

No. _____

In the
Supreme Court of the United States

Jarae Demarcus Morgan,

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

- I. Whether 18 U.S.C. § 922(g)(1) comports with the Second Amendment?
- II. Whether 18 U.S.C. § 922(g) permits conviction for the possession of any firearm that has ever crossed state lines at any time in the indefinite past, and, if so, if it is facially unconstitutional?
- III. Whether at minimum this Court should grant, vacate, and remand for reconsideration because of an intervening circuit decision that may invalidate the Commerce Clause precedent on which the panel opinion below relies.

PARTIES TO THE PROCEEDING

Petitioner is Jarae Demarcus Morgan, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RELATED PROCEEDINGS

- *United States v. Morgan*, No. 4:25-cr-00104, United States District Court for the Northern District of Texas. Judgment entered Oct. 14, 2025.
- *United States v. Morgan*, No. 25-11169, United States Court of Appeals for the Fifth Circuit. Judgment entered on May 18, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jarae Demarcus Morgan seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at *United States v. Morgan*, No. 25-11169, 2026 WL 1388716 (5th Cir. May 18, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence entered in *United States v. Morgan*, No. 4:25-cr-00104 (Oct. 14, 2025), is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on May 18, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Question I

Section 922(g) of Title 18 reads:

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.

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.

Questions II & III

Article I, Section 8 of the United States Constitution provides:

The Congress shall have Power

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

Petitioner Jarae Demarcus Morgan was named in an indictment charging a single count of violating 18 U.S.C. § 922(g)(1). Mr. Morgan moved to dismiss the indictment, arguing that (1) § 922(g) violates the Second Amendment in criminalizing the possession of a firearm for life by anyone previously convicted of a felony based on this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); (2) § 922(g) violates the Second Amendment in criminalizing the possession of a firearm as applied to Mr. Morgan; and (3) Congress exceeded the limits of the Commerce Clause when it criminalized the mere possession of a firearm that at some point crossed a state line, rendering 18 U.S.C. § 922(g)(1) unconstitutional. *See Morgan*, No. 25-11169, Record on Appeal ("ROA") at 048-52. The district court denied Mr. Morgan's motion based on Fifth Circuit precedent. ROA at 065.

At rearraignment, a magistrate advised Mr. Morgan that § 922(g)(1) required the government to prove *inter alia* that Morgan knowingly possessed a firearm, and that "the possession of the charged firearm affected interstate or foreign commerce; that is, before the defendant possessed the charged firearm, it had traveled at some time from one state to another, or between any part of the United States and any other country." ROA.152. This same element was set out in the factual resume. ROA.068. Morgan further agreed that the firearm was manufactured outside of the State of Texas. ROA.069. The district court accepted Morgan's guilty plea. ROA.079.

II. Appellate Proceedings

On appeal, Mr. Morgan challenged the denial of the Motion to Dismiss on both Second Amendment and Commerce Clause grounds. He acknowledged that the issues are foreclosed in the Fifth Circuit. The court of appeals affirmed. *See* Pet.App.A.

III. Grant of En Banc Review on the Commerce Clause Issue

After the Fifth Circuit affirmed Mr. Morgan’s judgment, the same court granted rehearing en banc in another case to consider

REASONS FOR GRANTING THE PETITION

I. **This Court should decide the constitutionality of 18 U.S.C. §922(g)(1) under the Second Amendment. It should hold this Petition pending resolution of any merits cases presenting that issue.**

The Second Amendment guarantees “the right of the people to keep and bear arms.” Yet 18 U.S.C. § 922(g)(1) denies that right, on pain of 15 years imprisonment, to anyone convicted of a crime punishable by a year or more. Despite this facial conflict between the statute and the text of the constitution, the courts of appeals uniformly rejected Second Amendment challenges to the statute for many years. *See United States v. Moore*, 666 F.3d 313, 316-317 (4th Cir. 2012) (collecting cases).

