NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

SAMUEL JONES,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

ISSUE 1

Whether the Confrontation Clause permits a surrogate expert witness, acting solely as a "technical reviewer" who did not participate in the underlying forensic testing, to testify to an absent analyst's forensic findings and conclusions as the basis for his opinion.

ISSUE 2

Whether a jurisdictional element satisfied by a *de minimis* connection to interstate commerce, such as 18 U.S.C. § 922(g)'s requirement that a prohibited person possess a firearm "in or affecting commerce," is sufficient to bring a purely local, non-economic criminal offense within Congress' powers under the Commerce Clause.

INTERESTED PARTIES

Interested parties of the case are as follows:

Samuel Jones, Petitioner

United States of America, Respondent.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Jones No. 23-CR-60204-RNS

(September 19, 2024)

United States Court of Appeals (11th Cir.):

United States v. Jones, No. 24-13220

(May 4, 2026)

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Samuel Jones respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 24-13220 in that court on May 4, 2026, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on May 4, 2026. A 30-day extension was granted by the Court for the filing of this petition. Thus, the petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

CONSTITUTUIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

U.S. CONST., amend. VI

> In all criminal prosecutions, the accused shall enjoy the right . . . . . to be confronted with the witnesses against him; . . . .

U.S. CONST. art. I, § 8, cl. 3

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

18 U.S.C. § 922(g)(1)

> It shall be unlawful for any person . . . who has been convicted in any court of, a crime publishable 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.

INTRODUCTION

Petitioner Samuel Jones respectfully asks this Court to resolve two recurring and consequential questions of federal constitutional law that decided his case. First, the court's decision below created a circuit split over whether the Sixth Amendment's Confrontation Clause permits a surrogate forensic witness—based on a title of "technical reviewer" or supervisor—who did not perform or observe the underlying testing to testify to an absent analyst's forensic findings and statistical conclusions as the basis for the reviewer's opinion. In Mr. Jones's trial the reviewer repeatedly recited the testing analyst's results while conceding he had no personal knowledge of how the tests were conducted. This practice violates this Court's decision in *Smith v. Arizona,* which found such practices to be an "end run" around defendants' right to *meaningful* cross-examination. Review is warranted to resolve the circuit split about whether a reviewer/supervisor title can substitute for the personal knowledge the Confrontation Clause demands.

Second, this Court should clarify the Commerce Clause boundary for purely local, non-economic crimes by examining whether the statutory jurisdictional hook under 18 U.S.C. §922(g), which requires only a *de minimis* connection to interstate commerce, is constitutional. Currently, that statutory provision has been read to federalize ordinary possession of a firearm by a felon in a purely local area. Consequently, the Eleventh Circuit upheld Petitioner's conviction based on a stipulation that the gun and ammunition at issue— at some unknown previous time after their manufacture—crossed interstate lines into Florida. Such broad application of the Commerce Clause results in limitless federal power whenever a product's remote manufacturing history is invoked. And that issue is nowhere better exemplified than in the constant stream of felon-in-possession cases across the country. These important, recurring issues—one protecting confrontation rights, the other preserving the constitutional limits of federal criminal jurisdiction—merit this Court's review.

STATEMENT OF THE CASE

I. The Arrest.

On the evening of January 16, 2023, Petitioner Samuel Jones ("Jones") was arrested on a warrant while he was frequenting an apartment complex that was in a known high crime area in Fort Lauderdale, Florida. At the time of his arrest, Jones was wearing a black short-sleeved T-shirt and a pair of jeans in low-sagging fashion below his waistband. Police were monitoring the apartment complex through a surveillance camera, and when they saw Jones in the area, they proceeded to the apartment complex in full uniform and a marked police car. They arrived at approximately 11:00 pm.

Upon arrival, the officers stopped their marked vehicle alongside Mr. Jones and yelled "Police!" Mr. Jones pulled up his waistband and fled. He ran into an outdoor common area of the apartment complex, a location previously identified by law enforcement as a site for illicit drug and gun transactions. This area was darkly lit, it had a tarped cover overhead, chairs, a metal table, and miscellaneous items strewn about. Surveillance cameras in the area confirmed that many people had been in and out of the area approximately 2 hours before the chase, but at the time Jones entered, no other people were present. Because the area was dark, Jones could not see well, and he ran into the metal table and a brick wall. The chase then abruptly ended as Jones fell to the ground.

Police secured Jones in handcuffs and arrested him. While Mr. Jones was prone on the ground, officers discovered a firearm holster nearby. A few minutes later, one of the officers found a gun a few feet away, partially covered by a tarp on the ground. Mr. Jones was subsequently charged with one count of illegally possessing a firearm and ammunition as a previously convicted felon, pursuant to 18 U.S.C. §922(g)(1).

II. Federal Court Proceedings.

To answer the federal §922(g) charges, Mr. Jones proceeded to a three-day trial, which commenced on April 29, 2024 and concluded on May 1, 2024. Mr. Jones defended on the grounds that he was not in possession of the firearm recovered that evening, asserting instead that the weapon was left behind by other individuals who utilized the common area for illicit activities.

A. Pretrial Proceedings

Before trial, the government gave notice that it intended to present expert testimony that Jones' DNA had been found on the gun. Its pretrial notice stated that Jerome Remm, Senior Forensic DNA Analyst at DNA Labs International would testify about a DNA analysis he conducted on the firearm.

The government's notice detailed Remm's findings and conclusions that each DNA sample was a complex mixture of three or more contributors and outlining Remm's probability estimates regarding whether Jones contributed to the analyzed samples. Moreover, Remm's signed report was produced to the defense.

Subsequently, the government amended its expert notice to replace Remm with a substitute DNA expert, Daniel I. Aguilar, Senior DNA Analyst and Technical Analyst Specialist from DNA Labs.

The government's amended notice made clear that Aguilar was to testify about Remm's analysis and Remm's conclusions, not Aguilar's own, and then give reasons why he approved and agreed with Remm's report. The notice also gave a benign reason why Remm could not be present, citing to scheduling conflicts. In addition, the government stated that Aguilar's testimony remained the same as Remm's testimony. Indeed, the notice (set out below)—showing Remm's testimony with Aguilar's redline amendments—shows how identical the testimonies were.

