NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

ALISBEY SANTILLON GATA,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL CARUSO
Federal Public Defender

TRACY DREISPUL*
R. D'ARSEY HOULIHAN
Assistant Federal Public Defenders
150 W. Flagler Street, Suite 1500
Miami, FL 33130
305-536-6900

August 29, 2023
******Counsel of Record*

QUESTION PRESENTED

Whether a jurisdictional element satisfied by a *de minimis* connection to interstate commerce, such as 18 U.S.C. § 922(g)'s requirement that a prohibited person possess a firearm "in or affecting commerce," is sufficient to bring a purely local, non-economic criminal offense within Congress' powers under the Commerce Clause.

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Mr. Gata submits that there are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

The following proceedings directly relate to the case before the Court:

United States v. Gata, No. 22-11514, 2023 WL 266388 (11th Cir. Mar. 28, 2023), *reh'g denied* (11th Cir. May 31, 2023).

United States v. Santillon Gata, 1:21-cr-20368-BB-1 (S.D. Fla. Apr. 14, 2022).

United States v. Santillon Gata, 1:21-mj-03240-JB-1 (S.D. Fla. June 24, 2021).

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Alisbey Santillon Gata respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-11514, in that court on March 28, 2023. *United States v. Gata*, 2023 WL 2663888 (11th Cir. Mar. 28, 2023), *reh'g denied* (11th Cir. May 31, 2023).

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Gata,* 2023 WL 2663888 (11th Cir. Mar. 28, 2023), is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The United States Court of Appeals had jurisdiction over this cause pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. The decision of the court of appeals was entered on March 28, 2023. Mr. Gata filed a timely petition for rehearing *en banc*, which was denied on May 31, 2023. This petition is timely filed pursuant to SUP. CT. R. 13.1 and 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. I, § 8, cl. 3

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

18 U.S.C. § 922(g)(1)

It shall be unlawful for any person . . . who has been convicted in any court of, a crime publishable 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.

STATEMENT OF THE CASE

Alisbey Santillon Gata ("Mr. Gata") pled guilty to one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), pursuant to a written plea agreement. (*See* DE 6, 29, 31). The factual basis for the plea established that law enforcement officers recovered two firearms while patting down Mr. Gata, before executing a search warrant at his residence. (DE 47:1). "Both firearms were manufactured outside of the State of Florida and therefore, traveled in interstate commerce." (DE 47:1).

The district court sentenced Mr. Gata to 96 months' imprisonment followed by three years of supervised release. (DE:45). Mr. Gata appealed his conviction to the United States Court of Appeals for the Eleventh Circuit, arguing that 18 U.S.C. § 922(g) is unconstitutional both on its face and as applied to his case, because the mere possession of the firearm by a convicted felon does not substantially affect interstate commerce. On March 28, 2023, the Eleventh Circuit issued an unpublished opinion rejecting Mr. Gata's claims. *United States v. Gata*, No. 22-11514, 2023 WL 2663888 (11th Cir. Mar. 28, 2023). The court wrote, in relevant part:

> As Santillon Gata concedes, decisions by this Court "have clearly held that 18 U.S.C. § 922(g) is constitutional under the Commerce Clause." *United States v. Longoria*, 874 F.3d 1278, 1283 (11th Cir. 2017) (citing *United States v. McAllister*, 77 F.3d 387, 391 (11th Cir. 1996)). We have also rejected as-applied challenges to 18 U.S.C. § 922(g), holding that the government proves a "minimal nexus" to interstate commerce where it demonstrates that the firearms were manufactured outside of the state where the offense took place and, thus, necessarily traveled in interstate commerce. . . . And we have specifically rejected constitutional challenges to § 922(g) under *United States v. Lopez*, 514 U.S. 549 (1995), concluding that "[n]othing in *Lopez* suggest[ed] that

> the minimal nexus test should be changed." *McAllister*, 77 F.3d at 390 (quotation marks omitted); *see also Lopez*, 514 U.S. at 561–62 (holding that the Gun-Free School Zones Act was unconstitutional because it did not "substantially affect" interstate commerce and lacked a jurisdictional element to ensure each "firearm possession in question affects interstate commerce").

Id. at *2 (internal citation omitted).

The court further noted that Mr. "Santillon Gata did not object to the constitutionality of § 922(g)" in the district court, and reviewed his claim for plain error. *Id.* at *3. Mr. Gata had conceded that his arguments were barred by precedent, "even when the gun was only manufactured outside the state of conviction." *Id.* Because he "admitted that the guns he possessed were manufactured outside of Florida," the Court affirmed his conviction. *Id.*

Mr. Gata filed a timely petition for rehearing *en banc*, which was denied by the Eleventh Circuit on May 31, 2023. This petition follows.

