

PETITION APPENDIX

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 8, 2024

Lyle W. Cayce
Clerk

No. 22-11239

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

HECTOR PATRICIO GALVAN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:22-CR-48-1

Before RICHMAN, *Chief Judge*, and GRAVES and WILSON, *Circuit Judges*.

PER CURIAM:*

Hector Patricio Galvan appeals his guilty-plea conviction for possession of a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1). He argues § 922(g)(1) is unconstitutional and the factual basis for his conviction was insufficient. We affirm.

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

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I

Galvan pleaded guilty, pursuant to a written plea agreement, to possession of a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1). He stipulated that he knowingly possessed a firearm, that he knew he had been convicted of a felony, and that the firearm traveled in interstate commerce. As part of the plea agreement, he waived his right to appeal or collaterally attack his conviction except to (1) directly appeal a sentence exceeding the statutory maximum or resulting from an arithmetic error, (2) challenge the voluntariness of the plea or the appeal waiver, and (3) bring an ineffective assistance of counsel claim. The district court sentenced Galvan to twenty-four months of imprisonment and three years of supervised release. Galvan timely appealed.¹

II

Galvan advances three arguments to contend his guilty-plea conviction is invalid. First, he argues § 922(g)(1) requires more than a firearm's past movement in commerce to show the requisite interstate nexus. Second, he argues § 922(g)(1) exceeds Congress's authority under the Commerce Clause. Third, he argues that § 922(g)(1) violates the Second Amendment under the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*.² Galvan concedes he did not raise these challenges in the district court and our review is for plain error.

¹ See FED. R. APP. P. 4(b)(1)(A).

² 597 U.S. 1 (2022).

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The Government argues that Galvan waived his right to make these plain-error challenges under the terms of his appeal waiver. Because Galvan is unable to prevail on the merits, we decline to address this issue.³

Galvan’s first two arguments are foreclosed by our precedent. First, we have clearly held the “‘in or affecting commerce’ element [of § 922(g)(1)] can be satisfied if the firearm possessed by a convicted felon had previously traveled in interstate commerce.”⁴ Second, “we have consistently upheld the constitutionality of § 922(g)(1)” in light of arguments that “§ 922(g)(1) exceeds Congress’s authority under the Commerce Clause.”⁵ Accordingly, we reject these arguments.

Galvan’s Second-Amendment challenge to § 922(g)(1) similarly fails to establish plain error. “Plain error is ‘clear’ or ‘obvious’ error that affects ‘substantial rights’ of the defendant and ‘seriously affects the fairness, integrity, or public reputation of judicial proceedings.’”⁶ To establish plain error, Galvan “must identify (1) a forfeited error (2) that is clear or obvious, rather than subject to reasonable dispute, and (3) that affects his substantial rights.”⁷ “If he satisfies these three requirements, we may correct the error

³ See *United States v. Smith*, No. 22-10795, 2023 WL 5814936, at *2 (5th Cir. Sept. 8, 2023) (per curiam) (unpublished) (electing to evaluate the defendant’s “argument[s] on the merits” despite the Government’s “compelling argument regarding the applicability of [the defendant’s] appeal waiver”).

⁴ *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996) (citing *United States v. Fitzhugh*, 984 F.2d 143, 146 (5th Cir. 1993) and *Scarborough v. United States*, 431 U.S. 563, 575 (1977)).

⁵ *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013).

⁶ *United States v. Sanchez*, 325 F.3d 600, 603 (5th Cir. 2003) (quoting *United States v. Saenz*, 134 F.3d 697, 701 (5th Cir. 1998)).

⁷ *United States v. Trujillo*, 4 F.4th 287, 290 (5th Cir. 2021) (citing *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

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at our discretion if it ‘seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.’”⁸ A “lack of binding authority is often dispositive in the plain error context.”⁹ “An error is not plain ‘unless the error is clear under current law.’”¹⁰ Because there is no binding precedent holding § 922(g)(1) unconstitutional and it is not clear that *Bruen* dictates such a conclusion, Galvan is unable to demonstrate an error that is clear or obvious.¹¹ Accordingly, the district court did not plainly err by accepting Galvan’s guilty plea.

