

United States Court of Appeals
for the Fifth Circuit

No. 25-30586

United States Court of Appeals
Fifth Circuit

FILED

September 4, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

THEOPLESS LEWIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:25-CR-45-1

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

PER CURIAM:*

The district court accepted the defendant's conditional guilty plea to two counts of an indictment, including possession of a firearm by a convicted felon, and entered judgment. On appeal, the defendant argues the statute of conviction on the firearm charge, 18 U.S.C. § 922(g)(1), is unconstitutional as applied to him.

We disagree and AFFIRM.

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

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FACTUAL AND PROCEDURAL BACKGROUND

In 2010, Theopless Lewis pled guilty to possession of cocaine and was sentenced to two years of imprisonment. In July 2017, Lewis went to the home of his former girlfriend late at night and began knocking on her front door, demanding to be let in. When she refused, Lewis shattered a window and entered the home. Once inside, he grabbed her hair and struck her on the head. Lewis pled guilty to home invasion in 2018 and was sentenced to eighteen months of imprisonment. Both of these convictions were in Louisiana state court.

Lewis's present appeal concerns a three-count indictment returned against him in March 2025 by a federal grand jury after the Monroe, Louisiana, Police Department executed a search warrant at Lewis's home and discovered multiple firearms. Count One charged Lewis with possession with intent to distribute marijuana. Count Two charged him with possession of firearms by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Count Three charged him with possession of a firearm during and in relation to a drug trafficking crime.

Lewis moved to dismiss Count Two of the indictment, arguing that Section 922(g)(1) violates the Second Amendment as applied to him. The district court denied Lewis's motion to dismiss based primarily on Lewis's prior conviction for possession of cocaine.

Following the district court's ruling, Lewis entered a conditional guilty plea agreement with the Government and pled guilty to Counts Two and Three. This plea agreement preserved Lewis's right to appeal the district court's denial of his motion to dismiss the indictment. The district court accepted Lewis's conditional guilty plea and sentenced him. Lewis timely appealed.

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DISCUSSION

Section 922(g)(1) makes it illegal to possess a firearm if an individual “has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1). Lewis argues that Section 922(g)(1) violates the Second Amendment as applied to him. Because Lewis raised this argument in his motion to dismiss, we review his claim *de novo*. See *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014).

The Second Amendment guarantees that “the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. To determine whether a firearm regulation violates this right, we employ a two-step analysis. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022). Under this analysis, if “the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* The burden then shifts to the government to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

We have held that the “plain text of the Second Amendment covers the conduct prohibited by [Section] 922(g)(1).” *United States v. Diaz*, 116 F.4th 458, 467 (5th Cir. 2024). The Government, therefore, “must demonstrate that the Nation has a longstanding tradition of disarming someone with a criminal history analogous to” Lewis’s. *Id.*

In analyzing a defendant’s criminal history, we may consider any of the defendant’s prior convictions that are “punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1); *Diaz*, 116 F.4th at 467. We may also review the conduct underlying the defendant’s predicate offense. *United States v. Simpson*, 152 F.4th 611, 614 (5th Cir. 2025). The Government argues that Lewis’s previous convictions for possession of cocaine and home invasion are relevant, as both felonies are punishable by

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imprisonment for greater than one year under Louisiana law.¹ *See* LA. REV. STAT. § 40:967 (possession of cocaine); LA. REV. STAT. § 14:62.8 (home invasion).

One of those two no longer suffices. Recently, we held that simple drug possession, standing alone, does not justify applying Section 922(g)(1) to a criminal defendant. *See United States v. Hembree*, 165 F.4th 909, 916–18 (5th Cir. 2026), *petition for cert. filed*, No. 25-1219 (U.S. Apr. 27, 2026). The Government accordingly concedes that Lewis’s conviction for cocaine possession cannot support his Section 922(g)(1) conviction.

Instead, the Government’s argument on appeal is that the elements of home invasion and Lewis’s underlying conduct demonstrate that he is a violent and dangerous felon that our historical tradition permits disarming.² We review that argument.

