No. _____

In the

Supreme Court of the United States

JESSE RAY MCCUIN,

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 WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 922(g)(1)'s prohibition against mere firearm possession exceeds the scope of Congress' power to regulate interstate and foreign commerce, both facially and as applied to Mr. McCuin.

2. Whether § 922(g)(1) is unconstitutional under the Second Amendment, both facially and as applied to Mr. McCuin.

PARTIES TO THE PROCEEDING

Petitioner is Jesse Ray McCuin, 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

This case arises from and is related to the following proceedings in the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit:

- *United States v. McCuin*, No. 1:24-cr-38-1, United States District Court for the Southern District of Mississippi. Judgment entered on October 8, 2025.

- *United States v. McCuin*, No. 25-60555, United States Court of Appeals for the Fifth Circuit. Judgment entered on August 6, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jesse Ray McCuin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. Alternatively, Mr. McCuin asks this Court to hold his petition pending the Fifth Circuit's en banc consideration of 18 U.S.C. § 922(g)(1)'s constitutionality under the Commerce Clause in *United States v. Curtis Squire* (No. 25-30324) and under the Second Amendment in *United States v. Peter Cordova* (No. 24-50564), or to grant his petition, vacate, and remand his case to the Fifth Circuit so that it can be considered by the Fifth Circuit in light of *Squire* or *Cordova.*

OPINIONS BELOW

The opinion of the court of appeals is unreported and is reproduced in Appendix A at App. 1a-2a. The order of the court of appeals denying initial hearing en banc is unreported and is reproduced in Appendix B at 3a. The district court's judgment of conviction and sentence is reproduced in Appendix C at App. 4a-9a. The district court's order denying the motion to dismiss is unreported and reproduced in Appendix D at 10a-47a.

JURISDICTION

The judgment of the court of appeals was entered on August 6, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1) provides:

> (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.

Article I, § 8 of the United States Constitution provides, in relevant part: "Congress shall have power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

Those powers include the ability "[t]o regulate Commerce . . . among the several States," and "[t]o make all Laws which shall be necessary and proper for carrying into Execution" that power. U.S. Const. art. I, § 8.

The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II.

INTRODUCTION

All that was required under governing circuit precedent to render Mr. McCuin's mere possession of a firearm a federal crime was the government's tender of proof that the firearm at issue was not manufactured in the State of Mississippi, and thus, at some unknown point in time, the firearm traveled in interstate commerce. That "minimal nexus" does not fall within a category of congressional regulation that the Commerce Clause permits, and 18 U.S.C. § 922(g)(1) cannot be reconciled with the Court's modern Commerce Clause doctrine after *United States v. Lopez*, 514 U.S. 549 (1995).

Yet, appellate courts have continued to hold that *Scarborough v. United States*, 43 U.S. 563 (1977) compels a finding that § 922(g)(1) is constitutional under the Commerce Clause and that the government need only prove the "minimal nexus" that a firearm crossed state lines at some unknown point in order to reach an individual's mere possession. *See United States v. Hemani*, 608 U.S. 772, 795-801 (2026) (Thomas, J., concurring) (collecting cases and describing the development of this issue). That holding is incompatible with this Court's modern Commerce Clause jurisprudence, which "must be read carefully to avoid creating a general federal authority akin to the police power." *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 536 (2012); *see Lopez*, 514 U.S. at 559 (holding that "the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce"). If mere possession suffices to confer federal power, the Commerce Clause authorizes the very federal police power the Constitution prohibits. This case

cleanly presents a vehicle for this Court to revisit this important issue and limit Congress to its enumerated powers.

Additionally, § 922(g)(1) forbids every person convicted of any felony from possessing any firearm for any purpose. The prohibition is indefinite, and it requires no finding that the individual is "dangerous" or that historical tradition in any way justifies his permanent disarmament. This Court has made clear that to comply with the Second Amendment, the government bears the burden of proving a modern firearm regulation is consistent with our historical tradition, but the courts of appeals have failed to hold the government to its burden as to § 922(g)(1), which is facially unconstitutional because there is no historical tradition of prohibiting all felons from possessing all firearms for life. In the aftermath of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the circuit courts remain deeply split over the question of how to apply its historical Second Amendment framework to § 922(g)(1). This case presents an opportunity to resolve whether § 922(g)(1) is constitutional under the Second Amendment, and if it is, how the lower courts must resolve Second Amendment challenges on an as-applied basis.

