No._____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES HILL,
PETITIONER,

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

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

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QUESTION PRESENTED

The federal government has committed petitioner James Hill to prison for a term of years based on testimony he briefly possessed a handgun on the front porch of a row home in Philadelphia. At his trial on a charge that this possession violated 18 U.S.C. § 922(g)(1), Mr. Hill protested that such local conduct is not within the scope of Congress's power to "regulate Commerce … among the several States," nor of any other constitutionally enumerated power. Following Third Circuit precedent construing *Scarborough v. United States*, 431 U.S. 563 (1977), as binding authority, the district court rejected his challenge.

The question presented is:

Whether the federal government may obtain a conviction under 18 U.S.C. § 922(g)(1) based on the purely local possession of a firearm that has previously crossed state lines.

RELATED PROCEEDINGS

United States District Court (E.D. Pa.):

United States v. James Hill, No. 18-cr-458 (July 1, 2019)

United States Court of Appeals (3d Cir.):

United States v. James Hill, No. 19-2532 (Dec. 10, 2020)

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

FEDERAL CASES **PAGE(s)**

TABLE OF AUTHORITIES - continued

PAGE(s)

TABLE OF AUTHORITIES - continued

PAGE(s)

FEDERAL STATUTES

STATE STATUTES

OTHER AUTHORITIES

No. 21-_____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES HILL,
PETITIONER

– VS. –

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI

Petitioner James Hill respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on December 10, 2020.

ORDERS AND OPINIONS BELOW

The opinion of the court of appeals denying Mr. Hill's challenge to 18 U.S.C. § 922(g)(1)'s application to purely intrastate possession of a firearm is not published, but is reprinted at 811 F. App'x 761 and submitted with this petition at Appendix B. Pet. App. 3a–9a. That opinion, issued on May 5, 2020, held the appeal C.A.V. (*curia advisari vult*) pending resolution in a pending *en banc* matter of an issue Mr. Hill raised in the court of appeals, but which this petition does not seek to have reviewed. Following decision in the *en banc* matter, the court of appeals entered judgment herein, Pet. App. 1a-2a (Appendix A), along with a second unpublished opinion, reprinted at 836 F. App'x 98 and submitted with this petition at Appendix C. Pet. App. 10a-15a. The district court's ruling denying Mr. Hill's motion for judgment of acquittal on ground the evidence did not show possession "in or affecting commerce," § 922(g),

is at Appendix D. Pet. App. 17a-18a. The judgment of conviction is at Appendix E. Pet. App 19a-25a.

JURISDICTION

The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291. That court entered its judgment on December 10, 2020. This petition is timely filed pursuant to Rule 13.1 and the Court's Order of March 19, 2020, extending the deadline for filing of a petition to 150 days from the date of the judgment of which review is sought. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, Clauses 1 and 3 of the United States Constitution provide in pertinent part:

> The Congress shall have Power … To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The Ninth Amendment of the Bill of Rights directs:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Tenth Amendment of the Bill of Rights directs:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Title 18 of the United States Code, Section 922(g), makes it unlawful for listed categories of persons, including any person who has been convicted 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.

Title 18 of the United States Code, Section 924(a)(2), provides that a knowing violation of § 922(g) is punishable by imprisonment of up to ten years.

STATEMENT OF THE CASE

Mr. Hill was tried and sentenced in federal court for possessing a firearm based on testimony he possessed a gun while on the front porch of a Philadelphia row home. Because he had previously sustained a felony conviction in the Court of Common Pleas for Philadelphia County, a federal statute makes it unlawful for him to "possess in or affecting commerce, any firearm." 18 U.S.C. § 922(g)(1).[1] Following a two-day trial, he was found guilty and thereafter sentenced principally to 70 months in federal prison, with three years of supervised release to follow. On appeal, the Third Circuit affirmed in relevant part under its prior precedent.

