Small v. United States

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544 U.S. *385 (2005)

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***386** Justice Breyer delivered the opinion of the Court. [Justices Stevens, O'Connor, Souter, and Ginsburg joined.]

***387** The United States Criminal Code makes it "unlawful for any person . . . who has been *convicted in any court*, of a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess . . . any firearm." 18 U.S.C. § 922(g)(1) (emphasis added).

The question before us focuses upon the words "convicted in any court." Does this phrase apply only to convictions entered in any *domestic* court or to *foreign* convictions as well? We hold that the phrase encompasses only domestic, not foreign, convictions.

I

In 1994 petitioner, Gary Small, was convicted in a Japanese court of having tried to smuggle several pistols, a rifle, and ammunition into Japan. Small was sentenced to five years' imprisonment. *United States v. Small*, 183 F. Supp. 2d 755, 757, n. 3 (W.D. Pa. 2002). After his release, Small returned to the United States, where he bought a gun from a Pennsylvania gun dealer. Federal authorities subsequently charged Small under the "unlawful gun possession" statute here at issue. *United States v. Small*, 333 F.3d 425, 426 (3d Cir. 2003). Small pleaded guilty while reserving the right to challenge his conviction on the ground that his earlier conviction, being a foreign conviction, fell outside the scope of the illegal gun possession statute.

The Federal District Court rejected Small's argument, as did the Court of Appeals for the Third Circuit. 183 F. Supp. 2d at 759; 333 F.3d at 427, n. 2. Because the Circuits disagree about the matter, we granted certiorari. *Compare United States v. Atkins*, 872 F.2d 94, 96 (4th Cir. 1989) ("convicted in any court" includes foreign convictions); *United States v. Winson*, 793 F.2d 754, 757-759 (6th Cir. 1986) (same), *with United States v. Gayle*, 342 F.3d 89, 95 (2d Cir. 2003) ("convicted in any court" does not include foreign convictions); *United States v. Concha*, 233 F.3d 1249, 1256 (10th Cir. 2000) (same).

***388** II

A

The question before us is whether the statutory reference "convicted in *any* court" includes a conviction entered in a *foreign* court. The word "any" considered alone cannot answer this question. In ordinary life, a speaker who says, "I'll see any film," may or may not mean to include films shown in another city. In law, a legislature that uses the statutory phrase "any person" may or may not mean to include "persons" outside "the jurisdiction of the state." *See, e.g., United States v. Palmer*, 3 Wheat. 610, 631 (1818) (Marshall, C.J.). . . .

In determining the scope of the statutory phrase we find help in the "commonsense notion that Congress generally legislates with domestic concerns in mind." *Smith v. United States*, 507 U.S. 197, 204 (1993). This notion has led the Court to adopt the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, ***389** application. . . . That presumption would apply, for example, were we to consider whether this statute prohibits unlawful gun possession abroad as well as domestically. And, although the presumption against extraterritorial application does not apply directly to this case, we believe a similar assumption is appropriate when we consider the scope of the phrase "convicted in any court" here.

For one thing, the phrase describes one necessary portion of the "gun possession" activity that is prohibited as a matter of domestic law. For another, considered as a group, foreign convictions differ from domestic convictions in important ways. Past foreign convictions for crimes punishable by more than one year's imprisonment may include a conviction for conduct that domestic laws would permit, for example, for engaging in economic conduct that our society might encourage. *See, e.g.*, Art. 153 of the Criminal Code of the Russian Soviet Federated Socialist Republic, in Soviet Criminal Law and Procedure 171 (H. Berman & J. Spindler transls. 2d ed. 1972) (criminalizing "Private Entrepreneurial Activity"); Art. 153, *id.*, at 172 (criminalizing "Speculation," which is defined as "the buying up and reselling of goods or any other articles for the purpose of making a profit"); *cf., e.g.*, Gaceta Oficial de la Republica de Cuba, ch. II, Art. 103, p. 68 (Dec. 30, 1987) (forbidding propaganda that incites against the social order, international solidarity, or the Communist State). They would include a conviction from a legal

system that is inconsistent with an American understanding of fairness. *See, e.g.*, U.S. Dept. of State, Country Reports on Human Rights Practices for 2003, Submitted to the House Committee on International Relations and the Senate Committee on Foreign Relations, 108th Cong., 2d Sess., 702-705, ***390** 1853, 2023 (Joint Comm. Print 2004) (describing failures of "due process" and citing examples in which "the testimony of one man equals that of two women"). And they would include a conviction for conduct that domestic law punishes far less severely. *See, e.g.*, Singapore Vandalism Act, ch. 108, § § 2, 3, III Statutes of Republic of Singapore p. 258 (imprisonment for up to three years for an act of vandalism). Thus, the key statutory phrase "convicted in any court of a crime punishable by imprisonment for a term exceeding one year" somewhat less reliably identifies dangerous individuals for the purposes of U.S. law where foreign convictions, rather than domestic convictions, are at issue.

