

NO. _____

In The
Supreme Court of the United States

WILLIE RICARDO GORDON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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Dated: October 13, 2022

QUESTION PRESENTED

1. Did the trial court err in accepting the findings of the presentence investigation report, regarding the weights of the drugs attributable to Mr. Gordon, and whether he was responsible for obstruction of justice as described in the presentence report?

RELATED CASES

- *U.S. v. Gordon*, No. 0420-3:3:18-cr-00628-JMC7, U.S. District Court for the District of South Carolina, at Columbia. Judgment entered November 12, 2019.
- *U.S. v. Gordon*, No. 19-4845, U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 15, 2022

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OPINIONS BELOW

The Petitioner submits that the opinion of the lower court has not been published, and has not been designated for publication. The opinion of the Fourth Circuit Federal Court of Appeals is located on pages 1a through 9a of the Appendix.

JURISDICTION

The date on which the United States Court of Appeals decided the case was July 15, 2022. No petition for rehearing was timely filed by counsel for the Petitioners. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED**Statutory Provisions:**

- 18 U.S.C. § 922
- 18 U.S.C. § 922(g)(1)
- 18 U.S.C. § 922(g)(5)
- 18 U.S.C. § 924(a)(2)
- 18 U.S.C. § 924(c)(1)(A)(i)
- 21 U.S.C. § 841(a)(1)
- 21 U.S.C. § 841(b)(1)(A)
- 28 U.S.C. § 1291

Sentencing Guidelines

- U.S.S.G. § 3C1.1

-
See Appendix pp. 20a-41a.

STATEMENT OF THE CASE

The above captioned matter involves the appeal of the Petitioner's criminal conviction and sentence of incarceration as a result thereof in the United States District Court for the District of South Carolina, Columbia Division. The Petitioner was convicted of multiple counts then pending following a three (3)-day jury trial held on January 7-9, 2019, in the following particulars: violations of U.S. Code Title 21, Section 846; 841(a)(1) and (b)(1)(A), and U.S. Code Title 18 Section 922, and 924(c)(1)(A)(i) (JA Volume II pp. 686 – 706.)¹ The Petitioner Willie Ricardo Gordon was sentenced to four hundred twenty (420) months of incarceration with standard and special conditions and assessments. (Appendix pp. 10a – 19a.) The litigation in this matter commenced on or about June 20, 2018, with the filing of Indictments against Mr. Gordon with superseding indictments filed on or about October 16, 2018. (JA Volume I pp. 20 – 39.) This matter concluded on or about November 12, 2019 with the sentencing of Petitioner. (JA Volume II pp. 621-684; Volume III pp. 709-739; Volume IV pp. 740, et seq.) Final Judgment was entered in this case November 12, 2019. (Appendix pp. 10a – 30a.) The Petitioner filed a notice of appeal on November 13, 2019. (JA Volume II pp. 707-708.) On July 15, 2022, the Fourth Circuit Federal Court of Appeals, in an unpublished opinion, affirmed the conviction of the petitioner, but remanded the matter due to a clerical error in Mr. Gordon's judgment. (Appendix pp. 1a-9a.)

¹ The references to the Joint Appendix are to the filing at the Fourth Circuit Federal Court of Appeals.

STATEMENT OF THE FACTS

The above captioned matter involves the appeal of the Petitioner's criminal conviction and sentence of incarceration as a result thereof in the United States District Court for the District of South Carolina, Columbia Division. The Petitioner was convicted of multiple counts then pending following a three (3)-day jury trial held on January 7-9, 2019, in the following particulars: violations of U.S. Code Title 21, Section 846; 841(a)(1) and (b)(1)(A), and U.S. Code Title 18 Section 922, and 924(c)(1)(A)(i) (JA Volume II pp. 686 – 706.) The Petitioner was sentenced to four hundred twenty (420) months of incarceration with standard and special conditions and assessments. (Appendix pp. 10a – 19a.) The litigation in this matter commenced on or about June 20, 2018, with the filing of Indictments against Mr. Gordon, with superseding indictments filed on or about October 16, 2018. (JA Volume I pp. 20 – 39.) This matter concluded on or about November 12, 2019 with the sentencing of the Petitioner. (JA Volume II pp. 621-684; Volume III pp. 709-739; Volume IV pp. 740 - 789.) Final Judgment was entered in this case November 12, 2019. (Appendix pp. 10a – 30a.) The Petitioner filed a notice of appeal on November 13, 2019. (JA Volume II pp. 707-708.) On July 15, 2022, the Fourth Circuit Federal Court of Appeals, in an unpublished opinion, affirmed the conviction of the petitioner, but remanded the matter due to a clerical error in Mr. Gordon's judgment. (Appendix pp. 1a-9a.)

