

No. _____

In the
Supreme Court of the United States

Chadin Derron Kelly,

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 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.
2. Whether 18 U.S.C. § 922(g)(1) comports with the Second Amendment.
3. Whether Congress may criminalize intrastate firearm possession based solely on the firearm crossing state lines at some point before the defendant came to possess it.

PARTIES TO THE PROCEEDING

Petitioner is Chadin Derron Kelly, 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. Kelly*, No. 4:25-cr-00069-P, U.S. District Court for the Northern District of Texas. Judgment entered on July 31, 2025.
- *United States v. Kelly*, No. 25-10901, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on June 10, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Chadin Derron Kelly 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The Fifth Circuit's unpublished opinion is available at *United States v. Kelly*, No. 25-10901, 2026 WL 1683485 (5th Cir. June 10, 2026). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence in *United States v. Kelly*, No. 4:25-cr-00069-P (N.D. Tex. July 31, 2025), is reprinted in Appendix B.

JURISDICTION

The Fifth Circuit entered judgment on June 10, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

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

I. Facts and Proceedings in District Court

Before this case, Petitioner Chadin Derron Kelly was convicted of robbery and was twice convicted of driving while intoxicated. ROA.214, ECF No. 29-1 [sealed], Presentence Investigation Report (PSR) ¶¶ 35–37.

Then, on June 16, 2024, local police responded to a reported shooting on the interstate. PSR ¶ 7. The victim, S.S., reported that while driving, she was forced to quickly brake after the car in front of her unexpectedly slowed. PSR ¶ 7. The car behind her then passed her on the passenger side. PSR ¶ 7. She saw the driver, who looked like he was angry and fiddling with something in his lap. PSR ¶ 7. She sped up and shots were fired, prompting her to call 911. PSR ¶ 7.

With S.S.'s help, law enforcement identified the car involved in the shooting as Petitioner Chadin Derron Kelly's vehicle. PSR ¶ 7. When law enforcement came to Kelly's home to execute a search warrant, Kelly admitted that he owned the car and that he had been driving on the interstate but denied shooting at S.S. PSR ¶ 9. Officers recovered a firearm—a Taurus model G3C 9mm-caliber pistol, search number ACK418406—and ammunition from Kelly's home. PSR ¶ 11.

On July 16, 2024, local police arrested Kelly on state charges for aggravated assault with a deadly weapon and unlawful possession of a firearm. PSR ¶¶ 14, 42–43. He was released on bond on October 26, 2024. PSR ¶¶ 14, 42–43.

On March 12, 2025, the federal grand jury in the Northern District of Texas indicted Kelly for the same firearm possession, citing a violation of 18 U.S.C. § 922(g)(1). ROA.18-21.¹ Kelly moved to dismiss the indictment, arguing that § 922(g)(1) was unconstitutional as outside Congress’s commerce power and violative of the Second Amendment. ROA.22-32. In the motion, Kelly also disputed the prevailing interpretation of § 922(g)(1), which allowed for proof of the “in and affecting commerce” element by the mere fact that the firearm at some point traveled in interstate commerce. ROA.24. The district court denied the motion. ROA.33-38.

Kelly then pleaded guilty without a plea agreement. ROA.141; PSR ¶ 81. Before his guilty plea hearing, Kelly stipulated that “the charged firearm...was not manufactured in Texas.” ROA.53. Kelly made no further admissions on when or how he came to possess the firearm. *See* ROA.41.

At arraignment, Kelly consented to proceeding before a magistrate judge. ROA.51, 98-101. The presiding judge advised Kelly that conviction under § 922(g)(1) required proof that “the possession of the charged firearm affected interstate or foreign commerce[.]” ROA.122. “[T]hat is,” the presiding judge explained, “before [Kelly] 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.122. The magistrate judge also found that a factual basis supported Kelly’s guilty plea based on

¹ The government initially accused Kelly of unlawfully possessing ammunition during the same time in a separate count. ROA.19. At the end of the prosecution and Kelly’s sentencing on the first count, the district court dismissed this second count on the government’s motion. ROA.190.

