No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2026

MYKING GREEN,
***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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QUESTION PRESENTED

"The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 309 (1979). When an appellate court reviews the sufficiency of evidence to support a conviction, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 318-19 (emphasis omitted).

Many federal crimes have a possession element. *See, e.g.*, 18 U.S.C. § 922(g)(1) (prohibiting a felon from knowingly possessing a firearm). And it may be satisfied by proof of "actual" or "constructive" possession. *Henderson v. United States*, 575 U.S. 622, 626 (2015). "Actual possession" exists where an individual "has direct physical control over a thing." *Id.* "Constructive possession" exists where the individual, "though lacking such physical custody, still has the power and intent to exercise control over the object." *Id.* In that regard, this petition asks the following question:

Whether a factfinder rationally can find possession of contraband beyond a reasonable doubt solely based on circumstantial evidence indicating that the contraband was in plain sight near the defendant?

PARTIES TO THE PROCEEDINGS

Myking Green, as the petitioner.

United States of America, as the respondent.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *United States v. Green*, No. 24-cr-20030 (S.D. Fla.) (judgment entered Sept. 16, 2024).
- *United States v. Green*, No. 24-13038 (11th Cir.) (judgment entered Apr. 21, 2026, and rehearing denied July 14, 2026).

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Mr. Myking Green, respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit judgment to be reviewed was rendered on April 21, 2026. The supporting opinion is reproduced herein as Appendix A-1.

STATEMENT OF JURISDICTION

Mr. Green brings this petition following the Eleventh Circuit's rendition of a final judgment. This Court therefore has jurisdiction under 28 U.S.C. § 1254(1). Also, this petition is timely. The Eleventh Circuit issued its opinion below in April, then denied rehearing in July, of 2026. This Court granted Mr. Green's application for an extension, through November 11, 2026, of the filing deadline for any petition for a writ of certiorari.

DOCTRINE INVOLVED

This petition addresses the doctrine of "constructive possession," which exists where a person has both "the power and intent to exercise control over" contraband, though "direct physical control" is lacking. *Henderson*, 575 U.S. at 626.

STATEMENT OF THE CASE[1]

I. The government prosecutes Mr. Green, only, since he was the closest passenger to a gun found in someone else's car.

After nightfall on September 13, 2023, police officers were patrolling Miami-Dade County's north side when they observed a Nissan sedan with tinted windows run a stop sign. (S.D. Fla. ECF No. 65-15:3; ECF No. 104:122; ECF No. 105:13-14, 46). One of them, Detective Richard Muñoz of the Miami-Dade Police Department, was a passenger in an unmarked patrol car. (S.D. Fla. ECF No. 105:12-14). His partner, a Detective Alphonse, was driving the car. *Id.* at 14. They were "conducting traffic stops" to "catch crimes in progress," including "trying to find people violating firearms" laws. *Id.* at 13-14.

The Nissan was occupied by three men. A man identified in the record by initials D.R.T. was operating the Nissan, although his driver's license was suspended. (S.D. Fla. ECF No. 65:16; EFC No. 104:122; ECF No. 105:16, 26, 46-47). The petitioner, Mr. Green, was in the front-passenger seat. (S.D. Fla. ECF No. 104:122; ECF No. 105:16; Gov't Ex. 16A at 00:08-00:12). Knowledge of Mr. Green's convicted-felon status at the time was never disputed. (S.D. Fla. ECF No. 104:122; ECF No. 105:97). The third individual—who, too, was a convicted felon—was seated in the back of the Nissan. (S.D. Fla. ECF No. 105:19-20, 81; Gov't Ex. 16A at 00:10-00:51).

[1] Unless otherwise indicated, the record of the district court case, *United States v. Green*, No. 24-cr-20030 (S.D. Fla.), will be referenced as "(S.D. Fla. ECF No. ___)" and "(S.D. Fla. Gov't Ex. ___)." The record of the court of appeals case, *United States v. Green*, No. 24-13038 (11th Cir.), will be referenced as ("11th Cir. ECF No. ___)."

At the time, the Nissan had been heading toward the final destination of its occupants: their home—a house which sat at the same street intersection as the stop sign the Nissan ran. (S.D. Fla. ECF No. 105:14, 29, 46). *See also* (S.D. Fla. Gov't Ex. 16A at 00:08-00:12) (D.R.T. stated, "we live here," to Detective Muñoz); *id.* at 00:54-01:05 (showing the intersection and the house).

