United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 1, 2026
Lyle W. Cayce
Clerk

No. 23-50731

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.

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

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").

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.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 30, 2026
Lyle W. Cayce
Clerk

No. 25-30712

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELIJAH MARTIN,

Defendant—Appellant.

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

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).[1] Martin timely appealed. Martin argues that § 922(g)(1) is unconstitutional

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[1] 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.

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

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

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 Matin'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.

[2] 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.").