

No. _____

IN THE
Supreme Court of the United States

MICHAEL CELESTINE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

ON 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

1. Whether 18 U.S.C. § 922(g)(1)'s prohibition on mere firearm possession exceeds the scope of Congress's power to regulate interstate and foreign commerce, both facially and applied to Mr. Celestine and, relatedly, whether this Court should revisit *Scarborough v. United States*, 431 U.S. 563, 575 (1977), in light of the Court's more recent Commerce Clause precedent.

2. Whether § 922(g)(1) is unconstitutionally vague, either facially or as applied to Mr. Celestine, and, more fundamentally, whether a statute prohibiting conduct protected by the Second Amendment should be subject to facial or as-applied void-for-vagueness scrutiny.

3. Whether § 922(g)(1) is unconstitutional under the Second Amendment, either facially or as applied to Mr. Celestine.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The petitioner herein, who was the defendant-appellant below, is Michael Celestine. The respondent herein, which was the appellee below, is the United States. Neither party is a corporation.

Related Proceedings

The following proceedings are directly related to this case:

- *United States v. Celestine*, No. 24-cr-92, U.S. District Court for the Eastern District of Louisiana. Judgment entered August 27, 2025.
- *United States v. Celestine*, No. 25-30506, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 14, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Celestine respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit. Alternatively, Mr. Celestine asks this Court to either hold his petition pending the Fifth Circuit’s en banc consideration of 18 U.S.C. § 922(g)(1)’s constitutionality under the Commerce Clause in *United States v. Curtis Squire* (No. 25-30324), or to grant his Petition, vacate, and remand his case to the Fifth Circuit so that it can be considered by the Fifth Circuit in light of *Squire*.

JUDGMENT AT ISSUE

On May 14, 2026, a panel of the Fifth Circuit Court of Appeals affirmed Mr. Celestine’s conviction and sentence. A copy of the judgment and decision are attached to this petition as the Appendix.

JURISDICTION

The Fifth Circuit entered its decision on May 14, 2026, and no petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition for a writ of certiorari is timely filed pursuant to Supreme Court Rules 13 and 30 because it is being filed within 90 days of the Fifth Circuit's final judgment.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

18 U.S.C. 922(g)(1) provides:

(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.

Article I, § 8 of the United States Constitution provides, in relevant part:

Congress shall have power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

The Second Amendment to the United States Constitution 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.

The Fifth Amendment to the United States Constitution provides, in relevant part:

No person shall be . . . deprived of life, liberty, or property, without due process of law.

INTRODUCTION

This Petition presents this Court with three, preserved opportunities to address wide-spread confusion over the Federal Criminal Code’s deeply flawed and constitutionally beleaguered felon-in-possession-of-a-firearm statute: 18 U.S.C. § 922(g)(1). Each of these issues is deserving of this Court’s attention and well presented in this case. Alternatively, because Mr. Celestine’s Petition raises numerous issues that this Court may soon take up in another case, this Court should either hold his Petition pending consideration of those issues or grant his Petition, vacate, and remand his case to the Fifth Circuit, which is poised to reconsider en banc whether § 922(g)(1) exceeds Congress’s power under the Commerce Clause—the first of the three constitutional issues raised herein. *See United States v. Squire*, No. 25-30324, 2026 WL 2089721 (5th Cir. July 20, 2026) (granting rehearing en banc).

First, this Court should finally apply its modern Commerce-Clause jurisprudence to § 922(g)(1), which makes it unlawful for people with felony convictions to “possess in or affecting commerce, any firearm or ammunition.” In *Scarborough v. United States*—which examined § 922(g)(1)’s predecessor statute—this Court held that “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.” 431 U.S. 563, 564 (1977). The Court explained: “Congress intended to require [no] more than the minimal nexus that the firearm have been, at some time, in interstate commerce,” *id.* at 575, “with little concern for when the nexus with commerce occurred,” *id.* at 577.

Appellate courts have held that *Scarborough* compels the conclusions that § 922(g)(1) is constitutional under the Commerce Clause and that the government need only prove that a firearm crossed state lines at any point in time for § 922(g)(1) to reach an individual’s mere possession of that gun. *See United States v. Hemani*, 146 S. Ct. 1677, 1694 (2026) (Thomas, J., concurring) (collecting cases and describing the development of this issue).

But that conclusion—and § 922(g)(1)’s constitutionality—is in grave doubt in light of this Court’s post-*Scarborough* Commerce Clause jurisprudence. Most notably, in *United States v. Lopez*, this Court established the test for the scope of Congress’s power to regulate activities that “affect” interstate commerce, holding that “the proper test requires an analysis of whether the regulated activity ‘substantially affects’ interstate commerce.” 514 U.S. 549, 559 (1995). *Lopez* seemed to, but did not expressly, overrule the more permissive test for federal regulation of gun possession articulated in *Scarborough*. This Court’s attention to this issue—and revisiting of *Scarborough*—is long overdue.

Second, the circuit courts’ chaotic and inconsistent construction of § 922(g)(1) following this Court’s Second Amendment decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), has rendered the statute incomprehensible, in violation of the due process clause. To avoid wholesale invalidation of § 922(g)(1), courts—including the Fifth Circuit—have contorted the statute by instead applying wildly divergent tests for determining its constitutionality on an as-applied basis, in the process creating inconsistent, ad hoc carve-outs for *certain* felons now deemed

outside the statute's reach. Meanwhile, the statutory text itself gives notice of none of this. Indeed, the actual statutory text is directly contrary to the new firearm law created by the judiciary, as constitutionally applied. This disordered, piecemeal approach has made it impossible for ordinary citizens to discern, by looking at the statute, who has and hasn't been permanently divested of their Second Amendment rights. That has created a due process quagmire rendering § 922(g)(1) unconstitutionally vague. But, when presented with this defect, at least three circuits—including the Fifth—have failed to faithfully apply this Court's void-for-vagueness doctrine to § 922(g)(1), subjecting it to case-by-case, as-applied scrutiny, despite the fact that it criminalizes constitutional conduct and therefore must be subject to facial void-for-vagueness scrutiny. This too warrants this Court's attention and correction.