Immediately after passing the stop sign, D.R.T. pulled the Nissan adjacent to a sidewalk in front of the house, parked the car and exited it, and sauntered his way towards the back of the car—the direction of the house. *Id.* at 00:08-00:12. Mr. Green, too, had exited the car, closed the door behind himself, and sauntered in the same direction. (S.D. Fla. ECF No. 105:46; Gov't Ex. 16A at 00:08-00:10). The backseat passenger remained in the car momentarily. (S.D. Fla. ECF No. 105:45-46; Gov't Ex. 16A at 00:08-00:10).

Detectives Muñoz and Alphonse followed the Nissan to conduct a "traffic stop." (S.D. Fla. ECF No. 105:14-15; Gov't Ex. 16A). About the moment D.R.T. and Mr. Green were passing the Nissan's rear wheels, the detectives pulled up with the patrol car's emergency lights activated and dashed out to confront D.R.T. and Mr. Green. (S.D. Fla. ECF No. 105:18, 45-46; Gov't Ex. 16A at 00:01-00:08). Detective Muñoz ordered both men to stop walking. (S.D. Fla. ECF No. 105:46; Gov't Ex. 16A at 00:08-00:10). At that moment, the Nissan's backseat passenger (the other felon) opened the back-passenger door and revealed himself. (Gov't Ex. 16A at 00:10-00:11). Detective Muñoz ordered him out of the Nissan. *Id.* at 00:48.

Once the Nissan occupants were corralled near the trunk, Detective Alphonse looked into the car through the opened driver door. (S.D. Fla. ECF No. 104:122; DE 105:20, 22; Gov't Ex. 15; Gov't Ex. 16A at 00:56-01:05; Gov't Ex. 16B at 00:01-00:05). Then, at Detective Alphonse's direction, Detective Muñoz abruptly handcuffed Mr. Green. (S.D. Fla. ECF No. 104:122; DE 105:22-23, 47; Gov't Ex. 15; Gov't Ex. 16B at 00:05-00:13). Detective Muñoz initially refused to tell Mr. Green why he was being detained or "argue about it." (S.D. Fla. ECF No. 105:32; Gov't Ex. 16B at 00:19-00:57).

Moments later, Detective Muñoz looked into the passenger side of the Nissan, where he saw a loaded pistol. (S.D. Fla. ECF No. 65-11; ECF No. 65-12; ECF No. 104:122; ECF No. 105:33-34, 37, 66; Gov't Ex. 16C at 00:07-00:17). The pistol was not "wrapped up or bundled." (S.D. Fla. ECF No. 105:26). It was not "tucked underneath the front passenger seat." *Id.* at 42. Nor was it "wedged in between the center console." *Id*. Rather, it was "unholstered" and "in plain view, just sitting on the floorboard" "right in front of the seat." *Id.* at 26-27, 33.

At no point did Detective Muñoz see Mr. Green with the pistol in his hand. *Id.* at 32. He nonetheless surmised that Mr. Green must have "kn[own] the gun was there." *Id.* at 44. This was so specifically because Detective Muñoz "saw [Mr. Green] getting out of that front passenger seat," and the pistol "was just laying in plain view that anybody can see that's getting into the front driver's seat." *Id.* at 33, 43-44. Detective Muñoz was so sure of himself, in fact, that he chose not to test the pistol, ammunition, or magazine for DNA or fingerprints. *Id.* at 43-44. Nor did he feel any need to detain the other Nissan occupants—even though one of them was a convicted

felon; D.R.T. had been operating the car illegally; and the pistol was not concealed while in the car, in violation of Florida law. *Id.* at 28, 46-47, 50.

Mr. Green was charged, by superseding indictment in the Southern District of Florida, with two counts of being a felon in possession of a firearm or ammunition, in violation of 18 U.S.C. § 922(g)(1). (S.D. Fla. ECF No. 26). Neither of the other occupants of the Nissan was charged, testified at trial, or provided any other statement against Mr. Green.

II. The lower court upholds Mr. Green's conviction only because he sat too close to the gun.

A jury found Mr. Green guilty of Count 2, but acquitted him of Count 1. (S.D. Fla. ECF No. 61). The district court sentenced Mr. Green to fifty-one months' imprisonment, to be followed by three years' supervised release. (S.D. Fla. ECF No. 90).

The Eleventh Circuit affirmed the district court's judgment. *United States v. Green*, No. 24-13038, 2026 WL 1078062 (11th Cir. Apr. 21, 2026) (per curiam). It rejected both of Mr. Green's claims: (1) the evidence was not sufficient to establish Count 1's possession element beyond a reasonable doubt; and (2) the district court reversibly erred by discharging, mid-trial, a juror would have voted to acquit had the prosecution failed to present a reliable eyewitness account or video of any critical event. *Id.* at *3-5.

