No. _____

In the Supreme Court of the United States

CHRISTOPHER GONZALES, *PETITIONER*,

V.

UNITED STATES OF AMERICA, *RESPONDENT*

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

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QUESTIONS PRESENTED FOR REVIEW

1. Does 18 U.S.C. § 922(g)(1)'s lifetime ban on the possession of firearms by all felons violate the Second Amendment on its face and as applied to Gonzales, who has a prior drug possession felony conviction?
2. Can Congress criminalize intrastate possession of a firearm solely because it crossed state lines at some point before it came into a person's possession?

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v.

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Petitioner Christopher Gonzales asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on September 9, 2024.

PARTIES TO THE PROCEEDING

The caption of this case names all parties to the proceeding in the court whose judgment is sought to be reviewed.

RELATED PROCEEDINGS

- *United States v. Gonzales*, No. 5:19-cr-00646-OLG (W.D. Tex. Dec. 9, 2022) (judgment of conviction)
- *United States v. Gonzales*, No. 22-51077 (5th Cir. Sept. 9, 2024)

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OPINION BELOW

A copy of the published opinion of the court of appeals, *United States v. Gonzales*, 117 F.4th 324 (5th Cir. Sept. 9, 2024), is reproduced at Pet. App. A1–3. A copy of the unpublished opinion ordering a limited remand, *United States v. Gonzales*, No. 22-51077, 2024 WL 550332 (5th Cir. Feb. 12, 2024), is reproduced at Pet. App. B1–7.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit were entered on September 9, 2024. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article I § 8 of the U.S. Constitution provides 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. 1, 3.

The Second Amendment to the U.S. Constitution provides that "[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.

FEDERAL STATUTE INVOLVED

18 U.S.C. § 922(g)(1)

> It shall be unlawful for any person—(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year … to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT

1. Gonzales is a convicted felon who possessed firearms. In 2017, he was convicted of possessing a controlled substance, an offense that was punishable in Texas by two years' imprisonment. In 2019, police officers executed a search warrant at Gonzales's home in Texas and discovered firearms, currency, and controlled substances. The firearms were manufactured in Austria, Romania, and New York.

2. Gonzales pleaded guilty to two counts: being a felon in possession of firearms that had been shipped and transported in interstate and foreign commerce, in violation of 18 U.S.C. § 922(g)(1), and possessing the firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). The factual basis for his § 922(g)(1) plea admitted only that the firearms were not manufactured in Texas and that he had been convicted of a state jail

felony for possession of a controlled substance. The district court sentenced Gonzales to 91 months' imprisonment for the § 922(g)(1) offense and a consecutive sentence of 60 months for the § 924(c) offense.

3. On appeal, Gonzales argued that § 922(g)(1) is unconstitutional on two grounds.[1] First, he argued that, under the new analytical test established in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), the statute violates the Second Amendment, both facially and as applied to him. The court of appeals rejected this claim on plain error review in the absence of binding precedent holding that § 922(g)(1) is unconstitutional. Pet. App. A2–3, B6 (citing *United States v. Jones*, 88 F. 4th 571, 573–74 (5th Cir. 2023)).

Second, Gonzales argued that the statute exceeds Congress's enumerated powers under the Commerce Clause. Gonzales conceded that the Fifth Circuit had previously ruled against him on this claim, and the court of appeals agreed. Pet. App. A2, B7 (citing

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[1] Gonzales also challenged his sentence. After a limited remand, the district court clarified that Gonzales's aggregate federal sentence of 151 months runs concurrently to his undischarged Texas sentences. Pet. App. A1–2.

Jones, 88 F. 4th at 573, and *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013)).

