The court also

¹ The district court also concluded that Vecera could be constitutionally disarmed due to his prior Texas felony conviction for violation of a family-violence protective order. Vecera was not charged in this case under the portion of § 922(g) that makes it a crime for a person subject to a domestic violence protective order to possess a firearm: § 922(g)(8). Nonetheless, the court, citing *Rahimi*, 602 U.S. at 698–700, concluded that if a person “can be disarmed under 18 U.S.C. § 922(g)(8) based on violating an ex parte civil order, [Vecera] can be disarmed based on waiv-

rejected Vecera’s facial and Commerce Clause challenges to § 922(g)(1) as foreclosed by Fifth Circuit precedent.

4. Vecera proceeded to a jury trial. At trial, he stipulated that he knew that he had previously been convicted of a crime punishable by more than one year’s imprisonment, although the stipulation did not identify a specific predicate offense. An ATF agent testified that the handgun found in Vecera’s pocket, a functioning Smith & Wesson model SD9VE pistol, had been manufactured in Connecticut and therefore traveled across state lines to get to Texas. The jury found Vecera guilty.

5. The district court sentenced Vecera to 125 months’ imprisonment and three years’ supervised release.

6. Vecera appealed. He raised both facial and as-applied challenges to the constitutionality of § 922(g)(1) under *Bruen*’s framework, as clarified in *Rahimi* and the Fifth Circuit’s decision in *Diaz*. *Diaz* established three points: (1) “felons” are part of “the people,” and thus § 922(g)(1) is presumptively unconstitutional, *id.* at 466–67; (2) § 922(g)(1) is facially constitutional, *id.* at 471–72; and (3) § 922(g)(1) was constitutional as

ing his right to a jury trial and entering a plea of guilty to a Texas criminal statute which prohibits violating a bond condition designed to protect vulnerable family members.” “Therefore,” the court concluded, “colonial-era statutes that impose capital punishment and authorized forfeiture of weapons for dangerous individuals serve as relevantly similar historical analogues to § 922(g)(1).”

applied to Diaz because—when considering only his prior convictions—his prior felony conviction for vehicle theft was relevantly similar to the Founding-era crime of horse theft, which was punishable by death or estate forfeiture, *id.* at 467, 469–70.

After *Diaz*, Fifth Circuit held in *United States v. Bullock* that § 922(g)(1) was constitutional as applied to a defendant with prior convictions for aggravated assault and manslaughter in which he killed a person while firing a gun into a crowd. 123 F.4th 183, 184–85 (2024) (5th Cir. 2024), *cert. denied*, 146 S. Ct. 255 (2025). *Bullock* reasoned that the defendant’s conduct “‘fits neatly’ within our Nation’s historical tradition” of “‘prohibit[ing] dangerous people from possessing guns.’” *Id.* at 185 (quoting *Rahimi*, 602 U.S. at 698, and *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting)). That tradition, *Bullock* said, was one of “severely punishing individuals convicted of homicide, a prototypical common law felony considered a very dangerous offense.” *Id.* (cleaned up). *Bullock* also concluded that the conduct underlying the defendant’s aggravated assault and manslaughter convictions was “‘relevantly similar’ to, and arguably more dangerous than, the ‘prototypical affray [which] involved fighting in public,’ the precursor to the ‘going armed’ laws punishable by arms forfeiture.” *Id.* (quoting *Rahimi*, 602 U.S. at 697–98). Finally, *Bullock* said that “the justification behind going armed laws, to ‘mitigate

demonstrated threats of physical violence,’ supports a tradition of disarming individuals like Bullock pursuant to § 922(g)(1), whose underlying convictions stemmed from the threat and commission of violence with a firearm.” *Id.* (quoting *Rahimi*, 602 U.S. at 698). In *United States v. Schnur*, the Fifth Circuit extended *Diaz*’s and *Bullock*’s reasoning to burglary as a predicate for § 922(g)(1) liability. 132 F.4th 863, 870–71 (2025); see also *United States v. Alaniz*, 146 F.4th 1240, 1241–42 (5th Cir. 2025).

Vecera argued that Fifth Circuit precedent foreclosed his as-applied and facial Second Amendment challenges to § 922(g)(1). He also raised a Commerce Clause challenge to the statute, acknowledging that Fifth Circuit precedent foreclosed that as well.

