

IN THE SUPREME COURT OF THE UNITED STATES

No. 26A-____

UNITED STATES OF AMERICA, APPLICANT

v.

LUIS MANUEL BANUELOS

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

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 60-day extension of time, to and including September 28, 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-4a) is available at 2026 WL 1195824.

The court of appeals entered its judgment on May 1, 2026. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 30, 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 Western District of Texas indicted respondent for possessing a firearm as a convicted felon, in violation of 18 U.S.C. 922(g)(1). App., infra, 1a. Respondent's predicate felony conviction is for possessing between 50 and 2000 pounds of marijuana. 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-2a. The court then convicted him after a stipulated bench trial. Id. at 2a.

A panel of the Fifth Circuit reversed the denial of the motion to dismiss and vacated the conviction. App., infra, 1a-4a. The court noted that, under Fifth Circuit precedent, Section 922(g)(1) violates the Second Amendment as applied to the predicate felony of simple drug possession. Id. at 2a (citing United States v. Hembree, 165 F.4th 909 (5th Cir. 2026), petition for cert. pending, No. 25-1219 (filed Apr. 24, 2026)). The court rejected the government's argument that "an examination of the facts underlying [respondent's] conviction shows that [respondent] was trafficking in drugs," stating that its precedents precluded it from "look[ing] to the facts of the underlying predicate felony conviction." Id. at 2a-3a.

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

Court of appeals opinion (5th Cir. May 1, 2026)	1a
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United States Court of Appeals
for the Fifth Circuit

No. 23-50731

United States Court of Appeals
Fifth Circuit

FILED

May 1, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS MANUEL BANUELOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:22-CR-903-1

Before ELROD, *Chief Judge*, and HO and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

An indictment charged Luis Manuel Banuelos with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). That charge was based on a 2005 state-court felony conviction for possession of between 50 and 2,000 pounds of marijuana. Banuelos moved to dismiss the federal indictment, arguing that § 922(g)(1) violates the Second Amendment as applied to his felony conviction of simple possession of marijuana. The

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

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district court denied Banuelos’s motion to dismiss and convicted him after a stipulated bench trial. Banuelos now appeals the denial of his motion to dismiss. Because intervening precedent holds that simple possession of drugs is an insufficient basis for permanent disarmament, we REVERSE the denial of Banuelos’s motion to dismiss and VACATE Banuelos’s conviction and sentence.

I

When the district court rejected Banuelos’s challenge, it did not have the benefit of our decision in *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026). There, we held that “the government did not meet its burden to prove that history and tradition support simple possession as a valid felony predicate under § 922(g)(1).” *Id.* at 918. We accordingly are constrained to reverse Banuelos’s conviction. The government makes two arguments as to why *Hembree* is not controlling, but neither is persuasive.

A

First, the government argues that even though Banuelos was convicted only of simple possession in Texas state court, an examination of the facts underlying that conviction shows that Banuelos was trafficking in drugs. *See United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025) (holding that “Congress can categorically disarm individuals convicted of violent felonies like drug trafficking”).

That approach is inconsistent with *Hembree*. In *Hembree*, the government attempted the same argument, noting that “Hembree’s prior conviction for simple possession [w]as necessarily the same as possession with intent to distribute” because Hembree was indicted for possession of methamphetamine with intent to distribute and pleaded that charge down to simple possession. 165 F.4th at 917. Indeed, the government provided the court with reports from a prior investigation of Hembree that supported its

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assertion that when Hembree was a prison guard, he possessed methamphetamine with the intent to distribute it to an inmate. *See* Response in Opposition to the Motion to Supplement the Record, *United States v. Hembree*, No. 24-60436 (5th Cir. Aug. 29, 2025), Dkt Nos. 87-1, 87-2. But we held that “[e]vidence of a potential greater charge does not support the government’s historical reasoning because our binding caselaw restricts us to reviewing only Hembree’s predicate conviction: possession of methamphetamine.” *Hembree*, 165 F.4th at 917 (citing *Kimble*, 142 F.4th at 318).

Hembree is a published case, and we are bound to follow it. *See, e.g., Jacobs v. Nat’l Drug Intel. Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008) (“It is a well-settled Fifth Circuit rule of orderliness that one panel of our court may not overturn another panel’s decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our *en banc* court.”). *Hembree* did not look to the facts of the underlying predicate felony conviction, so we cannot either.¹

B

Second, the government argues that we should consider a new historical analogue that *Hembree* did not: tobacco-related laws reflecting, in the government’s characterization, “severe and permanent punishment for illegal possession of a substance.” The government notes that “Virginia imposed the death penalty for all sorts of crimes relating to the tobacco trade—including embezzling tobacco, fraudulently delivering tobacco,

¹ There is arguably some tension in our circuit as to whether it is permissible to look at the conduct underlying the predicate offense in assessing dangerousness and violence. *See United States v. Mancilla*, 155 F.4th 449, 451 n.1 (5th Cir. 2025) (noting “differences in approach” in our cases but following *Kimble*’s approach because, as a case with a drug-trafficking predicate offense, it was “directly on point”).

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altering inspected tobacco, forging inspectors' stamps, and smuggling tobacco." Stuart Banner, *The Death Penalty: An American History* 8 (2002). But the government's characterization that these statutes punish illegal *possession* is inaccurate. The statutes criminalize "embezzling," "delivering," "altering," "forging," and "smuggling." They do not criminalize the possession of tobacco, even tobacco that was the target of these enumerated acts.

According to the government, these laws also establish that "colonial laws severely and indefinitely punished knowing participants in illicit marketplaces." But even though *Hembree* may not have had this tobacco analogue before it, that case "decline[d] to reach so far as to find possession to be part and parcel with the drug trade." 165 F.4th at 918. And the Virginia statutes to which the government points say nothing about possession. Those statutes thus do not provide a basis for departing from *Hembree*.

II

For the foregoing reasons, we REVERSE the denial of Banuelos's motion to dismiss and VACATE Banuelos's conviction and sentence.