REASONS FOR GRANTING THE WRIT

I. The categorical, lifetime ban on possessing a firearm, under 18 U.S.C. § 922(g)(1), violates the Second Amendment.

The Second Amendment guarantees "the right of the people to keep and bear arms." Yet § 922(g)(1) denies that right, on pain of imprisonment, to anyone previously convicted of a crime punishable by a year or more. Despite this facial conflict between the statute and the text of the constitution, the courts of appeals uniformly rejected Second Amendment challenges for decades. *See United States v. Moore*, 666 F.3d 313, 316–317 (4th Cir. 2012) (collecting cases). This changed, however, following *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). *Bruen* held that where the text of Second Amendment plainly covers regulated conduct, the government may defend that regulation only by showing that it comports with the nation's historical tradition of gun regulation. 597 U.S. at 24. It may no longer defend the regulation by showing that the regulation achieves an important or even compelling state interest. *Id.* at 19–24.

After *Bruen*, the courts of appeals have grappled with whether § 922(g)(1) infringes on rights protected by the Second Amendment. Before this Court decided *United States v. Rahimi*, 602 U.S.

680 (2024), the Ninth Circuit held that § 922(g)(1) violated the Second Amendment as applied to a person who has previous convictions for possession of drugs for sale, evading a police officer, and possession of a firearm as a felon. *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024). Similarly, the Third Circuit sustained the Second Amendment challenge of a man previously convicted of making a false statement to obtain food stamps, notwithstanding the felony status of that offense. *Range v. Attorney General of the United States*, 69 F.4th 96 (3d Cir. 2023), *cert. granted, judgment vacated, remanded*, No. 23-374 (U.S. 2024).

By contrast, the Eighth Circuit has held post-*Bruen* that § 922(g)(1) is constitutional in all instances, at least against Second Amendment attack. *United States v. Cunningham*, 114 F.4th 671, 673 (8th Cir. 2024), *reh'g denied*, No. 22-1080, 2024 WL 4031748 (8th Cir. Aug. 30, 2024); *see also United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (§ 922(g)(1) constitutional as applied to defendant with prior drug trafficking convictions), *reh'g denied*, No. 22-2870, 2024 WL 4683965 (8th Cir. Nov. 5, 2024). The Eleventh Circuit likewise has held that "felons are categorically 'disqualified' from exercising their Second Amendment rights." *United States v. Dubois*, 94 F.4th 1285 (11th Cir. 2024), *petition for*

cert. filed Oct. 8, 2024 (No. 24-5744). And the Seventh Circuit has determined that the issue can be decided only after robust development of the historical record, remanding to consider such historical materials as the parties could muster. *Atkinson v. Garland*, 70 F.4th 1018, 1023–1024 (7th Cir. 2023).

The Court's recent decision in *Rahimi*, which applied the *Bruen* framework for analyzing Second Amendment challenges to a criminal law for the first time, did not resolve the constitutionality of § 922(g)(1). *Rahimi* held that 18 U.S.C. § 922(g)(8)(C)(i)—which prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that the person represents a credible threat to the physical safety of others—is constitutional. *Rahimi*, 602 U.S. at 690.

But *Rahimi* is a narrow decision that embraces *Bruen*'s focus on text, history, and tradition. *First*, the Court rejected the govern-

ment's theory that the Second Amendment allows Congress to disarm anyone who is not "responsible" and "law-abiding."[2] *Id.* at 701; *see id.* at 772–73 (Thomas, J., dissenting) ("The Government … argues that the Second Amendment allows Congress to disarm anyone who is not 'responsible' and 'law-abiding.' Not a single Member of the Court adopts the Government's theory."). Not only did the Court state that "responsible" is a "vague term" and it is "unclear what such a rule would entail," *id.* at 701, but it further clarified that the government's proposed rule did not "derive from [its] case law." *Id.* It noted that *Heller*[3] and *Bruen* used the term "responsible" to "describe the class of ordinary citizens who undoubtedly enjoy the right," but neither decision adopted that formulation to define the limits of the Second Amendment. *Id.*; *see also id.* at 773 (Thomas, J., dissenting) ("The Government's claim that the Court

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[2] At oral argument, the government said that it was not invoking the "law-abiding" prong of its proposed rule for individuals subject to § 922(g)(8). *See* Tr. of Oral Arg. 8–9, *United States v. Rahimi*, No. 22-915 (U.S. Nov. 7, 2023). So the majority opinion discussed only the "responsible" prong. *Rahimi*, 602 U.S. at 701–02. In his dissenting opinion, Justice Thomas—who agreed with the majority in rejecting the government's theory—provided a more robust analysis discussing both prongs. *Id.* at 773–78 (Thomas, J., dissenting).

