

IN THE  
**Supreme Court of the United States**

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ZQUAREUS TROYEZ IMMANUEL THOMAS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**APPENDIX**

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ZQUAREUS TROYEZ IMMANUEL THOMAS,  
*Petitioner,*

v.

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**APPENDIX A**

*Opinion by the U.S. Court of Appeals for the Tenth Circuit  
(March 17, 2025)*

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**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**March 17, 2025**

**Christopher M. Wolpert**  
**Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ZQUAREUS TROYEZ IMMANUEL  
THOMAS, a/k/a Maniac,

Defendant - Appellant.

No. 24-6074  
(D.C. No. 5:22-CR-00016-G-1)  
(W.D. Okla.)

**ORDER AND JUDGMENT\***

Before **PHILLIPS**, **BALDOCK**, and **ROSSMAN**, Circuit Judges.

Zquareus Troyez Immanuel Thomas appeals his jury conviction for being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1). That statute makes it unlawful for a convicted felon to “possess in or affecting commerce, any firearm or ammunition.” *Id.* During Thomas’s trial, the government put on evidence that three spent shell casings he possessed had travelled across state lines. Thomas argued, both in a motion for a judgment of acquittal and in objecting to the jury

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\* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

instructions, that the “affecting commerce” element required the government to prove something more than that the ammunition had travelled across state lines at some time. The district court rejected his arguments, ruling precedent from this court holds that movement from one state to another satisfies the “affecting commerce” element.

On appeal, Thomas concedes his arguments are foreclosed by this court’s precedent. *See* Aplt. Opening Br. at 2, 15-16; Reply Br. at 1, 2. He nevertheless maintains that the district court erred in denying his motion for acquittal and in instructing the jury. He insists the “affecting commerce” element requires more than a minimal nexus with interstate commerce and it was insufficient to prove the ammunition had crossed state lines at some point in the past. He also contends the district court’s rulings are inconsistent with the Supreme Court’s Commerce Clause jurisprudence as articulated in *Gonzales v. Raich*, 545 U.S. 1 (2005), *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995).

We review the district court’s rulings de novo. *See United States v. Murphy*, 100 F.4th 1184, 1195 (10th Cir. 2024) (motion for acquittal); *United States v. Joseph*, 108 F.4th 1273, 1285 (10th Cir. 2024) (accuracy of jury instructions). We agree with the district court that Thomas’s arguments are squarely foreclosed by both the Supreme Court’s and this court’s precedents. *See Scarborough v. United States*, 431 U.S. 563, 577 (1977) (analyzing predecessor statute to § 922(g)(1) and holding that “Congress sought to reach possessions broadly, with little concern for when the nexus with commerce occurred”); *United States v. Campbell*, 603 F.3d 1218, 1220 n.1 (10th Cir. 2010) (noting the tension between *Scarborough* and *Gonzales*,

*Morrison*, and *Lopez*, but recognizing this court is bound to follow *Scarborough*); *United States v. Urbano*, 563 F.3d 1150, 1154 (10th Cir. 2009) (“[I]f a firearm has traveled across state lines, the minimal nexus with interstate commerce is met and the statute can be constitutionally applied.”); *United States v. Patton*, 451 F.3d 615, 634 (10th Cir. 2006) (“The constitutional understanding implicit in *Scarborough*—that Congress may regulate any firearm that has ever traversed state lines—has been repeatedly adopted for felon-in-possession statutes by this Court.”).

Although Thomas contends we should abandon the *Scarborough* line of cases in favor of *Lopez*, he tacitly acknowledges the Supreme Court has declined to resolve the tension in its cases. *See* Aplt. Opening Br. at 13-15 (discussing the tension between *Scarborough* and *Lopez* and citing *Alderman v. United States*, 562 U.S. 1163 (2011) (Thomas, J., dissenting from the denial of certiorari)). “Absent the Supreme Court overturning its own precedent or our own, we are bound by it.” *Contreras ex rel. A.L. v. Dona Ana Cnty. Bd. of Cnty. Comm’rs*, 965 F.3d 1114, 1130 n.3 (10th Cir. 2020). Likewise, absent en banc consideration, one panel of this court cannot overturn another panel’s decision. *United States v. Doe*, 865 F.3d 1295, 1298 (10th Cir. 2017). Thus, we adhere to *Scarborough* and our precedent holding that the “affecting commerce” element is satisfied so long as the ammunition at some time moved across state lines. *See Campbell*, 603 F.3d at 1220 n.1.

The district court's judgment is affirmed.

Entered for the Court

Bobby R. Baldock  
Circuit Judge

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March 17, 2025

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**RE: 24-6074, United States v. Thomas**  
Dist/Ag docket: 5:22-CR-00016-G-1

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(d)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rule 40 and 10th Cir. R. 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert  
Clerk of Court

cc: David Raymond Nichols Jr.

CMW/mlb



IN THE  
**Supreme Court of the United States**

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ZQUAREUS TROYEZ IMMANUEL THOMAS,  
*Petitioner,*

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UNITED STATES OF AMERICA,  
*Respondent.*

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**APPENDIX B**

*Opening Brief for Zquareus Troyez Immanuel Thomas*  
*(October 21, 2024)*

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No. 24-6074

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In the United States Court of Appeals  
for the Tenth Circuit

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**United States of America,**  
Plaintiff-Appellee,

**v.**

**Zquareus Troyez Immanuel Thomas,**  
Defendant-Appellant.

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On Appeal from the United States District Court  
for the Western District of Oklahoma  
District Court No. CR-22-16-G  
The Honorable Charles Goodwin, District Judge

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**Appellant's Opening Brief**

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Respectfully submitted,  
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Oral Argument is not requested.

October 21, 2024

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### **Prior or Related Appeals**

Mr. Thomas has not previously appeared before this Court. There are no pending or related appeals to his knowledge.

### **Statement of Jurisdiction**

The United States District Court for the Western District of Oklahoma had jurisdiction over this criminal case under 18 U.S.C. § 3231. This is a direct appeal of right taken pursuant to Rule 4(b), Federal Rules of Appellate Procedure. The Court of Appeals has jurisdiction to consider this appeal under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.



## Statement of the Issues

It is a crime for a person with a prior felony conviction to “possess ... affecting commerce ... ammunition.” 18 U.S.C. § 922(g)(1). This Court has held the government need only prove ammunition traveled from one state to another at some point in the past for the possession to be “affecting commerce.” *See, e.g., United States v. Patton*, 451 F.3d 615, 634–35 (10th Cir. 2006); *United States v. Campbell*, 603 F.3d 1218, 1220 n.1 (10th Cir. 2010). In this case, the government proceeded on that theory of “affecting commerce” exclusively.

- (1) Was there insufficient evidence presented to establish the “affecting commerce” element?
- (2) Relatedly, did the district court err in rejecting Mr. Thomas’s proposed instruction that the jury be required to find the possession affected commerce, not simply that the ammunition at one time crossed state lines?

[Both issues are currently foreclosed in this circuit and Mr. Thomas raises them solely for preservation.]

