No. 21-5270

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINTON D. C.

ORIGINAL

ROBERT STANARD — PETITIONER
(Your Name)

FILED
JUL 20 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Standard
(Your Name)

P.O. Box 5000
(Address)

Sheridan, Oregon 97378
(City, State, Zip Code)

(Phone Number)

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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INDEX TO APPENDICES

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MARCH 10, 2021.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. SECOND AMENDMENT TO U.S. Constitution
2. FOURTH AMENDMENT TO U.S. Constitution
3. Fourteenth AMENDMENT TO U.S. Constitution
4. Title 18 U.S.C. Section 922(g)(1)
5. Title 18 U.S.C. Section 922
6. Title 18 U.S.C. Section 921(a)(17)

QUESTION(S) PRESENTED

1. Does the taxing powers of Congress negates a person's possessory interest in ownership of A Firearm.
2. Where does interstate commerce begin and end in regulation of Firearms under Title 18 U.S.C. Section 922(g).
3. How does unlawful possession of Firearm "Substantially Effect" Interstate Commerce
4. Can Congess "Forever" tax a Firearm that is no longer passing through interstate commerce.
5. At what point in interstate commerce does a Firearm become personal property within the meaning of Fourth Amendment to United States constitution.
6. Does Commerce "end" at the point of Retail Sale of the Firearm.

TABLE OF AUTHORITIES CITED

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STATEMENT OF THE CASE

On October 29, 2016 at 0327 hours multiple Snohomish County Sheriff Office Deputies were dispatched to 17708 92nd Ave NW Stanwood, WA in reference to a domestic violence incident. While in route Deputies were advised of A disturbance going on inside the residence between Anna K. Stanard and Husband Robert Stanard. The Reporting Party Stated Robert would have a "shoot out" with police if they showed up at the residence. Deputies on arrival to Robert Stanard residence contacted Mr. Stanard in the Garage And took him into custody. Mr. Stanard was requesting that the Deputies shoot him, Mr. Stanard was Attempting Suicide By Cop. Deputy Jacob Navarro interviewed Mr. Stanard wife Anna K. Stanard. It was determined that Mr. Stanard Assaulted his wife and was arrested For Assault 4th Degree Domestic violence. Anna told Deputy Navarro that Robert had firearms in the house and garage. Deputy Navarro began collecting the firearms for Safekeeping and discovered Robert is A convicted felon. Deputy Navarro located .380 handgun in the master bedroom, An AR-15 in the gun safe in the garage. Deputy Navarro found or located what were possible precursors to making of explosive devices inside the garage. Detective Michael Atwood From Everett Police Department called out the Bomb Squad. The Bomb Squad did not locate any materials that were precursors For explosive devices. On October 29, 2016 Detective Margaret Ludwig obtained A Search warrant from Snohomish County District Court Judge Patricia Lyon. Detective Ludwig executed the Search warrant At 17708 92nd Ave NW Stanwood WA (Robert) residence. The Snohomish County Sheriff Office Seized multiple Firearm which consisted of Diamond Back AR-15 Rifle, 5.56 Box of Ammunition, 5.56 M196 tracer

STATEMENT OF THE CASE

rounds, AR-15 30 round capacity magazines, a silencer to fit the AR-15, and three S&W 9mm handgun magazines with ammunition, military style TAC vest and other accessories. Robert wife made a statement to ATF Agent Collier and Deputy NAVARRO that she (Anna K. STANARD) had purchased the FIREARMS for her husband knowing Robert was A Convicted Felon.

On NOV. 11th, 2016 Robert Stanard was charged by way of Indictment in the United States District Court FOR the Western District of WASHington to wit a violation 18 U.S.C. Section 922(g)(1) being a felon in possession of A FIREARM (Count One); being a felon in possession of AMMUNITION (Count Two); possession an unregistered silencer (Count Three); 26 U.S.C. Section 5841, 5861(d), 5871; and conspiring to obstruct justice (Count Four); 18 U.S.C. Section 371, 1503.

On JAN. 2018 Robert Stanard was found guilty At A jury trial of All Charges Alleged in the indictment. Mr. Stanard was representing by Counsel At the time of trial. Mr. Stanard was sentenced by the trial Court to A term of 84 Months to be Served in custody in the BUREAU OF Prisons.

STATEMENT OF THE CASE

On JAN. 2018 Counsel for Mr. Stanard filed A appeal to the United States Court of Appeals for the Ninth Circuit. Counsel raised severally issues that challenged the validity of Mr. Stanard Conviction. On March 10, 2021 United States Court of Appeals for the Ninth Circuit Affirmed Mr. Stanard Conviction.

ARGUEMENT

The unconstitutionality of Title 18 U.S.C. Section 922(g)(1):

Second Amendment to the United States Constitution states in part: "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." To interpet the second Amendment in any manner other than what the Framers had intended puts An unconstitutional strain on the people that it was intended to protect. The second Amendment makes clear that the right is not to be infringed upon. The Second Amendment is a Fundamental right guaranteed by the U.S. constitution. The language "shall not be infringed" means shall not be hindered, tampered with, or restricted in any way that would deprive Free exercise of A persons right to bear Arms.

A regulation under 922(g)(1) imposes A lifetime ban on persons convicted of a felony, the broad Application of section 922(g)(1) underscores and infringes upon the rights of American citizens to bear Arms. Congress "taking powers" pursuant to Section 922(g)(1) imposes A ban and takes Away a persons Ability to Freely own A Firearm. The Supreme Court held in Heller v. District of Columbia 554 US 570(2008) THAT the Second

Arguement cont:

Amendment protects the right to self defense in the home
The home is where the need for defense of self, family,
and property is most acute, and thus propecting private
firearm ownership.

