

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-10621
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 8, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SAVANNAH SIFUENTES,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:18-CR-111-1

Before OWEN, Chief Judge, and SOUTHWICK, and WILLETT, Circuit Judges.

PER CURIAM:*

Savannah Sifuentes, federal prisoner # 58092-177, pleaded guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and was sentenced within the advisory guidelines range to 51 months of imprisonment and a three-year term of supervised release. She correctly concedes that the first issue she raises on appeal, that § 922(g)(1) exceeds

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Congress's powers under the Commerce Clause, is foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013).

Sifuentes's second argument is that § 922(g) requires the Government to prove, as an element of the offense, that she knew of her prohibited status. She unsuccessfully raised this argument in her motion to dismiss the indictment in the district court, but acknowledged it was foreclosed at that time. *See United States v. Dancy*, 861 F.2d 77, 81 (5th Cir. 1988). While Sifuentes's appeal was pending, the Supreme Court held in *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019), that knowledge of prohibited status is an element of a § 922(g) offense.

With respect to Sifuentes's challenge to the factual basis and her guilty plea, we review for plain error. *United States v. Ortiz*, 927 F.3d 868, 872 (5th Cir. 2019). Although Sifuentes contends that objecting to the factual basis would have been futile because she unsuccessfully raised the same issue in her motion to dismiss the indictment, she cites nothing in the record to indicate that further objection, although foreclosed under existing caselaw, would have been unwelcome or that the district court would not have entertained it. *See United States v. Gerezano-Rosales*, 692 F.3d 393, 399 (5th Cir. 2012). To establish plain error, Sifuentes must show a forfeited error that is clear and obvious and that affects her substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If she makes such a showing, we have the discretion to correct the error but should do so only if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks, brackets, and citation omitted).

In light of the state court judgment reflecting Sifuentes's conviction for a state felony, which stated that she was sentenced to 10 years of imprisonment suspended for four years of community supervision and

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admonished in accordance with state law, it is reasonably disputable that Sifuentes was aware of her prohibited status at the time she possessed the instant firearm and thus reasonably disputable that the district court did not err in accepting Sifuentes's guilty plea. *See Puckett*, 556 U.S. at 135; *see also United States v. Hicks*, 958 F.3d 339, 401 (5th Cir. 2020). Moreover, because Sifuentes does not concede that plain error is the applicable standard of review, she does not even attempt to make a showing as to the final two prongs of the plain error test. *See Puckett*, 556 U.S. at 135.

With respect to whether Sifuentes's guilty plea waived her argument that the indictment should have been dismissed for failure to allege knowledge of her prohibited status, we recently stated that a defendant "failed to preserve" his *Rehaif* challenge to the indictment by pleading guilty. *See United States v. Lavalais*, 960 F.3d 180, 186 (5th Cir. 2020).

Finally, Sifuentes contends that the district court was required to utilize the categorical approach when analyzing whether her prior state conviction was a crime of violence (COV), and that it plainly erred by failing to conduct the divisibility analysis required under the categorical approach. In *United States v. Lipscomb*, 619 F.3d 474 (5th Cir. 2010), we considered whether the federal offense of possessing a firearm as a felon under § 922(g)(1) constituted a COV under the Guidelines where the indictment explicitly alleged that the defendant possessed a sawed-off shotgun, and rejected the defendant's claim that the categorical approach should apply. *See* 619 F.3d at 476-77. One panel of this court may not overrule another panel's decision without en banc reconsideration or a superseding contrary Supreme Court decision, *United States v. Lipscomb*, 299 F.3d 303, 313 n.34 (5th Cir. 2002), and nothing Sifuentes cites rises to the level of a superseding contrary Supreme Court

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decision. Accordingly, the district court did not plainly err. *See Puckett*, 556 U.S. at 135.

AFFIRMED.

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

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DEPUTY CLERK 

UNITED STATES OF AMERICA

v.

