

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 8, 2024

Lyle W. Cayce
Clerk

No. 22-40714

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MANUEL MOYA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:22-CR-290-1

Before KING, HO, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Manuel Moya pleaded guilty pursuant to a plea agreement to possession with intent to distribute more than five kilograms of cocaine, as well as possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). He argues for the first time on appeal that § 922(g)(1) is unconstitutional in light of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). The Government argues that the appeal waiver

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

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in Moya's plea agreement bars consideration of his claim. However, as the appeal waiver does not implicate our jurisdiction, and Moya's constitutional argument is easily resolved, we pretermitt the waiver issue. *See United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022); *United States v. Story*, 439 F.3d 226, 230–31 (5th Cir. 2006).

Because Moya did not raise this argument before the district court, we review for plain error. *See Puckett v. United States*, 556 U.S. 129, 134 (2009). Moya's plain-error challenge to the constitutionality of § 922(g)(1) is foreclosed by our decision in *United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023). In *Jones*, we noted that we have “not yet addressed the impact of *Bruen* on the constitutionality of § 922(g)(1) in a case in which the issue was preserved in the district court.” *Id.* at 573. “Given the absence of binding precedent holding that § 922(g)(1) is unconstitutional, and that it is unclear that *Bruen* dictates such a result,” we held in *Jones* that the defendant's plain-error challenge to § 922(g)(1)'s constitutionality based on *Bruen* failed. *Id.* at 574.

This court has continued to apply *Jones*'s precedent following the Supreme Court's decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024). *See United States v. Wilson*, No. 23-50509, 2024 WL 3610416, at *2 (5th Cir. Aug. 1, 2024); *United States v. Hildreth*, No. 22-20301, 2024 WL 3491773, at *5 (5th Cir. July 22, 2024); *United States v. Chavez*, No. 24-10064, 2024 WL 3201731, at *1 (5th Cir. June 27, 2024). We see no reason to stray from *Jones* here, since there is still an absence of binding precedent holding that § 922(g)(1) is unconstitutional, and it remains unclear whether *Bruen*—even with *Rahimi*'s clarification—dictates such a result. Accordingly, we find that Moya's plain-error challenge fails.

AFFIRMED.