

No. _____

IN THE
Supreme Court of the United States

LAMONT GUINYARD,
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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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g), which criminalizes a defendant's possession of a firearm or ammunition, is unconstitutional because it exceeds Congress's authority under the Commerce Clause.

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

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

United States v. Lamont Guinyard, No. 8:18-cr-592-SDM-AEP (Jan. 13, 2020)

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

United States v. Lamont Guinyard, No. 20-10312 (July 12, 2021)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lamont Guinyard 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, 2021 WL 2911065, is provided in the petition appendix (Pet. App.) at 1a-3a.

JURISDICTION

The Eleventh Circuit issued its decision on July 12, 2021. Pet. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. Mr. Guinyard has timely filed this petition within 150 days of the lower court judgment. *See* Order Regarding Filing Deadlines (Mar. 19, 2020); Order (July 19, 2021) (retaining 150-day deadline in cases where the lower court judgment was issued prior to July 19, 2021).

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.

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.

STATEMENT OF THE CASE

1. On December 12, 2018, Mr. Guinyard was charged by indictment in the U.S. District Court for the Middle District of Florida 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) and 924(a)(2). Doc. 1 at 1-2.¹ Mr. Guinyard entered a guilty plea without a plea agreement. Doc. 75.

In its factual basis for the guilty plea, the government relied on the manufacture of the firearm and ammunition outside of Florida and the inference that these items traveled across state lines before Mr. Guinyard’s possession of them in Florida. Doc. 75 at 19 (stating an expert with the Bureau of Alcohol, Tobacco, Firearms and Explosives had “determined that the Colt revolver had been made in Connecticut and the ammunition had been made in Minnesota, Idaho or Connecticut”); *accord* Doc. 18 at 3. Mr. Guinyard was not asked to admit, nor did he admit, that his criminal activity, possession, substantially affected interstate commerce. Doc. 75 at 20-22.

Over his objection at sentencing, the district court increased Mr. Guinyard’s guidelines range by finding, by a preponderance of evidence, that Mr. Guinyard committed a Florida offense, shooting into an occupied dwelling, with the firearm for which he was federally prosecuted. Doc. 78 at 69, 92-98; Doc. 65 at 1; *see* Doc. 43 at 2-3 (citing Fla. Stat. § 790.19); U.S.S.G. § 2K2.1(b)(6)(B) (providing a four-level increase for possessing a firearm “in connection with” another felony offense). The resulting guidelines range was 46 to 57 months. Doc. 78 at 97-98. The district court sentenced Mr. Guinyard to 51 months in prison, within this enhanced guidelines range, and to three years of supervised release to follow. Doc. 64; Doc. 78 at 112.

2. On appeal, the Eleventh Circuit rejected Mr. Guinyard’s 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. 2a-3a (collecting cases). Under

¹ These docket entries can be found in *United States v. Guinyard*, No. 8:18-cr-592-SDM-AEP (M.D. Fla).

this precedent, the Eleventh Circuit has affirmed § 922(g) convictions, including Mr. Guinyard’s, “even if a defendant only possessed the firearm in a single state.” *Id.* at 3a (citing *United States v. Jordan*, 635 F.3d 1181, 1189 (11th Cir. 2011)).

REASONS FOR GRANTING THE WRIT

This Court’s review is needed to resolve 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. The government here relied on the manufacture of the firearm and ammunition outside of Florida and the inference that they had traveled in interstate commerce before coming into Mr. Guinyard’s possession in Florida—a connection to interstate commerce that had thus ended before Mr. Guinyard’s offense. Doc. 18 at 3; Doc. 75 at 19. Third, the legislative history contains no “express congressional findings regarding the effects upon interstate commerce” of gun possession by felons. *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 pre-*Lopez* decision that construed § 922(g)’s predecessor.² 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. *Scarborough*, which both involved a different question and is incompatible with *Lopez*, does not control the question presented here.

Nonetheless, 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

² *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).

does not squarely address the constitutional issue.”). Because the courts of appeals cannot overrule or resolve this Court’s precedent, the important question of whether Congress in § 922(g) has usurped the States’ general police power remains unanswered. *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.”).³

In this case, the State of Florida charged Mr. Guinyard under its own firearm-possession statute, but dismissed that charge once a federal grand jury charged him under § 922(g). Doc. 35 (PSR) ¶¶ 1, 67. Notably, the district court increased Mr. Guinyard’s sentence by finding, based on a preponderance of the evidence, that he had committed another Florida offense (shooting into an occupied dwelling) with the firearm for which he was federally prosecuted. Doc. 78 at 69, 92-98; Doc. 65 at 1; *see* Doc. 43 at 2-3. Mr. Guinyard’s offense was local, was handled by local law enforcement, and was prosecuted by the State—until the federal government took over. Doc. 35 (PSR) ¶¶ 1, 9-11, 67. Mr. Guinyard’s case thus squarely presents the question of whether § 922(g) is an incursion into the general police power reserved to the States. *See Lopez*, 514 U.S. at 561 n.3, 564; *Morrison*, 529 U.S. at 617-19.

³ *See also Rawls*, 85 F.3d at 243 (Garwood, Wiener, Garza, JJ., concurring) (explaining that, while bound by *Scarborough*, “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”); *United States v. Storey*, __ F. Supp. 3d __, 2021 WL 5368097, at *2 (M.D. Fla. Nov. 17, 2021) (Mizelle, J.) (opining that the “minimal nexus” test “prompts concern” but explaining that “so long as *Scarborough*’s minimal nexus test remains controlling precedent in [the Eleventh] Circuit, this Court is not at liberty to chart another course”).

The question presented is important and recurring. Thousands of defendants are convicted under § 922(g) every year.⁴ Mr. Guinyard accordingly seeks this Court's review to resolve whether § 922(g) is unconstitutional.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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⁴ The Sentencing Commission reports 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.