

APPENDIX

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-4206

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BERNARD STEVEN BOYD,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, Chief District Judge. (1:20-cr-00287-TDS-1)

Submitted: October 14, 2021

Decided: October 18, 2021

Before DIAZ and QUATTLEBAUM, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert L. McClellan, IVEY, MCCLELLAN, SIEGMUND, BRUMBAUGH & McDONOUGH, LLP, Greensboro, North Carolina, for Appellant. Sandra J. Hairston, Acting United States Attorney, Julie C. Niemeier, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bernard Steven Boyd pleaded guilty, pursuant to a written plea agreement, to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The district court sentenced Boyd to 76 months' imprisonment. On appeal, Boyd argues that his sentence is procedurally and substantively unreasonable. We affirm.

We "review[] all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard." *United States v. Torres-Reyes*, 952 F.3d 147, 151 (4th Cir. 2020) (internal quotation marks omitted). "First, we ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020) (internal quotation marks omitted).

Boyd argues that his sentence is procedurally unreasonable because the district court failed to explain its chosen sentence or its rejection of his arguments in mitigation. "As is well understood, to meet the procedural reasonableness standard, a district court must conduct an individualized assessment of the facts and arguments presented and impose an appropriate sentence, and it must explain the sentence chosen." *United States v. Nance*, 957 F.3d 204, 212 (4th Cir.) (internal quotation marks omitted), *cert. denied*, 141 S. Ct. 687 (2020). The district court's explanation "should provide some indication . . . that the court considered the § 3553(a) factors and applied them to the particular defendant, and

also that it considered a defendant’s nonfrivolous arguments for a lower sentence.” *Id.* (citations and internal quotation marks omitted). “Where a sentencing court hears a defendant’s arguments and engages with them at a hearing, we may infer from that discussion that specific attention has been given to those arguments.” *Id.* at 213. After reviewing the record, we conclude that the district court sufficiently explained the chosen sentence and its rejection of Boyd’s mitigating arguments. We therefore hold that his sentence is procedurally reasonable.

If we find no significant procedural error in a defendant’s sentence, we “then consider[] the substantive reasonableness of the sentence imposed.” *United States v. Arbaugh*, 951 F.3d 167, 172 (4th Cir.) (internal quotation marks omitted), *cert. denied*, 141 S. Ct. 382 (2020). We look to “the totality of the circumstances to see whether the sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a).” *Id.* at 176 (internal quotation marks omitted). “Where, as here, the sentence is outside the advisory Guidelines range, we must consider whether the sentencing court acted reasonably both with respect to its decision to impose such a sentence and with respect to the extent of the divergence from the sentencing range.” *Nance*, 957 F.3d at 215 (internal quotation marks omitted). “A major departure should be supported by a more significant justification than a minor one,” *United States v. Provance*, 944 F.3d 213, 217 (4th Cir. 2019), and “the farther the court diverges from the advisory [G]uideline[s] range, the more compelling the reasons for the divergence must be,” *id.* at 220 (brackets and internal quotation marks omitted). However, we still “must give due deference to the district court’s decision that the 18 U.S.C. § 3553(a) factors, on a whole,

justify the extent of the variance.” *Id.* at 217 (brackets and internal quotation marks omitted).

The district court thoroughly discussed the § 3553(a) factors and concluded that, even in light of Boyd’s personal history, an above-Guidelines sentence was necessary to account for the severity of the offense conduct and the extent of his criminal history. Thus, affording the district court’s sentencing determination the requisite deference, we reject Boyd’s argument that the district court’s decision to vary upward from a 51-to-63-month Guidelines range sentence to a 76-month sentence was substantively unreasonable.

We therefore affirm the district court’s judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 18, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4206
(1:20-cr-00287-TDS-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BERNARD STEVEN BOYD

Defendant - Appellant

JUDGMENT

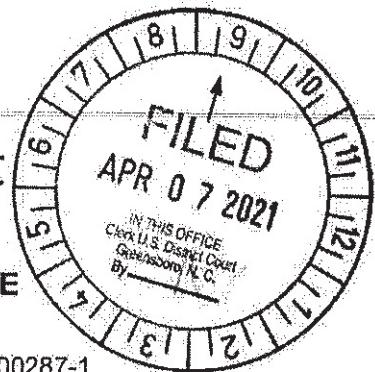
In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

United States District Court

Middle District of North Carolina



UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

BERNARD STEVEN BOYD

Case Number: 1:20-CR-00287-1

USM Number: 04257-509

Teresa Stewart Church

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count 1.

pleaded nolo contendere to count(s) _____ which was accepted by the court.

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
18:922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	April 7, 2019	1

The defendant is sentenced as provided in pages 2 through 8 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 shall 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 shall notify the court and United States attorney of any material change in the economic circumstances.

April 1, 2021
Date of Imposition of Judgment

Signature of Judge

Thomas D. Schroeder, United States District Judge

Name & Title of Judge

Date

DEFENDANT: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 76 months.

The court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to a Bureau of Prisons facility where he may participate in the most intensive form of substance abuse treatment deemed appropriate; where he may receive vocational training including heating, ventilation, air conditioning and computer technology; where he may be given a mental health evaluation and any recommended treatment while in the custody of the Bureau of Prisons; and, to the extent it does not conflict with that, a facility as close as possible to Winston-Salem, North Carolina.

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 _____ am/pm 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 pm 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: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Three (3) years.

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 the defendant poses 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.

DEFENDANT: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

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.
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. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall abide by the mandatory and standard conditions of supervised release.

The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

DEFENDANT: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$0.00	\$0.00		

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) 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, unless specified otherwise in the priority order or percentage payment column below. 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:

the interest requirement is waived pursuant to 18 U.S.C. Section 3612(f)(3) for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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.

DEFENDANT: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

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 payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with 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 _____ (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: To the extent the defendant cannot immediately comply, the Court recommends the defendant participate in the Inmate Financial Responsibility Program.

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 to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.

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

Joint and Several

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

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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: BERNARD STEVEN BOYD
CASE NUMBER: 1:20-CR-00287-1

DISPOSITION OF EVIDENCE

That at the expiration of time for appeal, the drugs seized from the defendant shall be destroyed and the firearm seized shall be destroyed or returned to its lawful and rightful owner, if one can be determined.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

BERNARD STEVEN BOYD

1:20CR 287-1



The Grand Jury charges:

On or about April 7, 2019, in the County of Forsyth, in the Middle District of North Carolina, BERNARD STEVEN BOYD knowingly did possess in and affecting commerce a firearm, that is, a Taurus .380 caliber handgun, having been convicted of a crime punishable by imprisonment for a term exceeding one year, and with knowledge of that conviction; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

DATED: July 27, 2020

MATTHEW G.T. MARTIN
United States Attorney

Margaret M. Reece
BY: MARGARET M. REECE
Special Assistant United States Attorney

A TRUE BILL:

[Redacted]

FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA * Case No. 1:20CR287-1
*
vs. * Winston-Salem, North Carolina
* October 22, 2020
BERNARD STEVEN BOYD, * 10 a.m.
*
Defendant. *

**TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE THOMAS D. SCHROEDER
UNITED STATES CHIEF DISTRICT JUDGE**

APPEARANCES:

For the Government: MARGARET M. REECE, ESQUIRE
Office of the United States Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

For the Defendant: TERESA STEWART CHURCH, ESQUIRE
Law Office of Teresa Stewart
301 North Main Street, Suite 2453
Winston-Salem, North Carolina 27101

Court Reporter: Lori Russell, RMR, CRR
P.O. Box 20593
Winston-Salem, North Carolina 27120

Proceedings recorded by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

PROCEEDINGS

(Defendant present.)

THE COURT: Ms. Reece.

MS. REECE: Good morning, Your Honor.

5 The first matter for the Court's attention is the United
6 States versus Bernard Steven Boyd. This is 1:20CR287-1.

7 Morgan Reece on behalf of the Government. Teresa Church on
8 behalf of the Defendant. The Defendant is also present. The
9 matter is on for a change of plea this morning.

10 THE COURT: All right. Ms. Church, good morning.

11 MS. CHURCH: Good morning, Your Honor.

12 THE COURT: Mr. Boyd, good morning to you.

13 THE DEFENDANT: Good morning.

14 **THE COURT:** The lawyers can remove their mask, if they
15 wish, during speaking; or you can leave them on, whatever
16 you're comfortable with.

17 Ms. Church, are you ready to proceed?

18 MS. CHURCH: Yes, Your Honor.

19 THE COURT: And have you had sufficient time to review
20 this file?

21 MS. CHURCH: Yes, Your Honor.

22 **THE COURT:** Do you believe that Mr. Boyd understands
23 the charge against him and the nature of the hearing today?

24 MS. CHURCH: Yes, Your Honor.

25 THE COURT: Does he wish to enter a plea of guilty?

1 **MS. CHURCH:** Yes, Your Honor.

2 **THE COURT:** Did anyone make any threat or promise to
3 induce his plea?

4 **MS. CHURCH:** No, Your Honor.

5 **THE COURT:** And do you recommend that I accept it?

6 **MS. CHURCH:** Yes, Your Honor.

7 **THE COURT:** And do you believe he offers this plea
8 today knowingly and voluntarily?

