

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMAAL HAMEEN,
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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QUESTIONS PRESENTED

I. In *Erlinger v. United States*, 602 U.S. 821 (2024), this Court held that the Fifth and Sixth Amendments require the government to prove the Armed Career Criminal Act’s (“ACCA”) complex different-occasions requirement to a jury beyond a reasonable doubt. Is *Erlinger* error structural?

II. The Eleventh Circuit determined *Erlinger* error was harmless in Petitioner Jamaal Hameen’s case by relying on contested facts from the Presentence Investigation Report (“PSR”) that were not admitted at trial and were not adopted by the district court at sentencing. Did the appellate court err by conducting harmless-error review based on these facts?

III. To determine whether a prior state conviction qualifies as an ACCA predicate, federal courts take a categorical approach and consider the elements of the state offense. When Mr. Hameen was convicted of aggravated assault, Florida appellate courts affirmed such convictions for reckless conduct. Decades *after* Mr. Hameen’s conviction, the Florida Supreme Court decided this offense required at least knowing conduct. Did the Eleventh Circuit err in relying on a Florida Supreme

Court decision issued decades after Mr. Hameen’s state conviction to decide his aggravated assault was an ACCA predicate?¹

IV. Does 18 U.S.C. § 922(g)(1) exceed Congress’s authority under the Commerce Clause, facially and as applied to Mr. Hameen’s intrastate firearm possession?²

¹ The question of whether federal courts should consult state decision in place at the time of a defendant’s prior conviction or the most recent state court decision to determine the elements of a prior conviction for purposes of applying ACCA’s category approach is pending in *Leland v. United States*, No. 25-12739 (response requested on Aug. 19, 2026).

² This Commerce Clause question is pending in *Stewart v. United States*, No. 26-5131 (response filed Sept. 21, 2026); and *Antunez-Galarza v. United States*, No. 26-5188 (response filed Sept. 30, 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

Jamaal Hameen

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. Hameen, No. 3:18-cr-115, U.S. District Court for the Middle District of Florida. Judgment entered Oct. 17, 2019.

United States v. Hameen, No. 19-14044, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Dec. 27, 2019.

United States v. Hameen, No. 19-14047, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Dec. 27, 2019.

United States v. Hameen, No. 19-14051, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Dec. 27, 2019.

United States v. Hameen, No. 19-14052, U.S. Court of Appeals for the Eleventh Circuit. Dismissal entered Dec. 27, 2019.

United States v. Hameen, No. 19-14053, U.S. Court of Appeals for the Eleventh Circuit. Dismissal entered Dec. 27, 2019.

United States v. Hameen, No. 19-14054, U.S. Court of Appeals for the Eleventh Circuit. Dismissal entered Dec. 27, 2019.

RELATED PROCEEDINGS – CONT.

United States v. Hameen, No. 19-14055, U.S. Court of Appeals for the Eleventh Circuit. Dismissal entered Dec. 27, 2019.

United States v. Hameen, No. 19-14056, U.S. Court of Appeals for the Eleventh Circuit. Dismissal entered Dec. 27, 2019.

**United States v. Hameen*, No. 19-14279,³ U.S. Court of Appeals for the Eleventh Circuit. Judgment entered April 22, 2026.

United States v. Hameen, No. 20-11363, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Mar. 31, 2021.

United States v. Hameen, No. 20-12054, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Mar. 31, 2021.

United States v. Hameen, No. 20-14169, U.S. Court of Appeals for the Eleventh Circuit. Dismissal entered Feb. 17, 2021.

United States v. Hameen, No. 22-12968, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered April 22, 2026.

United States v. Hameen, No. 23-12234 U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Feb. 6, 2024.

Hameen v. United States, No. 23-6579, U.S. Supreme Court. Judgment entered July 2, 2024.

³ This petition for writ of certiorari derives from Appeal No. 19-14279.

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PETITION FOR A WRIT OF CERTIORARI

Jamaal Hameen 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 order denying Mr. Hameen's timely filed petition for rehearing en banc is provided in **Appendix A**. The Eleventh Circuit's unpublished opinion affirming Mr. Hameen's conviction on remand is provided as **Appendix B**. This Court's order granting a petition for certiorari review, vacating the judgment below, and remanding for further proceedings is provided as **Appendix C**. The Eleventh Circuit's original unpublished decision is provided as **Appendix D**.

JURISDICTION

The Eleventh Circuit's opinion and judgment was entered on April 22, 2026. The Eleventh Circuit denied Mr. Hameen's petition for rehearing en banc on July 8, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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.

The Fifth Amendment to the United States Constitution states that “no person shall be . . . deprived of life, liberty, or property without due process of law.” U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution states in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation . . .” U.S. Const. amend. VI.

Section 922(g)(1) of Title 18 of the United States Code states that it is “unlawful for any person . . . [w]ho 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.”

Section 924(e) of Title 18 of the United States Code (Armed Career Criminal Act) states:

- (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years
- (2) As used in this subsection—
 - (B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year...that—
 - (i) has as an element the use, attempted use, or threatened use of physical force against the person of another. . . .

INTRODUCTION

Petitioner Jamaal Hameen is a lifelong Florida resident, except for his time in the United States Air Force. He struggled with substance abuse, especially after a work injury permanently injured his right, dominant, hand. Mr. Hameen has a string of state convictions, but they are all relatively minor—before this instant case he had never served more than a three-year sentence.

