

# United States Court of Appeals for the Fifth Circuit

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No. 24-50058  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 27, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

FRANK PENA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:22-CR-383-1

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Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:\*

Frank Pena pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). On appeal, he argues that the statute of conviction violates the Commerce Clause and violates the Second Amendment, on its face and as applied to him, in light of the test set forth in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022).

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

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He further argues that the as-applied analysis outlined by this court in *United States v. Diaz*, 116 F.4th 458, 462 (5th Cir. 2024), *petition for cert. filed*, (U.S. Feb. 18, 2025) (No. 24-6625), is wrong. The Government has filed an opposed motion for summary affirmance or, in the alternative, an extension of time to file a brief.

The Government is correct that Pena's arguments are foreclosed. *See Diaz*, 116 F.4th at 462; *United States v. Contreras*, 125 F.4th 725, 729 (5th Cir. 2025); *United States v. Giglio*, 126 F.4th 1039, 1042-46 (5th Cir. 2025); *United States v. Boche-Perez*, 755 F.3d 327, 334 (5th Cir. 2014). However, because Pena opposes the Government's motion, summary affirmance is not appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Regardless, because *Diaz*, *Contreras*, *Giglio*, and *Boche-Perez* are clearly dispositive, we affirm the district court's judgment without further briefing. *See United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019).

In light of the foregoing, the 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.