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully submits that this Honorable Court should grant his Petition and review the opinion of the Fourth Circuit Federal Court of Appeals, because the trial court erred in accepting the findings of the presentence investigation report, regarding the weights of the drugs attributable to Mr. Gordon, and regarding obstruction of justice as described in the presentence report, and the opinion of the Fourth Circuit Federal Court of Appeals must be reversed.

The trial court erred in accepting the findings of the presentence investigation report regarding Defendant Willie Ricardo Gordon, regarding the weights of drugs attributable to Mr. Gordon, and regarding alleged obstruction of justice. Further, the trial court erred in denying Mr. Gordon's request for a variance in his sentencing pursuant to the sentencing guidelines. Given that Mr. Gordon was sentenced to four-hundred-twenty (420) months of incarceration, this Honorable Court should review the opinion of the Fourth Circuit Federal Court of Appeals, reverse the opinion of the appellate court, and remand this matter for re-sentencing.

At Mr. Gordon's sentencing hearing, counsel presented a sentencing memorandum requesting a variance from the sentencing guidelines, as well as furthered objections to two (2) findings of the presentence investigation report. (JA Volume II, pp. 621 – 627.) The two objections that were overruled by the trial court pertained to the drug weights attributable to Mr. Gordon, as well as the fact that Mr. Gordon was given an enhancement for obstruction of justice. (JA Volume II, p. 632, lines 11-19.)

The presentence investigation report cites a case relative to the issue of calculation of drug weights – *U.S. v. Uwaeme*, 975 F.2d 1016 (4th Cir. 1992), which requires the trial court to find drug weights pursuant to a “reliable” preponderance of the evidence standard for purposes of sentencing. The methodology utilized by the chemist in *Uwaeme* was much more precise than the testimony presented in this case by co-defendants regarding drug quantity. The quantity of drugs in *Uwaeme* was scientifically ascertainable – the Defendant in that case, however, argued that the entire drugs seized from his person should have been weighed and tested, when only a sample was used for the weight calculation. However, the methodology used by the chemist in *Uwaeme* yielded reliable precision sufficient for Uwaeme’s conviction to be upheld. Pursuant to *Uwaeme*, the sentencing court is authorized to calculate drug amounts considering any relevant information, provided that the information has sufficient indicia of reliability to support its probable accuracy. The evidence presented in this case simply does not meet the criteria for sufficient indicia of reliability to support its probable accuracy.

At sentencing, counsel for Mr. Gordon raised the issue of whether or not the testimony of witness Blake Smith had any sufficient indicia of reliability – whose testimony yielded a responsibility of Mr. Gordon for 20,000 grams of methamphetamine in the presentence investigation report. (JA Volume III p. 717, paragraph 17; p. 723, paragraph 40, referencing paragraph 17.) Mr. Smith testified that he was close friends with Mr. Gordon and that he dealt methamphetamines in a partnership with Mr. Gordon for about eight (8) months in 2016. (JA Volume I p.

116, lines 16-21.) In those eight (8) months, Mr. Smith testified that he would attribute 9 or 10 to 15 kilograms of methamphetamine to Mr. Gordon. (JA Volume I, p. 116, lines 24-25; p. 117, lines 1-4.) Mr. Smith testified that at some point Mr. Gordon began to receive shipments through the mail through a supplier named Eddie Brockington with whom Mr. Smith was familiar. (JA Volume I, p. 118, lines 15-24.) Without giving any specific addresses or locations, Mr. Smith testified that the drugs would be delivered by mail to various addresses in “like” the Warrenton area of Aiken County, and a few in Edgefield that he could remember. (JA Volume I, p. 119, lines 1-3.) Mr. Smith testified that most of the packages were right under 10 pounds, or “4 keys” per package – however he does not specifically link these packages to Mr. Gordon. (JA Volume I, p. 119, lines 4-15.) Mr. Smith *specifically* testifies that he couldn’t say or put a number to the number of 4-kilogram mail packages that were delivered to Mr. Gordon because he stopped his dealings directly with the other supplier at the time, but estimated once or twice a week. (JA Volume I, p. 119, lines 16-21.) Mr. Smith testified that Gordon received the shipments once or twice a week “For as long as, you know – since I’d been incarcerated and had got free, it had been going on. So, you know, I just stepped into the position of receiving these packages. And, then when I, you know, stopped doing that, you know, it was to my knowledge that Mr. Rico, you know, filled in that spot. And so, you know, consistently, I would say.” (JA Volume I, p. 119, lines 23-25; p. 120, lines 1-3.) In this testimony there were no dates nor context presented to explain Mr. Smith’s testimony regarding the drugs attributable to Mr. Gordon. Pursuant to cross-examination, Mr. Smith testified

that the packages did not go specifically to a person, and that he was not present to see Mr. Gordon receive the packages each time. (JA Volume I p. 126, lines 1-11.) Mr. Smith could only testify that he picked up “a package” with Mr. Smith on one occasion. (JA Volume I, p. 125, lines 18-25; p. 126, lines 1-11.) Despite the fact that Mr. Smith testified about Brockington mailing packages, Smith testified that he never saw Brockington address a package and send it. (JA Volume I p. 126, lines 20-22.) Pursuant to cross examination, Mr. Smith admitted that he was speculating that Mr. Gordon may have gotten a package from [Brockington], but did not know of his own personal knowledge that any of that was true. (JA Volume I p. 126, lines 23-25; p. 127, lines 1-3.) Mr. Smith testified that he never saw Mr. Gordon pick up a package. (JA Volume I p. 127, lines 20-21.) Mr. Smith did testify that he “rescued” 2 kilos of methamphetamine on the side of the road pursuant to a call from Brockington – that that he split 1 kilo with Mr. Gordon. (JA Volume I, p. 120, lines 18-25; p. 121, lines 1-16.)

Ultimately, the trial court accepted the finding of the presentence investigation report regarding the amount of drugs as attributable to Mr. Gordon, however this was error. Clearly, this finding prejudiced Mr. Gordon in sentencing and was not based on the standards enunciated in the case of *Uwaeme*, as the evidence presented by Mr. Smith was not reliable. At trial, Mr. Smith testified that the drugs were distributed through package deliveries that came through the postal service sent to locations in Aiken and Edgefield County. However, Mr. Smith could not recall the addresses, nor the precise weights of the packages, nor could he articulate where the

deliveries occurred. As counsel for Mr. Gordon furthered at sentencing, the post office has the capacity to be very precise about tracking packages with particular addresses, and provide information regarding the weights of particular packages. The Government could have easily traced these packages through the mail and presented reliable evidence of such at the trial. It is difficult to accept that Mr. Smith had no knowledge whatsoever of addresses for drug shipments in his sworn testimony, but yet testified definitively that the mailings occurred. The post office has tracking capabilities to provide detailed information regarding a particular package. This testimony was absolutely critical to the assessment of the weight of drugs attributable to Mr. Gordon at sentencing, however the testimony was in no way credible and should not have been used in the presentence investigation to enhance Mr. Gordon's sentence. In fact, counsel for Mr. Gordon pointed out at sentencing that given Mr. Smith's definitive testimony about shipments to and from locations in Edgefield and Aiken counties, this information should have been readily ascertainable by the Government. Additionally, as counsel pointed out at sentencing, the testimony and evidence presented in this case established that the Government only found a small amount of drug weight at the home of Mr. Gordon, and did not find large sums of money that could have possibly substantiated the finding of the drug weights pursuant to Mr. Smith's testimony. Of note is that none of the other witnesses against Mr. Gordon testified regarding controlled deliveries by packages through the U.S. postal service – indicating a further lack of corroboration of Mr. Smith's testimony.

