

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10328
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 21, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHRISTOPHER DAVID SIMMONS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-119-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Appealing his conviction for being a felon in possession of a firearm, Christopher David Simmons raises arguments that are foreclosed by *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013), and *United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010). The Government has filed an unopposed motion for summary affirmance. Summary affirmance is proper when, among other instances, “the position of one of the parties is clearly right

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

In *Alcantar*, we rejected the argument that *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), affected our prior jurisprudence rejecting Commerce Clause challenges to the felon-in-possession statute (18 U.S.C. § 922(g)(1)). *Alcantar*, 733 F.3d at 146. In *Trejo*, we applied the plain error standard of review to a factual sufficiency claim that was raised for the first time in this court. *Trejo*, 610 F.3d at 313.

Accordingly, the Government’s motion for summary affirmance is GRANTED, its alternative motion for extension of time is DENIED, and the judgment of the district court is AFFIRMED.