In addition, it is difficult to read the statute as asking judges or prosecutors to refine its definitional distinctions where foreign convictions are at issue. To somehow weed out inappropriate foreign convictions that meet the statutory definition is not consistent with the statute's language; it is not easy for those not versed in foreign laws to accomplish; and it would leave those previously convicted in a foreign court (say of economic crimes) uncertain about their legal obligations. . . .

These considerations, suggesting significant differences between foreign and domestic convictions, do not dictate our ultimate conclusion. . . . They simply convince us that we should apply an ordinary assumption about the reach of domestically oriented statutes here — an assumption that helps us determine Congress' intent where Congress likely did not consider the matter and where other indicia of intent are in approximate balance. We consequently assume a congressional intent that the phrase ***391** "convicted in any court" applies domestically, not extraterritorially. But, at the same time, we stand ready to revise this assumption should statutory language, context, history, or purpose show the contrary.

B

We have found no convincing indication to the contrary here. The statute's language does not suggest any intent to reach beyond domestic convictions. Neither does it mention foreign convictions nor is its subject matter special, say, immigration or terrorism, where one could argue that foreign convictions would seem especially relevant. To the contrary, if read to include foreign convictions, the statute's language creates anomalies. . . .

For example, the statute specifies that predicate crimes include "a misdemeanor crime of domestic violence." 18 U.S.C. § 922(g)(9). [T]he language specifies that these predicate crimes include only crimes that are "misdemeanor[s] under Federal or State law." 18 U.S.C. § 921(a)(33)(A). If "convicted

in any court" refers only to domestic convictions, this language creates no problem. If the phrase also refers to ***392** foreign convictions, the language creates an apparently senseless distinction between (covered) domestic relations misdemeanors committed within the United States and (uncovered) domestic relations misdemeanors committed abroad. . . .

***393** The statute's lengthy legislative history confirms the fact that Congress did not consider whether foreign convictions should or should not serve as a predicate to liability under the provision here at issue. Congress did consider a Senate bill containing language that would have restricted predicate offenses to domestic offenses. *See* S. Rep. No. 1501, 90th Cong., 2d Sess., p. 31 (1968) (defining predicate crimes in terms of "Federal" crimes "punishable by a term of imprisonment exceeding one year" and crimes "determined by the laws of the State to be a felony"). And the Conference Committee ultimately rejected this version in favor of language that speaks of those "convicted in any court, of a crime punishable by a term of imprisonment exceeding one year." H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess., pp. 28-29 (1968), U.S. Code Cong. & Admin. News 1968, 4426, 4428. But the history does not suggest that this language change reflected a congressional view on the matter before us. Rather, the enacted version is simpler and it avoids potential difficulties arising out of the fact that States may define the term "felony" differently. And as far as the legislative history is concerned, these latter virtues of the new language fully explain the change. Thus, those who use legislative history to help discern congressional intent will see the history here as silent, hence a neutral factor, that simply confirms the obvious, namely, that Congress did not consider the issue. . . .

The statute's purpose *does* offer some support for a reading of the phrase that includes foreign convictions. As the Government points out, Congress sought to "'keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society.'" Brief for United States 16 (quoting *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 112 (1983)). . . . ***394** And, as the dissent properly notes, one convicted of a serious crime abroad may well be as dangerous as one convicted of a similar crime in the United States.

The force of this argument is weakened significantly, however, by the empirical fact that, according to the Government, since 1968, there have probably been no more than "10 to a dozen" instances in which such a foreign conviction has served as a predicate for a felon-in-possession prosecution. [Citation omitted.] This empirical fact reinforces the likelihood that Congress, at best, paid no attention to the matter.

C

In sum, we have no reason to believe that Congress considered the added enforcement advantages

flowing from inclusion of foreign crimes, weighing them against, say, the potential unfairness of preventing those with inapt foreign convictions from possessing guns. The statute itself and its history offer only congressional silence. Given the reasons for disfavoring an inference of extraterritorial coverage from a statute's total silence and our initial assumption against such coverage, we conclude that the phrase "convicted in any court" refers only to domestic courts, not to foreign courts. Congress, of course, remains free to change this conclusion through statutory amendment.

For these reasons, the judgment of the Third Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

The Chief Justice took no part in the decision of this case.[1]

Justice Thomas, with whom Justice Scalia and Justice Kennedy join, dissenting. ***395** . . .

[T]he Court distorts the plain meaning of the statute and departs from established principles of statutory construction. I respectfully dissent. ***396** . . .

II

The plain terms of § 922(g)(1) prohibit Small — a person "convicted in any court of a crime punishable by imprisonment for a term exceeding one year" — from possessing a firearm in the United States. "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Webster's Third New International Dictionary* 97 (1976)). . . . ***397** The broad phrase "any court" unambiguously includes all judicial bodies . . . with jurisdiction to impose the requisite conviction — a conviction for a crime punishable by imprisonment for a term of more than a year. Indisputably, Small was convicted in a Japanese court of crimes punishable by a prison term exceeding one year.

The clear terms of the statute prohibit him from possessing a gun in the United States.

