

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVID JIMENEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Kevin Joel Page

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Appendix A Opinion of Fifth Circuit, CA No. 23-10213, *United States v. Jimenez*, 2024 WL 1429426 (5th Cir. April 3, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered March 1, 2023. *United States v. Jimenez*, Dist. Court 4:22-CR-278-Y.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 23-10213

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVID JIMENEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-278-1

Before RICHMAN, *Chief Judge*, and OLDHAM and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

David Jimenez pleaded guilty to being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). He now challenges—for the first time on appeal—that: (1) § 922(g)(1) violates the Second Amendment, in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022), and

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

No. 23-10213

(2) § 922(g)(1) is unconstitutional because it exceeds Congress's authority under the Commerce Clause. We review both arguments for plain error.

Both arguments are foreclosed by our precedent. *See United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023) (per curiam) (rejecting *Bruen* challenge to § 922(g)(1) on plain error); *id.* at 573 (rejecting Commerce Clause challenge to § 922(g)(1) on plain error).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:22-CR-278-Y(1)

P. J. Meitl, assistant U.S. attorney

DAVID JIMENEZ

Maria A. Pedraza, attorney for the defendant

On October 19, 2022, the defendant, David Jimenez, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:


| <u>TITLE & SECTION</u> | <u>NATURE OF OFFENSE</u> | <u>OFFENSE CONCLUDED</u> | <u>COUNT</u> |
|--------------------------------------|--|--------------------------|--------------|
| 18 U.S.C. §§ 922(g)(1) and 924(a)(2) | Possession of a Firearm by a Convicted Felon | July 22, 2022 | 1 |

The defendant is sentenced as provided in page two of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed February 28, 2023.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed March 1, 2023.

Judgment in a Criminal Case

Defendant: David Jimenez

Case Number: 4:22-CR-278-Y(1)

Judgment -- Page 2 of 3

IMPRISONMENT

The defendant, David Jimenez, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 33 months on count one of the one-count indictment. This sentence shall run consecutively to any future sentence that may be imposed in case nos. F-1935436, F-1935438, and F-1935441 in the 265th Judicial District Court, Dallas County, Texas; and case no. 1741798D in the 213th Judicial District Court, Tarrant County, Texas. Further, this sentence shall run concurrently with any future sentence that may be imposed in case nos. 1741595D in the 213th Judicial District Court, Tarrant County, Texas; and case no. 1744942, in County Criminal Court No. 9, Tarrant County, Texas.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count indictment.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;

report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court;

participate in outpatient mental-health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month; and

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a Glock, Model 17, 9-millimeter caliber pistol, bearing serial no. BBPZ236.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____
deputy marshal