The Government moved for summary affirmance based on Vecera’s concessions. Vecera took no position on the motion. The Fifth Circuit granted the Government’s motion, agreeing with the parties that Vecera’s facial and as-applied Second Amendment challenges and his Commerce Clause challenge were foreclosed by circuit precedent. Pet. App. 2a.

Reasons for Granting the Petition

- I. The Court should grant certiorari to resolve the constitutionality of 18 U.S.C. § 922(g)(1) under the Second Amendment and the Commerce Clause.**
 - A. The courts of appeals are fractured over how to conduct the Second Amendment analysis, and the splits are entrenched and deepening.**

The courts of appeals are deeply divided over how to analyze Second Amendment challenges to § 922(g)(1). Some circuits see no need to conduct the text-and-history analysis required by *Bruen*, relying instead on this Court’s dicta that felon-in-possession prohibitions are presumptively lawful. Others apply *Bruen*’s text-and-history framework but reach dramatically different results. Examining the text, the circuits disagree about whether felons are part of “the people” protected by the Second Amendment. 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 Fifth Circuit’s approach underscores these deep divisions between the courts of appeals. It splits with other circuits on two preliminary questions. Unlike the Second, Fourth, Ninth, Tenth, and Eleventh Circuits—which have held that they remain bound by their pre-*Bruen*

precedent²—the Fifth Circuit agrees with the Third and Sixth Circuits that *Bruen* rendered its prior precedent obsolete.³ *Diaz*, 116 F.4th at 466. And while the Tenth and Eleventh Circuits have declined to conduct any historical analysis based on *Heller*’s “presumptively lawful” language,⁴ the Fifth Circuit joined the Third and Sixth Circuits in refusing to treat that language as controlling.⁵ *Id.* 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 shared by the Second, Third, and Sixth Circuits⁶—but split with the Fourth Circuit⁷—by holding that felons are part of “the people” protected by the Second Amendment. *Id.* at 466–67.

² See *Zherka v. Bondi*, 140 F.4th 68, 74–75 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 702–04 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *United States v. Duarte*, 137 F.4th 743, 750–52 (9th Cir. 2025) (en banc), *cert. denied*, No. 25-425, 2026 WL 135692 (U.S. Jan. 20, 2026); *Vincent v. Bondi*, 127 F.4th 1263, 1264–66 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (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).

³ *Range v. Attorney General*, 124 F.4th 218, 226–28 (3d Cir. 2024) (en banc); *United States v. Williams*, 113 F.4th 637, 648–50 (6th Cir. 2024).

⁴ *Vincent*, 127 F.4th at 1264–66; *Dubois*, 139 F.4th at 893–94.

⁵ *Range*, 124 F.4th at 228–29; *Williams*, 113 F.4th at 648.

⁶ See *Zherka*, 140 F.4th at 75–77; *Range*, 124 F.4th at 226–28; *Williams*, 113 F.4th at 649–50.

⁷ *Hunt*, 123 F.4th at 704.

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.⁸ But the Fifth Circuit left the door open for “as-applied challenges by defendants with different predicate convictions.” *Diaz*, 116 F.4th at 469 & 470 n.4. At first, the Fifth Circuit’s 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. 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).⁹ *Range*; *Williams*. The Fifth Circuit has since held that § 922(g)(1) is constitutional as applied to individuals convicted of “violent crimes.” *Bullock*, 123 F.4th at 185.

1. The Fifth Circuit’s approach to the history-and-tradition analysis is wrong and conflicts with this Court’s precedent.

The Fifth Circuit’s decision in *Diaz*, followed by the panel below, correctly held that, under the plain text of the Second Amendment, felons are part of “the people” protected by the Amendment. 116 F.4th at 467;

⁸ *Zherka*, 140 F.4th at 93; *Hunt*, 123 F.4th at 704; *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *Duarte*, 137 F.4th at 761–62.