Regarding the first claim, the Eleventh Circuit acknowledged that Mr. Green "didn't own, borrow, or drive the car." *Id.* at *4. It also acknowledged the absence of "'forensic evidence' connecting Green to the gun." *Id.* Furthermore, Mr. Green argued

that the record contained no evidence of the occupants' movements while all three of them and the gun were in the car, or even evidence either of when the gun made its way to the front-passenger area or generally into the car's cabin. The Eleventh Circuit took exception to neither of these points.

Still, the Eleventh Circuit held that the jury reasonably could have found constructive possession beyond a reasonable doubt. *Id.* at *3-4. Its supporting analysis noted the general elements while asserting that circumstantial evidence which shows the defendant had "ready access to [a] within a car" is, by itself, sufficient to permit a jury to infer the defendant's intent to control the gun. *Id.* Turning to the record, the analysis identified two pieces of evidence showing that the gun here was "directly at Green's feet"—and thus, "read[ily] access[ible]" to him—for at least a brief moment. *Id.* One piece was video footage showing that Mr. Green exited the car from the front-passenger door. *Id.* The other piece was a police officer's observation shortly afterwards; he saw the gun "lying in plain sight on the floorboard near" the same door Mr. Green used. *Id.*

The Eleventh Circuit denied Mr. Green's request for *en banc* and panel rehearing. This petition follows.

REASONS FOR GRANTING THE PETITION

I. The decision below conflicts with decisions of this Court and other Circuits on the same matter.

A. The Circuits generally are split, 11 to 1, on the question presented.

Under criminal law, "constructive possession" exists where a person has both "the power and intent to exercise control over" contraband, though "direct physical control" is lacking. *Henderson v. United States*, 575 U.S. 622, 626 (2015). In nearly every Circuit, however, "[m]ere proximity to contraband is not enough to establish constructive possession." *United States v. Burgos*, 133 F.4th 183, 190 (1st Cir. 2025) (citation omitted). There also must exist "some action, some word, or some conduct that links the individual to the contraband and indicates that he had some stake in it, some power over it." *Id.* (citation omitted).[2]

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[2] *See also United States v. Willis*, 14 F.4th 170, 181 (2d Cir. 2021) (gun- and drug-possession case adopting the same standard for constructive possession, while adding that "[m]ere presence is insufficient"); *United States v. Benjamin*, 711 F.3d 371, 376 (3d Cir. 2013) (same type of case stating the same principles, including that dominion and control are not established "by mere proximity to the item, or mere presence on the property where it is located or mere association with the person who does control the item" (citation modified)); *United States v. Blue*, 957 F.2d 106, 108 (4th Cir. 1992) ("As the Ninth Circuit explained, '[i]t is well established that mere presence as a passenger in a car from which the police recover weapons does not establish possession. The mere proximity of a weapon to a passenger in a car goes only to its accessibility, not to the dominion or control which must be proved to establish possession.'" (alteration in original) (quoting *United States v. Soto*, 779 F.2d 558, 560 (9th Cir. 1986))); *United States v. Hall*, 858 F.3d 254, 259 (4th Cir. 2017), *as amended* (June 21, 2017) (same); *United States v. Quiroz-Hernandez*, 48 F.3d 858, 865 (5th Cir.), *as modified on reh'g* (5th Cir. 1995) (drug-possession case stating that "mere proximity to the contraband is not enough" to show constructive possession); *United States v. Brooks*, 987 F.3d 593, 602 (6th Cir. 2021) (noting that the "rule in constructive-possession cases" is "that 'mere proximity' to a gun cannot alone prove possession); *United States v. White*, 95 F.4th 1073, 1078 (7th Cir. 2024) (to sustain a

But that is not the case in the Eleventh Circuit. Below, it held that a jury reasonably could find constructive possession of a loaded gun based solely on evidence proving then gun had been lying "in plain sight directly at Green's feet" and was therefore "read[ily] access[ible]" to him. *Id.* at *3-4. These facts simply establish that a firearm was near Mr. Green for some unknown period of time. Because the analysis cited no other evidence supporting the holding, *see id.*, it appears the Eleventh Circuit rested its decision entirely on this defendant's "proximity to contraband." *See Burgos*, 133 F.4th at 190. The decision therefore conflicts with every other Circuit's "rule in constructive-possession cases." *See* SUP. CT. R. 10(a); *Brooks*, 987 F.3d at 602; *Proximity*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("The quality, state, or condition of being near in time, place, order, or relation."). *See also United States v. Beverly*, 750 F.2d 34, 35-37 (6th Cir. 1984) (per curiam) (holding government failed to prove defendant constructively possessed two guns found lying in a waste basket within