The testimony of Zachary Wooten also was not credible and should not have been used to calculate drug weights in Mr. Gordon's presentence investigation report. The testimony of Mr. Wooten was uncorroborated and equaled 4,211.3 grams toward Mr. Gordon's sentencing report – an amount not supported by the testimony. Mr. Wooten testified that he received twelve (12) ounces from Mr. Gordon directly on one occasion, and purchased one kilo on another occasion. (JA Volume I p. 167, lines 4-6; p. 170, lines 4-7.) On two other occasions, Mr. Wooten testified that he exchanged 18 and 20 ounces, respectively, with Mr. Gordon. (JA Volume I, p. 171, lines 2-4.) On other occasions Mr. Wooten testified that he received 28 ounces from Mr. Gordon – short of a whole kilo – and a pound on two other occasions. (JA Volume I p. 171, lines 16-19; p. 172 lines 1-3.) The testimony of Mr. Wooten does not support the drug weights as indicated on Mr. Gordon's presentence investigation report.

Had the trial court properly discounted the drug weights by rejecting the unreliable and uncorroborated testimony of co-defendants, the proper sentencing base level would have been 32, rather than 38 for Mr. Gordon, pursuant to the sentencing guidelines. Trial counsel arrived at this result by furthering the argument that the reliable evidence submitted at trial indicated drug amounts attributable to Mr. Gordon at a level under 5 kilograms. The amount of drugs would be at least 500 grams but less than 1.5 kilograms of methamphetamines or Ice, which would have supported a base sentencing level of 32.

The trial court further erred in overruling Mr. Gordon's objection to an enhancement for obstruction of justice in his presentence investigation report. (JA

Volume III, p. 725, Paragraphs 46-47.) Pursuant to U.S.S.G. § 3C1.1, a guideline sentencing enhancement should be applied in cases where the defendant obstructed or impeded the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and the obstructive conduct related to the offense of conviction and any relevant conduct. The only witness that could have supported this finding was Mr. Robert Pendleton. Mr. Pendleton, who plead guilty as a co-defendant in this matter, testified that Mr. Gordon told him directly regarding Jeremy Davis that “he can get him” if he testifies against him. (JA Volume II p. 297, lines 23-25; p. 298, line 1.) However, Mr. Pendleton was cross-examined about this issue and whether he made a report in jail or did anything about the allegations against Mr. Gordon, but there was no evidence that he took any action based on what Mr. Gordon said. The presentence investigation report also details an alleged conversation between Marcus Young and Jeremy Davis – a co-defendant who did not cooperate with the trial of this matter. Davis allegedly told law enforcement that Marcus Young told him that he overheard Mr. Gordon ask Mr. Pendleton where Davis’ family lived because Mr. Gordon was going to “make them disappear.” The reliability of the statements attributed to Mr. Gordon is too attenuated for the trial court to find by a preponderance of the evidence that Mr. Gordon obstructed justice in this case, and the trial court erred in enhancing Mr. Gordon’s sentence pursuant to allegations of obstruction of justice.

The U.S. Sentencing Guidelines are now but one of seven statutory factors for a court to weigh when formulating a sentence. *United States v. Booker*, 125 S. Ct.

738 (2005); 18 U.S.C. § 3553. In *Booker*, the United States Supreme Court provided that the sentencing guidelines would be advisory, not mandatory, giving the trial court discretion to craft a sentence appropriate to the particular Defendant at issue. However, in the seminal case of *Gall v. United States*, 128 S. Ct. 586 (2007), the Supreme Court affirmed that the district court should begin all sentencing proceedings by correctly calculating the applicable sentencing guidelines range. If the trial court errs in properly calculating the sentencing guidelines range for an individual defendant, as reflected in the presentence investigation report, the trial court has erred which mandates a reversal of the sentencing by the appellate court. Mr. Gordon asserts that in this matter, the trial court erred in calculating his applicable sentencing range on two points of objection at sentencing – the amount of drugs attributable to him, as well as the issue of obstruction of justice – as described above. The Fourth Circuit Federal Court of Appeals erred in affirming the conviction and sentence of Mr. Gordon. Therefore, this matter should be remanded to the trial court for Mr. Gordon to be resentenced.

CONCLUSION

Wherefore, the Petitioner Willie Ricardo Gordon respectfully prays that this Honorable Court will grant his Petition for Writ of Certiorari.

Respectfully Submitted,

/s/ Scarlet B. Moore, Esq.

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Attorney for Willie Ricardo Gordon

October 13, 2022.

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4845

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIE RICARDO GORDON, a/k/a Rico,

Defendant - Appellant.

No. 19-4846

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS YOUNG, a/k/a Lay Low,

Defendant - Appellant.

Appeals from the United States District Court for the District of South Carolina, at Columbia. J. Michelle Childs, District Judge. (3:18-cr-00628-JMC-7; 3:18-cr-00628-JMC-10)

Submitted: July 6, 2022

Decided: July 15, 2022

Before MOTZ, AGEE, and QUATTLEBAUM, Circuit Judges.

Affirmed and remanded by unpublished per curiam opinion.

ON BRIEF: Scarlet B. Moore, Greenville, South Carolina. John M. Ervin, III, ERVIN LAW OFFICE, Darlington, South Carolina, for Appellants. Peter M. McCoy, Jr., United States Attorney, Kathleen Michelle Stoughton, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, Willie Ricardo Gordon and Marcus Young appeal their convictions and sentences after the jury convicted them of drug distribution and firearm offenses. On appeal, Young contends that he is entitled to relief under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), because the jury was not instructed to find that he knew he was a convicted felon at the time of his 18 U.S.C. § 922(g)(1) offense; and Gordon contends that the district court erred in its factual findings on drug quantity and obstruction of justice at sentencing. We affirm Appellants' convictions and sentences, but we remand for correction of clerical error in Gordon's judgment.* *See Fed. R. Crim. P.* 36.

Young contends that he is entitled to relief under *Rehaif*, because the jury was not instructed to find that he knew he was a convicted felon at the time of his § 922(g) offense. Because Young did not raise this issue in the district court, we review it for plain error. *See Greer v. United States*, 141 S. Ct. 2090, 2096 (2021); *United States v. Caldwell*, 7 F.4th 191, 213 (4th Cir. 2021) ("plain-error review applies to unpreserved *Rehaif* errors"). "To succeed in obtaining plain-error relief, a defendant must show (1) an error, (2) that is plain, (3) and that affects substantial rights." *Caldwell*, 7 F.4th at 211. Young must show that absent the jury instruction error, "there is a 'reasonable probability' that he would have been acquitted." *Greer*, 141 S. Ct. at 2097 (citation omitted). "If those three requirements

* Gordon's judgment erroneously cites the statute for his conviction of possession of a firearm in furtherance of a drug trafficking crime under 18 U.S.C. § 924(c)(1)(A)(i).

are met, [we] may grant relief if [we] conclude[] that the error had a serious effect on ‘the fairness, integrity or public reputation of judicial proceedings.’” *Id.* at 2096-97.

“[I]n *Rehaif*, the Supreme Court concluded that to obtain a § 922(g) conviction, the government ‘must show that the defendant knew he possessed a firearm *and also that he knew he had the relevant [felon] status when he possessed it.*’” *Caldwell*, 7 F.4th at 213 (quoting *Rehaif*, 139 S. Ct. at 2194). “As the Supreme Court has noted, ‘[i]n a felon-in-possession case where the defendant was in fact a felon when he possessed firearms, the defendant faces an uphill climb in trying to satisfy the substantial-rights prong of the plain-error test based on an argument that he did not know he was a felon. The reason is simple: If a person is a felon, he ordinarily knows he is a felon.’” *Id.* (quoting *Greer*, 141 S. Ct. at 2097). However, “the mere undisputed fact that [the defendant] was a felon at the time of the [offense] is not dispositive.” *Id.*

“[T]here may be cases in which a defendant who is a felon can make an adequate showing on appeal that he would have presented evidence in the district court that he did not in fact know he was a felon when he possessed firearms.” *Greer*, 141 S. Ct. at 2097. “But if a defendant does not make such an argument or representation on appeal, [we] will have no reason to believe that the defendant would have presented such evidence to a jury, and thus no basis to conclude that there is a ‘reasonable probability’ that the outcome would have been different absent the *Rehaif* error.” *Id.*; see *United States v. Hobbs*, 24 F.4th 965, 973 (4th Cir.) (concluding defendant failed to make required showing where he testified he was not allowed to possess firearms and had “not proffered ‘a sufficient argument or representation’ that he would have presented a factual basis at trial for contradicting this

evidence that he knew he was a felon”) (quoting *Greer*, 141 S. Ct. at 2100), *cert. denied*, ___ S. Ct. ___, 2022 WL 2111431 (June 13, 2022); *Caldwell*, 7 F.4th at 213 (concluding defendant could not make required showing where he never disputed validity of his felony convictions and had served sentences longer than a year “making it virtually impossible to believe he did not know he had been convicted of crimes punishable by such sentences”).

Although there was plain error in this case, we conclude that Young has failed to show that his substantial rights were affected, i.e., that absent the error, there is a reasonable probability that he would have been acquitted. In the district court, Young stipulated that he had a felony conviction and never disputed his felon status; and in his testimony, he not only admitted he was a convicted felon, but also that it meant he could not be in a house with guns; he knew he should not have guns in his house; and he had guns moved out of his house because he did not want to be charged with possessing them. Moreover, Young received and served sentences longer than one year prior to the offense; and on appeal, he has not proffered a sufficient argument or representation that he would have presented a factual basis at trial for contradicting the evidence that he knew he was a felon.

Gordon contends the district court erred at sentencing in finding the drug quantity attributable to him and that he obstructed justice under U.S. Sentencing Guidelines Manual § 3C1.1. “When evaluating a sentencing court’s calculation of the advisory Guidelines range, this Court reviews the district court’s factual findings, and its judgment regarding factual disputes, for clear error.” *United States v. Medley*, 34 F.4th 326, 337 (4th Cir. 2022) (internal quotation marks omitted). “We will not reverse a lower court’s finding of fact simply because we would have decided the case differently.” *Id.* (internal quotation marks

omitted). “Instead, clear error occurs when the lower court’s ‘factual findings are against the clear weight of the evidence considered as a whole.’” *Id.*

“Under the Guidelines, ‘[w]here there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance.’” *United States v. Williamson*, 953 F.3d 264, 273 (4th Cir. 2020) (quoting USSG § 2D1.1 cmt. n.5). The district court is accorded “considerable leeway in crafting this estimate” and “may ‘give weight to any relevant information before it, including uncorroborated hearsay, provided that the information has sufficient indicia of reliability to support its accuracy.’” *Id.* “[W]hen the approximation [of drug quantity] is based only upon uncertain witness estimates, district courts should sentence at the low end of the range to which the witness testified.” *United States v. Crawford*, 734 F.3d 339, 342 (4th Cir. 2013) (internal quotation marks omitted). In reviewing the calculation of drug quantity, “we afford ‘great deference’ to a district judge’s credibility determinations and how the court may choose to weigh the evidence.” *Williamson*, 953 F.3d at 273.

To apply an enhancement under USSG § 3C1.1, “the district court must conclude that the government has shown, by a preponderance of the evidence, that the defendant ‘willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice.’” *United States v. Kiulin*, 360 F.3d 456, 460 (4th Cir. 2004). “Under that provision, an increase for obstruction of justice is justified when, *inter alia*, a convicted defendant ‘threaten[s], intimidat[es], or otherwise unlawfully influenc[es] a co-defendant, witness, or juror, directly or indirectly, or attempt[s] to do so.’” *United States v. Brooks*, 957 F.2d 1138, 1149 (4th Cir. 1992) (quoting USSG § 3C1.1 cmt. n.4(A)). “At a minimum, section

3C1.1 requires that the defendant either threaten the codefendant, witness, or juror in his or her presence or issue the threat in circumstances in which there is some likelihood that the codefendant, witness, or juror will learn of the threat.” *Id.* at 1149-50.

We have reviewed the record and conclude that the district court did not clearly err in finding Gordon’s drug quantity was at least 4.5 kilograms of actual methamphetamine and that he willfully attempted to obstruct and impede the administration of justice by threatening, intimidating, or otherwise unlawfully influencing a codefendant or witness, directly or indirectly, or attempting to do so. The probation officer calculated that Gordon was accountable for 25.45 kilograms of actual methamphetamine, and his base offense level was 38. Gordon objected, primarily challenging the 20 kilograms attributed to him by one witness at trial. The court accepted Gordon’s argument not to count the entire 20 kilograms, but it found he was still responsible for at least 4.5 kilograms and a base offense level 38 due to consistent corroborating testimony of another witness at trial. Moreover, while the court overruled his objection to the enhancement under § 3C1.1, it sustained his objection to the leadership enhancement; and we find no clear error in its rulings.

