

No. _____

In the
Supreme Court of the United States

Joshua Ryan Burns,

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. Does 18 U.S.C. § 922(g)(1) violate the Second Amendment on its face?
2. Does 18 U.S.C. § 922(g)(1) exceed Congress's authority under the Commerce Clause on its face or as applied to Petitioner's intrastate possession of a firearm?

PARTIES TO THE PROCEEDING

Petitioner, Joshua Ryan Burns, 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. Burns*, No. 3:25-cr-53, U.S. District Court for the Southern District of Mississippi. Judgment entered January 14, 2026. (Appendix B).
- *United States v. Burns*, No. 26-60033, U.S. Court of Appeals for the Fifth Circuit. Judgment entered April 20, 2026. (Appendix A).

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PETITION FOR A WRIT OF CERTIORARI

Joshua Ryan Burns seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit’s opinion is reported at 2026 WL 1069961 and is reproduced in Appendix A at App.1a–2a.

JURISDICTION

The Fifth Circuit entered its judgment on April 20, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Article I, § 8 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.”

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. II.

Section 922(g)(1) of Title 18 of the United States Code provides, in relevant part: “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.”

STATEMENT OF THE CASE

1. An indictment charged Joshua Ryan Burns with one count of possession of a firearm by a person who has previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of § 922(g)(1).¹ ROA.10–11 (indictment). Burns had prior felony convictions for aggravated assault, burglary, and possession of a firearm as a felon. ROA.77, 160. He was on parole at the time of the charged offense. ROA.246 at 11–12 (¶¶ 44 and 46).

2. Burns moved to dismiss the indictment, arguing that § 922(g)(1) is unconstitutional in at least two respects: (1) it violates the Second Amendment on its face, and (2) it unconstitutionally exceeds Congress’s power under the Commerce Clause. ROA.33–57 (motion); ROA.89–106 (reply). The government opposed the motion. ROA.58–72. The district court denied it. ROA.107–19.

Burns pleaded guilty to the indictment pursuant to a plea agreement. ROA.127 (judgment), 145 (change of plea), 240–44 (plea agreement). Though he waived his right to appeal most issues, he reserved his right to appeal “the district court’s order denying Defendant’s motion to dismiss indictment, docket entry 20, pursuant to *New York State Rifle and Pistol Association versus Bruen*, 142 S. Ct. 2111 (2022).” ROA.242 (plea agreement); *see also* ROA.149 (change of plea).

¹ The indictment also charged Burns with one count of possession of an unregistered short-barreled shotgun. ROA.10–11. The Government moved *ore tenus* to dismiss that count, and the district court granted the Government’s motion. ROA.126.

The district court sentenced Burns to 37 months of imprisonment, 3 years of supervised release, a fine of \$1,500, and a special assessment of \$100. ROA.128–33 (judgment), 174–78 (sentencing).

3. On appeal, Burns pressed his Second Amendment and Commerce Clause challenges to § 922(g)(1).

The Fifth Circuit summarily affirmed Burns’ conviction. App.2a. It concluded that his facial Second Amendment challenge was foreclosed by *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024)), *cert. denied*, 145 S. Ct. 2822, 222 L. Ed. 2d 1102 (2025), which held that § 922(g)(1) is constitutional as applied to a defendant with a prior conviction for motor vehicle theft, and therefore constitutional on its face. App.2a. It concluded that Burns’ Commerce Clause challenge was foreclosed by *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013), which held that § 922(g)(1) does not exceed Congress’s authority under the Commerce Clause. App. 2a.

REASONS FOR GRANTING THE PETITION

J. This Court should grant the petition to resolve whether § 922(g)(1) comports with the Second Amendment.

A. Lower courts need guidance for resolving Second Amendment challenges to § 922(g)(1).

1. This Court's Second Amendment jurisprudence has changed significantly in the last twenty years. In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Court reviewed the Second Amendment's "text and history" and concluded that it confers "an individual right to keep and bear arms." The Court acknowledged that the right was "not unlimited." *Id.* It stated that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons," and it described such prohibitions as "presumptively lawful regulatory measures." *Id.* at 626 & n.26. At the same time, the Court acknowledged that it had not undertaken "an exhaustive historical analysis ... of the full scope of the Second Amendment." *Id.* at 626.

