

No. _____

In the
Supreme Court of the United States

Qurran Thomas,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1) comports with the Second Amendment.
2. Whether Congress may criminalize intrastate possession of ammunition based solely on the ammunition crossing state lines at some point before the defendant came to possess it.
3. Whether at a minimum this Court should grant, vacate, and remand for reconsideration because of an intervening circuit decision that may invalidate precedent on which the panel opinion below relies.

PARTIES TO THE PROCEEDING

Petitioner is Qurrán Thomas, 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. Thomas*, No. 5:24-CR-135-H-BV-1, U.S. District Court for the Northern District of Texas. Judgment entered on October 9, 2025.
- *United States v. Thomas*, No. 25-11162, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on May 29, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Qurrán Thomas seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's unpublished opinion is available at *United States v. Thomas*, No. 25-11162, 2026 WL 1507874 (5th Cir. Mar. 29, 2026) (unpublished). It is reprinted in Appendix A. The district court's judgment and sentence in *United States v. Thomas*, No. 5:24-CR-135-H-BV (N.D. Tex. Oct. 9, 2025), is reprinted in Appendix B.

JURISDICTION

The Fifth Circuit entered its judgment on March 29, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. art. I, § 8, cl. 3:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

U.S. Const. amend. II:

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.

18 U.S.C. § 922(g)(1):

(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.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

The grand jury returned a one-count indictment against Petitioner Qurrn Thomas alleging possession of ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Record in the Court of Appeals 8-10. Specifically, the government accused him of knowingly possessing: “Sellier and Bellot .40 S&W caliber ammunition.” Record in the Court of Appeals 8.

On June 6, 2025, the government filed a Factual Resume, *i.e.*, a written stipulation of facts aimed at supplying the factual basis necessary to support a guilty plea, signed by Petitioner. Record in the Court of Appeals 31-36. In that document, he admitted, *inter alia*, that he “did knowingly possess in or affecting interstate or foreign commerce ammunition, that is, Sellier and Bellot .40 S&W caliber ammunition[.]” Record in the Court of Appeals 32. He further admitted that the ammunition he possessed “moved in foreign or interstate commerce prior to [him] possessing it in Plainview, Texas on May 16, 2024.” Record in the Court of Appeals 34.

Petitioner also signed a written plea agreement, in which the government agreed not to “bring any additional charges against” him “based upon the conduct underlying and related to” his plea of guilty. Record in the Court of Appeals 116. The plea agreement did not contain a provision waiving or otherwise affecting Petitioner’s appellate rights. *See* Record in the Court of Appeals 112-119.

Error! Reference source not found. consented to pleading guilty before a U.S. Magistrate Judge. Record in the Court of Appeals 74-75. At the hearing, the presiding judge advised **Error! Reference source not found.** that conviction under § 922(g)(1) required proof of four elements. Record in the Court of Appeals 77-78. For the “in and affecting commerce” element, Petitioner was advised that the element was met when, “before the defendant possessed the ammunition, it had traveled at some time from one state to another or between any part of the United States and any other country.” Record in the Court of Appeals 78. In addition, **Error! Reference source not found.** affirmed that the Factual Resume, *i.e.*, the written stipulation of facts he had signed was “true and correct.” Record in the Court of Appeals 82-83. The magistrate judge determined that Petitioner was “fully competent and capable of entering an informed plea,” and that his plea of “guilty” to count one of the indictment was a “knowing and voluntary plea supported by an independent basis in fact that satisfies each of the essential elements of the offense charged.” Record in the Court of Appeals 83. The magistrate judge recommended accepting Petitioner’s guilty plea, and the district court later did so without objection. Record in the Court of Appeals 39-40, 41.

The court sentenced Petitioner to 144 months of imprisonment, three years of supervised release, a \$100 special assessment, and forfeiture. Record in the Court of Appeals 57-64.

B. Appellate Proceedings

On appeal, Petitioner raised three principal challenges to his § 922(g)(1) conviction. *First*, he argued that his conviction violated his Second Amendment rights in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). *Second*, he argued that Fifth Circuit precedent misinterprets the “in or affecting commerce” element in § 922(g)(1), and therefore, that his plea was not constitutionally valid and the factual basis insufficient for conviction. *Third*, Petitioner argued that if the prevailing interpretation is correct, then § 922(g)(1) exceeds Congress’s enumerated powers.

