

United States Court of Appeals for the Fifth Circuit

No. 23-60645
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TOMMY PINEDA-GUEVARA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:23-CR-2-1

Before JONES, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Tommy Pineda-Guevara pleaded guilty to possession of a firearm by an illegal alien in violation of 18 U.S.C. § 922(g)(5)(A). On appeal, he argues that § 922(g)(5)(A) is facially unconstitutional under the Second Amendment.¹ The Government has moved for summary affirmance, citing

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

¹ To the extent Mr. Pineda-Guevara presses an as-applied challenge, he does so for the first time on appeal. This argument is forfeited. *See Rollins v. Home Depot USA*, 8 F.4th

No. 23-60645

United States v. Portillo-Munoz, 643 F.3d 437 (5th Cir. 2011), and *United States v. Medina-Cantu*, 113 F.4th 537 (5th Cir. 2024), *petition for cert. filed* (U.S. Jan. 28, 2025) (No. 24-6427), both of which upheld the constitutionality of § 922(g)(5)(A) and foreclose Pineda-Guevara's constitutional challenge, as the Government correctly contends. *See Medina-Cantu*, 113 F.4th at 542; *Portillo-Munoz*, 643 F.3d at 442.

Because Pineda-Guevara opposes the Government's motion, we decline to grant summary affirmance. Nevertheless, further briefing is unnecessary. *See United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019). Accordingly, the Government's motion for summary affirmance is DENIED, and the judgment of the district court is AFFIRMED.

393, 397 (5th Cir. 2021).