In 2018, Mr. Hameen was arrested for trespassing after he got into an argument with a motel manager outside of a motel. During the arrest, a handgun fell to the ground.

A jury convicted Mr. Hameen of possessing a firearm as a felon. The judge found he qualified for ACCA’s enhanced statutory penalties, giving him a 15-year mandatory minimum sentence. This petition raises important issues about his conviction and sentence:

I. The government must prove ACCA’s different-occasions requirement to a unanimous jury beyond a reasonable doubt. *Erlinger v. United States*, 602 U.S. 821 (2024). In *Erlinger*, this Court decided that it could not say what a jury presented with reliable information might find about whether the defendant had committed his prior offenses on different occasions. Mr. Hameen’s petition presents a question *Erlinger* left open: Is *Erlinger* error structural?

Erlinger error’s unique features—including the lack of a trial record and the multi-factored nature of the inquiry—demonstrate *Erlinger* error is structural. Yet the Eleventh Circuit here rejected that conclusion, applying harmless-error review in blind reliance on distinguishable case law.

II. Even if *Erlinger* error is subject to harmless review, the Eleventh Circuit improperly conducted it here. It used contested PSR “facts”—not admitted to at trial and unadopted by the district court at

sentencing—to find that the *Erlinger* error was harmless. This compounded the constitutional error that the district court made and violated Mr. Hameen’s Fifth and Sixth Amendment rights.

III. The district court determined Mr. Hameen qualified for ACCA because of a 1990 Florida aggravated assault conviction. At the time, Florida intermediate appellate courts affirmed such convictions for reckless conduct. And, since Mr. Hameen’s sentencing, this Court has decided that reckless offenses are not ACCA predicates.

Yet the Eleventh Circuit affirmed Mr. Hameen’s ACCA sentence because the Florida Supreme Court held—decades *after* Mr. Hameen’s conviction—that Florida aggravated assault needed at least knowing conduct. The Sixth Circuit follows this approach. But several circuits employ a contrary practice requiring federal courts to consult state court decisions pre-dating a defendant’s prior state conviction.

In addition to conflicting with other circuits, the Eleventh Circuit’s approach violates both this Court’s precedent and Mr. Hameen’s constitutional ex post facto and due process rights. This Court has made abundantly clear that federal courts must look to the law in effect at the time of the prior state conviction. That precedent controls here. Also, the

Eleventh Circuit's approach is akin to expanding criminal statutes and applying them retroactively in violation of ex post facto and due process.

IV. Mr. Hameen's statute of conviction—18 U.S.C. § 922(g)(1)—is a frequently charged federal offense. Yet the federal government relies on purely intrastate conduct—the possession of a firearm—to prosecute individuals like Mr. Hameen. The district court denied Mr. Hameen's motion to dismiss the indictment for violating the Commerce Clause as foreclosed by Eleventh Circuit precedent.

The courts of appeals are intractable on this issue, despite Justice Thomas and multiple federal judges pointing out the serious constitutional problem with the federal government prosecuting intrastate conduct like possessing a firearm. Mr. Hameen's case presents an ideal vehicle for this Court to finally address this.

STATEMENT OF THE CASE

1. Mr. Hameen's offense was local. In February 2018, deputies with the county sheriff's office arrested Mr. Hameen for trespassing after they saw him arguing with a motel manager outside a motel in Duval

County, Florida. Doc. 347 at 35-36.⁴ During the arrest, a handgun fell from under Mr. Hameen's jacket. *Id.* at 45-46.

2. The federal government prosecuted Mr. Hameen under 18 U.S.C. § 922(g)(1), alleging that he, a felon, possessed the firearm "in and affecting interstate commerce." Doc. 1 at 2.

3. Mr. Hameen represented himself and moved to dismiss the indictment, arguing that 18 U.S.C. § 922(g)(1) exceeds Congress's authority under the Commerce Clause, facially and as applied to his purely intrastate possession of the firearm. Doc. 29 at 9; Doc. 49 at 9-10; Doc. 80 at 30, 33-34, 43. At a hearing on Mr. Hameen's motion, the district court explained that precedent foreclosed his argument. Doc. 80 at 33-34 (citing *United States v. McCalister*, 77 F.3d 387 (11th Cir. 1996), and *United States v. Scott*, 263 F.3d 1270 (11th Cir. 2001)).

4. Mr. Hameen proceeded to trial. Doc. 52.

A Bureau of Alcohol, Tobacco, Firearms & Explosive agent testified that the gun that came out of Mr. Hameen's jacket during his arrest was manufactured in California. Doc. 347 at 33, 43, 52, 54, 173, 176.

⁴ "Doc." references the district court docket entries. "App. Doc." references the appellate court docket entries.

Mr. Hameen testified to certain details of some past convictions. Relevant here, Mr. Hameen said that on April 8, 2008, he was convicted of the sale or delivery of cocaine. Doc. 348 at 63. On March 17, 2017, he was convicted of the sale or delivery of heroin. *Id.* at 64. He said that he helped people obtain drugs so that he could get high as well when he was sick. *Id.* at 68. He had injured his hand at work, had eight operations trying to restore its function, and had been prescribed pain medication for almost ten years. *Id.* at 25-26. And he turned to cocaine and heroin for relief. *Id.* He testified to no other details of these convictions.

Mr. Hameen did not testify about an August 3, 1990, aggravated assault conviction and there was no evidence of this conviction admitted at trial.

The jury convicted Mr. Hameen of being a felon in possession of a firearm. Doc. 317.

