No. 24-_____

IN THE

Supreme Court of the United States

ANTJOUN RIDDICK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether the federal government has the authority under the Commerce Clause, Art. I, § 8, cl. 3, to regulate the noncommercial, intrastate possession of an object that has crossed state lines at some point in the past, however remote, if that intrastate possession does not implicate the channels or instrumentalities of interstate or foreign commerce.

II.

Whether, despite the lack of a circuit split, this Court should address the frequently-litigated issue of whether this Court's decision in *United States v. Lopez* 514 U.S. 549 (1995), undermined this Court's decision in *Scarborough v. United States*, 431 U.S. 563 (1977), concerning the extent of the federal government's power under the Commerce Clause to regulate a person's noncommercial, intrastate possession of an object.

III.

Whether 18 U.S.C. § 922(g)(1), as applied to petitioner, violates the Second Amendment because he possessed a pistol at a private residence.

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RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Riddick*, No. 8:22-cr-00057-TDC-1, United States District Court for the District of Maryland. Judgment was entered on December 8, 2023.

- *United States v. Riddick*, No. 23-4741, United States Court of Appeals for the Fourth Circuit. Judgment was entered on March 31, 2025.

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OPINIONS BELOW

The decision of the Fourth Circuit affirming petitioner's judgment of conviction (**Appendix A**) is unpublished but is available at 2025 WL 957478. The order of the district court denying petitioner's motion to dismiss the indictment (**Appendix B**) is unpublished.

JURISDICTION

The Fourth Circuit issued its opinion and entered judgment on March 31, 2025. Petitioner did not file a petition for rehearing. This petition for writ of certiorari was filed within 90 days of the date of the Fourth Circuit's opinion and judgment. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Commerce Clause

Congress may "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., Art. I, § 8, cl. 3.

Second Amendment

"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."

18 U.S.C. § 922(g)(1)

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

A. Procedural Background

On February 16, 2022, a federal grand jury returned an indictment charging petitioner with possession of a firearm (a Ruger handgun) by a previously convicted felon, in violation of 18 U.S.C. § 922(g)(1). JA11.[1] On August 8, 2022, petitioner filed a motion to dismiss the indictment under the Second Amendment. JA14. The district court (the Honorable Theodore D. Chuang, presiding) denied that motion on January 9, 2023. App. B. On July 31, 2023, the district court conducted a two-day jury trial. JA288. *et seq*. On August 1, 2023, the jury found petitioner guilty after the district court denied petitioner's motion for judgment of acquittal. JA537.

On December 8, 2023, the district court sentenced petitioner to 54 months in federal prison to be followed by three years of supervised release, as well as a $100 special assessment. JA538.

On petitioner's direct appeal to the Fourth Circuit, that court affirmed petitioner's conviction on March 31, 2025. No petition for rehearing was filed.

[1] "JA" refers to the Joint Appendix filed in the Fourth Circuit.

B. Relevant Facts

The indictment charged petitioner, who previously had been convicted of an offense punishable in excess of one year of imprisonment, with knowingly possessing a Ruger pistol that was "in and affecting commerce," in violation of 18 U.S.C. § 922(g)(1). JA11.

At petitioner's jury trial, the government called three witnesses. Deputy U.S. Marshals Christopher Batelli and Tyler Wells testified that, around 8:50 a.m. on January 21, 2022, while executing an arrest warrant in Prince George's County, Maryland in the driveway of the residence in which petitioner was staying, they discovered a Ruger handgun in petitioner's waistband. JA311-19, 352, 355-65.

ATF Agent Matthew Leonard, who testified as an expert witness on firearms, opined that the Ruger handgun that petitioner possessed was manufactured outside of Maryland (namely, in Arizona). JA425-27. Agent Leonard stated that the model of Ruger handgun possessed by petitioner was last manufactured in 2005 but did not testify when that particular handgun was manufactured. JA, 426-27, 437. Agent Leonard also admitted that he did not know when the handgun had entered Maryland or how it had traveled into Maryland (and did not know whether petitioner himself had caused the handgun to cross state lines). JA426-37.[2]

Petitioner and the government stipulated at trial that petitioner previously had been convicted of a felony offense and knew that he had been so convicted as of

[2] In denying petitioner's motion for judgment of acquittal, the district court specifically stated that the government had offered sufficient evidence of the "interstate nexus" by offering the testimony from Agent Leonard, *see* JA443 – obviously referring to the "in or affecting commerce" element of 18 U.S.C. § 922(g)(1).

