

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 4, 2024

Lyle W. Cayce
Clerk

No. 23-10415
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELMER ALEXIS MONTANO FUENTES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CR-306-1

Before HAYNES, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Elmer Alexis Montano Fuentes appeals his conviction for possessing a firearm as an illegal alien in violation of 18 U.S.C. § 922(g)(5). We have rejected his contentions that a firearm's prior travel in interstate commerce across state lines fails to satisfy the commerce element of § 922(g), *see United States v. Rawls*, 85 F.3d 240, 242–43 (5th Cir. 1996), and that, so applied, the

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

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statute exceeds Congress’s authority under the Commerce Clause, *see United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020). We likewise have rejected his contention that § 922(g)(5) violates the Second Amendment under *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). *See United States v. Medina-Cantu*, 113 F.4th 537, 538–39 (5th Cir. 2024).

Conceding that his claims are foreclosed, Montano Fuentes raises them to preserve them for further review. Because the issues are foreclosed and “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), the Government’s unopposed motion for summary affirmance is GRANTED, and its alternative motion for an extension of time to file an appellate brief is DENIED. The judgment of the district court is AFFIRMED.