5. Before sentencing, the United States Probation Office recommended that Mr. Hameen be sentenced under ACCA because of (1) an August 3, 1990, Florida aggravated assault conviction; (2) the April 8, 2008, sale or delivery of cocaine conviction; and (3) the March 17, 2017, sale or delivery of heroin conviction. Probation characterized these

offenses as having been “committed on occasions different than one another.” *See* Doc. 454 (Presentence Investigation Report) ¶ 18.

Probation included the following details about these offenses:

- (a) Aggravated Assault – Deadly Weapon (Count One), Duval County Circuit Court, Case No. 90CF3345, committed on February 27, 1990;
- (b) Sale or Delivery of Cocaine, Duval County Circuit Court, Case No. 08CF1924, a serious drug offense, committed on February 6, 2008; and
- (c) Sale or Delivery of Heroin, Duval County Circuit Court, Case No. 16CF6066, committed on April 26, 2016.

Id.

5. Mr. Hameen objected to the (1) details of these offenses, and (2) ACCA enhancement. Doc. 365 at 2-3, 6; Doc. 366 at 37, 39, 40; Doc. 367 at 7, 10-11; Doc. 454 at 48; Doc. 475 at 9-10, 17, 54. He argued that (1) the details of the offenses were not accurate; and (2) applying the ACCA enhancement without a jury finding violated his Sixth Amendment right.

Id.

6. At sentencing, the government admitted—over Mr. Hameen’s objection—the state court judgments for Mr. Hameen’s aggravated assault, sale or delivery of cocaine, and sale or delivery of heroin. Docs. 450-2, 450-7, 450-16; Doc. 476 at 38-40, 98. These documents contained

the date of conviction, the statute Mr. Hameen was convicted of violating, that the convictions had taken place in Duval County, and Mr. Hameen's sentence. Docs. 450-2, 450-7, 450-14. They did not include any other offense details, including the date that the offenses were committed. *Id.*

The district court did not adopt the facts in the PSR. Docs. 475, 476. It stated, "Mr. Hameen has generally objected to the criminal history in the presentence report. And to the extent that Mr. Hameen is relying on the inclusion of arrest and booking information, the Court doesn't need to resolve that objection because the Court need not consider the specifics of the various offenses in reaching its determination." Doc. 476 at 63. The district court found ACCA applied based on the state court judgments and sentenced Mr. Hameen to 180 months' imprisonment. Doc. 476 at 86, 101, 125-127; Doc. 451 at 2.

7. Mr. Hameen appealed. He renewed his Commerce Clause challenge, argued that his aggravated assault conviction was not an ACCA violent felony, and renewed his constitutional challenge to ACCA's different-occasions element. App. Doc. 61 at 56-58, 63-65, 72-73. The Eleventh Circuit affirmed Mr. Hameen's sentence. App. Doc. 124-1 at 21-23, 30-31. It found these issues were foreclosed by Eleventh Circuit and

this Court's precedent. *Id.*

Mr. Hameen filed a petition for writ of certiorari to this Court. App. Doc. 135. While his petition was pending, this Court decided *Erlinger*, vindicating his constitutional challenge to ACCA's different-occasions element. This Court granted Mr. Hameen's petition, vacated the judgment, and remanded his case to the Eleventh Circuit for further consideration given *Erlinger*. App. Doc. 142.

Mr. Hameen filed supplemental briefing. App. Doc. 149. He argued *Erlinger* error occurred, it was structural requiring reversal, and, even if harmless-error review applied, the government could not prove harmlessness. *Id.* The government also filed supplemental briefing. App. Doc. 152. It agreed *Erlinger* error had occurred but argued the error was subject to harmless-error review and was harmless. *Id.* Mr. Hameen replied, countering the government's claims. App. Doc. 155.

8. The Eleventh Circuit affirmed. App. Docs. 175, 179. It agreed *Erlinger* error occurred. App. Doc. 179-1 at 6. It rejected Mr. Hameen's argument that *Erlinger* error was structural as foreclosed by prior circuit precedent. *Id.* It decided the error was harmless because of the time between offenses, citing the contested PSR facts—not admitted at trial

and unadopted sentencing—for the dates the offenses were committed. *Id.* at 6-8. The Eleventh Circuit also reinstated its original opinion on Mr. Hameen’s Commerce Clause and aggravated assault challenges. *Id.* at 3.

9. Mr. Hameen filed a petition for rehearing focused on the impropriety of his ACCA sentence, including the structural error issue and the Eleventh Circuit’s reliance on contested PSR “facts” not admitted at trial and unadopted at sentencing to conduct harmless-error review. App. Doc. 184-1. The Eleventh Circuit denied it. App. Doc. 186.

REASONS FOR GRANTING THE WRIT

I. This Court’s review is warranted on the *Erlinger* questions.

This petition presents two critical *Erlinger* questions. Under bedrock Fifth and Sixth Amendment principles, a defendant cannot be subject to ACCA’s increased penalties unless the government proves to a jury beyond a reasonable doubt that the defendant’s three predicate convictions had been “committed on occasions different from one another.” *Erlinger*, 602 U.S. at 830–35. This Court should grant review to decide whether *Erlinger* error is structural and, if not, whether an appellate court may rely on contested PSR facts—not admitted at trial and unadopted at sentencing—to find harmlessness.