⁹ *Range*, 124 F.4th at 230; *Williams*, 113 F.4th at 657–59.

see Pet. App. 2a (citing *Diaz*). After all, this Court has explained that “the people” “unambiguously refers to all members of the political community,” so the right to keep and bear arms belongs to “all Americans.” *Heller*, 554 U.S. at 580. But the Fifth Circuit has misapplied *Bruen*’s historical analysis. Section 922(g)(1) does not align with our Nation’s tradition of firearm regulation on either of the two central considerations: how and why it burdens the right to keep and bear arms. See *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692. The difference in *how* § 922(g)(1) burdens the right to bear arms is fatal to the statute facially, and *why* it burdens the right to bear arms dooms the statute as applied to offenders like Vecera.

2. Section 922(g)(1) is facially unconstitutional because it imposes an unprecedented lifetime ban on firearm possession.

Section 922(g)(1) facially violates the Second Amendment because it imposes a sweeping, historically unprecedented lifetime ban that prevents millions of Americans from possessing firearms for self-defense. The government has not cited a single historical gun law that imposed a *permanent* prohibition on the right to keep and bear arms—even for self-defense. In other words, no historical regulation “impose[s] a comparable burden on the right of armed self-defense.” See *Bruen*, 597 U.S. at 29.

That is hardly surprising. When Congress passed the modern felon-in-possession statute—four decades before *Heller* and more than a half-

century before *Bruen*—it did not believe that the Second Amendment protected an individual right to keep and bear arms. So Congress did not try to pass a law that aligned with the “Nation’s historical tradition of firearm regulation.” *See Bruen*, 597 U.S. at 17. Instead—dismissing the Second Amendment as “no obstacle”—it employed an “expansive legislative approach” to pass a “sweeping prophylaxis ... against misuse of firearms.” *Lewis*, 445 U.S. at 61, 63. And that sweeping, *permanent* prohibition on gun possession imposes a burden far broader than any firearm regulation in our Nation’s history.

The Fifth Circuit has recognized that § 922(g)(1)’s permanent disarmament requires a historical analogue that also permanently prevented individuals from possessing guns. *See Diaz*, 116 F.4th at 469. But the court did not cite any historical firearm regulation imposing permanent disarmament.¹⁰ Instead, the court relied on capital punishment and

¹⁰ In its line of cases holding that § 922(g)(1) is constitutional as applied to someone convicted of a violent crime, the Fifth Circuit has cited the affray laws. *Bullock*, 123 F.4th at 185. But there is no indication that those laws *permanently* deprived individuals of the right to keep and bear arms.

forfeiture laws as historical analogues justifying § 922(g)(1). *Id.* at 467–68. That reliance conflicts with this Court’s precedent in three ways.¹¹

First, this Court requires the government to show that a modern gun law aligns with our “historical tradition of *firearm* regulation.” *Bruen*, 597 U.S. at 24 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In other words, the government’s historical analogues must regulate *firearms*. In *Rahimi*, this Court relied only on historical laws that “specifically addressed firearms violence.” 602 U.S. at 694–95. So too in *Bruen*. 597 U.S. at 38–66. Capital punishment and estate forfeiture, however, are not *firearm* regulations. So they cannot justify § 922(g)(1). The Fifth Circuit reached a contrary conclusion by misreading *Rahimi*.

¹¹ The Fifth Circuit’s decision also misstates the historical evidence in three ways. *First*, the court cited a Founding-era New York law as “authorizing the death penalty for theft of chattels worth over five pounds.” *Diaz*, 116 F.4th at 468. But theft is not among the crimes subject to the death penalty under that law. *See* Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664–65. *Second*, despite the court’s characterization of forfeiture laws as a type of “permanent” disarmament (*Diaz*, 116 F.4th at 469, 471), “[f]orfeiture still allows a person to keep their other firearms or obtain additional ones.” *Rahimi*, 602 U.S. at 760 (Thomas, J., dissenting). *Third*, although the court stated (*Diaz*, 116 F.4th at 468–69) that individuals convicted of horse theft “were often subject to the death penalty,” the only source it cited explains that “hardly any horse thieves were executed.” Kathryn Preyer, *Crime and Reform in Post-Revolutionary Virginia*, 1 LAW & HIST. REV. 53, 73 (1983).