The Fifth Circuit summarily affirmed in an unpublished opinion. *United States v. Thomas*, No. 25-11162, 2026 WL 1507874 (5th Cir. Mar. 29, 2026) (unpublished) [Appendix A]. It held that Petitioner’s Second Amendment challenge was foreclosed by *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *cert. denied*, 145 S.Ct. 2822 (2025), and the Commerce Clause issues foreclosed by *United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013). *See id.* at *1 (citing *Diaz*, 116 F.4th 471–72; *Alcantar*, 733 F.3d at 145).

REASONS FOR GRANTING THE PETITION

I. This Court should decide the constitutionality of 18 U.S.C. § 922(g)(1) under the Second Amendment.

Section 922(g)(1) is unconstitutional because its lifetime prohibition on gun possession imposes a historically unprecedented burden on the right to bear arms. No historical firearm law imposed *permanent* disarmament. And the justification behind § 922(g)(1)—disarming a broad group of potentially irresponsible individuals—also fails historical scrutiny. The decision below relied on the Fifth Circuit’s opinion in *Diaz*, which suffers from analytical flaws and is at odds with this Court’s guidance in *Bruen* and *United States v. Rahimi*, 602 U.S. 680 (2024).

This question is critically important. Section 922(g)(1) is one of the most commonly charged federal offenses. Uncertainty about whether the statute is constitutional affects thousands of criminal cases each year. Even more concerning, § 922(g)(1) categorically and permanently prohibits millions of Americans from exercising their right to keep and bear arms. This Court’s intervention is urgently needed to resolve the scope of a fundamental constitutional right. After *Rahimi*, the confusion among the courts of appeals has only deepened. This Court should grant certiorari.

A. *Bruen* abrogated precedent upholding the constitutionality of § 922(g)(1).

The Second Amendment to the United States Constitution mandates that a “well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” U.S. CONST. amend. II. In

District of Columbia v. Heller, this Court held that the Second Amendment codified an individual right to possess and carry weapons, the core purpose of which is self-defense in the home. 554 U.S. 570, 628 (2008). *See also McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding “that individual self-defense is the central component of the Second Amendment right.”).

After *Heller*, the Fifth Circuit “adopted a two-step inquiry for analyzing laws that might impact the Second Amendment.” *Hollis v. Lynch*, 827 F.3d 436, 446 (5th Cir. 2016). In the first step, courts asked “whether the conduct at issue falls within the scope of the Second Amendment right.” *United States v. McGinnis*, 956 F.3d 747, 754 (5th Cir. 2020) (quoting *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012)). This step involved determining “whether the law harmonizes with the historical traditions associated with the Second Amendment guarantee.” *Id.* at 754. If the conduct was outside the scope of the Second Amendment, the law was constitutional. *Id.* Otherwise, courts proceeded to the second step to determine whether to apply strict or intermediate scrutiny. *Id.*

In *Bruen*, this Court announced a new framework for analyzing Second Amendment claims, abrogating the two-step inquiry adopted by the Fifth Circuit and others. *See* 597 U.S. at 19. *See also Diaz*, 116 F.4th at 465 (holding that *Bruen* “render[s] our prior precedent obsolete”) (quotation omitted). It rejected step two of that framework because “*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context.” *Bruen*, 597 U.S. at 19.

The Court elaborated that, under the new framework, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. The government then “must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* Only then may a court conclude that the individual’s conduct falls outside of the Second Amendment’s “unqualified command.” *Id.* (citation omitted). *See also United States v. Rahimi*, 602 U.S. 680, 699–700 (2024) (finding § 922(g)(8) facially constitutional under *Bruen*’s Second Amendment test).

