

No. 18-5762

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO GARCIA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

BRIAN A. BENCZKOWSKI
Assistant Attorney General

DANIEL J. KANE
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether 18 U.S.C. 922(g)(1), which makes it unlawful for a convicted felon to possess a firearm that has traveled in interstate commerce, exceeds Congress's authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is not published in the Federal Reporter but is reprinted at 735 Fed. Appx. 621.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 2018. The petition for a writ of certiorari was filed on August 22, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Middle District of Florida, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a). Pet. App. 3a. The district court sentenced petitioner to 78 months of imprisonment, to be followed by three years of supervised release. Id. at 5a; Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-9a.

1. In 2007, petitioner was convicted for felony racketeering and conspiracy to commit racketeering under Florida law based on a series of criminal acts committed by petitioner and various other gang members in Manatee County, Florida. Presentence Investigation Report (PSR) ¶ 37. Petitioner was sentenced to six years of imprisonment, to be followed by three years of probation, for those crimes. Ibid.

In November 2015, following petitioner's release from prison, law enforcement officers in Manatee County conducted a routine search of his home to ensure his compliance with the terms of his probation. PSR ¶ 10. During the search, the officers found in petitioner's bedroom a loaded nine-millimeter pistol, drug distribution paraphernalia, and several rounds of loose ammunition. PSR ¶¶ 10-11.

2. A federal grand jury in the Middle District of Florida charged petitioner with possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a). Pet. App. 3a;

Indictment 1-2. Petitioner pleaded guilty to the charge without a written plea agreement. Pet. App. 3a. At the plea hearing, petitioner admitted that he had at least one prior felony conviction and that he knowingly possessed a firearm. Plea Tr. 11-12. He also acknowledged through counsel that the firearm was manufactured outside of Florida and therefore traveled across state lines. Id. at 12-13. The district court sentenced petitioner to 78 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. 1a-9a.

As relevant here, the court of appeals rejected petitioner's argument, raised for the first time on appeal, that the statutory provision under which he was convicted, 18 U.S.C. 922(g)(1), is unconstitutional "both on its face and as applied to him" on the theory that it exceeds Congress's authority under the Commerce Clause. Pet. App. 8a-9a. The court observed that it had "repeatedly held that Section 922(g)(1) is not a facially unconstitutional exercise of Congress's power under the Commerce Clause because it contains an express jurisdictional requirement' that is satisfied when the firearm involved in the offense has at least 'minimal nexus' to interstate commerce." Id. at 8a (citing United States v. Jordan, 635 F.3d 1181, 1189 (11th Cir.), cert. denied, 565 U.S. 925 (2011)). It further determined that Section 922(g)(1) was constitutional as applied to petitioner because

petitioner had admitted that the firearm he possessed was manufactured outside Florida, establishing the required nexus to interstate commerce. Id. at 9a.

ARGUMENT

Petitioner contends (Pet. 2-4) that 18 U.S.C. 922(g)(1), which prohibits convicted felons from possessing firearms and ammunition that have previously traveled in interstate commerce, exceeds Congress's authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3. Petitioner forfeited that contention by failing to raise it in the district court, and the court of appeals' decision rejecting it does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

In Scarborough v. United States, 431 U.S. 563 (1977), this Court interpreted the phrase "possesses * * * in commerce or affecting commerce" in a predecessor statute to Section 922(g)(1) to require "only that the firearm possessed by [a] convicted felon traveled at some time in interstate commerce." Id. at 567-568; see id. at 572 ("[B]y prohibiting both possessions in commerce and those affecting commerce, Congress must have meant more than to outlaw simply those possessions that occur in commerce or in interstate facilities."). Following this Court's decision in United States v. Lopez, 514 U.S. 549 (1995), on which petitioner relies (Pet. 2-4), the courts of appeals uniformly have held that Section 922(g)'s prohibition against possessing a firearm that has

previously moved in interstate commerce falls within Congress's Commerce Clause authority.¹ This Court has recently and repeatedly denied petitions for writs of certiorari challenging the constitutionality of Section 922(g)(1) under the Commerce Clause.²

¹ See, e.g., United States v. Weems, 322 F.3d 18, 25-26 (1st Cir.), cert. denied, 540 U.S. 892 (2003); United States v. Santiago, 238 F.3d 213, 215-217 (2d Cir.) (per curiam), cert. denied, 532 U.S. 1046 (2001); United States v. Singletary, 268 F.3d 196, 198-205 (3d Cir. 2001), cert. denied, 535 U.S. 976 (2002); United States v. Gallimore, 247 F.3d 134, 137-138 (4th Cir. 2001); United States v. Daugherty, 264 F.3d 513, 518 (5th Cir. 2001), cert. denied, 534 U.S. 1150 (2002); United States v. Henry, 429 F.3d 603, 619-620 (6th Cir. 2005); United States v. Williams, 410 F.3d 397, 400 (7th Cir. 2005); United States v. Stuckey, 255 F.3d 528, 529-530 (8th Cir.), cert. denied, 534 U.S. 1011 (2001); United States v. Davis, 242 F.3d 1162, 1162-1163 (9th Cir.) (per curiam), cert. denied, 534 U.S. 878 (2001); United States v. Dorris, 236 F.3d 582, 584-586 (10th Cir. 2000), cert. denied, 532 U.S. 986 (2001); United States v. Scott, 263 F.3d 1270, 1271-1274 (11th Cir. 2001) (per curiam), cert. denied, 534 U.S. 1166 (2002).

² See, e.g., Dixon v. United States, No. 18-6282 (Nov. 5, 2018); Price v. United States, No. 18-6073 (Oct. 29, 2018); Dixon v. United States, No. 17-8853 (Oct. 15, 2018); Vela v. United States, No. 18-5882 (Oct. 9, 2018); Ibarra v. United States, No. 18-5795 (Oct. 1, 2018); Mitchell v. United States, No. 18-5593 (Oct. 1, 2018); Buchanan v. United States, No. 18-5444 (Oct. 1, 2018); Terry v. United States, No. 17-9136 (Oct. 1, 2018); Martin v. United States, No. 17-9098 (Oct. 1, 2018); Pina v. United States, 138 S. Ct. 2695 (2018) (No. 17-9070); Boatwright v. United States, 138 S. Ct. 2650 (2018) (No. 17-7645); Kitchen v. United States, 138 S. Ct. 1989 (2018) (No. 17-7521); Massey v. United States, 138 S. Ct. 500 (2017) (No. 16-9376); Moorefield v. United States, 138 S. Ct. 154 (2017) (No. 16-9549); Brice v. United States, 137 S. Ct. 812 (2017) (No. 16-5984); Isom v. United States, 137 S. Ct. 45 (2016) (No. 15-9109); Crouch v. United States, 137 S. Ct. 43 (2016) (No. 15-8974); James v. United States, 136 S. Ct. 2509 (2016) (No. 15-8227); Moore v. United States, 136 S. Ct. 2488 (2016) (No. 15-8601); Fisk v. United States, 136 S. Ct. 2485 (2016) (No. 15-7855); Delgado v. United States, 136 S. Ct. 2485 (2016) (No. 15-7850); Gibson v. United States, 136 S. Ct. 2484 (2016) (No. 15-7475).

The same result is warranted here, particularly given that petitioner's claim was not raised in the district court and therefore, as the government asserted below, is subject to review only for plain error. See Fed. R. Crim. P. 52(b); Gov't C.A. Br. 12.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

BRIAN A. BENCZKOWSKI
Assistant Attorney General

DANIEL J. KANE
Attorney

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