
No. 22-7157

in the
Supreme Court
of the
United States

Term,

ANDREQIO STEVENS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

REPLY TO BRIEF IN OPPOSITION

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This Court should grant certiorari to correct the appellate courts misinterpretation of 18 U.S.C. § 922(g)'s commerce clause element

The Solicitor General, relying on *Scarborough v. United States*, 431 U.S. 563 (1977) and *United States v. Bass*, 404 U.S. 336, 337, 92 S.Ct. 515, 517, 30 L.Ed.2d 488 (1971), contends that Petitioner Steven's arguments regarding the jurisdictional element of 18 U.S.C. § 922(g) possession offenses is “foreclosed.” But the Solicitor General ignores that these cases evaluated a different statute, and that Congress acted to amend the firearms possession statute after this Court’s pronouncements in *Scarborough* and *Bass*. “This Court generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents.” *Ysleta Del Sur Pueblo v. Texas*, 213 L. Ed. 2d 221, 142 S. Ct. 1929, 1940 (2022). Moreover, “[w]hen Congress amends legislation, courts must ‘presume it intends [the change] to have real and substantial effect.’” *Ross v. Blake*, 578 U.S. 632, 641–42, 136 S. Ct. 1850, 1858, 195 L. Ed. 2d 117 (2016)(internal citation omitted). Congress intended that effect in 1986, and this Court’s precedents in *Scarborough* and *Bass* are not controlling.

Further, the Solicitor General does not address this Court’s caution to *not* rely on *Scarborough* in interpreting the current 18 U.S.C. § 922(g). See *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 702, 178 L. Ed. 2d 799 (2011)(Scalia and Thomas in dissent); *Rehaif v. United States*, 139 S. Ct. 2191, 2199, 204 L. Ed. 2d 594 (2019)(“all but impossible to draw any inference that Congress intended to ratify a pre-existing consensus when, in 1986, it amended the statute.”).

Finally, the Solicitor General submits that, because there is no circuit split on this issue, certiorari review is not warranted. While it is true that “when frontier legal problems are presented, periods of ‘percolation’ in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court,” *Arizona v. Evans*, 514 U.S. 1, 24, 115 S. Ct. 1185, 1198, 131 L. Ed. 2d 34 (1995), the appellate courts have now had 37 years to let this issue percolate. Moreover, this Court has frequently used its review authority to correct a mistake in the interpretation of a statute despite a lack of conflict among the circuits – particularly where the interpretation is detrimental to a criminal defendant. See *Johnson v. United States*, 576 U.S. 591, 595, 135 S. Ct. 2551, 2556, 192 L. Ed. 2d 569 (2015); *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005); *Rehaif v. United States*, 139 S. Ct. 2191, 2199, 204 L. Ed. 2d 594 (2019). The need for review is even more compelling in a case such as this where important constitutional rights are at stake. See Public Law 99-308, May 19, 1986, 100 Stat 449, Section 1 (Congressional findings that § 922(g) was enacted to protect citizen’s rights under the Second Amendment and to safeguard against “unconstitutional exercise of authority under the Ninth and Tenth Amendments.”).

This Court “must give effect to, not nullify, Congress’ choice to include limiting language in some provisions but not others.” *Gallardo By & Through Vassallo v. Marsteller*, 213 L. Ed. 2d 1, 142 S. Ct. 1751, 1759 (2022). Here, Congress chose to

limit weapons possession offenses to those where the actor committed the possession “in or affecting commerce.” In separately delineating the receipt offense, Congress expressed a clear intention to require different proof for the jurisdictional elements of possession and receipt offenses. Picking up on this Court’s suggestion in *Scarborough*, Congress chose a “stricter nexus” for possession than receipt. Thus, for the possession offense under § 922(g), proof that the weapon had at some prior point traveled in interstate commerce, unrelated to the possession, is insufficient. As such, this Court should grant certiorari review, vacate Petitioner Steven’s conviction, and correct this long-standing misinterpretation at odds with the plain language of 18 U.S.C. § 922(g).

CONCLUSION

Stevens requests this Court grant certiorari, reverse the Sixth Circuit's decision, and remand for dismissal of his conviction.

Respectfully submitted,

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