Kelly's written stipulation. ROA.143-44, 146-50. The judge recommended accepting Kelly's guilty plea, and the district court later did so without objection. ROA.5-6, 54-55.

In the Presentence Investigation Report ("PSR"), U.S. Probation held Kelly accountable for the shooting on the interstate. PSR ¶ 23. Even so, the cross-reference did not result in a higher offense level than that applicable under USSG §2K2.1 because Probation enhanced the starting offense level after classifying Kelly's Texas robbery conviction as a Guidelines "crime of violence." PSR ¶¶ 21, 23, 31. In the end, Probation calculated a 46–57 months guideline range. PSR ¶ 79.

Both parties disputed the guideline range. ROA.215, Gov't's Obj. to the PSR, ECF No. 30 [sealed]; ROA.218, Def.'s Objs. to the PSR, ECF No. 31 [sealed]. The government argued that the shooting amounted to attempted first-degree murder, and that Probation should have applied a cross-reference to USSG §2A2.1 and calculated a 121–151 months guideline range. Gov't's Obj. to PSR 1, 14. The government argued in the alternative that the shooting was a second-degree murder at minimum, triggering a 63–78 months guideline range. Gov't's Obj. to PSR 1–2, 15. Unsurprisingly, Kelly vehemently opposed that the facts supported murder and disputed that a cross-reference to USSG §2A2.1 was appropriate. ROA.220, Def.'s Resp. to Gov't's PSR Objs. 1–13, ECF No. 33 [sealed].

Kelly also made his own objection. Def.'s Objs. to the PSR 1–10. Because Texas robbery was not a Guidelines' "crime of violence," Kelly argued that Probation incor-

rectly enhanced his base offense level. Def.’s Objs. to the PSR 4–10. If the court sustained the objection, Kelly explained the guideline range under §2K2.1 would likely trigger the cross reference to §2A2.2, as the §2K2.1 range (24–30 months) would dip below the range §2A2.2 produced (27–33 months). Def.’s Objs. to the PSR 10–12. The government opposed the objection. ROA.219, Gov’t’s Resp. to PSR Obj. 4–12, ECF No. 32 [sealed].

Probation rejected both arguments in its Addendum. ROA.222, Addendum to the PSR 1–2, ECF No. 35-1. At sentencing, the court described both objections as “imperative,” ROA.168, but ultimately overruled both, ROA.176. The court then adopted the PSR and its guideline calculations. ROA.176. Nonetheless, the court imposed an upward-variance sentence of 121 months’ imprisonment. ROA.184-85. It also imposed three years of supervised release under conditions and ordered the forfeiture of the firearm and associated ammunition. ROA.185-86.

II. Appellate Proceedings

Kelly raised three challenges to his § 922(g)(1) conviction on appeal.² *First*, Kelly argued that precedent misinterprets “in or affecting commerce” in 18 U.S.C. § 922(g); and if so, that his plea was not constitutionally valid and the factual basis insufficient for conviction. *Second*, Kelly argued that, if properly interpreted, Congress exceeded its commerce power when it enacted § 922(g). *Third*, Kelly maintained

² Kelly also challenged his sentence on the basis that the court miscalculated the guideline range because Texas robbery is not a crime of violence. The court held that regardless of error, Kelly suffered no prejudice. Kelly does not seek certiorari review on that issue or the panel’s conclusion on harmlessness.

that his § 922(g)(1) conviction could not pass constitutional muster under the Second Amendment.

The Fifth Circuit affirmed in an unpublished opinion. *United States v. Kelly*, No. 25-10901, 2026 WL 1683485 (5th Cir. June 10, 2026), *reprinted at* Pet. App’x a001–a002. The panel held that Kelly’s challenges to his conviction were all foreclosed. Pet. App’x a002. It relied on *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996), and *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013), for the commerce issues; and *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), to dispose of the Second Amendment claim. Pet. App’x a002.

