No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

REGINALD HERMAN SMITH, Jr.,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Should the Court overrule *Neder v. United States*, 527 U.S. 1 (1999), as inconsistent with the Fifth and Sixth Amendment principles underlying this Court's precedent in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny?

II. Does 18 U.S.C. § 922(g)(1) exceeds Congress's authority under the Commerce Clause, facially and as applied to Petitioner Reginald Smith's intrastate possession?

III. Is 18 U.S.C. § 922(g)(1) subject to as-applied Second Amendment challenges?

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below:

- United States of America
- Reginald Herman Smith, Jr.

RELATED PROCEEDINGS

The following is a list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court:

- *United States v. Smith*, No. 5:20-cr-7, U.S. District Court for the Middle District of Florida. Judgment entered December 20, 2022.
- *United States v. Smith*, No. 23-10003, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Aug. 28, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Reginald Herman Smith, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

ORDER AND OPINION BELOW

The Eleventh Circuit's August 28, 2026 opinion affirming Mr. Smith's conviction and sentence is for publication, --- F.4th ----, and is provided as **Appendix A.**

JURISDICTION

The Eleventh Circuit's opinion and judgment was entered on August 28, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I of the United States Constitution states that "Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., Art. I, § 8, cl. 3.

The Fifth Amendment to the United States Constitution states that "no person shall be . . . deprived of life, liberty, or property without due process of law."

The Sixth Amendment to the United States Constitution states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

Section 922(g)(1) of Title 18 of the United States Code states that it is "unlawful for any person . . . [w]ho has been convicted in any court of, a crime punishably by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition."

Section 924(e) of Title 18 of the United States Code states:

> (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years . . . .

STATEMENT OF THE CASE

1. In 2019, law enforcement found Petitioner Reginald Smith, Jr., with a shotgun in a state forest in Florida, hunting small game. Doc. 27 at 4–6.[1] He also had a nine MDMA pills on him. *Id.* at 6.

2. The federal government prosecuted Mr. Smith under 18 U.S.C. § 922(g)(1), alleging he possessed the firearm "in and affecting interstate commerce." Doc. 5 at 1. The felony convictions charged in the indictment included drug convictions, fleeing and eluding, false imprisonment,[2] and driving on a suspended license. Doc. 5 at 1–2.

To prosecute him federally for firearm possession, the government relied on the shotgun's manufacture outside the state of Florida and the inference that it must have crossed state lines at some point before Mr. Smiths' possession in Florida. *Id.* at 7. Mr. Smith pleaded guilty without a plea agreement. Doc. 33.

3. At sentencing, the district court found Mr. Smith subject to the Armed Career Criminal Act, 18 U.S.C. § 924(e)'s enhanced penalties

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[1] "Doc." references the district court docket entries. "App. Doc." references the appellate court docket entries.

[2] According to Mr. Smith's presentence report, the false imprisonment entailed a verbal alteration; it involved no weapons and apparently did not result in any injuries. Doc. 64 ¶ 49.

based on three prior convictions, two of which were for small sales of crack cocaine to an undercover officer about a week apart in 1993. Doc. 82 at 19. The district court imposed a 180-month sentence, ACCA's mandatory minimum. *Id.* at 20; Doc. 67.

3. On appeal, Mr. Smith challenged his ACCA enhancement, arguing that under *Erlinger v. United States*, 602 U.S. 821 (2024), the district court violated his Fifth and Sixth Amendment rights when it imposed the enhanced statutory penalty based on its own judicial factfinding, by a preponderance of the evidence, that he had three qualifying convictions committed "on occasions different from one another." App. Doc. 25 at 21–29. Among other things, he argued that *Erlinger* error was structural and so he did not need to show prejudice. *Id.* at 23–24.[3] Mr. Smith also challenged his conviction on the grounds that § 922(g)(1) plainly exceeds Congress's Commerce Clause authority and violates the Second Amendment, acknowledging that Eleventh Circuit precedent foreclosed both issues. App. Doc. 25 at 38–48.

