No. 24-6731

IN THE SUPREME COURT OF THE UNITED STATES

EMMANUEL ANTIONE HEMPHILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to plain-error relief on his claim that 18 U.S.C. 922(g)(1), which makes it unlawful for a convicted felon to possess a firearm that has traveled in interstate or foreign commerce, violates the Commerce Clause.

ADDITIONAL RELATED PROCEEDING

United States Court of Appeals (5th Cir.):

United States v. Hemphill, No. 22-50817 (Oct. 4, 2022)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A23) is available at 2024 WL 5184299.

JURISDICTION

The judgment of the court of appeals was entered on December 20, 2024. The petition for a writ of certiorari was filed on March 5, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Texas, petitioner was convicted of

escaping from federal custody, in violation of 18 U.S.C. 751(a), and possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (Supp. IV 2022). Judgment 1. The court sentenced petitioner to 180 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A23.

1. In March 2022, the Bureau of Prisons transferred petitioner, who was serving a federal sentence, from a prison to a halfway house for the duration of his sentence. Pet. App. A2. Ten days later, petitioner left the halfway house without permission and with no intent to return. See ibid. The U.S. Marshals Service obtained a criminal complaint and arrest warrant based on petitioner's escape. Ibid.

Two months later, a sheriff's deputy saw a car speeding on the highway. Pet. App. A2. The deputy activated his vehicle's emergency lights and attempted a traffic stop, but the driver -- later identified as petitioner -- did not pull over. Id. at A2-A3. Petitioner instead merged onto the interstate and continued driving, forcing the deputy and other law enforcement officers to pursue him. Id. at A3. Petitioner eventually pulled over, and petitioner and a passenger got out of the car and identified themselves. Ibid.

The sheriff's deputy ran petitioner's name through a law enforcement database and discovered the federal arrest warrant.

Pet. App. A3. The passenger informed another law enforcement officer that the glove compartment contained two firearms and drugs. Ibid. Law enforcement then searched the glove compartment and found two pistols, methamphetamine, cocaine, and marijuana. Ibid. Officers arrested petitioner and the passenger. Ibid. While in custody, petitioner wrote, signed, and had notarized an affidavit admitting that he owned all the contraband found in the car. Ibid.

2. A federal grand jury in the United States District Court for the Western District of Texas returned an indictment charging petitioner with escaping from federal custody, in violation of 18 U.S.C. 751(a), and possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. B1-B2. Petitioner proceeded to trial, where the government presented, among other evidence, testimony from a Bureau of Alcohol, Tobacco, Firearms and Explosives special agent that the two firearms found in petitioner's car had been manufactured overseas and, therefore, had traveled in interstate or foreign commence. 4/17/23 Tr. 234, 238-239.

The jury found petitioner guilty on both counts, and the district court sentenced him to 180 months of imprisonment, to be followed by three years of supervised release. Judgment 1-3.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. A1-A23.

As relevant here, petitioner argued for the first time on appeal that 18 U.S.C. 922(g)(1) exceeded Congress's power under the Commerce Clause. See Pet. C.A. Br. 31-40; see also id. at 33 (acknowledging that petitioner "did not raise his constitutional claim below"). Petitioner further conceded that the court of appeals had previously rejected that claim in earlier published decisions. Id. at 32-33.

The court of appeals likewise observed that it "ha[d] consistently upheld § 922(g)(1)'s constitutionality under the Commerce Clause." Pet. App. A22 (citing United States v. Alcantar, 733 F.3d 143, 145-146 (5th Cir. 2013), cert. denied, 572 U.S. 1028 (2014)). The court deemed itself "bound by [its] prior precedents" and "conclude[d] that [petitioner's] argument is foreclosed." Ibid.

ARGUMENT

Petitioner contends (Pet. 4-11) that 18 U.S.C. 922(g)(1), which prohibits convicted felons from possessing firearms "in or affecting commerce," exceeds Congress's authority under the Commerce Clause, U.S. Const. Art. 1, § 8, Cl. 3. The court of appeals correctly rejected that claim, and its unpublished decision does not conflict with any decision of this Court or another court of appeals. This Court has recently and repeatedly

denied certiorari on this issue,[1] and the same result is warranted here.

