

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

RASHAWN D. WATSON**JUDGMENT IN A CRIMINAL CASE**

§

§

§

Case Number: **1:19-CR-00085-JG(1)**USM Number: **65476-060****Joseph P. Morse and Albert A. Giuliani**

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1-5 of the Indictment
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
21:841(a)(1), (b)(1)(B) Possession With Intent To Distribute Controlled Substances.	03/07/2018	1
21:841(a)(1), (b)(1)(C); 21:851 Possession With Intent To Distribute A Controlled Substance.	03/07/2018	2
21:841(a)(1), (b)(1)(C); 21:851 Possession With Intent To Distribute A Controlled Substance.	03/07/2018	3
18:922(g)(1) and 924(a)(2) Felon In Possession Of a Firearm and Ammunition.	03/07/2018	4
18:924(c), (c)(1)(A)(i), (c)(1)(D)(i), (c)(1)(D)(i)(ii) Possession Of A Firearm In Furtherance Of A Drug Trafficking Crime.	03/07/2018	5

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 26, 2019

Date of Imposition of Judgment

s/ James S. Gwin
Signature of Judge**JAMES S. GWIN, UNITED STATES DISTRICT JUDGE**
Name and Title of Judge**June 28, 2019**

Date

DEFENDANT: RASHAWN D. WATSON
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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

130 months as to Counts 1-4 to be served concurrently and 60 months as to Count 5 of the Indictment to be served consecutively for a total of 190 months with credit for time served on the instant offenses.

The court makes the following recommendations to the Bureau of Prisons:
RDAP; FCI Morgantown

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: RASHAWN D. WATSON
CASE NUMBER: 1:19-CR-00085-JG(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **6 years on Counts 1-3 and 3 years on Counts 4-5 all served concurrently**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You 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.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

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SPECIAL CONDITIONS OF SUPERVISION

Substance Abuse Treatment and Testing

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

Cognitive Behavioral Treatment

You must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Search / Seizure

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

Mental Health Treatment

You must undergo a mental health evaluation and/or participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$500.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** Lump sum payments of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$500.00 for Counts 1, 2, 3, 4 and 5 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - The defendant shall pay the cost of prosecution.
 - The defendant shall pay the following court cost(s):
 - The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

NOT RECOMMENDED FOR PUBLICATION

File Name: 20a0415n.06

No. 19-3658

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.)
RASHAWN D. WATSON,)
Defendant-Appellant.)

FILED
Jul 17, 2020
DEBORAH S. HUNT, Clerk

BEFORE: MOORE, CLAY, and MURPHY, Circuit Judges.

MURPHY, Circuit Judge. Federal law prohibits certain categories of individuals from possessing firearms, including individuals who have been convicted of a felony. 18 U.S.C. §§ 922(g)(1), 924(a)(2). Before 2019, our court and most others had long held that this law's intent element required defendants to know *only* that they were in possession of a firearm. *See, e.g., United States v. Conley*, 802 F. App'x 919, 922 (6th Cir. 2020). In *Rehaif v. United States*, 139 S. Ct. 2191 (2019), however, the Supreme Court clarified that defendants must *additionally* know that they fall within one of the categories of individuals who may not possess firearms. *Id.* at 2194. After *Rehaif*, therefore, those charged with being a felon in possession of a firearm must know both that they possessed the firearm and that they had previously been convicted of a felony.

This case arose before *Rehaif*. Rashawn Watson was indicted for, among other crimes, being a felon in possession of a firearm. He ultimately pleaded guilty. But neither his indictment

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nor his plea agreement mentioned whether Watson knew of his status as a felon—as is now required by *Rehaif*. On appeal, Watson seeks to invoke that decision to overturn his guilty plea. Because we recently rejected a challenge largely identical to Watson’s, *see United States v. Hobbs*, 953 F.3d 853, 856–58 (6th Cir. 2020), we affirm.

Three times in early 2018, Watson sold fentanyl at his tobacco business to a confidential informant. These controlled buys led investigators to get a warrant to search Watson’s store, truck, and nearby stash house. Investigators found three firearms, ammunition, and illegal drugs.