[3] He also argued that, even if *Erlinger* error were not structural, he could satisfy all four prongs of plain-error review—there was a reasonable probability a jury would find the government hadn't proven beyond a reasonable doubt that his two small crack cocaine sales were on different occasions. *Id.* at 21–29.

4. The Eleventh Circuit affirmed. As to Mr. Smith's *Erlinger* argument, the Eleventh Circuit agreed that the district court had erred and the error was plain. *See* Pet. App. at A15–A16. But it implicitly rejected his argument that the error was structural without discussion.[4] Instead, the court reviewed the sentencing record—including the two small crack cocaine sales to an undercover officer less than a week apart in 1993—and held that, despite his argument to the contrary, Mr. Smith had not met his burden at prong three of plain-error review to show a reasonable probability of a different result. Pet. App. at A17–A21.

As to the Commerce Clause challenge, the Eleventh Circuit followed its binding precedent upholding § 922(g)(1) as facially constitutional because the statute "has an express jurisdictional requirement.'" *Id.* at A9 (citing *United States v. Edwards*, 142 F.4th 1270, 1285 (11th Cir. 2025)). The appellate court also applied its precedent to hold § 922(g)(1) constitutional as applied Mr. Smith "because his shotgun was manufactured outside of Florida, which means that it necessarily

[4] After Mr. Smith filed his initial brief, but before the decision below was issued, the Eleventh Circuit held in *United States v. Rivers*, 134 F.4th 1292, 1305–06 (11th Cir. 2025), that *Erlinger* error is subject to harmless-error review.

traveled across state lines to reach him," thus establishing the "requisite 'minimal nexus' between interstate commerce and possession." *Id.* (quoting *Edwards*, 142 F.4th at 1285).

To reject Mr. Smith's Second Amendment challenge, the Eleventh Circuit relied on *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (Jan. 20, 2026). *Id.* at A8. In *Dubois*, the Eleventh Circuit concluded that its decision in *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), remained binding precedent following *United States v. Rahimi*, 602 U.S. 680 (2025). *See* 139 F.4th at 893–94. As a result, in the Eleventh Circuit, "because [Mr.] Smith is a felon, § 922(g)(1) is constitutional as applied to him." Pet. App. at A8 (quoting *Rozier*, 598 F.3d at 771).

REASONS FOR GRANTING THE WRIT

I. This Court's review is needed to decide whether to overrule *Neder*.

This case presents an important question following the Court's recent *Erlinger* decision: Whether to overrule *Neder v. United States*, 527 U.S. 1 (1999), which the courts of appeals have uniformly relied on to hold that the failure to charge and prove to unanimous jury an element, including *Erlinger* error, is subject to harmless-error review.

In *United States v. Rivers*, 134 F.4th 1292, 1305–06 (11th Cir. 2025), the Eleventh Circuit held that *Erlinger* error is subject to harmless-error review. Thus, in the decision below, the Eleventh Circuit affirmed his ACCA sentence based on its view that—despite the fact that two of his three alleged predicates were small sales of crack cocaine to an undercover officer less than a week apart in 1993—he could not show a reasonable probability of a different result. Pet. App. A at A17–A21.

Rivers, for its part, relied on this Court's decisions in *Neder* and in *Washington v. Recuenco*, 548 U.S. 212 (2006). *Rivers*, 134 F.4th at 1305–06. *Neder* held that jury instructions that omit an element are not structural error but rather subject to harmless-error review. *Neder*, 527 U.S. at 8–9. And *Recuenco* relied conclusively on *Neder* to hold that the same rule applies to the failure to prove a sentencing factor to a jury. *Recuenco*, 548 U.S. at 18–22.

In its *Erlinger* briefing to the Supreme Court, the government argued for harmless-error review, likewise relying on *Neder* and *Recuenco*. *See* U.S. Br. at 27–28, U.S. Reply Br. at 14, *Erlinger*, 602 U.S at 821. But *Erlinger* cited neither decision, and only three justices endorsed harmless-error review. *See Erlinger*, 602 U.S. at 849–50

(Roberts, J., concurring); *id.* at 859–61 (Kavanaugh, J., joined by Alito, J., dissenting).

