No. _____

In the

Supreme Court of the United States

_____

Chockie Lee Hightower,

Petitioner,

v.

United States of America,

Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

Whether 18 U.S.C. §922(g) permits conviction for the possession of any firearm that has ever crossed state lines at any time in the indefinite past, and, if so, if it is facially unconstitutional?

PARTIES TO THE PROCEEDING

Petitioner is Chockie Lee Hightower, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Chockie Lee Hightower seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The unpublished opinion of the court of appeals is reported at *United States v. Hightower*, No. 25-10284, 2025 WL 2092512 (5th Cir. July 25, 2025)(unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence entered in *United States v. Hightower*, No. 4:24-cr-00194-1 (Dec. 17, 2024), is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on July 25, 2025. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Section 922(j) of Title 18 reads:

> (j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

Article I, Section 8 of the United States Constitution provides:

> The Congress shall have Power
> ***
> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes…

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

Petitioner Chockie Lee Hightower was indicted on a single count of violating 18 U.S.C. § 922(g)(1). Mr. Bradley entered a plea of guilty. The factual basis in support of the plea set forth the elements of the offense, including, as pertinent here, that "[t]he firearm had been shipped or transported in interstate or foreign commerce, that is, the firearm had been shipped or transported from one state to another or from a foreign nation to the United States." *See Hightower*, No. 4:24-cr-00194-1 (N.D. Tx.), Factual Resume, D.E. 22. The court accepted the plea.

II. Appellate Proceedings

Petitioner appealed, arguing that the interstate commerce nexus, as interpreted and applied in Section 922(j), exceeds the authority of Congress under the Commerce Clause. Mr. Bradley acknowledged that the issue is foreclosed in the Fifth Circuit. The court of appeals affirmed. See Pet.App.A.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve the tension between *Scarborough v. United States*, 431 U.S. 563 (1963) on the one hand, and *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) and *Bond v. United States*, 572 U.S. 844 (2014) on the other.

Similar to its counterpart in § 922(g), the possession of a stolen firearm statute requires a jurisdictional, interstate nexus. The correct interpretation of Section 922(j) and the nexus element -- "which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce" -- must require more than the mere crossing of a state line at an indeterminate time in the past. Courts have held for years that the mere travel across state lines at any time is sufficient to find that later possession of a firearm affected interstate commerce. These cases follow from this Court's jurisprudence in *Scarborough v. United States*, 431 U.S. 563, 577 (1963), finding federal commerce authority over items that at any point moved across state lines. These cases stand in tension with more recent precedents on the scope of Commerce Clause authority, that is *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) ("*NFIB*") and *Bond v. United States*, 572 U.S. 844 (2014).

Because *Scarborough* cannot be reconciled with these more recent precedents this Court should grant review to resolve that tension. "In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder." *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 533 (2012) ("*NFIB*"). Powers outside those explicitly enumerated by the Constitution are denied to the National Government. *Id.* at 534 ("The Constitution's express conferral of some powers makes

clear that it does not grant others.") There is no general federal police power. *See United States v. Morrison*, 529 U.S. 598, 618-619 (2000). Every exercise of Congressional power must be justified by reference to a particular grant of authority. *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 535 ("The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."). A limited central government promotes accountability and "protects the liberty of the individual from arbitrary power." *Bond*, 572 U.S. at 863.

The Constitution grants Congress a power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. But this power "must be read carefully to avoid creating a general federal authority akin to the police power." *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 536. Despite these limitations, and the text of Article I, Section 8, this Court has held that "[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states," and includes a power to regulate activities that "have a substantial effect on interstate commerce." *United States v. Darby*, 312 U.S. 100, 118-119 (1941). Relying on this expansive vision of Congressional power, this Court held in *Scarborough*, that a predecessor statute to 18 U.S.C. §922(g) reached every case in which a felon possessed firearms that had once moved in interstate commerce. It turned away concerns of lenity and federalism, finding that Congress had intended the interstate nexus requirement only to insure the constitutionality of the statute. 431 U.S. at 577.

