

No. _____

In the Supreme Court of the United States

NESTOR JOSE MENDOZA-GARCIA, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*

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

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QUESTION PRESENTED FOR REVIEW

Can Congress criminalize intrastate possession of a firearm solely because it crossed state lines at some point before it came into a person's possession?

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Petitioner Nestor Jose Mendoza-Garcia asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on July 14, 2026.

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Nestor Jose Mendoza-Garcia, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

All proceedings directly related to the case are as follows:

- *United States v. Mendoza-Garcia*, No. 5:25-CR-24-1 (W.D. Tex. Dec. 1, 2025) (judgment)
- *United States v. Mendoza-Garcia*, No. 25-51008 (5th Cir. July 14, 2026) (unpublished opinion)

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OPINION BELOW

A copy of the unpublished opinion of the court of appeals, *United States v. Mendoza-Garcia*, No. 25-51008 (5th Cir. July 14, 2026) (per curiam), is reproduced at App. 1a–2a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit was entered on July 14, 2026. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I § 8 of the U.S. Constitution provides 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. 1, 3.

Section 922(g)(5) of Title 18 of the U.S.C. provides:

It shall be unlawful for any person— ... (5) who, being an alien—

(A) is illegally or unlawfully in the United States, or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

. . . 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.

STATEMENT

1. Mendoza was born in Venezuela. The family left Venezuela for the United States, living and working in Peru and Chile for years during the journey. Mendoza entered the United States in 2023 and, after being released by Border Patrol, was given a future immigration court date. While in the United States, he worked many jobs, including in construction, for Amazon, and at Home Depot. But an immigration judge ordered him removed in absentia when he did not appear for his court hearing.

In late 2024, officers with the San Antonio Police Department conducted a traffic stop and arrested Mendoza for driving without a license. They found a pistol in the car. Mendoza admitted that the firearm was his. He explained that he found it two nights earlier, after hearing shots being fired outside his apartment, and kept it. The firearm, a Taurus, model PT740, .40 caliber pistol, was not manufactured in the state of Texas.

2. The government charged Mendoza with possessing a firearm as an “alien illegally and unlawfully in the United States” in violation of 18 U.S.C. § 922(g)(5). The indictment alleged that the possessed firearm “ha[d] travelled in interstate and foreign commerce.” C.A. ROA 8.

Mendoza moved to dismiss the charge, arguing that the statute violated the Second Amendment and exceeded Congress’s powers under the Commerce Clause. He acknowledged that both arguments were foreclosed by Fifth Circuit precedent. The district court denied the motion due to binding precedent.

3. Mendoza pleaded guilty to the indictment. The district court sentenced him to time served (around 12 months) and 3 years of supervised release.

4. Mendoza appealed, raising both the Second Amendment and the Commerce Clause challenges. The court of appeals affirmed, holding that both issues were foreclosed by its precedent. Pet. App. 2a.

REASON FOR GRANTING THE WRIT

This Court should grant certiorari to say whether § 922(g)(5) is a valid exercise of Congress’s Commerce Clause power.

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.” *Nat’l Fed’n of Indep. Bus. (NFIB) v. Sebelius*, 567 U.S. 519, 533 (2012). Powers outside those explicitly enumerated by the Constitution are denied to the National Government. *See id.* at 534 (“The Constitution’s express conferral of some powers makes clear that it does not grant others.”). There is no general federal police power. *See United States v. Morrison*, 529 U.S. 598, 618–619 (2000). Every exercise of Congressional power must be justified by reference to a particular grant of authority. *See NFIB*, 567 U.S. at 535 (“The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions.”). A limited central government promotes accountability and “protects the liberty of the individual from arbitrary power.” *Bond v. United States*, 572 U.S. 844, 863 (2011).

Article I, § 8, cl.3 of the United States Constitution provides: “Congress shall have power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes” This power “must be read carefully to avoid creating a general federal authority akin to the police power.” *NFIB*, 567 U.S. at 536.

United States v. Lopez established the test for the scope of Congress’s power to regulate activities that “affect” interstate commerce: “the proper test requires an analysis of whether the regulated activity ‘substantially affects’ interstate commerce.” 514 U.S. 549, 559 (1995). *Lopez* seemed to, but did not expressly, overrule the more permissive test for federal regulation of gun possession articulated in *Scarborough v. United States*, which required only the “minimal nexus that the firearm have been, at some time, in interstate commerce.” 431 U.S. 563, 575 (1977).

