No._____

In the Supreme Court of the United States

CALEB BRYANT HICKCOX,
Petitioner,

VERSUS

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

CHAD VAN CLEAVE
Attorney at Law
P.O. Box 1703
Georgetown, Texas 78627
Tel.: (512) 497-0604
Fax: (512) 852-4755
Attorney for Defendant-Appellant

QUESTIONS PRESENTED FOR REVIEW

1) Must district courts comply with the requirements of 18 U.S.C. § 3553(c) to state, in open court, the reasons for the sentence imposed?

2) Should a circuit split regarding the application of § 3553(c) to reasonableness challenges of defendants' sentences be resolved?

3) Is U.S.C. § 922(g)(1) unconstitutional in light of *Bruen* and its accompanying decisions?

Parties to the proceeding and compliance with Rule 14(b)

The parties concerned are included in the caption of this matter, and there are no corporate parties.

Opinions Below

The Fifth Circuit Court of Appeals unpublished decision is attached as [App. A]. The Judgment of the District Court is attached as [App. B].

Jurisdiction

The Fifth Circuit Court of Appeals' jurisdiction was invoked from the denial by the United States District Court for the Western District of Texas, under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

The Court of Appeals' decision was entered on April 25, 2023 [App. A]. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Other Authorities

Constitutional and Statutory Provisions

This case concerns the district court's failure to meet its statutory obligation to "state in open court the reasons for" imposing the specific sentence, as stipulated in 18 U.S.C. § 3553 (c), leading to Constitutional Due Process implications because the lack of compliance with this statute deprives a criminal defendant of his rights to proper notice and a hearing. Additionally, this case concerns the constitutionality of U.S.C. § 922(g)(1), which prohibits felons, both nonviolent and violent offenders, from possessing firearms.

Statement of the Case

Caleb Bryant Hickcox appeals from a sentence for possessing a firearm after having been convicted of a felony. The district court sentenced Mr. Hickcox above the top of the Guidelines to 63 months on the felon-in-possession count. (ROA. 22-50365.1)

In 2015, Mr. Hickcox pled guilty to Count One of an Indictment charging him with engaging in Organized Criminal Activity. (ROA. 22-50365.10) In connection with the plea, the district court sentenced Mr. Hickcox to a term of imprisonment of 72 months suspended for 72 months' probation, and a fine of $500. (ROA. 22-50365.96)

On September 16, 2016, a Motion to Revoke Probation was filed alleging that Mr. Hickcox had violated the conditions of his probation. (ROA. 22-50365.97)

On October 26, 2016, the district court revoked Mr. Hickcox's probation for failure to attend and complete the theft education probation within 180 days and sentenced him to 5 years confinement. (ROA. 22-50365.97)

On Dec 14, 2021, Mr. Hickcox was charged with one count of Possession of a Firearm by a convicted felon, in violation of 18 U.S.C. § 922(g). ROA. 22-50365.3. Mr. Hickcox pled guilty to that offense on January 20, 2022. (ROA. 22-50365.41)

Mr. Hickcox appeared for sentencing before the district court on April 27, 2022. (ROA. 22-50365.4)

The advisory Guideline range on the felon-in-possession case was 18 months to 24 months. (ROA. 22-50365.106) Counsel requested a sentence at the low end of the guideline range. (ROA. 22-50365.77) The district court gave Mr. Hickcox a top-of-the-Guidelines sentence of 63 months confinement, followed by 36 months of supervised release. (ROA. 22-50365.1) Likewise, the written Statement of Reasons clarified that the particular sentence was "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))." (ROA. 22-50365.108)

Mr. Hickcox contends that this rationale insufficiently establishes the reasonableness of the upward departure. He filed a timely notice of appeal of

the sentence to the felon-in-possession case on May 9, 2022. (ROA. 22-50365.5)

The Fifth Circuit Court of Appeals decided the case on April 25, 2023. In their ruling, the Fifth Circuit failed to reach the merits of the case and dismissed Mr. Hickcox's appeal without weighing the significant constitutional issues demanded by *Bruen*.[1]

Specifically, the Court said, "Because Hickcox did not challenge the constitutionality of § 922(g)(1) before the district court, we review only for plain error. See *United States v. Knowles*, 29 F.3d 947, 950 (5th Cir. 1994)." Applying the plain error standard to these introductory procedural issues was improper both legally and procedurally. More practically, the Fifth Circuit used this improper procedural application to avoid the deeper constitutional issues that *Bruen* demands. See *U.S. v. Caleb Bryant Hickcox*, No.: 22-50365, 2023. [App. A]. Furthermore, the court dismissed Hickcox's challenge to the reasonableness of his sentence and also dismissed his other arguments, including that the sentence was unconstitutional on other grounds.

What follows is this timely petition for a Writ of Certiorari.

[1] *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___ (2022).

Reasons for granting the Writ

A sentence cannot be determined to be reasonable if a sentencing court does not comply with 18 U.S.C. § 3553 (c) fully; however, conflicting decisions within the Fifth Circuit are creating unnecessary confusion on this issue that only the US Supreme Court can rectify properly.

Mr. Hickcox was sentenced to 63 months confinement in the BOP and three years of supervised release. (ROA.22-50041.85-86). Many sentencing judges in the Fifth Circuit, including the judge in Mr. Hickcox's case, have a consistent history of not complying with 18 U.S.C. § 3553 (c). 18 U.S.C. § 3553(c) specifically requires that "[t]he court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence." We believe that it is in the interest of justice for the Court to grant certiorari so that sentencing judges are reminded of their duty to comply with 18 U.S.C. § 3553 (c). As a reminder, 18 U.S.C. § 3553 (c) requires a sentencing judge to give the

reasons for his sentence. Such sentences that do not comply with this statute are unreasonable.

The purpose of these requirements is, among others, to give the Defendant an opportunity to object to the specific reasons and then to enable the Courts of Appeals to engage in meaningful review of the reasons given. See *United States v. Mondragon-Santiago,* 564 F.3d 357, 360 (5th Cir. 2009) ("The district court must adequately explain the sentence 'to allow for meaningful appellate review and to promote the perception of fair sentencing.'" (Quoting *Gall v. United States,* 552 U.S. 38, 50 (2007)).