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gun-possession conviction under a constructive-possession theory, evidence of "proximity" to a gun must be "coupled with evidence of some other factor—including connection with an impermissible item, proof of motive, a gesture implying control, evasive conduct, or a statement indicating involvement in an enterprise" (citation modified)); *United States v. Cowling*, 648 F.3d 690, 700 (8th Cir. 2011) (gun-possession case adopting the same principles regarding constructive possession, including the "mere proximity" rule); *United States v. Nungaray*, 697 F.3d 1114, 1117 (9th Cir. 2012) (addressing possession of guns in ruling that "[m]ere proximity to contraband and mere association with a person controlling the contraband are each insufficient to show constructive possession"); *United States v. Banks*, 884 F.3d 998, 1017 (10th Cir. 2018) ("Mere proximity to illegal drugs, mere presence on the property where they are located, or mere association with persons who do control them, without more, is insufficient to support a finding of possession." (citation modified)); *United States v. Jenkins*, 981 F.2d 1281, 1283 (D.C. Cir. 1992) (gun-possession case where court ruled: "Thus, mere proximity or accessibility to contraband is not enough to establish constructive possession; it must be accompanied with testimony connecting the defendant with the incriminating circumstances." (citation modified)).

another person's residence, even though defendant was seen "standing close to" the basket and one of the guns had a fingerprint indicating he touched it "at some point").

In fact, one of the Eleventh Circuit's own panels had already found "tension" between mere-proximity rules and the "ready access" principle applied below. *United States v. Gonzalez*, 71 F.3d 819, 835 n.29 (11th Cir. 1996). *Gonzalez* reiterated that constructive possession requires " both the intent and the power to exercise dominion and control over the firearm." *Id.* at 834 (citation modified). Yet it referenced other Circuits' precedents in finding "that accessibility alone is not usually thought to be sufficient to establish knowing dominion or control." *Id.* at 835 n.29 (citing *Soto*, 779 F.2d at 560). *Gonzalez* also acknowledged the difficulty in reconciling (1) a previous decision that equated the defendant's access to a weapon with "his ability to exercise control thereover," and (2) another decision's holding that "mere presence in the area of an object or awareness of its location is not sufficient to establish possession." *Id.* (citation modified) (first citing *United States v. Gates*, 967 F.2d 497, 499 (11th Cir. 1992) (per curiam); then quoting *United States v. Pedro*, 999 F.2d 497, 500-01 (11th Cir. 1993)). By its own admissions, then, the lower court "entered a decision in conflict with the [mere-proximity] decision[s] of []other United States courts of appeals." *See* SUP. CT. R. 10(a).

B. The Circuits also are split, 2 to 1, insofar as the question presented concerns facts similar to this case's.

Circuits routinely apply their mere-proximity rules in gun-possession cases. The Ninth Circuit's "well established" precedent, for instance, provides "that mere presence as a passenger in a car from which the police recover weapons does not

establish possession" of such weapons. *Soto*, 779 F.2d at 560 (collecting cases). This is so, *Soto* explains, because "mere proximity of a weapon to a passenger in a car goes only to its accessibility, not to the dominion or control which must be proved to establish possession." *Id.* (first citing *United States v. Whitfield*, 629 F.2d 136, 143 (D.C. Cir. 1980); then citing *Bettis v. United States*, 408 F.2d 563, 567 (9th Cir. 1969)).

In *Blue*, the Fourth Circuit followed this reasoning in reversing a conviction under the federal statute prohibiting felons from possessing firearms, *see* 18 U.S.C. § 922(g)(1). *Blue* arose from the discovery of a loaded pistol in a car that police stopped after observing seatbelt violations by the driver and his passenger. 957 F.2d at 107. One officer claimed that while walking towards the car, he saw the shoulder of the passenger, Herbert Blue, "dip as if the passenger were reaching under the seat with his right hand." *Id.* at 107-08. The officer eventually searched the car and found the pistol lying "under the passenger seat where Blue was sitting." *Id.*