“The Second Amendment allows Congress to disarm classes of people it reasonably deems dangerous.” *United States v. Kimble*, 142 F.4th 308, 314–15 (5th Cir. 2025). Accordingly, the Second Amendment “permits disarming individuals who pose a clear threat of violence to others or whose predicate felony convictions involve violence.” *Simpson*, 152 F.4th at 614. A “conviction for a ‘crime of violence’ indicates that [the defendant] poses a threat to public safety and the orderly functioning of society.” *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025). “The regulation of such person’s ability to possess a firearm ‘is consistent with this Nation’s

¹ The Government suggests that Lewis’s felony conviction for illegal possession of stolen things may also justify disarmament. Because we resolve this appeal on the basis of Lewis’s home invasion conviction, we do not address that possibility.

² The Government also argues that home invasion is a valid predicate offense because of its relationship to the crime of burglary. Because we resolve Lewis’s case on the Government’s first basis for affirmation, we do not reach that question here.

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historical tradition of firearm regulation.’” *Id.* at 870 (quoting *Bruen*, 597 U.S. at 34). Therefore, “if a defendant’s predicate felony involves . . . violence, his as-applied challenge to [Section] 922(g)(1) will fail.” *Kimble*, 142 F.4th at 312.

Louisiana defines home invasion as

the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another.

LA. REV. STAT. § 14:62.8. As this statute provides, home invasion can be committed with either an intent to use force or violence on another or an intent to vandalize, deface, or damage another’s property. *Id.* Certainly, an intruder who breaks into another’s home for the purpose of inflicting violence upon its occupants poses a clear threat of physical harm to others. So too does a home invader who intends to vandalize, deface, or damage another’s property.

In discussing the inherent potential of the related offense of burglary to cause harm to persons, the Supreme Court has explained that “[t]he fact that an offender enters a building to commit a crime often creates the possibility of a violent confrontation between the offender and an occupant.” *Taylor v. United States*, 495 U.S. 575, 588 (1990). The intruder’s “awareness of this possibility may mean that he is prepared to use violence if necessary to carry out his plans or to escape.” *Id.*

The Supreme Court’s reasoning is equally applicable to home invasion, which creates a dangerous situation that threatens to cause physical harm to the building’s occupants by making a violent confrontation especially likely to occur. The dangerousness is further exacerbated by the fact that an

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occupant must be present at the time of the intrusion. *See* LA. REV. STAT. § 14:62.8. Not even aggravated burglary of a home requires the victim to be present at the time of the intrusion. *See id.* § 14:60. As a result, a defendant who engages in such conduct “pose[s] a clear threat of violence to others.” *Simpson*, 152 F.4th at 614.

Lewis argues that our violence-based disarmament cases are distinguishable. *See United States v. Bullock*, 123 F.4th 183 (5th Cir. 2024); *United States v. Schnur* 132 F.4th 863 (5th Cir. 2025). Lewis contends that cases like *Bullock* and *Schnur* involved qualitatively different violent conduct than home invasion. *Bullock* concerned aggravated assault and manslaughter and *Schnur* concerned aggravated battery causing great bodily injury. *Bullock*, 123 F.4th at 184; *Schnur*, 132 F.4th at 867–68. On this basis, Lewis contends that the going-armed and affray laws that are applicable to offenses of more severe violence are inapplicable to home invasion.

A relevant historical analogue need not be “a dead ringer.” *Bruen*, 597 U.S. at 30. The relevant inquiry is whether a predicate conviction properly categorizes an individual as a member of a class of violent or dangerous felons. *See Kimble*, 142 F.4th at 318. That inquiry, for example, allows permanent disarmament of drug traffickers under Section 922(g)(1). *See id.* And Lewis’s actual conduct removes any lingering doubt. After breaking into his former girlfriend’s home well past midnight, he grabbed her hair and struck her on the head.

We conclude that prohibiting those convicted of home invasion from possessing firearms “fits comfortably” within this Nation’s tradition of “preventing individuals who threaten physical harm to others from misusing firearms.” *United States v. Rahimi*, 602 U.S. 680, 690 (2024).

Lewis’s as-applied challenge to Section 922(g)(1) fails.

AFFIRMED.