B. *Diaz* was wrongly decided, insofar as it holds that the government met its burden under *Bruen* step 2.

In *Diaz*, the Fifth Circuit considered a facial and as-applied challenge to § 922(g)(1). It first recognized that the constitutionality of § 922(g)(1) was an open question. This Court had not yet directly addressed the constitutionality of § 922(g)(1), and while the Fifth Circuit had issued prior decisions upholding the constitutionality of § 922(g)(1), these decisions relied on “the means-ends scrutiny that *Bruen* renounced” and did not survive *Bruen*. *Diaz*, 116 F.4th at 465 (citing *United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003), and *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001)). The court also rejected the government’s arguments that felons were not among “the people” protected by the Second Amendment. *See id.* at 466–67 (“*Diaz*’s status as a felon is relevant to our analysis, but it becomes so in *Bruen*’s second step of whether regulating firearm use in this way is consistent with the Nation’s historical tradition rather than in considering the Second Amendment’s initial applicability.”).

But the court ultimately affirmed Diaz’s conviction. *Id.* at 472. It found § 922(g)(1) was constitutional on its face and as-applied because there was a historical tradition of imposing severe, permanent punishments on felons like Diaz who had been convicted of theft offenses. *See id.* at 466–72. Specifically, it explained that “[a]t the time of the Second Amendment’s ratification, those—like Diaz—guilty of certain crimes—like theft—were punished permanently and severely,” that is, by death or estate forfeiture, and “permanent disarmament was [also] a part of our country’s arsenal of available punishments at that time.” *Id.*

Under *Bruen*, courts must strike down the law unless the government can meet its “heavy burden” to identify a historical tradition of regulations that are “relevantly similar” to § 922(g)(1). *United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. 2024). “The challenged and historical laws . . . must both (1) address a comparable problem (the ‘why’) and (2) place a comparable burden on the right holder (the ‘how’).” *Id.* (citing *Rahimi*, 602 U.S. 692, and *Bruen*, 597 U.S. at 27–30).

There is no way that the government could have met this heavy burden. Founding-era laws generally limited categorical disarmament to disempowered minority communities—for example, enslaved persons and Native Americans—and those perceived to be disloyal to the government. *See* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 261–65 (2020); Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America*, 25 LAW & HIST. REV. 139, 156–61 (2007). These laws are not relevantly similar to § 922(g)(1) because they did not

“impose a comparable burden on the right” and are not “comparably justified” to § 922(g)(1). *Bruen*, 597 U.S. at 29. In fact, “[p]ossessing a firearm as a felon . . . was not considered a crime until 1938 at the earliest.” *Diaz*, 116 F.4th at 468 (citing Federal Firearms Act, ch. 850, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938); An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87–342, § 2, 75 Stat. 757, 757 (1961)).

Such twentieth century laws are well beyond the historical sources cited in *Bruen*, and they cannot demonstrate a longstanding tradition of disarming felons. *See Bruen*, 597 U.S. at 66 (noting that even “late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence”). *See also Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting) (noting scholars have been unable to identify any founding-era laws disarming all felons); Adam Winkler, *Heller’s Catch-22*, 56 UCLA L. REV. 1551, 1563 & n.67 (2009) (“The Founding generation had no laws limiting gun possession by the mentally ill, nor laws denying the right to people convicted of crimes.”). Thus, the government cannot show that § 922(g)(1) is consistent with the Nation’s historical tradition of firearm regulation.

This Court’s decision in *Rahimi* also weighs in favor of striking down § 922(g)(1). *Rahimi* addressed a facial challenge to § 922(g)(8)(C)(i), the federal law that prohibits firearm possession by persons subject to certain domestic violence restraining orders. *Rahimi*, 602 U.S. 693. The Court found the government had met its burden to identify historical analogues that were “relevantly similar” to the

challenged statute. *Id.* at 697–98. Specifically, it held that the historical statutes identified by the government—surety laws and laws that prohibited riding or going armed with dangerous weapons—showed a national tradition of “temporarily disarm[ing]” an “individual found by a court to pose a credible threat to the physical safety of another.” *Id.*

