No. ____

IN THE

Supreme Court of the United States

ZQUAREUS TROYEZ IMMANUEL THOMAS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JEFFREY M. BYERS
FEDERAL PUBLIC DEFENDER
LAURA K. DESKIN
Counsel of Record
ASSISTANT FEDERAL PUBLIC DEFENDER
215 Dean A. McGee, Suite 109
Oklahoma City, OK 73102
(405) 609-5930
Laura_Deskin@fd.org

Counsel for Petitioner

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QUESTION PRESENTED

Whether the "affecting commerce" element of 18 U.S.C. § 922(g)(1) requires more than proving the firearm or ammunition traveled across state lines at some unknown point in the past to be a constitutional exercise of Congress's power under the Interstate Commerce Clause.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Thomas*, No. 24-6074 (10th Cir. March 17, 2025);
- *United States v. Thomas*, No. 22-cr-00016-G-1 (W.D. Okla. April 22, 2024).

There are no other proceedings related to this case under Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Zquareus Troyez Immanuel Thomas, respectfully seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals (Pet. App. 1a – 4a) is reported at 2025 WL 830474. The district court did not issue a written opinion in this case.

JURISDICTION

The Tenth Circuit entered its judgment on March 17, 2025. Rehearing was not sought. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. I, § 8, cl. 3 (Commerce Clause):

> 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 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. Legal Background

The Constitution grants Congress authority "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST. art. I, § 8, cl. 3. Though the scope of the Commerce Clause has evolved over time, the Supreme Court has firmly established that this power is not limitless. In *United States v. Lopez*, 514 U.S. 549 (1995), the Court reaffirmed that the Commerce Clause does not grant Congress a general police power and requires a substantial, non-attenuated connection between the regulated activity and interstate commerce. The Court has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce or persons or things in interstate commerce, and (3) activities that substantially affect interstate commerce. See *Gonzales v. Raich*, 545 U.S. 1, 16–17 (2005);*Perez v. United States*, 402 U.S. 146, 150 (1971). The

statute at issue here, 18 U.S.C. § 922(g)(1), criminalizes the possession of a firearm or ammunition "in or affecting commerce" by a convicted felon. Courts have typically upheld the statute based on the third category, interpreting its jurisdictional element to require that the item once moved across state lines. This is often called the "minimal nexus" interpretation.

This minimal nexus interpretation originated in *Scarborough v. United States*, 431 U.S. 563 (1977), where this Court held Congress intended § 922(g) to reach possession of firearms (or ammunition) that had "been, at some time, in interstate commerce." *Id.* at 575. But *Scarborough* predated the more rigorous scrutiny applied in *Lopez* and its progeny. It decided only a question of statutory interpretation, presuming Congress could constitutionally regulate the possession of firearms just because they previously moved across state lines. *See id. Lopez* did not so assume; it was an not as to legislative intent but on constitutional limits.

Lopez emphasized and reaffirmed that "'the power to regulate commerce, though broad indeed, has limits' that '[t]he Court has ample power' to enforce." 514 U.S. at 557 (quoting *Maryland v. Wirtz*, 392 U.S.183, 196 (1968)). There, the Court invalidated the Gun-Free School Zones Act because it regulated purely local conduct without any meaningful connection to economic activity or interstate commerce. *Id.* at 561–62. The Act's lack of a jurisdictional element was a key flaw, but, as the Tenth Circuit has observed, even the presence of a jurisdictional hook is not "a talisman that wards off constitutional challenges." *United States v. Patton*, 451 F.3d 615, 632 (10th Cir. 2006).

The only evidence lower courts require to satisfy the jurisdictional element of 18 U.S.C. § 922(g)(1) —"in or affecting interstate commerce"— is proof that that the firearm or ammunition ever crossed state lines at any point in time no matter how remote. In this case there was testimony that intact bullets were manufactured outside of the State of Oklahoma and therefore had to have crossed state lines sometime to become the empty shell casings possessed there. This is wholly insufficient to comport with the constitutional limitations of the Commerce Clause under *Lopez*. The casings had no discernible economic function, and Petitioner's constructive possession of them on a public street in Oklahoma bore no plausible relationship to commerce. The facts here demonstrate no substantial connection to interstate commerce as required by *Lopez*.