Third, and relatedly, the circuits are hopelessly confused and deeply split over the question of *how* to apply *Bruen*'s historical Second Amendment framework to § 922(g)(1). Without guidance, appellate courts will continue to struggle to apply *Bruen* to this frequently prosecuted statute, further entrenching this intractable conflict and perpetuating highly divergent outcomes. It is now impossible for millions of Americans to predict whether they are permitted to exercise a core constitutional right or whether they will be imprisoned for doing so. This Court must finally intervene.

STATEMENT OF THE CASE

On July 18, 2023, Appellant Michael Celestine was arrested by the New Orleans Police Department and charged in Louisiana court for being a felon in possession of a firearm in violation of state law. The U.S. Attorney's Office for the Eastern District of Louisiana ultimately picked up the case and, on November 21, 2024, Mr. Celestine was charged by superseding indictment with a single count of violating 18 U.S.C. § 922(g)(1). ROA.90. Specifically, the indictment alleged that Mr. Celestine possessed a Glock semiautomatic handgun, after having been convicted in Louisiana of two separate counts of being a "felon in possession of a firearm" in violation of La. R.S.14:95:1, one count of possession of a controlled substance in violation of La. R.S. § 40:967(C), and one count of aggravated burglary in violation of La. R.S. 14:60(F)(II). ROA.90-91.

Mr. Celestine filed a motion to dismiss the indictment on three constitutional grounds. *First*, he argued that § 922(g)(1) violates the Second Amendment as applied to him under the framework described in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). ROA.116. *Second*, he argued that, even if the court determined that § 922(g)(1) was constitutional as applied, the statute nonetheless was unconstitutionally vague, in violation of the Fifth Amendment's Due Process Clause, because it failed to provide meaningful notice of who belonged to the class of individuals who could be constitutionally prohibited from firearm possession. ROA.121. And *third*, Mr. Celestine argued that § 922(g)(1) exceeds Congress's authority under the Commerce Clause because it criminalizes mere firearm

possession, without requiring an adequate interstate-commerce nexus. ROA.125-26. The district court denied Mr. Celestine’s motion in its entirety, rejecting all three constitutional claims. ROA.145. Mr. Celestine pleaded guilty to the single § 922(g)(1) charge against him and was sentenced to 33 months’ imprisonment. ROA.163. With respect to the crime’s required relationship to interstate commerce, the government’s written factual basis submitted in support of the plea alleged only that the gun “was not manufactured in Louisiana” and, “[a]s a result, the weapon necessarily had been shipped and transported in interstate commerce prior to [it] being possessed by [Mr. Celestine] in the Eastern District of Louisiana.” ROA.166.

Mr. Celestine appealed. *United States v. Celestine*, No. 25-30506, 2026 WL 1349581 (5th Cir. May 14, 2026). He recognized, however, that Fifth Circuit precedent foreclosed all three arguments.¹ Accordingly, he raised the issues to preserve them for further review in this Court. Following the conclusion of Mr. Celestine’s appeal, the Fifth Circuit granted a petition for rehearing en banc in a similar case, *United States v. Curtis Squire*, to reexamine one of the three issues raised by Mr. Celestine, namely, whether § 922(g)(1) exceeds Congress’s authority under the Commerce Clause pursuant to *Lopez* and its progeny. 2026 WL 2089721, at *1. Thus, the Fifth Circuit appears poised to overturn its prior precedent holding to the contrary and to invalidate § 922(g)(1) on the ground urged by Mr. Celestine.

¹ See *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025); *United States v. Schnur*, 132 F.4th 863, 870-71 (5th Cir. 2025); *United States v. Landrum*, 168 F.4th 771, 772-75 (5th Cir. 2026); *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013).

REASONS FOR GRANTING THE PETITION

I. 18 U.S.C. § 922(g)(1)'s expansive reach is irreconcilable with this Court's *Lopez* Commerce Clause framework.

First, this Court should grant Mr. Celestine's Petition in order to subject § 922(g)(1) to long-overdue scrutiny under the Court's modern Commerce Clause jurisprudence and to re-examine *Scarborough's* statutory-interpretation holding in light of that precedent.

A. *In recent decades, this Court has articulated meaningful limits on Congress's power to regulate commerce—but lower courts have failed to apply those limits to § 922(g)(1).*

“The Federal Government ‘is acknowledged by all to be one of enumerated powers.’” *Nat’l Fed’n of Indep. Bus. v. Sebelius* [*NFIB*], 567 U.S. 519, 534 (2012) (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819)). “The enumeration of powers is also a limitation of powers, because ‘[t]he enumeration presupposes something not enumerated.’” *Id.* (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 195 (1824)). “And the Federal Government ‘can exercise only the powers granted to it.’” *Id.* at 534-35 (quoting *McCulloch*, *supra*, at 405). For example, the Constitution “withhold[s] from Congress a plenary police power that would authorize enactment of every type of legislation.” *Lopez*, 514 U.S. at 566.