But all the features that prevented this Court from striking down the *Rahimi* statute are missing from § 922(g)(1). In *Rahimi*, the Court emphasized the narrow scope of the challenged statute. It explained that “Section 922(g)(8) applies only once a court has found that the defendant represents a credible threat to the physical safety of another[,]” which “matches” the similar “judicial determinations” required in the surety and going armed laws. *Id.* at 699 (internal quotation marks omitted). The Court also emphasized the limited duration of § 922(g)(8). It explained that “Section 922(g)(8) only prohibits firearm possession so long as the defendant ‘is’ subject to a restraining order[,]” just “like surety bonds of limited duration[.]” *Id.* By contrast, § 922(g)(1) is a categorical ban that prohibits everyone convicted of a crime punishable by more than a year in prison from possessing a gun—without any individualized finding or consideration of whether or not they threaten others. *See* 18 U.S.C. § 922(g)(1). The analogues that the government relied upon in *Rahimi* cannot justify this broader, permanent ban. And this Court’s reliance on features of § 922(g)(8) that are missing from § 922(g)(1) confirms that § 922(g)(1) cannot pass constitutional muster under *Bruen* and *Rahimi*. Thus, for the same reasons § 922(g)(8) is constitutional, § 922(g)(1) is not.

Diaz held that “laws authorizing severe punishments for” certain felonies “and permanent disarmament in other cases establish that our tradition of firearm regulation supports the application of § 922(g)(1) to” certain felons. 116 F.4th at 471. This analysis suffers from critical flaws.

First, as noted above, *Diaz* held that the government had met its burden to show a “relevantly similar” historical analogue to § 922(g)(1) by relying on historical laws that punished certain crimes by capital punishment and estate forfeiture. *See Diaz*, 116 F.4th at 467–70. But contrary to the reasoning in *Diaz*, laws unrelated to firearms use are not proper analogues. This Court’s precedent requires the government to show that a modern gun law aligns with our “historical tradition of *firearm* regulation.” *Bruen*, 597 U.S. at 17 (emphasis added); *Rahimi*, 602 U.S. at 691 (same). In other words, the government’s historical analogues must regulate *firearms*; capital punishment and estate forfeiture are not firearm regulations. Indeed, *Rahimi* relied only on historical laws that “specifically addressed firearms violence.” 602 U.S. at 694–95. So did *Bruen*. *See* 597 U.S. at 38–66.

In justifying its reliance on capital punishment and estate forfeiture, however, *Diaz* asserted that *Rahimi* “consider[ed] several historical laws that were not explicitly related to guns.” *Diaz*, 116 F.4th at 468. But *Rahimi* says just the opposite. In *Rahimi*, this Court relied on two historical legal regimes—surety laws and going armed laws—that “*specifically addressed firearms violence*.” 602 U.S. at 694–95 (emphasis added). To be sure, surety laws were not “passed *solely* for the purpose of regulating firearm possession or use.” *Diaz*, 116 F.4th at 468. But this Court

emphasized that, “[i]mportantly for this case, the surety laws also targeted the misuse of firearms.” *Rahimi*, 602 U.S. at 696 (emphasis added). “The purpose of capital punishment in colonial America was threefold: deterrence, retribution, and penitence.” *Diaz*, 116 F.4th at 469 (citation omitted). Targeting the misuse of firearms was *not* one of its purposes. Yet it was a primary purpose for permanent felon disarmament, which aimed “to keep firearms out of the hands of those who are ‘a hazard to law-abiding citizens’ and who had demonstrated that ‘they may not be trusted to possess a firearm without becoming a threat to society.’” *Id.* (citation omitted). In other words, laws that did *not* target the misuse of firearms—like capital punishment and estate forfeiture—are *not* proper analogues.

Second, *Diaz* noted that this Court accepted a “greater-includes-the-lesser” argument in *Rahimi*. *Diaz*, 116 F.4th at 469–70. This is true only insofar as in *Rahimi*, both the greater restriction (imprisonment under the going armed laws) and the lesser punishment (disarmament under 18 U.S.C. § 922(g)(8)) had *the same purpose*. *Rahimi* held that “if imprisonment was permissible to ***respond to the use of guns to threaten the physical safety of others***, then the lesser restriction of temporary disarmament ... is also permissible.” 602 U.S. at 682 (emphasis added). But it does not follow, as *Diaz* concluded, that “if capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible.” *Diaz*, 116 F.4th at 469. Capital punishment simply did not target gun violence. Because neither capital punishment nor estate forfeiture

establishes a tradition of *firearm* regulation, this Court’s precedent forecloses employing them as historical analogues for § 922(g)(1).