(felons) are categorically different from the individuals
have a fundamental right to bear Arms. In most state
superior courts such as California, and State of
Washington, when a criminal defendant enters a
plea of guilty or No contest the Trial Court does
not in most case Admonishes to said defendant
that as a consequence of his/her plea, said defendant
is precluded from ever owning or possessing a
firearm. Moreso, when a defendant is placed on a
grant of probation for a felony/misdemeanor conviction,
As a condition of probation, said defendant is
barred from possessing or owning a firearm during
the term of probation. The probation/parole conditions
fail to inform that as a result of a felony
conviction said person right to bear Arms under
the second Amendment "is no more."

A criminal defendant must be Admonished by the
Sentencing court As a result of your plea, you Are
surrendering your fundamental right to bear Arms under
the Second Amendment.

Arguement Continued:

Felons who complete there terms of probation/parole successfully and return to a law abiding citizen, living a responsible lifestyle should now be restored to a equal class of citizen as a person who never sustained a felony conviction. A ex-felon should enjoy and be able to exercise the fundamental right that the framers of the second Amendment intended without further infringment by government Agents. A lifetime ban of firearm on a ex-felon is a unconstitutional Application of second Amendment. To set aside different classes of citizens by either social class versus ex-felon status defends segregation and puts into practice regulations that restrict freedom, and enjoyment of firearms. Certainly one can see an unequalness in this practice. When a person is convicted in most State Courts he/she can file a petition to restore a persons Civil Rights to "bear Arms". The federal law does not recognize the reinstatement of civil rights in Application of firearms.

922(g)(1) has granted Congress police powers to Forever regulate firearms no longer passing through or in Interstate Commerce. Section 922(g)(1) statue violates Anti trust under the Sherman Act Title

. A Ex-felon who is a law Abiding citizen has a liberty created infrest to unwarrant intrusion, or infringment on his right to bear Arms under Equal protection of law under the Fourteeth Amendment to U.S. Constitution.

922(g)(1) ARGUMENT

Title 18 U.S.C. §922(g)(1), as it is applied to the wrong normal everyday, law abiding citizen (ex-felon who has served his time and completed his debt to society) is misapplied. The 922(g)(1) statute was written and in it's clear language was intended to regulate to flow of commerce. The flow of commerce is the instrumentalities, articles, and goods in their travels from the manufacturer to the business or storage facility where it will wait to be sold. "The flow of commerce begins with the Manufacturer og the drug and ends with the consumer, that is, the patient." UNITED STATES v. Evers, 643 F.2d 1043, 1049 (5th Cir. 1981). When looking at this case, it appears that commerce does have an end. With commerce having an end, surely that would mean that the item has left the flow of commerce and is no longer under regulation. Zoslaw v. MCA Distrib. Corp.,693 F.2d 870, 878 (9th Cir. 1982) (holding that the "flow of commerce ends when goods reach their intended destination" (internal quotations omitted). This case was most recently cited inside, Aerotec International, Inc. v. Honeywell, 837 F.3d 1171 (9th Cir. App. 3/16/16).

So if commerce has an end wouldn't that mean that the jurisdictional hook also would end unless the offense happened on some Indian Land, Territory, or CommonWealth of the United States. When a citizen has possession of and article of commerce on their own private property, not only does the government not have jurisdiction by way of that instrumentality leaving the commerce but they also lose it by the property that it takes place within.

We know that in order for the possession to have an affect on commerce that the person that is possession of the article would have to be engaging in some type of activity which would beto reenter the item into the flow of commerce since said item has already exited. Here is an example of a way that the courts have said that commerce can be affected. In the case of UNITED STATES v. Johnston, 42 F.3d 1328 (10th Cir. Dec. 16, 1994), defines more clearly how or what it takes to "affects interstate commerce," citing case of UNITED STATES v. Levine, 41 F.3d 607 WL (10th Cir. 1994), "there the defendant tainted a can of soda after removing it from the shelf of a retail store and then publicized the story in the news media." "In Levine, the defendant made essentially the same argument Mr. Johnston makes here, contending that her conduct did not violate section 1365(b) because the can did not travel in interstate commerce after it was tainted. In response we undertook a thorough examination of the legislative history and concluded "that the requisite effect on interstate commerce must occur at or after tainting." We further held that this effect may be established in three ways:

> (1)... the product was in interstate commerce at the time of tainting; we are persuaded that the canned "consumer Product" is in interstate commerce during its entire commercial journey if part of that journey

involves movement across state lines; (2)... the product was not in interstate commerce at the time of tainting, [but] after tainting was returned to interstate commerce; we are persuaded that if a "consumer product" is taken off the shelf, tainted, and then returned to the shelf, it would still be in interstate commerce when the tainting occurred; or (3)...there was an actual impact on interstate commerce as a result of the tainting of the product. Johnston,@42 F.3d 1330.

In Johnston, because his claim of tainting was publicized and PepsiCo actually suffered a financial loss, resulting in an actual impact on interstate commerce. Especially since PepsiCo is the manufacturer of the same product which received bad publicity as a result of Mr. Johnston's false claims.

There are just a small handful of Supreme Court cases dealing with the whole Commerce Clause / Jurisdictional Hook hold true analysis's, giving clear understanding of the law or how to interpret the written language of the statute. U.S v. Lopez, 514 U.S. 549, 558-59, 115 S. Ct. 1624, 1629-30, 131 L. Ed. 2d 626 (1995) (internal citations ommited), "The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power": (1) "the use of the channels of interstate commerce;" (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come from intrastate activities;" and (3) "those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce."