Four years ago, this Court revisited its Second Amendment analysis. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 10 (2022), the Court struck down New York's public-carry licensing regime, holding that the regime violates the Second Amendment's guarantee of an individual right to carry a handgun for self-defense outside the home. The Court reaffirmed *Heller*'s focus on "text, as informed by history." *Id.* at 19. It articulated a two-part framework for evaluating Second Amendment challenges. *Id.* at 24. The Court instructed courts to consider, first, whether the "Second Amendment's plain text covers an individual's conduct." *Id.* If it does, the Constitution "presumptively protects that conduct," and courts must

consider, second, whether the government has met its burden to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

Two years ago, the Court applied the *Bruen* framework. *United States v. Rahimi*, 602 U.S. 680 (2024). The Court emphasized that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Id.* at 692. That analysis, in turn, involves ascertaining “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).

To determine whether historical analogues are relevantly similar, courts must train their focus on “why and how the regulation burdens the right” to keep and bear arms. *Rahimi*, 602 U.S. at 692. A regulation may satisfy the “why” inquiry “if laws at the founding regulated firearm use to address particular problems.” *Id.* But satisfying the “why” is not sufficient: “[e]ven 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.” *Id.* The Court emphasized that a challenged regulation need not be a “dead ringer” for a historical precursor, but it “must comport with the principles underlying the Second Amendment.” *Id.*

2. Lower courts have struggled to apply the *Bruen* framework. *See Rahimi*, 602 U.S. at 691 (noting that “some courts have misunderstood” the *Bruen* methodology); *id.* at 708 (Sotomayor, J., concurring) (acknowledging that “lower

courts [are] struggling to apply *Bruen*”); *id.* at 739 (Barrett, J., concurring) (“Courts have struggled with this use of history in the wake of *Bruen*.”); *id.* at 743 (Jackson, J., concurring) (“[L]ower courts appear to be diverging in both approach and outcome as they struggle to conduct the inquiry *Bruen* requires of them.”).

These struggles extend to § 922(g)(1). First, lower courts disagree about whether to apply the *Bruen* framework to challenges to § 922(g)(1). The Fourth, Eighth, Ninth and Tenth Circuits have disclaimed any need to apply the *Bruen* framework, relying on this Court’s statements about the presumptive lawfulness of prohibitions on the possession of firearms by felons. *See United States v. Hunt*, 123 F.4th 697, 703 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756, 222 L. Ed. 2d 1046 (2025) (disclaiming the need to perform a *Bruen* inquiry in part because of “statements in ... *Heller* ... that ‘nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons’ and that restrictions on felons possessing firearms were ‘presumptively lawful regulatory measures.’”); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708, 221 L. Ed. 2d 970 (2025) (suggesting no need to perform a *Bruen* inquiry for challenges to § 922(g)(1) because of “assurances by the Supreme Court” about laws prohibiting felons from possessing firearms); *United States v. Duarte*, 137 F.4th 743, 750–52 (9th Cir. 2025) (en banc) (holding that *Bruen* “did not change or alter” *Heller*’s “assurances” about § 922(g)(1)’s constitutionality); *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025) (suggesting no need to conduct a

Bruen inquiry because of this Court’s statements alluding to the “presumptive lawfulness” of laws disarming felons).

Meanwhile, the Third, Fifth, and Sixth Circuits have insisted that a *Bruen* inquiry is necessary to evaluate the constitutionality of § 922(g)(1). The Third Circuit applied the *Bruen* framework to § 922(g)(1), noting that *Heller* “did ‘not undertake an exhaustive historical analysis ... of the full scope of the Second Amendment.’” *Range v. Att’y Gen. United States*, 124 F.4th 218, 229 n.7 (3d Cir. 2024) (en banc) (quoting *Heller*, 554 U.S. at 626). The Fifth Circuit did the same, explaining that this Court’s statements endorsing the presumptive lawfulness of felon-in-possession bans “cannot supplant the most recent analysis set forth by ... *Rahimi*,” which mandated a rigorous historical analysis of the challenged regulation. *Diaz*, 116 F.4th at 466. And the Sixth Circuit agreed with the Third and Fifth Circuits, explaining that “applying *Heller*’s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to ‘expound upon the historical justifications’ for firearm-possession restrictions when the need arose.” *United States v. Williams*, 113 F.4th 637, 648 (6th Cir. 2024) (quoting *Heller*, 554 U.S. at 635).