The Court should grant plenary review to resolve either of these recurring questions of exceptional constitutional importance. Alternatively, the Court should hold the petition pending the Fifth Circuit's en banc reconsideration of both issues raised here: (1) whether § 922(g)(1) exceeds Congress' power under the Commerce Clause in *United States v. Squire*, 182 F.4th 481 (5th Cir. 2026) (per curiam) (per curiam) (granting rehearing en banc); and (2) whether § 922(g)(1) is facially

unconstitutional under the Second Amendment, and if it is not, considering the appropriate framework governing § 922(g)(1) Second Amendment challenges in *United States v. Cordova*, --- F.4th ---, No. 24-50564, 2026 WL 2683534 (5th Cir. Sept. 14, 2026) (per curiam) (granting rehearing en banc). If the en banc court decides either issue in the petitioner's favor, the Court should grant the petition, vacate, and remand (GVR) the case to the Fifth Circuit.

STATEMENT OF THE CASE

Petitioner Jesse Ray McCuin was a backseat passenger in a vehicle subject to a traffic stop. ROA.547. During a search of the vehicle, officers located a bag on the floorboard where Mr. McCuin was sitting that contained a handgun; specifically, a Walther P380 firearm. ROA.547. Mr. McCuin has prior felony convictions for drive-by shooting, burglary of a structure, and transfer of a controlled substance, *see* ROA.162, 340, 548, and he was charged by indictment with one count of possessing a firearm after previously having been convicted of a crime punishable by a term exceeding one year, in violation of § 922(g)(1), ROA.456-57.

There were no allegations or offers of proof that Mr. McCuin, who has resided in the State of Mississippi since childhood, had in any way traveled across state lines himself with the firearm or engaged in sales transactions across state lines. *See* ROA.547-48. The only connection to interstate commerce was the government's offer of proof that "[a]n ATF interstate nexus examiner examined the Walther P380 and determined it was not manufactured in the state of Mississippi; therefore, it had to travel in interstate commerce to be here." ROA.548. Mr. McCuin's crime was purely

local and noneconomic: the mere possession of a firearm as an individual previously convicted of a felony.

Mr. McCuin filed a motion to dismiss the indictment as unconstitutional under the Second Amendment, the Fifth Amendment, and the Commerce Clause. ROA.73-74, 75-94. The district court denied his motion in a written memorandum opinion and order. ROA.328-65. He ultimately pleaded guilty to the indictment and was sentenced to a 39-month term of imprisonment to be followed by a three-year term of supervised release. ROA.423-28, 456-57, 550-51, 582, 587.

Mr. McCuin appealed. *United States v. McCuin*, No. 25-60555, 2026 WL 2268368 (5th Cir. Aug. 6, 2026). He sought initial hearing en banc, asking the Fifth Circuit to reexamine its precedent foreclosing Commerce Clause challenges to § 922(g)(1) based on an erroneous interpretation of the force of *Scarborough*. No. 25-60555, ECF 29. In his merits brief he recognized that governing Fifth Circuit precedent foreclosed all the arguments he raised. *See* ECF 31. The Fifth Circuit denied his motion for hearing en banc. ECF 54.

While Mr. McCuin's appeal was still pending, the Fifth Circuit granted a petition for rehearing en banc in a similar case, *United States v. Squire*, 182 F.4th 481, to reexamine whether § 922(g)(1) exceeds Congress' authority under the Commerce Clause. Mr. McCuin filed an unopposed motion to stay pending the granted en banc rehearing petition in *Squire*, ECF 59, which the Fifth Circuit denied, ECF 65. A panel of the Fifth Circuit affirmed Mr. McCuin's judgment in an

unpublished opinion, determining "that all of his challenges are foreclosed by our precedent." *McCuin*, 2026 WL 2268368, at *1.