The Fifth Circuit asserted that *Rahimi* “consider[ed] several laws that were not explicitly related to guns.” *Diaz*, 116 F.4th at 468. But *Rahimi* says otherwise. In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going armed laws—that both “specifically addressed firearms violence.” 602 U.S. at 694–95. To be sure, surety laws were not “passed *solely* for the purpose of regulating firearm possession or use.” *Diaz*, 116 F.4th at 468. But this Court emphasized that, “[i]mportantly for this case, the surety laws also targeted the misuse of firearms.” *Rahimi*, 602 U.S. at 696 (emphasis added). In other words, historical laws that did *not* target the misuse of firearms—like capital punishment and estate forfeiture—are *not* proper analogues.

Second, the Fifth Circuit noted that this Court accepted a greater-includes-the-lesser argument in *Rahimi*. *Diaz*, 116 F.4th at 469. That is true as far as it goes. *Rahimi* held that “if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament ... is also permissible.” 602 U.S. at 699. But it does not follow, as the Fifth Circuit concluded, that “if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.” *Diaz*, 116 F.4th at 469. This Court explained that the purpose of imprisonment under the going armed laws was “to respond to the use of guns to threaten the physical safety of others.”

Rahimi, 602 U.S. at 699. So both the greater historical punishment (imprisonment under the going armed laws) and the lesser modern restriction (disarmament under 18 U.S.C. § 922(g)(8)) had the same purpose—curbing gun violence. Not so here. Again, capital punishment and forfeiture simply did not target gun violence.

This Court has also emphasized that the right to bear arms “is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 597 U.S. at 70 (cleaned up). But the Fifth Circuit’s reasoning—that because capital punishment is an “obviously permanent” deprivation of an individual’s right to bear arms, the lesser restriction of permanent disarmament is permissible for individuals who are not executed, *Diaz*, 116 F.4th at 469—conflicts with how the Constitution treats other fundamental rights.

“Felons, after all, don’t lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment.” *Williams*, 113 F.4th at 658. “No one suggests that such an individual has no right to a jury trial or be free from unreasonable searches and seizures.” *Id.* And “we wouldn’t say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding.” *Kanter*, 919 F.3d at 461–62 (Barrett, J., dissenting). “The obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have

understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Id.* at 462. Rather, “history confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one’s status as a convicted felon or to the uniform severity of punishment that befell the class.” *Id.* at 461.

Third, this Court has expressed “doubt that *three* colonial regulations could suffice to show a tradition.” *Bruen*, 597 U.S. at 46. But the Fifth Circuit relied on only three laws to establish a tradition of permanently punishing individuals who have been convicted of theft: a colonial Massachusetts law, a Founding-era New York law, and a post-revolutionary Virginia law. *Diaz*, 116 F.4th at 468–69. Putting to one side whether the court’s reading of these laws is correct, this limited historical evidence is too slender a reed to establish a tradition justifying the deprivation of a fundamental constitutional right.

A law is not compatible with the Second Amendment if it regulates the right to bear arms “to an extent beyond what was done at the founding.” *Rahimi*, 602 U.S. at 692. Section 922(g)(1) does just that. It imposes a lifetime ban on firearm possession that would have been unimaginable to the Founders. Thus, § 922(g)(1) facially violates the Second Amendment because there are “no set of circumstances” under which it is valid. *See Rahimi*, 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

3. Section 922(g)(1) is unconstitutional as applied to individuals based on their prior felony convictions for offenses that did not result in disarmament in the Founding era.

Vecera has prior felony convictions for coercion sexually motivated and burglary, ROA.413–14, 758–59, and the Fifth Circuit has held that § 922(g)(1) is not unconstitutional as applied to a defendant with such predicate convictions. *See, e.g., Alaniz*, 146 F.4th at 1241; *United States v. Kimble*, 142 F.4th 308, 311–12 (5th Cir. 2025), *cert. denied*, No. 25-5747, 2026 WL 135675 (U.S. Jan. 20, 2026). The Fifth Circuit’s analysis is wrong; under a correct application of *Bruen* and *Rahimi*, § 922(g)(1) is unconstitutional as applied to Vecera.

Rahimi applied *Bruen* to uphold 18 U.S.C. § 922(g)(8)(C)(i) based on historical firearm restrictions from which this Court identified a narrow purpose and temporary burden that were comparable to the purpose and burden of that provision. 602 U.S. at 1901. The Fifth Circuit’s reliance on the historical availability of capital punishment to support § 922(g)(1) is in tension with *Bruen* and *Rahimi* in several regards.