As we can see, the government can regulate 3 broad categories of activity through the commerce clause. Nowhere in those activities can the mere possession fit into the regulated activities, especially when that possession allegedly takes place outside the jurisdictional hook of the government. The possession of a firearm does not (1) take place during or through using any channel of interstate commerce, (2) Yes, a firearm is an instrumentality or thing of commerce. However one that does leave commerce at the time of it reaching the ultimate consumer as in UNITED STATES v. Kaplan, 836 F.3d 1199 (9th Cir. September 9, 2016). Citing UNITED STATES v. Sullivan, 332 U.S. 689, 696, 68 S. Ct. 331, 92 L.Ed 297 (1948)(to extend the Act's coverage to every article in interstate commerce until it reaches "the ultimate consumer," the patient. Id. at 697; See also UNITED STATES v. USPLABS, LLC, 338 F. Supp. 3d 547 (5th Cir. Oct. 5, 2018) citing Sullivan, (to safeguard the consumer by applying [it] to articles from the moment of their introduction into interstate commerce all the way to the moment of their delivery to the ultimate consumer). Sullivan, makes it clear that an article of interstate commerce does leave the flow of commerce at the point of purchase by the consumer. If an article has left commerce then surely the jurisdictional hook is also remeoved since the article is no longer a part of commerce. (3) If the mere possession does have an affect on commerce.

it could only be if the Defendant was to attempt to actually engage in one of the thre broad catagories of commerce. In other words if the Defendant were to try and sell or trade the firearm, he'd then be engaging in and reintroducing the article into the flow of commerce, thereby effectively affecting commerce. If the Defendant were to use the normal channels of commerce. he'd be affecting commerce. However, the mere possession does not. If the Defendant were to use the firearm in the commission of some other offense. he'd be using the firearm for harmful purposes. UNITED STATES v. Ballinger, 395 F.3d 1218, 1226 (11th Cir. 2005) ("plainly, congressional power to regulate the channels and instrumentalities of commerce includes the power to prohibit their use for harmful purposes, even if the harm itself occure outside the flow of commrc and is purely local in nature."). The mere possession of the firearm was not being used for, in, or during any harmful purpose. The possession did not have any impact on commerce either. As is the third fact of criteria. Had the Defendant robbed or stolen a firearm surely he would have had an affect on commerce. However, he did no such act.

Furthermore, looking into additional caselaw regarding commerce ending, UMOE Schat Harding, Inc., Pt. Schneider Elec, MFG. Batam, (2018 U.S. DIST. LEXIS 58122 (11th Cir. April 5, 2018) (civil action no. 17-0193-WS-N) (Where any stream of commerce ends depends on who the "consumer" of the product via "retail sale." When the product at issue is itself an ultimate product such as a vehicle, the product reasonably is viewed as remaining in the stream of commerce from manufacturer to distributor to dealership to retail purchaser/consumer). Here in this case it makes clear the reach of commerce and the channels of commerce and at what point the item leaves the flow of commerce and therefore the regulation of commerce. See also UNITED STATES v. Deleon, 2018 U.S. DIST LEXIS 145950 (D.N.M. Aug. 28, 2018) citing Sebelius, 567U.S. at 558, 561 (opinion of Roberts, C.J.); id. at 649-57 (joint opinion of Scalia, Kenedy, Thomas, and Alito, JJ.). Sebelius thus reveals that a valid exercise of Congress' Commerce Clause Power requires **MORE** than a substantial effect on interstate commerce. The mere possession does not have a substantial affect on commerce. Remember the firearm has been purchased and therefore has been removed from the flow of commerce and beyond the reach of Congress' Commerce Clause power. Otherwise Congress can forever have a jurisdictional hook into any article which then would indicate a broad power rather than the limited powers stated by the constitution. UNITED STATES v. Morrison, 529 U.S. 598,613, 120 S.Ct. 1740, 146 L.Ed. 2d 658 (2000) at 617 ("We accordingly reject the argument that Congress may regulate noneconomic, violent conduct based solely on that conduct's aggregate effect on interstate commerce."); UNITED STATES v. Lopez, 514 U.S. at 560 (Rehnquist, C.J.)("where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained."). Again, the mere possession of a firearm not involved in a commerce activity, nor

being used in a harmful manner which Congress and therefore the courts lose their subject matter jurisdiction as a result that the possession does not meet the criteria or jurisdictional element which limits the governments authority. If the possession were to take place on or in an area that the government could reasonably claim their subject matter jurisdiction such as happening within a territory or possession of the UNITED STATES. The private property that the Defendant purchased would not include such a territorial jurisdiction. Neither did the offense take place on any Indian land that is within the possession of the government.

In UNITED STATES v. Deleon, "for example, in the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, Congress decided to regulate the interstate firearms market by excluding felons from it. See 82 Stat. at 231, § 922(f) (prohibiting any person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year... to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce"0; id. at 236, § 1202(a) (declaring that a felon "who receives, possesses or transports in or affecting commerce... any firearm" commits a criminal offense). The Commerce Clause -- taken alone- permits Congress to regulate the interstate firearms market, but it does not permit Congress to regulate firearm possession, because possession is not commerce. If Congress has the power to regulate mere possession of a firearm that is to say that it can also regulate to possession of a toilett plunger "if that plunger is used in a harmful manner." Mere possession does not include nor does it activate Congresses power to regulate such article that has truly been removed from the flow of commerce. Furthermore, the mere possession does not "substantially affect" commerce. First we must must evaluate the words and their meanings.

