

United States Court of Appeals
for the Fifth Circuit

No. 25-10568
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
February 10, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAMES TRACY HIGGINBOTHAM,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CR-127-1

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

James Tracy Higginbotham appeals his conviction and sentence for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). He argues that § 922(g)(1) violates the Second Amendment on its face. Higginbotham also asserts that his prior Texas convictions for burglary are not violent felonies under the Armed Career Criminal Act (ACCA). The

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

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Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file an appellate brief.

First, we have held that § 922(g)(1) does not violate the Second Amendment on its face. *See United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). Second, in *United States v. Herrold*, 941 F.3d 173, 182 (5th Cir. 2019) (en banc), we held that Texas burglary is generic burglary and constitutes a violent felony under the ACCA. Accordingly, summary affirmance is proper. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The Government's motion for summary affirmance is GRANTED. Its alternative motion for an extension of time to file its appellate brief is DENIED. The judgment of the district court is AFFIRMED.