

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40829
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEVIN ANGELO FLORES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. V-00-CR-109-ALL

February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Kevin Angelo Flores appeals his conviction for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He argues for the first time on appeal that the factual basis was insufficient to support his conviction because 18 U.S.C. § 922(g)(1) operates unconstitutionally where the only interstate commerce nexus is the mere fact that the firearm possessed had a past connection to interstate travel. Flores acknowledges that his argument is foreclosed by circuit

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

precedent, but he raises it to preserve review by the Supreme Court.

We have previously rejected Commerce Clause challenges to 18 U.S.C. § 922(g) and have held that "the constitutionality of § 922(g) is not open to question." United States v. Daugherty, 264 F.3d 513, 518 (5th Cir. 2001) (internal quotations and citation omitted), petition for cert. filed, (U.S. Dec. 20, 2001) (No. 01-7524). Flores has not shown that the district court plainly erred. See United States v. Marek, 238 F.3d 310, 314-15 (5th Cir.) (en banc), cert. denied, 121 S. Ct. 37 (2001). Therefore, we AFFIRM the judgment of the district court.