The first word we will look at is (1) substantially; essentially: without material qualification in the main; in substance, materially, in a substantial manner, about, actually, competantly, and essentially. These definitions are found in the Black's Law Dictionary: Abridged 6th Ed.. We can see that possession can not fit into any of these catagories of defined words. Nor does mere possession substantially affect any form of commerce. (2) Affecting Commerce: the Term "Affecting Commerce" means In commerce, or Burdening or Obstructing commerce, or the free flow of commerce. In order to possess in and **Affecting Commerce** the Defendant would have had to possess the firearm while **in** or **Affecting Commerce.** In order to Affect the commerce the Defendant would also ghave to have delayed, obstructed, or burdened the flow of the firearm in commerce. By the Defendant possessing the firearm after the firearm had been purchased out of the flow of commerce by the ultimate consumer, it was not in a manner able to substantially, or affect commerce; (3) In: the word "in" can not be found in the Blacks Law dictionary.

Looking to find the definition of the word "in" the Defendant looks to the Webster's Unabridged Dictionary of the English Language, Delux Edition (2001). There are several different ways in which the word "in" is used and defined: 1) used to indicate inclusion within space, a place, or limits; 2) used to indicate inclusion within something abstract or immaterial; 3) used to indicate inclusion within or occurance during a period or limit of time; 5) used to indicate means, example: sketched in ink; spoken in French; 6) used to indicate motion or direction from outside to a point within, example: lets go into the house; 10) in or into someplace, position, state, relation, etc., example: please come in; 14) in possession or occupancy.

Upon understanding these meanings and uses, number 14 is the one we look at. It fits to the "T" the intended used and understanding that Congress' intent. The possessed in and affecting, would be that the firearm was currently in, related to, or actively connected to commerce. However, we know that or it will be shown that commerce is no longer attached after the article or good reaches its destination or intended target, being the ultimate consumer.

The Government in Defendants case failed to prove at trial that the Defendant possessed said firearms "in and affecting interstate commerce," as was alleged in the charging document, "the indictment." The Defendant was charged with possession "in and affecting interstate or foreign commerce." He was not charged with (1) "to ship or transport in interstate or foreign commerce," (2) "to receive any firearm... which has been shipped or transported in interstate or foreign commerce," but was charged with (3) possesses in an affecting interstate or foreign commerce a firearm. However, the Government had charged the Defendant with a combination of elements taken from (1) and (2) to make a new and alternative means and they would only have to prove to the jury that at some point the firearm had traveled in commerce at some point of its "lifetime." They were not required to prove that the possession was either "in and affecting interstate or foreign commerce." By only being required to show and not prove that the firearm had at some point been or traveled interstate commerce, they were able to convict by what is called alternative means. It means that they don't actually have to prove the actual elements of a charge, but instead can show something entirely different, as in the case of United States v. Mosby, 60 F.2d 454 (8th Cir. 1995) (the government provided evidence that the components of the cartridges are from outside the state of Minnesota. However, the district court granted Mosby's motion for judgement of acquital because the Government had not shown that Mosby possessed "in or affecting commerce"... in so doing, the district court failed properly to consider the linguistic structure of § 922(g)(1) and overemphasised the importance of the disjunctive definition in § 921(a)(17).); United States v. Schmidt, 571 F.3d 743 (8th Cir. May 15, 2009) (While § 922(g) only requires proof of either

possession in commerce or possession affecting commerce...). The Government in Defendants case proved neither "possession in commerce" or "possession affecting commerce." How do we know? We know that the alleged possession in no way shape or form, "affecting interstate or foreign commerce" because in order for that to happen, the Defendant would have had to in some way or degree obstruct, delay, or hinder any article or commodity that was still "in" the flow of commerce.

The term "commerce" is found in several Titles of the United States Codes. Beginning with 7, 15, 18, 21, 29, and 42 as well as others. Everyone has defined the word of "commerce" ideally the same, as trade, traffic, communication, and transportation. In order to effectively possess any firearm or ammunition "in" or "affecting interstate and foreign commerce," the Defendant would have as an example possessed said AR-15 (as an article or commodity of commerce) while either obstructing, delaying or hindering it's movement or used said firearm in a harmful, threatening, or violent manner while the firearm had been in transit from the manufacturer to its destination acrossed state lines. We already know that the Defendant (1) did not obstruct, delay, or hinder it's movement from the manufacturer to its intended destination, "the Ultimate Consumer." We also know that by looking at the cases, that commerce does have its end. United States v. Lopez, 131 Led.2d 626, 115 S. Ct. 1624 (1995) It (limits Congress's exercise of it's Commerce Power, that power remains broad enough to support application of § 922(g)(1)). As we can see the Supreme Court recognizes the broad reach of the commerce clause and the application of the 922(g)(1). It could be easily said that "broad" authority over reaches an article or commodity of commerce that has been removed from commerce and therefore the jurisdiction of the commerce power as well.

Had the Government been held to prove that the Defendant actually possessed said firearm "in and affecting interstate commerce" as charged, the Defendant would not have been found guilty. What happened was a slick and creative prosecutor, while in front of a layman Grand Jury easily confused then in how the actual 922(g)(1) statute really reads and the elements of it. The Defendant was indicted under the belief that the "he" "possessed in and affecting interstate commerce" a firearm and ammunition. However, during the trial the Government never introduced a shred of evidence to the contrary. At the end of the trial the Jury was charged with only having to determine if the firearm had or had not every traveled in interstate commerce. The Jury had been given a prejudicial variance and a constructive variance.