1. In July 2018, Mr. Hill was arrested by Philadelphia Police Department officers who reported recovering a gun from his person after confronting him on the front porch of a home on a residential block in West Philadelphia. Pet. App. 4a-5a.[2] Three months later, federal authorities adopted the case by indictment charging a single count under 18 U.S.C. § 922(g)(1) for possession "in and affecting commerce" of a firearm after conviction of a felony. Pet. App. 11a.

At trial, the government contended that a gun is possessed "in or affecting commerce," within the meaning of § 922(g), if it traveled in interstate commerce at any time prior to its possession. *See*, *e.g.*, C.A. App. 349 (opening statement). To prove this near-truism, the

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[1] In describing § 922(g)(1)'s operation, this petition should not be understood to make any representation concerning whether, at the time of the charged possession roughly three years ago, Mr. Hill was aware of the felony status that made it unlawful for him to possess a gun.

[2] In a pretrial ruling on a motion to suppress, the district court found that at the moment Mr. Hill was seized, police had a reasonable suspicion he was not a resident of the home and was on the property unlawfully (apparently on a theory of trespass, as there has never been any suggestion of burglary). C.A. App. 17. While petitioner disputes the official account of events, for purposes of this petition he is not asserting that the row home was his own residence.

prosecution called ATF Agent Shiva Raja, who testified that the gun in controversy was a Sig Sauer semiautomatic pistol manufactured in West Germany and imported into the United States by a Sig Sauer division in New Hampshire. C.A. App. 473.[3]

Disputing the government's view of what must be shown to establish possession "in or affecting commerce," the defense requested that the court instruct the jury it must find Mr. Hill not guilty unless the government proved beyond a reasonable doubt that the charged possession "had a substantial effect on interstate or foreign commerce." C.A. App. 189. In support, counsel cited *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Jones v. United States*, 529 U.S. 848 (2000), while acknowledging an adverse Third Circuit decision, *United States v. Singletary*, 268 F.3d 196 (2001), to be controlling precedent in the district court.

Declining the request, the court instructed that the firearm was possessed "in or affecting interstate or foreign commerce" if "at any time prior to the date charged in the indictment here, the firearm crossed the state or the United States border." C.A. App. 553; *id.* 556. The charge defined two additional elements: that Mr. Hill had been convicted of a felony, and that after the conviction he knowingly possessed a firearm. Pet. App. 12a.

Before submission of the case to the jury, the defense moved for relief pursuant to Rule 29 of the Rules of Criminal Procedure, providing for judgment of acquittal, on the ground that a firearm's prior travel across state lines is insufficient to demonstrate that any subsequent possession is in or affecting commerce. C.A App. 499. The district court denied the motion,

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[3] From Agent Raja's reference to "West Germany," it would appear probable the gun is more than 30 years old, *i.e.*, that it was manufactured before German reunification in 1990. Beyond the fact of the gun's import at an unknown time, there was no evidence of its history.

remarking that "the Supreme Court has taken a rather broad view of the element of interstate commerce." C.A. App. 500.

The jury returned a guilty verdict. The district court thereafter imposed a sentence of 70 months of federal imprisonment, three years of supervised release, and a special assessment of $100. Pet. App. 20a-21a, 24a.

2. Mr. Hill noticed and perfected a timely appeal, raising three challenges. As relevant to this petition, he challenged his conviction on the ground that 18 U.S.C. § 922(g)(1), if construed to prohibit the purely local possession of a gun, reaches conduct beyond the scope of the federal government's constitutional power to regulate. C.A. Appellant's Br. 14, 33-35. Mr. Hill also separately challenged his conviction on the ground that the prosecution had failed to charge and prove a fact essential to conviction, namely that he knew of a prior conviction's felony character at the time he allegedly possessed the gun. When the trial was conducted in March 2019, Third Circuit precedent had not required this *mens rea* be shown, but in the months following, this Court established the contrary rule in *Rehaif v. United States*, 139 S. Ct. 2191 (2019).