Citing *Soto*, the Fourth Circuit held that these facts "alone" could not "justify" any finding that Blue constructively possessed the pistol. *Id.* at 108. From there, it noted the absence of fingerprints linking Blue to the pistol. *Id.* There was no testimony that Blue was seen with the pistol. *Id.* No evidence established Blue's ownership of the pistol. *Id.* The record did disprove Blue's ownership of the car. *Id.* Nothing in the record otherwise placed him in that car on any prior occasion. *Id.* Given these circumstances, the Fourth Circuit could not sustain Blue's conviction because the government failed to "substantiate" its theory of possession. *Id.*

By contrast, "mere proximity of a weapon to a passenger in a car," *see Soto*, 779 F.2d at 560, can carry a possession conviction in the Eleventh Circuit. The decision below illustrates as much. Like Blue, Mr. Green was tried for being a felon in possession of a loaded gun police discovered in a car during a traffic stop. *Green*, 2026 WL 1078062, at *1. "The government produced no evidence that [Mr. Green] actually possessed the firearm; instead, it prosecuted the case on a theory of constructive possession." *See Blue*, 957 F.2d at 107. And the Eleventh Circuit only "relied on two pieces of evidence to support its" decision. *See id.* First, camera footage showed Mr. "Green exiting the car from the front passenger door." *Green*, 2026 WL 1078062, at *3. Second, police found the gun "lying in plain sight on the floorboard near" that door. *Id.* The gun, in other words, must have been "directly at Green's feet" for at least a moment before he exited the car. *Id.*

Presumably, the Fourth and Ninth Circuits would deem these facts insufficient to "justify a finding of constructive possession." *See Blue*, 957 F.2d at 108. To be sure, the Eleventh Circuit intimated that they "show[] [Mr. Green] had ready access to [a gun] within a car." *Green*, 2026 WL 1078062, at *3. But as *Blue* and *Soto* explain, such "accessibility" of a weapon "in a car" does not "go[] . . . to the dominion or control which must be proved to establish [a passenger's] possession" of that weapon. *See Blue*, 957 F.2d at 108 (internal quotation marks omitted) (quoting *Soto*, 779 F.2d at 560).

The Eleventh Circuit reached the opposite conclusion, *Green*, 2026 WL 1078062, at *3-4, thus departing even further from the Fourth and Ninth Circuits'

mere-proximity precedents. *See* SUP. CT. R. 10(a). *Cf. Rivas v. United States*, 783 A.2d 125, 128 (D.C. 2001) (en banc) ("A passenger in someone else's car, who is not the driver and who does not have exclusive control over the vehicle or its contents, may not be convicted *solely* on the basis that drugs were in plain view and conveniently accessible in the passenger compartment." (emphasis in original)).

C. *Allen* confuses lower courts.

In *County Court of Ulster County, New York v. Allen*, this Court considered the constitutionality of a New York statute providing that "the presence of a firearm in an automobile is presumptive evidence of its illegal possession by all persons then occupying the vehicle." 442 U.S. 140, 142 & n.1, 147 (1979). While explaining why the statute passed constitutional muster, the Court stated that

> the case is tantamount to one in which the guns were lying on the floor or the seat of the car in the plain view of the three occupants of the automobile. In such a case, it is surely rational to infer that each of the respondents was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons.

Id. at 164-65.

The Eleventh Circuit quoted select language from this passage for the proposition "that where 'guns [a]re lying on the floor or the seat of [a] car in the plain view of the . . . occupants, . . . it is surely rational to infer that each of the [occupants] was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons.'" *Green*, 2026 WL 1078062, at *3-4 (alterations in original) (quoting *Allen*, 442 U.S. at 164-65). In other words, the fact

that the weapons were near and clearly visible to the car occupants is sufficient to satisfy all three elements of constructive possession.

The District of Columbia's highest court, sitting *en banc*, has expressly rejected this notion. In *Rivas*, it read *Allen* as making "clear" that a statutory "presumption of possession from presence in a car with guns could not supplant the requirement of proof beyond a reasonable doubt." *Rivas*, 783 A.2d at 133. *Allen* does permit the prosecution to rely on the presumption "'as one not necessarily sufficient part of its proof.'" *Rivas*, 783 A.2d at 133 (quoting *Allen*, 442 U.S. at 166). But it "does not support the proposition that a finding of guilt beyond a reasonable doubt may be based solely on evidence that contraband was found in an automobile in plain view, conveniently accessible to the passenger defendant." *Id.* If *Rivas*'s reading of *Allen* is accurate, then it would appear Mr. Green's appeal was decided "in a way that conflicts with relevant decisions of this Court." *See* SUP. CT. R. 10(c).