The U.S. Supreme Court in *Holguin-Hernandez* easily affirmed a defendant's right to preserve issues such 18 U.S.C. § 3553(c) for appeal. That said, we previously stated that before *Holguin-Hernandez*, this Court considered the mere lack of compliance with 18 U.S.C. § 3553(c) an exercise for which remand would have been an empty formality. But after *Holguin-Hernandez* and its companion cases, this is no longer the case. The statement of reasons required by § 3553(c) now represents an indispensable necessity to appellate review of the reasonableness of the sentence. The preservation of the error on the reasonableness of the sentence, post-*Holguin-Hernandez* necessarily

includes preservation of the issue on the lack of compliance with § 3553(c). The appellate review of the reasonableness of the defendant's sentence necessarily depends upon proper application of the law. To find otherwise would be to slight the intent of *Holguin-Hernandez*. See *United States v. Holguin-Hernandez*, 140 S. Ct. 762 (2020).

This Court should clarify that district courts must comply with the statutes that govern the imposition of criminal sentences, even without a specific request by a criminal defendant. Clarifying this point would fully comply with past Supreme Court decisions and would allow judicial resources to be more efficiently applied, ironically, likely necessitating fewer appeals.

Even pre-*Holguin-Hernandez* courts affirmed the importance of stating reasons for their sentences. See *Holguin-Hernandez*. In *Zuniga-Peralta* the court stated, "I would hope that sentencing judges would make a habit of giving written and specific factual reasons for any sentence above or below a properly calculated Guideline range." See *U.S. v. Zuniga-Peralta*, 442 F.3d 345 (5th Cir. 2006).

Additionally, cases within the Fifth Circuit further affirm that 18 U.S.C. § 3553 (c) applies to circumstances like Hickcox's. For example, in *Davalos* the

court said, “Because the district court orally stated its reasons for imposing the particular sentence it did, the dictates of 18 U.S.C. § 3553(c) were satisfied.” See *United States v. Davalos,* No. 18-50784 (5th Cir. Apr. 20, 2020).

Martinez further affirms the importance and application of § 3553 (c), stating, “Section 3553(c) requires the district court to state the reasons for a particular sentence in open court at sentencing and the ‘specific reason’ for a nonguidelines sentence if one is imposed. § 3553(c); See *United States v. Key*, 599 F.3d 469, 474 (5th Cir. 2010). The explanation for the sentence must be sufficient ‘to allow for meaningful appellate review and to promote the perception of fair sentencing.’ *Gall*, 552 U.S. at 50.” See *United States v. Martinez*, No. 21-20414 (5th Cir. Aug. 8, 2022).

However, like Hickcox’s case, other Fifth Circuit cases refuse to apply § 3553(c) properly. For example, *Monk* dealt with an unpreserved error like Hickcox’s. In *Monk,* the court stated, “Monk has failed to establish that the error affected his substantial rights.” See *United States v. Monk*, No. 21-51130 (5th Cir. July 21, 2022).

These differing opinions within the Fifth Circuit regarding the application of 3553(c) create uncertainty that only SCOTUS can rectify.

However, rulings in other circuits have contradicted cases like *Monk* or have applied different standards of review. Therefore, only Supreme Court review can ensure the interests of justice and judicial economy are properly satisfied. See *Monk*.

Furthermore, the failure of district courts to comply with the 3553(c) requirements is, of course, *per se*, a violation of a defendant's rights to notice and a hearing under the Due Process Clause and therefore a deprivation of his substantial rights.

Authority outside of the Fifth Circuit is inconsistent on the reasonableness of a sentence that does not comply with 3553(c). This difference of authority creates a circuit split that the US Supreme Court must address to affirm that 18 U.S.C. § 3553 (c) is consistently applied, in a uniform manner in all circuits.

The differing standards applied to 3553(c) create an uncertainty that only the United States Supreme Court can address. For example, a month before *Holguin-Hernandez* was decided, the Sixth Circuit in *Hatcher* mandated plain-error review where the defendant had objected "to the court's upward variance"

but had never objected to "any specific procedural deficiencies at the sentencing hearing." See *United States v. Hatcher,* 947 F.3d 383 (6th Cir. 2020), See *Holguin-Hernandez*.

As the Court knows, a plain error that affects a defendant's substantial rights may be considered for review even when it was not previously brought to the court's attention. Mr. Hickcox's substantial rights were affected when the court did not comply with 18 U.S.C. § 3553(c).

However, after *Holguin-Hernandez,* the Eleventh Circuit applied the de novo standard, stating that "Aguilar-Gil's central argument on appeal is that his sentence is procedurally unreasonable because it did not comply with § 3553(c)(1). We review *de novo* whether the district court complied with § 3553(c)(1) regardless of whether the defendant objected below. See *United States v. Cabezas-Montano,* 949 F.3d 567, 608 n.39 (11th Cir. 2020)." See also *United States v. Aguilar-Gil,* No. 19-14117 (11th Cir. July 2, 2020). See also *Holguin-Hernandez*.

The Eleventh Circuit has also held that "[a] sentence is procedurally unreasonable if the district court fails to adequately explain the sentence, including any variance from the guidelines range. See *United States v. Shaw,*

560 F.3d 1230, 1237 (11th Cir. 2009). The court is required 'at the time of sentencing . . . to state in open court the reasons for its imposition of the particular sentence.' 18 U.S.C. § 3553(c). If the sentence is within the guidelines range and exceeds 24 months, the court must state 'the reason for imposing a sentence at a particular point within the range.' *Id.* § 3553(c)(1). And if the sentence is outside the guidelines range, the court must not only state 'the specific reason[s]' for the variance in open court but must also state those reasons 'with specificity in a statement of reasons form.' *Id.* § 3553(c)(2)." See *United States v. Oudomsine*, No. 22-10924 (11th Cir. Jan. 18, 2023).

Next, the Second Circuit recognizes that "[u]nder 18 U.S.C. § 3553(c), 'the sentencing judge in every case is required to "state in open court the reasons for its imposition of the particular sentence," and must do so "at the time of sentencing."' *United States v. Pruitt*, 813 F.3d 90, 92 (2d Cir. 2016) (quoting 18 U.S.C. § 3553(c)). The district court satisfied that requirement by explaining in open court that the seriousness of Alryashi's offense motivated the sentence imposed." See *United States v. Alryashi*, No. 20-840-cr (2d Cir. Mar. 26, 2021).