This changed, however, following *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and then *United States v. Rahimi*, 602 U.S. 680 (2024). But Circuit Courts of Appeals applying *Bruen* and *Rahimi* have adopted different approaches to testing 18 U.S.C. § 922(g)(1) against Second Amendment challenges. Some circuits see no need to conduct *Bruen*’s text-and-history analysis in the

§ 922(g)(1) context, relying instead on this Court’s dicta predating *Bruen*. Others apply *Bruen*’s text-and-history framework but disagree about whether felons are part of “the people” protected by the Second Amendment. The courts of appeals have also split on the traditions that justify § 922(g)(1), and they vary as to whether the statute is vulnerable to as-applied challenges. The Court needs to clarify the Second Amendment’s relationship to § 922(g)(1).

a. The legal framework of *Bruen* and *Rahimi*

In *Bruen*, the Court held that where the text of the Second Amendment covers regulated conduct, the government may defend that regulation only by showing it comports with the nation’s historical tradition of gun regulation. 597 U.S. at 17. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *Id.* The opinion began with a comparison between the Second Amendment’s text and the challenged law. The State of New York criminalized the unlicensed possession of a firearm in the home and on the street, and any New Yorker who wanted to obtain a license to carry a firearm outside the home needed to make a showing of “proper cause.” *Id.* at 1 (quoting N.Y. Penal Law Ann. § 400.00(2)(f)). This Court began by finding a conflict between this law and the Second Amendment’s plain text. The right to bear arms, this Court explained, “refers to the right to wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Id.* at 32 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008)). Since the “definition of ‘bear’ naturally encompasses

public carry,” the Second Amendment “presumptively guarantee[d]” the petitioner’s “right to ‘bear’ arms in public for self-defense.” *Id.* at 32-33.

The Court then turned to history. The plain-text analysis established a conflict between New York’s licensing regime and the Second Amendment, so the burden shifted to the State of New York to establish the challenged law’s consistency with historical firearm regulations. On this topic, the Court began with a word of caution: “[N]ot all history is created equal.” *Id.* at 34. “Constitutional rights are,” after all, “enshrined with the scope they were understood to have when the people adopted them.” *Id.* at 34 (quoting *Heller*, 554 U.S. at 634-35). Given that reality, “historical evidence that long predates” the Second Amendment’s enactment “may not illuminate the scope of the right[s]” at issue “if linguistic or legal conventions changed in the intervening years.” *Id.* This Court similarly cautioned “against giving postenactment history more weight than it can rightly bear.” *Id.* at 35. “[T]o the extent later history contradicts what the text says, the text controls.” *Id.* at 36.

With those rules in mind, this Court surveyed “the Anglo-American history of public carry” and ultimately declared New York’s proper-cause licensing regime unconstitutional. *Id.* at 70. Sure enough, various laws “limited the intent for which one could carry arms, the manner by which one carried arms, [and] the exceptional circumstances under which one could not carry arms,” but the historical evidence established no tradition of “prohibit[ing] the public carry of commonly used firearms for personal defense.” *Id.* New York’s argument from history failed, and this Court

held the challenged licensing regime to be an unconstitutional infringement on the right to bear arms. *Id.* at 70-71.

In *Rahimi*, this Court held that 18 U.S.C. §922(g)(8)(C)(i), which prohibits possession of a firearm based on the existence of a restraining order issued after a state court has found one poses “a credible threat to the physical safety” of another person, comports with the Second Amendment. 602 U.S. at 690. The Court resolved Mr. Rahimi’s claim by comparing “the tradition the surety and going armed laws represent” to § 922(g)(8)(C)(i). *Id.* at 699. All three, this Court explained, “restrict[] gun use to mitigate demonstrated threats of physical violence.” *Id.* All three “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* All three were also temporary. *Id.* at 698. The Court emphasized its limited holding, which was “only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Id.* at 702.

