

No. ____-_____

IN THE SUPREME COURT OF THE UNITED STATES

LUIS ANTONIO IBARRA,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11094
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 29, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS ANTONIO IBARRA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-150-1

Before CLEMENT, COSTA, and WILLETT, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Luis Antonio Ibarra raises an argument that is foreclosed by *United States v. Gonzales*, 40 F.3d 735 (5th Cir. 1994), *abrogated on other grounds by United States v. Dunigan*, 555 F.3d 501, 504-06 & n.7 (5th Cir. 2009). In *Gonzales*, 40 F.3d at 737-38, we held that the Supreme Court's decision in *United States v. Dixon*, 509 U.S. 688 (1993), did not overrule *Missouri v. Hunter*, 459 U.S. 359, 368-69 (1983). Ibarra

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

also raises an argument that is foreclosed by our decision in *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013), which rejected a challenge to § 922(g) under *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 551-53 (2012).

Additionally, Ibarra raises an argument that is foreclosed by *United States Rawls*, 85 F.3d 240, 242-43 (5th Cir. 1996), in which we held that proof of a firearm's manufacture in another state satisfies the interstate commerce element of § 922(g). Finally, our decision in *United States v. Rose*, 587 F.3d 695, 705-06 (5th Cir. 2009), forecloses Ibarra's argument that knowledge of the interstate nexus is an element of the offense under § 922(g).

Accordingly, the motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

**AMENDED JUDGMENT IN A CRIMINAL
CASE**

(Amended pursuant to Fed. R. Crim. P. 36)

v.

LUIS ANTONIO IBARRA

Case Number: **3:16-CR-00150-B(1)**USM Number: **54195-177****John M Nicholson**

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Counts 1, 2 and 3 of the three-count Indictment filed April 19, 2016
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g) & 924(a)(2) - Felon in Possession of a Firearm	11/06/2015	1
21 U.S.C. § 856(a)(1) & (b) - Using or Maintaining a Drug-Involved Premises	11/06/2015	2
18 U.S.C. § 924(c)(1)(B)(i) - Possession of a Firearm In Furtherance of a Drug Trafficking Crime	11/06/2015	3

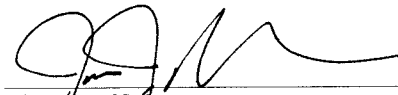
The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 14, 2017

Date of Imposition of Judgment



Signature of Judge

JANE J. BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

January 31, 2018

Date

DEFENDANT: LUIS ANTONIO IBARRA
CASE NUMBER: 3:16-CR-00150-B(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months. This term consists of 60 months on each of Counts 1 and 2, to run concurrently with each other, and 60 months on Count 3, to run consecutively to all other counts, for total aggregate sentence of 120 months.

It is ordered this sentence run concurrently with any sentences imposed in Case Nos. F-1531116, F-1531117, and F-1531118 pending in Dallas County Criminal District Court 6, Dallas, Texas.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be allowed to serve his sentence at a Bureau of Prisons facility in the Dallas-Fort Worth area. Further, the Court recommends that the defendant be allowed to participate in the Residential Drug Abuse Treatment Program (RDAP) while in custody of the Bureau of Prisons, if eligible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LUIS ANTONIO IBARRA
CASE NUMBER: 3:16-CR-00150-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **three (3) years on each of Counts 1, 2, and 3, to run concurrently with each other.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

DEFENDANT: LUIS ANTONIO IBARRA
CASE NUMBER: 3:16-CR-00150-B(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: LUIS ANTONIO IBARRA
CASE NUMBER: 3:16-CR-00150-B(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

The defendant shall provide to the probation office complete access to all business and personal financial information.

The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

DEFENDANT: LUIS ANTONIO IBARRA
 CASE NUMBER: 3:16-CR-00150-B(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00	\$.00	\$.00	\$.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LUIS ANTONIO IBARRA
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$300.00 for Counts 1, 2 and 3 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
See page 8.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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ADDITIONAL FORFEITED PROPERTY

The defendant shall forfeit to the United States:

1. an E.R. Armentina, unknown model, 20 gauge shotgun, bearing serial number 122006;
2. a Japanese, model Arsiaka Type 38, 6.5 x 50mm caliber rifle, bearing serial number 884;
3. a Marlin, model 39A, .22 caliber rifle, bearing serial number P12096;
4. a Savage model 450, .410 caliber shotgun, bearing no identifiable serial number (previously misidentified as a Revelation, model 350, .410 shotgun, bearing no identifiable serial number)¹;
5. a Cesar Guerini, model summit, 12 gauge shotgun, bearing serial number 135993²;
6. an Auto-ordinance, model 1927 A1, .45 caliber rifle, bearing serial number KN4579;
7. a Winchester, model Canadian Centennial, 30-30 caliber rifle, bearing serial number 10219;
8. a Heckler & Koch, model MP5, .22 caliber rifle, bearing serial number WG003511;
9. a Winchester, model 9422M, .22 magnum caliber rifle, bearing serial number F110176;
10. a Mossberg, model Blaze 47, .22 caliber rifle, bearing serial number RA0003832;
11. a Browning, model BL-22, .22 caliber rifle, bearing serial number 08969RT126;
12. a Remington, model 870 Express Magnum, 20 gauge shotgun, bearing serial number B576859U;
13. a Taurus, model PT24/7 PRO DS, 9 mm caliber pistol, bearing serial number TDM34656;
14. a Meriden Firearms Co. Secret Service SPCL Revolver, .32 caliber, bearing serial number 9101 (previously misidentified as a Howard Arms Co., model unknown, .32 caliber revolver, bearing serial number 9101);
15. a Gerstenberger & Eberwein 100 revolver, .22 caliber revolver, bearing serial number 202309 (previously misidentified as an Omega, model 100, .22 caliber revolver, bearing serial number 202309);
16. a Nagant, model M1895, 7.62 caliber revolver, bearing serial number N4447;
17. a Calico, model M – 950, 9 mm caliber pistol, bearing serial number 1001879;
18. a North American Arms, model NAA 22 S/LR, .22 caliber revolver, bearing serial number L174623;
19. a Rossi, model M88, .38 special caliber revolver, bearing serial number W257994;
20. a Brescia Arms model 503, .25 caliber pistol, bearing serial number 422868 (previously misidentified as a Galesi, model 503, 6.35 caliber pistol, bearing serial number 422868);
21. a High Standard, model Sentinel Deluxe Revolver – 107, .22 caliber revolver, bearing serial number 1871304;
22. a Browning, model FN Baby, 6.35 caliber pistol, bearing serial number 335234;
23. a Harrington & Richardson, model 2, .32 caliber revolver, bearing serial number 17S163 (previously misidentified as a Harrington & Richardson, unknown model, .32 caliber revolver, bearing serial number 178163);
24. a Sig Sauer, model P938 Rosewood, 9 mm caliber pistol, bearing serial number 52A031997; and
25. all ammunition and magazines seized with the above firearms, including any ammunition, magazines, and/or accessories recovered with the firearms.

¹ The descriptions and/or serial numbers of items 4, 14, 15, 20, and 23 were previously misidentified in the Preliminary Order of Forfeiture (doc. 35) and in the original Judgment in a Criminal Case (doc. 51).

² According to the government's amended motion for final order of forfeiture (doc. 60), the government has determined that items 5 and 24 are stolen property, which will be returned to the rightful owner in lieu of being judicially forfeited.