

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 06-10205-01-JTM

THOMAS L. McNEIL,  
Defendant.

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MEMORANDUM AND ORDER

This matter is before the court on the defendant Thomas McNeil's Motion to Dismiss, which seeks dismissal of both counts of the indictment (Count 1, felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and Count 2, possession of a firearm with a removed serial number in violation of 18 U.S.C. § 922(k)) on the grounds that Congress lacked the power to enact these statutes under the Commerce Clause.

This court denies the motion. The Tenth Circuit has directly rejected the contention that these firearm possession crimes are unconstitutional. *United States v. Bolton*, 68 F.3d 396, 400 (10th Cir. 1995), *cert. denied*, 516 U.S. 1137 (1996). Even following recent decisions by the Supreme Court, such as *United States v. Lopez*, 514 U.S. 549 (1995), which suggested a glimmer of life in the Commerce Clause as restraint on federal power, the Tenth Circuit has continued to hold these firearm statutes are constitutional enactments under the Commerce Clause. *United States v. Bayles*, 310 F.3d 1302, 1307 (10th Cir. 2002). This court has consistently followed these holdings. *See, e.g., United States v. Baker*, No. 06-10129, 2006 WL 1537388 (D. Kan. May 31, 2006).

IT IS ACCORDINGLY ORDERED this 16<sup>th</sup> day of November, 2006 that the defendant's Motion to Dismiss (Dkt. No. 11) is hereby denied.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE