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SUPREME COURT OF THE UNITED STATES

No. 03–750

GARY SHERWOOD SMALL, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[April 26, 2005]

JUSTICE BREYER delivered the opinion of the Court.

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. 183 F. Supp. 2d 755, 757, n. 3 (WD 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" stat-

ute here at issue. 333 F. 3d 425, 426 (CA3 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 (CA4 1989) ("convicted in any court" includes foreign convictions); *United States* v. *Winson*, 793 F. 2d 754, 757–759 (CA6 1986) (same), with *United States* v. *Gayle*, 342 F. 3d 89, 95 (CA2 2003) ("convicted in any court" does not include foreign convictions); *United States* v. *Concha*, 233 F. 3d 1249, 1256 (CA10 2000) (same).

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.) ("[G]eneral words," such as the word "'any,'" must "be limited" in their application "to those objects to which the legislature intended to apply them"); *Nixon* v. *Missouri Municipal League*, 541 U. S. 125, 132 (2004) ("'any'" means "different things depending upon the setting"); *United States* v. *Alvarez-Sanchez*, 511 U. S. 350, 357 (1994) ("[R]espondent errs in placing dispositive weight on the broad statutory reference to 'any' law enforcement officer or agency without considering the rest

of the statute”); *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1, 15–16 (1981) (it is doubtful that the phrase “‘any statute’” includes the very statute in which the words appear); *Flora* v. *United States*, 362 U. S. 145, 149 (1960) (“[A]ny sum,” while a “catchall” phase, does not “define what it catches”). Thus, even though the word “any” demands a broad interpretation, see, *e.g.*, *United States* v. *Gonzales,* 520 U. S. 1, 5 (1997), we must look beyond that word itself.

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, n. 5 (1993). This notion has led the Court to adopt the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, application. See *Foley Bros., Inc.* v. *Filardo,* 336 U. S. 281, 285 (1949); see also *Palmer, supra*, at 631 (“The words ‘any person or persons,’ are broad enough to comprehend every human being” but are “limited to cases within the jurisdiction of the state”); *EEOC* v. *Arabian American Oil Co.,* 499 U. S. 244, 249–251 (1991). 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, 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. Cf. 1 United States Sentencing Commission, Guidelines Manual §4A1.2(h) (Nov. 2004) ("[S]entences resulting from foreign convictions are not counted" as a "prior sentence" for criminal history purposes).

These considerations, suggesting significant differences between foreign and domestic convictions, do not dictate our ultimate conclusion. Nor do they create a "clear statement" rule, imposing upon Congress a special burden of specificity. See *post*, at 5 (THOMAS, J., dissenting). 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. Cf. *ibid.* We consequently assume a congressional intent that the phrase "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 creates an exception that allows gun possession despite a prior conviction for an antitrust or business regulatory crime. 18 U. S. C. §921(a)(20)(A). In doing so, the exception speaks of "Fed-

eral or State" antitrust or regulatory offenses. *Ibid.* If the phrase "convicted in any court" generally refers only to domestic convictions, this language causes no problem. But if "convicted in any court" includes foreign convictions, the words "Federal or State" prevent the exception from applying where a *foreign* antitrust or regulatory conviction is at issue. An individual convicted of, say, a Canadian antitrust offense could not lawfully possess a gun, Combines Investigation Act, 2 R. S. C. 1985, ch. C–34, §§61(6), (9) (1985), but a similar individual convicted of, say, a New York antitrust offense, could lawfully possess a gun.

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

For example, the statute provides an enhanced penalty where unlawful gun possession rests upon three predicate convictions for a "serious drug offense." §924(e)(1) (2000 ed., Supp. II). Again the statute defines the relevant drug crimes through reference to specific federal crimes and with the words "offense under State law." §§924(e)(2)(A)(i), (ii) (2000). If "convicted in any court" refers only to domestic convictions, this language creates no problem. But if the phrase also refers to foreign convictions, the language creates an apparently senseless distinction between drug offenses committed within the United States (potentially producing enhanced punishments) and similar offenses committed abroad (not pro-

ducing enhanced punishments).

For example, the statute provides that offenses that are punishable by a term of imprisonment of up to two years, and characterized under state law as misdemeanors, are not predicate crimes. §921(20). This exception is presumably based on the determination that such state crimes are not sufficiently serious or dangerous so as to preclude an individual from possessing a firearm. If "convicted in any court" refers only to domestic convictions, this language creates no problem. But if the phrase also refers to foreign convictions, the language creates another apparently senseless distinction between less serious crimes (misdemeanors punishable by more than one year's imprisonment) committed within the United States (not predicate crimes) and similar offenses committed abroad (predicate crimes). These illustrative examples taken together suggest that Congress did not consider whether the generic phrase "convicted in any court" applies to domestic as well as foreign convictions.

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). 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. Others will not be tempted to use or to discuss the history at all. But cf. *post*, at 13 (THOMAS, J., dissenting).

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)); see also *Lewis* v. *United States,* 445 U. S. 55, 60–62, 66 (1980); *Huddleston* v. *United States*, 415 U. S. 814, 824 (1974). And, as the dissent properly notes, *post*, at 12, 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. Tr. of Oral Arg. 32. 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. See *supra,* at 4. 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, see *supra,* at 5, 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.