No. _____

IN THE

Supreme Court of the United States

_____

MICHAEL LEE WILLIAMS,
***Petitioner*,**

v.

UNITED STATES,
***Respondent*.**

_____

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

1. Whether Congress may criminalize intrastate possession of a firearm and ammunition on the sole basis that the firearm and ammunition once moved, before the defendant's possession, through interstate commerce.

2. Whether the Armed Career Criminal Act (ACCA)'s definition of a "serious drug offense" requires knowledge of the substance's illicit nature, an issue left undecided in *Shular v. United States*, 140 S. Ct. 779, 787 n.3 (2020).

3. Whether the ACCA's requirement that prior offenses be "committed on occasions different from one another," 18 U.S.C. § 924(e)(1), is void for vagueness.

PROCEEDINGS IN FEDERAL TRIAL AND APPELLATE COURTS DIRECTLY RELATED TO THIS CASE

United States District Court (M.D. Fla.):

United States v. Michael Lee Williams, No. 8:18-cr-310-CEH-SPF (Dec. 19, 2019)

United States Court of Appeals (11th Cir.):

United States v. Michael Lee Williams, No. 20-10038 (May 17, 2021)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Lee Williams respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion, 855 F. App'x 635 (11th Cir. 2021), is provided in the petition appendix (Pet. App.) at 1a-6a.

JURISDICTION

The Eleventh Circuit issued its decision on May 17, 2021. Pet. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. Mr. Williams has timely filed this petition pursuant to this Court's Order Regarding Filing Deadlines (Mar. 19, 2020) (extending deadlines due to COVID-19) and Rule 29.2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

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

The Fifth Amendment to the U.S. Constitution provides, in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law.

Section 922(g) of Title 18 of the U.S. Code provides, in relevant part:

> It shall be unlawful for any person–
>
> (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . .
>
> to . . . possess in or affecting commerce, any firearm or ammunition.

The Armed Career Criminal Act, 18 U.S.C. § 924(e), provides in pertinent part:

> (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).
>
> (2) As used in this subsection–
>
> (A) the term "serious drug offense" means–
>
> (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
>
> (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

Florida Statute § 893.13(1)(a) makes it unlawful for any person to "sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance."

Enacted effective May 13, 2002, Florida Statute § 893.101 provides:

> (1) The Legislature finds that the cases of *Scott v. State*, Slip Opinion No. SC94701 (Fla. 2002) and *Chicone v. State*, 684 So.2d 736 (Fla. 1996), holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession, were contrary to legislative intent.
>
> (2) The Legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of this chapter.

(3) In those instances in which a defendant asserts the affirmative defense described in this section, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance. It is the intent of the Legislature that, in those cases where such an affirmative defense is raised, the jury shall be instructed on the permissive presumption provided in this subsection.

STATEMENT OF THE CASE

1. Mr. Williams' offense was local. On March 24, 2018, a local law enforcement officer saw Mr. Williams in a parked car in Sarasota, Florida and smelled marijuana coming from the car. During a search incident to arrest, the officer found a loaded .380 Colt pistol in Mr. Williams' pants pocket. Doc. 39 at 19-20.[1]

The State of Florida originally charged Mr. Williams for this conduct, including for the state offense of possessing the firearm as a convicted felon. The State dismissed these charges once the U.S. government prosecuted Mr. Williams under the federal felon-in-possession statute, 18 U.S.C. § 922(g). *See* Doc. 1; Doc. 69 (PSR) at ¶ 81.

2. Section 922(g) requires that the firearm or ammunition be possessed "in or affecting commerce." 18 U.S.C. § 922(g). The statute accordingly, on its face, does not require that the defendant's offense—i.e., possession—"'substantially affect[]' interstate commerce." *Cf. United States v. Lopez*, 514 U.S. 549, 559 (1995).

3. The federal indictment, returned in the U.S. District Court for the Middle District of Florida, charged Mr. Williams with one count of "possess[ing], in and affecting interstate commerce, a firearm and ammunition" as a convicted felon, in violation 18 U.S.C. §§ 922(g)(1)

[1] These docket entries can be found in *United States v. Michael Lee Williams*, No. 8:18-cr-310-CEH-SPF (M.D. Fla).

and 924(e). Doc. 1 at 1-2. Mr. Williams entered a guilty plea pursuant to a plea agreement. Docs. 39, 96.