SAVANNAH SIFUENTES (1)
VIC LAMAR VECCHIO (2)
ADAM LEE ARREDONDO (3)

No. **5-18CR0111-C**

INDICTMENT

The Grand Jury Charges:

Count One

Convicted Felon in Possession of Firearms
(Violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2))

On or about July 30, 2018, in the Lubbock Division of the Northern District of Texas, and elsewhere, **Savannah Sifuentes, Vic Lamar Vecchio, and Adam Lee Arredondo**, defendants, persons who had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess in and affecting interstate and foreign commerce firearms, to wit: a Mosin Nagant, M91/30 model, 7.62 caliber rifle, bearing serial number 30307; a Mosin Nagant, 1946R model, 7.62 caliber rifle, bearing serial number UA1488; and a Lee Enfield, NOIMKIII model, .303 caliber rifle, bearing serial number 58694.

In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

Savannah Sifuentes, et. Al.
Indictment - Page 1

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Forfeiture Notice
(18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c))


Upon conviction of the offense alleged in Count One of this Indictment, and pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), defendants **Savannah Sifuentes Vic Lamar Vecchio**, and **Adam Lee Arredondo**, shall forfeit to the United States of America any firearm and ammunition involved in or used in the knowing commission of the offense, including, but not limited to, the following: a Mosin Nagant, M91/30 model, 7.62 caliber rifle, bearing serial number 30307; a Mosin Nagant, 1946R model, 7.62 caliber rifle, bearing serial number UA1488; and a Lee Enfield, NOIMKIII model, .303 caliber rifle, bearing serial number 58694.

A TRUE BILL:



FOREPERSON

ERIN NEALY COX
UNITED STATES ATTORNEY



ANDERSON HATFIELD
Assistant United States Attorney
New Mexico State Bar No. 146699
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: 806-472-7323
Facsimile: 806-472-7394
Email: Anderson.Hatfield@usdoj.gov

Savannah Sifuentes, et. Al.
Indictment - Page 2

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

**SAVANNAH SIFUENTES,
Defendant.**

§
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§
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§

CASE NO. 5:18-CR-111-C (ECF)

**MOTION TO DISMISS THE INDICTMENT AS IT IS
BASED ON AN UNCONSTITUTIONAL STATUTE AND
FOR FAILURE TO STATE A FEDERAL OFFENSE,
FOR LACK OF FEDERAL JURISDICTION,
AND BRIEF IN SUPPORT**

Note: The defendant concedes that this Motion's requested relief is contrary to current Fifth Circuit law, but [deft he / she] seeks to preserve the issue for further review, either with the Fifth Circuit en banc, or with the Supreme Court. See United States v. Luna 165 F.3d 316, 319 -322 (5th Cir. 1999) and United States v. Daugherty, 264 F.3d 513, 518 (5th Cir. 2001).

Defendant SAVANNAH SIFUENTES ("SIFUENTES"), through undersigned counsel, respectfully asks this Court to dismiss the indictment against him/her, because: (1) it is based on an unconstitutional statute; (2) it fails to state a federal offense for lack of federal jurisdiction; and (3) it violates the Defendant's right to a grand jury finding on each of the elements. In support, SIFUENTES would show that:

Introduction.

Defendant is charged with being a felon possessing a weapon as proscribed by 18 U.S.C. § 922(g)(1). The defendant attacks the constitutionality of this statute and the sufficiency of the indictment based on the lack of a sufficient connection to interstate commerce. The thrust of defendant's argument is that the constitutionality of 18 U.S.C. § 922(g)(1) is doubtful following

the Supreme Court's decisions in United States v. Morrison, 529 U.S. 598, 627 (2000), and Jones v. United States, 529 U.S. 848, 859 (2000). And, consequently, the Fifth Circuit's decisions in United States v. Rawls, 85 F.3d 240, 242-43 (5th Cir. 1996) and United States v. Kuban, 94 F.3d 971, 973-74 (5th Cir. 1996), which have upheld the statute's constitutionality, are no longer good law.

Analysis

A. 18 U.S.C. § 922(g)(1) is unconstitutional.

In Rawls and Kuban, the Fifth Circuit held that, despite the Supreme Court's landmark decision in United States v. Lopez, 514 U.S. 549 (1995), 18 U.S.C. § 922(g)(1) is constitutional and that the statute was constitutional as applied (in those cases) because the "in or affecting commerce" element can be satisfied if the firearm possessed by a convicted felon had previously traveled in interstate commerce.