### Statement of the Case

Mr. Thomas was convicted, after a jury trial, to a one-count indictment charging him with being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1).<sup>1</sup> The indictment alleged Mr. Thomas possessed the ammunition after having been previously convicted of a crime punishable by a term of imprisonment exceeding one year, specifically possessing one spent/fired cartridge case of .45 Auto caliber ammunition bearing the marking “Hornady 45 AUTO” on the headstamp; and two spent/fired cartridge cases of .45 Auto caliber ammunition bearing the marking “COR-BON 45 Auto +P” on the headstamp.<sup>2</sup> This indictment arose after Mr. Thomas was accused of shooting at an individual’s house.<sup>3</sup> Mr. Thomas did not cross state lines to commit the offense, did not travel to obtain the ammunition, and

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<sup>1</sup> R. Vol. 1 at 15 (indictment).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 107. Mr. Thomas was not charged with the shooting in federal court, just possession of the empty shell casings.

committed the offense within the state of Oklahoma.<sup>4</sup> A firearm was never found; the government’s case stemmed from three shell casings (as previously described) collected from an Oklahoma City street at the scene of the shooting.<sup>5</sup>

At trial, Special Agent Brian Anderson with the Bureau of Alcohol, Tobacco, Firearms and Explosives testified the above-described shell casings were manufactured in Nebraska and Wisconsin, respectively, and had to have crossed state lines to get to Oklahoma.<sup>6</sup> When defense counsel asked Mr. Anderson how shell casings found on a street in Oklahoma City affected interstate commerce, the government objected, stating “the law and the instruction is that simply by crossing state lines they impact interstate commerce and no further explanation is required.”<sup>7</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *See* R. Vol. 3 at 30.

<sup>6</sup> *Id.* at 7, 16–18.

<sup>7</sup> *Id.* at 23–30.

At the close of the government’s case, Mr. Thomas made a Rule 29 motion for acquittal, arguing in relevant part there was insufficient evidence for the jury to find Mr. Thomas possessed the empty shell casings in or affecting commerce as required by § 922(g)(1).<sup>8</sup> He argued, “We do not have any evidence to how these empty cartridges had any effect on interstate commerce. All we know is that they crossed state lines at some point .... We would submit that the jury is required to decide if the [shell casings] had an effect on interstate commerce and that there was no testimony as to how [it] was affected.”<sup>9</sup> The district court denied the motion.<sup>10</sup>

The defense had no witnesses. Before the case was submitted to the jury, Mr. Thomas requested the jury instruction concerning 18 U.S.C. § 922(g)(1) include an element requiring the jury to find that the

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<sup>8</sup> *Id.* at 28.

<sup>9</sup> *Id.* at 28–29.

<sup>10</sup> *Id.* at 31.

ammunition was possessed in or affecting commerce.<sup>11</sup> The Court rejected the proposed instruction, adhering to the Tenth Circuit Pattern Instruction which requires only that the jury find that before the defendant possessed the ammunition, the ammunition had moved at some time from one state within the United States to another.<sup>12</sup>

At the close of the jury instruction conference and discussion regarding exhibits, Mr. Thomas renewed his Rule 29 motion, and it was denied without argument.<sup>13</sup>

The jury found Mr. Thomas guilty as charged, he was sentenced accordingly, and this timely appeal followed.

### **Summary of the Argument**

It is error to allow the government to prove empty shell casings were possessed “affecting commerce” simply with testimony they crossed

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<sup>11</sup> R. Vol. 1 at 50 (Defendant’s Requested Instruction No. 23); R. Vol. 3 at 34–35.

<sup>12</sup> R. Vol. 1 at 97; R. Vol. 3 at 35.

<sup>13</sup> R. Vol. 3 at 37.

state lines at some point in the past. This runs afoul of the Supreme Court’s holding in *United States v. Lopez*, 514 U.S. 549 (1995) by substituting a “minimal nexus” for the “substantial effect” that *Lopez* required. *Compare Lopez*, 514 U.S. 549, 558–59 (“Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that *substantially affect* interstate commerce.”) (internal citations omitted) (emphasis added) *with United States v. Urbano*, 563 F.3d 1150, 1154 (10th Cir. 2009) (“if a firearm has traveled across state lines, the *minimal nexus* with interstate commerce is met and the statute can be constitutionally applied.”) (emphasis added).

The “minimal nexus” framework is antithetical to the historical origins of the Commerce Clause, which was originally designed to regulate only those matters that involved the transportation of commerce. *See* 1 S. Johnson, *A Dictionary of the English Language* 361 (4th ed. 1773) (defining commerce as “Intercour[s]e; exchange of one thing for another; interchange of any thing; trade; traffick”); N. Bailey, *An Universal Etymological English Dictionary* (26th ed. 1789) (“trade or

traffic”); T. Sheridan, A Complete Dictionary of the English Language (6th ed. 1796) (“Exchange of one thing for another; trade, traffick”). Because the Commerce Clause has become unmoored from its historical origins, it has effectively been interpreted in a manner that grants the federal government a general police power over the entire country. *Gonzales v. Raich*, 545 U.S. 1, 65 (2005) (Thomas, J., dissenting); *United States v. Seekins*, 52 F.4th 988, 990 (5th Cir. 2022) (Ho, J., dissenting) (citing *NFIB v. Sebelius*, 567 U.S. 519, 536 (2012)).

In order to align the Commerce Clause with the Supreme Court’s guidance in *Lopez*, ensure its consistency with its historical origins, and better promote the tenets of vertical federalism, this Court should vacate the ruling below and determine that the district court erred when it found sufficient evidence of the “affecting commerce” element through mere proof the shell casings had crossed state lines at some unknown point in time. It similarly erred in taking the “affecting commerce” element away from the jury and substituting it with a requirement that it only need to find the shell casings crossed state lines in the past.

## **Argument**

### **I. The district court erred when denying Mr. Thomas’s Rule 29 Motion.**

#### **A. Issue raised and ruled on.**

Mr. Thomas raised the issue in a Rule 29 motion for acquittal that was denied on the record. R. Vol. 3 at 28, 37.

#### **B. Standard of Review**

This Court reviews de novo a district court’s decision to deny a defendant’s motion for acquittal under Rule 29. *United States v. Murphy*, 100 F.4th 1184, 1195 (10th Cir. 2024).

#### **C. Proof that shell casings crossed state lines in the past is insufficient evidence that empty shell casings found on an Oklahoma City street were possessed “affecting commerce.”**

The conclusion that Mr. Thomas’s possession of empty shell casings found on an Oklahoma City Street was a possession “affecting commerce” because they crossed state lines in the past does not square with the Supreme Court’s 21<sup>st</sup> Century Commerce Clause caselaw, nor is it in accordance with the history and tradition of the Commerce Clause itself.



**1. Requiring only movement across state lines in the past does not comport with *Lopez*'s requirement there be more than a minimal nexus.**

The Interstate Commerce Clause grants Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. CONST. ART. I, § 8, CL. 3. What this means, precisely, has been subject to appellate courts’ shifting interpretations, influenced in large part by both political pressures and the Supreme Court’s makeup. *See, e.g.,* Laura A. Cisneros, *Transformative Properties of Fdr's Court-Packing Plan and the Significance of Symbol*, 15 U. PA. J. CONST. L. 61, 64 (2012) (describing the “switch in time that saved nine”). *See generally* Daniel Francis, *The Decline of the Dormant Commerce Clause*, 94 DENV. L. REV. 255 (2017).