A. This Court should grant review to decide whether *Erlinger* error is structural.

The Eleventh Circuit erred in reviewing the *Erlinger* error in Mr. Hameen’s case for harmlessness. Mr. Hameen presents an ideal illustration of why *Erlinger* error is structural.

Courts face inherent uncertainty in attempting to review *Erlinger* error. The *Erlinger* Court implicitly highlights this: it could not say whether a hypothetical jury would have found different occasions. *Erlinger*, 602 U.S. at 835. The only thing the *Erlinger* Court could say “for certain” is that the district court erred “in taking th[e] decision from a jury of Mr. Erlinger’s peers.” *Id.*

This uncertainty makes sense. *Wooden*’s multifactored test is “unpredictable”; it will lead to different results on similar facts, such that “reasonable doubts about its application will arise often.” 595 U.S. at 385, 397 (Gorsuch, J., concurring); accord *Erlinger*, 602 U.S. at 821 (discussing holistic nature of different-occasions test). The impact of the “different occasions” constitutional error is inherently unquantifiable.

Moreover, there generally will be no trial record on ACCA’s requirements. As Justice Gorsuch asked at oral argument in *Erlinger*, “How do you do harmless-error review when you don’t have a trial

record?” Oral Arg. Tr. at 28. Courts cannot. Without a trial record or admission at the plea hearing, there is no evidentiary support for the different-occasions finding, let alone proof beyond a reasonable doubt. *See Thompson v. Louisville*, 362 U.S. 199, 204, 206 (1960) (holding that conviction based on record devoid of evidentiary support violates due process); *Erlinger*, 602 U.S. at 830 (discussing “ancient rule” that government must prove each of its charges “beyond a reasonable doubt”); *In re Winship*, 397 U.S. 358, 364 (1970).

Without a trial record, courts are left to conduct harmless-error review only on—at best—*Shepard*⁵ documents introduced at sentencing. These are of limited utility, inherently unreliable, and pose serious due process problems. *See Erlinger*, 602 U.S. at 841–42. What’s more, *Erlinger* recognized that using *Shepard* documents to find “different occasions” violates the basic principle of “fair notice.” 602 U.S. at 841. Imposing ACCA based on *Shepard* documents is thus fundamentally unfair, suggesting structural error. *Accord McCoy v. Louisiana*, 584 U.S.

⁵ *Shepard v. United States*, 544 U.S. 13 (2005). Worse, appellate courts conduct harmless-error review using even less reliable sources like arrest and booking reports. The Eleventh Circuit did that in Mr. Hameen’s case when it used contested facts in Mr. Hameen’s PSR based on these unreliable sources.

414, 427 (2018) (“An error might also count as structural . . . where the error will inevitably signal fundamental unfairness.”).

Given these inherent issues, *Erlinger* error must be structural. As this Court has explained, when deprivation of the jury trial right has “consequences that are necessarily unquantifiable and indeterminate” it “unquestionably . . . qualifies as ‘structural error.’” *Sullivan v. Louisiana*, 508 U.S. 275, 281–82 (1993); *see also United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (holding denial of right to choose counsel is structural error for the same reason). Harmless-error review for *Erlinger* error would be fundamentally unfair and require appellate speculation, which the Constitution does not countenance.

Mr. Hameen’s case is illustrative. Mr. Hameen went to trial but only limited evidence of two ACCA predicates was admitted; there was no evidence of his aggravated assault conviction. At sentencing, Mr. Hameen contested PSR facts, which the district court did not adopt. Rather, the district court used only the state court judgments, which contained few details of his alleged predicate offenses, to decide different occasions existed and violate Mr. Hameen’s constitutional rights.

This *Erlinger* error was compounded by the Eleventh Circuit’s review for harmlessness. And the Eleventh Circuit is not alone; the Fifth and Sixth Circuits have also held that *Erlinger* errors are subject to harmless-error analysis. See *United States v. Butler*, 122 F.4th 584, 589 (5th Cir. 2024); *United States v. Campbell*, 122 F.4th 624, 630–31 (6th Cir. 2024), *cert. denied*, 146 S. Ct. 248 (2025).

In sum, *Erlinger* errors are not amenable to harmless-error review. But unless and until this Court clarifies they are structural, defendants face harsh mandatory minimum sentences despite a complete denial of their jury trial right on ACCA’s enhancement—and often based on insufficient and unreliable allegations in documents from decades-old proceedings. The Court should grant review on this important issue.

B. If *Erlinger* error is reviewed for harmlessness, this Court should make clear that appellate courts cannot rely on contested PSR facts—not admitted at trial and unadopted at sentencing—to affirm an ACCA sentence imposed in violation of *Erlinger*.⁶

The Eleventh Circuit explicitly affirmed Mr. Hameen’s ACCA sentence imposed in violation of *Erlinger* because “the information

⁶ If this Court holds that *Erlinger* error is structural, it need not decide this issue.

contained in the PSR demonstrates that the error here was harmless.” App. Doc. 179-1 at 8. But Mr. Hameen objected to the PSR facts, including those about his past offenses, they were not admitted at trial, and the district court did not adopt them at sentencing. Even if *Erlinger* error is reviewed for harmlessness, appellate courts cannot rely on such contested facts; this compounds the *Erlinger* error and violates a defendant’s Fifth and Sixth Amendment rights.