First, *Diaz* and *Bullock* apply levels of generality that are too high. *Diaz* concluded that § 922(g)(1) and capital punishment share a common generic purpose (“to deter violence and lawlessness”) and broad burden (“permanently punishing offenders”). 116 F.4th at 469–70. *Bullock* concluded that there exists a historical tradition of disarming those whom legislatures deem dangerous. 123 F.4th at 185. The comparable purpose

and scope in *Rahimi* were significantly narrower. There, the historical analogues and § 922(g)(8)(C)(i) both sought “to mitigate *demonstrated threats of physical violence*” by *temporarily* restricting gun possession after *judicial determinations* that “a particular defendant *likely would threaten or had threatened another with a weapon.*” *Rahimi*, 602 U.S. at 688–89 (emphasis added).

The Fifth Circuit’s broad-brush approach paints at too high a level of generality. Capital punishment and forfeiture of chattels are similar to permanent disarmament if the metric is “severe punishments” but not if the metric is—as it must be—“how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, at 597 U.S. at 29. As then-Judge Barrett explained, the “obvious point that the dead” have no Second Amendment right “does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

Diaz reasoned that, “if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.” 116 F.4th at 469. This reasoning goes far beyond this Court’s explanation of how to compare modern and historical restrictions on the Second Amendment right. *Rahimi* explained that “if imprisonment was permissible *to respond to the use of*

guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.” 602 U.S. at 699 (emphasis added). Both the greater restriction (imprisonment under the going armed laws) and the lesser restriction (disarmament under § 922(g)(8)(C)(i)) had the same narrow purpose: “to mitigate demonstrated threats of physical violence.” *Id.* at 698. Not so here.

Second, *Diaz* relied on laws that did not regulate firearms even though *Bruen* and *Rahimi* require the Government to show that a modern gun law aligns with our “historical tradition of *firearm* regulation.” *Bruen*, 597 U.S. at 24 (emphasis added); see *Rahimi*, 602 U.S. at 1897. Indeed, *Rahimi* relied only on historical laws that “specifically addressed firearms violence.” 602 U.S. at 695. So did *Bruen*. See 597 U.S. at 38–66. Capital punishment and estate forfeiture, however, are not *firearm* regulations.

Third, *Diaz* treated the Second Amendment differently than other rights in the Bill of Rights, even though this Court has emphasized that it “is not a second-class right.” *Bruen*, 597 U.S. at 70 (cleaned up). But felons “don’t lose other rights guaranteed in the Bill of Rights even though an offender who committed the same act in 1790 would have faced capital punishment.” *Williams*, 113 F.4th at 658. “No one suggests

that such an individual has no right to a jury trial or be free from unreasonable searches and seizures.” *Id.* By tying the loss of the right to bear arms to capital punishment, and to the loss of other rights, the Fifth Circuit has rendered the Second Amendment a second-class right subject to different rules than other fundamental rights, contrary to this Court’s clear instruction to not do that.

Fourth, *Diaz*’s conclusion that the Founders would have accepted permanent disarmament of someone who had been convicted of offenses like *Diaz*’s—vehicle theft—is not supported by the historical record. According to *Diaz*, horse theft was punished severely with either death or estate forfeiture. 116 F.4th at 469. But as *Diaz*’s cited source explains, “hardly any horse thieves were executed.” See Kathryn Preyer, *Crime and Reform in Post-Revolutionary Virginia*, 1 Law & Hist. Rev. 53, 73 (1983). In 1796, Virginia capped punishment for horse theft at seven years. A Collection of All Such Acts of the General Assembly of Virginia 356 (1803) (Act of Dec. 15, 1796).¹² And contrary to *Diaz*’s suggestion, 116 F.4th at 468, New York did not authorize the death penalty for theft. Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664–65.¹³ Indeed, “property

¹² Available at https://books.google.com/books?id=mxRE-AAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

¹³ Available at <https://babel.hathitrust.org/cgi/pt?id=uc1.b4375239&seq=7>.

crimes including variations on theft, burglary, and robbery ‘were, on the whole, not capital’” at the founding. *Kanter*, 919 F.3d at 459 (Barrett, J., dissenting) (citing Lawrence M. Friedman, *Crime and Punishment in American History* 42 (1993)). And estate forfeiture was only permanent for defendants sentenced to death or perhaps life imprisonment. See *Rahimi*, 602 U.S. at 760 (Thomas, J., dissenting) (“Forfeiture still allows a person to keep their other firearms or obtain additional ones.”); *Kanter*, 919 F.3d at 459–61 (Barret, J., dissenting) (discussing history).