In a non-precedential opinion entered May 5, 2020, Pet. App. 3a-9a, the Third Circuit rejected Mr. Hill's challenge to the application of § 922(g)(1) to reach local gun possession, confirming his acknowledgment that the circuit's *Singletary* decision was controlling precedent that foreclosed this argument. Pet. App. 4a at footnote (citing *Singletary*, 268 F.3d at 205). The court also rejected Mr. Hill's remaining challenge, which was that the gun identified by Agent Raja should have been suppressed as the fruit of an arbitrary and unlawful seizure in violation of the Fourth Amendment. Pet. App. 7a-9a. The court deferred judgment, however, holding the

appeal C.A.V. (*curia advisari vult*) to await decision in an unrelated case in which rehearing *en banc* had been granted to consider the same *Rehaif* issue raised by Mr. Hill.

On December 1, 2020, the circuit correctly held *en banc* that, in a § 922(g)(1) prosecution, the government's failure to prove the defendant knew he was a felon is error of such gravity that reviewing courts ought generally exercise discretion under Criminal Procedure Rule 52(b) to correct it. *United States v. Nasir*, 982 F.3d 144 (3d Cir. 2020). Following decision in *Nasir,* the circuit entered an order and opinion in this case vacating the judgment and remanding for a new trial. Pet. App. 1a, 15a. An accompanying non-precedential opinion explains that "the Government failed to adduce evidence that Hill knew he was a felon," constituting plain error warranting correction. Pet. App. 11a. On the government's motion, the circuit thereafter stayed issuance of its mandate in the expectation a decision of this Court will shortly address when relief is or may be warranted for unpreserved *Rehaif* error. (C.A. Doc. Nos. 63, 64).[4] This timely petition follows.[5]

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[4] *See* Gregory Greer v. United States, No. 19-8709 (argued Apr. 20, 2021); United States v. Michael Andrew Gary, No. 20-444 (argued Apr. 20, 2021).

[5] It may be noted that the new trial granted by the Third Circuit stops short of the relief to which Mr. Hill is entitled should the question presented by this petition be answered in the negative. As reviewed in the discussion that follows, to uphold conviction on no greater a connection with interstate commerce than shown here would vest in the federal government a "general police power over the Nation." *Taylor v. United States*, 136 S. Ct. 2074, 2084 (2016) (Thomas, J., dissenting). Section 922(g) must therefore be construed to stop short of such purely local possession, or else struck down as unconstitutionally *ultra vires*. In the event of a saving construction, Mr. Hill is entitled to a judgment of acquittal. If the statute is struck down, Mr. Hill is entitled to the matter's dismissal. Upon either disposition, he would not be subject to further prosecution for the same offense.

REASONS FOR GRANTING THE PETITION

This Court's review is necessary to correct a widespread and fundamental error concerning the breadth of the Commerce Clause—an error that recurs, moreover, in a category of federal prosecutions numbering in the many thousands each year. Like other courts of appeals, the Third Circuit has concluded that it is bound by this Court's 44-year-old statutory interpretation decision in *Scarborough v. United States*, 431 U.S. 563 (1977), to ignore the rule that only activities having a substantial relation with interstate commerce are within the scope of Article I's enumeration of congressional powers. As a result, in this prosecution and others like it, the federal government has seized a plenary police power of the kind which the Constitution manifestly reserves to the several States. Review by this Court is necessary to eliminate an anomalous exception to the established law of the Commerce Clause and revive the distinction "between what is truly national and what is truly local." *United States v. Morrison*, 529 U.S. 598, 617-18 (2000).

A. Congress's enumerated powers do not extend to the regulation of purely local firearm possession.

Mr. Hill was convicted of unlawful firearm possession "in or affecting commerce," 18 U.S.C. § 922(g), based on testimony that the Sig Sauer pistol offered into evidence had at some unknown time traveled in overseas and interstate commerce, when it was imported from Germany and when it entered Pennsylvania. The government did not suggest that Mr. Hill had imported the gun, purchased it in another state, or even carried it across state lines himself. He was alleged simply to have possessed the gun on a row home's front porch.