[3] *District of Columbia v. Heller*, 554 U.S. 570 (2008).

already held the Second Amendment protects only 'law-abiding, responsible citizens' is specious at best.").

Second, *Bruen* reiterated that the government must "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. This requires a court to "ascertain whether the new law is relevantly similar to laws that our tradition is understood to permit, applying faithfully the balance struck by the founding generation to modern circumstances." *Rahimi*, 602 U.S. at 692 (cleaned up). "Why and how the regulation burdens the right are central to this inquiry." *Id.*

Rahimi held that the government had justified § 922(g)(8)(C)(i) by pointing to a tradition of "temporarily disarm[ing]" an "individual found by a court to pose a credible threat to the physical safety of another." *Id.* at 702. In particular, *Rahimi* relied on surety laws and "going armed" laws to establish a tradition similar to § 922(g)(8)(C)(i). *Id.* at 694–700. *Rahimi* thus endorses an incremental approach to Second Amendment challenges driven by a detailed historical analysis applied to a specific law, not sweeping generalities.

But *Rahimi*'s historical analysis otherwise provides little guidance here because § 922(g)(8)(C)(i) and § 922(g)(1) are very different. Section 922(g)(8)(C)(i) restricts gun possession if a restraining order "includes a finding that [a] person represents a credible threat to the physical safety of [an] intimate partner or child." In other words, the statute "restricts gun use to mitigate demonstrated threats of physical violence" and applies only once a court has made an individualized finding that such a threat exists. *Rahimi*, 602 U.S. at 698. Section § 922(g)(1), by contrast, is a categorical ban that prohibits everyone convicted of a crime punishable by more than one year in prison from possessing a gun—without any individualized finding and regardless of whether they misuse firearms to threaten others.

Rahimi also emphasized that § 922(g)(8)(C)(i)'s restriction is "temporary." *Id.* at 699. That is, the statute "only prohibits firearm possession so long as the defendant 'is' subject to a restraining order." *Id.* (cleaned up). Section 922(g)(1), however, imposes a "permanent, life-long prohibition on possessing firearms." *Id.* at 766 (Thomas, J., dissenting); *see Duarte*, 101 F.4th at 685 (discussing "§ 922(g)(1)'s no-exception, lifetime ban").

The stark differences between § 922(g)(1) and § 922(g)(8)(C)(i) confirm that the Court's decision upholding the latter does not resolve the constitutionality of the former, and the issue plainly merits certiorari. Section 922(g)(1) is a staple of federal prosecution.[4] It criminalizes conduct in civil society; it does not merely set forth standards or procedures for adjudicating a legal dispute. A felon living in a neighborhood beset by crime deserves to know whether he may defend himself against violence by possessing a handgun, or whether such self-defense is undertaken only on pain of 15 years imprisonment.

Although Gonzales has a previous felony conviction, this Court may well find that the Second Amendment supports a broad or facial challenge to § 922(g)(1). The dissenters in *Range* expressed serious doubts as to whether the logic of that decision could be contained to those convicted of relatively innocuous felonies. *See, e.g.,*

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[4] *See* U.S. Sentencing Comm'n, *QuickFacts: 18 U.S.C. § 922(g)(Firearms Offenses* (showing that 8,688 cases in FY 2022 involved § 922(g) convictions (13.5% of all cases), with the vast majority of those being under § 922(g)(1) for a prior felony conviction) https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY22.pdf (last visited Dec. 4, 2024).