That reasoning raises serious questions about the constitutionality of 18 U.S.C. §922(g)(1). Section (g)(1) imposes a permanent, not a temporary, firearm disability. And that disability can arise from all manner of criminal convictions that do not involve a judicial finding of future physical dangerousness.

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

To start, some circuits see no need to conduct *Bruen*’s text-and-history analysis in the § 922(g)(1) context, relying instead on Supreme Court dicta predating *Bruen*. Others apply *Bruen*’s text-and-history framework but disagree about whether felons

are part of “the people” protected by the Second Amendment. The courts of appeals have also split on the traditions that justify § 922(g)(1), and they vary as to whether the statute is vulnerable to as-applied challenges.

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits all “have upheld the categorical application of § 922(g)(1) to all felons.” *United States v. Duarte*, 137 F.4th 743, 747–48 (9th Cir. 2025) (citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S. Ct. 1041 (2025)); *Zherka v. Bondi*, 140 F.4th 68, 75, 78–79 (2d Cir. 2025). Each placed significant weight on this Court’s statement in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008), that “prohibitions on the possession of firearms by felons” are “presumptively lawful.” *See Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29; *Vincent*, 127 F.4th at 1265; *Dubois*, 94 F.4th at 1293; *Duarte*, 137 F.4th at 750–52; *Zherka*, 140 F.4th at 75 (relying on pre-*Bruen* precedent that cited *Heller*’s presumptively lawful language to conclude that the statute is facially constitutional).

The Second, Fourth, Eighth and Ninth Circuits went even farther. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *See Hunt*, 123 F.4th at 704–08. The Eighth Circuit reached the same end point based on the history alone. *See Jackson*, 110 F.4th at 1126–29. The en banc Ninth Circuit “agree[d] with the Fourth and Eighth Circuits that...historical tradition is sufficient to uphold the application of § 922(g)(1) to all

felons.” *Duarte*, 137 F.4th at 761 (citing *Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706).¹ The Second Circuit later joined the ranks on this side of the split. *Zherka*, 140 F.4th at 78–79.

On the other end, the Sixth Circuit has endorsed that “§ 922(g)(1) might be unconstitutional as applied to at least *some* felons.” *Duarte*, 137 F.4th at 748 (citing *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024)). “[T]he Third Circuit has held that § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps.” *Duarte*, 137 F.4th at 748 (citing *Range v. Att’y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)). And the Fifth Circuit has reversed § 922(g)(1) convictions on multiple as-applied grounds. *See United States v. Hembree*, 165 F.4th 909, 910 (5th Cir. 2026); *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025); *United States v. Mitchell*, 160 F.4th 169, 173 (5th Cir. 2025); *United States v. Doucet*, No. 24-30656, 2025 WL 3515404 (5th Cir. Dec. 8, 2025). *See also United States v. Diaz*, 116 F.4th 458, 469–70 & n.4 (5th Cir. 2024) (first opening the door to as-applied constitutional challenges post-*Bruen*).

The Third, Fifth, and Sixth Circuits agree *Heller*’s “presumptively lawful” dicta could not “supplant the most recent analysis set forth by the Supreme Court in *Rahimi*....” *Diaz*, 116 F.4th at 466. *See also Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit alone endorsed capital

¹ In *Duarte*, the en banc Ninth Circuit overruled a panel opinion holding the statute unconstitutional as applied to a person with prior convictions for vandalism, drug possession, and evading arrest. *See United States v. Duarte*, 101 F.4th 657, 661–63 (9th Cir.), *reh’g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *on reh’g en banc*, 137 F.4th 743 (9th Cir. 2025).

punishment at the founding as the dispositive historical analogue, *see Diaz*, 116 F.4th at 467–70; the Third Circuit, for its part, found the historical availability of the death penalty irrelevant, *see Range*, 124 F.4th at 231; *accord Kanter v. Barr*, 919 F.3d 437, 461–62 (7th Cir. 2019), *abrogated by Bruen* (Barrett, J., dissenting). Instead, the linchpin for the Third Circuit’s constitutional holding relied on the lack of evidence that the claimant “poses a physical danger to others.” *Range*, 124 F.4th at 232.