But the Court's opinions were hardly a ringing endorsement of these propositions. In Rawls, all three panel members observed that, had the Supreme Court not appeared to have addressed this issue in Scarborough v. United States, 431 U.S. 563 (1977), which pre-dated Lopez, Lopez might well have swung the constitutional question the other way.¹ And in Kuban, Judge DeMoss's thoughtful dissent explained how and why Scarborough does not control the

¹See Rawls, 85 F.3d at 243 ("if the matter were *res nova*, one might well wonder how it could rationally be concluded that mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm had, perhaps decades previously before the charged possessor was even born, fortuitously traveled in interstate commerce.")(Garwood, Wiener, and Garza, JJ, specially concurring.)

issue of § 922(g)'s constitutionality in the first place. See Kuban, 94 F.3d at 976 (DeMoss, J., dissenting in part).

Now it would appear that Judge DeMoss has more accurately divined the Supreme Court's interpretation of the limits to which the Commerce Clause bestows federal jurisdiction. Two Supreme Court decisions have cast doubt upon Rawls and Kuban's interpretation of the Commerce Clause analysis [upholding the constitutionality of 18 § 922(g)]. In fact, these decisions compel the Court to reconsider Rawls and Kuban in light of the Supreme Court's holdings in Morrison and Jones.

In Morrison, the High Court considered the provisions of the Violence Against Women Act (VAWA), which provided a federal civil remedy for the victims of gender-related violence (42 U.S.C. § 13981). The Court held that, in enacting § 13981, Congress exceeded its powers under the Commerce Clause; in so holding, the Court pointedly "reject[ed] the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." Morrison, 529 U.S. at 617. The Court also stressed that the interdiction of crime is, by and large, a state function, to be undertaken pursuant to the general police powers possessed by the states and not the federal government. see id.

Admittedly, the statutory provision at issue in Morrison did not contain an "interstate commerce nexus" like that present in 18 U.S.C. § 922(g)(1), which requires proof of "possess[ion] in or affecting commerce." But this is a distinction without a difference. Only a week after the High Court decided Morrison, it released its decision in Jones. There, the Court considered whether a private residence was "used in interstate or foreign commerce or in any

activity affecting interstate or foreign commerce," for purposes of 18 U.S.C. § 844(i), the federal arson statute. See Jones, 529 U.S. at 850.

A unanimous Court held that the private home in question was not “used in interstate . . . commerce or in any activity affecting interstate . . . commerce” simply because (1) the mortgage lender for the home was based out of state; (2) the casualty insurer for the home was located out of state; and (3) the home received natural gas from sources out-of-state. See id. at 854-57. The Court observed that a contrary ruling would raise a grave constitutional question whether § 844(i), as so interpreted, exceeded Congress's power to regulate under the Commerce Clause. See id. at 857-58. The Court also applied the rule of lenity and the principle that “unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes.” Id. at 858.

Morrison and Jones indicate that 18 U.S.C. § 922(g)’s “possess . . . in or affecting commerce” phrase does not reach the situation here, where the sole link to interstate commerce is the fact that the firearm in question was, at some unspecified point in the possibly remote past, manufactured in another state and then transported to Texas. Morrison and Jones have implicitly overruled Kuban and Rawls because, under the Supreme Court’s commerce clause analysis, 18 U.S.C. § 922(g)(1) is unconstitutional as currently interpreted.

The 10th Circuit has recently surveyed the law in applying the interstate commerce clause to the federal prohibition of felon from possession of a bullet proof vest found in 18 U.S.C. 931. The Court, like this concurring opinion in Kuban, found that the statute could not pass the test set forth in Lopez, but felt bound to follow Scarborough, or least the Circuit court decisions holding that Scarborough compels the finding that statutes prohibiting felons from the possession of

weapons or body armor do confer jurisdiction upon the federal courts. See United States v. Patton, 451 F.3d 615, 633-634 (10th Cir. 2006) (This type of statute “cannot be justified as a regulation of the channels of commerce, as a protection of the instrumentalities of commerce, or as a regulation of intrastate activity that substantially affects interstate commerce.”) & 451 F.3d at 635-36 (“Like our sister circuits, we see considerable tension between Scarborough and the three-category approach adopted by the Supreme Court in its recent Commerce. . . . We suspect the Supreme Court will revisit this issue in an appropriate case--maybe even this one.”) Note: Defendant incorporates by reference the reasoning of the 10th Circuit’s opinion, except to the extent the Court found that Scarborough was authority for finding the statutes in question to be constitutional on their face or as applied.