Mr. Smith urges the Court to grant certiorari to reconsider *Neder*.[5] The decision was criticized from the start as constitutionally untenable. As Justice Scalia explained in his dissent:

> The Court . . . acknowledges that the right to trial by jury was denied in the present case, since one of the elements was not—despite the defendant's protestation—submitted to be passed upon by the jury. But even so, the Court lets the defendant's sentence stand, because we judges can tell that he is unquestionably guilty.
>
> Even if we allowed (as we do not) other structural errors in criminal trials to be pronounced "harmless" by judges . . . it is obvious that we could not allow judges to validate this one. The constitutionally required step that was omitted here is distinctive, in that the basis for it is precisely that, absent voluntary waiver of the jury right, the Constitution does not trust judges to make determinations of criminal guilt.

Neder, 527 U.S. at 31–32 (Scalia, J., dissenting in part, joined by Souter & Ginsburg, JJ.).

Shortly after *Neder* came *Apprendi v. New Jersey*, 530 U.S. 466, 468 (2000), which held that under the Sixth Amendment, any fact that

[5] And, correspondingly, *Recuenco*.

increases a defendant's statutory penalty must be proven to a unanimous jury beyond a reasonable doubt. And the Court has since reaffirmed this constitutional bedrock principle "in response to a variety of other recent sentencing innovations." *Erlinger*, 602 U.S. at 833 (citing *United States v. Haymond*, 588 U.S. 634 (2019); *Alleyne v. United States*, 570 U.S. 99 (2013)).

If *Neder*'s embrace of harmless-error review when a jury had not found a defendant guilty of every element of a crime was dubious at the outset, *Apprendi* and its progeny confirm its infirmity. *Neder* is impossible to reconcile with the Fifth and Sixth Amendment principles underlying those bedrock decisions. As Judge Richardson, joined by Judge Diaz and Judge Floyd wrote, "there is something deeply unsatisfying" about applying harmless-error review to *Apprendi*-type errors. *United States v. Legins*, 34 F.4th 304, 423 (4th Cir. 2022). "It is bizarre that a deprivation of the jury right, which reflects a distrust of judges to adjudicate criminal guilt, can be set aside as harmless when we judges find the result sufficiently clear." *Id.*

Indeed, under *Neder*, "'the remedy for a constitutional violation by a trial judge (making the determination of criminal guilt reserved to the

jury) is a repetition of the same constitutional violation by the appellate court (making the determination of guilt reserved to the jury).'" *Id.* (quoting *Neder*, 527 U.S. at 32 (Scalia, J., dissenting in part)). That's what happened to Mr. Smith. The circuit court decided for itself that because his small crack cocaine sales were a week apart, a jury would find his offenses were on different occasions and so he was subject to ACCA's penalties—in effect replicating the district court's indisputable constitutional violation. Pet. App. at A17–A21.

This Court's intervention is needed. The courts of appeals have uniformly relied on *Neder* and *Recuenco* to hold that *Erlinger* errors are amenable to harmless-error review. *See Rivers*, 134 F.4th at 1305–06; *United States v. Beasley*, 163 F.4th 403, 406–09 (7th Cir. 2025); *United States v. Brown*, 136 F.4th 87, 93–95 (4th Cir. 2025); *United States v. Butler*, 122 F.4th 584, 589 (5th Cir. 2024); *United States v. Campbell*, 122 F.4th 624, 630–31 (6th Cir. 2024).

And the problem is not limited to *Erlinger* errors. Absent action by this Court, *Neder* will continue to give the courts of appeals permission to sit not as a court of review but as a finder of guilt in the first instance, convicting defendants of crimes and aggravated penalties that the

government never charged and a jury of the defendant's peers never found beyond a reasonable doubt. *See Legins*, 34 F.4th at 324 (expressing concern that this practice "diminishes the jury's historic" role but stating that it was "bound by" *Neder* and *Recuenco* to apply harmless error review to the omission of "all elements, including sentencing factors" (internal quotation marks omitted)).

