

IN THE SUPREME COURT OF THE UNITED STATES

MARK ANTHONY REYNA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether this Court's longstanding interpretation of language now codified in 18 U.S.C. 922(g)(1), which makes it unlawful for a convicted felon to possess a firearm that has traveled in interstate commerce, is correct and consistent with the Commerce Clause.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

United States v. Reyna, 21-cr-80 (Aug. 3, 2022)

United States Court of Appeals (5th Cir.):

United States v. Reyna, 22-10375 (Feb. 23, 2023)

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No. 22-7644

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is not published in the Federal Reporter but is available at 2023 WL 2239004.

JURISDICTION

The judgment of the court of appeals was entered on February 23, 2023. The petition for a writ of certiorari was filed on May 23, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2) (2018). Pet. App. B1. The district court sentenced him to 40 months of imprisonment, to be followed by three years of supervised release. Id. at B2-B3. The court of appeals affirmed. Id. at A1-A2.

1. In May 2021, officers responded to a 911 call reporting a domestic disturbance at a residence near Levelland, Texas. Presentence Investigation Report (PSR) ¶ 13. The caller told officers that petitioner was armed with a pistol, had hit the caller in the face and stomach, and then tossed the pistol into the street before leaving. PSR ¶¶ 13-14. Officers arrived minutes later and located the pistol in the street in front of the residence. PSR ¶¶ 14-15. They then found petitioner walking nearby with a gun magazine in his pocket that matched the pistol. PSR ¶ 15.

A federal grand jury in the Northern District of Texas indicted petitioner for possessing a firearm in and affecting interstate commerce following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2) (2018). Indictment 1. Petitioner entered an unconditional guilty plea pursuant to a plea agreement. Pet. App. B1, C1, C3-C4. As part of his guilty plea,

petitioner stipulated that he "committed all the essential elements of the offense." Id. at C3.

Specifically, petitioner admitted that he "knowingly possess[ed] in or affecting interstate or foreign commerce a firearm," "knew that he was a convicted felon," and "knew it was unlawful for him to possess a firearm." Pet. App. C2-C3. Petitioner also admitted "that the firearm traveled in interstate or foreign commerce" i.e., that the firearm had "at some time traveled from one state to another or between any part of the United States and another country." Id. at C3.

2. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A2.

On appeal, petitioner argued for the first time that the firearm-possession statute, 18 U.S.C. 922(g)(1), exceeded Congress's power under the Commerce Clause. Pet. C.A. Br. 3-6. Alternatively, he argued that Section 922(g)(1) should be construed to require "either recent movement across state lines, or movement in response to the defendant's conduct," and that the factual basis for his plea failed to show the necessary elements. Id. at 6. Petitioner acknowledged (id. at 3-7), however, that both this Court's precedent and circuit precedent foreclosed his arguments, and that he could not establish that any error was plain under Federal Rule of Criminal Procedure 52(b). The court of appeals agreed that his "claim [wa]s foreclosed" and granted the government's motion for summary affirmance. Pet. App. A1-A2.

ARGUMENT

Petitioner renews his contention (Pet. 4-8) that this Court's longstanding interpretation of language in 18 U.S.C. 922(g)(1), which prohibits convicted felons from possessing firearms "in or affecting commerce," exceeds Congress's authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl.3. Petitioner also renews his alternative contention (Pet. 8-10) that Section 922(g)(1)'s text does not in fact cover possession of a firearm that has traveled across state lines.

For the reasons explained in the government's briefs in opposition to the petitions for writs of certiorari in Stevens v. United States, No. 22-7157 (May 31, 2023), and Baker v. United States, No. 22-7276 (June 14, 2023), copies of which are being served on petitioner, those contentions do not warrant this Court's review. They lack merit; the court of appeals' unpublished per curiam decision does not conflict with any decision of this Court or another court of appeals; and this Court has recently and repeatedly denied petitions for writs of certiorari on both the

constitutional¹ and the statutory² issues. The Court should follow the same course here.³

Indeed, this case would be a particularly unsuitable vehicle for reviewing either issue. As a threshold matter, petitioner's statutory claim is foreclosed by his unconditional guilty plea, in which he admitted that the firearm he possessed was "in or affecting interstate or foreign commerce" because it had "traveled in interstate or foreign commerce." Pet. App. C2-C3. Although an unconditional guilty plea does not relinquish a constitutional challenge to the offense of conviction, Class v. United States, 138 S. Ct. 798, 804-805 (2018), petitioner's admission that the evidence sufficiently established all the elements of the offense charged in the indictment necessarily relinquished his statutory

¹ See, e.g., Seekins v. United States, 2023 WL 4163279 (June 26, 2023) (No. 22-6853); Penn v. United States, 141 S. Ct. 2526 (2021) (No. 20-6791); Perryman v. United States, 141 S. Ct. 2524 (2021) (No. 20-6640); Johnson v. United States, 141 S. Ct. 137 (2020) (No. 19-7382); Bonet v. United States, 139 S. Ct. 1376 (2019) (No. 18-7152); Gardner v. United States, 139 S. Ct. 1323 (2019) (No. 18-6771); Garcia v. United States, 139 S. Ct. 791 (2019) (No. 18-5762); Robinson v. United States, 139 S. Ct. 638 (2018) (No. 17-9169); Dixon v. United States, 139 S. Ct. 473 (2018) (No. 18-6282); Vela v. United States, 139 S. Ct. 349 (2018) (No. 18-5882); Terry v. United States, 139 S. Ct. 119 (2018) (No. 17-9136); Brice v. United States, 137 S. Ct. 812 (2017) (No. 16-5984); Gibson v. United States, 579 U.S. 919 (2016) (No. 15-7475).

² See Gray v. United States, 140 S. Ct. 557 (2019) (No. 19-5699); Robinson, *supra* (No. 17-9169).

³ The pending petitions for writs of certiorari in Stevens v. United States, No. 22-7157 (filed Mar. 23, 2023), Fraser v. United States, No. 22-7258 (filed Apr. 10, 2023), Baker v. United States, No. 22-7276 (filed Apr. 10, 2023), Gonzales v. United States, No. 22-7320 (filed Apr. 17, 2023), and Mack v. United States, No. 22-7524 (filed May 9, 2023), raise similar issues.

claim, which is inconsistent with the premise that his conduct satisfies those elements, see United States v. Broce, 488 U.S. 563, 570-571 (1989).

Furthermore, as petitioner acknowledges (Pet. 11), he did not raise either of his challenges in the district court. Petitioner's challenges would therefore be subject to at most plain-error review. See Fed. R. Crim. P. 52(b). Petitioner accordingly recognizes (Pet. 11) that his failure to raise those challenges in district court "probably presents an insurmountable vehicle problem."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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