9 **MS. CHURCH:** Yes, Your Honor.

10 **THE COURT:** All right. Thank you.

11 Please administer the oath to Mr. Boyd.

12 (The Defendant was duly sworn.)

13 **THE COURT:** Mr. Boyd, do you understand you're under
14 oath at this time; and if you answer any of my questions
15 falsely, your answers may later be used against you in another
16 prosecution for perjury or making a false statement?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** All right. If you would take that
19 microphone and bend it toward your client, Ms. Church. Thank
20 you.

21 And I don't think you'll need to lean into it. As long as
22 it's directed to you, I think it should be fine.

23 Mr. Boyd, tell us your full name, sir.

24 **THE DEFENDANT:** Bernard Steven Boyd.

25 **THE COURT:** How old are you?

1 **THE DEFENDANT:** I'm 33 years of age.

2 **THE COURT:** How far did you attend in school?

3 **THE DEFENDANT:** I got my GED.

4 **THE COURT:** GED?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** All right. Good.

7 Can you read and understand the indictment against you?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Can you read and understand your plea
10 agreement?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Have you been treated recently for any
13 mental illness?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** Have you been treated recently for any
16 addiction to a narcotic drug?

17 **THE DEFENDANT:** No, sir.

18 **THE COURT:** Now, you do not appear to me to be under
19 the influence of any substance, but I need to ask you whether
20 you -- and I know you're in custody, but I need to ask you
21 whether you're currently under the influence of any alcoholic
22 beverage, any drug, or any medication.

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** Did you receive a copy of the indictment?

25 **MS. CHURCH:** That was the -- if I may, Your Honor.

1 **THE COURT:** Yes.

2 (Discussion between Ms. Church and Defendant.)

3 **THE DEFENDANT:** Oh, yes, sir.

4 **THE COURT:** Did you read the indictment with
5 Ms. Church, your attorney?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Do you understand the indictment and the
8 charge against you?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Have you fully discussed the charge in the
11 indictment and your case in general with your attorney?

12 **MS. CHURCH:** If I may, Your Honor.

13 **THE COURT:** Go ahead.

14 (Discussion between Ms. Church and Defendant.)

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Have you had sufficient time
17 to speak with your attorney about your case?

18 **THE DEFENDANT:** Kind of, sort of. I was wondering if
19 I could discuss it a little bit more, but --

20 **THE COURT:** Sure. You need more time to do that?
21 I'll be happy to give you more time if you'd like it.

22 I'll tell you what I'm going to do. Why don't we pause for
23 a minute.

24 Why don't you have a chat with your client; and if he wants
25 to continue here, I'll be happy to do that. If after your

1 discussion you think he wants more time, just let me know
2 whether you want to try to deal with this today or some other
3 day. So I just need to know whether you'd like to continue
4 while we're here -- I'm here all day -- or whether you want to
5 set it for some other day. I don't know how much time you may
6 need. So if you could just figure that part out and let us
7 know. We'll wait just a minute just to get an answer to that
8 part.

9 **MS. CHURCH:** Thank you, Your Honor.

10 **THE COURT:** All right. Thank you.

11 (Discussion between Ms. Church and the Defendant.)

12 **MS. CHURCH:** I apologize, Your Honor. He was confused
13 by a few of the questions, but we're straight now. They just
14 weren't asked in the same way I had asked him, so he was making
15 sure that we were doing the plea. He got a little confused
16 between plea and sentencing.

17 **THE COURT:** All right. All right. Let me start over
18 then with you just to make sure we're all on the same page.

19 So we're here today, Mr. Boyd, because I am told by your
20 lawyer that you're interested in entering a plea of guilty in
21 this case.

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** And this hearing today is simply limited

1 to the question of whether you wish to enter a plea of guilty
2 and then, if you do, whether I'm willing to accept it.

3 Do you understand that?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** And my questions will all be geared toward
6 finding out whether you understand the process --

7 **THE DEFENDANT:** Uh-huh.

8 **THE COURT:** -- whether you understand the charges
9 against you, and whether you're interested in pleading or not.
10 And it's totally your decision. I have no opinion about that.

11 And if you are interested in pleading, then I have a number
12 of questions designed to determine whether I believe you're
13 pleading because you are aware of all of the risks of pleading
14 and not pleading and what are the penalties for the crime and
15 things like that.

16 Do you understand?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** So you had asked me a minute ago for a --
19 or indicated that you might want some more time. So you've
20 since talked with Ms. Church, your attorney. So would you like
21 to continue today, or would you -- do you need more time to
22 work with your attorney?

23 **THE DEFENDANT:** Yes, I'd like to continue.

24 **THE COURT:** All right. So you want to go forward with
25 this hearing?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Okay. Now, if at any time, Mr. Boyd, you
3 decide you do not want to go forward with the hearing, will you
4 let me know?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** You can stop at any time you want. Do you
7 understand that?

8 **THE DEFENDANT:** Okay. Yes, sir.

9 **THE COURT:** This is totally up to you whether you want
10 to proceed or not. Do you understand?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** The only reason I'm having this hearing is
13 because you've -- you've got a plea agreement that's been
14 signed by you that's been filed in your case, which is an
15 indication that you may be interested in entering into a plea,
16 and that's why we have this hearing here today.

17 Do you understand?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. So let me back up just a minute.
20 So the original document that presents the charge against you
21 is called an indictment. Did you receive a copy of that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** And have you reviewed that with
24 Ms. Church?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** And do you understand the charge that's
2 pending against you?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** And have you had sufficient time to speak
5 with Ms. Church about the charge?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** And have you fully discussed the charge
8 against you and explored all of your options?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right. Have you had a discussion -- I
11 don't want to know the details, but have you had a discussion
12 with Ms. Church whether you might be able to defend against it
13 and, if so, how you might do that?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. Are you satisfied that you've
16 fully explored all of those options that you may have in this
17 case prior to coming to court today?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** All right. And have you had sufficient
20 time to meet with your lawyer and talk with her about your
21 case?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** All right. Are you satisfied with the
24 services she's provided as your attorney and any advice she's
25 given you so far?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** All right. So, Ms. Church, I do have a
3 plea agreement. Do you have a copy?

4 **MS. CHURCH:** I do, Your Honor.

5 **THE COURT:** If you would turn to page 8, if it's an
6 executed copy, and show that to Mr. Boyd.

7 Is that your signature, Mr. Boyd?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Did you read and understand all the terms
10 of this plea agreement before you decided to sign it and be
11 bound by it?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** All right. So I'm going to ask Ms. Church
14 at this time to review with us briefly the principle parts of
15 your plea agreement, including any plea bargaining. That is
16 any agreement you have with the Government.

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Please listen carefully. When she
19 finishes, I'm going to turn back and ask you whether you agree
20 with her or not.

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** That way I can determine whether I believe
23 you understand your plea agreement or not. Okay?

24 **THE DEFENDANT:** Okay.

25 **THE COURT:** All right. So listen carefully to

1 Ms. Church and then I'll turn back and I'll have more questions
2 for you.

3 If you would, please, Ms. Church.

4 **MS. CHURCH:** Thank you, Your Honor.

5 Your Honor, Mr. Boyd understands that he is pleading guilty
6 to felon in possession of a firearm. He understands that that
7 carries -- that charge carries a sentence of not more than 10
8 years, a maximum fine of \$250,000, and not more than 3 years of
9 postsupervision release, and a \$100 assessment.

10 He further understands that should he have three prior
11 violent or serious drug offenses, those sentences could be
12 enhanced to 15 years to life and a postsupervision release of
13 not more than 5 years.

14 Under the terms of the agreement, the Government agrees
15 that should Mr. Boyd qualify under 3E1.1 for acceptance of
16 responsibility, the Government would recommend the additional
17 point.

18 Further, Mr. Boyd recognizes that he is forfeiting any
19 rights to the property or the disposition or use of the
20 property that was seized.

21 Further, under the plea agreement, he understands he is
22 waiving rights under the Freedom of Information Act and the
23 Federal Rules of Evidence listed on pages 5 and 6 of the plea
24 agreement, Your Honor.

25 **THE COURT:** All right. And does the plea agreement

1 contain the complete agreement between Mr. Boyd and the
2 Government in his case?

3 **MS. CHURCH:** It does, Your Honor.

4 **THE COURT:** All right. Thank you.

5 So, Mr. Boyd, you've heard Ms. Church review the key terms
6 of your agreement. Is that what you understand your agreement
7 to provide?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Do you understand all of the agreement?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Does the agreement -- the plea agreement
12 contain all of the terms and conditions of your agreement with
13 the Government so that there are no other conditions outside of
14 that agreement?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Have you had sufficient time
17 to read the plea agreement and to discuss it with your lawyer
18 before considering whether to sign it?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** All right. Do you have any questions at
21 this time you would like to ask about your plea agreement?
22 Either you can talk to your lawyer privately, or you can ask me
23 about them.

24 **THE DEFENDANT:** Can I talk with her?

25 **THE COURT:** You can talk with your lawyer, sure. All

1 right.

2 (Discussion between Ms. Church and the Defendant.)

3 **THE COURT:** All right. Mr. Boyd, you've had a chance
4 to talk with Ms. Church. Have you been able to resolve
5 whatever questions you may have?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** All right.