Lastly, the Ninth Circuit also recognizes the importance of following the statute, when it states that "a district court must explain a sentence sufficiently to permit meaningful appellate review." See *United States v. Murillo-Ramos,* No. 21-10068 (9th Cir. Mar. 25, 2022).

I. The application of the plain-error standard was erroneous.

The Government argues in its brief that this issue ought to be reviewed under the plain-error standard because no Supreme Court opinion or Fifth Circuit opinion holds that 922(g)(1) violates the Second Amendment. Mr. Hickcox posits that the Supreme Court's holding in *Bruen* is, in fact, tantamount to just such a holding and that this issue ought to be reviewed de novo.[2]

Bruen is far more than "merely illuminating" and "unequivocally overrule[s]" the statute in question here. Regardless, a violation of Hickcox's Constitutional rights under the Second Amendment does, per se, affect his substantial rights. This issue, if not addressed here, will have to be addressed in a 2255 filing in which Mr. Hickcox will have to allege that his trial counsel

[2] *Bruen,* 597 U.S.

should have objected to the Constitutionality of the statute. Addressing it now, given the foregoing, will save judicial resources. The use of the plain-error standard by the Fifth Circuit was erroneous and deprived Hickcox of his fundamental constitutional rights, which *Bruen* demands.[3]

II. U.S.C. § 922(g)(1) is unconstitutional considering *Bruen* and its accompanying decisions.

Recently courts have started overturning class-based prohibitions on firearm possession, including the eighteen- to twenty-year-olds class ban and those banned for certain misdemeanors convictions. In *Binderup* the plaintiff argued that the lifetime bans on firearm possession for individuals convicted of certain nonviolent misdemeanors violated his Second Amendment rights. The court ruled that prohibition was too broad and violated the Second Amendment. Significantly, this case precedes *Bruen*.[4]

Bruen has ignited the fires of freedom by giving federal judges the ammunition needed to overturn twentieth-century laws that contradict an

[3] *Bruen,* 597 U.S.
[4] *Binderup v. Attorney Gen. of the United States,* No. 14-4549 (3d Cir. 2016).

accurate historical understanding of America's founding jurisprudence. Specifically, post-*Bruen*, in *Fraser*, the Fourth Circuit just invalidated the federal restriction prohibiting eighteen- to twenty-year-olds from possessing firearms. Judge Pain wrote in his decision that such prohibitions "cannot stand" considering the decision in *Bruen.* Specifically, the court stated, "'*Bruen* marks a sea-change in Second Amendment law, throwing many prior precedents into question. See *United States v. Rahimi*, 61 F.4th 443, 450 (5th Cir. 2023) ("*Bruen* clearly fundamentally changed our analysis of laws that implicate the Second Amendment") (cleaned up)."'[5]

While previous decisions concluded similarly just prior to *Bruen*, this Fourth Circuit case has three noteworthy distinctions. First, it invalidated the prohibition using *Bruen*'s reasoning, stating that no similar law existed at the time of America's founding. Second, the judge struck down a twentieth-century law with no eighteenth-century analogue, similar to the ban on felons in possession. Third, the court applied the *Bruen* historical standard using the same reasoning as *Rahimi*. Finally, both laws in question dealt with prohibitions

[5] *John Corey Fraser, et al. v. ATF,* No. 3: 22-cv-410, at 15 (E.D. Va. May 10, 2023).

on classes of people. Therefore, this case and its accompanying cases provide similar territory for the Supreme Court to strike down U.S.C. § 922(g)(1).

In the Fifth Circuit the prohibition on those under felony indictment from possessing a firearm was struck down. The judge stated, "[t]he Second Amendment is not a 'second class right.' . . . No longer can courts balance away a constitutional right." He further stated this was a direct result of the *Bruen* decision, stating that *Bruen,* "changed the legal landscape." He further went on to say that '"[a]lthough not exhaustive, the Court's historical survey finds little evidence that § 922(n)—which prohibits those under felony indictment from obtaining a firearm—aligns with this Nation's historical tradition. . . . As a result, this Court holds that § 922(n) is unconstitutional."' The court struck down 922(n), a different section of the statute in question, using the same reasoning found in *Bruen*.[6]

III. The Government's reliance on Pre-*Bruen* authority

For brevity, we will quote our statement from the previous brief:

[6] *United States v. Quiroz,* PE:22-CR-00104-DC (W.D. Tex. Sep. 19, 2022).

> The Government cites to numerous cases that establish the pre-*Bruen* landscape, like Heller, in which it was established that "Constitutional rights are enshrined within the scope they were understood to have when the people adopted them." *Bruen* goes on to inform how to evaluate statutes under that standard, laying out the "distinctly similar" standard for evaluation of statutes dealing with problems that would have existed at the time of the founding, and the "relevantly similar" standard for statutes which dealt with problems that could not have existed at the time of the founding. And, according to *McDonald v. City of Chicago*, 561 U.S. 742 (2010), Courts may not "treat the right recognized in Heller as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." According to that logic, nothing should prohibit for life the right to keep and bear arms if it would not also prohibit for life the right to freedom of speech, freedom of religion, freedom of the press, and any other right guaranteed by the Bill of Rights.

It's abundantly clear that the government is relying on pre-*Bruen* authority because the weight of post-*Bruen* authority does not support its position. *Bruen* has been described as a revolution that changed how statutory interpretation must take place. We ask that the court return to the principles of the founding era and continue to enforce the *Bruen* standard.

IV. The Government's reliance on Post-*Bruen* litigation

Once again, let us refer to our previous brief.

