

United States Court of Appeals for the Fifth Circuit

No. 24-50622
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 16, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEVIN JOE SMITH,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:24-CR-27-1

Before KING, HAYNES, and HO, *Circuit Judges*.

PER CURIAM:*

Devin Joe Smith pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1), and was sentenced within his advisory guidelines range to 71 months in prison and three years of supervised release. Smith argues on appeal that § 922(g)(1) violates the Second Amendment as applied to him; it facially violates the Second

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

No. 24-50622

Amendment; and it violates the Commerce Clause. We review Smith's claims de novo. *See United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014).

As Smith correctly concedes, his facial challenge to § 922(g)(1) and his Commerce Clause arguments are foreclosed. *See United States v. Diaz*, 116 F.4th 458, 461-62, 471-72 (5th Cir. 2024), *cert. denied*, 2025 WL 1727419 (U.S. June 23, 2025) (No. 24-6625); *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013). As for Smith's as-applied challenge to § 922(g)(1), his argument fails in light of our recent decision in *United States v. Kimble*, 142 F.4th 308, 309, 317-18 (5th Cir. 2025), as well as *United States v. Chapman*, 851 F.3d 363, 375 (5th Cir. 2017).

Accordingly, the judgment of the district court is AFFIRMED.