REASONS FOR GRANTING THE PETITION

Certiorari review is needed to clarify whether a jurisdictional element requiring only a *de minimis* connection to interstate commerce, such as 18 U.S.C. § 922(g)'s requirement that a prohibited person possess a firearm "in or affecting commerce," is sufficient to bring a purely local, non-economic criminal offense within Congress' powers under the Commerce Clause.

A. This Court's constitutional precedents make clear that Congress may only regulate non-economic intrastate criminal activity if that activity "substantially affects" interstate commerce.

Article I, § 8, cl. 3, of the United States Constitution grants Congress the power "[t]o regulate Commerce ... among the several States." In *United States v. Lopez*, 514 U.S. 549 (1995), the Court surveyed the history of this Court's Commerce Clause jurisprudence and identified three broad categories of activities which Congress may regulate pursuant to that power. First, "Congress may regulate the use of the channels of interstate commerce." *Id.* at 558. Second, Congress may "regulate and protect the instrumentalities of interstate commerce, or persons and things in interstate commerce." *Id.* Third, and relevant here, Congress may regulate "those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce." *Id.* at 558-559 (citations omitted).

With respect to this third category, the Court acknowledged that its case law "ha[d] not been clear whether an activity must 'affect' or 'substantially affect' interstate commerce in order to be within Congress' power to regulate it under the

Commerce Clause." *Id.* at 559. The Court concluded that the proper analysis is whether the targeted activity substantially affects interstate commerce. *Id.*

Applying this "substantial effects" test, the Court held that the Gun-Free School Zones Act of 1990, formerly codified at 18 U.S.C. § 922(q), exceeded Congress' power. *Lopez*, 514 U.S. at 549. The Court found that § 922(q) was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms." *Lopez*, 515 U.S. at 561. It was "not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Id.* at 561. The Court found no congressional findings regarding the impact of intrastate firearms possession on interstate commerce. *Id.* at 562. And, significantly for present purposes, the Court found that the statute contained "no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." *Id.* at 561.[1]

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[1] The Court contrasted § 922(q) to the statute reviewed in *United States v. Bass*, 404 U.S. 446 (1971), *i.e.,* 18 U.S.C. App. § 1202(a) (repealed), which applied to a person with a felony conviction who "receives, possesses, or transports in commerce or affecting commerce ... any firearm." *Id.* at 337. The government had interpreted § 1202(a) to ban all possessions of firearms by convicted felons, and thus made no attempt to prove a connection to commerce in the defendant's case. The Court held that the statutory phrase "in commerce or affecting commerce" applied to "all three antecedents in the list," and that the government was thus required to prove an individual connection to commerce in every case. *Id.* at 339. The Court thus vacated the defendant's conviction on statutory grounds, and did "not reach the question whether, upon appropriate findings, Congress can constitutionally punish the 'mere possession' of firearms." *Id.* at 339 n.4.

The Court rejected the government's argument that "the presence of guns in schools poses a substantial threat to the educational process" by threatening the learning environment, which would in turn result in a "less productive citizenry" and "have an adverse effect on the Nation's economic well-being." *Id.* at 564. The government conceded that such reasoning would allow Congress to "regulate not only violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce." *Id*. Following such reasoning, the Court found it "difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign." *Id.* To accept the government's arguments would "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States"; "require [the Court] to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated"; and accept "that there will never be a distinction between what is truly national and what is truly local." *Id.* at 567-68 (citations omitted). "This" the Court was "unwilling to do." *Id.* at 568.

The Court again "reject[ed] the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," in *United States v. Morrison*, 529 U.S. 598, 617-18 (2000). In *Morrison*, the Court held that part of Violence Against Women Act, which created a civil remedy based on intra-state gender-related violence, exceeded Congress' power under the Commerce Clause. The Court reiterated that "[t]he Constitution requires a distinction between what is truly national and what is truly local." *Id*. at 618. "The

regulation and punishment of interstate violence that is not directed at instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States." *Id*. "Indeed," the Court could "think of no better example of the police power, which the Founders denied to the National Government and reposed within the States, than the suppression of violent crime and vindication of its victims." *Id.* (footnote omitted).