Summary of Testimony/Opinion and Basis: Mr. ~~Remm~~ Aguilar will testify as to the process by which human beings leave DNA behind on evidence and the methods that forensic experts employ to collect, process, and analyze DNA. With regard to the instant offense, Mr. ~~Remm~~ Aguilar will further testify that his laboratory processed and examined the DNA contained in swabs taken from the front and rear sights of the firearm, the grip of the firearm, and slide and trigger guard of the firearm, as well as DNA contained in swabs collected from the Defendant. He will then explain the comparison ~~he~~ Mr. Remm conducted between DNA contained on the firearm swabs and DNA contained on the Defendant swabs, which resulted in Mr. Remm's finding:(1) that the DNA profile obtained from the firearm's front and rear sights, which provided a mixture of three or more individuals with at least one male contributor, resulted in very strong support for the proposition that the Defendant was a contributor to that DNA profile, with the DNA profile obtained from the item approximately 37 million times more probable if the sample originated from the Defendant and two other persons than if it were three unknown persons; (2) that the DNA profile obtained from the firearm's grip, which provided a mixture of three or more individuals with at least one male contributor, resulted in moderate support for the proposition that the Defendant was a contributor to the DNA profile, with the DNA profile obtained from the item approximately 900 times more probable if the sample originated from the Defendant and three unknown persons than if it originated from four unknown persons; and (3) that the DNA profile obtained from the firearm's slide and trigger guard, which provided a mixture of at least four individuals with at least one male contributor, resulted in very strong support for the proposition that the Defendant is a contributor to that DNA profile, with the DNA profile obtained from the item approximately 68 trillion times more probable if the sample originated from the Defendant and four unknown persons than if it originated from five unknown persons. He will also explain why he approved and agreed with the conclusion reached in the report.

(United States v. Samuel Jones, 23-cr-60204 (DE 19 and DE 40)).

B. The Government's Case at Trial.

At trial, the arresting officers gave their testimony about the chase and arrest of Mr. Jones, and the discovery of a firearm as outlined above.

The issue of DNA was highly contested. One of the issues concerned possible cross-contamination at the scene of the crime because one of the arresting officers could be seen on body camera video footage helping to secure Mr. Jones in handcuffs and then handling the firearm without putting on new gloves before touching the firearm. The officer explained that he was not knowledgeable about contamination issues, and he was not thinking about such issues at the time of the arrest. That same officer admitted that while securing the firearm, he touched the exact same locations where subsequent DNA tests were conducted: the grip, the front and rear sights, and the slide and trigger glide. Although the officer insisted that his handling of the firearm did not compromise the evidence, other witnesses, including law enforcement and expert witnesses who saw the video footage, indicated that the officer's procedures were deficient and caused a high risk of cross-contamination.

An agent from Alcohol, Tobacco, and Firearm (ATF) retrieved the gun from Fort Lauderdale Police. This agent swabbed the gun at the grip, sights, and the slide and trigger glide, and he submitted the swabs to DNA Labs, Inc. for analysis. The ATF agent did not test the firearm for fingerprints, and he did not conduct or request DNA or fingerprint testing on the holster. The ATF paperwork that accompanied the swabs to the lab noted that a DNA analysis was required for prosecution of a criminal case against Mr. Jones.

At trial, Aguilar testified that he did not do the actual DNA testing. Rather, he had reviewed Remm's tests and findings, and he based his testimony on the materials Remm presented to him. Specifically, Aguilar testified at trial that he did not do the actual tests that were done, or determine how the software was used, but that the first analyst, Remm, did everything. Also, Aguilar specifically confirmed that Remm had performed the runs himself in Petitioner's case. Aguilar then stated that he double-checked Remm's reports and agreed with all of Remm's conclusions. Aguilar then repeated Remm's findings and conclusions:

1. With respect to the front and rear sights, Remm estimated there were three DNA contributors. Jones was estimated to contribute 32% of the DNA. Based on a software analysis of Remm's testing, it was estimated to be 37 million times more likely that Jones was one of the contributors, as opposed to a DNA mixture that was composed of three other random individuals.

2. With respect to the slide and trigger glide, Remm estimated there were five DNA contributors. Jones was estimated to contribute 58% of the DNA. Based on a software analysis of Remm's testing, it was estimated to be 68 trillion times more likely that Jones was one of the contributors, as opposed to a DNA mixture that was composed of five other random individuals.

3. With respect to the grip, Remm estimated that there were four

contributors. Jones was estimated to contribute 29% of the DNA. Based on a software analysis of Remm's testing, it was estimated to be 900 times more likely that Jones was one of the contributors, as opposed to four other random individuals.

After Aguilar testified, the government entered party stipulations into evidence. Relevant here, the parties stipulated that the firearm and ammunition at issue was manufactured outside of the State of Florida and therefore, traveled in interstate commerce. The government rested and Mr. Jones made Rule 29 motions that were denied.

C. The Defendant's Case.

In his defense, Jones presented his own expert testimony, Dr. Elizabeth Johnson. She testified that law enforcement's mishandling of the evidence at the arrest and subsequent potential laboratory analyst error undermined the reliability of the DNA findings. After Dr. Johnson completed her testimony, the defense renewed its Rule 29 motion, and the court denied that renewed motion.

D. Jury Deliberations.

After the parties gave closing arguments, the jury began its deliberations. The jury requested to see video footage from surveillance cameras that showed the flow of people in and out of the area where Mr. Jones was arrested. Because only still photographs of this footage had been admitted into evidence, the court informed the jury that they had to rely on the still photographs. Subsequently, the jury stated it could not come to a unanimous verdict. The court gave a modified *Allen* charge from the Eleventh Circuit Jury Pattern Instructions. The jury ultimately came back with a guilty verdict on May 1, 2024.

E. Sentencing.

Mr. Jones's sentencing was set for December 4, 2024. In the interim, this Court issued *Smith v. Arizona,* 602 U.S. 779 (2024), which abrogated *Williams v. Illinois*, 567 U.S. 60 (2012). At sentencing, the district court sentenced Jones to 180 months in prison pursuant to ACCA.

F. The Appeal.

Mr. Jones filed a timely appeal. As pertinent to this petition, Jones challenged his conviction on Sixth Amendment confrontation clause grounds based on Aguilar's improper DNA expert testimony. He argued that the use of *Aguilar* as a substitute expert in this context was a clear violation of the Sixth Amendment under the intervening case of *Smith v. Arizona,* 602 U.S. 779 (2024). As noted from the record, Aguilar did not have personal knowledge of the underlying DNA analysis that he testified about. He did not conduct or observe DNA tests. Rather, he merely "came behind" the analyst, Jerome Remm--who analyzed the DNA and signed the DNA report. Aguilar said he checked the documents that Remm presented to him and determined whether he agreed with Remm's conclusions. On that basis, he set out Remm's procedures, safety protocols, facts, figures and statistical analyses for the truth of the matters asserted and for the purpose of Jones' current prosecution. Jones argued that the plain error of using Aguilar's testimony in this manner adversely affected his substantial rights, as the government's circumstantial evidence was weak and the jury clearly struggled, initially announcing that they could not come to a unanimous verdict.

The government argued that Aguilar was a proper surrogate expert under *Smith* because he was the "technical reviewer" of Jones' case at DNA Labs. Even though as technical reviewer Aguilar only reviewed documents in a file—rather than observed or participated in the testing—the government argued that Aguilar still sufficed for Sixth Amendment purposes.

Jones argued that the government was wrong and that *Smith* could not be so easily evaded. He argued that *Smith* emphasized personal knowledge as a prerequisite for meaningful cross-examination, which was essential to the jury's fact-finding mission and the core values of the Sixth Amendment. Aguilar's purported independent review only consisted of a higher-level review of Remm's analysis based on documents that were provided to Aguilar, and which Aguilar relied on to be true. Aguilar then testified to those statements for their truth and in pursuit of this criminal prosecution. Jones argued that such a clear violation of *Smith* deprived defendants of their "right to cross-examine the testing analyst about what she did and how she did it and whether her results should be trusted," and further that such an exercise constituted an "end run" on all this Court has held the Confrontation Clause to require. *Smith,* 602 U.S. at 798-799. Thus, Jones argued for reversal.

In addition, Mr. Jones argued on appeal that his conviction under 18 U.S.C.

§ 922(g) was unconstitutional both on its face and as applied to his case, because the mere possession of the firearm or ammunition by a convicted felon did not substantially affect interstate commerce.

In an unpublished opinion, the Eleventh Circuit denied Jones' Sixth Amendment challenges. *United States v. Jones,* 2026 WL 1210147, *3-*4 (11th Cir. May 4, 2026). It found that *Bullcoming v. New Mexico,* 564 U.S. 647 (2011) had left open whether a supervisor or reviewer, even with limited connection to the scientific testing could testify. *United States v. Jones,* 2026 WL 1210147 at *3-*4. The court found that this distinction remained an open issue, notwithstanding *Smith*'s clarification of *Bullcoming*, its explicit focus on preserving meaningful cross-examination, and its clear intent to avoid an "end run" around the Sixth Amendment's Confrontation Clause. Because it considered this issue open, the Eleventh Circuit found there was no plain error in admitting Aguilar's surrogate testimony.

Additionally, the Court rejected Mr. Jones' challenges under the commerce clause, finding that his arguments were barred by prior precedent. The court further noted that Mr. Jones had not objected to the constitutionality of § 922(g) in the district court, and reviewed his claim for plain error. Accordingly, the court affirmed Mr. Jones' conviction. This petition follows.

REASONS FOR GRANTING THE WRIT

I. This Court Should Decide the Important Question of Whether the Confrontation Clause permits a surrogate expert witness, acting solely as a "technical reviewer" who did not participate in the underlying testing, to testify to the absent analyst's forensic findings and conclusions.

A. Legal Background

The Sixth Amendment guarantees a defendant the right to "be confronted with the witnesses against him." U.S. Const. amend. VI. At trial, that right bars admission of an absent witness's out-of-court statements offered for their truth unless the witness is unavailable and the defendant had a prior opportunity for cross-examination. *See Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). This Court's current authority further confines admissibility to statements that are testimonial—made for the "primary purpose" of establishing past events potentially relevant to future criminal prosecution. *See Davis v. Washington*, 547 U.S. 813, 823 (2006).

This Court has applied those principles to forensic evidence. For example, in *Melendez-Diaz v. Massachusetts*, the Court held that a forensic report prepared before trial cannot substitute for the in-court testimony of the analyst who prepared it. 557 U.S. 305, 318–20 (2009). This Court extended the rule in *Bullcoming v. New Mexico*, holding that a forensic report could not be entered into evidence through a substitute expert because such a surrogate expert could not convey what the certifying analyst knew or observed, and instead could serve as a shield for lapses or falsehoods by the original analyst. 564 U.S. 647, 661–63 (2011).

Following *Bullcoming*, the government adapted by having surrogate experts testify to the substance of forensic reports rather than offering the actual documents into evidence. They did so under the guise of presenting their own independent opinions, and they offered the substance of the absent analyst's report as the "basis" for their opinions. That practice again deprived defendants of the opportunity to cross-examine the analysts who had direct knowledge of the underlying testing process.

The Court most recently reviewed the problem in *Smith v. Arizona,* 602 U.S. 779, 784-85 (2024). *Smith* held that presenting the substance of an absent expert's report through a surrogate was no less forbidden than admitting the report itself. The Court explained that there was no meaningful distinction between an out-of-court statement disclosed to show the "basis" for an expert's opinion and that same statement disclosed for its truth, because the "basis" testimony had value only if it was assumed to be true by the expert and presented as fact to the jury. Id. at 795. Allowing such testimony prejudiced defendants because they had "no opportunity to challenge the veracity of the out-of-court assertions that were doing much of the work," including cross-examination of the testing analyst about "what she did and how she did it and whether her results should be trusted." Id. at 796, 799. Concluding that such a practice would make its previous authorities "a dead letter, and allow for easy evasion of the Confrontation Clause," this Court held that the tactic was unconstitutional. *Id*. At *798*. This landmark ruling in *Smith* now governs Sixth Amendment law.

B. The Eleventh Circuit's Decision Creates a Conflict with the Fourth Circuit and Leading State High Courts.

The Eleventh Circuit's decision contravenes *Smith* and creates a circuit split with the Fourth Circuit and several state courts of last resort. Unlike the Eleventh Circuit, these other courts have found that the title of "technical reviewer" or supervisor cannot replace *Smith's* requirement for personal knowledge.