Accordingly, we affirm Appellants’ convictions and sentences, but we remand for correction of clerical error in Gordon’s judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AND REMANDED

FILED: July 15, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4845 (L)
(3:18-cr-00628-JMC-7)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

WILLIE RICARDO GORDON, a/k/a Rico

Defendant - Appellant

No. 19-4846
(3:18-cr-00628-JMC-10)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARCUS YOUNG, a/k/a Lay Low

Defendant – Appellant

USCA4 Appeal: 19-4845

Doc: 60-2

Filed: 07/15/2022

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J U D G M E N T

In accordance with the decision of this court, the judgments of the district court are affirmed and case No. 19-4845 is remanded to the district court for further proceedings consistent with the court's decision.

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

District of South Carolina

UNITED STATES OF AMERICA

V.

Willie Ricardo Gordon
a/k/a "Rico"

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:18-628-JMC-7

USM Number: 33574-171

Russell Brown, CJA
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

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

■ was found guilty on count(s) 1-3 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841(a)(1), 841(b)(1)(A), 851 and 846	Please see Superseding Indictment	10/16/18	1
21:841(a)(1) and 841(b)(1)(A)	Please see Superseding Indictment	4/23/18	2
21:841(a)(1), 841(b)(1)(C) and 841(b)(1)(D)	Please see Superseding Indictment	6/25/18	3

The defendant is sentenced as provided in pages 2 through 10 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) 1-3, 28 of the Indictment; 28 of the Superseding Indictment ☐ is ☒ are dismissed on the motion of the United States.

☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 12, 2019

Date of Imposition of Judgment

J. Michelle Childs

Signature of Judge

J. Michelle Childs, United States District Judge

Name and Title of Judge

November 12, 2019

Date _____

AO 245B (SCDC Rev. 09/19) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 10

DEFENDANT: Willie Ricardo Gordon
CASE NUMBER: 3:18-628-JMC-7

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Four hundred twenty (420) months. This term consists of 360 months each as to Counts One and Two, these terms to run concurrently, and 60 months as to Count Three, that term to run consecutively.

☒ The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be housed at a facility in South Carolina. The Court also recommends that the defendant participate in Mental Health Treatment and Counseling and Substance Abuse Treatment.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ ☐ a.m. ☐ p.m. on _____ .
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____ .
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Willie Ricardo Gordon
CASE NUMBER: 3:18-628-JMC-7

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

The defendant shall be placed on supervised release for a term of **10 years**. This consists of 10 years each as to Counts One and Two and 5 years as to Count Three, said terms to run concurrently.

1) The defendant must submit to substance abuse testing to determine if he has used a prohibited substance. He must contribute to the cost of such program not to exceed the amount determined reasonable by the court approved “U.S. Probation Office's Sliding Scale for Services,” and will cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where 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: Willie Ricardo Gordon
CASE NUMBER: 3:18-628-JMC-7

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 _____

AO 245B (SCDC Rev. 09/19) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 5 of 10

DEFENDANT: Willie Ricardo Gordon
CASE NUMBER: 3:18-628-JMC-7

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	\$ 300.00	\$	\$	\$	\$

☐ 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.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
---------------	----------	----------

☐ 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 for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ 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.

AO 245B (SCDC Rev. 09/19) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

Judgment — Page 6 of 10

DEFENDANT: Willie Ricardo Gordon
CASE NUMBER: 3:18-628-JMC-7

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 \$ 300.00 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:

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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☐ 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:
As directed in the Preliminary Order of Forfeiture, filed 4/3/2019 and the said order is incorporated herein as part of this judgment.