8 **THE DEFENDANT:** Thank you for your time and you all.

9 **THE COURT:** Like I said, at any time if you are
10 uncomfortable or you want to stop, just let me know.

11 **THE DEFENDANT:** Okay.

12 **THE COURT:** All right. Now, do you have any other
13 questions or do you want to go forward?

14 **THE DEFENDANT:** No, sir, just -- I'm ready to go.

15 **THE COURT:** All right. Now, one of the conditions of
16 your plea agreement is in paragraph 5a; and the Government is
17 agreeing that if you qualify for what's known as acceptance of
18 responsibility under the sentencing guidelines and if your
19 offense level that's calculated is 16 or greater, then the
20 Government is recommending to the Court that you receive an
21 additional one-level decrease in your offense level.

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** The lower the offense level typically the
24 lower the sentencing guideline range under the guidelines.

25 Do you understand that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** So do you understand the Government is
3 agreeing to make a recommendation, but that the Court will not
4 be required to follow that recommendation? Do you understand?

5 **THE DEFENDANT:** You're saying you basically don't have
6 to or something?

7 **THE COURT:** Right. What I'm saying is it's -- the
8 Government is agreeing to recommend it --

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** -- but I'm not required to follow what the
11 Government recommends. Do you understand?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** So I might agree with it, or I might not.
14 Do you understand?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** And if for any reason I disagree with it,
17 do you understand that as a result, the sentence you receive
18 might be more severe than if you had gotten the one-level
19 decrease? Do you understand that?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** And do you understand that if I disagree
22 with the recommendation -- and I won't know the answer to that
23 until sentencing. But if I disagree with the recommendation, I
24 could impose a harsher sentence, but you don't get to withdraw
25 your plea. Do you understand that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Pardon me?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Okay. Did anybody make any threat or
5 promise to you, Mr. Boyd, other than the promises that are in
6 your plea agreement, in an effort to persuade you to plead
7 guilty today?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Somebody has made a promise to you?

10 **THE DEFENDANT:** Oh, no. Nobody made no promises.

11 **THE COURT:** Okay. All right.

12 Are all of the promises that you're relying on for your
13 plea today contained in the plea agreement?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. And so are there -- has
16 anybody threatened you to plead today?

17 **THE DEFENDANT:** No, sir.

18 **THE COURT:** Has anybody made any other promise that's
19 not in the plea agreement?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** All right. Did anybody try to force you
22 to plead guilty today?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** All right. Are you pleading guilty today
25 because it's your own personal wish to do so?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** All right. Now, you are pleading guilty
3 to possession of a firearm by a convicted felon. That's a
4 felony offense. If I accept your plea, you'll be adjudged
5 guilty of the offense; and as a result, you could lose certain
6 valuable civil rights. That would include the right to vote,
7 the right to hold a public office, the right to serve on a
8 jury, and the right to possess any kind of firearm or
9 ammunition.

10 Do you understand?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Now, do you also understand that if you
13 are not a U.S. citizen that, as a result of a guilty plea, you
14 could be removed from the U.S. and denied citizenship and
15 denied readmission?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Are you a U.S. citizen?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. Now, let me review the penalties
20 that are provided for if I accept your plea. I cannot
21 determine your sentence today. That will happen later at a
22 sentencing hearing. So today is just a question of whether or
23 not to accept your plea; and so before I'm going to consider
24 accepting your plea, I want to advise you of all the penalties
25 that could be imposed at your sentencing. Again, I don't know

1 what the sentence will be, but these are the maximum penalties,
2 and you need to know what those are before you make your
3 decision. Okay?

4 **THE DEFENDANT:** Okay.

5 **THE COURT:** So the maximum penalties for this crime
6 ordinarily would be imprisonment up to 10 years or a fine --
7 and a fine up to a quarter of a million dollars -- that's
8 \$250,000 -- or twice the gross gain or loss caused by the
9 violation, whichever would be larger. The Court also can
10 sentence you after imprisonment to up to 3 years of supervision
11 by the Court. So when you're released from prison, you would
12 be supervised for a period of time, possibly up to 3 years.
13 You can be required to forfeit the firearm and ammunition
14 involved in the case, to pay restitution; and there's a \$100
15 special assessment.

16 Do you understand those potential penalties?

17 **THE DEFENDANT:** Yes, sir, I understand.

18 **THE COURT:** Now, this crime, possession of a firearm
19 by a convicted felon, also has another set of penalties that
20 could apply depending on what your prior criminal record is;
21 and since I do not know your prior criminal record, I have to
22 advise you of these penalties just in case there's a chance
23 that they apply once I read your criminal record; and I'll see
24 that at sentencing. Okay?

25 **THE DEFENDANT:** Okay.

1 **THE COURT:** So if it turns out that your prior
2 criminal record indicates that you have three previous
3 convictions for violent felonies or for serious drug offenses
4 or some combination of those committed on different occasions,
5 then -- instead of the penalties I just told you about, the
6 penalties then would be a period of imprisonment of a mandatory
7 minimum of 15 years, up to life; a fine of not more than
8 \$250,000 or twice the gross gain or loss, whichever is greater;
9 a period of supervised release after imprisonment of up to 5
10 years instead of the 3 years I mentioned. You would be
11 required to forfeit the firearm and ammunition, and to pay
12 restitution, if any; and there is a \$100 special assessment.
13 There's also no probation or suspended sentence available in
14 that case.

15 Do you understand all of those potential penalties?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Now, I mentioned the penalty of supervised
18 release. Do you understand that following any term of
19 imprisonment -- if you are sent to prison as a result of your
20 sentence, that following that you may be placed on a period of
21 supervision by the Court?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you understand that during your period
24 of supervision if you violate any of the conditions of your
25 supervision, you could be sent back to prison for a period of

1 time?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you understand, Mr. Boyd, to your
4 satisfaction, all of the possible penalties and the
5 consequences of pleading guilty today?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Now, we've just reviewed all of the
8 potential penalties. As I said, I will not know your sentence
9 until your sentencing hearing, which will occur in the spring
10 once the written presentence report is available and you have a
11 chance to review it.

12 When I consider your sentence, I have to consider the U.S.
13 Sentencing Guidelines, which are created by the U.S. Sentencing
14 Commission. The commission has created what are known as
15 sentencing guidelines and related policy statements. They're
16 contained in a book. It looks like this. And so I'll read all
17 of those and consider those when I determine your sentence.

18 I cannot tell you your sentencing guideline range at this
19 time because I don't have your written presentence report. It
20 hasn't been prepared yet. Once that report is prepared,
21 though, you'll have a chance to read it with Ms. Church; and
22 this will be before your sentencing; and then if you have any
23 objection to any part of the report that you disagree with, you
24 can file objections to the parts you disagree with.

25 Do you understand?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Now, it may be that Ms. Church, or others,
3 have given you an estimate of what they think your guideline
4 range and what your sentence may be in this case. If so, do
5 you understand those are only estimates, and they may be very
6 different from the sentencing guideline range and the sentence
7 that I determine in your case at your sentencing hearing?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Now, the sentencing guidelines that are in
10 this book are only advisory. I'm not bound by these. So
11 they're guidance for me to consider, but they're not binding.

12 Do you understand?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** So do you understand that once I determine
15 your sentencing guideline range that I will not be required to
16 follow the guideline range? Do you understand?

17 **THE DEFENDANT:** No. Can you repeat it one more time?

18 **THE COURT:** So the sentencing guidelines are not
19 binding on me. They're only advisory. So they're a
20 recommendation is what they are.

21 Do you understand that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** So once I determine what your sentencing
24 guideline range is by applying these guidelines, it's only a
25 recommendation, and I'm not required to follow it.

1 Do you understand?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** So what I'll do at your sentencing is I'll
4 consider the recommendation from the guidelines when I
5 determine your sentence, and then I'll look at all of the
6 factors for sentencing that are laid out in the federal
7 statutes. And they're found in the U.S. Code -- in Section
8 3553 of the U.S. Code, Title 18.

9 Do you understand that?

10 **MS. CHURCH:** May I have one moment, Your Honor? I
11 think if I explain it the way I explained it, he'll understand.

12 **THE COURT:** All right.

13 (Discussion between Ms. Church and the Defendant.)

14 **THE DEFENDANT:** I understand.

15 **THE COURT:** Do you understand that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** All right. So, in other words, I'll
18 follow the -- the sentencing factors -- or consider them,
19 rather, the sentencing factors in the statute which I
20 mentioned, Title 18, U.S. Code, Section 3553; and then I'll
21 consider the guidelines as well; and then I'll determine a
22 sentence based on that.

23 Do you understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** All right. Now, because these guidelines

1 are only a recommendation, do you understand that the sentence
2 I impose could be the guideline sentence, or it could be less
3 than the guidelines, or it could be more than the guidelines
4 because I'm not bound by the guidelines? Does that make sense?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** All right. So do you understand that
7 parole has been abolished in the federal prisons? So if you're
8 sentenced to prison, you would not be released early on parole
9 because there is no more parole. Do you understand?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** So do you understand that you and the
12 Government have the right to appeal any sentence that the Court
13 imposes in your case?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. So now let me review with you
16 your rights under the U.S. Constitution. As you stand before
17 me and before I accept any plea you might offer in a moment --
18 and I'll ask you about that in a moment -- you have a lot of
19 rights under the U.S. Constitution that you enjoy at this time.