1. *United States v. Seward,* 135 F.4th 161, 168 (4th Cir. 2025).

The decision below conflicts with the Fourth Circuit and leading state courts of last resort. The Fourth Circuit has found that *Smith* bars surrogate expert "basis" testimony without any technical reviewer or supervisor exception. In *United States v. Seward,* 135 F.4th 161, 168 (4th Cir. 2025), the Fourth Circuit reviewed DNA evidence under *Smith's* new standards. The defendant had been convicted of murdering a rural mail carrier. There was significant circumstantial evidence including DNA and fingerprint evidence. 135 F.4th at 164. After 6 days of trial and 30 witnesses, the jury found the defendant guilty. *Id*.

The DNA evidence was presented by an expert analyst who conducted a technical review of the work of her lab's testing analysts. She admitted she was "not hands-on with the evidence samples . . . and that a non-testifying analyst tested the samples." *Id* at 168. The DNA expert further explained that "her role was to review the analyst's notes and work, and then to independently review the [analyst's] conclusions to ensure she agreed with the analyst." *Id.*

The DNA expert then discussed each sample and testified that "her lab analyzed each swab." *Id.* at 168. Proceeding under the assumption that proper protocols had been followed, she provided her conclusions—"all without having tested the samples herself." *Id.* at 168. The Fourth Circuit found that the expert's testimony violated *Smith* because the testifying DNA expert relied entirely on another analyst's work as the basis for her own testimony. *Id.* (citing *Smith,* 602 U.S. at 798). She could opine on the DNA profiles only by accepting the truth of "what [the nontestifying analyst] had reported about her work in the lab." *Id.* at 168. Notably, the Fourth Circuit did not read *Smith* as permitting a technical reviewer or supervisor exception to the Sixth Amendment. Instead, the court found that under *Smith's* new rule, the reviewer would need to observe the tests or work with the testing analyst to test the swabs. *Id.* at 168 n.*. In that instance, either analyst could testify based on personal knowledge of how the testing was actually conducted. *Id.* The court found the error to be a clear and straightforward result of *Smith*. In *Seward's* case, however, the error was not harmful because other substantial evidence supported the verdict. Thus, in sum, the Fourth Circuit determined that the core holding of *Smith'*s new rule was personal knowledge, which could not be avoided by supervisor or peer-reviewer titles.

2. *Massachusetts v. Gordon*, 266 N.E.3d 369 (Mass. 2025).

Similarly, the highest courts in several states have ruled that surrogate expert "basis" testimony under *Smith* is impermissible, and that this prohibition applies equally to technical reviewers and supervisors. Applying *Smith*, the Massachusetts Supreme Judicial Court in *Massachusetts v. Gordon*, 266 N.E.3d 369 (Mass. 2025) held that "basis" testimony from supervisors and technical reviewers who did not witness or perform the underlying testing violated the Sixth Amendment. In *Gordon,* the defendant was an attorney who had been accused of smuggling controlled substances into a prison. *Gordon,* 266 N.E.3d at 374. At trial, forensic evidence was presented to identify the controlled substance. Because the analyst who had originally tested the substance, Kimberly Dunlap, had left the employ of the state crime lab, the government presented the testimony of Dunlap's supervisor, Carrie Labelle, as a substitute expert. *Id*. at 375.

Labelle testified that as supervisor, she was required to perform technical and administrative reviews on her peers' work. This meant she went through case files, reviewed analysts' notes and data, and ensured that the analysts' conclusions were supported scientifically. *Id*. at 375. If discrepancies were noted, the analyst would be ordered to do additional testing. *Id*. at 376. Labelle testified that she had performed the technical reviews of Dunlap's work on the defendant's case. *Id*. at 375. Labelle acknowledged that she had not performed or observed the underlying tests conducted by Dunlap. *Id*. at 376.

Labelle testified to general principles and procedures of the lab and then pivoted to explain Dunlap's analysis of the defendant's specific case. She stated that she had reviewed the procedures and tests that were conducted and the "data results." *Id*. at 375. She stated that the data allowed her to reach an independent conclusion, identifying the substance as the same illicit drug previously found by Dunlap. *Id*. at 376. The Supreme Judicial Court, however, found that under *Smith*, Labelle's testimony concerning Dunlap's procedures and tests, as well as Labelle's conclusions drawn from them, violated the Sixth Amendment. *Id*. at 383-386. As in *Smith,* Labelle's testimony and conclusion were only possible because Labelle relied on the truth of what Dunlap had reported about her work in the lab. *Id*. at 385-386. Likewise, the jury could only credit Labelle's testimony because they also accepted Dunlap's underlying assertions. *Id*. at 385-386.

Furthermore, the *Gordon* court addressed the fact that Labelle was the supervisor on the defendant's case, rather than a complete stranger to the file. The court acknowledged that Justice Sotomayor's concurrence in *Bullcoming* had flagged a potential issue where "the person testifying is a supervisor, reviewer, or someone else with a personal, albeit limited, connection to the scientific test at issue." *Id.* at 379 n.14 (citing *Bullcoming).* However, the *Gordon* court recognized that Justice Sotomayor was not retreating from the necessity of personal knowledge, noting her clarifying example: "It would be a different case if, for example, a supervisor who observed an analyst conducting a test testified about the results or a report about such results." *Id.* at 392 (citing *Bullcoming*). Thus, the Supreme Judicial Court found no supervisor exception to *Smith* within Justice Sotomayor's *Bullcoming* concurrence. Her remarks, instead, supported *Smith's* core rule, confirming that a witness must have personal knowledge of the testing, even if acquired through passive observation. In the *Gordon* case, supervisor Labelle lacked this critical personal knowledge, thus, her status as a supervisor did not change the analysis. *Id.* at 388–89.

3. Other State Supreme Courts.

The Supreme Court of Washington also agreed that there was no supervisor exception to *Smith.* In *Washington v. Hall-Haught*, 569 P.3d 315 (Wash. 2025), the defendant was involved in a head-on collision with another motorist. Blood tests were conducted to determine whether the defendant had been under the influence of THC. These tests indicated THC in the defendant's system. *Hall-Haught*, 569 P.3d at 317. At trial, the state presented the THC report and testimony about its conclusions and findings through the lab's supervisor, rather than through the testimony of the analyst who actually created the report. *Id.* at 318. The Washington Supreme Court reversed the conviction because the testifying supervisor lacked personal knowledge of the tests, having only reviewed the data and report to form her conclusions. *Id.* at 318, 323. The court found that the conviction could not stand despite the supervisor's oversight of the testing analyst. Under *Smith*, the court explained, a supervisory relationship could not replace the personal knowledge required to provide an adequate basis for cross-examination under the Sixth Amendment. *Id.* at 323.