Bullock and *Schnur* are flawed in another way: their conclusion that § 922(g)(1) is supported by a historical tradition of prohibiting “dangerous people” from possessing firearms. See *Bullock*, 123 F.4th at 185. This is much like a theory that *Rahimi* rejected, namely the Government’s theory that the Second Amendment allows Congress to disarm anyone who is not “responsible” and “law-abiding.” 60 U.S. 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.’ Not a single Member of the Court adopts the Government’s theory.”). Not only did the Court state that “responsible” is a “vague term” and it is “unclear what such a rule would entail,” *id.* at 701, but it further clarified that the Government’s proposed rule did not “derive from [its] case law.” *Id.* *Rahimi* noted that *Heller* and *Bruen* used

the term “responsible” to “describe the class of ordinary citizens who undoubtedly enjoy the right,” but neither decision adopted that formulation to define the limits of the Second Amendment. *Id.*; *see also id.* at 773 (Thomas, J., dissenting) (“The Government’s claim that the Court already held the Second Amendment protects only ‘law-abiding, responsible citizens’ is specious at best.”).

In sum, the Fifth Circuit’s approach to as-applied challenges incorrectly applies this Court’s precedent. Under the comparative analysis proscribed by *Bruen* and *Rahimi*, § 922(g)(1) is unconstitutional as applied to Vecera.

B. Section 922(g)(1) exceeds Congress’s power to regulate interstate and foreign commerce.

Article I, § 8, cl.3 of the United States Constitution provides: “Congress shall have power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes” In *United States v. Lopez*, 514 U.S. 549 (1995), the Court established the test for the scope of Congress’s power to regulate activities that “affect” interstate commerce: “We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity ‘substantially affects’ interstate commerce.” *Lopez*, 514 U.S. at 559. *Lopez* seemed to, but did not expressly, overrule the more permissive test for federal regulation of gun possession articulated in *Scarborough v. United States*, which required only the “minimal nexus

that the firearm have been, at some time, in interstate commerce.” 431 U.S. 563, 575 (1977). But *Scarborough* was concerned solely with statutory interpretation and did not purport to resolve any constitutional issues. See *United States v. Hemani*, 146 S. Ct. 1677, 1697 (2026) (Thomas, J., concurring); *United States v. Bonner*, 159 F.4th 338, 342 (5th Cir. 2025) (Willett, J., concurring); *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc). Nevertheless, lower courts, including the Fifth Circuit, have adhered to the view that *Scarborough*’s “minimal nexus” is sufficient both to prove guilt under 18 U.S.C. § 922(g)(1) and to bring any subsequent act of firearm possession within Congress’ power to regulate. See *Hemani*, 146 S. Ct. at 1696–97 (Thomas, J., concurring); see also, e.g., *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013).

Members of this Court and judges on lower courts have acknowledged the irreconcilability of *Lopez* and a constitutional reading of *Scarborough*. *Hemani*, 146 S. Ct. at 1696–97 (Thomas, J., concurring). If *Scarborough* is a constitutional decision, then it grants the federal government unlimited power to regulate the affairs of citizens. See *id.* at 1697. Any physical object has almost certainly crossed a state line at some point in the past. To hold that this past travel grants Congress a perpetual right to regulate what someone does or does not do with that object is to eliminate any restrictions on Congress’ power. See *Nat’l Fed’n*

of *Indep. Bus. v. Sebelius*, 567 U.S. 519, 557 (2012) (Roberts, C.J.) (“The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions.”) (hereinafter “*NFIB*”); *Hemani*, 146 S. Ct. at 1697 (Thomas, J., concurring).

