

United States Court of Appeals
for the Fifth Circuit

No. 23-20473
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 23, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHRISTOPHER PAYNE,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CR-173-1

Before JOLLY, JONES, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Christopher Payne appeals his conviction for possession of a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1). He argues that § 922(g)(1) violates the Second Amendment both on its face and as applied to him in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). He also argues that § 922(g)(1) violates the Commerce Clause. The

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

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Government has filed an opposed motion for summary affirmance, or, alternatively, for an extension of time in which to file a brief.

As Payne concedes, his Commerce Clause argument is foreclosed. *See United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024), *petition for cert. filed* (U.S. Feb. 18, 2025) (No. 24-6625). Likewise, his facial challenge to § 922(g)(1) also is foreclosed. *See id.* at 471-72. As we have not yet decided the question, we conclude that Payne cannot meet his burden of showing it was plainly erroneous to apply § 922(g)(1) to him based on his prior Texas conviction for aggravated robbery. *See United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024).

Because it is opposed, we decline to grant the Government's motion for summary affirmance but will affirm without further briefing. *See United States v. Bailey*, 924 F.3d 1289, 1289-90 (5th Cir. 2019).

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