First, harmless-error review should be limited to the trial record. A court “cannot affirm a criminal conviction based on a theory not contained in the indictment or not presented to the jury.” *United States v. Ross*, 131 F.3d 970, 980 (11th Cir. 1997) (citation omitted); *see also Yates v. Evatt*, 500 U.S. 391, 404–06 (1991), *overruled on other grounds by Estelle v. McGuire*, 502 U.S. 62, 71 n.4 (1991) (holding that harmless-error inquiry is limited to a review of the evidence the jury considered); *Delaware v. Van Arsdall*, 375 U.S. 673, 681, 684 (1986) (assessing whether violation of confrontation clause right was harmless by reviewing “whole record”—which was limited to evidence admitted at trial); *Neder v. United States*, 527 U.S. 1, 16-20 (1999) (citing *Van Arsdall* and conducting harmless-error review based only on evidence in trial

record).

As Justice Sotomayor explained:

On harmless-error review, defendants have not forfeited any of their rights, including their right to have a jury decide whether there is reasonable doubt as to any element of the crime charged. . . . Incriminating evidence the jury never considered is irrelevant to that inquiry. . . . Appellate courts cannot find errors harmless simply because they believe that inculpatory evidence the Government never put before the jury (like Greer's presentence report) is sufficient to find the defendant guilty.

Greer v. United States, 593 U.S. 503, 517-18 (2021) (Sotomayor, J., concurring)

In *Erlinger*, this Court recognized that the non-elemental details in *Shepard* documents are unreliable, inadequate, and unfair for a sentencing court's different-occasions analysis, reiterating that such details should not come back to "haunt" a defendant and increase his sentence under ACCA. 602 U.S. at 840-42 (quoting *Mathis v. United States*, 579 U.S. 500, 512 (2016)). A sentencing court's use of *Shepard* documents to find a defendant's offenses occurred on different occasions is "exactly what the Fifth and Sixth Amendments forbid." *Id.* at 840; *see id.* at 832 (explaining these amendments "ensur[e] that the punishments courts issue are not the result of a judicial 'inquisition'").

Because a sentencing court cannot constitutionally use *Shepard* documents to find different occasions, an appellate court cannot use those same unreliable documents to affirm an ACCA sentence without repeating the very same constitutional error committed below. *See, e.g., United States v. Cogdill*, 130 F.4th 523, 541 (6th Cir. 2025) (Clay, J., dissenting) (discussing how reliance on *Shepard* documents would “yield the bizarre result” that the remedy for the trial judge’s constitutional error “is a repetition of the same constitutional violation by the appellate court”) (cleaned up). Thus, harmless-error review should be limited to the trial record—a principle the Eleventh Circuit violated when it affirmed Mr. Hameen’s enhanced sentence based on contested PSR facts not admitted at trial and unadopted at sentencing.

Second, even if harmless-error review could look beyond the trial record, contested PSR “facts”—not admitted at trial and unadopted by the district court at sentencing—cannot be relied on where, as here, the defendant objected to them before the district court and again on appeal. Even the government did not rely on these contested PSR facts to try to show harmlessness. App. Doc. 149 at 13-14; App. Doc. 152 at 15-18. Indeed, it may be one thing to affirm a defendant’s conviction, despite a

denial of his jury-trial right on an element, when the omitted element was “uncontested and supported by overwhelming evidence.” *Neder*, 527 U.S. at 17. But it is quite another to deny a defendant an ACCA different-occasions trial at all and then, on appeal, affirm his sentence by ignoring his *Erlinger*-validated objections that the “facts” on the sentencing record are unreliable and unproven.

But Eleventh Circuit did that here. It affirmed Mr. Hameen’s ACCA sentence by relying on contested PSR facts—not admitted at trial and unadopted by the district court at sentencing—for the dates of his past offenses. Doc. 475 at 23, 54; Doc. 476 at 51-52, 63.

Relying on these contested “facts” to conduct harmless-error review compounds the constitutional error. An *Erlinger* error violates a defendant’s fundamental constitutional rights to have a jury, and not a judge, undertake the complex, holistic, and multifactored analysis to determine whether past convictions were committed on occasions different from one another. That *Erlinger* error exists means a judge has already usurped that role.

When an *Erlinger* error occurs, harmless-error review asks whether the government can show beyond a reasonable doubt that a rational jury

would have found that the defendant’s prior offenses all were committed on occasions different from one another. For a judge to undertake that analysis—the rightful province of the jury—and then rely on contested facts not admitted at trial and unadopted at sentencing to do so compounds the constitutional error. The judge is then not only conducting the analysis but weighing contested evidence—also the rightful province of the jury.

Before *Erlinger*, the Eleventh Circuit (like other circuits) did not permit the government to rely on contested PSR facts to meet its ACCA different-occasions burden at sentencing. *United States v. McCloud*, 818 F.3d 591, 599 (11th Cir. 2016) (disallowing reliance on objected-to PSR paragraphs); *United States v. Kirkland*, 687 F.3d 878 (7th Cir. 2012) (allowing reliance on only *Shepard*-approved documents); *United States v. Delossantos*, 680 F.3d 1217, 1219 n.1 (10th Cir. 2012) (disallowing reliance on contested PSR paragraphs); *United States v. King*, 853 F.3d 267 (6th Cir. 2017) (allowing reliance on only *Shepard*-approved documents). But the Eleventh Circuit nonetheless relied on the contested PSR—even when the government did not—to override the *Erlinger* error, underscoring that its harmless-error review functions as a “judicial

‘inquisition’” that has no place under our Constitution. *Erlinger*, 602 U.S. at 832.

