

IN THE SUPREME COURT OF THE UNITED STATES

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No. 26A-\_\_\_\_

UNITED STATES OF AMERICA, APPLICANT

v.

ELIJAH MARTIN

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APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General -- on behalf of applicant United States of America -- respectfully requests a 58-day extension of time, to and including September 25, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The opinion of the court of appeals (App., infra, 1a-3a) is available at 2026 WL 1180541.

The court of appeals entered its judgment on April 30, 2026. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 29, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. A federal grand jury in the U.S. District Court for the Eastern District of Louisiana indicted respondent on two counts of possessing a firearm as a convicted felon, in violation of 18 U.S.C. 922(g)(1). App., infra, 1a. Respondent's predicate felony convictions are for simple drug possession and possessing a firearm as a convicted felon. Id. at 2a. Respondent's earlier felon-in-possession conviction was itself predicated on his conviction for simple drug possession. Ibid.

The district court denied respondent's motion to dismiss the indictment, rejecting his contention that Section 922(g)(1) violates the Second Amendment. App., infra, 1a n.1. Respondent then pleaded guilty. Id. at 1a.

A panel of the Fifth Circuit reversed. App., infra, 1a-3a. The Fifth Circuit has taken "a felony-by-felony approach" to as-applied challenges to Section 922(g)(1). Id. at 2a. Applying that approach, the Fifth Circuit has held that Section 922(g)(1) violates the Second Amendment as applied to the predicate felony of simple drug possession. Ibid. (citing United States v. Hembree, 165 F.4th 909 (5th Cir. 2026), petition for cert. pending, No. 25-1219 (filed Apr. 24, 2026)). The government accordingly conceded, and the panel in this case agreed, that circuit precedent required reversing respondent's convictions. Ibid.

2. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. The Fifth Circuit is currently considering whether to grant rehearing en

banc to reconsider its current approach to evaluating as-applied Second Amendment challenges to Section 922(g)(1). See C.A. Doc. 85, United States v. Cordova, No. 24-50564 (June 9, 2026) (order calling for response to rehearing petition). Meanwhile, the en banc Third Circuit is currently considering two cases concerning the appropriate framework for analyzing such as-applied challenges. See Williams v. Attorney General, No. 24-1091 (argued Feb. 11, 2026); United States v. Bost, No. 24-1719 (argued Feb. 11, 2026). The additional time sought in this application would afford the government the opportunity to await any relevant developments in those cases. The additional time also is needed to continue consultation within the government and to assess the legal and practical impact of the court of appeals' ruling, especially in light of this Court's recent decisions in United States v. Hemani, No. 24-1234 (June 18, 2026), and Wolford v. Lopez, No. 24-1046 (June 26, 2026). Finally, additional time is needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

D. John Sauer  
Solicitor General  
Counsel of Record

JULY 2026

APPENDIX

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| Court of appeals opinion<br>(5th Cir. Apr. 30, 2026) ..... | 1a |
|------------------------------------------------------------|----|

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

April 30, 2026

Lyle W. Cayce  
Clerk

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No. 25-30712

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELIJAH MARTIN,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:24-CR-54-1

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Before STEWART, ENGELHARDT, and DOUGLAS, *Circuit Judges*.

PER CURIAM:\*

Defendant-Appellant Elijah Martin pleaded guilty to two counts of possession of a firearm by a convicted felon under 18 U.S.C. § 922(g)(1).<sup>1</sup> Martin timely appealed. Martin argues that § 922(g)(1) is unconstitutional

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

<sup>1</sup> Prior to pleading guilty, Martin moved to dismiss the indictment based on the argument that 18 U.S.C. § 922(g)(1) is unconstitutional on its face and as applied to him, that it is unconstitutionally vague, and that it is unconstitutional because it exceeds Congress's power to regulate commerce. The district court denied the motion.

No. 25-30712

as applied to him. Martin’s predicate felony convictions are for simple drug possession and for possession of a firearm by a felon. His existing conviction for firearm possession was based on his conviction for simple drug possession. Martin argues that *United States v. Hembree* controls his appeal such that his convictions must be reversed. 165 F.4th 909 (5th Cir. 2026). The government concedes error and that the issue is foreclosed under *Hembree*.

In *Hembree*, our court reversed the defendant’s § 922(g)(1) conviction predicated on a conviction for simple drug possession because it was unconstitutional as applied to him. *Id.* at 910. We held that in light of the Supreme Court’s decision in *Bruen*, our court under *Diaz* takes a felony-by-felony approach to assess whether there is a sufficient historical analogue for the punishment of any of the § 922(g) predicate offenses. *Id.* at 912–13 (citing *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022)); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025). Our court found that the government did not meet its burden to provide a historical analogue for simple drug possession under § 922(g)(1). *Id.* at 918. We further explained that although our court reasoned in *Kimble* that a predicate felony conviction of drug trafficking was constitutional, the decision was “narrow” and did not speak to whether there is a historical analogue to simple drug possession. *Id.* at 916–17 (citing *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025)), *cert. denied*, No. 25-5747, 2026 WL 135675 (U.S. Jan. 20, 2026).

The government similarly fails to present a historical analogue here. The district court relied on extending *Kimble*’s drug trafficking analogues to predicate drug possession convictions when denying Martin’s motion to dismiss the indictment. But, as in *Hembree*, Martin’s convictions are

No. 25-30712

predicated on simple drug possession, which we have since held to be unconstitutional and distinguishable from *Kimble*. *Id.* at 916–18.<sup>2</sup>

In light of the foregoing and the government’s concession of error, the government has not met its burden to show that our history and tradition support Martin’s predicate offenses under § 922(g)(1). We hold that Martin’s convictions violate the Second Amendment as applied to him and REVERSE his convictions.

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<sup>2</sup> Even Martin’s felon-in-possession predicate would not suffice on its own considering it too is predicated on simple drug possession. *Diaz*, 116 F.4th at 468 (discussing that a firearm possession predicate under § 922(g)(1) was not considered a crime “until 1938 at the earliest,” that being a felon today does not necessarily mean one would have been a felon in the 18th century, and instead considering the government’s evidence “more specifically targeted to [the defendant’s] circumstances.”).