Third, an historical law must match both metrics to be considered relevantly similar—the why *and* the how—to serve as an analogue under *Bruen*. *Diaz* accordingly mis-stepped when it concluded that “[g]oing armed laws are relevant historical analogues to § 922(g)(1), just as *Rahimi* found them to be with respect to § 922(g)(8).” *Diaz*, 116 F.4th at 471. In short, “the justification behind going armed laws—to ‘mitigate demonstrated threats of physical violence’—does not necessarily support a tradition of disarming [felons] whose underlying convictions do not inherently involve a threat of violence.” *Diaz*, 116 F.4th at 471 n.5 (quoting *Rahimi*, 602 U.S. at 698). *Diaz* nonetheless relied on these historical laws because of a match on the “how” part of the test, ignoring the deficit on the “why.” *See id.* (“We focus on these laws to address the ‘how’ of colonial-era firearm regulation, rather than the ‘why,’ which is supported by other evidence.” (citing *Bruen*, 597 U.S. at 29)). This approach directly contradicts this Court’s instruction to match an analogue on *both* metrics. *Connelly*, 117 F.4th at 274 (citing *Rahimi*, 602 U.S. at 692; *Bruen*, 597 U.S. at 27–30).

The comparison to *Rahimi* also glossed over a critical difference between § 922(g)(1) and § 922(g)(8)(C)(i), which “applies only once a court has found that the defendant ‘represents a credible threat to the physical safety’ of another.” *Rahimi*, 602 U.S. at 699 (quoting 18 U.S.C. § 922(g)(8)(C)(i)). “That matches the . . . going armed laws,” *Rahimi* reasoned, “which involved judicial determinations of whether a

particular defendant likely would threaten or had threatened another with a weapon.” *Id.* As *Diaz* itself recognized, § 922(g)(1), unlike § 922(g)(8), casts its net irrespective of threats of violence. *Diaz*, 116 F.4th at 471 n.5. *Diaz* cannot excuse this incongruity by only half-applying *Bruen*.

Ultimately, there are no historical firearms laws that imposed the type of categorical, permanent disarmament effected by § 922(g)(1). The government therefore cannot overcome the presumption that § 922(g)(1) violates the Second Amendment. *See Bruen*, 597 U.S. at 24. The statute is unconstitutional, and this Court should grant certiorari.

C. This Court should intervene to resolve the Circuit split regarding the scope of the Second Amendment.

Not only was *Diaz* wrongly decided, but it deepened an intractable split among the Courts of Appeals regarding the scope of the Second Amendment right. The Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have held that § 922(g)(1) may be constitutionally applied to all felons. *See United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025) (citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024) (rejecting an as-applied challenge on a categorical basis); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024) (same); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025) (rejecting an as-applied challenge because neither *Bruen* nor *Rahimi* abrogated circuit precedent foreclosing such a challenge); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, — U.S. —, 145 S.Ct. 1041 (2025) (holding that *Bruen* did not abrogate circuit precedent foreclosing such challenges)).

The Third, Fifth, and Sixth Circuits remain open to as-applied challenges, but disagree on how to analyze such a challenge. The Fifth Circuit, as noted above, considers as-applied challenges by defendants whose relevant felonies were not punished “permanently and severely,” that is, by death or estate forfeiture. *Diaz*, 116 F.4th at 472. The Fifth Circuit has also determined that an individual may be constitutionally disarmed if his predicate conviction “convey[s] that he belongs to a class of dangerous felons that our regulatory tradition permits legislatures to disarm.” *United States v. Mancilla*, 155 F.4th 449, 452 (5th Cir. 2025) (quoting *United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025)) (cleaned up).

In the Sixth Circuit, however, the defendant bears the burden of proving that he is “not dangerous.” *United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). And unlike in the Fifth Circuit—where, in conducting the dangerousness inquiry, the court may only consider “prior convictions that are punishable by imprisonment for a term exceeding one year[,]” *United States v. Schnur*, 132 F.4th 863, 867 (5th Cir. 2025) (quoting *Diaz*, 116 F.4th at 467) (cleaned up)—a Sixth Circuit court “may consider a defendant’s *entire* criminal record—not just the specific felony underlying his § 922(g)(1) conviction.” *Williams*, 113 F.4th at 659–60 (emphasis added).