The Supreme Court has recognized three categories of cases that fall within the ambit of the Commerce Clause. First, it has permitted Congress to regulate the “channels of interstate commerce.” *Perez v. United States*, 402 U.S. 146, 150 (1971). Second, the Commerce Clause confers “authority to regulate and protect the instrumentalities of

interstate commerce, and persons or things in interstate commerce.” *Id.* See also *Gonzales*, 545 U.S. at 16–17. Finally, the Commerce Clause implicates the power to “regulate purely local activities that are part of an economic “class of activities” that have a substantial effect on interstate commerce.” *Gonzales*, 545 U.S. at 17 (citing *Perez*, 402 U.S. at 151; *Wickard v. Filburn*, 317 U.S. 111, 128–129 (1942)).

The statute at issue in this case, as applied to Mr. Thomas, renders it unlawful “for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . [to] possess in or affecting commerce, any firearm or ammunition.” 18 U.S.C. § 922(g)(1). It appears this statute is designed to capture those commodities within the third class of Commerce Clause cases described above, and thus requires inquiry into whether Mr. Thomas’s possession of empty shell casings had a substantial effect on interstate commerce.

In *Lopez*, the Supreme Court was tasked with determining whether the Gun–Free School Zones Act of 1990 violated the Commerce Clause. *Lopez*, 514 U.S. at 551. Although the Court concedes that the federal government’s reach under the Commerce Clause had expanded in recent

years, it maintained that “the power to regulate commerce, though broad indeed, has limits that [t]he Court has ample power to enforce.” *Id.* at 557 (internal quotation marks omitted) (quoting *Maryland v. Wirtz*, 392 U.S. 183, 196 (1968)). To this effect, the Court declared the possession-in-a-school-zone statute “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.” *Id.* at 561 (internal quotation marks omitted). It further expressed alarm at the fact that the statute “contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.” *Id.* Because the government had failed to demonstrate that the criminal statute substantially affected interstate commerce, the Court deemed it unconstitutional. *Id.* at 567–68.

18 U.S.C. § 922(g)(1) does have a jurisdictional element—it requires the possession of a firearm or ammunition be “in or affecting commerce.” It does not explain how this element may be met. *Lopez* tells us a criminal law must have more than a minimal nexus to commerce. Congress may only rely on its Commerce Clause power to regulate activities occurring

outside of interstate commerce if it has a rational basis for concluding those activities have “a *substantial* relation to interstate commerce.” *Lopez*, 514 U.S. at 559 (emphasis added). That is the “ultimate inquiry.” *Patton*, 451 F.3d at 632. After all, that a statute has a jurisdictional hook is not “a talisman that wards off constitutional challenges.” *Id.*

This Court recognized that a statute’s requirement (18 U.S.C. § 931, criminalizing possession of body armor by violent felons) that the body armor “once traveled in interstate commerce is so sweeping as to be unhelpful in determining whether the activities regulated by the statutes have a substantial and non-attenuated affect on interstate commerce.” *Id.* at 633. Just like body armor, a felon possessing an empty shell casing on an Oklahoma City street is not economic activity; nor does it have anything to do with commerce. *Cf. Patton*, 451 F.3d at 621 (“We can think of no reason that mere possession of body armor by a felon would be deemed commercial when the mere possession of a firearm near a school was not.”)

Yet this Court upheld the body armor statute under *Scarborough v. United States*, 431 U.S. 563 (1977). *Scarborough* was a case which looked

at a previous version of the felon-in-possession statute that held Congress intended the “affecting commerce” element therein “to require no more than the minimal nexus that the firearm have been, at some time, in interstate commerce.” *Id.* at 575. The decision “*assumed* that Congress could constitutionally regulate the possession of firearms solely because they had previously moved across state lines.” *Patton*, 451 F.3d at 634 (emphasis added). This, however, is a mere assumption—and one that does not square with the Supreme Court’s analysis in *Lopez*.

Moreover, even if Congress may constitutionally regulate firearms that have previously crossed state lines, how far afield may this go? Does this jurisdictional hook extend all the way to possession (constructive at that) of empty shell casings on a street that crossed state lines in their intact form at an unknown time in the past? How is this “affecting commerce”? It is non-sensical, and thus it makes sense that *Scarborough*’s assumption is eviscerated by *Lopez*, “where the Court cabined the constitutional power of the federal government under the Commerce Clause.” *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting) (citing *Lopez*. 514 U.S. at 568); *see also United*

*States v. Alderman*, 565 F.3d 641, 648–650 (9th Cir. 2009) (Paez, J., dissenting) (arguing the majority's upholding of the felon-in-possession-of-body-armor statute inappropriately extends *Scarborough* beyond the limits imposed by *Lopez*, *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales*.). Building on Judge Paez's concern, Justice Thomas dissented from the denial of the writ of certiorari in *Alderman*, quipping that, under the Ninth Circuit's interpretation of *Scarborough*, "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." *Alderman v. United States*, 562 U.S. 1163, 703 (2011) (Thomas, J. dissenting) (internal quotation marks and citations omitted).

The government here only proved that shell casings once traveled across state lines to eventually become empty shell casings on an Oklahoma City street. This cannot be sufficient to prove that Mr. Thomas's constructive possession of the empty shell casings was "affecting commerce." Mr. Thomas understands this Court's case law

states otherwise, see *Urbano*, 563 F.3d at 1154; *Campbell*, 603 F.3d at 1220 n.1, but it is time to revisit this conclusion.

**2. The definition of “commerce” requires proof that the commodity did more than simply cross state lines.**

Justice Thomas concurred in *United States v. Lopez*, clarifying why the history of the Commerce Clause demanded the outcome handed down by the Court and calling on the Court to further limit the scope of the Commerce Clause. *Lopez*, 514 U.S. at 585. Citing the etymology of the word “commerce,” Justice Thomas made a compelling historical argument that the Founders desired for the Commerce Clause only to reach the actual exchange or bartering of goods. *Id.* at 586 (citing 1 S. Johnson, *A Dictionary of the English Language* 361 (4th ed. 1773); N. Bailey, *An Universal Etymological English Dictionary* (26th ed. 1789); T. Sheridan, *A Complete Dictionary of the English Language* (6th ed. 1796); 3 *Oxford English Dictionary* 552 (2d ed. 1989) (parentheticals omitted)).

Subsequent historical analysis conducted by legal scholars bolsters Justice Thomas’ finding. In his article, *The Original Meaning of the Commerce Clause*, legal scholar Randy Barnett noted that virtually every

historical source he probed—including constitutional text, contemporary dictionaries, exchanges from the constitutional convention, discourses from the Federalist Papers, and notes from the ratification convention—all proved the same point. Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. CHI. L. REV. 101, 104, 112–21 (2001)). The Commerce Clause was historically designed only to reach conduct involving the actual exchange of goods. *Id.* Any contrary reading takes the Commerce Clause far beyond its “intended narrow scope.” William J. Seidleck, *Originalism and the General Concurrence: How Originalists Can Accommodate Entrenched Precedents While Reining in Commerce Clause Doctrine*, 3 U. PA. J. L. & PUB. AFFS. 263, 269 (2018).