If harmless-error review comports with the Fifth and Sixth Amendments at all, it does so only when the government retains the burden to prove the facts that increase a defendant’s statutory penalties beyond a reasonable doubt as guaranteed by those amendments. The Eleventh Circuit did not hold the government to this burden when it conducted harmless-error review—an admittedly “fact laden task” at that—by relying on contested “facts” not admitted at trial and unadopted by the district court at sentencing. This Court’s review is necessary to confirm that contested PSR facts not admitted at trial and unadopted by the district court at sentencing cannot be used to affirm an ACCA sentence where *Erlinger* error occurred.

II. This Court must decide whether the Eleventh Circuit erred in relying on a state decision made decades *after* Mr. Hameen’s aggravated assault conviction to determine it qualified as an ACCA predicate: circuits are divided, the Eleventh Circuit’s approach is contrary to this Court’s precedent, and the consequences are unjust.

Under ACCA, a “violent felony” “has as an element the use, attempted use, or threatened use of physical force against the person of

another . . .” 18 U.S.C. § 924(e)(2)(B)(i).⁷

Federal courts use the categorical approach to determine if a prior state conviction satisfies this elements clause—looking only to the elements of the prior conviction, not the facts. *See, e.g., Mathis v. United States*, 579 U.S. 500, 509-12 (2016). The elements of a prior state conviction are determined by state law, including decisions by state courts. *See, e.g., Stokeling v. United States*, 586 U.S. 73, 85-86 (2019); *Johnson v. United States*, 559 U.S. 133, 138 (2010).

Mr. Hameen was convicted of Florida aggravated assault in 1990. At that time, Florida intermediate appellate courts held that this could be committed recklessly. *See Somers v. United States*, 15 F.4th 1049, 1054-56 (11th Cir. 2021) (“*Somers I*”) (collecting Florida intermediate appellate court decisions). In *Borden v. United States*, 593 U.S. 420 (2021), this Court held that offenses with a *mens rea* of recklessness do not qualify as ACCA violent felonies under the elements clause.

But the Eleventh Circuit says Florida aggravated assault qualifies

⁷ This case does not involve one of the enumerated “violent felon[ies]” in (ii) and this Court invalidated the “residual clause” in *Johnson v. United States*, 576 U.S. 591 (2015). So only subsection (i)’s elements clause is at issue.

as a violent felony under ACCA here because, decades *after* Mr. Hameen’s conviction, the Florida Supreme Court decided Florida aggravated assault requires at least knowing conduct. *Somers v. United States*, 66 F.4th 890, 896 (11th Cir. 2023) (“*Somers III*”); *Somers v. United States*, 335 So.3d 887, 892-93 (Fla. 2022) (“*Somers II*”). It claimed, “When the Florida Supreme Court interprets a statute, it tells us what that statute always meant. [A defendant] cannot rely on earlier decisions of Florida’s intermediate courts of appeal to avoid this clear holding.” *Somers*, 66 F.4th at 896 (cleaned up).

A. The circuits are split on whether courts should consider judicial interpretations at the time of the prior offense.

The Court should grant review because the circuits are split on this important issue. At least four circuits—the First, Fourth, Seventh, and Eighth—consider judicial interpretations at the time of the prior conviction rather than later decisions. Relying on *McNeill v. United States*, 563 U.S. 816 (2011), the First and Fourth Circuits hold that controlling judicial interpretations of state law at the time of the prior conviction inform the categorical analysis, not later interpretations, even if those later interpretations were by the state’s highest court. *See United States v. Faust*, 853 F.3d 39, 57 (1st Cir. 2017) (concluding that, in

determining whether defendant’s prior Massachusetts conviction for assault and battery on a police officer was “violent felony,” court had to consider elements of offense according to judicial interpretations in place at time of prior conviction); *United States v. Cornette*, 932 F.3d 204, 214–15 (4th Cir. 2019) (declining to consider 1977 and 1980 Georgia Supreme Court decisions interpreting burglary statute because they did not inform elements of crime at time defendant was convicted of burglary; looking instead to intermediate appellate court decisions in place in 1976).

The Eighth Circuit holds the same in the context of determining whether a prior conviction is a “crime of violence” under the Sentencing Guidelines. *See United States v. Roblero-Ramirez*, 716 F.3d 1122, 1126–27 (8th Cir. 2013) (in deciding whether defendant’s prior Nebraska conviction for sudden-quarrel manslaughter was “crime of violence,” looking to highest state-court case law in place at time of prior conviction, not later Nebraska Supreme Court decision that manslaughter required intent because “[t]hat interpretation was not Nebraska law when Roblero-Ramirez was convicted”).

Further deepening the split, the Seventh Circuit has held the exact predicate at issue here—pre-*Somers-II* Florida aggravated assault—is

not a violent felony. In *United States v. Anderson*, 99 F.4th 1106, 1110–13 (7th Cir. 2024), *pet. for panel reh’g denied* Nov. 13, 2024, the Seventh Circuit expressly split from the Eleventh Circuit, holding under plain error review that Florida aggravated assault offenses pre-dating *Somers II* are not “violent felon[ies].”

Anderson started with the bedrock principle that courts must “look to the law at the time of the offense to determine whether a crime is a violent felony under ACCA.” 99 F.4th at 1111 (citing *McNeill*, 563 U.S. at 820). Thus, *Anderson* explained, “the relevant inquiry is whether the law at the time of his conviction was broader than the corresponding federal law.” *Id.* at 1110. And at the time of Anderson’s conviction in 2001, the Seventh Circuit noted, “Florida courts were split on the breadth of the assault statute. Some appellate courts had held that assault could be committed recklessly, while others had reached the opposition conclusion.” *Id.* at 1110–11 (citations omitted).