To prosecute Mr. Williams federally, the government relied on the fact that the firearm had been manufactured in Connecticut and the ammunition had been manufactured in Illinois or Mississippi, and therefore the "firearm and ammunition must have traveled in and affected interstate commerce before coming into the defendant's possession in the Middle District of Florida." Doc. 39 at 20. The connection between the firearm and ammunition and interstate commerce had thus occurred—and ended—before Mr. Williams' local criminal activity.

For this § 922(g) conviction, the district court sentenced Mr. Williams under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). The district court relied on three Florida drug convictions under Fla. Stat. § 893.13, which it determined qualified as "serious drug offense[s]" under the ACCA: (i) a 1999 conviction for sale/delivery of cocaine; (ii) a 2004 conviction for sale/delivery of cocaine; and (iii) a 2008 conviction for possession of cocaine with intent to sell or deliver. *See* Doc. 69 (PSR) at ¶¶ 30, 57, 66, 67. Mr. Williams entered *nolo contendere* pleas resulting in the 1999 and 2004 convictions. *See id.* ¶¶ 57, 66.

Mr. Williams maintained before the district court that the Florida offenses lacked knowledge of the illicit nature of substance as an element and therefore did not qualify as "serious drug offense[s]." Mr. Williams acknowledged binding Eleventh Circuit precedent to the contrary, *United States v. Smith*, 775 F.3d 1262 (11th Cir. 2014), but preserved this argument for further review, citing this Court's then-pending decision in *Shular v. United States*, 139 S. Ct. 2773 (2019). Doc. 69 (PSR) at 32 (Addendum); *id.* at 34-37 (Objections); Doc. 93 at 8-9. The district court overruled this objection based on *Smith*. Doc. 93 at 22-23.

4. The Eleventh Circuit affirmed Mr. Williams' § 922(g) conviction and sentence. Pet. App. 1a-6a.

Commerce Clause. The Eleventh Circuit rejected Mr. Williams' Commerce Clause challenge to § 922(g), relying on its binding precedent requiring the government merely to establish a "minimal nexus" to interstate commerce. Pet. App. 3a (citing *United States v. Wright*, 607 F.3d 708, 715-16 (11th Cir. 2010)). The court of appeals thus affirmed Mr. Williams' conviction because the firearm and ammunition had been manufactured in states outside of Florida and must have traveled in interstate commerce to arrive in Florida—a connection to interstate commerce that occurred before Mr. Williams' offense. *Id*. at 2a-3a.[2]

ACCA sentence. The Eleventh Circuit applied *Shular v. United States*, 140 S. Ct. 779 (2020), and its published decision in *Smith* to decide that Mr. Williams' post-2002 Florida drug convictions qualify as "serious drug offense[s]." Pet. App. 3a. The court of appeals also (i) affirmed the district court's finding, based on non-elemental facts, that Mr. Williams' prior offenses were "committed on occasions different from one another," and (ii) rejected that the ACCA sentence violated Mr. Williams' Fifth and Sixth Amendment rights. *Id.* at 3a-6a.

[2] Because Eleventh Circuit precedent foreclosed this issue, Mr. Williams could not prevail under any standard of review. Accordingly, the standard of review made no difference to the court's decision. *See id.* (citing the plain-error standard but deciding that Mr. Williams' facial and as-applied challenges were foreclosed by binding precedent); *see also United States v. Owens*, 808 F. App'x 917, 922 (11th Cir. 2020) (acknowledging that "the standard of review is immaterial" when "the argument conflicts with our binding precedent"), *cert. denied*, 141 S. Ct. 2808 (2021).

REASONS FOR GRANTING THE WRIT

This Court has decided several cases arising under the Armed Career Criminal Act and will decide another such case this term. *See Wooden v. United States*, 141 S. Ct. 1370 (2021). This Court, however, has not resolved whether the statute under which every ACCA case is prosecuted—§ 922(g)—is constitutional.[3]

In Mr. Williams' case, his offense was purely local. He possessed a loaded firearm in his pants pocket, which local law enforcement found during a search. The State of Florida charged Mr. Williams for possessing the firearm as a felon; but the State dismissed that charge once the U.S. government prosecuted Mr. Williams under § 922(g).

