

United States Court of Appeals for the Fifth Circuit

No. 24-50338
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 17, 2025
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JULIAN AVITIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:23-CR-985-1

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

PER CURIAM:*

Julian Avitia appeals his bench-trial conviction for possession of a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). He argues that § 922(g)(1) violates the Second Amendment, both as applied to him and facially, and that it violates the Commerce Clause. Because he properly preserved them, we review Avitia's claims *de novo*. See *United States*

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

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v. Diaz, 116 F.4th 458 (5th Cir. 2024), *cert. denied*, 2025 WL 1727419 (U.S. June 23, 2025) (No. 24-6625).

Avitia asserts that § 922(g)(1) is unconstitutional as applied to him because disarming him based upon his prior Texas conviction for the manufacture and delivery of a controlled substance does not fit within this country's historical tradition of regulating firearms. This circuit has recently upheld the application of § 922(g)(1) to disarm a felon previously convicted of the manufacture or delivery of a controlled substance. *United States v. Kimble*, 142 F.4th 308, 309–10, 317–18 (5th Cir. 2025). *Kimble* controls this case, and Avitia's claim fails. Because § 922(g)(1) is constitutional as applied to Avitia based on his predicate conviction of manufacture and delivery of a controlled substance, we do not consider Avitia's arguments regarding his predicate robbery conviction. *See Kimble*, 142 F.4th at 309, 317–18.

As to his facial constitutional challenge to § 922(g)(1) under the Second Amendment and his argument that § 922(g)(1) violates the Commerce Clause, Avitia correctly concedes that those arguments are foreclosed by our precedent. *See Diaz*, 116 F.4th at 462, 467–72; *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013).

AFFIRMED.