

United States Court of Appeals for the Fifth Circuit

No. 24-10664
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 12, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONIO ROBLEDO TOVAR,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CR-633-1

Before SMITH, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Antonio Robledo Tovar argues that his statute of conviction, 18 U.S.C. § 922(g)(1), violates the Second Amendment as applied to him. He also contends that § 922(g)(1) violates the Commerce Clause, but he correctly concedes that this argument is foreclosed. *See United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024).

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

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We review Tovar's as-applied challenge for plain error because he did not adequately present this argument before the district court. *See United States v. Jones*, 88 F.4th 571, 572 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024). An error is not clear or obvious where an issue is disputed or unresolved, or where there is an absence of controlling authority. *United States v. Rodriguez-Parra*, 581 F.3d 227, 230-31 (5th Cir. 2009). Because there is no binding precedent addressing whether applying § 922(g)(1) based on Texas convictions for possession of controlled substances is consistent with this nation's historical traditions and because it is not clear that *Bruen* or *Diaz* dictates such a result, Tovar is unable to demonstrate an error that is clear or obvious. *See id.*

AFFIRMED.