B. Even if constitutional, the statute is unconstitutional as applied.

Alternatively, if 18 U.S.C. § 922(g)(1) is read to be constitutional on its face, because it requires a substantial affect on interstate commerce, then it is unconstitutional as applied, because the indictment fails to allege a substantial effect on interstate commerce, and the grand jury did not find probable cause that there was a substantial effect on interstate commerce.

C. The indictment fails to allege the proper *mens rea* elements of the offense.

The indictment fails to allege that the defendant knew that [deft he / she] had the status that prohibited [deft him / her] from possessing firearms, nor does it allege the [deft he / she] knew that [deft his / her] possession of the weapons was in or affecting interstate commerce. These are particularly important elements in this case, thus the failure of the government to allege that the defendant knew that [deft he / she] was a felon is crucial.

In 1986, Congress passed the Firearms Owners Protections Act [FOPA]. A major thrust of this legislation was to alter the previous federal criminal law governing firearms by explicitly doing away with strict liability or quasi strict liability for offenses. Thus, Congress added the requirement in 18 U.S.C. § 924, that for a person to be liable for punishment, the government must prove that the person either willfully or knowing violated the relevant section of § 922(g). The explicit language of the relevant statute in this case allows the government to punish “[w]hoever knowingly violates subsection . . . (g) . . . of 922” The statute simply does not punish whoever “knowingly possesses a firearm” and happens to be a felon. Also, the statute simply does not punish whoever “knowingly possesses a firearm” if the firearm possession happens to be in or affect interstate commerce. It punishes knowing violations of the statute.

Knowing possession of a weapon is obviously not by itself a crime. The statute requires a knowing violation of § 922(g), thus, by the plain words of the statute, the defendant must know that [deft he / she] is a felon and that [deft he / she] possessed a weapon, and must know that the possession of the weapon was in or affecting interstate commerce. The Supreme Court has so held. In Bryan v. United States, 524 U.S. 184, 193 (1998), the Court held that the knowing violation requirement in 18 U.S.C. § 924 requires the government to prove that the defendant did have “knowledge of the facts that constitute the offense.” In Staples v. United States, 511 U.S. 600, 618-19 (1994), the Supreme Court held that, even when a statute has no explicit “knowing” element, the government must prove that a defendant had knowledge of “the facts that make his/her conduct illegal.” In Staples, the Supreme Court noted that there is a “presumption that a defendant must know the facts that make his/her conduct illegal” which “should apply” especially where the alternative is that the statute “would require the defendant to have knowledge only of

traditionally lawful conduct” Id. Here, the knowing possession of a firearm is traditionally lawful conduct. The Supreme Court noted that the “severe penalty” of a potential 10-year sentence suggested that Congress did not intend to jettison the usual requirement that the defendant know the facts that make his/her conduct illegal. See id.

The legislative history also directly supports the idea that Congress intended that the government must prove the defendant knew the facts and circumstances that constitute the offense. Congress explicitly said so. “It is the Committee's intent, that unless otherwise specified, the knowing state of mind shall apply to circumstances and results.” H.R. Rep. No. 99-495, 99 Cong., 2d Sess. 25-26, reprinted in 1986 U.S. Code Cong. and Ad. News 1327, 1351-52. As noted above, a major thrust of the FOPA was to completely alter the gun laws to abolish or alter the perceived “strict liability” created by the absence of any scienter requirement in the statute, and by the Supreme Court’s decision in United States v. Freed, 401 U.S. 601, 609 (1971).

A panel of this Court wrongly decided this issue in United States v. Dancy, 861 F.2d 77 (5th Cir. 1988), but in light of Bryan and Staples that decision is no longer valid.

