No. 24-7182

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

PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

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ARGUMENT IN REPLY

Respondent's memorandum in opposition (MIO) erroneously contends that this Court should deny certiorari on petitioner's first two Questions Presented because "petitioner has not preserved a Commerce Clause challenge to Section 922(g)(1)." MIO, at 3; *see also id.* ("While petitioner raised, the court of appeals considered, a sufficiency-of-the-evidence challenge, *he did not raise, and the court did not consider, a constitutional argument*.") (emphasis added). In support of this erroneous argument, respondent cited petitioner's opening brief filed in the U.S. Court of Appeals for the Fourth Circuit. MIO, at 3.

Contrary to respondent's assertion, petitioner's opening brief filed in the Fourth Circuit, in arguing that the evidence of the "in or affecting commerce" element of 18 U.S.C. § 922(g)(1) was insufficient, clearly framed his claim *as a constitutional argument*:

> ***There is insufficient evidence that appellant's intra-state possession of the handgun "affected" interstate commerce to satisfy the requirements of the Constitution's Commerce Clause***. In particular, the government offered no evidence of when and how the handgun (which was manufactured in Arizona on some unspecified date before 2006) came into Maryland. Appellant acknowledges that this argument is foreclosed by Fourth Circuit precedent. He raises it here solely to preserve it for potential review by the en banc Fourth Circuit or Supreme Court. . . .
>
> After [*United States v.*] *Lopez*, [514 U.S. 549 (1995),] many defendants have challenged their convictions under § 922(g)(1) when their possession of firearms were – like appellant's – solely intra-state and not related in any manner to interstate travel or economic activity. This Court, like other circuit courts, has distinguished *Lopez* on the ground that the former § 922(q) [the statute at issue in *Lopez*] – unlike § 922(g)(1) – did not have an "in or affecting commerce" jurisdictional element and that the Court in *Scarborough* [*v. United States*, 431 U.S. 563

> (1977),] focused on that jurisdictional element in addressing § 922(g)'s statutory predecessor. *See United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996) . . . . [T]his Court thus has found sufficient evidence that a firearm was "in or affecting commerce" for purposes of § 922(g)(1) merely based on the fact that, before a defendant possessed a firearm, it had traveled across state lines – even if there was (1) no proof of how or when (however remote) the firearm traveled to the state of the defendant's possession and (2) no proof that the defendant caused such interstate travel. *See, e.g., United States v. Gallimore*, 247 F.3d 134, 138-39 (4th Cir. 2001).
>
> Although appellant acknowledges that this Court's prior precedent forecloses his argument, he raises it here in an adversarial manner so that he can seek en banc review and/or Supreme Court review of this important issue. 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)(1), 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). [citations omitted][1] . . . These judges' compelling arguments – made as recently as 2022 – justify appellant's desire to seek further appellate review of this important issue.

Opening Brief of Appellant, *United States v. Riddick*, No. 23-4741, 2024 WL 865647, at *5-*6, *21-*24 (filed on Feb. 23, 2024) (emphasis added). Petitioner's opening brief also cited and quoted from *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 701 (2011) (Thomas, J., dissenting from denial of certiorari, joined by Scalia, J.) – in which Justices Thomas and Scalia made the same basic argument that the petition for writ of certiorari in the present case does. *See* Opening Brief of Appellant, *United States v. Riddick*, No. 23-4741, 2024 WL 865647, at *19.

[1] Those citations appear in the petition at page 8, footnote 5.

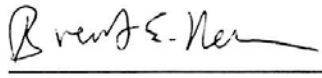
As petitioner's brief filed in the lower court demonstrates, respondent's representation about the manner in which petitioner raised the Commerce Clause claim in the court below is clearly incorrect. The Commerce Clause issue in the petition was both raised and decided in the Court of Appeals and is properly before this Court.

CONCLUSION

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

June 10, 2025

Respectfully submitted,



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