

United States Court of Appeals for the Fifth Circuit

No. 24-10990
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 14, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DANIEL LEE LUSK, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CR-12-1

Before RICHMAN, DOUGLAS, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Daniel Lee Lusk, Jr., pleaded guilty to possession of a firearm after a felony conviction, and he was sentenced to sixty months of imprisonment, to be followed by three years of supervised release. On appeal, he renews his argument that 18 U.S.C. § 922(g)(1) facially violates the Second Amendment in light of the reasoning in *New York State Rifle & Pistol Association, Inc. v.*

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

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Bruen, 597 U.S. 1 (2022). For the first time on appeal, he argues that § 922(g)(1) violates the Commerce Clause. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file its brief.

Lusk is correct that his arguments are foreclosed. *See United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *petition for cert. filed*, (U.S. Feb. 18, 2025) (No. 24-6625); *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020). Because the Government’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” summary affirmance is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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