II. These conflicts are important.

For starters, the question presented implicates constitutional interests. Due process demands that "no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Jackson v. Virginia*, 443 U.S. 307, 316 (1979). Yet the decision below "appears to ease the government's burden of proving constructive possession when [guns] are found in the close confines of an automobile." *See Rivas*, 783 A.2d at 127-28 (internal quotation marks omitted) (rejecting a rule that "requisite intent may be

inferred from the presence of contraband in an automobile, in plain view, conveniently accessible to the defendant" (citation omitted)). Moreover, this Court's prior precedents on proving constructive possession evince the general importance this petition's question. *See Henderson*, 575 U.S. at 626, 629 (clarifying "what counts as 'possession'" for § 922(g) purposes); *Allen*, 442 U.S. at 147 (addressing the constitutionality of a state's presumption that a firearm in a vehicle is unlawfully possessed by all of the vehicle's occupants).

Next, the importance of the question presented is amplified by the frequency with which the government prosecutes the type of charge brought against Mr. Green. In the most recent fiscal year, about 10% of federal convictions nationally were for § 922(g)(1) offenses. *See Section 922(g) Firearms*, UNITED STATES SENTENCING COMMISSION, https://www.ussc.gov/research/quick-facts/section-922g-firearms (last visited Nov. 6, 2026) (of the 66,662 cases reported, 7,245 of them involved convictions under § 922(g), with 89% of those convictions being for felon-in-possession offenses).

The question's relevance, however, is not confined just to § 922(g)(1) and other gun-possession cases. Other Circuits permit defendants to assert a mere-proximity defense in drug-possession cases, as well. *See, e.g.*, *Willis*, 14 F.4th at 181; *Banks*, 884 F.3d at 1017. In addition to the 7,245 federal gun-possession cases reported last fiscal year, another 16,234 federal drug cases were reported during the same period. *Drug Trafficking*, UNITED STATES SENTENCING COMMISSION, https://www.ussc.gov/research/quick-facts/drug-trafficking (last visited Nov. 6, 2026).

And nearly all of those drug cases involved trafficking, *id.*—which also requires proof of possession.

Thus, the question presented here bears relevance to approximately 35% of all federal prosecutions. Because of the clear Circuit split, that means geography alone will dictate whether the mere-proximity defense will be available in one-third of federal criminal cases tried each year. "[T]he outcome of [such] federal criminal prosecution[s] should not depend upon the circuit in which a case is tried." *See Tomala v. United States*, 504 U.S. 932, 933 (1992) (White and Thomas, JJ., dissenting from the denial of a petition for a writ of certiorari).

Finally, it appears this Court often grants review where, as here, its precedents have led to competing interpretations and thus inconsistent application. *See, e.g.*, *See* Petition for Writ of Certiorari at 21, *Grant v. Higgins*, 25-566 (U.S. granted June 30, 2026); Petition for Writ of Certiorari at 21, *Jackson v. United States*, No. 22-6640 (U.S. granted May 15, 2023).

III. This case is an excellent vehicle for resolution.

This is so for several reasons:

Foremost, this case does not sit in an interlocutory position. The gun-possession charge in question was tried and faced a direct appeal. Also, the underlying sufficiency-of-evidence claim has been fully preserved; Mr. Green raised the issue on appeal, as well as at trial in his Rule 29 motion for a judgment of acquittal.

For the same reasons, on the one hand, the factual record is fully developed. But on the other hand, this Court need not resolve any thorny questions of fact. The Eleventh Circuit rested its decision below entirely on the undisputed facts that (1) a loaded gun was in a car, lying "in plain sight directly at Green's feet" before he exited the car; and therefore, (2) the gun was "read[ily] access[ible]" to him for at least a brief moment. *Green*, 2026 WL 1078062, at *3.

Finally, the question presented is dispositive of whether the district court's judgment must be vacated entirely. The jury already acquitted Mr. Green of the other gun charge brought against him in this case. Should this Court answer the question presented in Mr. Green's favor, then there no longer would exists any basis for the existing conviction. In that case, the district court must vacate its judgment of conviction, including Mr. Green's sentence.

IV. The decision below is wrong.

Again, this Court's precedent instructs that constructive possession requires both "the power and intent to exercise control." *Henderson*, 575 U.S. at 626. The record below established that police found a gun in plain sight on the front-passenger floorboard of a car shortly after Mr. Green exited that car from front-passenger door. Accordingly, Mr. Green has accepted that a rational jury can find beyond a reasonable doubt that he was sitting close to a gun for at least an "instant in time and space," *see Rivas*, 783 A.2d at 134, and therefore would have had the "power" to exercise control over the gun had he chose to do so. *See Henderson*, 575 U.S. at 626. But the dispositive question always has been "whether the jury rationally could find beyond

a reasonable doubt that [Mr. Green also] *intended* to exercise that power." *See Rivas*, 783 A.2d at 130 (emphasis in original).