REASONS FOR GRANTING THE PETITION

This case presents two important constitutional questions plaguing the lower courts' interpretation of the federal felon in possession statute, 18 U.S.C. § 922(g)(1). First, this Court should grant review to resolve whether § 922(g)(1)'s expansive reach over purely local conduct is reconcilable with *Lopez* and this Court's modern Commerce Clause doctrine. For years, lower courts have misapprehended the Court's precedent, erroneously believing they are bound by *Scarborough*'s statutory holding, or that the statue is saved by its "jurisdictional hook." This case presents an appropriate vehicle to faithfully apply *Lopez* and its progeny and to prevent Congress from continuing to "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." 514 U.S. at 567. Alternatively, the Court should hold this petition pending the resolution of en banc proceedings in *United States v. Squire*, 182 F.4th 481 (5th Cir. 2026) (per curiam), and GVR to the Fifth Circuit.

Second, this Court should grant review to resolve whether § 922(g)(1) is constitutional under the Second Amendment at all, and if it is, to provide guidance as to how courts must analyze its constitutionality on an as-applied basis. Alternatively, the Court should hold this petition pending the resolution of en banc proceedings in *United States v. Cordova*, --- F.4th ---, No. 24-50564, 2026 WL 2683534 (5th Cir. Sept. 14, 2026) (per curiam), or its consideration of the issue in another case, and then GVR to the Fifth Circuit.

I. THE COURT SHOULD GRANT REVIEW TO RESOLVE WHETHER 18 U.S.C. § 922(g)(1) CAN BE RECONCILED WITH THIS COURT'S MODERN COMMERCE CLAUSE DOCTRINE.

In recent decades, the Court has placed meaningful limits on Congress' powers under the Commerce Clause. Yet, the lower courts have failed to faithfully apply modern Commerce Clause doctrine to § 922(g)(1), which in a case like Mr. McCuin's, criminalizes purely local, non-economic activity within the purview of the States, impermissibly and dramatically expanding the reach of the federal government beyond its constitutional limits. This case presents the question whether § 922(g)(1) exceeds Congress' power to regulate interstate commerce.

A. The Question Presented Is Important And Recurring.

1. The Constitution creates a federal government of enumerated powers. *See* U.S. Const. art. I, § 8. "Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." *United States v. Morrison*, 529 U.S. 598, 607 (2000). Those powers include the ability "[t]o regulate Commerce . . . among the several States," and "[t]o make all Laws which shall be necessary and proper for carrying into Execution" that power. U.S. Const. art. I, § 8.

In relevant part, § 922(g)(1) makes it "unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition." Under the prevailing interpretation of the statute, the government can meet the "in or affecting commerce" element so long as the firearm possessed had at any point in time previously traveled in interstate commerce. *See United States v.*

Rawls, 85 F.3d 240, 242-43 (5th Cir. 1996) (per curiam); *Hemani*, 608 U.S. at 795 (Thomas, J., concurring).

"The Commerce Clause does not authorize Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines." *Hemani*, 608 U.S. at 795 (Thomas, J., concurring) (internal quotation marks and citation omitted). Yet, without the Court's intervention, the government does not need to allege or prove at trial that an individual bought the firearm from someone in another State or even carried it across state lines at any point. *See, e.g., United States v. Ervin*, 131 F.4th 253, 256, 260 (4th Cir. 2025) (upholding conviction of a North Carolina defendant for unlawfully possessing a firearm manufactured in North Carolina because someone else brought it to another State and back to North Carolina). The current law of the circuits allows the federal government to regulate the mere possession of virtually any physical item. "The federal government just has to demonstrate that the item once traveled across state lines at some point in its lifetime, no matter how distant or remote in time. That is no limit at all." *United States v. Seekins*, 52 F.4th 988, 989 (5th Cir. 2022) (per curiam) (Ho, J., dissenting from denial of rehearing en banc) (internal citation omitted).

2. The prevention of a federal police power is a question of exceptional importance significant to the basic structure of the Constitution, and the Commerce Clause "must be read carefully to avoid creating a general federal authority akin to the police power." *Sebelius*, 567 U.S. at 536. "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." *Seekins*, 52 F.4th at 990 (Ho, J., dissenting from denial of rehearing en banc). "After all, it's hard to imagine any physical item that has not traveled across state lines at *some* point in its existence, either in whole or in part." *Id.* at 990 (emphasis original). This logic "would permit a federal law outlawing the theft of a Hershey kiss from a corner store in Youngstown, Ohio, by a neighborhood juvenile on the basis that the candy once traveled in interstate commerce to the store from Hershey, Pennsylvania." *United States v. Bishop*, 66 F.3d 569, 596 (3d Cir. 1995) (Becker, J., concurring in part and dissenting in part). Or the "possession of french fries that have been offered for sale in interstate commerce." *Alderman v. United States*, 131 S. Ct. 700, 703 (2011) (Thomas, J., dissenting from the denial of certiorari).