Article I, § 8 of the Constitution provides that “Congress shall have power” to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” For the first century of the Republic, “the Court’s Commerce Clause decisions dealt but rarely with the extent of Congress’ power.” *Id.* at 553. For the next fifty years, Commerce-Clause jurisprudence developed in response to a

modernizing economy, often employing “formal distinction[s]” between “direct” and “indirect” effects. *Id.* at 554-55. During this era, many regulatory laws were struck down as exceeding the scope of the limited power described in the Commerce Clause. *Id.*

In the mid-1930s, however, the New Deal “ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause.” *Id.* at 556. For the next sixty years, the Court’s view of the commerce power was “expansive, and indeed almost unlimited.” Erwin Chemerinsky, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 259 (6th ed. 2019). “From 1937 until 1995, not one federal law was declared unconstitutional as exceeding the scope of Congress’s commerce power.” *Id.* Indeed, “it [was] difficult to imagine anything that Congress could not regulate under the commerce clause so long as it was not violating another constitutional provision.” *Id.* at 276.

That changed in 1995, when this Court, in *Lopez*, “took a significant step toward reaffirming this Court’s commitment to proper constitutional limits on Congress’ commerce power.” *Alderman v. United States*, 131 S. Ct. 700, 703 (2011) (Thomas, J., dissenting from denial of certiorari); *id.* at 701 (explaining that *Lopez* “endeavored to more sharply define and enforce limits” on the commerce power). In *Lopez*, this Court surveyed a century of commerce jurisprudence, 514 U.S. at 552-58, and then 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,” *id.* at 559.²

Ultimately, the Court in *Lopez* struck down a federal law that prohibited possession of a firearm in a school zone. *Id.* at 551. The Court explained: “The 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. “Even . . . the most far reaching example of Commerce Clause authority over intrastate activity” in the Court’s New Deal jurisprudence, the Court observed, “involved economic activity in a way that the possession of a gun in a school zone does not.” *Id.* at 560 (citing *Wickard v. Filburn*, 317 U.S. 111 (1942)).

Five years later, in *United States v. Morrison*, 529 U.S. 598 (2000), this Court reaffirmed these critical limits on the reach of the Commerce Clause, striking down another federal law for exceeding Congress’s commerce authority. In doing so, the Court confirmed that the nature of the regulated activity was central to the analysis, noting that “in those cases where we have sustained federal regulation of intrastate activity based upon the activity’s substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor.” 529 U.S. at 611; *see*

² *Lopez*, in total, “identified three broad categories of activity that Congress may regulate under its commerce power.” 514 U.S. at 558. In addition to “activities that substantially affect interstate commerce,” the Court explained that Congress can regulate “use of the channels of interstate commerce” and “instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities.” *Id.* at 558-59 (internal citation omitted). “Mere possession of a firearm fits uneasily within any of these categories,” but “[t]he closest candidate might be ‘activities that substantially affect interstate commerce.’” *United States v. Bonner*, 159 F.4th 338, 341 (5th Cir. 2025) (Willett, J., concurring). Indeed, *Lopez* itself analyzed firearm possession only under the substantial effects test after “quickly dispos[ing] of” the other two categories. *See* 514 U.S. at 559.

also id. at 613 (“[T]hus far in our Nation’s history our cases have upheld Commerce Clause regulation of intrastate activity *only where that activity is economic in nature.*” (emphasis added)). Accordingly, the Court “reject[ed] the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” *Id.* at 616.

Most recently, in *NFIB*, Chief Justice Roberts explained 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). And not just any activity, but “existing commercial activity.” *Id.* at 552, 556. 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.

In other words, Congress can regulate individuals’ activity when they are “currently engaged in commerce” but not “individuals as such.” *Id.* at 557. “Any police power to regulate individuals as such, as opposed to their activities, remains vested in the States.” *Id.* “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.” *Id.* Four other Justices echoed Chief Justice Roberts’s analysis, emphasizing that Congress could only regulate “*activity* affecting commerce[.]” *Id.* at 658 (Scalia, Kennedy, Thomas, Alito, JJ., dissenting).

As *Lopez* and its progeny make clear: “The Constitution requires a distinction between what is truly national and what is truly local.” *Morrison*, 529 U.S. at 617–

18. And these constitutional limits on the commerce power are essential to securing limited government and maintaining federalism, including in criminal law. “Under our federal system, the ‘States possess primary authority for defining and enforcing the criminal law.’ . . . When Congress criminalizes conduct already denounced as criminal by the States, it effects a ‘change in the sensitive relation between federal and state criminal jurisdiction.’” *Lopez*, 514 U.S. at 561 n.3 (citations omitted). “Congress has no power to enact a comprehensive criminal code.” *Bonner*, 159 F.4th at 340 (Willett, J., concurring).

Despite this sea change, this Court has yet to apply modern Commerce-Clause jurisprudence to § 922(g)(1), one of the most prosecuted criminal statutes enacted by Congress under its Commerce Clause power.

B. In conflict with Lopez, lower courts continue to rely on Scarborough to uphold § 922(g)(1) under the Commerce Clause.

Despite *Lopez*, *Morrison*, and *NFIB*—lower courts have continued to hold that *Scarborough* forecloses Commerce Clause challenges to § 922(g)(1) entirely. See *Hemani*, 146 S. Ct. at 1694 (Thomas, J., concurring) (collecting cases and describing the development of this issue). For example, in *United States v. Rawls*, the Fifth Circuit rejected a post-*Lopez* Commerce Clause challenge to § 922(g)(1), believing that *Scarborough* “carrie[d] a strong enough implication of constitutionality to now bind us, as an inferior court, on that issue.” 85 F.3d 240, 243 (5th Cir. 1996) (Garwood, J., specially concurring). As a result, the Fifth Circuit in *Rawls* simply did not apply the *Lopez* framework at all.