* * *

We AFFIRM the district court’s judgment.

⁸ *Id.* (quoting *Puckett*, 556 U.S. at 135).

⁹ *United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir. 2022) (internal quotation marks omitted) (quoting *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015)), *cert. denied*, 143 S. Ct. 282 (2022).

¹⁰ *United States v. Bishop*, 603 F.3d 279, 281 (5th Cir. 2010) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)).

¹¹ See *United States v. Rodriguez-Parra*, 581 F.3d 227, 230-31 (5th Cir. 2009); see also *United States v. Smith*, No. 22-10795, 2023 WL 5814936, at *3 (5th Cir. Sept. 8, 2023) (per curiam) (unpublished) (holding defendant failed to establish plain error when challenging constitutionality of § 922(g)(1) under *Bruen* “given the lack of binding authority deeming § 922(g)(1) unconstitutional”).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA

v.

NO. 2:22-CR-048-Z

HECTOR PATRICIO GALVAN

FACTUAL RESUME

In support of Hector Patricio Galvan's plea of guilty to the offense in Count One of the indictment, Galvan, the defendant, Eric Coats, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

ELEMENTS OF THE OFFENSE

To prove the offense alleged in Count One of the indictment, charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), that is, Convicted Felon in Possession of a Firearm, the government must prove each of the following elements beyond a reasonable doubt:¹

- First.* That the defendant knowingly possessed a firearm as charged in the indictment;
- Second.* That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;
- Third.* That when he possessed the firearm, the defendant knew he had been convicted of such a crime; and

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019 ed.).

Fourth. That the firearm possessed traveled in interstate or foreign commerce; that is, before the defendant possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

STIPULATED FACTS

1. Hector Patricio Galvan admits and agrees that on or about March 23, 2022, in the Amarillo Division of the Northern District of Texas, and elsewhere, knowing he was a person who had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, he did knowingly possess in or affecting interstate or foreign commerce, a firearm, that is, a Springfield, Model XD, .45 caliber semi-automatic pistol, bearing serial number S3231015, in violation of Title 18, United States Code Sections 922(g)(1) and 924(a)(2).

2. On March 23, 2022, officers with the Amarillo Police Department (APD) stopped the vehicle that Galvan was driving because Galvan was not wearing a seat belt in violation of the Texas Transportation Code. Galvan had an outstanding warrant and was arrested at that time. Galvan gave the officers consent to search his vehicle. During the search, the officers located a Springfield, Model XD, .45 caliber semi-automatic pistol, bearing serial number S3231015, under the front passenger seat of the vehicle.

3. An officer read Galvan his *Miranda* warnings and he agreed to be interviewed. Galvan admitted to possessing the firearm located in the vehicle.

4. Court records confirmed that before March 23, 2022, Galvan had been convicted of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense. Further, before Galvan possessed the firearm, he knew he had been

convicted of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense.

5. An agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives was able to determine that the firearm described above was manufactured outside of the state of Texas. Accordingly, the firearm affected interstate or foreign commerce because the firearm must have traveled at some time from one state to another or between any part of the United States and any other country.

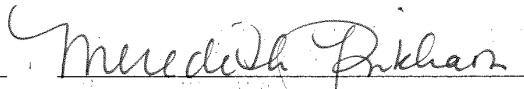
6. The defendant agrees that the defendant committed all the essential elements of the offense. Specifically, the defendant agrees that he possessed the firearm while being a person having been previously convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that the defendant knew he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year, and that the said firearm traveled in interstate or foreign commerce. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count One of the indictment.

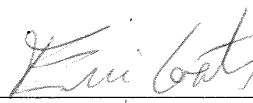
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AGREED TO AND STIPULATED on this 11 day of July, 2022.

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Defendant


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