> At the time of the filing of its brief, there were, in fact, many district

> courts which were fearful to apply *Bruen* as the Supreme Court intended. The Court is now aware that post-*Bruen* litigation is evolving quickly, and now District Courts even in the District from which Mr. Hickcox case arises are finding the courage to apply *Bruen* and finding one provision of 922(g) after another unconstitutional. This Court is likewise carefully applying the logic of *Bruen*, and has found 922(g)(8) to be unconstitutional. See *Rahimi*. Further, the Government led with the case of *Range vs. Atty Gen. United States*, 53 F.4th 262, 271 (3rd Cir. 2022) as part of its large body of persuasive authority. However, at or near the time of the filing of the Government's Brief, *Range* was withdrawn for en banc consideration. That said this Court, in its wisdom has granted Cert to *Rahimi* showing a willingness to address the issue of prohibited persons from possessing firearms.[7]

Hickcox is even more sympathetic than the plaintiff in *Rahimi*. Hickcox's underlying crime was not a violent one against an intimate partner but rather a crime of theft that first carried a penalty of probation. Rahimi also went on to commit several other serious felonies and had no claim of self-defense such as Mr. Hickcox was alleging. Therefore, we urge the Court to consider granting Certiorari to Hickcox so that the Court may provide clarity on the issue of prohibited persons that the *post-Bruen* world has created.

[7] Hickcox Appellant Reply Brief at 5, March 20, 2023, citing *Rahimi*, 61 F.4th at 450.

V. The Government fails to establish the existence of a historical analogue at the time of the founding as *Bruen* required

Bruen explicitly uses the text, history, and tradition test as its metric to determine if a firearms law is constitutional. Consequently, the bulk of our brief will use that test and discuss why historically analogous laws did not exist during the founding period. Also, throughout American history, the laws disarming persons often relied on racist and prejudice undertones that on their face and by their application would be unconstitutional today. A recent article from *the Harvard Law Review* summarizes this point best: "Many, perhaps most, gun laws enacted between 1789 and 1940 were influenced at least in part by racism. The concealed carry law at issue in *NYSRPA [Bruen]* traces back to *the Sullivan Law*, which was at least partially influenced by anti-immigrant sentiment."[8]

[8] Adam Winkler, *Racist Gun Laws and the Second Amendment,* 135 Harv. L. Rev. F. 537, See generally *Amici Curiae Brief of Italo-American Jurists and Attorneys in Support of Petitioners, NYSRPA*, No. 20-843 (July 15, 2021)

That said, historically the roots of the federal felon in possession ban can be found only in the twentieth century. In 1938 the federal felon in possession ban was passed as part of the Federal Firearms Act of 1938.[9] At that time 922(g)(1) prohibited only violent felons, which the First Circuit addressed in 2011.

As Greenlee states,

> [t]he federal felon ban codified in § 922(g)(1) (1938) itself was originally intended to keep firearms out of the hands of violent persons.[10] As the First Circuit explained in 2011,the current federal felony firearm ban differs considerably from the version of the proscription in force just half a century ago. Enacted in its earliest incarnation as the Federal Firearms Act of 1938, the law initially covered those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary, but extended to both felons and misdemeanants convicted of qualifying offenses . . . . The law was expanded to encompass all individuals convicted of a felony . . . several decades later, in 1961.[11]

It was not until *the Gun Control Act of 1968* was passed in the panic of the assassination of President Kennedy, Senator Kennedy, and Dr. Martin Luther

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[9] 52 Stat. 1250, the Federal Firearms Act of 1938.

[10] Greenlee, Joseph, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms from Possessing Arms,* Wyoming Law Review Vol. 20 Num. 9, Art. 7, 2020, Citing See *Federal Firearms Act,* Ch. 850, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938).

[11] *Id., United States v. Booker,* 644 F.3d 12, 24 (1st Cir. 2011) (citing Federal Firearms Act, Ch. 850, §§ 1(6), 2(f), 52 Stat. 1250,52 Stat. at 1250–51 (1938); An Act to Strengthen the Federal Firearms Act, Pub.L. No. 87–342, § 2, 75 Stat. 757, 757 (1961) (some citations omitted)).

King that Congress further overstepped their constitutional authority and included non-violent felons. Even worse, it also made possession of a firearm or ammunition a crime for anyone who had been convicted of a crime punishable by imprisonment for more than one year. The key word here is *punishable*, meaning that a party convicted does not actually have to be sentenced to over a year of incarceration. Even worse, this prohibition includes all handguns, shotguns, and even small caliber firearms like twenty-two caliber rifles, all of which are in common use.[12]

Furthermore, for federal crimes, only a pardon from the President can restore one's right to possess firearms. In 1992 Congress prohibited the government from spending money to review a felon's application to restore gun rights. The pre-*Bruen* Supreme Court in 2002 upheld this on procedural grounds in *Bean* stating, "no action" does not equal a denial. Specifically, Justice Thomas writing for the majority said, "mere inaction by ATF does not invest a district court with independent jurisdiction to act on an application" Therefore this ruling essentially established that a citizen had no right to force the government to review their application if Congress did not want to fund it.

[12] 18 U.S.C. Ch. 44 § 921.

See *U.S. v. Bean, 537* U.S. at 76, (2002). However, in a post-*Bruen* world while the procedural issue on rights restoration has previously been settled by this Court in *Bean*, the issue of whether U.S.C. § 922(g)(1) comports with the *Bruen* test has not.

For state crimes, restoring one's firearms rights may be possible in extremely narrow circumstances and only on a state-by-state basis. But to restore one's right to possess a firearm at the federal level for a state crime a party must have his conviction set aside or expunged, for which the person has been pardoned or has had their civil rights restored.

In reality, this process is extremely difficult for a state-level crime and very few individuals are allowed to utilize it. For a federal crime, the president of the United States must pardon, but presidential pardons are extremely rare events. To suppress a fundamental right like the right bear arms behind them is unconstitutional on its face.

The same is true of serviceman convicted under *the Uniform Code of Military Justice* of crimes equivalent to federal felonies. The reality is those too are considered federal crimes subjecting them to the revocation of their Second Amendment rights. These armed service members too do not have a mechanism

short of a presidential pardon to restore their gun rights. Tragically, those who pledged their lives for our Republic have no mechanism either to restore their rights.

VI. The Founding Era's restoration of rights

It is even more tragic because the Founding Era did provide for a restoration of rights in a much more liberal and free manner both at the state and the federal level. While the Founding Era punished many serious crimes with the death penalty, they were progressive enough to establish mechanism for free men to restore their firearms rights.

Many crimes during this period were punished by death. Therefore, the issue of rights restoration was a moot point. "Persons who may have been prohibited from keeping arms in the founding era were often punished by death."[13]

[13] Greenlee at 268 Citing, *Baze v. Rees,* 553 U.S. 35, 94 (2008) (noting "the ubiquity of the death penalty in the founding era" and that it was "the standard penalty for all serious crimes") (Thomas, J., concurring)
(Quoting Stuart B Anner, *the Death Penalty: An American History* 23 (2002)).