That same term, in *Jones v. United States*, 529 U.S. 848, 855 (2000), the Court held that a private dwelling had not been "used, in any activity affecting commerce," within the meaning of the federal arson statute, 18 U.S.C. § 844(i), when its owner "used" the residence as collateral for a loan, and to obtain an insurance policy. The requirement that the building be "used" in an activity affecting commerce, the Court held, was "most sensibly read to mean active employment for commercial purposes, and not merely a passive, passing, or past connection to commerce." *Id.* at 855. While decided as a matter of statutory construction, the Court found that its interpretation was appropriate, "[g]iven the concerns brought to the fore in *Lopez*," and the constitutional questions that would arise if the "'traditionally local criminal conduct,' in which petitioner Jones engaged," were rendered "a matter for federal enforcement." *Jones*, 529 U.S. at 858 (citation omitted).

Under the Court's precedents, Congress may regulate "purely local activities" only when they are "part of an economic 'class of activities' that have a substantial effect on commerce." *See Gonzalez v. Raich*, 545 U.S. 17 (2005) (holding that Congress' "power to regulate intrastate markets for medicinal substances encompasses the

portions of those markets that are supplied with drugs produced and consumed locally," and rejecting the respondents' argument that their individual actions should be exempted from a broader regulatory statute). In other words, when "a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequences." *Id.* (citing, *e.g.*, *Lopez*, 517 U.S. at 558) (internal quotation marks and further citation omitted).

But the same rule does not apply to traditional criminal statutes. The federal felon-in-possession statute, 18 U.S.C. § 922(g), is in no way a "general regulatory statute" akin to the Controlled Substances Act at issue in *Raich*, or the Agricultural Adjustment act of 1938, upheld by the Court in *Wickard v. Filburn*, 317 U.S. 111 (1942). Like § 922(q), which was invalidated by this Court nearly 30 years ago, § 922(g) "is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms." *Lopez*, 514 U.S. at 561 (footnote omitted). Under the "substantial effects" test applied in *Lopez*, § 922(g)—which requires only a *de minimis* connection to commerce—fails constitutional muster.

B. The courts of appeals continue to apply an unconstitutional "minimal nexus" test, based on pre-*Lopez* statutory rulings.

The courts of appeals have continued to affirm the constitutionality of § 922(g) following *Lopez*, however, based on the statutory element requiring proof that the defendant possessed the firearm "in or affecting commerce." In Mr. Gata's case, the court relied on *United States v. McAllister,* 77 F.3d 387, 389 (11th Cir. 1996), in which the Eleventh Circuit first held that § 922(g) was materially distinguishable from § 922(q), based on this jurisdictional element. The court reasoned that *Lopez* "relied on the fact that [§ 922(q)] 'by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms.'" *McAllister*, 77 F.3d at 389 (citing *Lopez*, 514 U.S. at 561). "In contrast, § 922(g) makes it unlawful for a felon to possess 'in or affecting commerce,' any firearm or ammunition." *Id*.

The fact that § 922(g)'s "in or affecting commerce" element has been interpreted to require only a *minimal* nexus to commerce did not change the analysis. *See McAllister*, 77 F.3d at 389-90. Instead, the Eleventh Circuit wrote that "McAllister misunderstands the scope of *Lopez*." *Id*. at 390. Unlike § 922(q), which the Court held was "not an essential part of a larger regulation of economic activity," the Eleventh Circuit found that § 922(g) was "an attempt to regulate guns that have a connection to interstate commerce." *Id*. The court further reasoned that "[w]hen viewed in the aggregate, a law prohibiting the possession of a gun to a felon stems the flow of guns to interstate commerce." *Id*. The court thus concluded that "[n]othing

in *Lopez* suggests that the 'minimal nexus' test should be changed." *Id*. at 390. *See also Gata*, 2023 WL 2663888 at *2 (same).

This Court's subsequent express rejection of the "aggregate effects" theory, on which the *McAllister* Court relied, did not move the dial. Following the Court's decision in *Morrison*, the Eleventh Circuit wrote: "In *McAllister*, we relied on the jurisdictional element of § 922(g) to sustain the statute after *Lopez*. *Morrison* does not compel us to reach a different conclusion." *United States v. Scott*, 263 F.3d 1270, 1273 (11th Cir. 2001).