At trial, the government did not attempt to produce any evidence demonstrating that the shell casings had even a remote impact on the actual transportation of goods. It simply argued that the shell casings crossed state lines at some unspecified point in time, thereby reducing the Commerce Clause element of § 922(g)(1) to a mere checkbox for the jury. To accept that any commodity that has ever crossed state lines is



forever “affecting commerce” is to write the historical understanding of the Commerce Clause out of the Constitution.

Even assuming, *arguendo*, that the government had tried to prove a nexus between the shell casings and interstate commerce, the connection is strikingly weak. In *United States v. Morrison*, the Court characterized its prior holding in *Lopez* as standing for the principle that “that the link between gun possession and a substantial effect on interstate commerce was attenuated.” *Morrison*, 529 U.S. at 612 (citing *Lopez*, 514 U.S. at 563–67). The government cannot meaningfully distinguish the *Morrison* perspective from the shell casings in Mr. Thomas’ case. In fact, it conceded at trial that the only meaningful connection between the shell casings and interstate commerce stemmed from the fact that the shell casings crossed state lines at some point in the past.<sup>14</sup>

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<sup>14</sup> R. Vol. 3 at 24.

Permitting the federal government to prove its case with mere proof that empty shell casings, prior to being shot, at one point crossed state lines is contrary to the Founders' understanding of the Commerce Clause.

**3. Finding the government's evidence to be sufficient in this case subverts the balance of power between the federal and state governments.**

When the Founders framed our modern system of government, they aspired to create a government “limited in its powers.” *See M'Culloch v. Maryland*, 17 U.S. 316, 406 (1819). This delicate balance was of paramount concern to the authors of the Federalist Papers. In Federalist Paper Number 51, for example, Publius<sup>15</sup> delineated that the only proper way to check the power of government was to “contrive[e] the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.” THE FEDERALIST NO. 51 (Publius) (digital version available at <https://billofrightsintstitute.org/primary-sources/federalist-no-51>).

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<sup>15</sup> Thought to be either Alexander Hamilton or James Madison.

Relatedly, in Federalist Paper 14, James Madison provided assurances that the “general government is not to be charged with the whole power of making and administering laws . . . the subordinate governments, which can extend their care to all those other subjects which can be separately provided for, will retain their due authority and activity.” THE FEDERALIST NO. 14 (James Madison) (digital version available at [https://avalon.law.yale.edu/18th\\_century/fed14.asp](https://avalon.law.yale.edu/18th_century/fed14.asp)). This carefully struck balance necessitates meaningful guardrails for Congress’s authority under the Commerce Clause.

The “minimal nexus” framework reflected in a decision finding there to be sufficient evidence of “affecting commerce” is tantamount to “abandon[ing] any attempt to enforce the Constitution's limits on federal power.” *Gonzales*, 545 U.S. at 58 (Thomas, J., dissenting). Our founders aspired to a system of limited government, with power and duties checked by virtue of vertical federalism. The “minimal nexus” framework strips state governments of their police powers, replacing their authority with plenary federal power. This Court should take the opportunity to re-establish these guardrails by determining that the government failed to

establish Mr. Thomas's possession was "affecting commerce" simply because the shell casings crossed state lines at some unknown point in the past.

**II. The district court improperly took the "affecting commerce" element away from the jury by allowing it to convict by finding the ammunition crossed state lines in the past.**

**A. Issue raised and ruled on.**

Mr. Thomas objected to the jury instruction at R. Vol. 3 at 34. The district court overruled the objection at R. Vol. 3 at 35.

**B. Standard of Review**

This Court reviews de novo whether as a whole, the jury instruction accurately informed the jury of the issues and the governing law. *United States v. Baker*, 508 F.3d 1321, 1324 (10th Cir. 2007).

**C. The Jury Instruction issued by the district court runs Afoul of *Lopez*, and *Scarborough v. United States* should not control.**

For all the same reasons urged in Part I above, Mr. Thomas argues the jury was improperly instructed. The district court erred in issuing a jury instruction that required only a "minimal nexus" between Mr.

Thomas's conduct and interstate commerce. This court should vacate his jury verdict and remand for a new trial.

### **Conclusion**

For the foregoing reasons, this Court should find the government provided insufficient evidence to prove that Mr. Thomas possessed the empty shell casings “affecting commerce.” It should also hold the jury instruction to have improperly taken the “affecting commerce” issue away from the jury by instructing it that the element was met by movement of the shell casings between states in the past. This Court should reverse accordingly.

### **Statement Regarding Oral Argument**

Oral argument is not requested.

Respectfully submitted,

s/ Laura K. Deskin

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Zquareus Thomas

### **Certificate of Compliance**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,673 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Century Schoolbook font, Size 14.

s/ Laura K. Deskin

### **Certificate of Service**

I hereby certify that on October 21, 2024, I electronically transmitted the attached brief to the Clerk of Court using the NextGen PACER System for filing, which will send notification to: David Nichols, Assistant United States Attorney.

s/ Laura K. Deskin

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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*United States of America v. Zquareus Troyez Immanuel Thomas*

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Case No. 24-6074

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**ATTACHMENT 1**

*April 22, 2024, Judgment*  
*W.D. OK CR-22-16-G*



# UNITED STATES DISTRICT COURT

Western District of Oklahoma

UNITED STATES OF AMERICA

v.

ZQUAREUS TROYEZ IMMANUEL THOMAS,  
a/k/a  
MANIAC

## JUDGMENT IN A CRIMINAL CASE

Case Number: CR-22-00016-001-G

USM Number: 84867-509

Laura K. Deskin

Defendant's Attorney

### THE DEFENDANT:

☐ pleaded guilty to count(s) \_\_\_\_\_

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☒ was found guilty on count(s) 1 of the Superseding Indictment.  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1)	Felon in Possession of Ammunition	12/15/2022	1
18 U.S.C. § 924(a)(8)			

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 8, 2024

Date of Imposition of Judgment



CHARLES B. GOODWIN

United States District Judge

April 22, 2024

Date Signed

AO 245B (Rev. 09/19) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 2 of 7

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
**ONE HUNDRED AND FORTY-FOUR (144) MONTHS.**

☒ The court makes the following recommendations to the Bureau of Prisons:

It is recommended the defendant participate in the Federal Bureau of Prisons Inmate Financial Responsibility Program at a rate determined by Bureau of Prisons staff in accordance with the program.

If eligible, it is recommended that the defendant participate in the Residential Drug Abuse Program while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ By 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 09/19) Judgment in a Criminal Case  
Sheet 3 — Supervised Release

Judgment—Page 3 of 7

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: \_\_\_\_\_  
**THREE (3) YEARS.**

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight (8) drug tests per month.  
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

### STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. Stricken.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's  
Signature

Date

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall participate in a program of substance abuse aftercare at the direction of the probation officer to include urine, breath, or sweat patch testing, and outpatient treatment. The defendant shall actively participate in the treatment program until successfully discharged from the program or until the probation officer has excused the defendant from the program. The defendant shall totally abstain from the use of alcohol and other intoxicants. The defendant shall not frequent bars, clubs, or other establishments where alcohol is the main business. The defendant shall contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.
2. The defendant must submit to a search of his person, property, electronic devices, or any automobile under his control to be conducted in a reasonable manner and at a reasonable time, for the purpose of determining possession, or evidence of possession, of firearms, ammunition, controlled substances, drug paraphernalia, drug use, and/or drug distribution activities at the direction of the probation officer upon reasonable suspicion. Further, the defendant must inform any residents that the premises may be subject to a search.
3. The defendant shall participate in a program of mental health aftercare at the direction of the probation officer. The court may order that the defendant contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.
4. The defendant shall participate in an approved domestic violence program at the direction of the probation officer.
5. The defendant shall not associate with any known gang members, including but not limited to, members of the Murder 1 gang; however, some contact may be permitted at the discretion of the U.S. Probation Office (e.g., family members).