However, there were crimes that did not carry the death penalty. For these crimes, "[m]any who committed firearms offenses were not disarmed at all, but instead had to pay a surety to ensure good behavior."[14]

For example,

> Connecticut's 1775 law disarmed "inimical" persons only "until such time as he could prove his friendliness to the liberal cause."[15] Massachusetts's 1776 law disarming disaffected persons provided that "persons who may have been heretofore disarmed by any of the committees of correspondence, inspection or safety" may "receive their arms again . . . by the order of such committee or the general court."[16] Many disarmament acts provided exemptions for prohibited persons who swore loyalty to the king.[17] And when Anne Hutchinson's supporters were being disarmed in the Bay Colony, some who sought forgiveness from the Colony were welcomed back into the community and could once again possess arms. So, once the perceived danger abated, the arms disability was often lifted. [18]

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[14] Greenlee at 268, For example, in 1759, New Hampshire persons "who shall go armed offensively" were not released "until he or she find such surities of the peace and good behavior." *Acts and Laws of His Majesty's Province of New-Hampshire in New England* 2 (1759). For an example of how this process worked, see *Welling's Case,* 47 Va. 670, 670 (Va. Gen. Ct. 1849)

[15] Greenlee at 268 Citing, Gilbert, supra note 92, at 282.

[16] *Mass. Gen. Laws* 484 (1776).

[17] Greenlee at 268 Citing, See, e.g., 52 *Archives of Maryland*, supra note 87, at 451–52; 7 Hening, supra note 87, at 36; *the Acts of the General Assembly of the Commonwealth of Pennsylvania*, supra note 103, at 193.

[18] Greenlee at 268 citing, See *Johnson*, supra note 84, at 175.

After the Revolution but just prior to the ratification of the Bill of Rights Shays Rebellion occurred. Shays Rebellion served as testbed for the American experiment's success. However, it also served a test on the restoration of the liberty of those involved in it. The young republic wisely exercised grace when responded to those involved. So did the founding fathers when restoring the firearms rights of those involved.

> Armed bands attacked courthouses, the federal arsenal in Springfield, and other government properties, ultimately resulting in a military confrontation with a Massachusetts militia on February 2, 1787. As the rebellion ceased later that year, Massachusetts established "the disqualifications to which persons shall be subjected, who have been, or may be guilty of treason, or giving aid or support to the present rebellion, and to whom a pardon may be extended."[19] Among these disqualifications were the temporary forfeiture of many civil rights, including a three-year prohibition on bearing arms.[20]

Thus, those involved in an armed insurrection against the United States at the time of the founding were only prohibited from possessing arms for only three years. Today there are men who are prohibited for life without option other than a presidential pardon and very few of them committed crimes half as serious as treason.

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[19] 1 *Private and Special Statutes of the Commonwealth of Massachusetts from 1780–1805,* 145 (1805).
[20] Greenlee at 268-269 Citing, *id.* at 146– 47.

Greenlee an established legal historian confirms the stark contrast between today and the American Revolutionary Period. Namely that the revocation and restoration of firearms rights was far more protected than it is today.

> The contrast between Shays's rebels and present-day felons can be stark. For example, in West Virginia, someone who shoplifts three times in seven years, "regardless of the value of the merchandise," is forever prohibited from possessing a firearm.[21] In Utah, someone who twice operates a recording device in a movie theater is forever prohibited from possessing a firearm.[22] And in Florida, a man committed a felony when he released a dozen heart-shaped balloons in a romantic gesture and thus earned a lifetime firearm prohibition.[23] It is inconsistent with history for many nonviolent present-day felons—someone who shoplifts three packs of bubble gum in West Virginia—to receive a lifetime firearm prohibition, when prohibited persons in the founding era—including armed insurrectionists—regained their rights once they no longer posed a violent threat.[24]

One must conclude then that the text, history, and tradition under the *Bruen* test is in direct contrast to today's firearms revoking legislation and the

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[21] Greenlee at 269 Citing, See W. VA. Code § 61-3A-3(c) (2020).
[22] Greenlee at 269 Citing, See Utah Code Ann. § 13-10b-201(2)(b) (West 2020).
[23] Greenlee at 269 Citing, Erika Pesantes, *Love Hurts: Man Arrested for Releasing Helium Balloon with His Girlfriend,* Sun Sentinel (Feb. 22, 2013), www.sun-sentinel.com/news/fl-xpm-2013-02-22-fl-helium-balloon-environmental-crime-20130222-story.html [https://perma.cc/2P9W-JTLU]. The felony examples were provided in *United States v. Torres,* 789 F. App'x 655, 658 n.2 (9th Cir. 2020) (Lee, J., concurring).
[24] Greenlee at 269, Citing See *W. VA. Code Ann.* § 61-3A-3(c).

oppressive and often near impossible restoration process. As a result, U.S.C. § 922(g)(1) and laws like it are not in keeping with the text, history, and tradition of the law as it existed at the founding of our nation. Thus, it must be set aside by this Court.

VII. The Government's reliance on reprehensible historical authority

Once again for brevity's sake quoting our previous brief would be instructive.

> It is supremely suspect that the Government similar is to point to founding period law that disarms supposedly, including Catholics, Native Americans, enslaved people, people who refused to swear a loyalty oath, and political dissidents, using such logic to suggest that any dangerous group may be disarmed. The Court can surely see the dangers of not upholding the Second Amendment against this faulty logic, for future generations could see any number of groups to be labeled dangerous, such as those determined to be intolerant, as we see definitions evolving over time, or who could become dissidents in any number of ways. If Catholics could be considered dangerous in one generation, then Protestants or Evangelicals or Conservatives could be considered dangerous in another. The same could be true in the future for groups who hold to any political or ideological view. The Second Amendment was meant to provide this sort of protection to all categories of the People.[25]

[25] Hickcox Appellant Reply Brief at 9, March 20, 2023.

The government's attempt to use this historical authority as grounds for upholding 922(g)(1) goes against very principles this nation was founded upon and thus the discriminatory statutes it cites cannot be an appropriate analogue under the *Bruen* Test.