The Third Circuit affirmed under its controlling precedent of *United States v. Singletary*, 268 F.3d 196, 205 (3d Cir. 2001), which read this Court's decision in *Scarborough v. United*

States, 431 U.S. 563 (1977), as binding authority for the rule that Congress, in the exercise of its power to "regulate Commerce … among the several States," may constitutionally prohibit the purely local possession of a gun that has previously crossed state lines. Pet. App. 4a at footnote. Other circuits are generally in accord.[6] The government has availed itself freely of the breadth of this construction, prosecuting many thousands of people each year under § 922(g). *See* United States Sentencing Commission, *Quick Facts: Section 922(g) Firearms* (May 2020) (more than 7,500 cases charging violation of § 922(g) sentenced in fiscal year 2019).[7]

This situation cannot be allowed to persist. Were the Third Circuit's rule correct, the possession of "*any* item" that "has ever … crossed state lines" must lie within Congress's power to regulate or ban, marking an extraordinary expansion of federal authority that "would trespass on traditional state police powers." *Alderman v. United States*, 131 S. Ct. 700, 703 (2011) (Thomas, J., joined by Scalia, J., dissenting from denial of certiorari) (emphasis added). Such an expansion would also threaten the liberty that it is the ultimate aim of dual sovereignty to protect. Reading federal criminal statutes too broadly weakens longstanding protections the Constitution guarantees the people, such as the right to insist the government persuade a jury drawn from the community of guilt beyond a reasonable doubt. *Taylor v. United States*, 136 S. Ct. 2074, 2088 (2016) (Thomas, J., dissenting).

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[6] *E.g.*, *United States v. Weems*, 322 F.3d 18, 26 (1st Cir. 2003); *United States v. Carnes*, 309 F.3d 950, 954 (6th Cir. 2002); *United States v. Santiago*, 238 F.3d 213, 216 (2d Cir. 2001); *United States v. Dorris*, 236 F.3d 582, 584 (10th Cir. 2000); *United States v. Jones*, 231 F.3d 508, 515 (9th Cir. 2000); *United States v. Wesela*, 223 F.3d 656, 660 (7th Cir. 2000).

[7] *Available at* https://www.ussc.gov/research/quick-facts/section-922g-firearms.

As Justice Thomas explained in his *Alderman* opinion, no party in *Scarborough* questioned whether prohibiting purely local firearm possession exceeds the federal government's authority to regulate interstate commerce, and the Court did not hold that the statute was constitutional. 131 S. Ct. at 701. *Scarborough* instead addressed the "statutorily required nexus" between the possession of a firearm by a convicted felon and commerce under 18 U.S.C. § 1202(a) (repealed 1986), a predecessor to § 922(g) prohibiting firearm possession "in commerce or affecting commerce." *Scarborough*, 401 U.S. at 564; *see Alderman*, 131 S. Ct. at 701. The Court held the requisite statutory nexus could be satisfied by evidence a gun had once traveled in interstate commerce, 431 U.S. at 564, noting that Section 1202(a)'s legislative history suggested Congress's wish to assert "its full Commerce Clause power," *id*. at 571 (internal quotation marks omitted).

Whatever *Scarborough*'s construction might imply in the abstract, this Court's decisions over the past two and a half decades have since made unmistakably clear that the constitutionality of Section 922(g) must, like any federal statute predicated on the commerce power, be assessed under the framework enunciated in *United States v. Lopez*, 514 U.S. 549 (1995). *See, e.g.*, *Taylor*, 136 S. Ct. at 2079 (opinion of Court); *Gonzales v. Raich*, 545 U.S. 1, 17 (2005). In *Lopez*, the Court synthesized a three-pronged test:

> [W]e have identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce.

514 U.S. at 558-59 (citing cases). In other words, "Congress may regulate 'the channels of interstate commerce,' 'persons or things in interstate commerce,' and 'those activities that substantially affect interstate commerce.'" *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 536 (2012) (Roberts, C.J.). The Court further stated in *Lopez*, with respect to federal firearm regulation, that statutes must "limit [their] reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce." 514 U.S. at 562.

