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No. _____

In the
Supreme Court of the United States of America

ISABEL YERO GRIMON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On a 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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Question Presented

In a broad opinion that conflicts with other appellate precedents and with the bedrock constitutional principle of limited federal jurisdiction, the circuit court held that a federal indictment conclusively establishes federal subject-matter jurisdiction to convict and sentence a defendant. “[I]f an indictment itself alleges a violation of a valid federal statute, the district court has subject matter jurisdiction over that case.” *United States v. Yero Grimon*, 923 F.3d 1302, 1305 (CA11 2019). The published opinion held that federal courts have jurisdiction despite there being no evidence that the crime charged implicated a federal interest: “All that was required for the district court to exercise subject matter jurisdiction over Grimon’s case was an indictment charging her with a violation of a valid federal law” *Id.* at 1306. This holding is incompatible with the Article III principle that, because federal courts have only limited jurisdiction, there is a presumption against its existence and the party invoking that jurisdiction has the burden of *proving*, not merely alleging, that it exists.

Did the Eleventh Circuit err in holding that federal jurisdiction is conclusively established whenever an indictment alleges a federal crime?

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**Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit**

Isabel Yero Grimon respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit, rendered in *United States v. Yero Grimon*, No. 17-15011, 923 F.3d 1302 (CA11 2019). That decision affirmed Ms. Yero Grimon's conviction, despite the undisputed fact that the record from the U.S. District Court for the Southern District of Florida evidences no basis for federal jurisdiction over the prosecution. The court held: "All that was required for the district court to exercise subject matter jurisdiction over Grimon's case was an indictment charging her with a violation of a valid federal law . . ." *Id.* at 1306 (CA11 2019). That broad, precedential holding conflicts not only with other circuit court decisions but also with the basic tenet of federalism that the federal courts' jurisdiction is limited, is never presumed, and must be established in every case.

Basis for Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eleventh Circuit Court of Appeals rendered its decision on 13 May 2019. Petitioner timely sought rehearing *en banc*, which the court summarily denied on 16 July 2019. This petition is timely.

Provisions of Law Involved

The text of the statutes of conviction, 18 U.S.C. §§ 1028A and 1029, are appended.

Statement of the Case

On 18 January 2017, Isabel Yero Grimon was arrested during a traffic stop in Florida pursuant to a Texas warrant. Police searched her car and found 19 blank credit cards, 16 of which were encoded with account numbers belonging to 10 different people, and a flash drive storing 134 credit-card account numbers. Ms. Yero Grimon admitted to knowing she had the cards and account numbers and that they belonged to other people. The federal government charged her with unauthorized possession of 15 or more “access devices,” *i.e.*, the cards and account numbers, in violation of 18 U.S.C. § 1029(a)(3), and with aggravated identity theft, in violation of 18 U.S.C. § 1028A, in connection with the possession offense.

Making no inquiry into its subject-matter jurisdiction, the district court accepted Ms. Yero Grimon’s guilty plea. During her change-of-plea hearing, Ms. Yero Grimon again admitted having the cards and account numbers and knowing that certain numbers belonged to other actual people. The government agreed that none of the credit-card account numbers or counterfeit cards was ever used. The only evidence supporting federal jurisdiction in the record is the parties’ stipulation to the bare legal conclusion that Ms. Yero Grimon’s “conduct affect[ed] interstate and foreign commerce.”

At sentencing, the government reiterated that none of the cards or account numbers had ever been used. The prosecutor stated: “I believe the government agrees with defense counsel that although there were printed cards or names that were embossed on the plastic cards, the government at this time cannot proceed and present any evidence that there were actual losses or that there were ten or more actual victims in this case.” Still, neither the parties nor the court addressed whether federal subject-matter jurisdiction existed.

The district court sentenced Ms. Yero Grimon to 12 months in prison on the possession charge plus a 24-month consecutive term on the aggravated identity theft charge.

On appeal, Ms. Yero Grimon argued that the district court lacked subject-matter jurisdiction because the government failed to prove any connection between her possession offense and interstate commerce. The possession statute provides that “knowingly and with intent to defraud possess[ing] fifteen or more … counterfeit or unauthorized access devices” is a federal offense only “if the offense affects interstate or foreign commerce … .” 18 U.S.C. § 1029(a)(3). Because the aggravated-theft charge required an underlying federal crime, Ms. Yero Grimon argued that the district court lacked jurisdiction over the entire prosecution. She could raise the issue on appeal because jurisdictional challenges can not be waived.

After oral argument, the Eleventh Circuit broadly held, in a published opinion, that federal courts have subject-matter jurisdiction over a prosecution whenever the government charges a federal crime: “[I]f an indictment itself alleges a violation of a valid federal statute, the district court has subject matter jurisdiction over that case.” *United States v. Yero Grimon*, 923 F.3d 1302, 1305 (CA11 2019). This precedent allows the federal government to manufacture federal subject-matter jurisdiction with bare allegations: “All that was required for the district court to exercise subject matter jurisdiction over Grimon’s case was an indictment charging her with a violation of a valid federal law … .” *Id.* at 1306. As a result, no criminal defendant can challenge federal jurisdiction in the Eleventh Circuit.

Ms. Yero Grimon, who has served her 36-months prison term and is now on supervised release, petitioned for rehearing or rehearing *en banc*, but the court of appeals summarily denied her petition.

Reasons for Allowance of the Writ

The Eleventh Circuit broadly held that, “if an indictment itself alleges a violation of a valid federal statute, the district court has subject matter jurisdiction over that case.” *United States v. Yero Grimon*, 923 F.3d 1302, 1305 (CA11 2019). That precedent conflicts with the bedrock principle of federalism that federal courts have only limited jurisdiction and that the party invoking that jurisdiction must prove — not just allege — that it exists:

Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.

Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citations omitted). The circuit court’s sweeping holding not only reverses the presumption against federal jurisdiction but makes it impossible to challenge federal jurisdiction over any prosecution.

The opinion directly conflicts with at least two other circuit court decisions holding that proof of an effect on interstate commerce is essential to a conviction for possessing stolen credit cards and account numbers. See *United States v. Clayton*, 108 F.3d 1114, 1118 (CA9 1997) (holding “that 18 U.S.C. § 1029(a)(3) requires the government to prove ... that the aggregate possession of 15 or more unauthorized access devices affected interstate commerce”); *United States v. Scartz*, 838 F.2d 876, 879 (CA6 1988) (holding that, “[u]nder 18 U.S.C. § 1029(a)(1), the government must demonstrate that the defendant used a counterfeit credit card knowingly and with intent to defraud and that such use in some way affected interstate commerce.”). These decisions accord with the text of the statute, which provides that “knowingly and with intent to defraud possess[ing] fifteen or more ... counterfeit or

“unauthorized access devices” is illegal only “if the offense affects interstate or foreign commerce” 18 U.S.C. § 1029(a)(3). The statute explicitly recognizes that not every possession of access devices will affect interstate or foreign commerce and requires proof.

The trial court never addressed its jurisdiction in violation of precedent. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (“[C]ourts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party”). Nonetheless, the appellate court affirmed the conviction on the broad ground that jurisdiction exists whenever a prosecutor brings a federal charge: “All that was required for the district court to exercise subject matter jurisdiction over Grimon’s case was an indictment charging her with a violation of a valid federal law” 923 F.3d at 1306. That precedential holding vastly expands federal authority in the Eleventh Circuit in disregard of this Court’s decisions. *See Jones v. United States*, 529 U.S. 848, 850 (2000) (“[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes.”); *United States v. Bass*, 404 U.S. 336, 349 (1971) (“[W]e will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction.”). Indeed, it means no criminal defendant can challenge federal jurisdiction.

The Eleventh Circuit incorrectly reasoned that the Constitution limits Congress’ power to write laws but not the federal judiciary’s power to hear cases:

[I]nterstate commerce jurisdictional elements, such as § 1029(a)(3)’s, are not “jurisdictional” in the sense of bearing on whether or not the district court has subject matter jurisdiction or authority to adjudicate the case. Rather, the interstate commerce element is “jurisdictional” only in the sense that it relates to the power of Congress to regulate the forbidden conduct. This Court has

therefore explained that, when it comes to federal criminal statutes requiring an interstate commerce nexus, the government's failure to sufficiently allege or prove the interstate commerce element does not deprive the district court of its subject matter jurisdiction over the criminal case.

923 F.3d at 1306. The court did not understand that an accused can challenge federal jurisdiction not only facially, *see, e.g., United States v. Lopez*, 514 U.S. 549, 557 (1995) (holding that a statute outlawing possessing a gun in a school zone exceeded Congress' power), but also as applied in her case, *see, e.g., United States v. Bass*, 404 U.S. at 341 & n.8 (holding the statute outlawing possession of a firearm by a felon had to be interpreted as requiring proof of a connection to interstate commerce to avoid bringing its constitutionality into doubt); *Bond v. United States*, 572 U.S. 844, 853 (2014) ("[T]he *real* question this case presents is whether the Act is constitutional as applied to petitioner.") (Scalia, J., concurring).

The decision below conflicts with *Bass* and with *Bond*, which both required proof of federal jurisdiction over the charged conduct. Moreover, this Court invalidated the statute challenged in *Lopez* in part because it "contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." 514 U.S. at 561. The opinion below eliminates that constitutionally required "case-by-case inquiry" from *every* federal prosecution in the Eleventh Circuit. At oral argument, Ms. Yero Grimon argued that, under the government's overly broad reading of the statute, every pickpocket and purse-snatcher is guilty of the same crime she is. The court ignored that its holding, in fact, sweeps that broadly.

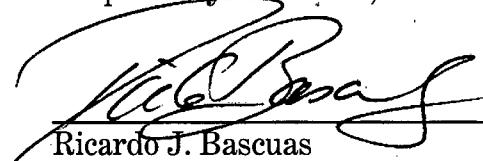
By failing to enforce the requirement that the government prove the facts necessary to establish jurisdiction over Ms. Yero Grimon's conduct; the Eleventh Circuit put itself into

conflict with other circuits as well. See, e.g., *United States v. Rodia*, 194 F.3d 465, 471 (CA3 1999) (“A jurisdictional element ... refers to a provision in a federal statute that requires the government to establish specific facts justifying the exercise of federal jurisdiction in connection with any individual application of the statute.”); *United States v. Pierson*, 139 F.3d 501, 503–04 (CA5 1998) (holding that a jurisdictional element requires proof of a nexus between the alleged conduct and interstate commerce); *United States v. Harrington*, 108 F.3d 1460, 1465 (CADC 1997) (“A ‘jurisdictional element’ in a federal statute is a provision which requires a factual finding justifying the exercise of federal jurisdiction in connection with any individual application of the statute.”).

The parties’ stipulation to the legal conclusion that the alleged possession affected commerce was not competent proof of federal jurisdiction because “no action of the parties can confer subject-matter jurisdiction upon a federal court.” *Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Jurisdiction could be established only by a stipulation to facts demonstrating an effect on interstate commerce: “Consent of parties cannot give the courts of the United States jurisdiction, but the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially upon such an admission.” *Pittsburg, Cincinnati, & St. Louis Railway Co. v. Ramsey*, 22 Wall. 322, 327 (1874).

WHEREFORE this Court should grant this petition for a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,



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