January 21, 2022, the date that he possessed the handgun. JA440-41. The presentence report reflects that, at the time that he possessed the handgun, petitioner previously had been convicted of multiple felony offenses in Maryland state court, including second-degree murder in 2015. SJA.550-553.

On appeal to the Fourth Circuit, petitioner contended that his conviction violated the Second Amendment and the Commerce Clause (but conceded that his arguments were foreclosed by Fourth Circuit precedent and stated that he was preserving the issues for a certiorari petition). The Fourth Circuit affirmed petitioner's conviction. The court's opinion stated:

> Antjoun Riddick appeals his conviction following a jury trial for possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On appeal, Riddick argues that § 922(g)(1) is unconstitutional, both facially and as applied to him, and that his conviction is not supported by sufficient evidence. We affirm.
>
> The parties agree that Riddick's Second Amendment challenges to § 922(g)(1) are foreclosed by our recent decision in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). *See also United States v. Canada*, 123 F.4th 159, 160-62 (4th Cir. 2024).
>
> Riddick further concedes that his challenge to the sufficiency of the evidence regarding the interstate commerce element of the offense is likewise foreclosed by our precedent. *See, e.g.*, *United States v. Reed*, 780 F.3d 260, 271-72 (4th Cir. 2015) (holding that showing a firearm traveled across state lines is sufficient to establish that a defendant's possession of a firearm was in or affected interstate commerce).
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> We agree with Riddick's concessions. We therefore affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

App. A.

REASONS FOR GRANTING THE PETITION

This petition raises two important questions worthy of this Court's review: **first**, whether the federal government possesses the authority under the Commerce Clause to criminalize the intrastate, noncommercial possession of an object that has crossed state lines at some point in the past, however remote, even if that possession occurs in a private residence and does not implicate the channels or instrumentalities of commerce; and, **second**, whether 18 U.S.C. § 922(g)(1)'s proscription on a previously-convicted felon's possession of a firearm violates the Second Amendment as applied to petitioner's possession of a pistol at a private residence.

I.

This Court Should Grant Certiorari in Order to Address Whether the Federal Government Has the Authority under the Commerce Clause to Regulate the Intrastate, Noncommercial Possession of an Object that Merely Has Crossed State Lines at Some Point in the Past, However Remote, if that Possession Does Not Implicate the Channels or Instrumentalities of Interstate or Foreign Commerce.

A. Introduction

During the past century, this Court's Commerce Clause precedent has sent contradictory messages about Congress's authority to regulate *intrastate* conduct. *Compare, e.g.*, *Wickard v. Filburn*, 317 U.S. 111 (1942) (upholding Congress's authority under the Commerce Clause to regulate locally grown wheat only to be used by the grower during the Great Depression), *with United States v. Lopez*, 514 U.S. 549 (1995) (invalidating the former 18 U.S.C. § 922(q) as exceeding Congress's Commerce

Clause power).[3] *See* Alex Kreit, *Rights, Rules, and Raich,* 108 W. VA. L. REV. 705, 707 (2006) (commenting on this Court's "increasingly unclear Commerce Clause jurisprudence" and noting "the internal conflicts within [this Court's] Commerce Clause jurisprudence").

Petitioner, however, is not asking this Court broadly to reassess this Court's Commerce Clause jurisprudence. Instead, he asks this Court to grant certiorari and address one specific, important issue: Does the federal government possess the authority to regulate the mere *intrastate* possession of an object that has crossed state lines at some point in the past, however remote, when that possession no longer implicates interstate (or foreign) commerce? The lower federal courts have "cried out for guidance from this Court" on this particular issue, which most commonly has been raised in cases involving federal criminal laws regulating firearms and related objects. *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 702 (2011) (Thomas, J., joined by Scalia, J., dissenting from denial of certiorari).