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.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA)	CRIMINAL NO.: 3:18-cr-00628-JMC-7
)	
v.)	
)	
WILLIE RICARDO GORDON)	
a/k/a "Rico"		

PRELIMINARY ORDER OF FORFEITURE

This matter is before the court on the motion of the United States for a Preliminary Order of Forfeiture as to Defendant Willie Ricardo Gordon, ("Gordon", "Defendant"), based upon the following:

1. On October 16, 2018, a multi-count Superseding Indictment was filed charging Gordon with drug trafficking, in violation of 21 U.S.C. §§ 841 and 846, and firearm offenses, in violation of 18 U.S.C. § 924(c).

2. Pursuant to Fed. R. Crim. P. 32.2(a), the Superseding Indictment contained a forfeiture allegation providing that upon Gordon's conviction, certain properties enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States. Such property includes:

A. Proceeds¹:

A sum of money equal to all property the Defendants obtained as a result of the drug offenses charged in the Superseding Indictment, and all interest and proceeds traceable thereto as a result for their violation of 21 U.S.C. §§ 841 and 846

¹ The government is not pursuing a forfeiture judgment against the Defendant.

B. Firearm:

FN, model Five-Seven, 5.7mm pistol
(Serial Number: 386184156)

C. Ammunition:

1. Miscellaneous rounds of 5.7 x 28 caliber ammunition
2. Miscellaneous rounds of .45 caliber ammunition

3. On January 9, 2019, a jury found Gordon guilty of two counts of drug trafficking and one count of possession of a firearm in furtherance of a drug trafficking crime.

4. Based upon Defendant's conviction, the court has determined that the property described above is subject to forfeiture, pursuant to 18 U.S.C. § 924(d)(1), 21 U.S.C. §§ 853 and 881, and 28 U.S.C. § 2461(c).

5. The court has determined that the government has established the requisite nexus between the said property subject to forfeiture and the offenses for which Gordon has been convicted; therefore, the United States is entitled to a preliminary order of forfeiture, subject to the provisions of 21 U.S.C. § 853 governing third party rights.

Accordingly, it is hereby **ORDERED**,

1. The below-described property, and all right, title, and interest of the Defendant, Willie Ricardo Gordon, in and to such property, is hereby forfeited to the United States of America, for disposition in accordance with law, subject to the rights of third parties in such property under 21 U.S.C. § 853(n):

A. Firearm:

FN, model Five-Seven, 5.7mm pistol
(Serial Number: 386184156)

B. Ammunition:

1. Miscellaneous rounds of 5.7 x 28 caliber ammunition
2. Miscellaneous rounds of .45 caliber ammunition

2. Upon entry of this Order, the United States Attorney is authorized to conduct proper discovery in identifying, locating, or disposing of the described property, or other substitute assets, in accordance with Fed. R. Crim. P. 32.2(b)(3); and to commence proceedings that comply with statutes governing third party rights, if applicable.

3. The United States shall publish notice of this Order and its intent to dispose of the personal property in such manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

4. Upon entry of this Order, the United States is authorized to seize the above-described property as directed by the United States Attorney's Office and to commence proceedings that comply with statutes governing third party rights.

5. Any person, other than the named Defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and Fed. R. Crim. P. 32.2(c).

6. Any petition filed by a third party asserting an interest in the above-

described property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject property, the time and circumstances of the petitioner's acquisition of the right, title or interest in such property, and additional facts supporting the petitioner's claim and the relief sought.

7. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

8. The United States shall have clear title to the property following the court's determination of all third party interests, or, if no petitions are filed, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of third party petitions.

9. The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. CRim. P. 32.2(e).

10. Upon entry of the criminal judgment, this Order becomes final as to Defendant, and shall be made a part of the sentence and included in the criminal judgment.

11. The Clerk, United States District Court, shall provide one (1) certified copy of this Order to the United States Attorney's Office.

AND IT IS SO ORDERED.



J. MICHELLE CHILDS
UNITED STATES DISTRICT JUDGE

April 3, 2019
Columbia, South Carolina

18 U.S.C. § 922 Unlawful acts

(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, 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 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 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 (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:

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 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

(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);

- (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;

(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—

- (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 employed 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

18 U.S.C. § 924(c)(1)(A)(i)

(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

21 U.S.C. § 841(a)(1)

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

U.S.S.G § 3C1.1 – Obstructing or Impeding the Administration of Justice

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by **2** levels.