Grand Juries have the exclusive prerogative to determine the charges. U.S. v. Ward, 747 F.3d 1184, 1189 (9th Cir. 2014) (A defendant charged by a grand jury indictment may only be tried on charges set forth in that indictment); U.S. v. Antonakeas, 225 F.3d 714, 721 (9th Cir. 2001) (qouting U.S. v. Miller, 47 U.S. 130, 140 (1985)). Again

looking at the 922(g)(1) statute, it has 3 means by which a person can violate it. (1) To ship or Transport in interstate or foreign commerce, (2) To possess in or affecting interstate or foreign commerce, (3) To receive any firearm... which has been shipped or transported in interstate or foreign commerce. So what the Government essentially did was puzzle together their own version of the statute that would have a prejudicial variance. Neither of the three parts or elements read: "To possess in and affecting interstate or foreign commerce." The Government took parts of (1) ...in interstate or foreign commerce and placed it together with and after element (2), possesses in or affecting commerce. By doing so the Government changes the statute unconstitutionally and illegally as it becomes a new statute not enacted by Congress. Not to mention now it also makes obtaining a conviction much easier as now the Government has less of a burden to prove as now they only are required to have some firearms "expert" to testify that said firearm has traveled or been shipped from one state to the obvious other state where it was not manufactured from. There is now physical evidence provided were a Defendant has an equal opportunity to confront the actual validity of such evidence. For example: a shipping invoice or bill of laiden. There is no way for a Defendant to effectively or purposely confront an ATF Agent's "expert" testimony. In reality it could be said that it violates the confrontation clause of due process.

How do we know this? If we look at Bond v. U.S., 572 U.S. 844; 134 S. Ct. 2077 (2014) it refers to a "clear statement rule," in quoting U.S. v. Bass, 404 U.S. 336, 350, 30 LED2d 488, 92 S. Ct. 515, (in Bass, we had to decide whether a statute forbidding "'receiv[ing], possess[ing], or transport[ing] in commerce or affecting commerce... any firearm'" prohibited possessing a gun that lacked any connection to interstate commerce. 404 U.S. at 337-339, 92 S. Ct. 515, 30 L. Ed. 2d 488. Though the court relied in part on a federalism-inspired interpretive presumption, it did so only after it had found, in Part I. of the opinion, applying traditional interpretive tools, that the text in question was ambiguous, id., at 339-347, 92 S. Ct. 515, 30 L.Ed.2d 488. Adopting in Part II. the narrower of the two possible readings, we said that "unless congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." id., at 349, 92 S. Ct. 515, 30 L.Ed.2d 488 (emphasis added). Had Congress "convey[ed] its purpose clearly" by enacting a clear and even sweeping statute, the presumption would not have applied. In Bass, clearly the statute, was unclear as in this case. When 922(g)(1) is read and applied as was Congress's intent when creating it, the Defendant would actually be innocent of any 922(g) violations. However, the courts seem to deviate from the clearly written statute and any ordinary meanings of words in the statute as in Jones v. U.S., 146 LED2D 902, 529 U.S. 848, 120 S. Ct. 1904 (2000) (Quoting U.S. v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-222, 97

LED 260, 73 S. Ct. 227)(When choice must be made between two readings of what conduct Congress has made a crime, it is appropriate, before choosing the harsher alternative, to require that Congress should have spoken in language that is clear and definite.)). In Jones, 529 U.S. 851 "An owner-occupied residence not used for any commercial purpose does not qualify as property "used in " commerce or commerce-affecting activity. This was clearly to determine a jurisdictional element or hook in order to prosecute under federal statutes.

Why does this matter? In Defendants case, the Government alleges that he possessed a firearm in and affecting interstate or foreign commerce. So if a building that was the subject of arson "does not qualify as property "used in" commerce or commerce - affecting activity," how can the alledged possession of a firearm on ones own private property when that possession is not "in" any "commerce - affecting activity" or even used for any commercial purposes, be within the regulation of Congress's commerce clause power? Especially, if commerce can't regulate a persons home even though the lumber used to build the home had at some point traveled across state lines, then certainly they were never intended to regulate the private property of another once the item had left the flow of commerce and item has lost it's jurisdictional element/hook. The commerce clause does allow Congress to regulate the commercial activity that surrounds the firearms market but certainly not the private ownership and mere possession. Just as Congress can not extend its regulating power through the commerce clause to someone who decides to burn down their own home because the physical building is not engaged in an activity in which has or had an affect on commerce, neither was it "used in" a commerce affecting activity. The mere possession of a firearm is identical when it comes to the jurisdiction element.

Asgrow Seed Co. v. Winterboer, 513 U.S. 179, 187, 130 L.Ed.2d 682, 115 S. Ct. 788 (1995)("When terms in a statute are undefined, we give them their ordinary meaning."). The Defendant points out that the word "in" as used in the 922(g)(1) statute can only have one meaning. Looking for the definition in the Blacks Law Dictionary, 10th Ed. was frivolous as it is not there. The Defendant then turned to "The American Heritage Dict. 2nd Collegiate Ed." In was properly defined as: during the act of or process of. Taking this meaning and applying it to the statute as it was at the creation of the statute, makes very clear the intend that Congress ahd. Reading the statute and the word "in" as intended, we can actually see that the Defendant would actually be innocent of Count 1 and Count 2, as the Defendant never possessed said firearm (during the firearms travel or during the process of the firearms travel in interstate commerce.) as the firearm was no longer a part of commerce at the time of the alleged possession. Neither was the Defendant engaged in any or delaying or obstructing or hindering the flow of goods that were or had traveled in interstate commerce. We can confirm this because the firearm

had clearly been removed prior to any alleged possession.

