No. 26-5453

IN THE SUPREME COURT OF THE UNITED STATES

JOSE ALVARO CERVANTES, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 7-13) that if 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of "a crime punishable by imprisonment for a term exceeding one year," ibid., is construed to apply where the relevant firearm "once moved across state lines" before it was possessed by the defendant, Pet. 13, it would exceed Congress's authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3. That contention merits no further review.

This Court has held that "proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the [jurisdictional element]" of a similarly worded

predecessor felon-in-possession statute. Scarborough v. United States, 431 U.S. 563, 564 (1977); see United States v. Bass, 404 U.S. 336, 350 (1971) ("[T]he Government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce."). The courts of appeals have uniformly upheld that reading against constitutional challenges. See, e.g., United States v. Singletary, 268 F.3d 196, 205 (3d Cir. 2001) (collecting cases), cert. denied, 535 U.S. 976 (2002).[1]

This Court has also repeatedly denied writs of certiorari on that question. See, e.g., Landrum v. United States, cert. denied, No. 25-7530 (Oct. 19, 2026); Hensley v. United States, 146 S. Ct. 2714 (2026) (No. 25-7248); York v. United States, 146 S. Ct. 144 (2025) (No. 24-7244); Mason v. United States, 146 S. Ct. 140 (2025) (No. 24-7286); Freeman v. United States, 146 S. Ct. 129 (2025) (No. 24-7101); Martinez v. United States, 146 S. Ct. 127 (2025) (No. 24-7104); Dean v. United States, 145 S. Ct. 2859 (2025) (No. 24-7217); Riddick v. United States, 145 S. Ct. 2859 (2025) (No. 24-7182); Dominguez v. United States, 145 S. Ct. 2857 (2025) (No. 24-6772); Hemphill v. United States, 145 S. Ct. 2855 (2025) (No. 24-6731); Collette v. United States, 145 S. Ct. 2853 (2025) (No. 24-6497). The same result is warranted here.

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[1] Although the Fifth Circuit granted rehearing en banc in a case involving a facial Commerce Clause challenge to Section 922(g)(1), see United States v. Squire, 182 F.4th 481 (2026) (per curiam), that court has not yet held argument or issued a decision in that case. There is accordingly no circuit split on the question at this time.

In any event, this case would be a poor vehicle for considering petitioner's contention because petitioner did more than just possess a firearm that crossed state lines at some point in the past. Petitioner possessed a loaded firearm in a vehicle along with a glass smoking pipe containing methamphetamine residue, five baggies of marijuana, a bag containing approximately 100 other small baggies, a digital scale with crystalized powder on it, 6.8 grams of methamphetamine, and body armor -- indicating that petitioner possessed the firearm in connection with drug dealing. Presentence Investigation Report ¶¶ 10-11. That conduct falls well within Congress's power to regulate activities that "substantially affect interstate commerce," United States v. Lopez, 514 U.S. 549, 559 (1995); see Taylor v. United States, 579 U.S. 301, 307 (2016) (holding that a defendant "who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction"), and also Congress's power to regulate "vehicles" "in interstate commerce," Lopez, 514 U.S. at 558. The petition for a writ of certiorari should be denied.[2]

Respectfully submitted.

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[2] The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.