

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALBERT AYALA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) exceeds Congress’s authority under the Commerce Clause, facially and as applied to intrastate firearm and ammunition possession?¹

¹ This Commerce Clause question is pending in *Storey v. United States*, Supreme Court No. 25-7216 (response requested May 26, 2026), and *Stewart v. United States*, No. 26-5131 (filed July 20, 2026).

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below:

United States of America

Albert Ayala.

RELATED PROCEEDINGS

The following is a list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court:

United States v. Albert Ayala, No. 24-13745, U.S. Court of Appeals for the Eleventh Circuit, Judgment entered on March 10, 2026 and Panel Rehearing En Banc Denied on May 5, 2026.

United States v. Albert Ayala, No. 6:23-cr-00052-CEM-RMN, U.S. District Court for the Middle District of Florida, Judgment entered on October 31, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Albert Ayala respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

ORDER AND OPINION BELOW

The Eleventh Circuit’s unpublished opinion affirming Mr. Ayala’s conviction and sentence is provided in **Appendix A**. The Eleventh Circuit’s order denying Mr. Ayala’s timely filed petition for panel rehearing is provided in **Appendix B**.

JURISDICTION

The Eleventh Circuit issued its opinion and judgment on March 10, 2026. On April 21, 2026, Mr. Ayala filed a petition for a rehearing in the Eleventh Circuit Court of Appeals. App. Doc 44². The Eleventh Circuit denied the petition for rehearing on May 5, 2026. App. Doc 46. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

² “Doc.” references the district court docket entries. “App. Doc.” references the appellate court docket entries.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I of the United States Constitution states that “Congress shall have 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.

Section 922(g)(1) of Title 18 of the United States Code states, “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 . . . possess in or affecting commerce, any firearm or ammunition.”

STATEMENT OF THE CASE

1. On January 23, 2023, Mr. Ayala was driving an automobile in which his friend, Tequilla Shepherd, was the only passenger. While driving on Interstate 4 in Orlando, Florida, Ms. Shepherd exited the vehicle from the front passenger door and struck the pavement, resulting in her death. Doc 143, pg. 55. A loaded handgun was found wedged in between the driver’s seat and the console of the car. Ayala later admitted to handling the firearm. Doc 58, pg. 3. The firearm was a polymer 80, Inc. pistol, model PF940C, that was manufactured outside the state of Florida, prior to the effective date of the Gun Control Act of

1968 and had no serial number. PSR ¶ 15; Doc 1; 58; 95. Inside the firearm was 9 mm ammunition that was manufactured by the Federal Cartridge Company in Anoka, Minnesota. PSR ¶ 15. Prior to possessing the firearm and ammunition in question, Ayala was a convicted felon who had not had his right to possess a firearm or ammunition restored by the State of Florida. Doc 95, pg. 2.

2. The federal government prosecuted Mr. Ayala for possession of the firearm and ammunition under 18 U.S.C. § 922(g)(1), alleging that he, a felon, possessed the firearm and ammunition “in and affecting interstate commerce.” Doc 1. To prosecute him federally for this possession in Florida, the government relied on the manufacture of the firearm and ammunition outside of Florida, and the inference that they had traveled in interstate commerce before his possession. Doc 95; Doc. 141.

3. Mr. Ayala pleaded guilty to the § 922(g)(1) charge without a plea agreement. Doc 95; 96. The district court imposed a 168-month sentence. Doc 132.

4. On appeal, Mr. Ayala did not challenge his § 922(g)(1) conviction on the ground that the statute plainly exceeds Congress’s

Commerce Clause authority. Such a claim is currently foreclosed by Eleventh Circuit precedent. *United States v. Edwards*, 142 F.4th 1270, 1285 (11th Cir. 2025), *cert. denied*, 146 S. Ct. 903 (2025); *United States v. Scott*, 263 F.3d 1270, 1274 (11th Cir. 2001).

On April 21, 2026, Mr. Ayala timely petitioned for rehearing en banc. The Eleventh Circuit denied his petition. Petition Appendix B.