20 You have the right to plead not guilty to the charge that's
21 pending, and you have the right to persist or to continue to
22 plead not guilty. You can demand that your case be tried by a
23 jury of twelve. At any trial you would be presumed to be
24 innocent; and the United States would bear the burden of
25 proving your guilt beyond a reasonable doubt, which means the

1 Government has to prove every element of the crime you're
2 charged with having committed beyond a reasonable doubt before
3 you could be found guilty.

4 Do you understand?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Now, you also have the right to the
7 assistance of a lawyer, like Ms. Church, and, if necessary, to
8 have the Court appoint a lawyer at trial and at every other
9 stage of the proceedings; and you have the right to see all of
10 the witnesses that the Government would bring in its case
11 against you. You have the right to confront all of those
12 witnesses, meaning to see them and to know who they are; and
13 then you have the right, either you or your lawyer, to
14 cross-examine them, to ask them questions.

15 Do you understand that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** You also have the right to testify in your
18 own defense if you'd like to testify, but nobody can force you
19 to testify. That's your own personal decision. So if you
20 choose not to testify, your decision could never be held
21 against you. In other words, the jury could not consider the
22 fact that you elected not to testify.

23 Do you understand?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** You have a right to remain silent. Do you

1 understand?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** You also have the right to present
4 evidence; and you can issue subpoenas from the Court, which a
5 Court orders, that would require witnesses to attend who could
6 testify for you.

7 Do you understand?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** If you decide not to present any evidence
10 at all and to require the Government just to proceed with the
11 burden that it has in its case, the fact that you did not put
12 on any evidence cannot be used against you.

13 Do you understand that?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** So once you enter a plea of guilty and
16 once I accept it, however, then there will be no trial, because
17 by doing that you will have given up your right to a trial and
18 you will have given up all of these other rights I just
19 mentioned with you that go along with having a trial.

20 Do you understand that?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** If I accept your plea of guilty, it is
23 highly unlikely the decision will ever be reversed.

24 Do you understand?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** If I accept your plea of guilty and once I
2 sentence you at your sentencing hearing, then you would not be
3 permitted to withdraw your plea.

4 Do you understand?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Now, if you were to require the Government
7 to go to a trial in this case, it would be required to present
8 evidence to establish all of the elements of the offense you're
9 charged with beyond a reasonable doubt to a jury of twelve. In
10 other words, every juror would have to agree beyond a
11 reasonable doubt as to each of the elements of the offense,
12 which I'll review with you in a moment, before you could be
13 found guilty.

14 Do you understand?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** So let me review with you the elements of
17 the offense. So listen carefully, and then I'm going to ask
18 you how you intend to plead to this offense today. Okay?

19 So the Government charges and would be required to prove to
20 the jury the following:

21 First, that you were previously convicted in any court of a
22 crime that's punishable by a term of imprisonment exceeding a
23 year. In other words, that you've been convicted of a felony
24 offense.

25 Second, the Government must prove that on or about April 7,

1 2019, here in Forsyth County, which is in the Middle District
2 of North Carolina, you knowingly possessed a firearm. The
3 Government charges it was a Taurus .380-caliber handgun.

4 Third, the Government has to prove that the possession was
5 in or affecting commerce.

6 And, fourth, that at the time you possessed the firearm,
7 you knew of your status as a convicted felon.

8 Do you understand the elements of the offense that the
9 Government has brought against you?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** And how are you pleading today to the
12 offense?

13 **THE DEFENDANT:** Guilty.

14 **THE COURT:** And are you pleading guilty, Mr. Boyd,
15 because you are, in fact, guilty of the offense?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** And do you understand that by pleading
18 guilty, you're admitting each of the four elements of the
19 offense as I've read them to you? In other words, do you
20 understand that by pleading guilty, you are agreeing to the
21 four elements of the offense; that you've -- in other words,
22 that you, in fact, committed that offense?

23 (Discussion between Ms. Church and the Defendant.)

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Do you understand what I mean by that

1 question?

2 **THE DEFENDANT:** Yeah. I mean, she explained it to me.

3 Yes, sir.

4 **THE COURT:** Pardon me?

5 **THE DEFENDANT:** Yes, she just explained it to me.

6 **THE COURT:** Your lawyer did?

7 **THE DEFENDANT:** Yeah.

8 **THE COURT:** All right. Do you understand my question
9 then?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** All right. And so do you understand
12 that -- when you say you're pleading guilty, do you understand
13 that you're admitting each of these elements? You're admitting
14 you were previously convicted of a felony; you're admitting
15 that on April 7, 2019, you possessed a hand gun; you're
16 admitting that the possession was in or affecting commerce; and
17 you're admitting at the time you possessed the gun you knew
18 that you were a convicted felon. Do you understand that?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** All right. There are a couple other
21 provisions of your plea agreement I want to make sure you
22 understand.

23 One of them, in 5b, is that you're agreeing to abandon any
24 interest in any of the items seized as a result of your
25 investigation and conviction, which would include the handgun

1 and anything else that was seized by law enforcement.

2 Do you understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** So do you also understand that you are
5 waiving any right you may have to seek from any Government
6 agency any information related to your investigation and
7 prosecution of this case that you could get under what's known
8 as the Freedom of Information Act? Do you understand you're
9 waiving that right as well?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Pardon me? Do you understand?

12 **THE DEFENDANT:** One moment.

13 **THE COURT:** Don't tell me you do if you don't.

14 **MS. CHURCH:** May I have just a moment, Your Honor?

15 **THE COURT:** All right.

16 (Discussion between Ms. Church and the Defendant.)

17 **THE DEFENDANT:** Yes. Oh, yes, sir.

18 **THE COURT:** So do you understand you're waiving any
19 rights you have under the Freedom of Information Act?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** All right. So another thing you're
22 waiving too is the rights you have under the rules of -- that
23 apply in this court. Normally the statements you make today
24 during your plea hearing are not admissible against you in any
25 later hearing, if there were to be a later hearing; but you're

1 agreeing that if you seek to withdraw your plea sometime after
2 today or if you appeal your case or attack your conviction
3 through a habeas petition, then you're agreeing that the
4 Government can use your statements today against you in that
5 proceeding.

6 Do you understand?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** All right. I'm finding in United States
9 versus Bernard Steven Boyd, 1:20CR287-1, that Mr. Boyd is fully
10 competent and capable of entering an informed plea; that he
11 understands the nature of the charge against him and the
12 consequences of his plea; and his plea of guilty is knowing and
13 voluntary.

14 So there is a factual basis, Ms. Church. It's Docket Entry
15 15. Did you receive a copy of that?

16 **MS. CHURCH:** I did, Your Honor.

17 **THE COURT:** Have you reviewed that with your client?

18 **MS. CHURCH:** Yes, Your Honor.

19 **THE COURT:** Are there objections to it?

20 **MS. CHURCH:** No objections, Your Honor.

21 **THE COURT:** All right. Mr. Boyd, did you read this
22 document entitled "Factual Basis"?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** All right. Do you agree with your
25 attorney that you have no objection to what's in it?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** All right. I've read the factual basis.

3 I will find it does provide an independent basis in fact for
4 each of the essential elements of the offense. I'll accept
5 Mr. Boyd's plea. He's now adjudicated guilty of the offense.

6 So, Mr. Boyd, I'm accepting your plea; and you're deemed
7 guilty now of the offense, as you've admitted. So the next
8 step is for the U.S. Probation office to prepare a written
9 presentence investigation report. You will be asked to provide
10 some information for the report. Ms. Church may be present for
11 your interview.

12 You'll have the opportunity to read the report with
13 Ms. Church; and if you disagree with anything in the report,
14 you can file an objection noting your disagreement. If the
15 objection is not resolved by the time of your sentencing
16 hearing, then I'll listen to the objection; and I'll make a
17 decision about it at your sentencing hearing before I then
18 determine a sentence in your case.

19 You'll have the opportunity to address the Court if you'd
20 like to be heard at your sentencing, but you may remain silent.
21 As I've said earlier, you enjoy the right to remain silent; and
22 I'm not going to hold it against you if you wish to do so.

23 So the Court directs the preparation of a written
24 presentence investigation report.

25 Sentencing will be held on Thursday, April 1st, 2021, at

1 1:30 p.m. here in Winston-Salem, Courtroom No. 2.

2 All right. Mr. Boyd --

3 (Discussion between Ms. Church and the Defendant.)

4 **MS. CHURCH:** I'm sorry. One moment, Your Honor.

5 **THE COURT:** All right.

6 (Discussion between Ms. Church and the Defendant.)

7 **THE COURT:** All right. Mr. Boyd, do you understand
8 everything that happened here today?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right. Any questions about anything?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** All right. Ms. Church, thank you.

13 **MS. CHURCH:** Thank you, Your Honor.

14 **THE COURT:** I have another matter then I think that
15 was supposed to be at 10:30, so we'll take a -- are you
16 handling that matter too?

17 **MS. REECE:** Yes, Your Honor.

18 **THE COURT:** Okay. Do you want to see if Mr. Trivette
19 is available? Is the defendant for that upstairs?

