



In Any Way, Shape, or Form? What Qualifies As “Any Court” under the Gun Control Act?

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The mass shooting that took place at the First Baptist Church in Sutherland Springs, Texas has raised questions about whether a required background check should have blocked the assailant, Devin P. Kelley, from purchasing the semi-automatic rifle [used](#) to kill more than two dozen and injure many more attendees. Preliminary reports reveal that Kelley may have been barred from purchasing and possessing a firearm for two possible reasons related to [criminal activity](#): (1) a felony conviction and/or (2) a domestic violence conviction. This speculation is based on [reports that](#) Kelley, while serving in the U.S. Air Force, had been convicted of crimes related to domestic abuse against his wife and stepchild, yet those convictions never made it into the FBI’s firearm background check database, the National Instant Criminal Background Check System ([NICS](#)).

The [Uniform Code of Military Justice](#) (UCMJ) is a body of criminal law [applicable](#) to members of the U.S. Armed Forces. Created by Congress through its [Article I, Section 8](#) war powers, UCMJ crimes are tried in military tribunals called “[courts-martial](#).” Because Kelley was convicted by a court-martial, it is necessary to determine whether convictions from those courts qualify to create a firearm disability under the Gun Control Act of 1968 (GCA), as amended. Specifically, [18 U.S.C. § 922\(g\)](#) prohibits firearm possession by a person who has been convicted *in any court* of a crime punishable by a term of imprisonment exceeding one year, as well as by a person who has been convicted *in any court* of a misdemeanor crime of domestic violence. The GCA does not define “any court,” but federal courts have construed the term to cover U.S. military courts.

Initially, federal courts took a widely expansive view of the term “any court” as used in the GCA. For instance, in holding that a court-martial is a court within the meaning of the GCA, a 1997 opinion from the [Seventh Circuit Court of Appeals](#) used the dictionary definition of the term “any”:

Looking to section 922(g)(1), we find nothing that defines or limits the term “court,” only a requirement that a conviction have been “in any court” in the course of prohibiting possession of firearms by a felon. Certainly “any court” includes a military court, the adjective “any” expanding the term “court” to include “one or some indiscriminately of whatever kind”; “one that is selected without restriction or limitation of choice”; or “all.”

Additionally, some [federal courts](#) had concluded that a conviction in “any court,” for the purposes of determining a firearm disability, included convictions in foreign courts. In resolving a circuit split over

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this issue, the Supreme Court interpreted the phrase to cover only domestic convictions in its 2005 ruling, *Small v. United States*. In a 5-4 ruling, the Court adopted a more limited interpretation of the GCA's reference to "any" court than employed by the Seventh Circuit and other lower courts, commenting that "[i]n ordinary life, a speaker who says, 'I'll see any film,' may or may not mean to include films shown in another city," and, likewise, "[i]n law, a legislature that uses the statutory phrase 'any person' may or may not mean to include persons outside the jurisdiction of the state." In reaching its conclusion, the Court applied the legal presumption that "Congress ordinarily intends its statutes to have domestic, not extraterritorial application." The Court ruled that this presumption against extraterritorial application was particularly relevant to the GCA, given the many potential differences between foreign and domestic convictions and "the potential unfairness of preventing those with inapt foreign convictions from possessing guns." The Court additionally reasoned that nothing in the GCA's text or legislative history suggests that the Act was intended to allow foreign convictions to give rise to a firearms disability.

Although the Supreme Court's opinion in *Small* abrogated lower court rulings holding that foreign convictions serve as predicate offenses for the GCA's firearm ban for felons, the opinion did not directly disturb earlier rulings holding that military convictions count for the ban. Indeed, a conviction by a court-martial does not appear to raise any of the concerns mentioned by the Supreme Court in *Small* about foreign convictions. Federal courts have noted no tension with *Small* when analyzing the related issue of whether a court-martial conviction is encompassed by the term "any court" in statutes that provide [heightened penalties](#) for certain repeat offenders. For instance, the [Eighth Circuit](#) opined that courts-martial proceedings maintain a connection to the U.S. government, given that they were created by Congress and are governed by federal statute. And the [Fourth Circuit](#) reasoned that, although there are some differences between courts-martial and civilian courts, they do not "rise to the level of contrasts between domestic and foreign courts that *Small* highlighted," and, further, expressed "doubt [that] the Supreme Court would interpret *Small* to prevent court-martial convictions from qualifying as predicate offenses" for the heightened penalties. Accordingly, a conviction by a court-martial for a crime punishable by a term exceeding one year or a misdemeanor crime of domestic violence likely would qualify as a conviction in "any court" for the purposes of the GCA's firearm disqualifiers.

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