

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: GERALD R. CARON, Petitioner v. UNITED STATES
CASE NO: 97-6270 *e. 4*
PLACE: Washington, D.C.
DATE: Tuesday, April 21, 1998
PAGES: 1-38

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

202 289-2260

LIBRARY

APR 28 1998

Supreme Court U.S.

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'98 APR 28 P1:51

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -X

3 GERALD R. CARON, :

4 Petitioner :

5 v. : No. 97-6270

6 UNITED STATES :

7 - - - - -X

8 Washington, D.C.

9 Tuesday, April 21, 1998

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:17 a.m.

13 APPEARANCES:

14 OWEN S. WALKER, ESQ., Boston, Massachusetts; on behalf of
15 the Petitioner.

16 JONATHAN NUECHTERLEIN, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; on
18 behalf of the Respondent.

C O N T E N T S

1		
2	ORAL ARGUMENT OF	PAGE
3	OWEN S. WALKER, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	JONATHAN NUECHTERLEIN, ESQ.	
7	On behalf of the Respondent	22
8	REBUTTAL ARGUMENT OF	
9	OWEN S. WALKER, ESQ.	
10	On behalf of the Petitioner	37
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:17 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 97-6270, Gerald Caron v. The United States.

5 Spectators are admonished do not talk until you
6 get out of the courtroom. The Court remains in session.
7 We will wait just a minute, Mr. Walker.

8 MR. WALKER: Thank you.

9 CHIEF JUSTICE REHNQUIST: Mr. Walker.

10 ORAL ARGUMENT OF OWEN S. WALKER

11 ON BEHALF OF THE PETITIONER

12 MR. WALKER: Mr. Chief Justice and may it please
13 the Court:

14 If a person is pardoned or has civil rights
15 restored, the statute at issue says his conviction is
16 considered a predicate conviction under Federal firearms
17 law only if the pardon or restoration of rights expressly
18 provides that he may not ship, transport, possess, or
19 receive firearms.

20 My client's -- when my client's rights were
21 restored, Massachusetts law told him that he could possess
22 rifles and shotguns and, indeed, possess a handgun in his
23 home. He's now serving an additional 12 years on his
24 sentence for possessing the very firearms that
25 Massachusetts law told him that he could possess.

1 We say it's self-evident that the statute --
2 that it cannot be said that Massachusetts expressly
3 provides that he could not ship, transport, possess, or
4 receive firearms.

5 QUESTION: Of course, if we accept your
6 interpretation of the law it wouldn't matter that the
7 firearms he had were the kind that Massachusetts allows
8 him to have. Even if he had the kind that Massachusetts
9 didn't allow him to have he would not be subject to this
10 provision of the statute.

11 MR. WALKER: That is the -- what the statute
12 literally says, and it is the -- we contend the only
13 literal reading of the statute. If the Court chooses to
14 follow that literal reading, that is fine as far as my
15 client is concerned.

16 QUESTION: What is the literal reading? Would
17 you go through that again?

18 MR. WALKER: The literal reading is that if
19 the -- a conviction -- if a pardon says -- only if a
20 pardon says you can have no firearms, only if a pardon
21 says no firearms can the conviction be considered a
22 conviction. This is -- he was not told no firearms. He
23 was told a lot of firearms, indeed, most firearms, and --

24 QUESTION: He wasn't pardoned, was he?

25 MR. WALKER: I beg your pardon?

1 QUESTION: Was he pardoned?

2 MR. WALKER: No. His situation is a restoration
3 of civil rights, Your Honor, but the analysis is the same.
4 The so-called --

5 QUESTION: That's where I'm having trouble,
6 because I read this statute -- I'd always thought that a
7 felon in possession of a gun was committing a Federal
8 crime.

9 Then when I read this statute, the words civil
10 rights restored, I discovered that 24 States restore civil
11 rights virtually automatically, so in half the country it
12 isn't a crime, unless, of course, in those States, and
13 they are a random set thereof, that have some other gun
14 law of their own for their own felons.

15 And so we have about -- I found about, like 11
16 or 12 of them anyway that seem to say, your rights are
17 restored automatically, they're never taken away, as soon
18 as you get out of prison, and by the way, you can have
19 guns, so there, I guess, there is no such law.

20 And then another set, about 11 say you can have
21 some guns and not other guns, and I guess that's what we
22 have here, right?

23 MR. WALKER: That's correct.

24 QUESTION: So how do we deal with this? I
25 honestly do not know. I'm very interested in your --

1 MR. WALKER: Well, I would suggest that the
2 Court should follow the words of the statute. The statute
3 does not say that a conviction remains a Federal predicate
4 if there are firearms that the pardon, the restoration of
5 civil rights, expressly provides the person can't have.

6 It doesn't say that the conviction remains a
7 predicate if the pardon or restoration of rights restricts
8 firearms privileges, and it would have been very easy for
9 Congress to say those things.

10 QUESTION: I don't think it has to be read that
11 way. I mean, you're taking the literal meaning. Suppose
12 it just prohibits his not possessing handguns. Aren't
13 handguns firearms?

