

No. \_\_\_\_\_

---

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

EMILIO GARZA,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

---

APPENDIX

---

---

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas

## APPENDIX A

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

---

No. 19-10363  
Summary Calendar

---

United States Court of Appeals  
Fifth Circuit

**FILED**  
February 7, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMILIO GARZA,

Defendant-Appellant

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:16-CR-261-1

---

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:\*

Appealing his guilty plea conviction for being a felon in possession of a firearm, Emilio Garza raises an argument that is foreclosed by *United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013). In *Alcantar*, 733 F.3d at 145-46, we rejected the argument that *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), affected our prior jurisprudence rejecting challenges to the constitutionality of 18 U.S.C. § 922(g)(1). Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

## APPENDIX B

## United States District Court

Northern District of Texas  
Fort Worth Division

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:16-CR-261-A(01)

EMILIO GARZA

§

## JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Robert Boudreau. The defendant, EMILIO GARZA, was represented by Federal Public Defender through Assistant Federal Public Defender John Stickney.

The defendant pleaded guilty on December 15, 2016 to the one count indictment filed on November 9, 2016. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title &amp; Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. § 922(g)(1) Felon in Possession of Firearm	10/11/16	1

As pronounced and imposed on March 22, 2019, the defendant is resentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00. The defendant has paid \$25.00 of the special assessment.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months to run consecutively to any time that remains to be served in Case No. 148820 in the 213<sup>th</sup> District Court of Tarrant; and concurrently to any time remaining to be served in Case No. 1475067 in the 213<sup>th</sup> District Court of Tarrant County.

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

MAR 22 2019

CLERK, U.S. DISTRICT COURT

By \_\_\_\_\_ Deputy \_\_\_\_\_

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the standard conditions ordered by this Court and shall comply with the following additional conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$25 per month.
5. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
6. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.

8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

FORFEITURE

The Court ordered that any firearm and ammunition involved in or used in the commission of the offense, including, but not limited to, the Sig Sauer, Model P290RS, 9-millimeter pistol, Serial No. 26C012130, was forfeited to the United States of America on April 13, 2017.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 22nd day of March, 2019.



JOHN McBRYDE  
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

---

---

---

Defendant delivered on \_\_\_\_\_, 2019 to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal for the  
Northern District of Texas

By \_\_\_\_\_  
Deputy United States Marshal