Historical context supports the current state of affairs is out of step with the Founders' understanding of the Commerce Clause. Justice Thomas, concurring in *Lopez*, traced the original meaning of "commerce" to its 18th-century usage as referring primarily to "trade" or "exchange." 514 U.S. at 585–86. Scholarship has since confirmed that the Founders intended the Commerce Clause to be a narrow grant of power focused on economic transactions—not a basis for federal jurisdiction over every object that ever crossed a state line. *See* Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. CHI. L. REV. 101, 104 (2001).

If § 922(g)(1) can be constitutionally applied merely because shell casings crossed state lines at some unknown point in the past, the logical endpoint of such reasoning is absurd. As Justice Thomas noted in dissent from the denial of certiorari

in *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 703 (2011) this theory would allow Congress to criminalize a child's theft of a Hershey's Kiss because it originated in another state.

Such an interpretation upsets the constitutional balance of federalism. The Founders envisioned a federal government of limited and enumerated powers, with most law enforcement authority reserved to the states. *See M'Culloch v. Maryland*, 17 U.S. 316, 406 (1819); THE FEDERALIST No. 51 (Madison). A theory of "commerce" that encompasses virtually all physical objects based on their manufacturing history would obliterate that distinction, converting the Commerce Clause into an unlimited federal police power.

The minimal nexus theory may reflect prior precedent, but it is at odds with the Constitution's text, history, and structural safeguards. The Court's post-*Lopez* Commerce Clause jurisprudence calls for a reevaluation of *Scarborough* and the overly deferential approach taken by the lower courts in cases like this one.

B. Proceedings Below

Petitioner was convicted in the United States District Court for the Western District of Oklahoma after a jury trial on a one-count indictment charging him with being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). The government's evidence consisted of three spent .45 caliber shell casings found on a street in Oklahoma City; no firearm was recovered. Pet. App. 14a – 15a. An agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives testified that the shell

casings were manufactured in Nebraska and Wisconsin and had therefore crossed state lines. Pet. App. 15a, 60a, 64a.

Petitioner did not cross state lines, and all alleged conduct occurred entirely within Oklahoma. During cross-examination, when defense counsel questioned whether shell casings found on a street in Oklahoma City affected interstate commerce, the government objected and asserted that no further explanation was required beyond prior interstate travel. Pet. App. 15a. At the close of the government's case, Petitioner moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29, arguing that there was insufficient evidence to establish that Petitioner possessed the ammunition "in or affecting commerce," as required by § 922(g)(1). The motion was denied. Pet. App. 45a – 48a.

Petitioner also requested a jury instruction requiring the jury to find that the ammunition was possessed in or affecting commerce. The district court rejected the proposed instruction and instead gave the Tenth Circuit Pattern Instruction, which requires only that the ammunition have previously moved in interstate commerce. Pet. App. 50a – 52a.

The jury found Petitioner guilty, and he was sentenced accordingly. Pet. App. 76a – 82a. On direct appeal to the Tenth Circuit, Petitioner reiterated that the minimal nexus requirement did not satisfy constitutional scrutiny under the Commerce Clause. Pet. App. 13a – 33a. Although acknowledging that his argument was foreclosed by circuit precedent, Petitioner urged reconsideration in light of *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598

(2000), and *Gonzales v. Raich*, 545 U.S. 1 (2005). The Tenth Circuit affirmed the conviction, citing *Scarborough v. United States*, 431 U.S. 563 (1977), and its prior decisions interpreting the statute's jurisdictional element. Pet. App. 1a – 4a. This petition timely follows.