Range, 69 F.4th at 131–32 (Krause, J., dissenting). Likewise, the Seventh Circuit has expressed doubt as to whether the Second Amendment distinguishes between violent and non-violent felonies. *Atkinson*, 70 F.4th at 1023. And the Fifth Circuit has drawn a different line, focusing on whether the predicate felony would have subjected the defendant to the severe penalties of capital punishment or estate forfeiture during the founding era. *United States v. Diaz*, 116 F.4th 458, 467–71 (5th Cir. 2024) (§ 922(g)(1) constitutional as applied to defendant with auto theft conviction because some horse thieves were executed during the founding era). Meanwhile the Sixth Circuit has taken another approach, requiring that individuals have "a reasonable opportunity to prove" they do not fit the "class-wide generalization" of dangerousness. *United States v. Williams*, 113 F.4th 637, 662 (6th Cir. 2024) (§ 922(g)(1) constitutional as applied to defendant with aggravated robbery convictions). Other circuits will weigh in soon; the en banc Third Circuit heard argument in *Range* in October, and the en banc Ninth Circuit will hear argument in *Duarte* in mid-December.

The plain-error posture of Gonzales's case does not diminish the importance of the question presented. To obtain relief Gonzales must show an error that is clear or obvious, that affected his substantial rights, and that seriously affects the fairness, integrity, or

public reputation of judicial proceedings. *See United States v. Olano*, 507 U.S. 725, 732 (1993). He can make that showing. As shown above, there is at least a reasonable probability that Gonzales could establish a clear or obvious violation of his Second Amendment rights if this Court evaluates the constitutionality of § 922(g)(1). At least one petition raising this issue is pending before the Court, *United States v. Dubois*, No. 24-5744 (response due Dec. 12, 2024), and others will likely follow. And the obviousness of error may be shown any time before the expiration of direct appeal. *Henderson v. United States*, 568 U.S. 266 (2013). Finally, a finding that the Gonzales has been sentenced to prison for exercising a basic constitutional right would affect the outcome and cast doubt on the fairness of the proceedings, to say the least.

II. This Court should grant certiorari say whether § 922(g)(1) is a valid exercise of Congress' Commerce Clause power.

"In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder." *Nat'l Fed'n of Indep. Bus. (NFIB) v. Sebelius*, 567 U.S. 519, 533 (2012). Powers outside those explicitly enumerated by the Constitution are denied to the National Government. *See id.* at 534 ("The Constitution's express conferral of some powers makes clear that it does not grant others."). There is no general federal police

power. *See United States v. Morrison*, 529 U.S. 598, 618–619 (2000). Every exercise of Congressional power must be justified by reference to a particular grant of authority. *See NFIB*, 567 U.S. at 535 ("The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."). A limited central government promotes accountability and "protects the liberty of the individual from arbitrary power." *Bond v. United States*, 572 U.S. 844, 863 (2011).

The Constitution grants Congress a power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. But this power "must be read carefully to avoid creating a general federal authority akin to the police power." *NFIB*, 567 U.S. at 536.

Notwithstanding these limitations, and the text of Article I, Section 8, this Court has held that "[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states," and includes a power to regulate activities that "have a substantial effect on interstate commerce." *United States v. Darby*, 312 U.S. 100, 118–119 (1941). Relying on this expansive vision of Congressional power, this Court held in *Scarborough v. United States*, 431 U.S. 563 (1963), that a predecessor statute to

18 U.S.C. § 922(g) reached every case in which a felon possessed firearms that had once moved in interstate commerce. *Scarborough* dismissed concerns of lenity and federalism, finding that Congress had intended the interstate nexus requirement only as a means to insure the constitutionality of the statute. *See Scarborough*, 431 U.S. at 577.

It is difficult to square *Scarborough*, and the expansive concept of the commerce power upon which it relies, with more recent holdings of the Court in this area. In *National Federation of Independent Business v. Sebelius*, five members of this Court found that the individual mandate component of the Affordable Care Act could not be justified by reference to the Commerce Clause. *See* 567 U.S. at 557–58 (Roberts., C.J. concurring). Although this Court recognized that the failure to purchase health insurance affects interstate commerce, five Justices did not think that the constitutional phrase "regulate Commerce ... among the several States" could reasonably be construed to include enactments that compelled individuals to engage in commerce. *See id*. at 550 (Roberts., C.J. concurring). Rather, they understood that phrase to presuppose an existing commercial activity to be regulated. *See id*. (Roberts., C.J. concurring).