In the *Alderman* case that prompted Justices Thomas and Scalia to urge review on certiorari, the defendants were convicted of unlawfully possessing body armor after conviction of a felony in violation of 18 U.S.C. § 931(a), *see* 131 S. Ct. at 700, a statute containing no explicit reference to interstate commerce. The Justices called in the strongest terms for review, stating that the Court's failure to do so "tacitly accepts the nullification of our recent Commerce Clause jurisprudence." *Id*. "This Court has a duty to defend the integrity of its precedents, and we should grant certiorari to affirm that *Lopez* provides the proper framework for a Commerce Clause analysis of this type." *Id.* at 702.

A number of jurists have joined Justices Thomas and Scalia in doubting the viability of a constitutional rule under which a gun's one-time travel across state lines suffices to bring its local possession forever after within the scope of the federal commerce power. *See United States v. Alderman*, 565 F.3d 641, 656 (9th Cir. 2009) (Paez, J., dissenting), *and id.*, *on petition for rehearing en banc*, 593 F.3d 1141, 1141-43 (2010) (O'Scannlain, J., joined by Paez, Bybee, and Bea, JJ., dissenting); *United States v. Patton*, 451 F.3d 615, 636 (10th Cir. 2006) (per McConnell, J.); *United States v. Bishop*, 66 F.3d 569, 595-96 (3d Cir. 1995) (Becker, J., concurring in part and dissenting in part).

Such a rule indeed cannot be sustained, as the purely local possession of a firearm does not fit within any of the three categories enunciated in *Lopez*. As to the first category, possessing a gun does not make use of or interfere with the channels of commerce. It is one thing to uphold federal jurisdiction when such use or interference "is necessarily a part of the commission of the targeted offense." *United States v. Vasquez*, 611 F.3d 325, 330 (7th Cir. 2010) (failing to register as sex offender upon adopting residence in different state); *Brooks v. United States*, 267 U.S. 432, 438-39 (1925) (transporting stolen automobile across state lines); *compare United States v. Hill*, 927 F.3d 188, 210 (4th Cir. 2019) (2-1) (assault that "interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct," when animated by anti-gay bias, as proscribed by Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, *see* 18 U.S.C. § 249(a)(2)(B)(iv)(I)), *cert. denied*, 141 S. Ct. 272 (2020). But to construe the "channels" prong to authorize regulation whenever an activity involves an item that crossed a state line at some unknown time does not pass muster. *See NFIB*, 567 U.S. at 556 ("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.").

As to *Lopez*'s second category, a handgun possessed locally is inarguably not a "thing in" interstate commerce, much less an instrumentality of it. Were the contrary view adopted, then possession of *any* item that has traveled across state lines must lie within federal power to regulate. *Alderman*, 131 S. Ct. at 703. As all "conduct in this interdependent world of ours has an ultimate commercial origin or consequence," *Lopez*, 514 U.S. at 580 (Kennedy, J., concurring), such a rule would obliterate all distinction between what is local and what is national, a consequence this Court has repeatedly held to defeat broad constructions of federal criminal statutes. *See Bond v. United States*, 572 U.S. 844 (2014) (prosecution under 18 U.S.C.

§ 229(a) for conduct in the nature of simple assault by means of chemical irritant); *Jones v. United States*, 529 U.S. 848 (2000) (prosecution under 18 U.S.C. § 844(i) for arson); *United States v. Bass*, 404 U.S. 336 (1971) (prosecution under 18 U.S.C. § 1202(a) (repealed 1986) for possession of a firearm after conviction of a felony); *see also Taylor*, 136 S. Ct. at 2083-2085 (Thomas, J., dissenting) (prosecution under Hobbs Act, 18 U.S.C. § 1951(a), for robbery).