REASONS FOR GRANTING THE PETITION

This case presents a pressing and recurring constitutional question concerning the outer limits of Congress's power under the Commerce Clause, and whether mere historical movement of a spent shell casing across state lines is sufficient to satisfy the jurisdictional element of 18 U.S.C. § 922(g)(1). The decision below entrenches an interpretation of *Scarborough v. United States*, 431 U.S. 563 (1977), that is irreconcilable with this Court's modern Commerce Clause jurisprudence, and raises serious questions of federalism and due process. This Court's review is warranted for the following reasons.

I. This Case Squarely Presents a Question of Exceptional Constitutional Importance Concerning the Commerce Clause's Limits.

This case provides the Court with an ideal vehicle to clarify the limits of Congress's power under the Commerce Clause as applied to criminal statutes that penalize wholly intrastate conduct. Under *Lopez*, 514 U.S. 549, and *United States v. Morrison*, 529 U.S. 598 (2000), Congress's authority to regulate non-commercial conduct under the Commerce Clause is limited to activities that have a substantial relation to interstate commerce. Here, the government did not attempt to show that Petitioner's constructive possession of spent shell casings had any such relation to

commerce—only that the shell casings had, at some unspecified time in the past, crossed state lines before being expended. This attenuated theory of jurisdiction renders the constitutional limitation in § 922(g) a dead letter. It allows the federal government to criminalize purely local conduct by proving only the historical origin of an item, regardless of whether that conduct has any continuing connection to interstate commerce. If this is sufficient, then so too would be possession of any good—no matter how trivial or disconnected from commerce—so long as it had once been sold or shipped across a state line. That result is incompatible with the structural limitations on federal power established in *Lopez* and *Morrison*.

To be clear, Petitioner does not challenge the constitutionality of 18 U.S.C. § 922(g)(1) on its face. Rather, the concern is with how lower courts have applied the statute in ways that effectively permit the federal government to exceed its constitutional authority under the Commerce Clause. Specifically, by embracing the "minimal nexus" framework endorsed in *Scarborough*, lower courts have allowed the statute's jurisdictional element to be satisfied by mere historical movement of ammunition across state lines—no matter how remote or attenuated the connection to interstate commerce. This application is inconsistent with the limitations this Court articulated in *Lopez* and *Morrison* and warrants reconsideration.

II. This Case Presents a Compelling Opportunity to Reconsider *Scarborough v. United States* in Light of This Court's Modern Commerce Clause Jurisprudence.

The decision below—and many like it—rest on an application of *Scarborough*, 431 U.S. 563, which interpreted an earlier version of § 922(g) to require only a

"minimal nexus" to commerce. But *Scarborough* predated this Court's modern Commerce Clause jurisprudence, which rejects the notion that Congress can reach all intrastate activity so long as there is any conceivable link to interstate commerce, no matter how attenuated. *Scarborough* relied on Congress's intent, not on an independent constitutional analysis. *See Patton*, 451 F.3d at 634 (noting that *Scarborough* "assumed that Congress could constitutionally regulate the possession of firearms solely because they had previously moved across state lines"). That assumption cannot survive *Lopez*, which explicitly held that a jurisdictional element must ensure, "through case-by-case inquiry," that the conduct in question substantially affects interstate commerce. *Lopez*, 514 U.S. at 561.

This case directly implicates a growing chorus of judicial voices calling for this Court to revisit the constitutional underpinnings of *Scarborough*'s upholding of the felon-in-possession statute based on a minimal interstate commerce nexus. Several judges and justices have questioned whether *Scarborough* survives this Court's 21st-century Commerce Clause jurisprudence, particularly in light of *Lopez*, 514 U.S. 549.