An indictment charged Watson with three drug counts, *see* 21 U.S.C. § 841(a)(1), with being a felon in possession of a firearm, *see* 18 U.S.C. § 922(g), and with possessing a firearm in furtherance of a drug-trafficking crime, *see id.* § 924(c)(1). The felon-in-possession count specified that Watson had previously been convicted of three felonies and that he knowingly possessed three firearms and ammunition. This count did not specify that Watson knew that he had previously been convicted of those felonies.

In May 2019, shortly before the Supreme Court issued *Rehaif*, Watson pleaded guilty to all five counts. His plea agreement did not require him to admit that he knew of his felon status, but he did admit that he knowingly possessed the firearms and ammunition. During the plea colloquy, the district court likewise did not ask Watson to admit that he knew of his status as a felon at the time that he possessed the firearms.

At sentencing, the district court found that Watson qualified as a career offender under U.S.S.G. § 4B1.1. This career-offender designation meant that Watson’s guidelines range was 262 to 327 months in prison. Varying substantially downward from that range, the district court sentenced Watson to 190 months in prison, followed by six years of supervised release. Although

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Watson’s sentencing occurred after *Rehaif*, he never asserted any type of *Rehaif* claim in the district court.

On appeal, Watson challenged both his career-offender enhancement and his felon-in-possession conviction. We have already granted the government’s motion to dismiss Watson’s career-offender claim because his plea agreement included an appeal waiver that barred him from asserting it. *See United States v. Watson*, No. 19-3658 (6th Cir. Mar. 3, 2020) (order). We thus need only consider Watson’s *Rehaif* arguments. He contends that *Rehaif* requires us to vacate his felon-in-possession conviction for both jurisdictional and merits reasons. After Watson filed his opening brief, our decision in *Hobbs* rejected the same types of arguments. 953 F.3d at 856–58. *Hobbs* leads us to affirm in this case too.

1. *Jurisdictional Challenge.* According to Watson, the indictment’s failure to allege the *Rehaif*-required element (that he knew of his status as a felon) deprived the district court of jurisdiction to convict him of a felon-in-possession offense. Not so. Based on *United States v. Cotton*, 535 U.S. 625 (2002), *Hobbs* already explained why a missing element in an indictment does not affect a federal court’s subject-matter jurisdiction. *See* 953 F.3d at 856–57. The Supreme Court has repeatedly clarified in recent decades that the word “jurisdiction” has a narrow domain, referring to “the courts’ statutory or constitutional power to adjudicate the case.” *Cotton*, 535 U.S. at 630 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998)); *see, e.g., Eberhart v. United States*, 546 U.S. 12, 16 (2005) (per curiam). Consistent with this caselaw, *Cotton* held that “defects in an indictment” are not jurisdictional because they do not deprive courts of their power to adjudicate a criminal case. 535 U.S. at 630. That power instead arises from a federal statute that gives district courts jurisdiction over “all offenses against the laws of the United States.” 18 U.S.C. § 3231; *see Cotton*, 535 U.S. at 630–31.

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Hobbs applied *Cotton*'s logic to a defective felon-in-possession indictment that omitted *Rehaif*'s knowledge-of-status element. 953 F.3d at 856–57. When doing so, *Hobbs* recognized that other courts had “rejected the notion that an indictment’s failure to allege the ‘knowledge-of-status’ element required by *Rehaif* deprives the court of jurisdiction.” *Id.* (citing *United States v. Balde*, 943 F.3d 73, 92 (2d Cir. 2019); *United States v. Burghardt*, 939 F.3d 397, 402 (1st Cir. 2019)). Since *Hobbs*, courts have continued to reject this notion. *See United States v. Maez*, 960 F.3d 949, 956 (7th Cir. 2020); *United States v. Espinoza*, __ F. App’x __, 2020 WL 2844542, at *1 (9th Cir. June 1, 2020) (mem.); *United States v. Moore*, 954 F.3d 1322, 1332–37 (11th Cir. 2020). Just as in *Hobbs* and these many other cases, any deficiency in Watson’s indictment “did not deprive the district court of jurisdiction.” 953 F.3d at 857.

In response, Watson asks us to revisit *Hobbs*. But a panel of this court may not overrule a previous panel’s published opinion. Watson should direct any disagreement with *Hobbs* to our en banc court, *see, e.g.*, *Salmi v. Sec’y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985), and he should direct any disagreement with *Cotton* to the Supreme Court, *see, e.g.*, *Agostini v. Felton*, 521 U.S. 203, 237 (1997).