VIII. Examining historical tradition of Class of Person Bans

The history of bans of classes of persons however does have some alleged historical analogue. However, this supposed analogue is the banning of classes of persons who are members of protected classes. Today we would find this abhorrent under our current understanding of fundamental rights.

IX. Laws disarming religious minorities

Disarming religious minorities unfortunately was a tradition that had its roots in the discriminatory aspects of the common law. English tradition had a long history of disarming religious minorities. For example, in 1689 Catholics were disarmed under English law.[26]

[26] See An Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 W. & M. Ch. 15 (1689).

X. Laws disarming or forbidding the acquisition of arms for Native Americans

Native Americans too were disarmed under the discriminatory laws in existence during the American colonial period and beyond. For example, Maryland, Massachusetts, and Pennsylvania passed such a law in the mid-18th century.[27] The reality is prohibitions such as these were common throughout English and early American history.

XI. Laws disarming those who refuse to take a loyalty oath

In 1777 North Carolina and Virginia enacted loyalty oath requirements for those that wish to exercise their right to bear arms.

> "…North Carolina went further, essentially stripping '"all Persons failing or refusing to take the Oath of Allegiance" of any citizenship rights. Those "permitted . . . to remain in the State" could "not keep Guns or other Arms within his or their house."'[28]

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[27] See 1757-68 Md. Acts 53, *An Act for Prohibiting all Trade with the Indians, for the Time Therein Mentioned,* Ch. 4, § 3, 1763 Pa. Laws 319, *An Act to Prohibit the Selling of Guns, Gunpowder or Other Warlike Stores to the Indians,* § 1, See *A Collection of Original Papers Relative to The History of The Colony of Massachusetts-Bay* at 492 (1769).

[28] Greenlee at 265 Quoting, *The State Records of North Carolina 89 (Walter Clark ed.1905).*

Virginia too required loyalty oaths to be given with the threat of disbarment being imposed for those that refused. Again, laws like this were common throughout the colonies.[29]

XII. 19th Century firearms prohibitions were largely based on discrimination based on race and therefore are not an analogue for 21st century prohibitions on felons like Hickcox.

In the 19th century such laws prohibiting classes persons focused even more on persons of African American decent and did so for insidious reasons found within the enslavement of those persecuted persons of color. Later these same sorts of laws would target free men of color in efforts to disarm them once they had thrown off their chains.

It's worth noting that *Heller and Bruen* only looked to 19th century to help interpret their understanding of 18th century American law. As Greenlee puts it, "[b]ecause the "original understanding" of the Second Amendment

[29] See *Act of May 5, 1777*, Ch. 3, in 9 *Hening's Statutes At Large* 281, 281-82 (1821).

defines its scope,[30] the *Heller* Court looked to nineteenth-century experiences only for help "understanding . . . the origins and continuing significance of the [Second] Amendment."[31]

Greenlee also establishes that "[n]ineteenth-century prohibitions on arms possession were mostly discriminatory bans on slaves and freedmen."[32] Unfortunately this trend to restrict persons of color from possessing arms existed at the start of the 19th century. For example, blacks were required to also have licenses to possess arms. These licenses were discretionary in nature and were absolutely enacted with the discriminatory intent of disarming blacks and rarely enforced against whites.[33]

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[30] Greenlee at 269 Citing *District of Columbia v. Heller, 554 U.S. 570, 625 (2008)* ("We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment."); *id.* at 634–35 ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.").
[31] *Id.* at 614.
[32] Greenlee at 269 Citing, See, e.g., *1804 Miss. Laws 90*; *1804 Ind. Acts* 108 § 4 (slaves); *1806 Md. Laws* 44 (slaves); *1851 Ky. Acts* 296 § 12 (Freedmen); *1860–61 N.C. Sess. Laws* 68 (Freedmen); *1863 Del. Laws* 332 (Freedmen).
[33] See, e.g., *1799 Laws of the Miss. Terr.* 113; 1806 Md. Laws 45.

Yet another example was a statute from Florida. '"A Florida law in 1825 authorized white people to "enter into all Negro houses" and "lawfully seize and take away all such arms, weapons, and ammunition."'[34]

The courts at the state level supported this sentiment as well. "[N]umerous restrictions imposed on this class of people [free men of color] in our Statute Book, many of which are inconsistent with the letter and spirit of the Constitution, both of this State and of the United States," was the restriction "upon their right to bear arms." *Aldridge v. Commonwealth,* 2 Va. 447, 449 (Gen. Ct. 1824).

Unfortunately, this acknowledgment that the disbarment of a class of persons based on race was necessary at the federal level as well. In 1857 the issue of armed blacks was delt with directly in the *Dread Scott* decision. This decision would set back race relations decades and set the stage for the American Civil War.

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[34] Winkler, at 537, Citing Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration, in Gun Control and the Constitution: Sources and Explorations on the Second Amendment* 403, 403 (Robert J. Cottrol ed., 1994).

The racist fears of the former chief justice of this very Court are sadly present in this decision. "In *Dred Scott*, Chief Justice Taney argued that one reason black people could not be citizens under the Constitution was that it "would give to persons of the negro race" the right "to keep and carry arms wherever they went." When the Chief Justice of the US Supreme Court states he fears granting citizenship to "negros" because he fears they will be armed then there can be little doubt that the legal purpose of race-based gun control is based on invidious discrimination. As a result, the court should reject any such laws as being an analogue for disarming felons today and should also view with skepticism any laws that disarm felons. This is especially ironic because blacks today are being disarmed disproportionately just the same because they make up a significant and once again disproportionate percentage of those convicted of felonies.[35]

With the end of the Civil War the racist nature of disarming black slaves shifted to targeting the now free men of color. Specifically, "[a]fter the Civil War, the Black Codes enacted in the South made it a crime for a Black person to have a gun." These black codes were unfortunately systematic attempt to

[35] Winkler, at 537, Citing *Dred Scott v. Sandford*, 60 U.S. 417 (1857). 60 U.S. 393 (1857).

return blacks to a state as close to slavery as possible. The use of these laws to disarm blacks as class was one such method.[36]

XIII. Post Civil War Jim Crow Era laws sought to disarm classes of persons based on race

In the aftermath of the Civil War the 14th Amendment was passed. This was understood to guarantee all citizens regardless of race equal protection and treatment under the law. As a result, restrictions based on race were slowly removed from the law. That said, the laws were rewritten by the former confederates and former slave masters to specifically target blacks and to deny them the right to bear arms. The African American Gun Association describes it well below.