The circuits’ continued “reliance on *Scarborough*” when analyzing § 922(g) Commerce Clause challenges is “erroneous for at least two reasons.” *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc). “First, the Court’s holding in *Scarborough* was statutory, not constitutional.” *Id.* (citations omitted). “Second, *Scarborough* pre-dates *Lopez*, where the Court cabined the constitutional power of the federal government under the Commerce Clause.” *Id.*

Importantly, *Scarborough* said nothing about the Constitution: “No party alleged that the statute exceeded Congress’ authority, and the Court did not hold that the statute was constitutional.” *Alderman*, 131 S. Ct. at 701 (Thomas, J., dissenting). Thus, *Rawls* should not have treated *Scarborough* as binding on the constitutional question, especially at the expense of applying the on-point *Lopez* decision. “Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (quoting *Webster v. Fall*, 266 U.S. 507, 511 (1925)).

Moreover, *Scarborough* is irreconcilable with this Court’s modern Commerce Clause jurisprudence. See *Alderman*, 131 S. Ct. at 702 (Thomas, J., dissenting) (“*Scarborough* . . . cannot be reconciled with *Lopez*.”); *Bonner*, 159 F.4th at 342 (Willett, J., concurring) (“In concluding otherwise, we have strayed from the Supreme Court’s considered interpretations of the Commerce Clause in *Lopez*, *Morrison*, and *NFIB*[.]”). Thus, the circuits’ general refusal to re-examine the Commerce question in

the modern legal era means no less than “the nullification of . . . recent Commerce Clause jurisprudence,” which “threatens the proper limits on Congress’ commerce power and may allow Congress to exercise police powers that our Constitution reserves to the States.” *Alderman*, 131 S. Ct. at 700 (Thomas, J., dissenting).

Indeed, the lower courts’ treatment of *Scarborough* grants the federal government near unlimited power to regulate the affairs of American citizens—which *Lopez* made clear is not constitutionally tolerated. *Id.* at 702-03 (“[T]he lower courts’ reading of *Scarborough*, by trumping the *Lopez* framework, could very well remove any limit on the commerce power.”). This is not hyperbole. In *Alderman*, for example, “[t]he Government actually conceded . . . that Congress could ban possession of french fries that have been offered for sale in interstate commerce.” *Id.* at 703. “If it’s enough that some object (or component of an object) at some unknown (and perhaps unknowable) point in time traveled across state lines to confer federal jurisdiction, it’s hard to imagine anything that would remain outside the federal government’s commerce power.” *Seekins*, 52 F.4th at 990 (Ho, J., dissenting). “After all, it’s hard to imagine any physical item that has not traveled across state lines at *some* point in its existence, either in whole or in part.” *Id.* (emphasis original). “That is no limit at all.” *Id.* at 989.

Under *Lopez* and its progeny, “it is difficult to see how § 922(g)(1) honors the principle of enumerated powers.” *Bonner*, 159 F.4th at 341 (Willett, J., concurring). Indeed, a person—like Mr. Celestine—who merely possesses a firearm in a manner no way connected with its prior movement in interstate commerce “is not ‘active in

the [firearm] market’ in any pertinent sense.” *See NFIB*, 567 U.S. at 556. Far from it: Simple firearm possession is not an economic activity—it is noneconomic. *See Lopez*, 514 U.S. at 551, 561, 567. That means Congress cannot regulate firearm possession under an “aggregate effect” on commerce theory. *Morrison*, 529 U.S. at 617; *Bonner*, 159 F.4th at 342 (Willett, J., concurring) (“At best, § 922(g)(1) can meet the substantial-effects test only by aggregating the impact of all firearm possession by felons. Yet aggregation is ordinarily appropriate only when the underlying activity is economic—and firearm possession is not.”); *GDF Realty Invs. v. Norton*, 326 F.3d 622, 630 (5th Cir. 2003) (“[T]he key question for purposes of aggregation is whether the nature of the regulated activity is economic.”).

Simply put, “[t]he mere fact that a felon”—like Mr. Celestine—“possesses a firearm which was transported in interstate commerce years before the current possession cannot rationally be determined to have a ‘substantial impact on interstate commerce’ as of the time of current possession.” *United States v. Kuban*, 94 F.3d 971, 978 (5th Cir. 1996) (DeMoss, J., dissenting in part). In other words, § 922(g)(1) does not actually regulate activities that substantially affect interstate commerce but instead regulates “individuals as such”—here, felons—in violation of the Commerce Clause and at the expense of the States and federalism. *See NFIB*, 567 U.S. at 557; *Morrison*, 529 U.S. at 617-19; *Lopez*, 514 U.S. at 561 n.3.

Accordingly, this Court should grant Mr. Celestine’s Petition to apply its modern Commerce-Clause jurisprudence to § 922(g)(1) and to reexamine *Scarborough*’s ongoing validity in light of that precedent.

II. 18 U.S.C. § 922(g)(1) is unconstitutionally vague under the Fifth Amendment because it fails to provide actual notice of who can and cannot lawfully possess a firearm.

Alternatively, this Court should grant Mr. Celestine’s Petition to determine whether § 922(g)(1) is unconstitutionally vague under the Fifth Amendment’s Due Process Clause and, specifically, to clarify whether statutes like § 922(g)(1)—which criminalize conduct protected by the Second Amendment—should be subject to facial or as-applied void-for-vagueness review.

This too is an issue of critical importance. Indeed, it now has become virtually impossible for citizens to know *a priori* whether they can or cannot continue to exercise their Second Amendment rights following a felony conviction. Although § 922(g)(1)’s text purports to permanently divest *all* felons of their Second Amendment rights, in practice the statute no longer does, nor can it under *Bruen* without violating the Second Amendment. Instead, numerous lower courts (such as the Fifth Circuit) have avoided striking down § 922(g)(1) in its entirety by deeming it constitutional or unconstitutional on a case-by-case basis, *i.e.*, as applied to certain subsets of felons or even to individual felons.³ As Judge Higginson recently observed: “Our caselaw strives to bring coherence to the felony-by-felony approach, but the challenge remains that certain predicate felonies have not yet been adjudged.” *United States v. Hembree*, 165 F.4th 909, 913 (5th Cir. 2026).⁴ Not only that, the statute itself

³ See, e.g., *Range v. Att’y Gen. United States of Am.*, 69 F.4th 96, 103-06 (3d Cir. 2023), *cert. granted, judgment vacated sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024), *on remand*, 124 F.4th 218 (3d Cir. 2024); *Diaz*, 116 F.4th at 470 n.4; *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024).