Likewise, in *Maine v. Gleason*, 339 A.3d 774, 780-81 (Me. 2025), Maine's Supreme Judicial Court ruled that a supervising toxicologist improperly testified based on blood-test data generated by non-testifying lab analysts in violation of the new Sixth Amendment rule created by *Smith*. The *Gleason* court, like the others mentioned above, specifically found a Sixth Amendment violation notwithstanding that the testifying toxicologist was the supervisor of the testing analyst, and that his role was to peer-review the testing done by the other analysts at the lab. *Gleason,* 339 A.3d at 780. Because this role was to review data and documentation generated by other employees, rather than to participate in or observe the underlying testing itself, the evidence was improper, notwithstanding the ostensible connection the reviewer had to the testing conducted in the case. *Id.* at 780-81.

C. The Eleventh Circuit's Decision is Wrong.

The Court should intervene because the Eleventh Circuit's decision creates a circuit split and permits significant constitutional error. The Eleventh Circuit denied relief in this case because it found that Justice Sotomayor's concurrence in *Bullcoming* had suggested a supervisor exception to the Sixth Amendment's limitations on surrogate experts. It asserted further that this potential exception carried forward into *Smith*. However, a fair reading of *Bullcoming* and *Smith* shows that the Eleventh Circuit's reasoning overreads one sentence of *Bullcoming*, and it fails to account for this Court's clarified requirement for personal knowledge mandated through *Smith*.

Bullcoming, admittedly, was a more limited decision than *Smith*, as it came earlier in the evolutionary chain of this Court's surrogate expert jurisprudence. Its holding merely specified that a surrogate expert, lacking personal knowledge of underlying tests, could not introduce a forensic report, even if the report was certified by an analyst who possessed such personal knowledge but was absent from trial. *Bullcoming,* 564 U.S. at 652. In that context and at that time, Justice Sotomayor set out certain factual scenarios that the *Bullcoming* case did "*not* present." *Id. at* 672. Because these scenarios were not essential to the holding of the *Bullcoming* case, they were *dicta*. One of those scenarios was—as the Eleventh Circuit noted—"a case in which the person testifying is a supervisor, reviewer, or someone else with a personal, albeit limited, connection to the scientific test at issue." *Id.* at 672-673. But the Eleventh Circuit left out Justice Sotomayor's accompanying example of what type of "personal . . . limited [] connection," she was referring to—"a supervisor who observed an analyst conducting a test." *Id.* at 673. Justice Sotomayor's example shows that she was not abandoning the necessity of personal knowledge, but she was merely noting a scenario where someone other than the testing analyst would, in fact, have personal knowledge of the underlying tests. This passage could not fairly be read to suggest that Justice Sotomayor was positing a future exception for lab personnel that had supervisory titles but lacked personal knowledge regarding the underlying forensic tests. As noted in *Bullcoming*, the text of the Sixth Amendment did not suggest "open-ended exceptions from the confrontation requirement to be developed by the courts." *Id*. at 662, citing *Crawford,* 541 U.S. at 54. And since this passage did not create such an exception, it could not carry forward to *Smith*.

Moreover, the limited reach of *Bullcoming* spawned an era where analysts shifted their testimony to avoid the import of *Bullcoming.* Thus, it became commonplace for experts to testify about the *substance* of forensics reports that they neither authored nor had personal knowledge about by framing such testimony as the "basis" for their "independent" expert opinions. This practice continued until *Smith* finally ended it. And the *Smith* court was clear that it considered such tactics to be an "end run" to all this Court has "held the Confrontation Clause to require." *Smith,* 602 U.S. 799. Moreover, to head off future problems, *Smith* clearly and strongly laid out its foundational principles, going so far as to abrogate prior precedents and make clear that the confrontation clause trumped the rules of evidence regarding expert testimony. *See Id. at* 795 *(*abrogating the main holding of *Williams v. Illinois,* 567 U.S. 50 (2012)); *Id. at* 794 ("[F]ederal constitutional rights are not typically defined—expanded or contracted—by reference to non-constitutional bodies of law like evidence rules."). The touchstone in *Smith* is personal knowledge, not supervisory or peer-reviewer titles. *Id. at* 799 (Confrontation Clause requires that defendants have a right to "cross-examine the testing analyst about what she did and how she did it and whether her results should be trusted.").

In petitioner's case, the testifying expert was a technical reviewer, and he testified that he did not participate in or observe any of the underlying testing in Petitioner's case. That undisputed testimony should have been the end of the matter under *Smith*. This Court should intervene to address the constitutional issue that is squarely presented, and resolve the circuit conflict that the Eleventh Circuit's misguided decision created.

D. The Court Should Intervene in this Important Issue.

The question presented has immediate and recurring consequences for high-stakes criminal prosecutions: forensic evidence—particularly DNA—frequently determines guilt or innocence in serious felony cases, and permitting testimony from a "technical reviewer" who lacks personal knowledge of the underlying testing would enable prosecutorial reliance on untested, out-of-court assertions in the majority of its cases. That practice not only raises the risk of wrongful convictions where forensic processes or statistical interpretations are contested, but it also undermines the uniform application of the Sixth Amendment. The Eleventh Circuit is at odds with the Fourth Circuit and a growing number of state high courts. This produces an unacceptable nationwide patchwork in which a defendant's confrontation rights depend on geography rather than constitutional principle. Finally, allowing forensics reviewers or supervisors to testify without requiring them to have personal knowledge of the underlying tests that they present subverts the opportunity for meaningful cross-examination and erodes the reliability of forensic proof and public confidence in the criminal justice system. Juries will be asked to rely on conclusions that cannot be probed by adversarial testing, and the public will rightly question the integrity of convictions that rest on unchallengeable expert presentations. The Court's clarification is therefore essential to protect defendants, ensure consistent constitutional protections, and preserve the credibility of forensic evidence in the courts.