In Bond, at 134 S. Ct. 2097, (there is no opinion of ours, and none written by any court or put forward by any commentator since Aristotle, which says, or even suggests, that "dissonance" between ordinary meaning and the unambiguous words of a definition is to be resolved in favor of ordinary meaning. If that were the case, there would hardly be any use in providing a definition. No, the true rule is entirely clear: "when a statute includes an explicit definition, WE must follow that follow that definition, even if it very's from that term's ordinary meaning." Stenberg v. Carhart, 530 U.S. 914, 942, 120 S. Ct. 2597, 147 LEd2d 743 (2000) (emphasis added). Both of those are, indeed, established interpretive presumptions that are (1) based upon realistic assessments od Congressional intent, and (2) well known to Congress - thus furthering rather than subverting genuine legislative intent. To apply these presumptions, then, is not to rewrite clear text; it is to interpret words fairly in light of their statutory context. But there is nothing either (1) realistic or (2) well known about the presumption the Court shoves down the throat of a resisting statute today. Who in the world would have thought that a definition is inoperative if it contradicts ordinary meaning? (A criminal statute must clearly define the conduct it proscribes. If it does not "'give a person of ordinary intelligence fair notice'" of its scope," U.S. v. Batchelder, 442 U.S. 114, 123, 99 S. Ct. 2198, 60 L.Ed2d 755 (1979), "it denies due process."

In light of this we can see that the Defendant was denied and prejudiced of his Due Process Rights.

A Constructive Variance of an indictment occurs when allegations set forth in the indictment are left unaltered, but the evidence at trial proves facts materially different from those alleged in the indictment. Ward, 747 F.3d 1189-90 (9th Cir. 2014); U.S. v. Homick, 964 F.2d 899, 907 (9th Cir. 1992).

In Counts 1 and 2, Defendant was charged with, "did knowingly possess, in and affecting interstate or foreign commerce, a firearm..." However, during the Defendants trial no evidence of any type was produced or introduced onto the record to support the Government's arguments that the Defendants alleged possession was "in" and (either or) "affecting interstate" and (either or again) "foreign commerce." Again we can see that the Government has created or altered their own version of the 922(g)(1) statute by piecing together the elements into a fourth (4) means of prohibition that is not in the actual statute which was enacted by Congress. Congress was clear about the three (3) means by which it intended to reach through the commerce clause power. Just as it states: 922 (g)(1) was intended to regulate the firearms market. The key word being Market. In the Blacks Law Dictionary 10th Ed. it defines market as: (1) a place of commercial activity in which goods or services are bought and sold; (4) the opportunity for buying and selling goods or services; the extent of econmoci demand; (6) the business of such an exchange; the

enterprise of buying and selling securities or commodities (the stock market is approaching an all - time high); (7) the price at which the buyer and seller of a security or commodity agree. Nowhere does it include the private ownership or mere possession. It was to keep a certain catagory of people from more than merely possessing firearms, but to be certain to keep them from participating in the actual manufacture, distribution, or transportation in the firearms market or any commercial business associated with it.

We will now venture over to commerce jurisdiction. In the first case, United States v. Gilbert, 181 F.3d 152 (1st Cir. June 21, 1999) (the Ninth Circuit reversed defendant's conviction on the ground that the Government failed to prove that the Gold Mine "was engaged in or affected interstate commerce" id at 670 this case is not precisely on point but it illustrates that "affecting interstate commerce" is not the sole test to use in determining whether there is interstate commerce jurisdiction). In Defendants case there was no test used or considered to determine if there truly was an interstate commerce jurisdiction. U.S. v. Rodiguez, 360 F.3d 949 (9th Cir. Jan. 5, 2004) (under the statute's definition of commerce, jurisdiction under 18 U.S.C. § 1951(a) is interpreted to be co - extensive with the commerce clause... Thus, notice of the scope of conduct proscribed by § 1951 is supplied by the common understanding of the reach of the commerce clause). Clearly, the courts recognize that the commerce clause power ultimately has a point at which it can no longer reach or attach its jurisdictional hook too. That reach has an end.

Carroll v. U.S., 178 LED2D 799, 562 U.S. 1163, 131 S. Ct. 700 (2011) (This Court has consitently recognized that the constitution imposes limits on federal power). See Gregory v. Ashcroft, 501 U.S. 452, 457, 111S. Ct 2395, 115 L.Ed.2D 410 (1991); Marbury v. Madison, 1 CRANCH 137, 176, 2L.Ed. 60 (1803) (opinion for the court by Marshall, C.J.) ("the powers of the legislture are defined, and limited, and that those limits may not be mistaken, or forgotten, the constitution is written"). It follows from the enumeration of specific powers that there are boundries to what the federal government may do. see, e.g., Gibbons v. Ogden, 9 WHEAT. 1, 195, 6 L. Ed. 23 (1824) ("the enumeration presupposes something not enumerated..."). The constitution "withold[s] from Congress a plenary police power that would authorize enactment of every type of LEGISLATION." U.S. v. Lopez, 514 U.S. 549, 566, 115 S. Ct. 1624, 131 L. Ed.2d 626 (1995).

Recently we have endeavored (tp) more sharply define and enforece limits on Congress' enumerated "[P]ower...[T]o regulate commerce... Among the several states." U.S. Const., Art. I, §8, Cl. 3. Lopez marked for the first time in half a century that this Court held that an act of Congrss exceeded its commerce power.

Five years after Lopez, we reaffirmed the "substantial effects" test in U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L.Ed.2d 658 (2000). We rejected Congress' attempt to "regulate noneconomic, violent criminal conduct based solely on that conduct's

aggregate effect on interstate commerce," and held unconstitutional the civil remedy portion of the V.A.W.A. of 1994.

