

APPENDIX A

United States v. Mora,
No. 18-50118, unpub. op. (5th Cir. Sept. 14, 2018)

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

No. 18-50118
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 14, 2018
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

OSCAR RAUL MORA, Also Known as Raul Ramirez,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 3:17-CR-1092-1

Before SMITH, ELROD, and WILLETT, Circuit Judges.

PER CURIAM:*

Oscar Mora appeals his conviction of possession of a firearm by a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 18-50118

convicted felon, in violation of 18 U.S.C. § 922(g)(1). Relying on *United States v. Lopez*, 514 U.S. 549 (1995), and *National Federation of Independent Business v. Sebelius (NFIB)*, 567 U.S. 519 (2012), Mora urges that § 922(g)(1) unconstitutionally extends federal control to non-commercial possession of a firearm. Mora concedes, however, that his position is foreclosed by circuit precedent, and he raises the issue to preserve it for Supreme Court review.

The government has filed an unopposed motion for summary affirmance, requesting alternatively an extension of time to file its brief. The government asserts that the parties agree that, under circuit precedent, Mora’s challenge to the constitutionality of § 922(g) is foreclosed. Summary affirmance is proper where, among other instances, “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

“This court has repeatedly emphasized that the constitutionality of § 922(g)(1) is not open to question.” *United States v. de Leon*, 170 F.3d 494, 499 (5th Cir. 1999); *see also United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013). In *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996), we rejected a challenge to the constitutionality of § 922(g)(1), finding that neither the holding nor the reasoning in *Lopez* constitutionally invalidates § 922(g)(1).

The motion for summary affirmance is GRANTED. The alternative motion for an extension is DENIED. The judgment is AFFIRMED.

APPENDIX B

Indictment,
United States v. Mora,
EP-17-CR-1092-1 DB
June 21, 2017

JUDGE DAVID BRIONES
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

2017 JUN 21 PM 12:28

UNITED STATES OF AMERICA,

Plaintiff,

v.

OSCAR RAUL MORA,
also known as (a.k.a.)
Raul Ramirez,

Defendant.

§ CRIMINAL NO. EP-17-CR-
§
§ SEALED INDICTMENT
§
§ CT 1: 18 U.S.C. § 922(g)(1) & 924(a)(2) -
§ Felon in Possession of a Firearm.
§
§ Notice of Government's Demand for
§ Forfeiture
§
§

EP 17 CR 1092

THE GRAND JURY CHARGES:

COUNT ONE

(18 U.S.C. § 922(g)(1) & 924(a)(2))

On or about March 30, 2016, in the Western District of Texas, Defendant,

OSCAR RAUL MORA,
a.k.a. Raul Ramirez,

having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate and foreign commerce, a firearm and ammunition, that is, a Taurus-Brazil, Model PT24/7 G2, nine (9) millimeter caliber handgun, and approximately twenty-seven (27) rounds of assorted brands of nine (9) millimeter caliber ammunition, all having been shipped and transported in interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

NOTICE OF GOVERNMENT'S DEMAND FOR FORFEITURE
(18 U.S.C. § 924(d) and 28 U.S.C. § 2461)

As a result of the foregoing criminal violation set forth in Count One, the United States of America gives notice to the Defendant,

OSCAR RAUL MORA,
a.k.a. Raul Ramirez,

of its intent to seek forfeiture, pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), of any and all firearms and ammunition involved in and used in the commission of the offense, including but not limited to the following:

- a. A Taurus-Brazil, Model PT24/7 G2, nine (9) millimeter caliber handgun, serial number THM75976; and
- b. Twenty-seven (27) rounds, more or less, of assorted brands of nine (9) millimeter caliber ammunition.

A TRUE BILL

ORIGINAL SIGNATURE
REDACTED PURSUANT TO
E-GOVERNMENT ACT OF 2002

FOREPERSON OF THE GRAND JURY

RICHARD L. DURBIN
UNITED STATES ATTORNEY

BY:


Assistant U.S. Attorney