14 MR. WALKER: Well, that's --

15 QUESTION: So in prohibiting handguns it's
16 prohibiting his possession of firearms.

17 MR. WALKER: There is a false syllogism in the
18 circuit court's reading of the statute, and it goes like
19 this.

20 Let's say you like lawyers. You like almost all
21 lawyers, but A, B, and C are particular lawyers that you
22 don't like, so the syllogism that is false goes like this.
23 I do not like A, B, and C. A, B, and C are lawyers.
24 Therefore, I do not like lawyers.

25 It comes out completely the opposite of the

1 truth, almost completely the opposite. The fact is, you
2 like lawyers, but if you follow that logic, you end up
3 with almost a contrary meaning.

4 The statute says no firearms. It says the State
5 law --

6 QUESTION: It does not say that. I -- unless I
7 have the wrong statute.

8 MR. WALKER: Well -- you're correct, Your Honor.

9 QUESTION: It does not say no firearms. That's
10 the whole point. It says, shall not be considered a
11 conviction for purposes of this chapter unless such pardon
12 or restoration expressly provides that the person may not
13 ship, possess, or receive firearms, and it doesn't say any
14 firearms, it says firearms.

15 MR. WALKER: That's correct, Your Honor. For
16 example --

17 QUESTION: So you have to be very, very careful.
18 So you misstated the statute.

19 MR. WALKER: Well, I beg to differ, Your Honor.
20 If the Governor told her staffer, draw up the pardon for
21 Smith, and I want it to expressly provide that Smith
22 cannot ship, transport, possess or receive firearms.

23 The staffer goes and writes those words and also
24 adds -- staffer, let's say, likes hunting and says, but
25 the person can have rifles and shotguns to go hunting.

1 So the Governor is looking the next day through
2 her papers, is about to sign the pardon, and she looks
3 down and says, what's this about rifles and shotguns. I
4 told you to draw up a pardon that expressly provided that
5 Smith couldn't ship, transport, possess or receive
6 firearms. It's perfectly clear what that means.

7 QUESTION: Let me take your lawyers example. It
8 isn't perfectly clear. It could mean all or it could mean
9 some, in all of these examples. Suppose, with lawyers,
10 someone says, I have been cheated by lawyers. Does that
11 mean I have been cheated by all lawyers?

12 MR. WALKER: That -- that --

13 QUESTION: I have been cheated by A, B, and C,
14 and wouldn't I make the statement, I've been cheated by
15 lawyers?

16 MR. WALKER: Well, that is a different --
17 there's no prohibition in that. There are no words of
18 prohibition.

19 For example, if you tell your children, you
20 can't have candy, and later in the day you find out that
21 they have had some candy, and they said, their answer is,
22 well, you didn't say that we couldn't have some candy.
23 You just said we can't have candy, and that's true.
24 M&M's, we didn't eat them, but they are candy, and the
25 parent says, I said you can't have candy, and the statute

1 says --

2 QUESTION: It doesn't work. It doesn't work
3 even for a prohibition.

4 Suppose you prohibited your child from eating
5 gumdrops, and someone asks you, have you ever prohibited
6 your children from eating candy? Wouldn't you reply,
7 yeah, on one occasion I prohibited them from eating
8 gumdrops. Gumdrops are candy. I have prohibited them
9 from eating candy.

10 MR. WALKER: You would say there's certain candy
11 that I prohibited my child from eating, but if the
12 question is, have you ever expressly told your children
13 not to eat candy, the answer would be no, if you've only
14 limited it to M&M's.

15 QUESTION: I wouldn't say no. I'd say, on one
16 occasion I told them they couldn't eat gumdrops.

17 MR. WALKER: Right, I couldn't eat -- but you
18 wouldn't say, on one occasion I told them they couldn't
19 eat candy. The other person may be asking about their
20 teeth, for example.

21 QUESTION: Mr. Walker, can we get away from
22 grammar for a moment and say, why isn't -- since you can
23 read this at least three ways, say why isn't the question,
24 is this person, this ex-felon, now like everybody else
25 with respect to guns, so if he can have guns like someone

1 who never committed a crime, fine. Then we know that he
2 doesn't fit in this category, but if he's not like
3 everyone else, then he does. Why isn't that the most
4 sensible reading of it?

5 MR. WALKER: I think that is the most sensible
6 reading.

7 QUESTION: But your client is not like everyone
8 else because he can't have handguns on the street.

9 MR. WALKER: Other people can't have handguns on
10 the street unless they get a special license.

11 QUESTION: Yes, but as I understand it, under
12 Massachusetts law ex-felons can never be equated to people
13 who never committed a crime because there's always a
14 prohibition.

15 MR. WALKER: That's correct, Your Honor. That's
16 correct. But the -- well, there's certainly -- I have to
17 address the question of congressional intent, which
18 clearly weighs heavily on our side, deference to State
19 lawmakers, and Justice Breyer has pointed out that 12 or
20 so States make this distinction, the some but not all guns
21 distinction.

22 The statute is this -- the changes were based --
23 in the statute were based on deference to the States. The
24 name of the statute, Firearms Owners Protection Act, and
25 there's all kinds of history about how the ATF was

1 bothering innocent-minded people --

2 QUESTION: Yes, but deference I don't think
3 really -- assuming that was the intent, I don't think that
4 gets you where you want to go, because they could defer in
5 either of two ways.

6 They could say, if the State legalizes it, it's
7 okay with us, or they could say, this is a very dangerous
8 situation, and unless the State wants to legalize it
9 across the board and equate the convicted felon with the
10 person who has never been convicted, we're not taking any
11 chances and we're going to treat the felon as a felon.

12 In either case, the Congress would be deferring
13 ultimately to a State determination, but in one case you
14 win, in one case you lose, so deference isn't going to win
15 the case for you.

16 MR. WALKER: I disagree, Your Honor. I think
17 first of all they aren't -- certainly aren't deferring to
18 the 12 or -- 11 or 12 States that make the distinction.

19 What they're saying is, we'll defer to you -- if
20 you want to ban all guns, Federal law -- for ex-felons,
21 Federal law will coincide. If you want them to have all
22 firearms, Federal law will coincide. But if you try to
23 split the difference, if you try to make reasonable
24 compromises about what kinds of guns ex-felons can have,
25 that's out.

1 QUESTION: There's no room for the Rule of
2 Lenity here, then.

3 MR. WALKER: Well, there's -- I do not think --

4 QUESTION: Rule of Lenity, I assume, is a
5 compromise rule. It says, if there is ambiguity, then, in
6 fact, we will apply the Rule of Lenity. You're saying you
7 shouldn't read this as -- I think you're saying that you
8 shouldn't read this as raising the possibility of
9 ambiguity. It's got to be read 100 percent in my favor.

10 MR. WALKER: I am just saying -- I am saying,
11 Your Honor, that there was only one reading that is
12 grammatically correct that the ordinary person who had a
13 pardon that says on it, pardon, you can have all the
14 hunting guns you --

15 QUESTION: I thought we're not talking about a
16 pardon. We're talking about a statutory --

17 MR. WALKER: Well, there -- if Your Honor
18 please, the issue of some but not all is exactly the same
19 for the pardon as it is for restoration of civil rights.
20 Indeed, I suggest that the reason the lower courts, or
21 some lower courts read this wrong is, they got into this
22 whole question of restoration of civil rights, which has
23 confounded all kinds of courts on all kinds of issues.

24 The simplest example is the some but not all
25 pardon, the person that holds the pardon that says that he

1 can have rifles and shotguns but not handguns. He looks
2 at it, says I can have rifles and shotguns, he looks at
3 the statute and he says, does this statute expressly
4 provide that I can't have firearms? No. It says I can
5 have most firearms.

6 QUESTION: That's why I couldn't understand why
7 you were running away from the Rule of Lenity that Justice
8 Souter brought up. The Rule of Lenity cuts in your favor,
9 doesn't it?

10 MR. WALKER: Well, I think it does ultimately.
11 It's certainly in my brief, and I --

12 QUESTION: It says only if you're totally
13 prohibited will this criminal law apply to you. If you're
14 only partially prohibited it won't. That's the more
15 lenient interpretation.

16 MR. WALKER: I agree, Your Honor, completely,
17 but I do think the Government's attempt to come up with a
18 different interpretation of the literal interpretation is
19 very strange, this question about there's four verbs in
20 the statute rather than only one; that suddenly changes
21 the whole meaning of the statute; that's why the First
22 Circuit was right; they didn't realize it, but it was
23 because there were four verbs there.

24 I don't think that cuts the mustard, and
25 therefore I don't think the Rule of Lenity is necessary,

1 but reasonable people may disagree.

2 QUESTION: May I interrupt just a minute,
3 because the question is, is it not -- the question is
4 whether Massachusetts law, which has restored the civil
5 rights, expressly provides that a felon may not ship,
6 transport, possess, or receive firearms, and does -- is it
7 not clear the Massachusetts law does provide that a felon
8 may not possess, transport or ship certain firearms that
9 other people can --

10 MR. WALKER: There are firearms which
11 Massachusetts law --

12 QUESTION: Well then, why isn't the plain
13 language against you? That's what I don't quite
14 understand.

15 MR. WALKER: There is a difference between,
16 there are certain items that are --

17 QUESTION: The question is whether what he
18 cannot ship, transport, or possess is a firearm, and there
19 are certain firearms that he may not ship, transport,
20 possess or receive.

21 MR. WALKER: Exactly, Your Honor, and if
22 Congress had --

23 QUESTION: And other citizens may.

24 MR. WALKER: If Congress had said that --

25 QUESTION: But that's what it did say.

1 MR. WALKER: No, it said -- it doesn't say, if
2 there are firearms --

3 QUESTION: No, it says, unless such pardon,
4 restoration -- expressly provides that the person may not
5 ship, transport, possess or receive firearms.

6 MR. WALKER: Right.

7 QUESTION: And it does.

8 MR. WALKER: No.

9 QUESTION: His restoration of civil rights is
10 not total. It is limited by the fact that he may not
11 possess, transport or receive certain firearms.

12 MR. WALKER: I dis -- I completely agree that
13 there are firearms that Massachusetts prohibits the ex-
14 felon from having, but I disagree that Massachusetts
15 expressly provides that a felon may not have firearms. An
16 express provision --

17 QUESTION: Well, he may not have those firearms,
18 the ones that he's prohibited from having.

19 MR. WALKER: That's correct, but when you say
20 candy is prohibited to a child -- I expressly provide you
21 can't have candy, you're saying to the child, no candy, no
22 M&M's or whatever.