20 **U.S. MARSHAL:** He's just right out here, sir.

21 **THE COURT:** All right. I'll just stay on the bench
22 then as soon as we get done.

23 **MS. REECE:** With the Court's permission, I'll step out
24 and see if defense counsel is out there.

25 **THE COURT:** That will be fine.

1 (Proceedings concluded at 10:41 a.m.)

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C E R T I F I C A T E

5 I, LORI RUSSELL, RMR, CRR, United States District Court
6 Reporter for the Middle District of North Carolina, DO HEREBY
CERTIFY:

7 That the foregoing is a true and correct transcript of the
8 proceedings had in the within-entitled action; that I reported
the same in stenotype to the best of my ability and thereafter
9 reduced same to typewriting through the use of Computer-Aided
Transcription.

10

11

Lori Russell

12

Lori Russell, RMR, CRR
Official Court Reporter

Date: 6/14/21

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) CASE NO. 1:20CR287-1
4)
5 vs.)
6 BERNARD STEVEN BOYD) Winston-Salem, North Carolina
7) April 1, 2021
8) 1:48 p.m.
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12 TRANSCRIPT OF THE **SENTENCING HEARING**
13 BEFORE THE HONORABLE THOMAS D. SCHROEDER
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

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26 Proceedings recorded by mechanical stenotype reporter.
27 Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 (The Defendant was present.)

3 **THE COURT:** Mr. Green?4 **MR. GREEN:** The Government is calling United States
5 versus Bernard Steven Boyd. It's 20CR287-1.6 **THE COURT:** Ms. McKoy is here on behalf of Probation,
7 and Ms. Church is here for the Defendant.8 Did you receive a copy, Ms. Church, of the
9 presentence report?10 **MS. CHURCH:** Yes, Your Honor.11 **THE COURT:** Did you review it with your client?12 **MS. CHURCH:** Yes, Your Honor.13 **THE COURT:** And are you prepared for his sentencing
14 today?15 **MS. CHURCH:** Yes, Your Honor.16 **THE COURT:** And, Mr. Boyd, did you receive a copy of
17 your presentence report?18 **THE DEFENDANT:** Yes, sir.19 **THE COURT:** Did you review it with your lawyer?20 **THE DEFENDANT:** Yes, sir.21 **THE COURT:** All right. Have you had an opportunity
22 to speak with your lawyer to go over the report?23 **THE DEFENDANT:** Yes, sir. I was going to ask for a
24 couple of minutes.25 **THE COURT:** You wanted some more time to meet with

1 your lawyer?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** About how much time do you think you
4 need?

5 **THE DEFENDANT:** Maybe just like ten minutes or so.

6 **THE COURT:** If I give you until 2:00, would that
7 enough?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Ms. Church, can you meet with your client
10 right here and chat with him if I take a break?

11 **MS. CHURCH:** I believe so, yes, Your Honor.

12 **THE COURT:** All right. What I am going to do is I'll
13 take a 5-minute break. If you are ready before then, let
14 Ms. Engle know. And I am hopeful that we can get going
15 whenever you're ready. So you just let me know.

16 **MS. CHURCH:** Thank you, Your Honor.

17 **THE COURT:** Did you have time to meet before this or
18 not?

19 **MS. CHURCH:** Yes, Your Honor. There's some questions
20 about -- I think it relates to a state matter, so if I could
21 just have a moment with him to clarify?

22 **THE COURT:** Sure. I will take a break for 5 minutes.
23 Hopefully, that's enough. If you need more time, just let
24 Ms. Engle know. I will be back shortly then.

25 (Court recessed at 1:50 p.m.)

1 (Court was called back to order at 2:02 p.m.)

2 (The Defendant was present.)

3 **THE COURT:** Okay. Did you have an opportunity to
4 speak with your client?

5 **MS. CHURCH:** Yes, Your Honor. Actually, Ms. McKoy
6 was helpful with us as well.

7 **THE COURT:** Okay.

8 So, Mr. Boyd, you said you would like to have some
9 additional time. Have you now satisfied your concerns?

10 **THE DEFENDANT:** Yes, sir. I thank you for your time.

11 **THE COURT:** Do you understand the report?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** All right. And you've talked about it
14 with your lawyer?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Thank you. You may have a seat, if you
17 wish.

18 I've read the presentence report. I have a
19 sentencing memorandum from the Government seeking an upward
20 variant sentence and a memorandum as well from the Defendant,
21 which I received.

22 Are there any objections to the presentence report?

23 **MS. CHURCH:** No objections, Your Honor.

24 **THE COURT:** I'm going to adopt the presentence report
25 without any change, and as to all matters in it, I will now

1 adopt as findings of fact.

2 We're here today to consider the imposition of a
3 sentence in Mr. Boyd's case. He did plead guilty to a
4 single-count indictment charging possession of a firearm by a
5 felon in violation of Title 18 of the U.S. Code, Section
6 922(g)(1).

7 If we consult the advisory guidelines, his total
8 offense level is 17. Criminal history category is VI. The
9 guideline range that's recommended, which is advisory, is 51 to
10 63 months with a 10-year statutory maximum that can be imposed.
11 The supervised release range is 1 to 3 years. The fine range
12 is 10,000 to \$95,000. Restitution does not apply. And there
13 is a 100-dollar special assessment.

14 Are you in agreement with these calculations?

15 **MS. CHURCH:** Yes, Your Honor.

16 **THE COURT:** Is the Government as well?

17 **MR. GREEN:** We are, Your Honor.

18 **THE COURT:** So I would be happy to hear from you as
19 to an appropriate sentence then.

20 **MS. CHURCH:** Your Honor, if I may, before we do that,
21 just so that I can get this on the record -- and if the Court
22 feels that there needs to be other clarification, the Court
23 could do so -- the concern that Mr. Boyd had was as to
24 paragraph 43 on page 14 where it states that there is an
25 unserved state charge. He was concerned as to how that would

1 be handled. We went over that and --

2 **THE COURT:** What do you mean "handled"?

3 **MS. CHURCH:** Ms. McKoy and I explained this to him as
4 well, but his concern was that he would be pleading guilty to
5 it today because it was in his report or that --

6 **THE COURT:** Paragraph 43?

7 **MS. CHURCH:** Yes, Your Honor. Or that he would
8 somehow -- where it says he has an unserved report, because it
9 was in the report, he had some concerns that this would cause
10 that. And Ms. McKoy helped me explain to him that that would
11 not be the case; but if the Court were to feel the need to
12 expound on that, I just wanted you to be aware that that's what
13 we've explained to him, that that has nothing to do with this
14 as far as conviction or charges in federal court.

15 Other than that, I don't wish to be heard further
16 just in case the Court wanted to say anything further than that
17 about his concerns.

18 **THE COURT:** Well, paragraph 43 reports that there's
19 an unserved warrant -- this is under the heading of "Other
20 Arrests" -- for two charges, felony trafficking in cocaine and
21 misdemeanor possession of marijuana in Forsyth County District
22 Court and then a third charge for felon in possession of a
23 firearm by a felon.

24 It's unserved, and because it's a report of an
25 arrest -- or not an arrest -- strike that -- a charge, I cannot

1 make any finding of guilt on that, and I would not. On the
2 other hand, it is an indication of an unserved warrant, and so,
3 at most, I believe I would make a -- I would recognize that
4 there is an unserved warrant for those three charges that's out
5 there for the Defendant.

6 (Ms. Church conferred with the Defendant.)

7 **MS. CHURCH:** Thank you, Your Honor. I just wanted to
8 get that clarified.

9 **THE COURT:** Is there any question about that?

10 **MS. CHURCH:** No, Your Honor.

11 **THE DEFENDANT:** No, sir. I just didn't have any
12 knowledge of that, and I didn't know, you know what I'm saying,
13 so I was just --

14 **THE COURT:** I didn't hear the last part.

15 **THE DEFENDANT:** Sorry. Yeah, I was just saying I
16 didn't have any knowledge of that, and, you know, I was just
17 asking the question.

18 **THE COURT:** All right. Well, you're not here to be
19 adjudged whether you're guilty of that or not because that's
20 not being adjudicated here in this courtroom.

21 **THE DEFENDANT:** Okay.

22 **THE COURT:** But I can take notice of the fact that
23 there is an unserved warrant that has those three charges in it
24 because that is in the presentence report, but I can't make a
25 determination of guilt as to those three charges because that

1 will be decided, if at all, by that other court.

2 Mr. Green, do you want to be heard about that?

3 **MR. GREEN:** No, Your Honor.

4 **THE COURT:** Okay.

5 **MS. CHURCH:** Thank you, Your Honor.

6 **THE COURT:** So, normally, I would hear from the
7 Defendant first. The Government here is asking for an upward
8 variant sentence.

9 Do you want to go first, or do you want to hear from
10 the Government?

11 **MS. CHURCH:** Your Honor, I would defer to the
12 Government first, please.

13 **THE COURT:** All right. Mr. Green?