In answering this question affirmatively, the Eleventh Circuit took *Allen* out of context and, consequently, misapplied it. As explained, the decision below cited *Allen*, 442 U.S. at 164-65, to support its assertion that jurors may infer a defendant's intent to control a gun entirely from circumstantial evidence showing he had "ready access" to that gun within a car. *Green*, 2026 WL 1078062, at *3-4. Even if that were true, nothing in *Allen* suggests that the inference, standing alone, satisfies the "reasonable doubt" test.

Unlike this case, *Allen* did not address a *per se* sufficiency-of-evidence claim. Rather, the principal issue concerned the constitutionality of statutory presumptions of criminal conduct. The *Allen* jury convicted four occupants of a car for unlawfully possessing two loaded handguns that police recovered from the car after stopping it for speeding. 442 U.S. at 143-44 & n.2. One of the occupants was a teenage girl; the other occupants, three adult males, were the respondents in this Court. *Id.* at 143. The guns were in an open handbag, which belonged to the teenager and was found in the front-passenger area where she had been sitting. *Id.* In accordance with New York's statutory presumption, the trial court instructed the jurors that they could infer possession of both guns from the occupants' presence in the car. *Id.* at 142 & n.1, 145. This Court granted certiorari review to decide whether that presumption undermined the respondents' due-process rights. *Id.* at 146-47 & n.5.

The respondents argued that the trial court should have rejected the presumption because "the evidence necessary to invoke the inference [of possession was not] sufficient for a rational jury to find the inferred fact beyond a reasonable doubt." *Id.* at 166. This Court disagreed. *Id.* at 166-67. The respondents, it explained, overlooked the type of presumption created by New York law. *Id.* at 166. The presumption was not a "mandatory" one, "which the jury must accept even if it is the sole evidence of an element of the offense." *Id.*

Rather, New York's presumption of possession was "permissive." *Id.* at 162-63. This type of presumption "allows—but does not require—the trier of fact to infer the elemental fact from proof by the prosecutor of the basic one." *Id.* at 157. "As long as it is clear that the presumption is not the sole and sufficient basis for a finding of guilt, it need only satisfy the test described in *Leary*[*v. United States*, 395 U.S. 6 (1969)]." *Allen*, 442 U.S. at 167. *Leary* prescribed the "standards for determining the validity under the Due Process Clauses of statutory presumptions in criminal cases." *Id.* at 149 n.5. It provided that a criminal statutory presumption is unconstitutional "unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." *Id.* at 166 & n.28 (quoting *Leary*, 395 U.S. at 36). This test is less "stringent" than the "reasonable doubt" test; the former test requires only that there exist some "'rational connection' between the basic facts that the prosecution proved and the ultimate fact presumed." *Id.* at 165-66. In that case, "the prosecution is entitled to rely [on the permissive presumption] as one not necessarily sufficient part of its proof." *Id.* at 166.

Applying these principles to the facts before it, the Court held that New York's permissive presumption of possession satisfied the *Leary* test. *Id.* at 163-67.

Importantly, it was within that discussion that the Eleventh Circuit found language purportedly supporting its "ready access" proposition. Essentially, one passage suggested that a factfinder could rationally infer the elements of constructive possession solely from evidence showing a gun was lying in a car within plain view of the car's occupants. *Id.* at 164-65.

But given the constitutional context explained above, that passage must be read to mean the inference satisfies *Leary*'s "more likely than not" standard. *See id.* at 166 & n.28. In other words, it appears the Court held that evidence showing a gun was in plain view of a car occupant could be "the sole and sufficient basis" for finding constructive possession—but *only* under the "preponderance of the evidence" test. *See id.* at 166-67. That is, the evidence does "not necessarily" permit the finding "[u]nder the more stringent [reasonable doubt] test." *See id.* at 166. In fact, the Eleventh Circuit itself has read *Allen* the same way. *See Cosby v. Jones*, 682 F.2d 1373, 1377 (11th Cir. 1982) ("[I]n its last paragraph the Court was careful to observe that, in addition to the permissive inference being valid, the record as a whole had been found sufficient to establish guilt beyond a reasonable doubt. Therefore, determining that a permissive inference instruction is valid does not settle whether the verdict is supported by sufficient evidence." (citing *Allen*, 442 U.S. at 167)).