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[3] In *Lopez*, this Court identified three categories of activity that Congress's commerce power authorizes it to regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) "activities having a substantial relation to interstate commerce . . . *i.e.*, those activities that substantially affect interstate commerce." 514 U.S. at 558-559. Holding that it was unwilling to "convert congressional authority under the Commerce Clause to a general police power," *id.* at 567, this Court invalidated the congressional statute that prohibited possession of firearms within a 1,000-foot radius of schools because the statute did not regulate an activity that "substantially affect[ed]" interstate commerce. *Id.* at 561.

Five years after *Lopez*, this Court reaffirmed the "substantial effects" test in *United States v. Morrison*, 529 U.S. 598 (2000). This Court invalidated Congress's 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 Violence Against Women Act of 1994. *Id.* at 617, 619.

In providing such guidance, this Court should resolve the important issue of whether *Scarborough v. United States*, 431 U.S. 563 (1977), actually held that the federal government possesses authority under the Commerce Clause to regulate *intrastate* possession of an object that previously traveled across state lines – as the lower federal courts have stated – or, instead, the lower courts have misread the holding in *Scarborough*.

In *Scarborough*, the Court held that a conviction under the former 18 U.S.C. § 1202(a) – the statutory predecessor of 18 U.S.C. § 922(g)[4] – only required proof that a particular firearm had traveled from one state or a foreign country into the state in which a previously-convicted felon (or other prohibited person) possessed it in order to satisfy the statute's "jurisdictional" element – that the firearm was "in commerce or affecting commerce." The Court rejected the defendant's argument that a *contemporaneous* "nexus" with interstate commerce was required under § 1202(a). The Court held that any past connection to interstate commerce, including merely crossing state lines – however remote in time – was sufficient under the statute. *Id.* at 570-78.

B. The Lower Courts' Erroneous Reliance on *Scarborough* as a Basis for Affording Sweeping Commerce Clause Authority to the Federal Government

[4] In 1986, Congress modified and recodified § 1202(a) as 18 U.S.C. § 922(g)(1).

The court below (the Fourth Circuit) and every other federal circuit have stated that *Scarborough* affirmed the federal government's power under the Commerce Clause to criminalize a prohibited person's entirely *intrastate* possession of a firearm, so long as the firearm crossed state lines in the past, however remote – without proof that the possession otherwise had anything to do with interstate commerce.[5] The circuits all have misread *Scarborough* and, more important, also have failed to account for the intervening decision in *Lopez*.

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[5] *See United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996); *see also 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, 243 (5th Cir. 1996); *United States v. Chesney*, 86 F.3d 564, 571 (6th Cir. 1996); *United States v. Lemons*, 302 F.3d 769, 771-72 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992 (8th Cir. 1995); *United States v. Hanna*, 55 F.3d 1456, 1461-62, 1462 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); *see also Fraternal Order of Police v. United States*, 173 F.3d 898, (D.C. Cir. 1999) ("FOP argues that § 922(g)(9) is beyond Congress's power to enact under the commerce clause. 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.'"). Although the D.C. Circuit addressed § 922(g)(9) rather than § 922(g)(1), there is no basis to distinguish between the two provisions in terms of the D.C. Circuit's Commerce Clause analysis.