> The Fourteenth Amendment did away with actually naming African Americans in laws prohibiting the right to bear arms. Instead, in the Jim Crow era facially-neutral laws imposed prohibitive fees and restrictions on the poor and were selectively enforced in ways to deny the right of black citizens to possess and carry arms.[37]

[36] *Id.*, Cottrol & Diamond, *supra* note 1, at 344.
[37] *Bruen*, 597 U.S., Amicus Brief of African American Gun Association Inc. at 27 2022.

In their summery of the Jim Crow Era, they set the stage by giving the following account.

> In 1892, Ida B. Wells wrote that a "Winchester rifle should have a place of honor in every black home, and it should be used for that protection which the law refuses to give." Ida B. Wells, Southern Horrors: Lynch Law in All its Phases 16 (1892). She had in mind recent events in Jacksonville, Florida, and Paducah, Kentucky, where well-armed blacks had thwarted lynch mobs.[38]

They continue showing how the Jim Crow Era South responded to this powerful call to arms by Wells.

> Perhaps not coincidently, a year later Florida made it a crime for a person "to carry around with him, or to have in his manual possession" a "Winchester rifle or other repeating rifle" without a license, which "may" be granted after posting a $100 bond with approved sureties. 1893 Fla. Laws 71-72. (In 1901, the law was amended to add pistols to the list.) That would be equivalent to $2,859 today. [39] The average monthly wage for farm labor in Florida in 1890 was $19.35.[40] Licenses were obviously

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[38] *Bruen,* 597 U.S., Amicus Brief of African American Gun Association Inc. at 27 2002, citing Margaret Vandiver, *Lethal Punishment: Lynchings & Legal Executions in the South* 179 (New Brunswick, N.J.: Rutgers University Press, 2006); George C. Wright, *Racial Violence in Kentucky 1865-1940: Lynchings, Mob Rule & "Legal Lynchings"* 169-170 (Baton Rouge: LSU Press, 1990).
[39] *Bruen,* 597 U.S., Amicus Brief of African American Gun Association Inc. at 27-28 2022, Citing Why a dollar today is worth only 3% of a dollar in 1893," Mar. 12, 2021. https://www.in2013dollars.com/us/inflation/1893.
[40] *Id.,* George K. Holmes, *Wages of Farm Labor* 29 (USDA 1912).

> beyond the means of poor persons, not to mention the unlikelihood of them being issued to African Americans.[41]

The courts of the early 20th century recognized the racist roots of this statute too.

> This law "was passed when there was a great influx of negro laborers in this State," and it was "for the purpose of disarming the negro laborers . . . . The statute was never intended to be applied to the white population . . . ."*Watson v. Stone*, 148 Fla. 516, 524, 4 So. 2d 700 (1941).[42]

Of course, it is obvious that the purpose of these licensing schemes was to make the right bear arms unaffordable for the new class of free blacks. The people of the time recognized it, and even the courts of the subsequent era recognized it too.

The roots of this brand of racist disarmament of classes of persons would even later extend to the author of the civil rights movement. "Even facially neutral laws were used in a racially discriminatory fashion; Martin Luther King Jr. was denied a concealed carry permit even after his house was firebombed.[43]

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[41] *Bruen*, 597 U.S., Amicus Brief of African American Gun Association Inc. at 28 2022.
[42] *Bruen*, 597 U.S., Amicus Brief of African American Gun Association Inc. at 28 2022.
[43] Winkler, at 537, Citing Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* 235 (2011).

For much of American history, gun rights did not extend to Black people and gun control was often enacted to limit access to guns by people of color."[44]

Native Americans too were not spared being prohibited from the access to arms in the 19th century. A Mississippi law greatly restricted others from trading with them so that they could have hunting equipment or arms. Of course, such a law was based on discriminatory intent well known to exist during the 19th century. Illinois too passed a similar law in 1813.[45]

Missouri passed a similar law in 1844 forbidding trade with Indians of necessities including blankets, horses, and arms without permission from a government agent. Again, to not conclude that such laws were based on discriminatory intent to is to not understand the unfortunate racist undertones present in much of 19th century America.[46]

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[44] *Id.*, supra note 1, at 344.
[45] Harry Toulmin, *The Statutes of the Mississippi Territory, Revised and Digested by the Authority of the General Assembly* at 593, Image 612 (Natchez, 1807), See *an Act Prohibiting the Trading with Indians,* Sec. 2, in Nathaniel Pope, *Laws of the Territory of Illinois* (1815).
[46] 1844 Mo. Laws 577, *An Act to Restrain Intercourse with Indians*, Ch. 80, § 4.

Lest the reader think that these discriminatory laws forbidding Native Americans access to arms or to be sold arms were restricted to the mid-19th century, one need only look to a 1901 Arizona statute.

> That if any person shall hereafter trade or give any guns, rifles, pistols or any other deadly weapons, ammunition or spirituous liquors to any Indian, without having a license, he shall, on conviction thereof before any Justice of the Peace, he fined in a sum not exceeding one hundred dollars for each offense, and also forfeit all the property received from the Indian, which shall be sold and the proceeds thereof paid into the public treasury. [47]

These discriminatory laws banning a class of persons based on race from posing arms were actually passed during the 20th century too. For historical context, this was only around 30 years before *the Federal Firearms Act of 1938* which first banned felons from possessing arms.[48]

Of course, almost all these laws from the 19th century were found in the former southern states after their unsuccessful rebellion which had the preservation of slavery at its goal. The Civil War settled the question of slavery however it did not settle the question of race targeted laws seeking to disarm blacks. It does not take a historian nor a legal scholar to know that such laws

[47] 1901, AZ, Title 10, §§ 342 & 362 *of the AZ Penal Code*.
[48] *Federal Firearms Act*, Ch. 850, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938).

were based on invidious discrimination. The unconstitutionality of these laws and their morality would not be questioned today. Therefore, to use them as a justification to uphold similar laws today as some sort of analogue is completely outrageous. To use these as an analogue to justify 21st century prohibitions on felons exercising a fundamental right is abhorrent and goes against the very founding principles this Court defends.