Second, lower courts disagree about whether § 922(g)(1) implicates the plain text of the Second Amendment (*Bruen*’s step one). The Fourth Circuit has found that § 922(g)(1) does not regulate activity protected by the Second Amendment’s text. *See Hunt*, 123 F.4th at 705. The Second, Third, Fifth, Sixth, and Ninth Circuits, on the other hand, have found that § 922(g)(1) implicates the Second Amendment’s plain

text. *Zherka v. Bondi*, 140 F.4th 68, 75–77 (2d Cir. 2025); *Range*, 124 F.4th at 228; *Diaz*, 116 F.4th at 466–67; *Williams*, 113 F.4th at 648–50; *Duarte*, 137 F.4th at 761.

Third, lower courts disagree about the relevant similarity of various historical analogues (*Bruen*’s step two). The Second and Ninth Circuits have found that colonial laws authorizing death or estate forfeiture for some felonies support the constitutionality of § 922(g)(1). *Zherka*, 140 F.4th at 80–83; *Duarte*, 137 F.4th at 756–59. The Fifth Circuit has found that such laws support the constitutionality of § 922(g)(1) as applied to modern felonies that were punished by death or estate forfeiture at the Founding. *Diaz*, 116 F.4th at 467–70. The Third Circuit has held that, for nonviolent crimes, “the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors—is rooted in our Nation’s history and tradition.” *Range*, 124 F.4th at 231.

Lower courts also disagree about the relevant similarity of English and early-American status-based laws disarming “dangerous” people. The Second Circuit has found that such laws are relevantly similar to § 922(g)(1), even when the statute applies to people convicted of nonviolent felonies. *See Zherka*, 140 F.4th at 84–91. The Third and Fifth Circuits have suggested that such restrictions do not justify § 922(g)(1) as applied to people convicted of nonviolent felonies who pose no physical danger to others. *Range*, 124 F.4th at 230 (such laws do not justify § 922(g)(1) as applied to a defendant convicted of food-stamp fraud); *United States v. Doucet*, No.

24-30656, 2025 WL 3515404, at *4–5 (5th Cir. Dec. 8, 2025), *cert. denied*, 224 L. Ed. 2d 527 (Apr. 27, 2026) (such laws do not justify § 922(g)(1) as applied to a defendant convicted of attempted production of marijuana). And the Sixth Circuit has read such laws as justifying § 922(g)(1) when individuals have a “reasonable opportunity to prove that they” are not dangerous. *Williams*, 113 F.4th at 661.

3. This Court should grant review to provide much-needed guidance about whether and how *Bruen*’s framework applies to § 922(g)(1).

B. The decision below conflicts with this Court’s precedent.

The Fifth Circuit misapplied this Court’s precedent to conclude that § 922(g)(1) is constitutional on its face. The provision imposes an unprecedented and permanent ban on the possession of firearms for self-defense. The government has failed to carry its burden to prove that it “is consistent with the Nation’s historical tradition of firearm regulation.” *See Bruen*, 597 U.S. at 24.

To uphold the facial constitutionality of § 922(g)(1), the Fifth Circuit has chiefly relied on four analogues: (1) historical laws authorizing capital punishment and estate forfeiture for some felonies; (2) unadopted proposals for the Second Amendment; (3) colonial-era “going armed” laws, and (4) laws disarming “dangerous” people. *Diaz*, 116 F.4th at 468–72 (addressing the first three analogues); *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025), *cert. denied*, 223 L. Ed. 2d 564 (Jan. 20, 2026) (addressing the fourth analogue). The court’s reliance on these analogues is misplaced.