The Sixth Circuit adopted a mixed approach: It blessed “governments label[ing] whole classes as presumptively dangerous,” *Williams*, 113 F.4th at 657, but it “refuse[d] to defer blindly to § 922(g)(1) in its present form,” *Range*, 124 F.4th at 230 (citing *Williams*, 113 F.4th at 658–61). According to the Sixth Circuit, “history shows that § 922(g)(1) might be susceptible to an as-applied challenge” by individuals who show they are “not dangerous....” *Williams*, 113 F.4th at 657. The Fifth Circuit later agreed in part with this analysis. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the circuits departed on the scope of the inquiry. *Compare United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025), *with Williams*, 113 F.4th at 659–60. The Third Circuit aligns with the Sixth Circuit on this point. *Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025). Thus, the Court needs to clarify the Second Amendment’s relationship to § 922(g)(1).

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 is enough 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 (1977), 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).

Because *Scarborough* cannot be reconciled with these more recent precedents this Court should grant review to resolve that tension. “In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.” *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 533 (2012) (“*NFIB*”). Powers outside those explicitly enumerated by the Constitution are denied to the National Government. *Id.* at 534 (“The Constitution’s express conferral of some powers makes clear that it does not grant others.”) There is no general federal police power. *See United States v. Morrison*, 529 U.S. 598, 618-619 (2000). Every exercise of Congressional power must be justified by reference to a particular grant of authority. *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 535 (“The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions.”). A limited central government promotes accountability and “protects the liberty of the individual from arbitrary power.” *Bond*, 572 U.S. at 863.

The Constitution grants Congress a power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Art. I, § 8, cl. 3. But this power “must be read carefully to avoid creating a general federal authority

akin to the police power.” *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 536. Despite these limitations, and the text of Article I, Section 8, this Court has held that “[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states,” and includes a power to regulate activities that “have a substantial effect on interstate commerce.” *United States v. Darby*, 312 U.S. 100, 118-119 (1941). Relying on this expansive vision of Congressional power, this Court held in *Scarborough*, that a predecessor statute to 18 U.S.C. § 922(g) reached every case in which a felon had firearms that had once moved in interstate commerce. It turned away concerns of lenity and federalism, finding that Congress had intended the interstate nexus requirement only to insure the constitutionality of the statute. 431 U.S. at 577.

It is hard to square *Scarborough*, and the expansive idea of the commerce power on which it relies, with more recent holdings of the Court in this area. In *Nat’l Fed’n of Indep. Bus.*, five members of this Court found that the individual mandate part of the Affordable Care Act could not be justified by reference to the Commerce Clause. *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 557-558 (Roberts., C.J. concurring). Although the Court recognized that failing to buy health insurance affects interstate commerce, five Justices did not think that the constitutional phrase “regulate Commerce ... among the several States,” could reasonably be construed to include enactments that compelled individuals to engage in commerce. *Id.* at 550 (Roberts., C.J. concurring). Rather, they understood that phrase to presuppose an existing commercial activity to be regulated. *Id.* (Roberts., C.J. concurring).

The majority of this Court in *NFIB* thus required more than a demonstrable effect on commerce: the majority required that the challenged enactment itself be a regulation of commerce – that it affect the legality of preexisting commercial activity. Possession of firearms, like the refusal to buy health insurance, may “substantially affect commerce.” But this possession is not, without more, a commercial act.

NFIB does not explicitly repudiate the “substantial effects” test. The Chief Justice’s opinion quotes *Darby*’s statement that “[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states...” *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 549 (Roberts., C.J. concurring); see also *id.* at 552-553 (Roberts., C.J. concurring)(distinguishing *Wickard v. Filburn*, 317 U.S. 111 (1942)). So it is perhaps possible to read *NFIB* narrowly: as an isolated prohibition on affirmatively compelling people to engage in commerce. But it is hard to understand how this reading would be at all consistent with *NFIB*’s textual reasoning.