Since *Lopez*, many dissenting or concurring judges in several circuits have criticized their courts' rote application of *Scarborough* in rejecting compelling constitutional challenges to federal statutes, like § 922(g), that have been interpreted to permit the exercise of federal jurisdiction over intrastate activity merely based on the fact that some object related to the activity had crossed state lines at some unspecified time in the past, however remote (with no other evidence of a genuine effect on *interstate* commerce). *See, e.g.*, *Seekins*, 52 F.4th at 991 (Ho, J., dissenting from denial of rehearing en banc, joined by Smith & Engelhardt, JJ.); *United States v. Alderman*, 593 F.3d 1141, 1141 (9th Cir. 2010) (O'Scannlain, J., dissenting from denial of rehearing en banc, joined by Paez, Bybee, & Bea, JJ.); *United States v. Chesney*, 86 F.3d 564, 574 (6th Cir. 1996) (Batchelder, J., concurring); *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting) ("S*carborough* is in fundamental and irreconcilable conflict with the rationale of . . . [*Lopez*]."; *United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996) (per curiam) (Garwood, J., concurring) (declaring that application of § 922(g)(1) to solely intrastate possession of a firearm would be unconstitutional under *Lopez* as a matter of first impression, yet *Scarborough* bound the Fifth Circuit "as an inferior court . . . whether or not the Supreme Court will ultimately regard it as a controlling holding in that particular respect"); *United States v. Bishop*, 66 F.3d 569, 590-603 (3d Cir. 1995) (Becker, J., dissenting in part); *see also United States v. Hill*, 927 F.3d 188, 215 n.10 (4th Cir. 2019) (Agee, J., dissenting) ("While some tension exists between *Scarborough* and . . . *Lopez*, the Supreme Court has not granted certiorari on a case that would provide further guidance, . . . and circuit courts have routinely relied on *Scarborough* as a basis for distinguishing *Lopez* in the context of firearms-related offenses.").

Justice Thomas, joined by Justice Scalia, recognized this systemic error by the lower courts when he stated that *Scarbough* did "not squarely address the constitutional issue" and, "as the lower courts have read it, cannot be reconciled with *Lopez* because [such a reading of *Scarborough*] reduces the constitutional analysis to the mere identification of a [nominal] jurisdictional hook" – i.e., the "in or affecting commerce" element as interpreted in *Scarborough*. *Alderman*, 131 S. Ct. at 702-03 (dissenting from denial of cert.);[6] *see also United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., joined by Smith & Englehardt, JJ., dissenting from denial of rehearing) ("[R]eliance on *Scarborough* was erroneous for at least two reasons. First, the Court's holding in *Scarborough* was statutory, not constitutional. *See Scarborough*, 431 U.S. at 567, 569-77. *See also* J. Richard Broughton, *The Ineludible (Constitutional) Politics of Guns*, 46 CONN. L. REV. 1345, 1360 (2014). Second, *Scarborough* pre-dates *Lopez*, where the Court cabined the constitutional power of the federal government under the Commerce Clause. *See* 514 U.S. at 568.").[7]

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[6] *See also United States v. Rahimi*, 602 U.S. 680, 765 n.6 (2024) (Thomas, J., dissenting) ("I doubt that § 922(g)(8) is a proper exercise of Congress's power under the Commerce Clause.").

[7] As petitioner's counsel stated over two decades ago:

> The constitutional issue of whether Congress exceeded its authority under the Commerce Clause was not raised in *Scarborough* and was not decided by the Court. The briefs filed in *Scarborough* demonstrate that the parties in that 1977 appeal were in agreement that Congress possessed the authority under the Commerce Clause to penalize a felon's mere possession of a firearm that had traveled interstate at some point in the past; the only issue in dispute was whether the statutory predecessor to § 922(g)(1), 18 U.S.C. § 1202(a), could be fairly interpreted to be an expression of such a sweeping power. See Br. for Pet., at 23-24, *Scarborough v. U.S.*, 431 U.S. 563 (1977) ("Congress has the power to confer federal authority to prosecute crimes previously in the state domain [including a felon's possession of a firearm], and even eliminate the requirement of proof that a particular transaction has a specific connection with interstate commerce."); Br. for U.S., at 10, *Scarborough v. U.S.*, 431 U.S. 563 (1977) ("There can be no doubt about the power of Congress under the Commerce Clause to prohibit

(continued)

Treating *Scarborough* as a timeless constitutional decision fails to account for this Court's concerns in *Lopez* that an overly broad interpretation of the federal government's authority to regulate "interstate" commerce "would . . . convert [the federal government's] authority under the Commerce Clause to a general police power of the sort retained by the States." *Lopez*, 514 U.S. at 567. Permitting the lower courts' interpretation of § 922(g)(1), based on *Scarborough*, would afford the federal government an unconstitutional, sweeping police power that properly belongs to the states. *Seekins*, 52 F.4th at 990 (Ho, J., dissenting from denial of rehearing) ("[T]he Commerce Clause power 'must be read carefully to avoid creating a general federal authority akin to the police power.'") (quoting *NFIB v. Sebelius*, 567 U.S. 519, 536 (2012)).

