

United States Court of Appeals for the Fifth Circuit

No. 22-11246
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 2, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEOPOLDO RAMIREZ-MORENO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-258-1

Before JONES, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Leopoldo Ramirez-Moreno pleaded guilty, pursuant to a written plea agreement, to one count of possession of a firearm by an alien illegally present in the United States after removal, in violation of 18 U.S.C. § 922(g)(5). He appeals and, relying on *National Federation of Independent Business et al. v. Sebelius et al.*, 567 U.S. 519 (2012), argues for the first time that § 922(g)

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 22-11246

exceeds the scope of Congress's power under the Commerce Clause and is thus unconstitutional. The Government has filed an unopposed motion for summary affirmance and an alternative request for an extension of time to file its brief.

Ramirez-Moreno correctly concedes that his arguments challenging the constitutionality of § 922(g)(1) are foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001); *United States v. De Leon*, 170 F.3d 494, 499 (5th Cir. 1999). He raises the arguments to preserve them for further review.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.