The majority of this Court in *NFIB* thus required more than a demonstrable effect on commerce; the majority required that the challenged enactment itself be a regulation of commerce—that it affect the legality of pre-existing commercial activity. Possession of firearms, like the refusal to purchase health insurance, may "substantially affect commerce." But such possession is not, without more, a commercial act.

To be sure, *NFIB* does not explicitly repudiate the "substantial effects" test. Indeed, the Chief Justice's opinion quotes *Darby*'s statement that "[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states...." *NFIB*, 567 U.S. at 549 (Roberts., C.J. concurring) (quoting *Darby*, 312 U.S. at 118–119); *see also id.* at 552–553 (Roberts., C.J. concurring) (distinguishing *Wickard v. Filburn*, 317 U.S. 111 (1942)). It is therefore perhaps possible to read *NFIB* narrowly: as an isolated prohibition on affirmatively compelling persons to engage in commerce. But it is difficult to understand how this reading of the case would be at all consistent with *NFIB*'s textual reasoning.

This is so because the text of the Commerce Clause does not distinguish between Congress's power to affect commerce by regulating non-commercial activity (like possessing a firearm), and its

power to affect commerce by compelling people to join a commercial market (like health insurance). Rather the Clause simply says that Congress may "regulate ... commerce between the several states." And that phrase either is or is not limited to laws that affect the legality of commercial activity. Five justices in *NFIB* took the text of the Clause seriously and permitted Congress to enact only those laws that were, themselves, regulations of commerce. *NFIB* thus allows Congress only the power "to prescribe the rule by which commerce is to be governed." *Gibbons v. Ogden*, 22 U.S. 1, 196 (1824).

And indeed, much of the Chief Justice's language in *NFIB* is consistent with this view. His concurring opinion rejected the government's argument that the uninsured were "active in the market for health care" because they were "not currently engaged in any commercial activity involving health care...." *NFIB*, 567 U.S. at 556 (Roberts., C.J. concurring). Significantly, the Chief Justice observed that "[t]he individual mandate's regulation of the uninsured as a class is, in fact, particularly divorced from any link to existing commercial activity." *Id.* (Roberts., C.J. concurring). He reiterated that "[i]f the individual mandate is targeted at a class, it is a class whose commercial inactivity rather than activity is its defining feature." *Id.* (Roberts., C.J. concurring). He agreed that

"Congress can anticipate the effects on commerce of an economic activity," but did not say that it could anticipate a non-economic activity. *Id*. at 557 (Roberts., C.J. concurring). And he finally said that Congress could not anticipate a future activity "in order to regulate individuals not currently engaged in commerce." *Id*. (Roberts., C.J. concurring). Accordingly, *NFIB* provides substantial support for the proposition that enactments under the Commerce Clause must regulate commercial or economic activity, not merely activity that affects commerce.

Here, the factual basis for Gonzales's guilty plea does not state that his possession of the gun was an economic activity. It says only …. Under the reasoning of *NFIB*, this should have been fatal to the conviction. As explained by *NFIB*, the Commerce Clause permits Congress to regulate only activities, i.e., the active participation in a market. But § 922(g)(1) criminalizes *all* possession, without reference to economic activity. It therefore sweeps too broadly.

Further, the factual basis for Gonzalez's guilty plea fails to show that he was engaged in the relevant market at the time of the regulated conduct. The Chief Justice has noted that Congress cannot regulate a person's activity under the Commerce Clause unless the person affected is "currently engaged" in the relevant market. *NFIB*, 567 U.S. at 557 (Roberts., C.J. concurring). As an

illustration, the Chief Justice provided the following example: "An individual who bought a car two years ago and may buy another in the future is not 'active in the car market' in any pertinent sense." *Id*. at 556 (Roberts., C.J. concurring). As such, *NFIB* brings into serious question the long-standing notion that a firearm which has previously and remotely passed through interstate commerce should be considered to indefinitely affect commerce without "concern for when the [initial] nexus with commerce occurred." *Scarborough*, 431 U.S. at 577.