AO 245B (Rev. 09/19) Judgment in a Criminal Case  
 Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 7

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
 CASE NUMBER: CR-22-00016-001-G

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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**TOTALS**                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
 CASE NUMBER: CR-22-00016-001-G

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:  
 If restitution is not paid immediately, the defendant shall make payments of 10% of the defendant's quarterly earnings during the term of imprisonment.

After release from confinement, if restitution is not paid immediately, the defendant shall make payments of the greater of \$ \_\_\_\_\_ per month or 10% of defendant's gross monthly income, as directed by the probation officer. Payments are to commence not later than 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be paid through the United States Court Clerk for the Western District of Oklahoma, 200 N.W. 4th Street, Room 1210, Oklahoma City, Oklahoma 73102.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number	Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
-------------	--	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:  
 All right, title, and interest in the assets listed in the Preliminary Order of Forfeiture dated \_\_\_\_\_ (doc. no. \_\_\_\_).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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*United States of America v. Zquareus Troyez Immanuel Thomas*

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Case No. 24-6074

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**ATTACHMENT 2**

*Portion of Transcript Containing  
Rule 29 Motion and Ruling*



1 Are there any motions from the parties?

2 MS. DESKIN: Your Honor, I just wanted to make a  
3 record regarding the jury instructions.

4 THE COURT: We're going to have an on-the-record  
5 conference about the jury instructions.

6 My question for now is whether you want to make a Rule 29  
7 motion.

8 MS. DESKIN: Good question. Yes, we do want to  
9 make a Rule 29 motion.

10 THE COURT: You need to be close to a microphone.  
11 Why don't you come forward to the podium.

12 MS. DESKIN: I brought the wrong notebook up.

13 Okay. So we'd like to make a motion for judgment of  
14 acquittal under Rule 29 because the evidence thus far is  
15 insufficient to sustain a conviction against Mr. Thomas.

16 We would like to press here especially that we don't  
17 believe that there is sufficient evidence that Mr. Thomas  
18 possessed the empty shell casings in or affecting interstate  
19 commerce as reads the 922(g) statute.

20 We know only that these shell casings, prior to being  
21 shot, at some unknown time crossed a state line. We do not  
22 have any evidence to how these empty cartridges had any effect  
23 on interstate commerce. All we know is that they crossed state  
24 lines at some point.

25 We also don't know if they were reloaded such that perhaps

1 they could have -- be considered something that was  
2 reconstituted and ended any effect on interstate commerce  
3 because they were turned into something new by the end user in  
4 Oklahoma that remained in Oklahoma.

5 We would submit that the jury is required to decide if the  
6 bullets had an effect on interstate commerce and that there was  
7 no testimony as to how they were affected.

8 Beyond that, the testimony in this case involved numerous  
9 individuals of quite varying testimony who, quite frankly, were  
10 probably all on drugs. Some of them -- in all likelihood, they  
11 were -- it seems that they were all on narcotics, perhaps at  
12 the time.

13 The main witness is apparently a regular meth user, at  
14 least as alleged by one of the witnesses, and appeared very  
15 intoxicated at the time of this event. And I do not think  
16 that -- we do not think that any jury could find beyond a  
17 reasonable doubt that Mr. Thomas, in fact, was in possession of  
18 empty shell casings on the street in Oklahoma City as alleged.

19 THE COURT: Does the government wish to make a  
20 response?

21 MR. NICHOLS: Your Honor, with regard to the first  
22 part about interstate commerce, the testimony from our last  
23 witness, Agent Anderson, was that all three rounds of this  
24 ammunition, being the shell casings, were manufactured in  
25 various states not being Oklahoma. And though while he did not

1 know when they crossed state lines, he knew that they would  
2 have had to have crossed state lines to reach Mr. Zquareus  
3 Thomas here in Oklahoma. And I believe under the current state  
4 of law, that is sufficient to demonstrate that they affected  
5 interstate commerce.

6 With regard to the fact that various witnesses may or may  
7 not have been under influences of drugs, I would submit to the  
8 Court the level at which that affects their credibility is a  
9 matter for the jury to decide.

10 The common thread through the four civilians who were on  
11 -- either on the porch of that house or in that house that  
12 night was that Zquareus Thomas was the person with the gun.  
13 Zquareus Thomas is the one who threatened to fire the gun, and  
14 Zquareus Thomas is the one who actually fired the gun from his  
15 car on the street in front of Mr. Kchao's house, which is where  
16 these three shell casings were collected.

17 I would submit that is a powerful case, parts of which are  
18 direct, parts of which are circumstantial, to demonstrate to  
19 this jury that he was knowingly in possession of those shell  
20 casings at some point. And for that reason, I think there is  
21 sufficient evidence to send it to a jury for an ultimate  
22 conclusion.

23 THE COURT: Thank you.

24 In considering a motion for judgment of acquittal, the  
25 Court views the evidence in the light most favorable to the

1 government and asks whether a reasonable juror could find the  
2 defendant guilty beyond a reasonable doubt of the crime  
3 charged.

4 The Court considers both the direct and the circumstantial  
5 evidence together with the reasonable inferences that can be  
6 drawn from that evidence. The Court does not weigh conflicting  
7 evidence or consider the credibility of witnesses, but  
8 determines whether the evidence, if believed, would establish  
9 each element of the crime.

10 Applying those standards, I will deny the motion for  
11 judgment of acquittal.

12 I'm going to take up a couple of matters now.

13 The defendant has indicated -- or the defense has  
14 indicated that they do not intend to call any witnesses or  
15 present any other evidence. And before we have the jury return  
16 and the defense announces that it rests, I want to visit with  
17 Mr. Thomas personally about his right to testify.

18 Mr. Thomas, before the defense ends its presentation of  
19 evidence, I want to make sure that you understand that you have  
20 an absolute right to testify or not to testify at trial. That  
21 is a choice that you alone have to make. Do you understand  
22 that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And is it your choice to  
25 not testify?

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

---

*United States of America v. Zquareus Troyez Immanuel Thomas*

---

Case No. 24-6074

---

**ATTACHMENT 3**

*Portion of Transcript Containing  
Jury Instruction Objection and Ruling*

1 Yes, we have an objection to the instruction. I'm sorry I  
2 don't have the number on the new one, but it's the -- the  
3 elements of the offense instruction for felon in possession of  
4 ammunition.

5 And specifically, we would request the instruction be  
6 given that we requested and put in in our proposed jury  
7 instructions. The difference in those is that ours follows the  
8 language of the statute. So rather than the fourth conceding  
9 that before the defendant possessed the ammunition, the  
10 ammunition had moved at some time from one state within the  
11 United States to another, we would ask that it instead just  
12 simply track the language of the statute, which requires only  
13 that the defendant possessed the ammunition in or affecting  
14 interstate commerce.

