

IN THE
SUPREME COURT OF THE UNITED STATES

Garcia v. United States of America

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

ATTACHMENT A

2025 WL 1249776

Only the Westlaw citation is currently available.

United States Court of Appeals, Tenth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Joshua Omar GARCIA, Defendant - Appellant.

No. 24-1051

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FILED April 30, 2025

(D.C. No. 1:17-CR-00358-CMA-1) (D. Colorado)

Attorneys and Law Firms

[Kyle W. Brenton](#), J. Bishop Grewell, DOJ-United States Attorney's Office, Denver, CO, for Plaintiff - Appellee.

[Leah Deborah Yaffe](#), Office of the Federal Public Defender, Denver, CO, for Defendant - Appellant.

Before [FEDERICO](#), [BALDOCK](#), and [MURPHY](#), Circuit Judges.

ORDER AND JUDGMENT *

[Bobby R. Baldock](#), Circuit Judge

*1 Defendant, Joshua Omar Garcia, pleaded guilty to possession of a firearm as a felon in violation of [18 U.S.C. § 922\(g\)\(1\)](#). In relevant part, [§ 922\(g\)\(1\)](#) makes it unlawful for a convicted felon to “possess in or affecting commerce, any firearm.” As permitted by Defendant's plea agreement, Defendant appeals the district court's denial of his motion to dismiss his felon-in-possession charge as unconstitutional under the Second Amendment and the Commerce Clause. He appeals for preservation purposes only, conceding our precedents foreclose his arguments. We exercise jurisdiction under [28 U.S.C. § 1291](#) and review Defendant's appeal de novo. See [United States v. Dorris](#), 236 F.3d 582, 584 (10th Cir. 2000) (explaining we review challenges to the constitutionality of a statute de novo).

Defendant first argues we must vacate his [§ 922\(g\)](#) conviction because it violates the Second Amendment, citing [New York State Rifle & Pistol Ass'n v. Bruen](#), 597 U.S. 1 (2022) and [United States v. Rahimi](#), 602 U.S. 680 (2024). Defendant raises both a facial and as-applied challenge. We agree with Defendant that our precedents foreclose his argument. In [United States v. McCane](#), we held [§ 922\(g\)\(1\)](#) does not violate the Second Amendment. 573 F.3d 1037, 1047 (10th Cir. 2009). In addition, [McCane](#) “upheld the constitutionality of [§ 922\(g\)\(1\)](#) without drawing constitutional distinctions based on the type of felony involved.” [Vincent v. Bondi](#), 127 F.4th 1263, 1266 (10th Cir. 2025). [McCane](#) remains binding after [Bruen](#) and [Rahimi](#), so Defendant's Second Amendment challenge fails. See *id.*

Defendant also argues [§ 922\(g\)](#) violates the Commerce Clause, citing [United States v. Lopez](#), 514 U.S. 549 (1995). Our precedents yet again foreclose Defendant's argument. We have affirmed the constitutionality of [§ 922\(g\)](#) under the Commerce Clause on numerous occasions. See, e.g., [United States v. Bolton](#), 68 F.3d 396, 400 (10th Cir. 1995) (“Section 922(g)'s requirement that the firearm have been, at some time, in interstate commerce is sufficient to establish its constitutionality under the Commerce Clause”); [Dorris](#), 236 F.3d at 584–86 (rejecting a challenge to [§ 922\(g\)\(1\)](#) based not only on [Lopez](#) but also [United States v. Morrison](#), 529 U.S. 598 (2000) and [Jones v. United States](#), 529 U.S. 848 (2000)); [United States v. Urbano](#),

[563 F.3d 1150, 1154 \(10th Cir. 2009\)](#) (reiterating, “if a firearm has traveled across state lines, the minimal nexus with interstate commerce is met and the statute can be constitutionally applied”).

Bound by precedent, we affirm Defendant's [§ 922\(g\)](#) conviction.

All Citations

Not Reported in Fed. Rptr., 2025 WL 1249776

Footnotes

- * After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. See [Fed. R. App. P. 34\(f\)](#); [10th Cir. R. 34.1\(G\)](#). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R. App. P. 32.1](#) and [10th Cir. R. 32.1](#).