Of course, the phrase "any court," like all other statutory language, must be read in context. *E.g., Deal v. United States*, 508 U.S. 129, 132 (1993). The context of § 922(g)(1), however, suggests that there is no geographic limit on the scope of "any court." [Footnote omitted.] By contrast to other parts of the firearms-control law that expressly mention only state or federal law, "any court" is not qualified by jurisdiction. . . . ***398** Congress' explicit use of "Federal" and "State" in other provisions shows that it specifies such restrictions when it wants to do so. . . .

III

Faced with the inescapably broad text, the Court narrows the statute by assuming that the text applies only to domestic

1. Chief Justice Rehnquist was ill and unable to participate.

convictions, criticizing the accuracy of foreign convictions as a proxy for dangerousness, finding that the broad, natural reading of the statute "creates anomalies," and suggesting that Congress did not consider whether foreign convictions counted. None of these arguments is persuasive.

*399 A

The Court first invents a canon of statutory interpretation — what it terms "an ordinary assumption about the reach of domestically oriented statutes," to cabin the statute's reach. . . . The extraterritoriality cases cited by the Court do not support its new assumption. [The cited cases] restrict federal statutes from applying outside the territorial jurisdiction of the United States. . . . ***400** These straightforward applications of the extraterritoriality canon, restricting federal statutes from reaching conduct *beyond U.S. borders*, lend no support to the Court's unprecedented rule restricting a federal statute from reaching conduct *within U.S. borders*. . . . Aside from the extraterritoriality canon, which the Court properly concedes does not apply, I know of no principle of statutory construction justifying the result the Court reaches. Its concession that the canon is inapposite should therefore end this case. . . . ***401**

B

In support of its narrow reading of the statute, the majority opines that the natural reading has inappropriate results. It points to differences between foreign and domestic convictions, primarily attacking the reliability of foreign convictions as a proxy for identifying dangerous individuals. . . . ***402** Surely a "reasonable human being" drafting this language would have considered whether foreign convictions are, on average and as a whole, accurate at gauging dangerousness and culpability. ***403** . . .

C

The majority worries that reading § 922(g)(1) to include foreign convictions "creates anomalies" under other firearms control provisions. It is true, as the majority notes, that the natural reading of § 922(g)(1) affords domestic offenders more lenient treatment than foreign ones in some respects. ***404** . . .

These outcomes cause the Court undue concern. They certainly present no occasion to employ, nor does the Court invoke, the canon against absurdities. We should employ that canon only "where the result of applying the plain language would be, in a genuine sense, absurd, *i.e.*, where it is quite impossible that Congress could have intended the result . . . and where the alleged absurdity is so clear as to be obvious to most anyone." *Public Citizen v. Department of Justice*, 491 U.S. 440, 470-471 (1989) (Kennedy, J., concurring in judgment). . . .

[T]he majority abandons the statute's plain meaning based on results that are at most incongruous and certainly not absurd. As with the extraterritoriality canon, the Court applies a mutant version of a recognized canon when the recognized canon is itself inapposite. ***405** Whatever the utility of canons as guides to congressional intent,

they are useless when modified in ways that Congress could never have imagined in enacting § 922(g)(1). . . .

D

The Court hypothesizes "that Congress did not consider whether the generic phrase 'convicted in any court' applies to domestic as well as foreign convictions," and takes that as license to restrict the clear breadth of the text. Whether the Court's empirical assumption is correct is anyone's guess. Regardless, we have properly rejected this method of guesswork-as-interpretation. . . .

***406** Here, . . . "our task is not the hopeless one of ascertaining what the legislators who passed the law would have decided had they reconvened to consider [this] particular cas[e]," [*Beecham v. United States*, 511 U.S. 368, 374 (1994)], but the eminently more manageable one of following the ordinary meaning of the text they enacted. That meaning includes foreign convictions. . . .

I do not even agree, moreover, that the legislative history is silent. As the Court describes, the Senate bill that formed the basis for this legislation was amended in Conference, to change the predicate offenses from "'Federal' crimes" punishable by more than one year's imprisonment and "crimes 'determined by the laws of a State to be a felony'" to conviction "'in any court, of a crime punishable by a term of imprisonment exceeding one year.'" The Court seeks to explain this change by saying that "the enacted version is simpler and . . . avoids potential difficulties arising out of the fact that States may define the term 'felony' differently." But that does not explain why all limiting reference to "Federal" and "State" was eliminated. The revised provision would have been just as simple, and would just as well have avoided the potential difficulties, if it read "convicted in any Federal or State court of a crime punishable by a term of imprisonment exceeding one year." Surely that would have been the natural change if ***407** expansion beyond federal and state convictions were not intended. The elimination of the limiting references suggests that not *only* federal and state convictions were meant to be covered.

IV

The Court never convincingly explains its departure from the natural meaning of § 922(g)(1). Instead, it institutes the troubling rule that "any" does not really mean "any," but may mean "some subset of 'any,'" even if nothing in the context so indicates; it distorts the established canons against extraterritoriality and absurdity; it faults without reason Congress' use of foreign convictions to gauge dangerousness and culpability; and it employs discredited methods of determining congressional intent. I respectfully dissent.