No. 26-5524

IN THE SUPREME COURT OF THE UNITED STATES

CHADIN DERRON KELLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 13-19) that if 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of "a crime punishable by imprisonment for a term exceeding one year," ibid., is construed to apply where the relevant firearm "crossed state lines long before" it was possessed by the defendant, Pet. 15, it would exceed Congress's authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3. That contention merits no further review.

This Court has held that "proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the [jurisdictional element]" of a similarly worded

predecessor felon-in-possession statute. Scarborough v. United States, 431 U.S. 563, 564 (1977); see United States v. Bass, 404 U.S. 336, 350 (1971) ("[T]he Government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce."). The courts of appeals have uniformly upheld that reading against constitutional challenges. See, e.g., United States v. Singletary, 268 F.3d 196, 205 (3d Cir. 2001) (collecting cases), cert. denied, 535 U.S. 976 (2002).[1]

This Court has also repeatedly denied writs of certiorari on that question. See, e.g., Landrum v. United States, cert. denied, No. 25-7530 (Oct. 19, 2026); Hensley v. United States, 146 S. Ct. 2714 (2026) (No. 25-7248); York v. United States, 146 S. Ct. 144 (2025) (No. 24-7244); Mason v. United States, 146 S. Ct. 140 (2025) (No. 24-7286); Freeman v. United States, 146 S. Ct. 129 (2025) (No. 24-7101); Martinez v. United States, 146 S. Ct. 127 (2025) (No. 24-7104); Dean v. United States, 145 S. Ct. 2859 (2025) (No. 24-7217); Riddick v. United States, 145 S. Ct. 2859 (2025) (No. 24-7182); Dominguez v. United States, 145 S. Ct. 2857 (2025) (No. 24-6772); Hemphill v. United States, 145 S. Ct. 2855 (2025) (No. 24-6731); Collette v. United States, 145 S. Ct. 2853 (2025) (No. 24-6497). The same result is warranted here.

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[1] Although the Fifth Circuit granted rehearing en banc in a case involving a facial Commerce Clause challenge to Section 922(g)(1), see United States v. Squire, 182 F.4th 481 (2026) (per curiam), that court has not yet held argument or issued a decision in that case. There is accordingly no circuit split on the question at this time.

Regardless, this case would be a poor vehicle to resolve the constitutional question because petitioner did more than just possess a firearm that crossed state lines at some point in the past. He possessed a loaded firearm while driving on the interstate and fired shots at another vehicle during a road rage incident, see Presentence Investigation Report ¶¶ 7-11 -- conduct that falls within Congress's power to "protect" "thing[s] in interstate commerce" such as "vehicles." United States v. Lopez, 514 U.S. 549, 558-559 (1995).

Petitioner further contends (Pet. 6-7) that this Court should grant the petition for a writ of certiorari, vacate the judgment below, and remand for further consideration (GVR) in light of the Fifth Circuit's decision to grant rehearing en banc in United States v. Squire, 182 F.4th 481 (2026) (per curiam). See p. 2 n.1, supra. Although this Court has previously exercised its GVR power to allow lower courts to reconsider their decisions in light of intervening en banc circuit precedent, see, e.g., Brown v. United States, 584 U.S. 928 (2018) (No. 17-6344); Sykes v. United States, 584 U.S. 928 (2018) (No. 16-9604); Lee v. United States, 562 U.S. 801 (2010) (No. 09-9085); Ryals v. United States, 561 U.S. 1003 (2010) (No. 09-8859); Welton v. United States, 559 U.S. 1034 (2010) (No. 09-8367), the government is not aware of any case -- and petitioner cites none (Pet. 6-7) -- where this Court has issued a GVR order in light of a circuit court merely granting a rehearing petition.

Nor should this Court hold the petition until the Fifth Circuit issues an en banc decision in Squire and then vacate the judgment and remand if that decision is favorable to petitioner. Although the Court appears to have followed that course in Brown and Sykes, see Brown, supra (No. 17-6344) (petition filed Oct. 6, 2017, redistributed several times, and GVR'd on Apr. 16, 2018); Sykes, supra (No. 16-9604) (petition filed June 14, 2017, redistributed several times, and GVR'd on Apr. 16, 2018), the petitioners in those cases had sought rehearing en banc, which the Eighth Circuit in both cases had denied. See 17-1420 C.A. Doc. 4559545 (July 20, 2017); 14-3139 C.A. Doc. 4377370 (Mar. 14, 2016). Here, by contrast, petitioner never sought rehearing en banc from the Fifth Circuit. Further, those cases involved a state-specific issue under the categorical approach where the regional circuit covering the relevant State -- that is, the only court of appeals likely to confront the question -- was considering the issue en banc. See United States v. Naylor, 887 F.3d 397, 399 (8th Cir. 2018) (holding that Missouri conviction for second-degree burglary did not qualify as a violent felony under the Armed Career Criminal Act, 18 U.S.C. 924(e)). In contrast, if the Fifth Circuit were to hold in Squire that Section 922(g)(1) exceeds Congress's power under the Commerce Clause, the decision would depart from the courts of appeals' current universal practice, create a conflict with all other circuits, and require intervention by this Court.

The petition for a writ of certiorari should be denied.[2]

Respectfully submitted.

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NOVEMBER 2026

[2] The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.