

United States Court of Appeals for the Fifth Circuit

No. 25-10974
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 15, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANDREW RYAN DAILY,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CR-87-1

Before HIGGINBOTHAM, ENGELHARDT, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

Andrew Ryan Daily appeals his guilty plea conviction for attempted production of child pornography, in violation of 18 U.S.C. § 2251(a). Citing *Bond v. United States*, 572 U.S. 844 (2014), Daily argues that the district court plainly erred by accepting a factual resume that admitted only that the item he used had moved in interstate commerce. He also contends, citing

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

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National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012), that Congress’s power under the Commerce Clause authorizes it to regulate only commercial activity and that the use of an object that traveled through interstate commerce in the past is not, by itself, a commercial act. However, he concedes that his arguments are foreclosed under current precedent. The Government has filed an unopposed motion for summary affirmance.

The parties are correct that Daily’s challenge to his factual basis is foreclosed. *See United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019); *United States v. Dickson*, 632 F.3d 186, 192 (5th Cir. 2011); *United States v. Kallestad*, 236 F.3d 225, 226-31 (5th Cir. 2000). Summary affirmance is therefore appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government’s motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.