Respectfully submitted,

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Sarah Gunter
Sarah Gunter
Assistant Federal Public Defender
Bar No. 24035471
Federal Public Defender's Office
1205 Texas Avenue, Room 507
Lubbock, TX 79401
Telephone: (806) 472-7236
Fax: (806) 472-7241
E-mail: sarah_gunter@fd.org
Attorney for Defendant

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

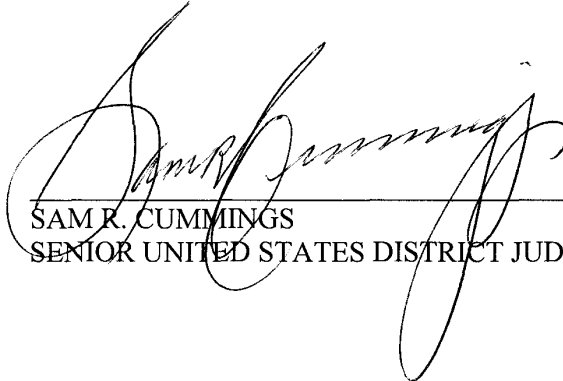
UNITED STATES OF AMERICA	§	
	§	
v.	§	NO. 5:18-CR-111-01-C
	§	ECF
SAVANNAH SIFUENTES (1)	§	

ORDER

The Court having considered Defendant's Motion to Dismiss the Indictment as it is Based on an Unconstitutional Statute and for Failure to State a Federal Offense, for Lack of Federal Jurisdiction filed December 14, 2018, is of the opinion that the same should be **DENIED.**

SO ORDERED.

Dated December 18, 2018.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE

19-10621.53

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

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UNITED STATES OF AMERICA

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v.

NO. 5:18-CR-111-C(01)

SAVANNAH SIFUENTES (1)

FACTUAL RESUME

In support of Savannah Sifuentes's plea of guilty to the offense in Count One of the Indictment, Sifuentes, the defendant, Sarah Gunter, 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 Firearms, 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; and
- Third.* That the firearm possessed traveled in interstate or foreign commerce; that is, before the defendant possessed the firearms, it had traveled at some time from one state to another or between a part of the United States and any other country.

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2015).

STIPULATED FACTS

1. Savannah Sifuentes admits and agrees that on or about July 30, 2018, in the Lubbock Division of the Northern District of Texas, and elsewhere, she, defendant, a person who had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess in or affecting interstate or foreign commerce firearms, to wit: a Mosin Nagant, M91/30 model, 7.62 caliber rifle, bearing serial number 30307; a Mosin Nagant, 1946R model, 7.62 caliber rifle, bearing serial number UA1488; and a Lee Enfield, NOIMKIII model, .303 caliber rifle, bearing serial number 58694.

2. In late July 2018, law enforcement received information that Sifuentes, a felon, was attempting to sell firearms. Deputies contacted Sifuentes in an undercover capacity and asked to meet her in order to inspect the rifles she was selling. Sifuentes and the deputies agreed to meet in the parking lot of a business in Lubbock, Texas, on July 30, 2018. When law enforcement saw Sifuentes arrive at the predetermined location on July 30, they took her and the other occupants of the car into custody.

3. After being taken into custody, Sifuentes waived her right to remain silent and agreed to speak with law enforcement. Sifuentes told law enforcement that she took possession of several guns in order to sell them. Specifically, she told deputies that she was in possession of the Mosin Nagant, M91/30 model, 7.62 caliber rifle, bearing serial number 30307; the Mosin Nagant, 1946R model, 7.62 caliber rifle, bearing serial number UA1488; and the Lee Enfield, NOIMKIII model, .303 caliber rifle, bearing serial number

58694. She told deputies that they were not her guns, but she possessed them as part of a plan to sell them.

4. Further investigation revealed that before Sifuentes possessed the firearms listed in this factual resume, she had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense. Specifically, on or about July 12, 2018, in the 137th District Court in Lubbock County, Texas, Sifuentes was convicted of Prohibited Weapon, a 3rd degree felony, and sentenced to ten years imprisonment. The court suspended the sentence and placed Sifuentes on probation.

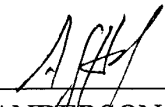
5. An Alcohol, Tobacco, Firearms, and Explosives (“ATF”) special agent examined the firearms listed in this factual resume and determined that each met the definition of a “firearm” under federal law. Another ATF special agent, who is an expert in the interstate nexus of firearms, determined that the firearms mentioned in this factual resume were not manufactured in the State of Texas and, therefore, each affected interstate or foreign commerce. That is, before Sifuentes possessed these firearms, they had traveled at some time from one state to another or between any part of the United States and any other country.

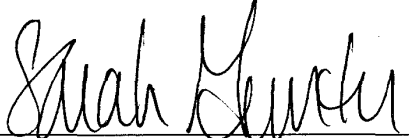
6. The defendant agrees that the defendant committed all the essential elements of the offense. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant’s guilty plea to Count One of the Indictment.

