

United States Court of Appeals for the Fifth Circuit

No. 23-40705
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 28, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JONATHAN GARCIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:22-CR-1848-1

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

PER CURIAM:*

Jonathan Garcia appeals his conviction for possession of a firearm by a convicted felon. Garcia contends that his conviction under 18 U.S.C. § 922(g)(1) violates the Second Amendment in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and that § 922(g)(1) exceeds Congress’s power to regulate under the Commerce Clause. Garcia correctly

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

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concedes that his Commerce Clause argument is foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013).

On appeal, Garcia presents both facial and as-applied challenges to the constitutionality of § 922(g)(1) in light of *Bruen*. Garcia's facial challenge to § 922(g)(1) is foreclosed by our recent decision in *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024). Regarding Garcia's unpreserved as-applied challenge, we have rejected plain-error Second Amendment challenges to § 922(g)(1) because the lack of binding precedent holding § 922(g)(1) to be unconstitutional post-*Bruen* means that any error is neither clear nor obvious. *See United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024).

For the foregoing reasons, we AFFIRM Garcia's conviction.