As a result, we must conclude that felon in possession ban is of modern vintage and certainly not a product of 18th century American thought. Bans on classes of persons prohibiting them from exercising a fundamental right based on religious creed, race or political opinion would be unthinkable today. As a result, *U.S.C. § 922(g)(1)* must fail under the "text, history, and tradition" standard established under *Bruen*. Prohibition of felons is 20th century invention. As result, they must fail under the *Bruen* test since once again there was no analogue from the time of the founding era.

To disarm felons as a class with the threat of extended incarceration is to potentially disarm all Americans. Ignorance of the law is no excuse. In essence, anyone can be charged and convicted of a felony because the law is

without end. Nothing is more dangerous to the ordered liberty found within our Republic than to allow 922(g)(1) as it is written to stand.

CONCLUSION

This case presents an opportunity for this Court to settle a circuit split regarding whether district courts must comply with the requirements of 18 U.S.C. § 3553 (c). In addition, it provides the court an opportunity to ensure that justice is properly applied to post conviction appellate actions; as well, as to ensure that judicial economy is promoted within all districts by applying consistent application of 18 U.S.C. § 3553 (c). More importantly this case allows the court to address the unconstitutionality of 922(g)(1) as it is applied to defendants like Hickcox who have been convicted of a non-violent felony.

FOR THESE REASONS, Petitioner Caleb Bryant Hickcox requests of this Court that his Petition for Writ of Certiorari be GRANTED.

Respectfully submitted,

By: /s/ Chad Van Cleave
Chad Van Cleave
Counsel of Record for Mr. Hickcox
P.O. 1703
Georgetown, Texas 78627
(512) 497-0604

App. A

United States Court of Appeals for the Fifth Circuit

No. 22-50365
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
April 25, 2023
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CALEB BRYANT HICKCOX,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:21-CR-361-1

Before JOLLY, JONES, and HO, *Circuit Judges*.

PER CURIAM:[*]

Caleb Bryant Hickcox pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court sentenced him to 63 months of imprisonment and three years of supervised release.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Hickcox argues that his § 922(g)(1) conviction is unconstitutional under the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). Because Hickcox did not challenge the constitutionality of § 922(g)(1) before the district court, we review only for plain error. *See United States v. Knowles*, 29 F.3d 947, 950 (5th Cir. 1994). To show plain error, the appellant must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). An error is not clear or obvious where an issue is disputed or unresolved, or where there is an absence of controlling authority. *United States v. Rodriguez-Parra*, 581 F.3d 227, 230-31 (5th Cir. 2009). "Even where the argument requires only extending authoritative precedent, the failure of the district court [to do so] cannot be plain error." *Wallace v. Mississippi*, 43 F.4th 482, 500 (5th Cir. 2022) (internal quotation marks and citation omitted). Because there is no binding precedent explicitly holding that § 922(g)(1) is unconstitutional and because it is not clear that *Bruen* dictates such a result, Hickcox is unable to demonstrate an error that is clear or obvious. *See Rodriguez-Parra*, 581 F.3d at 230-31.

Hickcox also seeks to preserve the argument that § 922(g)(1) is unconstitutional because it exceeds Congress's power under the Commerce Clause. As he concedes, this argument is foreclosed. *See United States v. De Leon*, 170 F.3d 494, 499 (5th Cir. 1999); *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Finally, Hickcox argues that his 63-month sentence is substantively unreasonable. Our review is for abuse of discretion. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020); *Gall v. United States*, 552 U.S. 38, 46-47, 49-51 (2007). Hickcox has not shown that the district court did not account for a factor that should have received significant weight, gave significant weight to an improper factor, or made a clear error in balancing the sentencing factors. *See United States v. Warren*, 720 F.3d 321, 332 (5th

Cir. 2013). The district court reviewed and adopted the presentence report, considered Hickcox's mitigating arguments, and determined that an above-guidelines sentence was appropriate because of the nature and circumstances of his offense. His argument that the district court should have weighed the sentencing factors differently "is not a sufficient ground for reversal." *United States v. Malone*, 828 F.3d 331, 342 (5th Cir. 2016); *see also United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017).

AFFIRMED.

App. B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:21-CR-00361(1) DC
USM Number: 78822-509

CALEB BRYANT HICKCOX
Alias(es):
None.
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Caleb Bryant Hickcox, was represented by Russell H. Lorfing.

The defendant pled guilty to Count(s) 1, of the Indictment on January 20, 2022. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count(s)
18 U.S.C. § 922(g), 18 U.S.C. § 924(a)(2)	Felon in Possession of a Firearm	December 10, 2021	1

As pronounced on April 27, 2022, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 5th day of May, 2022.

David Counts
United States District Judge

DEFENDANT: CALEB BRYANT HICKCOX
CASE NUMBER: 7:21-CR-00361(1) DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **Sixty-Three (63) months. This term to run concurrent with any sentence imposed in Docket No. CR57608 pending in 385th District Court of Midland County, Texas, and Docket No. 178452 pending in County Court at Law of Midland, Texas,** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to Sarasota, Florida as possible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____ with a certified copy of the Judgment.

_____

United States Marshal

DEFENDANT: CALEB BRYANT HICKCOX
CASE NUMBER: 7:21-CR-00361(1) DC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Three (3) years**.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: CALEB BRYANT HICKCOX
CASE NUMBER: 7:21-CR-00361(1) DC

CONDITIONS OF SUPERVISED RELEASE

(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

[1] The defendant shall not commit another federal, state, or local crime during the term of supervision.

[2] The defendant shall not unlawfully possess a controlled substance.

[3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

[4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

[5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

[6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

[7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

[8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.

[9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

[1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

[2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

[3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

[4] The defendant shall answer truthfully the questions asked by the probation officer.

DEFENDANT: CALEB BRYANT HICKCOX
CASE NUMBER: 7:21-CR-00361(1) DC

[5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change

[6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

[7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

[8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

[9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

[10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

[13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

[14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

[15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

[16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

[17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: CALEB BRYANT HICKCOX
CASE NUMBER: 7:21-CR-00361(1) DC

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW721CR000361-001 to ensure proper application to your criminal monetary penalty.**

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTAL:	$100.00	$0.00	$0.00	$0.00	$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **$100.00**.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. §3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

* 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.