In the recent years, this Court has "overruled several decisions inconsistent with" the "principles *Apprendi* and *Alleyne* discussed." *Erlinger*, 602 U.S. at 833–34. *Neder* should make one more.

II. This Court's review is warranted on the important and recurring question whether Congress's Commerce Clause authority empowers it to criminalize intrastate firearm possession in 18 U.S.C. § 922(g)(1).

Congress has made it criminal for nine categories of individuals, including felons, to possess firearms. 18 U.S.C. § 922(g)(1)–(9). The time for reviewing the constitutionality of § 922(g) is ripe. *See United States v. Hemani*, 608 U.S. 772, 795 (2026) (Thomas, J., concurring) ("Section 922(g) appears to exceed Congress's powers under the Commerce Clause."); *see also United States v. Bonner*, 159 F.4th 338, 340–43 (5th Cir. 2025) (Willett, J., joined by Duncan, J., concurring) ("harbor[ing] doubts that § 922(g)(1) is constitutional" under Congress's Commerce

Clause authority); *United States v. Hembree*, 165 F.4th 909, 919–21 (5th Cir. 2026) (Willett, J., concurring) (reiterating openness "to reconsidering whether § 922(g)(1) truly falls within Congress's enumerated powers"), *cert denied* Oct. 15, 2026, No. 25-1219 (presenting Second Amendment question).[6]

Section 922(g) is one of the most commonly prosecuted federal offenses. In fiscal year 2025, of the more than 66,000 cases reported to the Sentencing Commission, over 7,200 (or 10.9%) involved convictions under § 922(g). *See* United States Sentencing Commission, Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses Fiscal Year 2025, https://www.ussc.gov/research/quick-facts/section-922g-firearms (last visited Nov. 2, 2026). Of those, 89% were § 922(g)(1) convictions. *Id.*

Yet, under our Constitution, Congress lacks plenary power to "'punish felonies generally.'" *Bonner*, 159 F.4th at 340–41 & n.6 (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 428 (1821)). General police power is reserved to the states, leaving Congress with only those powers enumerated in the Constitution. *Id.* at 340–41 & n.3 (citing *United States*

[6] On July 20, 2026, the Fifth Circuit granted rehearing en banc on a petition raising a Commerce Clause challenge to § 922(g)(1). *See United States v. Squire*, 182 F.4th 481 (5th Cir. 2026).

v. Morrison, 529 U.S. 598, 607 (2000)); *United States v. Lopez*, 514 U.S. 549, 566–67 (1995).

Congress purports to rely on its Commerce Clause authority to criminalize firearm possession. *See* 18 U.S.C. § 922(g) (proscribing possession "in or affecting commerce").[7] But possession of a firearm by a felon, just like possession of a firearm in a school zone, "has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms." *Lopez*, 514 U.S. at 561; *id.* at 551–52 (affirming Fifth Circuit's decision concluding that 18 U.S.C. § 922(q), which proscribed possessing a firearm in a school zone, exceeds Congress's Commerce Clause authority); *see Hemani*, 608 U.S. at 798 (Thomas, J., concurring) ("The mere possession of a firearm that long ago crossed state lines is not 'economic activity' in any sense").

Nor can § 922(g)(1) be defended by aggregating the effect of all felon firearm possession. *Hemani*, 608 U.S. at 798 (Thomas, J., concurring) (citing *Morrison*, 529 U.S. at 617); *see Bonner*, 159 F.4th at 342 & n.18 ("[A]ggregation is ordinarily appropriate only when the underlying

[7] Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., Art. I, § 8, cl. 3.

activity is economic—and firearm possession is not") (citing *Lopez*, 514 U.S. at 567).