14 **MR. GREEN:** Your Honor, I guess the first issue to
15 sort out is I did -- the Government did receive Ms. Stewart's
16 paper yesterday, and I'm not sure I understand what the essence
17 of the paper is. If it -- I can't -- I'm not sure if I
18 understand if it's an alleged breach of a plea agreement or
19 more of an equity claim that the Court should now consider an
20 upward variance in light of the Government's recognition of his
21 decision to plead guilty --

22 **THE COURT:** Why don't you make your argument, and
23 then we'll hear from Ms. Church. And then if you need to --
24 feel the need to respond to that aspect of it --

25 **MR. GREEN:** I'll do it.

1 **THE COURT:** -- I would be happy to let you do that.

2 **MR. GREEN:** Your Honor, in the presentence report,
3 the probation officer, as well as the Government, indicates a
4 number of possible both departure and variance grounds
5 beginning in paragraphs 92 and 93 and 94 related both in the
6 underrepresentation of his criminal history category as well as
7 the nature and circumstances and the history and
8 characteristics of the Defendant.

9 And in this case, as we put forward in the position
10 paper, which I know the Court read -- I will not belabor that
11 report -- belabor those things -- but the history and
12 characteristics of this particular offense and Defendant, that
13 is, that when he possessed this firearm, he discharged it,
14 which is not accounted for in the underlying guideline range.

15 It appears from the circumstances, if he did
16 discharge it up in the air at some point, then other
17 individuals began to shoot. Now, I'm not saying that we don't
18 make the allegation that Mr. Boyd -- there's evidence that we
19 can prove that Mr. Boyd shot at anyone, but under those
20 circumstances, to discharge a firearm in a crowded area --

21 **THE COURT:** Within the city limits.

22 **MR. GREEN:** Within the city limits. In those
23 circumstances, it's described as extraordinarily dangerous, and
24 I think one could certainly come to the conclusion that
25 subsequent gun fire is --

1 **THE COURT:** Was a consequence of the discharge?

2 **MR. GREEN:** Yes, Your Honor. And, again, I cannot
3 allege here that Mr. Boyd was shooting at anyone in particular
4 or even that when he -- his version that he shot it in some way
5 to protect himself or to protect his girlfriend, but he did
6 conceal a weapon in the wheelchair of someone who'd be inside
7 in order to be armed and then get that weapon back when it
8 looked like there was going to be an altercation and then
9 ultimately discharged that weapon.

10 His criminal history -- the Court has read our
11 position paper -- it's fairly extensive. He had a prior
12 possession of a firearm by a felon, prior trafficking, and, in
13 fact, he was on -- I believe he was on bond from one of those
14 charges when this offense took place, all of which we believe
15 would command an upward variance.

16 Thank you.

17 **THE COURT:** All right. Ms. Church?

18 **MS. CHURCH:** Your Honor, it is not my position that
19 the plea agreement has been breached. I think, if anything, I
20 guess it would be qualified as an equity argument.

21 The position, after speaking with Mr. Boyd, that he
22 would request that I present and that I have presented on his
23 behalf is that there was a plea agreement in which he relied on
24 the Government's recommendation, understanding it would still
25 ultimately be up to the Court to accept that recommendation.

1 The Government at the time knew the facts of the case and his
2 criminal history available to them as well, and rather than
3 just not allowing for that recommendation at all as part of the
4 plea agreement, it was made. He relied on it, and then there
5 was a request to enhance the sentence or for an upward variance
6 based on facts that were known at the time as opposed to new
7 facts that may have been discovered in the presentence
8 investigation report.

9 I have had it occur in the past where an upward
10 variance had been requested by the Government for information
11 that was discovered through the research of the probation
12 office; but in speaking with Mr. Boyd, that is his -- that
13 would be the concern the defense presents is that the
14 information was known at the time, and this was still offered,
15 and now there is a request for an upward variance.

16 **THE COURT:** All right.

17 **MS. CHURCH:** Your Honor, if I may be heard as to
18 sentencing?

19 **THE COURT:** Sure, absolutely.

20 **MS. CHURCH:** Your Honor, as you can see from the
21 report -- and I'll try not to go over it multiple times, as the
22 Court has read it. But Mr. Boyd is one of those people who --
23 he had a definite lack of stability. It sounds like he was
24 moved around a bit. I think his aunt, from what I have been
25 able to gather from his family, was a very -- she was a stable

1 influence on him. But I would offer to the Court, in looking
2 at his siblings as well, you see the effects that occur
3 sometimes when children have addict parents or have a
4 situation -- and he has quite a few siblings that have criminal
5 records, but he also siblings who don't. So it's sort of
6 divided, which may be a bit unusual.

7 But, Your Honor, he now has an opportunity to raise
8 his own family, and that's one of the things that he has
9 expressed to me and I think one of the things that at the
10 appropriate time he wants to address to the Court is he wants
11 to do better for his children, his family than what he
12 experienced.

13 I'm offering to the Court today that that is a reason
14 for him to change his behavior. I understand he has this
15 criminal history, but he has a reason to want to change.

16 We discussed some of the things that he wishes to do.
17 As you can see in the report, there was some discussion. I
18 would ask the Court to consider some treatment, some training
19 for him as well, while he is in custody so that he can benefit
20 so that when he does come out -- the one thing he has said
21 repeatedly is he just wants to see -- be there for his
22 children. He wants to be with his children. And I believe
23 that was a large reason why he was so concerned about that word
24 "unserved," because he just saw him himself going back into
25 custody once he gets out of custody, and it just sort of had,

1 like, a moment of panic for him, Your Honor. That's his
2 largest concern is being there for his children.

3 I understand, and so does he, that actions put him
4 here, and those were his actions. He is not negating that at
5 all in making any request to the Court for leniency. It's just
6 that we wanted to present to the Court a reason, because often
7 there is a search for a reason "why should I believe that you
8 are any different now or will be any different than your
9 criminal history is exhibited you have been in the past." And
10 for Mr. Boyd that reason consistently through the entire time
11 that I have known him has been because now he has a family of
12 his own, that he knows what can happen to them if he doesn't
13 get straight because it's what happened to him when his family
14 wasn't able to do so. So he's sort of a living example of
15 knowing how not to do it, following that path, and now he's got
16 to do it properly.

17 Your Honor, he has asked the Court -- or he is going
18 to ask the Court for leniency in his sentence, understanding
19 what his range is. I believe he is requesting that it be below
20 the range. I am requesting that the Court consider his request
21 and, in the alternative, to consider the low end of the range,
22 but definitely asking the Court not to allow for an upward
23 variance in this situation.

24 **THE COURT:** Thank you.

25 Mr. Boyd, is there anything you want to say on your

1 own behalf before I make a decision as to a sentence?

2 Let me caution you you have no obligation to speak at
3 all. You enjoy the right to remain silent. If you would like
4 to remain silent, I certainly will not hold your silence
5 against you. On the other hand, if you would like to be heard
6 at all before I make a decision, this would be the appropriate
7 time. If you wish to speak, I am going to ask you just to pull
8 your mask down so we can hear you a little better.

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right.

11 **THE DEFENDANT:** First off, I want to thank you all
12 for giving me time to speak with the courts and giving me time
13 to understand this.

14 First, I just want to say I forgive -- I'm sorry for
15 anything that I done, you know. I know my past has come and
16 kind of haunting me and stuff, but since I have been
17 incarcerated, it's been, like, you know what I'm saying, like I
18 really found my purpose, you know. I know you all probably
19 done heard everything that has to be in this history of, you
20 know, people coming into court and stuff.

21 And I accept full responsibility what I'm doing --
22 what I did, you know what I'm saying, and I just want to ask
23 the courts, you know -- because my kids mean the world to me,
24 you know what I'm saying, and I got a one-year-old son now that
25 I'm trying to be there for, and also I have a 15-year-old

1 that's not -- I want him -- you know, I want to be there for
2 him to show him the right path because he's heading -- right
3 now he's at the age where I started messing up, you know what
4 I'm saying. I just want to be there for him to steer him in
5 the right direction, you know, just, you know, give him the
6 things that I've never had and really just, like, I want to see
7 him, you know, walk across the stage and stuff like that,
8 graduate. I didn't really get to do that. I got a GED, but
9 it's a lot different, you know what I'm saying, graduating from
10 high school, you know, being a proud parent, you know what I'm
11 saying.

12 Nobody really wasn't there for me like when I was
13 going through stuff like -- I used to play football and stuff
14 like that, but I didn't have nobody there for me or nothing
15 like that. All I seen was what I know, you know what I'm
16 saying, what I was doing. But now that I have the time to sit
17 down -- it shouldn't have took this long, but I'm being a man
18 to let you all know, you know what I'm saying, that's what's,
19 you know -- I admit for my guilt, you know what I'm saying. I
20 take full responsibility for my actions and stuff. It's stuff
21 that I can't take back that I wish I can, you know what I'm
22 saying.

23 But I'm just asking for the courts to -- like, if you
24 could, like, go under my guidelines or sentence me at a lower
25 level, you know what I'm saying, so I can get to my kids,

1 like -- and my aunt, like, right now, she's -- I wish she could
2 have made it here, but she's, like, going through something
3 right now. She had just passed away, and they brought her back
4 to life. So right now she's, like, recovering and stuff. And
5 I don't know. You know, I don't want to talk nothing bad or
6 nothing, but I would like to see her before anything happen,
7 you know what I'm saying.

8 **THE COURT:** All right, sir. Thank you. You may have
9 a seat, if you wish.