E. This Case is an Ideal Vehicle.

This case is uniquely positioned for certiorari because it presents a clear legal issue governed by this Court's intervening decision in *Smith v. Arizona*, which was handed down after Petitioner's trial was concluded. Had Petitioner enjoyed the benefit of *Smith* at trial, the verdict in all likelihood would have been different. The forensic expert here explicitly admitted that he based his testimony on the underlying tests of an absent forensic analyst—tests of which he possessed no personal knowledge. Instead, he relied on the prior analyst's reports concerning the laboratory work performed.

The Eleventh Circuit failed to apply *Smith's* intervening principles, relying instead on a misinterpretation of *Bullcoming* that the circuit subsequently imported into its *Smith* analysis. Specifically, the court held that no substantial error occurred because the testifying analyst served as a "technical reviewer"—an individual who, the Eleventh Circuit mistakenly believed, was not clearly required to have personal knowledge. This erroneous reading of *Smith* created a direct conflict with the

Fourth Circuit and several state courts of last resort, which have correctly applied *Smith* to bar testimony by technical reviewers who lack personal knowledge. Because the record plainly exposed the surrogate nature of the expert's testimony, and because the government's reliance on that testimony had a material impact in a trial where the jury initially deadlocked, this case offers the Court a straightforward, highly consequential vehicle to clarify that *Smith* forecloses surrogate testimony by technical reviewers who lack personal knowledge of the testing they recount.

II. Certiorari review is needed to clarify whether a jurisdictional element requiring only a *de minimis* connection to interstate commerce, such as 18 U.S.C. § 922(g)'s requirement that a prohibited person possess a firearm "in or affecting commerce," is sufficient to bring a purely local, non-economic criminal offense within Congress' powers under the Commerce Clause.

A. This Court's Constitutional Precedents Make Clear That Congress May Only Regulate Non-economic Intrastate Criminal Activity If That Activity "Substantially Affects" Interstate Commerce.

Article I, § 8, cl. 3, of the United States Constitution grants Congress the power "[t]o regulate Commerce ... among the several States." In *United States v. Lopez*, 514 U.S. 549 (1995), the Court surveyed the history of this Court's Commerce Clause jurisprudence and identified three broad categories of activities which Congress may regulate pursuant to that power. First, "Congress may regulate the use of the channels of interstate commerce." *Id.* at 558. Second, Congress may "regulate and protect the instrumentalities of interstate commerce, or persons and things in interstate commerce." *Id.* Third, and relevant here, Congress may regulate "those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce." *Id.* at 558-559 (citations omitted).

With respect to this third category, the Court acknowledged that its case law "ha[d] not been clear whether an activity must 'affect' or 'substantially affect' interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause." *Id.* at 559. The Court concluded that the proper analysis is whether the targeted activity substantially affects interstate commerce. *Id.*

Applying this "substantial effects" test, the Court held that the Gun-Free School Zones Act of 1990, formerly codified at 18 U.S.C. § 922(q), exceeded Congress' power. *Lopez*, 514 U.S. at 549. The Court found that § 922(q) was "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." *Lopez*, 515 U.S. at 561. It was "not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Id.* at 561. The Court found no congressional findings regarding the impact of intrastate firearms possession on interstate commerce. *Id.* at 562. And, significantly for present purposes, the Court found that the statute contained "no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." *Id.* at 561.[1]

[1] The Court contrasted § 922(q) to the statute reviewed in *United States v. Bass*, 404 U.S. 446 (1971), *i.e.,* 18 U.S.C. App. § 1202(a) (repealed), which applied to a person with a felony conviction who "receives, possesses, or transports in commerce

The Court rejected the government's argument that "the presence of guns in schools poses a substantial threat to the educational process" by threatening the learning environment, which would in turn result in a "less productive citizenry" and "have an adverse effect on the Nation's economic well-being." *Id.* at 564. The government conceded that such reasoning would allow Congress to "regulate not only violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce." *Id.* Following such reasoning, the Court found it "difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign." *Id.* To accept the government's arguments would "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States"; "require [the Court] to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated"; and accept "that there will never be a distinction between what is truly national and what is truly local." *Id.* at 567-68 (citations omitted). "This" the Court was "unwilling to do." *Id.* at 568.

The Court again "reject[ed] the argument that Congress may regulate

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or affecting commerce ... any firearm." *Id.* at 337. The government had interpreted § 1202(a) to ban all possessions of firearms by convicted felons, and thus made no attempt to prove a connection to commerce in the defendant's case. The Court held that the statutory phrase "in commerce or affecting commerce" applied to "all three antecedents in the list," and that the government was thus required to prove an individual connection to commerce in every case. *Id.* at 339. The Court thus vacated the defendant's conviction on statutory grounds, and did "not reach the question whether, upon appropriate findings, Congress can constitutionally punish the 'mere possession' of firearms." *Id.* at 339 n.4.

noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," in *United States v. Morrison*, 529 U.S. 598, 617-18 (2000). In *Morrison*, the Court held that part of Violence Against Women Act, which created a civil remedy based on intra-state gender-related violence, exceeded Congress' power under the Commerce Clause. The Court reiterated that "[t]he Constitution requires a distinction between what is truly national and what is truly local." *Id.* at 618. "The regulation and punishment of interstate violence that is not directed at instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States." *Id.* "Indeed," the Court could "think of no better example of the police power, which the Founders denied to the National Government and reposed within the States, than the suppression of violent crime and vindication of its victims." *Id.* (footnote omitted).

That same term, in Dewey *Jones v. United States*, 529 U.S. 848, 855 (2000), the Court held that a private dwelling had not been "used, in any activity affecting commerce," within the meaning of the federal arson statute, 18 U.S.C. § 844(i), when its owner "used" the residence as collateral for a loan, and to obtain an insurance policy. The requirement that the building be "used" in an activity affecting commerce, the Court held, was "most sensibly read to mean active employment for commercial purposes, and not merely a passive, passing, or past connection to commerce." *Id.* at 855. While decided as a matter of statutory construction, the Court found that its interpretation was appropriate, "[g]iven the concerns brought to the fore in *Lopez*," and the constitutional questions that would arise if the "'traditionally local criminal conduct,' in which petitioner Jones engaged," were rendered "a matter for federal enforcement." *Jones*, 529 U.S. at 858 (citation omitted).