23 QUESTION: Mr. Walker, I think I agree with your
24 analysis generally that when a prohibition is expressed
25 without qualification -- no candy, no firearms -- that

1 means absolutely none, and that's not what we have here in
2 Massachusetts. I'll grant you that.

3 The trouble with that analysis, and the trouble
4 with saying therefore plain meaning governs in your favor,
5 is that it leads to a crazy result which I find it very
6 difficult to believe Congress could have intended, because
7 it -- I mean, it leads to the result of saying that the
8 fact that Massachusetts draws a line, and we are referring
9 to Massachusetts law at least for some purpose here, the
10 line is nonetheless irrelevant.

11 And it seems to me that it is the strangeness of
12 that result which it is very difficult for me to believe
13 that Congress could possibly have intended. E.g.,
14 Massachusetts says, rifles are okay but no machine guns,
15 the fellow possesses a machine gun and Congress would have
16 meant to say, machine guns are therefore fine. That's
17 hard to accept.

18 Isn't that the problem with your case, and isn't
19 that why we should not look at this as a plain meaning
20 case?

21 MR. WALKER: If Your Honor please, the only
22 literal -- my position is, the only literal reading
23 produces that result, but as the Court recently said, a
24 literal reading that dramatically separates a statute from
25 its purpose should not be followed that far, and that's in

1 the Lewis case on any enactment in the Assimilated Crimes
2 Act.

3 And I would suggest the ordinary person that is
4 holding the pardon that says, you can have rifles, if
5 somebody says, the statute doesn't expressly provide I
6 can't have firearms, some clever person comes along and
7 says, this is great, you don't have a conviction now,
8 therefore you can go out and get concealed weapons and you
9 can go up to the ATF and thumb your nose at them, that's
10 really great, and the ordinary person isn't going to say,
11 oh, great.

12 The ordinary person is going to say, that's not
13 what my pardon -- my pardon doesn't extend that far.
14 That's a nice technical reading. That's a nice sort of
15 philosophical cuteness, but it obviously isn't what
16 Congress probably meant to say. It's what Congress said,
17 but it does go beyond the purpose of the statute.

18 QUESTION: Take the -- take that case, because
19 I'd like to go back to Justice Ginsburg's question, which
20 I'm not certain I see the answer to. Say, does Virginia's
21 law prohibit felons from having firearms? I don't know.
22 And if it has some firearms and not others, I'm not sure
23 how to answer the question, so I think it's ambiguous.

24 But if it is ambiguous, then what she said
25 applied to pardons or to expungements or to restoration of

1 civil rights, that the basic objective of the statute is
2 to ask whether or not the State is treating this felon as
3 if he's now like everybody else or whether he isn't, so if
4 you pardon him, you assume he's back in the group of
5 people that are like everybody else. We wiped it out, and
6 the same, en masse, with the civil rights restoration.

7 But it isn't wiped out -- it isn't wiped out,
8 and he's not like everybody else, if that wiping out had a
9 condition attached, which condition was, we're not
10 treating you like everybody else in respect to firearms.

11 And now, if that's the purpose, what's the
12 point, either in the pardon case, the expungement case or
13 the civil rights case, of insisting that the States say,
14 oh, we're really not treating you like everybody else
15 in that you can't even have cannons, atomic bombs, all
16 this stuff. We have to put it all in there, and why isn't
17 it enough to say that, well, most of the firearms are in
18 there so they're not like somebody else, or even a
19 significant amount?

20 MR. WALKER: Because in fact --

21 QUESTION: That's the policy question.

22 MR. WALKER: Because in fact, Your Honor,
23 restoration of civil rights does not treat -- result in
24 treating somebody as if they'd basically never been
25 convicted. It's very narrow. It's right to jury, hold

1 public office, et cetera -- serve on a jury, hold public
2 office.

3 And the -- in fact, you can be on parole in
4 several States -- and Massachusetts is one. You can be on
5 parole for a long, long time, 20 years. After 7 years
6 your civil rights are restored, you're allowed to have
7 some firearms and not other firearms, but the State hasn't
8 declared you like all other citizens.

9 QUESTION: The Federal statute is saying when
10 these three happen in respect to firearms, any of these
11 three things, the felon is, in effect, put back in the big
12 pool of everybody, but he's not put back in the big pool
13 of everybody if that event, which to a degree at least
14 made him like everybody, is conditioned in a firearms-
15 related way.

16 Now, if that's what we're doing, why wouldn't
17 the common sense of it be, is there a significant firearms
18 condition, not is there a perfect complete firearms
19 condition, but just is there a significant firearms
20 condition?

21 MR. WALKER: Well, if Your Honor please, I'm not
22 making myself clear.

23 A person can have his rights, civil rights
24 restored and every week have to report to a parole
25 officer, every week, or he has to register as a sex

1 offender, let's say. He can't testify in a trial without
2 being impeached.

3 He's not trust -- he's considered rather
4 untrustworthy by the State, yet his civil rights have been
5 restored and he's like everybody else with respect to
6 firearms.