3. "The Constitution requires a distinction between what is truly national and what is truly local." *Morrison*, 529 U.S. at 617-18. Section 922(g)(1) prosecutions comprise a great deal of federal convictions, yet in many cases, the government has not proven that the crime is anything more than local and noneconomic: the mere possession of a firearm by an individual previously convicted of a felony. There is no plausible reading of the Commerce Clause, as a matter of original meaning or under modern Commerce Clause doctrine, that confers the federal government such reach. *See Hemani*, 608 U.S. at 796-97 (Thomas, J., concurring); *Seekins*, 52 F.4th at 990-91 (Ho, J., dissenting from the denial of rehearing en banc).

"Under our written Constitution, [] the limitation of congressional authority is not solely a matter of legislative grace." *Morrison*, 529 U.S. at 616. "If the only thing limiting federal power is our ability to document (or merely speculate about) the provenance of a particular item, the Founders' assurance of a limited national government is nothing more than a parchment promise." *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from the denial of rehearing en banc).

B. Lower Courts Have Failed to Faithfully Apply This Court's Modern Commerce Clause Doctrine to § 922(g)(1).

Lower courts have coalesced around two justifications that § 922(g)(1) is within Congress' power to regulate interstate commerce: (1) that such a holding is compelled by *Scarborough*; and (2) that the statute is saved by its "jurisdictional hook." *See Hemani*, 608 U.S. at 799-801 (Thomas, J., concurring) (explaining the division and collecting cases). Neither reasoning is supported by the Court's governing precedent and modern Commerce Clause doctrine.

1. First, in *Scarborough*, the Court considered the predecessor to § 922(g)(1), 18 U.S.C. § 1202(a) (1970 ed.) (repealed 1986), which made it a crime for a felon to "receive[], possess[], or transport[] in commerce or affecting commerce" any firearm. 431 U.S. at 564. The Court determined that as a matter of statutory interpretation, the "minimal nexus that the firearm have been, at some time, in interstate commerce" was sufficient to prove a violation of the statute. *Id.* at 575.

Later, in *Lopez*, the Court reaffirmed certain limits on congressional power when it effectively invalidated the Gun Free School Act. 514 U.S. at 551. It identified "three broad categories of activity that Congress may regulate under its commerce

power": (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. *Id.* at 558-59.

Section 922(g)(1) "cannot be reconciled with this Court's modern Commerce Clause doctrine." *Hemani*, 608 U.S. at 797 (Thomas, J., concurring) (internal quotation marks and citation omitted). The statute does not fit within any of the *Lopez* categories. *See id.* at 797-98. It does not regulate the "use of the channels of interstate commerce" nor does it "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce." *Lopez*, 514 U.S. at 558-59. The statute criminalizes the mere possession of a firearm without regard to the channels or instrumentalities of interstate commerce, and "merely possessing a gun does not have a 'substantial effect' on interstate commerce." *Hemani*, 608 U.S. at 798 (Thomas, J., concurring). The mere possession of a firearm is purely intrastate noneconomic activity—the very kind of federal regulation the Court has refused to uphold. *See id.; Morrison*, 529 U.S. at 613 (noting that the Court had "upheld Commerce Clause regulation of intrastate activity only where that activity [was] economic in nature"); *Gonzales v. Raich*, 545 U.S. 1, 25 (2005) (distinguishing the "quintessentially economic" activities regulated by the Controlled Substances Act from the activities at issue in *Lopez* and *Morrison*). "The mere fact that a felon"—like Mr. McCuin—"possesses a firearm which was transported in interstate commerce years before the current possession cannot rationally be determined to have a 'substantial impact on interstate commerce' as of the time of current

possession." *United States v. Kuban*, 94 F.3d 971, 978 (5th Cir. 1996) (DeMoss, J., dissenting in part).