Mr. Smith and other § 922(g) defendants' convictions instead rest on the theory that Congress can criminalize the possession of a firearm so long as the firearm crossed state lines at some point in the past. *See Hemani*, 608 U.S. at 797 (Thomas, J., concurring); *United States v. Jordan*, 635 F.3d 1181, 1189–90 (11th Cir. 2011) (citing *United States v. Dupree*, 258 F.3d 1258, 1260 (11th Cir. 2001)). This theory, however, does not accord with the original meaning of the Commerce Clause. *See Hemani*, 608 U.S. at 797 (Thomas, J., concurring).

Nor does this theory provide any real limit to Congress's Commerce Clause authority. As several Fifth Circuit judges have written:

> If it's enough that some object (or component of an object) at some unknown (and perhaps unknowable) point in time traveled across state lines to confer federal jurisdiction, it's hard to imagine anything that would remain outside the federal government's commerce power. There is no plausible reading of the Commerce Clause, as originally understood by our Founders, that could possibly give the federal government such reach.

United States v. Seekins, 52 F.4th 988, 990 (5th Cir. 2022) (Ho, J., joined by Smith, Engelhardt, JJ., dissenting from denial of rehearing en banc)

(citing *Lopez*, 514 U.S. at 585–87 (Thomas, J., concurring)).[8]

The theory that Congress can criminalize an item's possession based on its place of manufacture originates not from the Commerce's text or history but from lower appellate courts' misapplication of this Court's decisions. *See Hemani*, 608 U.S. at 799 (Thomas, J., concurring). Some court have followed *Scarborough v. United States*, 431 U.S. 563 (1977). *See, e.g.*, *United States v. Nichols*, 124 F.3d 1265, 1266 & n.1 (11th Cir. 1997); *United States v. Rawls*, 85 F.3d 240, 242–43 (5th Cir. 1996); *see also Bonner*, 159 F.4th at 343 ("Our reliance on *Scarborough* combines these fears: our decisions now expand federal power not by remote implication from the constitutional text, but by remote implication from our own precedents").

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[8] In further support, the Fifth Circuit judges cited Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L. Rev. 101, 146 (2001) ("The most persuasive evidence of original meaning . . . strongly supports Justice Thomas's and the Progressive Era Supreme Court's narrow interpretation of the Congress's power [under the Commerce Clause]."); William J. Seidleck, *Originalism and the General Concurrence: How Originalists Can Accommodate Entrenched Precedents While Reining in Commerce Clause Doctrine*, 3 U. Pa. J. L. & Pub. Affs. 263, 269 (2018) ("The founding generation understood the term 'commerce' to mean only 'trade or exchange of goods.'. . . The writings of the framers and the purpose behind the creation of the Commerce Clause also confirm its intended narrow scope."). *Id.* at 990–91.

In *Scarborough*, this Court construed § 922(g)(1)'s predecessor and concluded that there was no indication Congress "intended to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce." 431 U.S. at 575. But Congress's statutory intention and its constitutional authority are different questions. *Scarborough*, which pre-dated *Lopez*, dealt only with the former, statutory interpretation question. *Hemani*, 608 U.S. at 800 (Thomas, J., concurring); *see Seekins*, 52 F.4th at 991 (opining that "our reliance on *Scarborough* was erroneous" because "the Court's holding in *Scarborough* was statutory, not constitutional" and "*Scarborough* pre-dates *Lopez*"); *Bonner*, 159 F.4th at 342 & n.22 ("*Scarborough* addresses only questions of statutory construction, and does not expressly purport to resolve any constitutional issue." (citation and internal quotation marks omitted)).

Some courts have also pointed to § 922(g)'s purported "jurisdictional hook"—"in or affecting commerce"—to conclude the statute passes constitutional muster under *Lopez* and *Morrison*. *Hemani*, 608 U.S. at 801 (Thomas, J., concurring) (collecting cases); *see Jordan*, 635 F.3d at 1189–90. *Lopez*, however, "considered a jurisdictional hook helpful only

if it 'would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.'" *Hemani*, 608 U.S. at 801 (Thomas, J., concurring) (quoting *Lopez*, 514 U.S. at 561). Section 922(g)'s purported "jurisdictional hook" fails in this regard because it does not require that a defendant's firearm possession affect interstate commerce. *Id.*