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[1] See, e.g., Womack v. United States, 145 S. Ct. 1319 (2025) (No. 24-6435); Meeks v. United States, 145 S. Ct. 1226 (2025) (No. 24-6416); Howard v. United States, 145 S. Ct. 1210 (2025) (No. 24-6290); Johnson v. United States, 145 S. Ct. 1213 (2025) (No. 24-6283); Wilson v. United States, 145 S. Ct. 1189 (2025) (No. 24-6102); Gonzales v. United States, 145 S. Ct. 1109 (2025) (No. 24-6103); Holmes v. United States, 145 S. Ct. 1108 (2025) (No. 24-6082); Townsel v. United States, 145 S. Ct. 1105 (2025) (No. 24-6063); Steward v. United States, 145 S. Ct. 424 (2024) (No. 24-5479); Sanchez v. United States, 145 S. Ct. 405 (2024) (No. 24-5560); Campos-Esqueda v. United States, 145 S. Ct. 405 (2024) (No. 24-5576); Gipson v. United States, 145 S. Ct. 344 (2024) (No. 24-5376); Tejada-Cruz v. United States, 145 S. Ct. 333 (2024) (No. 24-5261); Taylor v. United States, 145 S. Ct. 329 (2024) (No. 24-5229); Massey v. United States, 145 S. Ct. 308 (No. 24-5112); Baez v. United States, 145 S. Ct. 306 (2024) (No. 24-5101); Overman v. United States, 145 S. Ct. 305 (2024) (No. 24-5103); Lovings v. United States, 145 S. Ct. 303 (2024) (No. 24-5087); Vargas v. United States, 145 S. Ct. 254 (2024) (No. 23-7804); Paniagua v. United States, 145 S. Ct. 233 (2024) (No. 23-7692); Williams v. United States, 145 S. Ct. 232 (2024) (No. 23-7689); Olivas v. United States, 145 S. Ct. 227 (2024) (No. 23-7662); Thomas v. United States, 145 S. Ct. 225 (2024) (No. 23-7653); Galvan v. United States, 144 S. Ct. 2646 (2024) (No. 23-7451); Rocco v. United States, 144 S. Ct. 2642 (2024) (No. 23-7401); Stovall v. United States, 144 S. Ct. 2642 (2024) (No. 23-7402); Davis v. United States, 144 S. Ct. 2593 (2024) (No. 23-7305); Hoyle v. United States, 144 S. Ct. 2550 (2024) (No. 23-7225); Williams v. United States, 144 S. Ct. 2550 (2024) (No. 23-7235); Jones v. United States, 144 S. Ct. 2547 (2024) (No. 23-7179); Day v. United States, 144 S. Ct. 2547 (2024) (No. 23-7181); Carrasco v. United States, 144 S. Ct. 2546 (2024) (No. 23-7160); Pastrana v. United States, 144 S. Ct. 1469 (2024) (No. 23-7125); Whitfield v. United States, 144 S. Ct. 1377 (2024) (No. 23-7001); Pichon v. United States, 144 S. Ct. 1374 (2024) (No. 23-6973); EtchisonBrown v. United States, 144 S. Ct. 1356 (2024) (No. 23-6647); Racliff v. United States, 144 S. Ct. 1355 (2024) (No. 23-6278); Lujan v. United States, 144 S. Ct. 1127 (2024) (No. 23-6850); Salinas v. United States, 144 S. Ct. 1110 (2024) (No. 23-6881); Burks v. United States, 144 S. Ct. 1082 (2024) (No. 23-

1. Petitioner argues (Pet. 4-11) that Section 922(g)(1) exceeds Congress's power under the Commerce Clause. In particular, he argues (Pet. 7) that an individual's "local possession of a gun" does not establish a constitutionally sufficient nexus to commerce. That argument lacks merit.

a. In its current form, Section 922(g) identifies nine categories of persons -- including those who have previously been convicted of a felony, 18 U.S.C. 922(g)(1) -- to whom firearm restrictions attach. Section 922(g) makes it unlawful for such persons "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." 18 U.S.C. 922(g).

In United States v. Bass, 404 U.S. 336 (1971), this Court considered a predecessor criminal provision that applied to any person within specified categories (including convicted felons) who "receives, possesses, or transports in commerce or affecting commerce . . . any firearm." Id. at 337 (quoting 18 U.S.C. App. 1202(a) (1970)). The Court held that the statute's "in commerce or affecting commerce" requirement applied to the receipt and possession offenses as well as to the transportation offense, and

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6793); Jones v. United States, 144 S. Ct. 1081 (2024) (No. 23-6769); Francis v. United States, 144 S. Ct. 1049 (2024) (No. 23-6687); Desjarlais v. United States, 144 S. Ct. 866 (2024) (No. 23-6474); Paiva v. United States, 144 S. Ct. 707 (2024) (No. 23-6285).

that the government must prove a case-specific connection to interstate commerce for all three. Id. at 347-350. In particular, the Court held that the statute required proof that the firearm that a defendant had been charged with receiving had itself "previously traveled in interstate commerce." Id. at 350. The Court explained that such an element would ensure that the statute remained "consistent with * * * the sensitive relation between federal and state criminal jurisdiction." Id. at 351.

Then, in Scarborough v. United States, 431 U.S. 563 (1977), this Court specifically focused on the jurisdictional element in the context of a felon-in-possession offense and held that it is satisfied by proof that the relevant firearm previously traveled in interstate commerce. Id. at 567-568, 575, 578. The Court rejected the defendant's argument that "the possessor must be engaging in commerce" "at the time of the [possession] offense," explaining that Congress's use of the phrase "'affecting commerce'" demonstrated its intent to assert "'its full Commerce Clause power.'" Id. at 568-569, 571 (citation omitted).