7 This trustworthiness rationale that the Sixth
8 Circuit came up with and the First Circuit followed does
9 not work. The person is not treated as being free of
10 stigma, having a clean record.

11 That is not necessary to be reinstated to one's
12 firearms rights under Massachusetts law and several other
13 States, so there's no policy here that -- the reason that
14 you -- that you can't have rifles if you can't have
15 handguns is that basically that means that we don't really
16 trust you. In fact, you can have rifles even though we
17 think you should report to a parole officer, should
18 register, or whatever, so there is no policy rationale
19 that supports the Government's position.

20 But the question of deference and the Federal
21 deference to State authorities is a very significant one,
22 and it's -- the words of the congressional history about
23 honoring the intent of the States, giving the States
24 flexibility, all cut our way, and it is very odd -- it
25 would be, I would say, very odd for Congress to say look,

1 if you want to be able to let your civil-rights-restored
2 felon go hunting, then you've got to give him Saturday
3 night specials, concealed weapons, and everything else.
4 It doesn't make any sense to suggest --

5 QUESTION: Well, I think you can make sense out
6 of the policy that this statute has to be enforced
7 Nationwide.

8 I mean, this man might well have been arrested
9 in California, and we would have had to look back at the
10 Massachusetts law, and the Federal Government might say if
11 there are any -- they didn't put it in precisely these
12 terms, but their policy might be, if your civil rights
13 have been restored but there is a condition, and you do
14 not have full restoration as to any firearms at all,
15 that's enough for us. You cannot carry -- you will be
16 deemed a felon in possession for the Federal statute.

17 That's a perfectly sensible policy so far as I'm
18 concerned.

19 MR. WALKER: Well, there -- if Congress had said
20 that, if the Congress had said, if there are firearms you
21 can't possess, and we're just not going to make these
22 interstate distinctions in that kind of thing, that would
23 be a sensible policy.

24 But I would -- I have to say to the Court that
25 Congress rejected this simplicity rationale in the

1 previous sentence on what defines a conviction, and
2 basically -- I don't know how to say this tactfully, but
3 it basically said that this Court in the Dickerson case,
4 that said you have to interpret the word conviction
5 federally one way, it said -- it overruled this Court. It
6 says, you've got to look each time a felon possession case
7 comes up to determine whether the person --

8 QUESTION: It didn't overrule us. It just
9 changed one of its statutes, which was broken.

10 MR. WALKER: Well, thank you, Your Honor.

11 (Laughter.)

12 MR. WALKER: But at any rate, it paid -- the
13 parade of -- or the problems that this Court pointed out
14 with the other interpretation Congress ignored. It said,
15 you've got to do a lot of work, judges, here, to figure
16 out what the law is, even though you're an Idaho case with
17 a Massachusetts prior conviction.

18 If the Court has no other questions I would ask
19 to reserve.

20 QUESTION: Very well, Mr. Walker.

21 Mr. Nuechterlein, we'll hear from you.

22 ORAL ARGUMENT OF JONATHAN NUECHTERLEIN

23 ON BEHALF OF THE RESPONDENT

24 MR. NUECHTERLEIN: Mr. Chief Justice, and may it
25 please the Court:

1 In our view the unless clause of section
2 921(a)(20) means that a past felony conviction counts for
3 purposes of Federal firearms law if the convicting
4 jurisdiction gives continuing effect to the conviction in
5 a manner that relates to firearms. That is the majority
6 view among the courts of appeals that have addressed this
7 issue.

8 Under the minority view, which is what the
9 petitioner has supported here, a past State conviction
10 counts for Federal purposes only if the convicting State
11 prohibits its felons from possessing the kind of gun that
12 the felon is caught with in the present --

13 QUESTION: Well, the fact that there are these
14 differences of opinion may point in the direction of
15 suggesting that the language is ambiguous, and therefore
16 we have to apply the Rule of Lenity.

17 MR. NUECHTERLEIN: Well, in our brief we've
18 noted that there are two possible grammatical ways to read
19 this language, but one of them is not what petitioner
20 proposes here.

21 A conviction either counts as a conviction for
22 purposes of Federal law or it doesn't. The inquiry under
23 section 921(a)(20) turns on whether a State has restored a
24 felon's civil rights and, if so, whether it has continued
25 to impose restrictions on his firearms possession.

1 If that is the case, then the conviction remains
2 a conviction with respect to any firearms that the felon
3 may possess in the present. It triggers the prohibition
4 under the felon-in-possession statute, section 922(g),
5 that a felon may not possess any firearms.

6 QUESTION: Well, there's a certain incongruity
7 in saying that you're following State law and yet -- this
8 person was apparently allowed to possess long guns under
9 State law, and yet he's being prosecuted as a felon in
10 possession.

11 MR. NUECHTERLEIN: Well, Federal law requires a
12 court to look to the law of the convicting jurisdiction
13 for its purpose, and everyone acknowledges that, but the
14 purpose is to determine whether or not that convicting
15 jurisdiction has continued to give the conviction effect
16 with respect to firearms, and that is the only respect in
17 which Federal law defers to State law in this context.