REASONS FOR GRANTING THE WRIT

This Court’s review is warranted on the important and recurring question of whether Congress’s Commerce Clause authority empowers it to criminalize intrastate firearm and ammunition possession in 18 U.S.C. § 922(g)(1)

Congress has made it criminal for nine categories of individuals, including felons, to possess firearms. 18 U.S.C. § 922(g)(1)-(9). The time for reviewing the constitutionality of § 922(g) is ripe. *See United States v. Hemani*, 146 S. Ct. 1677, 1695 (2026) (Thomas, J., concurring) (“Section 922(g) appears to exceed Congress’s powers under the Commerce Clause.”);³ *see also United States v. Bonner*, 159 F.4th 338,

³ This petition presents the same Commerce Clause question as *Storey v. United States*, Supreme Court Case No. 25-7216, *see Hemani*, 146 S. Ct. at 1696 (citing *inter alia United States v. Storey*, 571F. Supp. 3d 1296, 1298 (M.D. Fla. 2021) (Mizelle, J.)).

340-43 (5th Cir. 2025) (Willett, J., joined by Duncan, J., concurring (“*Bonner*”)) (“harbor[ing] doubts that § 922(g)(1) is constitutional” under Congress’s Commerce Clause authority); *United States v. Hembree*, 165 F.4th 909, 919-21 (5th Cir. 2026) (Willett, J., concurring (“*Hembree*”)) (reiterating openness “to reconsidering whether § 922(g)(1) truly falls within Congress’s enumerated powers”), *pet. for cert. filed*, No. 25-1219 (presenting Second Amendment question).⁴

Section 922(g) is one of the most commonly prosecuted federal offenses. In fiscal year 2025, of the more than 66,000 cases reported to the Sentencing Commission, over 7,200 (or 10.9%) involved convictions under § 922(g). See United States Sentencing Commission, Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses Fiscal Year 2025, *available at* <https://www.ussc.gov/research/quick-facts/section-922g-firearms> (last visited July 23, 2026). Of those, 89% were § 922(g)(1) convictions. *Id.*

Yet, under our Constitution, Congress lacks plenary power to “punish felonies generally.” *Bonner*, 159 F.4th at 340-41 & n.6 (quoting

⁴ On July 20, 2026, the Fifth Circuit granted rehearing en banc on a petition raising a Commerce Clause challenge to § 922(g)(1). See *United States v. Squire*, 177 F.4th 614 (5th Cir. 2026), *reh’g en banc granted*, No. 25-30324.

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 428 (1821)). General police power is reserved to the states, leaving Congress with only those powers enumerated in the Constitution. *Id.* at 340-41 & n.3 (citing *United States v. Morrison*, 529 U.S. 598, 607 (2000)); *United States v. Lopez*, 514 U.S. 549, 566-67 (1995).

Congress purports to rely on its Commerce Clause authority to criminalize firearm possession. See 18 U.S.C. § 922(g) (proscribing possession “in or affecting commerce”).⁵ But possession of a firearm by a felon, just like possession of a firearm in a school zone, “has nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.” *Lopez*, 514 U.S. at 561; *id.* at 551-52 (affirming Fifth Circuit’s decision concluding that 18 U.S.C. § 922(q), which proscribed possessing a firearm in a school zone, exceeds Congress’s Commerce Clause authority); see *Hemani*, 146 S. Ct. at 1695-96 (Thomas, J., concurring) (“The mere possession of a firearm that long ago crossed state lines is not ‘economic activity’ in any sense”). Nor can § 922(g)(1) be defended by aggregating the effect of all felon firearm

⁵ Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const., Art. I, § 8, cl. 3.

possession. *Hemani*, 146 S. Ct. at 1696 (Thomas, J., concurring) (citing *Morrison*, 529 U.S. at 617); see *Bonner*, 159 F.4th at 342 & n.18 (“[A]ggregation is ordinarily appropriate only when the underlying activity is economic—and firearm possession is not”) (citing *Lopez*, 514 U.S. at 567).

Mr. Ayala and other § 922(g) defendants’ convictions instead rest on the theory that Congress can criminalize the possession of a firearm so long as the firearm crossed state lines at some point in the past. See *Hemani*, 146 S. Ct. at 1694-95 (Thomas, J., concurring); *Edwards*, 142 F.4th at 1285. This theory, however, does not accord with the original meaning of the Commerce Clause. See *Hemani*, 146 S. Ct. at 1695 (Thomas, J., concurring).