1. Laws authorizing capital punishment and estate forfeiture do not justify § 922(g)(1). To start, there is a serious factual question about the link between felonies, on the one hand, and capital punishment and estate forfeiture, on the other. *See Kanter v. Barr*, 919 F.3d 437, 459 (7th Cir. 2019), *abrogated by New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Barrett, J., dissenting). Even if the government could prove that link, it cannot show that colonial laws authorizing death or civil death are relevantly similar to § 922(g)(1). First, the laws do not share a comparable “why.” *See Rahimi*, 602 U.S. at 692. Laws authorizing death and civil death for some felonies addressed the problem of crime generally, whereas § 922(g)(1) is tailored to gun violence. And the laws do not share a comparable “how.” *See id.* Laws authorizing death and civil death did not impose “the *particular* (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies and felony-equivalent misdemeanors.” *Range*, 124 F.4th at 231.

2. The unadopted proposals for the Second Amendment do not justify § 922(g)(1). The Fifth Circuit admitted that “relying solely on these types of unadopted proposals to establish a tradition is a ‘dubious’ practice.” *Diaz*, 116 F.4th at 470 (quoting *Heller*, 554 U.S. at 603). Rightly so. Among other things, “none of the relevant limiting language made its way into the Second Amendment”; “proposals from other states that advocated a constitutional right to arms did not contain similar language of limitation or exclusion”; and “similar limitations or exclusions do not appear in any of the four parallel state constitutional provisions enacted before ratification of the Second Amendment.” *Kanter*, 919 F.3d at 455 (Barrett, J.,

dissenting) (citations omitted). And the proposals do not support categorically disarming felons: “[t]he concern common to all three is not about felons in particular or even criminals in general; it is about threatened violence and the risk of public injury.” *Id.* at 456 (Barrett, J., dissenting).

3. Going armed laws do not justify § 922(g)(1). In *Rahimi*, this Court used these laws, among others, to justify § 922(g)(8). *Rahimi*, 602 U.S. at 698–99. That provision was a better fit. Going armed laws and § 922(g)(8) “restrict[ed] gun use to mitigate demonstrated threats of physical violence,” satisfying the “why” inquiry. *Id.* at 698. And both schemes shared a “how”: they “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon,” and they were temporary restrictions on the Second Amendment right. *Id.* at 699.

None of these premises holds for § 922(g)(1). Section 922(g)(1)’s apparent purpose is more general: to restrict firearms from those who have broken the law without regard to whether their convictions involved a physical threat to others. Its burden is more onerous: it permanently disarms all felons even though no court has determined that a defendant would threaten or has threatened another with a weapon.

4. Laws disarming “dangerous” people do not justify § 922(g)(1). The Fifth Circuit has relied on “English laws disarming political and religious dissidents and American statements and practices.” *Kimble*, 142 F.4th at 315. But there is a serious question about whether those laws are valid analogues. In *Rahimi*, this Court

explained that though “English law had disarmed not only brigands and highwaymen but also political opponents and disfavored religious groups,” “state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic.” *Rahimi*, 602 U.S. at 694; *see id.* at 776 (Thomas, J., dissenting) (“Far from an exemplar of Congress’s authority, the discriminatory regimes the Government relied upon are cautionary tales. They warn that when majoritarian interests alone dictate who is ‘dangerous,’ and thus can be disarmed, disfavored groups become easy prey.”).

As for early American analogues disarming Loyalists, those laws are not relevantly similar to § 922(g)(1). For one, they share no comparable purpose. The early American laws were “the emerging nation’s proto-national security laws.” Pratheepan Gulasekaram, *Loyalty Disarmament and the Undocumented*, 125 Colum. L. Rev. F. 29, 38 (2025). They were designed to “smoke out existential threats to the cause of independence.” *Id.* at 38. Section 922(g)(1), on the other hand, is not a national security law, nor is it aimed at stabilizing an emerging government.