It is hard to square *Scarborough*, and the expansive concept of the commerce power on which it relies, with more recent holdings of the Court in this area. In *Nat'l Fed'n of Indep. Bus.*, five members of this Court found that the individual mandate component of the Affordable Care Act could not be justified by reference to the Commerce Clause. *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 557-558 (Roberts., C.J. concurring). Although the Court recognized that the failure to buy health insurance affects interstate commerce, five Justices did not think that the constitutional phrase "regulate Commerce ... among the several States," could reasonably be construed to include enactments that compelled individuals to engage in commerce. *Id.* at 550 (Roberts., C.J. concurring). Rather, they understood that phrase to presuppose an existing commercial activity to be regulated. *Id.* (Roberts., C.J. concurring).

The majority of this Court in *NFIB* thus required more than a demonstrable effect on commerce: the majority required that the challenged enactment itself be a regulation of commerce – that it affect the legality of preexisting commercial activity. Possession of firearms, like the refusal to buy health insurance, may "substantially affect commerce." But such possession is not, without more, a commercial act.

To be sure, *NFIB* does not explicitly repudiate the "substantial effects" test. Indeed, the Chief Justice's opinion quotes *Darby's* statement that "[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states..." *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 549 (Roberts., C.J. concurring); *see also id.* at 552-553 (Roberts., C.J. concurring)(distinguishing *Wickard v. Filburn*, 317 U.S. 111 (1942)). It is therefore perhaps possible to read *NFIB*

narrowly: as an isolated prohibition on affirmatively compelling persons to engage in commerce. But it is hard to understand how this reading of the case would be at all consistent with *NFIB*'s textual reasoning.

This is so because the text of the Commerce Clause does not distinguish between Congress's power to affect commerce by regulating non-commercial activity (like possessing a firearm), and its power to affect commerce by compelling people to join a commercial market (like health insurance). Rather, it simply says that Congress may "regulate ... commerce between the several states." And that phrase either is or is not limited to laws that affect the legality of commercial activity. Five justices in *NFIB* took the text of the Clause seriously and permitted Congress to enact only laws that were, themselves, regulations of commerce. *NFIB* thus allows Congress only the power "to prescribe the rule by which commerce is to be governed." *Gibbons v. Ogden*, 22 U.S. 1, 196, 9 Wheat. 1 (1824).

And indeed, much of the Chief Justice's language in *NFIB* adheres to this view. This opinion rejects the government's argument that the uninsured were "active in the market for health care" because they were "not currently engaged in any commercial activity involving health care..." *Id.* at 556 (Roberts., C.J. concurring) (emphasis added). The Chief Justice significantly observed that "[t]he individual mandate's regulation of the uninsured as a class is, in fact, particularly divorced from any link to existing commercial activity." *Id.* (Roberts., C.J. concurring)(emphasis added). He reiterated that "[i]f the individual mandate is targeted at a class, it is a class whose commercial inactivity rather than activity is its defining feature." *Id.*

(Roberts., C.J. concurring)(emphasis added). He agreed that "Congress can anticipate the effects on commerce of an economic activity," but did not say that it could anticipate a non-economic activity. *Id.* (Roberts., C.J. concurring)(emphasis added). And he finally said that Congress could not anticipate a future activity "in order to regulate individuals not currently engaged in commerce." *Id.* (Roberts., C.J. concurring)(emphasis added). Accordingly, *NFIB* supports the proposition that enactments under the Commerce Clause must regulate commercial or economic activity, not merely activity that affects commerce.

Here, the factual basis for the plea did not state that Petitioner's possession of the gun was an economic activity. Under the reasoning of *NFIB*, this should have been fatal to the conviction. As explained by *NFIB*, the Commerce Clause permits Congress to regulate only activities: the active participation in a market. But 18 U.S.C. §922(j) federally criminalizes all possession of stolen firearms, without reference to economic activity. Accordingly, it sweeps too broadly.