10 (Pause in the proceedings)

11 All right. I have taken the guidelines into account.
12 They are advisory. I've considered all the 3553(a) factors in
13 determining a sentence, and the sentence I will impose is that
14 which, in my view, is sufficient but no greater than necessary
15 to meet the sentencing objectives of Section 3553(a) and any
16 sentencing objectives that may apply as well under the advisory
17 guidelines.

18 I am going to vary upwardly in this case. I'm going
19 to impose 76 months. That's different from what you've asked
20 for, Mr. Boyd, and for what Ms. Church asked for. You asked
21 for a downward variance or at least a sentence that's at the
22 low end of the range. Let me explain the reasons for that on
23 this record. There are a number of aggravating factors that,
24 in my view, require that kind of a sentence.

25 First of all, one of the factors I look at is the

1 nature and circumstances of the offense. Here you possessed a
2 .380 handgun; but not only possessed it, you discharged it in a
3 public area in this city, which, according to the presentence
4 report, seems to have led to all the other gun fire that
5 started after that. It's amazing that nobody was shot or
6 injured in this. But some 11 other shell casings, I think,
7 were found at the scene.

8 It was bad -- you may have been -- you may have been,
9 in your mind, justifying the shot as a way to fire a warning
10 shot and tell people to calm down, at least that was your
11 explanation. That's not a justification for, one, possessing
12 the firearm and, two, firing it in the city. And it was just a
13 poor decision because it created havoc and could have been a
14 huge problem, worse than it was, but what makes it worse is you
15 had a previous conviction for being a felon in possession of a
16 firearm, paragraph 30, in 2008, served 13 to 16 months. And
17 here you are on this occasion with another firearm. So you
18 were warned. And a lot of people want a second chance, and I
19 fully believe in second chances, but you were warned and here
20 you are with a gun.

21 But it gets worse, and that's because that paragraph
22 that you talked about, your other arrests, paragraph 39 -- you
23 were talking about 43. This is 39. You were arrested March 25
24 of 2019 and charged with possession of drugs and then being a
25 felon in possession of a firearm again, and then you were

1 released. So you knew you had that pending charge, and then
2 within a matter of days, you're involved in this incident on
3 April 7, 2019. So you had multiple warnings. You had
4 convictions for being a felon in possession, and then here you
5 are again with a firearm.

6 So it's kind of hard to be lenient on somebody who's
7 not going to follow the law, particularly after they have been
8 convicted of that very offense.

9 This is a serious offense because you not only
10 possessed the firearm, but you discharged it in a public
11 setting.

12 I am concerned about promoting respect for the law
13 for the various reasons I indicated. You were told on a number
14 of occasions by courts that you can't have a firearm. You were
15 convicted of it, and then you were charged again. You're on
16 bond, and then here you are again with a firearm. You have to
17 ask yourself: What else is it that anybody can do to convince
18 you that you can't have a gun?

19 And I am concerned about providing a just punishment
20 for this offense. You have a number of prior convictions. And
21 the presentence report said in paragraph 9, when you were
22 interviewed by the officers after this incident, that you were,
23 quote, just a drug dealer. I don't know about that, but you
24 certainly were a drug dealer. I look at all of your prior
25 convictions, and you have drug convictions dating back to when

1 you were 19 years old. And here you are at age 34, the same
2 thing. I mean, they caught you with heroin and a handgun --
3 heroin in your front pocket.

4 And then you have been punished for all of those. A
5 number of sentences of 6 to 8 months for your drug convictions.
6 And then paragraph 30 for your felony possession of a firearm,
7 that was 13 to 16 months. Another drug conviction in paragraph
8 31, 6 to 8 months. You absconded supervision in that case.
9 Paragraph 33, 6 to 8 months, felony possession of cocaine.
10 Paragraph 34, felony possession of a cocaine, 5 to 15 months.
11 Paragraph 35, felony possession with intent to sell and deliver
12 and other trafficking charges, 35 to 51 months. Then you were
13 released December 19, 2018, and then here you are within a
14 matter of two or three months back out with a gun, heroin in
15 your pocket, charged with a gun offense, back on bond with
16 another gun.

17 I guess you see the picture. You're just -- it's not
18 sinking in to you. Now, I take you at your word you want to
19 raise your kids, but you're making these decisions. You're
20 deciding to be out there with a gun when people tell you not
21 to. You don't have any special exception to the laws that
22 apply to all of us, and these laws apply to you. So if you
23 want to figure out why you're in this predicament, look in the
24 mirror. You've made these decisions, and you have to make
25 better decisions. These are the consequences of continued

1 flaunting of the law.

2 I'm concerned about protecting the public. By your
3 own admission, you have a drug trafficking history; you're
4 possessing firearms. Guns and drugs don't go together well,
5 but, frequently, they do because people use guns to protect
6 their drugs and their money. Here you discharged the firearm
7 in a very careless way.

8 I was taken by the statement in the presentence
9 report that you didn't think that your drugs have negatively
10 impacted your life. I don't understand that statement because
11 your presentence report is Exhibit A of how your life has been
12 negatively impacted by your drugs. You have multiple
13 convictions for illegal drugs. I mean, your life would be a
14 lot better if you had none of these drug convictions. If you
15 quit using and trafficking in drugs in any amount, you could be
16 out, and you could raise your children, and you could get a job
17 like everybody else and work for a living.

18 Instead -- I mean, I don't understand how you think
19 you can raise your children when you're going to clubs, using
20 heroin. I mean, that's not the kind of conduct that a good
21 father would have, going out and using drugs, for a number of
22 reasons. One is you don't have the money for that. If you had
23 that money, it ought to be there to support your children. And
24 any child that's -- or any parent that's a drug user can't be a
25 good parent at the same time, period.

1 And, worse, the children grow up around somebody who
2 is a drug user. What do they learn from that? Well, probably
3 what you learned, because your parents were involved in illegal
4 activities, according to the presentence report. So here you
5 are doing the same thing for your children. All of people, you
6 would be in the best position to know how to be a good parent
7 so that you don't do to your children the kind of things you
8 say happened to you.

9 I appreciate that you think you're a good father and
10 that you want to be a good father, but you're not doing the
11 kind of things any good parent would do. It's kind of hard to
12 accept the truth of that with some of the conduct that you
13 have.

14 You indicate that you're not court ordered to pay any
15 child support. That ought to be, frankly, kind of irrelevant.
16 If you bring a child into this world, you have a moral
17 obligation to raise that child, provide for that child, make
18 sure that child is protected, is educated. Unless you're there
19 24 hours a day and in the middle of the night when the child is
20 sick or has to go to the doctor, it's kind of hard to be a good
21 father. It is going to be harder when you're in prison serving
22 a sentence, and that's because of some of your history of the
23 conduct that you've engaged in.

24 I appreciate the fact you want to do better, but it's
25 all very recent, I mean, your gun possession, your recent gun

1 charge before this incident, and you were on bond for a gun
2 charge, and here you are again with a gun. I, frankly, think
3 you need to take a much harder look at what all this is doing
4 to your life, because you're still relatively young; you're 34.
5 But, you know, hang around in this courtroom for a while when I
6 have some other sentencings and see the guys that come through
7 here when they're in their 50s or even 60s, doing the same
8 thing over and over again. Now, I know you don't want to be
9 that person.

10 So if you can't comply with the law, if you can't
11 control your actions, then the courts are going to protect the
12 community, and they will just take you out of circulation.
13 You'll be put in a prison cell somewhere so you can't sell
14 drugs and possess firearms and use them in ways that are a
15 danger to the public. That's just how it's going to work. So
16 I think you need to take a long and hard look at your decisions
17 and how they are affecting your life, and it's definitely
18 negatively impacting your life, unless you are happy being in
19 and out of prison. I can't imagine that you are.

20 You do have a GED, so I give you credit for that.
21 That demonstrates that you're capable and smart and, frankly,
22 smarter than someone who would do this kind of conduct.

23 You did have a very chaotic upbringing, and I
24 acknowledge that, but that's not an excuse for how you're
25 acting. I mean, you're acting like a 16-year-old with your

1 conduct, and you're 34. And that kind of excuse would bear
2 more credence if you were before the Court and much younger,
3 but you're 34 years old. I mean, you honestly know what you
4 need to be doing. And you now have children you need to be
5 responsible for and raise. So your work is cut out for you.

6 So to the extent that there's a request to vary
7 downward, given the nature and circumstances of the offense,
8 including the fact that the gun was discharged, as well as the
9 prior arrests for a firearm charge and the Defendant was on
10 bond for that when he possessed this firearm, only a matter of
11 days later, and then the Defendant's prior convictions, a
12 number of them, I'm not inclined to do that on this record.

13 So for all of those reasons, I'm ordering that you be
14 committed to the custody of the Bureau of Prisons for 76 months
15 followed by 3 years of supervised release. That's an upward
16 variant sentence.

17 And I'm ordering you pay a 100-dollar special
18 assessment. That's due and payable immediately. To the extent
19 you cannot immediately comply, I do recommend that you
20 participate in the Inmate Financial Responsibility Program.
21 I'm going to waive any fine based on hardship to your
22 dependents.

23 I'm imposing all the mandatory conditions of
24 supervision.

25 Now, the presentence report lays out the standard

1 conditions of supervision on pages 28, 29, and 30.