To prosecute Mr. Williams federally, the government relied on the fact that the firearm had been made in Connecticut and the ammunition had been made in Illinois or Mississippi, and therefore the firearm and ammunition "must have traveled in and affected interstate commerce before coming into the defendant's possession in the Middle District of Florida." Doc. 39 at 20 (emphasis added). The connection to interstate commerce had thus occurred—and ended—before Mr. Williams' offense. Mr. Williams' case squarely presents the question whether Congress may criminalize, and the federal government may prosecute, such purely local conduct. *See Gamble v. United States*, 139 S. Ct. 1960, 1980 n.1 (2019) (Thomas, J., concurring) ("Indeed, it seems possible that much of Title 18, among other parts of the U.S. Code, is premised on the Court's incorrect interpretation of the Commerce Clause and is thus an incursion into the States' general criminal jurisdiction and an imposition on the People's liberty.").

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[3] The only criminal offense punishable under the ACCA is § 922(g). *See* 18 U.S.C. § 924(e)(1). Mr. Williams presents two questions arising under the ACCA, based on the question this Court left open in *Shular* and the Court's pending decision in *Wooden*. But his petition also presents the fundamental question of Congress's authority to criminalize his local possession offense.

I. This Court's review is needed to resolve the fundamental issue of whether 18 U.S.C § 922(g) exceeds Congress's Commerce Clause power

In *United States v. Lopez*, 514 U.S. 549 (1995), this Court struck down the Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q)(1)(A), concluding that it exceeded Congress's power under the Commerce Clause. The same four considerations that led to this Court's decision in *Lopez* demonstrate that § 922(g), like § 922(q), does not pass constitutional muster.

First, § 922(g) prohibits possession—a non-economic activity. *Lopez*, 514 U.S. at 561, 567; *see United States v. Morrison*, 529 U.S. 598, 610 (2000). Second, § 922(g)'s jurisdictional element does not ensure on a case-by-case basis that the activity being regulated—possession—affects interstate commerce. *Lopez*, 514 U.S. at 559, 561-62; *Morrison*, 529 U.S. at 611-12. Indeed, the government recognized in Mr. Williams' case that the connection to commerce had ended "before [the firearm came] into the defendant's possession in the Middle District of Florida." Doc. 39 at 20. Third, the legislative history contains no "express congressional findings regarding the effects [of possession by felons] upon interstate commerce." *Lopez*, 514 U.S. at 562 (internal quotation marks and citation omitted). In earlier legislation predating the current version of § 922(g), Congress made the conclusory findings "that there is widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce" and "that the ease with which any person can acquire firearms . . . is a significant factor in the prevalence of lawlessness and violent crime in the United States." Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, § 901, 82 Stat. 197, 225. Such findings rely on reasoning this Court has "rejected as unworkable if we are to maintain the Constitution's enumeration of powers." *Morrison*, 529 U.S. at 615; *see Lopez*, 514 U.S. at 563-64. Finally, the link between possession by a convicted felon and interstate commerce is attenuated. *See Lopez*, 514 U.S. at 563-68; *Morrison*, 529 U.S. at 612-13.

The *Lopez* framework is thus the obvious place to start when analyzing the constitutionality of federal gun possession statutes. But many circuits (including the Eleventh Circuit) have affirmed § 922(g) under *Scarborough v. United States*, 431 U.S. 563 (1977), a much older precedent that construed § 922(g)'s predecessor.[4] Contrary to what lower courts often hold, *Scarborough* did not survive *Lopez*, and § 922(g) does not pass muster under *Lopez*. The Court in *Scarborough* decided, as a matter of statutory interpretation, that Congress did not intend "to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce"—a standard well below *Lopez*'s substantially affects test. *Compare Scarborough*, 431 U.S. at 575 (emphasis added); *id*. at 564, 577; *with Lopez*, 514 U.S. at 559. Given its incompatibility with *Lopez*, *Scarborough* is no longer good law.