⁴ See also *id.* (collecting predicate-by-predicate Fifth Circuit cases and citing *United States v. Hernandez*, 159 F.4th 425, 428 (5th Cir. 2025); *United States v. Kimble*, 142 F.4th 308, 314-15 (5th Cir. 2025); *United States v. Mitchell*, 160 F.4th 169, 194 (5th Cir. 2025); *United States v. Doucet*, No.

sheds no light on what the *judiciary* now has determined is the law's proper scope.

Under this opaque, piecemeal approach (which is still ongoing), some people with felony convictions have been deemed outside of § 922(g)(1)'s reach, while others continue to face prosecution. And that process has been entirely unpredictable. An ordinary citizen cannot possibly know beforehand who falls into which camp. That leaves those with a prior felony conviction who wish to possess firearms to merely guess how a court would resolve § 922(g)(1)'s applicability to their specific convictions, based on yet-to-be-produced historical evidence. *See United States v. Cockerham*, 162 F.4th 500, 517 (5th Cir. 2025) (Higginson, J., dissenting) (“Almost twenty million Americans have felony convictions. Thus, I am even more cautious about our court’s piecemeal approach to the § 922(g)(1) landscape, which provides little notice to these Americans of the serious recidivism consequences they could face.”). The result is the untenable choice for many citizens of risking liberty and a felony conviction, on the one hand, or forfeiting their Second Amendment rights, on the other.

Thus, the judiciary’s re-writing of § 922(g)(1) to save it from one constitutional peril (wholesale invalidation under the Second Amendment) has now exposed it to another (a due process violation under the Fifth Amendment). The result is that this deeply flawed statute is unconstitutionally vague and should be invalidated under the Fifth Amendment.

And, as Fifth Circuit caselaw on this topic illustrates, at least three circuits have failed to rectify this defect based on a fundamental misunderstanding of the

24-30656, 2025 WL 3515404, at *6 (5th Cir. Dec. 8, 2025); *United States v. Kendall*, No. 24-40441, 2025 WL 1983938, at *2 (5th Cir. July 17, 2025)).

void-for-vagueness doctrine—refusing to subject the statute to *facial* scrutiny, instead examining its vagueness on an as-applied basis. *See, e.g., United States v. Landrum*, 168 F.4th 771 (5th Cir. 2026).⁵ That contravenes this Court’s precedents holding that void-for-vagueness review of statutes implicating constitutionally protected conduct should be “concerned with the vagueness of the statute ‘on its face,’” not merely on a case-by-case basis. *United States v. Nat’l Dairy Prods. Corp.*, 372 U.S. 29, 36 (1963).

A. The Fifth Amendment prohibits vague criminal laws that fail to provide sufficient notice of unlawful conduct—and laws that reach constitutionally protected conduct are subject to more exacting scrutiny.

The Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. This Court has explained that the government “violates this guarantee by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983)).

A statute that leaves “grave uncertainty” about its reach cannot pass Due Process muster. *Johnson*, 576 U.S. at 592, 598. Rather, a statute “must be sufficiently

⁵ *See also United States v. Wilkins*, No. 24-6157, 2025 WL 3014353, at *4 (6th Cir. Oct. 28, 2025), *cert. denied*, 146 S. Ct. 1629 (2026) (“Wilkins does not attempt to argue the statute is vague as applied to his particular case. He only argues the statute is vague as a general matter. Accordingly, his claim fails.” (internal quotation marks and citation omitted)); *United States v. Mackall*, No. 23-3040, 2025 WL 2171130, at *2 (3d Cir. July 31, 2025) (“To bring a facial vagueness challenge to a criminal statute, Mackall must first show that it is vague as applied to his own circumstances. He does not attempt to do so. Instead, he argues that § 922(g)(1) is unconstitutionally vague on its face . . . Because Mackall does not argue that the statute is vague as applied to his own conduct, his challenge fails.”).

focused to forewarn of both its reach and coverage.” *Nat’l Dairy Prods. Corp.*, 372 U.S. at 33. This is “especially true where the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights”—like the Second Amendment right to keep and bear arms at issue here. *See Colautti v. Franklin*, 439 U.S. 379, 391 (1979); *Smith v. Goguen*, 415 U.S. 566, 573 (1974); *Keyishian v. Board of Regents*, 385 U.S. 589, 603-604 (1967)).

These principles have been in place for over a century. In *United States v. Reese*, this Court considered “whether a penal statute enacted by Congress . . . which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish.” 92 U.S. 214, 219 (1875). In other words, the question was “whether [a court] can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.” *Id.* The Court held no and struck down the law for two interrelated reasons. *Id.*

First, the *Reese* Court identified due process concerns: “It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.” *Id.* at 221. And second, it identified separation of powers concerns that resulted from the statute’s vagueness: “This would, to some extent, substitute the judicial for the legislative department of the government.” *Id.* “To limit this statute in the manner now asked for would be [to]

make a new law, not to enforce an old one. This is no part of [the judicial] duty.” *Id.*; *see also United States v. Davis*, 588 U.S. 445, 451 (2019) (“Our doctrine prohibiting the enforcement of vague laws rests on the twin constitutional pillars of due process and separation of powers.”). Thus, a criminal law that utilizes general language to prohibit conduct that is both within and without constitutional power to prohibit—like § 922(g)(1) does—is unconstitutionally vague.