The Ninth Circuit discussed how it might apply Lopez and Morrison "when traveling in unchartered waters" but ultimately concluded that it was "bound by Scarborough," in which this Court had "blessed" a "nearly identical jurisdictional hook." 565 F.3d, at 648. The Ninth Circuit determined that Scarborough had "carved out" a separate constitutional niche for statutes like § 931(a) and § 1202(a). 565 F.3d, at 646-647. The Ninth Circuit thus upheld the statute without "engag[ing] in the careful parsing of post - Lopez case law that would otherwise be required." Id., at 648. The Court recognized a tension between Scarborough and Lopez but declined to "deviate from binding precedent." 565 F.3d at 646. Since the court here in Carroll can "recognized a tension between" two very close precedent setting cases, there needs to be some sparsing to quall the tension. The Defendant believes just as in Lopez, Congress can not regulate the mere action (mere possession) of a firearm in a school zone, what difference is it to merely possess a firearm on privately owned property for lawful purposes? Especially when that possession is not "in" or "affecting commerce" of any sort.

As the Court did in Lopez, it's time for this Court to take a significant step toward reaffirming the Court's commitment to proper constitutional limit's on Congress' Commerce Clause Power. Limiting the power to a more narrower and clearer meanings as the Founding Fathers had originally intended.

When the mere possession of a firearm does cross into obstruction, delaying, or hindering any flow of commerce by either obstructing the channels, roads, or waterways of commerce as the commerce clause was truly intended by Congress. The Commerce Clause was to keep competitors, rebels, or vandals from interferring shipments of goods, such as pirates trying to hijack valuable shipments.

Furthermore, the Government in charging possession "in" and "affecting interstate" and foreign commerce must be required to establish beyond a reasonable doubt the effect on interstate commerce as alleged in the indictment -

In U.S. v. Grassie, 237 F.3d 1199 (10th Cir. Jan. 19, 2001) "under the statute as thus qualified, the proper two - step inquiry, according to the court, "is into the function of whether that function affects interstate commerce." Jones, 120 S. Ct. at 190 (quoting U.S. v. Ryan, 9 F.3d 660, 675 (8th Cir. 1993) (Arnold, C.J., concurring in part and dissenting in part)).

It is clear that this two step inquiry of "in" or "affecting commerce" is used to help determine whether or not allegations of an indictment meet the elements of what is alleged, should also be used in determining if a mere possess "in" and "affecting commerce"

actually has any commerce - affecting activity to it.

Just as in U.S. v. Ismay, 2008 U.S. Dist. Lexis 129300 (9thCir. July 17, 2008) (the issue for the court is whether § 2252A(a)(5)(b) exceeds congress' power under the Commerce Clause when federal jurisdiction is invoked solely on the basis that the materials used by a defendant to create child pornography - in this case a compact disc - had previosly traveled in interstate or foreign commerce... U.S. v. McCoy, 323 F.3d 1114 (9th Cir. 2003), which held that where a defendants production of child pornography "was purely non-economic and non-commercial, and had no connection with or effect on any national or international commercial child pornography market" the jurisdictional hook of paper, film, and cameras manufactured in other states or countries was an insufficient basis for a federal prosecution. McCoy, 323 F.3d at 1123, 1126. The government turns to Gonzalez v. Raich, 545 U.S. 1, 125 S. Ct. 2195, 162 L.Ed.2d 1 (2005), the Supreme Court found that the purely intrastate production and consumption of marijuana was within Congress' commerce power because such production had a substantial effect on supply and demand in the National MArket. Raich, 545 U.S. at 17-18 ("when congress decides that the 'total incidence' of a practice poses a threat to a Nation Market, it may regulate the entire class"). The mere possession of a firearm in no way shape or form has any type of effect imagined or actual on the firearms market.

Unlike Raich, in the Defendants case the possession of a firearm and ammunition does not have a "substantial effect" on the supply and demand in a National Market as the Manufacturing, selling, or trading of firearms or ammunition was not what the Government allegged. The alleged that the possession was "in" and "affecting interstate commerce." The mere possession can not so affect, hinder, or even obstruct commerce to gain some imaginary jurisdictional hook into the Defendants alleged possession.

In U.S. v. Urena-Villa, 2018 U.S. Dist. Lexis 118952 (9th Cir. July 16, 2018) (The Supreme Court of the U.S. has "established what is now the controlling four-factor test for determining whether a regulated activity 'substantially' affects interstate commerce." U.S. v. Adams, 343 F.3d 1024, 1028 (9th Cir. 2003)(Quoting U.S. v. McCoy, 323 F.3d 1114, 1119 (9th Cir. 2003)). "these considerations are: (1) whether the regulated activity is commercial/economic in nature; (2) Whether an express jurisdictional element is provided in the statute to limit it's reach; (3) Whether Congress made express findings about the effects of the proscribed activity on interstate commerce; and (4) whether the link between the prohibited activity and the effect on commerce is attenuated." Id. (citing U.S. v. Morrison, 529 U.S. 598, 610-12, 120 S. Ct. 1740, 1749-51, 146 L.Ed.2d 658(2000)). "The purpose of a Jurisdictional hook is to limit the reach of a particular statute to a discrete set of cases that substantially affect interstate commerce." Alderman, 565 F.3d at 647 (quoting McCoy, 323 F.3d at 1124).

Taking these (4) Four-factor test, we can show that (1) the regulated activity here, "mere possession" is neither commercial nor economic in nature; (2) there are three means

or ways to be charged with violating 922(g), each with their own expressed limiting reach; (3) it does not appear that Congress has made any express finding about the effects of the proscribed activity on interstate commerce; and (4) (this one I'm not certain I understan so I look to your experience and better understanding for guidance on this factor of the four - factor test).