A fair reading of *Scarborough* is that the case concerned solely statutory interpretation and did not purport to resolve any constitutional issues. See *United States v. Hemani*, 608 U.S. 772, 796 (2026) (Thomas, J., concurring) (describing *Scarborough* “as a matter of statutory interpretation”); *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc). A constitutional reading of *Scarborough* would grant the federal government unlimited power to regulate the affairs of citizens. See *Alderman v. United States*, 562 U.S. 1163, 1167 (2011) (Thomas, J., dissenting from denial of certiorari) (“[T]he lower courts’ reading of *Scarborough*, by trumping the *Lopez* framework, could very well remove any limit on the commerce power.”).

Most physical objects have crossed a state line at some point in the past. To hold that this past travel grants Congress a perpetual right to regulate

what someone does or does not do with that object is to eliminate any restrictions on Congress’s power. *See NFIB*, 567 U.S. at 557 (Roberts, C.J.) (“The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions.”). Nevertheless, the court of appeals has adhered to the view that *Scarborough*’s “minimal nexus” is sufficient both to prove guilt under 18 U.S.C. § 922(g) and to bring any subsequent act of firearm possession within Congress’ power to regulate. *See, e.g., United States v. Medina-Cantu*, 113 F.4th 537, 539 n.1 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 1318 (2025) (addressing § 922(g)(5)); *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013) (addressing § 922(g)(1))

As Justice Thomas recently explained, the prevailing interpretation of § 922(g) offenses allows the Government to “secure a conviction for unlawful firearm possession ‘if the firearm possessed’ by the drug user ‘had previously traveled in interstate commerce.’” *Hemani*, 608 U.S. at 795 (quoting *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996) (per curiam)). But the “Commerce Clause does not authorize Congress to regulate or ban possession of any item that has ever been offered for sale or crossed state lines.” *Id.* (quoting *Alderman*, 562 U.S. at 1167). “Such an understanding would ‘convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.’” *Id.* at 795–96 (quoting *Lopez*, 514 U.S. at 567). Thus, “[a]s a matter of both original meaning and

this Court’s precedents, § 922(g)(3) [prohibiting addicts or unlawful users of controlled substances from possessing firearms] appears to exceed Congress’s enumerated power to regulate interstate commerce.” *Id.* at 795 (Thomas, J., concurring).

Members of this Court and judges on lower courts thus have acknowledged the irreconcilability of *Lopez* and a constitutional reading of *Scarborough*. See *Alderman*, 562 U.S. at 1166 (Thomas, J., dissenting from denial of certiorari) (“*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez*”); see also *United States v. Hill*, 927 F.3d 188, 215 n.10 (4th Cir. 2019) (Agee, J., dissenting) (“While some tension exists between *Scarborough* and the Supreme Court’s decision in *Lopez*, the Supreme Court has not granted certiorari on a case that would provide further guidance[.]”); *United States v. Chesney*, 86 F.3d 564, 574–575 (6th Cir. 1996) (Batchelder, J., concurring); *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*.).

These concerns have led the Fifth Circuit to grant en banc review to reconsider its precedent holding § 922(g) to be a constitutional exercise of Congress’s Commerce Clause power. See *United States v. Squire*, 177 F.4th 614, *reh’g en banc granted*, 184 F.4th 481 (5th Cir. 2026). This Court should

also take a “closer look” at whether § 922(g) exceeds Congress’s Commerce Clause power. *Hemani*, 608 U.S. at 802 (Thomas, J., concurring).

This case is an ideal vehicle to do so. The factual basis for Mendoza’s guilty plea does not state that his possession of the gun was an economic activity. It says only that the firearm he possessed had moved in interstate commerce. And the factual basis fails to show that he was engaged in the relevant market at the time of the regulated conduct. This should have been fatal to his conviction. The Commerce Clause permits Congress to regulate only activities, i.e., the active participation in a market. But § 922(g)(5) criminalizes *all* possession, without reference to economic activity. It therefore sweeps too broadly.

This Court should grant certiorari to clarify the limits of Congress’s Commerce Clause power in relation to § 922(g).

CONCLUSION

FOR THESE REASONS, Mendoza asks that this Honorable Court grant a writ of certiorari.

Respectfully submitted.

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