Anderson rejected the Eleventh Circuit’s reasoning that *Somers II* “tells us what the statute always meant.” *Id.* at 1112 (quoting *Somers III*, 66 F.4th at 896). Under Florida’s approach to statutory interpretation, *Anderson* explained, Florida Supreme Court decisions

“disagreeing with a statutory construct previously rendered by a district court constitute ‘changes’ in the applicable law from the law at the time of the conviction.” *Id.* (quoting *Florida v. Barnum*, 921 So. 2d 513, 528 (Fla. 2005)). Because *Somers II* disagreed with the statutory construct from some of the intermediate appellate courts, *Anderson* reasoned that *Somers II* constituted a “change” in the law that was not retroactive. *Id.* Finally, *Anderson* looked to the state of the law at the time of the defendant’s prior conviction and determined that the decisions of the intermediate appellate courts created a realistic probability that the defendant could have been convicted for reckless conduct. *Id.*

Although *Anderson*’s analysis differed slightly from the First, Fourth, and Eighth Circuits, it reached the same basic conclusion: ACCA requires a backward-looking approach, so the elements of a past conviction must be determined according to law in effect at the time of that conviction, including judicial interpretations. *Id.* at 1111, 1112–13.

Only the Eleventh and Sixth Circuits have held that judicial interpretations in place at the time of the prior conviction are erased by subsequent state court decisions interpreting the statute differently. *See* App. Doc. 124-1 at 23-27; *Somers III*, 66 F.4th at 896; *United States v.*

Delaine, 171 F.4th 880 (6th Cir. 2026). As explained below, this approach is contrary to the principles underlying the categorical approach and ACCA’s backward-looking analysis as applied by this Court in *McNeill* and *Brown v. United States*, 602 U.S. 101 (2024) and violate defendants’ due process rights. Accordingly, this Court should grant certiorari to resolve this important split.

B. The Eleventh Circuit’s approach is contrary to this Court’s precedent.

This Court’s review is also warranted because the Eleventh Circuit’s refusal to consider binding state court case law from the time of Mr. Hameen’s prior convictions conflicts with this Court’s precedent on the categorical approach and ACCA’s text in at least two ways. First, the categorical approach aims to discern “what a jury necessarily found to convict a defendant (or what he necessarily admitted).” *Mathis v. United States*, 579 U.S. 500, 515 (2016) (internal quotation marks omitted). Dismissing judicial interpretations from the time of the prior conviction for a later interpretation subverts that purpose. Second, the text of ACCA’s violent felony provision, as confirmed by the Supreme Court’s decision in *McNeill* and its predecessors, requires a court to “consult the law that applied at the time of [the prior] conviction.” 563 U.S. at 820; *see*

also Brown 602 U.S. at 111 (emphasizing ACCA requires backward-looking analysis of law at time of prior offense). Ignoring state law at the time of Mr. Hameen’s convictions directly contradicts this requirement.

Also, whether *Somers II* changed the law or represented what the statute always meant matters not when it comes to ACCA’s categorical analysis. As Judge Martin wrote in an earlier Eleventh Circuit opinion, “It’s generally true that when a court interprets a statute it tells us what the statute has always meant.” *United States v. Seabrooks*, 839 F.3d 1326, 1451 n.5 (11th Cir. 2016) (Martin, J., concurring in the judgment). But that principle is irrelevant in the ACCA context, where the court’s “interest is not about divining the true meaning of [the state statute]. Rather, [the court’s] interest is in understanding what conduct could have resulted in [the defendant’s prior] convictions under the statute, even if Florida courts were misinterpreting the statute at that time.” *Id.*

Thus, when conducting the categorical approach ACCA demands, courts must discern “what a jury necessarily found to convict a defendant (or what he necessarily admitted).” *Mathis*, 579 U.S. at 515 (internal quotation marks omitted). And the only way to determine what Mr. Hameen necessarily admitted is to consult the elements of the crime as

understood when he was convicted. Measured by that rubric, Mr. Hameen necessarily admitted to having only a mens rea of culpable negligence: Mr. Hameen was convicted in 1990 within Florida’s Fifth District Court of Appeal, *see* Doc. 450-2, which at that time described aggravated assault as having a mens rea of culpable negligence. *See Kelly v. State*, 552 So. 2d 206, 208 (Fla. Dist. Ct. App. 1989).

Such a crime is not a violent felony, *see Borden*, 593 U.S. at 429, and no later judicial interpretation can transform it into one. *Cf. Beeman v. United States*, 871 F.3d 1215, 1224 n.5 (11th Cir. 2017) (noting, when determining whether defendant was sentenced under ACCA’s residual clause, subsequent case law holding predicate didn’t qualify under elements clause “casts very little light, if any on the key question of historical fact”).

McNeill also compels this conclusion by teaching that ACCA is “backward-looking.” 563 U.S. at 820. ACCA deals with past convictions, so determining whether a prior conviction is a predicate “can only be answered by reference to the law under which the defendant was convicted.” *Id.* Thus, ACCA requires courts “turn[] to the version of state law that the defendant was actually convicted of violating” to decide

whether a prior conviction is a “violent felony.” *Id.* at 821 (discussing *Taylor v. United States*, 495 U.S. 575 (1990), and *James v. United States*, 550 U.S. 192 (2007)).