Other circuits have similarly ruled. *See United States v. Santiago*, 238 F.3d 213, 216 (2d Cir. 2001) ("Unlike the statutes at issue in either *Lopez* or *Morrison*, § 922(g) includes an express jurisdictional element requiring the government to provide evidence in each prosecution of a sufficient nexus between the charged offense and interstate or foreign commerce."); *United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996) ("The existence of this jurisdictional element . . . distinguishes *Lopez* and satisfies the minimal nexus required for the Commerce Clause") (citation omitted); *United States v. Bell*, 70 F.3d 495, 498 (7th Cir. 1995) ("Section 922(g)(1) does not suffer from the same infirmities. It contains an explicit requirement that a nexus to interstate commerce be established."); *United States v. Bates*, 77 F.3d 1101, 1104 (8th Cir. 1996) ("section 922(g) contains the same type of 'express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce'") (citation omitted); *United States v. Dorris*, 236 F.3d 582, 586 (10th Cir. 2000) ("The jurisdictional

element of § 922(g)(1) puts it into a different category of analysis than the laws considered in *Lopez* and *Morrison*."). *See also Fraternal Order of Police v. United States*, 173 F.3d 898, 907 (D.C. Cir. 1999) ("We join all the numbered circuits . . . in rejecting this argument because § 922(g)(9) contains a 'jurisdictional element': in any prosecution under the provision for possession, the government must prove that the defendant possessed the firearm 'in or affecting commerce.'") (footnote omitted) (collecting cases).

These courts have found their analysis supported, if not required, by *Scarborough v. United States*, 431 U.S. 563, 577 (1977). In *Scarborough*, the Court held that proof that a firearm had previously traveled in interstate commerce was sufficient to prove, under 18 U.S.C. App. § 1202(a) (repealed), that the defendant possessed the firearm "in commerce or affecting commerce." The Court found that "Congress intended 'no more than a minimal nexus requirement.'" *Id.* at 577.

Scarborough was decided as a matter of statutory construction. The precise issue before the Court was "whether proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the statutorily required nexus between the possession of a firearm by a convicted felon and commerce." *Id.* at 564. And, tellingly, at no point in the *Lopez* opinion's exhaustive survey of the Court's Commerce Claus precedents, does the case even mention *Scarborough*.

Nonetheless, the courts of appeals have relied on *Scarborough* to hold that § 922(g), and statutes containing similar jurisdictional elements, are exempt from *Lopez*' three-category framework. *See United States v. Cardoza*, 129 F.3d 6, 11 (1st

Cir. 1997) ("where a federal criminal statute contains a jurisdictional element requiring proof that an object was 'in or affecting' commerce, the government need only meet the 'minimal nexus' test enunciated in *Scarborough v. United States*, 431 U.S. 563, 577 ... (1977)."); *Santiago*, 238 F.3d at 216 ("pre-*Lopez* case law makes clear that § 922(g) only requires a 'minimal nexus' between possession of a firearm and interstate commerce"); *United States v. Gateward*, 84 F.3d 670, 671 (3d Cir. 1996) ("We do not understand *Lopez* to undercut the *Bass*/*Scarborough* proposition that the jurisdictional element 'in or affecting commerce' keeps the felon firearm law well inside the constitutional fringes of the Commerce Clause."); *United States v. Napier*, 233 F.3d 394, 401 (6th Cir. 2000) ("Nothing in *Jones* suggests that the Supreme Court is backing off its opinion that § 1202(a), the predecessor of § 922(g)(1), required only 'the minimal nexus that the firearm have been, at some time, in interstate commerce.'") (citing *Scarborough*, 431 U.S. at 575).

Some courts have expressly held themselves "bound by *Scarborough*." *See United States v. Patton*, 451 F.3d 615, 636 (10th Cir. 2006) ("Like our sister circuits, we see considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases, and like our sister circuits, we conclude that we are bound by *Scarborough*, which was left intact by *Lopez*."); *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996) (Garwood, J., specially concurring) ("While *Scarborough* addresses only questions of statutory construction, and does not expressly purport to resolve any constitutional issue, the language of the opinion and the affirmance of the conviction there carry a strong

enough implication of constitutionality to now bind us, as an inferior court, on that issue in this essentially indistinguishable case."). Importantly, these Courts have reasoned that "[a]ny doctrinal inconsistency between *Scarborough* and [this] Court's more recent decisions is not for [the lower courts] to remedy." *See Patton*, 451 F.3d at 636. *See also United States v. Safeeullah*, 453 F. App'x 944, 948 n.2 (11th Cir. 2012) ("If the minimal nexus test is wrong, it is for the Supreme Court to say so."); *United States v. Cortes*, 299 F.3d 1030, 1036 n.2 (9th Cir. 2002) ("Until the Supreme Court tells us otherwise, however, we follow *Scarborough* unwaveringly."); *United States v. Lemons,* 302 F.3d 769, 773 (7th Cir. 2002) ("If, indeed, *Lopez*'s rationale calls into doubt our construction and application of section 922(g)(1), it is for the Supreme Court to so hold.").