These important constitutional limitations are fundamental to our criminal legal system. The void-for-vagueness doctrine protects “several important values.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). “First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Id.* In other words, vague laws violate due process because they do not provide “fair warning.” *Id.* “Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.” *Id.* In other words, “[a] vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Id.* at 108-09. Third, and especially relevant here, a vague law that “abuts upon sensitive areas” of constitutional freedom “operates to inhibit the exercise of those freedoms.” *Id.* at 109 (cleaned up).

B. The Courts of Appeals are misapplying these principles to § 922(g)(1).

As illustrated by the Fifth Circuit’s decision in *Landrum*, courts of appeals are misapplying the void-for-vagueness doctrine. Most critically, appellate courts have

drawn an erroneous distinction between treatment of the First and Second Amendments under the void-for-vagueness doctrine, holding that § 922(g)(1) is subject to merely case-by-case, as-applied review, rather than more exacting facial scrutiny. Additionally, courts have unduly limited their analysis to the question of whether the statute’s text—considered in a vacuum—is ambiguous, while ignoring the core question of whether the ordinary citizen has actual notice of who can and cannot lawfully possess a firearm. Both of these errors warrant this Court’s attention.

1. Lower courts have failed to recognized that laws infringing upon the Second Amendment must be subject to facial void-for-vagueness scrutiny.

First, central to the Fifth Circuit’s analysis in *Landrum*—the case that foreclosed Mr. Celestine’s void-for-vagueness claim below—was the court’s refusal to examine the *facial* constitutionality of § 922(g)(1) under the void-for-vagueness doctrine and its insistence, instead, that the statute could only be subject to an as-applied challenge examining whether the statute is vague in an individual defendant’s case. That determination was based on an erroneous distinction between the First and Second Amendments—leading to an unduly narrow application of the void-for-vagueness doctrine insofar as firearm rights are concerned.

Landrum stated broadly: “[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.” 168 F.4th at 773 (quoting *United States v. Mazurie*, 419 U.S. 544, 550 (1975)). And because § 922(g)(1) does not implicate the First Amendment, the panel held that “a criminal defendant must show that his statute of conviction ‘is vague *in his case*’”—something the defendant in *Landrum* ultimately failed to do. *Id.*

(emphasis in original). This analysis, however, ignores that § 922(g)(1)—while not infringing on the *First* Amendment—obviously infringes on the *Second*. And the panel did not explain why a statute infringing on a First Amendment right should be subjected to greater scrutiny under void-for-vagueness analysis than one that infringes on the Second Amendment right to bear arms. Certainly, the caselaw cited by the panel does not support that leap. In fact, that precedent makes clear that no such distinction is warranted.

The panel’s analysis primarily relied on *United States v. Mazurie*, in which this Court held that a statute regulating the introduction of “spirituous beverages into Indian country” was not unconstitutionally vague. 419 U.S. at 544. *Mazurie* cited past precedent—most notably, *United States v. National Dairy Products*—for the proposition that the spirit statute should be analyzed on an as-applied basis, since it did not infringe on the First Amendment. *Id.* at 550 (citation omitted)). In *National Dairy*, the statute at issue made it a crime to sell goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor. The Court noted that a distinction must be drawn “between the approach to ‘vagueness’” in cases arising under the First Amendment versus cases that did not implicate those rights. *Nat’l Dairy Prods. Corp.*, 372 U.S. at 36. Indeed, to that point, a line of cases examining statutes infringing on free expression had made clear that “standards of permissible statutory vagueness are strict in the area of free expression” precisely because they are “supremely precious in our society” and “[t]he threat of sanctions may deter their exercise.” *NAACP v. Button*, 371 U.S. 415, 432 (1963) (collecting cases).

While referencing the First Amendment, the Court in *National Dairy* made clear that the relevant line drawn by vagueness caselaw is not between the First Amendment and everything else, but between statutes infringing on constitutionally protected conduct versus those that do not. The Court explained that application of the void-for-vagueness doctrine to statutes implicating the First Amendment are “concerned with the vagueness of the statute ‘on its face’ *because such vagueness may in itself deter constitutionally protected and socially desirable conduct.*” *Nat’l Dairy Prods. Corp.*, 372 U.S. at 36. By contrast, as-applied analysis was appropriate in *National Dairy* because the challenged statute was “directed only at conduct designed to destroy competition, activity which is neither constitutionally protected nor socially desirable.” *Id.*⁶

Accordingly, contrary to the Fifth Circuit’s suggestion in *Landrum*, statutes implicating *constitutionally protected conduct* generally—not just conduct protected by the First Amendment—are “concerned with the vagueness of the statute ‘on its face,’” not just as applied. *Nat’l Dairy Prods. Corp.*, 372 U.S. at 36.

A holding to the contrary conflicts with cases like *National Dairy* and also violates Justice Alito’s warning in *McDonald* that the Second Amendment is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees” *McDonald v. Chicago*, 561 U.S. 742, 780 (2010); *see also, e.g., Bruen*, 597 U.S. at 70 (“The constitutional right to bear arms in public for self-defense

⁶ *See also Roark & Hardee LP v. Austin*, 522 F.3d 533, 552 (2008) (“[A] more stringent vagueness test should apply where a law *threatens to inhibit the exercise of constitutionally protected rights.*” (emphasis added) (internal quotation marks omitted)).

is not ‘a second-class right[.]’” (quoting *McDonald*, 561 U.S. at 780)).