As to the third and final category enunciated in *Lopez*, a person's purely local possession of a firearm does not "substantially affect interstate commerce." 514 U.S. at 559. Nor does such possession fit into any "economic" class of activities having such an effect. *Raich,* 545 U.S. at 17. Simply possessing a firearm for a non-commercial purpose — be it protection of one's home, collecting, or whatever else — cannot plausibly be characterized as "economic" activity. Such possession therefore may not be reeled within the scope of the federal commerce power on a postulate that all local possession, considered in the "aggregate," has a substantial effect on interstate commerce. *United States v. Morrison*, 529 U.S. 598, 617 (2000) (rejecting "argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce").

B. Section 922(g)(1) must be construed to stop short of criminalizing purely local firearm possession or else struck down.

To the extent § 922(g)(1) will bear no construction but that which the circuits have generally read *Scarborough* to dictate, it must be struck down as an *ultra vires* enactment exceeding Congress's Article I enumerated powers. But it is by no means self-evident that "in or affecting commerce," as used in § 922(g), need be construed to reach purely local firearm possession. On its face, the text seems no less amenable to a construction requiring the defendant either to have used the channels of interstate commerce to possess the gun, or

otherwise that his own possession in itself have substantially affected interstate commerce. *Cf. Taylor*, 136 S. Ct. at 2083-2085 (identifying those robberies which Hobbs Act may be construed to reach in abidance with Article I limitations). Use of the channels of interstate commerce to possess the gun could be shown if, for instance, the defendant knowingly procured or participated in a firearm's shipment, receipt, or transport across state lines. *See Bass*, 404 U.S. at 350 (sufficient to convict that at time of possession gun was moving in interstate commerce). To demonstrate that the defendant's own firearm possession had a "substantial effect" on interstate commerce, the government might prove possession of an inventory of guns for sale locally.

Only a saving construction of this kind accords with the "critically important" "background principle that Congress does not normally intrude upon the police power of the States," *Bond*, 572 U.S. at 863, and with the rule that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity," *Bass*, 404 U.S. at 347. As *Bond* illustrates in its own statutory construction and in its discussion of earlier precedents, this principle has often led the Court to insist "on a clear indication that Congress meant to reach purely local crimes" before interpreting even "expansive language in a way that intrudes on the police power[.]" 572 U.S. at 860 (reviewing *Bass*, 404 U.S. at 349-351, and *Jones*, 529 U.S. at 855-859); *see also Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (requiring any such congressional intent be "unmistakably clear in the language of the statute") (internal quotation and alteration marks omitted).

In the most directly on point case, addressing an earlier felon-in-possession statute, the Court concluded that "[a]bsent proof of some interstate commerce nexus in each case, § 1202(a) dramatically intrudes upon traditional state criminal jurisdiction." *Bass*, 404 U.S. at 350. The statute also presented ambiguity such that the rule of lenity prohibited choosing the harsher

alternative. *Id.* at 347. "Absent a clearer statement of intention from Congress than is present here, we do not interpret § 1202(a) to reach the 'mere possession' of firearms." *Id.*

C. This case is the right vehicle for resolving a question recurring in any number of the thousands of federal prosecutions under § 922(g) each year.

This case is perfectly suited for resolving the question presented. In addition to the question's precise preservation at all stages of proceedings, Mr. Hill's prosecution well illustrates how the federalization of traditionally local crimes not only intrudes upon state sovereignty, but also weakens the constitutional protections afforded to individuals, endangering everyone's liberty. *See New York v. United States*, 505 U.S. 144, 181 (1992) ("'[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power.'") (quoting *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J., dissenting)). Among other things, it weakens the universally cherished right to trial by jury, by altering the vicinage so as to draw jurors from a region that may not represent the defendant's own community.