> felons from possessing firearms that have moved in commerce .... The only issue in this case ... is whether Congress in fact exercised its broad power over commerce to prohibit possession of firearms that have moved in commerce when it prohibited possession 'affecting' commerce."). Thus, the parties in *Scarborough* did not "join issue" regarding whether the felon-in-possession statute would operate unconstitutionally in a case where the only interstate commerce nexus was the fact that a firearm had traveled interstate some time in the past, even if that interstate movement was long before a felon's possession of the weapon.
>
> . . . Thus, the only issue decided in *Scarborough* was Congress's intent – not whether Congress's expression of that intent, in the felon-in-possession statute, was unconstitutional. The latter issue was not decided by the Supreme Court. At most, *Scarborough* contains what the Supreme Court has characterized as a "sub silentio" holding on the Commerce Clause constitutionality issue. However, it is well established that such sub silentio holdings – that is, "unstated assumptions on non-litigated issues" – have no precedential value. *See*, *e.g.*, *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 182-83 (1979).

Brent E. Newton, *Felons, Firearms, and Federalism: Reconsidering Scarborough in Light of Lopez*, 3 J. APP. PRAC. & PROCESS 671, 674 & 677 n.36 (2001).

This Court should grant certiorari and resolve the conflict between how the lower courts have interpreted *Scarborough* and this Court's limited view of the federal government's Commerce Clause power in *Lopez*.

Significantly, in resolving that conflict, this Court need not go so far as to declare that the prior interstate travel of an object has no relevance. This Court could, for example, permit the federal government to exercise its Commerce Clause authority when an object has moved in interstate commerce in some manner related to truly commercial or economic activity that continues after the object has entered into a state. In that regard, this Court's pre-*Scarborough* cases approving of a broad authority for the federal government to regulate objects that previously had traveled in interstate commerce all involved objects with some logical relation to "commerce" in the sense of *economic activity*. *See, e.g.*, *Katzenbach v. McClung*, 379 U.S. 294, 304-05 (1964) (". . . [W]e must conclude that [Congress] had a rational basis for finding that racial discrimination in restaurants had a direct and adverse effect on the free flow of interstate commerce. . . . We think in so doing that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce. The absence of direct evidence connecting discriminatory restaurant service with the flow of interstate food, a factor on which the appellees place much reliance, is not, given the evidence as to the effect of such practices on other aspects of commerce, a crucial matter."); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964) ("It is said that the operation of

the motel here is of a purely local character. But, assuming this to be true, [i]f it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze. . . ."); *United States v. Sullivan*, 332 U.S. 689, 698 (1948) (approving "the constitutional power of Congress [in the Food, Drug, and Cosmetic Act] under the commerce clause to regulate the branding of articles that have completed an interstate shipment and are being held for future sales in purely local or intrastate commerce").

In contrast to those cases, the evidence at petitioner's trial failed to prove that his possession of a firearm that previously crossed state lines at some point in the past was connected to any economic or commercial activity. Instead, he merely possessed the pistol in his waistband on residential property. The evidence also failed to prove that petitioner possessed the firearm while in a "channel" of, or while using an "instrumentality" of, interstate commerce.

Finally, two points should be noted. First, as Justices Thomas and Scalia correctly observed in *Alderman* – the issue in this case is not merely about a statute prohibiting previously-convicted felons from possessing firearms:[8]

> [T]he lower courts' reading of *Scarborough*, by trumping the *Lopez* framework, could very well remove any limit on the commerce power. The [lower courts'] interpretation of *Scarborough* seems to permit Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines. Congress arguably could outlaw "the theft of a Hershey kiss from a corner store in Youngstown, Ohio, by a neighborhood juvenile on the basis that the candy once traveled ... to the store from Hershey, Pennsylvania." *United States v. Bishop*, 66 F.3d 569, 596

[8] Even if this case were only about § 922(g), that itself would warrant this Court's attention, as one in 10 federal criminal prosecutions in federal district court are brought under that statute. *See* Robert Leider, *The Modern Common Law of Crime*, 111 J. CRIM. L. & CRIMINOLOGY 407, 444 (2021).