Significantly, the Third Circuit upheld an as-applied challenge by an individual with a decades-old food stamp fraud conviction, holding that the government could not show a historical tradition of depriving people like him of his Second Amendment right. *Range v. Att’y Gen. U.S.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc). It adopted yet another standard, holding that § 922(g)(1) is unconstitutional

as applied to someone who did not “pose[] a physical danger to others’ if armed[.]” *Pitsilides v. Barr*, 128 F.4th 203, 210 (3d Cir. 2025) (quoting *Range*, 124 F.4th at 232). It urged courts to “consider all factors that bear on a felon’s capacity to possess a firearm without posing such a danger[.]” which includes an individual’s “entire criminal history,” and also “post-conviction conduct.” *Id.* at 211–12.

In sum, disagreements abound — not only inter-circuit, but intra-circuit too. In *Range*, the en banc Third Circuit generated six opinions, including one dissent. The Ninth Circuit in *Duarte*, also en banc, generated four opinions, including one partial dissent. *Williams*, a panel decision, produced a concurrence in the judgment only. In short, judges “are currently at sea when it comes to evaluating firearms legislation[.]” and are in “need [of] a solid anchor for grounding their constitutional pronouncements.” *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring). Indeed, as the inter and intra circuit splits demonstrate, there is a dire need for this Court to intervene.

D. In the alternative, this Court should hold the instant petition pending the resolution of another case presenting the same issue.

Should the Court grant certiorari in another case presenting a challenge to § 922(g)(1), it should hold Petitioner’s petition pending the outcome. *See Lawrence on Behalf Lawrence v. Chater*, 516 U.S. 163, 166 (1996); *Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be ‘GVR’d’ when the case is decided.”) (emphasis in original).

II. This Court should delineate the boundaries of federal authority under the Commerce Clause in the firearm context.

A predecessor to 18 U.S.C. § 922(g), the Omnibus Crime Control and Safe Streets Act of 1968 prohibited “[a]ny person who . . . has been convicted by a court of the United States or of a State...of a felony” from receiving, possessing, or transporting “in commerce or affecting commerce any firearm.” Pub. L. No. 90-351, § 1202, 82 Stat. 197. In *Scarborough v. United States*, this Court addressed “whether 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.” *Scarborough v. United States*, 431 U.S. 563, 564 (1977) (emphasis added). *Scarborough* answered this question “yes,” but the Court did not linger on the constitutional implications of its statutory construction. *See id.* at 577. *See also United States v. Johnson*, 42 F.4th 743, 750 (7th Cir. 2022) (noting that the decision in *Scarborough* “was one of statutory interpretation”); *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc) (“[T]he Court’s holding in *Scarborough* was statutory, not constitutional.”).

By contrast, this Court *did* examine the constitutional question presented by 18 U.S.C. § 922(q) in *United States v. Lopez*, 514 U.S. 549 (1995). The statute “made it a federal offense ‘for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.’” *Id.* at 551 (quoting 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V)). The district court held that the act constituted a valid exercise of Congress’s commerce power, but the appellate court

reversed. *Id.* at 551–52. This Court affirmed the appellate court’s ruling that the statute lay “beyond the power of Congress under the Commerce Clause.” *Id.* at 552 (cleaned up).

In so doing, the Court cabined Congress’s commerce power to “three broad categories of activity” subject to regulation: (1) “the use of the channels of interstate commerce”; (2) activities, even if intrastate, that threaten “the instrumentalities of interstate commerce, or persons or things in interstate commerce”; and (3) “activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce.” *Id.* at 558–59 (cleaned up). The Court quickly disposed of any justification for § 922(q) under the first two categories, focusing its inquiry on the third. *Id.* at 559. It noted that § 922(q) was “a criminal statute that by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise,” elaborating in a footnote that “States possess primary authority for defining and enforcing the criminal law” and that federal criminalization of “conduct already denounced as criminal by the States . . . effects a change in the sensitive relation between federal and state criminal jurisdiction.” *Id.* at 561 & n.3 (cleaned up). The Court also expressed deep concern that the government’s arguments for why possession of a firearm in a local school zone substantially affected commerce lent themselves to no limiting principle, opening the door to a “a general federal police power.” *Id.* at 563–66. Ultimately, the Court concluded that “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.

“Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.” *Id.*

Given *Lopez*, it is “doubt[ful] that § 922(g)(8)” —and by extension § 922(g)(1)— “is a proper exercise of Congress’s power under the Commerce Clause.” *Rahimi*, 602 U.S. at 765 n.6 (2024) (citing *Lopez*, 514 U.S. at 585 (Thomas, J., concurring)) (Thomas, J., dissenting). But lower courts cannot conclusively resolve the tension between *Scarborough* and *Lopez*. The ultimate question posed by *Lopez*—“whether” intrastate possession of a firearm that crossed state lines long before the regulated possession “affect[s] interstate commerce sufficiently to come under the constitutional power of Congress to regulate”—“can be settled finally only by this Court.” *United States v. Morrison*, 529 U.S. 598, 614 (2000) (cleaned up).

A. Federal appellate courts have struggled to reconcile *Scarborough* and *Lopez*.

Federal courts have “cried out for guidance from this Court” on this issue for decades. *Alderman v. United States*, 131 S.Ct. 700, 702 (2011) (Thomas, J., dissenting from the denial of certiorari). Simply put, “*Scarborough* is in fundamental and irreconcilable conflict with the rationale of the United States Supreme Court in [*Lopez*].” *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting in part). Until recently, the Fifth Circuit “continue[d] to enforce § 922(g)(1)” unquestioningly because it considered itself “not at liberty to question the Supreme Court’s approval of the predecessor statute to [§ 922(g)(1)].” *United States v. Kirk*, 105 F.3d 997, 1015 n.25 (5th Cir. 1997) (en banc) (per curiam). See also *United*

States v. Rawls, 85 F.3d 240, 243 (5th Cir. 1996) (per curiam) (Garwood, J., concurring) (“[O]ne might well wonder how it could rationally be concluded that mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm had, perhaps decades previously before the charged possessor was even born, fortuitously traveled in interstate commerce,” but concluding that *Scarborough*’s “implication of constitutionality” “bind[s] us, as an inferior court, . . . whether or not the Supreme Court will ultimately regard it as a controlling holding in that particular respect.”).

The Fifth Circuit has not been alone in this perspective. *See, e.g., United States v. Patterson*, 853 F.3d 298, 301–02 (6th Cir. 2017) (“If the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent,” *i.e., Scarborough*, “that does not squarely address the constitutional issue.” (quoting *Alderman*, 131 S. Ct. at 703 (Thomas, J., dissenting from the denial of certiorari))); *United States v. Cortes*, 299 F.3d 1030, 1037 n.2 (9th Cir. 2002) (although “[t]he vitality of *Scarborough* engenders significant debate,” committing to “follow *Scarborough* unwaveringly” “[u]ntil the Supreme Court tells us otherwise”); *United States v. Bishop*, 66 F.3d 569, 587–88, 588 n.28 (3d Cir. 1995) (noting that, until the Supreme Court is more explicit on the relationship between *Lopez* and *Scarborough*, a lower court is “not at liberty to overrule existing Supreme Court precedent”); *United States v. Patton*, 451 F.3d 615, 634–35 (10th Cir. 2006) (collecting cases).

Thus, nine courts of appeals have upheld § 922(g)(1) based solely on *Scarborough*'s minimal nexus test. See *United States v. Smith*, 101 F.3d 202, 215 (1st Cir. 1996); *United States v. Santiago*, 238 F.3d 213, 216–17 (2d Cir. 2001) (per curiam); *United States v. Gateward*, 84 F.3d 670, 671–72 (3d Cir. 1996); *Rawls*, 85 F.3d at 242–43; *United States v. Lemons*, 302 F.3d 769, 771–73 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992 (8th Cir. 1995) (per curiam); *United States v. Hanna*, 55 F.3d 1456, 1461–62, 1462 n.2 (9th Cir. 1995); *United States v. Dorris*, 236 F.3d 582, 584–86 (10th Cir. 2000); *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). Two courts of appeals have engaged in *Lopez*'s substantial-effects test and reasoned that § 922(g)(1) is constitutional under it. See *United States v. Crump*, 120 F.3d 462, 466 & n.2 (4th Cir. 1997) (citing *United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995) (en banc), *abrogated on other grounds by Rehaif v. United States*, 588 U.S. 225 (2019)); *United States v. Chesney*, 86 F.3d 564, 568–70 (6th Cir. 1996).