This is so because 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 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 allowed 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).

And much of the Chief Justice’s language in *NFIB* adheres to this view. This opinion rejects the government’s argument that the uninsured were “active in the market for health care” because they were “not currently engaged in any commercial activity involving health care...” *Id.* at 556 (Roberts., C.J. concurring) (emphasis added). The Chief Justice significantly observed that “[t]he individual mandate’s regulation of the uninsured as a class is, in fact, particularly divorced from any link to existing commercial activity.” *Id.* (Roberts., C.J. concurring)(emphasis added). He repeated that “[i]f the individual mandate is targeted at a class, it is a class whose commercial inactivity rather than activity is its defining feature.” *Id.* (Roberts., C.J. concurring)(emphasis added). He agreed that “Congress can anticipate the effects on commerce of an economic activity,” but did not say it could anticipate a non-economic activity. *Id.* (Roberts., C.J. concurring)(emphasis added). And he finally said that Congress could not anticipate a future activity “in order to regulate individuals not currently engaged in commerce.” *Id.* (Roberts., C.J. concurring)(emphasis added). Accordingly, *NFIB* supports the proposition that enactments under the Commerce Clause must regulate commercial or economic activity, not merely activity that affects commerce.

Here, the factual basis for the plea did not state that Petitioner’s possession of the gun was an economic activity. Under the reasoning of *NFIB*, this should have been fatal to the conviction. As explained by *NFIB*, the Commerce Clause permits

Congress to regulate only activities: the active participation in a market. But 18 U.S.C. § 922(g)(1) criminalizes all possession, without reference to economic activity. It sweeps too broadly.

The factual basis also did not show that Petitioner was engaged in the relevant market at the time of the regulated conduct. The Chief Justice has noted that Congress cannot regulate a person's activity under the Commerce Clause unless the person affected is "currently engaged" in the relevant market. *Id.* at 557. 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 (emphasis added). Thus, NFIB brought into serious question the long-standing notion that a firearm which has previously and remotely passed through interstate commerce should be considered to indefinitely affect commerce without "concern for when the [initial] nexus with commerce occurred." *Scarborough*, 431 U.S. at 577.

Scarborough also stands in tension with *Bond*, so § 922(g) ought not be construed to reach the possession by felons of every firearm that has ever crossed state lines. Bond was convicted of violating 18 U.S.C. § 229, a statute that criminalized the knowing possession or use of "any chemical weapon." *Bond*, 572 U.S. at 853; 18 U.S.C. § 229(a). She placed toxic chemicals – an arsenic compound and potassium dichromate – on the doorknob of a romantic rival. *Id.* The Court reversed her conviction, holding that any construction of the statute that can reach such conduct would compromise the chief role of states and localities in the suppression of

crime. *Id.* at 865-866. It instead construed the statute to reach only the kinds of weapons and conduct associated with warfare. *Id.* at 859-862.

Section 229 defined the critical term “chemical weapon” broadly as “any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.” 18 U.S.C. § 229F(8)(A). It also criminalized the use or possession of “any” such weapon, not of a named subset. 18 U.S.C. § 229(a). This Court still applied a more limited construction of the statute, reasoning that statutes should not be read to sweep in purely local activity:

The Government’s reading of section 229 would “alter sensitive federal-state relationships,” convert an astonishing amount of “traditionally local criminal conduct” into “a matter for federal enforcement,” and “involve a substantial extension of federal police resources.” [United States v.]Bass, 404 U.S. [336] 349-350, 92 S. Ct. 515, 30 L. Ed. 2d 488 [(1971)]. It would transform the statute from one whose core concerns are acts of war, assassination, and terrorism into a massive federal anti-poisoning regime that reaches the simplest of assaults. As the Government reads section 229, “hardly” a poisoning “in the land would fall outside the federal statute’s domain.” Jones [v. United States], 529 U.S. [848,] 857, 120 S. Ct. 1904, 146 L. Ed. 2d 902 [(2000)]. Of course Bond’s conduct is serious and unacceptable—and against the laws of Pennsylvania. But the background principle that Congress does not normally intrude upon the police power of the States is critically important. In light of that principle, we are reluctant to conclude that Congress meant to punish Bond’s crime with a federal prosecution for a chemical weapons attack.