2. *Merits Challenge.* Watson makes two *Rehaif* arguments on the merits. He initially asserts that the indictment’s failure to allege *Rehaif*’s knowledge-of-status element rendered it defective because indictments must include all elements of an offense. *See United States v. Resendiz-Ponce*, 549 U.S. 102, 107 (2007). Watson next argues that his plea was unknowing and involuntary (and so unconstitutional) because the district court failed to inform him of this element and to ensure he knew of his status as a felon when he possessed the firearms. *See Bousley v. United States*, 523 U.S. 614, 618–19 (1998).

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Watson did not raise these arguments in the district court, so we review them for plain error. *See Hobbs*, 953 F.3d at 857; *Conley*, 802 F. App'x at 922; *see also Maez*, 960 F.3d at 957. To prevail on plain-error review, Watson must identify “an ‘(1) error (2) that was obvious or clear, (3) that affected [his] substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.’” *Hobbs*, 953 F.3d at 857 (citation omitted). As we did in *Hobbs*, we will resolve Watson’s claims on the third (prejudice) prong of this plain-error test. “An error affects a defendant’s substantial rights if there is a reasonable probability that, but for the error, the outcome of the proceeding would have been different.” *Id.* (quoting *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1343 (2016)) (internal quotation marks omitted). This test thus requires Watson to show “a reasonable probability that, but for the alleged failure to inform him of [Rehaif’s] knowledge-of-status element, he would not have entered the plea.” *Id.* (quoting *United States v. Dominguez-Benitez*, 542 U.S. 74, 76 (2004)) (alteration omitted). A defendant may satisfy this burden by pointing to “contemporaneous evidence suggest[ing] that he would have rejected the plea deal[.]” *Id.*

Watson does not make this showing. On appeal, he has not even argued that he would have stood trial if the government had to prove that he knew of his felon status, nor has he pointed to any contemporaneous evidence suggesting that he would have done so. Moreover, as in *Hobbs*, “[p]utting the government to its burden of proof would have cost [Watson] the potential benefit of his plea without gaining him anything.” *Id.* at 858 (alteration and citation omitted). Thus, he does not show a reasonable probability that the outcome of the proceeding would have been different absent the *Rehaif* error.

Watson’s response does not change things. He cites a footnote from *Dominguez-Benitez* suggesting that an unconstitutional guilty plea without a plea colloquy explaining the rights that a

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defendant was waiving could not “be saved even by overwhelming evidence that the defendant would have pleaded guilty regardless.” 542 U.S. at 84 n.10 (discussing *Boykin v. Alabama*, 395 U.S. 238, 243 (1969)). Relying on this footnote, the Fourth Circuit has held that a district court’s failure to notify a defendant of *Rehaif*’s knowledge-of-status element at a plea hearing qualifies as “structural error” that automatically meets the plain-error test’s prejudice prong. *See United States v. Gary*, 954 F.3d 194, 202–07 (4th Cir. 2020). In *Hobbs*, however, we held that a defendant who pleads guilty must show prejudice from a district court’s failure to explain *Rehaif*’s knowledge-of-status element. *See* 953 F.3d at 857–58. We nowhere suggested that such a failure could qualify as structural error. *Id.*; *cf. Ruelas v. Wolfenbarger*, 580 F.3d 403, 410–11 (6th Cir. 2009); *United States v. Stewart*, 306 F.3d 295, 318–23 (6th Cir. 2002). Watson’s argument is incompatible with *Hobbs*.

In addition, most other circuit courts agree with *Hobbs*’s approach. Several have expressly rejected the argument that a district court’s failure to notify a defendant of *Rehaif*’s knowledge-of-status element at a plea hearing counts as structural error. *See, e.g., United States v. Coleman*, 961 F.3d 1024, 1028–30 (8th Cir. 2020); *United States v. Trujillo*, 960 F.3d 1196, 1201–08 (10th Cir. 2020); *United States v. Hicks*, 958 F.3d 399, 401 (5th Cir. 2020). Others have, like *Hobbs*, rejected *Rehaif* arguments under the prejudice prong of the plain-error test. *See United States v. McLellan*, 958 F.3d 1110, 1120 (11th Cir. 2020); *United States v. Williams*, 946 F.3d 968, 973–74 (7th Cir. 2020); *Burghardt*, 939 F.3d at 403–05.

We affirm.