Thus, *Scarborough* "cannot be reconciled with *Lopez*," *Alderman*, at 702 (Thomas, J., dissenting from denial of certiorari), and *Scarborough* does not compel § 922(g)(1)'s constitutionality.[1] The question before the *Scarborough* Court was not constitutional, but statutory: whether the "*statutorily required nexus* between the possession of a firearm by a convicted felon and commerce could be satisfied by evidence that the gun had once traveled in interstate commerce." *Scarborough*, 431 U.S. at 564. (emphasis added); *see Hemani*, 608 U.S. at 800 (Thomas, J., concurring). Although the Court affirmed the conviction after concluding the legislative history of the statute gave no indication "that Congress intended to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce," there was no real analysis of whether the "minimal nexus" was *constitutionally* sufficient. *Scarborough*, 431 U.S. at 575. "It based its holding on the statute's

[1] For decades, members of the Court and lower court judges have agreed that *Lopez* and *Scarborough* are irreconcilable. *See, e.g., Alderman*, 131 S. Ct. at 703 (Thomas, J., dissenting from the denial of certiorari) ("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 that does not squarely address the constitutional issue."); *United States v. Bonner*, 159 F.4th 338, 342 (5th Cir. 2025) (Willett, J., concurring); *United States v. Hembree*, 165 F.4th 909, 919-20 (5th Cir. 2026) (Willet, J., concurring); *Seekins*, 52 F.4th at 991-92 (Ho, J., dissenting from the denial of rehearing en banc) (citing cases); *Kuban*, 94 F.3d at 977 (DeMoss, J., dissenting) ("[T]he precise holding in *Scarborough* is in fundamental and irreconcilable conflict with the rationale of [*Lopez*]."); *United States v. Alderman*, 565 F.3d 641, 648-50 (9th Cir. 2009) (Paez, J., dissenting) (arguing the majority's upholding of the felon-possession of body armor statute inappropriately extended *Scarborough* beyond the limits of *Lopez*); *United States v. Patton*, 451 F.3d 615, 636 (10th Cir. 2006) (recognizing the "considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases").

Lower court judges have also determined § 922(g) exceeds Congress' power to regulate interstate commerce. *See, e.g., Seekins*, 52 F.4th at 991 (Ho, J., dissenting from denial of rehearing en banc); *Bonner*, 159 F.4th at 343 (Willett, J., concurring); *Kuban*, 94 F.3d at 977 (DeMoss, J., dissenting in part); *United States v. Chesney*, 86 F.3d 564, 574-75 (6th Cir. 1996) (Batchelder, J., concurring).

'language' and 'legislative history,' not constitutional law." *Hemani*, 608 U.S. at 800 (Thomas, J., concurring) (quoting *Scarborough*, 431 U.S. at 575). "*Scarborough* cannot be taken, by this Court or the courts of appeals, as purporting to settle the question of § 922(g)'s constitutionality." *Id.*

2. Second, while § 922(g)(1) has a "jurisdictional hook" purporting to connect the offense to interstate commerce, that does not render the statute per se constitutional. *See Hemani*, 608 U.S. at 801 (Thomas, J., concurring) (quoting *Alderman*, 562 U.S. at 1167 (Thomas, J., dissenting from the denial of certiorari)) ("[T]reating Congress's jurisdictional element as dispositive 'could very well remove any limit on the commerce power' and 'would trespass on traditional state police powers.'"). "*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." *Alderman*, 562 U.S. at 702 (Thomas, J., dissenting from the denial of certiorari). Such a reading, "by trumping the *Lopez* framework, could very well remove any limit on the commerce power." *Id.* at 702-03.

Lopez considered a jurisdictional hook useful only if it "would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." 514 U.S. at 561. The Fifth Circuit's "minimal nexus" interpretation that the firearm must have moved in commerce at some point in time does not "limit [the statute's] reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce." *Id.* at 562. *Morrison* also considered a jurisdictional useful to the extent it could help show that the statute "is

in pursuance of Congress' power to regulate interstate commerce." 529 U.S. at 613. But simply because Congress purports to exercise its power does not mean that it does so legitimately. *See Hemani*, 608 U.S. at 802 (Thomas, J., concurring).