Mr. Smith's case presents an excellent opportunity to resolve this important constitutional question. His offense, possession, was local and non-economic; he possessed a shotgun while hunting. But § 922(g)(1) was applied to him based on the firearm's manufacture, at some point in the past, outside of Florida. The Eleventh Circuit affirmed his conviction based on its settled precedent.[9]

Accordingly, only this Court can resolve this important constitutional question. This Court should grant certiorari on this issue, which affects thousands of criminal defendants, to ensure that Congress's Commerce Clause power is "read carefully to avoid creating a general

[9] The Eleventh Circuit affirmed on plain-error review but, given its precedent, the district court could not have revisited the legal question of § 922(g)(1)'s constitutionality in any case. *See Jordan*, 635 F.3d at 1190 (maintaining its Commerce Clause precedents because they "have not been overruled by the *en banc* Court or by the Supreme Court").

federal authority akin to the police power." *Seekins*, 52 F.4th at 990 (quoting *NFIB v. Sebelius*, 567 U.S. 519, 536 (2012)) (internal quotation marks omitted).

III. This Court's review is needed to resolve the circuit split on whether § 922(g)(1) is subject to as-applied challenges.

In *Hemani*, this Court held that § 922(g)(3) is unconstitutional as applied to the petitioner who "uses marijuana a few times a week." 608 U.S. at 777; *see id.* at 782 (disagreeing with government's argument that § 922(g)(3) is constitutional "as applied in this case and others"). In *Rahimi*, this Court held that § 922(g)(8), "[a]s applied to the facts of this case," was consistent with the Second Amendment. 602 U.S. at 690. The question presented here is whether the neighboring provision in § 922(g)(1), banning felons from possessing firearms, is similarly subject to as-applied Second Amendment challenges.

This question divides the lower courts. The Eleventh Circuit, and other circuits, have concluded that "felons are categorically 'disqualified' from exercising their Second Amendment right." *Dubois*, 139 F.4th at 893 (quoting *Rozier*, 598 F.3d at 770-71); *see Hemani*, 608 U.S. at 803 n.1 (Jackson, J., with whom Sotomayor, J., joins, concurring) (citing *United States v. Duarte*, 137 F.4th 743, 761–62 (9th Cir. 2025) (categorically

affirming the constitutionality of § 922(g)(1) as applied to nonviolent felons); *United States v. Jackson*, 110 F.4th 1120, 1125, 1129 (8th Cir. 2024) (similar)). Thus, in the Eleventh Circuit there is no avenue to challenge whether an individual's prosecution under § 922(g)(1) violates the Second Amendment.

Other circuits, by contrast, have sustained as-applied challenges to § 922(g)(1). *See Hemani*, 608 U.S. at 803 n.1 (Jackson, J., with whom Sotomayor, J., joins, concurring) (citing *United States v. Cockerham*, 162 F.4th 500, 504 (5th Cir. 2025) (holding § 922(g)(1) is unconstitutional as applied to a defendant whose prior conviction was for failing to pay child support); *Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (same, where the prior conviction was for making a false statement to obtain food stamps)).

Recently, the Fifth Circuit held that § 922(g)(1) is unconstitutional as applied to a defendant whose prior conviction was simple possession of methamphetamine. *Hembree*, 165 F.4th at 910. The Solicitor General sought this Court's review and was denied. *See United States v. Hembree*, No. 25-1219, --- S. Ct. ----, 2026 WL 2976154 (Oct. 5, 2026). And the Third Circuit held that the statue is unconstitutional as applied to a defendant

with a felony driving under the influence conviction. *Williams v. Att'y Gen.*, --- F.4th ----, 2026 WL 3059230 (3d Cir. Oct. 13, 2026) (en banc). The circuit split on § 922(g)(1) accordingly persists and now impacts individuals with prior drug and driving-related convictions, like Mr. Smith. The ability to assert a core constitutional right should not depend on Mr. Smith hunting in Florida, rather than in Texas or Pennsylvania. He therefore respectfully requests this Court's review.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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November 2, 2026