

No. 26-5235

In the Supreme Court of the United States

MALLORY TAYLOR,

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***

REPLY BRIEF FOR THE PETITIONER

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I. THIS COURT SHOULD GRANT CERTIORARI IN THIS CASE TO RESOLVE THE PROFOUND UNCERTAINTY, INCLUDING AN ACKNOWLEDGED CIRCUIT SPLIT, REGARDING THE CONSTITUTIONALITY OF 18 U.S.C. §922(G)(1) UNDER THE SECOND AMENDMENT.

There is a circuit split on a momentous question of constitutional law, namely whether and under what circumstances felons retain their Second Amendment rights. *Compare* *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. May 9, 2025)(en banc)(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)), **with** *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024); *Range v. Att’y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024)(en banc); **see also** *Duarte*, 137 F.4th at 747, 761 (acknowledging split); Supplemental Brief for the Federal Parties in Nos. 23-374.

The law should make clear precisely when the exercise of an enumerated constitutional right becomes a felony. And as a federal constitutional guarantee, the Second Amendment does not depend on a citizen’s state of residence. Uncertainty in this area tends to chill the exercise of fundamental rights, may lure citizens into committing felonies when they misjudge the scope of their constitutional protections and may discourage lawful prosecutions. The circuit split here, moreover, is reasonably balanced, and entrenched by *en banc* decisions on either side, *see Duarte*, 137 F.4th at 762; *Range v. Att’y Gen.*, 124 F.4th at 222–23, a fact that demonstrates both that it merits discretionary review and that it will not resolve without intervention of this Court. And as noted above, this split has been repeatedly acknowledged both by the judiciary and the government.

II. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE TENSION BETWEEN SCARBOROUGH V. UNITED STATES, 431 U.S. 563 (1963) ON THE ONE HAND, AND NAT’L FED’N OF INDEP. BUS. v. SEBELIUS, 567 U.S. 519 (2012) AND BOND v.

UNITED STATES, 572 U.S. 844 (2014) ON THE OTHER.

Courts have held for years that the mere travel across state lines at any time is sufficient to find that later possession of a firearm affected interstate commerce. These cases follow from this Court’s jurisprudence in *Scarborough v. United States*, 431 U.S. 563, 577 (1963), finding federal commerce authority over items that at any point moved across state lines. These cases stand in tension with more recent precedents on the scope of Commerce Clause authority, that is *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) (“*NFIB*”) and *Bond v. United States*, 572 U.S. 844 (2014).

The text of the Commerce Clause does not distinguish between Congress’s power to affect commerce by regulating non-commercial activity (like possessing a firearm), and its power to affect commerce by compelling people to join a commercial market (like health insurance). Rather, it simply says that Congress may “regulate ... commerce between the several states.” And that phrase either is or is not limited to laws that affect the legality of commercial activity. Five justices in *NFIB* took the text of the Clause seriously and permitted Congress to enact only laws that were, themselves, regulations of commerce. *NFIB* thus allows Congress only the power “to prescribe the rule by which commerce is to be governed.” *Gibbons v. Ogden*, 22 U.S. 1, 196, 9 Wheat. 1 (1824).

While it is true that this Court has denied writs of certiorari on this basis, those were prior to the Fifth Circuit’s granting of a petition for rehearing en banc

in a case involving a facial Commerce Clause challenge to Section 922(g)(1), *United States v. Squire*, No. 25-30324 (July 20, 2026). And this Court has previously exercised its GVR power to allow lower courts to reconsider their decisions in light of intervening en banc circuit precedent, see, e.g., *Brown v. United States*, 584 U.S. 928 (2018) (No. 17-6344); *Sykes v. United States*, 584 U.S. 928 (2018) (No. 16-9604); *Lee v. United States*, 562 U.S. 801 (2010) (No. 09-9085); *Ryals v. United States*, 561 U.S. 1003 (2010) (No. 09-8859); *Welton v. United States*, 559 U.S. 1034 (2010) (No. 09-8367).

This Court should hold the petition until the Fifth Circuit issues an en banc decision in *Squire* and then vacate the judgment and remand if that decision is favorable to petitioner.

This Court appears to have followed that course in *Brown* and *Sykes*, see *Brown*, *supra* (No. 17-6344) (petition filed Oct. 6, 2017, redistributed several times, and GVR'd on Apr. 16, 2018); *Sykes*, *supra* (No. 16-9604) (petition filed June 14, 2017, redistributed several times, and GVR'd on Apr. 16, 2018). Although the petitioners in those cases had sought rehearing en banc, which the Eighth Circuit denied, that fact should not cause a different result here.

If the Fifth Circuit in *Squire* were to hold that Section 922(g)(1) exceeds Congress's power under the Commerce Clause, as petitioner here argues, the decision would depart from the courts of appeals' current practice, create a conflict with all other circuits, and require intervention. The petition for a writ of certiorari here should be granted, or at least, held until a decision in *Squire*.

Respectfully submitted,

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