> (C.A.3 1995) (Becker, J., concurring in part and dissenting in part). The Government actually conceded at oral argument in the [lower court] that Congress could ban possession of french fries that have been offered for sale in interstate commerce.

Alderman, 562 U.S. at 702-03 (op. dissenting from denial of cert.); *see also Seekins*, 52 F.4th at 990 (op. dissenting from denial of reh'g en banc) ("[Under the lower courts' interpretation of *Scarborough*,] [t]he federal government can regulate virtually every tangible item anywhere in the United States. After all, it's hard to imagine any physical item that has not traveled across state lines at some point in its existence, either in whole or in part.").[9]

And, second, the states clearly have the authority under their police powers to prohibit certain classes of persons, including convicted felons, from possessing firearms. Indeed, 48 of the 50 states have such laws. *Range v. Attorney General United States*, 124 F.4th 218, 282 n.183 (3d Cir. 2024) (en banc) (Krause, J., joined by Roth, concurring in judgment) (citing *Fifty-State Comparison: Loss and Restoration of*

[9] Professor David Engdahl has derided *Scarborough* as "the herpes theory" of interstate commerce – that once an item has traveled in interstate commerce, it *forever after* remains in interstate commerce and subjects it to federal regulation. See David E. Engdahl, *The Necessary and Proper Clause as an Intrinsic Restraint on Federal Lawmaking Power*, 22 HARV. J.L. & PUB. POL'Y 107, 120 (1998). In less colorful language, a district court aptly described *Scarborough*'s "legal fiction":

> *Scarborough* may fairly be read to establish the legal fiction that has prevailed in these cases since it was announced . . . . Simply phrased, *Scarborough*'s legal fiction is that the transport of a weapon in interstate commerce, however remote in the distant past, gives its present intrastate possession sufficient interstate aspect to fall within the ambit of the statute. This fiction is indelible and lasts as long as the gun can shoot. Thus, a felon who has always kept his father's World War II trophy Luger in his bedroom has the weapon "in" [or "affecting"] commerce.

United States v. Coward, 151 F. Supp. 2d 544, 549 (E.D. Pa. 2001).

Civil/Firearms Rights, Restoration Rts. Project, https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges-2/).

C. The Federal Government Lacks the Constitutional Power to Regulate an Object that Has Crossed States Lines in the Past But Lacks Any Current Connection to Interstate or Foreign Commerce.

The federal government's enumerated powers are "few and defined," while the powers which remain in the state governments are "numerous and indefinite." *Lopez*, 514 U.S. at 552 (citing THE FEDERALIST No. 45, pp. 292-293 (C. Rossiter ed. 1961)). One of these enumerated powers granted to Congress is "[t]o regulate Commerce . . . among the several States." Art. I, § 8, cl. 3. Without limits on federal regulatory power, our nationwide regulation would become "for all practical purposes . . . completely centralized" in a federal government. *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 548 (1935).

This Court's decision in *Lopez* defined these limits. If there is no "use of the channels of interstate commerce" or "instrumentalities of interstate commerce, or persons or things in interstate commerce," the federal government may only regulate "those activities having a substantial relation to interstate commerce." *Lopez*, 514 U.S. at 558-59. The federal government cannot satisfy this standard by regulating intrastate possession of an object merely because it crossed state lines at some point in the past. Permitting such an exercise of federal power "effectually obliterate[s] the distinction between what is national and what is local and create[s] a completely centralized government." *Lopez*, 514 U.S. at 564, 557.

D. This Case Is an Ideal Vehicle to Resolve This Important Constitutional Question.

Petitioner preserved the issue – at trial and on appeal – as a challenge to the sufficiency of the evidence supporting his conviction under § 922(g)(1). Thus, he is not making a facial challenge to the statute or seeking to invalidate its use in future cases. He merely requests this Court interpret "in or affecting commerce" in the statute to require something more than the mere fact that a firearm has crossed state lines in the past, however remote. He does *not* contend the statute would be unconstitutional as applied to offenders who actually do possess firearms "in or affecting" interstate or foreign commerce – such as, for example, by possessing a firearm in connection with or in relation to interstate drug-trafficking activity; robbery of a business that is in interstate commerce; or traveling with a firearm on an interstate highway or in an interstate mode of transportation.