And the early American laws did not comparably burden the right to bear arms. Such laws permitted individuals to avoid disarmament by taking an oath or affirmation of loyalty to the emerging Republic. Gulasekaram, 125 Colum. L. Rev. F. at 40. And the laws “did not technically prohibit recusants from acquiring new arms”; instead “they read more like forfeiture laws than disabilities.” C. Kevin Marshall, *Why Can’t Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol’y 695, 724 & n.154 (2009) (citing Pa. Act of June 13, 1777, §§ 1-3; Va. Act of May 5, 1777, §§ 1, 3). Section

922(g)(1), on the other hand, permanently disarms a defendant without regard to his changed circumstances, and it prohibits the acquisition of new firearms for self-defense.

C. The question presented is important and recurring, and this case is an ideal vehicle for resolving it.

1. The question presented is important. This Court has recognized the right to bear arms as “among the ‘fundamental rights necessary to our system of ordered liberty.’” *Rahimi*, 602 U.S. at 690 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010)). Section 922(g)(1) denies that fundamental right to millions of Americans. One study found that about nineteen million Americans had felony convictions in 2010, and it predicted that number would grow in the foreseeable future. Shannon, S.K.S., Uggen, C., Schnittker, J. *et al.* The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010. *Demography* 54, 1795–1818 (2017).²

2. The question presented is recurring. In fiscal year 2023, federal agents logged more than 7,000 arrests for weapons offenses, including violations of § 922(g). Motivans, Mark A., U.S. Dep’t Just., Off. Just. Programs, Federal Justice Statistics, 2023, at 3 (2025).³ “Crimes involving firearms” were “the third most common federal

² Available at http://users.soc.umn.edu/~uggen/Shannon_Uggen_DEM_2017.pdf, last accessed July 15, 2026.

³ Available at <https://bjs.ojp.gov/document/fjs23.pdf>, last accessed July 15, 2026.

crime” in fiscal year 2025. United States Sentencing Commission, 2025 Annual Report, at 19.⁴ Defendants will continue to argue that the Second Amendment bars their prosecutions. Courts will continue to face the daunting task of parsing the historical justifications for such prosecutions.

3. This case is a good vehicle for addressing the questions presented. The facts of the case are undisputed. And Burns’ claim is properly before this Court. In both the district court and the Fifth Circuit, Burns pressed his facial Second Amendment challenge to § 922(g)(1). ROA.33–57, 89–106. The Fifth Circuit resolved that challenge on its merits. App. 2a.

II. This Court should grant the petition to address whether and when § 922(g)(1) comports with the Commerce Clause.

A. Lower courts need guidance for resolving Commerce Clause challenges to § 922(g)(1).

1. For decades, lower courts have “cried out for guidance” about how to analyze Commerce Clause challenges to federal criminal statutes. *See Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from denial of certiorari). The need for guidance stems in large part from the tension between two of this Court’s decisions: *Scarborough v. United States*, 431 U.S. 563 (1977) and *United States v. Lopez*, 514 U.S. 549 (1995).

In *Scarborough*, the Court analyzed § 922(g)(1)’s predecessor, which prohibited felons from possessing, “in commerce or affecting commerce,” any firearm.

⁴ Available at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2025/2025-Annual-Report.pdf>, last accessed July 15, 2026.

Scarborough, 431 U.S. at 564 (quoting 18 U.S.C. § 1202(a)). The Court held that the government could prove that a felon possessed a firearm “in commerce or affecting commerce” by showing the “minimal nexus that the firearm” was, “at some time, in interstate commerce.” *Id.* at 564, 575.

In *Lopez*, this Court invalidated, on Commerce Clause grounds, a statute that prohibited the knowing possession of a firearm in a school zone. *Lopez*, 514 U.S. at 551. In its reasoning, the Court identified “three broad categories of activity that Congress may regulate under its commerce power”: (1) “the use of the channels of interstate commerce”; (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce”; and (3) “activities having a substantial relation to interstate commerce.” *Id.* at 558–59.

The Court “quickly disposed” of the first two categories, concluding that the statute prohibiting guns in schools was “not a regulation of the use of the channels of interstate commerce, nor ... an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor ... a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce.” *Id.* at 559.