Because courts often fail to apply the *Lopez* test to firearm possession cases, defendants across the country are denied *Lopez*'s guarantee of protection from congressional overreach guaranteed. For instance, applying *Lopez* would demand that § 922(g)'s “possess in or affecting commerce” element 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. But *Scarborough* continues to control the outcome in a large majority of circuits, leaving the “empty, formalistic” requirement of a jurisdictional

provision as the only check on Congress's power to criminalize this kind of intrastate activity. *Chesney*, 86 F.3d at 580 (Batchelder, J., concurring).

B. An unchecked Commerce power significantly expands Congress's reach into state affairs.

The federal government's enumerated powers are "few and defined," while the powers which remain in the state governments are "numerous and indefinite." *Lopez*, 514 U.S. at 552 (citing *The Federalist* No. 45, pp. 292–293 (C. Rossiter ed. 1961)). One such enumerated power is "[t]o regulate Commerce . . . among the several States[.]" U.S. Const. art. I, § 8, cl. 3. But without limits on federal regulatory power, our nationwide regulation would become "for all practical purposes . . . completely centralized" in a federal government. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 548 (1935). And "constitutional limits on governmental power do not enforce themselves. They require vigilant—and diligent—enforcement." *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from denial of rehearing en banc).

"Congress may conclude that a particular activity substantially affects interstate commerce" and decide to regulate the activity, but Congress's mere act of legislating "does not necessarily make it so." *Morrison*, 529 U.S. at 614 (quoting *Lopez*, 514 U.S. at 557 n.2) (cleaned up). Here, inserting the phrase "which has been shipped or transported in interstate or foreign commerce" after any object connected to intrastate activities that Congress may want to police cannot fulfill the constitutional requirement. *See Alderman*, 131 S. Ct. at 702 (Thomas, J., dissenting from the denial of certiorari) ("*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez* because it reduces the constitutional analysis to the mere

identification of a jurisdictional hook.”). A judicial blessing of constitutional magnitude for this minimal nexus would “effectually obliterate the distinction between what is national and what is local and create a completely centralized government.” *Lopez*, 514 U.S. at 557 (quoting *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)). The Commerce Clause power would be reduced to a rubber stamp, opening the door to a federal police power in direct contravention of the federal government the Constitution enshrines. *See Morrison*, 529 U.S. at 618 (“the Founders denied the National Government” “the police power,” “reposed in the States”); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (the Commerce Clause “must be read carefully to avoid creating a general federal authority akin to the police power”).

III. At a minimum, this Court should grant, vacate, and remand for reconsideration after the en banc Fifth Circuit decides *United States v. Squire*.

On July 20, 2026, the Fifth Circuit granted a petition for rehearing en banc in *United States v. Squire* to consider whether its precedent “is based on an erroneous reading of *Scarborough v. United States*, 431 U.S. 564 (1977).” Petition for Reh’g En Banc iv, ECF No. 75, *United States v. Squire*, No. 25-30324 (5th Cir. Jun. 16, 2026); *United States v. Squire*, 182 F.4th 481, 482 (5th Cir. 2026).

This Court should hold this Petition to await the Fifth Circuit’s en banc ruling in *Squire*. “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.” *Id.* at 166–67 (cleaned up) (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); *Polisky v. Wetherill*, 403 U.S. 916 (1971); *Cuffle v. Avenenti*, 498 U.S. 996 (1990); *Nicholson v. Boles*, 375 U.S. 25 (1963)).

The forthcoming decision in *Squire*, a controlling and likely material decision of a lower court, falls comfortably within this framework. This Court should hold this Petition, and grant certiorari, vacate the judgment below, and remand for reconsideration in light of *Squire*.

CONCLUSION

Petitioner Qurran Thomas respectfully submits that at a 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*.

Respectfully submitted this 27th day of August, 2026.

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