On the evidence presented, the Sig Sauer pistol washed out of the stream of commerce perhaps decades before Mr. Hill is alleged to have briefly possessed it on a row home's front porch. The jury did not find any proximate relationship between the charged possession and interstate commerce. Rather, the jury was instructed to return a guilty verdict if "at any time prior to the date charged in the indictment here, the firearm crossed the state line or the United States border." C.A. App. 556. Thus was the federal government able to obtain a conviction and a nearly six-year prison sentence in the absence of any demonstrable federal interest, and despite the Commonwealth of Pennsylvania's own law barring many persons with felony convictions

from possessing firearms—though not altogether the same class whom § 922(g)(1) prohibits from doing so. *See* 18 Pa. Stat. Ann. § 6105(a), (b).[8]

This federal usurpation dramatically altered the substance of the jury trial right afforded Mr. Hill, particularly the meaning of the right to have jurors selected from a fair cross section of the "community." *Duren v. Missouri*, 439 U.S. 357, 359 (1979). It is not evident that the venue of this prosecution (the Eastern District of Pennsylvania) represents in any meaningful sense the community in which the crime was allegedly committed, namely, the City and County of Philadelphia. Philadelphia's demography is markedly different from that of the eight other counties comprising the Eastern District, while these other eight are largely congruous with each other.

For example, in Philadelphia, white residents constitute 44.8 percent of the population, Black residents 43.7 percent, Latino residents 15.2 percent, and Asian residents 7.8 percent.[9] In none of the eight other counties do Black residents constitute as much as one third of the population; in six of the counties, white residents account for nearly 90 percent of the population.[10] Had the case been left to the state to prosecute, it is highly likely that Mr. Hill, a Black Philadelphian, would have been tried before a jury including more than token Black

[8] Mr. Hill was himself initially charged in state court, with the case nolle-prossed following return of the federal indictment. *See* Presentence Investigation Report ¶ 37 (rev. June 12, 2019).

[9] *See QuickFacts: Philadelphia County, Pennsylvania*, United States Census Bureau, https:www.census.gov/quickfacts/philadelphiacountypennsylvania (reporting data as of 2019).

[10] *See QuickFacts* for Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, and Northampton Counties, United States Census Bureau, https://www.census.gov/quickfacts.

representation. It is unknown to counsel in this case whether the jury included a single non-white member or Philadelphia resident. *See* C. A. App. 591.

All this, even alone, draws into question whether Mr. Hill was afforded the genuine jury trial right guaranteed by the Constitution and its Bill of Rights. Even the least such doubt is to the detriment of our deepest constitutional values. *See*, *e.g.*, The Federalist No. 83, p. 408 (Dover thrift ed. 2014) ("The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them, it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government.") (A. Hamilton); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1402 (2020) ("When the American people chose to enshrine [the] right [to trial by jury] in the Constitution.… [t]hey were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed.").

The County of Philadelphia is also the vicinage designated by the Commonwealth of Pennsylvania for the trial of felonies under its law. *See* 42 Pa. Stat. Ann. §§ 901(a), 911(a) (establishing single Court of Common Pleas for Philadelphia County, as well as each of more than 50 additional counties).[11] By providing for Hill to be tried before a jury drawn from a much larger region, the federal government "displaced" the "public policy of the Commonwealth of Pennsylvania, enacted in its capacity as sovereign[.]" *Bond*, 572 U.S. at 865 (internal quotation marks omitted). This displacement, along with the abridgment of Mr. Hill's jury trial right, amply shows that construing Section 922(g) to reach local gun possession appropriates a general

[11] A small minority of the state's common pleas courts exercise jurisdiction in more than one county. *See* 42 Pa. Stat. Ann. 901(a).

police power of the kind manifestly entrusted to the states, upending the allocation of power that is both "embodied in the structure of our Constitution and expressly required by the Tenth Amendment." *Chiafolo v. Washington*, 140 S. Ct. 2316, 2333 (2020) (Thomas, J., joined by Gorsuch, J., concurring in judgment).

Purely local possession of a firearm, lacking any substantial relationship with interstate commerce, lies beyond the scope of Congress's enumerated powers under this Court's contemporary precedent. The federal government must prove more than a gun's one-time travel across a state line before its whole penal power may be brought to bear on a person who, anytime thereafter, possesses the gun strictly in his own home, neighborhood, or state of residence.

CONCLUSION

James Hill respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

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