In short, *Allen* does not support the Eleventh Circuit's assertion that the jury rationally could have found constructive possession's intent element—beyond a

reasonable doubt—solely from evidence establishing the accessibility of a gun in a car. *See Rivas*, 783 A.2d at 133 (holding that *Allen* "does not support the proposition that a finding of guilt beyond a reasonable doubt may be based solely on evidence that contraband was found in an automobile in plain view, conveniently accessible to the passenger defendant").

If anything, *Allen* implies that additional facts must be proven. *See Cosby*, 682 F.2d at 1377 (citing *Allen*, 442 U.S. at 167). And that makes sense. The "reasonable doubt" test requires a factfinder "to reach a subjective state of near certitude of the guilt of the accused." *Jackson*, 443 U.S. at 315. And as one court has explained, "[p]eople offer or accept rides from colleagues or acquaintances solely because they are travelling to a common destination." *Rivas*, 783 A.2d at 131. Someone might "accept[] a ride . . . not knowing there were [contrabands] present until some time after he got in the car." *Id.* at 135. "Or [the passenger] may have been aware that [the driver] had co[ntraband] in his vehicle, but rode in the car anyway, intending to do nothing more than (foolishly) ride around with a friend who was also a [criminal]." *Id.* So where, as here, the record contains "no evidence as to how long [a passenger and contraband] had been in the car, how [they] had come to be there, or what [the passenger] had been doing," no rational factfinder can fairly conclude—with "near certitude"—that the passenger "intended to exert control over [the contraband], *i.e.*, that he was not just an innocent bystander." *See Jackson*, 443 U.S. at 315; *Rivas*, 783 A.2d at 128, 134.

Even the Eleventh Circuit precedents cited by the decision below involved "something more in the totality of the circumstances." *See Rivas*, 783 A.2d at 128. It relied principally on *Gates*. *Green*, 2026 WL 1078062, at *3-4. "Like Green," the decision explained, the *Gates* defendant "was a front seat passenger with two guns next to him on the floorboard. That was enough . . . to show constructive possession." *Id.* at *4. Because the record in this case presents "similar facts," the decision concluded that a reasonable jury could find that Mr. Green also constructively possessed a firearm. *Id.* at *3.

Not so. Unlike Mr. Green, Gates was not simply convicted of being a felon in possession of a firearm. The Eleventh Circuit upheld Gates' convictions for attempted cocaine trafficking, cocaine-trafficking conspiracy, and using and carrying a firearm during a drug-trafficking crime. *Gates*, 967 F.2d at 499. "Of course, numerous cases have recognized that guns are a tool of the drug trade. There is a frequent and overpowering connection between the use of firearms and narcotics traffic." *United States v. Cruz*, 805 F.2d 1464, 1474 (11th Cir. 1986). Understandably, then, a jury would have had firm grounds to find, beyond a reasonable doubt, that Gates intended to carry the guns for protection during the drug transaction he and his "coconspirators arranged." *Gates*, 967 F.2d at 499.

The Eleventh Circuit also supported its decision with the following statement from *Gonzalez*: "Appellant's presence in the [car], with ready access to the weapon later discovered in the glove compartment, was sufficient to prove that he possessed [that weapon], irrespective of the fact that the [car] belonged to a third person." 71

F.3d at 835. But as *Gonzalez* itself acknowledges, "accessibility alone is not usually thought to be sufficient to establish knowing dominion or control." *Id.* at 835 n.29 (citing *Soto*, 779 F.2d at 560).

In fact, *Gonzalez* does not rest on "accessibility alone." *See id.* The appellant there, Augustin Gonzalez, argued that the evidence did not permit a finding, beyond a reasonable doubt, that he possessed a .38 Smith & Wesson revolver police had found in the glove compartment of a car he was seen driving. *Id.* at 822, 833. Before addressing accessibility, the Court noted "evidence of appellant's ownership" of the revolver. This included records of a sale. *Id.* at 834. "Constructive possession exists when a defendant has ownership . . . over an object itself." *United States v. Leonard*, 138 F.3d 906, 909 (11th Cir. 1998). Accordingly, the *Gonzalez* court held that the sale records "alone" were "sufficient to establish that appellant knowingly possessed the .38 Smith & Wesson." 71 F.3d at 834. Only then did the Court cite Gonzalez's "ready access to the weapon" as "additional evidence" of possession. *Id.* at 835.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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November 10, 2026