AGREED TO AND STIPULATED on this 4th day of July, 2018.


SAVANNAH SIFUENTES
Defendant

ERIN NEALY COX
UNITED STATES ATTORNEY


ANDERSON HATFIELD
Assistant United States Attorney
New Mexico State Bar No. 146699
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: 806-472-7323
Facsimile: 806-472-7394
E-mail: anderson.hatfield@usdoj.gov


SARAH GUNTER
Attorney for Defendant

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

U.S. DISTRICT COURT
NORTHERN DIST. OF TX
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UNITED STATES OF AMERICA

v.

NO. 5:18-CR-111-C(01)

SAVANNAH SIFUENTES (1)

PLEA AGREEMENT

Savannah Sifuentes, the defendant, Sarah Gunter, the defendant's attorney, and the United States of America (the government) agree as follows:

1. **Rights of the defendant:** The defendant understands that the defendant has the rights:
 - a. to plead not guilty;
 - b. to have a trial by jury;
 - c. to have the defendant's guilt proven beyond a reasonable doubt;
 - d. to confront and cross-examine witnesses and to call witnesses in the defendant's defense; and
 - e. against compelled self-incrimination.
2. **Waiver of rights and plea of guilty:** The defendant waives these rights and pleads guilty to 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 Firearms. The defendant understands the nature and elements of the crime to which

the defendant is pleading guilty, and agrees that the factual resume the defendant has signed is true and will be submitted as evidence.

3. **Sentence:** The maximum penalties the Court can impose include:

- a. imprisonment for a period not to exceed 10 years;
- b. a fine not to exceed \$250,000, or twice any pecuniary gain to the defendant or loss to the victim;
- c. a term of supervised release of not more than three years, which may be mandatory under the law and will follow any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release;
- d. a mandatory special assessment of \$100;
- e. restitution to victims or to the community, which is mandatory under the law, and which the defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone;
- f. costs of incarceration and supervision; and
- g. forfeiture of property.

4. **Immigration consequences:** The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses. The defendant understands this may include the offense to which the defendant is pleading guilty, and for purposes of this plea agreement, the defendant assumes the offense is a removable offense. Removal and other immigration

consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the district court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. The defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea of guilty may entail, even if the consequence is the defendant's automatic removal from the United States.

5. **Court's sentencing discretion and role of the Guidelines:** The defendant understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, but are advisory only. The defendant has reviewed the guidelines with the defendant's attorney, but understands no one can predict with certainty the outcome of the Court's consideration of the guidelines in this case. The defendant will not be allowed to withdraw the defendant's plea if the defendant's sentence is higher than expected. The defendant fully understands that the actual sentence imposed (so long as it is within the statutory maximum) is solely in the discretion of the Court.

6. **Mandatory special assessment:** Prior to sentencing the defendant agrees to pay to the U.S. District Clerk the amount of \$100, in satisfaction of the mandatory special assessment in this case.

7. **Defendant's agreement:** The defendant shall give complete and truthful information and/or testimony concerning the defendant's participation in the offense of conviction. Upon demand, the defendant shall submit a personal financial statement

under oath and submit to interviews by the government and the U.S. Probation Office regarding the defendant's capacity to satisfy any fines or restitution. The defendant expressly authorizes the United States Attorney's Office to immediately obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court. The defendant fully understands that any financial obligation imposed by the Court, including a restitution order and/or the implementation of a fine, is due and payable immediately. In the event the Court imposes a schedule for payment of restitution, the defendant agrees that such a schedule represents a minimum payment obligation and does not preclude the U.S. Attorney's Office from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation. The defendant understands that the defendant has a continuing obligation to pay in full as soon as possible any financial obligation imposed by the Court.