Scarborough's reading of the nexus element is thus too broad, and it impermissibly extends federal power over purely local activity. None of the *Lopez* categories apply to cases like Mr. McCuin's. The law of the circuits renders modern Commerce Clause precedent wholly superfluous, allowing Congress—by the mere inclusion of a broad interstate commerce element—to "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." *Lopez*, 514 U.S. at 567. "[C]ircuit precedent dramatically expands the reach of the federal government under the Commerce Clause. No Supreme Court precedent requires it. And no proper reading of the Commerce Clause permits it." *Seekins*, 52 F.4th at 992 (Ho, J., dissenting from the denial of rehearing en banc).

C. This Case Is An Ideal Vehicle For Review.

This case presents an ideal vehicle for resolving the constitutional question. The case cleanly presents the purely legal issue, which was raised below in both the district court, the Fifth Circuit, and in a petition for initial hearing en banc. *See McCuin*, No. 25-60555, ECF 54 (5th Cir. July 31, 2026) (denying petition for hearing en banc); *McCuin*, 2026 WL 2268368 (recognizing that Mr. McCuin properly preserved his constitutional challenges and affirming the judgment as foreclosed by Fifth Circuit precedent).

Mr. McCuin was convicted of a local and noneconomic crime: possessing a firearm after previously having been convicted of a felony offense. The only grounds offered to prove that the conduct had anything to do with interstate commerce was the offer of proof that "[a]n ATF interstate nexus examiner examined the Walther P380 and determined it was not manufactured in the state of Mississippi; therefore, it had to travel in interstate commerce to be here." ROA.548. There was no offer of proof by the government that Mr. McCuin's possession of the firearm took place in a channel of commerce, that it involved any facility of interstate commerce, or that Mr. McCuin's possession of the firearm had any effect whatsoever—much less a substantial effect—on interstate commerce. Indeed, it is "hard to imagine a more local crime than this." *Seekins*, 52 F.4th at 990 (Ho, J., dissenting from the denial of rehearing en banc).

II. THIS COURT SHOULD GRANT THE PETITION TO RESOLVE WHETHER AND WHEN § 922(g)(1) COMPORTS WITH THE SECOND AMENDMENT.

The Court should address whether § 922(g)(1) is constitutional under the Second Amendment, and if so, how it must be analyzed as applied to resolve the deep confusion and division amongst the courts of appeals.

1. The Second Amendment guarantees that "the right of the people to keep and bear Arms[] shall not be infringed." U.S. CONST. amend. II. To decide whether a challenged law is consistent with the Second Amendment, a court must engage in a two-step analysis. *See Bruen*, 597 U.S. at 17. "When the Second Amendment's plain text covers an individual's conduct," the burden shifts to the government to

"justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

Section 922(g)(1) is facially unconstitutional. The statute imposes an unprecedented and permanent ban on the possession of firearms for any purpose. The government has continually failed to carry its burden to prove that § 922(g)(1) "is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. There is no relevantly similar historical regulation that bans firearm possession in the same manner as § 922(g)(1) and it therefore violates the Second Amendment on its face.

2. While no circuit has yet applied *Bruen* to find § 922(g)(1) facially unconstitutional under the Second Amendment, there is no question that the lower courts have struggled to apply the *Bruen* framework with widely disparate results. *See United States v. Rahimi*, 602 U.S. 680, 691 (2024) (noting that "some courts have misunderstood" the *Bruen* methodology); *id.* at 708 (Sotomayor, J., concurring) (acknowledging that "lower courts [are] struggling to apply *Bruen*"); *id.* at 739 (Barrett, J., concurring) ("Courts have struggled with this use of history in the wake of *Bruen*."); *id.* at 743 (Jackson, J., concurring) ("[L]ower courts appear to be diverging in both approach and outcome as they struggle to conduct the inquiry *Bruen* requires of them.").

3. Since *Bruen*, a deeply entrenched circuit split has emerged concerning not only how to apply the historical tradition analysis to Second Amendment challenges, but whether the statute is vulnerable to Second Amendment challenges at all. Six

circuits have held that § 922(g)(1) is categorically constitutional under the Second Amendment. *See Zherka v. Bondi*, 140 F.4th 68, 93 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026); *United States v. Hunt*, 123 F.4th 697, 703 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025); *United States v. Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc), *cert. denied*, No. 26-425, 2026 WL 135692 (U.S. Jan. 20, 2026); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026); *United States v. Dubois*, 139 F.4th 887, 891 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026).