United States v. Hill, 927 F.3d 188 (4th Cir. APP. MArch 20, 2019) (What's more, regardless of how particular cases have turned out, circuit courts have uniformly recognized that the mere presence of a jurisdiction element is not dispositive to the Commerce Clause inquiry. E.g., United States v. Durham, 902 F.3d 1180, 1212 (10th Cir. 2018) ("although the presence of a jurisdictional is neither necessary or sufficient, it is clearly helpful in determining whether the prohibited activity has a substantial effect on [interstate] commerce." (internal quotation marks omitted)); United States v. Alderman, 565 F.3d 641, 648 (9th Cir. 2009) (acknowledging that "a jurisdictional hook is not always a talisman that wards off constitutional challenges" and concluding that the court must look to whether "the jurisdictional hook together with additional factors, such as congressional findings" demonstrate a substantial effect on interstate commerce (emphasis added)(internal quotation marks omitted)), cert. denied, 562 U.S. 163, 131 S. Ct. 746, 178 L. Ed. 2d 667 (2011); United States v. Morales-de Jesus, 372 F.3d 6, 13 (1st Cir. 2004) ("Although [a statute's] jurisdictional element ensures that any prosecuted conduct has a minimal nexus with interstate commerce, that minmal nexus may not meet the substantial effect requirement of Morrison.").

A jurisdictional hook for 922(g) would not be the simple "prior movement from one state to another, but one that would require the Government in prosecutions just as they do in other statutes, is to provide some significant showing of evidence (physical) where a defendant has a fair and equal opportunity to confront the evidence provided in order to prove his innocence rather than creating barriers for the Defendant. What has essentially happened is the burden beyond perponderance of the evidence has been removed from the accusers (the Government) and it has made obtaining convictions easier and made it tougher for a Defendant to prove his innocence. There is no possible or effective way to confront and disprove the accuracy or thruthfulness of the ATF Agent's testimony where as a Defendant can challenge per se the calibration of a testing machine. This process literally stacks and tips the scales of justice out of balance and the criminal justice system fails the people of its country. We must continue a mens rea requirement/element to all our federal and state laws in order to uphold the OATH to protect the constitution. Afterall, that is what the Founding Fathers had truly intended when constructing the Constitution of the United States.

Even in cases such as child pornography a jurisdictional hook is required. For example "the court distinguished both Morrison and Lopez because neither act contained a jurisdictional hook," finding that SORNA had an express and clear jurisdictional

element because it required required proof that the Defendant traveled in interstate commerce or foreign commerce and thereafter failed to register as required, U.S. v. Morris, 2009 U.S. Dist. Lexis 128034 (9th Cir. Feb. 26, 2009).

922(g) does not have even remotely close to any jurisdictional element like in U.S. v. Morris. By not having at least a similar requirement which would then be bringing into question the actual intent (mens rea) of the defendants actions. Afterall, it is the actions we "supposedly partake in" that are in violation of a statute, not the prior actions of some other means. Say for example: Manufacturer, dealer, or ultimate consumer (purchaser). The Government can not keep a jurisdictional hook (element) in a commodity, good or article of commerce once the articla has already passed through and is no longer a part of the regulatable items. Only items that are in commerce can be regulated, for example: those items that are currently moving from either the manufacturer, materials supplier (raw materials), to their intended destination. That intended destination would be either the dealer or no further than the ultimate consumer (purchaser). To be any other way is to say that goods never leave the stream or flow of commerce and therefore giving the federal government the ability to reach into out lives forever through the commerce hook. In other words, a person is charged with assault because he beat the bloody guts out of someone with a toilette plunger. How? Well sorry to tell you folks, but the plunger had at some point traveled in interstate or foreign commerce to your bathroom as it was made in China.

We know that this is not true. We can not allow the government to make decisions to regulate certain items, commodities or goods forever. That thinking reaches beyond the limits of Congress' "limited powers to regulate." The constitution does not say, "limited powers to regulate what it wants for however long it wants to." No it sure doesn't.

REASONS FOR GRANTING THE PETITION

Title 18 U.S.C. Section 922, 922(g)(1) is unconstitutional. The Application of Section 922, 922(g)(1) grants Congress Police Powers to forever tax, and regulate Firearms beyond the ends of Interstate Commerce.

Firearms are not instruments of government property.

Firearms are personal property; through sales and purchase, from Retail Vendors; no longer instruments of interstate Commerce.

Firearms not traveling in interstate Commerce has no effect on interstate Commerce by mere possession of said Firearm.

In order for the possession of Firearm to have an affect on commerce that the person that is possession of the Article would have to be engaging in some type of activity which would be to reenter the item into the flow of Commerce since said item has Already exited. See e.g. United States v. Johnston, 42 F.3d 1328 (10th Cir. 1994) U.S. v. Lopez, 512 U.S. 549, 559 (1995) The Supreme Court identified three broad Categories of Activity that Congress may regulate through it's Commerce power.

Congress powers to regulate Commerce Are regulatory on instruments of interstate commerce. Regulatory powers of Congress to regulate Firearms that have (long ago) exited Commerce Continues the jurisdictional hook of Congress beyond it's Vested Authority, to regulate Commerce.
United States v. KAPLAN, 836 F.3d 1199 (9th Cir. 2016)

(Firearm leaves commerce at the time of it reaching the Ultimate consumer)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Standard

ROBERT STANDARD 08757-081

Date: 7-2-21