18 QUESTION: So you say it's not deference across
19 the board. It's just deference in one particular.

20 MR. NUECHTERLEIN: That is correct, and it's
21 important to remember that even under petitioner's
22 position there are a variety of contexts in which Federal
23 law would criminalize the possession of a firearm by a
24 felon where a State law would not.

25 For example, in this case petitioner has prior

1 convictions in California and also under Federal law, so
2 no matter what Massachusetts does to restore his civil
3 rights for his Massachusetts convictions, and no matter
4 what Massachusetts says with respect to his firearms
5 privileges, he still remains a felon in possession for
6 purposes of Federal law.

7 QUESTION: Yes, but not for sentencing under the
8 three-strikes-you're-out proposal, because if the
9 Massachusetts convictions don't qualify then he'd be
10 sentenced differently.

11 MR. NUECHTERLEIN: Well, I think that the fact
12 that this case arises as a 924(e) case dealing with the
13 recidivism sentencing provision, merely serves to
14 emphasize why this reading has to be correct. It's
15 implausible to believe that Congress would want the
16 recidivism inquiry, which is -- looks to how dangerous
17 this particular person is based on his past convictions --

18 QUESTION: Well, I think the reading you
19 espoused may be the one that most closely tracks what
20 Congress must have intended, but I'm not certain that the
21 language requires it, and in that posture I ask you again
22 whether we don't have to be concerned about the Rule of
23 Lenity.

24 MR. NUECHTERLEIN: Well, I think again the Rule
25 of Lenity can only be used to advocate a position that is

1 consistent with the statutory text, and this statutory
2 text cannot be read to turn on what kind of firearm a
3 felon happens to possess in the present.

4 Returning back to the fact that this is a
5 section 924(e) proceeding, it's very unlikely, we believe,
6 that Congress would want the recidivism inquiry to turn on
7 whether petitioner brought a rifle or a handgun to the
8 scene of his July 1993 assault. What matters is that with
9 respect to none of these violent felony convictions had
10 the State wiped his slate clean.

11 QUESTION: Well, Mr. Nuechterlein --

12 QUESTION: Your example assumes not just
13 application of the Rule of Lenity, but also rewriting of
14 the statute pursuant to the Rule of Lenity, because even
15 if you applied the Rule of Lenity, that doesn't -- that
16 gets you to the point where it wouldn't matter whether he
17 brought a shotgun or a short gun, it would -- he would
18 simply be able to have all firearms or be able to have no
19 firearms.

20 That is to say, even if he had a firearm that
21 was forbidden by the State, if you take the reading given
22 by petitioner, even if he brought a handgun, which the
23 State prohibits, he wouldn't be sentenced as a recidivist
24 under this provision.

25 MR. NUECHTERLEIN: That is correct, and as this

1 Court has repeatedly stated the Rule of Lenity cannot be
2 used to support a reading of a statute that gives rise to
3 implausible results and that would be one of them.

4 QUESTION: But I think the --

5 QUESTION: That's what the --

6 QUESTION: I was going to yield to Justice
7 Souter the remainder of my time.

8 (Laughter.)

9 QUESTION: There are three possible readings,
10 and I think that the petitioner will take two out of those
11 three, so it doesn't have to be all or nothing, or --

12 QUESTION: Only if you don't want to make up
13 language that the statute doesn't contain.

14 MR. NUECHTERLEIN: The Rule of Lenity would
15 not -- could not be used to support a reading of the
16 statute that is either implausible or is grammatically
17 incompatible with the language of the statute.

18 The reading that the First Circuit shows here is
19 the only reading that is both grammatical and plausible.

20 QUESTION: Well, I question the plaus -- here's
21 the problem that I have with the plausibility. The
22 plausibility problem on the other side I think is clear.
23 You know, you allow the person under State law to buy a
24 single-shot .22 and he says, that means I can buy a
25 machine gun. Congress couldn't have meant that.

1 The implausibility on your side, though, it
2 seems to me, is this, that on your reading State law
3 becomes a trap. I find it implausible to believe that
4 Congress wrote that statute having State law in mind as
5 relevant for some purpose, nonetheless assuming that even
6 though State law says you can have the single-shot .22,
7 you follow State law, you do what is lawful under State
8 law, and you still get caught under the Federal statute.
9 That turns State law into a trap, and that seems to me the
10 source of the implausibility for your all-or-nothing
11 reading.

12 MR. NUECHTERLEIN: I disagree for two reasons.
13 One is that there are many circumstances in which both
14 State and Federal law address the same subject matter
15 under criminal law, and a person is assumed to both know
16 about and to comply with both, but more importantly, under
17 any interpretation of the statute, and that includes
18 petitioner's, there will be a broad range of circumstances
19 in which Federal law would criminalize what State law
20 expressly permits, and this is an example of such a case.

21 If you disregard the three previous
22 Massachusetts convictions it would still remain the case
23 that in 1970 petitioner was convicted of attempted murder
24 in California. No matter what Massachusetts, the
25 jurisdiction of his long-time residence, says to him about

1 his right to possess firearms, he would still be barred
2 under Federal law from possessing them.

3 QUESTION: Okay, but he would not be barred, in
4 effect, through the use of the Massachusetts scheme as a
5 pitfall, or as a trap for him. Federal law would
6 straightforwardly say, no.