Under the Court's precedents, Congress may regulate "purely local activities" only when they are "part of an economic 'class of activities' that have a substantial effect on commerce." *See Gonzales v. Raich*, 545 U.S. 17 (2005) (holding that Congress' "power to regulate intrastate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally," and rejecting the respondents' argument that their individual actions should be exempted from a broader regulatory statute). In other words, when "a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequences." *Id.* (citing, *e.g.*, *Lopez*, 517 U.S. at 558) (internal quotation marks and further citation omitted).

But the same rule does not apply to traditional criminal statutes. The federal felon-in-possession statute, 18 U.S.C. § 922(g), is in no way a "general regulatory statute" akin to the Controlled Substances Act at issue in *Raich*, or the Agricultural Adjustment act of 1938, upheld by the Court in *Wickard v. Filburn*, 317 U.S. 111 (1942). Like § 922(q), which was invalidated by this Court nearly 30 years ago, § 922(g) "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." *Lopez*, 514 U.S. at 561 (footnote omitted). Under the "substantial effects" test applied in *Lopez*, § 922(g)—which requires only a *de minimis* connection to commerce—fails constitutional muster.

B. The courts of appeals continue to apply an unconstitutional "minimal nexus" test, based on pre-*Lopez* statutory rulings.

The courts of appeals have continued to affirm the constitutionality of § 922(g) following *Lopez*, however, based on the statutory element requiring proof that the defendant possessed the firearm "in or affecting commerce." In Mr. Jones' case, the court relied on *United States v. McAllister,* 77 F.3d 387, 389 (11th Cir. 1996), in which the Eleventh Circuit first held that § 922(g) was materially distinguishable from § 922(q), based on this jurisdictional element. The court reasoned that *Lopez* "relied on the fact that [§ 922(q)] 'by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms.'" *McAllister*, 77 F.3d at 389 (citing *Lopez*, 514 U.S. at 561). "In contrast, § 922(g) makes it unlawful for a felon to possess 'in or affecting commerce,' any firearm or ammunition." *Id*.

The fact that § 922(g)'s "in or affecting commerce" element has been interpreted to require only a *minimal* nexus to commerce did not change the analysis. *See McAllister*, 77 F.3d at 389-90. Instead, the Eleventh Circuit wrote that "McAllister misunderstands the scope of *Lopez*." *Id*. at 390. Unlike § 922(q), which the Court held was "not an essential part of a larger regulation of economic activity," the Eleventh Circuit found that § 922(g) was "an attempt to regulate guns that have a connection to interstate commerce." *Id*. The court further reasoned that "[w]hen viewed in the aggregate, a law prohibiting the possession of a gun to a felon stems the flow of guns to interstate commerce." *Id*. The court thus concluded that "[n]othing in *Lopez* suggests that the 'minimal nexus' test should be changed." *Id*. at 390.

This Court's subsequent express rejection of the "aggregate effects" theory, on which the *McAllister* Court relied, did not move the dial. Following the Court's decision in *Morrison*, the Eleventh Circuit wrote: "In *McAllister*, we relied on the jurisdictional element of § 922(g) to sustain the statute after *Lopez*. *Morrison* does not compel us to reach a different conclusion." *United States v. Scott*, 263 F.3d 1270, 1273 (11th Cir. 2001).

Other circuits have similarly ruled. *See United States v. Santiago*, 238 F.3d 213, 216 (2d Cir. 2001) ("Unlike the statutes at issue in either *Lopez* or *Morrison*, § 922(g) includes an express jurisdictional element requiring the government to provide evidence in each prosecution of a sufficient nexus between the charged offense and interstate or foreign commerce."); *United States v. Wells*, 98 F.3d 808, 811 (4th Cir. 1996) ("The existence of this jurisdictional element . . . distinguishes *Lopez* and satisfies the minimal nexus required for the Commerce Clause") (citation omitted); *United States v. Bell*, 70 F.3d 495, 498 (7th Cir. 1995) ("Section 922(g)(1) does not suffer from the same infirmities. It contains an explicit requirement that a nexus to interstate commerce be established."); *United States v. Bates*, 77 F.3d 1101, 1104 (8th Cir. 1996) ("section 922(g) contains the same type of 'express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce'") (citation omitted);

United States v. Dorris, 236 F.3d 582, 586 (10th Cir. 2000) ("The jurisdictional element of § 922(g)(1) puts it into a different category of analysis than the laws considered in *Lopez* and *Morrison*."). *See also Fraternal Order of Police v. United States*, 173 F.3d 898, 907 (D.C. Cir. 1999) ("We join all the numbered circuits . . . in rejecting this argument because § 922(g)(9) contains a 'jurisdictional element': in any prosecution under the provision for possession, the government must prove that the defendant possessed the firearm 'in or affecting commerce.'") (footnote omitted) (collecting cases).

These courts have found their analysis supported, if not required, by *Scarborough v. United States*, 431 U.S. 563, 577 (1977). In *Scarborough*, the Court held that proof that a firearm had previously traveled in interstate commerce was sufficient to prove, under 18 U.S.C. App. § 1202(a) (repealed), that the defendant possessed the firearm "in commerce or affecting commerce." The Court found that "Congress intended 'no more than a minimal nexus requirement.'" *Id.* at 577.

Scarborough was decided as a matter of statutory construction. The precise issue before the Court was "whether proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the statutorily required nexus between the possession of a firearm by a convicted felon and commerce." *Id.* at 564. And, tellingly, at no point in the *Lopez* opinion's exhaustive survey of the Court's Commerce Claus precedents, does the case even mention *Scarborough*.