But treating the Second Amendment as a second-class right is exactly what lower courts are doing by refusing to subject § 922(g)(1) to facial scrutiny. Thus, an overly broad and vague firearm regulation that threatens to infringe on Second Amendment guarantees will only be examined on a case-by-case basis and post-conviction (once the harm already has been done and the right already infringed), while one implicating obscenity will be struck down in its entirety as facially unconstitutional. The upshot is an elevation of the First Amendment right to view pornography over the Second Amendment right to bear arms⁷ and a chilling effect on the exercise of Second Amendment rights—the precise ill that void-for-vagueness cases like *National Dairy* warned about.

Thus, lower courts’ refusal to subject § 922(g)(1) to strict, facial void-for-vagueness scrutiny—instead limiting scrutiny to a narrow, as-applied framework—conflicts with this Court’s precedent and requires correction.

2. Lower courts have applied an unduly narrow view of void-for-vagueness doctrine to § 922(g)(1).

Second—regardless of whether Mr. Celestine’s claim should have been analyzed under a facial or as-applied framework—lower courts (as *Landrum* illustrates) have adopted too narrow of a view of the void-for-vagueness doctrine. Specifically, the Fifth Circuit limited its analysis of § 922(g)(1) to the narrow question

⁷ Compare *Smith*, 361 U.S. at 151 (while examining an obscenity statute, holding that “stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech”), with *Landrum*, 168 F.4th 771 (declining to apply those stricter standards in the context of the Second Amendment).

of whether its statutory language—considered in a vacuum—is ambiguous. Having narrowed the scope of the question before it, the Fifth Circuit observed that the law “clearly defines the prohibited conduct—possessing a firearm as a felon” and then held that “[t]hat clarity is dispositive.” *Landrum*, 168 F.4th at 774-75.

Section 922(g)(1) does not use the term “felon,” but instead provides that “[i]t 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 a firearm. But it is no longer true that “*any*” such person cannot possess a gun—some can and some cannot, consistent with the Second Amendment. Thus, § 922(g)(1)’s definition of prohibited conduct has been replaced with a new one—a definition that is entirely of judicial creation and which is nowhere to be found in the statute’s text.

By ignoring that reality, *Landrum* unmoored the void-for-vagueness doctrine from the constitutional rights it was designed to protect. Fundamental to our system of governance is that “[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.” *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). Instead, “[a]ll are entitled to be informed as to what the State commands or forbids.” *Id.* Thus, due process requires that all criminal laws define prohibitions with “sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender*, 461 U.S. at 357. A core concern of this doctrine is “*actual* notice to citizens.” *Id.* (emphasis added). And “the other principal element of the doctrine [is] the requirement that a legislature establish minimal guidelines to

govern law enforcement.” *Smith*, 415 U.S. at 574. A statute that “fail[s] to describe with sufficient particularity” the conduct prohibited is unconstitutionally vague. *Kolender*, 461 U.S. at 360.

As this Court made clear in *Reese*, this lack of actual notice—and, similarly, failure to establish minimal guidelines governing the law’s enforcement—may arise from judicial construction of a statute’s terms when that construction changes the meaning of the statute’s otherwise clear text or when Congress impermissibly passes off responsibility for defining those terms to the judiciary. *See Reese*, 92 U.S. 214. That makes sense: Judicial interpretation that changes the meaning of statutory text in a manner that creates unpredictability in the law’s enforcement is equally capable of inflicting the constitutional ills that the void-for-vagueness doctrine was designed to guard against. In fact, *Reese* warned of the precise type of statutory construction that has occurred in the context of § 922(g)(1), explaining: “It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.” *Id.* at 221. To that end, *Reese* specifically cautioned that a statute “should have no double meaning.” *Id.* at 219.

More recently, Justice Gorsuch reiterated the impermissibility of laws that “hand off the legislature’s responsibility for defining criminal behavior to unelected prosecutors and judges” and “leave people with no sure way to know what consequences will attach to their conduct.” *Davis*, 588 U.S. at 448. As Justice Gorsuch explained: “Only the people’s elected representatives in Congress have the power to

write new federal criminal laws. And when Congress exercises that power, it has to write statutes that give ordinary people fair warning about what the law demands of them.” *Id.* In other words, void-for-vagueness problems arise from a statute that says one thing in its text but means something different in application—particularly when judges, rather than the text of the law itself, are left to define the criminal behavior proscribed.

The lower courts do not cite cases like *Reese*, nor discuss the constitutional principles underpinning the void-for-vagueness doctrine—principles making clear that § 922(g)(1)’s current application is not constitutionally tenable. The Fifth Circuit in *Landrum*, for example, even stated that “no precedent supports the proposition that a Supreme Court decision interpreting the constitution’s protections can render a clear statute void for vagueness.” *Landrum*, 168 F.4th at 775. Instead, the Fifth Circuit held that “the vagueness doctrine requires that the *challenged statute itself* be unconstitutionally vague.” *Id.* at 774 (emphasis in original). But that a statute’s text is *one basis* for finding a vagueness problem does not mean it is the *only basis*, as *Reese* makes clear. Thus, analysis of the kind used in *Landrum* misses the forest for the trees—applying the void-for-vagueness doctrine in a manner that is divorced from its purpose. Indeed, as *Reese* illustrates, vagueness doctrine must be understood in the context of the constitutional rights it was developed to protect.

Post-*Bruen* construction of § 922(g)(1) illustrates that point. Once § 922(g)(1) ceased to actually prohibit “*any person*” with a felony conviction from possessing a firearm—and instead just *some* of those people—the statute’s text ceased to mean

what it said and failed to define the class of individuals actually divested of their Second Amendment rights. Thus, the *theoretical* clarity of the statute's text became irrelevant to the vagueness question, because that text ceased to provide accurate notice of the conduct prohibited. As a result, the statute's text does not just have a "double meaning," but an entirely secret one—a definition concealed from the public and wholly inaccessible to the ordinary person. Indeed, it is now *impossible* for the ordinary person to know from reading § 922(g)(1) who is and is not prohibited from carrying a firearm.

