

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2021

Lyle W. Cayce
Clerk

No. 20-50476
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DARIO REYES-TORRES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:19-CR-270-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Dario Reyes-Torres challenges the constitutionality of his bench trial conviction and the resulting 15-month sentence imposed for possession of a firearm by an alien illegally and unlawfully in the United States, in violation of 18 U.S.C. §§ 922(g)(5) & 924(a)(2). He contends that the Second

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Amendment's right to keep and bear arms should extend to him, despite his immigration status, and that, therefore, § 922(g)(5) is unconstitutional. The Government moves for summary affirmance or, in the alternative, an extension of time to file a brief.

Reyes-Torres raises an argument that is foreclosed by *United States v. Portillo-Munoz*, 643 F.3d 437, 439-42 (5th Cir. 2011), in which we held that the Second Amendment's protections regarding the right to carry and possess firearms did not extend to aliens illegally or unlawfully present in the United States and, therefore, § 922(g)(5) was constitutional under the Second Amendment. Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED as unnecessary, and the judgment of the district court is AFFIRMED.