2 Have you reviewed those with your client?

3 **MS. CHURCH:** Yes, Your Honor, and provided a copy.

4 **THE COURT:** Are there any objections?

5 **MS. CHURCH:** No, Your Honor.

6 **THE COURT:** Insofar as Mr. Boyd has reviewed those
7 and is aware of them, I am imposing all of the standard
8 conditions of supervised release that are laid out in the
9 presentence report, finding that they are necessary for the
10 proper application of supervision in this case.

11 Now, there are two conditions of special conditions
12 that are laid in paragraphs 2 and 3 on pages 30 and 31.

13 Did you review those as well?

14 **MS. CHURCH:** Yes, Your Honor, and also provided a
15 copy.

16 **THE COURT:** Any objection?

17 **MS. CHURCH:** No, Your Honor.

18 **THE COURT:** All right. So as a special condition,
19 I'm imposing the following:

20 That the Defendant submit to substance abuse testing
21 at any time as directed by his probation officer; that he
22 cooperatively participate in a substance abuse treatment
23 program, which may include drug testing and inpatient and
24 residential treatment, and to pay for those services as
25 directed by his officer. During the course of treatment, he

1 shall abstain from the use of any alcoholic beverages. This is
2 for the justifications set out in that condition, which
3 includes his use of drugs.

4 Also, that he submit his person, residence, office,
5 vehicle, or any other property under his control to a
6 warrantless search to be conducted by a U.S. probation officer
7 at a reasonable time and in a reasonable manner based upon
8 reasonable suspicion of contraband or evidence of a violation
9 of a condition of your supervised release. Failure to submit
10 to such a search may be grounds to revoke supervision, and he
11 shall warn any residents that the premises are subject to such
12 searches.

13 The justifications are set out in paragraphs 9 and 6
14 of the presentence report, and the Defendant possessed a
15 firearm as a convicted felon as well as heroin.

16 I will recommend to the Bureau of Prisons that
17 Mr. Boyd be designated to a facility where he can receive drug
18 treatment, whatever appropriate level the Bureau of Prisons
19 thinks is the most intensive form that he needs.

20 I will also recommend that he be permitted to
21 participate in vocational training, including heating,
22 ventilation, air conditioning, or computer technology, which is
23 what he requested in the PSR.

24 Anything else you want me to address?

25 **MS. CHURCH:** Your Honor, if I may, just given the

1 circumstances of his childhood, if we could possibly have some
2 sort of behavioral assessment as well just to see if he needs
3 some assistance.

4 **THE COURT:** All right. I will recommend a mental
5 health evaluation and, to the extent not inconsistent with
6 those, that he be designated to a facility -- I presume he
7 wants as near as possible to his home here in the Winston-Salem
8 area?

9 **MS. CHURCH:** Please, Your Honor.

10 **THE COURT:** All right. I will make that
11 recommendation as well.

12 **MS. CHURCH:** Thank you.

13 **THE COURT:** Anything further, Ms. Church?

14 **MS. CHURCH:** May I have one moment, Your Honor?

15 (Ms. Church conferred with the Defendant.)

16 **MS. CHURCH:** No, Your Honor.

17 And I will tell the Court that I did briefly explain
18 to Mr. Boyd his appellate rights, and I will do so again once
19 the judgment is entered.

20 **THE COURT:** All right. I will address that in just a
21 minute.

22 **MS. CHURCH:** Thank you, Your Honor.

23 **MR. GREEN:** Destruction order, Your Honor.

24 **THE COURT:** All right. At the expiration of time for
25 appeal, the firearm should be returned to its rightful, lawful

1 owner or otherwise destroyed. And the drugs shall be
2 destroyed.

3 So I'll advise Mr. Boyd then, and I know you're going
4 to speak with him again, but if you do wish to file a notice of
5 appeal, you must do so in writing within 14 days of the entry
6 of the Court's judgment. If you cannot afford the cost of an
7 appeal, you can ask the Fourth Circuit to waive the cost of
8 your appeal.

9 Good luck to you, Mr. Boyd.

10 We have another matter set, I think, at 2:30. Okay.
11 So we'll be in recess then until the next matter.

12 (END OF PROCEEDINGS AT 2:41 P.M.)

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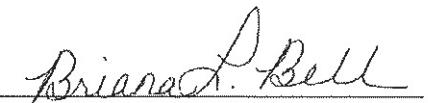
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER

4
5
6 I, Briana L. Bell, Official United States Court
7 Reporter, certify that the foregoing transcript is a true and
8 correct transcript of the proceedings in the above-entitled
9 matter prepared to the best of my ability.

10
11 Dated this 21st day of June 2021.

12
13
14 
15 Briana L. Bell, RPR
Official Court Reporter

18 U.S. Code § 922 - Unlawful acts

[U.S. Code](#) [Notes](#) [State Regulations](#)

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal,

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State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell,

trade, give, transport, or deliver ^{77a}any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General; [1]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are _____

Signature _____ Date _____. "

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who [2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or

ammunition is being transported or ^{82a}shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)

(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is

defined in section 101(a)(26) of the Immigration and Nationality Act^{83a}
(8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)

(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)

(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term “firearm” does not include the frame or receiver of any such weapon;

(B) the term “major component” means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:^{86a}

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)

(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary^[3] the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)

(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

- (i)** on private property not part of school grounds;
- (ii)** if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;
- (iii)** that is—
 - (I)** not loaded; and
 - (II)** in a locked container, or a locked firearms rack that is on a motor vehicle;
 - (iv)** by an individual for use in a program approved by a school in the school zone;
 - (v)** by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
 - (vi)** by a law enforcement officer acting in his or her official capacity; or
 - (vii)** that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)

(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm

-
- (i)** on private property not part of school grounds;
- (ii)** as part of a program approved by a school in the school zone, by an individual who is participating in the program;
- (iii)** by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
- (iv)** by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

- (1)** the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or
- (2)** the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)

(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any

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licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)

(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place

of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)

(i) the transferee has presented to the transferor a permit that

—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

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(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)^[4]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)

(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

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(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)

(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established

under section 103 of that Act,^{95a}

(B)

- (i)** the system provides the licensee with a unique identification number; or
- (ii)** 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

- (A)** assign a unique identification number to the transfer;
- (B)** provide the licensee with the number; and
- (C)** destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)

- (i)** such other person has presented to the licensee a permit that—
 - (I)** allows such other person to possess or acquire a firearm; and
 - (II)** was issued not more than 5 years earlier by the State in which the transfer is to take place; and
- (ii)** the law of the State provides that such a permit is to be issued only after an authorized government official has verified

that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

- (A)** for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or
- (B)** for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v) , (w) Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)

(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

- (A)** a handgun; or
- (B)** ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

- (A)** a handgun; or
- (B)** ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

- (A)** a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)

(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) PROVISIONS RELATING TO ALIENS ADMITTED UNDER NONIMMIGRANT VISAS.—

(1) DEFINITIONS.—In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) EXCEPTIONS.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

- (i)** accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; or
- (ii)** en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) WAIVER.—

(A) Conditions for waiver.—Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

- (i)** the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and
- (ii)** the Attorney General approves the petition.

(B) Petition.—Each petition under subparagraph (B) shall—

- (i)** demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and
- (ii)** include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

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- (i) would be in the interests of justice; and
- (ii) would not jeopardize the public safety.

(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A)

- (i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or
- (ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) LIABILITY FOR USE.—

(A) In general.—

Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.—

A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.—As used in this paragraph, the term “qualified civil liability action”—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[APPENDIX A Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 228; amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1216; Pub. L. 97-377, title I, § 165(a), Dec. 21, 1982, 96 Stat. 1923; Pub. L. 99-308, § 102, May 19, 1986, 100 Stat. 451; Pub. L. 99-408, § 2, Aug. 28, 1986, 100 Stat. 920; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-649, § 2(a), (f)(2)(A), Nov. 10, 1988, 102 Stat. 3816, 3818; Pub. L. 100-690, title VII, § 7060(c), Nov. 18, 1988, 102 Stat. 4404; Pub. L. 101-647, title XVII, § 1702(b)(1), title XXII, §§ 2201, 2202, 2204(b), title XXXV, § 3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924; Pub. L. 103-159, title I, § 102(a)(1), (b), title III, § 302(a)-(c), Nov. 30, 1993, 107 Stat. 1536, 1539, 1545; Pub. L. 103-322, title XI, §§ 110102(a), 110103(a), 110105(2), 110106,

110201(a), 110401(b), (c), 110511, ^{103a} 110514, title XXXII, §§ 320904, 320927, title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, §§ 657, 658(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369, 3009-372; Pub. L. 104-294, title VI, § 603(b), (c)(1), (d)-(f)(1), (g), Oct. 11, 1996, 110 Stat. 3503, 3504; Pub. L. 105-277, div. A, § 101(b) [title I, § 121], Oct. 21, 1998, 112 Stat. 2681-50, 2681-71; Pub. L. 107-273, div. B, title IV, § 4003(a)(1), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 107-296, title XI, § 1112(f)(4), (6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005, 119 Stat. 2099, 2101; Pub. L. 114-94, div. A, title XI, § 11412(c)(2), Dec. 4, 2015, 129 Stat. 1688.)

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