7 But this is not a case where State -- I mean,
8 the argument here is not a case where Federal law is
9 straightforwardly saying no. Federal law is making a
10 reference to State law. State law says it's okay, and
11 then Federal law in effect says, well, on one all-or-
12 nothing grammatical reading, that isn't good enough.
13 That's a strange scheme when you're dealing with convicted
14 felons.

15 MR. NUECHTERLEIN: Well, Federal law in our view
16 does, in fact, expressly prohibit possession of a firearm
17 by a felon if the convicting jurisdiction has not -- or
18 has continued to give effect to his conviction in a manner
19 that relates to firearms.

20 QUESTION: In any way.

21 MR. NUECHTERLEIN: But even in Massachusetts,
22 even if you look only at Massachusetts, then there are two
23 additional circumstances under which the Federal law
24 prohibition will be broader than the State law prohibition
25 under anybody's construction of the statute.

1 For example, he committed a Federal felony in
2 Massachusetts. Notwithstanding anything that
3 Massachusetts tells him about his firearms privileges, he
4 is still a felon in possession under the Federal criminal
5 prohibition, and there's also --

6 QUESTION: But he has to commit a felony, and he
7 would say, well, you know -- and in the circumstances of
8 this case I don't feel too sorry for him, because it's
9 just a question of how much of a penalty he gets for a
10 later felony that he committed, but the statute also
11 covers a case where he hasn't committed any later felony,
12 and he's just following the State law which says, you may
13 now possess long guns, and suddenly he's guilty,
14 nonetheless, of a Federal firearms offense.

15 MR. NUECHTERLEIN: Justice Scalia, if Congress
16 had wanted simply to track in every respect the State law
17 prohibition it would have been very easy for it to have
18 done that, and it didn't.

19 But the more important point is that even if he
20 only had one felony conviction and that felony conviction
21 was in Massachusetts, there is a 2-year window after which
22 Massachusetts restores some of its firearms privileges but
23 does not restore his civil rights.

24 There are jurisdictions that restore firearms
25 privileges before civil rights, and even with respect to

1 those jurisdictions the Federal prohibition still obtains.
2 There's still -- because we have a two-step inquiry it's
3 inconceivable that Congress meant to defer to State law in
4 every respect.

5 QUESTION: Why wouldn't -- I mean, I don't
6 understand what Congress was driving at. That's what I --
7 and the reason is, as Justice Souter was saying, is it's
8 plausible Congress could have meant, once the State
9 decides to let these previously convicted felons carry
10 some guns, Federal law jumps out of the business and we
11 leave it up to State law, and he'll be punished if he's
12 carrying the kinds of guns he shouldn't and he won't be
13 punished if he's carrying the kinds of guns he should.

14 I mean, that's a possible reading of the
15 statute, in which case the anomaly of him being able to
16 carry anything, even if the State lets him carry some
17 things, is no longer anomalous.

18 MR. NUECHTERLEIN: Right. It's important,
19 though --

20 QUESTION: So that's a possible reading. What I
21 can't get at is, what was Congress up to? I mean, as I
22 said before, it seems to me that with this word civil
23 rights they've sort of taken this statute away from half
24 the country, and then when you start looking to how these
25 24 States get back into it there's a whole nightmare of

1 different rules and regulations as to when some guns can
2 be carried and you can't carry others, et cetera.

3 So what was Congress doing, in other words, if
4 it didn't mean to take the Federal Government out of the
5 business entirely in respect to prior felons if the State
6 was willing to let those prior felons carry some guns?
7 What other purpose could Congress have had?

8 MR. NUECHTERLEIN: It's important to remember
9 the historical backdrop against which Congress legislated.
10 Up till 1986 it was always a felony for a felon to possess
11 firearms if he had a State conviction for a felony,
12 notwithstanding anything the State had done to restore his
13 rights, either monolithically or partially.

14 Congress then began in this legislation with the
15 presumption that felons are too dangerous to have
16 firearms, but it made an exception in cases where a State
17 has decided not to give continuing effect to the
18 conviction for purposes of civil rights for firearms
19 privileges, and that is the bright-line rule that Congress
20 imposed here, and it is a rule of national application.

21 QUESTION: Am I right in understanding that
22 there was a lot of labor lost, if your interpretation is
23 correct, with all the time that the First Circuit spent
24 figuring out if civil rights had been restored?

25 That was academic. They should have gone right

1 to the gun prohibition. They should have seen that X
2 felon for life is barred from carrying at least some guns,
3 and that's the end of it.

4 MR. NUECHTERLEIN: Well, the district court had
5 never reached the firearms restriction question, because
6 under binding First Circuit precedent --

7 QUESTION: But shouldn't the district court have
8 gone right to that question?

9 MR. NUECHTERLEIN: It was --

10 QUESTION: Why get into this whole hassle about
11 whether civil rights had been restored if the Federal
12 legislation means so long as the State bars you from
13 carrying any gun you don't come out from this category?

14 MR. NUECHTERLEIN: It was because at the time
15 the district court ruled, the First Circuit law was
16 crystal clear. If you hadn't received an individualized
17 pardon or restoration of civil rights, then that was the
18 end of the inquiry, so that was the simplest basis on
19 which the district court could have resolved the case, and
20 it was on that basis that the First Circuit then revisited
21 its earlier precedent.