Finally, the fact that there is not a circuit split concerning this question presented should not be a basis for denying certiorari – especially considering the widespread belief among all the circuits that their hands are tied by *Scarborough*. Since *Lopez*, in 1995, countless federal defendants have raised this issue in the lower courts and in petitions for writ of certiorari – and very likely will continue to so in view of the compelling nature of the argument that *Lopez* undermined *Scarborough*, an argument that continues to find strong encouragement for further litigation in recurring dissenting opinions. *See, e.g.*, *Alderman*, 562 U.S. 1163 (Thomas, J., joined by Scalia, J., dissenting from denial of certiorari); *Seekins*, 52 F.4th 988) (Ho, J., joined by Smith & Englehardt, JJ., dissenting from denial of rehearing). For once and for

all, this Court should address this important question. At the very least, doing so would promote judicial economy.

II.

This Court Should Grant Certiorari in Order to Address Whether the Second Amendment Prohibits the Government from Regulating a Person's Possession of a Firearm on Private Residential Property Even if that Person Has a Prior Conviction for a Violent Offense.

In a pretrial motion, petitioner unsuccessfully moved to the dismiss the indictment on the ground that 18 U.S.C. § 922(g)(1) was facially unconstitutional under the Second Amendment. App. B. On appeal, he broadened his challenge also to include an "as applied" challenge – based on the fact that he possessed the firearm on residential property. Opening Brief of Appellant, *United States v. Riddick*, No. 23-4741, 2024 WL 865647, at * (4th Cir., filed Feb. 23, 2024).[10]

[10] Concerning the as-applied challenge, petitioner contended:

> Although appellant only raised a "facial" Second Amendment challenge to § 922(g)(1) in the court below (JA229), he also may raise an alternative, "as-applied" challenge on appeal. *See Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 330-31 (2010) (concluding that the petitioner could raise a "facial" constitutional challenge to a federal statute even though, in the lower courts, the petitioner only had raised an "as-applied" challenge because "the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge"); *cf. Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534-35 (1992) (permitting petitioners to raise a "regulatory" Fifth Amendment taking claim for the first time in the Supreme Court despite apparently having only raised a "physical" taking claim in the lower courts); *id*. ("Petitioners' arguments that the ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate claims. They are, rather, separate arguments in support of a single claim – that the ordinance effects an unconstitutional taking. Having raised a taking claim in the state courts, therefore, petitioners could have formulated any argument they liked in support of that claim here."); *see also United States v. Green*, 996 F.3d 176, 184 (4th Cir. 2021) ("Before the district court, Green's argument that Hobbs Act robbery is not a crime of violence appears to have rested on vagueness grounds alone. But that is not dispositive, because once a defendant raises a claim before the district court, it may make a new argument for that claim on appeal without triggering plain error review.") (citing *Yee*).

(continued)

Assuming *arguendo* that the government could offer sufficient evidence that our country has a "historical tradition of firearm regulation"[11] that generally prohibits persons previously convicted of violent felonies[12] from possessing firearms when they are not on private residential property, the government cannot prove such a historical tradition concerning such a previously-convicted felon who possessed a handgun on private residential property and when there is no evidence that he was using the handgun to commit any violent offense (as opposed to possessing it for self-defense). *Cf. District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008) (in invalidating the D.C. ordinance that prohibited possession of a firearm in a person's residence, the Court noted: "The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation [a handgun] to 'keep' and use for protection of one's home and family, would fail constitutional muster.").

Therefore, even assuming *arguendo* that the Commerce Clause permits the federal government to regulate petitioner's possession of the handgun, the Second Amendment does not.

Opening Brief of Appellant, No. 23-4741, 2024 WL 865647, at *6-7.

[11] *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 24 (2022).

[12] *See Rahimi v. United States*, 602 U.S. 680, 693 (2024) ("[T]he Government offers ample evidence that the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others"). As noted *supra*, at the time that he possessed the handgun, petitioner had a prior conviction for attempted murder.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the Fourth Circuit's judgment.

Respectfully submitted,

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