

United States Court of Appeals for the Fifth Circuit

No. 24-50321
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 2, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

VALENTE BRITO, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:23-CR-152-1

Before GRAVES, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM:*

Valente Brito, Jr., pled guilty to possession of a firearm after felony conviction, and he was sentenced to 168 months of imprisonment, to be followed by three years of supervised release. For the first time on appeal, he argues that 18 U.S.C. § 922(g)(1) violates the Second Amendment on its face and as applied to him under the test set forth in *New York State Rifle & Pistol*

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

No. 24-50321

Ass’n, Inc. v. Bruen, 597 U.S. 1 (2022). The Government moves for summary affirmance or, alternatively, for an extension of time to file its brief. Brito takes no position on the Government’s motion but concedes that his arguments are foreclosed.

Brito’s arguments are indeed foreclosed. *See United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), *petition for cert. filed* (U.S. Feb. 24, 2025) (24-6625); *United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024). Because the Government’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” summary affirmance is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government’s alternative motion for an extension of time is DENIED as moot.