8. **Forfeiture of property:** The defendant agrees not to contest, challenge, or appeal in any way the administrative or judicial (civil or criminal) forfeiture to the United States of any property noted as subject to forfeiture pursuant to the plea of guilty, specifically the forfeiture of the Mosin Nagant, M91/30 model 7.62 caliber rifle bearing serial number 30307; the Mosin Nagant, 1946R model, 7.62 caliber rifle bearing serial number UA1488; and the Lee Enfield, NOIMKIII model .303 caliber rifle bearing serial number 58694. The defendant agrees that this property is subject to forfeiture under 21 U.S.C. § 853(a). The defendant consents to entry of any orders or declarations of forfeiture regarding such property and waives any requirements (including notice of

forfeiture) set out in 19 U.S.C. §§ 1607-1609; 18 U.S.C. §§ 981, 983, and 985; the Code of Federal Regulations; and Rules 11 and 32.2 of the Federal Rules of Criminal Procedure. The defendant agrees to provide truthful information and evidence necessary for the government to forfeit such property. The defendant agrees to hold the government, its officers, agents, and employees harmless from any claim whatsoever in connection with the seizure, forfeiture, storage, or disposal of such property.

9. **Government's agreement:** The government will not bring any additional charges against the defendant based upon the conduct underlying and related to the defendant's plea of guilty. The government will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. The government will dismiss, after sentencing, any remaining charges in the pending indictment. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against the defendant or any property.

10. **Violation of agreement:** The defendant understands that if the defendant violates any provision of this agreement, or if the defendant's guilty plea is vacated or withdrawn, the government will be free from any obligations of the agreement and free to prosecute the defendant for all offenses of which it has knowledge. In such event, the defendant waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, the defendant

also waives objection to the use against the defendant of any information or statements the defendant has provided to the government, and any resulting leads.


11. **Voluntary plea:** This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.


12. **Representation of counsel:** The defendant has thoroughly reviewed all legal and factual aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation. The defendant has received from the defendant's attorney explanations satisfactory to the defendant concerning each paragraph of this plea agreement, each of the defendant's rights affected by this agreement, and the alternatives available to the defendant other than entering into this agreement. Because the defendant concedes that the defendant is guilty, and after conferring with the defendant's attorney, the defendant has concluded that it is in the defendant's best interest to enter into this plea agreement and all its terms, rather than to proceed to trial in this case.

13. **Entirety of agreement:** This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties. This agreement supersedes any and all other promises, representations, understanding, and agreements that are or were made between the parties at any time before the guilty plea is entered in court. No promises or representations have been made by the United States except as set forth in writing in this plea agreement.

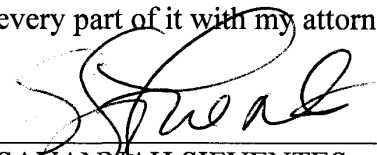
AGREED TO AND SIGNED this 14th day of January, 2018.9

ERIN NEALY COX
UNITED STATES ATTORNEY


ANDERSON HATFIELD
Assistant United States Attorney
New Mexico State Bar No. 146699
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: 806-472-7323
Facsimile: 806-472-7394
E-mail: anderson.hatfield@usdoj.gov

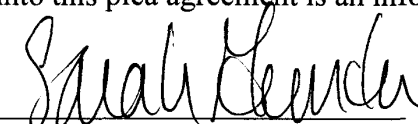

JEFFREY R. HAAG
West Texas Branch Chief

I have read or had read to me this plea agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.


SAVANNAH SIFUENTES
Defendant

1/14/19
Date

I am the defendant's attorney. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge and belief, my client's decision to enter into this plea agreement is an informed and voluntary one.


SARAH GUNTER
Attorney for Defendant

1/14/19
Date

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of the Defendant, the Court pronounced sentence against Defendant.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the TDCJ-ID. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the Lubbock County Judicial Compliance Department. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant immediately committed to the custody of the Sheriff of Lubbock County, Texas on the date the sentence is to commence. Defendant shall be confined in the Lubbock County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the Lubbock County Judicial Compliance Department. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Lubbock County Judicial Compliance Department. Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☐ The Court ORDERS Defendant's sentence EXECUTED.

☒ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Court Costs	\$ 279.00	APO Fee	\$60.00
Attorney Fee	\$ 0	Payment Start Date	August 21, 2018
		VIS Included	No

An additional fee of \$25 is due if Court Costs not paid within 31 days of this judgment.

Dismissals: 2017-412557 Counts II & III

The Defendant shall submit a blood sample or other specimen, such as a Buccal swab, within one week of sentencing, to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record.

