

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

IN THE SUPREME COURT OF THE UNITED STATES

---

RAMIRO LEAL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

---

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

APPENDIX

---

/s/ Adam Nicholson

JASON HAWKINS  
Federal Public Defender  
Northern District of Texas  
TX State Bar No. 00759763  
525 Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
(214) 767-2886 Fax

Adam Nicholson \*\*  
Assistant Federal Public Defender  
Northern District of Texas  
TX State Bar No. 24097045  
525 S. Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
(214) 767-2886

## INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 22-10181, dated August 11, 2022, *United States v. Leal*, 2022 WL 3282223 (5th Cir. Aug. 11, 2022) (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered January 26, 2022. *United States v. Leal*, Dist. Court 4:21-CR-230-Y (1).

## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 16, 2022

Lyle W. Cayce  
Clerk

---

No. 22-10098  
Summary Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RAMIRO LEAL,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:21-CR-230-1

---

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:\*

Ramiro Leal appeals the guilty plea conviction and 46-month sentence imposed upon him for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Leal argues that Section 922(g)(1) exceeds the scope of Congress's power under the Commerce Clause and is thus

---

\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-10098

unconstitutional. *See Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) (“*National Federation*”). He specifically asserts that Congress’s power under the Commerce Clause authorizes it to regulate only commercial activity and that the mere travel of an object through interstate commerce is not, by itself, a commercial act.

Leal concedes his claim is foreclosed by circuit precedent, and he raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance and an alternative request for an extension of time to file its brief. We have said in other opinions that we consistently uphold the constitutionality of Section 922(g)(1), a statutory provision which we described as “a valid exercise of Congress’s authority under the Commerce Clause.” *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013). We explained that *National Federation* did not address the constitutionality of Section 922(g)(1) and did not express an intention to overrule precedent finding Section 922(g)(1) constitutional. *Id.* at 145–46.

The parties are correct that Leal’s claim is foreclosed.

Accordingly, the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED as unnecessary, and the judgment of the district court is AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS  
Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

Case Number: 4:21-CR-230-Y(1)

Douglas A. Allen, assistant U.S. attorney

RAMIRO LEAL

Michael A. Lehmann, attorney for the defendant

On September 29, 2021, the defendant, Ramiro Leal, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:


<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of Firearm	August 21, 2020	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed January 25, 2022.

  
TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

Signed January 26, 2022.

### **IMPRISONMENT**

The defendant, Ramiro Leal, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 46 months on count one of the one-count indictment. This sentence shall run concurrently with any future sentence that may be imposed in case no. 1656483D in the 396th Judicial District Court, Tarrant County, Texas, and case no. 1656485, in Criminal Court No. 9, Tarrant County, Texas.

The Court recommends that the defendant be enrolled in a G.E.D. program, if possible.

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

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years on count one of the one-count indictment.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the U. S. Sentencing Commission Guidelines Manual and shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004;

report in person to the U.S. Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

must refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the Court; and

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

### **FINE/RESTITUTION**

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.



### FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a Glock, Model 43, 9-millimeter caliber pistol, bearing serial no. BDRU762.

### 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 marshal