Bond, 572 U.S. at 863

As in *Bond*, it is possible to read § 922(g) to reach the conduct admitted here: possession of an object that once moved across state lines, without proof that the defendant's conduct caused the object to move across state lines, nor even proof it moved across state lines recently. But to do so would intrude deeply on the traditional state responsibility for crime control. This reading would assert the federal government's power to criminalize virtually any conduct anywhere in the country, with little or no relationship to commerce, nor to the interstate movement of commodities.

The better reading of the phrase “possess in or affecting commerce” – which appears in § 922(g) – therefore requires a meaningful connection to interstate commerce. This reading would require either: 1) proof that the defendant's offense caused the firearm to move in interstate commerce, or, at least, 2) proof that the firearm moved in interstate commerce at a time reasonably near the offense.

III. At minimum, this Court should grant, vacate, and remand for reconsideration after the en banc Fifth Circuit decides *United States v. Squire*, No. 25-30324 (5th Cir. reh'g en banc granted Jul. 20, 2026).

In *Squire*, the en banc Fifth Circuit will reconsider whether its precedent “is based on an erroneous reading of *Scarborough v. United States*, 431 U.S. 564 (1977),” and finally may “apply the *Lopez* framework to § 922(g)(1)” and “bring” the Fifth Circuit's “precedent into conformity with Supreme Court precedent and the Constitution.” Petition for Reh'g En Banc iv, ECF No. 75, *United States v. Squire*, No. 25-30324 (5th Cir. Jun. 16, 2026). If the Fifth Circuit overrules its current precedent, the opinion below would rely on a plain error rationale. “Where intervening developments, or

recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate.” *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996). These intervening events “may include a wide range of developments, including our own decisions, State Supreme Court decisions, new federal statutes, administrative reinterpretations of federal statutes, new state statutes, changed factual circumstances, and confessions of error or other positions newly taken by the Solicitor General, and state attorneys general.” *Lawrence*, 516 U.S. at 166–67 (internal citations omitted) (citing *Conner v. Simler*, 367 U.S. 486, (1961); *Schmidt v. Espy*, 513 U.S. 801 (1994); *Sioux Tribe of Indians v. United States*, 329 U.S. 685 (1946); *Louisiana v. Hays*, 512 U.S. 1230 (1994); *NLRB v. Federal Motor Truck Co.*, 325 U.S. 838 (1945); *Wells v. United States*, 511 U.S. 1050 (1994); *Reed v. United States*, 510 U.S. 1188 (1994); *Ramirez v. United States*, 510 U.S. 1103 (1994); *Chappell v. United States*, 494 U.S. 1075 (1990); *Polsky v. Wetherill*, 403 U.S. 916 (1971)). The upcoming decision in *Squire*, a controlling and likely material decision of a lower court, falls comfortably within this framework. This Court should grant certiorari, vacate the judgment below, and remand for reconsideration in light of *Squire*.

CONCLUSION

Petitioner respectfully submits that at minimum this Court should grant *certiorari*, vacate the judgment of the United States Court of Appeals for the Fifth Circuit, and remand for reconsideration after the en banc Fifth Circuit decides *Squire*. Petitioner further asks this Court to grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit, or if it does so in another case to address the Second Amendment constitutionality of § 922(g)(1), should hold this Petition pending the outcome.

Respectfully submitted this 14th day of August, 2026.

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