REASONS FOR GRANTING THIS PETITION

- I. 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. 563 (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, *United States v. Squire*, No. 25-30324 (5th Cir. Jun. 16, 2026), ECF No. 75. If the Fifth Circuit overrules *Rawls* and *Alcantar*, the opinion below thus 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 thus should grant certiorari, vacate the judgment below, and remand for reconsideration in light of *Squire*.

II. Lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions.

The Second Amendment guarantees “the right of the people to keep and bear arms.” U.S. Const. amend. II. Yet 18 U.S.C. § 922(g)(1) indiscriminately denies that right to anyone “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.” This Court should decide whether, when,

and how § 922(g)(1) prosecutions fall outside the Second Amendment’s unqualified command.

A. To sustain a prosecution under § 922(g)(1), the government must identify historical analogues that match “why” and “how” § 922(g)(1) burdens the Second Amendment right.

“When the Second Amendment’s plain text covers an individual’s conduct,” the government must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). The governing “historical inquiry” requires lower courts to find “a historical regulation” or “analogue” that is “relevantly similar” to a “modern firearm regulation” to establish the constitutionality of the modern law. *Id.* at 28–29 (quoting C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993)). Relevant similarity, as sketched out by *Bruen*, means that the regulations must match on “how and why” the Second Amendment right is burdened. *Id.* at 29. Otherwise stated, “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations....” *Id.* (cleaned up).

United States v. Rahimi, 602 U.S. 680 (2024), applied *Bruen* to a conviction under 18 U.S.C. § 922(g)(8)(C)(i). But *Rahimi* “conclude[d] 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.” *Rahimi*, 602 U.S. at 702 (emphasis added). True, *Rahimi* clarified that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that

underpin our regulatory tradition,” *id.* at 692 (citing *Bruen*, 597 U.S. at 26–31) (emphasis added), emphasizing that a “a ‘historical *twin*’ is not required,” *id.* at 701 (quoting *Bruen*, 597 U.S. at 30) (emphasis in *Rahimi*). And it found that “Section 922(g)(8)[’s]...prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition th[at] surety and going armed laws,” both “founding era regimes,” “represent.” *Id.* at 698. But *Rahimi*’s reasoning left unresolved whether the government could invoke this tradition to justify a statute like § 922(g)(1), which imposes a permanent firearm possession ban regardless of any threat, judicially determined or otherwise, that an individual person may pose. *Rahimi* thus still left lower courts “at sea when it comes to evaluating” § 922(g)(1), placing courts in acute “need [of] a solid anchor for grounding their constitutional pronouncements.” *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

Last Term, the Court revisited how *Bruen* applies to federal firearm crimes in *United States v. Hemani*, 608 U.S. —, No. 24-1234, 2026 WL 1751710 (U.S. June 18, 2026). *Hemani* considered an attempted prosecution under 18 U.S.C. § 922(g)(3) against Ali Hemani “because he uses marijuana a few times a week.” 2026 WL 1751710, at *3, *11. *Hemani* held that the Second Amendment did not tolerate it. *Id.* at *11–12. *Hemani* again explicitly left unresolved, however, how *Bruen* applies to § 922(g)(1). *Id.* at *10 n.6, *11 (U.S. June 18, 2026).

Lacking that guidance, “lower courts applying *Bruen*’s approach have been unable to produce consistent, principled results, and, in fact, they have come to conflicting conclusions on virtually every consequential Second Amendment issue to come before them.” *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up).

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).³ 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*

³ 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).

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 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 “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).

III. 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.

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 (internal citations omitted). 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. 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 differ on the relationship between *Scarborough* and *Lopez*.