Some judges, however, disagree. In 2010, four judges of the Ninth Circuit dissented from the denial of rehearing in a case involving a constitutional challenge to a statute prohibiting the possession of body armor, 18 U.S.C. § 931, which had been upheld based on a jurisdictional element similar to that in § 922(g). *See United States v. Alderman*, 593 F.3d 1141 (9th Cir. 2010) (O'Scannlain, J., dissenting from the order denying rehearing en banc). Judge O'Scannlain wrote that "[t]he majority's opinion makes *Lopez* superfluous. Insert a jurisdictional recital, the majority in effect says, and Congress need not worry about whether the prohibited conduct has a 'substantial relation to interstate commerce.'" *Id.* (citation omitted).

When the case reached this Court, Justice Thomas echoed these concerns in an opinion dissenting from the denial of certiorari:

> Joining other Circuits, the Court of Appeals for the Ninth Circuit has decided that an "implic[it] assum[ption] of constitutionality in a 33-year old statutory interpretation opinion "carve[s] out" a separate constitutional place for statutes like the one in this case and pre-empts a "careful parsing of post-*Lopez* case law." . . . That logic threatens the proper limits on Congress' commerce power and may allow Congress to exercise police powers that our Constitution reserves to the States.

Alderman v. United States, 562 U.S. 1163 (2011) (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari) (internal citations omitted). As the opinions of the courts of appeals makes clear, however, "[i]f 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 that does not squarely address the constitutional issue." *Id.*

C. The decision below is wrong.

The decision below cannot be squared with *Lopez*' constitutional rule. As Judge Garwood wrote in *Rawls*, "[i]f the matter were *res nova*, one might well wonder how it could rationally be concluded that the 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." 85 F.3d at 243 (Garwood, J., specially concurring). "It is also difficult to understand how a statute construed never to require any but such a per se nexus could "ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce."" *Id.* (citing *Lopez*, 514 U.S. at 561). Obviously, it cannot.

The circuit courts are wrong, however, to conclude that their continued adherence to *Scarborough* is required. As another Fifth Circuit judge recognized,

Lopez was "a fundamental and landmark restatement and redefinition of the powers of Congress under the Commerce Clause." *United States v. Kuban,* 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting in part). "[T]he precise holding in *Scarborough* is in fundamental and irreconcilable conflict with the rationale of" *Lopez*," and "the 'minimal nexus' of *Scarborough* can no longer be deemed sufficient under the *Lopez* requirement of substantially affecting interstate commerce." *Id*. at 977-78.

This case is a perfect example of *Scarborough's* fundamental and irreconcilable tension with *Lopez* and its progeny. The only evidence in the record, of any connection to interstate commerce, was the stipulation in the factual proffer that both firearms had been manufactured outside the State of Florida, and had, therefore, traveled in interstate commerce at some undetermined time before they came into Mr. Gata's possession (in Florida). *See* DE 30:1. This is plainly insufficient to show a substantial effect on interstate commerce, and the conviction should be vacated.

D. The issue is important, timely, and worthy of the Court's review.

It has been nearly three decades since this Court's landmark ruling in *Lopez*. Yet the tension between *Lopez* and *Scarborough* continues to vex the circuit courts and wreak confusion in the law.

Recently, seven judges of the Fifth Circuit voted in favor of rehearing en banc the same constitutional challenge to § 922(g) presented herein. *See United States v. Seekins*, 52 F.4th 988 (5th Cir. 2022), *cert. denied*, No. 22-6853 (Jun. 26, 2023). In an opinion dissenting from the denial of rehearing en banc, Judge Ho offered another reason why this Court's review is warranted:

> Americans disagree passionately over a wide range of issues—including a variety of criminal justice issues, such as whether felons should be punished for possessing firearms. . . .
>
> In these sharply divided times, I can think of no better moment to reaffirm our Founders' respect for diverse viewpoints and restore the proper constitutional balance between our national needs and our commitment to federalism.

See id. at 988 (Ho, J., dissenting from denial of rehearing en banc).

This argument has particular force with respect to § 922(g). In today's society, virtually all firearms and ammunition (among a host of other products) will have been manufactured, or contain component parts that had been manufactured, in another state. If such a tenuous connection is sufficient to render the possession "in or affecting commerce," then is truly no difference between what is national and what local. Because the ruling below is out of step with this Court's constitutional holdings, certiorari review is warranted.

CONCLUSION

Based upon the foregoing, Mr. Gata asks this Court to grant certiorari and review the decision of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

MICHAEL CARUSO
Federal Public Defender

/s/ Tracy Dreispul
TRACY DREISPUL*
R. D'ARSEY HOULIHAN
Assistant Federal Public Defenders
150 W. Flagler Street, Suite 1500
Miami, FL 33130
305-536-6900

Miami, Florida
August 29, 2023.

**Counsel of Record*