Relying on *McNeill*, this Court recently reiterated that ACCA requires “a historical inquiry into the state law at the time of that prior offense.” *Brown*, 602 U.S. at 120. And *Brown* confirms that—just like a later change in law cannot “erase” a qualifying predicate conviction—a later change in law also cannot transform a non-qualifying offense into an ACCA predicate. *Id.* at 122–23 (recognizing that state crimes involving a substance that predates the substance’s addition to the federal schedules are not ACCA predicates).

The Eleventh Circuit’s reliance on a 2022 Florida Supreme Court decision—issued over three decades after Mr. Hameen’s prior conviction—contradicts the directive in *McNeill* and *Brown* regarding ACCA’s backward-looking, historical analysis. This Court should grant review to correct the Eleventh Circuit’s approach.

C. The consequences of the Eleventh Circuit’s approach are unjust, violating ex post facto and due process.

The Eleventh Circuit’s approach has real and unjust consequences for defendants. As in Mr. Hameen’s case, it expanded what qualifies as

an ACCA predicate to include his aggravated assault even though he could have committed it with culpable negligence. ACCA, for Mr. Hameen, increased his potential sentence from 10 years maximum to 15 years minimum. 18 U.S.C. § 924(a)(2) (1990). Given the circuit split on this important issue, geography alone will determine whether various state convictions will satisfy ACCA and thus whether a defendant will be subject to significantly enhanced imprisonment.

The Eleventh Circuit's approach also violates defendants' due process rights. Take Mr. Hameen. When Mr. Hameen committed aggravated assault, as well as the federal firearm offense, a less culpable mens rea could, practically, have resulted in a conviction for aggravated assault. *See Somers I*. This is true even though *Somers II* and *III* tell us it would not now. So Mr. Hameen was not on notice that his aggravated assault would qualify as a violent felony under ACCA, which this Court has said requires at least knowing conduct. And this question is dispositive in Mr. Hameen's case, presenting at least a five-year difference in incarceration. Without aggravated assault as an ACCA predicate, he falls short of the enhancement and would be subject to a statutory maximum 10 years instead of statutory minimum 15 years.

Many judges have raised concern with the Eleventh Circuit’s approach for this reason. *Welch v. United States*, 958 F.3d 1093, 1101-02 (11th Cir. 2020) (Rosenbaum, J., concurring) (“We live in the real world. And in the real world, whatever the Florida Supreme Court decided in 1997 that the Florida robbery statute ‘always’ meant cannot change the fact that, before [that decision], at least some of Florida’s intermediate courts of appeals applied the Florida robbery statute to cover” conduct that would not satisfy ACCA); *United States v. Pinkston*, 177 F.4th 1309, 1317-18 (11th Cir. 2026) (Abudu, J., concurring) (expressing concern with “allowing a defendant’s prior conviction to be upgraded to a qualifying crime of violence based on subsequent and contrary judicial decisions”).

Finally, the Eleventh Circuit’s approach has far-reaching effects. Whether various state offenses satisfy numerous federal recidivism provisions—from the Sentencing Guidelines to the mandatory-life three-strikes statute—are all governed by the same categorical approach as ACCA. This Court’s review is warranted.

III. 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 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*, 608 U.S. 772, 796 (2026) (Thomas, J., concurring) (“Section 922(g) appears to exceed Congress’s powers under the Commerce Clause.”); *see also United States v. Bonner*, 159 F.4th 338, 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).⁸

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*

⁸ 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*, 182 F.4th 481 (5th Cir. 2026).

<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 *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 428 (1821)). General police power is reserved for states, leaving Congress with only those constitutionally enumerated powers. *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”).⁹ 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

⁹ 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.

Commerce Clause authority); see *Hemani*, 608 U.S. at 798 (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 possession. *Hemani*, 608 U.S. at 798 (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. Hameen and other § 922(g) defendants’ convictions instead rest on the theory that Congress can criminalize firearm possession so long as the firearm crossed state lines at some point in the past. See *Hemani*, 608 U.S. at 796 (Thomas, J., concurring); *United States v. Edwards*, 142 F.4th 1270, 1274 (11th Cir.), *cert. denied*, 146 S. Ct. 903 (2025). This theory, however, does not accord with the original meaning of the Commerce Clause. See *Hemani*, 608 U.S. at 797 (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)).¹⁰

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*, 608 U.S. at 799-800 (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

¹⁰ 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.

(5th Cir. 1996) (collecting cases); *see also Bonner*, 159 F.4th at 343 (“Our reliance on *Scarborough* combines these fears: our decisions now expand 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*, 608 U.S. at 800 (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.”) (cleaned up).

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*, 608 U.S. at 801 (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*, 608 U.S. at 801 (Thomas, J., concurring) (quoting *Lopez*, 514 U.S. at 561). Section 922(g)’s purported “jurisdictional hook” fails in this regard because it doesn’t require that a defendant’s firearm possession affect interstate commerce. *Id.* at 802.

Mr. Hameen’s case presents an excellent opportunity to resolve this important constitutional question. His offense, possession, was local and non-economic; he possessed a firearm while being arrested for a separate crime of trespassing in Florida. But § 922(g)(1) was applied to him based on the firearm’s manufacture, at some point in the past, outside of Florida. The Eleventh Circuit affirmed his conviction based on its settled precedent. App. Doc. 124-1 at 21-23.

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

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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