One circuit has held open the possibility that § 922(g)(1), as applied to some felons, may violate the Second Amendment. *See United States v. Williams*, 113 F.4th 637, 657 (6th Cir. 2024). Two circuits have held that § 922(g)(1), as applied to some felons, violates the Second Amendment. *See Range v. Att'y Gen. United States*, 124 F.4th 218, 222-23 (3d Cir. 2024) (en banc); *United States v. Mitchell*, 160 F.4th 169, 194 (5th Cir. 2025), *cert. denied*, No. 25-935, 2026 WL 1855110 (U.S. June 29, 2026).

4. Last Term this Court held that the government's prosecution of a defendant under the unlawful-user provision of 18 U.S.C. § 922(g)(3) violated the Second Amendment. *Hemani*, 608 U.S. at 795. In doing so, the Court expressly declined to decide the question presented here, reserving the question whether § 922(g)(1) violates the Second Amendment. *Id.* at 794 ("We do not address 18 U.S.C. § 922(g)(1)'s provision disarming individuals convicted of felonies (often including drug-related ones).").

Section 922(g)(1) prosecutions comprise a large portion of federal convictions and sentencings. *See* U.S. Sent'g Comm'n, *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses* 1 (FY 2025). The government itself has acknowledged "the special need for certainty about Section 922(g)(1) given the frequency with which the government brings criminal cases under it." Supp. Br. for the Federal Parties, at 10 n.5, *Garland v. Range*, No. 23-374 (filed June 24, 2024). The Court should grant review to apply *Bruen* to address the constitutionality of § 922(g)(1) under the Second Amendment and to resolve the circuit conflict.

III. ALTERNATIVELY, THE COURT SHOULD HOLD THE PETITION, AND GRANT, VACATE, AND REMAND IF THE FIFTH CIRCUIT GRANTS RELIEF IN *SQUIRE* OR *CORDOVA*.

If the Court does not grant plenary review on the questions presented here, it should hold the petition pending the Fifth Circuit's en banc consideration of these issues in *Squire* and *Cordova*, or pending possible consideration of these issues in other cases, and GVR to the Fifth Circuit if the en banc court decides either issue in the petitioner's favor.

1. The Court regularly uses 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). In addition, the Court has previously held petitions while the court of appeals considered the question presented en banc. *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).

2. The same course is warranted here. If the en banc court decides either issue in petitioner's favor, a GVR would be warranted so that Mr. McCuin can seek relief in the court below. *See Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) ("Where intervening developments . . . 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."). Alternatively, in that event, the Court may wish to grant the case for plenary review, as the government has recognized that, at least concerning the Commerce Clause issue, if the en banc court holds that "Section 922(g)(1) exceeds Congress' power under the Commerce Clause, the decision would . . . require intervention by this Court." Br. for the United States at 5, *Celestine v. United States*, No. 26-5311 (filed Oct. 14, 2026). Either way, the proper approach is to hold the petition pending the en banc court's resolution of *Squire* and *Cordova.*

Additionally, with respect to the Second Amendment issue, there are dozens of petitions currently pending before the Court that raise the same issue presented here. *See* "SCOTUS Gun Watch 11/02/2026," DUKE CTR. FOR FIREARMS LAW (Nov. 2, 2026), https://firearmslaw.duke.edu/2026/11/scotus-gun-watch-11-02-2026 [https://perma.cc/4VMY-E4HV] (listing dozens of pending petitions raising the constitutionality of § 922(g)(1) under the Second Amendment). If the Court does not

hold the petition and then GVR based on the en banc court's resolution of *Squire* or *Cordova*, it should hold the petition while it determines how it will proceed on the similar Second Amendment petitions currently pending before the Court.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari and set the case for plenary review. Alternatively, the Court should hold the petition pending the Fifth Circuit's en banc consideration of *United States v. Squire* and *United States v. Cordova*, or the consideration of the issues presented in any other case, and grant, vacate, and remand to the Fifth Circuit.

Respectfully submitted,

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November 4, 2026