The factual basis also did not show that Petitioner was engaged in the relevant market at the time of the regulated conduct. The Chief Justice has noted that Congress cannot regulate a person's activity under the Commerce Clause unless the person affected is "currently engaged" in the relevant market. *Id.* at 557. As an illustration, the Chief Justice provided the following example: "An individual who bought a car two years ago and may buy another in the future is not 'active in the car market' in any pertinent sense." *Id.* at 556 (emphasis added). Thus, NFIB brought into serious question the long-standing notion that a firearm which has previously

and remotely passed through interstate commerce should be considered to indefinitely affect commerce without "concern for when the [initial] nexus with commerce occurred." *Scarborough*, 431 U.S. at 577.

Scarborough also stands in tension with *Bond*, so §922(j) ought not be construed to reach the possession of any stolen firearm that has ever crossed state lines. Bond was convicted of violating 18 U.S.C. §229, a statute that criminalized the knowing possession or use of "any chemical weapon." *Bond*, 572 U.S. at 853; 18 U.S.C. §229(a). She placed toxic chemicals – an arsenic compound and potassium dichromate – on the doorknob of a romantic rival. *Id.* The Court reversed her conviction, holding that any construction of the statute that can reach such conduct would compromise the chief role of states and localities in the suppression of crime. *Id.* at 865-866. It instead construed the statute to reach only the kinds of weapons and conduct associated with warfare. *Id.* at 859-862.

Section 229 defined the critical term "chemical weapon" broadly as "any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere." 18 U.S.C. §229F(8)(A). It also criminalized the use or possession of "any" such weapon, not of a named subset. 18 U.S.C. §229(a). This Court still applied a more limited construction of the statute, reasoning that statutes should not be read to sweep in purely local activity:

> The Government's reading of section 229 would "'alter sensitive federal-state relationships,'" convert an astonishing amount of "traditionally local criminal conduct" into "a matter for federal enforcement," and "involve a substantial extension of federal police resources." [United States v.]Bass, 404 U.S. [336] 349-350, 92 S. Ct. 515, 30 L. Ed. 2d 488 [(1971)]. It would transform the statute from one whose core concerns are acts of war, assassination, and terrorism into a massive federal anti-poisoning regime that reaches the simplest of assaults. As the Government reads section 229, "hardly" a poisoning "in the land would fall outside the federal statute's domain." Jones [v. United States], 529 U.S. [848,] 857, 120 S. Ct. 1904, 146 L. Ed. 2d 902 [(2000)]. Of course Bond's conduct is serious and unacceptable—and against the laws of Pennsylvania. But the background principle that Congress does not normally intrude upon the police power of the States is critically important. In light of that principle, we are reluctant to conclude that Congress meant to punish Bond's crime with a federal prosecution for a chemical weapons attack.

Bond, 572 U.S. at 863

As in *Bond*, it is possible to read §922(j) to reach the conduct admitted here: possession of an object that once moved across state lines, without proof that the defendant's conduct caused the object to move across state lines, nor even proof that it moved across state lines in the recent past. But to do so would intrude deeply on the traditional state responsibility for crime control. Such a reading would assert the federal government's power to criminalize virtually any conduct anywhere in the country, with little or no relationship to commerce, nor to the interstate movement of commodities.

The better reading of the commerce nexus therefore requires a meaningful connection to interstate commerce. Such a reading would require either: 1) proof that the defendant's offense caused the firearm to move in interstate commerce, or, at

least, 2) proof that the firearm moved in interstate commerce at a time reasonably near the offense.

CONCLUSION

Petitioner asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, or if it does so in another case to decide the above issues, should hold the instant Petition pending the outcome.

Respectfully submitted this 21st day of October, 2025.

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