This petition presents an issue only this Court can resolve—how to reconcile the statutory interpretation decision in *Scarborough* with the constitutional decision in *Lopez*. *See Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 703 (2011) (Thomas, Scalia, JJ., dissenting from the denial of certiorari) ("If the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent [*Scarborough*] that does not squarely address the constitutional issue."). Because the courts of appeals cannot overrule this Court's precedent, the *Lopez* test will disappear for intrastate possession crimes without this Court's intervention. *See Gamble*, 139 S. Ct. at 1980 n.1 (Thomas, J., concurring); *see also Rawls*, 85 F.3d at 243 (Garwood, J., concurring) (explaining lower court determined it was bound

[4] *See, e.g.*, *United States v. Smith*, 101 F.3d 202, 215 (1st Cir. 1996); *United States v. Santiago*, 238 F.3d 213, 216-17 (2d Cir. 2001); *United States v. Gateward*, 84 F.3d 670, 671-72 (3d Cir. 1996); *United States v. Rawls*, 85 F.3d 240, 242-43 (5th Cir. 1996); *United States v. Lemons*, 302 F.3d 769, 772-73 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992-93 (8th Cir. 1995); *United States v. Hanna*, 55 F.3d 1456, 1461-62 & n.2 (9th Cir.1995); *United States v. Dorris*, 236 F.3d 582, 584-86 (10th Cir. 2000); *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010).

by *Scarborough* but suggesting that "one might well wonder how it could rationally be concluded that mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm had, perhaps decades previously before the charged possessor was even born, fortuitously traveled in interstate commerce").

Thousands of defendants are convicted under § 922(g) every year.[5] The question presented is thus important and recurring. Mr. Williams accordingly seeks this Court's review to resolve whether Congress may criminalize his purely local conduct.

II. This case presents the question left open in *Shular*—whether 18 U.S.C. § 924(e)(2)(A)(ii) requires knowledge of the substance's illicit nature

In *Shular*, this Court held that the ACCA's definition of a "serious drug offense," § 924(e)(2)(A)(ii), does not set forth "generic offenses" that the state offense must match. 140 S. Ct. at 782. Instead, § 924(e)(2)(A)(ii) entails a categorical approach that asks whether the state offense "involves," or necessarily requires, the conduct specified in the ACCA. *Id*. at 784-86. This Court left open the alternative question whether § 924(e)(2)(A)(ii) "requires knowledge of the substance's illicit nature," because the petitioner had expressly disclaimed this argument. *Id*. at 787 n.3.

Mr. Williams' petition squarely presents this question. He maintained this statutory interpretation argument below, and the Eleventh Circuit rejected this argument based on its binding precedent in *Smith*. *See* Pet. App. 3a (citing *Smith*, 775 F.3d at 1267-68); Initial Brief, *United States v. Williams*, No. 20-10038, 2020 WL 3833326, at *13-14 (11th Cir. July 6, 2020). In *Smith*, the Eleventh Circuit held that, "[n]o element of *mens rea* with respect to the illicit nature of the

[5] The Sentencing Commission reports that there were 6,782 cases involving § 922(g) convictions in fiscal year 2020. *See* U.S. Sentencing Comm'n, *Quick Facts: Felon in Possession of a Firearm* (May 2021), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY20.pdf.

controlled substance is expressed or implied by" § 924(e)(2)(A)(ii). *Smith*, 775 F.3d at 1267. Mr. Williams seeks this Court's review, because the Eleventh Circuit's reading of the ACCA is erroneous and conflicts with this Court's decisions.