Judge Paez, dissenting in *United States v. Alderman*, 565 F.3d 641, 648–50 (9th Cir. 2009), argued that *Scarborough* could not be squared with *Lopez, United States v. Morrison*, 529 U.S. 598 (2000), and *Raich, supra* 545 U.S. 1, all of which emphasized the need for a more substantial connection between the regulated activity and interstate commerce. Justice Thomas agreed, dissenting from the denial of certiorari in *Alderman*, highlighting the tension between *Scarborough* and modern Commerce Clause limits: "*Scarborough*, as the lower courts have read it, cannot be

reconciled with *Lopez* because it reduces the constitutional analysis to the mere identification of a jurisdictional hook." *Alderman,* 131 S. Ct. at 703 (Thomas, J., dissenting).

Judge Edith Jones of the Fifth Circuit also signaled skepticism of *Scarborough*'s continuing validity, noting the minimal nexus theory is ripe for reconsideration: "[A]ssuming *Scarborough*'s holding is still good law, its premises are under serious strain in light of the Supreme Court's more recent Commerce Clause jurisprudence." *United States v. Kiefer*, 694 F.3d 1109, 1115 (10th Cir. 2012) (Jones, J., concurring specially) (discussing tension with *Lopez* and *Morrison*).

Judge Ho, dissenting to denial of rehearing en banc in *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (and joined by Fifth Circuit Judges Smith and Engelhardt) also called attention to this conflict, arguing that lower courts inappropriately extended *Scarborough* beyond the limits imposed by *Lopez.* Judge Ho warned, "If it's enough that some object (or component of an object) at some unknown (and perhaps unknowable) point in time traveled across state lines to confer federal jurisdiction, it's hard to imagine anything that would remain outside the federal government's commerce power. There is no plausible reading of the Commerce Clause, as originally understood by our Founders, that could possibly give the federal government such reach." *Id.* at 990 (Ho, J., dissenting)

The Tenth Circuit also acknowledged the tension in 2006: ""[W]e see considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases" and noting it suspected

this Court would revisit the issue in an appropriate case. *Patton*, 451 F.3d at 636. This is that case.

This judicial commentary reflects deep and persistent concerns about federal overreach and the erosion of meaningful Commerce Clause limits. This case presents an ideal vehicle to resolve that constitutional question.

III. Continued Adherence to *Scarborough*'s Minimal-Nexus Standard Subverts the Jury's Role and Violates Fundamental Principles of Due Process.

The district court took the "affecting commerce" element from the jury by instructing that the interstate commerce requirement was satisfied if the shell casings had at any point crossed state lines. That instruction relieved the government of its burden to prove a key element of the offense beyond a reasonable doubt and improperly invaded the jury's province: that the possession was "in or affecting commerce."

Lopez made clear that criminal statutes must include a meaningful jurisdictional element and that the government must prove it. Here, the district court's instruction turned a constitutional safeguard into a check-the-box formality, inviting the jury to convict based on a legally insufficient theory of federal jurisdiction. This Court's review is necessary to reaffirm the constitutional role of the jury and the limits of federal criminal jurisdiction.

IV. The Question Presented Has Profound Implications for Federalism and the Balance of Power Between the States and the Federal Government.

As this Court has repeatedly emphasized, the Commerce Clause is not a general police power. Yet under the prevailing "minimal nexus" framework, the federal government may criminalize virtually any conduct so long as the item involved once crossed state lines. This transforms the Commerce Clause into an unchecked source of federal criminal law, eroding the sovereignty of the States.

The facts of this case illustrate the absurd reach of this theory. The government prosecuted the Petitioner, not for possessing a firearm or actively engaging in commerce, but for allegedly constructively possessing spent shell casings found on a street. This is not commercial activity. How his actions affected or could have affected this nation's interstate commerce is anyone's guess. It certainly was not proven. That Congress's power can extend this far defies the structure and purpose of our Constitution. This case provides a compelling opportunity for the Court to restore the meaningful limitations on federal power that the Framers intended.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

JEFFREY M. BYERS
FEDERAL PUBLIC DEFENDER

Counsel of Record
LAURA K. DESKIN
ASSISTANT FEDERAL PUBLIC DEFENDER
215 Dean A. McGee, Suite 109
Oklahoma City, OK 73102
(405) 609-5930
Laura_Deskin@fd.org