This unlimited power renders 18 U.S.C. § 922(g)(1) facially unconstitutional. In *NFIB*, Chief Justice Roberts noted that “[a]s expansive as our cases construing the scope of the commerce power have been, they all have one thing in common: They uniformly describe the power as reaching ‘activity.’” 567 U.S. at 551 (emphasis added). He reasoned that this limitation of Commerce Clause power to “activities” is a “distinction between doing something and doing nothing [which] would not have been lost on the Framers, who were ‘practical statesmen,’ not metaphysical philosophers.” *Id.* at 555 (quoting *Industrial Union Dept., AFL-CIO v. American Petroleum Institute*, 448 U.S. 607, 673 (1980) (Rehnquist, J., concurring in judgment)). Four other Justices echoed Chief Justice Roberts’s sentiment regarding the Commerce Clause analysis, stating that Congress could only regulate “activity affecting commerce[.]” *NFIB*, 567 U.S. at 658 (Scalia, Kennedy, Thomas, Alito, JJ., dissenting). And as Justice Thomas noted recently, “the mere possession of a firearm that long ago crossed state lines is not ‘economic activity’ in any sense, and the

Court has never upheld regulation of intrastate activity that is not ‘economic in nature’ under this category.” *Hemani*, 146 S. Ct. at 1695 (Thomas, J., concurring).

Here, 18 U.S.C. § 922(g)(1) does not require that Vecera’s possession of the gun be an economic activity; this ought to be 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. Accordingly, it sweeps too broadly.

Further, the statute does not require that Vecera be engaged in the relevant market at the time of the regulated conduct. Chief Justice Roberts also 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 556, 557 (Roberts, C.J.). 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. As such, *NFIB* overrules the long-standing notion that a firearm which has previously and remotely passed through interstate commerce should be considered to affect commerce indefinitely without “concern for when the [initial] nexus with commerce occurred.” *Scarborough*, 431 U.S. at 577.

Vecera’s case illustrates how this Court’s precedent removes any limitation on Congress’s commerce power. His original and superseding indictments alleged that he “possess[ed] a firearm” that “ha[d] been shipped and transported in interstate commerce[.]” The sole fact offered to support the commerce element at trial was that the firearm had been manufactured in Connecticut and had to have traveled across state lines to get to Texas. As the ATF agent explained at trial, “if a firearm is manufactured outside of the State of Texas and it ended up being recovered in Texas, it traveled in interstate commerce.”

Vecera thus was convicted under § 922(g)(1) without evidence that he was “currently engaged” in the gun market at the time of his arrest. So § 922(g)(1) fails to survive *NFIB*’s Commerce Clause analysis. The statute has been construed to require only that a firearm has traveled in interstate commerce at some previous time. *See Scarborough*, 431 U.S. at 575. If the statute cannot be construed to require commercial activity of some kind by the defendant—something more substantial than mere possession of an item that may have crossed state lines years ago—it then contains no jurisdictional element sufficient to bring it within the terms of Congressional power. In the absence of such a jurisdictional element, this Court has found federal criminal statutes falling substantially outside the Commerce power to be unconstitutional, without pausing to consider whether the particular conduct of the defendant might

have affected commerce. *See Lopez*, 514 U.S. at 561; *United States v. Morrison*, 529 U.S. 598, 607 (2000). In other words, without such an element, comparable statutes have been found facially unconstitutional. The Court should say the same here.

Alternatively, the Court should revisit *Scarborough*'s interpretation of the statute to avoid the constitutional problem, as it did in *Bond v. United States*, 572 U.S. 844 (2014), 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.” *Id.* at 853; 18 U.S.C. § 229(a). She placed toxic chemicals—an arsenic compound and potassium dichromate—on the car door, mailbox, and doorknob of a romantic rival. *Bond*, 572 U.S. at 852. The 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. The Court should grant certiorari to say otherwise.

II. These are critically important and recurring questions.

The Court should grant the petition because the 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*, at 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 nonviolent 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).

Given § 922(g)(1)’s widespread impact both on new prosecutions and on the millions of nonviolent Americans it prohibits from exercising a fundamental constitutional right, this Court should answer this important and recurring question as soon as possible.

III. This case is an ideal vehicle for addressing these questions.

This case presents an ideal vehicle for addressing whether § 922(g)(1) violates the Second Amendment and the Commerce Clause. The case cleanly presents purely legal issues. There are no jurisdictional problems, factual disputes, or preservation issues. Vecera thoroughly briefed his facial and as-applied Second Amendment challenges and his Commerce Clause challenge in both the district court and the court of appeals. The district court and Fifth Circuit squarely rejected all challenges.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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