Turning to the third category, the Court held that the prohibition against guns in schools did not regulate an activity that substantially affects interstate commerce. *Id.* at 559–61. The Court explained that the regulation was “a criminal statute that by its terms ha[d] nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.” *Id.* at 561 (footnote omitted). It

emphasized that the regulation was not “an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.” *Id.* And it faulted the regulation for lacking a “jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.” *Id.*

2. Members of this Court and others have recognized the tension between *Scarborough* and *Lopez*. See *Alderman*, 131 S. Ct. at 702 (Thomas, J., dissenting from denial of certiorari) (“*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez*.”); *United States v. Seekins*, 52 F.4th 988, 991–92 (5th Cir. 2022) (Ho, J., dissenting) (citing cases); *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting) (“[T]he precise holding in *Scarborough* is in fundamental and irreconcilable conflict with the rationale of [*Lopez*].”).

If the government need prove only that a gun traveled—at some point—in interstate commerce to obtain a conviction under § 922(g)(1), then § 922(g)(1) is likely unconstitutional for the reasons outlined in *Lopez*. Like the provision invalidated in *Lopez*, § 922(g)(1) is “a criminal statute that by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise.” See *Lopez*, 514 U.S. at 561. And like the unconstitutional provision in *Lopez*, § 922(g)(1) is not “an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.” See *id.* Finally, though § 922(g)(1) has a jurisdictional element, lower courts have rendered the element meaningless. As lower courts have interpreted it, the jurisdictional element does not test whether “the

firearm *possession* in question affects interstate commerce,” *see Lopez*, 514 U.S. at 561 (emphasis added), but only whether the firearm itself has traveled in interstate commerce.

3. Despite the tension between *Scarborough* and *Lopez*, lower courts have been reluctant to stray from *Scarborough*’s holding. Even after *Lopez*, at least nine courts of appeals have relied on *Scarborough* to hold that § 922(g)(1)’s nexus element can be satisfied if the firearm traveled—at any point—across a state boundary. *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); *United States v. Rawls*, 85 F.3d 240, 242–43 (5th Cir. 1996); *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). Two courts of appeals have applied *Lopez*’s framework, and both have upheld § 922(g)(1). *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).

4. This Court’s review is needed to address *Scarborough*’s reach and to explain how the *Lopez* framework applies to § 922(g)(1).

B. The question presented is important and recurring, and this case is a good vehicle for addressing it.

1. The question presented is important. A “healthy balance of power between the States and the Federal Government ... reduce[s] the risk of tyranny and abuse from either front.” *Lopez*, 514 U.S. at 552 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991)). Section 922(g)(1), as the lower courts have interpreted it, upends this healthy balance. It permits the federal government to regulate based on nothing more than its “ability to document (or merely speculate about) the provenance of a particular item.” *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from denial of rehearing en banc). In so doing, it “dramatically expands the reach of the federal government under the Commerce Clause.” *Id.* at 992 (Ho, J., dissenting from denial of rehearing en banc).

2. The question presented is recurring. As discussed above, federal agents log thousands of arrests for weapons offenses. *Motivans*, *supra*, at 3. Each of these arrests raises the specter of a federal police power that defies the limited national government the Framers contemplated and the Constitution guaranteed. *See Alderman*, 131 S. Ct. at 703 (Thomas, J., dissenting) (“[P]ermit[ting] Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines” would be “[s]uch an expansion of federal authority” as to “trespass on traditional state police powers.”).

3. This case is an ideal vehicle to confront the issue. To prove the jurisdictional element, the government relied exclusively on the fact that Burns possessed a firearm in Mississippi that was manufactured outside of Mississippi.

ROA.160. The government offered no proof that Burns traveled in interstate commerce to bring the firearm to Mississippi, that Burns possessed the firearm in another State, or even that Burns purchased the firearm from a seller participating in interstate commerce. *See* ROA.160.

And Burns' Commerce Clause challenge is properly before this Court. In the district court and on appeal, Burns pressed his Commerce Clause challenge to § 922(g)(1). *See* ROA.53–56. The Fifth Circuit resolved that challenge on its merits. App.2a.

CONCLUSION

Petitioner Joshua Ryan Burns respectfully requests that this Court grant the petition for a writ of certiorari. Alternatively, the Court should grant review in one or more cases presenting similar questions and hold petitioner's case pending disposition of that case.

Respectfully submitted this 16th day of July, 2026.

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