15 To that end, we also would ask that our requested  
16 instruction, I believe the government also asked for this  
17 instruction as well, but they do not continue to ask for that  
18 instruction, and that is the definition of interstate commerce  
19 under 18, U.S.C., Section 10.

20 We would want -- what the Tenth Circuit pattern  
21 instructions there do is, most importantly for us, beyond  
22 defining what interstate commerce is, is that it says, "If you  
23 decide that there was any effect at all on interstate commerce,  
24 then that is enough to satisfy this element."

25 The reason why that particular instruction would be good

1 to give in this case is because it -- it allows the jury to  
2 decide whether there was an effect on interstate commerce here,  
3 rather than essentially telling them that it has been satisfied  
4 because it moved from one state to another at some point in  
5 time.

6 THE COURT: All right. Any response from the  
7 government to that?

8 MR. NICHOLS: No, Your Honor.

9 THE COURT: I'm going to overrule the defendant's  
10 objections and requests for an additional instruction. Given  
11 the fact that the government is proceeding under a single  
12 theory as far as the effect on interstate commerce,  
13 specifically that the government argues that because the  
14 ammunition at one point moved from one state to another, that  
15 the interstate commerce element is satisfied, I think, under  
16 the state of the law as it exists, that it is proper to reduce  
17 the question down to the element as reflected -- the fourth  
18 element as reflected in the elements instruction that is in the  
19 proposed draft.

20 Tenth Circuit authority, and essentially all authority as  
21 I know in federal court, says that that movement from one state  
22 to another is sufficient to establish the interstate commerce  
23 requirement under this statute. And if there is a change in  
24 the law, then the government's only proceeded under the one  
25 theory, and so they would do so to their own risk.

1       So given that, I am -- I do find it proper under the law  
2       to include the fourth element as proposed and to not include  
3       any more general instruction about the interstate commerce  
4       requirement.

5       Okay. With that, let's see, the only other thing on my  
6       notes is to make sure that we're all on the same page as far as  
7       admitted exhibits.

8       Have both sides reviewed the clerk's list of admitted  
9       exhibits? Have we had time to do that? I want you to do that  
10      now. We're on track to start up at 2:30, and at that point I  
11      would give the jury instructions and we'd have -- or I would  
12      have the defense rest, I'm then going to call you up and at  
13      least allow you the opportunity to renew your Rule 29 motion.

14      I know that's entirely superfluous, but still folks like  
15      to do it, and so I'm going to let you do that. And then we'd  
16      move straight into jury instructions and closing arguments from  
17      there, but I do -- in our time between now and 2:30, I want you  
18      to check with Mr. Buckle on exhibits and make sure that  
19      everybody signs off on what's in and what's out.

20      Anything else we need to talk about before we break?

21             MR. NICHOLS: No, Your Honor.

22             THE COURT: Anything from the defendant?

23             MR. COWIN: No, Your Honor.

24             THE COURT: Very good. We'll be in recess until  
25      2:30. I want counsel back here at 2:20 and we'll try to start



IN THE  
**Supreme Court of the United States**

---

ZQUAREUS TROYEZ IMMANUEL THOMAS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**APPENDIX C**

*Opening Brief for the Government*  
*(December 5, 2024)*

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No. 24-6074

---

**In the United States Court of Appeals for the Tenth Circuit**

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UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

V.

ZQUAREUS TROYEZ IMMANUEL THOMAS, DEFENDANT-APPELLANT.

---

ON APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

THE HONORABLE CHARLES GOODWIN  
DISTRICT JUDGE

D.C. No. CR-22-16-G

---

BRIEF OF PLAINTIFF-APPELLEE  
ORAL ARGUMENT NOT REQUESTED

---

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**Prior or Related Appeals**

There are no prior or related appeals.

### **Jurisdictional Statement**

A federal grand jury returned a Superseding Indictment charging Zquareus Thomas with: Count 1—being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). ROA, Vol. 1, at 15–16.<sup>1</sup> Mr. Thomas was convicted by a jury. *Id.* at 104. On April 22, 2024, the district court entered a final order, sentencing Mr. Thomas to 144 months’ imprisonment on Count 1. *Id.* at 129–35. The district court had jurisdiction pursuant to 18 U.S.C. § 3231. Mr. Thomas filed a timely notice of appeal on April 22, 2024. *Id.* at 136. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

### **Statement of the Issues**

Mr. Thomas was convicted by a jury of being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1), which requires that the possession of the ammunition “affect[] interstate commerce.” At trial, Mr. Thomas requested an instruction utilizing the language of the statute. But the district court chose to instruct the jury—consistent with this Court’s pattern instruction—that the government only had to

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<sup>1</sup> Citations are to documents included in the record on appeal, identifying the volume and page number where they are located, e.g., “ROA, Vol. \_\_\_, at \_\_\_.” See 10th Cir. R. 28.1(A)(2).

prove that the ammunition “had moved at some time from one state to another.”

Mr. Thomas acknowledges this Court’s precedent forecloses his arguments but nonetheless raises two issues:

- I. Was the evidence presented at trial sufficient to establish the “affecting commerce” element?
- II. Was it error for the district court to reject Mr. Thomas’s proposed instruction and instead instruct the jury consistent with this Court’s pattern instruction?

### **Statement of the Case**

On the evening of December 15, 2022, Mr. Thomas and his girlfriend, Patricia Eaton, went to the home of David Kchao in Oklahoma City. ROA, Vol. II, at 8 (¶ 15). Mr. Kchao, angry with Mr. Thomas and Ms. Eaton, used racial slurs toward Mr. Thomas. *Id.* at 9 (¶ 19). These slurs angered Mr. Thomas, who produced a firearm and began firing at the house where Mr. Kchao was standing. *Id.* at 8–9 (¶ 15). At the time of the shooting, there were four individuals inside the house, which was struck four times. *Id.* at 8 (¶ 15), *See also* ROA, Vol. I, at 128. Following the shooting, Mr. Thomas and Ms. Eaton left the scene and were later arrested. ROA, Vol. II, at 8 (¶ 15) Ms. Eaton told law enforcement that Mr. Thomas fired the gun from the driver’s



seat of his car and later disposed of the weapon. *Id.*

The grand jury returned a superseding indictment that charged Mr. Thomas with unlawfully possessing a “Hornady 45 AUTO” round of ammunition and two “COR-BON 45 Auto +P” rounds of ammunition after a felony conviction. ROA, Vol. I, at 15. Mr. Thomas proceeded to jury trial on the charge of being a felon in possession of ammunition, as charged in the Superseding Indictment. *Id.* at 11 (Docs. 134, 135).

At trial, the government called Special Agent (SA) Brian Anderson, an interstate nexus examiner with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), to testify regarding the origin of the charged shell casings. *See generally* ROA, Vol. III, at 7–26. SA Anderson testified the Hornady ammunition was manufactured and loaded in Nebraska and that the COR-BON ammunition was manufactured at a facility in Wisconsin before it was loaded at a facility in South Dakota. *Id.* at 17. He also testified that neither of these manufacturers of ammunition maintain facilities in Oklahoma. *Id.*

On cross examination, Mr. Thomas asked SA Anderson to explain how the ammunition affected interstate commerce once it had crossed state lines. *Id.* at 23. The government objected and the trial court

called a bench conference. *Id.* During that conference, counsel for Mr. Thomas admitted her line of questioning was irrelevant based on precedent. *Id.* at 24.