The Defendant is not to contact Victim or Victim's family, either directly or indirectly, or by any other means. Further, the defendant is not to come within 100 yards of Victim or Victim's family, their place of residence, school or place of employment.

The Defendant waives any and all interest in any property seized in connection with this case, cash or property (real or personal, tangible or intangible) which is the subject of any civil forfeiture action.

IT IS FURTHER ORDERED that the imposition of the sentence of confinement be suspended and that any fine imposed be paid in the manner set out below and the Defendant, SAVANNAH SIFUENTES, is hereby placed on Community Supervision for a period of Four (4) Years under the terms and conditions of the Community Supervision Law of the State of Texas, upon the following terms and conditions:

- (a) Commit no offense against the laws of this or any other State or the United States;
- (b) Avoid injurious or vicious habits;
- (c) Avoid persons or places of disreputable or harmful character;



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- (d) Report to the Supervision Officer as directed. Defendant is paroled to the Director of Lubbock Community Supervision, or his designees; Defendant shall report this day in person, and thereafter as directed by the Supervision Officer but at least once every month, in writing, on or before the 21st day of each month hereafter, and each of said days ordered to report is a separate condition of this community supervision;
- (e) Permit the Supervision Officer to visit him at his home or elsewhere;
- (f) Work faithfully at suitable employment as far as possible;
- (g) Remain within Lubbock County, Texas unless the Court consents in writing to a change of residence;
- (h) Support all his dependents;
- (i) Report any change of address to the community supervision office of Lubbock County, Texas, in writing, within 24 hours;
- (j) Memorize the terms and conditions of this community supervision;
- (k) Make the following payments to the Supervision Officer of Lubbock County, Texas beginning **August 21, 2018**: the payment of each installment ordered is a separate condition of this community supervision;
 - 1) Community Supervision fee of **\$60.00** per month;
- (l) The Defendant will report to the Community Supervision Office of Lubbock County, Texas at 8:30 a.m. and 1:00 p.m. Monday through Friday when not gainfully employed;
- (m) Defendant shall submit a non-dilute urine specimen, or any other specimen, requested to be tested for alcohol, narcotics or dangerous drugs whenever instructed by the Court or the supervision officer. Such tests are to be paid for by the defendant;
- (n) Defendant must complete **160 hours** of Community Service at the direction of the Community Supervision Office. Twenty (20) hours are mandatory at 4 hours per month (beginning next month). The remaining are to be imposed at the Community Supervision Office's discretion;
- (o) Defendant shall be evaluated to determine his/her educational skill level. If the defendant's educational level is found to be less than the average skill of students who have completed the sixth grade in this State, the defendant shall enroll in classes for the purpose of achieving the required skill level. If it is determined that the defendant does not have the intellectual capacity to achieve the required level than he/she will no longer be required to attend the said classes. **If the Defendant has not completed his/her high school education, he/she will either take the courses necessary to complete his/her high school education or achieve a General Equivalency Degree (GED);**
- (p) Defendant shall attend and complete any drug, alcohol, or any other program as directed and deemed necessary by the Supervision Officer. Defendant must register and begin said classes within sixty (60) days;
- (q) Defendant shall maintain total abstinence from the use or possession of alcoholic beverages and any narcotics, substances not meant for human consumption, or dangerous drugs not prescribed by a physician and cooperate fully with the Community Supervision Officer and any other agency contracted therewith to achieve rehabilitation of said Offender;
- (r) Defendant shall not enter any store, bar, club, restaurant, or any other business which has as a primary source of its income the sale of alcoholic beverages;
- (s) A curfew will be imposed between the hours of 11:00 P.M. and 6:00 A.M.; Defendant will be at home or at a Community based facility each night and remain there unless his work requires him to be elsewhere;
- (t) If a Probationer desires to leave the State of Texas, the probationer shall deposit cash in an amount sufficient to cover any costs of extraditing probationer back to the State of Texas. Said cash must be deposited with the Lubbock County Treasurer's Office before any transfer is authorized and shall be returned to probationer upon termination of supervision or return of supervision to the State of Texas. This money will be used only for the purpose of extraditing probationer back to Texas, should extradition become necessary, unless otherwise agreed upon by the probation and the Lubbock County Community Supervision and Corrections Department;

Signed and entered on this the 12 day of July, 2018.

x 
John J. McClendon III
JUDGE PRESIDING



19-10621.131