22 QUESTION: What do -- if my -- the question I
23 just asked you -- you remember that one?

24 MR. NUECHTERLEIN: Yes.

25 QUESTION: All right. That wasn't necessarily

1 my view, but suppose the view that underlay that question
2 was right, then I guess when you went back to the history
3 of this statute, they would have not just -- they would
4 have been gutting the prior law, so you would have thought
5 that there would have been huge arguments about it,
6 whether this basic statute, you know, that forbids felons
7 to possess guns was really going to be -- half of it
8 chopped away. There would have been an enormous argument.

9 On the other hand, on your reading of it, it
10 makes a kind of odd, bizarre, but narrow exception that
11 has weird, jagged edges. Very well, maybe there wasn't a
12 lot of debate about that. Maybe it went unnoticed.

13 Well, when you look into this, what was it?
14 What was the debate like? I mean, what was the discussion
15 like when they passed this statute?

16 MR. NUECHTERLEIN: There wasn't --

17 QUESTION: Was this meant to be a major change
18 in the statute that really would have eradicated half the
19 statute, or was it meant to be some minor thing?

20 MR. NUECHTERLEIN: No. In fact, the statute
21 does not reflect a belief by Congress that it was
22 overhauling the Federal felon-in-possession prohibition.
23 Congress was responding to this Court's decision in
24 Dickerson that held that whether something should be
25 counted as a conviction to begin with under -- for

1 purposes of the statute, this Court had held that that
2 question should be held purely as a matter of Federal law.

3 What was at issue there was a State procedure of
4 deferred adjudication, and this Court held that even
5 though the State didn't characterize deferred adjudication
6 as a conviction, that it would be deemed a conviction for
7 purposes of Federal law, so that was -- that, along with
8 situations where someone is given a blanket pardon and his
9 conviction is treated as a nullity, were the two
10 situations that Congress was focused on.

11 QUESTION: How many States are there that allow
12 ex-felons free access to guns just like everyone else?

13 MR. NUECHTERLEIN: States have 50 different
14 approaches to this problem, and I've -- I couldn't give
15 you an exact figure, but I do know that most States do not
16 restore firearms privileges immediately upon release from
17 confinement. That occurs gradually over time.

18 About half the States --

19 QUESTION: You mean, even for embezzlers and
20 bigamists?

21 MR. NUECHTERLEIN: I think most State statutes
22 are phrased in terms of whether or not you've committed a
23 felony.

24 QUESTION: No matter what felony, whether it's a
25 violent crime or not.

1 MR. NUECHTERLEIN: Some States I think also have
2 fine-tuned this to focus --

3 QUESTION: Maybe embezzlers have their check-
4 writing privileges restored gradually.

5 (Laughter.)

6 QUESTION: I'm trying to find out whether this
7 statute -- whether there's any ex-felon that benefits from
8 this provision. I've had all my civil rights restored,
9 but -- so if there are States that say, ex-felon, after a
10 certain amount of time you can buy guns, and you're
11 subject to the prohibitions that everyone else is, but no
12 more.

13 If there aren't States that do that, then I
14 would resist interpreting a statute to do nothing.

15 MR. NUECHTERLEIN: Justice Ginsburg, there are
16 States that do that. The question is how long it takes
17 for firearms privileges to be restored.

18 About half of the States in the Federal system
19 are all-or-nothing States, such that they either prohibit
20 possession of all firearms, or they permit possession of
21 all firearms after a certain point.

22 Some States, like Vermont, restore firearms
23 privileges immediately upon release from prison. Others
24 take 10 years, 15 years, but there are a substantial
25 number of cases -- there are a substantial number of

1 States in which firearms privileges are either completely
2 withheld or completely restored.

3 QUESTION: And in Massachusetts your view is
4 that no ex-felon -- the Massachusetts conviction will
5 always stick because there's always a bar on at least some
6 gun possession.

7 MR. NUECHTERLEIN: Unless the felon were to have
8 that removed under State law processes.

9 If there are no further questions --

10 QUESTION: Thank you, Mr. Nuechterlein.

11 Mr. Walker, you have 6 minutes remaining.

12 REBUTTAL ARGUMENT OF OWEN S. WALKER

13 ON BEHALF OF THE PETITIONER

14 MR. WALKER: May it please the Court, unless the
15 Court has further questions, I have no further argument.

16 QUESTION: Just the difference -- the
17 difference -- the consequence of this, am I right that it
18 was 120 months versus 262 months? Is that what we're --

19 MR. WALKER: The maximum would have been 10
20 years, that's correct, Your Honor, so the add-on because
21 of the fact that he did what -- well, because of the
22 court's -- circuit's interpretation of this statute was 12
23 additional years. Well, 11 years and 10 months
24 additionally.

25 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Walker.

1 The case is submitted.

2 (Whereupon, at 12:01 p.m., the case in the
3 above-entitled matter was submitted.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of:

GERALD R. CARON, Petitioner v. UNITED STATES
CASE NO: 97-6270

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Donna Marie Fedele

(REPORTER)