Indeed, this Court has "repeatedly held that 'mere omission from a criminal enactment of any mention of criminal intent' should not be read 'as dispensing with it.'" *Elonis v. United States*, 575 U.S. 723, 734 (2015) (addressing 18 U.S.C. § 875(c)) (quoting *Morissette v. United States*, 342 U.S. 246, 250 (1952)); *accord Staples v. United States*, 511 U.S. 600, 618-20 (1994). This Court's "presumption in favor of scienter even when Congress does not specify any scienter in the statutory text" supports that § 924(e)(2)(A)(ii) includes a *mens rea* requirement. *Rehaif v. United States*, 139 S. Ct. 2191, 2195 (2019) (citing *Staples*, 511 U.S. at 606). Given the severe penalties required by the ACCA, it is unlikely that Congress meant to include an offense that does not require the defendant know he is dealing with an illicit substance. *See Staples*, 511 U.S. at 616-17 (reading the statute at issue to require *mens rea*, which was supported by the "potentially harsh penalty" of up to 10 years in prison); *McFadden v. United States*, 576 U.S. 186, 188-89, 191-92 (2015).[6]

Effective May 13, 2002, Florida eliminated knowledge of the illicit nature of the substance as an element. *See* Fla. Stat. § 893.101 (eff. May 13, 2002); *Shelton v. Secretary, Dep't of Corr*., 691 F.3d 1348, 1349-51 (11th Cir. 2012); *State v. Adkins*, 96 So. 3d 412, 414-16 (Fla. 2012); *In re Standard Jury Instructions in Criminal Cases (No. 2005-03)*, 969 So. 2d 245, 247-57 (Fla. 2007). In *Shular*, this Court observed that Florida permits a defendant to raise his lack of knowledge as an affirmative defense, which then requires the jury to find his knowledge beyond a reasonable

[6] To the extent that any ambiguity remains, the rule of lenity further supports Mr. Williams' reading of § 924(e)(2)(A)(ii). *See, e.g.*, *Yates v. United States*, 574 U.S. 528, 547-48 (2015).

doubt. 140 S. Ct. at 787. Mr. Williams, however, entered a *nolo contendere* plea to one of the two post-May 2002 prior convictions at issue here, and the *Shepard* documents do not establish that this plea rests on anything more than maintained innocence. *See United States v. Diaz-Calderone*, 716 F.3d 1345, 1350-51 & n.27 (11th Cir. 2013) (quoting Fla. R. Crim. P. 3.172(e), under which a defendant "either (1) acknowledges his or her guilt or (2) acknowledges that he or she feels the plea to be in his or her best interest, while maintaining his or her innocence"); Doc. 69 (PSR) at 67-71; *Johnson v. United States*, 559 U.S. 133, 137 (2010) (concluding documents approved in *Shepard v. United States*, 544 U.S. 13, 26 (2005) (plurality opinion) did not establish the conviction rested upon anything more than battery-by-touching).

The question presented thus affects at least one of the three prior convictions relied on to sentence Mr. Williams under the ACCA. The Court's decision here could resolve that Mr. Williams is not eligible for the ACCA's increased penalties. Mr. Williams accordingly asks for this Court's review to resolve the question left open in *Shular*.

III. Alternatively, Mr. Williams respectfully asks that this Court hold his petition pending its decision in *Wooden*

Wooden is the first case in which this Court may interpret the ACCA's requirement that a defendant's prior offenses be "committed on occasions different from one another." *See* 141 S. Ct. 1370; 18 U.S.C. § 924(e)(1). During oral argument in *Wooden*, members of this Court questioned whether the ACCA's different-occasions provision is incapable of interpretation and thus void for vagueness. *See* Oral Argument Tr. at 24, 70, *Wooden v. United States*, No. 20-5279 (Oct. 4, 2021).[7] Should the Court determine that the ACCA's different-occasions provision is

[7] This Court granted certiorari on question 2 in the *pro se* petition, which asked whether the appellate court erred "by expanding the scope of 18 U.S.C. § 924(e)(1) in the absence of clear statutory definition with regard to the vague term 'committed on occasions different from one

void for vagueness, that decision may apply in Mr. Williams' direct appeal. *See Johnson v. United States*, 576 U.S. 591, 602-03 (2015) (deciding that ACCA's residual clause was unconstitutionally vague); *see also Carlson v. Green*, 446 U.S. 14, 17 n.2 (1980) (deciding issue not raised below). Mr. Williams accordingly requests that this Court hold his petition pending the Court's decision in *Wooden*.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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another.'" Petition for a Writ of Certiorari, *Wooden v. United States*, No. 20-5279, at 2 (July 24, 2020); *Wooden v. United States*, 141 S. Ct. 1370 (2021).