Federal courts have “cried out for guidance from this Court” on this issue for decades. *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from 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). 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) (“one 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 v. United States*, 562 U.S. 1163, 131 S. Ct. at 703 (Thomas, J., dissenting from 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). Thus far, only 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 these firearm possession cases at all, defendants across the country lack the constitutional protection from congressional overreach provided by *Lopez*. 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’ power to criminalize this kind of intrastate activity. *Chesney*, 86 F.3d at 580 (Batchelder, J., concurring).

B. An unchecked Commerce power would significantly expand 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;” instead, “[t]hey 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” 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”).

CONCLUSION

Petitioner Chadin Derron Kelly 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*.

Respectfully submitted this 8th day of September, 2026.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Maria Gabriela Vega

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Attorney for Petitioner Chadin Derron Kelly

United States Court of Appeals for the Fifth Circuit

No. 25-10901
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 10, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHADIN DERRON KELLY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CR-69-1

Before KING, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

Chadin Derron Kelly pleaded guilty to possessing a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). He was sentenced to an above-guidelines sentence of 121 months of imprisonment. On appeal, Kelly argues that the district court erred in applying an enhanced base offense

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 25-10901

level under U.S.S.G. § 2K2.1(a)(4)(A) and raises several concededly foreclosed constitutional challenges to his conviction.

First, even if we assume that the district court erred in its calculation of the guidelines range, we are persuaded by the Government's showing that the error was harmless on this record, which includes the district court's reasons for the sentence and its consideration of the statutory maximum, as well as its written statement of reasons. *See United States v. Redmond*, 965 F.3d 416, 420-21 (5th Cir. 2020); *United States v. Ibarra-Luna*, 628 F.3d 712, 714 (5th Cir. 2010).

Second, Kelly contends that § 922(g)(1) as currently interpreted violates the Commerce Clause and the Second Amendment. As he correctly concedes, his arguments are foreclosed. *See United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996); *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025).

Accordingly, the district court's judgment is AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

CHADIN DERRON KELLY

Case Number: 4:25-CR-00069-P(01)
U.S. Marshal's No.: 60372-511
Frank Gatto, Assistant U.S. Attorney
Joshua Rhodes, Attorney for the Defendant

On April 9, 2025 the defendant, CHADIN DERRON KELLY, entered a plea of guilty as to Count One of the Indictment filed on March 12, 2025. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Firearm Possession by a Prohibited Person	6/25/2024	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on March 12, 2025.

Upon motion of the Government, all remaining Counts are dismissed, as to this defendant only.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed July 31, 2025.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed July 31, 2025.

Judgment in a Criminal Case
Defendant: CHADIN DERRON KELLY
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IMPRISONMENT

The defendant, CHADIN DERRON KELLY, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **One Hundred Twenty-One (121) months** as to Count One of the Indictment filed on March 12, 2025. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. 1832723 and 1832720 in the 485th Judicial District Court of Tarrant County, TX which are related to the instant offense.

The Court recommends to the Bureau of Prisons that the defendant be able to participate in the Residential Drug Abuse Treatment Program, if eligible. The Court further recommends to the BOP that the defendant be incarcerated at the FCI Texarkana facility, or as close to the Eastern District of Texas as possible.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Indictment filed on March 12, 2025.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame;
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed;
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer;
- 4) The defendant shall answer truthfully the questions asked by the probation officer;
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observed in plain view;

Judgment in a Criminal Case

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Defendant: CHADIN DERRON KELLY

Case Number: 4:25-CR-00069-P(1)

- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her employment (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer;
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours;
- 10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed , or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers);
- 11) The defendant shall not act or make an agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court;
- 12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk; and,
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

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pay the assessment imposed in accordance with 18 U.S.C. § 3013;

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month; and,

participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and Fed. R. Crim. P. 32.2(b)(4)(B), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States:

- Taurus, model G3C, 9mm-caliber pistol, Serial No. ACK418406; and
- Any associated ammunition recovered with the firearm.

Judgment in a Criminal Case
Defendant: CHADIN DERRON KELLY
Case Number: 4:25-CR-00069-P(1)

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY _____
Deputy Marshal