Scarborough forecloses petitioner's contention that the Commerce Clause requires the government to prove more than the prior movement of a firearm in interstate commerce to satisfy Section 922(g)(1)'s jurisdictional element. And consistent with Bass and Scarborough, the courts of appeals have uniformly held that Section 922(g)'s prohibition against possessing a firearm

that has previously moved in interstate commerce falls within Congress's Commerce Clause authority. See United States v. Torres-Colón, 790 F.3d 26, 34 (1st Cir.), cert. denied, 577 U.S. 882 (2015); United States v. Bogle, 522 Fed. Appx. 15, 22 (2d Cir. 2013); United States v. Brown, 765 F.3d 278, 284 n.1 (3d Cir. 2014); United States v. Lockamy, 613 Fed. Appx. 227, 228 (4th Cir. 2015) (per curiam), cert. denied, 577 U.S. 1085 (2016); United States v. Rendon, 720 Fed. Appx. 712, 713 (5th Cir.) (per curiam), cert. denied, 586 U.S. 896 (2018); United States v. Henry, 429 F.3d 603, 619-620 (6th Cir. 2005); Baer v. Lynch, 636 Fed. Appx. 695, 696 (7th Cir. 2016); United States v. Joos, 638 F.3d 581, 586 (8th Cir. 2011), cert. denied, 565 U.S. 1184 (2012); United States v. Conrad, 745 Fed. Appx. 60, 60 (9th Cir. 2018); United States v. Griffith, 928 F.3d 855, 865 (10th Cir. 2019); United States v. Vereen, 920 F.3d 1300, 1317 (11th Cir. 2019), cert. denied, 140 S. Ct. 1273 (2020).

b. Petitioner suggests (Pet. 9-10) that Scarborough conflicts with this Court's subsequent decisions in United States v. Lopez, 514 U.S. 549 (1995), and Jones v. United States, 529 U.S. 848 (2000). Those cases are inapposite.

In Lopez, the Court held unconstitutional a federal prohibition against possessing a firearm in a school zone in 18 U.S.C. 922(q) (1988 & Supp. IV 1992), which "by its terms ha[d] nothing to do with 'commerce' * * * , however broadly one might

define th[at] term[].” 514 U.S. at 561. The Court noted that among other things, Section 922(q) “contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.” Ibid. Section 922(g), in contrast, requires proof of a connection to interstate commerce in each case, and the Court in Lopez specifically distinguished Section 922(g)’s statutory predecessor from Section 922(q), on the ground that the former included an “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.” Id. at 562. Lopez accordingly did not cast doubt on Scarborough’s continuing force or the constitutionality of Section 922(g)(1) as applied to a firearm that has previously moved in interstate commerce.

Petitioner’s reliance on Jones is even further afield. The Court in Jones did not issue a constitutional ruling. Jones simply construed the federal arson statute’s textual requirement that the arsonist-defendant must have damaged or destroyed real property “used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce,” 18 U.S.C. 844(i) (emphasis added). See Jones, 529 U.S. at 854 (explaining that, unlike statutes that solely employ an affecting-commerce requirement, “[t]he key word [in Section 844(i)] is ‘used’”).

Jones held that that Section 844(i)'s used-in-commerce requirement "is most sensibly read to mean active employment for commercial purposes" and, for that reason, the provision did not extend to arsons involving "an owner-occupied residence not used for any commercial purpose." Id. at 850, 855; see id. at 854-859. That holding casts no doubt on Scarborough's continued vitality.[2]

2. In any event, this case would be an unsuitable vehicle for this Court's review. As petitioner acknowledged below, see Pet. C.A. Br. 33, he did not raise his Commerce Clause challenge in district court. Petitioner is therefore not entitled to relief on this challenge unless he can satisfy plain-error review, see Fed. R. Crim. P. 52(b), and he cannot satisfy that standard given the uniform wall of contrary precedent. Cf. Henderson v. United States, 568 U.S. 266, 278 (2013) (explaining that "lower court decisions that are * * * not plainly wrong (at time of trial or at time of appeal) fall outside the * * * scope" of the plain-

[2] Petitioner also briefly invokes (Pet. 5) National Federation of Independent Bus. v. Sebelius, 567 U.S. 519 (2012) (NFIB), but he fails to explain how that decision bears on the question presented. Five Members of the Court in NFIB concluded that the Affordable Care Act's individual mandate exceeded Congress's Commerce Clause authority because, rather than regulating any pre-existing activity, the provision "compel[led] individuals to become active in commerce by purchasing a product" in the future. 567 U.S. at 552 (opinion of Roberts, C.J.); see id. at 655-660 (joint dissent). That conclusion has no application to this context, which involves a firearm that has itself already moved in interstate commerce.

error rule). This Court should not review the question presented in a case where the answer makes no difference to the petitioner.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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