Prior to trial, Mr. Thomas submitted a proposed jury instruction that would direct the jury to only convict if “the ammunition was possessed in or affecting commerce.” ROA, Vol. 1, at 50. The district court instructed the jury consistently with Tenth Circuit Pattern Instruction 2.44. ROA Vol. 1 at 97.

Mr. Thomas was found guilty by the jury. *Id.* at 104. He was sentenced to 144 months’ imprisonment, *id.* at 130, and timely filed this appeal, *id.* at 136.

### **Summary of the Argument**

Consistent with Supreme Court precedent, this Court has held that to satisfy the “affecting interstate commerce” element of § 922(g), the government only has to prove that the firearm—or, in this case, ammunition—crossed state lines at some point in time prior to the defendant’s possession. Consistent with that requirement, the United States presented evidence that the ammunition that Mr. Thomas was charged with possessing was manufactured outside the state of

Oklahoma and, thus, must have crossed state lines for Mr. Thomas to have used it in Oklahoma. Additionally, the instruction the district court gave to the jury on this point accurately stated the law as interpreted by this Court and, thus, did not take the issue of the interstate-commerce element from the hands of the jury.

### **Discussion**

**I. Evidence that the ammunition crossed state lines at some point is sufficient to establish the minimal interstate nexus required by 18 U.S.C. § 922(g)(1).**

**A. This Court’s review is de novo.**

After the government rested its case, Mr. Thomas orally moved for a judgment of acquittal under Fed. R. Crim. P. 29, specifically claiming the government failed to prove the interstate-commerce element of § 922(g)(1). ROA, Vol. III, at 28. As a result, this Court reviews Mr. Thomas’s claim de novo. *See United States v. Williams*, 403 F.3d 1188, 1194 (10th Cir. 2005). “In doing so, [this Court] view[s] all evidence in the light most favorable to the government, ultimately determining whether the evidence and all reasonable inferences drawn therefrom could allow a reasonable jury to find defendant guilty beyond a reasonable doubt.” *Id.* (internal quotation marks omitted and alterations adopted).

**B. The evidence was sufficient to prove the interstate-commerce element of § 922(g)(1).**

Mr. Thomas was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). That statute provides:

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.

18 U.S.C. § 922(g)(1)

In *Scarborough v. United States*, the Supreme Court held that there was “no indication that Congress intended to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce” for a conviction under what is now § 922(g)(1). 431 U.S. 563, 575, (1977). The district court in *Scarborough* was presented with evidence that the subject firearm had traveled in interstate commerce before the defendant even became a convicted felon. *Id.* at 565.

Since *Scarborough*, this Court has repeatedly held the nexus requirement in 922(g)(1) requires only that a firearm have traveled across state lines at some point in the past. *See United States v. Phelps*,

No. 23-3012, 2023 WL 5527951 (10th Cir. Aug. 28, 2023); *United States v. Dix*, No. 23-3035, 2023 WL 5367508 (10th Cir. Aug. 22, 2023); *United States v. Goines*, No. 20-3183, 2021 WL 4544098 (10th Cir. Oct. 5, 2021); *United States v. Campbell*, 603 F.3d 1218, 1220 n.1 (10th Cir. 2010); *United States v. Urbano*, 563 F.3d 1150, 1153–1155 (10th Cir. 2009); *United States v. Baker*, 508 F.3d 1321, 1324 n.1 (10th Cir. 2007); *United States v. Patton*, 451 F.3d 615, 634-36 (10th Cir. 2006).

Under this standard, the evidence was clearly sufficient. SA Anderson testified that Hornday ammunition “was manufactured, loaded and shipped from its facility in the state of Nebraska.” ROA, Vol. III, at 17. He further confirmed that Hornday has never manufactured ammunition in the state of Oklahoma. *Id.*

Regarding the COR-BON ammunition, SA Anderson testified that the casing was originally manufactured by Jagemann in a facility “in the state of Wisconsin, which was then sent to the COR-BON facility in South Dakota where it was loaded and then prepared for distribution” *Id.* at 17–18. He confirmed that COR-BON has never manufactured ammunition inside the state of Oklahoma. *Id.* This Court has repeatedly held that an agent’s testimony regarding nexus is sufficient

to prove the interstate-commerce requirement of § 922(g)(1). *See, e.g., United States v. Hoyle*, 697 F.3d 1158, 1165 (10th Cir. 2012); *United States v. Hill*, 224 F. App'x 825, 830 (10th Cir. 2007); *United States v. Williams*, 403 F.3d 1188, 1195 (10th Cir. 2005).

Mr. Thomas admits that circuit precedent forecloses his argument. *See* Aplt. Br. at 15–16. That should end the inquiry. A panel of this Court “cannot overrule the judgment of another panel of this Court”; instead, it is “bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court.” *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993) (*per curiam*).

## **II. The district court did not err in instructing the jury.**

### **A. This Court’s review is for an abuse of discretion.**

“This court reviews the refusal to give a requested jury instruction for abuse of discretion and will reverse only if prejudice results from such a refusal.” *United States v. Joseph*, 108 F.4th 1273, 1285 (10th Cir. 2024). “In order to assess whether the court properly exercised its discretion, [this Court] review[s] the jury instructions de novo to determine whether, as a whole, they accurately state the governing law and provide the jury with an accurate understanding of the relevant

legal standard and factual issues in the case.” *Id.* (internal quotation marks omitted).

**B. The district court properly instruct the jury on the interstate-commerce element.**

The pattern jury instructions for this circuit provide the following description of the interstate-commerce element under § 922(g)(1):

before the defendant possessed the firearm [or ammunition], the firearm [or ammunition] had moved at some time from one state to another [or from a foreign country to the United States].

Tenth Circuit Pattern Instruction No. 2.44 (2021 ed.). And the district court gave this instruction to the jury. ROA, Vol. I, at 97. That instruction is consistent with this Court’s long-standing view of the reach of § 922(g)(1). *See Patton*, 451 F.3d at 634 (“The constitutional understanding implicit in *Scarborough*—that Congress may regulate any firearm that has ever traversed state lines—has been repeatedly adopted for felon-in-possession statutes by this Court.”).

On appeal, Mr. Thomas contends that this instruction “runs [a]foul of *Lopez*, and *Scarborough v. United States* should not control.” Aplt. Br. at 21 (citing *United States v. Lopez*, 514 U.S. 549 (1995)). This

argument largely reiterates the argument this Court rejected in *Patton*. See 451 F.3d at 634–36. In that case, this Court recognized that there is “considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases.” *Id.* at 636. Still, this Court concluded that *Scarborough* would continue to control until the Supreme Court resolved the conflict. *Id.* Despite being aware of this issue, the Supreme Court has not seen fit to revisit *Scarborough*. See *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700 (2011) (denying certiorari); *id.*, 131 S. Ct. at 702 (Thomas, J., dissenting from denial of certiorari) (arguing that the Court should have granted certiorari to resolve the apparent conflict between *Scarborough* and *Lopez*).