Nonetheless, the courts of appeals have relied on *Scarborough* to hold that

§ 922(g), and statutes containing similar jurisdictional elements, are exempt from *Lopez*' three-category framework. *See United States v. Cardoza*, 129 F.3d 6, 11 (1st Cir. 1997) ("where a federal criminal statute contains a jurisdictional element requiring proof that an object was 'in or affecting' commerce, the government need only meet the 'minimal nexus' test enunciated in *Scarborough v. United States*, 431 U.S. 563, 577 ... (1977)."); *Santiago*, 238 F.3d at 216 ("pre-*Lopez* case law makes clear that § 922(g) only requires a 'minimal nexus' between possession of a firearm and interstate commerce"); *United States v. Gateward*, 84 F.3d 670, 671 (3d Cir. 1996) ("We do not understand *Lopez* to undercut the *Bass*/*Scarborough* proposition that the jurisdictional element 'in or affecting commerce' keeps the felon firearm law well inside the constitutional fringes of the Commerce Clause."); *United States v. Napier*, 233 F.3d 394, 401 (6th Cir. 2000) ("Nothing in *Jones* suggests that the Supreme Court is backing off its opinion that § 1202(a), the predecessor of § 922(g)(1), required only 'the minimal nexus that the firearm have been, at some time, in interstate commerce.'") (citing *Scarborough*, 431 U.S. at 575).

Some courts have expressly held themselves "bound by *Scarborough*." *See United States v. Patton*, 451 F.3d 615, 636 (10th Cir. 2006) ("Like our sister circuits, we see considerable tension between *Scarborough* and the three-category approach adopted by the Supreme Court in its recent Commerce Clause cases, and like our sister circuits, we conclude that we are bound by *Scarborough*, which was left intact by *Lopez*."); *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996) (Garwood, J., specially concurring) ("While *Scarborough* addresses only questions of statutory construction, and does not expressly purport to resolve any constitutional issue, the language of the opinion and the affirmance of the conviction there carry a strong enough implication of constitutionality to now bind us, as an inferior court, on that issue in this essentially indistinguishable case."). Importantly, these Courts have reasoned that "[a]ny doctrinal inconsistency between *Scarborough* and [this] Court's more recent decisions is not for [the lower courts] to remedy." *See Patton*, 451 F.3d at 636. *See also United States v. Safeeullah*, 453 F. App'x 944, 948 n.2 (11th Cir. 2012) ("If the minimal nexus test is wrong, it is for the Supreme Court to say so."); *United States v. Cortes*, 299 F.3d 1030, 1036 n.2 (9th Cir. 2002) ("Until the Supreme Court tells us otherwise, however, we follow *Scarborough* unwaveringly."); *United States v. Lemons,* 302 F.3d 769, 773 (7th Cir. 2002) ("If, indeed, *Lopez*'s rationale calls into doubt our construction and application of section 922(g)(1), it is for the Supreme Court to so hold.").

Some judges, however, disagree. In 2010, four judges of the Ninth Circuit dissented from the denial of rehearing in a case involving a constitutional challenge to a statute prohibiting the possession of body armor, 18 U.S.C. § 931, which had been upheld based on a jurisdictional element similar to that in § 922(g). *See United States v. Alderman*, 593 F.3d 1141 (9th Cir. 2010) (O'Scannlain, J., dissenting from the order denying rehearing en banc). Judge O'Scannlain wrote that "[t]he majority's opinion makes *Lopez* superfluous. When the case reached this Court, Justice Thomas echoed these concerns in an opinion dissenting from the denial of certiorari. *Alderman v. United States*, 562 U.S. 1163 (2011) (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari). As the opinions of the courts of appeals makes clear, however, "[i]f the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent that does not squarely address the constitutional issue." *Id.*

C. The decision below is wrong.

The decision below cannot be squared with *Lopez*' constitutional rule. As Judge Garwood wrote in *Rawls*, "[i]f the matter were *res nova*, one might well wonder how it could rationally be concluded that the mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm had, perhaps decades previously before the charged possessor was even born, fortuitously traveled in interstate commerce." 85 F.3d at 243 (Garwood, J., specially concurring). "It is also difficult to understand how a statute construed never to require any but such a per se nexus could "ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce."" *Id.* (citing *Lopez*, 514 U.S. at 561). Obviously, it cannot.

The circuit courts are wrong, however, to conclude that their continued adherence to *Scarborough* is required. As another Fifth Circuit judge recognized, *Lopez* was "a fundamental and landmark restatement and redefinition of the powers of Congress under the Commerce Clause." *United States v. Kuban,* 94 F.3d 971, 977

(5th Cir. 1996) (DeMoss, J., dissenting in part). "[T]he precise holding in *Scarborough* is in fundamental and irreconcilable conflict with the rationale of" *Lopez*," and "the 'minimal nexus' of *Scarborough* can no longer be deemed sufficient under the *Lopez* requirement of substantially affecting interstate commerce." *Id*. at 977-78.

This case is a perfect example of *Scarborough's* fundamental and irreconcilable tension with *Lopez* and its progeny. The only evidence in the record, of any connection to interstate commerce, was the stipulation in the factual proffer that the firearm and ammunition had been manufactured outside the State of Florida, and had, therefore, traveled in interstate commerce at some undetermined time before they came into Mr. Jones' possession (in Florida). This is plainly insufficient to show a substantial effect on interstate commerce, and the conviction should be vacated.

D. The issue is important, timely, and worthy of the Court's review.

It has been nearly three decades since this Court's landmark ruling in *Lopez*. Yet the tension between *Lopez* and *Scarborough* continues to vex the circuit courts and wreak confusion in the law.

Previously, seven judges of the Fifth Circuit voted in favor of rehearing en banc the same constitutional challenge to § 922(g) presented herein. *See United States v. Seekins*, 52 F.4th 988 (5th Cir. 2022), *cert. denied*, No. 22-6853 (Jun. 26, 2023). In an opinion dissenting from the denial of rehearing en banc, Judge Ho offered another reason why this Court's review is warranted:

> Americans disagree passionately over a wide range of issues—including a variety of criminal justice issues, such as whether felons should be punished for possessing firearms. . . .
>
> In these sharply divided times, I can think of no better moment to reaffirm our Founders' respect for diverse viewpoints and restore the proper constitutional balance between our national needs and our commitment to federalism.

See id. at 988 (Ho, J., dissenting from denial of rehearing en banc).

This argument has particular force with respect to § 922(g). In today's society, virtually all firearms and ammunition (among a host of other products) will have been manufactured, or contain component parts that had been manufactured, in another state. If such a tenuous connection is sufficient to render the possession "in or affecting commerce," then is truly no difference between what is national and what local. These concerns remain vital to preserving the balance of federalism. *See United States v. Hemani,* 146 S.Ct. 1677, 1694-98 (2026) (Thomas, J., concurring). Because the ruling below is out of step with this Court's constitutional holdings, certiorari review is warranted.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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