In other words, § 922(g)(1) does not provide "actual notice" of what conduct is and is not prohibited. And there is no constitutional significance to whether this was the fault of the legislature or the judiciary—the constitutional ill is the same. True, the mechanism creating vagueness may be different in different cases—judicial acrobatics versus legislative drafting—but the due process violation is identical: a legal prohibition is not defined with "sufficient definiteness" to permit the ordinary person to understand what conduct is permitted.

What's worse: The conduct prohibited by § 922(g)(1) is *constitutionally protected*, meaning, this lack of notice and clear guidelines as to what is and is not prohibited chills the exercise of the right to bear arms. That defect is violative of both due process and the Second Amendment. Indeed, the very line of First Amendment cases cited in *Landrum* warns explicitly that, when constitutionally protected conduct is involved, what matters most under the void-for-vagueness doctrine is "the danger of tolerating . . . the existence of a penal statute susceptible of sweeping and

improper application.” *Button*, 371 U.S. at 432–33. “These freedoms are delicate and vulnerable, as well as supremely precious in our society,” the Court has explained. *Id.* Thus, “[t]he threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.” *Id.* “Because First Amendment freedoms”—like Second Amendment freedoms—“need breathing space to survive, government may regulate in the area only with narrow specificity.” *Id.*

Section 922(g)(1) wholly fails to regulate “with narrow specificity” and, in doing so, fails to adequately define the class of individuals whose Second Amendment rights have been permanently divested, thus depriving the citizenry of adequate notice. And that is true regardless of whether the statute is considered on its face or as applied to Mr. Celestine’s particular case. The statute is unconstitutional—both facially and as applied—as a result.

III. This Court must address intractable circuit confusion over the state of 18 U.S.C. § 922(g)(1) post-*Bruen*.

Third, and finally, this Court must address the unprecedented circuit confusion over what *Bruen* means for § 922(g)(1)—one of the single most prosecuted statutes in the Federal Criminal Code. Specifically, this Court must address whether § 922(g)(1) is constitutional under the Second Amendment at all in light of *Bruen* or whether it should be invalidated in its entirety—and, if the statute remains good law as a general matter, how to analyze its constitutionality on a case-by-case, as-applied basis. Much ink has been spilled on this issue. Indeed, there are scores of petitions

raising this very issue currently pending before this Court.⁸ And for good reason: 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. *See United States v. Hunt*, 123 F.4th 697, 702–04 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *Vincent v. Bondi*, 127 F.4th 1263, 1265 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026); *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025). Some have upheld § 922(g)(1) across the board based on a historical analysis. *See Zherka v. Bondi*, 140 F.4th 68, 78–79 (2d Cir. 2025), *cert. denied*, 223 L. Ed. 2d 555 (Jan. 20, 2026); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 761–62 (9th Cir. 2024) (en banc). Still others apply *Bruen*’s text-and-history framework but reach dramatically different results, disagreeing about which historical traditions justify § 922(g)(1), whether the statute is vulnerable to as-applied challenges, and (if so) how to analyze those challenges. *See Range*, 124 F.4th at 232; *Williams*, 113 F.4th at 657; *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025).

⁸ *See* ‘SCOTUS Gun Watch,’ Duke Ctr. for Firearms Law (Aug. 10, 2026) (listing approximately forty pending petitions raising the constitutionality of § 922(g)(1) under the Second Amendment), *available at* <https://firearmslaw.duke.edu/2026/08/scotus-gun-watch-8-10-2026>.

The courts of appeals are deeply divided over the scope of a fundamental constitutional right and its application to a hugely impactful statute. Mr. Celestine's case presents yet another opportunity to resolve that turmoil.

IV. Alternatively, this Court should hold this Petition pending possible consideration of these issues in other cases or grant the Petition, vacate, and remand in light of the Fifth Circuit's en banc consideration of *United States v. Squire*.

If this Court is disinclined to grant plenary review immediately, the Court should either hold Mr. Celestine's Petition pending possible consideration of these issues in other cases or grant the Petition, vacate, and remand to the Fifth Circuit in light of the court's en banc grant in *United States v. Squire*. 2026 WL 2089721, at *1.

With respect to the Commerce Clause issue, the Fifth Circuit appears poised to reverse its prior precedent holding that, under *Scarborough*, § 922(g)(1)'s prohibition of mere firearm possession is supported by Congress's Commerce Clause power. That would likely lead to the invalidation of § 922(g)(1) on the very ground raised by Mr. Celestine. Thus, this Court should hold Mr. Celestine's Petition pending the Fifth Circuit's consideration of the Commerce Clause issue en banc or, alternatively, grant Mr. Celestine's Petition, vacate, and remand his case to the Fifth Circuit in light of that impending change in circuit law.

With respect to the Second Amendment issue, as discussed above, there are dozens of petitions currently pending before this Court raising that same issue. Thus, if this Court does not immediately grant, reverse, and remand based on *Squire*, it should instead hold Mr. Celestine's Petition while it determines how it will proceed on the similar Second Amendment Petitions currently pending before this Court.

Accordingly, justice and judicial economy counsel against outright denial of Mr. Celestine's petition. Instead, this Court should hold his petition for the time being, or grant, vacate, and remand as appropriate.

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Celestine's petition for writ of certiorari. Alternatively, this Court should hold this Petition pending possible consideration of these issues in other cases or grant the Petition, vacate, and remand in light of the Fifth Circuit's en banc consideration of *United States v. Squire*.

Respectfully submitted,

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