Absent an intervening en banc or Supreme Court decision, this Court remains bound by the precedent of *Scarborough* and *Lopez*. *Smith*, 10 F.3d at 724. As a result, the district court did not err when it instructed the jury consistent with precedent.



**Conclusion**

For these reasons, this Court should affirm the judgment and sentence of the district court.

Respectfully submitted,

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**Certificate of Compliance with Type-Volume Limitation,  
Typeface Requirements, and Type Style Requirements**

As required by Fed. R. App. P. 32(g), I certify that this brief is proportionally spaced and contains 2010 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). I relied on my word processor to obtain the count and it is: Microsoft Word 365.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

s/ DAVID R. NICHOLS, JR.  
Assistant U.S. Attorney

IN THE  
**Supreme Court of the United States**

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ZQUAREUS TROYEZ IMMANUEL THOMAS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**APPENDIX D**

*Reply Brief for Zquareus Troyez Immanuel Thomas*  
*(January 9, 2025)*

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No. 24-6074

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In the United States Court of Appeals  
for the Tenth Circuit

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**United States of America,**  
Plaintiff-Appellee,

**v.**

**Zquareus Troyez Immanuel Thomas,**  
Defendant-Appellant.

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On Appeal from the United States District Court  
for the Western District of Oklahoma  
District Court No. CR-22-16-G  
The Honorable Charles Goodwin, District Judge

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**Appellant's Reply Brief**

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Respectfully submitted,  
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January 9, 2025

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### **Argument in Reply**

As Mr. Thomas stated in his “Statement of the Issues,” he understands that both issues presented in his opening brief are foreclosed by circuit precedent. Appellant’s Opening Br. at 2; *see also United States v. Urbano*, 563 F.3d 1150, 1153–1154 (10th Cir. 2009). Mr. Thomas presents this reply brief only to address one misstatement of fact included in the government’s “Statement of the Case.” This fact is irrelevant to the Court’s resolution of this appeal, but it matters to Mr. Thomas that the facts stated in public documents are correct.

On page 3 of the Government’s Brief, citing to Paragraph 15 of the Presentence Investigation Report, it states that, “[a]t the time of the shooting, there were four individuals inside the house, which was struck four times.” Gov. Br. at 3. The house was struck three times, not four. Mr. Thomas objected to the Presentence Investigation Report’s statement, and the district court ordered the report “modified to reflect at paragraph 15 that the house was struck three times during the incident at issue, not four.” ROA Vol. III at 65.

Otherwise, Mr. Thomas has no contention with the government's reply brief. It accurately states the current state of the law in this circuit. But Mr. Thomas stands by the arguments made in his opening brief. Holding Mr. Thomas criminally responsible in a federal court for possessing spent shell casings located on an Oklahoma City street simply because they crossed state lines at some unknown point in time exceeds the "outer limits" of the Commerce Clause. *United States v. Lopez*, 514 U.S. 549, 556-557 (1995).

Respectfully submitted,

s/ Laura K. Deskin

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### **Certificate of Compliance**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 265 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Century Schoolbook font, Size 14.

s/ Laura K. Deskin

### **Certificate of Service**

I hereby certify that on January 9, 2025, I electronically transmitted the attached brief to the Clerk of Court using the NextGen PACER System for filing, which will send notification to: David Nichols, Assistant United States Attorney.

s/ Laura K. Deskin

IN THE  
**Supreme Court of the United States**

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ZQUAREUS TROYEZ IMMANUEL THOMAS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**APPENDIX E**

*Judgment of Conviction in the U.S. District Court  
for the Western District of Oklahoma  
(April 22, 2024)*

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## UNITED STATES DISTRICT COURT

Western District of Oklahoma

UNITED STATES OF AMERICA

v.

ZQUAREUS TROYEZ IMMANUEL THOMAS,  
a/k/a  
MANIAC

## JUDGMENT IN A CRIMINAL CASE

Case Number: CR-22-00016-001-G

USM Number: 84867-509

Laura K. Deskin

Defendant's Attorney

## THE DEFENDANT:

☐ pleaded guilty to count(s) \_\_\_\_\_☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☒ was found guilty on count(s) 1 of the Superseding Indictment.  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Felon in Possession of Ammunition	12/15/2022	1
18 U.S.C. § 924(a)(8)			

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 8, 2024

Date of Imposition of Judgment


  
CHARLES B. GOODWIN  
United States District Judge

April 22, 2024

Date Signed

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
**ONE HUNDRED AND FORTY-FOUR (144) MONTHS.**

☒ The court makes the following recommendations to the Bureau of Prisons:

It is recommended the defendant participate in the Federal Bureau of Prisons Inmate Financial Responsibility Program at a rate determined by Bureau of Prisons staff in accordance with the program.

If eligible, it is recommended that the defendant participate in the Residential Drug Abuse Program while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ By 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: \_\_\_\_\_  
**THREE (3) YEARS.**

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight (8) drug tests per month.  
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

### STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. Stricken.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's  
Signature

Date

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
CASE NUMBER: CR-22-00016-001-G

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall participate in a program of substance abuse aftercare at the direction of the probation officer to include urine, breath, or sweat patch testing, and outpatient treatment. The defendant shall actively participate in the treatment program until successfully discharged from the program or until the probation officer has excused the defendant from the program. The defendant shall totally abstain from the use of alcohol and other intoxicants. The defendant shall not frequent bars, clubs, or other establishments where alcohol is the main business. The defendant shall contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.
2. The defendant must submit to a search of his person, property, electronic devices, or any automobile under his control to be conducted in a reasonable manner and at a reasonable time, for the purpose of determining possession, or evidence of possession, of firearms, ammunition, controlled substances, drug paraphernalia, drug use, and/or drug distribution activities at the direction of the probation officer upon reasonable suspicion. Further, the defendant must inform any residents that the premises may be subject to a search.
3. The defendant shall participate in a program of mental health aftercare at the direction of the probation officer. The court may order that the defendant contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.
4. The defendant shall participate in an approved domestic violence program at the direction of the probation officer.
5. The defendant shall not associate with any known gang members, including but not limited to, members of the Murder 1 gang; however, some contact may be permitted at the discretion of the U.S. Probation Office (e.g., family members).

DEFENDANT: Zquareus Troyez Immanuel Thomas, a/k/a Maniac  
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**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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**TOTALS**                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.



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**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
- If restitution is not paid immediately, the defendant shall make payments of 10% of the defendant's quarterly earnings during the term of imprisonment.

After release from confinement, if restitution is not paid immediately, the defendant shall make payments of the greater of \$ \_\_\_\_\_ per month or 10% of defendant's gross monthly income, as directed by the probation officer. Payments are to commence not later than 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be paid through the United States Court Clerk for the Western District of Oklahoma, 200 N.W. 4th Street, Room 1210, Oklahoma City, Oklahoma 73102.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names  
(including defendant number)

Total Amount

Joint and Several  
Amount

Corresponding Payee,  
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

All right, title, and interest in the assets listed in the Preliminary Order of Forfeiture dated \_\_\_\_\_ (doc. no. \_\_\_\_).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**(82a)**