Nor does this theory provide any real limit to Congress’s Commerce Clause authority. As several Fifth Circuit judges have written:

If it’s enough that some object (or component of an object) at some unknown (and perhaps unknowable) point in time traveled across state lines to confer federal jurisdiction, it’s hard to imagine anything that would remain outside the federal government’s commerce power. There is no plausible reading of the Commerce Clause, as originally understood by our Founders, that could possibly give the federal government such reach.

United States v. Seekins, 52 F.4th 988, 990 (5th Cir. 2022) (Ho, J., joined by Smith, Engelhardt, JJ., dissenting from denial of rehearing en banc (“*Seekins*”)) (citing *Lopez*, 514 U.S. at 585-87 (Thomas, J., concurring)).⁶

The theory that Congress can criminalize an item’s possession based on its place of manufacture originates not from the Commerce’s text or history but from lower appellate courts’ misapplication of this Court’s decisions. See *Hemani*, 146 S. Ct. at 1696 (Thomas, J., concurring). Some courts have followed *Scarborough v. United States*, 431 U.S. 563 (1977). See, e.g., *United States v. Nichols*, 124 F.3d 1265, 1266 & n.1 (11th Cir. 1997); *United States v. Rawls*, 85 F.3d 240, 242-43 (5th Cir. 1996) (collecting cases); see also *Bonner*, 159 F.4th at 343 (“Our reliance on *Scarborough* combines these fears: our decisions now expand

⁶ In further support, the Fifth Circuit judges cited Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L. Rev. 101, 146 (2001) (“The most persuasive evidence of original meaning . . . strongly supports Justice Thomas’s and the Progressive Era Supreme Court’s narrow interpretation of the Congress’s power [under the Commerce Clause.]”); 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) (“The founding generation understood the term ‘commerce’ to mean only ‘trade or exchange of goods.’ . . . The writings of the framers and the purpose behind the creation of the Commerce Clause also confirm its intended narrow scope.”). *Id.* at 990-91.

federal power not by remote implication from the constitutional text, but by remote implication from our own precedents”).

In *Scarborough*, this Court construed § 922(g)(1)’s predecessor and concluded that there was no indication Congress “intended to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce.” 431 U.S. at 575. But Congress’s statutory intention and its constitutional authority are different questions. *Scarborough*, which pre-dated *Lopez*, dealt only with the former, statutory interpretation question. *Hemani*, 146 S. Ct. at 1697 (Thomas, J., concurring); see *Seekins*, 52 F.4th at 991 (opining that “our reliance on *Scarborough* was erroneous” because “the Court’s holding in *Scarborough* was statutory, not constitutional” and “*Scarborough* pre-dates *Lopez*”); *Bonner*, 159 F.4th at 342 & n.22 (“*Scarborough* addresses only questions of statutory construction, and does not expressly purport to resolve any constitutional issue.”) (citation and internal quotation marks omitted).

Some courts have also pointed to § 922(g)’s purported “jurisdictional hook”—“in or affecting commerce”—to conclude the statute passes

constitutional muster under *Lopez* and *Morrison*. *Hemani*, 146 S. Ct. at 1697 (Thomas, J., concurring) (collecting cases); *see Edwards*, 142 F.4th at 1285. *Lopez*, however, “considered a jurisdictional hook helpful only if it ‘would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.’” *Hemani*, 146 S. Ct. at 1698 (Thomas, J., concurring) (quoting *Lopez*, 514 U.S. at 561). Section 922(g)’s purported “jurisdictional hook” fails in this regard because it does not require that a defendant’s firearm possession affect interstate commerce. *Id.*

Mr. Ayala’s case presents an excellent opportunity to resolve this important constitutional question. His offense, possession, was local and non-economic; he possessed a firearm and ammunition driving a car in Florida. But § 922(g)(1) was applied to him based on the manufacture of the firearm and ammunition, at some point in the past, outside of Florida. Additionally, in Mr. Ayala’s case, the firearm in question was manufactured prior to the effective date of the Gun Control Act of 1968 and had no serial number. Doc 58, pg. 2; PSR ¶ 15.

Accordingly, only this Court can resolve this important constitutional question. This Court should grant certiorari on this issue,

which affects thousands of criminal defendants, to ensure that Congress's Commerce Clause power is "read carefully to avoid creating a general federal authority akin to the police power." *Seekins*, 52 F.4th at 990 (quoting *NFIB v. Sebelius*, 567 U.S. 519, 536 (2012)) (internal quotation marks omitted).

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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