Scarborough stands in even more direct tension with *Bond v. United States*, which shows that § 922(g)(1) ought not be construed to reach the possession by felons of every firearm that has ever crossed state lines. Bond was convicted of violating 18 U.S.C. § 229, a statute that criminalizes the knowing possession or use of "any chemical weapon." *Bond*, 572 U.S. at 853; 18 U.S.C. § 229(a). She placed toxic chemicals—an arsenic compound and potassium dichromate—on the car door, mailbox, and door knob of a romantic rival. *See id*. at 852. This Court reversed her conviction, holding that any construction of the statute capable of reaching such conduct would compromise the chief role of states and localities in the

suppression of crime. *See id*. at 865–866. The Court instead construed the statute to reach only the kinds of weapons and conduct associated with warfare. *See id*. at 859–862.

Notably, § 229 defines the critical term "chemical weapon" broadly as including "a toxic chemical," defined as "any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere." 18 U.S.C. § 229F(8)(A). Further, the statute criminalizes the use or possession of "any" such weapon, not of a named subset. 18 U.S.C. § 229(a). This Court nonetheless applied a more limited construction of the statute, reasoning that statutes should not be read in a way that sweeps in purely local activity:

> The Government's reading of section 229 would "'alter sensitive federal-state relationships,'" convert an astonishing amount of "traditionally local criminal conduct" into "a matter for federal enforcement," and "involve a substantial extension of federal police resources." [*United States v.*] *Bass*, 404 U.S. [336,] 349–350, 92 S. Ct. 515 [(1971)]. It would transform the statute from one whose core concerns are acts of war, assassination, and terrorism into a massive federal anti-poisoning regime that reaches the simplest of assaults. As the Government reads section 229, "hardly" a

> poisoning "in the land would fall outside the federal statute's domain." *Jones* [*v. United States*], 529 U.S. [848,] 857, 120 S. Ct. 1904 [(2000)]. Of course Bond's conduct is serious and unacceptable—and against the laws of Pennsylvania. But the background principle that Congress does not normally intrude upon the police power of the States is critically important. In light of that principle, we are reluctant to conclude that Congress meant to punish Bond's crime with a federal prosecution for a chemical weapons attack.

Bond, 572 U.S. at 863.

As in *Bond*, it is possible to read § 922(g)(1) to reach the conduct admitted here: possession of an object that once moved across state lines, without proof that the defendant's conduct caused the object to move across state lines, nor even proof that it moved across state lines in the recent past. But to do so would intrude deeply on the traditional state responsibility for crime control. Such a reading would allow Congress to criminalize virtually any conduct anywhere in the country, with little or no relationship to commerce or to the interstate movement of commodities.

Gonzales did not challenge either the sufficiency of his plea's factual resume or the constitutionality of the statute in district court. The plain-error posture of Gonzales's case does not diminish the importance of the question presented. On appeal, the error can be rendered clear, and there is no doubt that Gonzales's conviction

under a statute that exceeded Congress's authority affects his substantial rights and the fairness, integrity, or public reputation of judicial proceedings. *See Olano*, 507 U.S. at 732. He can satisfy plain-error review, and the issue raised is worthy of certiorari.

CONCLUSION

FOR THESE REASONS, Gonzales asks this Honorable Court to grant a writ of certiorari. If this Court grants certiorari in another case to address either issue, it should hold the instant petition pending the outcome. If the constitutionality of § 922(g)(1) is called into question, or if its scope is limited, the Court should grant certiorari in the instant case, vacate the judgment below, and remand for reconsideration. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996).

Respectfully submitted.

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DATED: December 5, 2024