

No. 18-5762

IN THE
Supreme Court of the United States

PEDRO GARCIA,

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**

REPLY TO THE UNITED STATES' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Reply Argument.....	1
Conclusion	3

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Alderman v. United States</i> , 131 S. Ct. 700 (2011).....	1
<i>Henderson v. United States</i> , 568 U.S. 266 (2013).....	2
<i>Scarborough v. United States</i> , 431 U.S. 563 (1977).....	1
<i>Tapia v. United States</i> , 564 U.S. 319 (2011)	2
<i>United States v. Lopez</i> , 514 U.S. 549 (1995).....	1
<i>United States v. Walker</i> , 59 F.3d 1196 (11th Cir. 1995).....	2
Statutes	
18 U.S.C. § 922(g)(1)	1, 2

REPLY ARGUMENT

Only this Court can resolve whether 18 U.S.C. § 922(g)(1) is unconstitutional. The lower courts have upheld the statute based on *Scarborough v. United States*, 431 U.S. 563 (1977). *See* Petition for a Writ of Certiorari (“Pet.”) at 3 n.1; Brief for the United States in Opposition (“BIO”) at 5 n.1. *Scarborough*, however, is a statutory interpretation decision, not a constitutional one. 431 U.S. at 577. This Court’s decision in *United States v. Lopez*, 514 U.S. 549 (1995), addresses the constitutional issue implicated here, and § 922(g)(1) does not pass muster under its framework. Until this Court intervenes, defendants will continue to be convicted and sentenced to federal prison based on a statute that clearly exceeds Congress’s Commerce Clause authority. *See Alderman v. United States*, 131 S. Ct. 700, 703 (2011).

Petitioner’s case is an excellent vehicle to resolve the constitutionality of § 922(g)(1). His case squarely presents the issue of whether Congress may regulate non-economic activity—possession—occurring in one’s own home. Local law enforcement officers found the firearm during a state probation compliance search of Petitioner’s residence. Pet. at 2. To obtain Petitioner’s federal conviction, the government relied on the firearm’s manufacture outside Florida and the inference it had crossed state lines, a connection to interstate commerce that ended well before the regulated activity—Petitioner’s possession in Florida. *Id.* Petitioner’s case is representative of the prosecutions the federal government routinely brings, demonstrating that § 922(g)(1) lacks a jurisdictional element that “ensure[s], through case-by-case inquiry, that the firearm possession in question affects interstate commerce.” *Lopez*, 514 U.S. at 561.

The government fails to address the merits of Petitioner’s arguments. The government instead contends that the Court should deny certiorari here because plain error review should apply. BIO at 6. But the district court, as well as the Eleventh Circuit panel below, were bound by the

Eleventh Circuit’s previous published decisions rejecting Commerce Clause challenges to § 922(g) convictions. That Petitioner did not challenge the constitutionality of § 922(g) before the district court therefore did not affect the Eleventh Circuit’s decision. *See Pet.* at 8a-9a. Petitioner’s case thus presents the issue of whether the Eleventh Circuit, and other circuits, have incorrectly concluded that § 922(g) is constitutional.

This Court’s decision that § 922(g) is unconstitutional would be outcome determinative. Petitioner’s federal conviction and sentence under an unconstitutional statute would be vacated even under plain error review. *See Henderson v. United States*, 568 U.S. 266, 279 (2013); *United States v. Walker*, 59 F.3d 1196, 1198 (11th Cir. 1995).

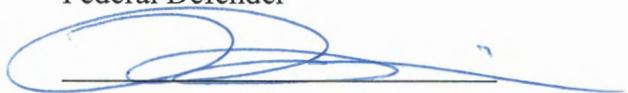
This Court has granted certiorari to address significant and recurring legal questions raised for the first time on appeal. *See, e.g., Tapia v. United States*, 564 U.S. 319, 323, 335 (2011). Petitioner’s case raises a significant and recurring constitutional question of whether § 922(g)(1) exceeds Congress’s authority under the Commerce Clause. *See Pet.* at 2-4. Petitioner therefore respectfully seeks this Court’s review.

CONCLUSION

For the reasons stated above and in his petition, Mr. Garcia respectfully requests this Court grant his petition.

Respectfully submitted,

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