

United States Court of Appeals for the Fifth Circuit

No. 25-50841
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 17, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEWIS GREEN, III,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:22-CR-129-1

Before JONES, RICHMAN, and WILLETT, *Circuit Judges*.¹

PER CURIAM:*

Lewis Green, III, appeals his convictions for possession of a firearm following conviction of a felony offense, 18 U.S.C. § 922(g)(1), and possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C.

¹ JUDGE WILLETT would deny the Government's motion for summary affirmance and would instead grant the Government's alternative request for additional time to brief the merits of the case.

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

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§ 924(c)(1)(A). He argues for the first time that, in light of the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022): (1) § 924(c)(1)(A) violates the Second Amendment as applied to him; (2) § 922(g)(1) violates the Second Amendment as applied to him; and (3) § 922(g)(1) facially violates the Second Amendment. He also argues that § 922(g)(1) exceeds Congress’s powers under the Commerce Clause. He concedes that his challenges are reviewable for plain error only. The Government moves for summary affirmance and, alternatively, an extension of time to file its merits brief.

Summary affirmance or disposition is proper where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Summary affirmance is typically reserved for cases in which the parties agree that the issues are foreclosed. *See United States v. Lopez*, 461 F. App’x 372, 374 n.6 (5th Cir. 2012).²

The parties are correct that Green’s § 922(g) challenges are foreclosed by this court’s precedent. *See United States v. Simpson*, 152 F.4th 611, 614-15 (5th Cir. 2025); *United States v. Kimble*, 142 F.4th 308, 317 (5th Cir. 2025), *cert. denied*, No. 25-5747, 2026 WL 135675 (U.S. Jan. 20, 2026); *United States v. Giglio*, 126 F.4th 1039, 1044 (5th Cir. 2025); *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013).

² Although an unpublished opinion issued on or after January 1, 1996, is not controlling precedent, it may be considered as persuasive authority. *See Ballard v. Burton*, 444 F.3d 391, 401 & n.7 (5th Cir. 2006) (citing 5TH CIR. R. 47.5.4).

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The Supreme Court has not issued a post-*Bruen* opinion addressing whether or how § 924(c) implicates the Second Amendment. Nor has this court addressed the issue in a published opinion. Nevertheless, in an unpublished opinion, this court rejected a plain-error challenge to the constitutionality of § 924(c)(1) because it was not clear that *Bruen* or other binding authority compelled the conclusion that the statute was unconstitutional; this court observed that the challenge required an extension of this court's precedent and thus could not be plain error. *United States v. Ruiz*, No. 23-10406, 2024 WL 1134725, at *1 (5th Cir. Mar. 15, 2024) (unpublished).³ Other circuit courts have rejected Second Amendment challenges to § 924(c)(1) in light of *Bruen*. See, e.g., *United States v. Risner*, 129 F.4th 361, 366-69 (6th Cir. 2025); *United States v. Lopez*, No. 22-13036, 2024 WL 2032792, at *3 (11th Cir. May 7, 2024) (unpublished); *United States v. Cash*, No. 22-2713, 2023 WL 6532644, at *2-4 (3d Cir. Oct. 6, 2023) (unpublished). And this court has held that “any error is not plain if this circuit's law remains unsettled and the other federal circuits have reached divergent conclusions.” *United States v. Jones*, 88 F.4th 571, 574 (5th Cir. 2023) (internal quotation marks and citation omitted). Here, multiple circuits have rejected Second Amendment challenges to § 924(c)(1) in light of *Bruen*. Given *Ruiz* and the authority from other circuits, Green fails to establish plain error. *United States v. Miller*, 665 F.3d 114, 136 (5th Cir. 2011).

The judgment of the district court is AFFIRMED. The government's motion for summary affirmance is DENIED. See *United States v. Coleman*, 817 F.3d 907, 909 (5th Cir. 2016). Its alternative motion for an extension of time to file a reply brief is DENIED as unnecessary.

³ Although an unpublished opinion issued on or after January 1, 1996, is not controlling precedent, it may be considered as persuasive authority. See *Ballard v. Burton*, 444 F.3d 391, 401 & n.7 (5th Cir. 2006) (citing 5TH CIR. R. 47.5.4).